



## **FACTORING POLICY**

Date of Meeting: 14 December 2021

Review Date: December 2024

## **CONTENTS**

## **PAGE NO**

1.	Introduction	3
2.	Aims and Objectives	3
3.	Legislation and Other Statutory Requirements	3
4.	Equal Opportunities	5
5.	Definitions	5
6.	The Factoring Service	6
7.	Factoring Charges	8
8.	Arrears Control and Recovery	8
9.	Factoring Floats	9
10.	Staff Roles and Responsibilities	9
11.	Role of the Committee	10
12.	Consultation Methods	10
13.	Record-Keeping	11
14.	Emergency Situations	11
15.	Data Protection and Access to Personal Information	12
16.	Complaints about the Factoring Service	12
17.	Review	12

## **APPENDICES**

1.	Debt Recovery Procedures	13
----	--------------------------	----

## **1. Introduction**

- 1.1 The Association has a delegated authority to act as Property Factor for those owners and sharing owners whose properties fall within its area of management and where we have been appointed as property factor within the Title Deeds or by a majority of owners voting at a public meeting.
- 1.2 The Association recognises the benefits of providing a factoring service, which will encourage good relations with local owners and ensure that all properties and common areas within the estate are adequately maintained. The Association will therefore seek to provide the highest possible standard of service to owners, while ensuring that such provision is always practical, legally compliant and cost-effective.
- 1.2 The Association's provision of a factoring service will always be dependent upon owners making payments whenever requested, whether in respect of work already done or in advance for major works to be carried out. This policy will not duplicate the Deed of Conditions which will always take precedence. (All references to owners will include sharing owners, for the purposes of this policy.)

## **2. Aims and Objectives**

- 2.1 The factoring policy aims to:-
- (i) Identify key staff and clarify their roles and responsibilities in providing an efficient and effective factoring service.
  - (ii) ensure owners are fully aware of their responsibilities regarding factoring and title deed conditions
  - (iii) demonstrate open, fair and accountable charges for the services provided
  - (iv) ensure there are clear and effective procedures in place to recover factoring charges in a fair and consistent manner
  - (v) establish and sustain good communication links with owners
  - (vi) manage factoring floats and sinking funds or reserve funds (where relevant) on behalf of owners in a proper and accountable manner
  - (vii) establish clear procedures and communication systems between relevant staff
  - (viii) maintain effective recording and monitoring systems

## **3. Legislation and other Statutory Requirements**

- 3.1 This policy reflects the Association's commitment to full compliance with all legal, regulatory and good practice requirements. The main pieces of legislation that apply to the provision of factoring services are:

The Abolition of Feudal Tenure (etc.) (Scotland) Act 2000 and as updated

The Title Conditions (Scotland) Act 2003

The Tenements (Scotland) Act 2004 (including the Tenement Management Scheme)

The Housing (Scotland) Act 2006

The Housing (Scotland) Act 2010 (including The Scottish Social Housing Charter)

The Property Factors (Scotland) Act 2011 (including the Code of Conduct, revision of which is due to take effect from 16 August 2021, subject to Scottish Govt. approval)

The Housing (Scotland) Act 2014 (including creation of the FTT (First Tier Tribunal))

- 3.2 The Association is registered in accordance with the Property Factors (Scotland) Act 2011 and will ensure it continues to be registered, with the Scottish Government as a property factor, complies with all aspects of the property factor's Code of Conduct and provides a written statement of services to all factored owners as required.
- 3.3 From 1<sup>st</sup> December 2016, the Tribunals (Scotland) Act 2014 created a new, two-tier structure for devolved tribunals in Scotland – to be known as the Scottish Tribunals. There is a First-tier Tribunal for first instance decisions and an Upper Tribunal (primarily for dealing with appeals) with a common system of leadership, appointments, practice and procedures, wherever practicable, under the overall leadership of the Lord President of the Court of Session.
- 3.4 From 1<sup>st</sup> December 2016, the previous HOHP (Home Owner Housing Panel) ceased to exist and was replaced by the First-tier Tribunal for Scotland Housing and Property Chamber (FTT). The First-Tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 and the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 also came into force from 1 December 2016.
- 3.5 These Regulations make consequential changes to the Property Factors (Scotland) Act 2011 (the 2011 Act), largely substituting references to the HOHP and the Homeowner Housing Committees with references to the FTT. Similar amendments apply to the Code of Conduct for Property Factors (the Code).
- 3.6 The address to which applications should be directed is:

Housing and Property Chamber  
First-tier Tribunal for Scotland  
Glasgow Tribunals Centre  
20 York Street  
GLASGOW  
G2 8GT

Tel: 0141 302 5900

Fax: 0141 302 5901

Email: [HPCAdmin@scotcourtribunals.gov.uk](mailto:HPCAdmin@scotcourtribunals.gov.uk)

## 4. Equal Opportunities

- 4.1 Calvay Housing Association operates an equal opportunities policy and will ensure that information relating to the factoring service is available in the most appropriate format, including large print, other languages, tape or other form, where necessary. This will ensure the factoring service is open and accessible to everyone.

## 5. Definitions

- 5.1 The following definitions will be used throughout this policy and are as stated in the Property Factors (Scotland) Act 2011:-

(i) Property Factor, i.e. Calvay Housing Association

- manages the common parts of land used to any extent for residential purposes and owned by two or more persons, or by the housing association and one or more other person and,
- manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties, 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 and maintenance of that land

(ii) Homeowner

- 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 managed or maintained by a property factor and available for use by the owner

(iii) Property Factor's Duties

- duties in relation to the management of the common parts of land owned by the homeowner, or
- duties in relation to the management or maintenance of land adjoining or neighbouring residential property owned by the homeowner and available for use by the homeowner

- 5.2 Other Definitions used throughout the Policy are:-

(i) Deeds of Conditions

A legal document that sets out any rules covering the management, maintenance, insurance, repair and renewal of the shared parts of a building, as well as the division of responsibilities of the owner and factor in relation to the maintenance of common open space or amenity areas related to that property.

(ii) Factoring Float

This is a one-off deposit of an agreed sum that may be paid to the Factor when the owner purchases the property and refunded on re-sale, less any outstanding factoring charges. The amount of the float may be determined by the Deed of Conditions or as otherwise agreed between the owner and factor.

- (iii) Sinking Funds or Reserve Funds  
This is a fund that may be set up by the factor to enable owners to pay in advance towards regular cyclical maintenance works, such as gutter-cleaning or close-painting; or to save up towards planned maintenance or major renewal works such as new roofs, close-doors, etc.

**N.B.** – Calvay Housing Association does not currently hold any factoring floats, sinking funds or reserve funds for owners, but reserves the right to do so in accordance with the Title, should this be deemed appropriate in future).

## **6. The Factoring Service**

6.1 The factoring service will include the following Core Services :-

- (i) Instructing common reactive maintenance and repairs and apportioning costs
- (ii) Conducting pre/post inspection services for 20% of repairs and maintenance
- (iii) Planning for, arranging and overseeing cyclical maintenance and major repairs
- (iv) Co-ordinating environmental maintenance and 3 separate charges split by actual costs per area covered, i.e.
  - Grass-cutting, tree pruning, litter-picking of backcourts / common areas
  - Bin-store maintenance including a fortnightly clean out
  - Weekly pulling through of bulky items for uplift
- (v) Weekly uplift and disposal of bulky items from backcourts
- (vi) Ensuring common buildings insurance, premiums and claims Providing property management and administration services
- (vii) Advertising for and maintaining a Reactive Maintenance Contractors Framework
- (viii) Provision of regular information, communication and consultation with owners
- (ix) Provision of technical expertise and an advisory service for factored owners
- (x) Issuing invoices, maintaining accounts, monitoring and recovery of arrears
- (xi) Providing access to an independent and qualified welfare rights service
- (xii) Apportioning costs and liaising with solicitors regarding sales and re-sales
- (xiii) Managing and maintaining secure data on behalf of owners
- (xiv) Stair cleaning service for all closes, based on a per unit split of actual costs

### 6.2 Common Reactive Maintenance and Repairs

The Association will carry out common repairs to items such as the roof, close, gutters, downpipes, common windows, doors and the general structure of the building.

### 6.3 Cyclical Repairs, Planned Maintenance & Improvements

Cyclical repairs are carried out by the Association to prevent a property from falling into a state of disrepair, e.g. close-painting, roof-anchor testing, gutter-cleaning, etc.

As well as renewals or improvements to common elements, planned maintenance may also involve, e.g. replacement kitchens, windows, etc. Where any such works are to be carried out to the properties owned by the Association, an option may be extended to owners who wish to be included in the contract. This would allow owners to benefit from having the works co-ordinated by the Association and from lower costs achieved through competitive tendering and economies of scale. In relation to external works in tenement

buildings, e.g. replacement windows, this would also assist in maintaining uniformity of the external appearance of the building, which is a requirement per the Title Deeds.

#### 6.4 Environmental Maintenance and Other Services

Costs will be recharged on a pro-rata basis to all properties liable to pay a share of the grass cutting, de-littering and general maintenance of common and amenity areas.

Costs of providing other common services such as, close-cleaning, bin store maintenance and pulling through of bulk from backcourts, including weekly uplift and disposal will also be charged at cost on a pro-rata basis, where provided.

#### 6.5 Buildings Insurance

The Association will comply with the property Deed of Conditions to ensure that the buildings they manage have adequate insurance in the event of fire, storm, flood or other major disaster. Cover will be arranged via a major insurance company and we will use a broker to ensure we achieve at the most competitive rate available for the appropriate level of cover. The Association will pass any claims to be made via the Common Buildings Insurance Policy to the broker, who will provide the necessary liaison between the owner and the Insurance Company and inform the owners of the outcome. Calvay takes no responsibility for the result of any individual claim.

Buildings Insurance will automatically be arranged for all owners.

Owners should note and will be regularly reminded that cover does not include personal effects, furniture, fittings, etc. and it is their own responsibility to ensure they are adequately covered in this respect by means of separate house contents insurance.

#### 6.6 Charges for Additional Services

Charges for the common electrical supply for stair-lighting and controlled entry systems, as well as stair-lighting maintenance will be recovered at cost on a pro-rata basis.

### **7. Factoring Charges**

7.1 The Association will annually assess the costs of the factoring service to ensure that the charges cover the actual expenditure incurred. Owners will be consulted on the proposed annual review and will receive at least 4 weeks' notice of any increase to be applied from 1<sup>st</sup> April each year.

7.2 All charges will be in advance, except any reactive repairs which will be chargeable in arrears, i.e. once the Association has received the relevant invoices.

7.3 Copies of relevant contractors' invoices will be made available to owners upon request.

7.4 Invoices will be issued quarterly in April, July, October and January and prompt payment will be expected. However, in cases of genuine difficulty, or where the cost incurred is substantial the Association may authorise payment arrangements to suit individual circumstances.

- 7.5 The Association will offer various methods of paying factoring charges to suit individual preference, e.g. payment card, direct debit, cheque, debit card or credit card payment via the telephone or internet, as well as other payment options provided by allpay from time to time. Owners may also pay more frequently than quarterly if they prefer.
- 7.6 Certain works that are not covered by the factoring service may be arranged or instructed and charged separately, e.g. replacement windows. In this situation, payment would be expected in advance of any service or works being authorised.

## **8. Arrears Control and Recovery**

- 8.1 Owners will be considered as being in arrears if they do not pay their account in full within 28 days of the invoice being sent out, unless they already have an agreed payment arrangement to which they are adhering.
- 8.2 The Association will pursue owners with factoring arrears by way of reminder letters, phone calls, text messages, emails and house visits. Assistance with debt issues and applying for benefits will also be available via Calvay staff and the Welfare Rights Officer, with mutually acceptable payment arrangements being negotiated, where appropriate. However, where co-operation is not forthcoming, court action will be raised to recover debts, with the costs incurred by the Association being added to the original sum owed.
- 8.3 In addition to letters and visits, other recovery methods may include the use of solicitors, Sheriff Officers, small claims actions and recovery decrees, property inhibitions, arrestment of bank account, sequestration, etc. (Ref: Appendix 1 – Debt Recovery Procedures for more info.)
- 8.4 Recovery procedures will be agreed and monitored by the Operations Sub-Committee. While the Property Services Manager will have delegated authority to initiate legal action directly against an owner, or in conjunction with a lender or other creditor, the Operations Sub-Committee will be fully updated regarding the progress of any such cases prior to the implementation of court decisions, which will always be a last resort.
- 8.5 Where an owner has outstanding factoring arrears and no acceptable payment arrangement is in place, further works may not be undertaken on their behalf unless an agreed element of the cost is paid in advance or a satisfactory arrangement made to clear the arrears. This will not of course relate to common emergency repairs which will generally be carried out.

## **9. Factoring Floats, Sinking Funds and Building Reserve Funds**

- 9.1 Whilst Factoring Floats, Sinking Funds and Reserve Funds are mentioned in all Deeds of Conditions relating to the properties that we factor, together with respective amounts of Factoring Floats to be paid, Calvay Housing Association does not currently hold any such floats or funds.



- 9.2 Should the Association decide to arrange any such float or fund system, we would ensure that there was a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.
- 9.3 In such an event, any amounts held in sinking funds or reserve funds on behalf of owners would be deposited in a separate interest bearing account. In the event of a property being sold or an owner deciding to terminate their arrangement after following any procedures laid down in the Title Deeds or in legislation, the float, sinking fund or reserve fund, together with any interest accrued would simply be refunded.

## **10. Staff Roles and Responsibilities**

- 10.1 The Property Services Manager will have overall responsibility for the management of the Factoring service, although other members of staff will also be responsible for various elements of the service provision, e.g.
- PSA (Finance) - apportion charges, issue invoices, pursue payments, liaise with solicitors and new owners and act as the first point of contact for factoring enquiries
  - PSA (Maintenance) - instruct repairs, arrange inspections, determine recharges, etc.
  - PSO (Maintenance) - carry out pre inspections and post inspections and advise on common repairs
  - SPSO to advise and assist staff in handling enquiries and pursuing charges
- 10.2 The Association will ensure clear procedures are in place and clear lines of responsibility, to encourage effective internal liaison.

## **11. The Role of the Committee**

- 11.1 All information provided to Committee in relation to owners will ensure confidentiality is always maintained.
- 11.2 Quarterly reports to the Operations Sub-Committee will include details of:-
- the number of properties factored, split by owners and sharing owners
  - the number of outstanding debtors, range of debt and action taken or proposed
  - any tranche ups, joint sales, additional owners or those leaving the service
  - any complaints registered with the FTT (First Tier Tribunal) and the outcome
- 11.3 Committees' role in the factoring process will be limited to:
- agreeing and reviewing the policy and procedures
  - monitoring outcomes of the factoring service through reports
  - authorising the implementation of court actions

- considering complaints via the Association's complaints process (prior to any referrals to the FTT (First Tier Tribunal))

## **12. Consultation Methods**

- 12.1 All owners and sharing owners will receive clear and concise information about the factoring service, in accordance with the Property Factors (Scotland) Act.
- 12.2 Each new factoring client will receive a copy of the Code of Conduct and Written Statement at the outset and all owners will receive an updated copy, should there be any changes to the written statement or the terms of the factoring service.
- 12.3 All owners will be consulted annually in relation to the review of service charges and will be given at least 4 weeks' notice of any increase in charges prior to 1<sup>st</sup> April each year.
- 12.4 The Association will also adhere to any procedures for consulting owners as per the Title Deeds, prior to instructing any major repairs or improvement works above the respective thresholds, or where any owner requests such a meeting in accordance with their Title.
- 12.5 Owners may also have the opportunity for consultation, via the Association's newsletters, annual report, satisfaction surveys and open meetings or by contacting the office at any time.
- 12.6 Should factored owners wish to establish owners' associations, Calvay Housing Association will support this.
- 12.7 Staff will aim to respond to enquiries and complaints as quickly and as fully as possible and keep owners updated should we require additional information or time to respond:-
- Non-urgent telephone enquiries within 24 hours, although this may take less or more time depending on the nature of the enquiry.
  - Non-urgent enquiries made by email or letter will be responded to in writing within 5 working days.
- 12.8 Where a property factored by the Association is to be sold, owners must advise the Association of the date of transfer and the name of the new owners. If solicitors handling the transaction require copies of Building Warrants, guarantees, or other documents, an administrative charge may be made.

## **13. Record-keeping**

- 13.1 The Association will maintain comprehensive records of all relevant information, including ownership details, liability for common repairs, details of insurance cover, apportionment of charges attributable to the property and financial details relating to floats, sinking funds or reserve funds, where appropriate. Details of solicitors and lenders will also be held where known.

## **14. Emergency Situations**

- 14.1 Owners will be given contact details of the Association's out-of-hours emergency repairs service, together with the relevant response times for all types of common repairs.

However, where an owner reports a common emergency repair which turns out to be an individual repair, the owner responsible will be recharged for the full cost of that repair.

- 14.2 Where an emergency requires access to an owner's individual property, the Association will make every effort to contact the owner, failing which, if in the opinion of the PSO (Maintenance), access is needed immediately, the Association will force access.

**NB.** This action would only be taken in extreme situations.

- 14.3 The Association will advise owners of the action to take in the event of an emergency.
- 14.4 There will be no threshold for common emergency repairs. The Association will carry out such works as it deems necessary to ensure the interim protection and safety of the property and its residents and will recover these costs accordingly. This may also relate to temporary repairs required to alleviate any health and safety issues, pending a majority decision by the owners involved, to authorise major works.

## **15. Data Protection and Access to Personal Information**

- 15.1 The Association will ensure that we meet the requirements of the General Data Protection Regulation 2018. All information provided by factored owners in relation to this policy will be treated with the strictest of confidence and will not be disclosed to any third party without the express permission of the person concerned.
- 15.2 Under the Data Protection and Access to Information legislation, customers have the right to request access to information pertaining to them which is held by the Association. Requests for such access will be processed in line with the Association's relevant policy and procedures.

## **16. Complaints**

- 16.1 Any owner who is dissatisfied with any aspect of the factoring service or with how they have been treated by a member of staff, should make a complaint to the Property Services Manager in the first instance, unless the complaint is about the Property Services Manager, in which case they should direct their complaint to the Director.
- 16.2 The Association takes all complaints very seriously and has a separate Complaints Policy, a copy of which is available from the Association's offices on request.
- 16.3 If after following the Association's Complaints Policy, the owner remains dissatisfied, they will be advised that they have final recourse to the FTT (First Tier Tribunal), details

of which will be noted in the Written Statement and also available via the Association's website or by contacting the Association's offices.

**NB:** This will also be noted at the end of the Complaints Procedure Notes issued with the Association's Complaints Form to clarify that the FTT rather than the (SPSO) Scottish Public Services Ombudsman would consider complaints about the factoring service and the contact address for the FTT is also given here too.

## **17. Policy Review**

- 17.1 This Policy will be reviewed three years from the date of approval, or earlier should the need arise to reflect changing circumstances or changes in legislation or good practice standards.

## **Debt Recovery Procedures**

The Association will monitor factoring accounts on a monthly basis and will pursue owners in regard to factoring arrears by way of reminder letters, broken arrangement letters and final demands, as well as phone calls, text messages, emails messages and home visits. Diary notes will be kept and regularly reviewed to enable the specific circumstances of each case to be monitored and assessed. The Association will offer owners every opportunity to repay their debts by negotiating repayment arrangements based on ability to pay. We may also refer cases to the Welfare Rights Officer where appropriate.

### **1. Legal Action**

However, where an owner fails to contact or negotiate with the Association, or to make or adhere to an acceptable payment arrangement, a solicitor's letter will be sent detailing our intention to raise legal action and informing the owner that they must clear the debt within 7 days, or contact our office to discuss a repayment plan. If this does not result in full payment or an acceptable arrangement, the following enforcement measures may be used:-

#### **(i) Small Claims Action (Summary Cause)**

A summons will be issued by recorded delivery or Sheriff Officer and a hearing date will be set. If there is no agreement or time to pay direction lodged, the Sheriff will generally order Decree to Enforce. Court expenses may be added to the original sum and these expenses are generally subject to interest charges of 8% per annum.

#### **(ii) Potential Enforcement Actions (Diligence)**

Earnings Arrestment: where the Sheriff orders a specific, regular amount to be deducted from the owner's wages (by their employer) and paid to the Association. This is set by a table of deductions based on the level of the person's earnings.

Bank Account Arrestment: where the Sheriff implements a speculative arrestment to recover the outstanding balance from the owner's bank account

Rent Arrestment: where the Sheriff Officer arrests the rent from the owner's sub-letting tenant or via their letting agent

#### **(iii) Enforcement Notices & Orders**

Notice of Potential Liability: this flags up the outstanding debt at the point of sale, so that the outgoing or incoming owner has to pay. The potential buyer's solicitor would generally insist that the outgoing owner pays up before the sale is concluded.

Inhibition Orders: this inhibits (or prevents) the owner from selling the house for a period of 5 years unless the debt is cleared. This is recorded on the Register of Inhibitions and can be renewed after 5 years.

Attachment Orders or Exceptional Attachment Orders: these orders can be attached to goods within the owners' property or outwith the owners' property, such as a car and where the Sheriff Officer values these goods, then sells them to pay off the debt.

*(Whilst this is a legal option, Calvay Housing Association would only apply for such an Order in exceptional circumstances and with Management Committee approval.)*

**(iv) Bankruptcy / Sequestration**

Where an owner has an outstanding debt of £3,000 or more, the Association can initiate action to declare the owner bankrupt (or sequestrated in Scottish law).

**(v) Sharing Owners**

Additional actions may be used to recover outstanding arrears from sharing owners, such as entering into a voluntary joint sale with the owner, to enable them to settle their outstanding debts from the proceeds of sale. Where mortgage arrears also exist, the Association may join with the sharing owner's lender to recover the property and effect a forced sale and division of the proceeds to settle the debts.

**5.3 General**

The Association will not take legal action against an owner without firstly taking reasonable steps to resolve the matter and without giving written notice of our intention to do so. In all cases, where an owner has outstanding factoring arrears and no payment arrangement is in place, further works may not be undertaken on their behalf unless an agreed element of the cost is paid in advance or a satisfactory arrangement made to clear the arrears.

The Association will generally pursue each individual owner for their share of any debt, rather than pursue co-owners where there may be joint liability for the non-payment of fees or charges. Similarly, the Association will not usually charge homeowners interest for late payments, but reserves the right to do so at its discretion as this is provided for within the Title Deeds. However where the Association incurs third party costs, such as legal expenses, it will seek to recover these from owners over and above the cost of the initial bill.