



# Consultation on a draft revised code of conduct for registered property factors: Analysis of Responses



**PEOPLE, COMMUNITIES AND PLACES**

Consultation on a draft revised code of conduct for registered property factors:  
Analysis of Responses

Craigforth, June 2018

***Acknowledgments***

Thanks to the individuals and organisations who responded to the consultation.

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# Executive Summary

This summary presents key findings from the analysis of responses to a consultation on a draft revised Code of Conduct for registered property factors.

The consultation opened on 6 October 2017 and closed on 15 January 2018. In total, 102 responses were available for analysis, of which 73 were from groups or organisations and 29 from individual members of the public. The majority of responses (62 out of the 102 received) were group responses from organisations that act as a property factor. Of these, 33 respondents were Registered Social landlords (RSLs) including subsidiaries, 21 were private businesses and eight were local authorities.

## **Part 1 - The Impact of the original Code of Conduct for property factors**

In Part 1, the consultation paper asked for views on the impact of the original Code of Conduct for property factors which has been in force since October 2012. Respondents were evenly divided as to whether the original Code has made significant improvements (35%) or has made some or slight improvements (36%) while 6% felt there has been no improvement.

Those who identified improvements most frequently suggested that the original Code has defined the minimum standards of service required of property factors or provided a legal/professional framework within which property factors now work.

The specific aspects of the Code most frequently suggested as having resulted in improved standards were the introduction of a Written Statement of Services (WSS), complaints resolution via an independent complaints body and communication and consultation having been improved.

Respondents expressing a view that the original Code has made no improvements sometimes related personal experience of a poor service provided by one or more factors. Amongst other respondents identifying problems with the Code the most frequently made suggestion was that more robust enforcement is needed to deal with factors who do not comply.

## **Part 2 - Proposals on a draft 'revised' code of conduct for property factors**

Questions 2 and 3 asked for the respondent's views on the introductory text and the themes featured in the draft revised Code, as set out in the consultation paper. A significant majority of respondents (72%) thought that the introductory text does clearly explain its purpose, who it applies to, and the broader regulatory background.

Respondents who agreed most frequently thought that the text is clear and easy to read and understand. Respondents who disagreed or were unsure sometimes suggested that the text is too long or repetitive.

In terms of what is not covered within the Code, the most frequent request was for greater clarity with respect to when a person is acting as a factor.

The consultation paper explained that there are currently seven themes featured in the Code: Written statement of services; Communication and consultation; Financial obligations; Debt recovery; Insurance; Carrying out repairs and maintenance; and Complaints resolution. Question 3 sought views on these themes, each of which is the subject of a separate section of the draft revised Code.

A significant majority of respondents - 67% - thought that the themes of the revised Code should be kept as drafted, 6% would change the wording of existing themes, and 14% proposed additional themes. No respondents thought any themes should be removed from the draft revised Code. Reasons given for keeping the themes as drafted included that they are comprehensive, clear and easy to understand and consistent with the previous Code.

Questions 4 – 10 on the consultation paper cover the seven individual sections of the draft revised Code.

### Written Statement of Services

A small majority of respondents - 52% - thought Section 1 of the revised Code should be changed, while 32% thought they should be kept as drafted.

Section 1.2 sets out five circumstances in which 'a property factor must take all reasonable steps to ensure that a copy of the written statement of services is provided'. Several respondents suggested amendment of the first two of these circumstances, highlighting practical difficulties for factors including that they may not receive timely notification of a sale or that sales may fall through or be delayed.

A majority of those commenting did not agree the requirement to provide a WSS on an annual basis. It was argued that to do so would be time consuming or expensive and that costs would ultimately be met by property owners via management fees. Instead it was proposed a WSS should be reissued only when there are relevant changes or when the resident requests a copy.

While 44% of respondents thought that the format and structure of the WSS should be standardised, 33% thought it should not. The points made most frequently by those favouring standardisation included that this would ensure consistency of approach and simplify matters for homeowners and enable them to more easily compare the services that different factors provide.

However, it was also suggested that, while it would be useful to have a template available, its use should not be mandatory or that it should be possible to adapt any template to suit different circumstances.

Arguments made against standardisation included that one size does not fit all as both properties and factors differ widely. It was also suggested that factors operate in a competitive market and should be allowed to produce their own documents.

## Communication and consultation

Section 2 of the draft revised Code proposes the minimum standards and requirements for how a property factor should communicate and consult with homeowners. While 45% of respondents thought that the requirements of Section 2 of the revised Code should be changed, 40% thought they should be kept as drafted. Further comments generally addressed very specific issues of wording or the detail of the requirements.

## Financial obligations

Section 3 of the draft revised Code proposes the minimum standards and requirements for how a property factor should undertake any financial obligations it has with homeowners. While 47% of respondents thought that the requirements of Section 3 of the revised Code should be kept as drafted, 35% thought they should be changed.

Respondents who thought that Section 3 should be kept as drafted sometimes suggested this section is clear, strengthens the previous requirements and protects homeowners' interests.

There were calls for greater clarity as to what is meant by a 'detailed financial statement' and several respondents raised issues concerning the potential suitability of factoring invoices. On the requirement to provide an outgoing homeowner with 'all financial information that relates to their account' prior to the date of the change of ownership, some respondents felt this would not be practical or possible.

## Debt recovery

Section 4 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is recovering debt from homeowners and/or informing other relevant homeowners of such action. A majority of respondents, 59%, thought that the requirements of Section 4 of the revised Code should be kept as drafted, while 24% thought they should be changed.

Respondents who thought that Section 4 should be kept as drafted often made few additional comments, although it was suggested that Section 4 is fair and strengthens the previous requirements.

There were some concerns that certain of the provisions could result in higher charges to other homeowners or that some homeowners might seek to delay payment of the whole balance of their account, rather just than the disputed portion, if their case has gone to the First-tier Tribunal for Scotland (Housing and Property Chamber) (FTT). It was argued that it should be made clear that only disputed debts are exempt from payment during the FTT process.

## Insurance

Section 5 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is required to hold insurance and/or arrange insurance on behalf of homeowners. A small majority of respondents, 51%, thought that the requirements of Section 5 of the revised Code should be kept as drafted, while 29% thought they should be changed.

Positive aspects identified included that this section is clear. Otherwise comments tended to focus on specific details. For example, the requirement to 'notify homeowners annually in writing of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance' was suggested to be unnecessary.

## Carrying out repairs and maintenance

Section 6 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken. A majority of respondents, 60%, thought that the requirements of Section 6 of the revised Code should be kept as drafted, while 25% thought they should be changed.

Further comments included that this section covers the important points and would help ensure homeowners receive sufficient information to hold their factor accountable.

## Complaints resolution

Section 7 of the draft revised Code proposes the minimum standards or requirements for a property factor to follow in circumstances where it is handling and/or resolving complaints from homeowners. While 46% of respondents thought that the requirements of Section 7 of the revised Code should be kept as drafted, while 38% thought they should be changed.

Further comments included that it is not practical, reasonable or fair that an incoming factor should be held responsible for dealing with the failings of a previous factor, and also that the requirement to 'set out any recourse to the complaints procedures of any professional or membership body that the property factor may belong to' should be removed.

While 44% of respondents thought that there should not be standardised procedures for handling complaints, 34% thought there should. Amongst respondents who thought that complaints handling should be standardised the reason cited most frequently was that it would bring consistency to the complaints process.

Several respondents who thought there should be a standardised procedure suggested that the Scottish Public Service Ombudsman (SPSO) complaints

procedure should be used as a model and it was noted that many RSLs and local authorities already use this procedure.

A number of respondents who did not advocate a standardised approach also referred to the SPSO complaints procedure, noting that many RSLs and some local authorities already use and would wish to keep this. Other respondents who did not favour a standard procedure cited the need for flexibility to allow organisations to handle complaints in a way that is appropriate for them.

#### Any other comments on the draft revised Code

General comments welcoming the draft revised Code included that it is more detailed than the previous version and removes grey areas. The glossary was suggested to be a positive addition. Less favourable views included that it is too long and complex.

### **Part 3 - Proposed Modification Order**

Part 3 of the consultation paper asked for views on modifying certain provisions of the Property Factors (Scotland) Act 2011 (the 2011 Act) with the purpose of giving further effect to the draft revised Code as published as part of this consultation.

A majority of respondents, 70%, thought a de-registered property factor should be required to comply with the Code despite removal from the register of property factors, while 7% thought they should not.

A majority, 55%, also thought a three-year time limit should be introduced for homeowner applications to be lodged initially with the FTT, while 19% thought it should not. Those who agreed with the proposal or were unsure most frequently suggested that the three-year time limit was reasonable or fair to both homeowners and Property Factors.

The most frequently made comment by those who disagreed or were unsure was that a three-year timeframe seems too long or excessive. The most frequently suggested alternative timeframe was one year.

### **Part 4 - Impact Assessments**

Part 4 of the consultation paper noted that a Business and Regulatory Impact Assessment (BRIA) was prepared prior to the introduction of the original Code and that the Scottish Government is now looking to determine the impact of the draft proposals to revise the Code. Comments received will be used to inform a draft revised BRIA.

A small majority of respondents, 53%, thought that there were proposals in the consultation which have financial, regulatory or resource implications for themselves or their business, while 18% thought there were not. Comments tended to focus on the financial and resource implications, often seeing these two as being closely connected.



The specific proposal most frequently seen as having a resource implication was the requirement to issue an annual WSS and there was a concern that the additional administrative cost would have to be passed on to homeowners.

An Equality Impact Assessment (EQIA) was also prepared prior to the introduction of the current Code and again the Scottish Government is now looking to determine the impact of the draft proposals to revise the Code. Comments received will be used to inform a draft revised EQIA as well as a draft Children's Rights and Wellbeing Impact Assessment.

A majority of respondents, 68%, did not think any of the proposals would have an impact on or have implications for 'equality groups', while 5% thought there would be an impact. There were relatively few further comments and most of these comments simply noted that they had no concerns or did not think there would be any impact or were any implications.

### **Part 5 - The Impact of the Property Factors (Scotland) Act 2011**

The final part of the consultation paper asked for the respondent's views on the impact of the requirements of the wider Property Factors (Scotland) Act 2011. Respondents were relatively evenly divided as to whether the 2011 Act has made significant improvements (35%) or has made some or slight improvements (32%) while 6% (all Individual respondents) felt there has been no improvement.

Respondents who identified improvements often pointed to the 2011 Act and Code as having set a framework and minimum standards for the factoring industry. The individual elements highlighted most frequently were property factor registration and enforcement of standards by the FTT.

# Introduction

## Background

This report presents an analysis of responses to a consultation on a draft revised Code of Conduct for registered property factors.

Section 14 of the Property Factors (Scotland) Act 2011 (the 2011 Act) requires that Scottish Ministers must, from ‘time to time’, prepare and publish a Code of Conduct (the Code) which sets minimum standards of practice for registered property factors in their business with homeowners. Following an informal review of the original Code, a draft revised Code has been prepared and is the subject of this consultation exercise.

The consultation opened on 6 October 2017 and closed on 15 January 2018. The consultation paper is available at <https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/> and published responses can be viewed at [https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/consultation/published\\_select\\_respondent](https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/consultation/published_select_respondent).

## Profile of respondents

In total, 102 responses were available for analysis, of which 73 were from groups or organisations and 29 from individual members of the public. The majority of responses were received through the Scottish Government’s Citizen Space consultation hub.

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Organisational respondents were then allocated to one of four categories by the analysis team. A breakdown of the number of responses received by respondent type is set out in Table 1 below and a full list of organisational respondents can be found in Annex 1.

**Table 1: Respondents by type**

Type of respondent	Number
Organisations:	
Community or Resident’s Group	2
Property Factor	62
Representative or Professional Body	8
Other	1
<b>Organisations</b>	<b>73</b>
<b>Individuals</b>	<b>29</b>
<b>All respondents</b>	<b>102</b>

The majority of responses (62 out of the 102 received) were group responses from organisations that act as a property factor. Of these, 33 respondents were Registered Social landlords (RSLs) including subsidiaries, 21 were private businesses and eight were local authorities. The 'Other' group response was from a local authority that does not act as a property factor.

Individual respondents included individuals who are involved in delivering property factoring services and those who identified themselves as being in receipt of property factoring services.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area. However, the views they express cannot necessarily be seen as representative of wider public opinion.

## **Analysis and reporting**

The remainder of this report presents a question-by-question analysis of the comments made. A small number of respondents did not make their submission on the consultation questionnaire, but instead submitted their comments in a statement-style format. This content was analysed qualitatively under the most directly relevant consultation question.

Within the main report, the answers at the closed questions are presented in chart form. The full results by respondent type are presented in Annex 2.

A number of the consultation questions asked respondents to make reference to the relevant requirement(s) of the original Code or the draft revised Code where applicable. Where respondents did so, this is reflected within the analysis but the full text of the original or draft revised Code has not been presented. Readers may benefit from having a copy of the consultation paper for reference.

Throughout the consultation respondents made suggestions for redrafting of the proposed Code. Many of these were of detailed or technical nature and are beyond the scope of this summary report but all responses are available in full to the team at the Scottish Government for its consideration.

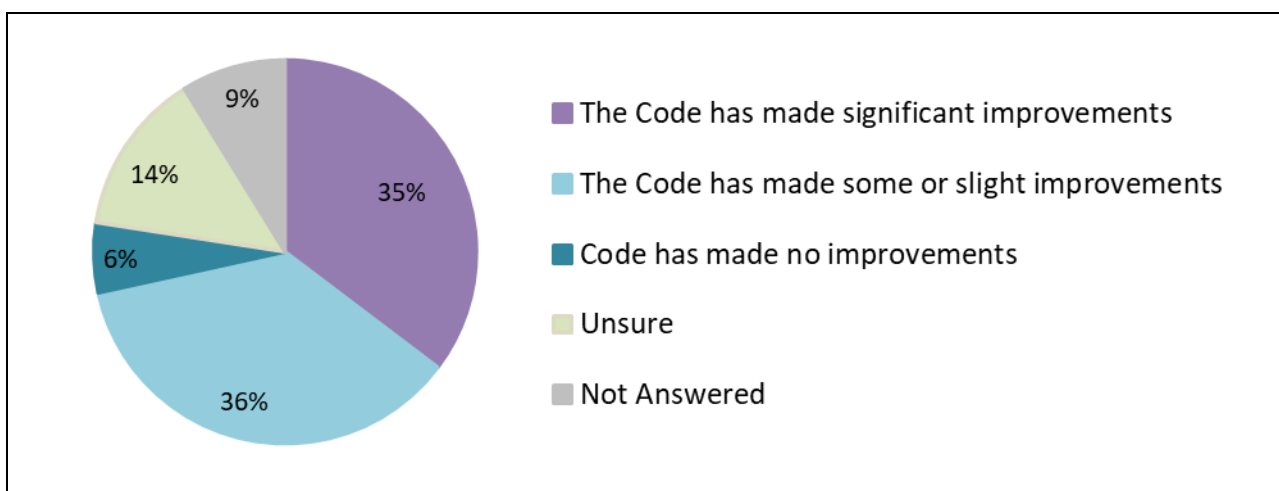
# Part 1 - The Impact of the original Code of Conduct for Property Factors

In Part 1, the consultation paper asked for views on the impact of the original Code of Conduct for Property Factors published in October 2012.

**Question 1 - Do you think the original Code of Conduct for property factors has led to improvements in the quality of factoring services provided to homeowners by property factors?**

As illustrated in Figure 1 below, respondents were evenly divided as to whether the original Code has made significant improvements (35%) or has made some or slight improvements (36%) while 6% felt there has been no improvement.

**Figure 1: Responses to Question 1. Also see Table 2 (Annex 2: Quantitative Analysis).**



## Improvements identified

Those who identified improvements most frequently suggested that the original Code has defined the minimum standards of service required of property factors or provided a legal and/or professional framework within which property factors now work. Other positive impacts identified included:

- Clarifying the responsibilities of a factor and encouraging factors to review and improve the services they provide.
- Requiring factors to be registered and helping to eliminate rogue operators.
- Increasing transparency and accountability.
- Making homeowners more aware of their rights.

A small number of individual respondents related positive personal experiences of their current factor, suggesting this might indicate positive effects of the current Code. However, it was also suggested that reputable factors already met the required standards before the Code was introduced and, in these cases, there will have been less impact. A small number of respondents identified the greatest

impact as being among factors who previously did not operate at an acceptable level. While it was suggested that the level of improvement may have been greatest in the private sector since housing associations were already heavily regulated, one RSL (acting as a property factor) also identified improvements made within their own services.

The specific aspects of the Code most frequently suggested to have resulted in improved standards were:

- Introduction of a **Written Statement of Services** (WSS) resulting in improved clarity/transparency.
- **Complaints Resolution** via an independent complaints body leading to improved accountability.
- **Communication and consultation** having been improved, including amongst organisations that already had their own codes in place.

Small numbers of respondents pointed to improvements resulting from the sections of the Code concerning: financial regulation; debt recovery; insurance; carrying out repairs and maintenance.

The work of the First-tier Tribunal for Scotland (Housing and Property Chamber) was referenced by a number of respondents including that:

- Recommendations made by members of the First-tier Tribunal (FTT) for strengthening the Code to make it even more effective should be supported where there is merit and value in doing so.
- Useful lessons may be learned by sharing information from cases brought.
- Improvement may be inferred in some areas (such as communication and complaints handling) from the small number of cases brought.

### **On-going problems identified**

Individual respondents expressing a view that the original Code has made no improvements sometimes related personal experience of poor service provided by one or more factors.

Among other respondents identifying problems with the Code the most frequently made suggestion was that more robust enforcement is needed to deal with factors who do not comply. Related points included that:

- The Code is sometimes ignored.
- Some factors continue to provide a poor service.
- Factors found to be in breach of the Code on multiple occasions should be removed from the register or fined a more significant amount.
- Some factoring companies are not registered and the lack of enforcement of registration is unfair to those who do comply. A minority of smaller factors do

not appear to learn from their mistakes and are appearing before the FTT on numerous occasions.

Other problems identified with the original Code included:

- It sets out a process for property factors to follow but does not specify minimum standards in delivery of the service. It does not deal with customer service issues, and high levels of customer satisfaction are rare.
- Some local authorities are selective about the elements adopted or do not register as factors for some mixed ownership blocks.
- Factors may omit or misrepresent the requirement of some sections of the Code in their WSS.
- Some factoring customers are not aware of the Code or have insufficient understanding of the role and legal status of property factors. Some homeowners may still be unclear what they can expect and may find it difficult to resolve disputes.
- For some organisations, compliance with the Code has had an adverse impact on costs and workload and so has reduced the resources available to develop the service being provided.

A small number of other respondents at Question 1 drew attention to the work of the Glasgow Factoring Commission, particularly referencing its suggestion that the Scottish Government should 'review the overall legislative framework relating to common property management and repair'. It was also suggested that the Scottish Government should introduce a mandatory requirement for appointment of common factors.

## Part 2 - Proposals on a draft ‘revised’ code of conduct for property factors

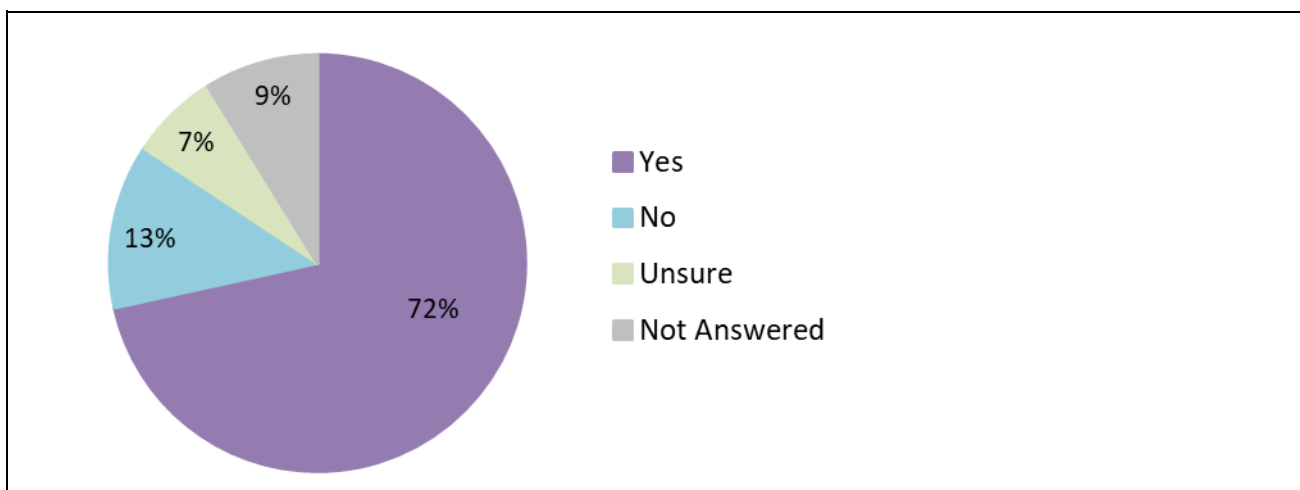
### Introductory text and themes

Questions 2 and 3 asked for views on the introductory text and the themes featured in the draft revised Code, as set out in the consultation paper.

#### **Question 2: Does the Code’s introductory text clearly explain its purpose, who it applies to and the broader regulatory background?**

As illustrated in Figure 2 below, a significant majority of respondents (72%) thought that the introductory text does clearly explain its purpose, who it applies to, and the broader regulatory background.

**Figure 2: Responses to Question 2. Also see Table 3 (Annex 2: Quantitative Analysis).**



Many respondents who agreed left no additional comment. Among those who did, the most frequently-stated view was that the text is clear, with smaller numbers suggesting it is unambiguous, concise, easy to read/understand and provides sufficient information. In comparison to the same section in the original Code, the draft text was suggested to be more robust, comprehensive or detailed. Particular aspects welcomed included that it provides detail around homeowner led works and provides clarification that local authorities and RSLs, who may not consider themselves factors in the traditional sense, must comply with the Code.

Respondents who disagreed or were unsure sometimes suggested that the text is too long or repetitive, and that this makes homeowners less likely to read it. However, others suggested that the length is inevitable or that the content is valuable as many homeowners will not refer to the 2011 Act.

Other general points on the introductory text, in each case made by only one respondent, included that the foreword does not explain the sources of the feedback obtained by the Scottish Government prior to deciding to strengthen the Code, or to tell the homeowner what to do if their factor is unregistered.

Several respondents suggested clarifications, amendments or additions to the text as drafted, noted below under the subheadings used in the Code. Comments were diverse, and often made by only one or a very small number of respondents. They are set out in turn below.

### **What is the purpose of the Code?**

It was suggested that it should be explained why the Code is important for homeowners.

### **Who does the Code apply to?**

Providing further explanation or definitions within the body of the text, rather than interrupting the text with references to a section of the 2011 Act was suggested, as was a requirement that local authorities should register as property factors if they arrange for works to be undertaken on any shared ownership blocks.

### **What may happen if a homeowner believes that their property factor is not complying with the Code?**

The statement regarding decisions made by the FTT Chamber President was suggested to be inaccurate as the President now has the power to delegate.

### **What may happen if a property factor is found by the First-tier Tribunal to have failed to comply with a property factor enforcement order?**

Clarification of the wording concerning the inability of a factor to recover costs after being removed from the register was requested, to state that this applies only to work instructed after the date of removal.

It was also suggested that it should be made clear that it is not an offence to operate as a property factor despite removal from the register where there is still time to appeal or an appeal has not yet concluded.

### **How do the requirements of professional bodies and other legislation relate to the Code?**

The list of other professional bodies was said to be confusing or to lack context. Addition of a reference to the Consumer Rights Act of 2015 and the Tenements (Scotland) Act 2004 was proposed.

### **What is not covered within the Code?**

The most frequent request was for greater clarity with respect to when a person is acting as a factor. Examples given of people and situations where this might be in doubt or should be clarified included:

- A homeowner undertaking regular work (such as stair cleaning) with majority agreement of other homeowners.
- One homeowner (possibly a landlord) agreeing to obtain quotes and arrange work for a common repair.



- Absentee landlords who arrange *ad hoc* repairs or regular maintenance work such as grass cutting in the course of their letting business, but rarely charge other proprietors a fee for this work. Or a letting agent performing the same function on behalf of their landlord client, and charging this client for the work, but not other proprietors.
- A person who acts as a manager under a Development Management Scheme.

Other suggestions on this section included:

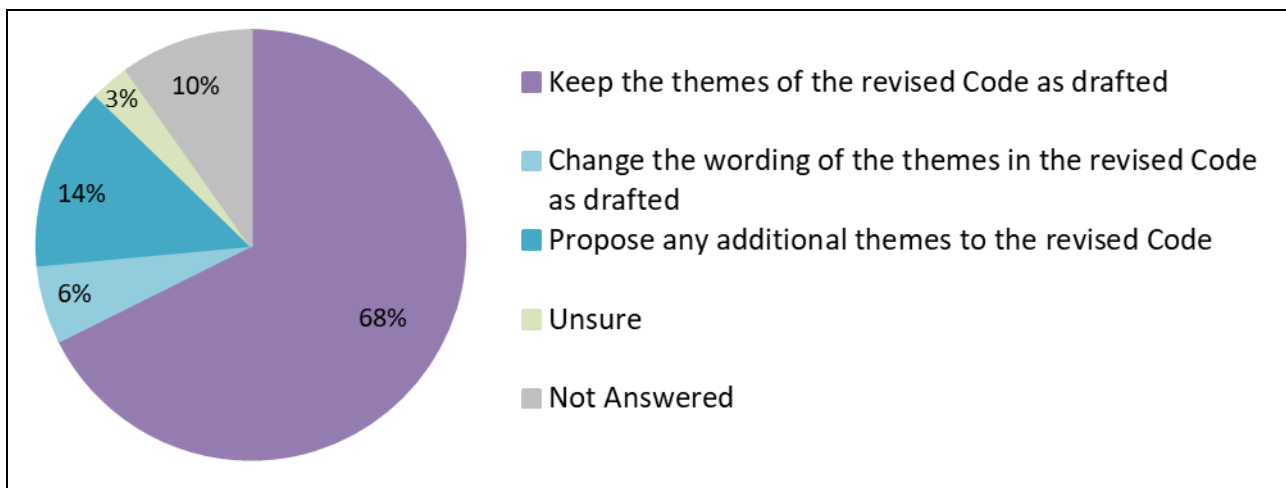
- That it should be made clear that issues outwith the business arrangement between factor and homeowners include disputes between neighbours about noise or antisocial behaviour.
- The legal position for homeowners who are managing common property elements and are not using a property factor' should be clarified.
- The Code covers standards of conduct relating to a factor's communication with homeowners, but not the homeowner's communication with their factor. Homeowners should also be made aware their communication with the factor may be covered by any unacceptable actions policy the factor has in place.

The consultation paper explained that there are currently seven themes featured in the Code: Written Statement of Services; Communication and consultation; Financial obligations; Debt recovery; Insurance; Carrying out repairs and maintenance; and Complaints resolution. Question 3 sought views on these themes, each of which is the subject of a separate section of the draft Code.

**Question 3: As published as part of this consultation, would you Keep the themes of the revised Code (as drafted); change the wording of the themes in the revised Code (as drafted); propose any additional themes to the revised Code; remove any themes in the revised Code (as drafted)?**

As illustrated in Figure 3 below, a significant majority of respondents - 68% - thought that the themes of the revised Code should be kept as drafted, 6% would change the wording of existing themes, and 14% proposed additional themes. No respondents thought any themes should be removed from the draft revised Code.

**Figure 3: Responses to Question 3. Also see Table 4 (Annex 2: Quantitative Analysis).**



### **Keep as drafted**

Reasons given for keeping the themes as drafted included that they are:

- Comprehensive, covering all the main subjects and requirements for a factoring service.
- Concise, clear, self-explanatory or easy to understand and navigate.
- Consistent with the previous Code.

### **Change the wording**

A small number of respondents proposed changes to wording of themes, although these generally referred to points of detail under a specific requirement and are considered below.

One respondent welcomed the inclusion of 'financial obligations' as implying the requirements of this section are obligatory and suggested that the word 'obligations' should be added to other themes.

### **Additional themes proposed**

Additional themes, each suggested by only a small number of respondents, were:

- Explanation of a property factor's duties.
- Training or professional qualifications for property factors.
- Quality standards for workmanship.
- Compliance with provisions in title deeds and other legislation.
- Selling a property and changing factor.
- Dismissing a factor or transfer of a factoring contract to an alternative supplier.

Finally, one respondent proposed an alternative structure for the draft revised Code, namely: Management; Property; Administration; and Accounting.

## Specific Requirements

Questions 4 – 10 on the consultation paper cover the seven individual sections of the draft revised Code.

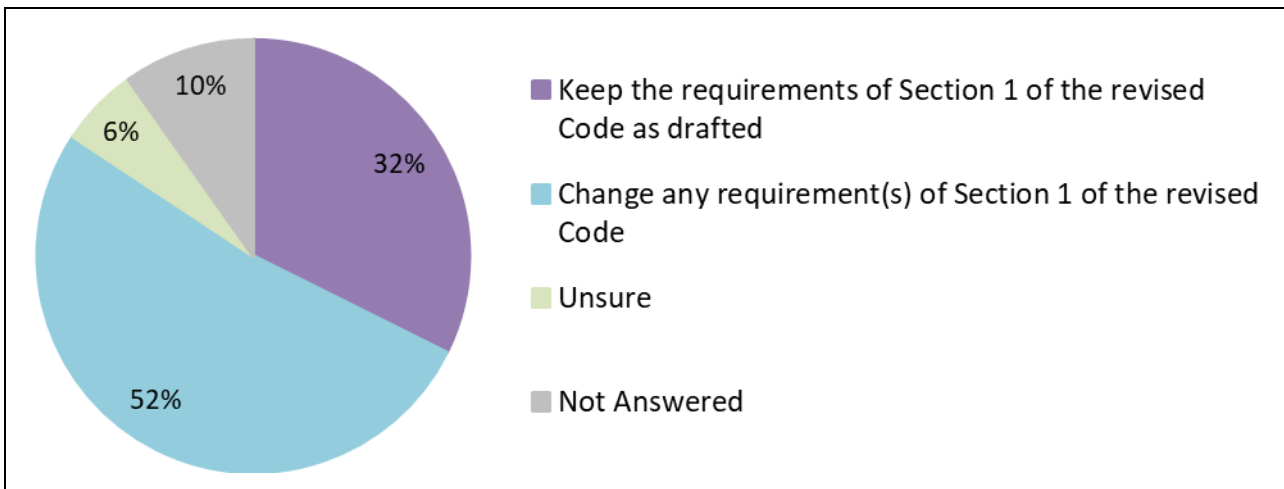
### Section 1: Written Statement of Services

Section 1 of the draft revised Code covers the requirements for provision of a Written Statement of Services (WSS) to homeowners and the information which should be included in the Statement of Service. It notes that different requirements may apply depending on whether the land is owned by a group of homeowners or whether the land is owned by a land maintenance company or a party other than the group of homeowners.

**Question 4a: As published as part of this consultation, would you: keep the requirements of Section 1 of the revised Code (as drafted); or change any requirement(s) of Section 1 of the revised Code?**

As illustrated in Figure 4 below, a small majority of respondents - 52% - thought Section 1 of the draft revised Code should be changed, while 32% thought they should be kept as drafted.

**Figure 4: Responses to Question 4a. Also see Table 5 (Annex 2: Quantitative Analysis).**



At Question 4a, general observations included that Section 1 it is clear or comprehensive. Suggestions included that all WSS should be dated, and should have the address to which they apply on the document and not in a covering letter. It was also suggested that it would be helpful to provide:

- Clarification that Section 1 covers the *contents* of the WSS, while the provisions under each heading are covered in later sections.
- Examples of what could be meant by a 'group of homeowners'.
- A template or standardised format for a WSS written in plain English. A shorter, simpler WSS was suggested to be easier for residents to read and understand.

It was also argued that, throughout the draft revised Code, references to 'procedure' should be amended to refer to 'policy', as procedures are generally understood to be detailed documents for internal use within an organisation.

**Section 1.1** states that a property factor must provide each homeowner with a WSS setting out, in a simple, structured and transparent way, the terms and service delivery standards of the arrangement in place between them and the homeowner. Clarification of what is meant by 'provide' was requested and, specifically, whether providing an electronic copy or online access to a downloadable copy of the WSS complies with the Code. One respondent related their experience that homeowners now expect information to be provided digitally and suggested that the wording be amended to reflect this. It was also suggested that the requirements of the new Code are such that the word 'simple' should be removed from Section 1.1.

An individual respondent noted that, under the previous Code, their factor was able to issue a WSS that was not specific to the property, but instead include a list of services that *might* be included. It was argued that the revised Code should require the WSS to show the services provided to an individual property.

**Section 1.2** sets out five circumstances in which 'a property factor must take all reasonable steps to ensure that a copy of the WSS is provided'. These circumstances are set out in turn below.

1. To any new homeowner within 4 weeks of the property factor agreeing in writing to provide services to them; and
2. To any new homeowner within 4 weeks of the property factor being made aware of an impending change of ownership or the actual sale of a property of which they manage and maintain the common parts (whatever comes first).

Several respondents suggested amendment of these circumstances is needed, highlighting practical difficulties for property factors including that they may not receive timely notification of a sale or that sales may fall through or be delayed. It was also suggested that from a legal perspective, property factors cannot provide information prior to someone taking ownership. Alternative approaches suggested were that:

- The requirement should be 4 weeks from receiving confirmation of the completed sale or date of entry.
- The period should be extended to 12 weeks.

Other suggestions included that it would be useful to include a requirement for solicitors to access the Property Factors Register to check if a property is factored, rather than relying on information provided by their clients, or that the WSS should be provided as part of the conveyancing process. Finally, it was suggested that homeowners should be consulted when a new factor takes over the business of the existing factor.

3. To all homeowners at least once on an annual basis thereafter. If applicable, any changes must be clearly indicated on any revised written statement of services issued.

A substantial majority of all respondents who made a comment at Question 4a did not agree to the requirement to provide a WSS on an annual basis. It was argued that to do so would be impractical, time consuming or expensive and that costs would ultimately be met by property owners via management fees or by local authorities where no factoring fees are charged. An estimated cost of £10 per statement was suggested by one respondent while a Local Authority respondent noted they would need to send over 8,000 documents per year with no means of recovering the cost.

Instead it was proposed a WSS should be reissued only when there are relevant changes or when the resident requests a copy, as set out in Section 1.3. Several respondents suggested that sending the WSS in hardcopy once, then making it available via a website should suffice. It was also suggested that homeowners might be signposted to an online WSS via a written communication. It was argued, however, that such online provision could be impractical and not user-friendly since WSS are property specific and an organisation might require hundreds of different statements to be made available on its website.

Smaller numbers of respondents suggested:

- Homeowners would not welcome annual copies of the WSS or might find these confusing.
- The paper used to produce annual copies would not be environmentally friendly.
- The statement could instead be reissued at 3-year intervals.
- Paper copies should be required annually only if a resident has no access to the property factor's website or if the factor has no website.
- Factors should be given discretion to charge for additional hardcopies of the WSS.

Only a very small number of respondents agreed that annual provision of a statement is reasonable or important although these respondents also referenced providing the statement via a website or in electronic form.

4. To all relevant homeowners within 4 weeks if there are changes required to the terms of the written statement of services as a result of the property factor identifying that they have provided information which was misleading or inaccurate at the time of previous issue. Any changes must be clearly indicated on the revised written statement of services issued

Comments on correcting misleading or inaccurate information were limited but included that:

- It would be unduly expensive to reissue a WSS for a relatively minor inaccuracy, such as an incorrect telephone number.
- The reference could instead be to 'substantial' changes.
- A factor could instead write to homeowners explaining the inaccuracy and signposting to the full revised WSS on their website.

5. To all relevant homeowners at the earliest opportunity (not exceeding 1 year after the change takes effect) if there is a substantial change required to the terms of the written statement of services. Any changes must be clearly indicated on the revised written statement of services issued

Comments on updates after substantial change included that this should be required within 4 weeks or 6 months of the change taking effect.

There were few comments specifically on **Section 1.3** although clarity was again requested on whether an electronic copy available online is acceptable and it was suggested a timescale should be added to this section.

**Section 1.4** sets out requirements for the content of the WSS in situations where the land is owned by a group of homeowners while **Section 1.5** sets out the corresponding requirements where the land is owned by a land maintenance company or a party other than the group of homeowners. The requirements of Sections 1.4 and 1.5 differ only at A (Authority to Act) – the requirements of subsections B – H are identical.

#### A. Authority to Act

All comments on the Authority to Act refer to the requirements specified for Section 1.4. However, it was suggested that there may be situations where a company owns the common land around buildings but not the buildings themselves, and that the arrangement to maintain such land may be separate from the arrangement to maintain common building elements.

Several respondents commented on the term 'custom and practice arrangement' in paragraph A(1) with suggestions made including:

- Explanation of a custom and practice arrangement and how this can be terminated should be included.

- The text should state that if the title deeds are old, and in the absence of other formal agreement, then the arrangement is purely one of custom and practice.
- Guidance on the rights of factors operating under such an arrangement would be helpful.

A small number of respondents referenced FTT cases concerning custom and practice arrangements with suggestions including that the Scottish Government might wish to consider use of this term in the light of an FTT decision outlining the difficulties involved. It was also suggested that there should be greater clarity that if custom and practice is the authority to act and this is clearly stated, it should be good enough in cases where the factor can show they have been providing the service for a number of years.

Other views on the content of the Authority to Act section included:

- There is no benefit to including definitions of ‘property factor’ and ‘homeowner’ on the WSS as these can be viewed elsewhere. Alternatively, it was suggested these should be explained in simple language with signposts to legal definitions.
- A bespoke WSS for each property is not necessary, but Authority to Act will vary from building to building. The WSS should only list the categories which may apply.
- With respect to A(2), clarification of the circumstances covered and terms used is required, or confirmation is needed that A(2) refers to changes going forward and does not apply retrospectively.
- With respect to A(3), it was suggested it might be useful to distinguish consultation with individual homeowners from a representative committee.
- Where not defined in titles or deeds of conditions, a fair and acceptable arrangement has to be agreed between the factor and the majority of owners before an apportionment system is introduced. This is the standard acceptable by the courts therefore should be acceptable here.

## B. Services provided

On section B, it was suggested that it might be helpful to clarify that ‘core services’ are those covered by the management fees and so should not attract additional charges. Other suggestions included that:

- Arrangements surrounding periodic inspections should be clarified.
- Homeowners should be provided with information about the standard of service provided to enable them to see whether this is delivered.
- There should be explanation of circumstances where progress reports will or will not be provided.



## C. Financial and Charging Arrangements

Comments on section C were limited but included that:

- Regarding C6, factors should be required to have a fee structure that is transparent in methodology and calculation.
- To avoid the need for reissuing the WSS, the fees should be set out in a financial statement distinct from the WSS.
- C7 should require that every owner is informed of the proportion that they, and all other owners are charged. It was also suggested that the Code should note that the apportionment of management fees and works and services charges between properties is likely to be determined by the title deeds.
- C8 should cover both floating and sinking funds, should explain what these are, and should recognise that the title deeds may determine how contributions are determined.
- C9 should also include arrangements, and timescales, for refunding payments where work has not been done.
- Regarding C11, information on how payments will be taken including timescales and payment methods should not be included as payment methods may change, necessitating reissue of the WSS.

## D. Communication Arrangements

Broader comments on section D included that it might be better titled 'Communication and Complaints'. Comments on specific parts included:

- D13 could also refer to other complaints arbitration mechanisms available, such as via organisations of which the factor is a member.
- D15(i) is not clear, since the Code already sets out the information to which the homeowner is entitled.
- D15(ii) is potentially a very onerous requirement. It was suggested that producing a document electronically may still be costly and time consuming and that a reasonable charge should be allowed for both paper and electronic copies or that it should be sufficient for the factor to make documents available for inspection at no charge. An alternative view was that the principle of no charges except for paper copies is important.
- Data protection (D16) is covered by separate legislation and should not form part of the Code, or it may be sufficient for the WSS to confirm that the factor complies with data protection regulations.

## E. Declaration of Interest

Comments on section E were limited. A small number of respondents expressed concern about the practicality and cost of achieving compliance when someone provides a letting service and a factoring service in the same development. It was argued that the declaration of interest could require frequent updating and,

depending on the definition of 'substantial change' in Section 1.2, could mean the WSS also has to be updated. Alternative approaches suggested were that:

- The factor should provide homeowners with a separate, annual notification of interest for the preceding year.
- A declaration of interest should be required only where the factor acts as a landlord within a development, rather than as a letting agent.

A suggested addition to section E was that if a factor provides insurance and receives any commission on the premiums paid, this should also be declared as an interest.

#### F. Property Factor Registration Number, duty to provide information for the purposes of the public register and details of membership of professional or trade bodies

It was suggested that paragraph F(18) is not necessary, or could be abbreviated to confirmation of the factor's registration number. Reasons given included that this information is already in the 2011 Act and its inclusion here may encourage owners to bring complaints in the event of minor errors.

With respect to paragraph F(19), a small number of respondents argued that the phrase 'expects to act for' or 'previously acted for' should be removed, both because the information provided on the Register is only for properties currently managed, and because a factor cannot be expected to declare who they expect to act for. It was also suggested that the Register is neither updated often enough to keep information current nor is in a format that allows previous client information to be held. Respondents suggested that the type of search envisaged is not feasible at present, and the relevance of such a search is questionable. Simplification to state that the factor is required by legislation provide information in connection with searches for conveyancing purposes was suggested.

Comments on paragraph F(20) included that membership of trade organisations has no relevance under the 2011 Act or that it is not clear what benefit there would be making it mandatory for factors to specify if they are members of relevant bodies. It was also suggested that, since membership of such bodies may change, its inclusion would then require factors to issue an amended WSS.

Other comments included that including examples of relevant professional or trade bodies would be helpful. An alternative perspective was that listing these bodies could be confusing to homeowners and might result in complaints being directed to the organisations listed rather than to the FTT.

#### G. Compliance with the Code of Conduct and property factor enforcement orders imposed by the First Tier Tribunal

There were very few comments on section G, other than that this section is not necessary as the information is already in the Act and easily available from the Scottish Government and FTT websites.

## H. How to End the Arrangement

A small number of respondents commented on potential data protection issues concerning any information passed to another factor. It was suggested that:

- Factors would need to ensure that the potential sharing of information with a new factor is included in their Fair Processing Notice to all owners.
- H(24) should be amended to state that there is no requirement to provide information relating to an individual homeowner where this requires the explicit consent from that homeowner.
- Legitimate information may not be passed on if the factor's data protection policy is too restrictive.

It was also suggested that the Code should be prescriptive about the information exchanged, and that paragraph H(24) should be cross referenced to Section 2.9, where such information could be specified. One respondent provided a potential list of what might be included. Clarification of the process when an owner denies permission to pass on their details was also requested.

With respect to paragraph H(25) it was argued that property factors should not be expected to provide legal advice to homeowners on how to terminate their appointment. Instead it was suggested that in the WSS:

- The property factor should advise that their appointment can be terminated, and that the homeowner should refer to their title deeds and any relevant legislation.
- There should be a statement about ending the agreement, signposting owners to title deeds, sources of independent advice, and relevant legislation. However, scheme-specific information based on legal advice obtained by the factor should only be provided on request.

Finally, amendment of H(24) and H(25) to cover situations where homeowners do not own factored land was requested.

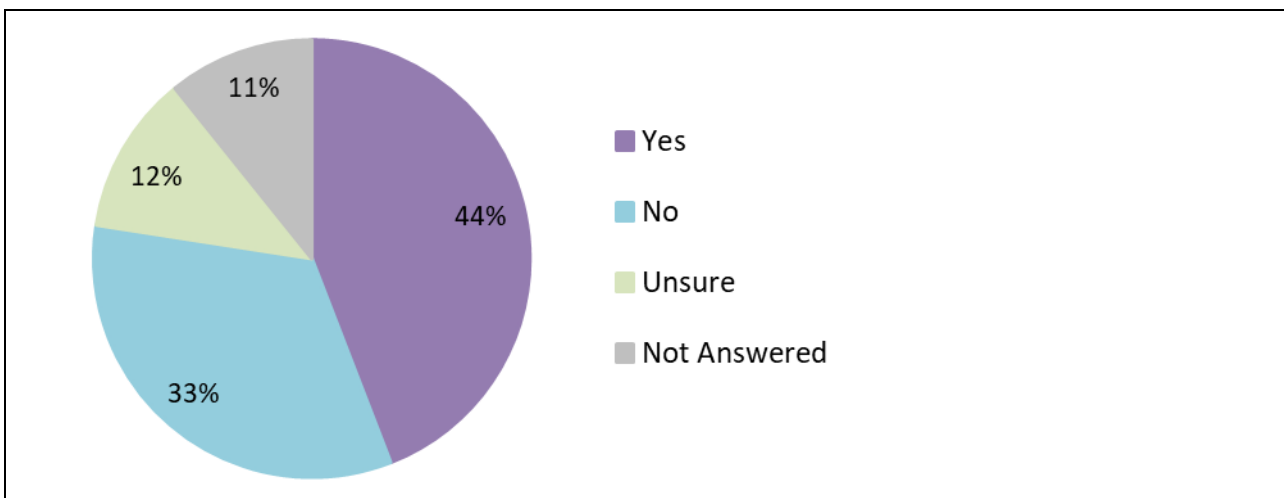
## Standardisation of the Written Statement of Services

The Code sets the standards on what information should be included in the WSS a property factor must provide to homeowners, but does not specifically prescribe a standard format and/or structure on how that WSS should appear.

### Question 4b: Should the format and structure of the written statement of service be standardised as part of any proposed changes to the Code?

As illustrated in Figure 5 below, 44% of respondents thought that the format and structure of the WSS should be standardised, while 33% thought it should not.

Figure 5: Responses to Question 4b. Also see Table 6 (Annex 2: Quantitative Analysis).



The points made most frequently by those favouring standardisation included that this would:

- Ensure consistency of approach and that all factors provide the required information without room for interpretation. It was suggested that there is too much variation between the WSS agreements that are in current use.
- Simplify matters for homeowners and enable them to more easily compare the services different factors provide.
- Potentially be helpful for some factors, particularly those operating at small scale or new to the industry.

Small numbers of respondents suggested that a standard format could be similar in nature to the new Model Tenancy Agreement created by the Scottish Government for use in the private rented sector and this might be helpful to the FTT in determining whether a WSS is fit for purpose. Others commented that the matter is difficult to judge in the absence of a draft WSS or that there should be a separate consultation on any proposed standard statement.

However, it was also suggested that, while it would be useful to have a template available, its use should not be mandatory or that it should be possible to adapt any template to suit different circumstances. It was also argued that while a standard

format would have been useful when the original Code was introduced, factors have already developed their own documents, and changing to a new format now would involve a significant amount of additional work and cost.

Arguments made against standardisation included that:

- One size does not fit all as both properties and factors differ widely. As above it was suggested that there should be flexibility as long as the requirements of the Code are complied with.
- Factors operate in a competitive market and should be allowed to produce their own documents and to tailor services to the needs to their clients.

Alternative suggestions included that there could be a standard structure or a requirement to provide standard common information, but not to use a template or common format.

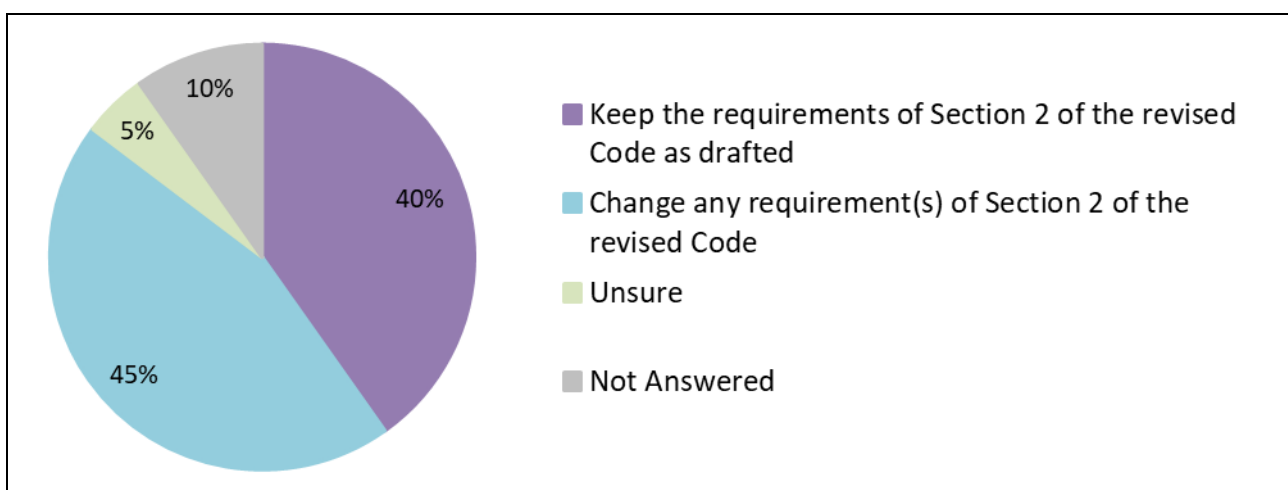
## Section 2: Communication and consultation

Section 2 of the draft revised Code proposes the minimum standards and requirements for how a property factor should communicate and consult with homeowners.

**Question 5: As published as part of this consultation, would you: keep the requirements of Section 2 of the revised Code (as drafted); or change any requirement(s) of Section 2 of the revised Code?**

As illustrated in Figure 6 below, 45% of respondents thought that the requirements of Section 2 of the revised Code should be changed, while 40% thought they should be kept as drafted.

**Figure 6: Responses to Question 5. Also see Table 7 (Annex 2: Quantitative Analysis).**



Respondents who thought Section 2 should be kept as drafted often left no further comments. Those who did comment sometimes suggested the requirements to be relevant, fair, satisfactory, clear and effective, and easy to understand. It was also

suggested that the information provided to owners would be increased significantly. Several respondents who suggested that changes are necessary also welcomed the additional requirements.

Other general comments on Section 2 included a view that the revised draft seems unnecessarily long or burdensome, or that some additional requirements could cause a factor to be held in breach of the Code over very minor issues. It was also suggested that

- It is potentially confusing to have Section 1.4D titled 'Communication arrangements' and Section 2 'Communication and consultation'.
- References to sections of the act may make the text difficult to follow. Plain English should be used wherever possible.

Comments on **Section 2.1** included that:

- 'Negligently' and 'knowingly' are open to differing interpretation and should be defined.
- Four weeks is not a feasible time in which to revise and reissue information. It was suggested the period should instead be: 6 weeks; 12 weeks; or as soon as reasonably practicable.
- The requirement (footnote 25) that information must be corrected if specified in an enforcement order issued by the FTT could be clearer.
- Reference to 'the correct legal position' is not necessary and should be removed as factors do not give legal advice.

An additional requirement suggested was to oblige the factor to modify or correct misleading or false information given out by someone else, when the factor knows it to be inaccurate or misleading.

Comments on **Section 2.2** included that this is essentially the same as in the previous version of the Code, but much longer. While it was acknowledged that the additional text reflects what is in the Act, it was also suggested to be unnecessary to include references to discrimination since these are covered by primary legislation. Other points on Section 2.2 included:

- Clarification was requested regarding the requirement that a factor can 'reasonably indicate it may take legal action against the homeowner as long as this is not undertaken in an abusive, intimidating or threatening manner.' Several respondents suggested that, for some residents being told of legal action is of itself threatening.
- The need for a factor to notify third party suppliers of a Code which is not enforceable against them was questioned, and the requirement to have a written procedure published on the factor's website was also suggested to be too prescriptive or to discriminate against factors who have a website.

It was also suggested that there is nothing in the Code to state that owners should not be abusive towards factors or that owners should comply with the communication procedures set out. It was argued that factors should not be penalised where inconsistent or excessive communication from a small minority of homeowners affects the service for the remaining group.

Comments on **Section 2.3** were very limited but included:

- There should be an additional section requiring the homeowner to provide their contact details, telephone number and contact email address.
- Contact details for the factor in the event of an out-of-hours emergency could be provided as an alternative to contractors.

Points made on **Section 2.4** included that:

- The text should clarify whether the written procedure for consultation should be individual to each development or generic across the factor's portfolio.
- That a written procedure may not be needed where title deeds already specify procedures for consultation or a spending threshold, or that any written procedures must be in accordance with the title deeds.
- Any delegated authority provision, whether in the title deeds or otherwise, should be clearly stated in the WSS.
- 'Collective' should be defined.
- As a written procedure on consulting homeowners is already included as part of the WSS, why is a separate document required?
- Procedures may be largely for internal use within the factor's organisation in which case providing them to homeowners will be of little benefit.

There were again very few specific comments on **Section 2.5** but these included suggestions that:

- The words 'orally and/or in writing' in the first sentence should be clarified or removed.
- Time limits for responding to complaints should be specified to ensure they are reasonable or that the limit should be stipulated as 10 working days.

Comments on **Section 2.6** sometimes reflected those at Section 1.4F (and as discussed at Question 4a above). Clarification was sought as to why the registered number needs to be included in all documents sent to the homeowner and whether this requirement would apply to text messages, social media posts, or enclosures sent. It was suggested that the number should be required only for business documents or only for the principal methods of communication.

There was a relatively high level of comment on **Section 2.7**. Suggestions included that the requirement for a factor to ensure their current notice of registration is

published on their website should be removed or amended, or that the benefits are unclear and should be explained. Alternative approaches suggested were that:

- This information is available on the Property Factor Register website and the duty to publish it lies with the Scottish Government not the factor.
- A link to the Property Factor Register website should be sufficient.
- Quoting the registered number on documentation should be sufficient.

It was also suggested that this requirement discriminates against factors who have a website by imposing additional administrative requirements and also that it would not prove that a factor is registered, only that they were registered at the time the certificate was issued.

**Section 2.8** attracted the highest level of comment at Question 5. General comments included that this section is too long and complicated and that the use of 'may' and 'must' could be difficult for homeowners to interpret.

Several of the comments on **2.8a** referenced Freedom of Information (FOI) requirements. It was suggested that there should be greater explanation with respect to FOI and Environmental Information regulations, including what the 'alternative procedures' referenced in footnote 27 might involve. Specifically, it was suggested that the different statutory timescales and procedures that may be associated with requests under FOI or Data Protection regulations should be made clear in the text. An alternative view, however, was that there is no need for the Code to attempt to restate or abbreviate this legislation and that simply referring to the fact that FOI may apply would be sufficient.

A small number of respondents made points relating to commercial sensitivity, citing circumstances when works may be part of a larger contract, and requested greater clarity on the level of detail needed.

A small number of respondents made points concerning the requirements when a factor decides not to provide or only partially provide information, as set out in **2.8b**. Comments included that an adequate explanation should be given under these circumstances, and that acceptable reasons for withholding information should be explained in the text.

Comments on **2.8c** often reflected those a D15ii – namely that this is not reasonable as costs may be incurred by the factor even when providing documentation in electronic format and that a charge should be allowed. Even making documents available for inspection was seen as having the potential to incur costs in respect of time spent reviewing and redacting the materials and it was suggested that, in the absence of provision for charging, costs will eventually be recovered from all homeowners using the service through increased management fees.



Other suggestions made by only a small number of respondents included:

- A standard or maximum fee could be set.
- It should be possible to set different timescales for responding to requests for information and to complaints.

A small number of respondents suggested the boxed text at the end of section 2.8 to be potentially confusing including because several sections appear under both 'may' and 'must'.

The majority of points made with respect to **Section 2.9** concerned drafting details.

With respect to the phrase '...and may supply each other with any necessary information...' it was suggested that:

- 'May' should be changed to 'will' or 'must' supply to avoid contradicting Section 7.5 (Complaints resolution).
- 'Necessary information' should be defined and, to provide clarity, there should be a list of the types of information that can be shared. Whether owners would be required to sign mandates in terms of data protection was queried.
- 'Any necessary information' should be replaced by 'all requested information' and the text does not go far enough in specifically requiring handover of information between factors.
- 'Incoming' should be amended to 'new formally appointed'.

Other points on the requirements of Section 2.9 included that since the outgoing and incoming factors do not have a formal relationship with one another, there should be a defined and written point at which provision of specified information would be appropriate. It was also suggested more emphasis should be placed on the conduct of outgoing factors since changing factor should be an easy process and is important to encourage an open market.

### **Suggested Additions:**

A small number of respondents suggested additional subjects for inclusion in Section 2. These were:

- A minimum required level of information to purchasers to ensure a prospective homeowner is fully aware of their communal property maintenance obligations. It was suggested this could be included in the Home Report.
- Where homeowners are appointing a new factor, the WSS should be agreed by homeowners as part of the appointment process and not imposed by the factor after appointment.
- Private sector factors should be required to carry out periodic independent customer satisfaction surveys and possibly post repair satisfaction sampling. Particular areas of concern were suggested to be: evidencing inspection of

areas that are difficult to access; how estimates for repairs are calculated; and how evidence that a problem has been resolved is communicated to homeowners.

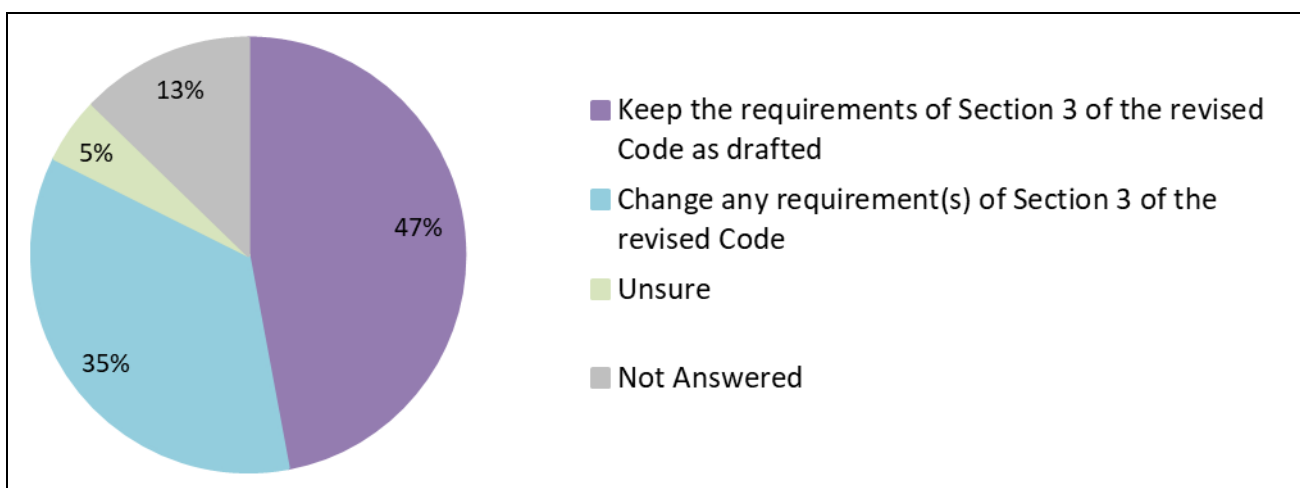
### Section 3: Financial obligations

Section 3 of the draft revised Code proposes the minimum standards and requirements for how a property factor should undertake any financial obligations it has with homeowners.

**Question 6: As published as part of this consultation, would you: keep the requirements of Section 3 of the revised Code (as drafted); or change any requirement(s) of Section 3 of the revised Code?**

As illustrated in Figure 7 below, 47% of respondents thought that the requirements of Section 3 of the revised Code should be kept as drafted, while 35% thought they should be changed.

**Figure 7: Responses to Question 6. Also see Table 8 (Annex 2: Quantitative Analysis).**



Respondents who thought that Section 3 should be kept as drafted or were unsure often made few additional comments. Generally positive aspects identified included that this section is clear or reasonable, that it strengthens the previous requirements, protects homeowners' interests and is possibly the most important part of the Code.

Suggested changes to Section 3 included a number of general points as well as specific amendments to individual subsections, primarily 3.1, 3.5 and 3.8. Points on the remaining subsections were limited.

General comments included that:

- The requirements should be standardised in line with the Letting Agent Regulations.
- There should be specific reference to the regulatory requirements for factors in relation to the handling of client funds, including the use of client accounts

and related requirements in terms of Anti-Money Laundering legislation and guidance.

- 'Where held' or 'as applicable' should be added to several subsections as some factors do not hold funds.

Difficulties in obtaining information about monies held or repayment of these funds from an outgoing, deregistered factor were also highlighted.

With respect to the preamble it was suggested that the professional bodies mentioned in the introduction to the Code should be listed as well as the statutory bodies and also that, as drafted, there is no context to the reference to the Financial Conduct Authority (FCA) and the Prudential Regulation Authority.

Comments on **Section 3.1** often involved requests for greater clarity with respect to what is meant by a 'detailed financial statement' with suggestions including that this should be standardised for consistency. The reference to enclosing a copy of the WSS in Section 3.1 was also queried or suggested to be inappropriate and the requirement to 'make clear reference' to the WSS was suggested to require clarification.

Several respondents raised issues concerning the potential suitability of factoring invoices. Respondents noted their understanding that sufficiently detailed invoices, issued as part of the billing cycle, would be sufficient to fulfil the requirement to provide information and that a separate annual statement is not required. Others suggested that this could or should be the case.

It was also suggested that:

- An income and expenditure statement for the year should be provided, but that this should not extend to providing balance sheets or audited accounts as this would result in increased fees.
- A detailed 'breakdown of charges' should not mean the factor has a requirement to show a breakdown of every individual overhead within the business.
- A statement of anticipated expenditure at the beginning of the financial period should be provided.
- Whether information can apply to a group of homeowners rather than to an individual homeowner should be made clear.

Comments on **Sections 3.2 and 3.3** included that 3 months is too long a period to wait for financial information to be provided, with one month as the suggested alternative, with the existence of outstanding invoices from contractors being part of the information provided. With respect to situations where the property factor has terminated the arrangement with homeowners it was suggested that homeowner's funds should also be returned within one month.

With respect to **Section 3.4** comments included:

- There is no explanation of how 'funds due' should be calculated.
- There is no time limit – 3 months was suggested.
- That the factor may take instruction from the homeowner's solicitor to transfer float funds to the new owner if this is agreed as part of a sale.
- There should be an option for negotiation between a group of homeowners and the factor about how any reserves are handled.

Points on **Section 3.5** included that a requirement to provide an outgoing homeowner with 'all financial information that relates to their account' prior to the date of the change of ownership is not logical, practical or possible as final figures are only available once the exact point of sale is known. It was argued that:

- The factor may not be notified of a sale, or the sale may fall through or be delayed.
- Homeowners remain liable for the maintenance and insurance of their property up until the date their ownership terminates.
- The issue of final funds is adequately addressed through the conveyancing process.

It was also noted that some factors invoice in arrears and may not have ICT systems able to provide a statement before the point of sale.

Alternative approaches suggested were that:

- Final accounting should be required within 12 weeks or 3 months of the date of sale, or the date of the property factor being notified that the property has been sold, whichever is the later.
- The requirement should be for the factor to confirm the process for how and when any excess funds are reasonably due to be repaid to the selling homeowner's solicitor.

A small number of respondents who interpreted Section 3.5 as suggesting that funds should be returned prior to a change of ownership argued that this would not be appropriate.

With respect to **Section 3.6** suggestions included that there should be a reference to the Deed of Conditions as arrangements for advance funds are contained therein, and also that publishing the procedure might be helpful to prospective homeowners and professional advisers. However, it was also argued that the provision is not necessary, and concerns matters that are for solicitors to determine under the sale missives.

In comments on **Section 3.7** it was suggested that it is not feasible for a local authority to have separate interest-bearing accounts for owners.

Points raised with respect to **Section 3.8a** (concerning floating funds) included both that this may contravene the terms of a site's Deed of Conditions and also that a rule preventing a factor from using floating funds without the collective agreement of residents is not feasible. Instead, it was argued, the requirement should be that if the funds are used the residents are informed of both their use and the reasoning behind it.

Other respondents suggested:

- The importance of keeping floating funds or funds for large projects separately from the factor's account.
- A requirement for homeowner funds to be held in specific property bank accounts.
- Separate trust fund accounts should be set up for each development rather than holding funds for several developments in a single account.

Clarification was also requested as to whether movement of monies between bank accounts for the same owners has to be notified on every occasion.

**Section 3.8b** (concerning sinking funds) was also suggested to be unworkable by several respondents. It was noted that banking regulations do not allow a factor to open an interest-bearing account in the name of a group of homeowners without the bank first receiving the passport and identification details of every homeowner, and that this information is not likely to be forthcoming, especially in larger developments. Factors were suggested instead to be operating trust or client accounts that are independently identifiable within their IT systems, with the funds being held in these accounts separately from the property factor's funds.

It was also suggested that during large repair projects a rule preventing use of sinking funds without the collective agreement of residents is not feasible, or might delay safety critical action. Instead it was argued, the requirement should be that if the funds are used the residents are informed of their use and the reasoning for it.

Other suggestions included:

- That procedures should be included for refunding owners in situations where advance payments were made for specific projects which subsequently did not go ahead.
- Some organisations could require new procedures and additional ICT systems to run separate floating or sinking fund accounts.

### **Suggestions for additional clauses at Section 3**

Respondents also identified a number of additional issues to be included at Section 3, amongst them that:

- A factor's complaints procedure should specifically permit homeowners to challenge charges which they believe have been improperly made.

- The situation with respect to developers’ accounts should be clarified since the developer will continue to be involved until all properties have been purchased.
- Annual audit of factors funds should be required, as applies under governance arrangements supporting the Letting Agent’s Register. It was argued that without a statutory reporting method there is doubt over the financial stability of some firms, and that factors should also be required to hold a minimum capital sum before being authorised to trade.

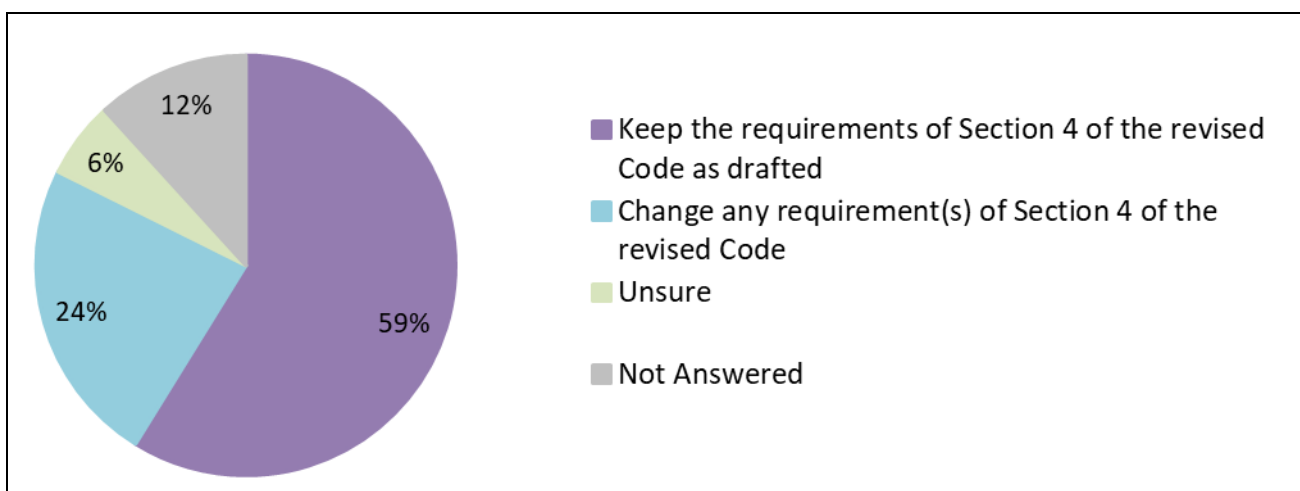
## Section 4: Debt recovery

Section 4 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is recovering debt from homeowners and/or informing other relevant homeowners of such action.

**Question 7: As published as part of this consultation, would you: keep the requirements of Section 4 of the revised Code (as drafted); or change any requirement(s) of Section 4 of the revised Code?**

As illustrated in Figure 8 below, 59% of respondents thought that the requirements of Section 4 of the revised Code should be kept as drafted, while 24% thought they should be changed.

**Figure 8: Responses to Question 7. Also see Table 9 (Annex 2: Quantitative Analysis).**



Respondents who thought that Section 4 should be kept as drafted often made few additional comments. Positive aspects identified included that this section is clear, comprehensive, fair, reasonable or appropriate. It was also seen as strengthening the previous requirements.

Suggested changes to Section 4 included a number of general points as well as specific amendments to individual subsections, primarily 4.4 and 4.8. Points on the remaining subsections were limited.

General points raised included that the Code does not need to go into further detail as relevant information will be contained in the Debt Recovery Procedure of each

factor, and also that debt recovery procedures may be specified in a property's title deeds. It was also argued that procedures must allow for the probability of dispute between owners, since some may be reluctant to pay for a service that is not of direct interest to them, while others will understandably resent having to pay more as a consequence.

Regulatory requirements relating to forbearance for homeowners in arrears with factoring fees and charges were also highlighted, including potential changes to the Debt Arrangement Scheme. It was suggested that requirements for factors should reflect the wider prevailing debt recovery/ forbearance requirements applicable through this or other appropriate statutory schemes.

It was also suggested that Section 4 should be both more specific and more robust. On the latter point it was argued that the process appears to favour homeowners who do not pay rather than those who do, and that problems concerning empty properties and owners who cannot be traced may not be resolved. A Community or Resident's Group respondent reported that a factor may withdraw services, or expect other homeowners to make up the shortfall, rather than taking court action against those who do not pay.

With respect to the introductory paragraphs it was suggested that a 'serious problem' is a subjective term which should be defined, and that who decides whether something is serious or not should be explained. It was also argued that the obligation should be for factors to make homeowners aware of the implications of late payment and to have clear debt recovery procedures: the obligation, as drafted, to 'prevent non-payment from escalating into a serious problem' was suggested to be too broad and beyond the control of the factor. How such an obligation could be enforced by the FTT was also queried.

Comments on **Sections 4.1** and **4.2** were minimal but included suggestions that:

- Reminders of amounts owing should be issued within a specified time – such as 28 days of falling into arrears.
- The phrase 'unreasonable or excessive' should be clarified, and that the factor should be able to demonstrate that surcharges are reasonable.
- It should be clear that late payment surcharges are to be levied against the defaulting homeowner, and not against other homeowners until all action against the defaulter has been exhausted and failed.

Comments on **Section 4.3** included requests for greater clarity. Specifically, it was suggested that the stage at which other homeowners will be required to make payment for the debts of defaulters should be made clear.

The requirement to post debt recovery procedures on the factor's website was suggested to discriminate against factors who maintain a website and to be of no benefit if already included in the WSS. It was also suggested that some aspects of debt recovery procedures may be commercially sensitive and that the Code should simply require the factor to provide debt recovery procedures on request.

The majority of respondents who commented on **Section 4.4** expressed concerns, including that the provision could result in higher charges to other homeowners. However, it was also welcomed as bringing clarity in relation to disputed debt referred to the FTT.

Specific issues raised included that:

- Some homeowners may seek to delay payment of the whole balance of their account, rather just than the disputed portion, or may claim all debt is disputed without good cause. It was argued that it should be made clear that only disputed debts are exempt from payment during the FTT process.
- Applicants may deliberately delay the FTT process to avoid payment and court action for as long as possible.

A number of procedural points were also made concerning the operation of the wider court system and the FTT, including about information provided to the factor. These included that:

- Provisions in Section 4.2 of the existing Code should be retained or that Section 4.4 should be removed until the implications have been reviewed.
- Discretion should remain with the Sheriff as to whether court action remains appropriate or whether proceedings should be suspended for determination by the FTT.
- There should be a mechanism for the FTT to reject spurious complaints from an application, albeit parts of the application may proceed. Extension of the role of the Chamber President was suggested.

There were few comments on **Section 4.5**. It was suggested that there should be a reference to restrictions that may be applied due to data protection issues. It was also suggested that the text as drafted is too vague and that it should prescribe what should happen in a particular situation, rather than requiring factors to give advice to homeowners.

Opinion was somewhat divided on **Section 4.6**. Some respondents suggested the requirements to be impractical or unworkable including for reasons of data protection. Specific comments included that:

- 'Relevant homeowners' and 'any debt recovery action' should be explained.
- In order to ensure confidentiality is maintained, information on debt recovery should be anonymised and included in the annual financial statement.
- Factors should only be required to advise homeowners that they cannot pass on information about debt recovery when they are asked to provide this information.
- Publicity may have a detrimental effect on the relationship between the factor and a homeowner in arrears and make recovery or resolution less likely.



However, other respondents suggested that factors may cite data protection legislation to avoid providing information that homeowners should be entitled to have. Specifically, it was suggested to be only fair that a homeowner required to pay another homeowner's debt should know the amount of the debt, which property has incurred it, and the likelihood of the debt being recovered. The view of the Scottish Information Commissioner that the circumstances under which information could, or could not, be released were misunderstood was also reported, and further discussion with the Commissioner was recommended.

In situations where provision of information would contravene data protection requirements, it was suggested that factors should be required to provide as much information as possible - such as how many residents are in arrears, the amount of arrears, and the stage in the debt recovery process.

A role for a homeowner's committee was also suggested including that it could be kept informed of debt recovery activity, or that it should be sufficient for the factor to keep the committee informed, and then to provide an annual report to all homeowners.

The only comment on **Section 4.7** was a suggestion that data protection issues could render this section ineffective.

Comments on **Section 4.8** included that it is for the presiding court in any court action to award expenses as it sees fit if proceedings are raised prematurely.

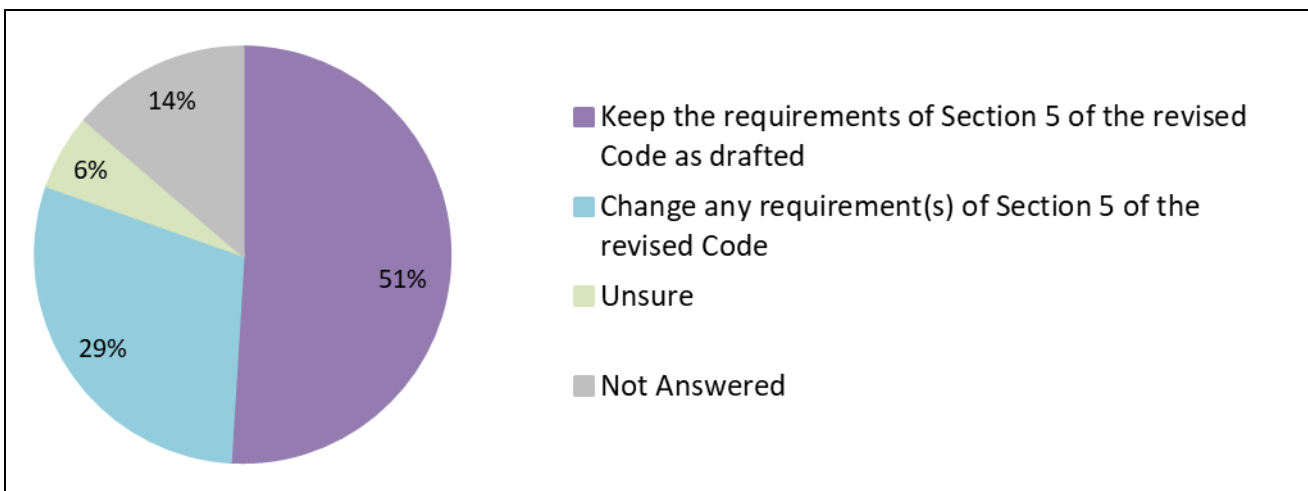
## Section 5: Insurance

Section 5 of the draft 'revised' Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is required to hold insurance and/or arrange insurance on behalf of homeowners.

**Question 8: As published as part of this consultation, would you: keep the requirements of Section 5 of the revised Code (as drafted); or change any requirement(s) of Section 5 of the revised Code?**

As illustrated in Figure 9 below, 51% of respondents thought that the requirements of Section 5 of the revised Code should be kept as drafted, while 29% thought they should be changed.

**Figure 9: Responses to Question 8. Also see Table 10 (Annex 2: Quantitative Analysis).**



Respondents who thought Section 5 should be kept as drafted often made few additional comments. Positive aspects identified included that this section is clear and concise, fair and justified, and strengthens the previous requirements. It was also seen as being in line with good practice and as reflecting the standards required by professional bodies.

Suggested changes to Section 4 included a number of general points as well as specific amendments to individual subsections, primarily 5.1, 5.2, 5.3 and 5.8. Points on the remaining subsections were limited.

General comments included that Section 5 should be expanded to ensure clarity for homeowners in terms of what the building insurance policy does and does not cover, and that this would help homeowners to comply with mortgage terms and conditions that require buildings to be insured for all perils, including for flood. Confirmation by the factor that the buildings insurance policy covers all the usual perils including flood was suggested. A factor's lack of authority to require owners to comply with policy conditions was highlighted, along with a concern that a policy could be void as a result.

Suggestions on **Section 5.1** included that there is no reason for homeowners to know the details surrounding a factor's professional indemnity insurance or that details could be incorporated into the factor's registration. It was also suggested that:

- The Scottish Government should publish appropriate levels of professional indemnity cover based on turnover and type of activity and require a factor to ensure they have this level of cover in place.
- There are small businesses whose services fall under the property factor registration requirements but that are not traditional factoring companies and for whom compulsory insurance is not appropriate.
- Housing Associations should not be exempt from professional indemnity cover requirements when acting as a factor, and Public Liability or Directors and Officers Insurance does not offer adequate protection in certain claims scenarios.

Comments on **Section 5.2** included, most frequently, that the 'summary of cover' is created by the insurance provider, who will be unaware how the total is split between individual homeowners and will not include this information. As factors cannot alter the insurer's documentation, the Code should allow this information to be provided in other ways.

Other points on provision of an annual insurance statement included that there should be clarity on the formula used. Suggested additions or modifications included:

- Claims history could be added to the information supplied.
- The types of insurance cover provided should be specified.
- It should be stated that electronic copies of the policy will be provided free of charge on request.

**Section 5.3** was suggested to be an area in which transparency is essential, with further comments including:

- Factors should be prohibited from receiving commission on insurance premiums to ensure there is no conflict of interest.
- Some factors are registered as insurance brokers and may therefore be paid a commission by underwriters.
- There must be a clear delineation of the responsibilities of the factor and the broker.

The law in relation to secret profits was also noted.

Changes in approach proposed included:

- There should be a requirement to show the level of insurance commission that is charged, irrespective of to whom it is payable.

- Any commission charged should be shown as a separate, clearly labelled item in every invoice that includes a payment for insurance.
- The duty of disclosure, presently upon the factor, might be extended to include others described in Section 3 of the 2011 Act. This would include those responsible for control of the factoring business.
- Homeowners must have the authority to negotiate a ‘fees only’ arrangement with a factor, with any rebate coming from the broker being to the benefit of the owner.

There were very limited comments on **Section 5.4** including that it should be modified to explain when it would be applicable for a factor to have a procedure in place for submitting insurance claims on behalf of homeowners. It was also suggested that for any approach to be effective, staff should be trained in its use and the approach should be kept under review.

It was suggested that **Section 5.5** should be amended to say that where a homeowner has made a claim on their own behalf they should also be responsible for following the progress of that claim. Being clear about the distinction between claims relating to private or common property was also recommended.

**Section 5.6** requires that a property factor must be able to demonstrate to a homeowner how and why they appointed the insurance provider, and **Section 5.7** that documentation relating to the selection process be made available on request. While often not specifically referencing these sections, a number of respondents suggested actions that should be open to homeowners who are not satisfied with the quotation obtained. These included:

- Homeowners could ask for a re-tendering if the premiums are considered too high or the cover is deemed insufficient.
- Homeowners should be entitled to obtain an alternative quotation, and that this should be accepted if it is better than the one obtained by the factor.
- By a majority decision, homeowners should be allowed to opt out of any type of add on cover beyond the basic buildings insurance.

It was also suggested that where homeowners opt out of common property insurance and organise their own individual cover, the total re-instatement cost of a whole tenement will be significantly more than the sum of individual policies put together. A separate legal requirement for all homeowners and landlords to take out common property insurance was therefore proposed.

However, it was also noted that there may be site-specific reasons why a block policy is not the best option for all groups of homeowners within a property factor’s portfolio, and that the Code should highlight this.

At **Section 5.8** a small number of respondents expressed their disappointment at the omission of a requirement to arrange building re-instatement valuations. It was suggested that this principle has been determined by the FTT and that the Code

should contain a clear statement requiring a factor to arrange valuations where they put in place insurance on behalf of homeowners. It was also suggested that:

- Valuations should be mandatory at intervals of 5 years at the most.
- Homeowners should be entitled to request a revaluation at an alternative date to that proposed by the factor, subject to the title deeds and/or legislation.

The majority of comments at Section 5.8 concerned the requirement to 'notify homeowners annually in writing of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance.' Annual notification was considered to be unnecessary with alternative suggestions being:

- Recording the frequency or proposed dates of revaluations in the WSS.
- Informing owners when property revaluations take place.
- Amendment of the text to state that the requirement only applies if a factor arranges property revaluations as part of the service.

Addition of a statement that it is the owners' responsibility to ensure that they are satisfied with the adequacy of the sum insured was also proposed.

There were few comments on **Section 5.9** other than that factors should be required to inform homeowners how their sum insured for any public liability insurance has been determined. Changes to the discount rate in Scotland and a forthcoming Damages Bill were referenced. It was also suggested that the Code should recognise particular issues in relation to liability for children's play areas.

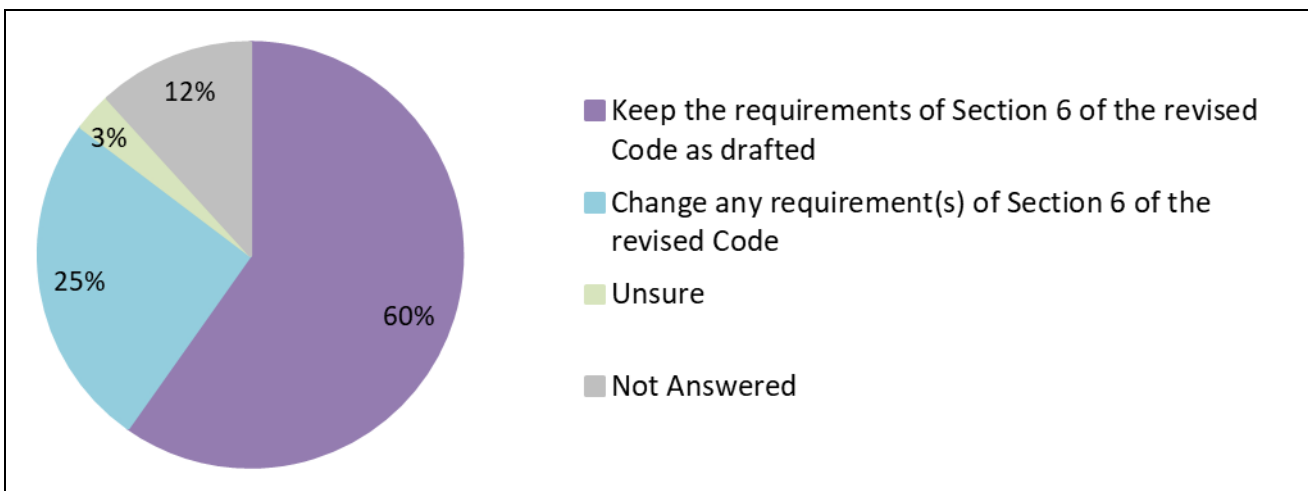
## Section 6: Carrying out repairs and maintenance

Section 6 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken.

**Question 9: As published as part of this consultation, would you: keep the requirements of Section 6 of the revised Code (as drafted); or change any requirement(s) of Section 6 of the revised Code?**

As illustrated in Figure 10 below, 60% of respondents thought that the requirements of Section 6 of the revised Code should be kept as drafted, while 25% thought they should be changed.

**Figure 10: Responses to Question 9. Also see Table 11 (Annex 2: Quantitative Analysis).**



Respondents who thought Section 6 should be kept as drafted often made few additional comments. Positive aspects identified included that this section is fair, covers the important points, strengthens the existing Code and will ensure consistency across the sector. Specifically, it was also suggested that Section 6 places an obligation on the factor to evidence that they have met the requirements of the Code if requested to do so and provides homeowners with sufficient information to ensure the accountability of their factor.

However, it was also suggested that Section 6 does not go far enough to ensure full transparency of the tendering process, and that the wording should also be strengthened to prevent some local authority factors being selective in their interpretation of what is required. One respondent queried how a list of common situations would be covered by the proposed wording.

Other general points or suggestions included that:

- If maintenance work is not satisfactory, and the homeowners wish to change maintenance company, the factor should not have the right of veto.

- There should be a requirement for factors to break larger projects down into manageable and affordable elements to make it easier for owners to afford the work required.
- There could be a requirement for factors to produce before and after photographs of repairs to evidence both the problem and the solution.
- A procedure for homeowners to challenge the factor on the cost of inspection and remedial work should be set out in the WSS and should also be covered in Section 7 of the Code.
- There could be reference to the requirements of the Construction (Design and Management) CDM Regulations with respect to contractors.

The recommendation of the Glasgow Factoring Commission that the Scottish Government should review the overall legislative framework relating to common property management and repair was also highlighted.

Amending **Section 6.1** to state that updates will be provided to owners on request rather than as a matter of course was suggested, as was there being a financial limit beyond which progress reports are required. Retrospective reports were suggested to be permissible for emergency repairs.

A requirement to advise homeowners on lack of progress was also suggested, including that where work has been cancelled homeowners should be kept informed, and all monies refunded within 4 weeks.

The need for a factor to obtain majority approval before carrying out repairs was also noted.

Comments on **Section 6.2** included that there is no explanation of what constitutes an emergency repair. More clarity on potential health and safety issues was also suggested, including that a factor should have authority to act where there is a risk of danger to an individual or to the public.

There were limited comments on **Section 6.3**, but these included that competitive tendering should be the norm. However, it was also suggested that a tendered repairs service often covers all responsive maintenance over a certain period of time, so quotes for individual pieces of work may not be available.

Comments on **Section 6.4** included that there should be a statutory requirement to produce a programme of works to ensure that the property is properly maintained and that homeowners fully understand their future financial commitments. Further suggestions included:

- There should be a requirement for those conducting inspections to have appropriate expertise, and for findings to be recorded appropriately.
- That an inspection report should be available, especially if the factor considers no work is required.
- The period between inspections should be detailed in the WSS.

However, it was also argued that factors do not generally prepare a programme for cyclical maintenance as part of the core service and that the role of the factor is as an agent, not as a direct supplier of services.

It was suggested that the requirement of **Section 6.5** that contractors appointed by the factor should have public liability insurance should be amended to require adequate public liability insurance. The need for adequate employer's liability insurance and contractor's liability insurance was also suggested.

In order to ensure that only competent contractors are used, it was suggested that Section 6.5 should require a factor to determine that contractors have adequate health and safety policies in place and that they provide method statements for works being carried out.

Comments on **Section 6.6** and **Section 6.7** were very limited but included that the duty placed on the factor might be extended to the responsible person and others referred to in Section 3 of the 2011 Act.

It was suggested that the requirements of **Section 6.8** strengthen the homeowner's ability to check that a contractor has been appointed 'without favour'. Clarification as to what is covered by 'other interests' was requested and specifically, whether this would include a situation where a relative or friend owns or works for a contractor.

Further guidance on ensuring full transparency of any tendering process was also suggested, particularly with reference to use of a factor's in-house contractor.

**Section 6.9** includes a requirement that 'If appropriate, the property factor should obtain a collateral warranty from any third party instructed by the property factor to undertake works on behalf of homeowners'. Associated comments or suggestions included that:

- 'If appropriate' is open to differing interpretation and that identifying when a collateral warranty may be appropriate is an unreasonable burden to place on the factor.
- To avoid disputes, a list of circumstances when a collateral warranty is appropriate should be provided.
- The requirement should be to consider obtaining such a warranty.

Points on collateral warranties included that these are not common place for residential repairs and maintenance other than for flat roof systems, rot eradication and a very few other specific scenarios. It was argued that such warranties will not be provided by contractors without having an impact on the price of work, and this will ultimately be passed on to homeowners.

Queries regarding the degree to which requirement for a collateral warranty should be allowed to prevent work or the use of a particular contractor were also raised, including:



- Since such a warranty is only effective if there is professional indemnity insurance in place and not all subcontractors will have this, is it the intention that contractors without professional indemnity insurance should not be appointed?
- If the factor is unable to obtain agreement from a contractor for a collateral warranty, would this prevent works from being instructed?

The need for factors to have a procedure for raising complaints with contractors was also highlighted.

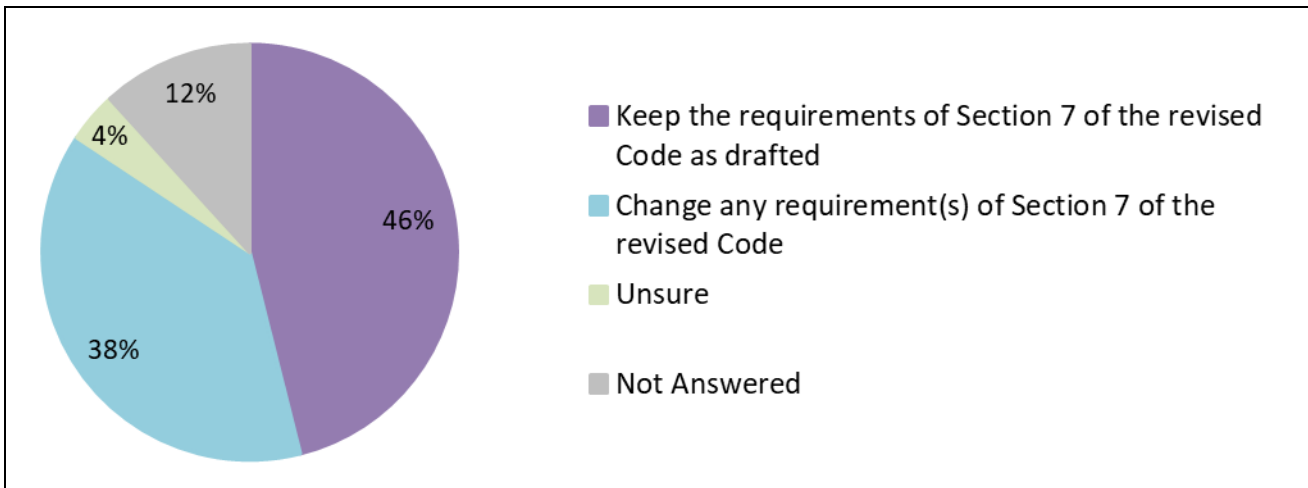
## Section 7: Complaints resolution

Section 7 of the draft revised Code proposes the minimum standards or requirements for a property factor to follow in circumstances where it is handling and/or resolving complaints from homeowners.

**Question 10a: As published as part of this consultation, would you: keep the requirements of Section 7 of the revised Code (as drafted); or change any requirement(s) of Section 7 of the revised Code?**

As illustrated in Figure 11 below, 46% of respondents thought that the requirements of Section 7 of the revised Code should be kept as drafted, while 38% thought they should be changed.

**Figure 11: Responses to Question 10a. Also see Table 12 (Annex 2: Quantitative Analysis).**



Respondents who thought Section 7 should be kept as drafted often made few additional comments. Positive aspects identified that this section is clear or transparent and strengthens the Code. Specific aspects of Section 7 highlighted as being welcome included:

- Clarification of how complaints which are on-going at the point a new factor is appointed should be handled.
- Allowing sufficient time for any complaint to be dealt with internally before referral to the FTT.

- Clarification of the responsibility of the factor to manage complaints from homeowners against contractors or other third parties.

It was also suggested to be important that the homeowner is made aware of this procedure and that the FTT exists as an arbiter in the event of an unresolved complaint. This was seen as an argument in favour of a standardised WSS.

General comments on Section 7 included a number of contributions from respondents who described personal involvement in raising complaints against their factor. This included reports that some factors may respond to a complaint by terminating the factoring agreement. The addition of a provision to prevent this happening was suggested.

Other suggested additions to Section 7 included:

- A flow chart, illustrating the pathway for a complaint from its outset to escalation to the FTT.
- A stage between the factor's complaints procedure and the FTT to filter out any vexatious or irrelevant claims.
- Guidance on the correct procedure if a factor finds it difficult to comply with a decision of the FTT.

Comments on the introductory paragraphs of the text as drafted included that:

- It should be made clear that a homeowner must have exhausted the factor's complaints procedure before making an application to the FTT.
- The phrases 'refused to resolve the homeowner's concerns' and 'unreasonably delayed' are open to differing interpretation. It was suggested that 'have failed to fully or satisfactorily answer complaints' or 'have been unable to resolve concerns' would be more appropriate, and that an indication of timescales considered to represent an 'unreasonable delay' could be added.

The majority of comments on **Section 7.1** referred to the requirement to 'set out any recourse to the complaints procedures of any professional or membership body that the property factor may belong to'. Several respondents thought that this reference should be removed. It was argued that:

- Since homeowners can make an application to the FTT, signposting to services provided by professional bodies serves no purpose and may confuse matters.
- Section 19 of the 2011 Act states that no matter adjudicated upon by the FTT can be adjudicated upon by another court or tribunal. The Act does not refer to complaints procedures of professional or membership bodies.
- Many professional bodies do not operate complaints systems for members of the public. Factors could also be deterred from joining professional bodies

because of a risk of having to proceed through a duplicate complaints process.

It was also noted that some factors will have to comply with their own professional body's requirements in relation to complaints procedures with respondents either suggesting that the Code should acknowledge this, or that this is under separate jurisdiction and nothing to do with the Code.

Other suggestions with respect to section 7.1 included:

- That mediation that should be considered before going to the more formal FTT route.
- That if an alternative arbitration mechanism is available, the Code should provide guidance on whether this route or the FTT should be used in the first instance.
- The wording concerning handling of complaints against contractors is stronger in the existing Code, and that factors should be expected to be responsible for the performance of their contractors, including by initiating complaints if necessary.

Comments on **Section 7.2** largely concerned the requirement that 'either the responsible or any relevant person' should confirm that the factor's complaints procedure has been exhausted. This was variously suggested to be excessive, impractical, or unnecessary and to go beyond the requirements of the Scottish Public Services Ombudsman (SPSO) complaints procedure.

The absence of a minimum time period for the property factor to address a complaint prior to a referral to the FTT was also noted.

With respect to **Section 7.3** it was suggested that allowing factors to charge for handling complaints 'when title deeds or contractual documentation allow', may cause some homeowners to be put off making complaints about their factor. It was suggested that the ability to charge for handling complaints should be removed.

Comments on **Section 7.4** were limited but included that the 3-year period specified for retention of correspondence relating to complaints is in accordance with the policy of the local authority factor making this point.

The advice that an outgoing factor might dispose of correspondence concerning complaints immediately after the end of the factoring arrangement was questioned, however. It was suggested that there may be on-going proceedings at the time an arrangement ends or that proceeding could subsequently be raised in the context of a historical complaint which is not continuing.

In comments on **Section 7.5** several respondents queried what is meant by 'necessary information' and it was suggested that the minimum information reasonably required should be prescribed. An explicit statement that ALL

information relating to the property must be handed over when a change of factor takes place was also requested.

It was also argued that this information belongs to the homeowner, who can instruct the factor to whom their information should be released, with a dispute resolution mechanism in place if this is not done. In contrast, it was suggested, an obligation placed on one factor relative to another has no dispute resolution mechanism in the event of non-compliance. A means of redress for a factor to formally complain about the conduct of another factor in relation to handover was proposed.

Other suggestions on Section 7.5 included that it would be more appropriately placed in Section 2 of the Code.

A number of respondents argued that **Section 7.6** should be removed. Specific issues raised included:

- It is not practical, reasonable or fair that an incoming factor should be held responsible for dealing with the failings of a previous factor. For example, a lack of information about the previous factors actions is likely to make it difficult for a new factor to respond to complaints.
- Such a requirement may deter a factor from taking over a development, particularly one with a history of complaints.
- Any complaints should be resolved by the outgoing factor, who should otherwise be liable to a complaint to the FTT. It was noted that if an outgoing factor does not co-operate, the incoming factor cannot take them to the FTT.
- As drafted, the text is over complicated, confusing or unclear. In particular, the phrase 'which may lead to a continuing failure' was suggested to be problematic.

One respondent noted that they were not clear whether this section is intended to cover either or both where the assets of one factor are purchased and therefore taken over by another factor, or where a factor's appointment is terminated, and a new factor is appointed. Another suggested that only in the first circumstance would they consider the proposed text appropriate.

On the text as drafted it was suggested that:

- A former factor should be compelled to provide information within a certain timescale.
- A reasonable time frame within which homeowners may take a complaint to the FTT should be specified, with 12 months suggested as reasonable.

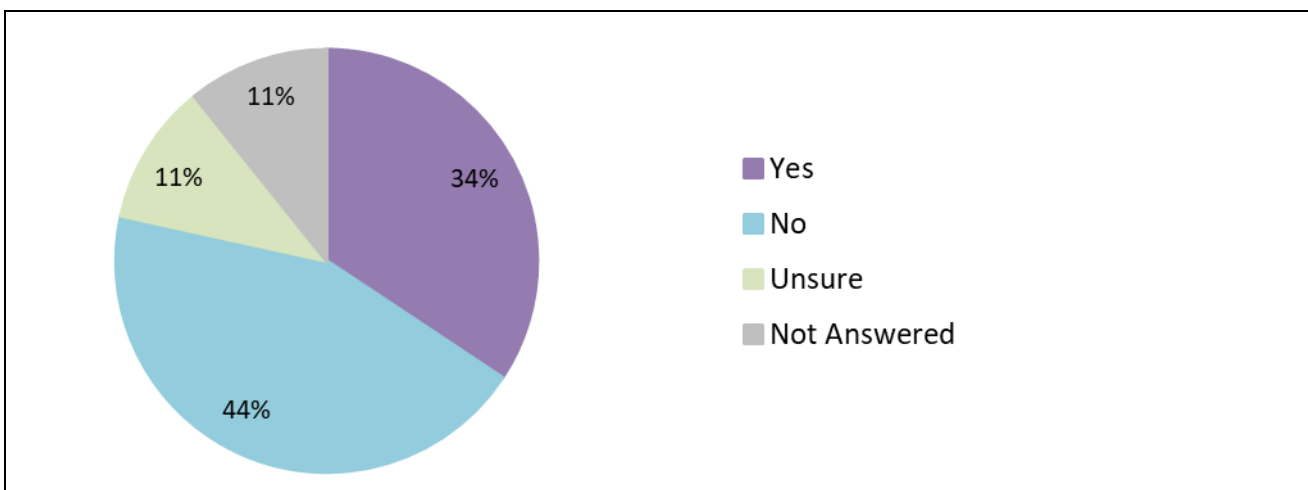
## Standardisation of Complaints Handling Procedures

The consultation paper recognises that property factors vary in organisation size and many have different internal structures, hierarchies and operating procedures. The draft revised Code currently requires a property factor to provide homeowners with a clear written complaints resolution procedure but does not specifically prescribe a standardised approach to complaint handling which should be followed by all property factors.

### Question 10b: Should the procedures for complaints handling be standardised as part of any proposed changes to the Code?

As illustrated in Figure 12 below, 44% of respondents thought that there should not be standardised procedures for handling complaints, while 34% thought there should. A full breakdown of responses by respondent type presented in Table 13 in Annex 2, shows that while the majority of organisational respondents who answered the question were opposed to standardised procedures a majority of individual respondents was in favour of standardisation.

**Figure 12: Responses to Question 10b. Also see Table 13 (Annex 2: Quantitative Analysis).**



Amongst respondents who thought that complaints handling should be standardised the reason cited most frequently was that it would bring consistency to the complaints process. Other comments included that:

- It would be helpful to homeowners, would make it easier to complain, would force factors to get better at handling complaints, and would mean all owners reaching the FTT would have been through the same process.
- At present there are wide variations in procedure and smaller factors may not be aware of the features of a good procedure for complaints handling.
- The FTT has criticised complaints handling procedures and a standardised procedure would resolve this issue.

Several respondents who thought there should be a standardised procedure suggested that the SPSO complaints procedure should be used as a model and it was noted that many RSLs and local authorities already use this procedure.

However, a number of respondents who did not advocate a standardised approach also referred to the SPSO complaints procedure, noting that many RSLs, some local authorities and Royal Institution of Chartered Surveyors (RICS) members already use and would wish to keep this. It was suggested that within a large organisation, a separate standardised procedure for factored owners could create management difficulties and could interfere with efficient handling of complaints.

Other respondents who did not favour a standard procedure cited the need for flexibility to allow organisations to handle complaints in a way that is appropriate for them and to allow them to differentiate themselves from other factors through their complaints handling processes.

It was also argued that:

- The wide range of size and structure amongst factoring organisations means a one-size-fits-all-approach will not be appropriate. It was also suggested a standardised procedure would favour larger companies.
- Factors already have procedures in place and there would be confusion and cost implications if these procedures had to be revised.
- Failure to comply with the requirement of a professional body could see a company fined or struck off.
- Section 7 of the draft revised Code goes far enough to protect homeowners while allowing factors to operate within their own business structures.

Other points made at Question 10b included that:

- It is important to recognise that small factors do not have the resources of larger firms and that using any standardised procedure should not become an excessive overhead for them.
- There should be a consultation on any proposed standardised procedure.
- While stopping short of a standardised procedure, it would be useful to provide a template or examples and guidance on good practice.

Finally, one respondent noted their own participation in a Primary Authority Arrangement, a statutory scheme whereby a local authority partners with a business to provide it with regulatory advice.

## Any other comments on the draft 'revised' Code

### Question 11: Do you have any other comments on the draft revised Code and its appendices i.e. glossary (as published as part of this consultation)?

Comments at Question 11 sometimes referred to matters already covered elsewhere in the report are not included in the analysis below.

General comments welcoming the draft revised Code included that it is more detailed than the previous version and removes grey areas. The glossary was suggested to be a positive addition.

Less favourable views, in each case raised by only small numbers of respondents, included that:

- The draft revised Code is too long, too complex, more difficult to understand or adds little to the existing Code.
- Some of the language used is too prescriptive - for example that 'must ensure' could be replaced with 'take all reasonable steps to ensure'. An alternative perspective was that 'reasonable' and 'where possible' are too open to interpretation.
- Some phrases used are too vague or ambiguous and that the draft revised Code should be completely reviewed.

There were other examples of contrasting perspectives. For example, it was suggested that the small number of FTT cases brought indicates that, in the vast majority of cases, the factoring service being provided is satisfactory. Alternatively, it was suggested that many homeowners are unhappy with their factor but find making a formal complaint requires too much effort. Likewise, a view that the Code is too easily manipulated by factors was contrasted by an opinion that it favours homeowners.

Suggestions on format included that the Code would be improved by addition of a summary for each section, and an appendix setting out the responsibilities of homeowners. An alternative structure more related to the practical aspects of running a factoring business was also suggested, and a number of additional terms were proposed for inclusion in the glossary.

Clarification suggested in terms of content included:

- Detail on the process whereby a factor may be removed from the Register.
- Whether acting through the auspices of 'Custom & Practice' is legally recognised.
- Whether commercial property is covered.
- What the impact of the General Data Protection Regulation (GDPR) is likely to be.

Amongst additional provisions suggested for inclusion in the Code were:

- A requirement for conveyancing solicitors to check the Register to see if a property is factored or a statutory obligation on the homeowner or their solicitor to inform the factor of a prospective change of ownership. It was suggested homeowners may avoid informing the factor of a sale in order to avoid paying factoring debts.
- Specific requirements for factors of retirement properties, whose occupants may be vulnerable. It was suggested such factors should be held on a separate Register and regularly inspected, including auditing of billed costs.
- A provision for regular communal property surveys or inspections should be considered. This could be linked to planned maintenance, with a duty on every homeowner to contribute to a communal ring-fenced sinking fund.
- A standard formula for sinking fund contributions, based on a forward maintenance cost estimate provided by a third party. This was suggested to reconcile the interests of residential owners wishing to spend to protect the long-term value of their property and buy to let owners who want to reduce costs for short term gain.
- Addressing the problem of homeowners who do not pay their contributions to ensure non-compliance does not inhibit communal maintenance and repair.
- A statutory requirement for all blocks to be insured, effectively over-riding any historic deeds which omit the requirement.
- Given the variation in fees, financial parameters within which factoring charges should be set could be included, with fees being linked to the level of service provided.

A small number of respondents raised issues relating to regulation, enforcement and the FTT. In particular, the effectiveness of regulation was questioned, given that a homeowner has no right to make an application to the FTT if their factor is unregistered. It was also suggested that:

- The powers available to Police Scotland to prosecute an individual or organisation illegally acting as a factor should be clarified.
- The 'Fit and Proper Person' test for a property factor is not enforced robustly.
- Information on what is likely to constitute a vexatious application to the FTT should be provided or that a mechanism to stop spurious referrals to the FTT is required.

Respondents also reported what they suggested to be inconsistent interpretation of the Code by the FTT and suggested this should be monitored.

Other issues raised included:

- That all those operating as property factors should be dealt with equally with no distinction or difference of approach based on their relationship with or to a local authority or RSL.



- Qualification and training beyond the current requirements for a responsible person should be considered. It was suggested that a factor should be required to hold, or be actively working towards, a relevant professional qualification.
- The Scottish Association of Landlord's interpretation of the legislation to mean that a landlord cannot organise mutual repairs unless they are registered as a property factor was highlighted. It was suggested this restriction is not logical.
- Concern was raised about the definition of 'property factor' in the 2011 Act, in view of difficulties relating to common property. The possibility of certain individuals or bodies, which carry out work that would generally be considered to be that of a property factor, not falling within the statutory definition was raised, and legislative change to the definition of 'property factor' was suggested to be necessary.
- The Tenement (Scotland) Act 2004 and the Title Conditions(Scotland) Act 2003 were also suggested to require review as part of the on-going review of legislation concerning property.

Finally, it was suggested that by the time the next review of the Code is due it could be a task for the factoring industry rather than for the Scottish Government, and that the industry could sponsor a representative panel of homeowners to help with an on-going review process.

## Part 3 – Proposed Modification Order

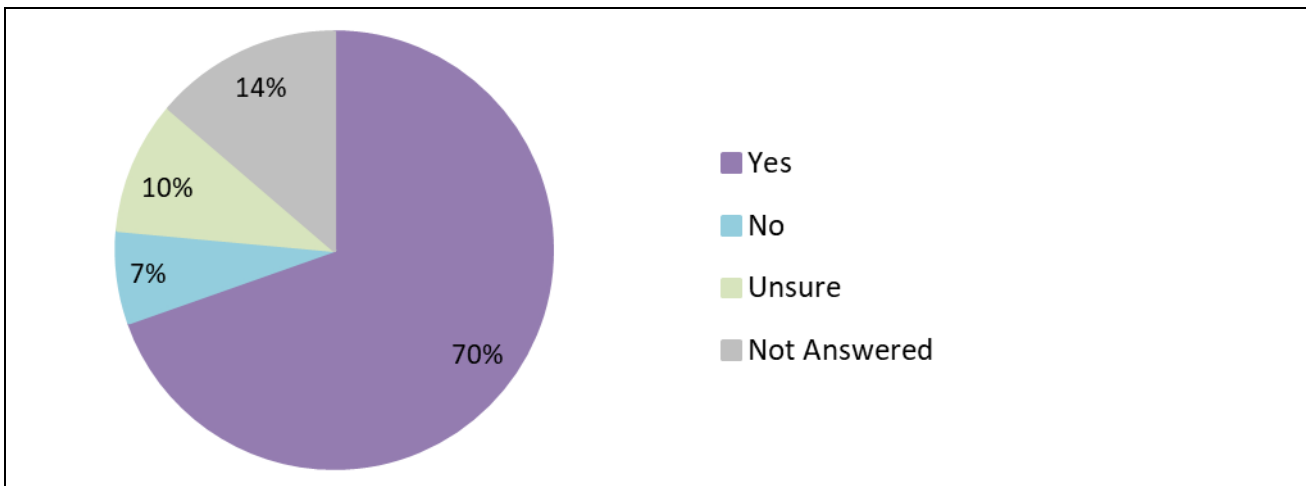
Part 3 of the consultation paper asked for views on modifying certain provisions of the Property Factors (Scotland) Act 2011 (the 2011 Act) with the purpose of giving further effect to the draft 'revised' Code as published as part of this consultation.

### Removal from the register and compliance with the Code and property factor enforcement orders

**Question 12: For the limited purposes described above, should a de-registered property factor, be required to comply with the Code, including property factor enforcement orders, despite removal from the register of property factors?**

As illustrated in Figure 13 below, 70% of respondents thought a de-registered property factor should be required to comply with the Code despite removal from the register of property factors, while 7% thought they should not.

**Figure 13: Responses to Question 12. Also see Table 14 (Annex 2: Quantitative Analysis).**



Although there was no specific opportunity to comment at Question 12 on Citizen Space, a small number of respondents did make a comment elsewhere within their response. Among the comments from those who supported the proposal was that it provides greater recourse for homeowners in this circumstance. Respondents also made suggestions around how the approach should be taken forward including that a property factor should continue to be held accountable for failures which occurred prior to their de-registration and these should be enforceable by the FTT. It was also suggested that further guidance is required for circumstances whereby a property factor finds it difficult to comply with a decision of the FTT if an appeal is on-going.

One respondent agreed that the legislation should be amended but questioned the suitability of a property factor enforcement order (PFEO) in the event of a determination against a former factor and how they might achieve compliance. A

respondent who disagreed was not clear as to why a factor should also be subject still to the PFEO's which led to their de-registration.

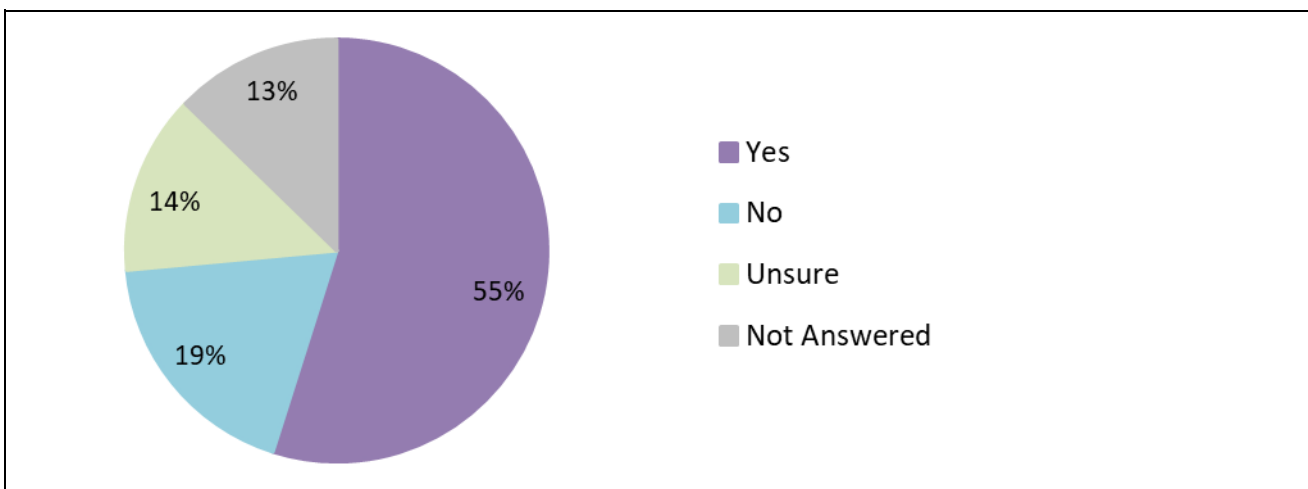
## Liability for Registered Property Factors and time limits for submitting homeowner applications to the First-tier Tribunal

**Question 13: Should a three-year time limit be introduced for homeowner applications to be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber?**

Please explain your answer making reference to any alternative suggested timeframe or criteria (if applicable).

As illustrated in Figure 14 below, 55% of respondents thought a three-year time limit should be introduced for homeowner applications to be lodged initially with the First-tier Tribunal for Scotland Housing and Property Chamber, while 19% thought it should not.

**Figure 14: Responses to Question 13. Also see Table 15 (Annex 2: Quantitative Analysis).**



Those who agreed with the proposal or were unsure most frequently suggested that the three-year time limit was reasonable or fair to both homeowners and factors. Others felt that it is important for a clear timescale to be in place to ensure transparency for both factors and homeowners.

Reasons given for agreeing with the proposal included that it would correspond with the 3-year keeping of correspondence requirement on factors and any professional organisation should have the capacity to keep records over this timescale. It was also suggested that keeping records over a longer than three-year timeframe could be challenging.

Other comments focused on how the approach should work and included that the three-year timeframe should continue to apply if the homeowner moves to a different factor.

The most frequently made comment by those who disagreed or were unsure was that a three-year timeframe seems too long or excessive. Reasons given for taking this view included that:

- A longer period increases the likelihood of personnel having changed or people being unable to recall events.
- The new GDPR may affect the time relevant information can be held.

The most frequently suggested alternative timeframe suggested was one year. Respondents sometimes clarified how they saw this year timeframe being defined. Specific suggestions included a year after someone becomes aware of the matter they wish to lodge.

Other suggestions put forward by one or small number of respondents included:

- 2 years, including as a more reasonable timescale given that 'continuing failures' options remain open to homeowners.
- Mirroring SPSO timescales.

An alternative perspective was that three years is too short a timeframe and that five years would be more appropriate.

Other comments on the timeframe included that while there should be a time limit, it should at the discretion of the Chamber President to consider cases dating back beyond the period of limitation under exceptional circumstances.

# Part 4 – Impact Assessment

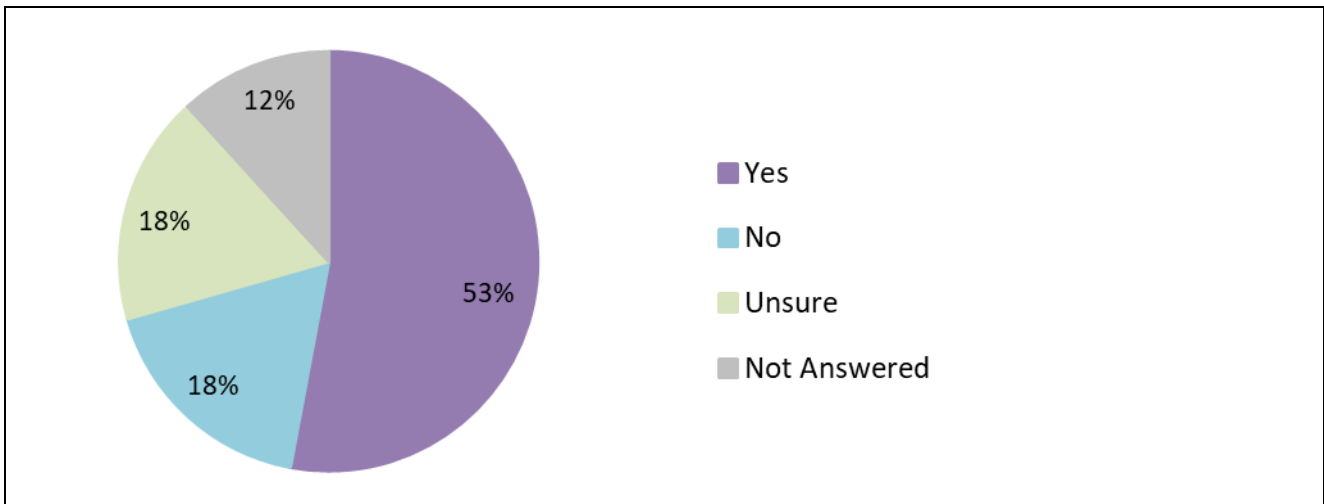
## Costs and other resources

Part 4 of the consultation paper noted that a Business and Regulatory Impact Assessment was prepared prior to the introduction of the original Code and that the Scottish Government is now looking to determine the impact of the proposals to revise the Code.

**Question 14a: Are there any proposals in this consultation which have any financial, regulatory or resource implications for you and/or your business (if applicable)?**

As illustrated in Figure 15 below, 53% of respondents thought that there are proposals in the consultation which have a financial, regulatory or resource implications for themselves or their business, while 18% thought there are not.

**Figure 15: Responses to Question 14a. Also see Table 16 (Annex 2: Quantitative Analysis).**



Comments tended to focus on the financial and resource implications, often seeing these two as being closely connected.

Those who thought the proposals would have implications sometimes commented that any changes to the Code of Conduct are likely to have an impact including having financial and other resource impacts. These were often associated with increased administrative costs. It was also suggested that there would be a training requirement for key staff on any changes to the Code and a resource requirement associated with reviewing all relevant policies and procedures.

The specific proposal most-frequently seen as having a resource implication was the requirement to issue an annual Written Statement of Services. One respondent noted that an RSL has estimated the cost as being £10 per owner for each WSS sent out. There was a concern that the additional administrative cost would have to be passed on to owners and it was suggested that this is something that factors, and RSLs in particular, would be keen to avoid. Alternative approaches suggested

was that the WSS should not be re-issued unless significant changes have been made to it during the year or that any requirements could be fulfilled by a website update and notification on the next invoice.

Other comments focused on the development of the WSS and included that having a bespoke WSS per property showing specific authority to act and level of delegated authority would be resource intensive and unnecessary. It was also suggested that time and cost would be involved in having a solicitor check the re-drafted WSS. Having a WSS available on their website was seen as having IT resource implications for some property factors.

Other aspects which were identified as having resource and/or financial implications were:

- Having to provide various information and documentation free of charge. Specifically, the cost and resource implications of sending information electronically at no charge.
- Providing a detailed statement of fees, or an annual insurance statement. On the latter issue, it was noted that the responsibility for insuring their property is the homeowners and thus it is also their responsibility to instruct the factor to conduct a revaluation, unless the Deeds give specific delegated authority to do so without advance client agreement.
- Providing a copy of third party warranties if requested by the homeowner.
- Standardising complaints procedures.
- The time required for a factor to defend any action taken against them. Specifically, the time taken to prepare for and attend hearings, including preliminary hearings.

Although there were relatively few comments about the regulatory implications, those which were made included that any standardisation of complaints procedures for factors would have regulatory implications for RSLs since they have to comply with the SPSO model complaints handling procedures.

Those respondents who did not expect the proposals to have financial, regulatory or resource implications for themselves or their business tended to make only limited further comment, including that none of the changes would be expected to have significant implications.

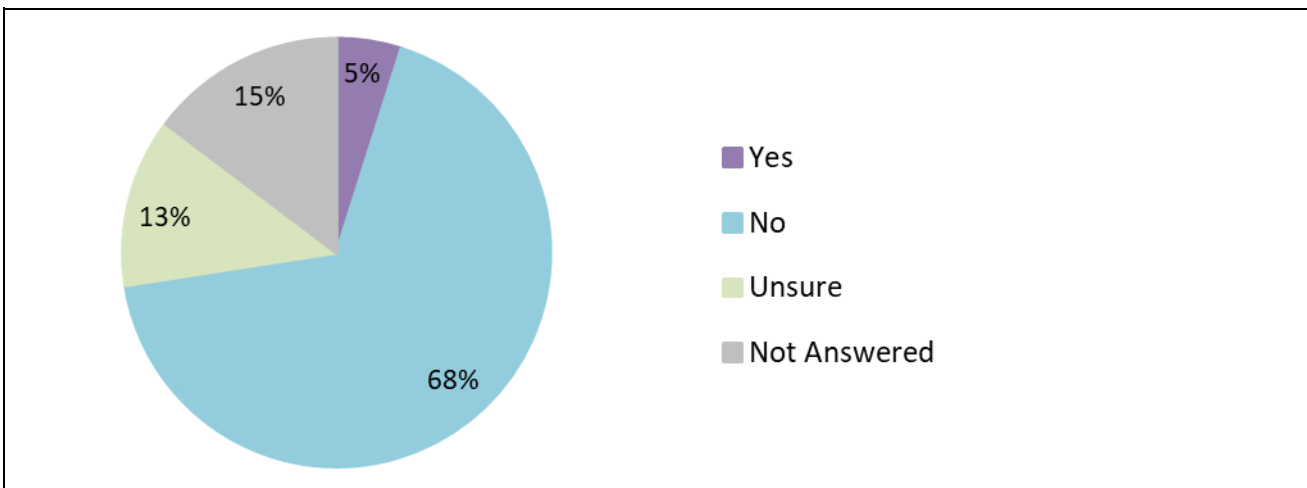
## Equalities

An Equality Impact Assessment (EQIA) was also prepared prior to the introduction of the current Code and again the Scottish Government is looking to determine the impact of the proposals to revise the Code. Comments received will be used to inform an updated EQIA as well as a Children’s Rights and Wellbeing Impact Assessment.

### Question 14b: Are there any proposals in this consultation which impact or have implications on ‘equality groups’?

As illustrated in Figure 16 below, 68% of respondents did not think any of the proposals would have an impact on or have implications for ‘equality groups’, while 5% thought there would.

Figure 16: Responses to Question 14b. Also see Table 17 (Annex 2: Quantitative Analysis).



There were relatively few further comments and most of these simply noted that they had no concerns or did not think there would be any impact or that were any implications.

Possible impacts or implications that were identified included that the increased complexity of the Code and the WSS could disadvantage some people, including people with learning disabilities, those for whom English is not their first language, or older homeowners. Specifically, it was suggested that older homeowners may be less likely to have access to a computer and may struggle to access online materials.

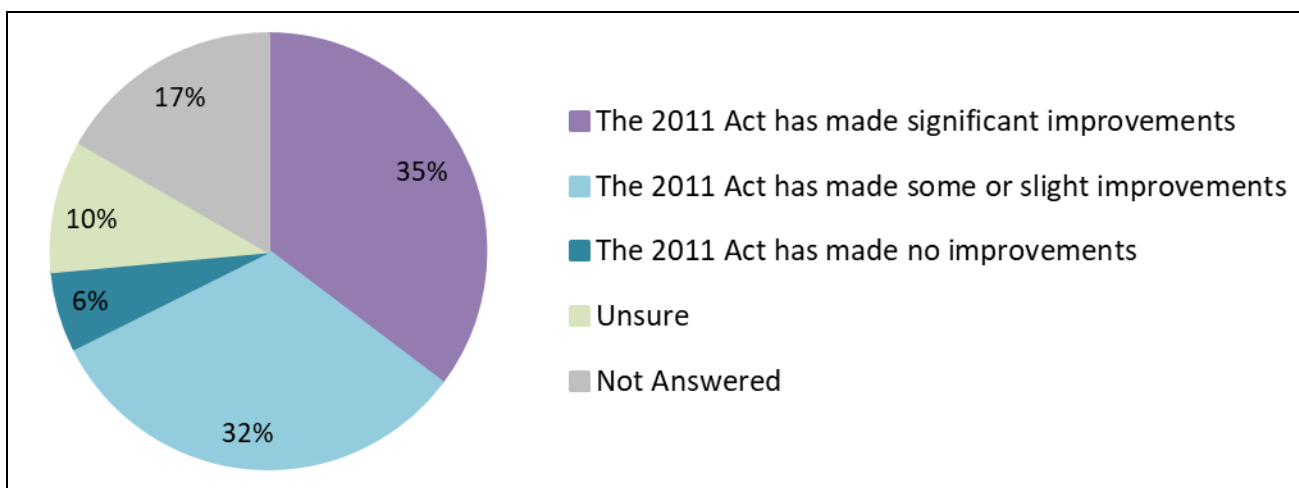
## Part 5 – The Impact of the Property Factors (Scotland) Act 2011

The final part of the consultation paper asked for the respondent's views on the impact of the requirements of the wider Property Factors (Scotland) Act 2011.

**Question 15: In addition to the Code, do you think the wider requirements of the Property Factors (Scotland) Act 2011 (2011 Act) has led to improvements in the regulation of property factors?**

As illustrated in Figure 17 below, respondents were relatively evenly divided as to whether the 2011 Act has made significant improvements (35%) or has made some or slight improvements (32%) while 6% (all Individual respondents) felt there has been no improvement.

**Figure 17: Responses to Question 15. Also see Table 18 (Annex 2: Quantitative Analysis).**



Further comments made at Question 18 tended to reflect answers given at Question 1.

### Improvements identified

Respondents who identified improvements often pointed to the Act and Code as having set a framework and minimum standards for the factoring industry and having created greater clarity or transparency. It was also suggested that there has been improvement in delivery of services and better communication with homeowners, who are more aware of their rights.

Several respondents suggested improvements may have been greatest amongst private factors while RSLs and local authorities, which were already heavily regulated, may have seen less of an effect.



The individual elements highlighted most frequently were:

- Property factor registration and re-registration. Benefits identified as resulting from the registration of factors included improved confidence, the ability to quantify the number of factors and factored properties, and the ability to trace the factor of a specific property.
- Enforcement of standards by the FTT. It was suggested that the process of making an application is relatively straightforward, and that the FTT provides a mechanism by which homeowners can hold their factor to account.

Other benefits reported included allowing local authorities to take responsibility for dealing with maintenance issues in shared properties.

### **On-going problems**

A small number of respondents gave examples of issues which they felt have not been resolved by the Act including that:

- It has not increased knowledge of the nature of the factoring process among homeowners considering entering into a factoring relationship, and that buyers often do not understand the nature of their liability to pay for common works.
- Repairs to common areas in developments without a property factor were not addressed and remain a problem.
- While standards have improved, the 2011 Act has not encouraged excellence, innovation or open competition in the factoring marketplace.
- Factors who have not registered are still operating and some registered factors do not fulfil the terms of the Code.
- The legislation does not include provision for enforcement of obligations against factors or for enforcement action to be taken by a majority of homeowners.

Problems identified as having stemmed from the 2011 Act were:

- Some factors have interpreted the Act to their own advantage and can avoid dealing with complaints.
- The FTT procedure is too complicated and discourages homeowners from making a complaint.
- Factors may be targeted by malicious or vexatious complaints from homeowners.
- The cost of compliance is ultimately passed on to homeowners, with the most serious consequences being for those on low incomes.

### **Further actions suggested**

It was suggested that more action needs to be taken against deregistered factors and those who fail to comply with the legislation. To fail to take such action was

seen as unfair to those factors who have invested in their businesses and complied with the legislation. It was also suggested the 'Fit and Proper Person' test should be made more robust and the checks that are carried out should be clarified.

The need to make buyers fully aware of the implication of factoring arrangements in advance of purchasing a property was also highlighted. Specific suggestions included that:

- Conveyancing solicitors should be required to check the register to confirm whether a property is factored.
- A guide to managing the factor on a particular development should be produced whenever a property is sold, and conveyancing solicitors should be required to ensure it is understood by the potential purchaser.

Several suggestions were made with respect to applications to the FTT, including that:

- The homeowner should have a right of appeal.
- The factor should have an automatic right of appeal, not just on a point of law and with permission from the FTT.
- The FTT should have the power to make an order against the applicant, particularly in cases concerning liability for disputed debt, but also in relation to costs.
- The Chamber President should exercise powers under the 2017 Regulations to reject applications that are insufficiently clear as to the homeowner's complaint. FTT administrative staff could work with an applicant to format the application correctly prior to the assessment of whether it is to be the subject of a hearing.
- When an application is made to the FTT, information should be sourced from the factor during the sifting process, to give a balanced view of the dispute.

Promotion of Alternative Dispute Resolution was also suggested as providing a more effective outcome, both financially and in the context of the on-going relationship between the factor and homeowners.

Other suggestions made at Question 15, in each case raised by only one or a small number of respondents, included:

- Introduction of a duty on homeowners to carry out a five-yearly inspection of common property condition.
- Repeal of the clause on exemptions for individuals to take out common property insurance currently in Section 18(4) of the Tenements (Scotland) Act 2004.
- Amendment of the 2011 Act to reflect the criteria for rejection of applications as per The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

## Annex 1: Organisations responding to the consultation

Respondent type	Type of property factor	Organisation
Community or Resident's Group		Hillhead Community Council
Community or Resident's Group		North of Scotland Regional Network 1
Other		Glasgow City Council
Property Factor	Local Authority	East Ayrshire Council
Property Factor	Local Authority	East Renfrewshire Council
Property Factor	Local Authority	Falkirk Council
Property Factor	Local Authority	Fife Council
Property Factor	Local Authority	North Lanarkshire Council
Property Factor	Local Authority	Renfrewshire Council
Property Factor	Local Authority	South Lanarkshire Council
Property Factor	Local Authority	The City of Edinburgh Council
Property Factor	Private Business	Aberdeen Property Leasing
Property Factor	Private Business	Allied Souter and Jaffrey Ltd
Property Factor	Private Business	Apex Property Factor Ltd
Property Factor	Private Business	Block Property Management Ltd
Property Factor	Private Business	Donald Ross Residential
Property Factor	Private Business	Edinburgh Factoring
Property Factor	Private Business	Ethical Maintenance
Property Factor	Private Business	FirstPort Property Services Scotland
Property Factor	Private Business	Greenbelt Group Limited
Property Factor	Private Business	Hacking and Paterson Management Services
Property Factor	Private Business	Lancefield Quay Riverside Limited
Property Factor	Private Business	Life Property Management Limited
Property Factor	Private Business	McCarthy & Stone Management Services

<b>Respondent type</b>	<b>Type of property factor</b>	<b>Organisation</b>
Property Factor	Private Business	McTavish & Company
Property Factor	Private Business	Newton Property Management Ltd
Property Factor	Private Business	Redpath Bruce Property Management Ltd
Property Factor	Private Business	Scottish Woodlands Ltd
Property Factor	Private Business	Speirs Gumley Property Management
Property Factor	Private Business	The Property Management Company (Aberdeen) Ltd
Property Factor	Private Business	Trinity Factoring Services Ltd
Property Factor	Private Business	YourPlace Property Management Limited (part of the Wheatley Group)
Property Factor	RSL inc Subsidiary	Abertay Housing Association
Property Factor	RSL inc Subsidiary	Argyll Community Housing Association
Property Factor	RSL inc Subsidiary	Bield Housing & Care
Property Factor	RSL inc Subsidiary	Bridgewater Housing Association
Property Factor	RSL inc Subsidiary	Choice Places
Property Factor	RSL inc Subsidiary	Cloch Housing Association
Property Factor	RSL inc Subsidiary	Clydebank Housing Association Ltd
Property Factor	RSL inc Subsidiary	Dunbritton Housing Association
Property Factor	RSL inc Subsidiary	Fife Housing Group
Property Factor	RSL inc Subsidiary	Glasgow West Housing Association Limited
Property Factor	RSL inc Subsidiary	Govanhill Housing Association
Property Factor	RSL inc Subsidiary	Hanover (Scotland) Housing Association
Property Factor	RSL inc Subsidiary	Highland Residential (Inverness) Ltd
Property Factor	RSL inc Subsidiary	Hillcrest Housing Association Ltd
Property Factor	RSL inc Subsidiary	Home in Scotland
Property Factor	RSL inc Subsidiary	Link Group Ltd.
Property Factor	RSL inc Subsidiary	Loreburn Housing Association
Property Factor	RSL inc Subsidiary	Melville Housing

<b>Respondent type</b>	<b>Type of property factor</b>	<b>Organisation</b>
Property Factor	RSL inc Subsidiary	Milnbank Property Services Ltd
Property Factor	RSL inc Subsidiary	ng Property Services
Property Factor	RSL inc Subsidiary	Paisley South Property Services Ltd
Property Factor	RSL inc Subsidiary	Partick Works Limited
Property Factor	RSL inc Subsidiary	Pentland Housing
Property Factor	RSL inc Subsidiary	Port of Leith Housing Association
Property Factor	RSL inc Subsidiary	Prospect Community Housing Ltd
Property Factor	RSL inc Subsidiary	Queens Cross Factoring
Property Factor	RSL inc Subsidiary	Reidvale Housing Association
Property Factor	RSL inc Subsidiary	Sanctuary Scotland Housing Association Limited
Property Factor	RSL inc Subsidiary	Thenue Housing
Property Factor	RSL inc Subsidiary	Thistle Housing Association
Property Factor	RSL inc Subsidiary	Wellhouse Housing Association
Property Factor	RSL inc Subsidiary	Williamsburgh Housing Association Ltd
Property Factor	RSL inc Subsidiary	Wishaw & District Housing Association
Representative or Professional Body		Chartered Institute of Housing Scotland
Representative or Professional Body		Joint submission from the Scottish Federation of Housing Associations (SFHA) and the Glasgow and West of Scotland Forum of Housing Associations (GWSF)
Representative or Professional Body		Law Society of Scotland
Representative or Professional Body		Property Managers Association Scotland Limited
Representative or Professional Body		Scottish Association of Landlords & Council of Letting Agents
Representative or Professional Body		Scottish Property Federation
Representative or Professional Body		The Institute of Residential Property Management
Representative or Professional Body		UK Finance

## Annex 2: Quantitative Analysis

**Table 2: Responses to Question 1 by respondent type**

**Do you think the original Code of Conduct for property factors has led to improvements in the quality of factoring services provided to homeowners by property factors?**

Type of respondent	Significant improvement	Slight improvement	No improvement	Unsure	Not answered	Total
Organisations:						
Community or Resident's Group		1			1	2
Property Factor	28	26	1	5	2	62
Representative or Professional Body	1	4			3	8
Other		1				1
Total organisations	29	32	1	5	6	73
<b>% of organisations answering</b>	<b>43%</b>	<b>48%</b>	<b>1%</b>	<b>7%</b>		
Individuals						
Individuals	7	5	5	9	3	29
<b>% of individuals answering</b>	<b>27%</b>	<b>19%</b>	<b>19%</b>	<b>35%</b>		
<b>All respondents</b>	36	37	6	14	9	102
<b>% of all respondents</b>	35%	36%	6%	14%	9%	
<b>% of all those answering</b>	<b>39%</b>	<b>40%</b>	<b>6%</b>	<b>15%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 3: Responses to Question 2 by respondent type**

**Does the Code’s introductory text clearly explain its purpose, who it applies to and the broader regulatory background?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident’s Group	1			1	2
Property Factor	52	6	2	2	62
Representative or Professional Body	2	1	1	4	8
Other	1				1
Total organisations	56	7	3	7	73
<b>% of organisations answering</b>	<b>85%</b>	<b>11%</b>	<b>5%</b>		
Individuals					
Individuals	17	6	4	2	29
<b>% of individuals answering</b>	<b>63%</b>	<b>22%</b>	<b>15%</b>		
<b>All respondents</b>					
<b>All respondents</b>	73	13	7	9	102
<b>% of all respondents</b>	72%	13%	7%	9%	
<b>% of all those answering</b>	<b>78%</b>	<b>14%</b>	<b>8%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 4: Responses to Question 3 by respondent by type**

As published as part of this consultation, would you keep the themes of the revised Code (as drafted); change the wording of the themes in the revised Code (as drafted); propose any additional themes to the revised Code; remove any themes in the revised Code (as drafted)?

Type of respondent	Keep the themes as drafted	Change the wording	Propose additional themes	Unsure	Not answered	Total
Organisations:						
Community or Resident's Group		1	1			2
Property Factor	50	3	6	2	1	62
Representative or Professional Body	3				5	8
Other	1					1
Total organisations	54	4	7	2	6	73
<b>% of organisations answering</b>	<b>81%</b>	<b>6%</b>	<b>10%</b>	<b>3%</b>		
Individuals	15	2	7	1	4	29
<b>% of individuals answering</b>	<b>60%</b>	<b>8%</b>	<b>28%</b>	<b>4%</b>		
<b>All respondents</b>	69	6	14	3	10	102
<b>% of all respondents</b>	68%	6%	14%	3%	10%	
<b>% of all those answering</b>	<b>75%</b>	<b>7%</b>	<b>15%</b>	<b>3%</b>		

Figures do not necessarily sum to 100% due to rounding.



**Table 5: Responses to Question 4a by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 1 of the revised Code (as drafted); or change any requirement(s) of Section 1 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1	1			2
Property Factor	18	38	3	3	62
Representative or Professional Body	1	4		3	8
Other	1				1
Total organisations	21	43	3	6	73
<b>% of organisations answering</b>	<b>31%</b>	<b>64%</b>	<b>4%</b>		
Individuals					
Individuals	12	10	3	4	29
<b>% of individuals answering</b>	<b>48%</b>	<b>40%</b>	<b>12%</b>		
<b>All respondents</b>	33	53	6	10	102
<b>% of all respondents</b>	32%	52%	6%	10%	
<b>% of all those answering</b>	<b>36%</b>	<b>58%</b>	<b>7%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 6: Responses to Question 4b by respondent type**

**Should the format and structure of the written statement of service be standardised as part of any proposed changes to the Code?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1			1	2
Property Factor	29	24	6	3	62
Representative or Professional Body	1	1	3	3	8
Other			1		1
Total organisations	31	25	10	7	73
<b>% of organisations answering</b>	<b>47%</b>	<b>38%</b>	<b>15%</b>		
Individuals					
Individuals	14	9	2	4	29
<b>% of individuals answering</b>	<b>56%</b>	<b>36%</b>	<b>8%</b>		
<b>All respondents</b>					
<b>All respondents</b>	45	34	12	11	102
<b>% of all respondents</b>	44%	33%	12%	11%	
<b>% of all those answering</b>	<b>49%</b>	<b>37%</b>	<b>13%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 7: Responses to Question 5 by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 2 of the revised Code (as drafted); or change any requirement(s) of Section 2 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group		1		1	2
Property Factor	27	30	3	2	62
Representative or Professional Body		5		3	8
Other		1			1
Total organisations	27	37	3	6	73
<b>% of organisations answering</b>	<b>40%</b>	<b>55%</b>	<b>4%</b>		
Individuals					
Individuals	14	9	2	4	29
<b>% of individuals answering</b>	<b>56%</b>	<b>36%</b>	<b>8%</b>		
<b>All respondents</b>					
<b>All respondents</b>	41	46	5	10	102
<b>% of all respondents</b>	40%	45%	5%	10%	
<b>% of all those answering</b>	<b>45%</b>	<b>50%</b>	<b>5%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 8: Responses to Question 6 by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 3 of the revised Code (as drafted); or change any requirement(s) of Section 3 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1			1	2
Property Factor	32	26	1	3	62
Representative or Professional Body	1	2		5	8
Other	1				1
Total organisations	35	28	1	9	73
<b>% of organisations answering</b>	<b>55%</b>	<b>44%</b>	<b>2%</b>		
Individuals					
Individuals	13	8	4	4	29
<b>% of individuals answering</b>	<b>52%</b>	<b>32%</b>	<b>16%</b>		
<b>All respondents</b>	48	36	5	13	102
<b>% of all respondents</b>	47%	35%	5%	13%	
<b>% of all those answering</b>	<b>54%</b>	<b>40%</b>	<b>6%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 9: Responses to Question 7 by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 4 of the revised Code (as drafted); or change any requirement(s) of Section 4 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1	1			2
Property Factor	44	13	2	3	62
Representative or Professional Body	1	2		5	8
Other	1				1
Total organisations	47	16	2	8	73
<b>% of organisations answering</b>	<b>72%</b>	<b>25%</b>	<b>3%</b>		
Individuals					
Individuals	13	8	4	4	29
<b>% of individuals answering</b>	<b>52%</b>	<b>32%</b>	<b>16%</b>		
<b>All respondents</b>	60	24	6	12	102
<b>% of all respondents</b>	59%	24%	6%	12%	
<b>% of all those answering</b>	<b>67%</b>	<b>27%</b>	<b>7%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 10: Responses to Question 8 by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 5 of the revised Code (as drafted); or change any requirement(s) of Section 5 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1			1	2
Property Factor	40	17	2	3	62
Representative or Professional Body	1	2		5	8
Other			1		1
Total organisations	42	19	3	9	73
<b>% of organisations answering</b>	<b>66%</b>	<b>30%</b>	<b>5%</b>		
Individuals					
Individuals	10	11	3	5	29
<b>% of individuals answering</b>	<b>42%</b>	<b>46%</b>	<b>13%</b>		
<b>All respondents</b>					
<b>All respondents</b>	52	30	6	14	102
<b>% of all respondents</b>	51%	29%	6%	14%	
<b>% of all those answering</b>	<b>59%</b>	<b>34%</b>	<b>7%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 11: Responses to Question 9 by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 6 of the revised Code (as drafted); or change any requirement(s) of Section 6 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group		2			2
Property Factor	47	11	1	3	62
Representative or Professional Body	2	1		5	8
Other		1			1
Total organisations	49	15	1	8	73
<b>% of organisations answering</b>	<b>75%</b>	<b>23%</b>	<b>2%</b>		
Individuals					
Individuals	12	11	2	4	29
<b>% of individuals answering</b>	<b>48%</b>	<b>44%</b>	<b>8%</b>		
<b>All respondents</b>					
<b>All respondents</b>	61	26	3	12	102
<b>% of all respondents</b>	60%	25%	3%	12%	
<b>% of all those answering</b>	<b>68%</b>	<b>29%</b>	<b>3%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 12: Responses to Question 10a by respondent type**

As published as part of this consultation, would you: keep the requirements of Section 7 of the revised Code (as drafted); or change any requirement(s) of Section 7 of the revised Code?

Type of respondent	Keep the requirements as drafted	Change any requirements	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1			1	2
Property Factor	29	29	2	2	62
Representative or Professional Body	1	3		4	8
Other				1	1
Total organisations	31	32	2	8	73
<b>% of organisations answering</b>	<b>48%</b>	<b>49%</b>	<b>3%</b>		
Individuals					
Individuals	16	7	2	4	29
<b>% of individuals answering</b>	<b>64%</b>	<b>28%</b>	<b>8%</b>		
<b>All respondents</b>					
<b>All respondents</b>	47	39	4	12	102
<b>% of all respondents</b>	46%	38%	4%	12%	
<b>% of all those answering</b>	<b>52%</b>	<b>43%</b>	<b>4%</b>		

Figures do not necessarily sum to 100% due to rounding.



**Table 13: Responses to Question 10b by respondent type**

**Should the procedures for complaints handling be standardised as part of any proposed changes to the Code?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	2				2
Property Factor	19	36	5	2	62
Representative or Professional Body		2	1	5	8
Other	1				1
Total organisations	22	38	6	7	73
<b>% of organisations answering</b>	<b>33%</b>	<b>58%</b>	<b>9%</b>		
Individuals					
Individuals	13	7	5	4	29
<b>% of individuals answering</b>	<b>52%</b>	<b>28%</b>	<b>20%</b>		
<b>All respondents</b>					
<b>All respondents</b>	35	45	11	11	102
<b>% of all respondents</b>	34%	44%	11%	11%	
<b>% of all those answering</b>	<b>38%</b>	<b>49%</b>	<b>12%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 14: Responses to Question 12 by respondent type**

**For the limited purposes described above, should a de-registered property factor, be required to comply with the Code, including property factor enforcement orders, despite removal from the register of property factors?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group	1			1	2
Property Factor	46	6	8	2	62
Representative or Professional Body	3			5	8
Other			1		1
Total organisations	50	6	9	8	73
<b>% of organisations answering</b>	<b>77%</b>	<b>9%</b>	<b>14%</b>		
Individuals					
Individuals	21	1	1	6	29
<b>% of individuals answering</b>	<b>91%</b>	<b>4%</b>	<b>4%</b>		
<b>All respondents</b>	71	7	10	14	102
<b>% of all respondents</b>	70%	7%	10%	14%	
<b>% of all those answering</b>	<b>81%</b>	<b>8%</b>	<b>11%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 15: Responses to Question 13 by respondent type**

**Should a three-year time limit be introduced for homeowner applications to be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group		1		1	2
Property Factor	38	15	7	2	62
Representative or Professional Body	3			5	8
Other			1		1
Total organisations	41	16	8	8	73
<b>% of organisations answering</b>	<b>63%</b>	<b>25%</b>	<b>12%</b>		
Individuals					
Individuals	15	3	6	5	29
<b>% of individuals answering</b>	<b>63%</b>	<b>13%</b>	<b>25%</b>		
<b>All respondents</b>					
<b>All respondents</b>	56	19	14	13	102
<b>% of all respondents</b>	55%	19%	14%	13%	
<b>% of all those answering</b>	<b>63%</b>	<b>21%</b>	<b>16%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 16: Responses to Question 14a by respondent type**

**Are there any proposals in this consultation which have any financial, regulatory or resource implications for you and/or your business (if applicable)?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident's Group		1		1	2
Property Factor	43	10	6	3	62
Representative or Professional Body	3	1		4	8
Other			1		1
Total organisations	46	12	7	8	73
<b>% of organisations answering</b>	<b>71%</b>	<b>18%</b>	<b>11%</b>		
Individuals					
Individuals	8	6	11	4	29
<b>% of individuals answering</b>	<b>32%</b>	<b>24%</b>	<b>44%</b>		
<b>All respondents</b>	54	18	18	12	102
<b>% of all respondents</b>	53%	18%	18%	12%	
<b>% of all those answering</b>	<b>60%</b>	<b>20%</b>	<b>20%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 17: Responses to Question 14b by respondent type**

**Are there any proposals in this consultation which impact or have implications on ‘equality groups’?**

Type of respondent	Yes	No	Unsure	Not answered	Total
Organisations:					
Community or Resident’s Group		1		1	2
Property Factor	3	52	4	3	62
Representative or Professional Body		1	1	6	8
Other		1			1
Total organisations	3	55	5	10	73
<b>% of organisations answering</b>	<b>5%</b>	<b>87%</b>	<b>8%</b>		
Individuals					
Individuals	2	14	8	5	29
<b>% of individuals answering</b>	<b>8%</b>	<b>58%</b>	<b>33%</b>		
<b>All respondents</b>	5	69	13	15	102
<b>% of all respondents</b>	5%	68%	13%	15%	
<b>% of all those answering</b>	<b>6%</b>	<b>79%</b>	<b>15%</b>		

Figures do not necessarily sum to 100% due to rounding.

**Table 18: Responses to Question 15 by respondent type**

**In addition to the Code, do you think the wider requirements of the Property Factors (Scotland) Act 2011 (2011 Act) has led to improvements in the regulation of property factors?**

Type of respondent	Significant improvement	Slight improvement	No improvement	Unsure	Not answered	Total
Organisations:						
Community or Resident's Group		1			1	2
Property Factor	28	25		5	4	62
Representative or Professional Body		2			6	8
Other		1				1
Total organisations	28	29	0	5	11	73
<b>% of organisations answering</b>	<b>45%</b>	<b>47%</b>	<b>0%</b>	<b>8%</b>		
Individuals						
Individuals	8	4	6	5	6	29
<b>% of individuals answering</b>	<b>35%</b>	<b>17%</b>	<b>26%</b>	<b>22%</b>		
<b>All respondents</b>	36	33	6	10	17	102
<b>% of all respondents</b>	35%	32%	6%	10%	17%	
<b>% of all those answering</b>	<b>42%</b>	<b>39%</b>	<b>7%</b>	<b>12%</b>		

Figures do not necessarily sum to 100% due to rounding.



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