



Summary of Work of the Housing and Property Chamber

1 April 2023 – 31 March 2024



Foreword by Chamber President

The reporting year has not been without its challenges.

The Chamber again saw a sizeable rise in application numbers, which reached their highest levels to date. There were significant increases in eviction, repairing standard and property factor application volumes. This was the first year when the number of applications to the Chamber exceeded 5000. Changes in housing legislation relating to evictions have impacted on the complexity of cases being determined by the Chamber. The Chamber's ability to absorb the additional and more complex workloads was in itself a major achievement during the reporting year. Despite the challenges faced by the Chamber, thanks to the hard work of tribunal members and staff, 10% more cases were closed than during the previous year, which is a very positive outcome.

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 2023 to 31 March 2024.

I hope this summary will be of interest.

Aileen Devanny

Chamber President

1. Introduction

In 2022-23, the Chamber received its highest number of applications since it came into being in December 2016. In the current reporting year for 2023-24, the Chamber again saw a sizeable rise in application numbers, which exceeded 5000 for the first time. There were significant increases in eviction, repairs and property factor application volumes.

Changes in housing legislation relating to evictions have impacted on the complexity of cases being determined by the Chamber. The Chamber's ability to absorb the additional and more complex workloads was in itself a major achievement during the reporting year.

Tribunal members again had to keep abreast of changes to housing legislation during the year when considering cases. Some of the changes introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 were again extended until 31 March 2024.

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 meant that landlords could not 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. While processes were put in place within the Chamber in relation to these changes, very few rent assessment applications were received during the year.

Enforcement of evictions also continued to be delayed except in certain specified circumstances. Increased damages for unlawful eviction, up to a maximum of 36 times the monthly rent, continued to apply.

Various changes to the statutory repairing standard with which landlords are required to comply came into force on 1 March 2024. From that date, all private rented properties are 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. Tenanted properties also need a circuit breaker device that reduces the risk of electrocution and fire. Training for members was held in February 2024 in advance of these changes. An assessor from the Judicial Institute for Scotland evaluated the training very positively.

While case management discussions (CMDs) continued to be held by teleconference, there was a continued return towards in-person evidential hearings, mainly for property factor, letting agent and repairing standard applications. These can be particularly complex and can involve considerable paperwork, group applications and/or multiple witnesses and possible property inspections.

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 a 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 continued to impact on the ability of parties to seek rent assessments or the ability to appeal against the rent level set by the rent officer during the reporting year.

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 where there is a dispute over compliance with the letting agent code of practice.

3. The HPC's approach

While HPC proceedings are legal proceedings, the tribunal takes a more 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.

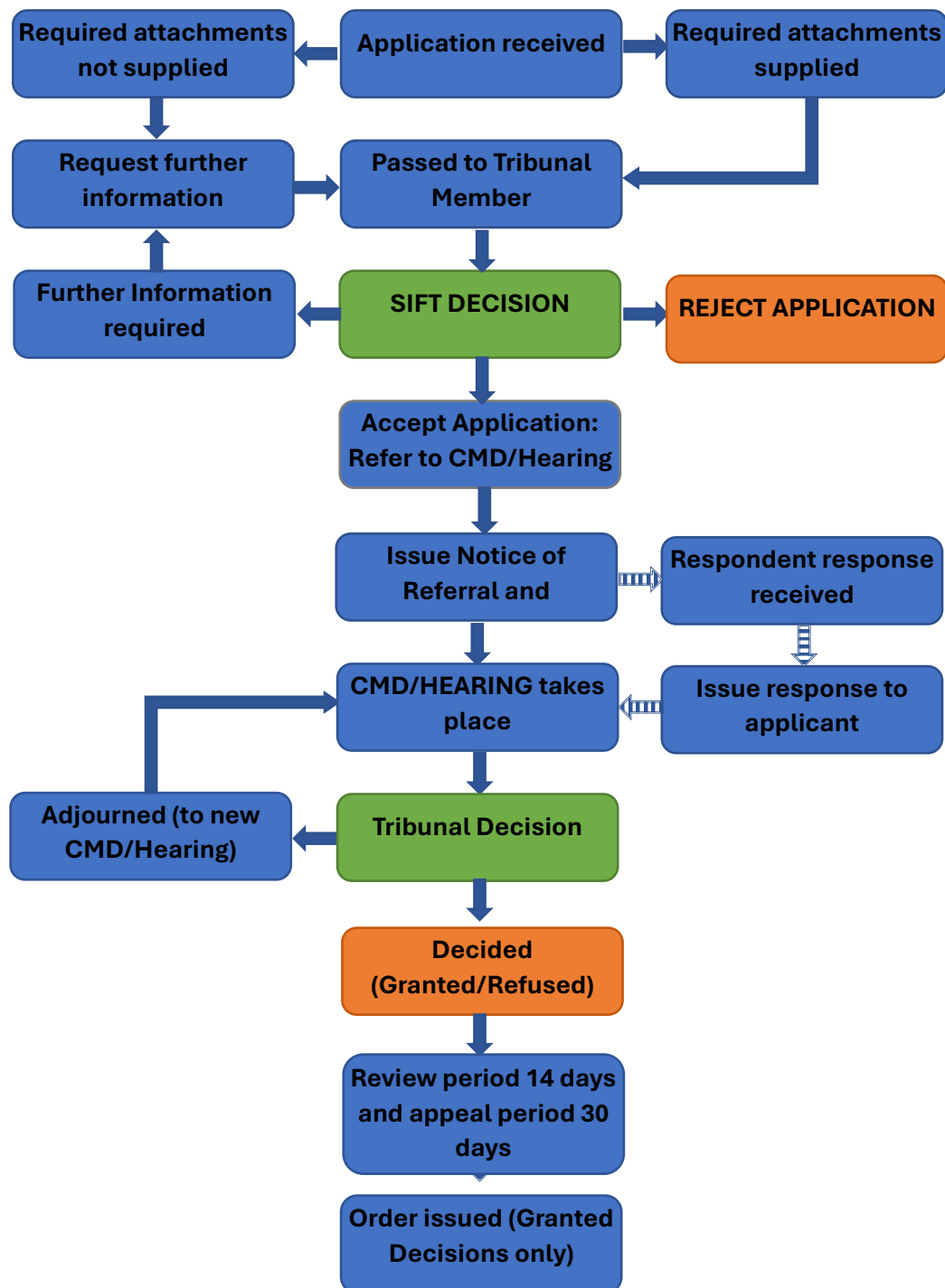
Guidance on the application process is available on the HPC website. The application can be made on a form, which can be downloaded from the website and contains prompts on the required information and attachments. HPC staff are not legally qualified and cannot give case specific legal advice, but they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

Because the approach is more inquisitorial, the tribunal on its own initiative may make inquiries into issues that 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 raise legal points not raised by the parties if relevant to the competency of the application. The procedure is typically less formal than the courts and this means that there may be less need for parties to be represented, 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 below, 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 them 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 meets 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, 11% 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 (PRS) 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.

evidential hearing². A final decision on the application can be made at the CMD, and this is often the case.

For eviction applications, temporary changes initially introduced during the coronavirus pandemic have been made permanent. Grounds of eviction, which were formerly mandatory, are now discretionary, and the tribunal must now consider the reasonableness of making an eviction order in each case. All eviction applications are therefore referred to a two-person tribunal, comprising a legal member and an ordinary member with housing or property expertise. For eviction applications upon which a decision was made during the year, 99% were decided at the CMD, and the remaining 1% were decided at an evidential hearing.

Most other types of PRS applications- such as tenancy deposit applications and civil proceedings applications without an accompanying eviction application - are usually referred to be dealt with at a CMD by a legal member sitting alone.

Repairing standard, property factor and letting agent cases can be more complex and take longer to complete than most PRS cases. These types of cases generally remain with the same tribunal members throughout the process.

In repairing standard and rent assessment cases, an inspection is carried out by the tribunal in person. This is usually followed by a hearing, which takes place shortly after the inspection at a venue located close to the property, although in some cases the hearing may be held by teleconference.

A CMD is normally scheduled in the first instance in property factor and letting agent cases with two allocated members before a hearing is arranged. These cases can be complex and often involve large volumes of productions. The CMD 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. All CMDs are conducted by teleconference unless the tribunal requests otherwise.

Hearings are held in person as a matter of course, unless the tribunal advises otherwise in the interests of fairness. In a small proportion of cases, CMDs and hearings are conducted by videoconference, where the legal member considers that this is necessary to deal with the application fairly and justly.

A considerable amount of forward planning is required in advance of a videoconference to ensure that the CMD or 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 on the parties' views. It is unlikely for the foreseeable future that videoconference hearings will be

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, 19 applications were decided on this basis, all in private rented sector cases.

available for all cases of the Chamber, given the pressures that currently exist on the SCTS digital support team.

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 the 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 are made for observers to attend CMDs and hearings, whether these are conducted in person, by teleconference or by videoconference, where this is requested. Guidance for observers on what to expect and points to be borne in mind when attending a CMD or hearing is available on the Chamber's website.

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 whether 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 2023/24

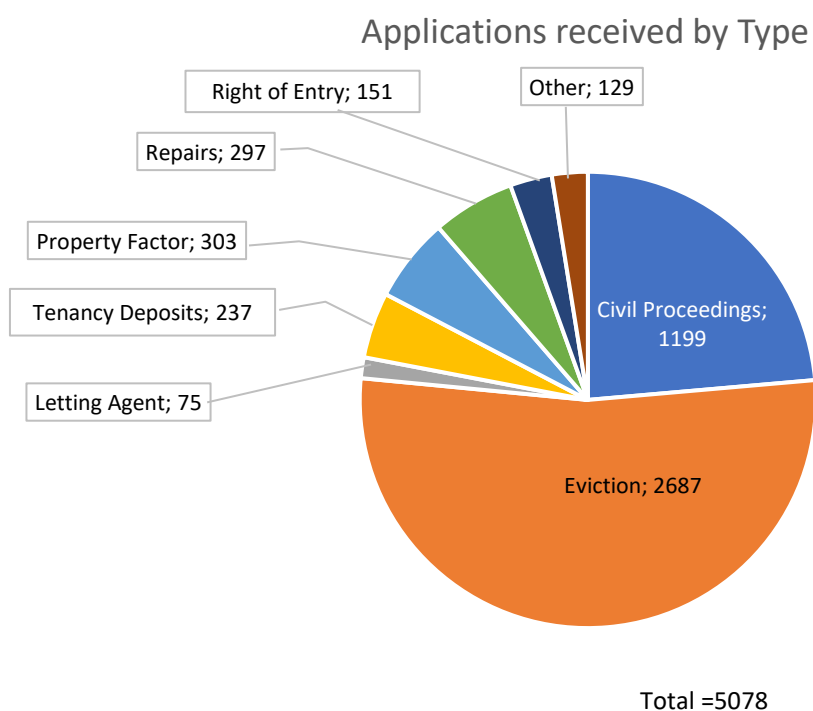
A total of 5078 applications were received during the reporting year. This was a 10% increase on the level of applications received in 2022-23, resulting in the highest annual volume of applications received to date.

A breakdown of applications dealt with during the year 2023/24 is shown below. The brought forward/carried forward figures reflect the ongoing nature of cases.

Applications	Brought forward	Received	Closed	Carried forward
Totals	2352	5078	4417	3013

Applications received - overview

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



The vast majority (83%) of applications received were once again within the PRS jurisdiction. As in previous years, most of these were eviction applications (2687), which for the first time accounted for the majority (53%) of all applications received³. The level of eviction applications was 19% higher than in 2022-23.

³ In 2022-23, eviction applications accounted for 48% of all applications received. Unfortunately, there was an error in the 2022-23 statistical report, which inaccurately quoted this figure as 60%.

Civil proceedings applications (1199) again accounted for the second highest proportion (24%) received, although these dropped slightly from the previous year's total of 1250. As in 2022-23, these figures indicate that most eviction applications are no longer accompanied by a civil proceedings application. This is again likely to be due to fewer eviction applications being brought on rent arrears grounds than in previous years. As noted later in this report, the data, which it was possible to collect during the year, demonstrates that almost as many applications were brought on the grounds that the landlord intends to sell the property as were brought on the ground of rent arrears.

Property factor applications (303) were the third biggest category received, overtaking tenancy deposit applications for the first time. They accounted for 6% of all applications. As in 2022-23, numbers were up significantly on the previous year, with a 19% increase.

Repairing standard cases followed very closely behind, with 297 applications. These were up by over a third (38%) on 2022-23 figures, accounting for 6% of applications overall.

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 accounted for 5% of applications (237). As in 2022-3, these applications were down (by 9%) on the previous year.

The number of right of entry applications (151) fell by 17% on the previous year, accounting for 3% of all applications. Letting agent applications again increased (by 12%), but the actual numbers (75) remained fairly low. Rent assessment applications remained low (13), at fewer than half of the previous year's number (30).

Applications closed during the year

A total of 4417 applications were closed during the year, 10% more than in 2022-23. Perhaps unsurprisingly, given the higher volume and increased complexity of applications received, the number of applications carried forward into 2024-25 was 28% higher than in the previous year.

Rejected and withdrawn applications

Of the 4417 applications closed during the year⁴, a total of 476 (11%) were rejected⁵. A breakdown of the reasons for rejection of these applications is shown in the table below.

The applications rejected include those where a legal member considered during the sifting

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

stage that the application had no legal merit (i.e. was “frivolous”) and could not succeed, or that the application was so fundamentally flawed that it could not succeed and it was not appropriate to accept it, for example, the correct pre-application notice procedure was fatally flawed, or it was not a legally competent application. In keeping with the overall application numbers, almost half of applications (224 or 47%) that were rejected were eviction applications, with the remainder spread across most other application types.

Rejected applications

Reason for rejection	Number
Frivolous or vexatious	95
Not appropriate to accept	324
Made for a purpose other than that specified in the application	53
Identical or substantially similar application	----
The dispute has been resolved	4
Total	476

One-third of all applications closed during the year (1413 or 32%) were withdrawn by the applicant at some stage of the proceedings, mostly after they were accepted for determination at the sift and referred to a tribunal for determination. Two-thirds (932 or 66%) of the applications withdrawn were eviction applications, while a further 15% (209) were civil proceedings applications. The remainder were spread across most other application types.

There is no requirement to state the reason for withdrawing an application. For the majority (1005 or 71%) of withdrawals⁶, the reason recorded was that the dispute has been resolved by the parties. No reason was given for 29% of withdrawals (404). The remainder were recorded as being withdrawn because the tenant had vacated the property (2) or because the matter had been resolved through mediation (2). Whatever the reason recorded for the withdrawal, it is the experience of tribunal members that in most eviction cases it is due to the tenant having vacated the property after the application was made.

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

CMDs and hearings held during the year

A total of 4070 hearings and CMDs were held during the reporting year (an 11% increase on the previous year). Of these, 3025 were CMDs and 1045 were hearings⁷. An application can be determined either at a CMD or at a hearing.

CMDs and hearings continued to take place largely by teleconference call, with tribunal members, parties and clerks participating remotely.

A total of 275 CMDs and hearings were held in person during the reporting year. Of these, 40% involved repairing standard applications. Almost a third (31%) were in property factor cases. The remainder were accounted for by PRS (including evictions) (21%), letting agent (7%) and rent assessment applications (1%).

In-person hearings are now the norm in property factor, repairing standard, letting agent and rent assessment cases, as they were prior to the coronavirus pandemic. They may be arranged in other case types where the legal member considers this is 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 – where, for example, an interpreter is required and parties also wish to call a number of witnesses. A hearing in person may also be arranged whether the parties request this.

A total of 111 applications were heard by videoconference during the reporting year⁸. The majority of these (62%) were private rented sector cases, while 28% were property factor cases and the remaining 10% were letting agent applications.

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
- 2) the outcomes for those applications that were closed during the year⁹.

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

⁷ Note: the figure for hearings includes property inspections and re-inspections carried out by a tribunal

⁸ 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.

⁹ 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.

reach a CMD or hearing until the following year. Moreover, 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 and/or 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. Applications received and case outcomes by case type

i. Evictions

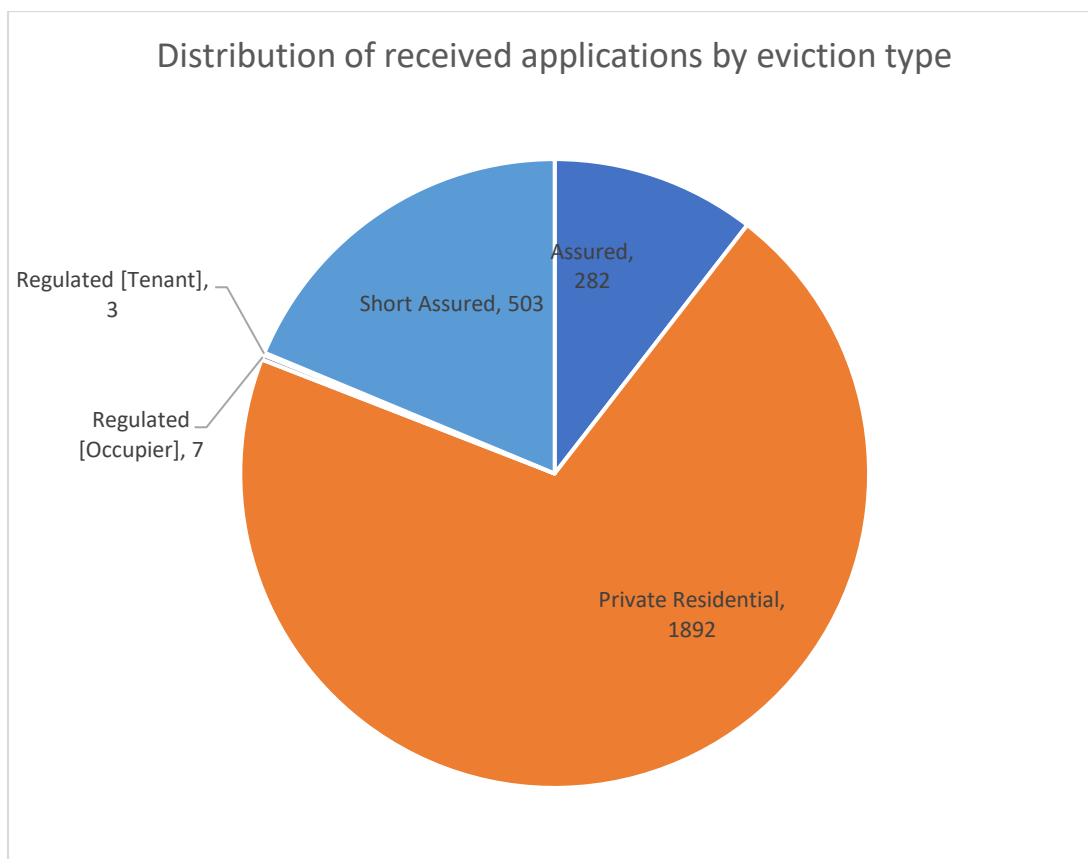
A total of 2687 eviction applications were received, comprising the majority (53%) of all applications received¹⁰.

As in the previous year, the majority of eviction applications involved private residential tenancies, which is a type of tenancy introduced on 1 December 2017. As might be expected, these are becoming increasingly prevalent, making up 70% of all eviction applications received (as against 68% in 2022-23 and 64% in 2021-22).

There was a corresponding decrease in the proportion of applications relating to assured and short assured tenancies, which made up 29% of applications¹¹.

¹⁰ In 2022-23, eviction applications accounted for 48% of all applications received. Unfortunately, there was an error in last year's report, which incorrectly quoted this figure as 60%.

¹¹ There were also 10 applications relating to regulated tenancies. Note: the figure shown in the chart for assured tenancies includes applications relating to short assured tenancies under rule 65 of the Tribunal Rules i.e. where the ground for eviction is something other than termination of the short assured tenancy under rule 66. Those shown separately as short assured tenancies are rule 66 applications.



Grounds stated in applications

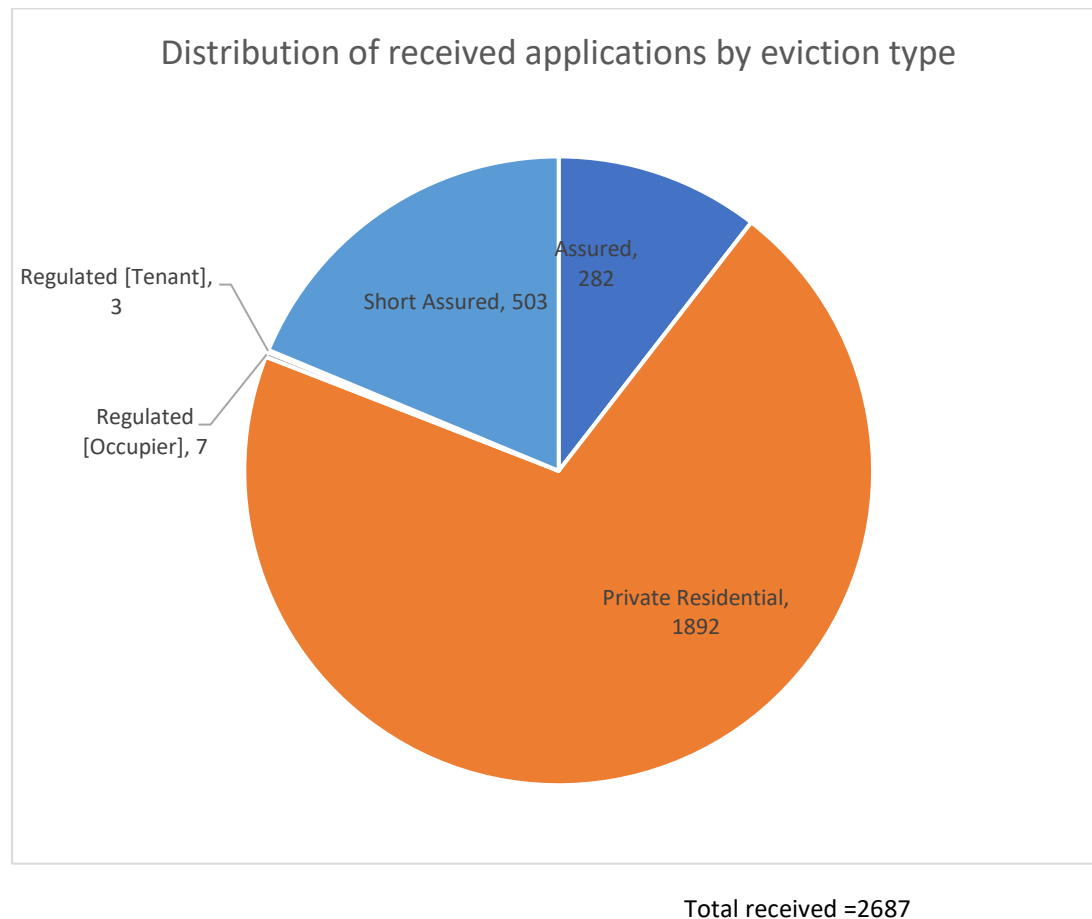
During the reporting year, efforts were made to record data on the grounds on which eviction applications were brought. This has not been a straightforward task for several reasons, including the fact that in some instances, more than one ground is included in the application, but either the entire application or some of the stated grounds may not continue to a determination.

Sufficient data has been obtained, however, to show that in private residential tenancy evictions, applications brought on the ground that the landlord intends to sell the property (grounds 1 and 1A) were almost as common as those brought on rent arrears grounds (grounds 12 and 12A) during the reporting year¹². After these two categories, the other grounds on which applications were most commonly brought were breach of tenancy agreement (ground 11), landlord intends to live in property (grounds 4 and 4A¹³), landlord's family member intends to live in property (ground 5) and anti-social behaviour (ground 14).

¹² Note: Grounds 1A (Landlord intends to sell property to alleviate financial hardship) and 12A (substantial rent arrears) were temporary provisions introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which expired on 31 March 2024.

¹³ Note: Ground 4A (Landlord intends to live in property to alleviate financial hardship) was a temporary provision introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which expired on 31 March 2024.

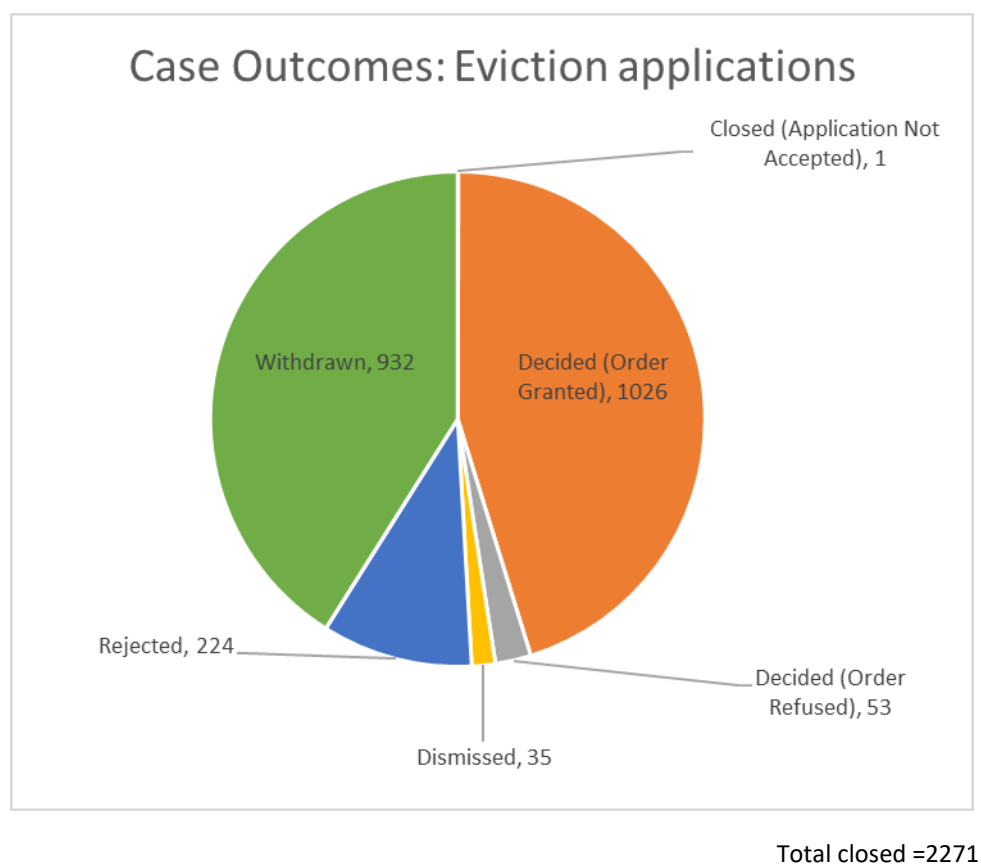
The most common grounds used in assured tenancy evictions, where there is no equivalent to ground 1, also related to rent arrears¹⁴. Almost 1 in 5 eviction applications brought during the year were on the ground that the short assured tenancy has reached its end date (rule 66). The experience of tribunals is that in many of these cases, applicants stated in their application that they intended to sell the property.



¹⁴ Grounds 8,8A, 11 and 12. Note: this includes short assured tenancies where the application was brought under rule 65.

Case outcomes

The chart below shows the outcomes for 2271 eviction applications that were closed during the year.



A total of 224 applications (10%) were rejected, while 41% (932) were withdrawn by the applicant at some stage of the process. For 74% (688) 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. Although no reason was stated for all but one of the remaining 243 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 (1114), an eviction order was granted in the vast majority of cases (1026 or 92%). An eviction order was refused in 53 cases, and 35 applications were dismissed, because either one party had failed to co-operate with the tribunal or to comply with a case management order or because the tribunal considered that it did not have jurisdiction.

ii. Civil proceedings

A total of 1199 civil proceedings applications were received during the year, representing the second largest proportion of applications received. 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 sometimes the costs of rectifying alleged damage to the property at the end of a tenancy. They can however be made for other reasons and may be brought by a tenant against a landlord. Examples might include an application for recovery of a tenancy deposit that has not been returned, or compensation for alleged damage caused to the tenant's belongings due to the poor condition of the let property.

As in the previous year, civil proceedings applications accounted for a lower proportion of all applications (24%) than in the year before (27%). While this was mainly due to the sizeable increase in eviction applications, the actual number of civil proceedings applications was slightly (4%) lower than in 2022-23. Given that the level of eviction applications (2687) received was 19% higher than in the previous year, these figures demonstrate that again most eviction applications were not accompanied by a civil proceedings application.

As in previous years, a sizeable proportion (165 or 15%) 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 52 eviction applications and smaller numbers of tenancy deposit (22) and other private rented sector applications (4), 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.

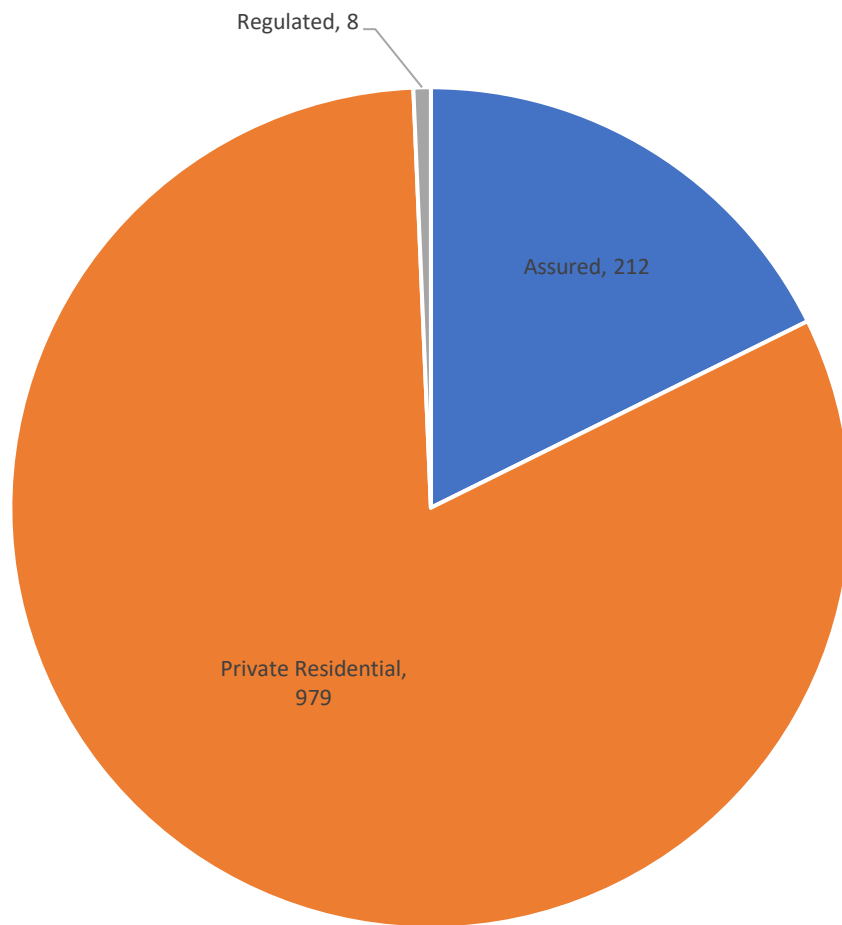
There is no limit on the amount of money that can be claimed in civil proceedings applications. These can involve significant sums, which can often significantly exceed the ordinary cause threshold of £5000 in the sheriff court. The Scottish Association of Landlords reported in August 2019 that the largest payment order issued by the HPC to date was for rent arrears totalling £39,520¹⁵. As rents have generally continued to increase since then, it can now take a relatively short period 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 82% of applications, compared with 79% in the previous year and 76% in 2021-22. The remaining 18% (212) relating to assured/short-assured tenancies¹⁶.

¹⁵ [Tribunal on trial: 18 months of the Scottish Housing and Property Chamber | NRLA](#)

¹⁶ There were also 8 applications concerning regulated tenancies

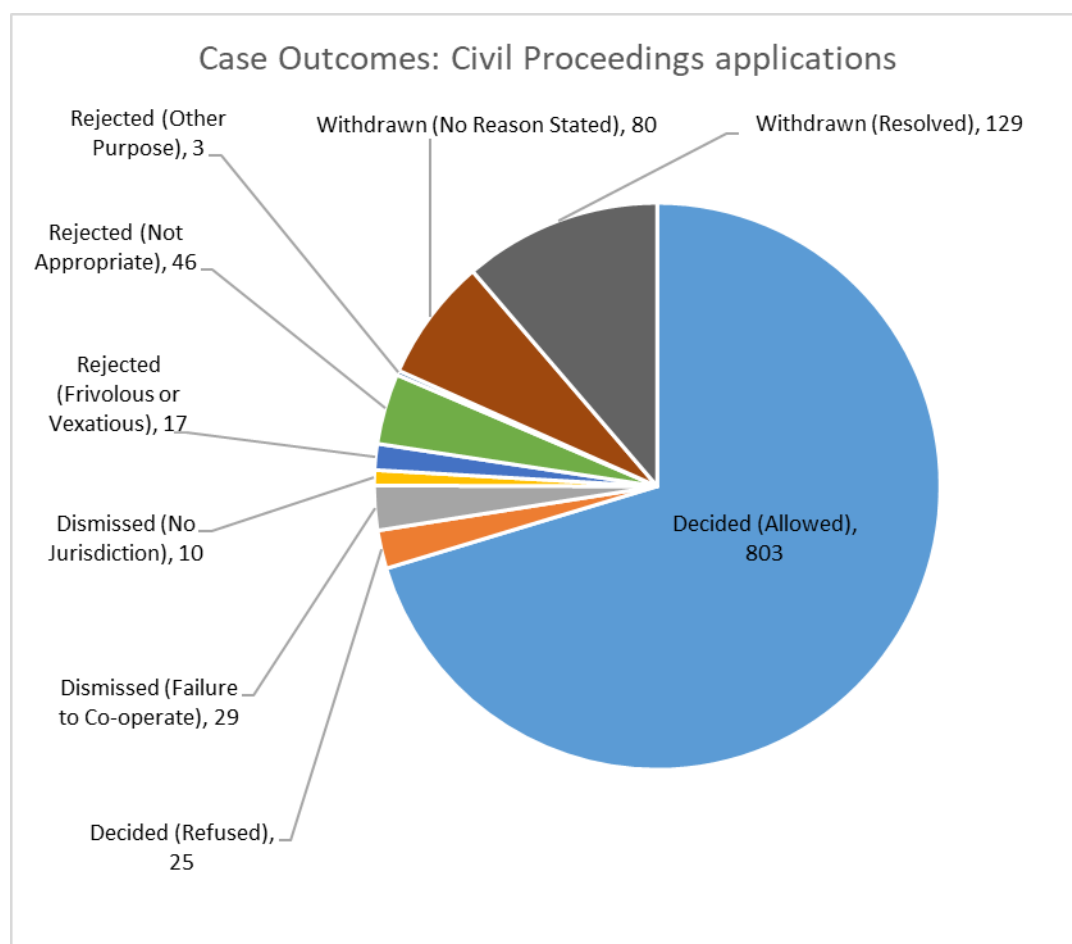
Distribution of received applications by Civil Proceedings type



Total= 1199

Case outcomes

The chart below shows the outcomes for 1142 civil proceedings applications that were closed during the year.



Total closed= 1142

A total of 66 applications (6%) were rejected, and 209 (18%) were withdrawn. The reason stated for withdrawal in 129 (62%) of these applications was that the matter had been resolved, while no reason was given for the other 80 withdrawals. As in the previous year, withdrawals were less common than in eviction applications. While this is at least partly because eviction applications are often withdrawn because the tenant has vacated the property, it may also be 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 previous years, an order was granted in the vast majority (803 or 93%) of the 867 applications which were determined by a tribunal. Of the remaining 7% of applications (64), an order was refused in 25 cases and 39 were dismissed, either due to a failure by the applicant to co-operate 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, few respondents took up this option during the year. A total of 31 applications for a time to pay direction were disposed of during the year. Of these, a time to pay direction was granted in half (16) of applications. All of these involved payment by instalments. The remaining 15 applications (all but two of which sought payment by instalments) were refused.

iii. Property factor applications

Property factor applications were the third biggest category of applications received, overtaking tenancy deposit applications for the first time. There were 303 property factor applications, constituting 6% of all applications received. This is the highest number of property factor applications ever received in one year, by either the Chamber or its predecessor, the Homeowner Housing Panel.

This figure represents a 19% increase in applications compared with the previous year, and the second year in a row where application numbers increased significantly (having risen by 28% in 2022-23).

The reasons behind the increase are perhaps less clear than in 2022-2023, when there was a notable rise in the number of multiple applications relating to the same development or tenement. While there were still a considerable number of group applications in 2023-24, this was slightly lower than in the previous year. There was accordingly an increase in individual applications during the reporting year.

During the year, 63 groups of multiple applications from different homeowners within a development or tenement were received. This compares with 66 groups in the previous year. Group applications received totalled 163 applications overall¹⁷, accounting for 54% of all property factor applications. This compares with 2022-23, when 65% were group applications.

As in the previous year, most of the groups (49) involved only two applications. The remaining groups numbered between 3 and 8 applications¹⁸. Where possible, multiple applications are grouped together and heard on the same day by the same tribunal to ensure efficiency and consistency, although this can result in longer and more complex hearings.

As in previous years, the vast majority (96%) of applications involved commercial property factors; while 2.3% (7) concerned housing associations¹⁹ and 1.7% (5) involved local authorities.

¹⁷ Note: there were in fact 173 applications overall within these 63 groups, but only 163 of these were received during the reporting period.

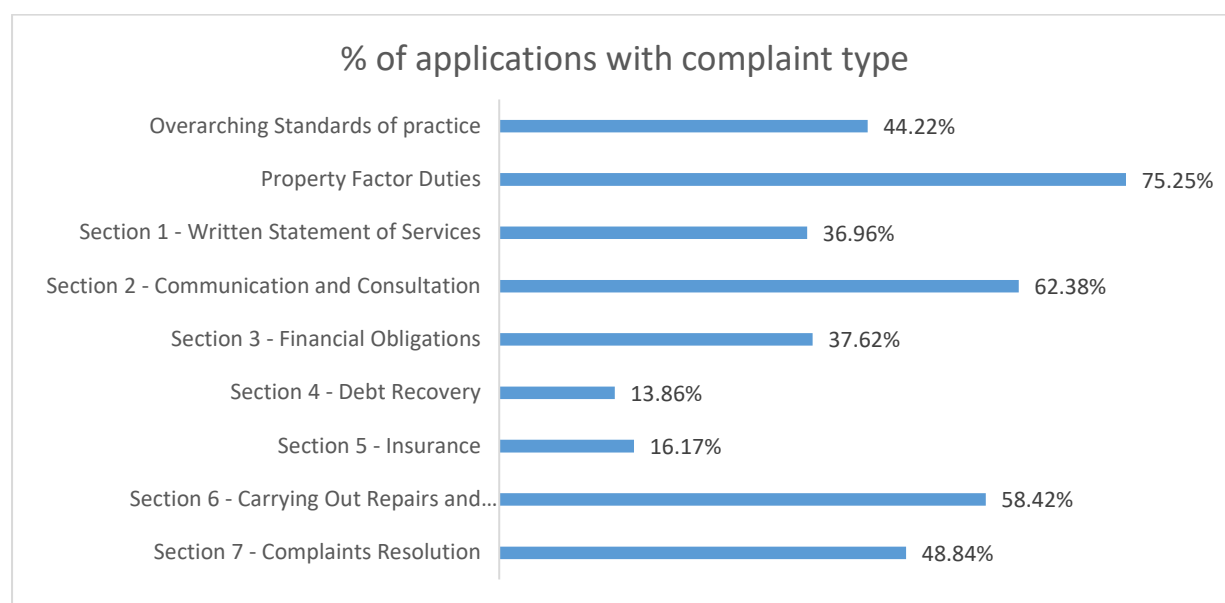
¹⁸ These are the total group numbers overall. Some of these applications will have been received in a different reporting year.

¹⁹ Or their subsidiaries.

The vast majority of the applications received (271 or 89%) concerned residential factoring, as in previous years. The remaining 11% (32) were categorised as land management complaints.

Three-quarters of applications (75%) included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

As in previous years, the most common category of complaints under the code of conduct concerned communication and consultation (62% of all applications). The most common categories of complaint after this related to carrying out repairs and maintenance (58%) and complaints resolution (49%)²⁰.

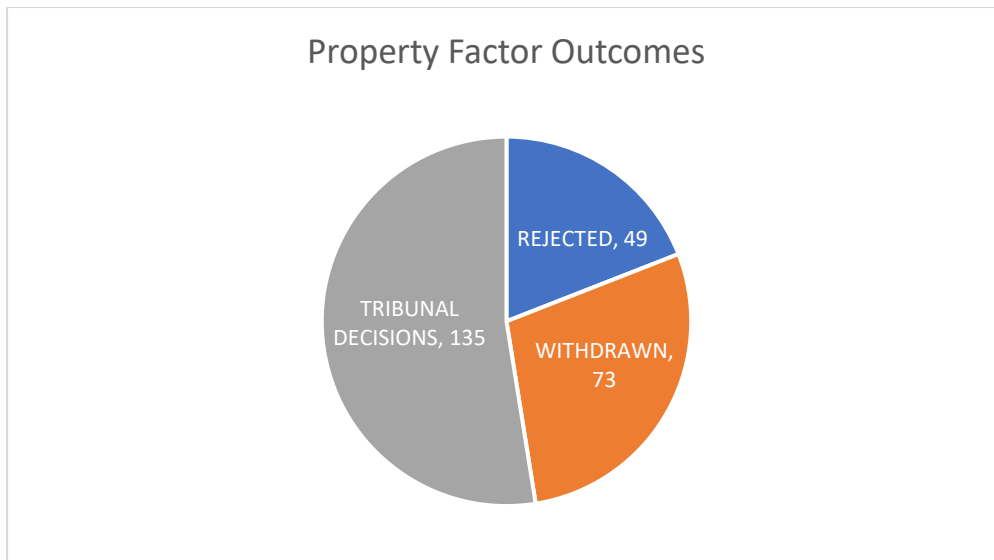


Case outcomes

The chart below indicates the case outcomes for 257 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 duties²¹.

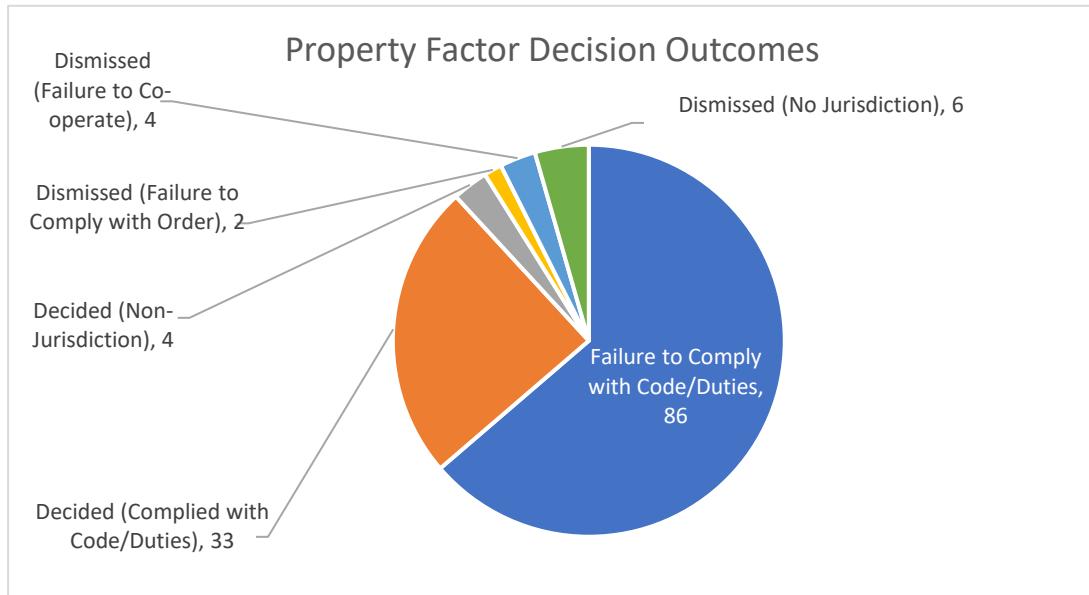
²⁰ Note: most applications involved more than one complaint, and many included complaints under several different sections of the code of conduct.

²¹ Note: a tribunal decision during the year does not necessarily mean that the application is closed during that same year. In cases where a Property Factor Enforcement Order (PFEO) is issued by a tribunal, a decision on whether the order has been complied with may not be made until the following year.



Total = 257

A total of 49 applications (19%) were rejected. More than one-quarter (28% or 73) of applications were withdrawn by the applicant: while no reason was stated for 33 of these, more than half (40 or 54%) were withdrawn because the matter had been resolved. A total of 135 applications were decided by a tribunal. The outcomes of those applications are shown in the chart below.



Total=135

In almost two-thirds (86 or 64%) of those 135 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 33 applications. That figure represents 28% of applications where a substantive decision was

made²². While this is still a minority of cases, it marks a notable improvement on the same figure for the previous year (19%).

In 4 cases, after considering legal submissions on the issue, the tribunal decided that the application was outwith its jurisdiction. The tribunal dismissed a total of 12 applications. In 6 cases, this was due a failure by a party either to co-operate or to comply with a case management order by the tribunal. In the other 6 cases, this was because the tribunal considered that it had no jurisdiction.

A total of 65 Property Factor Enforcement Orders (PFEs) were issued.

Tribunals considered whether property factors had complied with a PFE in 65 cases²³. The tribunal found that there had been compliance in almost three-quarters of these (47 or 72%). The tribunal found that there had been a failure to comply with the PFE in 17 cases²⁴. As in the previous year, this indicates a relatively high rate of compliance by property factors and is a positive outcome.

iv. Repairing standard applications

A total of 297 repairing standard applications were received, comprising 6% of all applications. This was an increase of 38% on the numbers received in 2022-23, and a significant rise for the second year in a row.

As in previous years, tenants made the majority of applications (201 or 68%), while the remaining 32% (96) were made by third-party applicants. This is a slight increase in the proportion of third party applications received in the previous year, up from 29%.

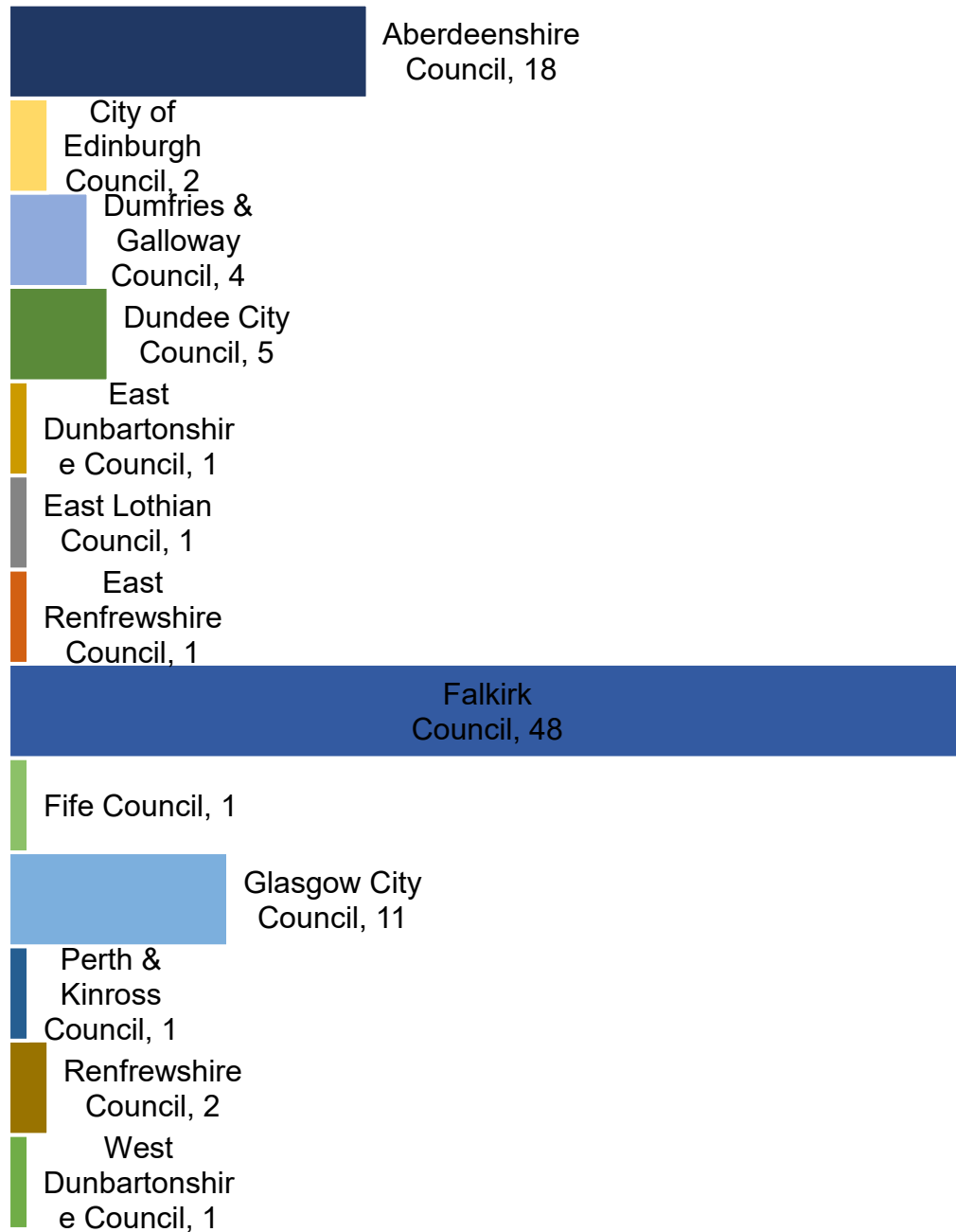
As before, third-party applications came from a small number of local authorities, which have been particularly proactive. Applications were received from 13 of the 32 local authorities, as shown in the chart below. This included more local authorities than in the two previous years (10 in 2022-23 and 7 in 2021-22). As in the previous year, Falkirk Council made the highest number of applications (48), accounting for 50% of all third-party applications. This was followed by Aberdeenshire Council (18) and Glasgow City Council (11).

²² i.e. excluding applications which were dismissed or where the tribunal decided it had no jurisdiction.

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

²⁴ In the remaining case, the tribunal decided to revoke the PFE

Third Party Applications received by Local Authority



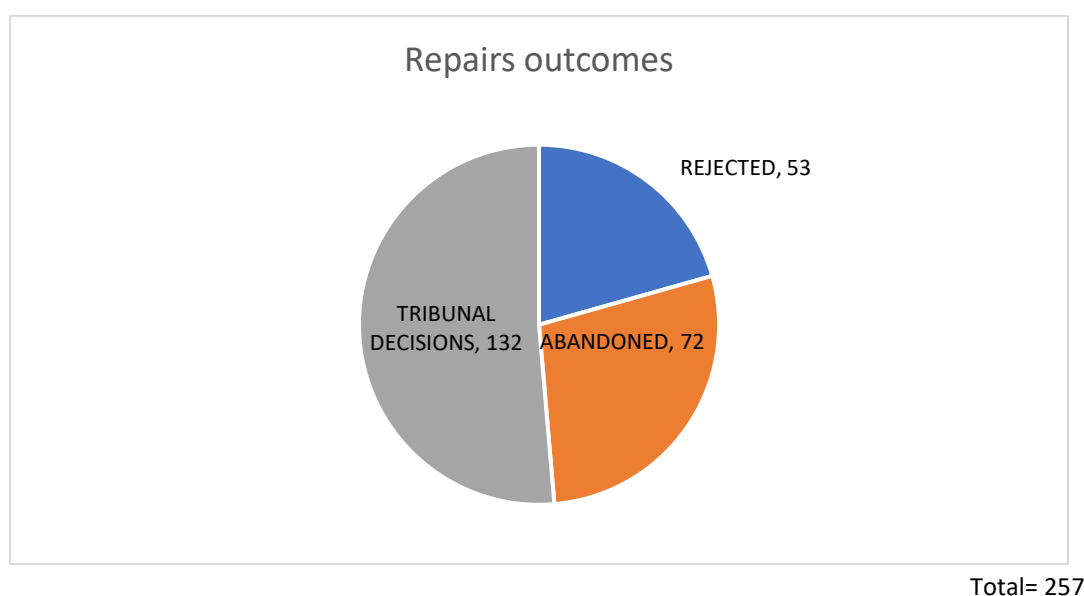
Total = 96

Case outcomes

The chart below shows the outcomes of 257 repairing standard applications which were closed and/or decided by a tribunal during the year²⁵.

A total of 53 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 72 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 it²⁶. In 21 cases, the HPC continued with the application 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.



The tribunal decided on 132 applications during the year.

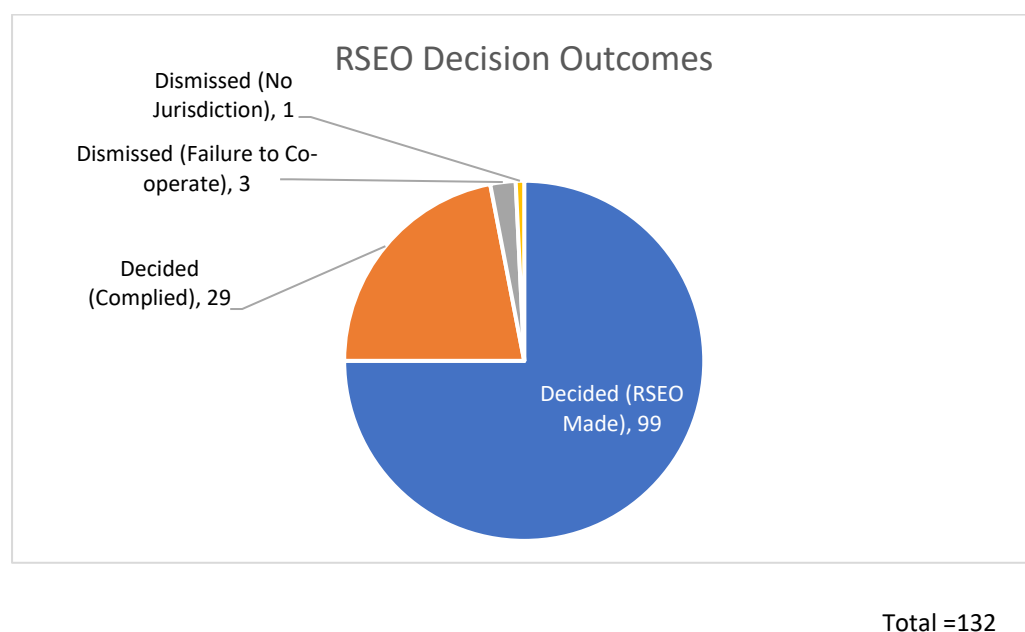
‘Decided’ means a decision was made about whether the landlord had complied with their repairing standard duty. In cases where a Repairing Standard Enforcement Order (RSEO) is issued by a tribunal, a decision on whether the order has been complied with will not be made until a later date, depending on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

²⁵ Note: a tribunal decision during the year does not necessarily mean that the application is closed during that same year. In cases where a Repairing Standard Enforcement Order (RSEO) is issued by a tribunal, a decision on whether the order has been complied with may not be made until the following year, or in some cases could be years later.

²⁶ Housing (Scotland) Act Schedule 2 Paragraph 7

Even after the tribunal has decided that the landlord has failed to comply with the RSEO and/or made a Rent Relief Order, and referred the matter for prosecution, 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.

The decisions made on the 132 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 three- quarters of cases (75% or 99). An RSEO was issued in all of these cases. In 29 cases (22%), the tribunal found that the landlord had complied with the repairing standard duty. The tribunal dismissed four applications. In one case, this was because the tribunal decided that it had no jurisdiction, and in the other three cases, this was due to failure by a (tenant) applicant to co-operate.

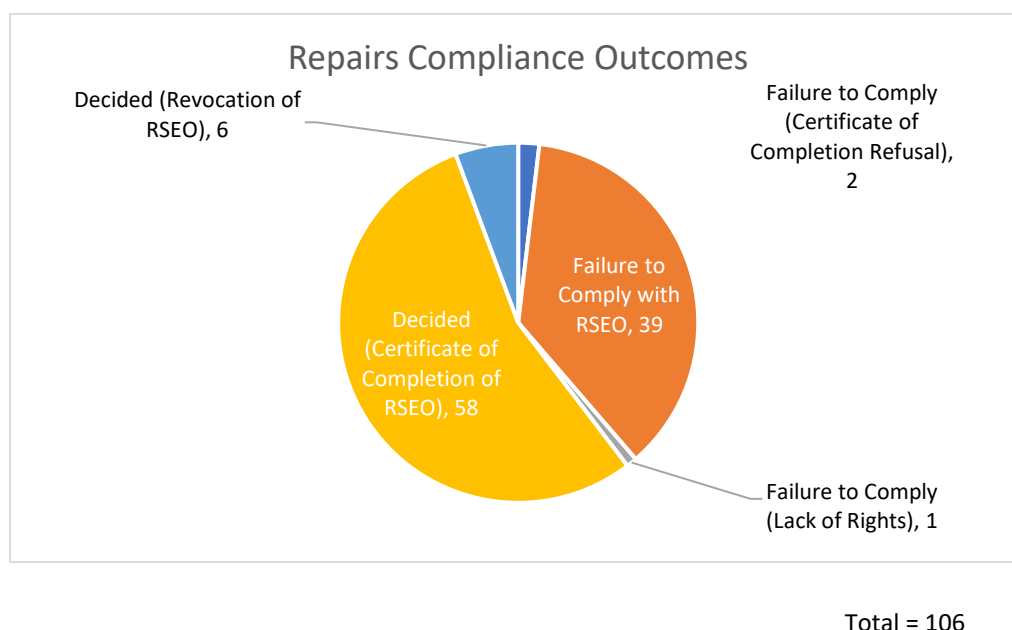


As shown in the chart below, 58 Certificates of Completion were issued by tribunals following compliance by the landlord with the RSEO²⁷. A Failure to Comply decision was issued in 39 cases, and a Rent Relief Order accompanied 22 of these. If the tenant has moved out by the stage of consideration of compliance with a Repairing Standard Enforcement Order, a Rent Relief Order cannot be considered.

In six cases, the tribunal revoked the RSEO because it considered that the action required by the order was no longer necessary. In two 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

²⁷ Note: some of these RSEOs would have been issued in previous years

a Certificate of Completion. In one case, the tribunal decided that there had been a failure to comply because the landlord lacked the necessary rights to complete the works detailed in the RSEO.



Where a tribunal has issued an RSEO, it may later vary the order as it considers to be reasonable²⁸. 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.

v. 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 commencing²⁹. If they fail to do so, the tenant can make an application to the HPC under rule 103 of the tribunal's rules³⁰. 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 was 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 noted in 2020 that the 'big upsurge' in applications meant that there has been better enforcement of landlord obligations³¹.

²⁸ Housing (Scotland) Act 2006 section 25

²⁹ Under the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011](#)

³⁰ [Chamber's Procedure Rules](#)

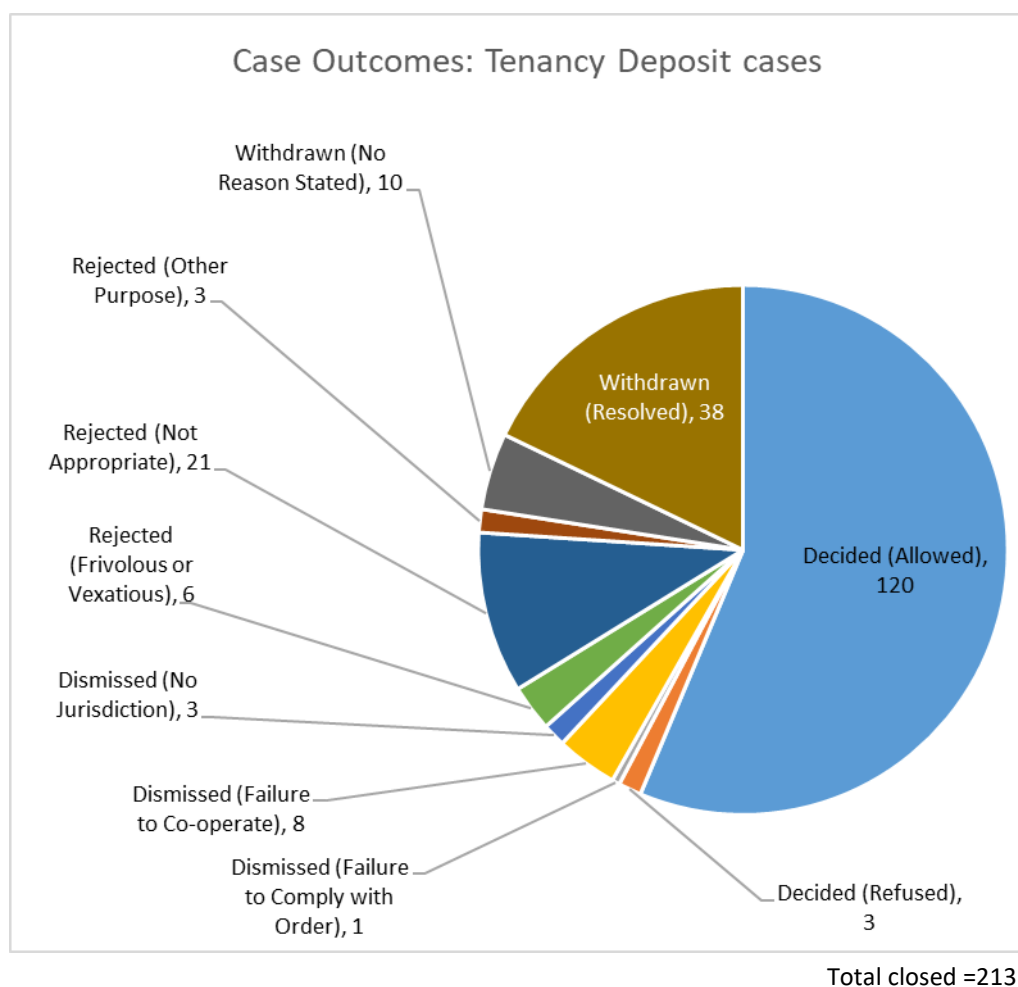
³¹ Scottish Association of Landlords – evidence to the [Local Government and Communities Committee](#) (at Annex B, p.7)

A total of 237 tenancy deposit applications were received during the year, a decrease of 9% on the previous year's figure. These figures suggest a continuing downward trend: in 2022-23 the level of applications was 13% lower than in the previous year. This may suggest that, while some landlords are still failing to comply with their duties, an increasing number are now aware of these duties and are complying with them. 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 forgot³².

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 213 tenancy deposit applications which were closed during the year.



³² [Majority of Scottish Landlords Comply with Tenancy Deposit Laws](#), Scottish Housing News, 9 January 2020

A total of 30 (14%) applications 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 the tribunal had requested information necessary to constitute a valid application and no response was received. In many cases, the rejection was because not all of the information required to make a valid application had 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 quarter (48 or 23%) of applications were withdrawn at various stages of the process. The reason stated for most (38) of these withdrawals was that the matter had been resolved, while no reason was given for the remaining 10 withdrawals. This suggests that there may have been discussion and negotiation between the parties in those cases.

In the vast majority of the 135 applications which were decided by a tribunal (120 or 89%), an order was granted in the applicant's favour. Only 3 applications were refused, while the remaining 12 were dismissed, either due to the applicant's failure to co-operate or failure to comply with a case management order of the tribunal, or because the tribunal decided that it had no jurisdiction.

vi. Landlord (right of entry) applications

There were 151 landlord (right of entry) applications, a 17% decrease on the number received in the previous year. The number of applications within this jurisdiction, while remaining relatively low, had previously been increasing slowly year on year since its introduction in December 2015. This year, however, there was a noticeable decrease. The reasons for this are unclear.

Right of entry applications continue to be received in a few cases where there is also a repairing standard dispute (and occasionally an eviction or civil proceedings application) involving the same parties.

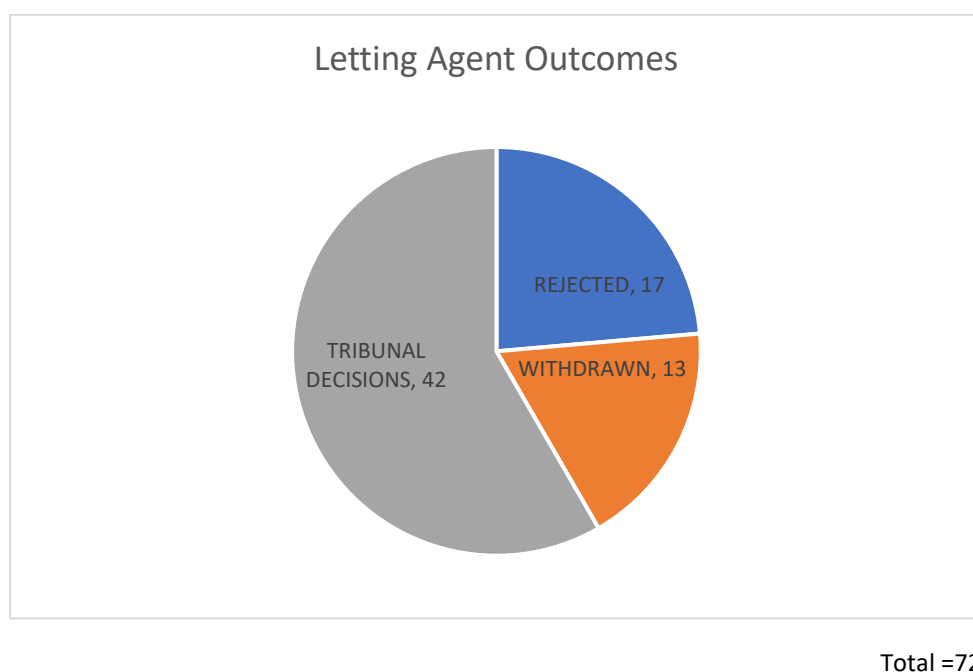
vii. Letting agent applications

A total of 75 applications to enforce the letting agent code of practice were received during the year, accounting for 1.5% of applications. While the figures are small, this is a 12% increase on the previous year's figure of 67 applications.

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

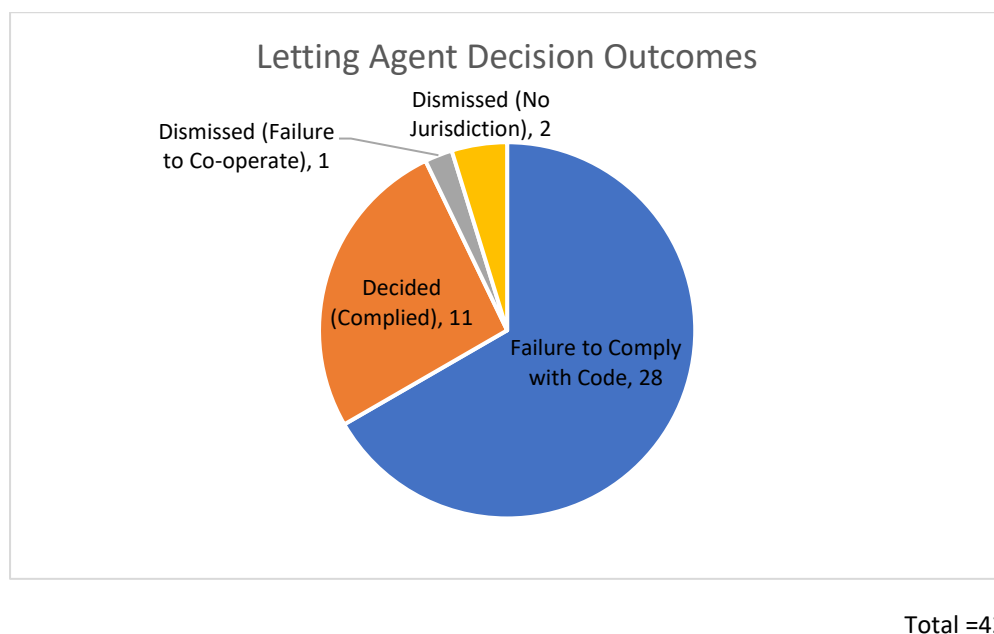
Case outcomes

The chart below indicates the outcomes of the 72 letting agent code of practice applications which were closed and/or decided by a tribunal during the year.³³ '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.



³³ Note: a tribunal decision during the year does not necessarily mean that the application is closed during that same year. 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 the following year.

17 (24%) of the applications were rejected, and 13 were withdrawn. A tribunal decided the remaining 42 applications (59%). The decisions made in these cases are shown in the chart below.



In two-thirds of these applications (28 or 67%), 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 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 an applicant to co-operate.

The proportion of cases where the tribunal found there had been a failure to comply with the code of practice was much higher than in the previous year (67% as against 44%).

Tribunals considered whether letting agents had complied with LAEOs in 17 cases³⁴. The tribunal found that the letting agent had complied with the LAEO in all but one of these cases (16), with a failure to comply decision in the other case.

viii. Other types of application

Various other types of application made up the remaining 2.5% of applications (129). This is a similar proportion to the previous year.

1. Rent assessment applications

Only 13 rent assessment applications were received, fewer than half the number (30) received in the previous year. This decrease is likely to be due to the impact of the Cost of Living (Tenant Protection) (Scotland) Act. Of the 13 applications received, 5 concerned regulated tenancies,

³⁴ Note: some of these LAEOs would have been issued in the previous year

while 4 related to assured/short assured tenancies and the remaining 4 concerned private residential tenancies.

2. Other private rented sector applications

The remaining 116 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	55
Private residential tenancy terms applications ³⁵	105 106 107	18
Application for damages for unlawful eviction	69	11
Applications for a time to pay order	41H	11
Application for compensation for misrepresentation or concealment by a landlord	78	5
Application to provide written tenancy agreement and weekly rent book	68	4
Landlord registration appeals	99	2
Application to determine removal expenses	67	2
Application to adjust recoverable rent	80	2
Application to recover unlawful premiums and loans	87	2
Application to contract out of the repairing standard.	47	1
Application to order a person to cease obstructing a person from complying with the repairing standard	49	1
Application to appeal the decision of a landlord in relation to adapting a rented house for a disabled person or carrying out	59	1

³⁵ 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.

work to improve the energy efficiency of the house.		
Application to determine the application of the 1984 Act	90	1
Total		116

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 increased markedly from 85 the previous year, recovering to the levels of 2021-22 (when there were 115).
- Applications for a wrongful termination order (55) were up by 78% on the previous year (31), continuing the upwards trend in these applications in recent years.
- The number of private residential tenancy terms applications increased by 80% from 10 to 18.
- Applications for damages for unlawful eviction again increased on the previous year (from 7 to 11)

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 should be noted that the representation figures discussed in this section do not tell the whole story. These figures 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 actually have 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 may have 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

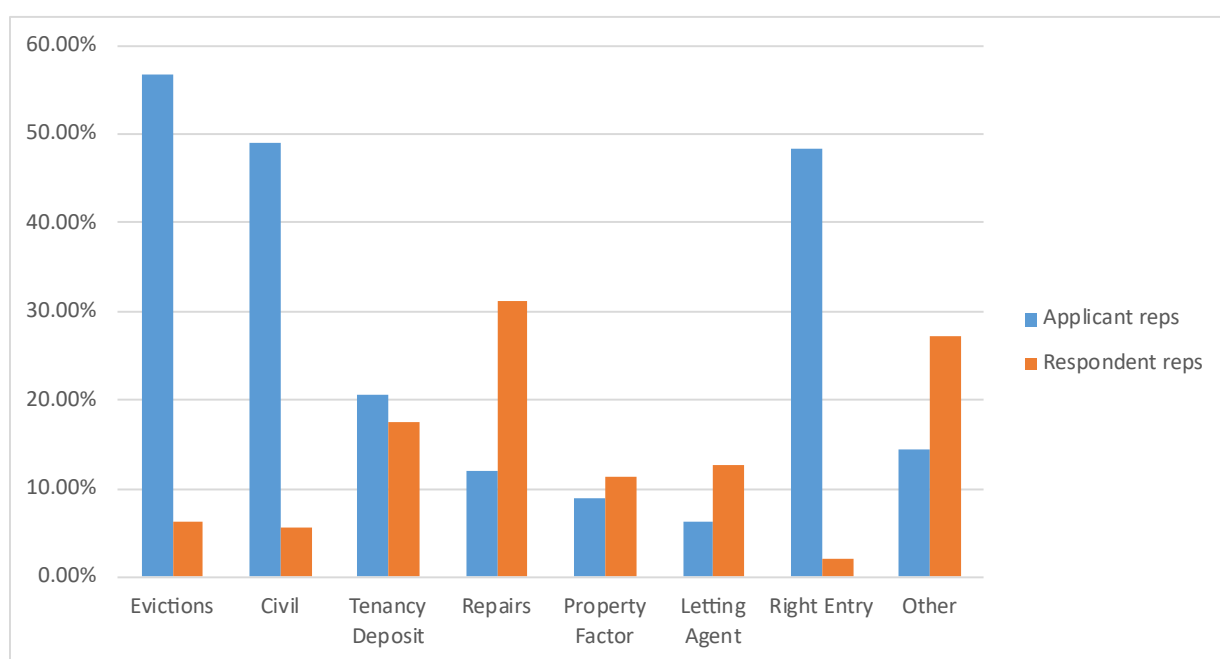
procedure and/or issues which they might wish to raise with the tribunal³⁶. It is not uncommon for parties to bring a supporter, usually a family member or friend, with them to a CMD or hearing. No record is kept of cases where a party brings a supporter.

Given the inquisitorial approach of the HPC, any issues regarding the legal competency of an application will often 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.

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.

Levels of representation of parties



Evictions and civil proceedings

As in previous years, most applicants (landlords) in eviction applications were represented. It is notable, however, that representation levels were down on the two preceding years at 57% (compared with 63% in 2022-23 and 60% in 2021-22). Levels of representation remain significantly lower than those in 2019-20, when 80% of applicants in eviction cases were

³⁶Rule 11 of the [Chamber's Procedure Rules](#)

represented.

While the data collected does not identify the nature of applicants' representatives, these are generally either solicitors or letting agents.

The proportion of respondents (tenants) who were represented in eviction cases was, at 6%, very slightly lower than in the previous two years (7% in both years).

Fewer than half (49%) of applicants in civil proceedings cases were represented, a drop of 5% from the previous year. The proportion of respondents (mainly tenants) who were represented in civil proceedings applications was 6%, the same as in the previous year. While statistics are not collected on who civil proceedings applicants are, experience suggests that the vast majority are landlords. Some, however, are tenants seeking a payment order against their landlord.

Other application types

In tenancy deposit cases, tenant applicants were more likely to be represented (20%) than respondent landlords (17%). This is a reversal of the situation in 2022-23, when 22% of landlords and 14% of tenants were represented. In both 2020-21 and 2021-22, 26% of landlords were represented. These figures suggest a downward trend in the proportion of landlords with representation in these cases.

In right of entry cases, just under half of landlords (48%) were represented, a similar proportion to the two previous years. 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 in the two previous years. 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 (12% for repairing standard applications and 2% for right of entry applications).

Representation levels for homeowner applicants in property factor cases were down (from 13% to 9%) from the previous year's levels but remained the same (11%) for respondent property factors. In letting agent cases, fewer applicants were represented than in the previous year (down from 12% to 6%) but representation levels were the same for respondents (13%) as in 2022-23. Both applicants (14% up from 13%) and respondents (27% up from 24%), were slightly more likely to be represented in 'other' case types than in 2022-23.

Decrease in representation levels

As in the previous year, neither party was represented in most cases, other than in eviction applications. For the first time, fewer than half of applicants in civil proceedings applications were represented. While landlords are still more likely to be represented than tenants, it is clear that aside from eviction cases, most 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 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 did previously 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 is also possible that some parties, particularly landlords, who now have prior experience of the tribunal process, feel more confident representing themselves in the light of that experience.

It could be, however, that some parties are unable or unwilling to access representation for financial or other reasons. Some landlords may be keen to keep their costs down, particularly if being represented might involve instructing a solicitor. In civil proceedings cases, it could also be the case that more of these applications are being made by tenants, who are generally less likely to be represented, against their landlords. It is understood that some tenants may be unable to obtain legal representation despite having approached a number of legal firms, as some firms no longer provide representation in housing cases under legal aid.

8. Members and training

As at the end of March 2024, there were 97 tribunal members (the tribunal judiciary) within the Chamber. Of these, 56 are legal members and 41 are ordinary members. These ordinary members are either qualified surveyors (who sit on repairing standard complaints, rent assessment, property factor cases and some private rented sector issues) 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).

Training for members on the changes to the statutory repairing standard, which came into force on 1 March 2024, was held in February 2024. The training was evaluated very positively by an assessor from the Judicial Institute for Scotland (JI), who said *"it was a pleasure to attend the event"*, observing that: *"It was a thoroughly planned and designed programme and it was obvious that training needs of the tribunal members were the main focus of the topics*

provided.” On each of the criteria for training delivery set by the JI, the Chamber was assessed as having met or exceeded the standard set in the guidelines.

Property factor induction training was also held in February 2024 for existing legal members within the Chamber who had not previously been trained in property factor cases.

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 is available for the use of tribunal members and is kept regularly updated.

9. Notable successes during the year

The Chamber again saw a sizeable rise in application numbers, which reached their highest levels to date. There were significant increases in eviction, repairing standard and property factor application volumes. This was the first year when the number of applications to the Chamber exceeded 5000. Changes in housing legislation relating to evictions have impacted on the complexity of cases being determined by the Chamber. The Chamber’s ability to absorb the additional and more complex workloads was in itself a major achievement during the reporting year. Despite the challenges faced by the Chamber, thanks to the hard work of tribunal members and staff, 10% more cases were closed than during the previous year, which is a very positive outcome.

Tribunal members again had to keep abreast of changes to housing legislation during the year when considering cases. Some of the changes introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 were again extended until 31 March 2024. Enforcement of evictions continued to be delayed except in certain specified circumstances. Increased damages for unlawful eviction, up to a maximum of 36 times the monthly rent, continued to apply. Intenancy rent increases remained capped at 3%. Landlords could, however, apply to a rent officer for an increase of up to 6% to help cover increases in certain “prescribed property costs”, in defined and limited circumstances. If a landlord was unhappy with an order made by the rent officer, they could appeal to the Chamber. New processes were put in place in relation to these changes.

Various changes to the statutory repairing standard with which landlords are required to comply came into force on 1 March 2024. From that date, all private rented properties are 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. Tenanted properties also need a circuit breaker device that reduces the risk of electrocution and fire. Training for members was held in February 2024 in advance of these changes. As noted above, the training was evaluated very positively by the Judicial Institute.

While case management discussions (CMDs) continued to be held by teleconference, there was a continued move towards in-person evidential hearings, mainly in relation to property factor, letting agent and repairing standard applications. These can be particularly complex and can involve considerable paperwork, group applications and/or multiple witnesses.

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 so³⁷. A party's request for a review of a decision must be made within 14 days of it being sent to them³⁸. 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 decision³⁹.

During the year, a total of 105 requests for review of a decision were received by the HPC, across most jurisdictions. This was a 25% increase on the previous year, which cannot be attributed solely to the 10% increase in applications received. The reasons for this increase are unclear.

As in previous years, the highest number (42) concerned property factor cases (compared with 32 in 2022-23). These were followed by evictions (19), civil proceedings (13), repairs (11), letting agents (11), other private rented sector cases (8) and rent assessment (1).

As in previous years, most review requests (71) 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 22 cases, the decision was corrected or set aside. No action was taken by the tribunal (and the original decision therefore remained in place) in seven cases, while two review requests were withdrawn and one was 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

³⁷ Section 43

³⁸ Rule 39 of the [Chamber's Procedure Rules](#)

³⁹ Section 44 Tribunals (Scotland) Act 2014

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 made⁴⁰.

The tribunal considered a total of 76 recall applications during the year. Half of these (38) were allowed, and half (38) were refused.

3. Appeals

The Tribunals (Scotland) Act 2014 introduced a new appeals process, with appeals being made to the Upper Tribunal for Scotland. This 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.

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 that made the original decision.

A total of 147 requests for permission to appeal to the Chamber were received across all jurisdictions, a 30% increase on the previous year. As in 2022-23, most of these (111 or 76%) related to the private rented sector jurisdictions (including eviction, civil proceedings and other PRS cases). The remaining 24% (36) were accounted for by property factor, repairing standard and letting agent cases, and one rent assessment application.

A total of 146 permission to appeal requests were disposed of during the reporting year⁴¹. As in the previous year, the vast majority (118 or 81%) of these were refused by the tribunal, with only 14% (20) being granted either in full or in part. The remaining 8 requests were withdrawn by the party involved.

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 First-tier Tribunal does not send the case file to the Upper Tribunal. It is for the applicant to send a copy of the tribunal's decision granting permission to appeal to the Upper Tribunal.

⁴⁰ Rule 30 of the [HPC Procedure Rules](#)

⁴¹ Some of these requests were received during the previous reporting year.

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 44 appeals/permission to appeal requests relating to decisions made by the HPC were made to the Upper Tribunal for Scotland during the year. While these numbers are relatively small in the context of the number of decisions made, this was a 63% increase on the previous year (27).

Just over half of the appeals/permission to appeal requests (23) to the Upper Tribunal concerned civil proceedings, evictions or other PRS cases. Most of the remainder (16) concerned property factor cases, while three related to letting agents and one was a repairing standard case.

Just under half (20) of the appeals/permission to appeal requests were refused. Of the remainder, 11 were upheld and the Upper Tribunal quashed the original tribunal's decision in eight cases. Four were withdrawn and the outcome of the remaining case was not known within the reporting year.

11. Future developments

It remains to be seen whether the expiry of the provisions in the Cost of Living (Tenant Protection) (Scotland) Act 2022 on 31 March 2024 results in a further increase in eviction applications in the coming year.

Following the expiry of the rent cap provisions, a temporary rent cap will take effect from 1 April 2024⁴². The new provisions will temporarily amend the process of rent adjudication where most tenants can refer a proposed rent increase to a Rent Officer or the Chamber for consideration. A tapering approach will be introduced which aims to protect tenants from the sharp increases in rent that some could experience if rents moved back to market level in one step, whilst allowing rent increases that support landlords to continue to invest in their rental properties.

The Housing (Scotland) Bill was introduced in the Scottish Parliament on 26 March 2024. The Bill includes provisions on rent controls; evictions and damages for unlawful evictions; residential tenants keeping pets and making changes to let property; unclaimed tenancy deposits; registration of letting agents; and the ending of joint tenancies. If the Bill is passed in its original form, it will have a significant impact on the work of the Chamber.

⁴² [The Rent Adjudication \(Temporary Modifications\) \(Scotland\) Regulations 2024](#)