

# WRITTEN STATEMENT OF SERVICES UNDER THE PROPERTY FACTORS (SCOTLAND) ACT 2011

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## Introduction

On 1<sup>st</sup> October 2012, the Property Factors (Scotland) Act 2011 ("the Act") was brought into force by the Scottish Government.

This new legislation is designed to regulate the property factoring industry and provide transparency to homeowners who share responsibility for communal repairs or services provided by a Property Factor.

As West Dunbartonshire Council ("the Council") have responsibility for managing the communal parts of your property, we require to comply with the terms of the Act and with the Code of Conduct for Property Factors, developed by the Scottish Government. In terms of the Act, the Council is deemed to be the Property Factor for the building which your property forms part of.

The Council are registered as a Property Factor with the Scottish Government and adhere with the Code of Conduct referred to above. Our registration number is PF000334.

The following Statement of Services forms part of the Code of Conduct and sets out what the Council believe to be our management activities in respect of those parts of the building of which your property forms part and/ or associated garden ground or paths etc the legal ownership of which may in terms of your Title Deeds be shared by you and your neighbours. These shared areas or items are often referred to in title deeds as "common parts", "communal areas" or similar.

It is not intended to be a legally binding agreement. Rather it describes, in simple and transparent terms, our responsibilities as your factor.

## Section 1: Authority to Act

*This section provides information on the legal right that the Council has to act as the Property Factor in respect of your property's communal parts.*

You'll find everything you need to know about your rights and responsibilities as a factored homeowner in what is called the Burdens Section of the Land Certificate in your name. The Land Certificate is the formal legal document confirming that you are the legal owner of your property and the details are taken from the conditions applicable to your property as held in the Land Register of Scotland. In addition to details of the current ownership of the property and any securities (such as mortgages), it sets out the rules covering the management, maintenance, insurance, repair and improvement of the shared parts of your building. However, most importantly

and for the purposes of this Written Statement, it also sets out in a definitive legal manner the rights and responsibilities of you as an owner and West Dunbartonshire Council as the property manager.

At the time when you purchased your property, your Solicitor should have discussed with you your conditions of title including responsibility for repairs etc and any factoring or property management arrangements. The Council doesn't hold copies of your deeds. However, the Land Register of Scotland is a public service and accordingly as a member of the public, you can obtain a copy from the Registers of Scotland (who charge for the service). You can contact them on **0845 607 0164** or [customer.services@ros.gov.uk](mailto:customer.services@ros.gov.uk). There is more information on their website: [www.ros.gov.uk](http://www.ros.gov.uk), or write to them at **Registers of Scotland, Hanover House, 24 Douglas Street, Glasgow, G2 7NQ**.

As regards our authority to act as a property factor and in the event that your property is situated in a four in a block type building, a tenement or other multi – storey building, we have the requisite authority either by virtue of the fact that we continue to own one or more properties within the block (as provided for in the title deeds) or, where we no longer own any properties within the block in question, the proprietors (including previous owners of your own property) have continued using our factoring and property management services.

If your property is a terrace house, semi-detached or detached house, we will have been appointed as property managers in accordance with the terms of your titledeeds.

## **Delegated Authority and Financial Thresholds**

In addition to our general authority to act as factors as described above, there are also certain provisions entitling us to instruct works without financial limit in some cases and up to £500(inclusive of VAT) in other cases and that without any need for prior reference to the proprietors within the block or terrace in question. The exact details applicable to your property may depend on when your property was first sold off under the Right to Buy Legislation and where your property was situated prior to the changes in local government in 1996. By way of explanation, the previous Dumbarton and Clydebank District Councils were quite separate legal bodies and the conditions of title (including factoring arrangements and the power delegated to the council to instruct certain works without the need for prior approval) differed in practice.

## **Properties in the Dumbarton Area**

- Where we factor properties within the Dumbarton area and these were first sold off by the former Dumbarton District Council prior to 1996, we have delegated authority to incur expenditure without limit but only insofar as the works are in our opinion of an emergency nature or constitute necessary repairs as opposed to routine maintenance or improvements.Examples would be works required to protect the integrity or stability of the building or where failure to carry out the works as a matter of necessity would result in greater costs to the owners if delayed.
- Where the property was first sold off following local government reorganisation in 1996 AND we still own at least one property in the block we have full power to instruct any works that we think are necessary or desirable for the repair, maintenance or renewal of the common parts. However where we no longer own a property in the block our delegated

authority to proceed to instruct such works without a majority vote of proprietors is restricted to situations where the cost of such works does not exceed £500 inclusive of VAT.

- Please note that the date on which your property was first sold off is contained in your land certificate and your solicitor should be able to advise on this. Alternatively that information is available from the Registers of Scotland (see contact details above).

### **Properties in the Clydebank Area**

- Where we factor properties within the Clydebank area and these were first sold off by the former Clydebank District Council prior to September 1987, **AND more than half of the properties in your block are privately owned**, we have nonetheless delegated authority to incur expenditure without limit but only insofar as the works are in our opinion of an emergency nature or constitute necessary repairs as opposed to routine maintenance or improvements. Examples would be works required to protect the integrity or stability of the building or where failure to carry out the works as a matter of necessity would result in greater costs to the owners if delayed. Where however the council still own at least half of the properties in your block we as factors have a wider discretion and can in addition insist that with respect to any works (i.e. not just restricted to emergency or necessary repairs) the private proprietors in the block comply with any reasonable specification and programme of external decoration of the common parts or communal areas as we as factors think appropriate.
- Where the date of the first sale off of your property was after September 1987 **AND** we still own at least one property in the block we have full power to instruct any works that we think are necessary or desirable for the repair, maintenance or renewal of the common parts. However where we no longer own a property in the block our delegated authority to proceed to instruct such works without a majority vote of the proprietors is restricted to situations where the cost of such works does not exceed £500 inclusive of VAT.
- Please note that the date on which your property was first sold off is contained in your land certificate and your solicitor should be able to advise on this. Alternatively that information is available from the Registers of Scotland (see contact details above).

## **Section 2: Our Services**

*This section provides information on the general common repair provisions contained within your Title Deeds and identifies the typical repairs and common services that the Council may have responsibility for maintaining.*

**As part of our factoring agreement, we will provide core services to our customers. These include:**

- Manage and deal with repair and maintenance issues relating to the common parts of your block.
- Carry out inspections on your property at the request of you or any neighbour having a problem or concern.

- Decide what repairs are necessary to the common structure and carry them out within specified timescales.
- Liaise as appropriate with tenants and private owners where repair works are deemed as necessary.
- Appoint contractors to carry out common repairs and maintenance works.
- Ensure that necessary works have been completed to an acceptable standard.
- Advise you of the progress of the works, including estimated timescales for completion of the common repairs or maintenance works, unless you have agreed with the other homeowners in the block a cost below which job specific reports are not required.
- Advise you of your final share of costs after completing the repair, however if there is a substantial change due to undiscovered work as the job proceeds, we will always endeavour to advise you as the job progresses of any such change in value. Such variations usually occur on bigger jobs or jobs that were difficult to fully inspect before opening up the area to be worked on.
- Pay for the common works, divide the cost accurately and invoice you for your share of the costs.
- Engage with owners where necessary improvement works to the block are identified to obtain consent to proceed.
- Investigate and always try to resolve any complaints of unsatisfactory repair works or queries relating to the accounts sent out for payment.
- Answer any enquiry you may have about the service we provide.
- Liaise with legal professionals as required.

Depending on the type of property you live in, you might have some of the following additional property specific services:

- Communal Electricity
- Lift Maintenance
- Caretaking
- Multi Storey Service Charges

**The above list is not intended to be exhaustive, but does provide a general overview of the common repair issues and services to be provided by the Council. The property specific services we provide to your property are detailed on your annual invoice.**

In addition to the above, we may from time to time carry out other services considered by the Council to be reasonably related to management of common parts of the property which do not fall under the heading of core services. These shall be known as non-core services for which additional fees or charges may be invoiced separately and costs shared on an equitable basis. An example of non-core services may be maintenance of common rooms where applicable, common ground maintenance and landscaping.

Information on our factoring services can also be found on the Council's general website:  
[www.west-dunbarton.gov.uk](http://www.west-dunbarton.gov.uk).

## **Section 3: Financial & Charging Arrangements**

*This section provides information on how the Council intend instructing and charging for communal repairs and services.*

As a private homeowner within a factored property, you are responsible for paying a share of the costs of any common repairs, maintenance and services that are required or provided as part of the Council's factoring service. Included in this cost is a sum representing the management and administration of these services.

The exact share due in respect of your property is defined in your Title Deeds. However it is generally the case that each property is responsible for an equal share of the costs. For example, if the roof is the common property of four flats in a block of four, each owner will be liable for a one-quarter share of the cost of roof repairs.

Where the Title Deeds do not set out all or some of the above, they are regarded as silent on this matter and the requirements will be determined in accordance with the Tenement Management Scheme under the Tenements (Scotland) Act 2004. In most cases, the Act specifies that each owner will be responsible for an equal share of the repair costs.

As a service provider to private property owners we are entitled to charge a fee which represents our overheads (administrative and staff costs) in running and managing the service that we provide to you and your neighbours. This fee (which is referred to in some cases as a "factoring fee" and in other cases an "administrative fee", "management fee/charge" or "service charge") is in addition to the actual costs of the repairs or maintenance works carried out to the common parts or communal areas. In some properties the title conditions may additionally refer to a factoring fee or service charge. The absence of a reference to factoring or service charges does not however affect our right to charge accordingly. Where applicable the factoring or service charge is charged on an annual basis. Charges are reviewed annually and rise with the current rate of inflation. Property specific rates are detailed on your annual invoice but generally the current charges are:

flat/tenement/maisonette £74.99 per annum and multi-storey properties £105.01 per annum.

We review the fee as part of a budget process. It is reviewed in conjunction with the Council's Financial Services Department who consider the market, the economic climate and the demands on our services from owners. We aim to keep costs as competitive as possible.

We review our property - specific service charges on an annual basis and aim to provide customers with a month's notice of changes at the start of the financial year.

We bill you what our contractors charge us for services and common repairs, as set out in our contract arrangement with them.

In some property types, when you become an owner with West Dunbartonshire Council we will take a small deposit of £50. As long as your account with us is up to date and you don't have any outstanding debt due to us, your deposit will be automatically returned to you if you sell your property or move to another factor

You will have seen from our comments on Delegated Authority and Financial Thresholds that in many circumstances we are entitled to instruct certain works without the prior approval of the

proprietors. In such cases you will be invoiced for your share of the cost relating to such works following upon their completion.

Where the proposed works fall outwith the scope of our delegated authority or (where applicable) are estimated by us to exceed £500 inclusive of VAT, we will write to each owner providing details of the costs in the circumstance and, prior to instructing the work, the Council will endeavour to obtain consent from the majority of owners concerned.

If, however, for whatever reason the individual owners and/or the Council have differing opinions on repair issues, the provisions of the relevant Title Deeds will apply and in the majority of cases this provides for arbitration.

### **Charging Arrangements**

**Please note the following paragraph adopts the exact provisions relating to charging arrangements as specified in your title to the property. For that reason we would explain that all references to "Feuar" means you as the property owner.**

As soon as reasonably practicable after the end of each Half Year Period, the Factor shall prepare a statement of the Common Charges incurred in respect of that Half Year Period and shall furnish a copy thereof to each of the proprietors of dwellinghouses in the Block. The Feuar shall make payment to the Factor of the proportion of the Common Charges payable in respect of his dwellinghouse as follows:- (i) Within 10 days after the commencement of each Half Year Period a sum, notified by the Factor to the Feuar from time to time, approximately equivalent to the proportion of the Common Charges estimated by the factor as payable by the Feuar (hereinafter called "the half year deposit") and (ii) Within 14 days after the receipt from the Factor by the Feuar of a copy of the statement of the Common Charges for that half year period, the amount (if any) by which the proportion of Common Charges ascertained in accordance with the said statement exceeds the half year deposit paid. Any amount by which the half year deposit exceeds the amount ascertained in accordance with the said statement shall be retained by the Factor and taken into account by him in estimating the half year deposit for the subsequent Half Year Period. The Half Year Period ends on 30 June and 31 December. The statement will also set out the various methods of payment.

We will provide to you, in writing at least once a year (whether together with the statement or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests we will also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. We may impose a reasonable charge for copying, subject to notifying you of this charge in advance.

## **VAT**

The Council must pay VAT for some repair and maintenance costs. When this is the case, we will add VAT at the appropriate rate to your share of the costs. The invoice that we send you will fully detail any VAT payable.

## **Debt Recovery Procedure**

We take a firm but sensitive approach to arrears recovery. We aim to minimise debt to ensure maximum benefit to all. Following receipt of any invoice for common repairs or maintenance related charges, you will be requested to make settlement of the costs within 14 days. If you are unable to pay the balance in one instalment, you should contact our Income Management Section on Freephone 0800-33-77-03 to discuss a suitable payment arrangement.

If you do not pay your share of the repair cost within 14 days, the Council will take steps to recover these costs. A reminder will be issued allowing a further 7 days for payment. If payment is still not made, this will be followed by a final reminder after a further period of 7 days and finally a Legal Proceedings letter advising that the balance should be paid within 7 days or the arrears will be referred for court action. Please note that if court action is required, the Council will ask the court to require you to pay our legal costs in addition to the outstanding repair costs.

The full debt recovery procedure is available on request. This can also be accessed on the West Dunbartonshire Council website [www.west-dunbarton.gov.uk](http://www.west-dunbarton.gov.uk) on our property factoring pages.

If you are experiencing financial difficulties, you should contact our Income Management Section immediately as they are there to help and assist whenever possible. They can be contacted via their dedicated Freephone helpline of 0800-33-77-03.

## **Section 4: Reporting a Repair**

*This section provides information on how to report a repair to the Council. It also sets out the Council's intended response.*

It is your responsibility to report repairs when you become aware of them. You can report a repair involving common parts by calling Freephone 0800-073-8708. You can also report it by accessing our website <http://www.west-dunbarton.gov.uk/housing/maintenance-repairs/housing-repairs-to-council-property/> on your PC or your mobile phone although this method of reporting a repair should not be used for reporting emergency repairs. To report emergency repairs that occur out-with normal office hours, these should be reported by calling Freephone 0800-197-1004.

Repairs fall into three main categories and we will endeavour to deal with your repair within the following timescales:

- **Emergency Repair**

A repair that causes immediate risk to health or is likely to cause serious damage to the property or make the property less secure. The emergency work may only make the building safer and follow-up work is likely to be required.

We aim to complete any emergency repair within 24 hours of our receipt of the relevant notification

- **Urgent Repairs**

A non-emergency repair which will cause considerable inconvenience or where there is a risk to health and safety, security of the property or there is a risk of damage to the property.

We aim to complete any urgent repair within 7 days of your notification to us.

- **Necessary Repairs**

Items which will not cause immediate inconvenience and where there is no threat to health or safety.

We aim to complete any necessary repairs within 40 days of your notification to us.

There may be occasions when due to unforeseen weather, the availability of goods, materials or specialist labour, it may not be possible to achieve the above timescales. On these occasions we would endeavour to keep you informed of progress.

Invoices in respect of all repairs (or in the event of the repair being to a common part or a communal area an invoice in respect of your share) will be sent to you as detailed in Section 3 (Financial & Charging Arrangements) above. Please also see Section 3 for payment timescales etc.

### **Communication Arrangements**

*This section provides general information on communication with the Council, what to do when you are selling your home or if you are not satisfied with the level of service you receive from the Council's Sold Property Service.*

### **Sold Property Section**

The Council's Sold Property Section is part of the Council's Maintenance & Repairs Service and deals with all factoring arrangements where we are the current factors or property managers. For any factoring enquiry, our team can be contacted at:

**Telephone:** 01389 738222

**Email:** [soldproperty@west-dunbarton.gov.uk](mailto:soldproperty@west-dunbarton.gov.uk)

**Address:** Sold Property Section

57 Cochno Street

Clydebank, G81 1RQ

Information on our factoring services can also be found on the Council's website <http://www.west-dunbarton.gov.uk/housing/maintenance-repairs/factoring/>.

We aim to respond to owners enquiries on the same day, to let them know how long it will take to answer their enquiry and to provide final answers to enquiries within 10 working days. If for any

reason we are unable to complete our action within this time, we will inform you of progress at least every 5 working days, or as agreed with you.

### **Selling Your Home**

If you sell your property, your Solicitor should notify the Sold Property Section of the change of ownership as soon as you know who the new owner will be. We will then calculate any outstanding charges and send you or your Solicitor a final account.

In a situation where proposed works have been agreed but not yet carried out, you should consult your Solicitor as to what arrangements are to be made with the new purchaser regarding responsibility for payment.

## **Section 5:Complaints Procedure**

In West Dunbartonshire Council we are committed to providing the best quality services which we can afford and we aim constantly to improve those services. In all big organisations like ours, things sometimes go wrong. With your help, we aim to identify problems, to solve them quickly and efficiently and to prevent them happening again. Your views matter to us. Our complaints procedure lets you tell us what you feel has gone wrong and helps us improve our services for everyone.

### **When to use our complaints procedure**

You should use the complaints procedure if you believe that:

- We have done something wrong.
- We have failed to do something that you expected.
- We have not treated you with courtesy.

### **How to complain**

#### **Step 1**

Contact the Service area direct, a member of staff will try to sort things out for you on the spot.

It is easier to resolve complaints if made quickly and directly to the service area concerned, Staff will try to resolve the matter for you on the spot or if they cannot and further action is required they will let you know and pass this to our Customer Relations Team to take forward.

#### **Step 2**

If they are unable to resolve the matter for you or you did not feel comfortable going directly to the service area, please contact the Customer Relations Team

By phone: 01389 738273

Online: Submit a complaint using the online form

By E-mail: [customer.relations@west-dunbarton.gov.uk](mailto:customer.relations@west-dunbarton.gov.uk)

In Writing: West Dunbartonshire Council, Customer Relations, 3 Aurora House, Queens Quay, Clydebank, G81 1BF

Please note by calling or completing the online form your complaint will reach us quickly.

**Our complaints process has 2 stages**

Stage 1 allows five working days or less to resolve your complaint, unless there are exceptional circumstances.

Stage 2 deals with two types of complaint: those that have not have been resolved at Stage 1 and those that are complex and require a detailed investigation.

**We will**

- treat your complaint fairly and ensure we thoroughly investigate it.
- tell you the name of the officer handling your complaint.
- acknowledge receipt of your complaint within two working days.
- discuss the complaint with you if necessary to understand why you remain dissatisfied and what outcome you are looking for.
- provide you with a full response to your complaint as soon as possible and within 20 working days.

If our investigation will take longer than 20 working days, the Customer Relations Team will tell you and agree revised time limits, we will keep you updated on progress where possible.

**First-tier Tribunal for Scotland Housing and Property Chamber (FTT)**

If you consider the Council has failed to carry out its duties as property factor or has failed to comply with the Code of Conduct, you are entitled to make an application to the First-tier Tribunal for Scotland Housing and Property Chamber. In order to do this the following circumstances must apply:

- You must have notified the Council in writing of the reasons why you consider that the Council has failed to carry out its property factoring duties or failed to comply with the Code of Conduct.
- The Council's complaints process has been exhausted and you believe that the Council has refused to resolve your complaint or has unreasonably delayed attempting to resolve your complaint.

The First-tier Tribunal for Scotland contact details are as follows:

**Address:**      Housing and Property Chamber

First-tier Tribunal for Scotland

Glasgow Tribunals Centre

20 York Street

Glasgow

G2 8GT

**Telephone:** 0141-302-5900

**Fax:** 0141-302-5901

**Email:** [HPCadmin@scotcourttribunals.gov.uk](mailto:HPCadmin@scotcourttribunals.gov.uk)

## **Section 6: Declaration of Interest**

*This section comprises our statement of any financial or other interests we otherwise have in the block managed and maintained by us as property factors on your behalf.*

It may be the case that we still own one or more properties in the block where your property is situated. In such cases and in addition to being your factor, we have interests as owner(s) and landlord of our tenants. As owners we will usually have voting rights in terms of the title deeds and depending on the number of properties owned by us, we may have a majority and therefore a conclusive say on major decisions affecting the block including the instructing of maintenance, repair and improvement works.

Where work is to be carried out on your block, the Council's Direct Labour Organisation (Maintenance & Repairs) will normally manage & carry-out necessary works. As a Local Authority we are bound to ensure our business decisions meets the Best Value criteria set by the Scottish Government and a service level contractual agreement is in place to meet these objectives. Improvement works will be subjected to tender procedures in-line with Council's, Government and EU standing orders and procurement regulations.

## **Section 7: Changing Factor**

*This section provides information on how to change your Property Factor*

Insofar as the council continues to own at least one property in the block we are entitled to act as the Property Factor for your block. If however we decide to relinquish our right to act as Property Factor a majority of proprietors may appoint a replacement Property Factor to manage the block and any associated common parts and communal areas.

In the event that the council no longer owns a property within your block, a majority of proprietors can vote to terminate the council's appointment as Property Factor and appoint a replacement if they so wish. In such cases, the Council must be formally advised of the decision in writing signed by the majority.

