

# **Property managers in Scotland - a market study**

Annexe E - choice and competition

February 2009

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# 1 CHOICE AND COMPETITION

1.1 In the main report we have considered problems in general with switching property managers.<sup>1</sup> In addition, during the course of the study, the OFT identified specific situations where choice and competition were inhibited from reasons in addition to those identified generally with switching property managers. These were:

- owner occupiers in ex-local authority properties within a predominantly social housing development may be required to use the social housing landlord's property manager. Of itself this may not be a problem, but where consumers are dissatisfied with the services they will be captive and unable to switch
- a property manager may be appointed by a developer on the completion of a new development to manage for a number of years
- more generally restrictions in the title deeds – and deeds of condition – may make it difficult to dismiss the incumbent property managers.

1.2 This annexe presents more detail on the specific issues encountered in these circumstances.

## **Owner occupiers in predominantly social housing developments**

1.3 A common situation arises where owners have exercised their right-to-buy – or have purchased such a property – but within a development or estate which is either supplied by a housing association or the local authority. There appear to be around 100,000 properties in this category managed by a RSL/ housing association and further properties managed by local authorities. In such cases, the RSL/ housing association or local

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<sup>1</sup> At the end of this annexe there are two flow chart diagrams that set out the switching process in more detail.

authority will supply property management services themselves. In such circumstances, consumers may be locked into a 30 year agreement.

- 1.3 The only way individual property owners might be able to effect a change is where there are more property owners than residential tenants and they are able to secure the necessary majority, as specified in the deeds of the property, to facilitate a switch to an alternative property manager. The publication *Common repair, common sense* states that consumers that have exercised their right-to-buy may dismiss the local authority or RSL property manager:

'The local authority may retain responsibility for managing and maintaining the common parts, and collect payment for that service as the property manager or factor. However, a two-thirds majority of all owners (including right to buy owners, other owners and the local authority as owner) can decide to dismiss the local authority property management service and either appoint a new manager or manage the property yourselves [i.e. the owners]. Similar arrangements will apply to a property manager where at least one of the flats is owned by a registered social landlord'.<sup>2</sup>

Where property owners are in the minority position this may well mean that they have no practicable influence or say in who their property manager is. After the 30 year period has expired the responsibility for appointing the property manager reverts to the owners. At this point, the property manager can be removed on a simple majority vote (as opposed to the two-thirds majority that would be required prior to that).

- 1.4 The consumer survey examined the attitudes to switching of consumers with an RSL or local authority property manager. To assess awareness of this situation, respondents who had property management services provided by a social landlord were asked to identify any barriers that would prevent them from changing their current arrangements for the repairs and maintenance of common parts of the block.

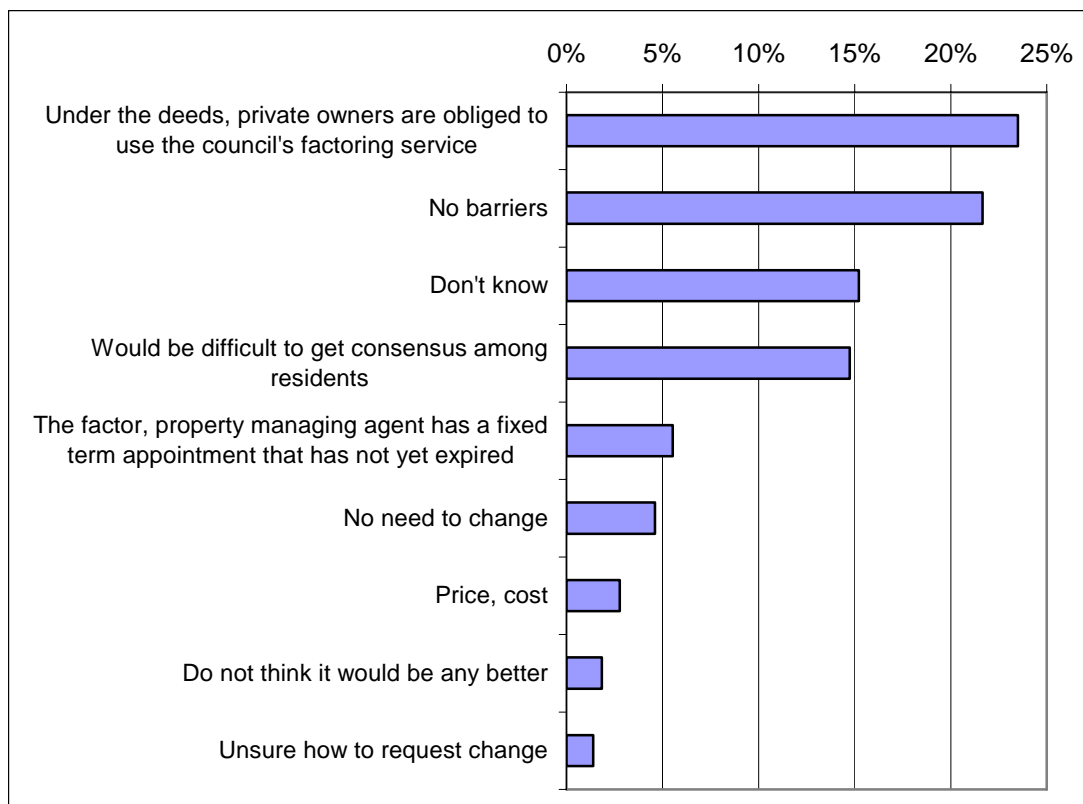
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<sup>2</sup> *Common Repair, Common Sense*, page 26.

- 1.5 As table 1.1 below illustrates, around 25 per cent of respondents mentioning the fact that they are obliged to use the local authority's or housing association's factoring services, and a similar proportion saying that there are no barriers to changing their arrangements (a further 15 per cent gave a 'don't know' response).
- 1.6 Other respondents identified practical barriers, and similarly this implies a belief that change is possible, even if it might be difficult to achieve. 15 per cent said that it would be hard to obtain a consensus among residents and three per cent cited financial barriers. A further six per cent said that their property manager had a fixed term appointment that has not yet expired.

**Table 1.1: Awareness of barriers to changing arrangements**

Q: What barriers, if any, would prevent you from changing the current arrangements for the repairs and maintenance of common parts of the block?



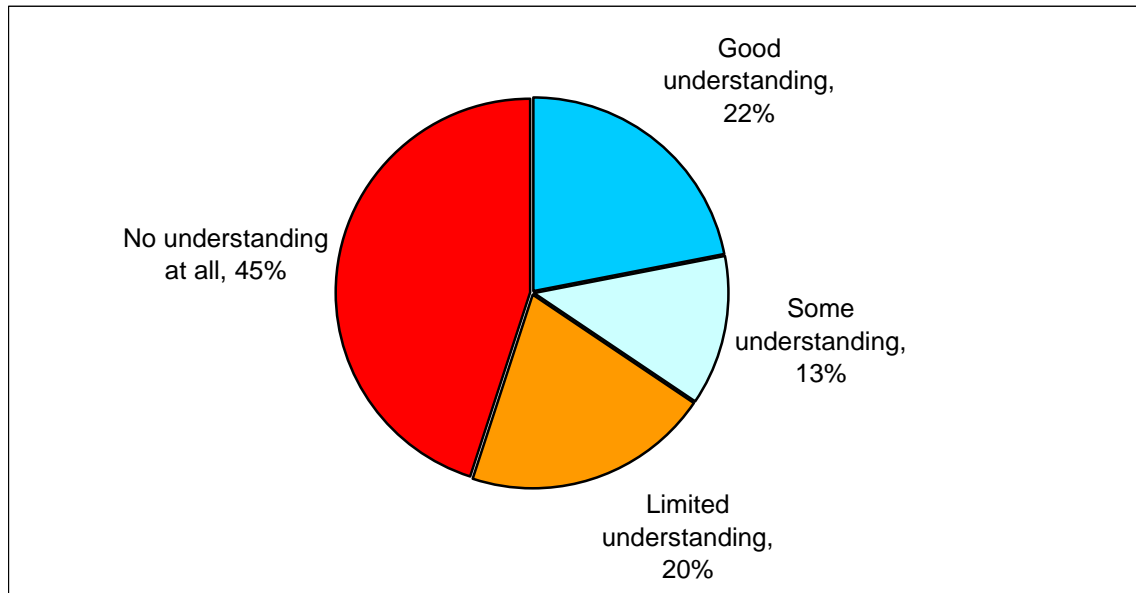
Base: All who have services provided by Council, Housing association or Housing Association factor (217). Results exclude 'don't know' answers

Source: Survey of consumer experiences of property management – a report of findings

1.7 Individual property owners who had property management services provided by a RSL/ housing association were also asked how well they felt they understood the procedures that would need to be followed for them to be able to change their property manager. Less than a quarter said they had a good or some understanding of the procedures, while 18 per cent said they had a limited understanding and 41 per cent said they had no understanding at all (see table 1.2 below).

## Table 1.2: Understanding of procedures for changing factor or property managing agent

Q: If the possibility ever arose, how well do you feel you understand the procedures that would have to be followed for the residents of your block to change their property managing agent?



Base: All who have services provided by Council, Housing association or Housing Association factor (217). **Results exclude don't know answers**

Source: Survey of consumer experiences of property management – a report of findings

1.8 The particular problems of switching in this sector are reflected in the findings of the levels of flats lost. Table 4.2 shows that while private sector property managers lost around one per cent of properties per year, RSLs and local authorities lost 0.1 per cent. Given the overall level of satisfaction with RSLs and local authorities as property managers, this level of switching indicates that barriers to switching may be substantial.

1.9 In considering the reasons for this very low level of switching, it is likely that the explanations of low switching given above are likely to be relevant.

## **New developments**

- 1.10 A particular case of this concerns new developments. Property developers will appoint property manager and impose restrictions in the title deeds or deeds of condition. Typically, the property manager may be appointed for a period of years (three or five) before they may be replaced. There may also be a condition that the three<sup>3</sup> or five year period may only commence once the last flat on the development has been sold. Particularly in a property downturn, purchasers who bought early on may have to wait considerably beyond three or five years to be in a position where they can raise the issue of switching property manager.
- 1.11 As noted in the main report, the property manager is selected by the developer, who may have very different grounds for selecting a property manager than those of the owners. For example, the developer may have arrangements with specific property managers; or it may be that the developer wishes to relinquish responsibility for the development as soon as possible after completing building and pass the management of all of the maintenance and repair issues at the development (including in some cases snagging issues) onto the property manager.

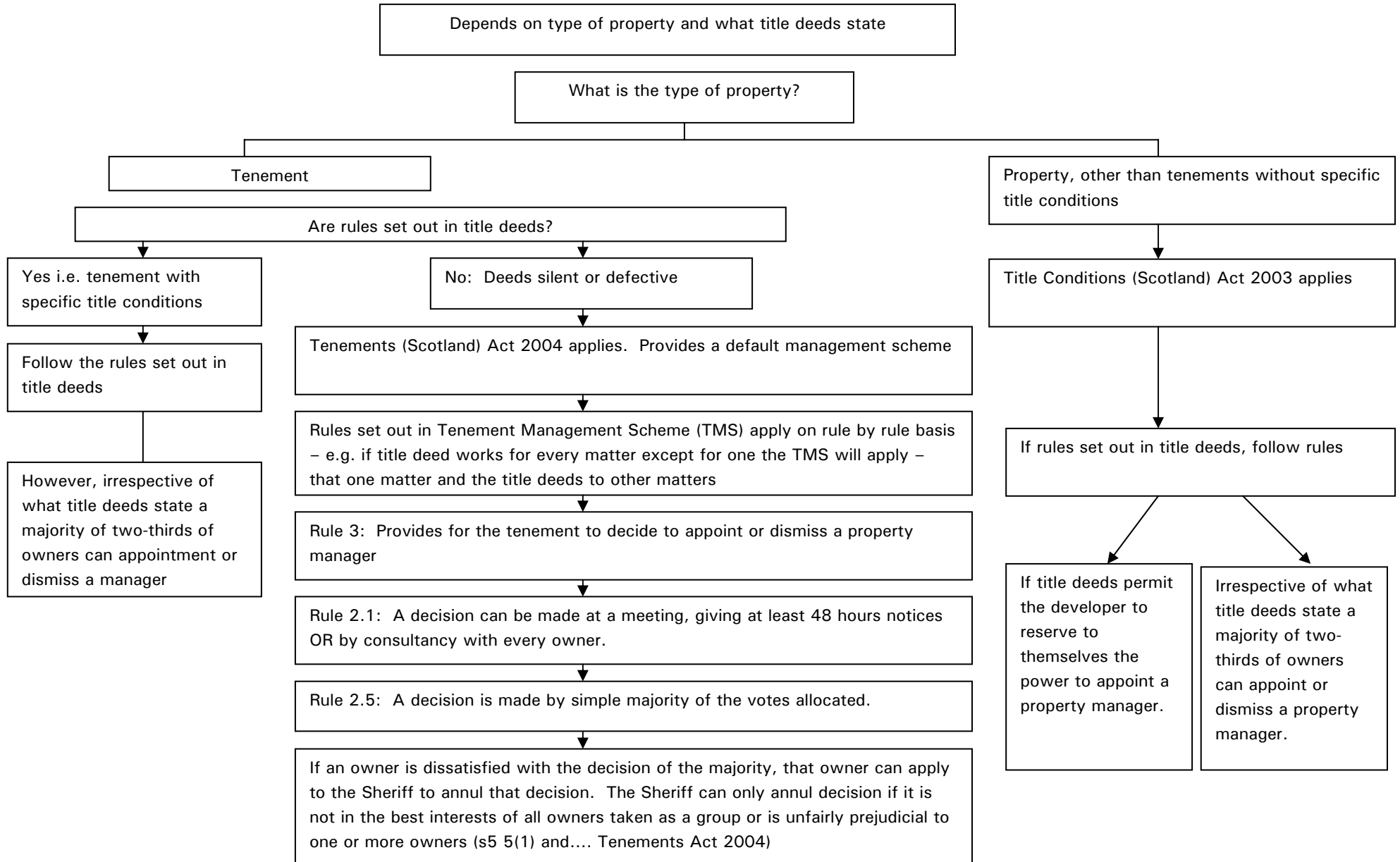
## **Restrictions in title deeds and deeds of conditions**

- 1.12 The deeds of some properties may contain restrictions in terms of the appointment, retention or dismissal of a property manager, which may make it difficult to change notwithstanding the default law. In some cases, the property manager may in fact be nominated in the deeds. In other cases, the arrangements for owners to achieve consensus to switch are otherwise complicated or onerous.

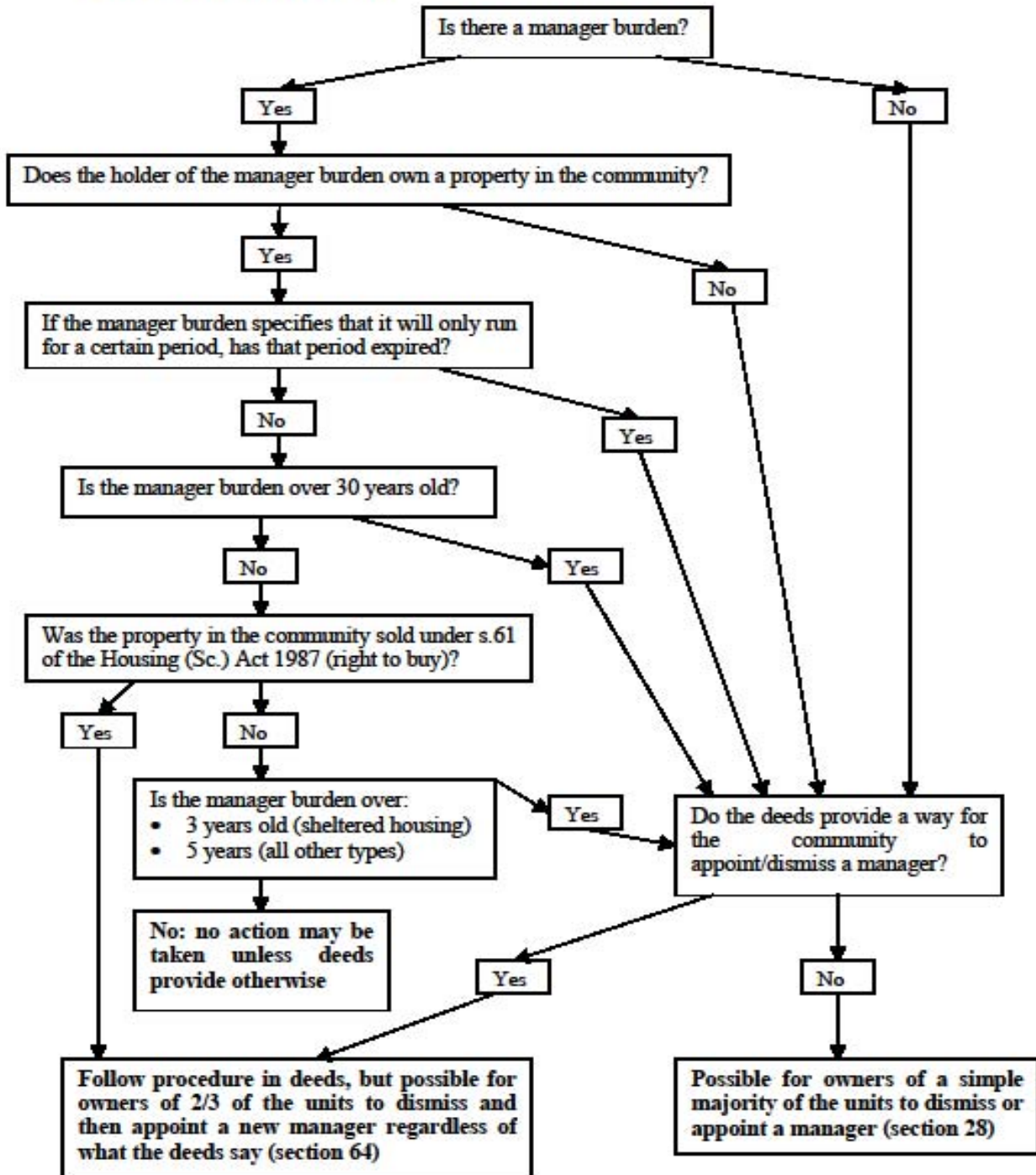
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<sup>3</sup> Three years for retirement homes and sheltered accommodation and five year for other properties.

# PROCEDURE FOR SWITCHING PROPERTY MANAGER



### Manager Burdens Flowchart



Source: A Guide to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 & the Title Conditions (Scotland) Act 2003 for Housing Associations, July 2004

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