



PRIVATE RENTED HOUSING PANEL
HOMEOWNER HOUSING PANEL

A stylized illustration of a city skyline in shades of blue and grey, featuring various buildings and trees, positioned above the bottom text.

ANNUAL REPORT
1 JANUARY- 30 NOVEMBER 2016

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President's Foreword



It gives me pleasure to present the final Annual Report of the Private Rented Housing Panel (prhp) and Homeowner Housing Panel (ho hp).

This report covers an eleven-month period from 1 January - 30 November 2016. On 1 December 2016, both prhp and ho hp jurisdictions were transferred into the new First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tribunals (Scotland) Act 2014.

During the period covered by this report, we began to see the impact of a number of changes within the prhp jurisdiction, which were introduced on 1 December 2015. Firstly, we started to see third-party applications coming through in repairing standard cases. Third-party reporting, which was introduced by the Housing (Scotland) Act 2014, gives third parties (currently defined as local authorities) the ability to take cases to prhp relating to the landlord's duty to meet the repairing standard. The ability of local authorities to bring such cases was introduced on a phased basis between December 2015 and June 2016 with all local authorities able to bring an application by 1 June 2016.

I held a number of user events around Scotland with local authorities and landlord and tenant advice groups in early 2016 to raise awareness of the new provisions. Prhp received 46 third-party applications during the period covered by this report, representing around 15% of all repairing standard applications received. It is notable that most of these have come from a small number of local authorities. The highest numbers have come from Dumfries and Galloway, followed by Glasgow and Dundee city councils. It should be noted, however, that these were the 3 authorities which were part of phase 1 of the phased introduction, from 1 December 2015. Third-party applications have also been received from 8 other local authorities, all but one of which were part of phase 2, which commenced on 1 April 2016.

The numbers of applications received to date have fallen well below the projected numbers, and the majority of local authorities had not made use of the process by 30 November 2016. Whilst the reasons for this are not clear, it remains to be seen whether there will be an increase in numbers in the future, as awareness of the process grows among local authorities, or whether its use will continue to be primarily confined to a small number of local authorities.

Secondly, 1 December 2015 also saw the extension of the repairing standard to include provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. During the period covered by this report, we saw 90 applications which included a complaint about this issue. This suggests that there is a fairly high level of awareness about this, perhaps due to significant press coverage of fatalities caused by

carbon monoxide poisoning. It is notable that 20 of these applications were third-party applications from local authorities, representing more than 40% of all third-party applications.

From 1 December 2015, landlords also became subject to a duty to ensure electrical safety inspections are carried out at five year intervals. Statutory Guidance has been issued by Scottish Ministers which outlines requirements in this area, and while these are not recorded separately, we have seen a number of applications since that date where the absence of an Electrical Installation Condition Report has been complained about, particularly in third-party applications.

The third change introduced in December 2015 was the introduction of a new jurisdiction for private landlords to make applications to prhp to assist them in exercising their legal right of entry to a property to ensure compliance with the repairing standard. The legislation for this was contained in the Private Rented Housing (Scotland) Act 2011. During the period covered by this report, we received 23 right of entry applications.

During 2015 and 2016, recruitment exercises were conducted for legal chairpersons and surveyor members to increase the pool of judicial members to service the projected increase in applications as a result of third party applications.

Generally, the Committees in rent and repairing standard cases involve two members, a surveyor member and a legal chairperson, whilst the housing members, sitting alone, consider right of entry applications. Members are selected for ho hp Committees depending on the nature of the dispute and any specialism required to determine the issue.

During this year, considerable work was involved in preparing for further changes which would impact on the panels in late 2016 and 2017. These changes involved the creation of a Housing and Property Chamber which will sit within the First-tier Tribunal for Scotland following the passage of the Tribunals (Scotland) Act 2014. The prhp and ho hp transferred into the Chamber on 1 December 2016. Further new jurisdictions will be added in 2017 and 2018 following the implementation of Parts 3 and 4 of the Housing (Scotland) Act 2014. Firstly, from 1 December 2017, the sheriffs' jurisdiction for civil cases relating to the private rented sector in Scotland will be transferred to the First-tier Tribunal. A new tenancy regime will also be introduced on the same date, and the dispute resolution mechanism will be by application to the First-tier Tribunal.

Secondly, from 31 January 2018, the registration of letting agents will be compulsory and compliance with a statutory code of practice for all registered letting agents will be mandatory. There will be a means of redress for tenants and landlords to the First-tier Tribunal in relation to letting agent code of practice disputes; and a route of appeal for letting agents on decisions by Scottish Ministers in relation to entry to, or removal from, the letting agent register.

With the changes implemented in 2015 and late 2016, and the forthcoming changes, it has been a busy year for everyone connected with the Panels. However, we are aware that despite ongoing changes, our focus must remain the delivery of a high quality and user centred service for judicial decision making within the housing/property jurisdictions.

Some notable trends throughout the period of this report are as follows:

- Rejected prhp applications were down by 50%. The reasons for this are unclear.
- There were lower numbers of complied prhp decisions in repairs cases, resulting in more Repairing Standard Enforcement Orders (RSEOs) issued than in the previous year. This may be at least partly due to the introduction of third party applications.
- There was a notable increase in the number of hohp applications received. During the 11-month period covered by this report, there were 9% more applications than were received during the whole of 2015.
- Despite this, the overall number of hohp complaints considered by Committees was 45% lower than 2015. There is a number of possible reasons for this as the report details.
- There was also a significant increase in the decisions where it was held that the property factor had complied with its obligations. In more than half of all applications considered by a Committee, it was found that the property factor had neither failed to comply with the Code of Conduct nor failed to carry out its property factor's duties. This shows a marked change from the previous year, when a decision that the property factor had complied with its obligations was issued in only a quarter of cases.

Finally, I would like to recognise the enthusiasm and talents of the Panels' judicial membership and of the administrative staff assigned to the Panels by the Scottish Courts and Tribunals Service (SCTS). I thank them for their considerable commitment and support throughout the year in delivery of a user focussed and professional service.



Mrs Aileen Devanny
President

1. The Private Rented Housing Panel

The Private Rented Housing Panel (prhp) is a Scottish Tribunal established by the Housing (Scotland) Act 2006. The objective of prhp is to resolve disputes between tenants and landlords in the private rented housing sector by the use of informal and flexible procedures.

The Panel considers issues relating to:

1. determining applications from tenants, third parties and landlords concerning the landlord's duty to meet the repairing standard under the Housing (Scotland) Act 2006.
2. considering objections to Fair Rents fixed by Rent Officers for regulated tenancies under the Rent (Scotland) Act 1984
3. determining market rents for short assured tenancies and terms and/or market rents for statutory assured tenancies under the Housing (Scotland) Act 1988

Repairing Standard Cases

The Housing (Scotland) Act 2006 introduced a mechanism for tenants in the private rented sector to seek to compel their landlord to carry out necessary repairs to ensure that the property meets the "repairing standard". The Act imposes a duty upon a landlord to ensure that a house meets that standard at the start of the tenancy and at all times during the tenancy.

The repairing standard is set out in section 13 of the 2006 Act. A house meets the repairing standard if -

- a. the house is wind and water tight and in all other respects reasonably fit for human habitation;
- b. the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- c. the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- d. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- e. any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- f. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

- g. the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health¹

The repairing standard applies to most tenancies in the private rented sector. An application can only be accepted from a current tenant of a property and from 1 December 2015 (on a phased basis) from a Scottish Local Authority.

Applications by tenants under the 2006 Act have become the primary area of work for the prhp, and the volume of applications has been increasing in recent years.

New statutory guidance relating to electrical installations and carbon monoxide detectors was introduced on 1 December 2015. These changes place stricter criteria on private landlords to meet electrical safety standards and add a requirement for suitable carbon monoxide detection. This is in addition to the existing statutory guidance on satisfactory provision for detecting and giving warning of fires. Links to the statutory guidance referred to in this paragraph are available on the First-tier Tribunal for Scotland (Housing and Property Chamber) website at: <https://www.housingandpropertychamber.scot/>

Third party applications

While most repairing standard applications continue to be made by tenants, changes made by the Housing (Scotland) Act 2014 amended the Repairing Standard legislation to allow a third party (specifically the local authority) to make applications in the same way as the tenant, from 1 December 2015.

A phased approach was taken to the implementation of third-party applications. The commencement dates and which local authorities belonged to each phase were as follows:

- Phase 1 - commenced from 1 December 2015
- Phase 2 - commenced from 1 April 2016
- Phase 3 - commenced from 1 June 2016

Phase 1: Glasgow City; Dundee City; Dumfries and Galloway (3 authorities)

Phase 2: City of Edinburgh; Aberdeen City; Renfrewshire; Highland; North Lanarkshire; North Ayrshire; Aberdeenshire; West Lothian; East Dunbartonshire; Comhairle nan Eilean Siar; East Ayrshire; East Lothian; Moray; Orkney Islands; Shetland Islands. (15 authorities)

Phase 3 : Fife; South Lanarkshire; East Renfrewshire; Scottish Borders; Stirling; Angus; Argyll and Bute; South Ayrshire; Midlothian; Perth and Kinross; Clackmannanshire; Falkirk; Inverclyde; West Dunbartonshire. (14 authorities)

¹ Since 1 December 2015

Guidance on the third-party procedure is available on the Housing and Property Chamber website at: <https://www.housingandpropertychamber.scot/>

Right of entry applications

The Private Rented Housing (Scotland) Act 2011 made a further amendment to the Housing (Scotland) Act 2006 from 1 December 2015. This allows a private landlord to apply to prhp for assistance in exercising their right of entry to tenanted property to view the state and condition of the property and/or to carry out works to meet the requirements of the 2006 Act. Once an application for right of entry is received it is allocated to one member of the panel. This is usually a housing member.

Guidance on right of entry applications is available on the Housing and Property Chamber website at: <https://www.housingandpropertychamber.scot/>

Rent Assessment Cases

The prhp has jurisdiction in rent assessment cases under the Rent (Scotland) Act 1984 (the “1984 Act”) and the Housing (Scotland) Act 1988 (the “1988 Act”).

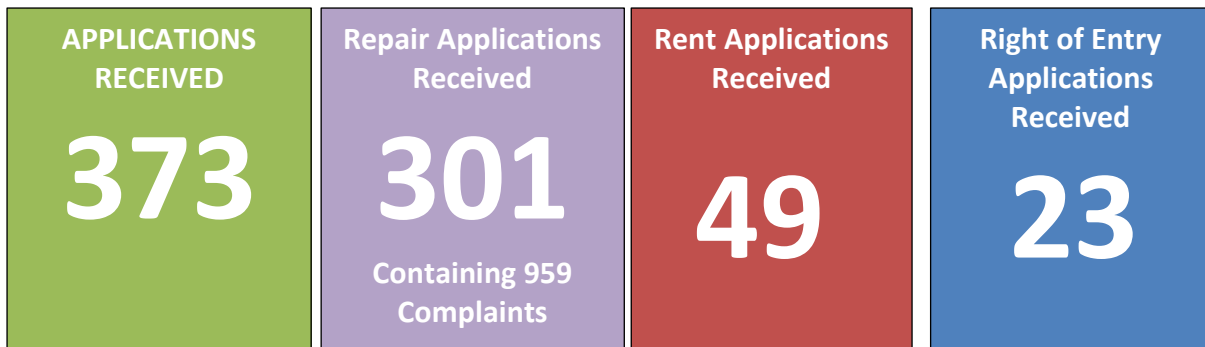
Under the 1984 Act, the Panel considers appeals by landlords or tenants against rents registered by Rent Officers in relation to regulated tenancies, and determine fair rents for properties in accordance with the provisions of that Act.

Under the 1988 Act, the Panel considers, in relation to assured and short assured tenancies:-

- (a) Appeals by tenants against the level of rents set by landlords and to decide a market rent for such properties in accordance with that Act, and
- (b) Appeals by landlords or tenants where the other party has proposed a review of the terms of the tenancy.

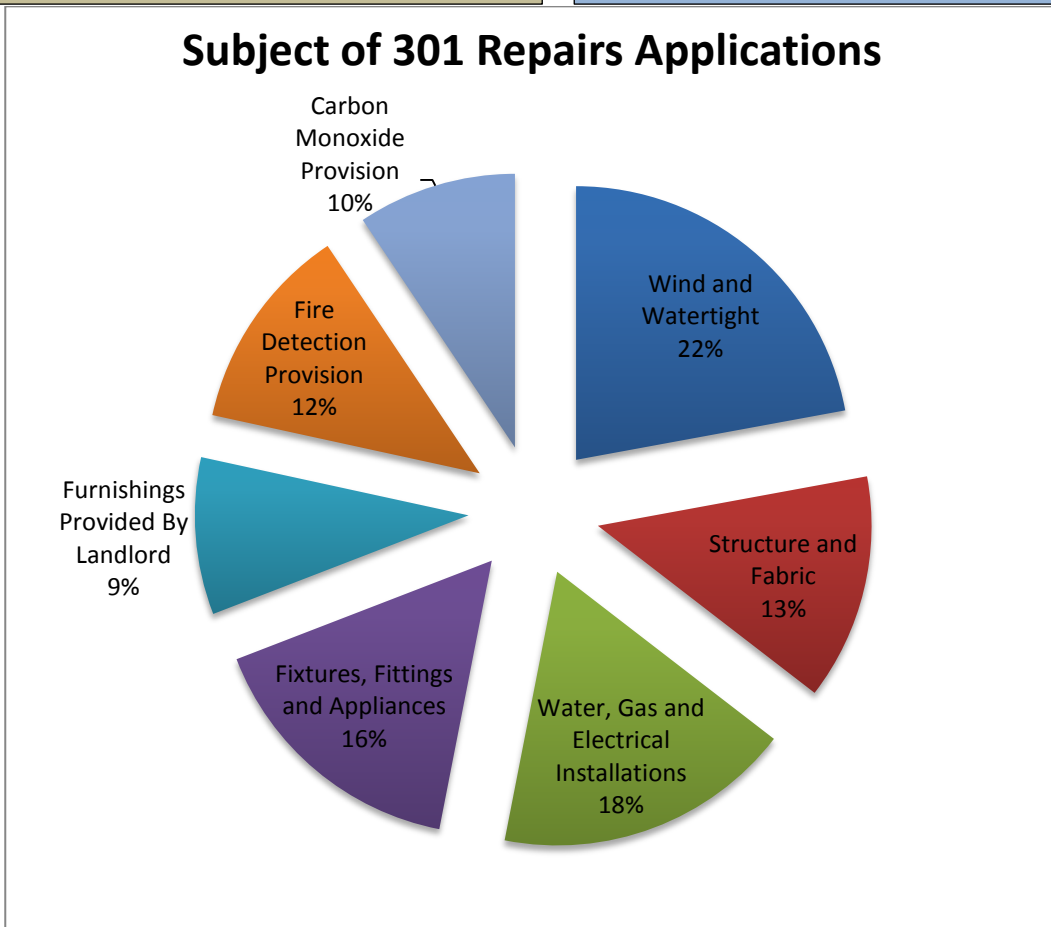
Full details about the new Housing and Property Chamber and how it works can be found on the website at: <https://www.housingandpropertychamber.scot/>

2. PRHP Key Statistics²



74 from Glasgow City area

47 from City of Edinburgh area



Committee Repairs Decisions Issued

240

Complied Decisions

52

RSEO issued

180

² Parts of proceedings can occur over 2 calendar years, e.g. hearing in 2015 with a decision issued early 2016 or a hearing prior to the end of November 2016 with decision issued in December 2016 or early 2017. We have recorded in this section only events occurring during 1 January to 30 November 2016.

Background

The private rented sector in Scotland has expanded significantly in recent years. In 1999, only 5% of all homes were privately rented. By 2016, 15% of the housing stock in Scotland was within the sector, an estimated increase of 250,000 households. In 2016, 67% of private rented properties were flats, and 41% of adults living in private rented properties have been living there for less than a year. A total of 46% of private rented properties were located in large urban areas, with 87% overall located in urban areas, including small towns.³

The majority of landlords in the private rented sector in Scotland own a small number of properties. In 2009, 84% of privately rented dwellings were owned by 'individuals, a couple or a family', with 14% being 'owned by a company, partnership or property trust', and just 2% owned by an institution. Around 70% of landlords own one property, and the vast majority (95%) own between 1 and 5 properties. However, the 5% of landlords that own more than five properties account for around 40% of the sector. Many landlords, in particular those entering the sector in recent years, may be letting a property they have inherited or have been unable to sell. There are also a significant number of 'buy-to-let' landlords within the sector.⁴

Applications received during the period 1 January- 30 November 2016

A total of 373 applications were received during the eleven-month period covered by this report. This represents an increase on the previous year, when a total of 355 applications were received during the entire year.

While the number of repairs applications received was slightly down on the previous year, 15% of these were third party applications, which were introduced on 1 December 2015. The number of third party applications was less than projected at the planning stage but this may reflect a slow take up of this procedure by local authorities. In addition, some authorities assist tenants to initiate applications rather than bring third party applications. There was also a considerable increase in the number of rent applications, which were up 48% on the previous year. The other notable change from the previous year was a significant increase in the number of Right of Entry applications received - 23 were received, compared to 3 in the previous year. This is not surprising, however, as these applications were only introduced on 1 December 2015. However, the applications are below the projected numbers and a possible reason for this may be that many landlords and letting agents are unaware of this procedure.

³ Scottish Government (2017) Scotland's People Annual Report: Results from the 2016 Scottish Household Survey
<http://www.gov.scot/Publications/2017/09/9979>

⁴ Source; Scottish Government (2013) A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland: <http://www.scotland.gov.uk/Publications/2013/05/5877/4>

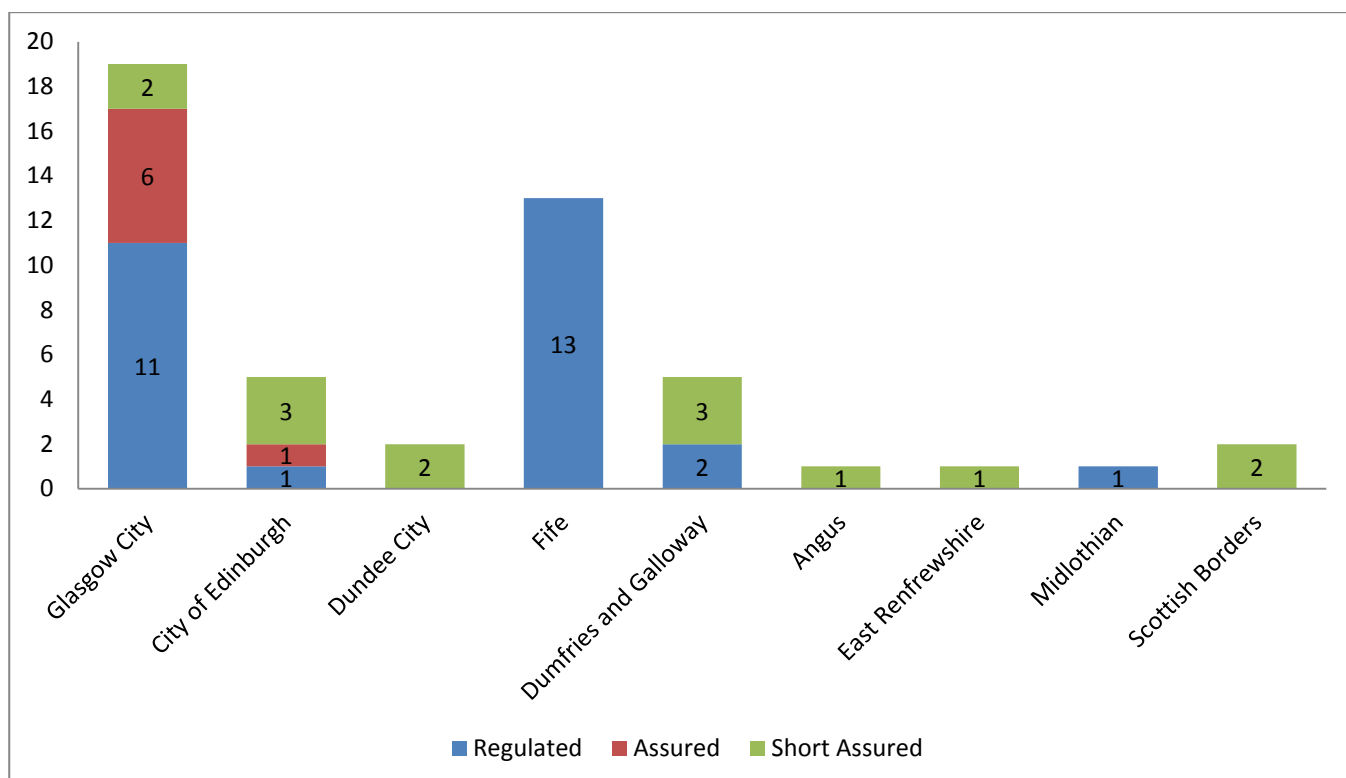
The numbers of applications received in each category are shown in the table below.

Application Type	Received
Rent (Assured)	7
Rent (Regulated)	28
Rent (Short Assured)	14
Repairs (Tenant)	255
Repairs (Third Party)	46
Right of Entry	23
TOTAL	373

Rent applications

A total of 49 rent assessment applications were received during the period covered by this report. Of these, 28 related to regulated tenancies, 14 concerned short assured tenancies, and 7 concerned assured tenancies. While there was a significant increase in the number of applications received when compared with the previous year, this was almost entirely due to 13 applications received from Fife in respect of regulated tenancies involving the same landlord. These were all dealt with together by the same Committee.

The applications received came from across 9 local authority areas, with the highest numbers coming from Glasgow and Fife.



Repairing standard applications

301 repairing standard applications were received during the period of the report. Many of these applications contained complaints about outstanding repairs falling under more than one ground. A total of 959 repair complaints were included in the 301 applications. The numbers of complaints under each ground are shown below.

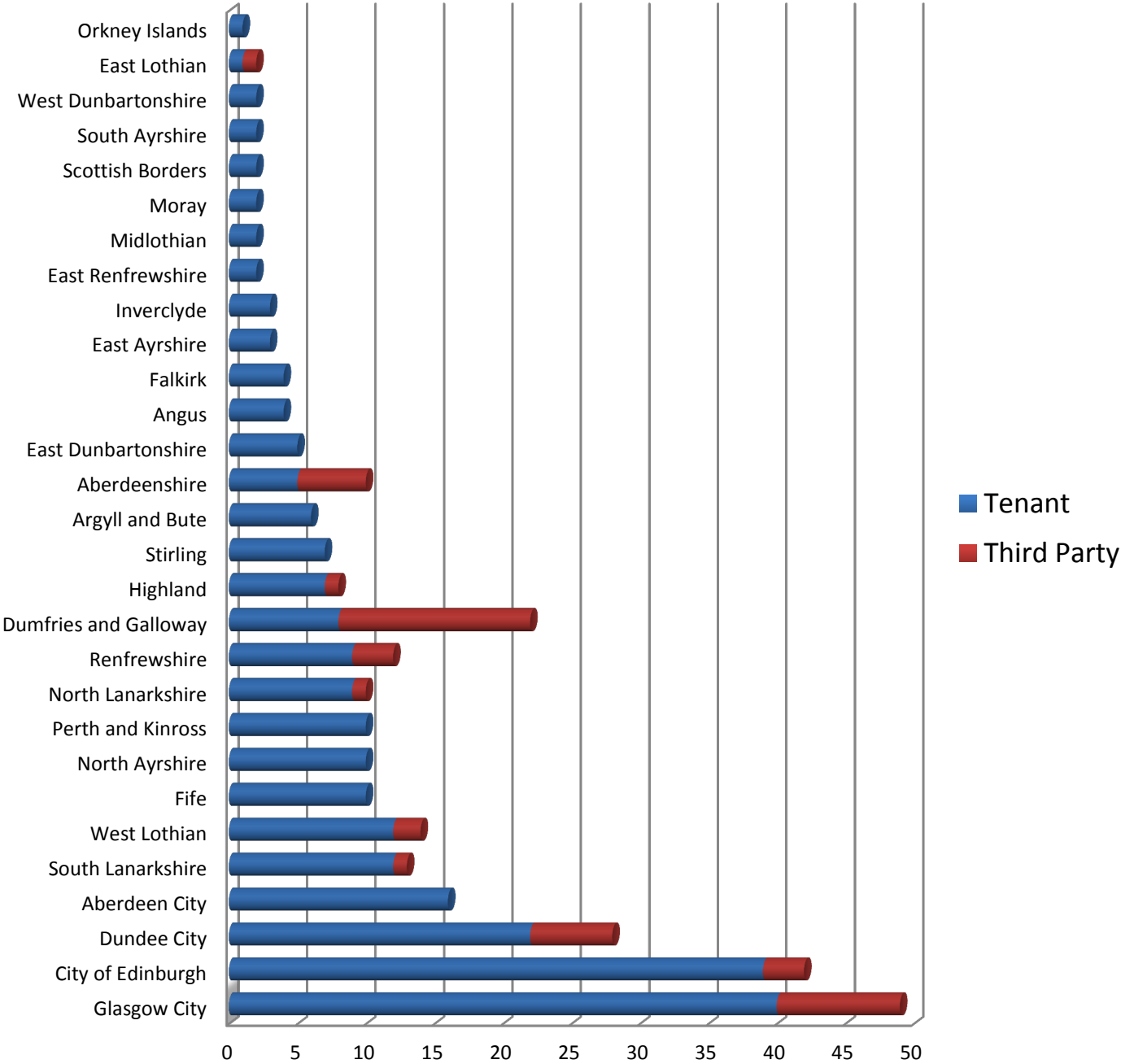
Repairing Standard	Tenant	Third Party	Number	As % of Applications received in Jan- Nov 2016
Wind and Watertight	181	31	212	70
Structure and Fabric	104	24	128	43
Water, Gas and Electrical Installations	135	34	169	56
Fixtures, Fittings and Appliances	129	25	154	51
Furnishings Provided By Landlord	67	22	89	30
Fire Detection Provision	81	36	117	39
Carbon Monoxide Provision	70	20	90	30

Applications were received from across Scotland during the period 1 January - 30 November 2016, with at least one application from 29 of the 32 Scottish local authority areas. While the majority of applications came from urban areas with a high population density, a considerable number came from rural areas of Scotland.

A total of 46 third-party applications were received during the period covered by this report, representing around 15% of all repairing standard applications. Applications were received from only 11 local authorities, with the highest numbers coming from Dumfries and Galloway (14 applications), followed by Glasgow (9) and Dundee (6) city councils. It should be noted, however, that these were the 3 authorities which were included in phase 1 of the phased introduction, from 1 December 2015. Third-party applications were also received from 8 other local authorities, all but one of which were part of phase 2, which commenced on 1 April 2016.

As the vast majority of applications which now come before the prhp are repairing standard applications rather than rent assessment cases, the discussion within this chapter relates primarily to repairing standard cases.

Repairs Applications By Local Authority



Rejected Applications

A total of 32 applications were rejected by the Panel President before being referred to a Committee.⁵ A breakdown of the reasons why these applications were rejected can be found in the table below.

Reasons for Rejection	
Frivolous or vexatious application	3
Invalid application	6
No jurisdiction	1
Dispute resolved	22
TOTAL	32

Mediations

In 2007, prhp became the first tribunal body in Scotland to introduce an in-house mediation service as an alternative form of resolving disputes. The take-up of mediation to date has, however, been very disappointing. There are a number of possible reasons for this, including the termination of tenancies before the application progresses, which is fairly common. This invalidates any attempt to resolve the dispute by agreement, as there are no longer two parties involved. Even where there has been a successful mediation, the tenant often leaves before the agreement has been implemented, which makes it difficult to find out whether the landlord has carried out the actions set out in the mediation agreement.

In two separate cases, mediation was offered and scheduled but never took place as the tenant vacated the property. Both cases were referred to a Committee for determination.

Two agreements were reached at mediation, neither of which was complied with and the cases were referred to a Committee for determination.

In one case, mediation was arranged but the tenant withdrew and advised that they would be vacating the property. The case was closed on the basis of their withdrawal.

⁵ Note: all but one of the rejected applications was repairs applications. One rent application was rejected as invalid.

Applications withdrawn by parties

In repairs cases, where 1) the tenant or third-party applicant withdraws their application or 2) in tenant applications, the tenancy is terminated (in which case, the application is deemed to have been withdrawn) before the application is referred to a Committee, the Panel President can decide whether to abandon the application or to continue to determine it. Where the withdrawal or termination of tenancy occurs after the application has been referred to a Committee, the Committee can decide whether to abandon or continue to determine the application. Before making such a decision, the President or the Committee will look at all the circumstances of the case, and in particular whether the repairs alleged in the application may give rise to health and safety issues for future occupants.

A total of 103 repairs applications were withdrawn by the third party applicant or a tenant (including those where the application was deemed to be withdrawn because the tenant had moved out from the property).⁶ Of these applications, 17 were abandoned before referral stage, often because the repairs had been carried out. Of the remainder, 60 were continued by the President/or a Committee, and 26 were abandoned.

A total of 9 rent assessment applications and 16 right of entry applications were withdrawn by the applicant.

Committee decisions⁷

Once an application has been accepted by the Panel President, it is referred to a Private Rented Housing Committee, which comprises a legal chairperson and a surveyor member. The members of the Committee are drawn from the Panel's judicial membership.

Before making a decision on a repairing standard application, the Committee will usually inspect the house concerned. Following the inspection, a hearing usually takes place in a nearby venue, and a written decision is later issued by the Committee. If the Committee decides that the property meets the Repairing Standard, it issues a 'complied' decision. If it decides the landlord has failed to comply with the repairing standard duty, the Committee will issue a Repairing Standard Enforcement Order (RSEO). This Order specifies the works which require to be carried out at the house and a time limit for completion of these works.

A total of 240 repairs decisions were issued by Committees during the period covered by this report. 42 rent assessment decisions were also issued - a rent was determined in 38 of these cases, and no rent was determined in the remaining cases.

⁶ Note: of the 103 applications withdrawn, 98 were withdrawn (or deemed withdrawn) by the tenant and 5 were withdrawn by a third-party applicant

⁷ Note: parts of the proceedings can occur over 2 calendar years, e.g. a hearing in 2015, with a decision issued in early 2016, or a hearing prior to the end of November 2016, with a decision issued in December 2016 or early 2017. We have recorded in this section only events occurring during 1 January- 30 November 2016.

Repairs Committee Outcomes			
Decision	Tenant	Third Party	Total
RSEO issued as house did not meet standard	158	22	180
Complied with standard	49	3	52
Failure to Comply (Landlord's lack of rights)	1	0	1
Non-Jurisdiction	0	1	1
Application abandoned at hearing	6	0	6

Compliance by landlords with RSEOs

Once the time has passed for completing the works required by the RSEO, the property is re-inspected by the surveyor member of the Committee, and if the works are completed satisfactorily, a Completion Certificate is issued.

If the works have not been completed to a satisfactory standard, the Committee can issue a Failure to Comply Notice. The Committee can also decide to grant a Rent Relief Order, reducing the rent payable by the tenant by up to 90%.

In cases where compliance with the RSEO was assessed during the period covered by this report, the decisions issued by Committees are shown below.

Decision	Tenant	Third Party	Total
Certificate of Completion	105	2	107
Failure to Comply With RSEO	25	0	25
Failure to Comply (Certificate of Completion Refusal)	8	0	8
Failure to Comply (with Rent Relief Order)	18	1	19
Revocation of RSEO (no longer deemed necessary)	11	0	11
Variation of RSEO (e.g. extension of time limit)	52	0	52

Appeals

Parties have a right to appeal to a court against a decision made by a Private Rented Housing Committee. In relation to repairing standard cases under the 2006 Act, there is a right of appeal to the Sheriff Court. In relation to rent assessment cases under the 1984 Act and the 1988 Act, parties have the right of appeal to the Court of Session.

Three appeals were lodged in the sheriff court by tenants against certificate of completion decisions. Of these, two were dismissed, and one was sisted. One appeal was lodged by a landlord against an RSEO, and was dismissed in court.

Tenancy management complaints

Under section 29 of the Housing (Scotland) Act 2006, the prhp must record and report the frequency with which applications to the Panel include complaints about the landlord's management of the tenancy. However, the prhp has no power to deal with complaints about the landlord's management of the tenancy. This is made clear in the information leaflets which give details of the services provided by the Panel.

There is a tenancy management complaint form on the prhp website, but, as in previous years, there were no tenancy management complaints recorded during the period of this report. This should not be regarded as evidence that problems relating to the landlord's management of the tenancy do not exist. It is clear from the terms of some of the applications received that some tenants have experienced problems with letting agencies acting on behalf of landlords, even if they have not specifically reported this as a problem.

The duty to report on tenancy management complaints will be abolished as at 1 December 2016, when the prhp ceases to exist. However, forthcoming changes introduced by the Housing (Scotland) Act 2014 are likely to have a major impact as regards complaints about the management of tenancies. From 31 January 2018, the Act will introduce a compulsory register and a code of practice for letting agents in Scotland, and will allow both tenants and landlords to apply to the new First-tier Tribunal (Housing and Property Chamber) in respect of alleged failure to comply with the code of practice.

3. The Homeowner Housing Panel

The Homeowner Housing Panel (hohp) is a Scottish Tribunal set up under the Property Factors (Scotland) Act 2011 (“the 2011 Act”). The statutory Code of Conduct for Property Factors sets minimum standards of practice expected of registered property factors. A Property Factor Register was set up by Scottish Ministers to register all property factors operating in Scotland.

The hohp offers dispute resolution for disputes occurring between homeowners and their property factors. A homeowner can bring an application to the hohp under two possible grounds, as set out in the 2011 Act. These are:

1. a complaint that the property factor has failed to carry out its duties as a property factor in relation to the management or maintenance of land
2. a complaint that the property factor has failed to comply with the statutory code of conduct for property factors.

Where appropriate, an application can be made under both grounds at the same time.

A ‘property factor’s duties’ are defined in the 2011 Act as:

- (a) duties in relation to the management of the common parts of land owned by the homeowner, or
- (b) duties in relation to the management or maintenance of land –
 - (i) adjoining or neighbouring residential property owned by the homeowner, and
 - (ii) available for use by the homeowner

What a property factor’s duties include is therefore a matter of interpretation in each case. This might include duties contained in: the title deeds for the property; the property factor’s written statement of services; or any other relevant contractual documents. It might also include duties under the common law, including the law of agency.

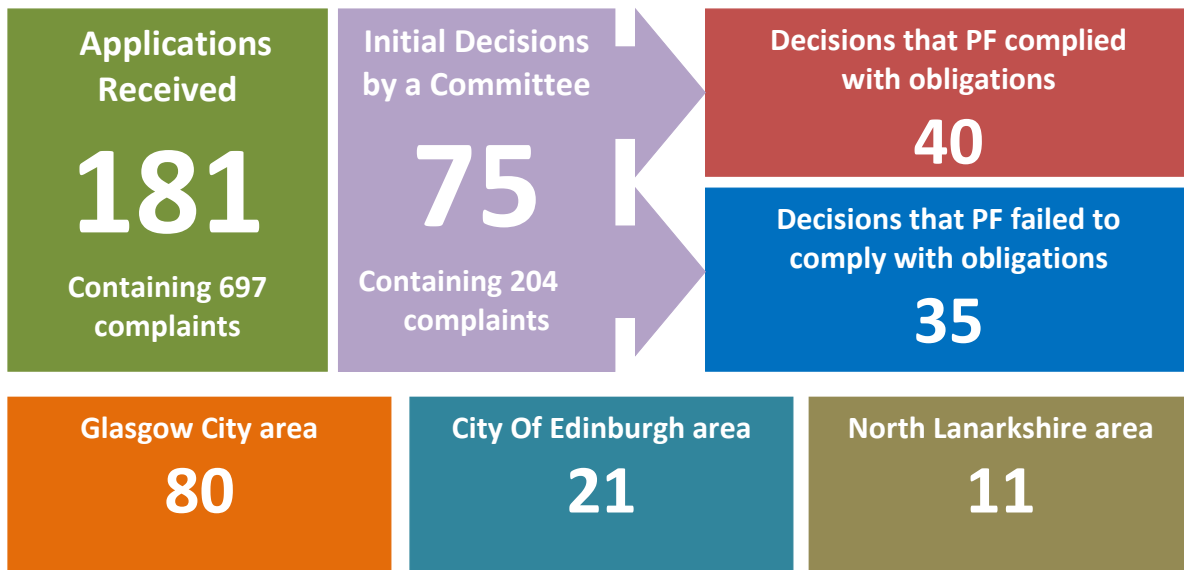
The objective of the hohp is to resolve disputes between homeowners and property factors by providing informal and flexible proceedings. In accordance with its overriding objective⁸, the Panel seeks to deal with proceedings justly in a way that is proportionate to the complexity of the issues and the parties’ resources.

⁸ Set out in the Homeowner Housing Panel (Applications and Decisions) Regulations 2012

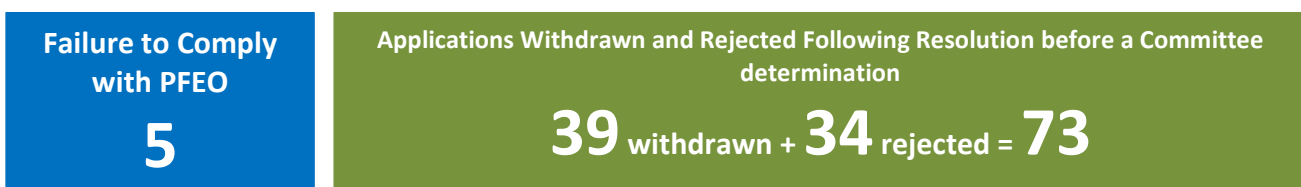
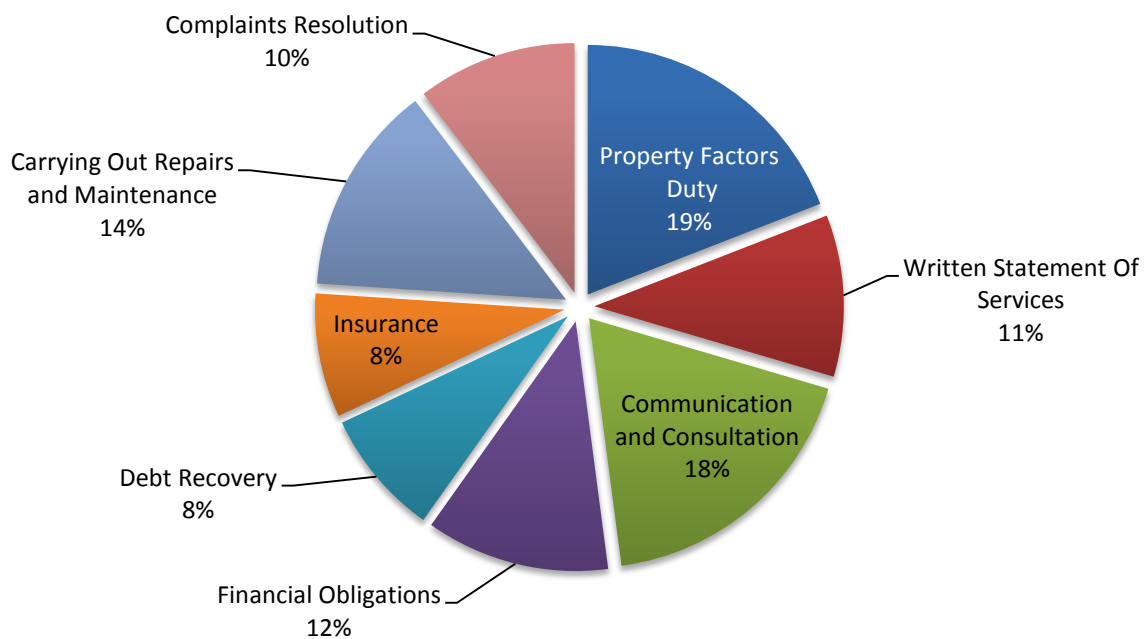
The 2011 Act covers all property factors operating in Scotland. This includes residential property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations. It also includes land owning land management companies – it applies to land which is available for the use of neighbouring or adjoining homeowners, provided that the homeowners are obliged by their title deeds to contribute to the management and maintenance costs of the land.

Full details about the new Housing and Property Chamber and how it works can be found on the website at: <https://www.housingandpropertychamber.scot/>

4.HOHP Key Statistics⁹



Subject of 181 Property Factor Applications



⁹ Note: parts of the proceedings can occur over 2 calendar years – e.g. a hearing in 2015, with a decision issued in early 2016, or a hearing in 2016, with a decision issued in early 2017. We have recorded in this section only events occurring during the period from 1 January- 30 November 2016.

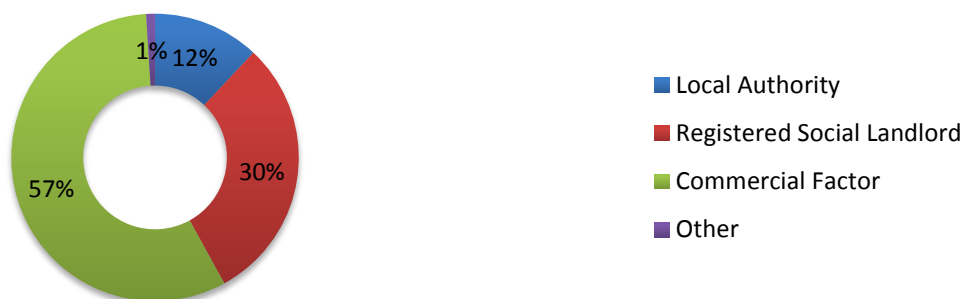
As at 31 March 2016, there were 370 registered property factors operating in Scotland.¹⁰ This represents a slight decrease on the previous year, when this figure was 377. During 2015/16, a total of 38 property factors were removed from the register, while 31 new factors were registered. The chart below shows the proportion of registered property factors in each category.¹¹

Registered Factors Organisations - Types



There were a total of 611,281¹² properties searchable on the register of property factors for the year ending 31 March 2016. Of these properties, 57% were factored by commercial property factors,¹³ 30% by registered social landlords¹⁴ and 12% by local authorities.¹⁵

Portfolio Size By Factor Type



Close to half (44%) of all property factors manage fewer than 100 properties, with the two largest property factors managing more than 40,000 properties.

¹⁰ All figures provided by the Scottish Government Property Factor Registration Team

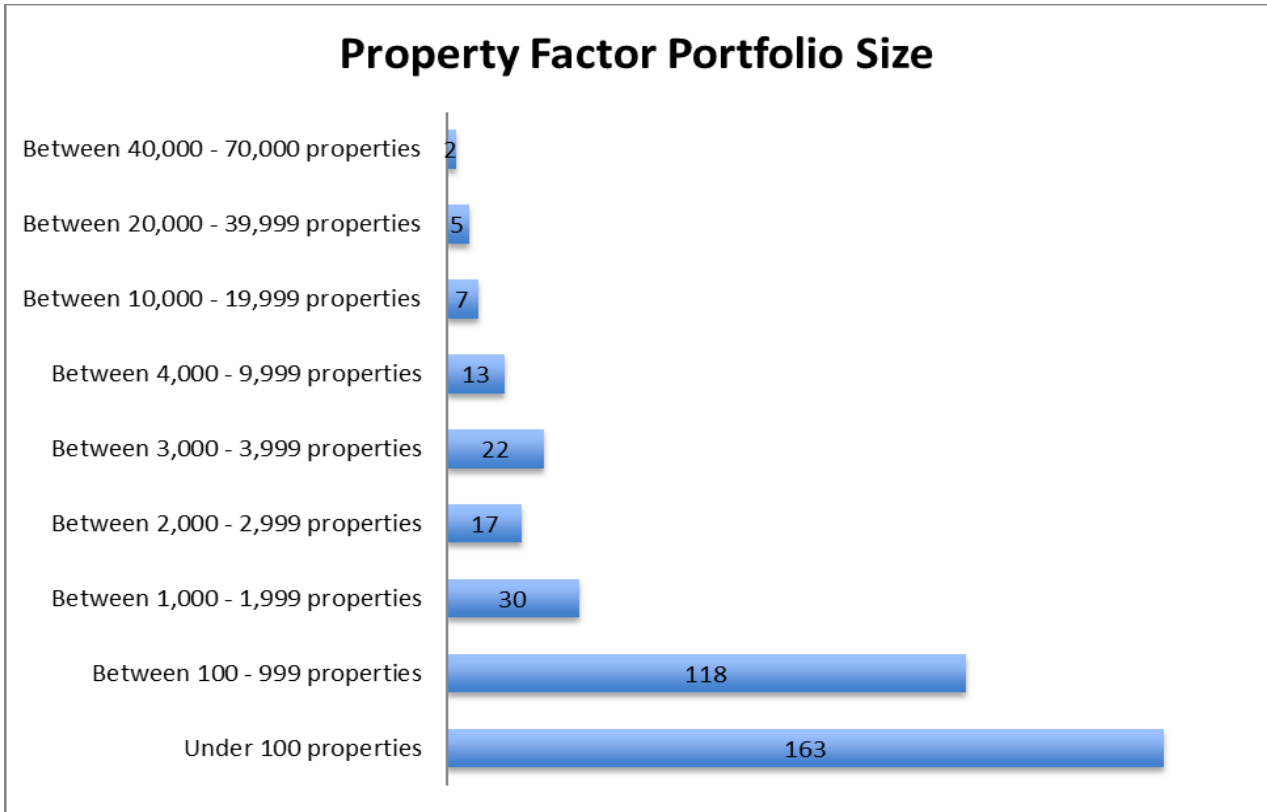
¹¹ Note: 'Commercial factors' include those property factors classifying themselves as either a limited company, unlimited company, a partnership (including limited liability).

¹² This includes information on all properties in mixed tenure blocks as is required by the Property Factors (Scotland) Act 2011.

¹³ This figure includes those property factors classifying themselves as either a limited company, unlimited company, a partnership (including limited liability partnerships) or a sole trader

¹⁴ This figure includes subsidiaries owned by registered social landlords

¹⁵ Around 1% of properties were factored by a property factor registered as 'other', which is an owners and residents' association.

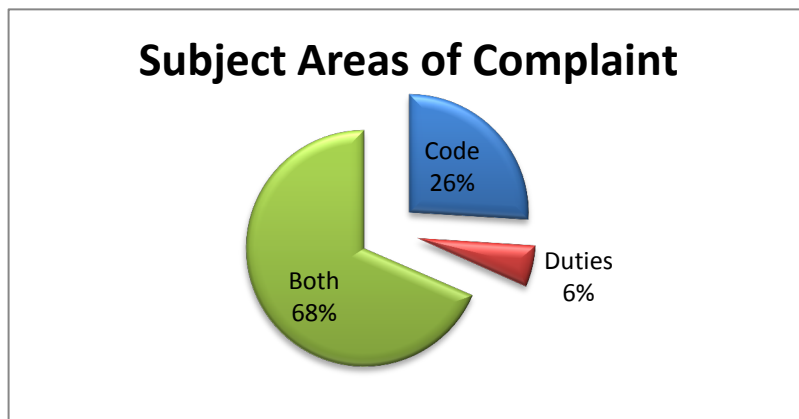


Applications received between 1 January and 30 November 2016

A total of 181 applications were received by ho hp during the period covered by this report, an increase of 9% on the number received during the whole of 2015.

Nature of the applications received

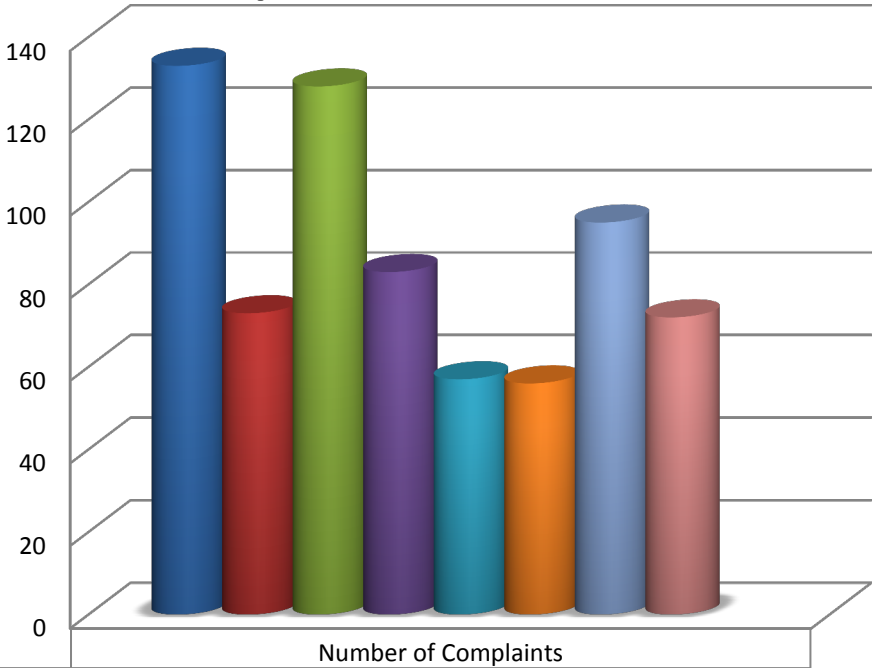
Of the 181 applications received, 68% included complaints about both a failure to comply with the Code of Conduct and a failure to carry out the property factor's duties; 26% related to the Code of Conduct only; and 6% were about duties only. The proportions under each subject area of complaint were similar to those for 2015.



Overall therefore, 74% concerned a failure to carry out the property factor’s duties. This was the most common category of complaint.

As in 2015, the next most common category of complaint was Section 2 of the Code of Conduct for Property Factors relating to Communication and Consultation, which was present in 71% of applications. The following chart relates to the 181 applications received and shows the breakdown by number of applications for each category of complaint. While the proportion of complaints including most of these categories was broadly similar to the previous year, it is notable that the percentage of complaints about section 7 of the Code of Conduct – Complaints Resolution fell from 50% of all applications to 40%.

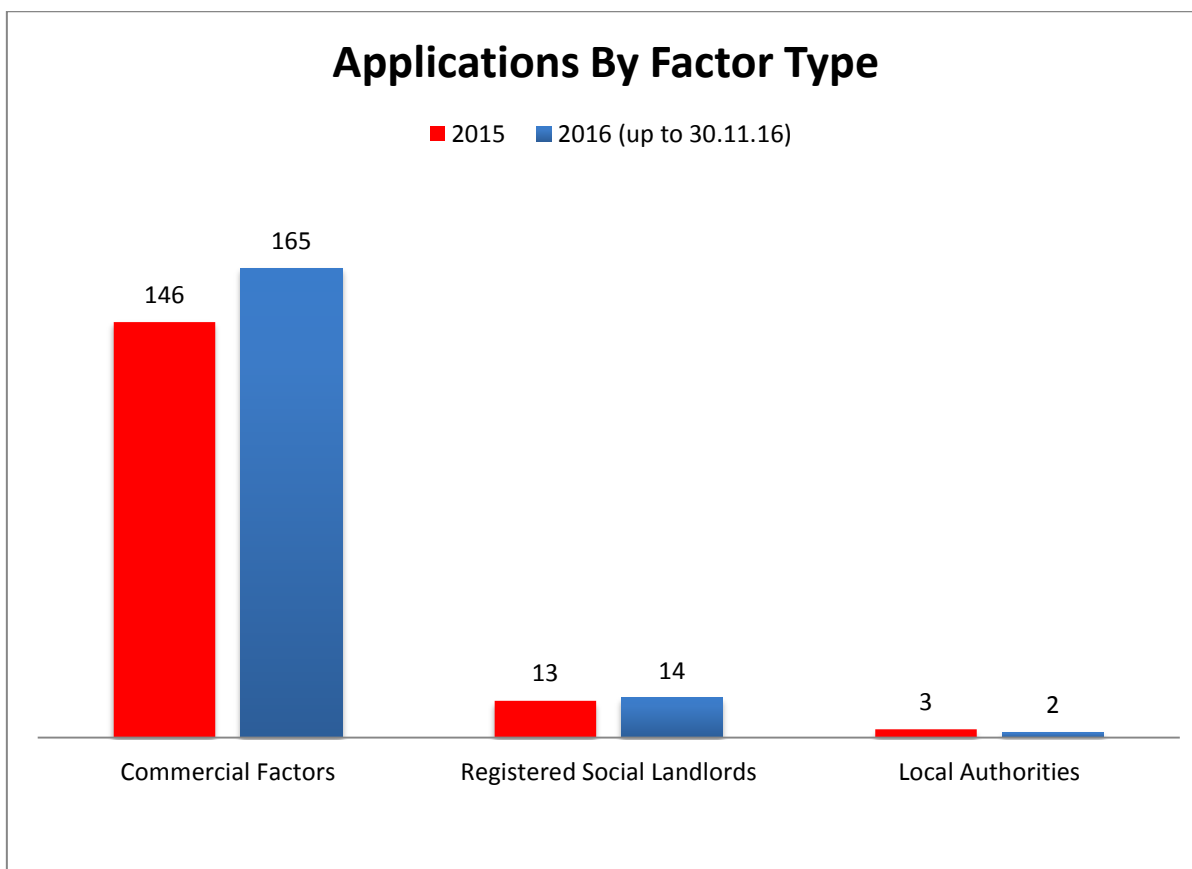
Subject of 181 Applications by number of complaints



	Number of Complaints
■ Property Factors Duty	133
■ Written Statement Of Services	73
■ Communication and Consultation	128
■ Financial Obligations	83
■ Debt Recovery	57
■ Insurance	56
■ Carrying Out Repairs and Maintenance	95
■ Complaints Resolution	72
■ Total	697

Applications by property factor type

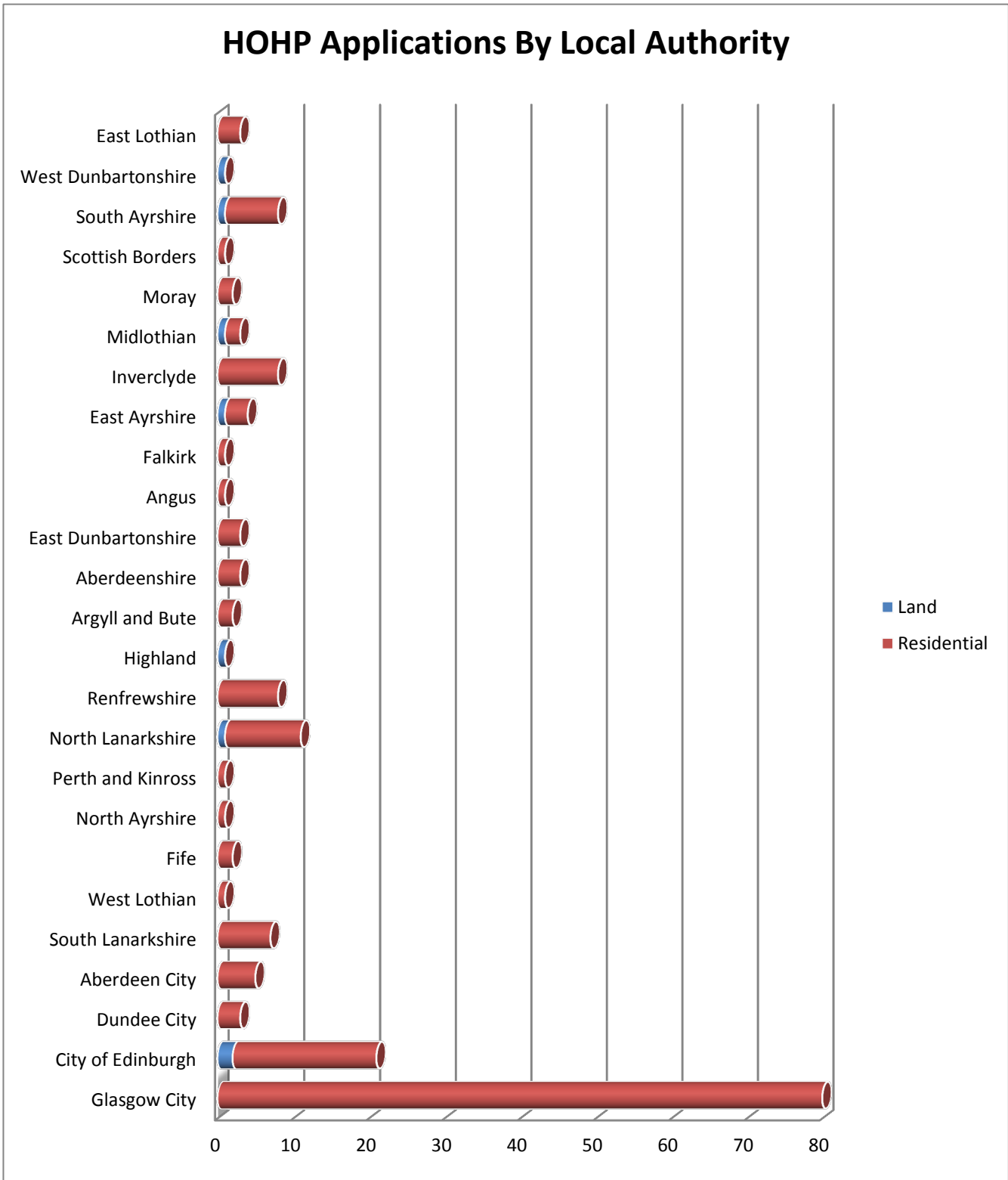
The number and type of property factors which were the subject of applications is set out in the chart below, which shows comparison figures for the previous year.



The table shows that the vast majority (91%) of applications received concerned commercial property factors, as in 2015. The figures show that the increase in applications compared to 2015 is almost entirely due to an increase in applications relating to commercial factors.

Where applications came from

Applications were received from across Scotland. At least one application was received from 25 of the 32 Scottish local authority areas.



Rejected applications

Of the 147 applications closed during the period covered by this report, a total of 39 were rejected by the Panel President before being referred to a Committee.

A breakdown of the reasons why these applications were rejected can be found in the table below.

Reasons for Rejection	
(a) that it is a vexatious or frivolous application	3
b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute	2
(c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications	0
(d) that the dispute to which the application relates has been resolved (including 2 applications following evidence of compliance with a mediation agreement)	34
TOTAL	39

Mediations

The Panels have 19 trained mediators amongst their membership, who have all undertaken an accredited mediation course. In February 2014, a mediation service was piloted into the Homeowner Housing Panel's procedure.

Mediation has been more successful in hohp cases than in prhp cases, perhaps because of the nature of the disputes, as well as the ongoing relationship between the parties which allows for monitoring of any agreement. The Panel President has the power to delay referring the case to a Committee where "there is a reasonable prospect of the dispute being resolved by the parties". This might be appropriate if, for example, it seems that there has been a simple misunderstanding which could be resolved. The President may also suggest that the parties try mediation to resolve the dispute. The President can also request further information from the homeowner or the property factor before making a decision.

A total of 10 hohp mediations took place during the period covered by this report. In six of these cases, an agreement was reached and complied with, resulting in the cases being closed. In a further two cases, an agreement was reached but not complied with, resulting in referral to a Committee. In the remaining two cases, no agreement was reached and the application was referred to a Committee for determination.

Applications withdrawn by the homeowner

A total of 44 applications were withdrawn by the homeowner. The reasons why these applications were withdrawn are set out in the table below. As in the previous year, the most common reason was that the dispute had been resolved by the parties.

Reasons for Withdrawal	
Resolved by Parties	39
Process too long/complicated	1
Other reason/No reason given*	4
TOTAL	44

*parties are not required to give reasons for withdrawing their application, and reasons can be diverse so they are grouped together when they don't come under one of the other general categories monitored.

Committee decisions

After an application has been accepted by the President of the Panel, it is referred to a Homeowner Housing Committee for determination. The members of the Committee are drawn from the Panel's membership. There will usually be an oral hearing, although the Committee can decide to determine the case on the basis of the written representations submitted by the parties, if both parties agree to this.

The Committee issues a written decision to the parties soon after the hearing, along with a statement of reasons for the decision.

If the Committee decides that the property factor has neither failed to carry out its factoring duties nor has failed to comply with the Code of Conduct, it issues a complied decision. If it decides, however, that the property factor has failed to carry out its factoring duties or has failed to comply with the Code of Conduct, it will usually issue a Notice of Proposal to make a Property Factor Enforcement Order. This sets out the terms of the Property Factor Enforcement Order (PFEO) which the Committee proposes to make. The notice sets out a timescale within which the parties can make written representations on the terms of the proposed PFEO. Taking into account any written representations received, the Committee will usually issue a PFEO.

The PFEO requires the property factor to carry out actions which the Committee considers necessary and, where appropriate, make such payment to the homeowner as it considers reasonable. It is a criminal offence not to comply with a PFEO without reasonable excuse.

In the period covered by this report, Committees issued 40 complied decisions and upheld all or part of the homeowner's complaints in 35 cases. These figures show that in more than half of all applications, the Committee found that the property factor had neither failed to comply with the Code of Conduct nor failed to carry out its property factor's duties. This shows a change from the previous year, when a complied decision was issued in only a quarter of cases. This may be due to property factors becoming more aware of the requirements upon

them, and improved service delivery standards.

The majority of Committee decisions were reached after an oral hearing, with 2 decisions being made on the basis of written representations.

Decision	Land	Residential	Total
Complied	2	38	40
Failure to Comply (No PFEO issued)	0	3	3
Failure to Comply (No Proposed PFEO issued)	0	4	4
Failure to Comply (PFEO issued)	3	25	28

A breakdown of complaints considered and upheld by Committees is shown in the following table. In most complaint categories, fewer than half of complaints were upheld. The only exception to this was complaints under section 2 of the Code of Conduct (Communication and Consultation), 53% of which were upheld.

Nearly half of complaints under sections 1 (Written Statement of Services), 6 (Carrying out Repairs and Maintenance) and 7 (Complaints Resolution) of the Code of Conduct - 48%, 47% and 45% respectively - were upheld. In all other categories, 40% or less of complaints were upheld. This suggests that overall there were considerably higher rates of compliance than in the previous year.

While more applications were received than in 2015, the overall number of complaints considered was around 45% lower than in that year. This suggests that homeowners are including fewer complaints within each application than in 2015. There are a number of possible reasons for this, including homeowners submitting more focussed applications than previously, and improved service delivery by property factors.

COMPLAINTS CONSIDERED/UPHELD BY COMMITTEES

Property Factor Duties / Code of Conduct		Land	Residential	Total
Property Factor Duties	Considered	1	34	35
	Upheld	0	14	14
Section 1 - Written Statement of Services	Considered	0	21	21
	Upheld	0	10	10
Section 2 - Communication and Consultation	Considered	2	39	41
	Upheld	1	21	22
Section 3 - Financial Obligations	Considered	1	25	26
	Upheld	0	9	9
Section 4 - Debt Recovery	Considered	0	15	15
	Upheld	0	3	3
Section 5 - Insurance	Considered	0	14	14
	Upheld	0	4	4
Section 6 - Carrying Out Repairs and Maintenance	Considered	1	31	32
	Upheld	0	15	15
Section 7 - Complaints Resolution	Considered	1	19	20
	Upheld	1	8	9
Totals	Considered	6	198	204
	Upheld	2	84	86

Compliance with Property Factor Enforcement Orders (PFEOs)

Where a PFEO has been issued, the Committee makes a decision on compliance with the PFEO after the period for compliance stated in the PFEO has expired. If the Committee is satisfied that the PFEO has been complied with, it issues a Certificate of Compliance.

If the Committee decides that the property factor has failed to comply with the PFEO, it issues a Failure to Comply decision. It also advises the Property Factor Registration Team at the Scottish Government of this failure, and refers the matter to the Police/Procurator Fiscal for prosecution, as it is an offence not to comply with a PFEO.

During the period covered by this report, a certificate of compliance was issued by the Committee in 13 cases where a PFEO had been issued. A failure to comply decision was issued in 5 cases.

Decision	Land	Residential	Total
Certificate of Compliance	2	11	13
Failure to Comply with PFEO	0	5	5
Revocation of PFEO	0	1	1
Variation of PFEO	0	5	5

Appeals

Parties have a right to appeal to the sheriff court against a decision made by a Homeowner Housing Committee. During the period covered by this report, six appeals were lodged in respect of HOHP decisions. One of these was an appeal from a homeowner against a complied decision, which was dismissed by the court. Four appeals were lodged by property factors against Property Factor Enforcement Orders. Three of these were dismissed, and one was upheld. One appeal was lodged by a property factor against a decision that there had been a failure to comply with a PFEO. The decision was quashed.

5. Finance

Prhp and ho hp are funded by Scottish Government. This annual report covers the period from 1 January to 30 November 2016, in terms of Section 29(5) of the Housing (Scotland) Act 2006¹⁶ and Section 27 of the Property Factors (Scotland) Act 2011¹⁷. The financial year for the prhp and ho hp, however, like all government sponsored bodies, runs from 1 April until 31 March. Since this annual report straddles two financial years, the accounting figures shown for the period covered by this report include the budgets for both financial years.

Both prhp and ho hp respond to the number of applications received and provide a demanded service. It follows that the number of cases they consider during the year can be variable, and the Panels have little control over service demand.

HPC 16/17 Annual Report Finance Figures

	PRHP						HOHP	
	Repairing Standard & Rent		Third Party Applications		Right of Entry S35		2015/16 £000's	2016/17 £000's
	2015/16 £000's	2016/17 £000's	2015/16 £000's	2016/17 £000's	2015/16 £000's	2016/17 £000's		
Staff Salaries & Expenses	90.3	81.6	199.4	285.3	40.6	82.4	95.1	91.5
Members Expenses (Includes hearing and training fees and expenses)	393.6	396.1	25.6	86.2	14.3	7.6	208.8	238.1
Office Costs (Includes all locally incurred office costs e.g. postage, photocopy costs, hearing venues)	73.9	62.3	158.5	24.0	35.0	5.0	28.3	22.3
TOTAL	557.8	540.0	383.5	395.5	89.9	94.9	332.1	351.8

Following the creation of SCTS on 1 April 2015, a number of office costs were allocated to central departments and no longer incurred by Tribunals. For comparison purposes with 14/15 figures, these costs were included in the 15/16 annual report however these costs have now been excluded from the figures for both 15/16 and 16/17.

¹⁶ Repealed (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016

¹⁷ Repealed (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016