****

**Information Guide on applications about property factors**

This guidance has been prepared by the Housing and Property Chamberfor 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 for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

**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.

**Where can I get advice?**

Please note that staff in the Scottish Courts and Tribunals Service cannot give you legal advice on your situation, although they can explain and help you to understand the Tribunal procedure that an application will follow.

If you wish legal advice that is available from a solicitor, and a list of solicitors is available on the Law Society of Scotland website. Legal Advice relating to housing issues may also be available from Shelter, Citizens Advice Scotland,  or a University Law Clinic. Citizen’s Advice Scotland also provide advice relating to benefits, debt and money matters. The websites for these and other organisations are available on our website, and some have been copied below:

[**Law Society of Scotland: http://www.lawscot.org.uk/**](http://www.lawscot.org.uk/)

[**Shelter Scotland: http://scotland.shelter.org.uk/**](http://scotland.shelter.org.uk/)

[**Citizens Advice Scotland: http://www.cas.org.uk/**](http://www.cas.org.uk/)

**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 –
1. the owners of any two or more adjoining or neighbouring residential properties, or
2. 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 alleged 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;

1. Written Statement of Services
2. Communication and consultation
3. Financial obligations -
4. Debt recovery
5. Insurance
6. Carrying out repairs and maintenance
7. 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

**Can a group of Homeowners apply to the Housing and Property Chamber for a determination by a tribunal?**

The Property Factors (Scotland) Act provides that only a homeowner can bring an application. The Chamber has received applications from office bearers of owners’ associations seeking to bring group actions on behalf of residents within a development.  An application by an owners’ association is not competent under the Act. However, there is nothing to prevent a group of the individual homeowners making identical applications and naming the same representative to attend and to represent them throughout the process and at a hearing. The procedural rules allow two or more applications to be heard together where the applications have been made by different homeowners and relate to the same property factor. The decision as to whether this is appropriate will rest with the Tribunal.

**Is there a cost for this service?**

Applying to the Tribunal is free of charge. If an Order is made that requires execution, the party who was granted the Order would incur a cost to engage Sheriff Officers to carry out the execution. The Tribunal does not carry out the execution of any Orders they make.

**Does the Tribunal award expenses at the end of an application?**

The Tribunal has the power to award expenses against a party, but only 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 and is not an automatic award.

Parties should be aware that if they instruct an agent to act on their behalf in a case, the expenses incurred for the duration of the case cannot be recovered from the other party on the basis that they are successful in pursuing or defending the application. Only where the party has incurred unnecessary or unreasonable expense, caused by the unreasonable behaviour of the other party in the conduct of the case, could an application for expenses be submitted.

It is at the tribunal’s discretion whether an award should be made. If they decide to award expenses against the party, the amount of the expenses awarded would be the amount to cover the unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made. If an award of expenses is granted by the Tribunal, it will be assessed by the Auditor of the Court of Session.

**What happens when an application is received?**

Once an application is received, it will be assessed to check that the form is correctly completed and that the required attachments are present. If something is missing the Chamber President, or another member of the First-tier Tribunal under the delegated powers of the Chamber President, will request this from the applicant through the administration and the application will not be accepted until all the required information and attachments are provided.

If the required information is not provided, the application will not be accepted by the Chamber President or the member with delegated powers, and the case will be closed. The applicant will be advised of this by the administration, and informed that they may submit a fresh application when they have all the required information and documents.

Where the further information requested is sent within the timescale, the application is deemed to have been made on the date the last of the required information is received.

Complete applications will be passed to the Chamber President or the member with delegated powers, who will consider the application.

**Can the President reject an application?**

The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must decide whether the application can be referred to a tribunal or whether it should be rejected. They must reject the application if:

* they consider that the application is vexatious or frivolous, or
* they consider that 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, or
* they have good reason to believe that it would not be appropriate to accept the application; or
* they consider that the application is being made for a purpose other than a purpose specified in the application;

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

There is no in-house mediation service offered by the Chamber. However, in cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must:

(a) bring to the attention of the parties the availability of mediation at any point in the proceedings as an alternative procedure for the resolution of the dispute;

(b) provide information explaining what mediation involves; and

(c) if the parties consent to mediation, adjourn or postpone the hearing in accordance with rule 28 to enable the parties to access mediation.

In such cases, parties may be invited to consider mediation as a way of resolving the dispute.

It will be for the parties to access mediation and the responsibility on the Tribunal is to bring to the attention of parties the availability of mediation in suitable cases and provide information explaining the mediation process. The section below on “Finding a Mediator” will be helpful if a party wishes to try mediation. The Tribunal cannot offer validation or recommendation of any particular mediator nor refer parties to a mediator.

**What is Mediation?**

Mediation is a flexible process that can be used to settle disputes in a whole range of situations. Mediation involves an independent third party, the mediator, who helps people to agree a solution when there is a disagreement. The mediator helps parties work out what their issues and options are, then use those options to work out an agreement.

With the help of the mediator, the parties with the dispute decide whether they can resolve the issues and what the solution should be. The mediator does not take sides or make judgements. The mediator will ensure that both parties get a chance to state their case, hear the other side, work through the issues that are important to them and make an agreement. Parties in mediation are in control of the solution.

Mediation is a confidential process where the terms of discussion are not disclosed to any party outside the mediation hearing. If parties are unable to reach agreement, they can still follow formal procedures such as grievances and complaints or go to a tribunal or court, if appropriate. The details of what went on in the mediation will not usually be disclosed or used at a tribunal or a court hearing.

**If you are willing to engage in mediation, then you need to approach a mediator as soon as possible.** Please see the section below entitled “Finding a Mediator”. Some mediation services are free and Scottish Mediation will be able to provide information.

**The mediation proceeds at the same time as the application proceeds through the Tribunal process. This means that by trying mediation, the parties do not delay the progress of the Tribunal case.**

If consent to mediation is obtained from both parties and mediation is to take place, you will **still need to respond to requests for information or requests for written submissions sent to you by the Tribunal.** **You may have been given a date by the Tribunal for a hearing or case management discussion and the case will still proceed on this date, unless you are notified by the Tribunal of a postponement or that the application has been withdrawn or dismissed.**

It is likely that mediation will be able to take place quickly after there is an agreement to mediate and will take place before the date fixed for the hearing or case management discussion.

Where mediation is due to take place and you feel this requires the deadline to supply information or written representations to the Tribunal to be extended, or requires the hearing or case management discussion to be postponed, you should contact the Tribunal in writing to make this request as soon as you become aware of this.

If the dispute is resolved at mediation, then the applicant should contact the Tribunal in writing to request that the application be withdrawn.

If mediation is successful and results in an agreement which has a timescale for compliance, and the applicant wishes to await compliance with the agreement before withdrawing the application, the applicant should contact the Tribunal in writing to:

1. confirm the position in relation to when the mediation agreement is due to be complied with, and
2. request a postponement of proceedings until after this timescale has expired.

**Finding a Mediator?**

The Tribunal cannot offer validation or recommendation of any particular mediation service or refer parties to a mediator.

Scottish Mediation acts as the professional body for mediators in Scotland and maintains the Scottish Mediation Register of mediators. Parties who want to use mediation to resolve their case can find a relevant mediator by accessing this Register on the Scottish Mediation web site <https://www.scottishmediation.org.uk/find-a-mediator/> and by selecting Housing and Property in the ‘Types of Mediation’ Box on the lower right hand side of the page.

**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 andasking 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.

**Can I amend my application or written representations before the hearing?**

The Tribunal Rules do allow for amendment of applications and written representations in certain circumstances. Any party can amend their written representations up to 7 working days prior to the date fixed for a hearing or case management discussion (**Rule 13** refers).

Where the effect of any amendment to the written representations would be to introduce a new issue, the amendment can only be made with the consent of the Tribunal (**Rule 14** refers). If the amendment is accepted, the other party will be given an opportunity to make written representations within 14 days of intimation of the amendment.

Amendments can also be made where no new issues have been raised. **Rule 14A** allows the applicant to amend the application including the amount claimed by intimating the amendment to the tribunal and any other party at least 14 days prior to a case management discussion or hearing. The Tribunal will then decide whether to consent to the amendment, and under what conditions consent will be given.

**Can the Tribunal hear multiple applications at the same time?**

Yes, the Tribunal has the power to direct that two or more applications should be heard together. The Rules state:

“**12.**—(1) The First-tier Tribunal may direct two or more applications to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

(a) property;

(b) required work;

(c) property factor;

(d) letting agent; or

(e) landlord.

(2) The First-tier Tribunal may require the parties to take any steps necessary to enable two or more applications to be heard together.”

**Who will the members of the tribunal be?**

Under [The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016](http://www.legislation.gov.uk/ssi/2016/340/made) a tribunal may be composed of:

            a legal member;

            a legal member and one ordinary member; or

            a legal member and two ordinary members

The legal member will always be the chairing member of the tribunal. All legal members appointed to the Chamber are qualified as solicitors or advocates. Ordinary members are either qualified as chartered surveyors, or have other experience of or practical involvement in housing and land related issues.

An exception to the above composition is in applications by a landlord for assistance in exercising a right under section 181(4) of the Housing (Scotland) Act 2006(1). These applications may be decided by the First-tier Tribunal consisting of an ordinary member sitting alone.

**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 a hearing takes place?**

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 complywith 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.

The tribunal may also hold a case management discussion to determine how an application should proceed, and this can be held in a hearing venue, or over telephone/video conference.

**What is a case management discussion?**

A case management discussion is a discussion between the Tribunal and the parties about aspects of the case that may require to be dealt with in order to efficiently resolve the dispute. Case management discussions will normally take place at hearing venues, and parties will be required to attend. If this is not possible, contact with the Tribunal to explain this should be made in advance and at as early a stage as possible..

At the case management discussion, the Tribunal may wish to:

identify the issues to be resolved;

identify what facts are agreed between the parties;

raise with parties any issues it requires to be addressed;

discuss what witnesses, documents and other evidence will be required; and

discuss whether or not a hearing is required;

As well as the above matters, the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making an eviction order or payment order. It is important therefore that you attend the case management discussion if one is arranged. If you do not attend the case management discussion, this will not stop a decision or order being made by the Tribunal if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

**What is a Direction?**

Directions either orally or in writing are a method by which tribunals regulate the conduct or progress of the proceedings in a case before them. The provisions in Rule 16 set out some circumstances in which a tribunal may wish to issue a Direction. Tribunals may issue directions to instruct parties on such matters as:

 documents that need to be given to the other side and lodged (filed with the Tribunal) prior to the Hearing; and

 witnesses and documents the parties should bring to the hearing.

Please refer to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in full for further information. If Directions are issued they may require one party to do something but the Direction must be intimated on all parties.

**Do I have to comply with the Direction?**

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 provide that it is an offence to fail to comply with a Direction. If the tribunal considers that such an offence has taken place during the proceedings, they will refer the matter to the police for investigation.

It is a breach of the Code of Conduct for a property factor 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.

**Can parties request the Tribunal issue a Direction?**

Rule 16 specifies that a party to the proceedings can ask the Tribunal to give a Direction to another party. The President of Tribunals 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 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.

**Do I have to attend the case management discussion or the hearing?**

Think carefully before you decide not to attend a case management discussion or hearing. Remember that if you choose not to attend, you will not be able to respond to any of the points the other parties make on the day and the Tribunal will not have the chance to ask you any questions. If you do not attend, then the Tribunal can decide to proceed and make a decision in your absence if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

All subsequent questions which refer to a hearing apply equally to a case management discussion.

**Does the Housing and Property Chamber take account of specific requirements a party has for enabling them to attend at and participate in a case management discussion or Hearing?**

We will do our best to ensure that any hearing venues we use are accessible to all parties.

When you are first contacted by the Tribunal, there will be an accompanying form which asks you to let us know of any requirements the hearing venue should have to enable you to attend at and participate in the proceedings. If you wish confirmation of this or if there are other requirements which 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.

**When will the Hearing be held?**

Hearings are held on weekdays within normal working hours. You should always receive at least 14 days’ notice of the date for a hearing - unless all parties consent to a shorter period, or there are urgent or exceptional circumstances. In most cases, you will be given at least 28 days’ notice, since the Tribunal will notify parties of a hearing date and request any written submissions at the same time.

**Tribunal hearings are held in public – what does this mean?**

It is a requirement of the Rules that tribunal hearings are held in public. This means that details of the hearing are published on the Tribunal website in advance, and members of the public can attend to view proceedings.

If you have a special reason for wishing the hearing to be held in private then you must write to the Tribunal in advance explaining what the reason is and asking them to hold the hearing in private. The Tribunal will then decide whether or not to agree to your request, but will only agree to hold the hearing in private if they decide it is necessary in the interests of justice to do so.

We will tell you 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.

It’s 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 the people you are bringing should arrive 10 minutes before the hearing is due to start.

**What happens at the Hearing?**

The Tribunal will decide what procedure is to be followed at the hearing, and the chairing member must take reasonable steps to:

introduce to the parties the members of the First-tier Tribunal conducting the hearing;

explain the purpose of the hearing; and

ensure that the parties to the hearing understand and can participate in the proceedings.

At the hearing you will be able to tell the Tribunal your view on the issues and you can also bring witnesses if you wish but you will have to arrange this and notify the tribunal in in advance. You will be able to ask the other party questions and also question any witnesses he or she has brought to the hearing. The Tribunal have the right to record Hearings and you will be notified at the outset of the Hearing if it is to be recorded. The Chairperson and member(s) will keep a note of the evidence submitted at the Hearing. The Tribunal will want to establish from the evidence:

What they think the relevant facts are,

What conclusions should be drawn from these facts, and

what should be the outcome of the application.

**Can I attend personally or do I have to be represented?**

You can conduct your case yourself or you can have your representative conduct the case for you. Do not be put off attending a hearing – the procedure is fairly informal and the chairperson will ensure that you know what is happening. There are rules that govern representatives and supporters of parties at proceedings. The rule regarding representation is Rule 10:

***10*** *(1) A party may be represented in any proceedings by a representative whose details must be notified to the First-tier Tribunal prior to any hearing.*

*(2) A party may disclose any document or communicate any information about the proceedings to that party’s lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.*

*(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(4) A practice direction, an order, or anything permitted or required to be done by a party under these Rules, may be done by a lay representative, except the signing of an affidavit or precognition.*

*(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—*

*(a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or*

*(b) it is satisfied that to do so would be in the interests of the efficient administration of justice.*

*(6) Where a representative begins to act for a party after the application is made, the representative must immediately notify the First-tier Tribunal and any other party of that fact.*

*(7) Where a representative ceases to act for a party, the representative or the party must immediately notify the First-tier Tribunal and any other party of that fact, and give details of any new representative (if known).*

The rule regarding supporters is Rule 11:

***11.****(1) A party who is an individual may be accompanied by another individual to act as a supporter.*

*(2) A supporter may assist the party by—*

*(a) providing moral support;*

*(b) helping to manage tribunal documents and other papers;*

*(c) taking notes of the proceedings;*

*(d) quietly advising on—*

*(i) points of law and procedure;*

*(ii) issues which the party might wish to raise with the First-tier Tribunal.*

*(3) A party may show any document or communicate any information about the proceedings to that party’s supporter without contravening any prohibition or restriction on disclosure of the document or information.*

*(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(5) A supporter may not represent the party.*

*(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—*

*(a)it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or*

*(b)it is satisfied that to do so would be in the interests of the efficient administration of justice.*

**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.

**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 Rules 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

**Can I bring written evidence which has not been sent before to the Tribunal?**

This is covered by Rules 21 and 22:

***21.****(1) The First-tier Tribunal may require any person—*

*(a)to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence; and*

*(b)to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.*

*(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.*

*(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence under rule 22(1), it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.*

*(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.*

***22.****(1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—*

*(a)a list of any documents and copies of the documents that the party wishes to rely upon; and*

*(b)a list of any witnesses that the party wishes to call to give evidence.*

*(2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse.*

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 they 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 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 Rules 21 and 22.

**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

#### 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.

**Can parties bring children to the Hearing?**

Please be advised that children under the age of 14 are not permitted to accompany any individual or be present in the hearing room during Tribunal proceedings. Children under 14 may be permitted to wait in designated waiting areas of the venue but **only in circumstances where the party can provide adequate supervision in the form of another adult**.

SCTS staff and those of third party companies working for SCTS on the day of the hearing are not permitted to provide childcare and are not responsible for the supervision of children attending the venue. It is the tribunal’s discretion to take any actions they deem appropriate should a party (or witness) bring a child to a tribunal hearing and that party (or witness) cannot provide adequate supervision for that child in the form of another supervising adult. This may include the tribunal continuing to hear and determine the case in the absence of a party or a witness.

**What happens if someone is disruptive at the Hearing?**

Everyone attending the hearing is expected to behave in a polite and appropriate manner. The Tribunal has the power to exclude any person from the hearing if that person is being disruptive – this includes any party, representative, or supporter.

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

Yes, you can apply to the Tribunal 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

**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 property factor Code of Conduct/Duties decisions are intimated to the property factor registration team.

**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 <http://sedsh119.sedsh.gov.uk/propertyfactorregister/>

**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.

**In what format can I send written information?**

You can send information by post, email or fax. Typed submissions are preferable, though handwritten evidence is also acceptable. Any handwritten submissions should be clearly legible, and this may mean it should be written in block letters to aid the Tribunal Members and other parties in understanding your submissions. If we receive a submission that is difficult to read, we may ask if you are able to supply the information in another way, so that your submissions can be considered in full.

**I have documents to attach to an email, is there a size limit for emails sent to the Tribunal?**

We are only able to receive attachments that total 20MB in size. If your documentation is larger than this, then if possible separate the document to be attached over multiple emails. If your file is too large you may have to consider sending the documentation by other means.

For system security reasons we cannot open zipped files sent to us, or follow links to online document storage sites.

**Can I send video or audio evidence?**

Case management discussions and hearings are being conducted by teleconference for the time being. Audio and video evidence can be accepted, a request can be made to the tribunal who will send instructions.

For evidence contained within video recordings, parties should produce still photographs which can be circulated in advance to the tribunal members and other party

**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 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.

**Written Submissions and Requests to the Tribunal**

 In general terms, when a party wishes to make a request for consideration by the tribunal, an example would be a **request for a postponement or adjournment** of a case management discussion or hearing,this request with the reasons for it **should be highlighted at the beginning of the written submission or communication sent**to the tribunal. This makes it easier for the tribunal administration to identify the request and it avoids delay and the risk that such a request is missed.

 When submitting written representations to the tribunal, in accordance with legislation, we are required to cross all correspondence over to the tribunal members and the other party involved in the case. If any party wishes to submit confidential information and request this is not crossed over to the other party, then such a **request, with the reason for non-disclosure,** **must be made clear at the beginning of the written submission**. Requests for non-disclosure of information may not be granted for reasons of fairness and transparency. In the event that the request for non-disclosure is not granted, the whole written submission will not be crossed over to the other party and will be disregarded for the purposes of the tribunal proceedings. As a consequence, to avoid delay in circulation of submissions, which include a request for non-disclosure of information, parties may wish to consider whether it is appropriate to lodge two documents with the tribunal. One document containing their submissions which contain no confidential information, which will automatically be crossed over to the other party and the tribunal members and will form part of the case papers, with another document containing the confidential information with the request at the start of the document for non-disclosure of this document with the reasons for the request.