

Citizen Participation and Public Petitions Committee
Wednesday 13 November 2024
17th Meeting, 2024 (Session 6)

PE2006: Review and simplify the legislation in relation to dismissal of property factors

Introduction

Petitioner Ewan Miller

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act to cover dismissal of property factors or bring forward other regulations that would achieve the same aim. This could include giving the First Tier Tribunal powers to resolve disputes related to the dismissal of property factors.

Webpage <https://petitions.parliament.scot/petitions/PE2006>

1. [The Committee last considered this petition at its meeting on 7 February 2024.](#) At that meeting, the Committee agreed to write to the Minister for Victims and Community Safety.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received a new written submission from the Minister for Victims and Community Safety which is set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.](#)
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial position on this petition on 23 March 2023.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 778 signatures have been received on this petition.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
November 2024

Annexe A: Summary of petition

PE2006: Review and simplify the legislation in relation to dismissal of property factors

Petitioner

Ewan Miller

Date Lodged

28 March 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act to cover dismissal of property factors or bring forward other regulations that would achieve the same aim. This could include giving the First Tier Tribunal powers to resolve disputes related to the dismissal of property factors.

Previous action

I have contacted Rona MacKay MSP and brought the matter to the attention of the Minister for Public Finance, Planning and Community Wealth.

Background information

I am the Chair of my local Residents Association (RA) of an estate of 860 privately owned properties. After many years of dissatisfaction, the RA ran a vote to dismiss our factor. In our opinion, the motion was passed in alignment with the deeds for the estate.

Subsequent to this, the factor appointed a legal firm who challenged the vote on the basis that 38 (of 860) properties were tenanted in the estate and the RA could not provide evidence the tenant had passed the voting paper to the owner. The First-tier Tribunal confirmed they could not decide on this matter as it involved interpretation of deeds and proposed seeking a decision in a civil court. If the factor is correct, this would appear to set a precedent, making it very difficult to replace a factor in Scotland.

Annexe B: Extract from Official Report of last consideration of PE2006 on 7 February 2024

The Convener: PE2006 is on reviewing and simplifying the legislation in relation to dismissal of property factors. I am delighted to see that we have been joined by our parliamentary colleague Sarah Boyack, who will speak to this petition—we will hear from you in just a moment, Ms Boyack.

The petition, which has been lodged by Ewan Miller, calls on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act 2011 in order to cover dismissal of property factors, or to bring forward other regulations that would achieve the same aim. Such actions could include giving the First-tier Tribunal for Scotland powers to resolve disputes relating to the dismissal of property factors.

When we last considered this petition on 3 May 2023, we agreed to write to the Scottish Government and other relevant stakeholders, and we have received responses from the Minister for Victims and Community Safety, the Property Managers Association Scotland and the charity Under One Roof. Those responses, which are set out in the papers that colleagues received ahead of today's meeting, note the instruments that are already available to home owners to challenge property factors via the First-tier Tribunal, which I referred to a moment ago, and the courts process more widely. In a response in June 2023, the minister also committed to providing an update on progress towards the publication of the voluntary code of practice for landowning maintenance companies by early this year.

We have also received submissions from the petitioner and Shelagh Young, highlighting their own experiences of the difficulties and challenges involved in trying to remove their property factors—I suspect, too, that many of us as MSPs have been contacted by constituents with individual and specific issues—and they have also expressed concern that the gravity of the situation facing home owners across the country is perhaps not being fully understood.

Before I ask members to comment, I wonder whether Sarah Boyack would like to assist the committee in its consideration.

Sarah Boyack (Lothian) (Lab): Yes, I would, and thank you very much, convener, for the opportunity to address the committee this morning.

I am increasingly receiving casework from constituents on a range of issues arising with property factors. The main issue is that factors are seen as unaccountable, with high and rising costs, high quotes for repairs, insufficient information to assess value for money, poor communication, lack of engagement or interest in engaging with residents, historic debts being passed to current owners and people finding it very difficult to challenge costs or standards of work, to suggest improvements or to remove factors altogether.

Constituents feel powerless against factors that have been appointed by developers. There is a lack of a clear tendering process for the initial appointment, as referenced by the petitioner in highlighting the appointment of the factor by the developer. There

is a lack of transparent information about services and costs before people commit to buying a new build, which means that they buy a property without knowing exactly what they are committing to financially. Reliance on title deeds is problematic, too, because they are not clear with regard to voting rights, processes and procedures.

Constituents have reported to me poor communication when responding to queries, unwillingness to engage on improving services or processes, errors in invoices and staff unclear about what they should be doing. There is also a big worry about future costs, including the costs of repairing unadopted roads, and people are worried about costs rising while their income is reducing and there being no help available if their income falls.

Using the code of practice to challenge factors is seen as incredibly cumbersome and as working against individual owners, who face a huge amount of organisation if they have to reach out to their neighbours. The First-tier Tribunal is also incredibly daunting to owners, as they might well be up against the factors and their legal teams.

I have asked written and oral questions on the steps that the Scottish Government will take to ensure that the system works for property owners. Moreover, in a working paper that was published last November, the Competition and Markets Authority referenced the imbalance of power between factors and home owners. The issues that constituents are raising with me come down to the power that factors have and the power that home owners have.

During the committee's previous consideration of the petition, Mr Ewing made points in defence of the role of factors, and I want to make it clear that it is always better to have a factor in place than not. If there is no factor in place, buildings can fail or fall into a state of repair and basic health and safety approaches can end up not being followed. That is in no one's interest, but there has to be more transparency in the system from factors being appointed to having the capacity to change them.

A constituent of mine has calculated how much their factor earns. They pay £45 a quarter in factor management fees in a development with more than 250 properties. In other words, in a development not that far from this Parliament, a factor is receiving over £11,000 a quarter, or nearly £50,000 a year for managing the property—and that does not include the cost of any works that need to be done, which owners themselves pay for.

To conclude, convener, I think that the Parliament has a duty to ensure that our constituents are protected through legislation. The Scottish Government has been slow to act on this matter, and I encourage the committee to use this petition in order to think of ways of ensuring a fair power balance between factors and home owners.

Thank you again for the opportunity to address the committee.

The Convener: Not at all. Thank you very much, Ms Boyack.

You have touched on issues that, as a constituency MSP, I can say have been raised by constituents of mine, too. I would say that there are good and less good factors, and there is good and bad practice. Obviously, constituents tend to contact

us when faced with an issue, but I think that the issues that you have raised and touched on are becoming increasingly part of my own casework profile.

I note that we are still waiting for the Scottish Government's publication, but having heard those remarks and reflected, do colleagues have any comments or suggestions as to how we might proceed?

David Torrance: I wonder whether the committee would consider writing to the Minister for Victims and Community Safety, highlighting the petitioner's submissions and seeking an update on the work to finalise and publish the voluntary code of practice for landowning maintenance companies.

The Convener: I am content that we do that. Are there any other thoughts about things that we might consider?

Maurice Golden: Once we have received the response, it might be worth while hearing from the minister on this. After all, the proposed code of practice is voluntary, which, clearly, means that it will not be mandatory for factors. Again, we have not seen the publication, but it might be worth hearing from the minister and perhaps other stakeholders on this point.

The Convener: Yes. Mr Choudhury, do you agree?

Foysol Choudhury: Yes.

The Convener: Last time round, Mr Ewing, you expressed concerns, not I think in relation to the petition but with regard to the unforeseen consequences of actions that might be taken.

Fergus Ewing: I was pleased to hear Sarah Boyack say that, generally speaking, it is beneficial to have a factor rather than none. If you have no factor, common repairs, whether in a tenement or, for that matter, an estate where there is substantial common property to be maintained, can get neglected, and that will lead to huge problems. My experience of factors over 20 years in legal practice was that they had a bit of a thankless task, and the remuneration was generally modest in relation to the amount of work to be undertaken, the sheer amount of time spent on speaking to people and so on.

I have seen mostly good practice but, as I have said, members have received complaints, as indeed I have. However, I do think that many of the problems are not going to be solved by legal reform, because they are more practical difficulties. I might be a bit rusty, because it has been 20 years since I last practised, but as I understand it, if anyone is charging extortionate fees—which I think Sarah Boyack was suggesting in the example that she gave—there are existing legal remedies to challenge any grossly exorbitant fees for the provision of services. If services are worth, say, £1,000, you cannot charge £1 million for them, and people can, I believe, find a remedy through the sheriff court.

I am just not convinced that we are necessarily going to progress this issue through legislation, but I do support Mr Torrance's recommendation that we find out whether

the minister can make any further recommendations and that we see how the voluntary code of practice is getting on.

The Convener: Shall we write to the Government as our first step and then reserve the possibility of pursuing the matter? What I think that Ms Boyack was suggesting—and I am not sure that I disagree—is that, depending on what the code of practice says, there might need to be a little bit more direction to try to make things happen. The key thing is that we do not find ourselves embracing something that is then widely ignored.

Are we agreed?

Members *indicated agreement.*

Annexe C: Written submission

Minister for Victims and Community Safety written submission, 28 March 2024

PE2006/H: Review and simplify the legislation in relation to dismissal of property factors

Thank you for your letter dated 14 February 2024. I apologise for the delay in responding.

You have drawn my attention to the petitioner's further two submissions and requested an update on the Voluntary Code of Practice for land owning land maintenance companies.

The petitioner has provided further details on their situation in their submissions. I acknowledge that these situations can be challenging for residents.

The petitioner recognises that, rather than raising widespread or systemic issues, this petition highlights difficulties in a particular relationship between property factor and homeowners. I note the petitioner suggests there are a number of live applications to the First-tier Tribunal (Housing and Property Chamber) pertaining to this case. You will understand that I cannot comment on the specific circumstances of a private dispute, but with regard to the broader issues this petition raises, I consider that the current legislative framework does provide effective means by which to resolve these issues.

The Property Factors (Scotland) Act 2011 introduced a Code of Conduct for property factors ("the Code"). The Code requires that factors provide homeowners with a written statement of services at the start of the relationship. The written statement of services must include clear information on how to change or terminate the service arrangement, including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination. Failure by the factor to provide this information to homeowners at the outset of the factoring arrangement is a breach of the Code.

The procedures for homeowners to vote to remove property factors are often set out in title deeds. If these are silent then the Title Conditions (Scotland) Act 2003 and Tenements (Scotland) Act 2004 provide the necessary mechanisms to enable homeowners to dismiss and appoint property factors.

It is open for any party with an interest to challenge the validity of a vote taken by homeowners. That is a protection for homeowners, to ensure that votes are properly taken and reflect the views of the majority.

Where a factor and homeowner disagree about the procedure to be followed in dismissing a factor, or the validity of a vote taken to remove a factor, the sheriff court can determine whether the procedure to remove a factor was properly followed, and whether or not a property factor has been removed. In my view that is the appropriate means by which to determine, in any particular case, whether a property factor has been removed by the homeowners.

Regarding the use of homeowners' funds to pay a factor's legal costs, if homeowners consider that a factor has used the homeowner's funds for a purpose not authorised by the terms of the factoring agreement or title conditions, homeowners may seek a remedy in the sheriff court. Further, the Code requires that homeowners know what it is they are paying for, how charges are calculated and that no improper payment requests are involved. If homeowners consider that the factor has used their funds for purposes which are not detailed in the written statement of services, homeowners may apply to the First Tier Tribunal (Housing and Property Chamber) ("the Tribunal") to establish whether the property factor has failed to comply with the Code.

Where the Tribunal considers that a property factor has failed to comply with the Code, the Tribunal may make a property factor enforcement order, requiring the property factor to take such actions, including making payments, as the Tribunal considers necessary. Failure to comply with a property factor enforcement order is a criminal offence. Non-compliance with the code of conduct or with property factor enforcement orders may ultimately be grounds for removal of a property factor from the register of property factors. Removal from the register would require the property factor to cease to operate as a property factor, or face criminal sanction.

In light of these existing remedies by which homeowners may challenge the actions of a factor, in my view, legislative change at this time is neither necessary nor proportionate.

With regard to the progress of the voluntary code of practice for land owning land maintenance companies, this code would apply only where homeowners pay a land-owning land maintenance company for management of the open spaces that are owned by the land maintenance company. This issue is distinct from the dismissal of traditional property factors (where the factor does not own the land maintained). There does not appear to be any suggestion of the involvement of a land-owning land maintenance company in the present petition.

Unfortunately, due to other work pressures, work has not progressed on the voluntary code of practice as anticipated. I will consider how this work is taken forward and what other information could be usefully provided for homeowners who are thinking about switching property factors.

SIQBHIAN BROWN