

Questions Submitted by a Homeowner:

Q. Is there a process by which general issues arising from the decisions of the HOHP are made known to the Scottish Government, so that they might consider if any amendments to the current Code of Conduct (or indeed the 2011 Act) are desirable?

A. An annual report for the Homeowner Housing Panel is prepared and laid before the Scottish Parliament. This report will provide information about the working of the panel during each calendar year. The report for 2013 is presently under preparation. The report will provide statistical information and as well as provide information on the panel, its members and administration, and its procedures. It will not make comment on individual decisions.

However, the committee's decisions are published on the hohp website and, at the same time as publication on the website, a copy is sent to the Scottish Government housing policy team who are responsible for legislative and Code changes as well as being involved with the property factoring registration team. Committees do made observations about the Code or factoring practices within their written decisions in appropriate cases which may inform policy decisions by Scottish Government.

The Scottish Government Housing Policy department answer as follows:

The Scottish Government has committed to reviewing the code after three years of operation to consider whether changes are appropriate.

Q. Does the Scottish Government publish the outcomes of the Notices of Failure to Comply with PFEOs where these are confirmed and notified by the HOHP to the Scottish Minister?

A. This is not a matter for the panel and is best answered by the Scottish Government housing policy team.

The Scottish Government Housing Policy department answer as follows:

The Scottish Government Housing Policy Team has confirmed that one of the potential consequences of failing to comply with a PFEO is removal from the register. If a Property Factor is removed from the register the Scottish Ministers will give public notice of this.

Q. Is there any obligation on Property Factors to note the Decisions of the HOHP, particularly on matters which have a general application to all Property Factors and Homeowners? How might the HOHP help to identify those generally applicable parts of their decisions?

A. There is no obligation on property factors to note decisions. However, it is likely that responsible property factors will be reading the decisions. This is something on which representatives of the property factoring organisations are best placed to consider and comment on. As mentioned previously, Homeowner Housing Committees make observations about factoring practices in their written decisions in appropriate cases.

Q. Is there any similar duty on individual HOHP committees to note relevant previous decisions, other than when explicitly referenced by one or other of the parties to the application?

A. Copies of all decisions at the time of publication are distributed to all Committee members to allow them to keep up to date and to try to aid consistency of decision making.

A Homeowner Housing Committee operates as an independent and impartial decision maker and is not bound to follow previous Committee decisions. A committee must base their decision on the circumstances under consideration in a particular application and it is unlikely that the facts will be identical in different cases. However, a previous decision of a Homeowner Housing Committee, although not binding on another Homeowner Housing Committee, may be persuasive when they are considering issues of a similar nature. It is open to a party to highlight previous committee decisions to a Homeowner Housing Committee. The inquisitorial nature of the committee allows them to consider previous decisions, even if not referred to in the course of the proceedings.

Q. Would it be beneficial if Property Factors had a nominated person responsible for their organisations' compliance with the Act and the Code of Conduct, and who might therefore be expected to take cognisance of any generally applicable parts of relevant prior HOHP decisions?

A. The Panel cannot answer this. However, there are representatives from factoring organisations at the user group event and this point is something that they may wish to consider.