

Proposals for compulsory owners' associations: owner responses

Under One Roof has submitted an official response from the charity to the Scottish Law Commission's Discussion Paper on Compulsory Owners' Associations.

However, as part of our efforts to ensure the Commission received feedback from those directly affected by the proposed changes to legislation, we also requested feedback from owner-occupiers and landlords through our newsletter and social media channels.

Under One Roof provided links to the full discussion paper, but asked participants to answer 10 of the questions posed by the Law Commission. We received 67 responses to our call for comment. Answers are provided to questions 3, 13, 16, 23, 25, 50, 52, and in the general comments at the end of the document.

We have provided a summary indicating percentage of responses to the questions (rounded up), and a sampling of comments that we feel the Commission may find useful. Text answers have been edited for brevity and are an attempt to provide a wide selection of views, but are not inclusive of all comments submitted.

On a scale of 1-5, with 5 being strongly agree and 1 being strongly disagree, do you agree that owners' associations should be made compulsory?

- 66% answered they strongly agree, with a further 9% saying they agree
- 10% answered they neither agree or disagree
- 5% said they disagree and 10% said they strongly disagree

When asked why they felt this way, among those who strongly agreed or agreed said:

“Because they are the first necessary step in ensuring tenement owners work collaboratively. They will help build community as well as enable tenements to be better looked after, and help end the culture of avoidance, isolationism and neglect that persists in many tenements.”

“To get necessary repairs and maintenance agreed to and undertaken in line with what is in title deeds and to access support from local council that can't get without.”

“I am a co-chair of an owners' association, and it is a complete nightmare to manage when there are no obligations for owners to pay a fee towards ongoing running costs. The roof is in need of replacing and there is no recourse to ensure all owners contribute towards this. Making OA compulsory and the proposals presented in the paper are required to prevent the wholesale dereliction of tenement properties.”

“I currently find it phenomenally difficult to organise even very basic communal repairs in my tenement, which has led to the building falling into disrepair. A well-implemented compulsory owners' association with appropriate support in place should make it significantly easier to organise essential maintenance.”

“OAs would/should provide a more consistent approach to building maintenance & improvement and give a defined platform/avenue for when any works are required. Also gives a forum for planning maintenance work.”

When asked why they felt this way, among those who neither agreed or disagreed said:

“Unclear the difference between an OA and having a property factor for the tenement. OA seems to perform same function as a factor. If that is the case, a tenement should either have an OA or factor.”

“The theory is fine but the reality of compulsory associations in mixed tenure and mixed ability tenement buildings is likely to be very different. Most people in tenements don't even know buildings insurance is compulsory at the moment, how would you get sufficient engagement and that's presuming the people in the building have the skills.”

“At the moment, tenements work on the goodwill of one or two people who take the responsibility and it seems to work. Compulsory sounds rather draconian, but something that ensure prompt payment, probably.”

“While owners should take responsibility for their part of common repairs and maintenance in a tenement property, an association per se depends on the owners being willing to communicate with each other. This isn't always the case, especially with absentee ownership, which is why it's helpful to have a factor.”

When asked why they felt this way, among those who disagreed or strongly disagreed said:

“Making owners' associations doesn't conjure into existence people with the skills, disposition and time needed to charm, coax or cajole co-owners into taking an interest in (and paying for) ongoing maintenance. It would be better to make it easier for willing owner groups to work collectively e.g. by creating a simple way for them to have a collective bank account.”

“Three reasons 1. You can't change people with a piece of paper, and it could cause more problems where relationships may already be fraught. 2 The majority of Property managers/ factors do not do their jobs especially regarding inspections. There is no monitoring of these organisations and no penalty clause when they fail to carry out their contractual duties. Everything on paper looks good but the practicality of it is different and most people do not have the length of time it takes to deal with a factor. 3 A piece of paper that is not policed cannot force people into looking after their flat or communal area. It is just another paper exercise - you can take a horse to water, but you cannot make it drink it.”

“There are not nearly enough registered property factors and there are too many stories of rogue factors taking advantage of owners'/resident associations being ripped off by unscrupulous factors. Also associations can work well but there is nothing in the proposals to make a dysfunctional association work or to force reluctant payers to meet any obligations.”

“Need to trust people, some tenements work really well, you will only load additional costs on these.”

3. The SLC is proposing that OAs be subject to mandatory duties, including:

- (i) To appoint a manager within six months of the position becoming vacant**
- (ii) To comply with any registration requirement arising under the legislation**
- (iii) To hold an annual general meeting of members within 12 months of the creation of the OA, and in every 15 months thereafter**
- (iv) To approve an annual budget**

Should OAs be subject to these mandatory duties?

- 73% answered they agreed OAs should be subject to the duty to appoint a manager within six months of the position becoming vacant , 15% disagreed, 23% were unsure
- 58% answered they agreed OAs should be subject to the duty to comply with any registration requirement arising under the legislation, 19% disagreed, 23% were unsure
- 62% answered they agreed OAs should be subject to the duty to hold an annual general meeting of members within 12 months of the creation of the OA, and in every 15 months thereafter, 19% disagreed, 19% were unsure
- 54% answered they agreed OAs should be subject to the duty to approve an annual budget, 19% disagreed, 27% were unsure

When asked “if you answered no/unsure to any of these duties, what changes would you recommend, and/or what additional duties would you propose?”, amongst the replies we received were:

“I would recommend communication via the Novoville app. I think owners would be reluctant to attend meetings and landlords may not be able to.”

“It all comes down to the difference between OA and factor. Also some tenements may consist of 4 - 8 flats, people may not want to invite their neighbours into their home for an AGM.”

“Meetings should be held annually not 15 monthly as outstanding matters could drag on. How can anyone guarantee that every homeowners association would have people literate enough to ensure legislation requirements are met, and that budgets are suitably planned?”

“Cannot wait six months to appoint an agent - repairs and defects can happen on day one. Bring down the minimum period to 60 days max.”

“Carry out building condition surveys, say every 4-5years, to establish what work is required then prioritise that before setting an annual budget for the work to be carried out the following year.”

“A properly trained and recognised Factor should be mandatory...too many would-be experts and barrack room lawyers in some Tenements”

“Creating a lot of rules is fine but who is going to be checking its complied with? What powers will they have to enforce compliance, is there an assumption that homeowners will be in a position to understand all this and do it or are we just creating another layer of bureaucracy that we’ll need to pay someone else (good or bad) to manage for us. Whatever this system is it needs to be simple, streamlined, backed by both carrot and stick measures and ensure that disputes can be managed effectively.”

“I would add a duty to appoint a suitably qualified property manager.”

“This looks like a way for factors/property managers to increase fees for doing more stuff badly. What happens if there is no quorum at the required AGM? Will a mechanism to fine owners who don't attend then be introduced? The budget question only makes sense if there are collective funds but where are they coming from? Did they chicken out of requiring every owner to contribute regularly to a building fund (which is really what's needed, but very difficult politically)?”

13. (a) After a fixed period, should legislation disapply existing title conditions to the extent that they modify the application of the OA scheme?

(b) What should be the duration of the fixed period?

(c) Should the OA be under a duty to register a preservative deed of conditions on request by any owner, subject to the right of any other owner to challenge this request?

(d) Should members of the OA be able to take a special majority decision to refuse to register a preservative deed of conditions, subject to the same voting threshold as for registration of a deed of conditions?

(e) Do you have any other comments on our provisional proposals in relation to standardisation of existing tenement title conditions?

The SLC is proposing to introduce a standardisation of existing tenement titles after a fixed period. This would mean that all tenements, unless a request is made to preserve the original titles, would be subject to the same set of titles.

How much do you agree with this provisional proposal (scale of 1-5)

- 36% answered they strongly agree, with a further 14% saying they agree
- 27% answered they neither agree or disagree
- 3% said they disagree and 20% said they strongly disagree

When asked why they felt this way, among those who strongly agreed or agreed said:

“Because some titles are vague. The lack of clarity about what is communal property and communal burdens is another thing that depends on individual owners tackling repairs.”

“To ensure that costs are fair but do think support should be available to those who do not have the finances or who are on low income etc”

“Consistency likely to be advantageous in terms of legal recourse and national frameworks/guidance.”

“Remove ambiguity about what is a common repair e.g. loft insulation is that a joint responsibility or just the top floor flat / flats.”

“The flats in our building are of different sizes with different liabilities so agree if this takes that into account.”

“Our title deeds from 1999 are outdated. Whilst it says the owners are responsible to ensure the factors maintain the property in a good state of repair, properly insured, etc, the deeds do not require us to have a homeowners association, the existing owners are not literate enough to understand the need for a homeowners association, leaving the factor to make all the decisions about the management of the property. Most of the owners cannot be contacted as the factor is the only party holding all the owners’ contact details, and of course the factor being the cause of the complaints leaves the rest of us nowhere. Any standardisation should ensure the homeowners association has contact details of all owners as well as residents.”

“Reading title deeds can be a nightmare. Ours is a 1980s block of 9 (3x3) but titles say roof is divided into 3 areas for 3 owners below, plus communal/9. No idea how that could/should be divided so we just divide all roof repairs by 9, no matter location of repair.”

“Strongly agree. There are many differences between tenement titles. I'm in complete favour of standardising them. It will make titles far easier to interpret and enforce responsibilities as an owner.”

When asked why they felt this way, among those who neither agreed or disagreed said:

“It may not be fair if some properties are bigger than others.”

“How would standardisation of titles work in the case of where flats are above commercial enterprises? Or where the top floor flat has extended into the attic?”

“I’m not sure what the implications are here but many title deeds for older tenements include quite quirky bespoke clauses would these be lost? I don’t think most homeowners are that familiar with their title deeds unless they’ve needed to refer to them in the context of a dispute. What will be gained from standardisation if they aren’t even followed properly now?”

When asked why they felt this way, among those who disagreed or strongly disagreed said:

“As long as the historic title deeds still function sensibly, keep that history. And one size does not fit all tenements.”

“At a high level, this would seem to make a lot of sense, but I wonder if some owners could be disadvantaged, discriminated against, or placed in a legally dubious situation, depending on the precise scope of the standardisation. For example, if a flat owner on the top floor has extended their property up into the attic space as permitted by their current titles, what if this right is removed under the standardised titles?”

“This ignores historical data for example regarding who is responsible for paying for the garages - is it the owners’ responsibility for their own garage? or is it communal. People will be paying for a service they will not get - I have dealt with factors and property managers for over 30 years, and it is still the same issues.”

“The title deeds were made for a good reason, and this should be maintained! The Deeds are objective and neutral and serves to all owners equally.”

“We have titles since 1980's. Folk have made changes so the titles are no longer 'accurate'. But legally no one is able to make changes and if they do, they are supposed to change all the title deeds which is prohibitively expensive. However, if changes are made regardless, there isn't much anyone can do.

There has to be some sort of flexibility within the system to allow for changes - such as a licence. But it does also need some sort of 'teeth', so folk are deterred from ignoring deeds. Should planning approval take the title deeds into account? Perhaps the title deeds need to be revisited every 10 years without prohibitive expense.”

16. (a) Which option do you prefer:

(i) The OA legislation should apply to small tenements, subject to modification or disapplication of inappropriate mandatory duties;

or

(ii) The OA legislation should not apply to small tenements, except where owners of flats in a small tenement “opt in” to the legislation subject to modification or disapplication of inappropriate mandatory duties?

(b) Should a “small tenement” be defined as a tenement building of three flats or fewer? If not how should a “small tenement” be defined and why?

Should small tenements (e.g. a tenement building of three flats or fewer) be subject to having an OA?

- 30% agreed
- 49% disagreed
- 21% other

23. (a) Should the members of the OA be the registered owners, unregistered holders and heritable creditors in possession of flats in the tenement?

(b) Do you have any comments on the position of non-owner occupiers of flats in the tenement?

What should be the position of non-owner occupiers of flats in the tenement?

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- 23% said they should be members of the OA
- 20% said they should not be members of the OA
- 22% said they can join the OA at their discretion, but this should not be a requirement
- 15% said each OA should be able to decide on the position of non-owner occupiers
- The remaining 20% stated other, and gave an alternative option

25. (a) Should the manager be under a duty to maintain a list of names and contact details of members of the OA?

(b) Should members of the OA be under a duty to provide the first manager with their name and contact details within three months of the manager's appointment, and to inform the manager of any changes to their name and contact details within one month of their occurrence?

(c) Should a member, on disposal of their flat, be obliged to notify the manager of (i) any change to their contact details; (ii) the name and contact details of the new owner; (iii) the name and address of the agent acting for the new owner; (iv) the date on which the new owner will be entitled to take entry?

(d) Should a member of the OA be entitled to obtain the name and contact details of another member or members where necessary in connection with the management and maintenance of the building or the operation of the OA?

Should the manager be under a duty to maintain a list of names and contact details of members of the OA?

- 75% agreed
- 9% disagreed
- 16% other

Should a member of the OA be entitled to obtain the name and contact details of another member or members where necessary in connection with the management and maintenance of the building or the operation of the OA?

- 74% agreed
- 9% disagreed
- 18% other

50. In the OAS, should a decision taken by members be binding on owners and their successors as owners?

- 53% agree
- 12% disagreed
- 35% other

52. In the OAS:

(a) Should the manager require to be a registered property factor?

(b) Should eligibility to act as manager be subject to any other qualifications?

a)

- 30% answered yes
- 52% answered no
- 18% answered other

b)

- 38% answered yes
- 39% answered no
- 23% answered other

When asked for more detail, comments included:

“For listed buildings some additional qualifications might be required.”

“Property factors - despite assumed qualifications - have failed owners. Managers should put their own property's interest first & foremost, not managing a profitable property portfolio from a distance.”

“Could the OAS manager not be a debt collection agency rather than a factor? Factor may be acceptable but if the manager has to be a factor this risks taking power away from owners and turning into the wider factor racket which is oftentimes undemocratic.”

“Has anyone done the arithmetic to work out how many Owners' Associations there will be, how many property factor managers there will be, how much extra time this will take (meetings will necessarily be in the evening or at weekends) and therefore how many extra employees will be needed? And how much owners will be charged?”

“Making the manager a registered property factor isn't necessarily a good idea. Some tenements are able to successfully self-manage (a neighbouring close does this). Registered property factors are necessarily good at their role. They can be expensive for the service provided.”

“I believe that in some other countries one owner/resident carries out this work, often for nothing. The cost of factors and their poor reputation would be a deterrent. And this would create another commercial opportunity out of something which doesn't need to be done for gain.”

“Fit and proper person, possibly a (free) basic training course. Online-type that could be done in a couple of hours.”

“Manager must be legally compliant on a myriad of legislative requirements and have the ability to open multiple bank accounts as required.”

“It would be a mistake to force stairs to sign up with a factor as it is the more expensive option. They need to be encouraged to manage and maintain the property themselves to make it cost effective.”

“A property factoring type qualification, experience of managing that type of property, ability to communicate well, be able to read and write and be able to use I.T. Not just a caretaker's role.”

“I don't think the appointment of an external property manager should be required. If OAs are empowered to make the necessary decisions, then it may make property managers redundant. Although it should be at the discretion of the OA. No qualifications should be required.”

“Ideally there should be a factor involved, but not always possible.”

“Qualification of good character, similar to that required by club treasurers etc”

General Comments

Below is a sampling of responses when we asked, “Do you have any other comments?”

“Tried without success for 5 years to form an OA for our group of flats, so making it compulsory would have a huge impact. Owners need to be aware that there will be costs involved.”

“In my experience the need to have a decision based on the majority of owners has resulted in failure to carry out work when so many owners fail to respond to requests to give their decision. By staying silent they prevent work taking place. I think a scheme decision should be legally binding when a majority of those who vote approve it - provided that all owners are given the chance to vote.

Also I really welcome this compulsory OA proposal. As the owner occupier of a block where 8 out of 12 flats are held by absentee landlords it has become impossible to carry out the necessary routine maintenance such as gutter cleaning which is needed to avoid building deterioration.”

“Something needs to be done! I'm in a position of wanting to make changes to my flat which will substantially improve my property but stuck because of titles. And it's an improvement that only impacts my own flat but because the roof (mine is separate) is communally owned, I'm not allowed to do it - even if I offer to pay for the upkeep. That's what I mean by flexibility! My situation is a good example of being given a 'licence' and would be so much cheaper than if I had to change all the 43+ flats titles!”

"I think in general tenements have suffered from the preconception that those who own them are invested in their maintenance because they are of high value. There is also an assumption that those who have property are of a certain level of financial security and perhaps educational attainment or even mental health. That's not a safe assumption and the motivations and circumstances of lots of different types of owners needs to be carefully factored into recommendations, eg elderly widow on a pension, versus financially stretched first time buyer, versus property developer versus housing association. Having an association doesn't make decisions easier, it doesn't in and of itself make people more likely to participate or more willing to spend money they don't have. There has to be some upside to the system and an acknowledgement that factors who currently manage many properties haven't always done so successfully so why would this be any more so? It seems we have been unable to do with houses what has been achieved with cars where people must get an MOT and insurance and pay tax and largely do. They also try to maintain a no claims bonus and it seems that's the sort of regime that needs to be created that incentivises proactive engagement because there either rewards or serious consequences. A supportive system that communicates with all owners regularly is needed rather than one that relies on lots of legal clauses buried in documentation and rules that people won't know about and won't be equipped to deal with. The system should also recognise the resistance that can be encountered among owners and help to break deadlock situations. If lessons are to be learned from the 2004 Act one must be that putting something in statute doesn't make it happen."

I'd love to be able to tap into this idea, but as a very small, registered landlord with three properties in blocks built at the start of the last century the introduction of a Missing Shares policy by the local authority would probably be of more practical use."

"One other frustrating thing that comes up is "improvements". It's quite annoying to organise any kind of improvements on a property because they require a unanimous decision. In my opinion, it should be a simple majority. I have had countless improvements not get off the ground because they are blocked by one or two other owners, when it's very clear the majority of the owners want them. Seems daft that we are hamstrung by owners who simply don't respond. A lot of improvements would prevent larger, more expensive problems down the line. But it's very hard to get people to see the bigger picture.

It would also be good to make it easier to find landlords' contact details. It's a nightmare trying to trace them, and factors and estate agents hide behind "GDPR".

"If a tenement works well without an OA, it should be allowed to continue, but if there are problems then flat owners should be able to ask that an OA be set up."

"I really don't think this is workable. Many tenements (our own included) operate with good co-operation between owners, and this would seem an unnecessary level of bureaucracy. In many other tenements, getting absentee landlords all to agree to even considering something like this would be unworkable."

"An operational framework can only be as good as the means of policing (accountability and transparency) and enforcement of wrongdoing (sanctions). Therefore, workability and effectiveness need to take into account ease of enforcement against wrongdoing and sanctions as deterrent against wrongdoing."

"Spain has a law concerning the maintenance of flats since 1960. Their model works very well in most circumstances. A resident's association is created by default and one homeowner is the president. If they wish to, the residents association hire a property manager to deal with the issues of the tenement, under the supervision of the resident's association. In general there are no issues having volunteers to be the chair/president of the association, but in the exceptional circumstances when there are issues nominating the chair/president, this role rotates annually amongst homeowners. In my experience this model works well. There's no need to enforce a professional middlemen to the role. "

"I feel action on this is long overdue and support the proposals wholeheartedly."

"Concerns about the implementation of this and the willingness of an owner in a building stepping up to the plate to manage communal matters. There will be the few who relish the appointment and do a great job, but I can't see a flood of people coming forward to take up the position. There is also the risk of the "bullies" within the building wanting to take over the position as OA Manager and that's another ball game altogether. I agree that change needs to happen to progress the state of buildings to improve the stock availability for the future. However, I don't feel overly optimistic with the proposal for an OA Manager to be put in place for each building. Hoping for the goodwill of one person per building might be a big ask. In general it's a good idea and I agree that an OA should be a positive move but not sure there will be such a positive response from all owners. People are so tied for time and everyone saying their lives are "so busy" - it might fall flat on its face and then the matter is passed to the local authority to pick up the pieces. That in itself is another concern as LA's probably don't have the capacity / funding to support this. I believe it's going to be a slow journey to progress and a difficult proposal to enforce. Interested to hear the outcome when it has progressed to the next stage."

"Obviously there is a big problem of undermaintained tenement buildings. Forcing owners into more red tape is not the answer. Start by making it easy for willing owners to form effective associations. Coming up with an organisational form that does not carry the admin burden of being a company or charity but does provide a group of people with a simple way to have a collective bank account would be good start."

“This is long overdue. But, it has to have teeth. There has to be simple mechanisms in place for the OA Manager to be able to get the funds from each owner. Chasing money/responses cannot be too onerous or the OAS will fail.”

“The legislation would be very welcome. But it doesn't seem to go as far as mandating holding a sink fund, which happens elsewhere. Without actually compelling people to put money into a pot I'm not sure how useful OAs would be.”

“Small two residence properties need just as much protection as multi residential properties as just one person can make it impossible to get necessary the works undertaken without legal costs otherwise”