

REPORT TO: HOUSING COMMITTEE - 29 OCTOBER 2012
REPORT ON: THE PROPERTY FACTORS (SCOTLAND) ACT 2011
REPORT BY: DIRECTOR OF HOUSING
REPORT NO.: 386-2012

1. PURPOSE OF REPORT

- 1.1 To outline the rationale key legislative provisions and compliance requirements contained within the Property Factors (Scotland) Act 2011.
- 1.2 To brief Committee on the implications of the Act relative to the delivery of land and property services to owners of ex-Council stock, who reside in mixed tenured properties and open plan estates.

2. RECOMMENDATIONS

The Housing Committee is requested to:

- 2.1 Note the legislative requirement for Dundee City Council to register as a Property Factor by 1 October 2012.
- 2.2 Agree the appointment of the Chief Executive and Director of Housing as 'responsible persons' in accordance with legislative requirements.
- 2.3 Note the key elements as outlined within the Act in terms of the registration of land and property relative to the delivery of Capital, Revenue and hard landscaping services to owners of ex council stock within mixed tenured properties and open plan estates across the city.
- 2.4 Agree that the Director of Housing, in association with other appropriate Council departments prepares and issues a Written Statement to be provided to all relevant owners who receive Dundee City Council factoring services.
- 2.5 Remit the Director of Housing to monitor and review the administration fee element that forms part of the professional fees levied when recharging owners for Council services, in accordance with the terms of their title deeds. This review will include any new/additional services identified consequential of delivering services in accordance with the provisions of this Act.

3. FINANCIAL IMPLICATIONS

- 3.1 The key financial implications include the following:
- A registration fee of £370 is applicable (payable by the Council to the Scottish Government every 3 years) and costs will be incurred in printing and issuing the Written Statement to relevant owners. These costs will be met from existing budgets.

4. **MAIN TEXT**

Dundee City Council provides factoring services to former council house owners in mixed tenure blocks in delivering capital investment programmes and planned maintenance. Dundee Association of Council House Owners (DACHO) was established to represent the interests of owners. The Council has a constructive relationship with DACHO and a track record of working together to deliver service improvements. Dundee City Council was the first local authority to develop and implement an Owners' Charter and has Service Standards for the services we provide to owners.

4.1 The rationale behind the Property Factors (Scotland) Act 2011 is to ensure greater protection for homeowners.

The Act seeks to create a statutory framework of registered of Property Factors across Scotland who can be held accountable for their land and property services to all relevant homeowners.

The underlying principles of the Act are openness, transparency and fairness in the delivery of a quality service to homeowners.

A minimum set of standards has been identified within a 'Code of Conduct' and the introduction of an independent body referred to as a Homeowners Housing Panel has been established to address dispute resolutions between homeowners who have identified Property Factors who have failed to comply with their Code of Conduct.

4.2 The definition of Property Factor is aimed to capture private sector property factor, registered social landlords, land maintenance companies and local authorities who manage common/mutual elements within a building. It is not necessarily a pre-requisite to charge for the services delivered simply to provide them.

In contrast to this there is a pre-requisite for an owner's Title Deed to stipulate the requirement to pay a share of cost associated with land management/maintenance.

4.3 The 3 main elements within the Act cover the following:

1. **Compulsory Registration**

There is a legal requirement to register the relevant property and land within Dundee City Council in accordance with the Act and nominate a Responsible Person and one other high ranking officer to be held accountable for service delivery in respect of that stock profile (the Chief Executive and the Director of Housing respectively).

Registration requires a registration fee payable by the Council to the Scottish Government every 3 years. 6,820 relevant properties have been identified which require to be registered as their title deeds stipulate a requirement to pay a share of costs associated with maintenance/upkeep of common/mutual elements within a building and/or hard landscaping services. A fee of £370 applies to Dundee City Council.

2. **Compliance With the Code of Conduct**

The Code of Conduct lays down the minimum standards expected in terms of service delivery as provided by the relevant Property Factor to the designated stock profile identified for registration.

It is important to note that if there is any conflict between the conditions of sale (as outlined within an owner's Title Deeds) and the Code of Conduct then the Title Deeds take precedence.

The main aim of the Code of Conduct is to ensure Property Factors provide clear and unambiguous communication on the services they deliver (within their stock profile) to relevant registered homeowner.

It specifies that homeowners must be informed on how a rechargeable debt is constituted and also advised on the Property Factor's debt recovery policy.

There is a requirement for all Property Factors to provide a Written Statement of services outlining the processes and procedures associated with the communal/mutual work undertaken, the communication consultation and financing arrangements that apply, the service delivery standards expected, the rationale behind the appointment of contractors and any notes of interest in respect of the appointed contractor. In addition to this there is also a requirement to issue to the homeowner an annual statement detailing the works carried out and all the charges made for the previous year as well as ensuring that the homeowner is aware of how to challenge or complain about any relevant aspect associated with the service provision.

It is important to note that whilst the legislation allows 1 year after 1 October 2012 to provide the Written Statement to owners, any owner who asks for their Written Statement must receive it within 4 weeks from the date of request after 1 October 2012.

3. **The Housing Homeowners' Panel**

The constitution of the Homeowners Panel is expected to include a lawyer a chartered surveyor and a Housing professional. Its role will be to hear complaints from homeowners who have exhausted the formal complaints procedure in play within a local authority and still remain dissatisfied with the service provision.

It will not hear complaints it considers to be vexatious, frivolous or previously dealt with. If the panel decides that a Property Factor has failed to comply with its Code of Conduct they can place an enforcement order on the Property Factor compelling them to follow through as appropriate within a specified timeframe. Failure to follow through on an enforcement order is deemed to be a criminal offence. There is a right of appeal to the Sheriff Court on a point of law only.

It is important to note that all communication with relevant homeowners must be retained for a period of 3 years and provided to the Homeowners Panel on request.

- 4.4 Members should note that there is no defined set of management services provided within the scope of the Act and Local Authorities across Scotland are determining their own 'position' in relation to their own stock profile and their services delivery to relevant owners.

5. **ACTION**

- 5.1 Stages 1 and 2 of the Formal requisition process have been completed.
- 5.2 Interdepartmental working groups involved in the delivery of mutual/common services to owners of ex-council stock have been established for the preparation of the Written Statement and are working towards full compliance of the Act.
- 5.3 I.T. is currently actively involved in assessing the additional requirements to enable production runs of the Written Statement which must be personally addressed to all relevant current owners of ex council stock legislation affected by the legislation.
- 5.4 A review of all Department's written communication including letters, accounts and e-mails with owners will need to be undertaken and adjusted as necessary to take account of the new requirements of the Act.
- 5.5 Raising staff awareness and ensuring the relevant training and development is undertaken for all who deliver factoring services needs to be established with both the client departments and the relevant contractors.
- 5.6 An invitation to the Dundee Association of Council House Owners (DACHO) will be extended in order to outline and discuss the implications of the new legislation. DACHO's views will be sought on the content of the Written Statement.

6. **POLICY IMPLICATIONS**

- 6.1 The report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

7. **CONSULTATIONS**

The Chief Executive, Director of Corporate Services and Head of Democratic and Legal Services and all other Chief Officers have been consulted on the preparation of this report. No concerns were expressed.

8. **BACKGROUND PAPERS**

- 8.1 The Property Factors (Scotland) Act 2011.
- 8.2 The Code of Conduct associated with all registered Property Factors across Scotland.
- 8.3 The definition of a Property Factor as noted within the Act (annex A of the Act).

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