

Housing and Property Chamber

First-tier Tribunal for Scotland



Information Guide on applications about property factors

This guidance has been prepared by the Housing and Property Chamber for the assistance of homeowners and property factors wishing to know more about the Housing and Property Chamber application process. It is not, and is not meant to be, a comprehensive description of all aspects of the changes introduced by the Property Factors (Scotland) Act 2011 in relation to providing minimum standards for property factors. The legislation is contained within the Property Factors (Scotland) Act 2011 and The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016 (“the 2016 Regulations”).

Introduction to the Property Factors Act

The Property Factors Act aims to protect homeowners by providing minimum standards for property factors. It applies broadly to all residential property and land managers whether they are private sector businesses, local authorities or housing associations. There is a compulsory register of all property factors operating in Scotland and property factors have to comply with the Code of Conduct that sets out minimum standards of practice. A copy of the Code of Conduct can be accessed from the Housing and Property Chamber website or can be obtained from the Housing and Property Chamber offices.

Who is a Property Factor?

The definition of “property factor” is contained in Section 2 of the Act. In the Act “property factor” is;

- A person who, in the course of that person’s business, manages the common parts of land owned by two or more other persons and used to any extent for residential purpose,
- A local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned –
 - by two or more other persons, or
 - by the local authority or housing association and one or more other person,
- A person who, in the course of that person’s business, manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land), and
- A local authority or housing association which manages or maintains land which is available for use by –
 - I. the owners of any two or more adjoining or neighbouring residential properties, or

- II. the local authority or housing association and the owners of any one or more such properties,

but only where the owners of those properties are required by the terms of the property title deeds to pay for the cost of the management or maintenance of that land.

Who is not a Property Factor?

- a person so far as managing or maintaining land on behalf of the Crown that was acquired by virtue of Her Majesty's prerogative rights in relation to unclaimed or ownerless land,
- an owners' association established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9) so far as managing or maintaining common parts or land in accordance with the scheme,
- a person so far as managing or maintaining common parts or land on behalf of another person who is a property factor in relation to the same common parts or land.

Who can make an application to the Housing and Property Chamber?

The Act provides that a homeowner may make an application. "Homeowner" is defined in Section 10(5) of the Act, as

- an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
- an owner of residential property adjoining or neighbouring land which is (i) managed or maintained by a property factor, and (ii) available for use by the owner.

What can a Homeowner make an application about?

A homeowner can make an application under two separate grounds. The first ground is if the homeowner feels the property factor is not complying with the Property Factor **Code of Conduct**, and the second ground is if the property factor is not carrying out their duties as **property factor**. Property factor duties complaints in the second ground can include allege breaches of the written Statement of Services (which is a service level agreement), or title deed conditions or a factoring contract or contraventions of the law of agency. If the application is made on the basis of breach of property factor duties, the homeowner will need to specify the document or provision which the homeowner considers contains the duty which the property factor has not met. Code of Conduct complaints in the first ground relate to breaches of specific sections of the Code of Conduct.

What is the Property Factor Code of Conduct?

The Code of Conduct sets out minimum standards of practice for registered property factors, the Code covers;

- I. Written Statement of Services
- II. Communication and consultation
- III. Financial obligations -
- IV. Debt recovery
- V. Insurance
- VI. Carrying out repairs and maintenance
- VII. Complaints resolution.

What is the Written Statement of Services?

It is a requirement of the Code of Conduct at Section 1 that a property factor provides each homeowner with a written Statement of Services. The Statement of Services should set out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between the property factor and the homeowner.

When should a homeowner expect to receive the Written Statement of Services?

Homeowners should have received a Statement of Services from the property factor no later than one year after the property factor's initial registration in the property factor register. Since the commencement of the Act on 1 October 2012, a homeowner can request a Statement of Services at any time and the property factor must provide this within four weeks of a request. If a homeowner has not received the Statement after such a request, a formal complaint can be raised with the factor and if the Statement is still not provided within a reasonable timescale, an application could be made to the Housing and Property Chamber.

Are there actions a homeowner must take before their application to the Housing and Property Chamber will be treated as a valid application?

Yes, the homeowner **must** first notify their property factor in writing of the reasons why they consider that the factor has failed to carry out their duties, or failed to comply with the Code. The property factor must also have refused to resolve the homeowner's concern, or have unreasonably delayed attempting to resolve them.

A homeowner considering an application to the Housing and Property Chamber, should if possible, request the Written Statement of Services from the property factor prior to applying, as it will allow the tribunal to consider the extent to which the property factor's actions have complied with the terms and service delivery standards in the Statement of Services which the factor has undertaken to meet. It will also allow the homeowner to check the service delivery standards and refer to these in their application to the Housing and Property Chamber

How does a homeowner apply for a determination by a tribunal?

An application form can be downloaded from our website or requested from the Chamber office. The form is simple and straightforward. Common questions relating

to completing the form are at the end of this guide. The homeowner must include with the application-

- written evidence that they have notified the property factor of the complaint and that the property factor has either refused to resolve the complaint or has unreasonably delayed resolving the complaint;
- copies of any correspondence which they have sent and received from the property factor regarding the complaint, including the factor's response to the notification of complaint; and
- a copy of any Statement of Services provided by the property factor.
- An inventory listing the documents should be included if numerous documents are being produced

An application has been received by the Housing and Property Chamber what happens next?

Once a valid application is received, the President (or a convenor with delegated powers) has 14 days from the date of receipt to decide whether the application can be referred to a Tribunal or whether it should be rejected. A valid application will only be rejected if

- the President considers it to be vexatious or frivolous (definitions of these terms are given in the Housing and Property Chamber Annual Report 2014), or
- the homeowner has not afforded the factor a reasonable opportunity to resolve the dispute, or
- the homeowner has recently made an identical or very similar application, or
- the dispute has already been resolved.

Can the dispute be resolved informally through the Housing and Property Chamber?

The President has the power to delay referring the case to a Tribunal where "there is a reasonable prospect of the dispute being resolved by the parties". This might be appropriate if, for example, it appears that there has been a simple misunderstanding which could be resolved. The President may request that the parties try mediation to resolve the dispute. The President can also request further information before making a decision.

What does Mediation involve?

Mediation is a way of settling disputes informally without the stress, and bad feeling often involved in using formal judicial procedures. Mediation is practical, confidential, and free. Parties are not compromising their case by agreeing to mediation. Mediators are trained, impartial people who are skilled in helping establish common ground between parties. A guide to the Housing and Property Chamber mediation process is available on the website or on request. A successful mediation would result in an agreement being signed by both parties confirming what steps will be taken to resolve the issues. If mediation is selected, then the parties will be contacted to arrange a date for the mediation session to take place.

If mediation is not offered to parties by the President because it is considered unsuitable, not agreed to by the parties, does not succeed, or the mediation agreement is not complied with, the President will make a decision on whether to refer the case to Tribunal, or to reject the application.

The application has been referred to a tribunal - what happens next?

When the President refers an application to a Tribunal both parties will be sent a **Notice of Referral** confirming this and asking whether they wish to deal with the application by written representations or whether they wish to attend a hearing before the Tribunal. Remember that you **must reply to the Tribunal by the date given in the Notice**. If you need more time, you must contact the Tribunal to ask for this, giving a brief explanation as to why you need more time. If you want to change or add to your representations you can do so by writing to the Tribunal and seeking their consent to the amendment. If the Tribunal allow the amendment, then they will arrange for the amended representations to be intimated to the other party.

Who will the members of the Tribunal be?

Each tribunal will comprise at least two members, although there may be three. There will always be a legal member who acts as chairperson and who is a solicitor or an advocate. The other member or members will be a surveyor member (who is a chartered surveyor) and/ or a housing member, who has experience of, or practical involvement in housing and land related issues.

What procedure does the Tribunal follow if parties agree the matter should be decided on written representations?

If both parties agree to have the application dealt with by written representations only, then the parties will be given an opportunity to comment on each others' representations, and after that the Tribunal will consider the evidence. If, having looked at the written representations and responses the Tribunal consider that they require further information from the parties, then the Tribunal may issue a Direction to the parties, specifying the further information which they require before they can make a decision. Once the Tribunal are in receipt of all the required written evidence, they will consider the application and issue a decision with their reasons for it.

What action can the Tribunal take before the Hearing?

The Tribunal has the power to make inquiries and can require the parties to attend a hearing or produce documents or information. If a party is served with a Direction from the Tribunal requiring attendance or further information then they must comply with that, otherwise they may be guilty of a criminal offence and could be fined. It is also an offence to knowingly give false information to the Tribunal.

It is a breach of the Code of Conduct to fail to comply with a request from the Housing and Property Chamber to provide information relating to the application and such a breach is likely to be referred to the Scottish Ministers.

What are Directions?

Directions either orally or in writing are the method by which tribunals regulate the conduct or progress of the proceedings in a case before them. The provisions in Regulation 20 of the 2016 deals with the provisions which apply to these. Individual tribunals can decide themselves at any time to issue directions and commonly such Directions deal with such issues as

- what documents need to be given to the other side and lodged (filed with the Chamber) prior to the hearing;
- which witnesses and documents the parties should bring to the hearing;
- whether issues raised by the parties will be dealt with as preliminary matters, and in which order. If the points are more complex, a case management hearing may be fixed by the Tribunal.

If Directions are issued they may require one party to do something but the Direction must be intimated on all parties.

Can parties request the Tribunal issue a Direction?

Regulation 13 specifies that a party to the proceedings can ask the Tribunal to give a Direction to another party. The President has issued a Practice Direction which must be followed by a party if they wish to ask the Tribunal for such a Direction. This is contained in Presidents Practice Direction No 1 and this Practice Direction specifies a form for the party to use when seeking such a Direction. Practice Direction No 1 and the form are available from the Housing and Property Chamber website.

Where will the hearing take place?

Hearings take place throughout Scotland and will normally be held in a public venue, unless a party has a special reason for wishing the hearing to be held in private, in which case a written request should be submitted with reasons for the request to the tribunal for consideration. The Tribunal will then decide whether to agree to such a request. The Tribunal will not grant such a request unless there is a good reason provided for the hearing to be held in private.

Details of the place, date and time of the hearing will be published on the Housing and Property Chamber website at least 5 working days before the hearing.

We will do our best to ensure that the hearing venue complies with the Disability Discrimination Act 2005.

What if a party has any special needs to be considered when attending the Hearing?

When you received the Notice of Referral from us, there would have been an accompanying form asking you to let us know of any special needs of anyone attending the hearing, and we will try to accommodate these. If you wish confirmation of this or if there are other requirements that you have not told us about, then please let us know as soon as possible. If a party or a witness needs an interpreter for the hearing, we can arrange this if we are told about this in advance.

What time will the hearing start?

Hearings are held on weekdays within normal working hours. They are normally held at 10.30 am. We will tell you at least 14 days in advance about the hearing time and the hearing venue. We will do our best to make sure the hearing starts on time. This time may be changed to suit individual circumstances.

What is the procedure for parties arriving to attend the Hearing?

- It is important you arrive on time. Please let us know if you or your witnesses are delayed. If you decide not to attend, then please let us know.
- You and anyone else you are bringing with you should arrive 10 minutes before the hearing is due to start.
- Please bring your copy of the papers that we sent you. You will need to make a copy for any other person you bring with you if you want them to have a set of papers.

When you arrive, the Chamber Clerk will explain what will happen and answer any questions you may have. Venues sometimes have tea/ coffee facilities but not always. On the few occasions that there is no Chamber Clerk, a tribunal member will meet you and explain the procedure.

What happens at the Hearing?

The Chamber Clerk will take you and the other party into the hearing room, and show you where to sit. The chairperson will begin with introductions, explain how the hearing will run and try to make the procedure as straightforward and easy to follow as possible. Please do not be put off attending a hearing. The procedure is fairly informal and the chairperson will ensure that you know what is happening. However, please remember that the tribunal hearing is a judicial process (like a court) and the Tribunal members are judges and there will be a degree of formality for fairness to both parties.

The chairperson will manage the hearing so that everyone can have their say. You will be given the chance to be heard by the tribunal and to ask the other party any relevant questions.

Everyone attending a hearing is expected to behave in a polite and appropriate manner. The tribunal has the power to exclude any person from the hearing, even if they are a party or a representative, if that person is being disruptive.

The tribunal will often deal with topics one at a time, rather than asking you to make a statement about the whole of the case at once.

The chairperson will keep a note of the evidence, and hearings are often audio-recorded.

The tribunal will want to establish from the evidence (both written and oral)

- What they think the relevant facts are.
- What conclusions should be drawn from these facts.
- What should be the outcome of the application.

Do parties have to be represented at the Housing and Property Chamber hearings?

No, you can conduct your case yourself or you can bring a representative to conduct the case for you. The rules relating to procedure are set out in the regulations which can be found on the Housing and Property Chamber website. The rules about representation are in Regulation 8 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016.

Do parties have to attend a Hearing when one has been arranged?

Parties can choose whether they will attend a Hearing. Attendance is only compulsory if the Tribunal specifically direct a party to be present. If any party does not attend the hearing, the tribunal can decide to proceed with it in their absence, provided they are satisfied that they received proper notice of the hearing. If a hearing is fixed, then any party who does not attend will have no opportunity to respond to any of the points made at the hearing and to answer any questions the Tribunal may have.

How long will the hearing last?

Most hearings will take a few hours, and will generally be dealt with in one day, but this depends on the individual circumstances, and some more complicated cases may take longer than this.

Can a party lodge productions at or in advance of the Hearing?

The rules about written evidence and lodging of documents in advance of a hearing are detailed in Regulation 18 and 19 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016.

If there are documents that a party wishes the tribunal to consider at the hearing (other than the documents which comprise the application and/or any written representations submitted), they **must be sent in advance**. When submitting productions a party must send to the Chamber a list of documents, together with copies of the documents that you wish to rely on, no later than 7 days before the

hearing. If a party wishes to rely on a document which has not been sent to the Chamber at least 7 days before the hearing, the tribunal may decide that this cannot be considered as part of the evidence in the case, or the hearing may need to be adjourned until a later date. The tribunal may allow the document to be included with the evidence only if it is satisfied that there is good reason to do so, and considers this to be fair in the circumstances.

What documentation constitutes a production as opposed to written representations?

Productions comprise paperwork which did not form part of the application and written representations/ answers received following the issue of the notice of referral. The application is circulated to the parties at the time of notice of referral and the written representations/ answers are received by the Chamber within a designated timescale after the notice of referral is issued, and the Housing and Property Chamber administration will ensure that copies of paperwork submitted at this stage are crossed over and both parties see the others' written representations/ answers.

Productions can be documents, photographs, statements forming the evidence, skeleton arguments on issues parties wish to advance in some detail at the hearing, etc.

Do parties have to lodge (i.e. file) productions in a particular format?

The President has decided that, except as otherwise provided for in the regulations or decided by a tribunal, the productions must be lodged in hard copy format. This is so that this written evidence can be easily accessed and referred to during a hearing by the parties and by the Tribunal members. It has also proved necessary to require this due to the quantity of written material being produced in some cases. The President has issued a Practice Direction No 3 which deals with this issue and can be found on the Chamber website at <http://the Housing and Property Chamber.scotland.gsi.gov.uk>

What format does the Practise Direction specify productions should take?

The Practice Direction requires parties to lodge a paginated (i.e. numbered) and indexed inventory of the productions in hard copy at the same time as lodging the productions. This will make reference to the productions easier at the hearing and ensures that all parties have copies of the same papers. This is not a difficult process and means that a party must list the productions in order on an inventory, and then attach the productions to the inventory in the same order as they appear on the list. Each production will require to be given a number (the number will appear prominently on the front page of the production e.g. on top right hand side) and that number should form the index on the inventory. The productions should where possible be indexed in a sequence, possibly date order or by topic e.g. photographs. There is no specific style of inventory that parties need use but a possible style is attached to this guidance.

Are productions only to be sent to the Housing and Property Chamber?

No. If parties intend to lodge an inventory and productions, they must send at the same time as sending a copy of these papers to the Chamber, a copy of the inventory and productions to all other parties or their representatives. The definition of “party” is given in the Practice Direction referred to. This requirement is to ensure that each party has fair notice of the other’s case and everyone is operating with a complete set of papers.

Parties are also reminded of the need to lodge documents and written evidence within the time limits specified in the Regulations 18 and 19.

Can parties bring witnesses to the Hearing?

If you wish to bring a witness/ witnesses with you on the day of the hearing to give evidence on your behalf, you must send to the Chamber no later than 7 days before the hearing a list of these witnesses. If you do not send a list of witnesses at least 7 days before the hearing, the tribunal may decide that evidence from this witness/ these witnesses cannot be heard, or the hearing may need to be adjourned until a later date.

When does the tribunal make a decision on the case?

The tribunal makes its decision by considering all the evidence, including the documents sent to the Chamber before the notice of referral and hearing and also what is said at the hearing.

The tribunal will not normally give its decision on the day. It will usually be sent out about 4 weeks after the hearing, along with a statement of reasons for the decision. If it is a complex decision, a Tribunal may require a longer timescale to produce the written decision.

What happens after the decision has been issued?

If the tribunal decides that the property factor has failed to carry out the property factor’s duties and/or to comply with the property factor code of conduct, then the tribunal may make a ‘property factor enforcement order’ (PFEO) requiring the property factor to take such action as the tribunal considers necessary, and where appropriate, make such payment to the homeowner as the tribunal considers reasonable. The PFEO must state the period within which any action must be taken or any payment required must be made.

It is a criminal offence not to comply with a PFEO without reasonable excuse.

It is for the tribunal to decide whether the property factor has failed to comply with the PFEO. Where the tribunal decides that a property factor has failed to comply with a PFEO, it must serve notice of the failure to Scottish Ministers. The law about PFEOs is contained in sections 19-24 of the 2011 Act, which can be accessed on the Housing and Property Chamber website.

Can I request a review of a decision from the Housing and Property Chamber?

Yes, you can request a review of any formal decision issued to you. You must do so within 14 days of the date of the decision (this time period may be extended on cause shown by the tribunal, if it is in the interests of justice to do so). The request for review will be considered, as far as reasonably practicable, by the same member(s) who made the decision to which the review relates. If the tribunal is considering setting the decision aside or re-determining it, then both parties will be given an opportunity to make representations before the decision is made.

The tribunal who made the decision are entitled to review a decision at their own instance if they consider it necessary to do so. If they are considering setting aside or setting aside and re-determining the decision then both parties would be given an opportunity to make representations before the decision is made.

If the review request (or review at the tribunal's own instance) is to correct an error in fact or an administrative error that does not affect the decision then this does not require to be presented to parties for representation before a decision is made.

Can parties appeal against a decision by a tribunal or the President?

Yes, you can apply to the Chamber for permission to appeal within 30 days of the date the decision is issued. An appeal can only be raised on a point of law (as opposed to a finding of the Tribunal about the facts in the case), and only in relation to the following decisions:

- A decision by the President to reject the application or refer it to a tribunal
- A decision on the application by a tribunal :
 - To issue a decision that the property factor has breached the Code of Conduct and/or property factor duties and, if appropriate, to propose a PFEO
 - To issue a complied decision that there is no breach by the property factor
 - To issue a PFEO and the requirements of the Order
 - To decide to take no action after the proposed PFEO
- A decision by a Tribunal on whether to grant or refuse a variation or revocation of the PFEO
- A decision by a Tribunal to issue a notice of a failure to comply with a PFEO
- A decision by a Tribunal not to grant a failure to comply with a PFEO

What happens after I apply for permission to appeal?

The tribunal who made the decision that is being appealed will consider the application for permission to appeal and determine whether they think permission should be granted, granted in part or refused. If permission is granted in part or refused a statement of reasons will be prepared and issued with a note of the decision.

In every case, you would have a right to take your appeal to the Upper Tribunal. If your application for permission is granted, you can send your appeal to the Upper

Tribunal. If your application is granted in part or refused, you can apply for permission to appeal from the Upper Tribunal. In every case you have 30 days from the date the appeal decision is sent to you to submit your appeal or application for permission to appeal to the Upper Tribunal.

OTHER COMMON QUESTIONS

This section answers some common questions that are not covered in the main guide.

Are Housing and Property Chamber decisions publically available?

Yes, they can be accessed from our website.

Does the Property Factor Registration team know of these decisions?

Yes, copies of the Housing and Property Chamber decisions are intimated to the property factor registration team.

Is there a cost for this service?

Applying to the Housing and Property Chamber is free of charge.

However, the Chamber has the power to award expenses against a party where that party through unreasonable behaviour in the conduct of the case has put any other party to unnecessary or unreasonable expense. Exercise of this power is not linked to the outcome of the case.

Can expenses be awarded against the homeowner if an application to the Housing and Property Chamber is unsuccessful?

No, the Act does not give powers to a tribunal to award expenses against an unsuccessful applicant.

However, the First-tier Tribunal has the power to award expenses against a party where that party through unreasonable behaviour in the conduct of the case has put any other party to unnecessary or unreasonable expense. Exercise of this power is not linked to the outcome of the case.

I don't think my property factor is registered – how can I check?

You should check correspondence issued by your property factor to you after 1 October 2012 as it should include the property factor's registration number if the property factor is registered. If you do not have recent correspondence or the correspondence does not provide a registration number, then in the first instance you should contact your property factor and ask for the registration number. There is a public register which you can check on line as all property factors require to be registered and it is a criminal offence if a property factor operates as such and is not registered. The Scottish Property Factor Register is available at [INSERT LINK](#)

Can a homeowner challenge any information contained in the written Statement of Services?

Yes, if they consider that the information contained in the written Statement of Services is misleading or false as this would potentially be a breach of section 2.1 of the Code of Conduct. However, it is for the property factor to decide the core services which will be provided.

A factor is not adhering to the terms of their written Statement of Services – What can homeowners do?

A homeowner should make a complaint to the property factor and allow the property factor time to try to resolve the complaint. If this is unsuccessful, then an application could be considered by a tribunal.

Section 1 of the Code of Conduct details the information which should appear in a written Statement of Services, and the other Sections of the Code deal with minimum service level requirements. A failure to comply with a provision in the written Statement of Services is likely to be a breach of property factor duties.

Can a tribunal dismiss or change a homeowner's property factor?

No, the Tribunal have no powers to do so. The written Statement of Services should provide clear information on how to change or terminate the service arrangement and homeowners would need to seek their own legal advice on this process. Please refer to chapter 3 of the booklet "Common Repair; Common Sense" published by Consumer Focus for further information. There is a link to this booklet on the Housing and Property Chamber website.

Can a tribunal alter title deeds and change the share of maintenance which a homeowner is asked to pay?

No, the Tribunal have no powers to do so. Homeowners would need to seek their own legal advice on this process. Please refer to chapter 2 of the booklet "Common Repair; Common Sense" published by Consumer Focus for further information.

What are common repairs and how do homeowners find out about responsibilities for these as well as the procedure for making decisions about repairs to common parts?

Common Repairs are repairs to the common parts of a building or an estate for which there is joint responsibility with other owners in the building or estate. The title deeds normally narrate the rights and responsibilities of ownership including any shared responsibility. If the titles are silent or there is a discrepancy in the titles between ownership shares in a tenement building, then the Tenements (Scotland) Act 2004 provides a scheme for making decisions and allocating shares of costs. There is another scheme relating to shared costs for entire developments and shared property such as amenity ground in housing estates which lays down a similar set of default rules in a community management scheme if there are gaps or deficiencies in the title deeds. Information about the rules for the Community

Management Scheme is included in the Title Conditions (Scotland) Act 2003. Property factors should have checked the title deed or the Management Schemes, if they apply, and included in the Statement of Services issued to homeowners, details of the share which they have to pay towards these joint costs. Further information on all tenement management issues can be obtained in the consumer focus booklet "Common Repair; Common Sense".

There are disagreements between the owners about the common repairs to be carried out - is this something that can form an application to the Housing and Property Chamber?

Generally, No. A Tribunal will look at whether the property factor has complied with the Code of Conduct and discharged the duties of a factor and has complied with the service delivery requirements on the property factor. A tribunal cannot make a Property Factor Enforcement Order against other owners to make them change their decisions about instructing or not instructing common or joint repairs or works or make orders on other owners about payment for common repairs. More information about the process of making scheme decisions (and possible assistance available to tenement owners who are unable to pay for common repairs) can be found within the booklet "Common Repairs; Common Sense" and the 2003 and 2004 Acts referred to earlier. The local authority may also be able to provide assistance with the service of statutory notices, if they consider it appropriate, and some authorities provide financial assistance for common repairs to tenements in certain circumstances.

Can a private tenant make an application to the Housing and Property Chamber if they notify the property factor of common repairs and these are not carried out?

A tenant cannot apply about a property factor issue to the Housing and Property Chamber. However, a landlord of residential property has in most cases a duty to ensure that a house meets the repairing standard and this will apply to common parts if a tenant uses these areas and if the landlord has an obligation to pay a share of the maintenance costs of these areas. Therefore, in the first instance private tenants should contact their landlord and report the problem. If the problem persists, tenants would be entitled to submit a repairing standard application to the Housing and Property Chamber, and guidance is available on our website on how to apply.

In the Code reference is made to not complying with duties imposed by legislation relating to consumer protection, financial services, consumer credit licenses, title conditions, health and safety, data protection and equalities. Do these issues fall within the Housing and Property Chamber remit or is it an issue for the specialist bodies who enforce these issues?

Generally the specialist bodies associated with these areas are the most appropriate avenue for complaint resolution since they possess the appropriate specialist expertise. If an application is made to the Housing and Property Chamber, the President or the tribunal may require the complaint to be referred in the first instance to the specialist body for investigation and a decision before deciding if an application to the Housing and Property Chamber is appropriate.

Do the Housing and Property Chamber have a role in deciding if an individual or body is a property factor within the definition of the Act?

No, the role of the Housing and Property Chamber is not to determine eligibility for registration of property factors or to validate the registration of property factors. These matters are issues for the Scottish Property Factors Registration Team and the Housing and Property Chamber will accept the determination of registration reached and proceed accordingly. This has the effect that in some instances applications to the Housing and Property Chamber may require to be sisted (frozen) until the issue of registration is decided and a decision is made as to whether an individual or body is a property factor in relation to the property or land. In these instances the Housing and Property Chamber will liaise with the Registration Team and advise them of receipt of an application to the Housing and Property Chamber.

Can the Housing and Property Chamber accept applications about a change to the services provided and management fee charged by a property factor?

The written Statement of Service will detail the services which a property factor will provide and will detail the management fee to be charged and fee structure and processes for reviewing and increasing or decreasing this fee. If services and fees are being provided in accordance with the Statement of Services, any requirements in the title deeds and legislation, any contractual factoring agreement in place and the Code of Conduct, then the Housing and Property Chamber have no powers to interfere with the service provision and fees charged.

ABOUT THE APPLICATION FORM

Which part of Section 2 to the application form should a homeowner complete?

If the complaint relates to a building which is used to any extent for residential purposes, then the homeowner should complete **A** with details of the property which they own and which is the subject of complaint e.g. "Flat 2/R, 1 Brown Street, New Town NT1 9AB".

If the complaint relates to land such as open grassed area, a play area, a woodland area, roadway, drainage scheme, or anything other than a building, then the homeowner should complete **B** and give details of the land which is the subject of the complaint and its location and e.g. "triangular shaped grassed area bordered by Brown Street and Black Street, New Town NT1 and which is adjacent to the block of flats at 1/20 Brown Street and 1/20 Black Street".

What is the difference between Part A and B of Section 7 of the application form?

The Act provides two grounds for making an application to the Housing and Property Chamber and it is important to be clear under which ground homeowners bring the complaint. The grounds are detailed in Part A and B below. For example

a) If a complaint is brought under Part A (the ground that the property factor has failed to ensure compliance with the Code of Conduct), then the homeowner will require to specify the part or parts of the Code which the property factor has failed to comply with and reasons/ evidence for this view.

b) If a complaint is brought under Part B (the ground that there has been a failure to carry out the property factor's duties), then a homeowner must specify the property factor's duties and the homeowner must show why the factor's actions fall short of these duties or in what way the property factor has breached these duties. The terms "Property Factor's duties" in relation to a homeowner are defined in the Act as

"(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land-

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner."

It is necessary to specify which ground or grounds apply as the property factor is entitled to fair notice of the ground(s) of complaint under which the application is brought, and the Housing and Property Chamber need to know this as the information required may vary depending on the ground under which an application is made. For example for complaints under Part B, specification of property factor duties may be contained in a written Statement of Services or contract or in title conditions and in which case the document referred to which specifies the duty or obligation will need to be produced.

What Additional details are required in Section 7 of the application form?

Listed below are the titles of the further information questions from Section 7, and a guide as to the type of information that a homeowner may be able to supply:

- **What is your complaint?** Homeowners should include here details of what has gone wrong and when it did or did not happen. Where possible homeowners should give precise dates when the issues arose and details of anyone else who witnessed them. If there are several issues, a homeowner should summarise them as separate points or paragraphs and send copies of letters or documents that will help the President or Tribunal to understand the complaint properly.
- **What your reasons are for considering that the Property Factor has failed to resolve your complaint?** Homeowners should include here details of when they complained to the Property Factor, how the complaint was or was not dealt with and the outcome, and send copies of letters, communications or documents which have passed between the homeowner and the Property Factor concerning the complaint.
- **How this has affected you?** Homeowners should include here details about how the failure to carry out duties or the actions of the Property Factor have affected them - how they felt about what was done or not done or what went

wrong and about any costs or losses incurred. If the homeowner had to pay for things as a result of the Property Factor's actions or inactions, they can include this information here. This includes information regarding to whom the payment was made, and copies of receipts if available. The costs/losses should be things that the homeowner would not have had to pay for if the Property Factor's actions had been different.

- **What would help to resolve the problem?** Homeowners should include here details about how they would like the complaint to be resolved and why. This may include an apology, a reduction or repayment of fees, compensation or other actions the Property Factor might take.