

# Shelagh Young submission of 24 January 2024

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

I understand that this petition is due for further consideration from the Committee soon.

I am concerned because, having looked at the minutes from the 3 May 2023 discussion, I feel that some members of the Committee completely misunderstood the gravity of the situation facing communities of owners who feel the need to achieve a better deal from their factors.

I purchased a new build home in Edinburgh in 2016 and it took me some time to realise how the system works and to what extent the appointment and dismissal of factors runs contrary to the interests of consumers. You might be aware that this matter has been raised with the Competitions and Markets Authority (CMA), in the course of its investigation into the housebuilding industry. The [CMA working paper](#) published in November 2023 expressed the strong view that there is a serious imbalance of power between homeowners and property managers/factors who are given the right to manage public spaces that are co-owned by homeowners, including freehold property owners in Scotland.

In our case the factor appointed by the developers is a member of the same business group, returning a proportion of profits to the developer annually. No contract specifying service levels exists between this developer and the appointed factor (according to both parties) and no deeds exist or other agreement requiring that property owners have to be consulted at any point about what level and scope of services they require. There is a gaping hole in the law/policy in Scotland relating to the key document, the Written Statement of Services (WSS). Although the WSS does define service levels and is a legal requirement, there is nothing in the relevant Scottish legislative framework which prevents the WSS being changed by factors at any point and, however frequently or radically the factors choose to do so without consultation with property owners, there is no right of redress.

Common sense suggests that, if polite negotiation and lobbying from owners for better or different services from a factor were thwarted by that factor's unreasonable refusal to engage or improve then the "customer" would be free to move their business elsewhere. But the point made very clearly in petition PE2006 is that we are not free to do so. In my case, property owners of 206 units have signed deeds which do not grant them the right to organise a postal vote of owners which would facilitate such a decision. That right is restricted to the factors themselves and they may charge the residents unlimited fees for doing so.

Our deeds do grant us the right to organise a face-to-face voting meeting but, as experienced by the petitioner and their residents association, the validity of such a vote is likely to be challenged by the incumbent factors. Worse still, our deeds contain the following, possibly grossly anti-democratic clause, in relation to voting:

“Rule 10.4 But where the Association is proprietor of any Plot or Flat or Commercial Unit, no decision is made unless it is supported by the vote for that Plot or Flat or Commercial Unit.”

In our case the "Association" referred to in the Deeds is the developer who has a direct business and financial relationship with the factors. I have not consulted a lawyer to double check the meaning of this clause, but the developer appears to have written itself a casting vote into the Deeds by remaining a proprietor through ownership of mid-market rental blocks on this development.

I am concerned that some parliamentarians are thinking more about the relatively simple, small-scale logistics of factoring within tenements and failing to grasp the enormity of the risks being faced by new build homeowners. When roads, paths, playgrounds and shared structures are not adopted by the local authority, the co-owners can face enormous costs but also significant risks. For example, we are reliant on the factors to ensure adequate insurance cover against risks of injury to the public and ours appear to have failed to discharge that duty properly. I am writing to you unable to be confident that we do carry adequate insurance cover should a wall be blown onto a car or, heaven forbid injure a person.

The First Tier Tribunal is a helpful institution but too slow and its remit too narrow to address all the risks that property owners face. Being able to easily appoint and then dismiss incompetent or overly expensive factors is an important consumer right that is not currently existent in any practical sense in Scotland.