

Citizen Participation and Public Petitions Committee  
Wednesday 5 March 2025  
4th Meeting, 2025 (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 19 February 2025.](#)  
At that meeting, the Committee heard evidence from –
  - Siobhian Brown MSP, Minister for Victims and Community Safety
  - Jill Clark, Team Leader, Private Law Unit
  - Sandra Jack, Policy Advisor, Private Law Unit
  - Stephen Leetion, Housing Registers Policy & Customer Focus Team Leader, Better Homes Division
  - Megan Stefaniak, Solicitor, Scottish Government Legal Directorate
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. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.](#)
4. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
5. [The Scottish Government gave its initial position on this petition on 23 March 2023.](#)
6. Every petition collects signatures while it remains under consideration. At the time of writing, 785 signatures have been received on this petition.

## **Action**

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

**Clerks to the Committee  
February 2025**

## **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 19 February 2025**

**The Convener:** Our second item is consideration of continued petitions. The first of those is PE2006, which was lodged by Ewan Miller and calls on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act 2011 to cover dismissal of property factors or to lay other regulations that would achieve the same aim. That could include giving the First-tier Tribunal for Scotland housing and property chamber powers to resolve disputes related to the dismissal of property factors.

We last considered the petition on 13 November 2024. At that point, given all the different bits of evidence that we had received, we felt that, in order to understand matters better, including the position of the Scottish Government, we would invite the Minister for Victims and Community Safety to give evidence. I am absolutely delighted that the minister, Siobhian Brown, is with us this morning, together with a number of Government officials. Rather than my doing so, I wonder whether the minister would like to introduce the officials to us and tell us what they do.

**The Minister for Victims and Community Safety (Siobhian Brown):** I would like them to do it.

**The Convener:** In that case, I invite each of you to introduce yourselves and explain your work, because four different voices will sound much more interesting than my just reading it all out.

**Megan Stefaniak (Scottish Government):** I am a solicitor at the Scottish Government legal directorate.

**Stephen Leetion (Scottish Government):** I am part of the housing registers team, which is part of the better homes department, where I deal with policy and customer focus issues.

**Jill Clark (Scottish Government):** I am in the private law unit, dealing with property law, among other things.

**Sandra Jack (Scottish Government):** I am from the private law unit, dealing with property law.

**The Convener:** When I invited you to do that, I did not realise that it would sound like “University Challenge”. I should now say that that was your starter for 10. [Laughter.] Thank you all very much, and welcome.

If you are content, we will move straight to questions. I invite you to decide, minister, when you would like members of your team to contribute—that will be the easiest way forward.

As a general opening comment, I note that the committee has not fully understood why the Scottish Government thinks that no new legislation is required to deal with the problem that has been raised in the petition, given everything that we have heard from the petitioner about the difficulties of navigating the current arrangements.

**Siobhian Brown:** If I could, convener, I would like to start with a few opening remarks to provide a bit of clarity, as there is a bit of crossover between my portfolio and that of the Minister for Housing on the issue.

Thanks very much, everybody, for the opportunity to talk about the dismissal and the appointment of property factors, and to provide an update on the progress of the voluntary code of practice for the dismissal and the replacement of land-owning land maintenance companies.

My property law portfolio responsibility covers the dismissal and the appointment of property factors—sometimes referred to as switching—which includes the land-owning land maintenance companies. The Minister for Housing has portfolio responsibilities for the Property Factors (Scotland) Act 2011, which includes the register of properties factors and the code of conduct. My comments will focus specifically on my portfolio.

I know that the petitioner has called for legislation to cover the dismissal of property factors. Legislation is already in place that deals with that matter. If the title deeds of a property do not set out how the property factors are to be dismissed, provisions under the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 will apply.

As I have indicated in my previous responses to the committee, I consider that the existing remedies by which home owners might dismiss a factor are adequate and that a legislative change at this time is not necessary. I note that, in its response to the petition, Under One Roof said that the process to dismiss a property factor is not clear—I will come on to that—while the Property Managers Association Scotland considered that the current legislation on the matter is sufficient.

I recognise, however, that some home owners find the procedure to switch property factors complicated. A guidance note on manager burdens will be published shortly on the Scottish Government website, which will help home owners to navigate the various options with regard to establishing voting procedures.

I have spoken to my officials this morning and the website says that the guidance will be published shortly. I am told that the timescale is within the next few weeks, but there are a few technical issues with the graphics that are being added to the website.

**The Convener:** To be clear, what will that do?

**Siobhian Brown:** It is guidance on the various options for how voting procedures should be carried out when dealing with factors.

**The Convener:** I understand that, but the petitioner's argument is that those who seek to dismiss property factors in the civil courts find that the whole process is not practical. Because of the intimidatory nature of potential legal costs and the unquantifiable nature of what they might be, it effectively flashes the frighteners, if I can put it that way, at residents who might feel that that is what they want to do so they hesitate before doing so. How do you respond to that inherent fear, which they

say is a deterrent to acting on that instinct, even when they feel that it is what they have to do?

**Siobhian Brown:** I appreciate the petitioner's comments and his experience, but it is quite rare that this has happened with factors. However, we need to ensure that a process is in place for anybody who wants to remove a factor. Usually, that is in the title deeds, so it would be unusual if that was not in place.

Moving forward, if someone feels intimidated because they have to get legal advice or go through the court process, I think that they should feel supported through our guidance. My officials might want to come in with something further here.

**Stephen Leetion:** No matter which body you take such cases to, there will be a legal nature to it. Those cases are complicated, and they are not things that everybody deals with every day. It might just be that, because they are complicated, people will need legal advice, whether that is from the sheriff court or from another judicial body such as the First-tier Tribunal, and everything comes at a cost.

I appreciate exactly what you have said, however. It can be intimidating. The tribunal is supposed to be less intimidating, but there are complaints that people lawyer up and that is just the nature of the beast. It is complicated, and people on both sides of an argument need to have the right legal advice.

**The Convener:** Thank you. Is it Mr Leeton?

**Stephen Leetion:** Leetion.

**The Convener:** Will the advice that is being worked on be a pamphlet or an online directional guide? How would people know that that advice is available and find a route to access it?

**Siobhian Brown:** I will pass over to Jill Clark, who has been involved in the design of it.

**Jill Clark:** It will be online. I imagine that we will also get in touch with consumer groups and bodies such as Under One Roof to make sure that everybody is aware that it is available. We are trying to make it very simple to follow, with a flow chart, so it is clear what a home owner has to do and that they need a certain amount of votes in order to act. It will cover what applies—is it your title deeds or is it other legislation? It should be accessible, and it will be promoted.

**The Convener:** Am I correct to say that, in support of the Government's view that separate legislation is not needed, the initiative is designed to illustrate how individuals would navigate the current process, which the Government believes ought to be satisfactory to meet the issue of dismissal?

**Jill Clark:** Yes, that is correct.

**The Convener:** Finally, the minister and Jill Clark have touched on Under One Roof in its contributions. In its submission, the organisation takes the view that the complexity of the law on dismissing property factors, as well as the separate issue of what some people see as the intimidatory nature of the costs that they might be

contemplating, is a barrier to home owners who want to switch property factors. It all looks too difficult to navigate. Is there a hope that the advice will also assist with that issue? Is that your response to the views of Under One Roof?

**Siobhian Brown:** That is part of it. As I said in my opening remarks, there has been a delay in issuing the voluntary code of practice because of pressures on the team. We are looking at doing that within the next six months. The draft has gone to key stakeholders to try to simplify the process. That will be in addition to what will be online on the Scottish Government's website.

Does anyone else have any views on how the voluntary code of practice will help?

**Jill Clark:** The voluntary code of practice relates to landowning and land maintenance companies, so it will certainly help in that area. The guidance that we should be putting out shortly should help people to navigate the existing system when voting on property factors.

**The Convener:** That scene setting was interesting. Do colleagues have any questions?

**Fergus Ewing (Inverness and Nairn) (SNP):** I suppose that I should declare that I am still on the roll of solicitors and am registered with the Law Society of Scotland, although that is more of an expense than an interest, albeit a merited expense.

The thesis of Mr Miller's petition is that he is calling for the legislation to be amended to enable the dismissal of property factors or for other regulations to be laid that would achieve the same aim. It seems to me that two things should be said about that. First, I think that Mr Miller is concerned not about tenement properties but about housing estates with open land that requires maintenance. The difficult issue of green belt has been a running theme with which I grappled—unsuccessfully, I should confess—during my time in your shoes, minister.

Secondly, it seems to me that the nub of Mr Miller's concern is not so much the issue of who is the factor but of how much they charge. In her evidence to the committee on 13 November 2024, Sarah Boyack cited an example in which the charges had increased dramatically, with quarterly fees rising from £300 to £800 pounds.

If I am right that the nub—the beef—of the issue is not so much who the factor is but what they are doing and whether they are fleecing the owners, the owners' problem is that going through the ordinary cause procedure in the sheriff court is too expensive. I know that they are absolutely right about that and can say beyond peradventure that only the very rich or those who are on legal aid can litigate in ordinary cause courts and that the cost deters everyone else.

I understand, minister, that you are providing the orthodox answer—as perhaps I did; not always but too often—that there is a remedy. The orthodox answer is that people can go to court and that is fine, but they cannot go to court because they do not have the money to go to court, so that is a theoretical remedy and not a practical one.

I will suggest a possible solution, although I do not know whether it will fly. We have, as alternatives to the ordinary cause court, the small claims court and the summary

cause court. The small claims court is intended as one to which parties can go to explain their case, first in writing and then in person to the sheriff, with no lawyers involved—at least, lawyers should not be involved, although companies often send King’s counsel. That is absurd, but that is what they do. Expenses are not usually awarded by that court unless there is an abuse of process. I am not talking about the summary cause court but about the small claims court, because summary cause is similar to ordinary procedure and practice, in which lawyers end up being involved.

There could be a stipulation regarding charges that are shown to be excessive in accordance with simple evidence given by a tradesman about the ordinary rates for that trade. A change from £300 to £800 per quarter is an absurd increase by any account. The example that Sarah Boyack cites is an increase of almost 300 per cent and we have no reason to doubt that that is correct.

Would the answer not be to confer privative jurisdiction on the small claims court and give the sheriff in that court the power under legislation, if, in his discretion, he finds that the factor has overcharged and abused the system and a claim has been completely excessive, to say, “Look, you’ve abused your power. You’re no longer the factor”? That could be set out quite simply in law as a matter of principle. I checked “Gloag on Contract” and I think that the claim would be dealt on a quantum meruit basis. I have no doubt that Jill Clark and Megan Stefaniak can correct me if I am mistaken on the law.

I do not expect the minister to be able to answer that, because I have not given her notice of my question—I thought of it only last night when I was looking at the committee papers. I wanted to set out my suggestion and I am grateful to the convener for allowing me to do so at some length.

**The Convener:** Thank you, Mr Ewing. Your intervention was interesting. It might be a little unreasonable to expect the minister to have an immediate response to that. I do not know whether you want to respond, minister? If you want to give it some further thought, would it be helpful for us to make available the Official Report with Mr Ewing’s suggestion at the earliest opportunity?

**Siobhian Brown:** I would like to give it some further thought, but we are always open to new suggestions as to how we can simplify the process. I am probably putting my colleagues on the spot, but I do not know whether they have any initial thoughts about the legal implications of Mr Ewing’s suggestion, or whether it is simply a case of our going away and thinking about it.

**Megan Stefaniak:** We will have to consider it and come back to the committee.

**The Convener:** We have touched on the nub of the issue, which is people’s terror about the unquantifiable cost that they would incur.

**Maurice Golden (North East Scotland) (Con):** To round off some of the discussion, what is the minister’s assessment of how the legislation allows access to justice?

**Siobhian Brown:** Legal aid is available for people who apply and are eligible for it. There should be no problem with anyone accessing justice if they would like to.



**Maurice Golden:** Just to be clear, is it the Scottish Government's position that the current approach allows for a justice system that is up to date, fair and respects the rights and diverse needs of users?

**Siobhian Brown:** Yes, that is my understanding. Do my officials want to say anything other than that?

**Megan Stefaniak:** If home owners have any issues with property factors relating to the requirements of the Property Factors (Scotland) Act 2011, they can take that to the First-tier Tribunal. There is no cost to take a case to the tribunal, although the legal advice has costs. Separately, a home owner can take a matter to the sheriff court if it specifically relates to title deeds or the dismissal of a property factor.

**Maurice Golden:** What is the Scottish Government's view on the Competition and Market Authority's report and its position that the current system of private management of housing estates might lead to consumer detriment?

**Siobhian Brown:** The Scottish Government welcomes the CMA's report and is grateful for its engagement with officials and the Scottish market in its investigation. It is a substantial report. Ministers and officials are considering the recommendations and will respond fully in due course. The suite of recommendations extends over a few ministerial portfolios and the impact of each recommendation needs to be considered in the wider context.

I understand that the Minister for Housing considers that it would be useful, while examining the findings and the recommendations of the CMA, to add more voices to the discussion, and he might include them in the proposed round-table session with property factors. It is under consideration.

**Maurice Golden:** I am sure that we all appreciate that we are running down the clock in this parliamentary session. Is there any more detail on how and when that response might be published?

**Siobhian Brown:** That has not been made clear to me, but, as I said, the Minister for Housing is looking into it. We can perhaps write to the committee on that.

**Foyso! Choudhury (Lothian) (Lab):** Good morning, minister. In a previous submission to the committee, the Scottish Government stated that it had received fewer complaints about property factors over the past 10 years. Is the minister aware of how many property factors have been dismissed in the past 10 years?

**Siobhian Brown:** I am not aware of that number; I do not know whether any of my officials have it. We might have to write back to the committee with those details.

**Foyso! Choudhury:** Do you think that the present system is fair and democratic?

**Siobhian Brown:** Yes, I think that it is. However, we do not have the exact number of how many dismissals there have been in the past 10 years; it has not been specifically on my radar in my ministerial role for the past two years per se. However, if there are ways in which we can improve the system, the Scottish Government is always willing to look at them.

**The Convener:** I suppose that leads to Under One Roof's view that the Government should seek the views of housing professionals, owners and other organisations on what options might exist for reducing the barriers for owners to replace property factors. Have you given consideration to amplifying, perhaps, the options that others, such as Mr Fergus Ewing, might have for what could be done? Arguably, the number of factors that have been dismissed will be suppressed if people are deterred by the process from bringing forward an action to try to deter the property factor in the first place. Those barriers might limit that number.

**Siobhian Brown:** Yes, absolutely. One of the things that I can do, which I take away from this evidence session, is to speak with the Minister for Housing, because if he is going to have a round-table session to examine the recommendations from the CMA report, that consideration could be intertwined with that.

**The Convener:** That is very helpful. Thank you.

It seems that colleagues do not have any further questions. It was quite brief this morning, minister, but I think that, from our point of view, we got to the nub of the matter. It was short but sweet—I am sure that you are perfectly happy that that was the case. We thank you all very much for your participation.