

hohp

Homeowner Housing Panel

**Annual Report
2013**



Laid before the Scottish Parliament by the Scottish Ministers under section 27(3) of The Property Factors (Scotland) Act 2011 December 2014

SG/2014/274



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President's Foreword



I have pleasure in presenting the Annual Report of the Homeowner Housing Panel (hohp) which covers the first complete year of operation of the Panel from 1 January 2013 until 31 December 2013.

Although the Panel came into being on 1 October 2012, it was not until January 2013 that the first Notice of Referral was issued referring an application to a Homeowner Housing Committee for determination. This was because the legislative provisions under which the Panel operate provide that the Code of Conduct applies only to a property factor after the factor's registration, and the majority of property factors were not registered until November and December 2012 and into January 2013. The first hearing took place in April 2013 with the first Committee decision published on the hohp website in May 2013. During 2013, 30 hearings took place and 28 decisions were issued by Committees.

It is difficult to predict in advance the number of applications which will be received in the first year of operation of any new jurisdiction and during 2013 we received 333 applications from homeowners. A considerable number of applications brought to the Panel for determination were complex because of the number of complaints included, because of multiple applications being heard together, because of the nature of the legal issues in dispute, or because of the extent of the paperwork submitted by parties.

Applications received during 2013 show that one of the most common complaints received from homeowners related to poor communication and consultation by property factors, and statistics in this report show that these types of complaint are the ones most frequently upheld by Committees. On occasions homeowners' complaints have been resolved at a hearing by the property factor providing information to the Committee and in doing so the homeowner has a better understanding of the circumstances behind the actions of the property factor and as a consequence the homeowner has withdrawn the complaint. Whilst it is acknowledged that registration and compliance with the statutory Code of Conduct is new for property factors and it will take time for property factors to become familiar with the requirements now placed upon them, nevertheless surprise has been expressed by Committee members that it has taken a formal hearing for the property factor to share the information with the homeowner and early resolution of such complaints would have been possible without the Panel's involvement.

Delays by some property factors in initiating a staged complaint resolution procedure are evident when applications are initially considered by the President and property factors may wish to consider if their approach to complaint handling requires revision in light of the comments contained in this report.

Committees from time to time make observations within their written decisions and it is hoped that these observations and the information contained in this report will provide guidance to property factors and homeowners, resulting in a better understanding of the role and duties of a property factor, and of the rights and obligations of homeowners; in improvements to factoring practices; as well as assisting parties comply with the legislative requirements of the 2011 Act.

We welcome user feedback about our service and suggestions for future improvement. As with any new body it is important to provide information to users to enable them to understand Panel procedures as well as what to expect if the case proceeds to a hearing. This is consistent with the overriding objective of the Panel. However, whilst we try to operate a user focused service, we have experienced an expectation amongst some users that we provide advice on the merits of on going or proposed cases and will meet with parties for that purpose. It has to be remembered that the Homeowner Housing Panel is a Scottish tribunal, and as such it is an impartial judicial decision-making body with a judicial membership which operates within strict legislative provisions and for that reason it is not appropriate for ho hp staff to provide advice to parties, or for meetings to take place with judicial officeholders or Panel staff.

The work of the Panel during 2013 is detailed in this report and reflects our activities during that period. Since this is the first complete year of operation of the ho hp, we have taken the opportunity to explain the Panel processes although, it has to be remembered that as a new jurisdiction procedures may be adjusted in light of experience. The report refers to our aims and focuses on continuous initiatives for improvement. By this approach we hope to create a justice system which is efficient, effective and user focused.

It stands as a huge tribute to the skills and hard work of the Panel's judicial membership and the Panel staff that we have achieved all that we have during this first year of operation. I thank them for their professionalism, commitment and support.



Mrs Aileen Devanny
President



1. The Role of the Panel

Background

The Homeowner Housing Panel (hohp) is a devolved Scottish Tribunal set up under The Property Factors (Scotland) Act 2011 (“the 2011 Act”), which came into force on 1 October 2012.

The 2011 Act made it an offence for a property factor to operate without being registered and introduced a dispute resolution procedure. 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. There is a Scottish Property Factor Registration Team within the Scottish Government, which is responsible for maintaining the Scottish Property Factor Register.

The hohp is an independent and impartial judicial body separate from Scottish Government and the Property Factor Registration Team. The hohp offers dispute resolution for problems occurring between homeowners and their property factors. An application can be made to the hohp where a homeowner believes that their property factor has failed to comply with their factoring duties or the Code of Conduct. 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. The Act covers land owning land management companies as well as commercial property factors – 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.

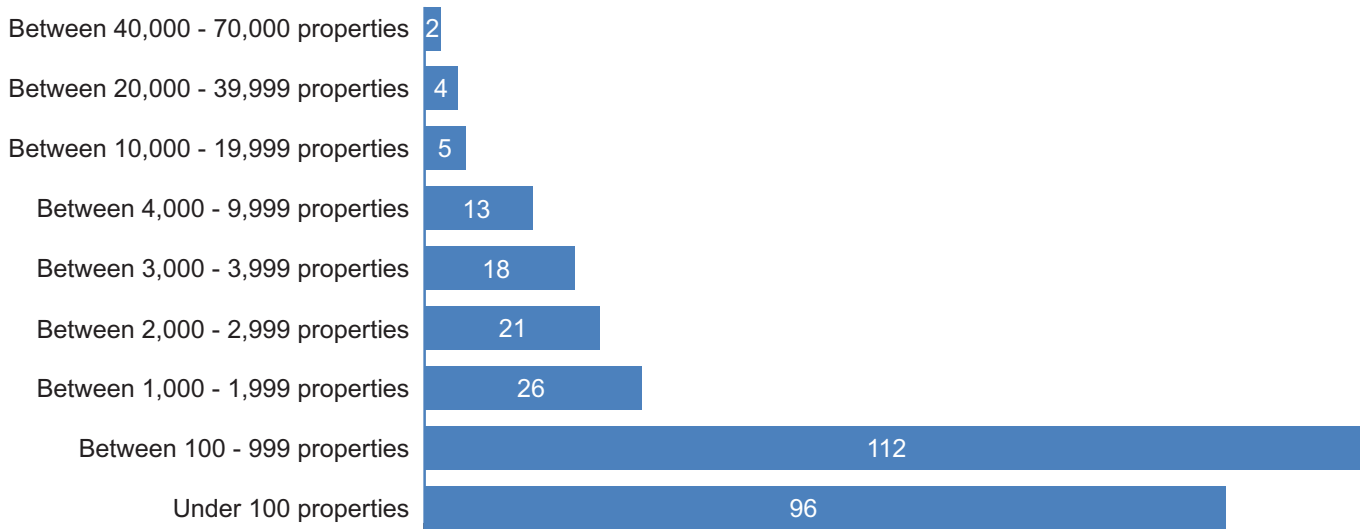
As at 31 March 2013, there were 297 registered property factors operating in Scotland. Of these, 158 were commercial property factors 119 were registered social landlords; and 20 were local authorities.¹

There were a total of 554,966 properties factored by registered property factors for the period ending 31 March 2013.² Some property factors manage less than 100 properties with the largest property factors managing between 40,000 – 70,000 properties. The following diagrams reflect the property portfolio sizes of registered property factors and the organisational structures of registered Property Factors.

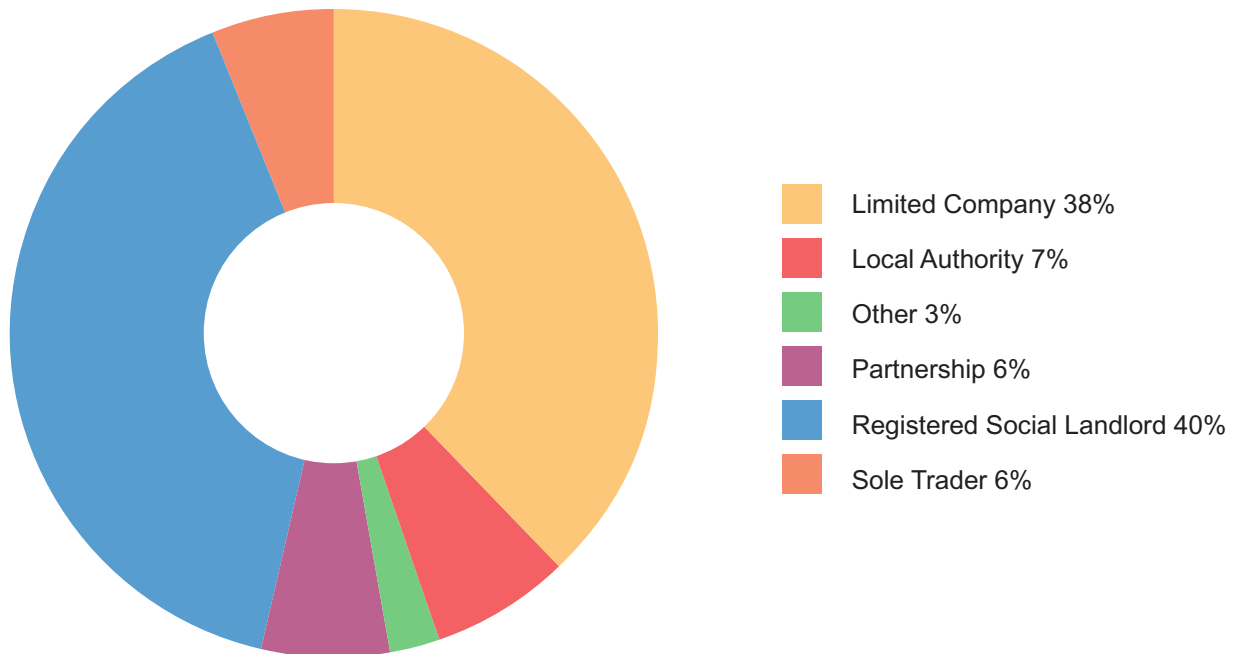
¹ Figures supplied by the Scottish Government Property Factor Registration Team for the period ending 31 March 2013.

² As above

Property Factor Portfolio³



Registered factors Organisations – Types



³ Figures supplied by the Scottish Government Property Factor Registration Team relevant as at 31 March 2013.

How We Work

As a tribunal, the objective of the hohp is to resolve disputes between homeowners and property factors by providing informal and flexible proceedings. In accordance with the overriding objective, as set out in the Homeowner Housing Panel (Applications and Decisions) Regulations 2012 (“the 2012 regulations”), the Panel seeks to deal with proceedings justly in a way that is proportionate to the complexity of the issues and the parties’ resources.

The Panel is based in the Europa Building in Argyle Street, Glasgow, alongside the Private Rented Housing Panel, where there are facilities for office accommodation and hearing suites.

Who We Are – Members and Staff

There are 68 Panel members who are specialists in housing and land management issues. They are appointed by Scottish Ministers, following an open and transparent public appointments process. There is a Panel President, who is a solicitor, and a Vice President, who is a surveyor. Details of the Panel membership can be found at Appendix A.

The Panel members are appointed to both the Homeowner Housing Panel and the Private Rented Housing Panel and sit in both jurisdictions. They are responsible for the judicial functioning of the Panel Committees which are called Homeowner Housing Committees. Applications which proceed for determination will be referred by the President to a Homeowner Housing Committee. Each Committee will comprise at least two members:

1. a legal member who acts as chairperson and who is a solicitor or an advocate
2. a surveyor member (who is a chartered surveyor) and/or a housing member, who has experience of, or practical involvement in housing and land related issues, or two housing members.

A group of members from the Panel have been trained in mediation, and since February 2014 a pilot mediation service has been offered as an alternative means of dispute resolution for cases referred under the 2011 Act. Further information about this can be found in section 8 of this report.

The administration of the Panel is provided by the Scottish Tribunals Service (STS). There are 4 full time members of support staff and an Operational Manager, who is responsible for the hohp in addition to the Private Rented Housing Panel, the Additional Support Needs Tribunal for Scotland and the Council Tax Reduction Review Panel. The staff are responsible for case management and, scheduling hearings, as well as clerking and support for Committees, finance and communications.

Our Funding

The hohp is funded by Scottish Government. This annual report covers the calendar year 1 January 2013 to 31 December 2013 in terms of Section 27(4) (a) of the Property Factors (Scotland) Act 2011. The financial year for the hohp, however, like all government sponsored bodies, runs from 1 April until 31 March. Since this annual report straddles two financial years, the accounting figures for the year 2013 at Appendix B include the budgets for both financial years.

The hohp responds to the number of applications received and is a demand-led service. It follows that the number of cases the Panel considers during the year can be variable and the hohp has little control over service demand.

2. Our Aims and Values

Our Aims

The hohp will carry out its statutory functions in a fair and impartial manner, and will provide an accessible, high quality and effective service to the Scottish community through the committed and professional approach of its staff and members.

In accordance with our overriding objective, as set out in the 2012 regulations, we seek to deal with proceedings justly in a way that is proportionate to the complexity of the issues and the parties' resources. We seek to ensure that the proceedings are informal and flexible, and that so far as practicable, the parties are on an equal footing procedurally and are able to participate fully in the proceedings. We undertake to resolve issues with the participation of both parties, using the special expertise of Committee members effectively to provide a solution to the problems before us, avoiding delay so far as compatible with proper consideration of the issues.



hohp offices at Europa Building

Our Values

- We are an independent body.
- We respect diversity and will provide fair treatment for everyone.
- We will be fair and unbiased in the decisions we make.
- We value our staff and members, and will ensure that they are equipped with the training and information they require to fulfil their role most effectively.
- We will continually strive to improve our processes and the service we provide to our users.
- We will use our resources efficiently and effectively.
- We will seek to engage proactively with stakeholders and representatives of the Scottish Government.
- We will work as a team to meet the targets we set.
- We will provide clear and timely information on our decisions and activities.

Our Promise

Every Panel member and every member of staff is fully committed to providing the best possible service we can to all who come to us, no matter what their gender, sexual orientation, race, ethnicity, religion or belief, age, relationship status, or physical or mental ability. We will do all that we can to make our service efficient, accessible and user-focused.



A member of hohp staff answering a call



3. The Application Process

The rules governing applications to the Homeowner Housing Panel are set out in the 2011 Act and the 2012 Regulations.

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.

Property factor's duties

These 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 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 and any other relevant contractual documents. It might also include duties under the common law, including the law of agency.

Application of the 2011 Act

The 2011 Act is not retrospective, and the hohp cannot usually deal with complaints about a failure to carry out the property factor's duties before 1 October 2012. It can only consider complaints about a failure to carry out the property factor's duties before that date if there has been a continuing failure to act after that date.

The Code of Conduct does not apply to a property factor until it has been registered by the Scottish Property Factors Register Team. Therefore, the hohp can only deal with complaints under the Code of Conduct from the date of the property factor's registration. The first group of property factors was registered on 1 November 2012.

The application process

Before making an application to the hohp, a homeowner must first notify their property factor in writing of the reasons why they consider that the property factor has failed to carry out its duties, or failed to comply with the Code of Conduct. The property factor must also have refused to resolve the homeowner's concerns, or have unreasonably delayed in attempting to resolve them.

The application must be in writing, and copies of the following documents must be attached to the application:

- (1) the homeowner's written notification to the property factor as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty (i.e. the Code of Conduct).
- (2) any response in writing provided by or on behalf of the property factor to the notification described at (1) above;
- (3) any other correspondence which the homeowner has sent to the property factor about their complaint, together with a copy of any other correspondence received from the property factor regarding their complaint;
- (4) any written statement of services issued in terms of Section 1 of the Code of Conduct by the property factor.

An application form and two template notification letters are available from the hohp office and can be downloaded from the website. Many of the applications received by the hohp do not comply with the requirements of the 2011 Act, as discussed in more detail on page 22. In such cases, the hohp contacts the homeowner, advising them that their application cannot be progressed until these requirements have been met.

The 2011 Act provides that only an individual homeowner can make an application to the hohp. There is, however, nothing to prevent homeowners within a block of properties or a development making identical applications and agreeing that these can be dealt with together. There was a case during 2013 where 148 applications from homeowners within the same development were dealt with together, as discussed in more detail in section 5 of this report.

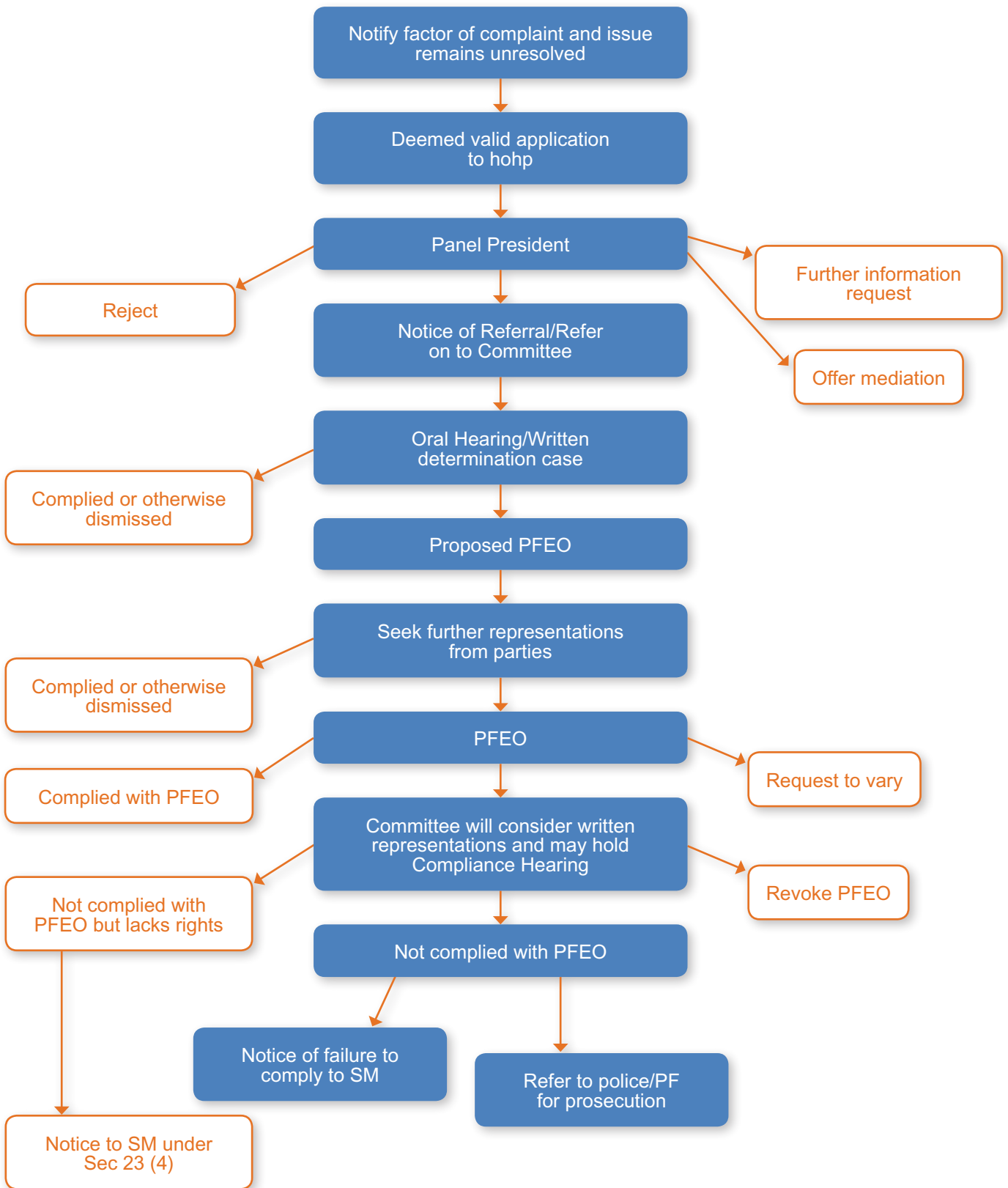
Once all of the necessary information has been received from the homeowner, the President must decide within 14 days whether to refer the application to a Homeowner Housing Committee. The President can reject an application on the following grounds:

- it is vexatious or frivolous
- the homeowner has not given the factor a reasonable opportunity to resolve the dispute
- the homeowner has recently made an identical or substantially similar application in relation to the same property, and a reasonable period of time has not elapsed between the applications
- the dispute has already been resolved.

The 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. From February 2014, 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 property factor before making a decision.

The President or the Vice President issues a Minute when a decision is made to refer the application to a Homeowner Housing Committee. This Minute provides details of the paperwork which comprise the application to be considered by a Committee.

Flowchart showing the progress of application to ho hp



Definitions:

PFEO	Property Factor Enforcement Order
SM	Scottish Ministers
PF	Procurator Fiscal

The Committee stage

After the initial sift process conducted by the President/ Vice President, applications are referred to a Homeowner Housing Committee for determination. The members of the Committee are drawn from the Panel's membership. The Committee considers the evidence available to it, including the written representations received from the parties. 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.

Prior to the oral hearing, the Committee can manage the progress of the case as it considers appropriate in the circumstances. It may issue one or more written directions to the parties relating to the conduct or progress of the case. It may, for example, require the parties to provide further information or documentation to the Committee, or provide for a particular matter to be dealt with as a preliminary issue. In some cases, the Committee may decide to hold a case management hearing prior to the oral hearing. The Committee also has the power to carry out an inspection of the property at any stage of the proceedings.

Hearings before a Homeowner Housing Committee are open to the public, and a list of future hearings can be found on the hohp website.

The Committee will not normally give its decision on the day of the hearing. A written decision is sent 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 failed to carry out the factoring duties or 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 then issues 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 the Committee considers reasonable. It is a criminal offence not to comply with a PFEO without reasonable excuse.

After the period for compliance stated in the PFEO has expired, the Committee writes to the parties asking them to confirm whether the property factor has complied with the PFEO. If the Committee is satisfied that the PFEO has been complied with, it issues a decision to that effect which is known as a Certificate of Compliance.

If the Committee decides that the property factor has failed to comply with the PFEO, it will advise the Property Factor Registration Team at the Scottish Government of this failure. This may raise questions about the suitability of the property factor to remain on the Property Factor Register. The case is also referred to the Police/Procurator Fiscal for prosecution of the property factor in terms of Section 24 of the 2011 Act.

Any decision of a Committee can be appealed to the sheriff court. All hohp decisions are published on the hohp website. Copies of all decisions are also sent to the Property Factor Registration Team at the Scottish Government.

4. Key Statistics for 2013 (Period 1 January 2013 – 31 December 2013)⁴

Overall number of enquiries received – 5200

- 15 Number of applications outstanding at the start of 2013
- 254 Number of applications outstanding at the end of 2013
- 94 Number of applications closed during 2013;

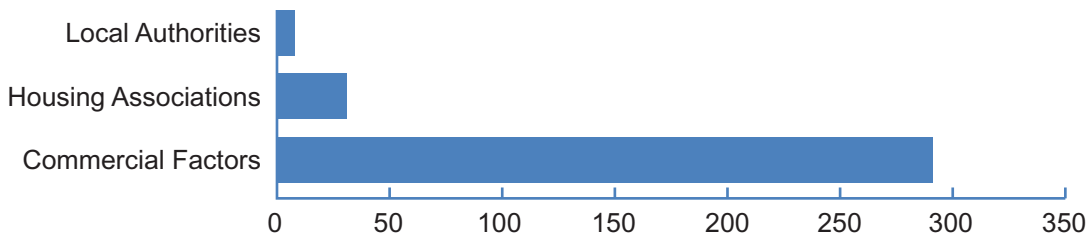
Breakdown of Applications closed during 2013
20 Withdrawn Applications
55 Rejected Applications
8 Complied Decisions (relating to 8 Applications) (Committee decided that no failures on part of property factor)
1 Failure to Comply
5 Certificates of Compliance (relating to 10 Applications) (Certificate confirming PFEO complied with)
TOTAL – 94 Applications Closed

Applications received during 2013

A total of 333 applications were received from homeowners during the year. It should be noted, however, that this total includes 148 applications received from 75 homeowners in relation to one development, as discussed in more detail in section 5. The diagram below shows the number of applications received in respect of each category of property factor. The majority involved commercial factors, although this figure includes the 148 multiple applications, in relation to which two lead cases were identified.

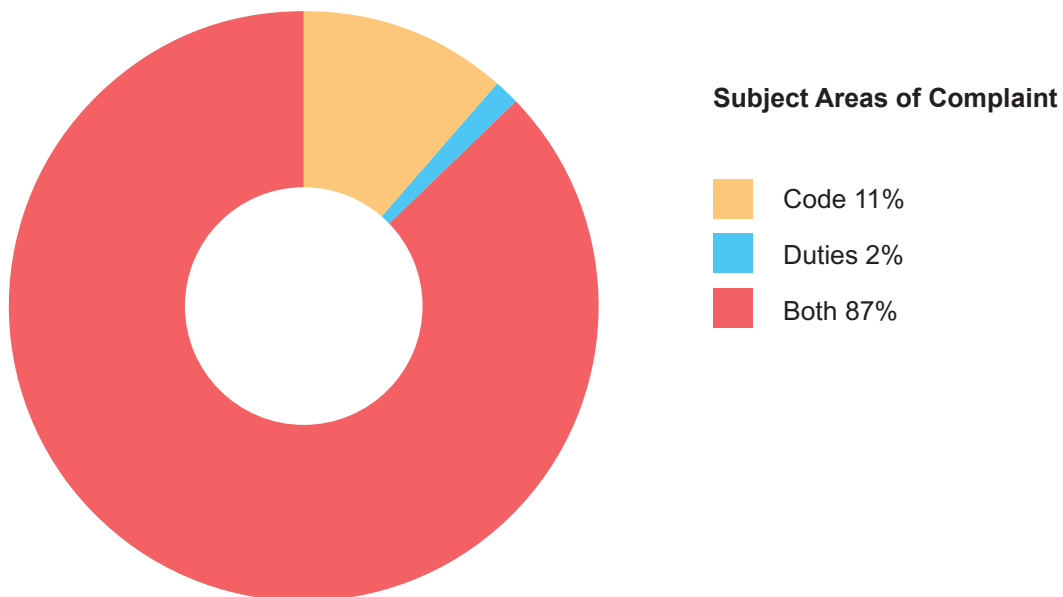
⁴ Parts of the proceedings can occur over 2 calendar years – e.g. hearing in 2013, and decision issued early 2014. We have recorded in this section only events occurring in 2013. This explains why we have recorded 30 hearings but only 28 decisions.

Applications By Factor Type



Nature of the applications received

Of the 333 applications received, 38 (11%) related to alleged breaches of the Code of Conduct for property factors and 5 (2%) were about a failure to carry out the property factor's duties. The remaining 290 (87%) concerned both alleged breaches of the Code and an alleged failure to carry out the property factor's duties. This may in part reflect the difficulties experienced by some homeowners in identifying and articulating the property factor's duties. It could also be an indication that some homeowners were keen to ensure that all of their complaints were covered in their application.

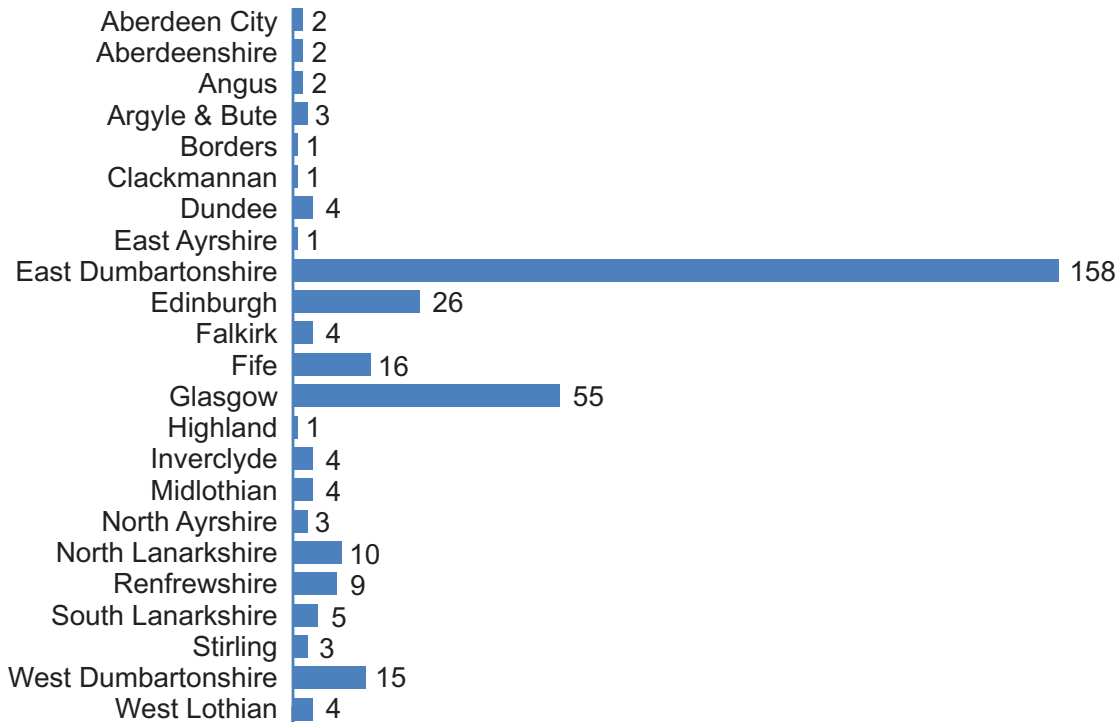


Where the applications originated from

Applications were received from across Scotland in 2013. At least one application was received from 22 of the 32 Scottish local authority areas. The highest overall number was from East Dunbartonshire, but of 158 cases from that area, 148 related to the same development and were dealt with together. Aside from that, the highest number came from Glasgow (55 applications). This might have been expected, given that property factoring has traditionally been more prevalent within traditional tenement properties in the West of Scotland. A surprisingly high proportion of the applications received have, however, been in respect of properties within newer developments, which have factoring arrangements written into their deeds of conditions. This may explain the next highest number, 26 applications from Edinburgh, where factors have not traditionally operated in older tenement properties.

The chart below shows the geographical distribution of the applications received. This shows that the majority of applications came from the west central belt as might be expected, but that cases were spread across various other parts of Scotland.

Geographical Distribution of Applications Received



Rejected applications

Of the 333 applications received, a total of 55 were rejected by the President in accordance with section 18 of the 2011 Act, before being referred to a Committee. The grounds on which the President may reject an application are set out on page 9.

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

Reasons for Rejection	
(a) that it is vexatious or frivolous	19
(b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute	19
(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	17
TOTAL	55

Vexatious or frivolous

Nineteen applications were rejected on the grounds that they were ‘vexatious or frivolous’. In all of these cases, the application was considered to be frivolous, rather than vexatious (which means habitually and persistently instituting proceedings without any reasonable grounds usually with an improper motive).⁵ The decision to reject an application is not taken lightly, and a number of court judgements have observed that the statutory test for ‘frivolous’ is intended to set a low threshold for applicants. The test of ‘frivolous’ has been interpreted as applying to an application made in good faith but which is “futile, misconceived, hopeless or academic”.⁶

The 2011 Act does not specifically state that an application can be rejected on competency or jurisdictional grounds, but the definition of “frivolous” provides a basis for such rejections. To reject an application on this ground, the President must be satisfied, on the basis of the papers submitted by the homeowner – and, if necessary, information obtained from further inquiries to the property factor and the homeowner – that the application is hopeless or misconceived and that no Homeowner Housing Committee would consider it to have any merit. A conclusion that an application is unlikely to succeed would not meet the test for rejection. In making this decision the President disregards issues relating to the credibility and reliability of evidence produced. There is accordingly a high test to be met for rejection. The Act makes clear that the whole application must be rejected or referred to a Committee. If there is an arguable case in relation to any ground of complaint in the application, it is therefore referred to a Committee for determination of the whole application.

Homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute

A further 19 applications were rejected because they did not comply with Section 17(3) of the 2011 Act, which states that an application may not be made to the ho hp unless:

- (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the Code of Conduct; and
- (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner’s concern.

As further discussed in section 5, more often than not applications when first received do not comply with a strict interpretation of section 17(3) of the Act. In most cases, the ho hp writes to the homeowner advising them what is required in terms of section 17(3) and stating that their application will not be progressed until this has been done. In some cases, however, despite correspondence back and forth, this does not happen, and the President eventually takes the view that the application should be rejected.

⁵ Lady Paton in *Lord Advocate V AB* (2012) CSIH31. Lord Bingham (as Lord Chief Justice) in *John Jarvis Ltd v Rockdale Housing Association* (1986) 36BLR 48

⁶ Lord Bingham (as Lord Chief Justice) in *R V North West Suffolk (Mildenhall) Magistrates Court* [1998] Env LR 9 at Page 16

Retrospective complaints

A number of applications were rejected on the grounds that they concerned matters which occurred before the 2011 Act came into force and before the property factor was registered. Complaints about a breach of the Code of Conduct cannot be considered by the hoHP if the alleged breach took place before the property factor was registered. The 2012 Regulations also provide that the hoHP cannot consider an alleged failure before 1 October 2012 to carry out a property factor's duties, unless there was a continuing failure to act after that date. Sometimes this issue is not clear, and in such cases the application proceeds to a Committee for a determination on the question of jurisdiction, followed by a determination of the application where appropriate.

This was a significant issue in a number of cases soon after the commencement of the Act, but it has become less prevalent over time. However, it still arises in some cases, and is likely to continue to do so for some time. Some applications also relate partly to complaints arising before the relevant date, and partly to complaints relating to a period after that date. Such applications are referred to a Committee to make a determination in relation to the issues falling within the Panel's jurisdiction.

Applications withdrawn by the homeowner

A total of 20 applications were withdrawn by the homeowner. The reasons why these applications were withdrawn are set out in the table below. In more than half of these cases, the application was withdrawn because the matter had been resolved.

Reasons for Withdrawal	
Resolved	17
Process too complicated	1
Reapplying	1
Factor dismissed	1
TOTAL	20

Hearings

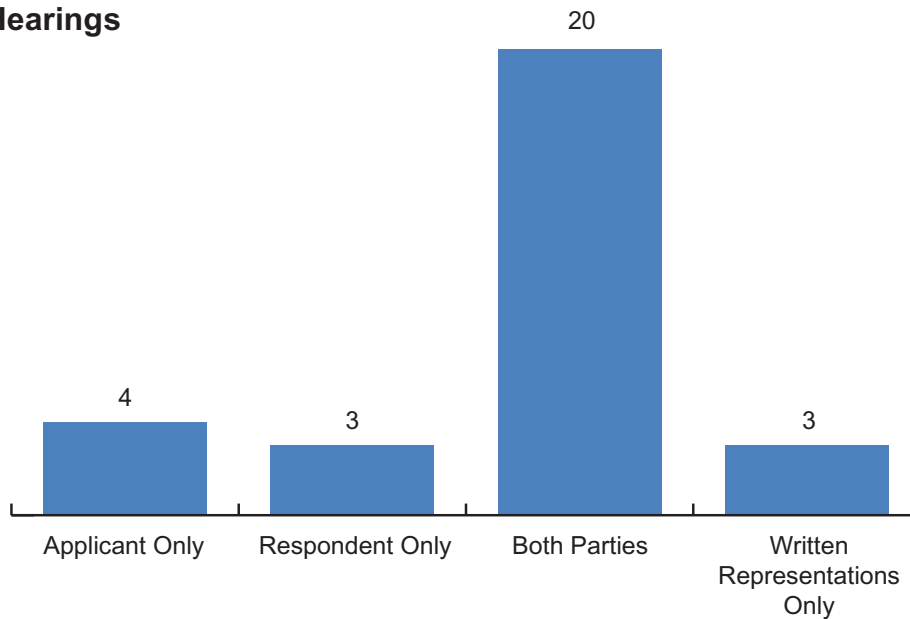
A total of 30 hearings were held in 2013. So far as possible, the hearings were held at a location which was convenient to the parties. Almost half (14) of the hearings were held in the ho hp offices in Glasgow, four were held in Edinburgh, and the remainder in various other locations. Three of the hearings considered more than one application at the same time and as a consequence 35 applications were considered at the 30 hearings. A small number of cases were heard over more than one day.

Of the 30 hearings, the majority (27) involved a commercial property factor, and the remainder involved housing associations.

No inspections of the property were carried out by Committees before the hearing.

Three of the 30 hearings were conducted on the basis of written representations at the request of both parties. Of the remaining 27 hearings, 20 were attended by both parties, 4 were attended by the homeowner only, and 3 by the property factor only. In most cases, the parties represented themselves. Parties were represented by a solicitor or other representative in a total of 9 cases. The property factor had a representative in 6 cases; the homeowner in 1 case; and both parties were represented in the remaining 2 cases.

Attendance at Hearings



The legislation under which the Panel operates states that the Committee must comprise two or three members, or that it is possible for a single legal chairperson to sit alone with the consent of the parties if the President directs. In practice Committees usually sit as two or three members. There is a legal chairperson in all cases and one or two others members drawn from surveyor members and/or housing members depending on the nature of the issues in dispute to ensure that the specific expertise of the individual Panel members is used to best effect. The President/Vice President decides if it will be a two or three person Committee and the type of member(s) (surveyor member and/or housing member) most appropriate for each Committee based on the nature of the complaints.

Case outcomes

Of the 28 decisions issued by a Committee, 8 were not upheld by the Committee. In the remaining 20 cases, the homeowner's complaint was either upheld or partly upheld. In most of these cases, the complaint was partly upheld, i.e. the Committee found that the property factor had failed to carry out its duties and/ or comply with the Code of Conduct in relation to some, but not all, of the homeowner's grounds for complaint. After the notice of proposal to make a Property Factor Enforcement Order (PFEO) is issued, written representations are sought from the parties before the Committee decide to issue a PFEO. A notice of proposed PFEO was issued in 17 cases with the decision. In 3 instances a Committee considered that a homeowner's complaints should be upheld in whole or in part but issued no proposed PFEO. Reasons given within Committee decisions for not issuing a proposed PFEO were that the property factor had before the hearing carried out the action which the Committee considered would be an appropriate requirement of any proposed PFEO; and where there would be no practical benefit to the homeowner in issuing a proposed PFEO (such as requiring the property factor to issue a written statement of services where the factoring arrangement by the date of the hearing had been terminated).

Even although no proposed PFEO is issued, the failure of the property factor to carry out its duties and/or comply with the Code of Conduct is drawn to the attention of the Property Factor Registration Team, who receive a copy of all Committee decisions. This allows the Registration Team to consider issues raised in the decisions in the context of assessing whether a property factor meets the 'Fit and Proper' test.

Breakdown of 28 Decisions

Section of the Code	No. of Complaints	No. of Complaints upheld by a Committee (HOHC)
Section 1 – Written Statement of Service	17	5
Section 2 – Communication and consultation	19	12
Section 3 – Financial obligations	7	2
Section 4 – Debt Recovery	3	2
Section 5 – Insurance	8	4
Section 6 – Carrying out repairs and maintenance	21	5
Section 7 – Complaints Resolution	8	3
Property Factors' Duties	24	10
TOTAL	107	43

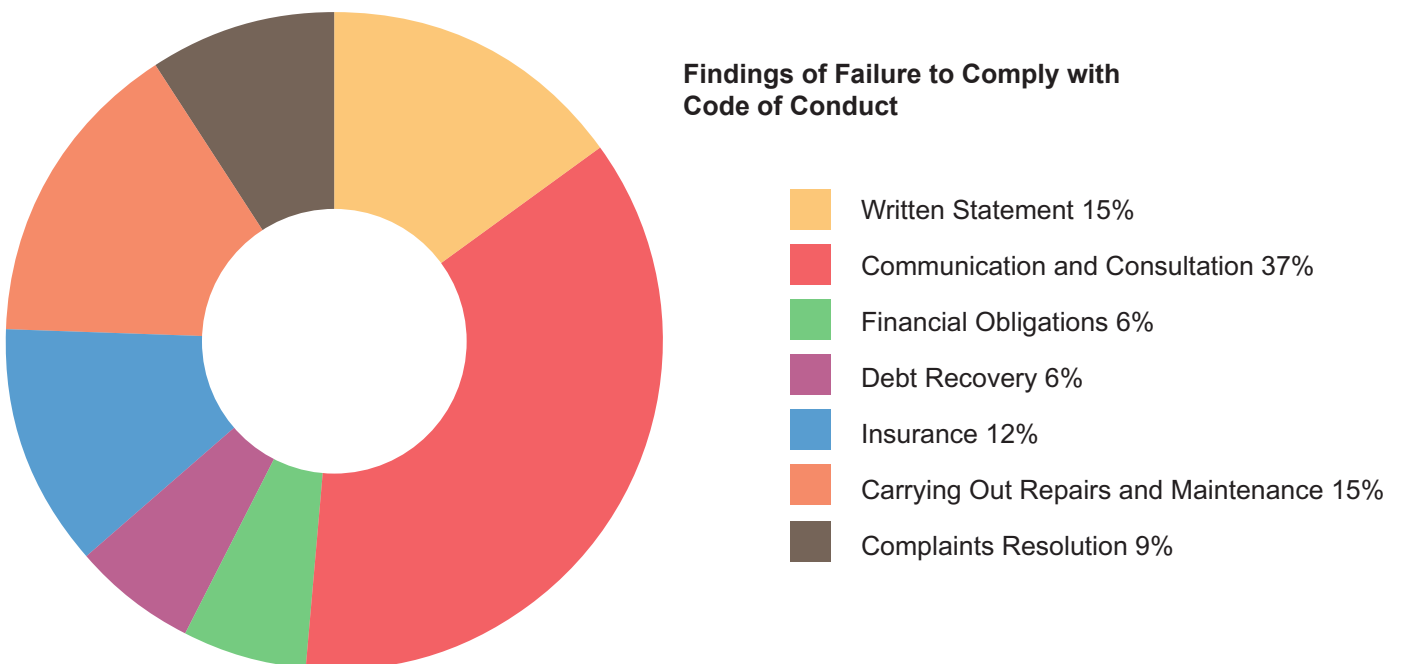
Property Factors' Duties

Complaints that property factors had failed to carry out their property factor's duties arose in relation to issues such as alleged failures to comply with a Deed of Conditions in relation to floats; alleged failure to instruct works to common property; alleged failure to convene a meeting of homeowners; alleged lack of accounting; alleged poor quality of maintenance works; and alleged failure to comply with the fiduciary duty owed by an agent to his principal to disclose a commercial interest between the factor and a third party.

Whilst some of these issues could have formed part of Code complaints due to their nature, it is possible that homeowners chose to bring it under failure to comply with property factor's duties because this allows continuing failures occurring before 1 October 2012 to be considered if there is a continuing failure to act after that date. Of the 28 Decisions issued during 2013, in 10 cases the Committee upheld that the property factor had failed to carry out the property factor's duties.

Code of conduct

The most common reason for a Committee determination that there had been a failure to comply with the Code of Conduct was a breach of Section 2, which is about communication and consultation (12 cases). The other Sections of the Code which were most commonly found to have been breached were: Section 1 (written statement of services); and Section 6 (carrying out repairs and maintenance), each of which occurred in 5 cases. In most cases where there was a failure to comply with the Code of Conduct, the Committee concluded that there had been a breach of more than one part of the Code. The diagram below shows the sections of the Code which Committees found to have been breached.



Property Factor Enforcement Orders

A Property Factor Enforcement Order (PFEO) was issued by the Committees in a total of 12 cases. The actions which the property factor was required to carry out in terms of the PFEO included one or more of the following:

- Issuing an apology
- Paying compensation to the homeowner
- Repaying fees to the homeowner
- Carrying out works
- Amending the written statement of services
- Producing accounts information
- Refunding the excess on the homeowner's insurance

Compliance by property factors

In 10 cases, the property factor complied with the PFEO and the Committee duly issued a Certificate of Compliance. In 5 cases the Certificate of Compliance was issued in 2013 and in 5 cases the Certificate of Compliance was not issued until 2014. The Certificates issued in 2014 will be included in the 2014 Annual Report. This explains why only 5 Certificate of Compliance are recorded under cases closed during 2013 on page 12. In two cases, the property factor failed to comply with the PFEO, and in both cases a Notice of Failure to Comply was served on Scottish Ministers, and the cases were referred to the police for prosecution. One of the failure to comply decisions was subject to appeal which was abandoned in 2014. This explains why only one failure to comply decision is recorded in the table on page 12.

Appeals

Three appeals against hohp decisions were lodged in the sheriff court in 2013. All of these were decided in 2014. One appeal was abandoned. In the second appeal, the sheriff quashed the original decision and referred the case back to a differently constituted Committee, with the consent of both parties and the President. The third appeal was referred back to the original Committee to ensure compliance with section 19 (2) of the 2011 Act.

5. Overview of Cases and Emerging Trends

Introduction

2013 marked the first full year of operation for the hohp. The 2011 Act applies only to registered property factors. The first group of property factors was registered in November 2012, with more property factors registered in December 2012 or early 2013. As a result, the hohp did not have jurisdiction to deal with applications in most instances until some months after 1 October 2012, when the Act came into force. The first Notice of Referral to a Committee was issued in January 2013. The first hearing was held in April 2013, and the first decision was published on the website in May 2013.

The subject matter of the applications received in 2013 was wide ranging. Those which concerned alleged breaches of the Code of Conduct covered all aspects of the Code. It is notable, however, that a relatively high proportion of applications involved alleged failures to respond within reasonable timescales to telephone calls and correspondence; not providing information which was requested; and not following the property factor's own written complaints procedure.

There has been considerable public interest in hohp hearings, which are open to the public. A list of future hearings is published on the hohp website, and some hearings have been attended by members of the public. There have been as many as 15 observers attending a hearing.

While it is important to note that the hohp has been up and running for just 15 months by the end of 2013, we have noticed a number of emerging trends to date. Some of the more significant issues which have arisen so far are discussed below.

Parties' understanding of the role of hohp

The hohp received an estimated 5,200 telephone, email and written enquiries in 2013, many of these from members of the public and property factors.⁷ It has become clear that many homeowners have difficulty in understanding how the hohp process operates, and what is required of them in bringing an application.

As is appropriate for a tribunal, the hohp aims to take a more enabling approach than that which is typically encountered in the courts. As the Upper Tier Judge Edward Jacobs of the Administrative Appeals Chamber has stated in a publication on Tribunal Practice:

“This [enabling] approach requires the tribunal to try to create a framework for proceedings that allows parties who are inexperienced with the procedures involved to give of their best in an unfamiliar setting.”⁸

The hohp approach is intended to facilitate the direct participation of the parties in the proceedings, particularly where they are unrepresented. Although the hohp must observe the rules of natural justice to ensure the fairness of the proceedings, it is not subject to strict rules about written pleadings. The Panel have produced an information guide for parties, together with an optional application form, which is intended to be user friendly. There are also guidance on how to fill in the form; guidance about what to expect at a hearing; and template letters for the notification of

⁷ Note: It is not possible to separate out enquiries received from members of the public and property factors. The total number of enquiries also includes calls and emails from Panel members, STS, Scottish Government etc.

⁸ Paragraph 1.45 Tribunal Practice and Procedure by Edward Jacobs (2nd Edition)

complaints to property factors. The 2012 regulations give Committees a degree of flexibility in most instances as to the procedure to be followed, and the President and Committees must seek to give effect to the overriding objectives of fairness and justice when interpreting the regulations.

While hohp staff do their best to explain the process and what is required from homeowners, including directing them to the various resources mentioned above, the hohp is an impartial tribunal. Whilst the Panel can provide information about the process, it cannot provide advice to parties about their case. It has become clear, however, that many homeowners, as well as some property factors, do not fully understand the Panel's role. There have been a considerable number of instances where homeowners, and in some cases, property factors, have contacted us requesting an appointment to come to the Panel offices to discuss their case.

Hohp staff explain to parties that the hohp is a tribunal body. However, there remains a fairly widespread misunderstanding about the Panel's role. As a judicial body this may be partly due to the use of the term 'Panel', rather than 'tribunal'.

While a minority of homeowners are represented either by solicitors or advice agencies in relation to their case, the majority are unrepresented. There is little evidence to date that homeowners are approaching independent advice agencies for assistance, or that such agencies are becoming involved in hohp cases.

Requirements of section 17(3) of the 2011 Act

One of the most notable trends to date has been the difficulties experienced by both homeowners and property factors in understanding and complying with the requirements of section 17(3) of the 2011 Act. This states that an application cannot be made to hohp unless:

- (a) the homeowner has notified the property factor in writing as to why s/he considers that the property factor has failed to carry out its property factor's duties or, as the case may be, to comply with the section 14 duty (i.e. the Code of Conduct), and
- (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

The 2012 regulations also provide that the homeowner must attach copies of certain documents, as set out on page 9, to his/her application. These include the notification in writing from the homeowner to the property factor for the purposes of the Section 17(3) (a) of the Act, together with any response in writing from the property factor to that notification.

Section 17(3) (a) – notification to the property factor

The Panel's experience to date has been that very few applications comply with a narrow interpretation of the Section 17(3) (a) notification requirement. While homeowners have often expressed their dissatisfaction to the property factor in writing before submitting an application, in most cases they have not complied strictly with Section 17(3) (a) of the Act. The President uses a strict interpretation of the notification requirement when considering the application at the sifting stage, in order to ensure fair notice to property factors about the matters which they need to address in their written representations or at a hearing.

The adequacy of the notification is assessed on a case-by-case basis, but it is reasonable to expect the notification to be sufficient to allow the property factor to ascertain clearly which parts of the Code of Conduct and/or which general property factor's duties it is alleged have been breached. If the President at the sifting stage in Section 18, does not consider that there has been adequate notification, the Panel will write back to the homeowner advising them that their application will not be progressed until 1) they send such a notification to the factor and 2) the property factor is then given a reasonable opportunity to resolve the dispute.

The Panel have produced template-style notification letters which homeowners can use if they wish, and with which property factors are familiar. Where used, these letters should place beyond doubt that this is notification under section 17(3) (a) and that referral is possible if the property factor does not attempt to resolve the dispute following receipt of these. This procedure assists both homeowners and property factors. The templates assist homeowners to focus on the service levels expected of property factors, resulting in applications which specify relevant issues within the Panel's jurisdiction. The templates assist property factors in cases where there is uncertainty about the stage reached in the procedure. They provide better detail about homeowners' complaints, and provide a further opportunity for property factors to engage their complaint handling procedure. This may then result in a reasonable prospect that the dispute may be resolved between the parties.

Section 17(3) (b) – refusal to resolve/unreasonable delay in resolving the complaint

The requirements of section 17(3) (b) have also caused difficulties for both homeowners and property factors. The 2012 regulations require the homeowner to attach correspondence from the property factor. It is often the case that correspondence has been ongoing between the homeowner and property factor, in some cases for some considerable time, with the homeowner clearly expressing dissatisfaction and in some cases sending a letter/letters headed 'complaint'. Yet there is often no clear indication that the property factor is progressing the complaint through a clearly signposted and staged complaint resolution procedure, as might be expected, given the wording of the Code of Conduct.

The situation is well illustrated by the following anonymised excerpt from a letter by a homeowner to a property factor:

"I find your letter of XX most disingenuous. I first asked you to make a formal complaint in my letter of XX (10 months before). You have successfully protracted my complaint until now, no doubt in the hope that it will 'go away'. Sadly, I have felt it necessary to escalate this complaint to the Homeowner Housing Panel as it appeared to me that you were prepared to go on indefinitely not answering the central issue. That you are only now instigating your complaints handling procedures is exasperating."

Where such a delay in initiating the complaint resolution procedure occurs, rather than resolving the homeowner's concerns, this usually has the opposite result, causing frustration and escalating the dispute.

While such delays and unstructured processes in complaint handling are not uncommon, some property factors do deal with complaints in a clear and structured way. Property factors who are also registered social landlords are required to operate a model complaint handling procedure which provides a definition of a 'complaint'. This ensures certainty as to the stage at which the internal complaint handling procedure should be initiated and sets clear stages through which the complaint should be progressed.

Some commercial property factors are also clearly initiating their own procedure at an early stage and signposting the homeowner through the various steps of their internal complaint handling procedure, ending with a letter stating their final position and details of the ho hp, should the homeowner wish to make an application. This is clearly helpful for the homeowner, and also signposts the President to the stage reached in complaint resolution, which in turn assists decision-making with regard to the test in Sections 17(3)(b) and 18(2)(b). A view is likely to be taken that a failure to engage in a complaint resolution procedure when a complaint or notification under Section 17(3) (a) is received is evidence of refusal to resolve/ unreasonable delay in attempting to resolve the homeowner's concerns.

If the President considers that the property factor has not had a reasonable opportunity to resolve the dispute, a decision on referral to a Committee is delayed. The homeowner is prompted to give the property factor a further opportunity to resolve the dispute. However, if the property factor has allowed months to pass of ongoing correspondence relating to the homeowner's dissatisfaction/ complaint and there is no clear indication of the complaints being processed through a staged internal complaint resolution procedure as required by the Code, this may be regarded as unreasonable delay.

Section 17(3) states that an application may not be made until the Section 17(3) (a) and (b) requirements have been met. Given the issues described above, Section 17(3) has been interpreted by the President to mean that an application will not be considered for referral to a Committee or rejection until these tests are met. Unless it was interpreted in this way, most applications would be rejected on receipt, which would be contrary to the aim of access to justice and the aims of the Code of Conduct and the Act.

Impact on case-handling timescales

In 2013, the average length of time from receipt of an application to the hearing date was 132 days. In most cases, the bulk of this time elapsed between the application being received and the case being referred to a Committee. The main reason behind this has undoubtedly been the various issues which have arisen from the requirements of section 17(3), as discussed above, and the ongoing correspondence which has resulted from these.

Case management by ho hp Committees

Homeowner Housing Committees have wide-ranging and flexible case management powers under the 2012 regulations. These include powers to: make such inquiries as the Committee thinks fit; to require the parties or any other person to attend a hearing or provide the Committee with such documents or information as it may reasonably require; to issue directions to the parties relating to the conduct or progress of the proceedings; to carry out an inspection of the property; and to hear cases together.

Committees have made extensive use of these powers where appropriate. In particular, Committees have frequently issued written directions to the parties. Directions have been used for a variety of purposes. These include: requiring one or both parties to provide further information or documents in advance of the hearing; requiring parties to provide further details of their arguments or evidence; and providing for a particular matter to be dealt with as a preliminary issue.

In some cases, case management hearings have been held in advance of the final hearing, in order to clarify the parties' arguments and/or consider whether there is agreement between them on certain issues.

Case study – dealing with multiple applications from one development

The 2011 Act provides that only a homeowner can bring an application. The ho hp has received applications from office bearers of owners' associations seeking to bring group actions on behalf of a majority of residents within a development. An application by an owners' association is not competent under the Act. However, there is nothing to prevent all of the individual homeowners making identical applications and naming the same representative to attend and represent them at a hearing. This occurred in one case in 2013, where the Panel dealt with 148 applications from 75 homeowners from one development.⁹

Most of the homeowners had two applications before the Panel concerning identical complaints – relating firstly to a float, and secondly to service levels for land management. A Committee has power to deal with such applications together at one hearing. To aid case management for both the ho hp and the parties, it was agreed, with the co-operation of all parties at a case management meeting chaired by the President, that two lead applications would be selected for determination by a Committee. It was also agreed that the final decisions by the Committee (or on appeal) in these lead applications would be applied to all the other cases. The procedure was successful and all 146 applications were disposed of in one day at two separate hearings, which took place in 2014.

This case study demonstrates the flexibility of the proceedings, as the 2012 regulations do not specifically mention a procedure for taking lead cases. This process saved time and expense for both the Panel and the parties, as well as any additional costs to the parties in the event that there had been an appeal(s).

Expectations and outcomes

In the ho hp application form homeowners are asked to state what would help to resolve their problem. This is very helpful to Committees (and also, since February 2014, where a mediation is arranged), as it gives an indication of what the homeowner would like to happen as a result of their application. In some cases, the homeowner is seeking an outcome which ho hp cannot provide – for example, the dismissal of their property factor or change of their title deeds. However, common answers to this question include: an apology by the property factor; payment of compensation; reduction or repayment of fees; carrying out of works; provision of information; and adherence to title deeds.

In those cases where a PFEO was issued, comparison of the responses to this question in the application form with the terms of the PFEO shows that in around half of cases, the terms of the PFEO closely matched the outcome the homeowner had originally requested.

⁹ Note: this case is referred to elsewhere in this report as involving 148 applications from 75 homeowners. One homeowner decided to withdraw his applications at the hearing, leaving 146 applications from 74 homeowners to be dealt with by two lead applications.

6. Continuous Improvement within hohp

Continuous improvement – overview

The hohp and the Scottish Tribunals Service (STS), which is responsible for providing administrative support to the hohp, are committed to continuous improvement. This focuses on finding the most efficient way to meet the needs of those who use the hohp, and continually striving to improve the way in which the hohp and STS work. Because this is a new jurisdiction, procedures will be adjusted in light of experience.

In the interests of transparency, the hohp publishes information about the steps taken to (a) promote and increase sustainable growth, and (b) to improve efficiency, effectiveness and economy in the exercise of its functions. Further details about this can be found on the hohp website.

STS and the hohp are exploring the use of electronic methods for distributing papers, of recording members' availability for hearings and the administration of the payroll system for members.

Training – Members

We are committed to relevant and high quality training of members to equip them to carry out their roles effectively and efficiently as members of decision-making committees.

To this end, we provided induction training over three days at the end of 2012 for existing members of the prhp on the new hohp jurisdiction. The new members appointed to the hohp also received induction training on the hohp jurisdiction.

During 2013 there were three training days for chairpersons dealing with the legal issues arising from the new hohp jurisdiction. In addition the Panel circulated information to members on jurisdictional issues and circulates all Committee decisions to help to ensure consistency of decision making. This ensures that members are equipped with relevant knowledge to decide cases brought to the Panel. During 2013 we prepared for a one-day prhp/hohp members conference in Glasgow which took place in February 2014.

Administration Improvements

The continuous improvement initiative within STS looks at the functions of the processes the Secretariat (support staff) carry out, rather than the judicial functions exercised by individual Committees. The staff of the hohp actively participates in these initiatives, with the aim of improving our processes and services to Panel users, by identifying and implementing value added enhancements to services, processes or the Panel. During 2013 staff within the hohp took part in a Value Stream Mapping exercise which involves all team members sitting as a group and detailing each part of the process from the point where an application is received to the conclusion of the case. This detailing or 'mapping' of the process gives them the opportunity to look at each step of the process and raise any areas where there may be duplication of tasks or waste and gives them the opportunity to remove those areas and identify improvements and efficiencies for the benefit of both staff and Panel Users.

The hohp is committed to continually re-evaluating our ways of working with the objective of increasing quality, and staff have been trained in a number of continuous improvement tools and techniques, such as problem solving loops, to further increase efficiency and service. A problem-

solving loop is a useful tool which is structured pathway similar to a desk instruction of how to break down the problem to identify the root cause, highlight ideas to address the cause and recognise any benefits resulting from the solution. Doing this as a team allows us to use the expertise of the staff to identify improvements from the very heart of the process.

There is a continuing commitment by the STS to continue to increase key skills of staff through the use of structured training programmes, including relevant internal and external courses in areas such as leadership and development and effective use of IT systems, amongst others. STS also encourages the use of multi-skilling of staff across teams and during 2013, staff within the housing jurisdictions, including the hohp, began producing a database of standard operating procedures, which will build into a complete manual of comprehensive desk instructions. These are being continually developed and updated and will sustain a better informed and skilled workforce.

Website

We have made efforts to provide homeowners and property factors with more information about the work of the hohp and have expanded our website. During 2013 there were 40,955 visitors to the hohp website seeking information. All decisions of the Panel are published on the website.

Complaint handling procedure

During 2013, STS reviewed its complaint handling procedures to ensure compliance with the new model provided by the Scottish Public Services Ombudsman (SPSO). Complaints relating to the administration of the hohp are handled in the first instance by the hohp itself. If the complainer remains dissatisfied with the hohp's decision on the complaint or the way it has been handled, they can then take the complaint to the SPSO. Complaints about the conduct of a Panel member are referred to the President or Vice President of the hohp for investigation.



7. Working with Others

Scottish Tribunals Service

The Scottish Tribunals Service (STS) provides combined administrative support for seven Scottish devolved tribunals. These are: Mental Health Tribunal for Scotland (MHTS); Additional Support Needs Tribunal for Scotland (ASNTS); Pensions Appeal Tribunal Scotland (PATS); Lands Tribunal for Scotland (LTS); Scottish Charity Appeal Panel (SCAP); Council Tax Reduction Review Panel (CTRRP); Private Rented Housing Panel (prhp); and the Homeowner Housing Panel (hohp).

The creation of STS in 2011 marked the beginning of a phased programme of tribunal reform, which follows a number of independent expert reports, which concluded there was a need for such reform in Scotland. Its creation ensures that tribunals are administered and run independently of government, providing separation from the policy-related functions of the sponsoring divisions of Scottish Government. This has led to benefits such as a modern streamlined service for users, avoiding unnecessary duplication of certain services common to all tribunals and providing a number of advantages. These include economies of scale, cost savings and better use of tribunal resources; the creation of a centralised specialist team to provide support to tribunal members and staff in key areas such as finance; and improvement in the governance of tribunals.

However, there is a need to preserve the identity and ethos of the individual tribunals, and to retain within each individual tribunal the existing staff with specialist knowledge and experience of the jurisdiction of each tribunal.

Increasing public awareness about the work of the Panel

During the year the President gave presentations at conferences for the Scottish Association of Landlords, at the annual seminar of the Institute of Residential Property Management and at the Scottish Housing Best Value Network conference on factoring.

The President welcomed Lady Anne Smith, an Inner House judge of the Supreme Courts for Scotland (now appointed President of Scottish Tribunals); Mrs Patricia Ferguson, the Member of the Scottish Parliament who sponsored the Private Members Bill which resulted in the Property Factors (Scotland) Act 2011; and Mr Eric Queen, Chief Executive of Scottish Courts Service, to the Panel's offices to meet hohp staff and to explain the workings of the Panel.

In addition, an article provided by the President on the Scottish Model for Regulation of Property Managers was published in the magazine *News on the Block*. Updates on the work of the Panel were also published in *Just News*, the Scottish administrative justice newsletter.

We have, over the year, provided more information for users on the hohp website about Panel procedures and a pamphlet on the hearing procedure was published. We also updated the hohp information guide during the year.

All decisions of the Homeowner Housing Committees are published on the hohp website, as are details of forthcoming hearings, which are open to the public.

There is a statutory requirement on property factors to bring the existence of the Homeowner Housing Panel to the attention of their customers.

Scottish Tribunals Forum

In the course of the year the President attended regular meetings of the Scottish Tribunals Forum for senior officeholders of the devolved and reserved tribunals to explore best practice with other Scottish tribunal presidents, members of the judiciary and senior civil servants.

The work of the Forum discussed the options for the reform of tribunals in Scotland and a consultation on the Tribunals (Scotland) Bill on tribunal reform in Scotland. The President submitted written responses to the consultation papers on the proposal for a new tribunal system for Scotland and on the proposed merging of the Scottish Tribunals Service and Scottish Court Service.

8. Looking to the Future

Tribunal reform

1. The next few years will mark a period of major change for the prhp and the hohp. In April 2015, the STS will be merged with the Scottish Court Service (SCS) to form a merged Scottish Courts and Tribunals Service. The new body will be fully independent of Government, with a board chaired by the Lord President as head of the courts and tribunals judiciary. It is not envisaged that the front-line operational delivery of tribunals will be affected, as the current specialist staff and venues for tribunals will remain. The reforms should therefore have little direct impact on users of the prhp and the hohp.
2. The Tribunals (Scotland) Act 2014 will introduce major tribunal reform in Scotland. The Act will:
 - Create two new tribunals – the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland – to be known collectively as the Scottish Tribunals.
 - Allow for the creation of Chambers to house the tribunals in the First-tier – grouped by similar subject jurisdiction and led by Chamber Presidents, who will have responsibility for business within their Chamber.
 - Allow for the creation of Divisions in the Upper Tribunal.
 - Make the Lord President of the Court Session Head of the Scottish Tribunals, bringing judicial leadership of the Scottish Tribunals within his remit.
 - Establish a new office – President of the Scottish Tribunals – with powers delegated from the Lord President.
 - Give responsibility for welfare, training and discipline to the Lord President, including the power to suspend a tribunal member, if considered necessary in the public interest.
 - Bring tribunal appointments under the remit of the Judicial Appointments Board for Scotland.
 - Give responsibility for making tribunal rules to the Scottish Civil Justice Council.
3. The creation of the Scottish Tribunals and the new chambers will be phased. The first new chamber will be a Housing Chamber, which is currently expected to be transferred in by December 2016. This will be occupied by the Private Rented Housing Panel, the Homeowner Housing Panel and the new jurisdictions created by the Housing (Scotland) Act 2014, as discussed below.
4. The Housing (Scotland) Act 2014 will introduce a new first-tier tribunal jurisdiction which will deal with private rented housing cases which are currently dealt with in the sheriff court. These will include repossession cases under the Housing (Scotland) Acts 1984 and 1988; various non-repossession cases under the 1984 and 1988 Acts; cases relating to other landlord-tenant

disputes about compliance with individual tenancy agreements; and civil cases relating to landlord registration under the Antisocial Behaviour etc. (Scotland) Act 2004.

5. The Housing (Scotland) Act 2014 will also introduce a compulsory register and a code of practice for letting agents in Scotland. The Act provides for applications to be made by a tenant or landlord to the new first-tier housing tribunal in respect of failure to comply with the code of practice. The tribunal will also hear appeals in respect of a decision by Scottish Ministers to refuse to enter a prospective letting agent onto the register, or to renew or revoke a letting agent's registration. The Act also provides that Scottish Ministers may transfer the jurisdiction of the sheriff in relation to actions involving letting agents and tenants or landlords to the first-tier tribunal. This new legislation will affect those property factors which also operate a letting agency business.

Mediation

- In February 2014, a pilot mediation project was introduced to assist the resolution of property management disputes at an early stage and without the need for a hearing before a Homeowner Housing Committee. Mediation is now offered to the parties in all suitable cases. The parties must both opt in to mediation for this to go ahead. The hohp mediation service is free of charge, flexible and confidential. The Panel mediators are trained impartial people who are skilled in helping establish common ground. We have 20 trained mediators amongst our membership, who have all undertaken accredited mediation courses.
- Choosing mediation allows the homeowner and the property factor to work out a solution best suited to their needs, instead of having a solution imposed upon them by a Committee. Because people have found their own solution to their problems, they are more likely to actually do what they have agreed to do. Mediation can improve the relationship between the homeowner and the property factor. Once people have had the opportunity to talk through the issues, each party is better able to understand the other party's point of view. If mediation is successful, the parties will sign up to an agreement which ends the hohp's involvement in the case, unless either party complains that the agreement has been breached.
- The project and the effectiveness of mediation for factoring disputes will be evaluated after a period of time or a specific number of referrals and mediation outcomes, depending on the take up figures for mediation. A leaflet providing further information on the mediation process is available on the hohp website.

Other developments

- In the course of the year, the President will maintain links with other Scottish tribunals through regular engagement in discussions with other judicial members and attendance at the Scottish Tribunals Forum.
- The Panel will continue to seek ways to raise the awareness of service users about the work of the Panel. The hohp website will be expanded to include more information on our jurisdiction and relevant housing and land management issues for service users. We have also reviewed our hohp information guide for users and produced a leaflet on what to expect at a hearing before a Homeowner Housing Committee.

9. How to Contact Us

Address: Europa Building, 450 Argyle Street, Glasgow G2 8LH

Telephone: 0141 242 0175

Fax: 0141 242 0141

Email: hohpadmin@scotland.gsi.gov.uk

Web: <http://hohpscotland.gov.uk>



APPENDIX A

Members of the private rented housing panel and homeowner housing panel

CHAIRMEN
Mr David Bartos – LLB (Hons) FCI Arb
Mr Jim Bauld – LLB (Hons) Dip LP NP
Mr George Clark – LLB (Hons) Dip LP
Mr Andrew Cowan – LLB (Hons) Dip LP
Mrs Aileen Devanny – LLB NP DCPP Dip – PRESIDENT
Mr Pino Di Emidio – LLB (Hons) LLM
Mr Paul Doyle – LLB Dip LP NP
Mr Ron Handley – BA LLB
Mr Derek Hogg – *
Mrs Judith Lea – LLB Dip LP MBA MSC WS
Mr Martin McAllister – LLB NP
Mrs Anne McCamley – LLB BA
Mr John McHugh – LLB (Hons) Dip LP NP
Mr Richard Mill – LLB Dip LP NP
Mr James Millar – LLB NP
Mr Ewan Miller – LLB (Hons) NP
Mrs Karen Moore – LLB
Mr Maurice O’Carroll – LLB (Hons) Dip LP LARTPI
Ms Sarah O’Neill – LLB (Hons) Dip LP NP MBA
Mr David Preston – LLB NP
Mrs Patricia Pryce – MA LLB Dip LP NP
Miss Simone Sweeney – BA (Hons) LLB Dip LP NP
Mrs Jacqui Taylor – LLB (Hons) Dip LP NP MBA TEP
Mr Steven Walker – LLB (Hons) Dip LP

*Until October 2013

SURVEYORS

Mr Angus Anderson – MRICS

Mr Mark Andrew – FRICS FAAV

Mr Kingsley Bruce – MRICS

Mr Robert Buchan – VICE PRESIDENT- BSc FRICS

Mr Richard Burnett – MA FRICS FIRPM

Mr George Campbell – DPA MSc CEng CEnv MICE FRICS

Mr Alexander Carmichael – FRICS

Mr David Godfrey – MRICS

Mr Colin Hepburn – MRICS

Mrs Sara Hesp – LLB (Hons) BA (Hons) MRICS ACI Arb

Ms Carol Jones – MA MRICS

Mr Mike Links – FRICS

Mr Donald Marshall – BA (Hons) FRICS

Mr Ian Mowatt – BSc FRICS

Mr Ian Murning – TD LLB (Hons) LLM DPA FRICS MCI Arb MInst RE

Mrs Susan Napier – BSc FRICS

Mr Andrew Taylor – MRICS

Mr Charles Reid Thomas – MSc Med MRICS MIED

Ms Geraldine Wooley – MA Med MRICS MIED

HOUSING

Mrs Christine Anderson – BA

Mrs Helen Barclay – Dip Hsg CIHCM

Mr John Blackwood – LLB BD

Mrs Susan Brown – BA (Hons) Dip Hsg Dip Human Resource Management, Dip Youth and Community Work

Mr A Scott Campbell – Dip Public Health Inspection REHIS

Mr Colin Campbell – FCIH

Mrs Elizabeth Dickson – HNC in Building with Building Regulations, Law and Administration

Mr David Hughes Hallett – FRICS

Mr Christopher Harvey – BA (Hons) MA (Hons)

Mrs Brenda Higgins – CIXHM MBA BA Dip Housing Administration

Ms Carolyn Hirst – BSc (Hons) MBA CIHM FRSA

Mr Tom Keenan – BA DPA

Mr Ahsan Khan – MA BSc (Hons) MPhil MCIH

Ms Irene Kitson – BA CFCIPD

Mrs Mary Lyden – Bed PG Dip Housing Studies

Mrs Ann MacDonald – MA MCIH

Mr Douglas McIntyre – BSc (Hons) MCIOB Cert CIH

Ms Elaine Munroe – FCIH MBA ICIOB

Mr James Riach – MREHIS

Mrs Linda Robertson

Mr Mike Scott – BSc (Hons) MSc MRTPI FCIH

Mrs Susan Shone – CICHM PG dip

Mrs Jean Thomson – DHS CBA FCIH

Mrs Sally Wainwright – BA (Hons)

Mr John Wolstencroft – BSc (Hons) PG Dip CIHM

Panel Numbers:

President and Vice President comprising 1 female and 1 male

24 Legal Chairpersons comprising 8 female and 16 male

19 Surveyor Members comprising 4 female and 15 male

25 Housing Members comprising 14 female and 11 male

APPENDIX B

HOMEOWNER HOUSING PANEL

Expenditure Statements for the financial year 2013/14*

Expenditure Item	Actual 2012/13 £'000s	Budget 2013/14 £'000s	Actual 2013/14 £'000s
Staff Salaries and Expenses:			
Support Staff**	50.9	85.5	81.0
Staff Expenses (T&S)	0.4	4.0	3.0
Members Expenses:			
Members Fees	71.2	164.8	132.9
Members Expenses	7.5	20.3	8.9
Committee Costs:			
Training & Expenses	31.0	21.5	20.1
Venue & Hearing Costs	0.3	15.3	0
Central Costs:			
Accommodation	0	0	0
General Expenses	5.8	12	11.3
Postal Costs	0.3	5	4.0
Computer charges/Website***	27.6	11.8	17.1
TOTAL	195	340.2	278.3

* The above expenditure is shown on the basis of the financial year 1 April 2013 to 31 March 2014.

Support Staff 4

** The costs for 12/13 included both the transitional costs to end September and the ongoing running costs from the implementation of the Tribunal from 1 October. Costs for 13/14 include the first full year of costs.

*** This expenditure in 13/14 includes the cost of hosting the HOHP website, the development of the CMS system and depreciation costs

APPENDIX C

Public Services Reform (Scotland) Act 2010

To promote openness and transparency across the public sector in Scotland, Section 31 (1) and (2) of the Public Services Reform (Scotland) Act 2010 imposes duties on public bodies listed in Schedule 8 of the Act to publish as soon as practicable after the end of the financial year a statement of any expenditure incurred on certain matters including:

- Public Relations;
- Overseas Travel;
- Hospitality and Entertainment;
- External Consultancy;
- Payments with a value in excess of £25,000; and
- The number of members and staff who received remuneration in excess of £150,000.

Whilst the Homeowner Housing Panel is not listed within schedule 8 of the Act and is not required to publish this information nonetheless the President has decided to provide the information.

The Homeowner Housing Panel has made no payments in the above categories for the accounting period 1 January 2013 until 31 December 2013.

In Terms of Section 32(1) (a) and (b) of the Act, the public bodies listed in Schedule 8 must publish a statement of the steps taken to (a) promote and increase sustainable growth, and (b) to improve efficiency, effectiveness and economy in the exercise of their functions.

During the year the Panel and the Panel administration have made concerted efforts to reduce expenditure, improve efficiency, manage resources more effectively and cut down our ecological footprint. The following steps have been taken:

- The Panel has promoted the use of electronic systems with more use of email communication and scanning and electronic sending of paper records and documents.
- The Panel administration has increased their use of the Scottish Government and local authority venues for hearings, provided it does not involve the need for participants to travel long distances. The Panel uses the conference facilities in Scottish Government venues for training events.
- To recycle paper, print cartridges and other resources where possible.
- To explore sharing of resources and specialist services among the Scottish-based Tribunals of the Scottish Tribunals Service (STS).
- To evaluate and explore refinements within the statutory framework to our application and case management processes. We have carried out various continuous improvement tools such as process mapping to improve efficiency within our processes.

APPENDIX D

Glossary of Terms

Appellant – the person who makes the appeal

Corporate governance – the set of processes, customs, policies, laws and institutions affecting the way the organization is directed

Court of Session – the supreme civil court of Scotland

Credibility – being trusted and believed in

Diversity – the state of being varied

Housing member – The member of the Committee who is selected for his or her expertise in housing and land related issues

Induction – training for new members

Jurisdiction – having the power to make legal decisions and judgements

Legislative provisions – that which the law provides

Mediation – a process to help parties resolve their differences and reach agreement.

Reliability – ability to be depended on for accuracy

Reporting period – 1 January – 31 December in any year

Respondent – the party against whom an application or appeal is made

Sheriff Court – Sheriff Courts provide the local court service in Scotland with each court serving a sheriff court district within a Sheriffdom

Sisted – held in abeyance until the parties to the action are ready to proceed

“The 2011 Act” – The Property Factors (Scotland) Act 2011

“The 2012 Regulations” – The Homeowner Housing Panel (Applications and Decisions) Regulations 2012

