

## PROFESSIONAL DIPLOMA IN PROPERTY FACTORING (PDPF)

### LEVEL 4 MEMBER EXAM – PREPARATION GUIDE

#### HOW TO APPROACH THIS EXAM

The PDPF exam contains two parts:

- Part A which is one essay worth 50%
- Part B (50%) which consists of 5 short answer questions worth 10% each

All questions are **compulsory**, and the exam pass mark is **60%**. The time allowed for this exam will be two and a half hours with no break between the Part A & B.

This guide provides examples for each question type, along with sample answers.

#### PART A: Essay response

Below is a fictional example of a case brought to the First Tier Tribunal (FTT) by a homeowner against a property factor for failing to have a clear written procedure for debt recovery. The fact scenario provided below is intentionally limited in detail to encourage full consideration for what has been raised in the complaint, as well as what ought to have been raised by the applicant.

Given the following scenario, assess the extent to which the factor has complied with the Factors Code of Conduct, paying specific attention to the requirements outlined in subsections of Section 4 of the Property Factors (Scotland) Act 2011. In your answer, provide evidence of where the factor has met the standards set out in the Code, and specifically identify whether or not the factor has complied. Additionally, you may consider to what extent the homeowner has fulfilled their duty to specify which parts of the Code they are complaining under, and where it is alleged the factor has failed. You may draw on other sections of the Factors Code as well as FTT decisions, to support your answer.

Scenario:

The applicant, Gerard Butler of 300 Greenland Street, Paisley brought a complaint to the First Tier Tribunal against the respondent, Mrs Frankie Brown of Nim's Factoring service, on the basis that the property factor failed to have a clear written procedure for debt recovery and was therefore in violation of Section 4 of the Factors Code of Conduct – citing provisions 4.1, 4.8, 4.9 and 4.10. In his written evidence, Mr Butler claimed that he should not be liable for costs incurred as a result of his neighbour, Mr Coriolanus, defaulting on his service charge.

Mr Butler owns a duplex apartment within a townhouse, where he occupies the ground and 1<sup>st</sup> floor, and his neighbour, Mr Coriolanus, occupies the top 3<sup>rd</sup> floor. Nim's Factoring service provides estate management services which includes garden maintenance. Mr Coriolanus failed to pay the service charge, arguing that he does not have access to the garden surrounding the property

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owned by Mr Butler, and therefore should not be liable for the core service fee which includes garden maintenance. As a result, Nim's Factoring service pursued Mr Butler (individually) for the outstanding sum, but not other owners in the development. When Mr Butler did not pay on time, Nim's Factoring service issued a late payment charge. Mr Butler argues that no support was offered when he advised Mrs Brown that he could not afford to pay the outstanding sum or the late payment charge.

Evidence supplied by the factor to FTT only made reference to Section 4 of the complaint and did not supply a Debt Recovery Procedure in the response. Instead, to evidence that Nim's Factoring Service did in fact have a clear written procedure for debt recovery, Mrs Brown's response referred to a Deed of Condition (DoC) specifying equal apportionment of service charges amongst all owners in the block (irrespective of individual use). The response also highlighted that the DoC states: "where all reasonable legal processes have been exhausted or where the homeowner becomes bankrupt, or declared insolvent, then the debts, including any legal expenses falls due to be paid in equal proportions by the remaining development proprietors". The response also included Nim's Written Statement of Services (see box below) – highlighting the terms for service provision, procedure for issuing factoring invoices and their complaints handling process:

#### SERVICE PROVISION

A Management Fee is charged to cover the cost of the following core services. This fee is reviewed annually and is subject to VAT at the current rate. Changes in the fee will be notified to you by February each year, and will be effective from 1st April.

These services may include the following:

- a) Stair cleaning and gardening or back-court maintenance
- b) Removal of Bulk uplift from Common Areas
- c) Electricity supply for stair lighting, lifts, door entry and TV aerial systems
- d) Lift maintenance
- e) Concierge services

Where services to common areas are not provided, the joint responsibility for maintenance and upkeep rests with homeowners, in line with the Deed of Conditions and billed quarterly through your factoring invoice. If these areas are not maintained, we will be entitled to arrange the necessary works, thereafter levying a charge on all residents.

Where other services are requested for the maintenance and upkeep of the property, with relevant consent, we will supply competitive quotes and will arrange for the service to be provided.

#### FACTORING INVOICES

Invoices are currently issued quarterly. Invoices note the amount payable for the Management Fee which is a flat rate; and the Insurance premium based on your liability as per the Deed of Conditions; both are billed quarterly in advance.

Common repairs, major and cyclical works are recharged as per the share of common repairs noted in your Deeds, unless otherwise agreed.

A Statement of Account is issued annually, together with the quarterly invoice. We will issue these electronically to your email address; or by post where we do not have an email address for you.

Invoices are due for payment within 14 days of issue and a variety of options are available to facilitate payment.



We encourage payment by monthly direct debit, or electronic payments through our partnership with Allpay.

#### COMPLAINTS HANDLING PROCESS

We aim to get things right first time, however we recognise that there may be occasions where our service falls short of your expectations or situations where you are unhappy with a contractor. If this is the case, please give us the opportunity to put things right. Our Complaints Handling Procedure (available from our office and website) reflects our commitment to valuing complaints; it seeks to resolve dissatisfaction as close as possible to the point of service delivery and to conduct thorough, impartial and fair investigations so that, where appropriate, we can make evidence-based decisions on the facts of the case.

Brief summary of the complaint from Gerard Butler of 300 Greenland Street, Paisley is as follows:

1. Factor failed to have a clear written procedure for debt recovery
2. Factor inconsistently and unfairly applied a share of debt only to him and not to other liable owner homeowners
3. Factor applied late payment charges unfairly

#### Sample Answer:

##### Complaint 1

4.1 of the Property Factors Code of Conduct says “non-payment by some homeowners may affect provision of the services to others or may result in other homeowners in the group being able to meet the non-paying homeowners’ debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason, it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating”.

4.8 says: “on request, a property factor must provide homeowners with a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills”.

4.9 says “a property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them while ensuring compliance with data protection legislation”.

4.10 says “a property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if you’re liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).”



It is clear that the Code does not specifically say that a Property Factors Written Statement must include detailed information as to how Homeowners' service might be affected in such a scenario where a debtor's debt is unrecoverable. What is required, however, is specific written information from the Factor in relation to such debts – but only at the point at which it has implications for the other homeowners, including details of (as far as they can lawfully disclose) any action taken to recover it, and details of how these debts might affect the owners in the development specifically with reference to the wording of their Deed of Conditions [DoC].

It is therefore important that the Owners and the Property Factor pay particular attention to the requirements of the DoC when dealing with such situations. No WSS can adequately provide that level of specific detail and it will be very much judged on a case-by-case basis, but a good WSS should ideally refer to consulting the DoC in matters like this. No such evidence was led by Mr Butler, therefore, the Tribunal should not have been able to make a finding based on the evidence (or lack thereof) - FTT could have however, issued a Practice Direction to the Factor asking it to demonstrate if they did indeed write separately to Mr Butler in relation to the debt explaining why it was being recharged and how Owners might be affected if they do not pay – and they could have deferred their findings until this was made available (or not made available). Had the complaint been raised correctly then FTT could have found against the Factors because they did not apply the debt recovery actions consistently by missing out other Owners who were also liable for the debt [even though they may have re-charged the correct value to Mr Butler] – Overarching Standards of Practice requires a Factor to apply policies consistently and reasonably.

The Tribunal should not have been able to find that the Factor had not complied with the Code in terms of its WSS to Homeowners, because it is not a requirement of the Code that a WSS should have this information.

## Complaint 2

NIM Property Factors Written Statement is too basic and should expand further, however based on this version, as limited as it is, we find that the Factors WSS does: a) make clear that invoices will be issued and payment is due within 14 days; b) refers to the responsibility for maintenance and upkeep jointly resting with homeowners in line with the Deed of Conditions; and c) confirms how to access the Complaints handling process. Under the Code a Property Factors WSS does not specifically have to include the full complaints handling process.

In this case the Factor has simply signposted homeowners via their WSS to a website or to request a copy of their Complaints Handling Process. That does not breach the Code of Conduct. However, it is a requirement of Section 7 Complaints Resolution that a Factor must provide a written complaint handling procedure to clients upon request, and this procedure should be consistently and reasonably applied – it should also include details of how a Homeowner can make an application to the First Tier Tribunal, if a complaint remains unresolved. The Factor appears to have singled out Mr Butler as being liable for the share of the debt of Mr Coriolanus, but they have not adequately explained why they have not apportioned the debt to all of the remaining proprietors, or given evidence of the Factors efforts to recover the debt. Similarly, they have failed to explain in what way services might be affected if homeowners failed to pay their bills, or indeed if the other Homeowners refused to pay a share of the debts of others. In this instance I would therefore agree that the Homeowner could have had legitimate cause for complaint against their Factor under 2.6, 4.2, 4.8, 4.9 and 4.10 of the Code, if they had raised the complaint on these grounds. Had they done so, I believe the FTT would have found them to be in breach in all these points.

## Complaint 3

Section 1 (Written Statement of Services) subsection 1.5 C – Financial & Charging Arrangements (11) of the Code states that a WSS should show “how the property factor will collect payments, including timescales and methods (clearly stating the payment method is available to homeowners). Any charges relating to late payment must clearly state the period of time after which of these charges would be applicable.”

There is no specific requirement under the Code that a Written Statement of Services must confirm the level of charge that might be applied in terms of late payment. That is a bespoke process which would sit outside of the Written Statement, however, applying these charges, a property Factor must be able to demonstrate that they notified the Homeowners of the charge, when it would apply, and how much the level of the charge would be in advance of levelling that charge. If the Factor cannot evidence that they did that, then they would certainly be in breach of section 4.2 and 2.6 of the code – but again it is incumbent upon the Homeowner to raise the complaint correctly. If they do not raise the complaint correctly then FTT should not be able to make such a finding.

In summary, the FTT could not prevent the Factor levying an appropriate proportion of the debt incurred by Mr Coriolanus against Mr Butler, if ultimately the DoC rendered him responsible for a share of the debt. However, FTT could find against the Factor for the reasons explained above, providing the complaints were correctly raised. It is important for both parties to ensure that complaints are raised under the appropriate code headings as ultimately, if they do not, a legitimate complaint may not be heard.

### **PART B: Short Answer (10 pts)**

Consider a scenario where you factor a block of 25 flats – most of which are rented, with 5 owner-occupied. You are preparing your annual financial accounts and find that 8 customers have fallen into arrears on their service charge for the year. What two options are available to you as a factor to recoup your income loss? Outline the process you would follow under these two scenarios.

#### **Sample Answer:**

Non-payment by some customers can affect provision of services to other owners, or can result in other customers being liable for the non-paying owner's debts, if they are jointly liable for the debts of others in the group. In practice, factors may opt to recover outstanding sums from the other homeowners and/or reduce services. Therefore, the factor has the option of 1) taking action to recover debt from the defaulting customers or the owners collectively, and/or 2) reducing services across the scheme.

It is therefore important that factors make customers aware of the implications of late payment, and to have clear procedures to deal with such situations and take action as early as possible, to prevent non-payment from developing into a serious problem. It is the obligation of factors to make customers aware of the implications of late payment and to have clear debt recovery procedures. Factors must also have systems in place to ensure the regular monitoring of payments due from customers.

In the case of non-payment, factors must issue timely written reminders to inform individual customers of any amounts outstanding. Reminders of amounts owing should be issued within a



specified time, such as 28 days of falling into arrears. Factors must also provide customers with a clear statement of how service delivery and charges will be affected if one or more owners do not fulfil their obligations. Factors must be able to demonstrate that reasonable steps have been taken to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging the remaining homeowners. Additionally, the Code requires factors to signpost customers to relevant advice agencies should an owner or resident be unable to pay their debt due to hardship.

