

Housebuilding Market Study
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

24th November 2023

Dear Sir/Madam,

Response to Housebuilding Market Study – 3rd November 2023

Further to your invitation to offer comments on your working paper and the 11 questions under the section headed consultation questions and next steps, we felt it was appropriate to respond to question 6 only, with our response focusing on how factoring in general operates in Scotland.

We are one of Scotland's leading independent providers of property factoring services, with a long-established reputation built upon strong foundations and a proven ability to meet the needs and expectations of our customers. With offices in both Glasgow and Edinburgh we provide our customers with administrative services, along with advice and guidance on all aspects of residential property factoring covering a varied portfolio ranging from traditional tenements to modern housing estates. We work with several major housebuilders providing factoring assistance from land purchase to development completion and beyond, also ensuring that all relative detail on maintenance costs and services offered are readily available to new homeowners from the outset.

Question 6

- a) **Would enhanced consumer protection measures by themselves provide sufficient protection for households, or would mandatory adoption also be necessary to achieve a comprehensive solution to the detriment experienced by households living under private estate management arrangements?**

In our own experience, we believe that the introduction of legislation and the creation of a strategic framework (of minimum standards of practice for registered companies), can satisfy all items considered relevant under point 17, without the need for mandatory adoption. With the creation of effective legislation and a register of management companies, protection for the consumer is achievable, through companies providing a fair and transparent service, which can provide the consumer with all the necessary information and the ability to change, if a company fails to meet the required standards. Ministers can hold the power to enter a person or company onto a register of management companies or to remove them when failing to meet the requirements set out in any new legislation, meaning they are unable to practice.

There can be significant variations between areas of what the paper considers public amenity areas on housing estates, for example, not all communal areas are in locations that are immediately accessible to the wider public. There are also examples where homeowner's front gardens form part of what is considered common property and while the homeowner may have exclusive use, there is a requirement for these areas to be maintained on a uniformed communal basis, it seems unlikely that the Local Authorities would be willing to adopt such areas.

1

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b) Are there any other measures that are required to provide adequate protection to households living under private estate management arrangements?

Accreditation or mandatory qualification (for example IRPM) to enable a person or company to practice in the industry, can only help to raise standards further.

Consideration should also be given to creating minimum standards around the sale process, placing additional responsibility on Conveyancing Solicitors ensuring that the correct information is made available prior to a sale transaction taking place. (Details on how this operates in Scotland are covered under the section **Onward Sale**).

c) Do the protections afforded to households in Scotland by virtue of the property Factors (Scotland) Act 2011 provide adequate protection, in accordance with the principles outlined above.

The recommendation to introduce the items identified under point 17 to (partially or fully) mitigate the detriment experienced by households living under the current arrangements through a series of additional protections, does not necessarily apply to Scotland as these are already in place. We consider that each of these protections already exists through the minimum standards set out in the Property Factors (Scotland) Act 2011, Code of Conduct and therefore does provide more than adequate protection.

Transparency – The Code sets out minimum standards of practice for registered property factors, encouraging transparency in the way that a factor conducts their business in connection with the management of common property or maintenance of land as detailed in the homeowner's Title Deed. The Overarching Standard of Practice requires registered factors to be honest, open, transparent, and fair in their dealings with homeowners. Information issued to homeowners must be clear and easily accessible.

Cost-reflective/Accountability – Under the Code, a property factor **must** provide each homeowner with a comprehensible written statement of services (WSS), setting out in a simple structured way, the arrangements in place between the factor and the homeowner. The factor must also take reasonable steps to ensure that this document is provided to homeowners within a 4-week period and where there are substantial changes to this document at the earliest opportunity, not exceeding three months. The WSS **must** include information on Authority to Act, Details of Services Provided, Financial and Charging Arrangements, Communication and Consultation, Declaration of Interest, Information about the 2011 Act and the duties it places on a property factor and information on How to End the Arrangement.

Proportionality – Section four of the Code outlines the principles for debt recovery under 11 separate points. A factor is required to inform their customers of any late payment charges along with details of the factor's debt recovery procedures in the event of non-payment by the customer. This section makes provision for fair, reasonable, and proportionate action to be taken in the event of non-payment which can affect the factor's ability to settle contractor's invoices on behalf of the homeowners.

Switching – As touched upon earlier, the Code requires a property factor to provide clear information on when and how a group of homeowners may (by collective or majority agreement) terminate or change the service arrangements.

Redress – Section seven of the Code outlines the minimum requirements for a factor when considering Complaint Resolution and that they **must** have a written complaints handling procedure to include the steps which a complaint must pass through and the timescales for the progression of the complaint through each step. In the event the factor fails to resolve the complaint, information must be provided to the homeowner on how to make an application to the First-tier Tribunal for Scotland Housing and Property Chamber (the FTT is an independent judicial body that determines tenancy related housing disputes within the private rented sector

and matters relating to the property factor compliance with 2011 Act). Ultimately if a homeowner remains unhappy with the steps taken by their property factor in attempting to resolve a complaint about a failure in their factoring duties (as outlined in their WSS), or that they consider there has been a breach of the Code, the FTT has the power to determine the outcome following a hearing. The FTT can then issue a series of instructions to the factor through a Property Factor Enforcement Order (An order requiring a property factor to undertake such action as the FTT considers necessary, and, where appropriate, make a payment to the homeowner, as the FTT considers reasonable), which the factor must comply with, unless they choose to appeal the decision. The homeowner also has the right to appeal any decision taken by the FTT. Any appeal must be made solely on a point of law.

The Code also requires the factor to manage complaints from homeowners against contractors or third parties appointed by the factor on behalf of the homeowner.

Liability – A property factor must have and maintain adequate professional indemnity insurance to ensure that it is appropriate for the level of income and type of service offered. Where Public Liability Insurance is placed by the factor through their broker (on behalf of the collective homeowners), clear details of the cost, how the homeowners share of the cost is calculated, the terms of the policy and the name of the provider must be provided.

Onward sale – in October 2018, the Scottish standard conveyancing clauses were updated to include the requirements for solicitors to use the 'Property Standardisation Group's Letter to Factors', an 11-point request for information. The eleven points are: -

1. Arrange to apportion factoring charges between the parties at the date of entry;
2. Confirm any amount due by the property, of total common expenditure in the last 12 months, including any fees;
3. Before the date of entry, provide details of estimated charges that are due by the seller to the date of entry;
4. Confirm details of any float deposit due to the factor (To facilitate maintenance of common property, homeowners place the factor with funds by way of a property float; the provision of a float requirement also being supported by the Tenements (Scotland) Act 2004. We believe the provision of a float fund is essential in ensuring the ongoing maintenance of common property, with payment of the float made during the purchase process or through our first factoring invoice);
5. Confirm if the factor is holding any existing float, or other monies, on behalf of the seller which is due to be returned at completion;
6. Confirm details of any existing insurance policy, including details of the provider, policy number and sum insured;
7. Provide details of any common repairs which are proposed, outstanding or being considered by the homeowners, which the factor is aware of;
8. Confirm details of any common defects, maintenance issues or pending matters that the factor is aware of, where costs are being obtained for consideration of the collective homeowners;
9. Advise of any requirements to contribute towards a sinking fund;
10. Advise whether there are any unpaid charges or debts which may be recoverable under any provision in the Title Deeds;
11. Provide detail of any apportionment or other final fees due, which are not already stated.

With conveyancing solicitors adopting this standard approach, it leaves very little room for any relative information not being made available to any incoming purchaser, or to the seller.

- d) Should such measures be implemented by the UK, Scottish and Welsh Governments, as appropriate, or by the CMA following conclusion of a market investigation? Please explain why, and whether this differs by nation.**

As housing is a devolved power, we believe that responsibility for creating, updating, and implementing legislation should remain with each of the respective Governments, particularly

as there are differences between property ownership models across the nations, however, perhaps other Governments following the lead of the Scottish Government (in terms of the introduction of the Property Factors (Scotland) Act 2011) and introducing similar legislation will provide homeowners in other areas of the UK the benefits experienced in the working system in Scotland, thus reducing the issues being faced to a level that requires no further costly and perhaps unmanageable adoption enforcement legislation. Due to these variations, a UK-wide approach implemented by the CMA would not seem an appropriate or practical alternative.

Yours faithfully,

