

Housing and Property Chamber
First-tier Tribunal for Scotland



Summary of Work of the Housing and Property Chamber

1 April 2022 – 31 March 2023



Foreword by Chamber President

The reporting year has not been without its challenges.

A total of 4596 applications were received during the reporting year. This is the highest number of applications received in any single year since the Chamber came into being in December 2016. This figure represents a 37% increase on the level of applications received in 2021-22, and is also 12% higher than the pre-pandemic previous highest figure of 2019-20.

Changes in legislation have been applied during the reporting year including the now permanent change that tribunals require to consider the issue of reasonableness in eviction cases. The result of this is that more eviction applications are contested, which inevitably increases the timescale for determination of these applications.

One notable achievement during the year was a successful all members' training event in February 2023 which was positively evaluated by the Judicial Institute for Scotland (JI). On each criteria for training delivery set by the JI, the Chamber was assessed as having met or exceeded the standard set in the guidelines.

I would like to acknowledge the hard work and resilience of those tribunal judges and SCTS staff who work within the chamber jurisdiction. My thanks go to them for their commitment and to parties to proceedings for their patience and cooperation.

This summary provides details of the types of cases which are heard by the Housing and Property Chamber; the procedure the chamber applications follow; and, as with previous years, statistical information for the reporting year, which for this report is 1 April 2022 to 31 March 2023.

I hope this summary will be of interest.

Aileen Devanny

Chamber President

1. Introduction

In 2022-23, the Chamber received the highest number of applications seen in any single year since the Chamber came into being in December 2016. There was a 37% increase on the level of applications received in 2021-22, and applications were also 12% higher than the pre-pandemic previous highest figure of 2019-20. As discussed later in this report, this appears to have been primarily driven by a steep increase in eviction applications, although increases were also seen across most other application categories.

Following the expiry of temporary protections for tenants under the [Coronavirus \(Scotland\) Acts \(Early Expiry of Provisions\) Regulations 2022](#), the extended periods required for notices issued to tenants after 30 March 2022 reverted to those which were in place before 7 April 2020. Most notice periods reverted back to 12 weeks or 2 months (depending on the grounds and the type of tenancy) from 30 March 2022. As anticipated, this appears to have led to a large rise in eviction applications received from around summer 2022. There may also be other reasons for this increase, however, including the difficult economic climate and the resulting financial constraints on parties.

Tribunal members again had to keep abreast of various legislative changes when considering cases during the year. The Cost of Living (Tenant Protection) Scotland Act 2022, which came into force on 28 October 2022 in response to the “cost of living crisis”, made a number of changes which impacted on the work on the Chamber. These changes applied to eviction applications where 1) the pre-application notice was served on or after 6 September 2022, and/or 2) the application was received by the Chamber after 28 October 2022.

The Act introduced:

- a delay in carrying out evictions (except on certain grounds, such as criminal or antisocial behaviour) until either the earlier of the end of a period of 6 months beginning with the day on which the order was granted, or the expiry or suspension of the provisions of the Act
- New eviction grounds for private residential and assured/short assured tenancies (that the landlord intends to sell the property or live in the property to alleviate financial hardship, and that the tenant has substantial rent arrears)
- a temporary rent freeze (0% rent cap) in relation to in-tenancy rent increases
- increased damages for unlawful evictions, up to a maximum of 36 times the monthly rent

The provisions of the Act were initially in place until 31 March 2023, although they have since been extended twice.

2. The Chamber jurisdictions

The Housing and Property Chamber (HPC) has a very wide jurisdiction, covering 50 different application types. These involve the application of at least 12 different statutes. The law relating to private tenancies is particularly complex, being contained in numerous statutes and having evolved through case law. Cases involving property factors often raise complex issues of property law, as well as agency law and consumer law, among others.

There are six main categories of application within the HPC jurisdiction, as described below.

1. Private rented sector applications

On 1 December 2017, the sheriff's jurisdiction for civil cases relating to the private rented sector (PRS) was transferred to the HPC. A new private residential tenancy regime was introduced on the same date, and the HPC provides the dispute resolution mechanism for issues arising from these new tenancies. The private rented sector jurisdiction deals with a wide range of private rented tenancy issues, and since its introduction, it has been by far the biggest jurisdiction in terms of case volumes.

The three biggest categories of PRS application in terms of volume are:

1. *Eviction* and recovery of possession.
2. *Civil proceedings* seeking payment orders.
3. *Tenancy deposit applications* seeking payment orders for monetary sanctions in respect of a failure to comply with tenancy deposit regulations and/or provide required information.

Other categories of PRS application include, among others:

- drawing up the terms of a tenancy
- provision of a written tenancy agreement
- landlord registration appeals
- letting agent registration appeals
- requirements for disabled adaptations for private rented properties
- damages for unlawful eviction
- wrongful termination orders
- recovery of unlawful premiums and loans
- appeals against rent penalty notices issued by a local authority.

2. *Repairing standard applications*

Under the Housing (Scotland) Act 2006, private rented sector tenants can apply to the HPC to seek to compel their landlord to carry out necessary repairs to ensure that their property meets the statutory “repairing standard”, which has been extended to include the tolerable standard test and holiday lets of over 31 days’ duration. Third parties (i.e. local authorities) can also make applications, in the same way as the tenant.

3. *Homeowner (Property Factor) applications*

Under the Property Factors (Scotland) Act 2011, homeowners can bring an application to the HPC regarding a dispute with their property factor under either or both of two possible grounds:

1. 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. that the property factor has failed to comply with the statutory code of conduct for property factors.

4. *Landlord (Right of entry) applications*

Private landlords can apply 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 repairing standard under the Housing (Scotland) Act 2006.

5. *Rent assessment applications*

Under the Rent (Scotland) Act 1984, both landlords and tenants can appeal against rents registered by Rent Officers in relation to regulated tenancies, and seek a determination of a fair rent for their property.

Under the Housing (Scotland) Act 1988, the HPC can consider, 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.

Under the Private Housing (Tenancies) (Scotland) Act 2016, the HPC can consider appeals against the level of rent set by the rent officer in relation to a private residential tenancy.

With the exception of regulated tenancies and other specific limited exceptions, the Cost of Living (Tenant Protection) Scotland Act 2022, which came into force on 28 October 2022, impacted on the ability of parties to seek rent assessments or the ability to appeal against the rent level set by the rent officer.

6. *Letting agent applications*

On 31 January 2018, the registration of letting agents became compulsory, and compliance with a statutory code of practice for all registered letting agents became mandatory. Since that date, tenants, landlords and Scottish Ministers have been able to apply to the HPC in relation to letting agent code of practice disputes.

3. The HPC's approach

While HPC proceedings are legal proceedings, the tribunal takes an inquisitorial approach, rather than the adversarial process which exists in the courts. The process is designed to be accessible to parties, many of whom, whether landlords or tenants, are unrepresented.

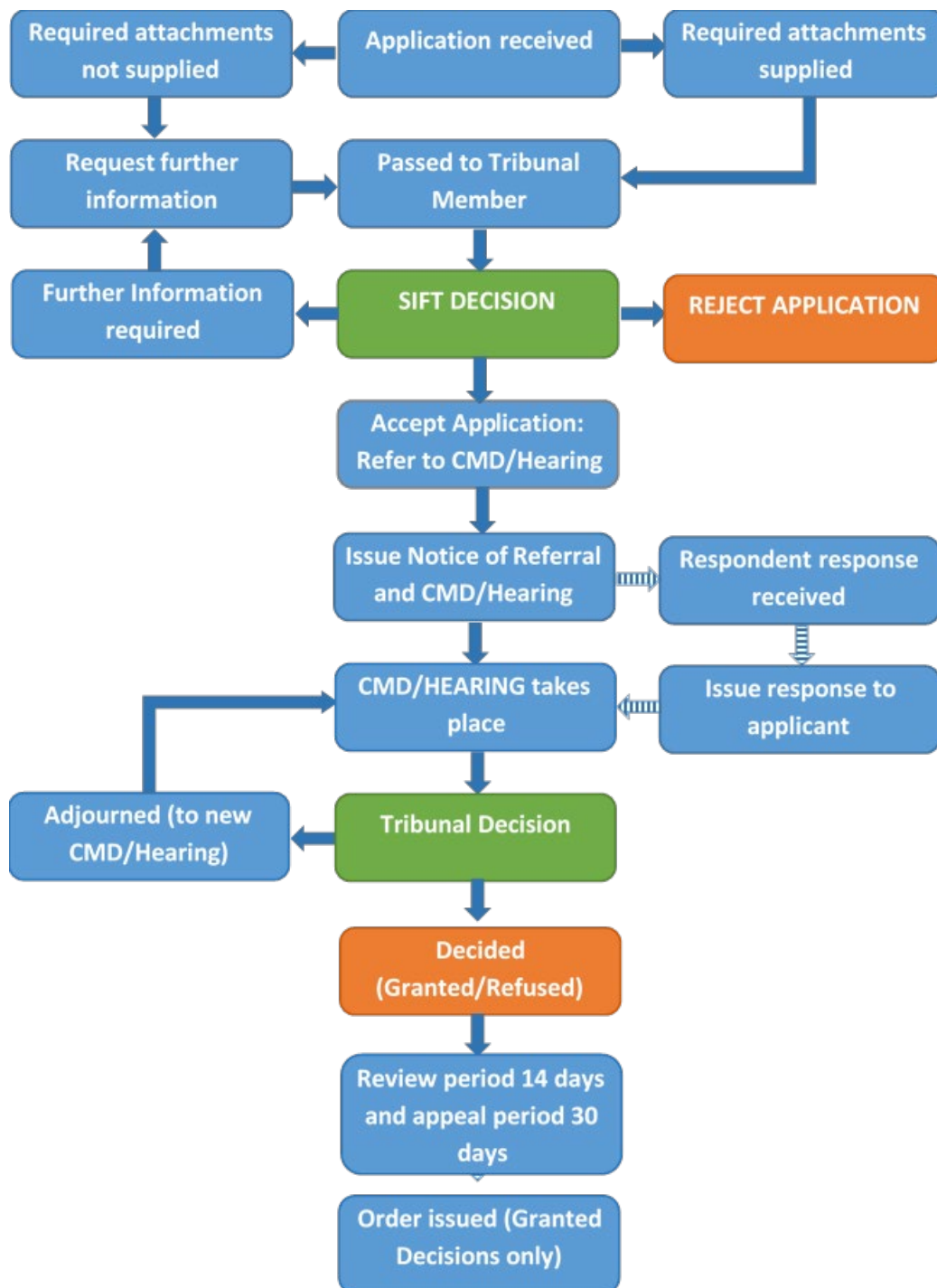
Guidance on the application process is available on the HPC website. The application can be made on a form which can be downloaded from the website and contains prompts on the required information and attachments. HPC staff are not legally qualified and cannot give case specific legal advice, but they can signpost parties to information about procedure on the HPC website.

Because the approach is inquisitorial, the tribunal on its own initiative makes more inquiries than the courts into issues which are considered relevant at each stage of the tribunal process. At the initial sifting stage, additional information will often be requested from the applicant, rather than rejecting an incomplete application. The tribunal judge (legal member) who carries out the sifting role will consider whether the application as presented has no possibility of success and, if so, will reject it. At the case management discussion (CMD) or the hearing, the specialist tribunal will ask more questions of the parties than the courts would typically do. Tribunals will sometimes raise legal points not raised by the parties. This means that there may be less need for parties to be represented than in the courts, although tribunal judges cannot provide legal advice to the parties and must remain independent and impartial. While the HPC has an enabling approach, it still involves the application of often complex housing and property legislation.

4. The HPC process

The process followed by the HPC once an application is received is outlined in the flowchart on the next page, and the key stages are explained in more detail on the following pages.

HPC Process Flowchart



Key stages of the process

i. Initial check on receipt of application

When an application is made, it must meet the requirements prescribed by the relevant HPC procedure rule. The application first goes through a process where a tribunal judge (legal member) must decide whether it meets the prescribed requirements for that type of application. When they are first received, applications often fail to meet the prescribed requirements. Required attachments may be missing, while other information relating to the pre-application procedures or other essential information to make out the case may not be included. In property factor, letting agent and repairing standard cases, it is not unusual for applicants to have failed to notify the other party of their complaints in sufficient detail to give fair notice, as required by the relevant legislation.

One approach to dealing with this could be to reject the application and send it back to the applicant. While this may keep down the HPC's timescale for the end-to-end process, it would be frustrating for applicants, many of whom are individuals without legal representation¹. Moreover, the HPC is an enabling body, and to return applications which are defective would not be consistent with that approach. Therefore, the HPC instead engages in correspondence with the applicant, explaining the information required or additional documents needed. If after a reminder for information, the applicant has still not provided the information sought (normally at least several weeks after the application was received), the application will be rejected.

ii. Sifting stage

Once an application does meet the prescribed requirements, it goes through a sift to check whether it should be referred to a tribunal. The sift involves an assessment by the legal member of whether the application is so fundamentally flawed that it has no prospect of success and should be rejected. This is a high bar. During the year reported on, 10% of all applications disposed of were rejected, generally because either they did not meet this test or they did not meet the prescribed requirements, often after a request for information.

iii. Referral to CMD or hearing

Once accepted, private rented sector applications generally go to a case management discussion (CMD) in the first instance. A CMD is an opportunity to consider aspects of the case that may require to be dealt with in order to resolve the dispute efficiently. Then, if the facts are disputed or the tribunal has a discretionary decision to make, the application will go to an

¹ In fact, as noted in section 7, most applicants are unrepresented in all types of application other than evictions and civil proceedings.

evidential hearing.² A final decision on the application can be made at the CMD, and this is often the case. Prior to the coronavirus pandemic, most private rented sector cases were disposed of at a CMD by a legal member sitting alone, without the need for a further hearing.

This changed in 2020-21, particularly in relation to eviction applications, as a result initially of the changes introduced by the Coronavirus (Scotland) Act 2020. These made previously mandatory grounds of eviction discretionary, and these provisions have been retained. The tribunal must now therefore consider the reasonableness of making an eviction order in each case. During the year reported on, eviction applications continued to be referred to a two-person tribunal, comprising a legal member and an ordinary member with housing or property expertise. While most eviction applications on which a decision was made (90%) were decided at the CMD, the remaining 10% were decided at an evidential hearing.

CMDs and hearings continued to take place largely by teleconference call, with tribunal members, parties and clerks participating remotely. In a small proportion of cases, CMDs and hearings were conducted by videoconference, where the legal member considered that this was necessary to deal with the application fairly and justly. A total of 80 applications were heard by videoconference during the reporting year³. The majority of these (71%) were private rented sector cases, while most of the remainder (21%) were property factor cases.

A considerable amount of forward planning is required in advance of a videoconference to ensure that the hearing runs smoothly on the day. It is also dependent on the availability of computer equipment and connectivity for the participating parties, as well as the parties' views. It is unlikely for the foreseeable future that videoconference hearings will be available for all cases of the Chamber, given the pressures which currently exist on the SCTS digital support team.

A total of 89 hearings were held in person during the reporting year. The majority of these (68%) were property factor cases, and 28% were private rented sector cases.

Such hearings may be arranged where the legal member considers this to be necessary to deal with the application fairly and justly. This may happen where there would be particular challenges involved in holding the hearing by teleconference or videoconference, for example where an interpreter is required and parties also wish to call a number of witnesses.

Prior to the pandemic, hearings were generally fixed as a matter of course in the repairing standard, property factor and letting agent jurisdictions. These cases can be more complex and

² Note: in a very small proportion of applications, the tribunal makes a decision on the basis of the parties' written submissions without a hearing, in terms of Rule 18 of the [Chamber's Procedure Rules](#). During the reporting period, 13 applications were decided on this basis.

³ Note: the number of applications dealt with by videoconference does not directly correlate with the number of videoconference hearings, as some of the hearings involved two or more conjoined applications.

take longer to complete than most PRS cases, and generally remain with the same tribunal members throughout the process.

Until the end of April 2023, in repairing standard and rent assessment cases, an inspection was carried out by the tribunal in person, followed by a hearing held by teleconference one week later. Since 1 May 2023, in person hearings have in most cases been scheduled shortly after the inspection at a venue located close to the property. This is a return to the process which was in place before the pandemic.

In 2021-22, a decision was taken that due to the complexity of property factor cases and the volumes of productions in these cases, a CMD should be scheduled in the first instance with two allocated members before a hearing is arranged. This is intended to assist with case management and allow an opportunity for directions to be issued by the tribunal. It also allows parties to focus on the areas of dispute to ascertain whether any informal resolution is possible. A CMD has been scheduled as part of the standard process for both property factor and letting agent applications since September 2021. All CMDs are conducted by teleconference unless the tribunal requests otherwise. Most hearings were held by teleconference during the reporting year. From 1 May 2023, however, these have reverted to in person hearings as a matter of course, unless the Tribunal advises otherwise in the interests of fairness.

iv. Decision by the tribunal

The HPC's role generally ends with the tribunal issuing a final determination and /or an order, unless a review request, recall application or permission to appeal request is received. As with the courts, the HPC has no role in enforcement of payment or eviction orders, which is the responsibility of the successful party.

All HPC decisions and statements of reasons for those decisions are published on the HPC website and are therefore publicly available. The language used in HPC decisions is typically less legalistic than in court judgments. If the matter involves complex legal issues, however, the explanations need to be sufficiently robust for appeal purposes and will involve discussions on the law.

All forthcoming hearings are also advertised on the HPC website due to the interest which surrounds some cases, and members of the press and observers can and do attend. Arrangements were made during the year for observers to attend CMDs and hearings conducted by teleconference. Updated guidance for observers on what to expect and points to be borne in mind when attending a CMD or hearing conducted by teleconference was issued in August 2021.

v. Further decision on compliance

Where an enforcement order is issued in the repairing standard, property factor and letting agent jurisdictions, the tribunal has a further role in deciding whether the order has been

complied with within the timescale set out in the order. It is a criminal offence to fail to comply with a Repairing Standard Enforcement Order, Property Factor Enforcement Order or Letting Agent Enforcement Order. The HPC therefore reports such failures to the police for prosecution, and it is for the prosecuting authorities to decide if cases should proceed to court. The tribunal is also required to serve notice of the failure to comply on the local authority in repairing standard cases, and on Scottish Ministers in property factor and letting agent cases. It is then for the relevant registration body to decide whether further action should be taken in light of these decisions. If in the course of proceedings it becomes apparent that a party should be registered as a landlord, letting agent or property factor and there appears to be no registration in place, the tribunal will refer the issue to the appropriate registration body. Any further action based on this information is a decision for the registration body.

5. Overall case volumes during the year

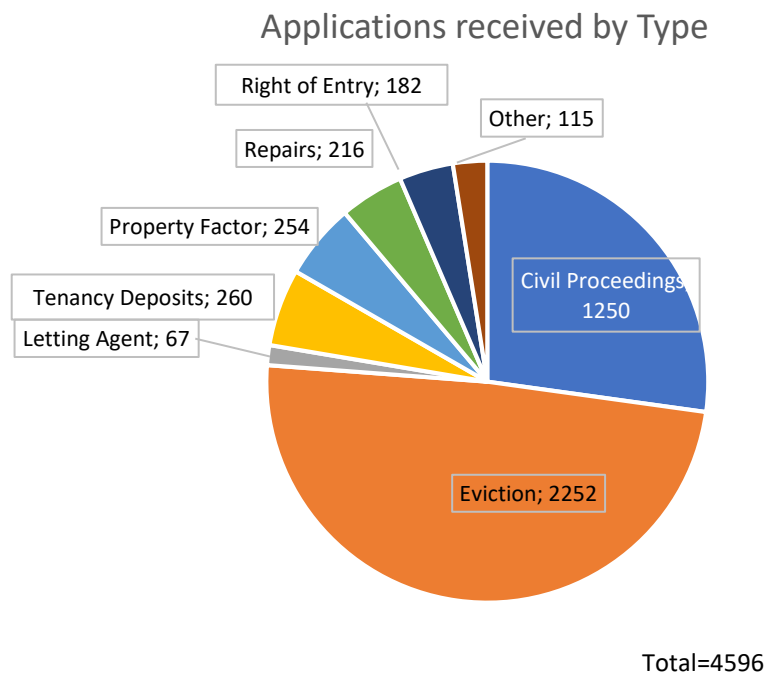
A total of 4596 applications were received during the reporting year. This is the highest number of applications received in any single year since the Chamber came into being in December 2016. This figure represents a 37% increase on the level of applications received in 2021-22, and is also 12% higher than the pre-pandemic previous highest figure of 2019-20.

A breakdown of applications dealt with during the year is shown in the table below. The brought forward/carried forward figures reflect the ongoing nature of cases.

Applications	Brought forward	Received	Closed	Carried forward
Totals	1757	4596	4001	2352

Applications received - overview

A breakdown of the categories of application received is shown in the chart below.



The vast majority (84%) of applications received were once again within the private rented sector jurisdiction. The most noticeable change in the overall distribution of applications received was a large increase in eviction applications, which were 80% higher than the number received in the previous year (1251). Eviction applications made up 49% of all applications received (compared with 37% in 2021-22). While the increase is likely to have been largely driven by the changes to notice periods following the expiry of coronavirus protections, there may be other factors involved. The number of applications was in fact 29% higher than that in 2019-20, before the pandemic period. It remains to be seen whether applications will level off again in 2023-24.

While the total number of civil proceedings applications (1250) was 15% higher than in 2021-22 (1089), the proportion of these fell from 33% of all applications in the previous year to 27% of all applications. Given the sizeable increase in eviction applications, and the fact that civil proceedings applications may be brought by both landlords and tenants for a variety of reasons, the figures suggest that many (and possibly most) eviction applications were not accompanied by a civil proceedings application. This could indicate that fewer eviction applications were brought on rent arrears grounds than was previously the case.

As in the two previous years, the third biggest category of applications (6%) was tenancy deposit applications for an order for payment of a sanction where the landlord has failed to comply with the duty to pay a tenancy deposit into an approved scheme. There were 260 of these applications, a fall of 13% on the previous year's figure.

The number of property factor applications (254) was marginally lower than that for tenancy deposit applications, also accounting for 6% of all applications. Numbers were up by 28% on the previous year. This was at least partly due to a sizeable increase in the number of multiple applications relating to the same development or tenement. Letting agent applications increased by 46%, although the actual numbers (67) remained fairly low.

While the total number of repairs cases (216) increased by 19% on the previous year, the overall proportion remained at around 5%. The number of landlord (right of entry) applications (182) rose by 13% on the previous year, continuing the upward trend since these were introduced in 2015. While still low in volume (30), rent assessment applications also increased - numbers were 58% higher than in 2021-22.

Applications closed during the year

A total of 4001 applications were closed during the year, 31% more than during the previous year. This is a testament to the hard work of the tribunal members and SCTS administrative staff who process and determine the applications received. Perhaps unsurprisingly, however, given the higher volume of applications received, 34% more applications were carried forward into 2023-24 than into the previous year.

Rejected and withdrawn applications

Of the 4001 applications closed during the year⁴, a total of 482 (12%) were rejected⁵, the same proportion as the previous year. A breakdown of the reasons for rejection of these applications is shown in the table below.

The applications rejected included those where a legal member considered during the sifting stage that the application had no legal merit (i.e. was “frivolous”) and could not succeed, or that it was so fundamentally flawed that it could not succeed and it is not appropriate to accept e.g. the correct pre-application notice procedure was fatally flawed, or it was not a legally competent application.

⁴ Note: this figure relates to applications closed during the year, rather than applications received.

⁵ The grounds for rejection are contained in Rule 8 of the [Chamber's Procedure Rules](#) (SSI 2017 No 328). “Vexatious” is taken to mean habitually and persistently instituting proceedings without any reasonable grounds, usually with an improper motive. “Frivolous” has been interpreted as applying to an application made in good faith but which is “futile, misconceived, hopeless or academic” per Lord Bingham (as Lord Chief Justice) in *R V North West Suffolk (Mildenhall) Magistrates Court* [1998] Env LR 9 at page 16

Rejected applications

Reason for rejection	Number
Frivolous or vexatious	176
Not appropriate to accept	222
Made for a purpose other than that specified in the application	80
Identical or substantially similar application	2
The dispute has been resolved	2
Total	482

One-third of all applications closed during the year (1337 or 33%) were withdrawn by the applicant at some stage of the proceedings, mostly after they were referred to a tribunal. The majority (827 or 62%) of the applications withdrawn were eviction applications, while a further 16% (220) were civil proceedings applications.

There is no requirement to state the reason for withdrawing an application, and no reason was given for 36% of withdrawals. For the remaining 63% of withdrawals⁶, however, the reason recorded was that the dispute has been resolved by the parties.

Work done during the year

The figures discussed in section 6 for each category of application relate to: 1) the applications received during the year and 2) the outcomes for those applications which were closed during the year⁷. It should be noted, however, that a significant proportion of the Chamber's work involves managing the progress of ongoing applications which may not reach a final conclusion during the year. An application may be processed in one reporting year, for example, but it may not reach a CMD or hearing until the following year. An application received in the previous reporting year may have been closed during the current year.

An application may be dealt with at several CMDs and/ or hearings. These may also be postponed / adjourned on one or more occasions for a variety of reasons. This can involve a significant amount of work for both the tribunal and the HPC administration.

⁶ Note: percentages do not add up to 100 due to rounding.

⁷ Note: in property factor, repairing standard and letting agent applications, there may not be a *final* outcome during the same year. Where the tribunal issues an enforcement order in such cases, a final decision on whether the relevant party has complied with that order may not be made until a later date.

6. Applications received and case outcomes by case type

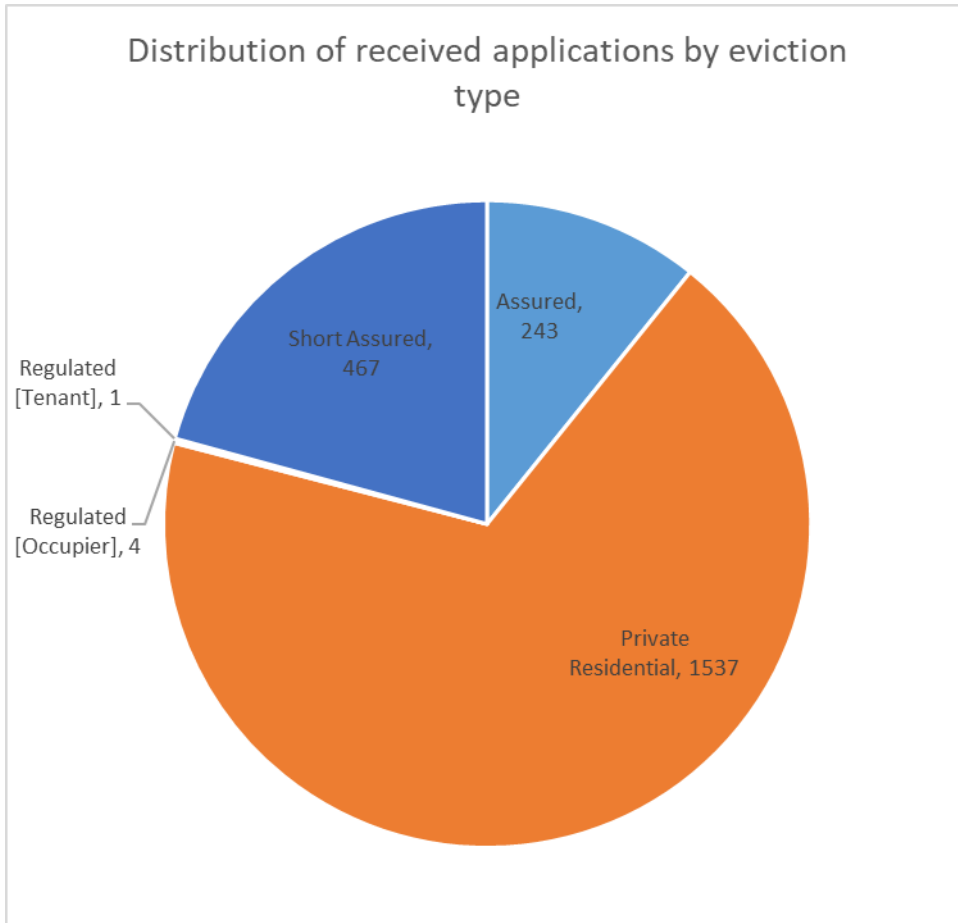
i. Evictions

As in the previous year, the majority of eviction applications concerned private residential tenancies, which were introduced on 1 December 2017. As might be expected, these are becoming increasingly prevalent, making up 68% of all eviction applications received (as against 64% in 2021-22 and 60% in 2020-21).

There was a corresponding decrease in the proportion of applications relating to assured or short assured tenancies, which made up 32% of applications⁸.

While detailed data was not collected on the grounds on which applications were brought, the experience of those within the Chamber suggests that, while applications on the grounds of rent arrears are still common, they are less prevalent than in previous years. It is thought that there has been a sizeable increase in applications brought on the grounds that the landlord intends to sell the property. This specific ground (ground 1) is only available in relation to private residential tenancies, which as noted above now account for two-thirds of eviction applications. It is also notable, however, that in many short assured tenancy eviction applications, where the ground is that the tenancy has reached its end date, applicants stated in the application that they intended to sell the property. It is also thought that there has been an increase in applications brought on the ground that the landlord or a member of their family, intend to live in the property.

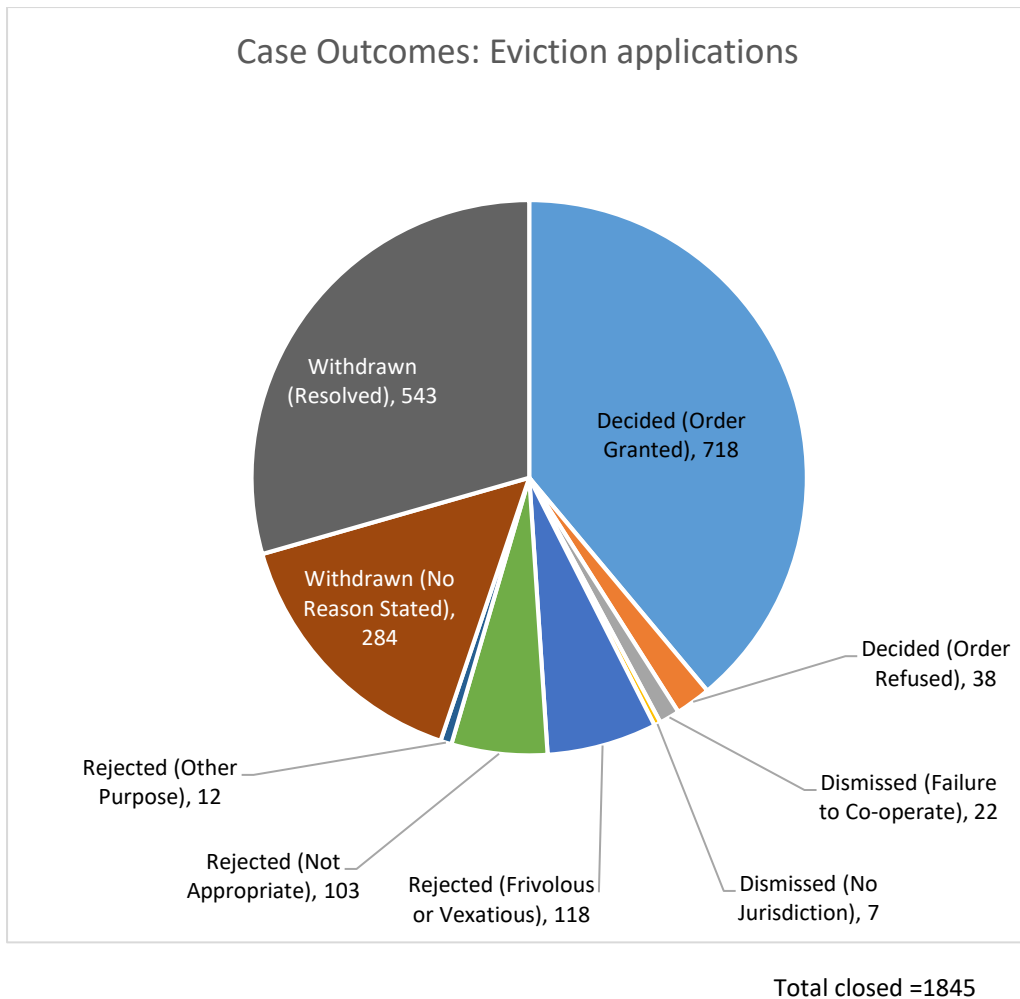
⁸ There were also five applications relating to regulated tenancies.



Total received =2252

Case outcomes

The chart below shows the outcomes for 1845 eviction applications which were closed during the year.



A total of 233 applications were rejected, while more than half (53% or 827) were withdrawn by the applicant at some stage of the process. For around two-thirds (543) of withdrawn applications, the reason given was that the matter had been resolved. It is likely that in some cases, this was because the respondent had vacated the property voluntarily prior to the CMD or hearing. While no reason was stated for the remaining 284 withdrawals, it is likely that in some cases, the applicant may have reconsidered the situation and/or negotiated matters with the respondent.

Of the eviction applications which did proceed to a tribunal determination at a CMD or hearing (785), an order was granted in the vast majority of cases (718 or 91%). An order was refused in 38 cases, and 29 applications were dismissed, either because one party had failed to co-operate with the tribunal or because the tribunal considered that it did not have jurisdiction.

ii. Civil proceedings

Civil proceedings applications can be brought in relation to any monetary dispute between landlord and tenant. They typically involve landlords seeking recovery of unpaid rent, and often

also the costs of rectifying alleged damage to the property at the end of a tenancy. They can however be brought for other reasons, and may be brought by a tenant against a landlord.

As in the previous year, civil proceedings applications made up the second largest proportion of applications received. While these accounted for a lower proportion of all applications (27%) than in the previous year (33%), this was due to the sizeable increase in eviction applications. The number of civil proceedings (1250) was actually 15% higher than in 2021-22. Given that 2252 eviction applications were received, however, this suggests that a fairly high proportion of eviction applications were no longer accompanied by a civil proceedings application.

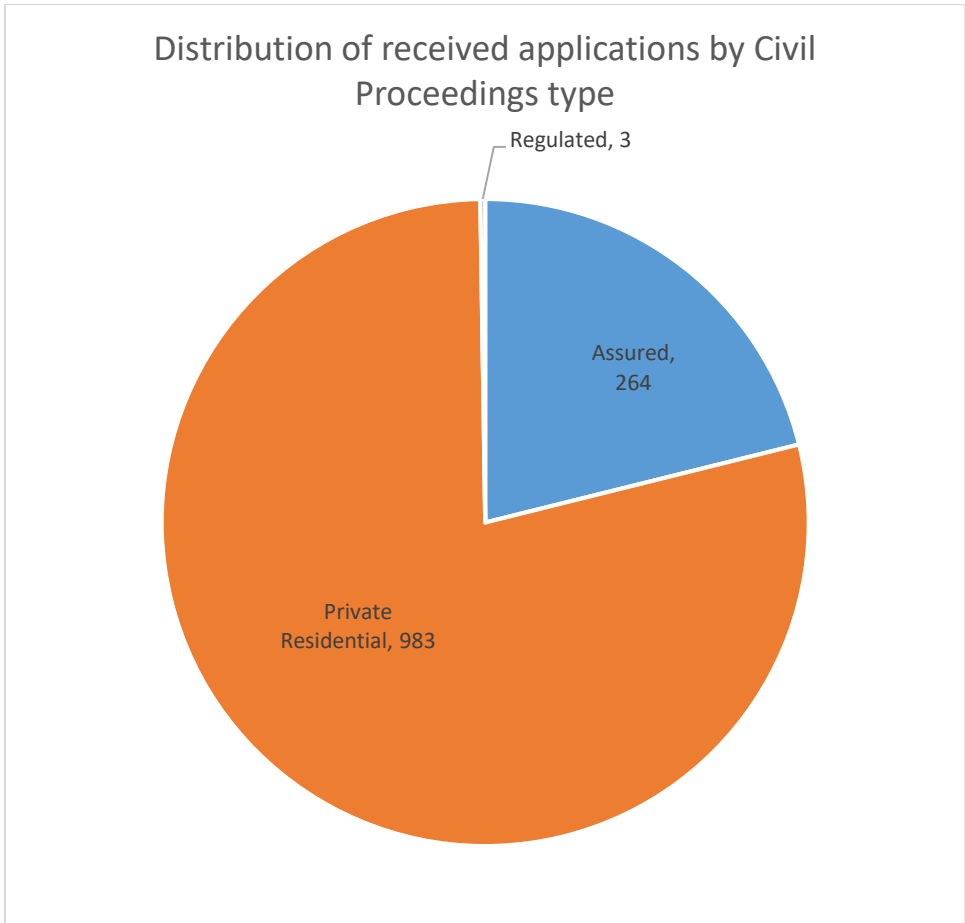
As in the previous year, a sizeable number (159) of civil proceedings applications were served on the respondent by the tribunal using service by advertisement on the HPC website, rather than by sheriff officer. This method is used where an applicant is unable to trace the respondent's current address. While this method of service was also used in smaller numbers of eviction and tenancy deposit applications, it remains most common in civil proceedings applications. This generally happens where the tenant has left the property but still owes the landlord unpaid rent. There may also be a claim in some cases for damage alleged to have been caused to the property by the tenant.

There is no limit on the amount of money that can be claimed in civil proceedings applications. These can involve significant sums, which can often exceed the ordinary cause threshold of £5000 in the sheriff court. The Scottish Association of Landlords reported in August 2019 that the largest payment order issued by the HPC to date was for rent arrears totalling £39,520⁹. As rents have generally continued to increase since then (and also given the lengthened notice periods which applied during the pandemic), it can now take a relatively short period of time for arrears to mount up into many thousands of pounds.

As expected, the proportion of civil proceedings applications involving private residential tenancies again increased during the year. These accounted for more than three-quarters (983 or 79%), compared with 76% in the previous year and 66% in 2020-21, with 21% (264) relating to assured/short-assured tenancies¹⁰.

⁹ [Tribunal on trial: 18 months of the Scottish Housing and Property Chamber | NRLA](#)

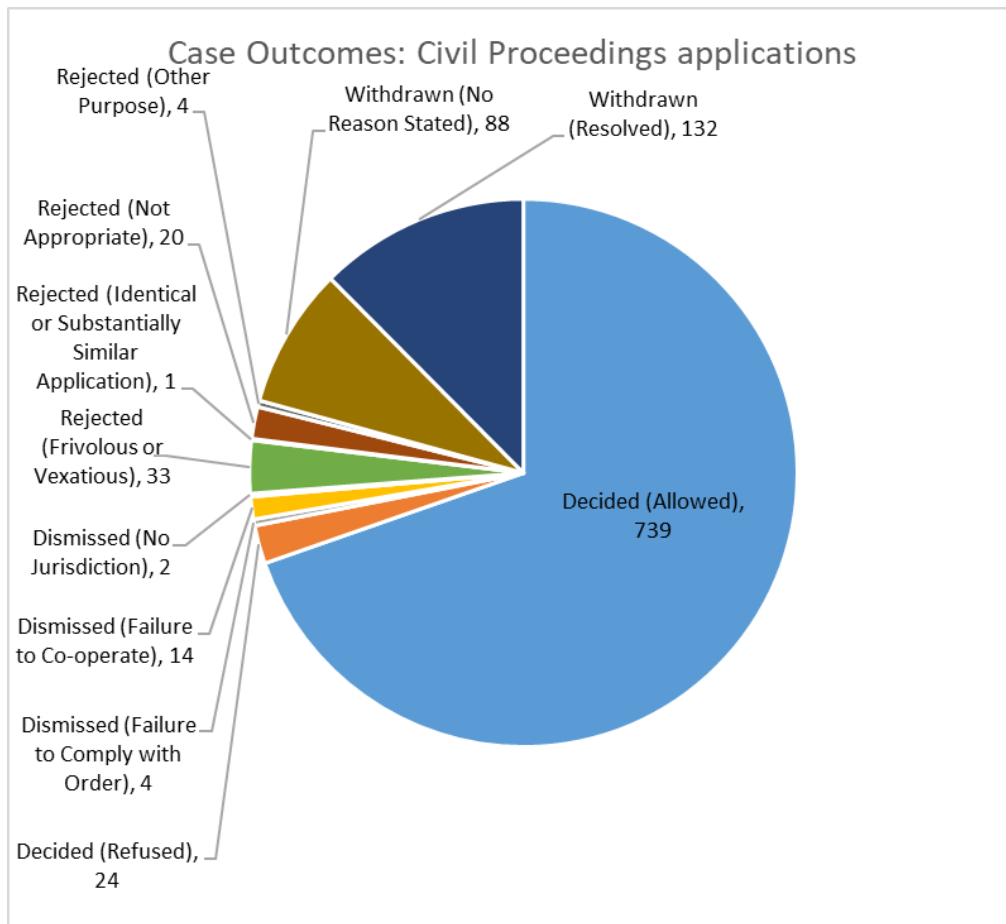
¹⁰ There were also three applications concerning regulated tenancies



Total= 1250

Case outcomes

The chart below shows the outcomes for 1061 civil proceedings applications which were closed during the year.



Total closed= 1061

A total of 58 applications (5%) were rejected, and 220 (21%) were withdrawn. The reason stated for withdrawal in 132 (60%) of these applications was that the matter had been resolved, while no reason was given for the other 88 applications withdrawn. As in the previous year, withdrawals were less common than in eviction applications, perhaps because applicants often continue to pursue respondents for outstanding rent arrears and/or damages after they have left the property. Nevertheless, these figures suggest that in a sizeable proportion of cases, the parties may have negotiated and/or resolved the matter prior to the CMD or hearing.

As in 2021-22, an order was granted in the vast majority (739 or 94%) of the applications which were determined by a tribunal. Of the remaining 6% of applications (44), an order was refused in 24 cases and 20 were dismissed, either due to a failure by the applicant to co-operate or comply with an order, or because the tribunal did not have jurisdiction.

All respondents in payment order applications are sent an application to seek a time to pay direction under the Debtors (Scotland) Act 1987. These applications allow a respondent who admits the debt owed to ask the tribunal to allow them to pay the sum owed either by instalments or as a lump sum at a later date. As in the two preceding years, relatively few respondents took up this option during the year. A total of 43 applications for a time to pay

direction were disposed of during the year. Of these, a time to pay direction was granted in more than half (25) of applications. All of these involved payment by instalments. The remaining 18 applications (all but one of which involved payment by instalments) were refused.

iii. Tenancy deposit applications

Landlords in Scotland who take a tenancy deposit from their tenant have since 2012 been required to pay the deposit into an approved scheme within 30 working days of the tenancy commencing¹¹. If they fail to do so, the tenant can make an application to the HPC under rule 103 of the tribunal's rules¹². The tribunal can require the landlord to pay to the tenant up to a maximum of three times the amount of the deposit. Such applications were previously made in the sheriff court. The transfer of jurisdiction to the HPC resulted in a significant increase in applications from tenants. This is likely to be a result of its more accessible procedures. In particular, unlike the sheriff court, no fee is payable for bringing an application. The Scottish Association of Landlords has previously noted that the 'big upsurge' in applications has meant that there has been better enforcement of landlord obligations¹³.

While some way behind evictions and civil proceedings applications, tenancy deposit applications were, as in the two previous years, the third biggest category of applications received. There were 260 such applications in 2021-22, a decrease of 13% on the previous year's figure. The fact that these numbers remain fairly high suggests that, despite the duty having been in place since 2012, there are many landlords who are still failing to comply with it. While in some cases the landlord has deliberately failed to comply with the duty, 2020 research by Safe Deposits Scotland found that in most cases the landlord was either unaware of the legislation or forgot¹⁴.

The same research found that the average award made by a tribunal at that time was 1.7 times the value of the deposit. It also found that landlords had been ordered to pay a total of £321,609 to tenants, averaging £1,109 per case. The highest award to tenants was £7,500 in relation to a rented property in Edinburgh, representing three times the deposit amount.

Case outcomes

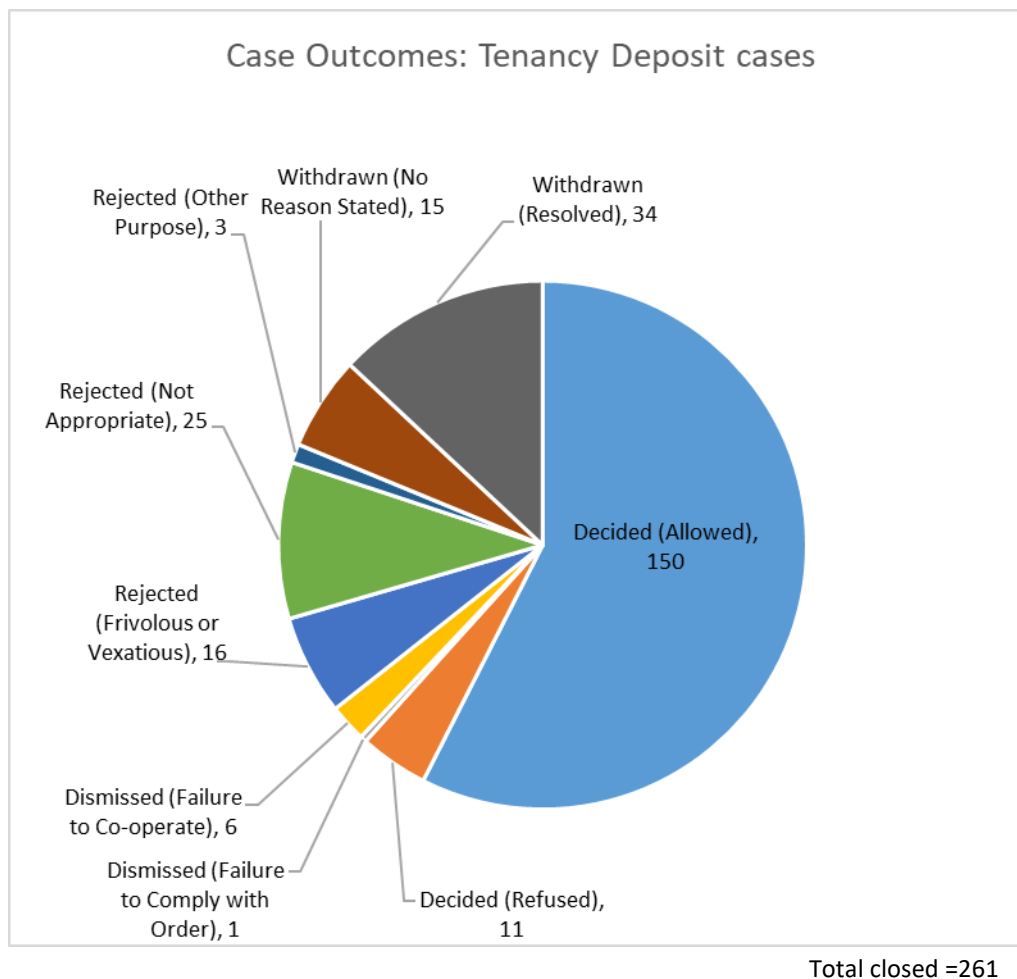
The chart below shows the outcomes for the 261 tenancy deposit applications which were closed during the year.

¹¹ Under the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011](#)

¹² [Chamber's Procedure Rules](#)

¹³ Scottish Association of Landlords – evidence to the [Local Government and Communities Committee](#) (at Annexe B, p.7)

¹⁴ [Majority of Scottish Landlords Comply with Tenancy Deposit Laws](#), Scottish Housing News, 9 January 2020



A total of 44 (17%) applications closed were rejected. In many cases, the application was rejected because the application was received more than three months after the tenancy ended, which is the statutory deadline for such applications. Most of the applications were rejected because information necessary to constitute a valid application had been requested by the tribunal and no response was received. In many cases, the rejection was because all of the information required to make a valid application had not been received within three months of the end of the tenancy. A few applications were rejected because the respondent named was the letting agent rather than the landlord, or because the tenancy was not a relevant tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011, for example because it was a holiday let or the landlord was a resident landlord.

It is fairly common for an application to be made under rule 103 when in fact the applicant is seeking the return of their deposit in addition to/rather than seeking a sanction against their landlord for failure to protect their deposit. In this situation, it is open to the applicant to bring a separate civil proceedings application for the return of their deposit alongside the section 103 application. The two applications will then be conjoined and heard together by the tribunal.

Almost one in five (49 or 19%) applications were withdrawn at various stages of the process. The reason stated for most (34) of these withdrawals was that the matter had been resolved,

while no reason was given for the other 15 withdrawals. This suggests that there may have been discussion and negotiation between the parties in those cases.

In the vast majority of the 168 applications which were decided by a tribunal (150 or 89%), an order was granted in the applicant's favour. A total of 11 applications were refused, while the remaining 7 were dismissed, due to either the applicant's failure to co-operate or to comply with an order of the tribunal.

iv. Property factor applications

There were 254 property factor applications, representing 6% of all applications received. This was a 28% increase in applications compared with the previous year. This increase was at least partly due to a sizeable rise in the number of multiple applications relating to the same development or tenement. As in previous years, the vast majority (97%) of these applications involved commercial property factors, while the remaining 3% (7) concerned housing associations¹⁵.

As in previous years, the vast majority of the applications received (83%) concerned residential factoring. The remaining 17% were categorised as land management complaints. This represents (a sizeable increase from the two previous years (3% in 2021-22 and 7% in 2020-21), which may be accounted for by a group of 20 land management cases. As in previous years, the most common category of complaints under the code of conduct concerned communication and consultation (61% of all applications). The most common categories of complaint after this related to carrying out repairs and maintenance (52%) and complaints resolution (50%)¹⁶. As in previous years, most applications (68%) included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

During the year, 66 groups of multiple applications from different homeowners within a development or tenement were received. Group applications received totalled 165 applications overall¹⁷. This means that almost two-thirds of property factor applications received during the year were group applications. While there were more than three times as many group applications as in the previous year (21), most of the groups (52) involved only two applications. Aside from one group of 20 applications, the remaining groups numbered between 3 and 7 applications. Where possible, multiple applications are grouped together and heard on the same day by the same tribunal to ensure efficiency, although this can result in longer and more complex hearings.

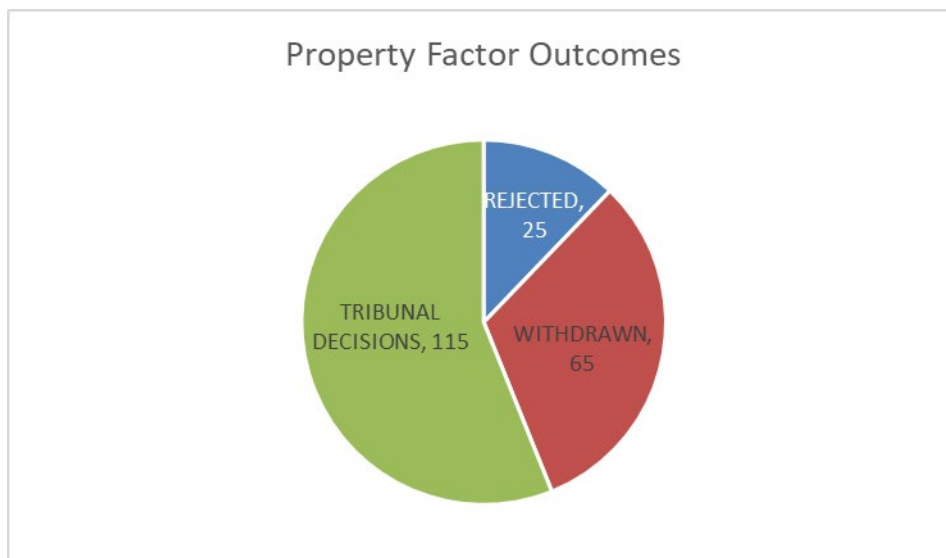
¹⁵ Or their subsidiaries

¹⁶ Note: most applications involved more than one complaint, and many included complaints under several different sections of the code of conduct.

¹⁷ Note: there were in fact 172 applications overall within these 66 groups, but only 165 of these were received during the reporting period.

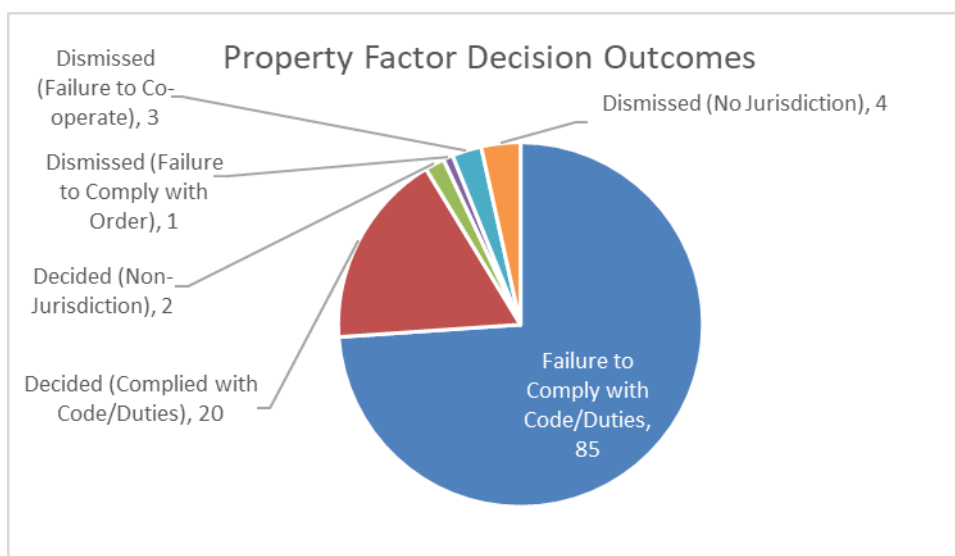
Case outcomes

The chart below indicates the outcomes of the 205 property factor applications which were closed and/or decided by a tribunal during the year. 'Decided' means a decision was made about whether the property factor had complied with the code of conduct and/or the property factor's duties. In cases where a Property Factor Enforcement Order (PFE0) is issued by a tribunal, a decision on whether the order has been complied with may not be made until the following year.



Total = 205

A total of 25 applications (12%) were rejected, half the proportion which were rejected the previous year. One-third (32% or 65) of applications were withdrawn by the applicant: while no reason was stated for most of these (45), in almost a third of cases (20), it was because the matter had been resolved. A total of 115 applications were decided by a tribunal. The outcomes of those applications are shown in the chart below.



Total=115

In almost three-quarters (85 or 74%) of those 115 applications, the tribunal found that the property factor had failed to comply with the code and/or the property factor's duties. The tribunal found that the property factor had complied with the code and/or their duties in only 20 applications (17%). This was in line with the previous year, when compliance was found in only 18% of applications decided upon. In four cases, after considering legal submissions on the issue, the tribunal decided that the application was outwith its jurisdiction.

Eight applications were dismissed by the tribunal. In four cases, this was due to a failure by a party to co-operate or to comply with an order by the tribunal. In the other four cases, this was because the tribunal considered that it had no jurisdiction.

A total of 75 Property Factor Enforcement Orders (PFEOs) were issued. Most of these (58 or 77%) related to group applications, across 15 different groups.

Tribunals considered whether property factors had complied with a PFEO in 54 cases¹⁸. The tribunal found that there had been compliance in more than two third of these (42 or 77%). The tribunal found that there had been a failure to comply with the PFEO in 11 cases¹⁹. As in the previous year, this indicates a relatively high rate of compliance by property factors and is a positive outcome.

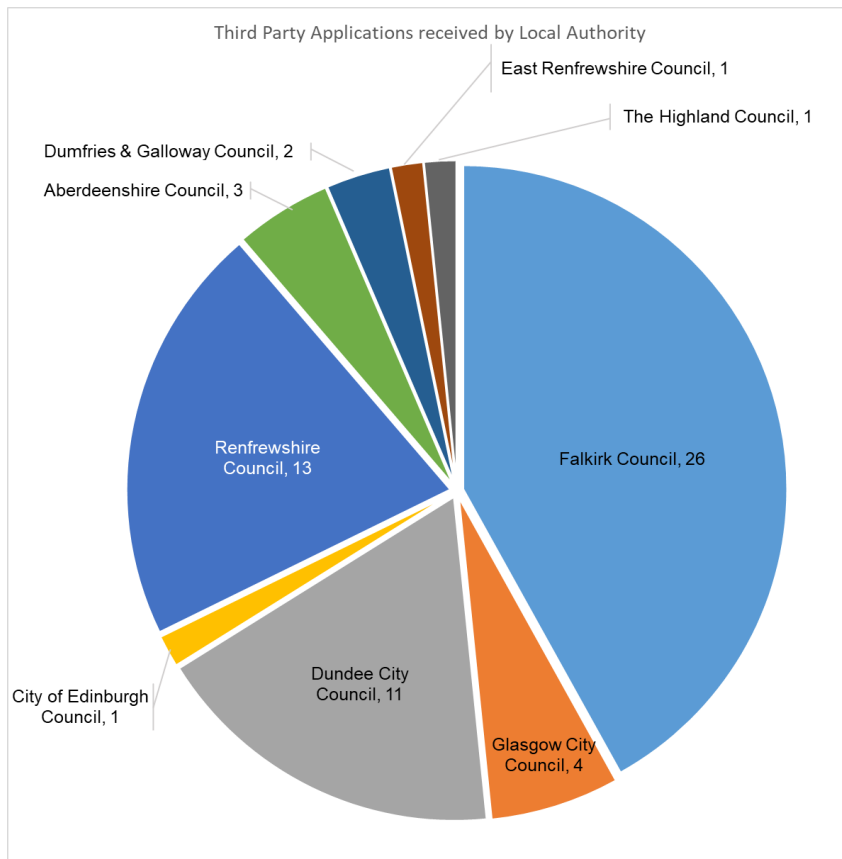
v. Repairing standard applications

A total of 216 repairing standard applications were received, comprising 5% of all applications. This was a sizeable (19%) increase on the numbers received in 2021-22. As in previous years, the majority of applications (154 or 71%) were made by tenants, while the remaining 29% (62) were made by third-party applicants. This represents a significant increase in third-party applications, with twice as many received as in 2021-22. The proportion of third-party applications, while remaining low, was similar to that in 2020-21. This suggests that some local authorities have become more active again in pursuing third-party applications following the pandemic period.

As before, third-party applications came from a small number of local authorities which have been particularly proactive. Applications were received from 10 of the 32 local authorities, as shown in the chart below. This included more local authorities than in the two previous years (4 in 2020-21 and 7 in 2021-22). As in two of the three previous years, Falkirk Council made the highest number of applications (27), accounting for 44% of all third-party applications. This was followed by Renfrewshire Council (13), Dundee City Council (11) and Glasgow City Council (5).

¹⁸ Note: some of these PFEOs would have been issued in the previous year.

¹⁹ In the remaining case, an outcome of 'other' was recorded



Total = 62

Case outcomes

The chart below shows the outcomes of 224 repairing standard applications which were closed and/or decided by a tribunal during the year.

A total of 50 applications were rejected during the year. The most common reasons for rejection were that the applicant was no longer residing at the property when the application was made, that the tenant had not responded to requests for further required information and that the tenant had failed to send the required notification of repairs to the landlord.

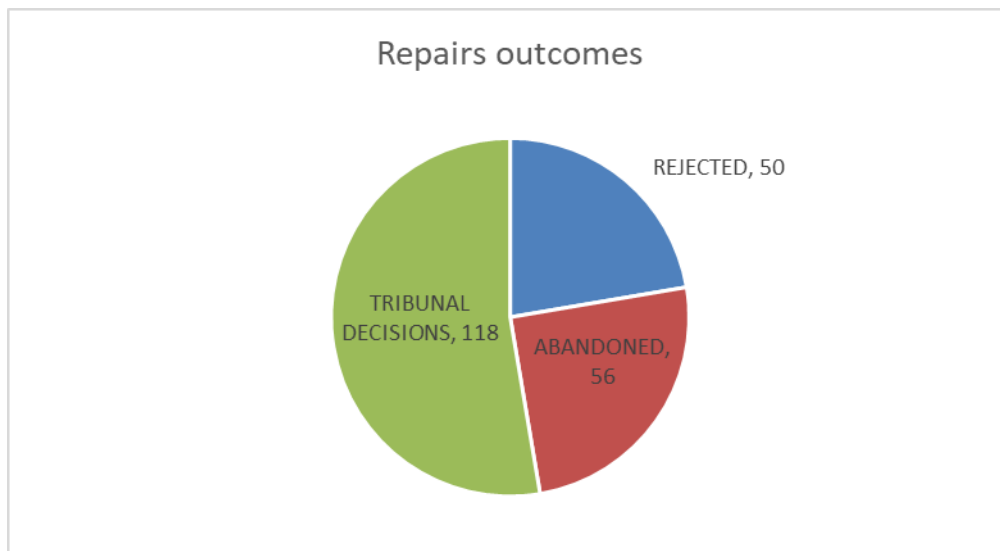
A total of 56 applications were abandoned either before referral to a tribunal or at a later stage. Where an application is withdrawn (usually because the landlord has carried out the repairs) or where the tenant leaves the property after making the application, the tribunal has power to either continue with an application or abandon it²⁰. In 31 cases, the HPC continued with the application and referred it to a tribunal even after the tenancy was terminated, due to the allegations made or given the nature of the repairing complaints made, which raised health and safety issues for others.

²⁰ Housing (Scotland) Act Schedule 2 Paragraph 7

The tribunal decided on 118 applications during the year.

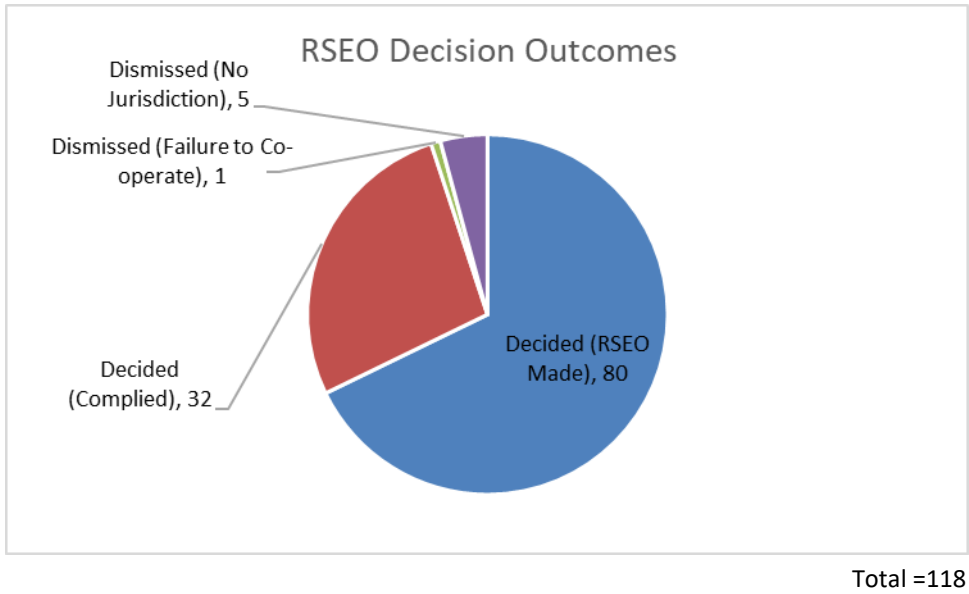
‘Decided’ means a decision was made about whether the landlord had complied with their repairing standard duty. In cases where a Repairing Standard Enforcement Order (RSEO) is issued by a tribunal, a decision on whether the order has been complied with will not be made until a later date, depending on the time allowed in the RSEO for the completion of repairs.

Even after the tribunal has decided that the landlord has failed to comply with the RSEO and referred the matter for prosecution and/or made a Rent Relief Order, the case remains open with the tribunal. The RSEO is registered against the title to the property, and occasionally a landlord will carry out the repairs years later and then approach the tribunal asking for remove the order. This usually occurs when the landlord wishes to sell the property and needs to remove the burden on the title which prohibits letting and is proving to be a barrier to the sale.



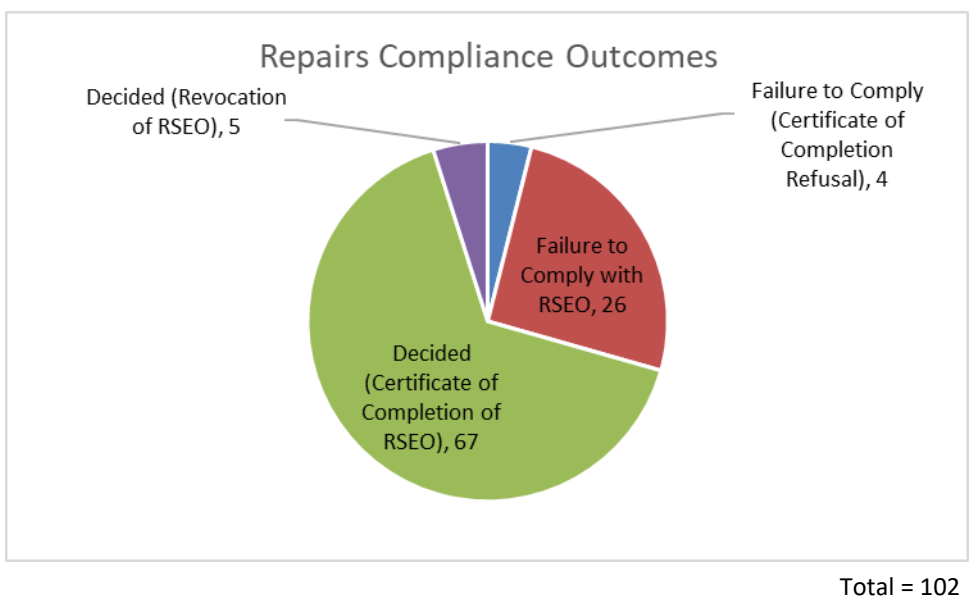
Total= 224

The decisions made on the 118 applications which were considered by a tribunal are shown in the chart below. The tribunal found that there had been a failure to comply with the repairing standard duty in more than two-thirds (68% or 80) of cases. An RSEO was issued in all of these cases. In 32 cases, the tribunal found that the landlord had complied with the repairing standard duty. The tribunal dismissed six applications. In five cases, this was because the tribunal decided that it had no jurisdiction, and in the other case this was due to failure by a party to co-operate.



As shown in the chart below, 67 Certificates of Completion were issued by tribunals following compliance by the landlord with the RSEO²¹. A Failure to Comply decision was issued in 26 cases, and 14 of these were accompanied by a Rent Relief Order. If the tenant has moved out by the stage of consideration of compliance with a Repairing Standard Enforcement Order, a Rent Relief Order cannot be considered.

In five cases, the tribunal revoked the RSEO because it considered that the action required by the order was no longer necessary. In four cases where a Failure to Comply decision had previously been issued, and the landlord subsequently contacted the HPC to say the works had been completed, the tribunal decided that the work was still not complete and refused to issue a Certificate of Completion.



²¹ Note: some of these RSEOs would have been issued in previous years

Where a tribunal has issued an RSEO, it may later vary the order as it considers to be reasonable²². Most commonly, a tribunal will vary an order to give the landlord more time to complete the works, where it considers this to be reasonable.

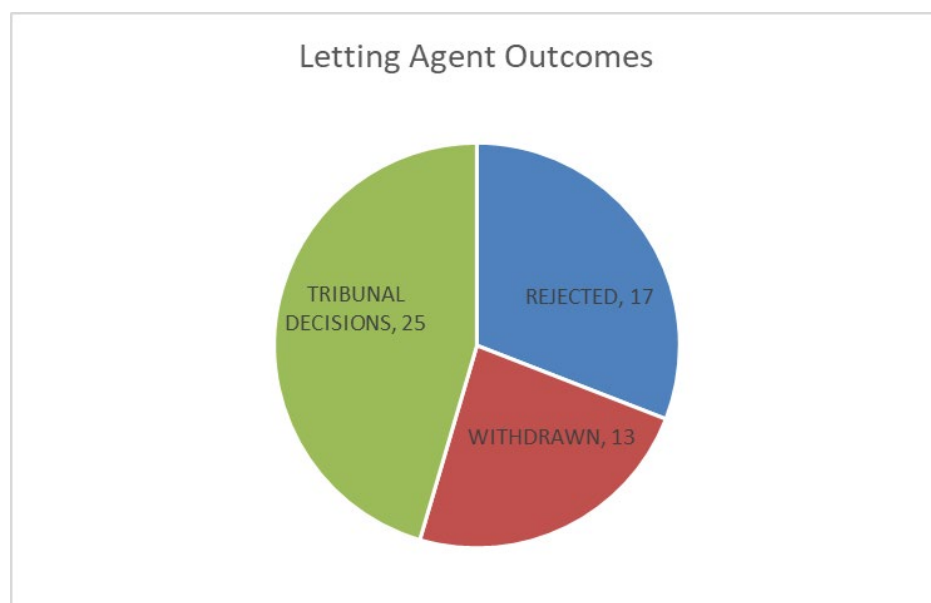
vi. Letting agent applications

A total of 67 applications to enforce the letting agent code of practice were received during the year, accounting for 1.5% of applications. While this was an increase of 46% on the previous year, the level of applications was lower than that in 2019-20 (77).

It was anticipated that once all letting agents were registered, as they were required to do by 1 October 2018, applications would increase as awareness of the code of practice grew among landlords and tenants. Despite the increase on the 2021-22 figures, the volume of letting agent applications remains significantly below the original projected figure of 240 cases per annum. While the reasons for this are unclear, this suggests that neither landlords nor tenants have many complaints about letting agents - or that if they do, they are not taking these to the Chamber. It may also be the case that letting agents are resolving complaints at an early stage, and that landlords and tenants therefore do not need to escalate matters to the Chamber.

Case outcomes

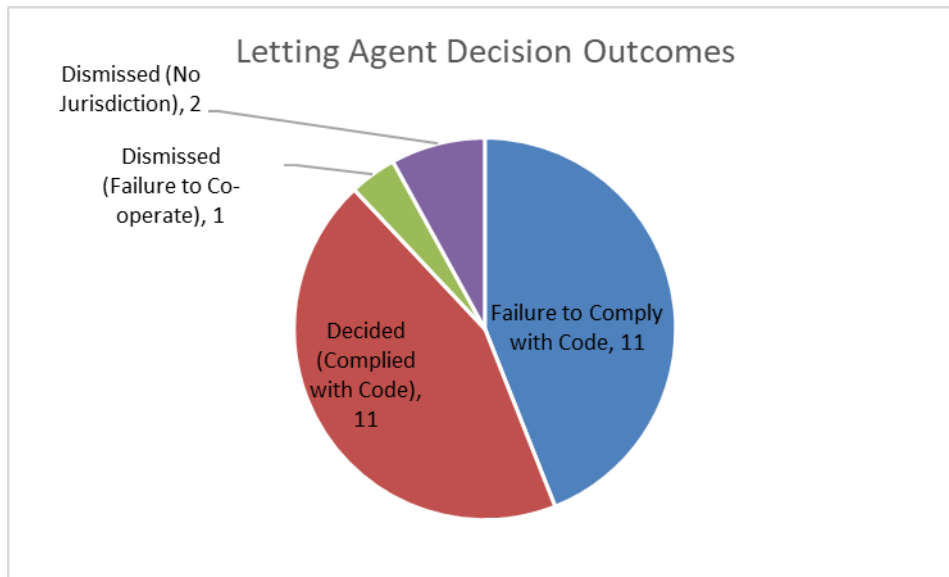
The chart below indicates the outcomes of the 55 letting agent code of practice applications which were closed and/or decided by a tribunal during the year. ‘Decided’ means a decision was made about whether the letting agent had complied with its duties under the code of practice. In cases where a Letting Agent Enforcement Order (LAEO) is issued by a tribunal, a decision on whether the order has been complied with may not be made until a later date.



Total =55

²² Housing (Scotland) Act 2006 section 25

17 (31%) of the applications were rejected, and 13 were withdrawn. The remaining 25 applications were decided by a tribunal. The decisions made in these cases are shown in the chart below.



Total =25

In 11 of these applications, the tribunal found that there had been a failure to comply with the code of practice. A Letting Agent Enforcement Order (LAEO) was issued in all but one of these cases. The tribunal decided that the letting agent had complied with the code in 11 cases. The remaining three applications were dismissed by the tribunal, two because it did not have jurisdiction and the other due to failure by a party to co-operate.

The proportion of cases where the tribunal found there had been compliance with the code of practice increased for the second year in a row, which is a positive finding, although there was a finding of failure to comply with the code in a similar number of cases.

Tribunals considered whether letting agents had complied with LAEOs in 17 cases²³. The tribunal found that there had been compliance with a LAEO in 16 cases, with a failure to comply decision in the remaining case

vii. Landlord (right of entry) applications

There were 182 landlord (right of entry) applications, a 13% increase on the number received in the previous year. The number of applications within this jurisdiction, while remaining relatively low, has been slowly increasing year on year since it was introduced in December 2015. Right of entry applications continue to be received in a few cases where there is also a repairing standard dispute (and on occasion an eviction or civil proceedings application) involving the same parties.

²³ Note: some of these LAEOs would have been issued in the previous year

viii. Other types of application

Various other types of application made up the remaining 2.5% of applications (115).

1. Rent assessment applications

While still low in volume (30), the number of rent assessment applications cases was 58% higher than that of the previous year. Around half (14) of these concerned regulated tenancies, while 9 related to assured/short assured tenancies and the remaining 7 concerned private residential tenancies.

2. Other private rented sector applications

The remaining 85 applications were all within the private rented sector jurisdiction. Details of these applications are shown in the table below.

Other private rented sector applications

Application type	Rule number	Number of applications
Application for a wrongful termination order	110	34
Application for a time to pay order	41H	11
Private residential tenancy terms applications ²⁴	105 106 107	10
Application for damages for unlawful eviction	69	7
Application to order a person to cease obstructing a person from complying with the repairing standard	49	5
Application to recover unlawful premiums and loans	87	4
Application to provide written tenancy agreement and weekly rent book	68	3
Landlord / letting agent registration appeals	94 99	2
Application to appeal against a decision of the local authority to serve a notice that no rent is payable.	100	2

²⁴ These include: applications to draw up the terms of a tenancy (rule 105), applications to draw up the terms of tenancy where a statutory term is unlawfully displaced (rule 106) and applications for a payment order where landlord has failed to provide information.

Application for compensation for misrepresentation or concealment by a landlord	78	2
Application to revoke a notice that no rent is payable	101	1
Application to contract out of the repairing standard.	47	1
Application to appeal the decision of a landlord in relation to adapting a rented house for a disabled person or carrying out work to improve the energy efficiency of the house.	59	1
Application to determine removal expenses	67	1
Application to amend a rent increase notice	81	1
Total		85

While the numbers involved were small, the following changes were of particular note during the reporting year:

- The overall number of these 'other' types of applications fell markedly compared with the previous year (from 115 to 85)
- While the numbers remained fairly small (31), applications for a wrongful termination order were up slightly, continuing an upwards trend in these applications compared to previous years.
- There was a decrease in time to pay order applications (from 18 to 11), although the numbers were low.
- While again numbers were low, the number of applications for damages for unlawful eviction more than doubled (from 3 to 7)
- There was an increase in applications to order a person to cease obstructing a person from complying with the repairing standard (from 1 to 5)
- There was a slight decrease in applications to draw up the terms of a tenancy (down from 13 to 10).

7. Representation of parties

As in previous years, whether parties were represented in the tribunal process during the year varied according to 1) the type of application and 2) whether they were an applicant or a respondent.

It is not possible to determine from the data obtained whether a party's representative was a solicitor, a letting agent, a non-solicitor adviser, or a friend or family member.

It should be noted that the representation figures discussed in this section do not tell the whole story. These record applications where the party named at least one representative at some stage of the tribunal process. In some cases, a party may be represented during certain stages of the process but not others - for example, while a party may have named a representative at the start of the process, they may not have actually been represented at any CMD and/or hearing. Conversely, there are occasions on which a party, such as a respondent in an eviction application, attends a CMD or a hearing with a legal or other representative whom they have not notified the tribunal about in advance. In some cases, a party has received advice and support from an advice agency or solicitor in completing and/or submitting their application form or their written representations in response, but the adviser is unable to represent them at the CMD or hearing.

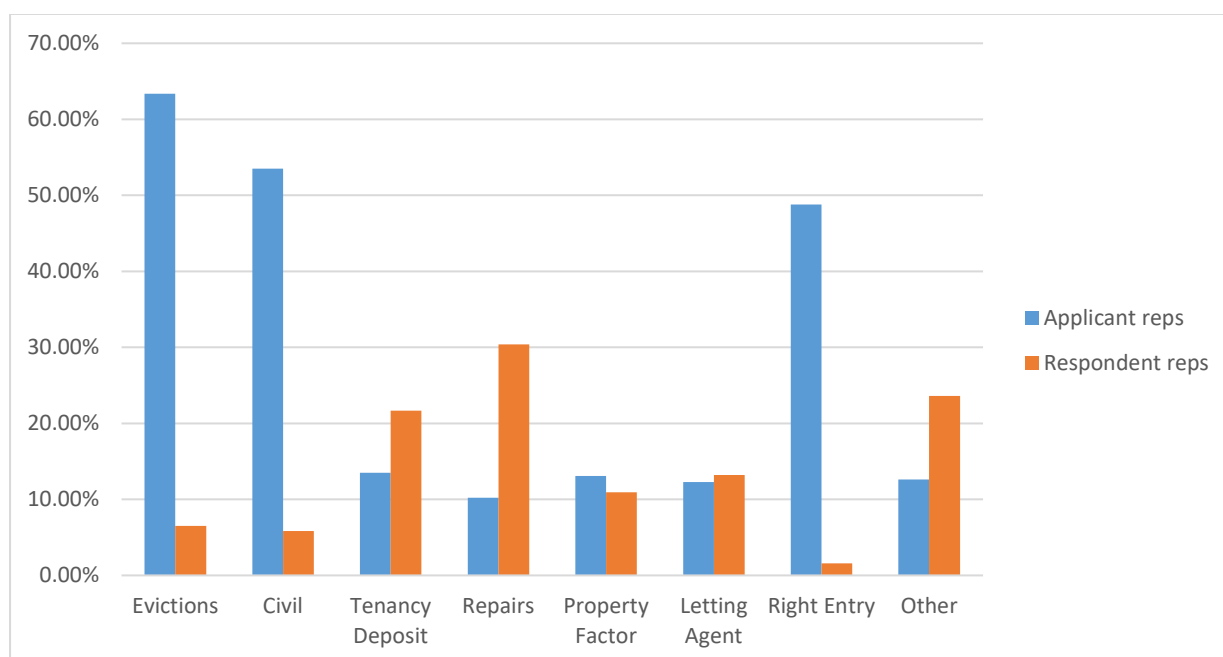
Parties are also entitled to be accompanied by a supporter at a CMD or hearing. While a supporter may not represent the party, they may assist them by providing moral support, helping them to manage their papers, taking notes and advising them on points of law and procedure and/or issues which they might wish to raise with the tribunal²⁵. It is not uncommon for parties to bring supporters, usually family members or friends, with them to a CMD or hearing. No record is kept of cases where a party brings a supporter, however.

Given the inquisitorial approach of the HPC, any issues regarding the legal competency of an application will generally have been addressed at the sifting stage, unless they require legal submissions from both parties at a CMD. It follows that any application which clearly does not meet the requirements will generally have been rejected at the sifting stage.

The chart below shows the percentage of applications for each case type where the party named at least one representative at some stage of the tribunal process during the reporting year.

²⁵Rule 11 of the [Chamber's Procedure Rules](#)

Levels of representation of parties



Evictions and civil proceedings

As in previous years, most applicants (landlords) in eviction applications were represented. Representation levels were slightly higher than during the previous year: 63% of appellants were represented, compared with 60% in 2020-21. Levels of representation remain significantly lower than those in 2019-20, however, when 80% of applicants in eviction cases were represented.

The proportion of respondents (tenants) who were represented in eviction cases was the same as the previous year, at 7%.

Just over half (54%) of applicants in civil proceedings cases were represented, a very similar proportion to the previous year. While statistics are not collected on who these applicants are, the vast majority of applicants are landlords. Some, however, are tenants. The proportion of respondents (mainly tenants) who were represented in civil proceedings applications was 6%, slightly lower than in the previous year.

Other application types

In tenancy deposit cases, the proportion of respondent landlords who were represented in tenancy deposit applications fell slightly to 22% (from 26% in the two previous years). Among tenant applicants, 14% were represented. This was a slight increase on the previous year, but is still markedly lower than the 25% who were represented in 2019-20.

In right of entry cases, just under half of landlords (49%) were represented, the same as in the previous year. This remains significantly lower than the 81% of landlords who were represented in 2019-20. Levels of representation among landlord respondents in repairing standard cases remained at 31%, the same as the previous year. Again, this was much lower than the levels for 2020-21 (43%) and 2019-20 (63%). Levels of tenant representation remained low for both types of case (10% for repairing standard applications and 2% for right of entry applications).

Representation levels for both applicants and respondents in property factor cases were again slightly down on the previous year's levels. The same was true for applicants in 'other' cases. However, representation levels were slightly higher in letting agent cases for both applicants (up from 7% to 12%) and respondents (up from 11 to 13%) than in 2021-22 and were also notably higher for respondents in 'other' case types (23%, up from 14%).

Decrease in representation levels

As in the previous year, neither party was represented in the majority of cases, other than in evictions and civil proceedings applications. While it remains the case that landlords are generally more likely to be represented than tenants, it is clear that aside from eviction and civil proceedings cases, the majority of landlords did not have any form of representation within the tribunal process.

There could be a number of reasons for the continued reduction in representation levels across most case types during the reporting year. While it is difficult to reach any definitive conclusions, it appears that while most landlord applicants still seek representation in eviction and civil proceedings cases, parties are increasingly willing to represent themselves. This may be due to the tribunal's less formal and inquisitorial approach and/or because parties feel more able to represent themselves at a teleconference than they previously did at a physical CMD or hearing. While a teleconference CMD or hearing is subject to the same rules as a face to face CMD/hearing, it may feel less formal to parties and is likely to be easier and more convenient for them to attend by themselves. It may also be, however, that some parties are unable or unwilling to access representation for financial or other reasons.

8. Members and training

As at the end of March 2023, there were 99 tribunal members (the tribunal judiciary) within the Chamber. Of these, 54 are legal members and 45 are ordinary members. These ordinary members are either qualified surveyors (who sit on repairing complaints, rent assessment and some property factor cases) or members with specialist knowledge and experience of housing issues (who generally deal with applications relating to private rented sector issues, property factors, right of entry and letting agents).

The Chamber held a successful all members' training event in February 2023 which was positively evaluated by the Judicial Institute for Scotland (JI). On each criteria for training delivery set by the JI, the Chamber was assessed as having met or exceeded the standard set in the guidelines.

Members receive development through an ongoing process of members' development reviews. This is an opportunity for members to reflect on their work and receive peer feedback. Findings from members' reviews influence the training programme for the year.

A judicial bench book is available electronically for tribunal members. This is a resource which contains legislation and case law relevant to the jurisdiction. Notable Upper Tribunal decisions are circulated electronically to the membership, and a database of important Upper Tribunal decisions relevant to the Chamber's jurisdiction has been created for the use of tribunal members.

9. Notable successes during the year

By the start of the reporting year, the Chamber had completely recovered from the pandemic period, and there was no backlog for any application type. Property inspections in repairing standard and rent assessment applications resumed as normal, without specific risk assessments being undertaken beforehand. As the year progressed, while CMDs continued to be held by teleconference, there was a resumption of in-person evidential hearings, mainly in cases involving property factor and letting agent applications. These applications can be particularly complex, and can involve considerable paperwork, group applications and/or multiple witnesses.

The Chamber again saw a significant rise in application numbers, reaching higher levels than before the pandemic. This was largely due to a steep increase in eviction applications, and tribunal members had to keep up to date with further legislative changes which took effect in relation to eviction cases during the year. Despite these challenges, thanks to the hard work of tribunal members and staff, more cases were closed than during the previous year, which is a very positive outcome.

10. Reviews, recalls and appeals

1. Reviews

The Tribunals (Scotland) Act 2014 introduced a review process, which allows a tribunal to review a decision made either at the request of a party or at its own instance where it is necessary in the interests of justice to do so²⁶. A party's request for a review of a decision must

²⁶ Section 43

be made within 14 days of it being sent to them²⁷. Where the tribunal decides to review a decision, it may take no action, set the decision aside or correct a minor or accidental error in the decision²⁸.

During the year, a total of 84 requests for review of a decision were received by the HPC, across most jurisdictions. As in the two previous years, the highest proportion (32) concerned property factor cases. These were followed by evictions (14), repairs (13), civil proceedings (11), other private rented sector cases (11), letting agents (2) and rent assessment (1).

As in the previous year, most review requests (50) were refused. In relation to the remaining 34 decisions which were the subject of a review request, the tribunal decided to review the decision. In 21 cases, the decision was corrected or set aside. No action was taken by the tribunal in nine cases, while one request was withdrawn and three were not determined within the reporting period.

2. Recalls

The Chamber's procedure rules also provide that in certain categories of proceedings (including evictions, civil proceedings and tenancy deposit applications), a party may apply for the recall of a decision within 14 days of the decision, where the tribunal made the decision in absence because that party did not take part in the proceedings or failed to appear or be represented at a hearing following which the decision was made²⁹.

A total of 77 recall applications were considered by a tribunal during the year. Just over half of these (39) were allowed, and 37 were refused. The remaining application had not been determined within the reporting period.

3. Appeals

The Tribunals (Scotland) Act 2014 introduced a new appeals process, with appeals being made to the Upper Tribunal for Scotland. This has led to a much higher volume of appeals than prior to the establishment of the Chamber. One reason for this could be the accessibility of the process, including the fact that there is no fee involved. Guidance is sent to parties in relation to reviews and appeals when a decision is issued to them. Many appeals do not involve legal representatives. An appeal can, however, be made on a point of law only, rather than just because a party is unhappy with the outcome. In some cases, a party may request a review and make a permission to appeal request at the same time.

²⁷ Rule 39 of the [Chamber's Procedure Rules](#)

²⁸ Section 44 Tribunals (Scotland) Act 2014

²⁹ Rule 30 of the [HPC Procedure Rules](#)

Permission to appeal requests to the Housing and Property Chamber

Where a party wishes to appeal a decision made by the First-tier Tribunal, they must first seek permission to appeal from the Housing and Property Chamber. The permission to appeal request is usually considered by the tribunal which made the original decision.

A total of 113 requests for permission to appeal to the Chamber were received across all jurisdictions, a slight reduction on the previous year. Most of these (80 or 71%) related to the private rented sector jurisdictions (including eviction, civil proceedings and other PRS cases), with the remaining 29% (33) accounted for by property factor, repairing standard and rent cases, and one time to pay order application.

As in 2021-22, the vast majority (96 or 85%) of permission to appeal requests were refused by the tribunal, with only 7 being granted either in full or in part. This represents a significant increase in refusals compared with 2020-21, when only 64% of requests were refused. The remaining requests were either withdrawn by the party involved or had not been decided on by the tribunal before the end of the reporting year.

Appeals/permission to appeal requests to the Upper Tribunal for Scotland

Where permission to appeal has been granted by the tribunal, the applicant must then appeal to the Upper Tribunal. This is not an automatic process, as the Upper Tribunal is an entirely separate judicial body from the First-tier Tribunal. The case file is not sent to the Upper Tribunal by the First-tier Tribunal. It is for the applicant to send a copy of the tribunal's decision granting permission to appeal to the Upper Tribunal.

Where a permission to appeal request is refused by the tribunal, a further application can be made to the Upper Tribunal for Scotland for permission to appeal the original tribunal's decision.

A total of 27 appeals/permission to appeal requests relating to decisions made by the HPC were made to the Upper Tribunal for Scotland during the year³⁰. While this is a significantly lower number than the previous year (87), half of that figure related to one property factor group application. The numbers were higher than for 2020-21, when only 17 appeals/ permission to appeal requests were received.

Most of the appeals/permission to appeal requests (19 or 70%) to the Upper Tribunal concerned civil proceedings, evictions or other private rented sector cases. There were six

³⁰ Note: the appeal/permission to appeal figures quoted here may differ from those recorded by the Upper Tribunal for Scotland (UTS). This is likely to be due to an appeal or permission to appeal request being recorded by the Chamber in one reporting year and received in a different reporting year by the UTS. The UTS also records multiple appeals received from different parties relating to the same group application as one appeal, whereas the Chamber records these separately.

which concerned property factor cases, one related to a repairs case and one was a letting agent case.

Just under half (13) of the appeals/permission to appeal requests were refused. Of the remainder, three were upheld and the Upper Tribunal quashed the original tribunal's decision in eight cases. There was no outcome in two cases and one was withdrawn.

11. Future developments

A number of changes to the statutory repairing standard which landlords are required to comply with are due to come into force on 1 March 2024. From that date, all private rented properties will be required to have central heating, a kitchen with adequate space and facilities to prepare and store food, and common areas that are safe to use and properly maintained. Properties will also need a circuit breaker device that reduces the risk of electrocution and fire.

From 1 April 2023, the rent cap for private sector tenancies increased under the Cost of Living (Tenant Protection) (Scotland) Act 2022 from 0% to 3%. This means that landlords cannot increase the rent payable by a tenant by more than 3%. Tenants who receive a rent increase notice from their landlord can apply to the Rent Officer for a determination as to whether the increase proposed by the landlord exceeds the permitted rate. Landlords can apply for increases of up to 6% to help cover certain increases in "prescribed property costs" (such as mortgage interest, insurance premiums and service charges payable by the landlord) in certain circumstances. The rent increase ordered by the Rent Officer must be no more than 50% of the prescribed property costs, and the increase cannot exceed 6% of the current rent being paid. Both tenants and landlords have a right of appeal from the decision of the Rent Officer to the Chamber. Processes have been put in place within the Chamber in relation to these changes.

The changes introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 were later extended from 1 April 2023 until 30 September 2023, and then again for a further six months until 31 March 2024. This means that until that date, enforcement of evictions continues to be delayed except in certain specified circumstances, and the new grounds for eviction will continue to apply. Increased damages for unlawful eviction also continue to apply. The rent cap of 3% also remains in place for new tenancies. It remains to be seen what the impact of these changes will be on the work of the Chamber during 2023-24.