

# HOMEOWNER HOUSING PANEL



Annual Report 2014

hohp

Laid before the Scottish Parliament by the Scottish Ministers under section 27(3) of The Property Factors (Scotland) Act 2011 February 2016

SG/2016/8



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## President's Foreword



I have pleasure in presenting the Annual Report of the Homeowner Housing Panel (hohp) which covers the year of operation of the Panel from 1 January 2014 until 31 December 2014. The work and activities of the Panel during that year are detailed in this report.

204 applications were received in 2014 covering the whole of Scotland. A considerable number of applications brought to the Panel for determination were complex because of the number of complaints included, because of multiple applications being heard together, because of the nature of the legal issues in dispute, or because of the extent of the paperwork submitted by parties. Some applications were resolved or rejected before referral to a Homeowner Housing Committee for determination resulting in a total of 91 applications being considered at 55 Committee hearings in 2014, over 65 days. This report provides a breakdown of this caseload and the outcomes.

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

Applications received during 2014 continue the trend from 2013 that the most common complaint received from homeowners related to poor communication and consultation by property factors, and statistics in this report show that these types of complaint are the ones most frequently upheld by Committees. It continues to surprise Committee members that it has taken a formal hearing for the property factor to share information with the homeowner and early resolution of such complaints would have been possible without the Panel's involvement. There was also an increase during 2014 in the number of complaints relating to poor complaint resolution and a high proportion of these complaints were upheld by Committees. This has led the panel to consider positive initiatives which may lead to improvements in these areas. Whilst it is always important to remember that the panel is an independent and impartial judicial body and the panel's role is not to make housing policy, nevertheless the panel is uniquely placed to see positive and negative trends in factoring practice and to fail to comment on these would be to miss a valuable opportunity to outline possible changes worthy of consideration which may lead to improvements in the factoring industry as a whole in Scotland.

A positive initiative promoted by the panel in 2014 was the introduction of a judicially led mediation pilot which hopefully will lead to a culture of better communication between parties and earlier dispute resolution. The project has to date shown positive outcomes. However, meetings between parties to discuss complaints need not wait

until an application is received by the panel and early intervention is the key to good complaint handling. Delays by some property factors in initiating a staged complaint procedure continue to be evident when applications are initially considered by the President with some property factors failing to initiate their staged complaint handling procedure even in the face of considerable written communication from homeowners expressing concerns. The introduction of a standard complaint handling procedure for all property factors who are not presently subject to the Scottish Public Services Ombudsman (SPSO) model complaint handling procedures may give clarity as to the point at which a staged complaints procedure should commence and would avoid uncertainty. This could be linked to the proposed review of the Code of Conduct for Property Factors. Good practice in complaint handling was one of the topics under discussion amongst attendees at the hoohp user group event in 2015 and it was gratifying to witness the positive approach of industry attendees to the topic.

It is also becoming clear that there is considerable variation in the content and level of detail of the written statements of services which have been issued by property factors. It appears that some property factors are unsure as to exactly what is required of them, and how much detail they need to provide. As with complaints procedures, there may be merit in exploring whether examples of good practice in this area, or even a template written statement of services, might be produced, possibly as part of the proposed review of the Code of Conduct.

The panel welcomes user feedback about our service and suggestions for future improvement. However, whilst we try to operate a user focused service, we have experienced an expectation amongst some users that we will provide case specific advice. This is not a service we can provide as the panel is a judicial decision-making body and there is perhaps scope for existing consumer advice bodies to look at expanding their service to cover specialist advice in relation to property and land management issues. This may help users of property management services to understand better the role and duties of a property factor and the legal duties which come with homeownership and may help to manage homeowners' expectations.

During the year, we continued to look at ways in which we can deliver our service more effectively and efficiently and we have reviewed the case management system. We continued to provide high quality judicial training for members, tailored to the panel jurisdictions.

Finally, I would like to recognise the talent, energy and enthusiasm of the Panel's judicial membership and the Panel staff in delivering our professional service to panel users. I thank them for their commitment and support.



Aileen Devanny  
President

# 1. The Role of the Panel

## Background

The Homeowner Housing Panel (hohp) is a devolved Scottish Tribunal set up under the Property Factors (Scotland) Act 2011 (“the 2011 Act”), which came into force on 1 October 2012. The 2011 Act made it an offence for a property factor to operate without being registered and introduced a dispute resolution procedure. The statutory Code of Conduct for Property Factors sets minimum standards of practice expected of registered property factors. A Property Factor Register was set up by Scottish Ministers to register all property factors operating in Scotland. There is a Property Factor Registration Team within the Scottish Government, which is responsible for maintaining the Scottish Property Factor Register.

The hohp is an independent and impartial judicial body separate from Scottish Government. The hohp offers dispute resolution for problems occurring between homeowners and their property factors. An application can be made to the hohp where a homeowner believes that their property factor has failed to comply with their factoring duties or the Code of Conduct. The 2011 Act covers all property factors operating in Scotland. This includes residential property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations. The Act covers land owning land management companies as well as commercial property factors – it applies to land which is available for the use of neighbouring or adjoining homeowners, provided that the homeowners are obliged by their title deeds to contribute to the management and maintenance costs of the land.

As at 31 March 2014, there were 346 registered property factors operating in Scotland. This represents a significant increase in the overall number of property factors compared with the total of 297 as at March 2013. This increase is almost entirely due to an increase in the number of commercial property factors, from 158 in March 2013 to 206 as at 31 March 2014. Of the remaining property factors, 120 were registered social landlords; and 20 were local authorities.

There were a total of 571,293 properties factored by registered property factors for the year ending 31 March 2014, an increase of around 3% from the previous year. Of these properties, 60% were factored by commercial property factors, 29% by registered social landlords and the remaining 11% by local authorities.

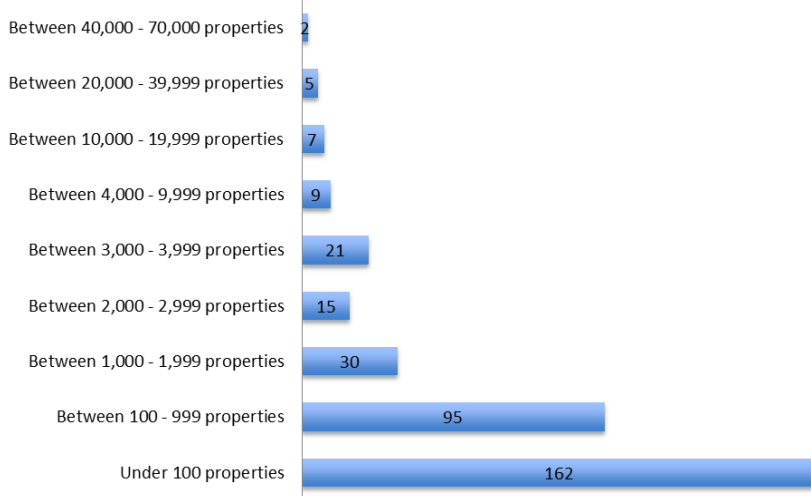
Nearly half of all property factors (162) manage fewer than 100 properties, with the two largest property factors managing between 40,000 – 70,000 properties.<sup>1</sup>

The following diagrams reflect the property portfolio sizes of registered property factors, the organisational type of registered property factors and the portfolio sizes of the various categories of property factor.

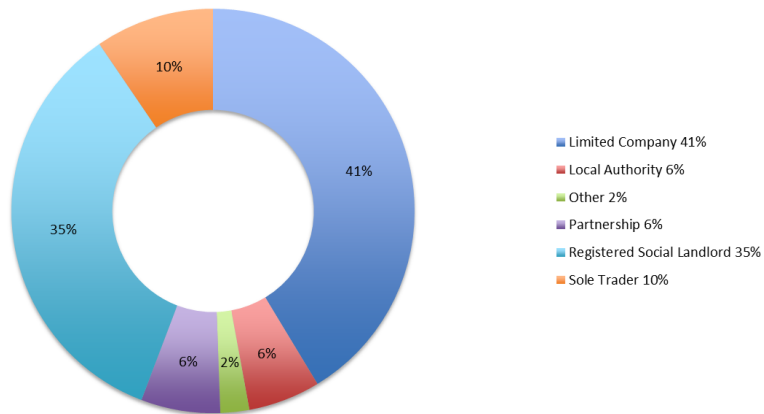
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<sup>1</sup> All figures supplied by the Scottish Government Property Factor Registration Team for the period ending 31 March 2014

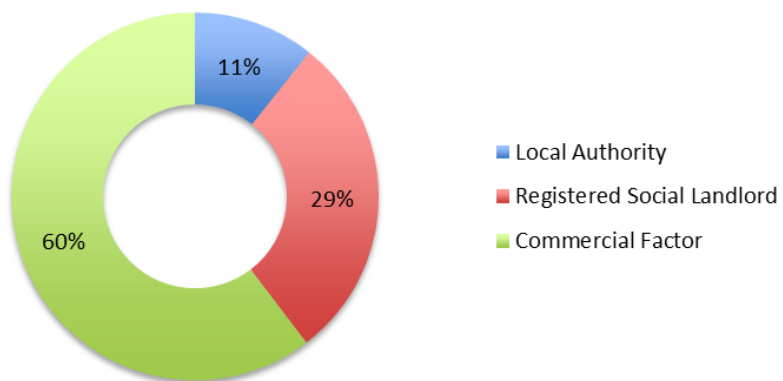
### Property Factor Portfolio Size



### Registered Factors Organisations - Types



### Comparison of Portfolio Size



## How We Work

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

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

## Who We Are – Members and Staff

There are 67 Panel members who are specialists in housing and land management issues. They are appointed by Scottish Ministers, following an open and transparent public appointments process. There is a Panel President, who has qualified as a solicitor, and a Vice President, who has qualified as a surveyor. Details of the Panel membership can be found at Appendix A.

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

1. a legal member who acts as chairperson and who has qualified as a solicitor or an advocate.
2. a surveyor member (who has qualified as a chartered surveyor) and/or a housing member, who has experience of, or practical involvement in housing and land related issues. In some circumstances, there are two housing members on a committee, rather than a surveyor and a housing member.

A group of members from the Panel have been trained in mediation, and since January 2014 a pilot mediation service has been offered as an alternative means of dispute resolution for cases referred under the 2011 Act. Further information about this can be found in section 6 of this report.

The administration of the Panel is provided by the Scottish Courts and Tribunals Service (SCTS).<sup>2</sup> There are 4 full time members of support staff, comprising 3 caseworkers and a team leader. The staff members are responsible for case management and scheduling hearings, as well as clerking and support for Committees, finance and communications. The administration is supported by an Operational Manager, who is responsible for the hohp in addition to the Private Rented

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<sup>2</sup> Since 1 April 2015, following the merger of the Scottish Court Service and the Scottish Tribunals Service



Housing Panel, the Additional Support Needs Tribunal for Scotland and the Council Tax Reduction Review Panel.

## Our Funding

The ho hp is funded by Scottish Government. This annual report covers the calendar year 1 January 2014 to 31 December 2014 in terms of Section 27(4) (a) of the Property Factors (Scotland) Act 2011. The financial year for the ho hp, however, like all government sponsored bodies, runs from 1 April until 31 March. Since this annual report straddles two financial years, the accounting figures for the year 2014 at Appendix B include the budgets for both financial years.

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



## 2. Our Aims and Values

### Our Aims

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

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



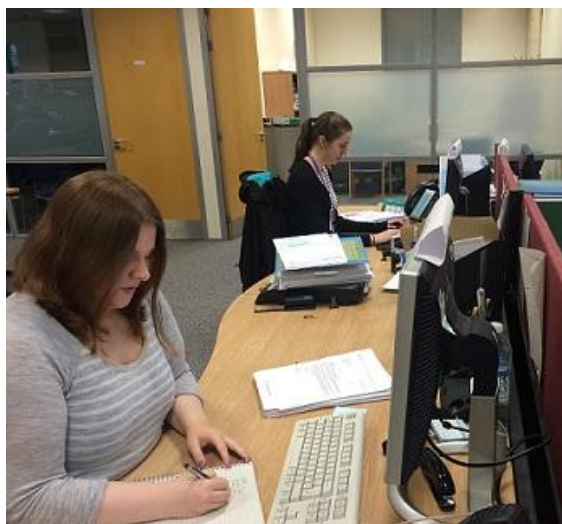
Deliberations of a homeowner housing committee following a hearing

## Our Values

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

## Our Promise

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



Hohp staff at work

## 3. The Application Process

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

A homeowner can bring an application to the hohp under two possible grounds, as set out in the 2011 Act. These are:

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

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

### Property factor's duties

These are defined in the 2011 Act as:

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land –

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.

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

### Application of the 2011 Act

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

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

### The application process

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

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

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

An application form and two template notification letters are available from the hohp office and can be downloaded from the website. Many of the applications received initially by the hohp do not comply with the requirements of the 2011 Act, as discussed in more detail on page 30. In such cases, the hohp contacts the homeowner, advising them that their application cannot be progressed until these requirements have been met.

The 2011 Act provides that only an individual homeowner can make an application to the hohp. Since only applications from homeowners can be considered, an application cannot be made by a residents' association. There is, however, nothing to prevent homeowners within a block of properties or a development making identical or substantially similar applications and agreeing with the consent of the Homeowner Housing Committee to which the applications are referred that these can be dealt with together. There have been a number of cases where multiple applications from homeowners within the same development were dealt with together in this way.

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

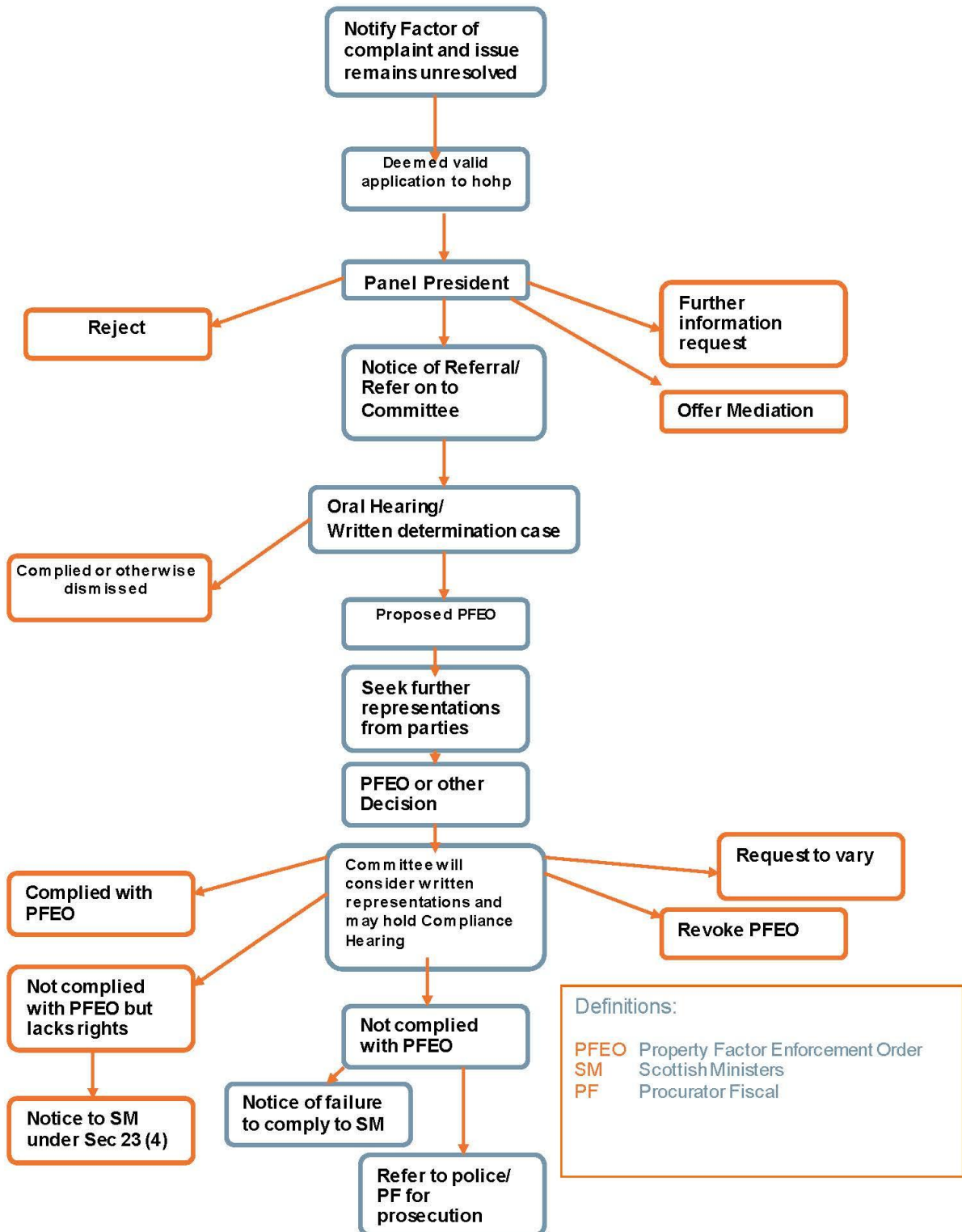
- it is vexatious or frivolous
- the homeowner has not given the factor a reasonable opportunity to resolve the dispute
- the homeowner has recently made an identical or substantially similar application in relation to the same property, and a reasonable period of time has not elapsed between the applications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

The President has the power to delay referring the case to a Committee where "there is a reasonable prospect of the dispute being resolved by the parties". This might be appropriate if, for example, it seems that there has been a simple misunderstanding which could be resolved. Since January 2014, the President may also suggest that the parties try mediation to resolve the dispute. The President can also request further information from the homeowner or the property factor before making a decision.

The President or the Vice President issues a Minute when a decision is made to refer the application to a Homeowner Housing Committee. This Minute provides details of the paperwork which comprise the application to be considered by a Committee. After the application is referred to a Committee, any proposed amendment to the application detailed in the Minute may only be made with the consent of the Committee.



## Flowchart showing the progress of application to HOHP



## The committee stage

After the initial sift process conducted by the President / Vice President<sup>3</sup>, applications are referred to a Homeowner Housing Committee for determination. The members of the Committee are drawn from the Panel's membership. The Committee considers the evidence available to it, including the written representations received from the parties. There will usually be an oral hearing, although the Committee can decide to determine the case on the basis of the written representations submitted by the parties, if both parties agree to this.

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

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

The Committee will not normally give its decision on the day of the hearing. A written decision is sent to the parties soon after the hearing, along with a statement of reasons for the decision.

If the Committee decides that the property factor has failed to carry out the factoring duties or comply with the Code of Conduct, it will usually issue a Notice of Proposal to make a Property Factor Enforcement Order. This sets out the terms of the "Property Factor Enforcement Order" (PFEO) which the Committee proposes to make. The notice sets out a timescale within which the parties can make written representations on the terms of the proposed PFEO. Taking into account any written representations received, the Committee will usually issue a PFEO.

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

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

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

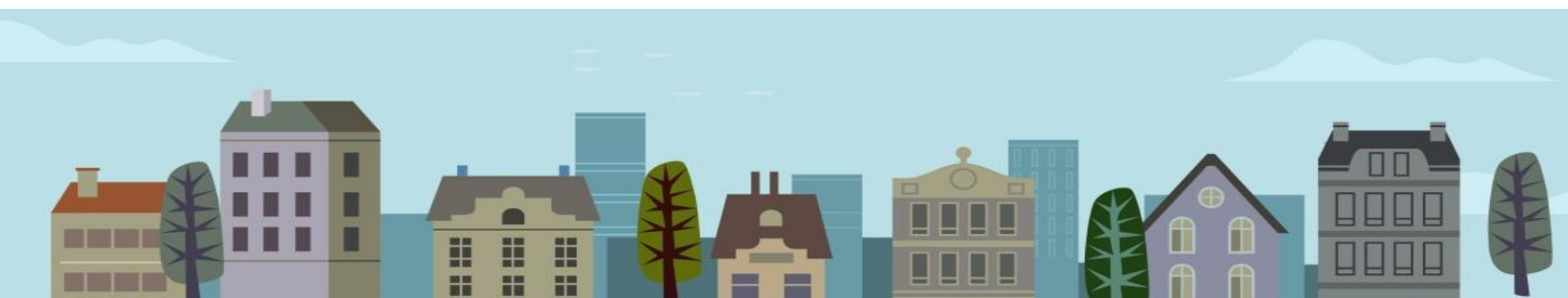
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<sup>3</sup> Or another panel member to whom the President may delegate her functions in terms of section 96 of the Housing (Scotland) Act 2014



factor in terms of Section 24 of the 2011 Act since it is an offence not to comply with a PFE0.

Any decision of a Committee can be appealed to the sheriff court. That appeal is by summary application and must be lodged in the sheriff court within a specific timescale. All hohp decisions are published on the hohp website. Copies of all decisions are also sent to the Property Factor Registration Team at the Scottish Government.



## 4. Key Statistics for 2014 (Period 1 January 2014 – 31 December 2014)

### Overall number of enquiries received –12550<sup>4</sup>

- **254** Number of applications outstanding at the start of 2014
- **204** Number of applications received in 2014
- **327** Number of applications closed during 2014
- **131** Number of applications outstanding at the end of 2014

Breakdown of Applications closed	2014	2013
<b>Withdrawn Applications</b>	43	20
<b>Rejected Applications</b>	70	55
<b>Complied Decisions</b> ( i.e. Committee decided that no failures on part of property factor) <sup>5</sup>	29	8
<b>Failure to Comply with a PFEO</b>	4	1
<b>Certificates of Compliance</b> (certificate confirming PFEO complied with)	17	5
<b>Total Applications closed</b>	<b>327<sup>6</sup></b>	<b>94</b>

### Applications received during 2014

A total of 204 applications were received from homeowners during the year. While this is a considerably lower number than 2013 (when 333 applications were received), the 2013 figure included 148 applications received from 75 homeowners in relation to one development. Taking this into account, this suggests a slight upward trend in the number of applications received when compared with the previous year. The diagram on the next page shows the number of applications received in respect of each category of property factor. Section 2 (1) (a) and (c) of the 2011 Act applies to Commercial Property Factors and Sections 2 (1) (b) and (d) of that Act applies to Local Authorities and Housing Associations. The Act states that all of these come under the definition of a property factor and have to be registered, but the Act distinguishes the different categories of property factor.

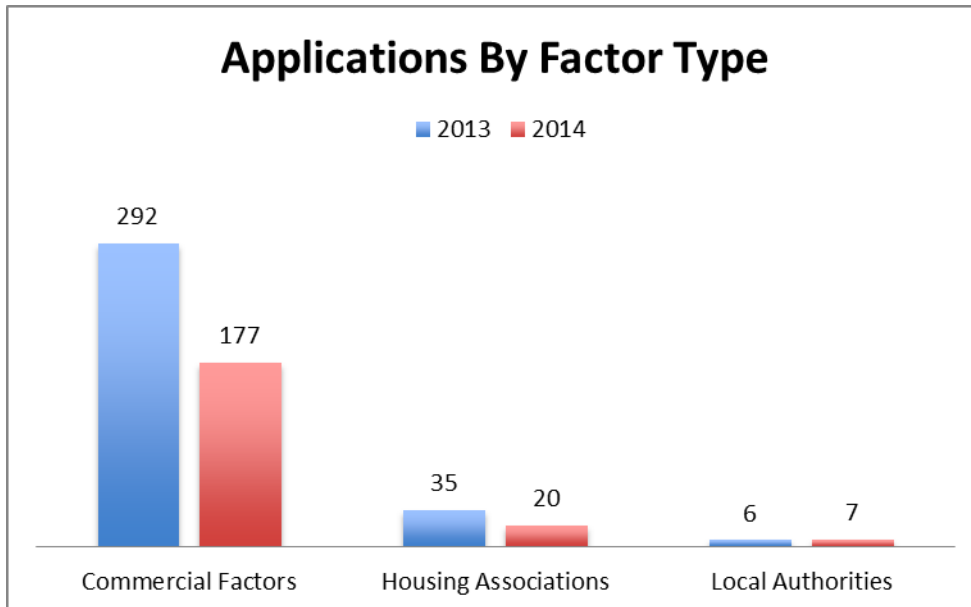
As with the previous year, the majority (87%) involved commercial factors, with around 10% of applications in respect of housing associations and the rest involving local authorities. In looking at these figures, regard has to be given to the percentage of

<sup>4</sup> Note: this is an estimated figure, based on weekly statistics

<sup>5</sup> Note: a decision can cover multiple applications if the applications are heard together and involve the same parties

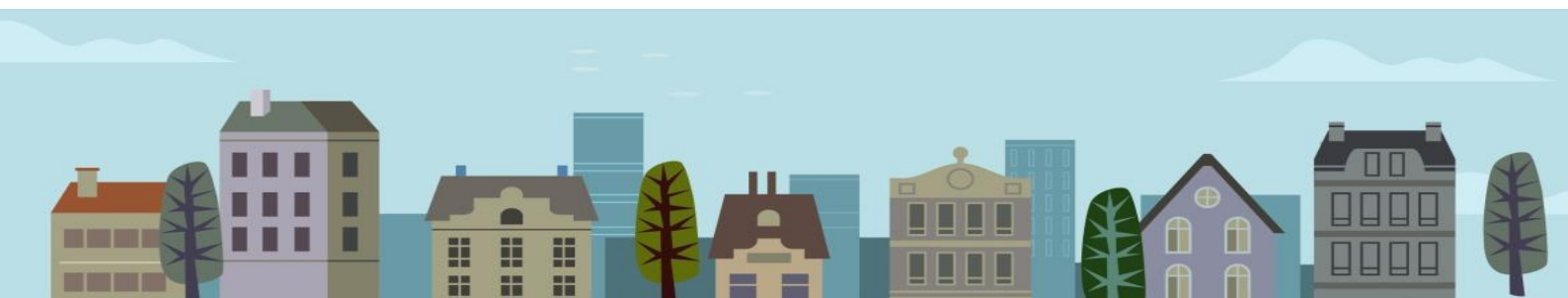
<sup>6</sup> Parts of the proceedings can occur over 2 calendar years – e.g. or a hearing in 2013, with a decision issued in early 2014, or a hearing in 2014, with a decision issued in early 2015. We have recorded in this section only events occurring in 2014.

properties factored by each category of property factor as commercial factors manage the highest proportion of properties.

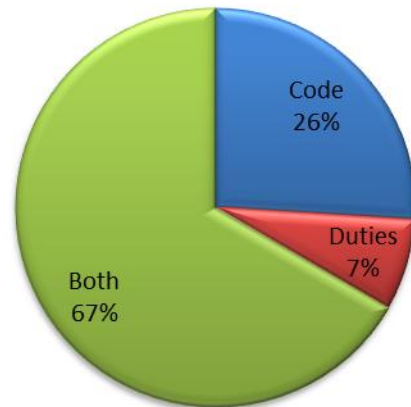


### Nature of the applications received

Of the 204 applications received, 53 (26%) related to alleged breaches of the Code of Conduct for property factors and 15 (7%) were about a failure to carry out the property factor's duties. Two-thirds of applications (136 applications) concerned both alleged breaches of the Code and an alleged failure to carry out the property factor's duties. These figures show an increase in both code only and duties only applications compared with 2013, with a corresponding decrease in applications involving both. This may suggest that homeowners are now finding it easier to identify code and duties issues than in the previous year.

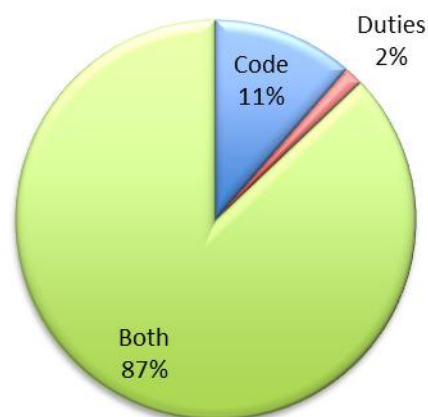


## Subject Areas of Complaint



2014

## Subject Areas of Complaint

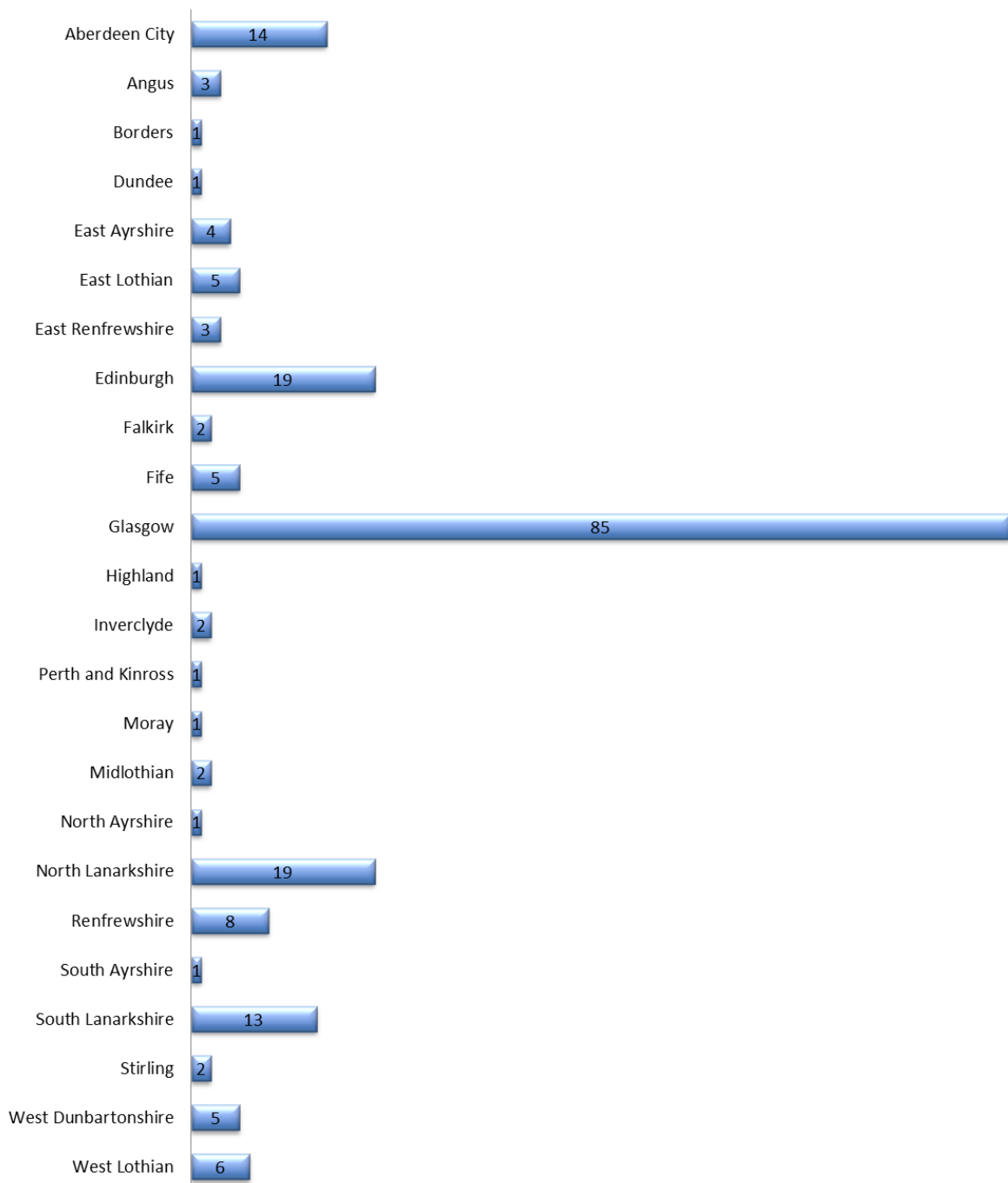


2013

### Where the applications came from

Applications were received from across Scotland in 2014. The Chart on the next page shows the geographical distribution of the applications received. At least one application was received from 24 of the 32 Scottish local authority areas. As in 2013, the vast majority of applications came from Glasgow and the west central belt, with 85 from Glasgow alone. Most of the remaining cases originated in Edinburgh and Aberdeen. As in the previous year, while some applications did concern traditional tenement properties, there were a high number in respect of properties within newer developments, which have factoring arrangements written into their deeds of conditions. Another notable trend in 2014 was an increase in the number of applications relating to sheltered housing developments.

## Geographical Distribution of Applications Received



## Rejected applications

Of the 204 applications received, a total of 70 were rejected by the President in accordance with section 18 of the 2011 Act, before being referred to a Committee. The grounds on which the President may reject an application are set out on page 11.

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

Reasons for Rejection	2014	2013
(a) that it is vexatious or frivolous	17	19
b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute	5	19
(c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications	0	0
(d) that the dispute to which the application relates has been resolved	48	17
<b>TOTAL</b>	<b>70</b>	<b>55</b>

As the table shows, more applications were rejected in 2014 than in the previous year. It can also be seen from the table that considerably fewer applications were rejected in 2014 on the grounds that the homeowner had not afforded the property factor a reasonable opportunity to resolve the dispute. At the same time, many more were rejected on the grounds that the dispute had been resolved. Both of these changes reflect the Panel's increased emphasis on encouraging homeowners who make an application to go back to the property factor and take their complaint through the factor's formal complaints process, before the panel will progress their application. This approach is in line with the Panel's overriding objective under the 2012 Regulations, as discussed on page 8.



### ***Vexatious or frivolous***

A total of 17 applications were rejected on the grounds that they were ‘vexatious or frivolous’. In all of these cases, the application was considered to be frivolous, rather than vexatious (which means habitually and persistently instituting proceedings without any reasonable grounds, usually with an improper motive<sup>7</sup>). The decision to reject an application is not taken lightly, and a number of court judgements have observed that the statutory test for ‘frivolous’ is intended to set a low threshold for applicants. The test of ‘frivolous’ has been interpreted as applying to an application made in good faith but which is “futile, misconceived, hopeless or academic”.<sup>8</sup>

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

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

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

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

As in 2013, most applications when first received did not comply with a strict interpretation of section 17(3) of the Act. In most cases, the ho hp writes to the homeowner advising them what is required in terms of section 17(3) and stating that their application will not be progressed until this has been done. In some cases, despite correspondence back and forth, this does not happen, and the President eventually takes the view that the application should be rejected. There was a marked

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<sup>7</sup> Lady Paton in *Lord Advocate v AB* (2012) CSIH31. Lord Bingham (as Lord Chief Justice) in *John Jarvis Ltd v Rockdale Housing Association* (1986) 36BLR 48

<sup>8</sup> Lord Bingham (as Lord Chief Justice) in *R v North West Suffolk (Mildenhall) Magistrates Court* [1998] Env LR 9 at

decrease in these rejections compared with 2013, which suggests that homeowners are now more likely to notify the property factor of their complaints as required under the Act.

### ***The dispute to which the application relates has been resolved***

Forty-eight applications were resolved on this ground, nearly three times as many as in 2013. Again, this is likely to be due in part to homeowners being encouraged to go back to the property factor and go through its formal complaints procedure. This category includes cases where no response is received by the Panel to its correspondence to homeowners asking for further information. In such cases, where there have been a number of attempts to elicit information from the homeowner with no response, the homeowner is advised that the President will make the assumption that the matter has been resolved.

### **Applications withdrawn by the homeowner**

A total of 43 applications were withdrawn by the homeowner. The reasons why these applications were withdrawn are set out in the table below. In 18 cases, the application was withdrawn because the matter had been resolved. Ten applications were withdrawn because the homeowner felt the process was too long or complicated. In 6 cases, the homeowner withdrew their application but intended to submit a new application.

Reasons for Withdrawal	2014	2013
Resolved	18	17
Process too long/complicated	10	1
New application submitted	6	1
Factor dismissed	1	1
Other	2	0
No reason given	6	0
<b>TOTAL</b>	<b>43</b>	<b>20</b>

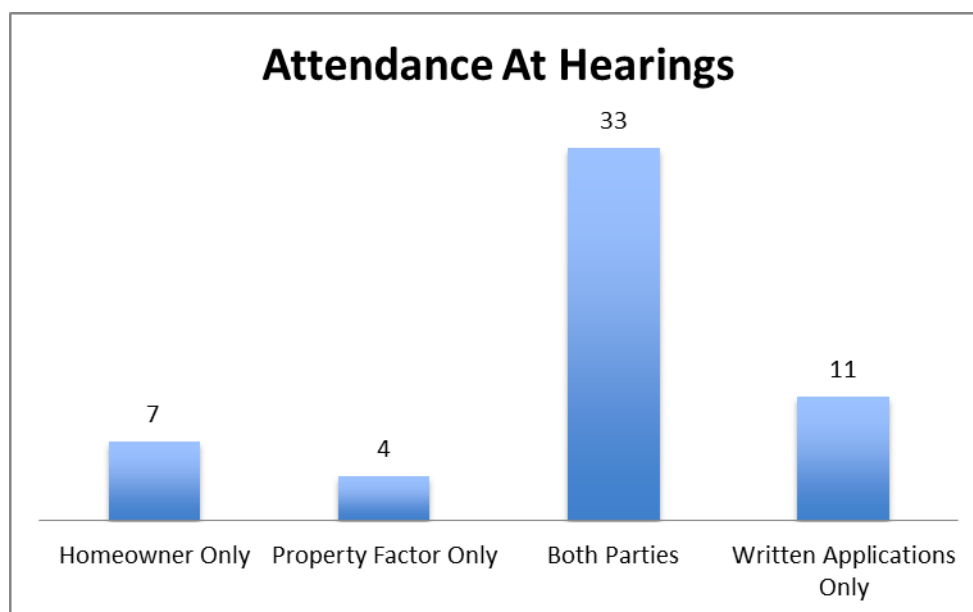


## Hearings

A total of 91 applications were considered at 55 hearings in 2014, over 65 days. So far as possible, the hearings were held at a location which was convenient to the parties. Over half (39) of the hearing days were held in the hoohp offices in Glasgow, with 19 held in Edinburgh, 3 in Aberdeen and 2 in Dundee and the remaining two hearing days being held in Stirling and Bathgate. Some of the hearings considered more than one application at the same time, while a small number of cases were heard over more than one day. In a few cases, there was more than one hearing - in addition to the main substantive hearing, there may have been a preliminary/case management hearing for example, and/or a hearing to determine whether the property factor had complied with a property factor enforcement order.

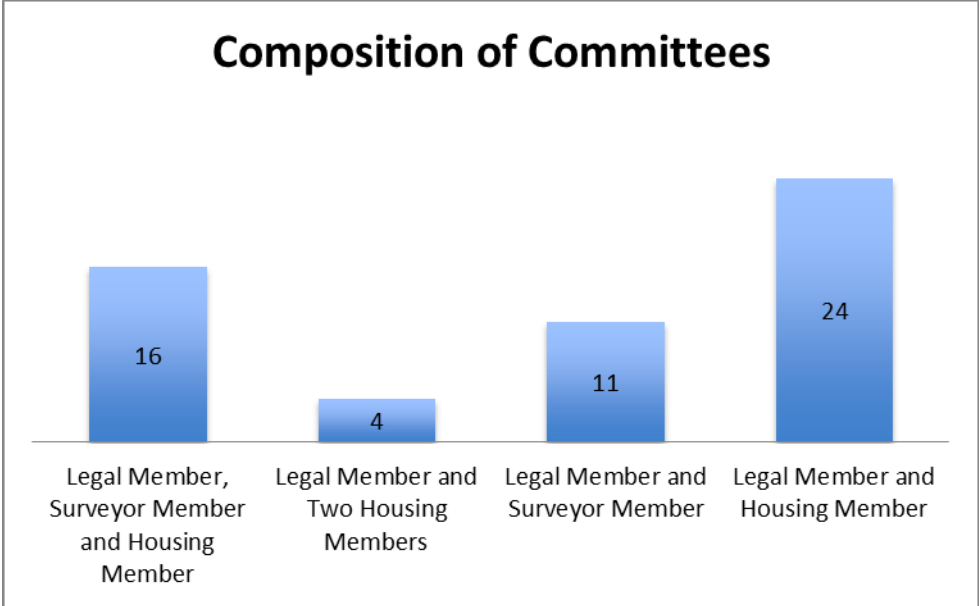
Two inspections of the property were carried out in 2014 by Committees before the hearing.

The hearings on 11 applications were conducted on the basis of written representations at the request of both parties, a higher number than in 2013, when only 3 cases were dealt with in this way. Of the remaining hearings, 33 were attended by both parties, 7 were attended by the homeowner only, and 4 by the property factor only. In most cases, the parties represented themselves.



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

type of member(s) (surveyor member and/or housing member) most appropriate for each Committee based on the nature of the complaints. A breakdown of the composition of the 55 Homeowner Housing Committees which heard hohp cases during 2014 is shown in the diagram below.



## Case outcomes

A total of 57 decisions were issued by committees in 2014.<sup>9</sup> In just over half (29) of these decisions, the Committee found that the property factor had complied with the code of conduct and/or property factor's duties. In the remaining 28 cases, the homeowner's complaint was either upheld or partly upheld. In most of these cases, the complaint was partly upheld i.e. the Committee found that the property factor had failed to carry out its duties and/ or comply with the Code of Conduct in relation to some, but not all, of the homeowner's grounds for complaint.

After the notice of proposal to make a Property Factor Enforcement Order (PFEO) is issued, written representations are sought from the parties before the Committee decides to issue a PFEO. A notice of proposed PFEO was issued in 28 cases with the decision. In 26 of those cases, after considering the representations submitted by the parties, the Committee went on to issue a PFEO. In the other 2 cases, the committee did not issue a PFEO. In these cases, the reason given by the Committee for not issuing a PFEO were that, following the notice of proposed PFEO, the property factor had carried out the actions which the Committee has included in the proposed PFEO.

Even in cases where no PFEO is issued, the failure of the property factor to carry out its duties and/or comply with the Code of Conduct is drawn to the attention of the Property Factor Registration Team, which receives a copy of all Committee decisions. This allows the Registration Team to consider issues raised in the decisions in the context of assessing whether a property factor meets the 'fit and proper person' test.

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<sup>9</sup> Note: This figure is lower than the number of hearing days, because there was more than one hearing in some cases, including procedural/case management hearings held in advance of the main hearing, in order to clarify the parties' arguments and/or consider whether there was agreement between them on certain issues. Moreover, the decisions in relation to some hearings held in 2014 were not issued until 2015, and likewise some decisions were issued in 2014 when the hearing took place in 2013. Only decisions issued in 2014 were included in the table.

## Breakdown of 57 Decisions<sup>10</sup>

Section of the Code	No. of Complaints	No. of Complaints upheld by a Committee (HOHC)
Section 1 – Written Statement of Service	16	8
Section 2 – Communication and consultation	38	20
Section 3 – Financial obligations	26	8
Section 4 – Debt Recovery	13	5
Section 5 – Insurance	14	6
Section 6 – Carrying out repairs and maintenance	31	10
Section 7 – Complaints Resolution	26	14
<b>Property Factor’s Duties</b>	34	27
<b>TOTAL</b>	<b>198</b>	<b>98</b>

<sup>10</sup> Note: some applications related to complaints under more than one section of the code of conduct.

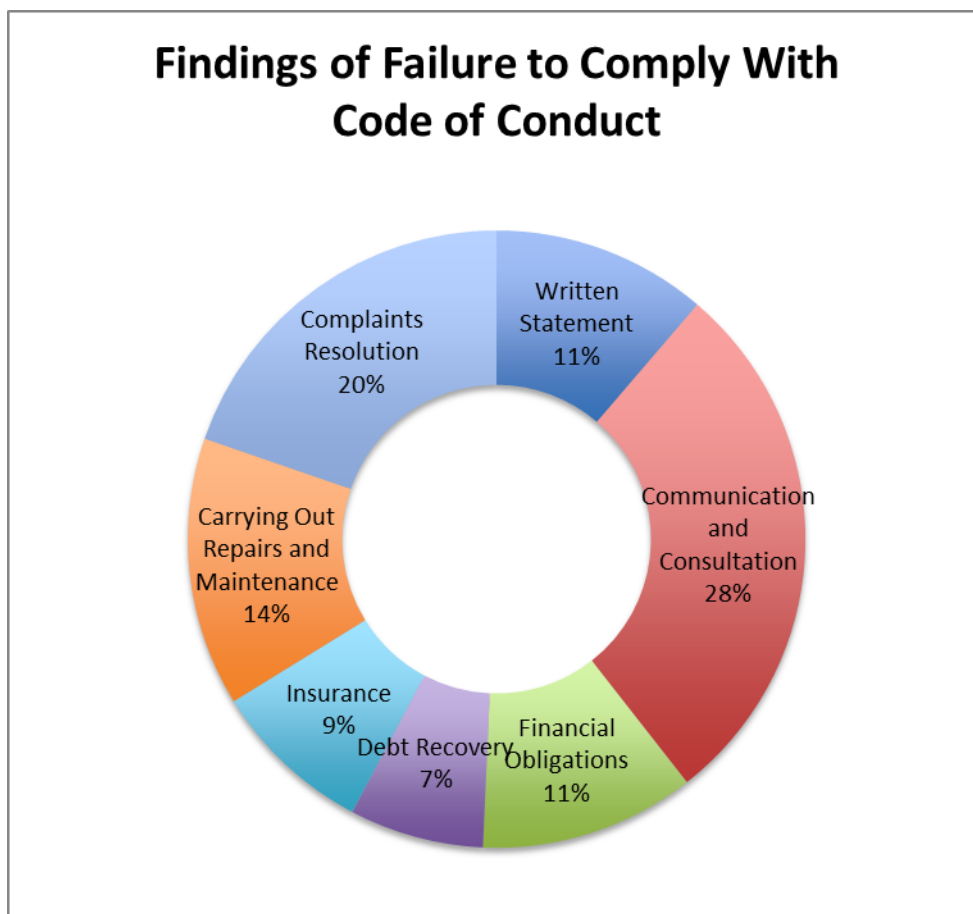
### Property Factor's Duties

Complaints that property factors had failed to carry out their property factor's duties arose in relation to issues such as alleged failures to comply with a Deed of Conditions in relation to floats; alleged failure to instruct works to common property; alleged lack of proper accounting; and alleged poor quality of maintenance works.

There were a higher number of complaints (34) relating to property factor's duties in 2014 than in the previous year. Most of these complaints (27) were upheld by committees.

### Code of conduct

As in 2013, the most common reason for a Committee determination that there had been a failure to comply with the Code of Conduct was a breach of Section 2, which is about communication and consultation. There was a marked increase in complaints under section 2, with twice as many complaints (38) made under this section than in 2013 (20). More than half of these complaints were upheld by Committees. The other Sections of the Code which were most commonly found to have been breached were: Section 7 (complaints resolution) and Section 6 (carrying out repairs and maintenance). In most cases where there was a failure to comply with the Code of Conduct, the Committee concluded that there had been a breach of more than one part of the Code. The diagram below shows a breakdown of committee findings of a failure to comply according to each section of the code.



## Property Factor Enforcement Orders

A Property Factor Enforcement Order (PFEO) was issued by the Committee in a total of 26 cases. The actions which the property factor was required to carry out in terms of the PFEO included one or more of the following:

- Issuing an apology
- Paying compensation to the homeowner
- Repaying fees to the homeowner
- Carrying out works
- Amending the written statement of services
- Providing information with regard to insurance policies, including commission

## Compliance by property factors

The property factor complied with the PFEO in 17 instances and the Committee duly issued a Certificate of Compliance in those cases. This figure includes 5 Certificates of Compliance issued in 2014 which related to PFEOs issued in 2013. Only Certificates issued in 2014 are included in the 2014 Annual Report. In 4 cases, the property factor failed to comply with the PFEO, and in these cases a Notice of Failure to Comply was served on Scottish Ministers, and the cases were referred to the police for prosecution.

## Appeals

In 2014, five cases were appealed. Two of these cases were linked with the same homeowner and property factor and were dealt with together by the same Homeowner Housing Committee and considered together at one appeal hearing. In relation to these 2 linked cases the appeal was upheld and the decision of committee overturned. In the other 3 cases the appeal was dismissed but in one case the sheriff made comments about 2 aspects of the Property Factor Enforcement Order (PFEO) and the committee then varied the order in line with the sheriff's comments.

In 2015, the first detailed judgment was issued by the sheriff in an appeal decision against a 2014 decision of a Homeowner Housing Committee. That appeal decision decided that the Homeowner Housing Committee should not be the respondent to the appeal and the appropriate respondent is the other party to the original application. The decision also deals with the question of expenses in such appeals, with the sheriff expressing the view that the nature and scope of the Act do not sit well with the imposition of expenses following an appeal to the sheriff. Parties may wish to have regard to the sheriff's comments when framing an appeal application and when deciding to incur costs of legal representation.<sup>11</sup>

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<sup>11</sup> The judgement can be found on the hohp website at: <https://hohp.scotland.gov.uk/news/sheriff-judgements>

## 5. Overview of Cases and General Trends

### Introduction

While 204 new applications were received by hohp in 2014, it should be noted that this is a relatively small number, considering that there are over 571,000 factored properties in Scotland.

As in the previous year, the subject matter of the applications received in 2014 was wide ranging. Those which concerned alleged breaches of the Code of Conduct covered all aspects of the Code. It is notable, that, as in 2013, a relatively high proportion of applications involved alleged failures to respond within reasonable timescales to telephone calls and correspondence; not providing information which was requested; and not following the property factor's own written complaints procedure.

Many applications are not straightforward, and some can raise complex and technical issues of conveyancing and property law.

2014 was a very busy year for hohp, with an upwards trend in the number of applications received, when compared to 2013. The hohp received an estimated 12,550 telephone, email and written enquiries in 2014<sup>12</sup>, more than double the number received in 2013.

Many of the emerging trends which were noted in the 2013 annual report continued in 2014, as set out below.

### Parties' understanding of the role of hohp

It is clear that many homeowners continue to have difficulty in understanding how the hohp process operates, and what is required of them in bringing an application.

While hohp staff do their best to explain the process and what is required from homeowners, including directing them to the guidance and other resources produced by hohp itself, hohp is an impartial tribunal. Whilst the Panel can provide information about the process, it cannot provide advice to parties about the merits of their case. It remains clear, however, that many homeowners do not fully understand the Panel's role. There continue to be instances where homeowners, and in some cases, property factors, have contacted us requesting an appointment to come to the Panel offices to discuss their case. It is also apparent that some property factors are under the impression that the role of the hohp is to advise homeowners on their applications.

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<sup>12</sup> Note: while many of these enquiries came from members of the public and property factors, the total number of enquiries also includes calls and emails from Panel members, STS, Scottish Government etc. It is not possible to separate out enquiries received from members of the public and property factors.

There is a tendency among both homeowners and property factors to think that they can enter into ongoing correspondence/ dialogue with the President or a Committee about specific cases. This is not appropriate, as hohp is a judicial body, and it seems unlikely that they would expect to enter into correspondence in the same way with a judge within a court.

While hohp staff do explain to parties that the hohp is a tribunal body, there remains a fairly widespread misunderstanding about the Panel's role. As noted in the 2013 report, this may be partly due to the use of the term 'panel', rather than 'tribunal'.

### **Requirements of section 17(3) of the 2011 Act**

It is also clear that both homeowners and property factors continue to have difficulties in understanding and complying with the requirements of section 17(3) of the 2011 Act. This states that an application cannot be made to hohp unless:

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

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

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

### ***When is an application 'made'?***

The President has taken the view that for the purposes of section 17 (3) (a), an application is not considered to have been made until the application paperwork which has been lodged meets the prescriptive requirements of the legislation and the Panel has all of the information which is necessary in order to consider whether or not the application should be referred to a Homeowner Housing Committee. If the view were taken that the initial application form received constituted the application, the overwhelming majority of applications received would be rejected on the grounds that the requirements of section 17 (3) (a) had not been met. The President takes the view that this cannot have been the intention of the legislation, particularly in light of the Panel's overriding objective, as set out in the 2012 regulations, which is secondary legislation approved by the Scottish Parliament. These objectives are to deal with the proceedings justly, flexibly, proportionately and avoiding delay.

In line with this approach, if, once an application has been received, the President does not consider that there has been adequate notification, the Panel will write back to the homeowner advising them that their application will not be progressed until 1)



they send such a notification to the factor and 2) the property factor is then given a reasonable opportunity to resolve the dispute. The Panel has produced template-style notification letters which homeowners can use if they wish, and with which property factors are familiar. These are intended to assist both homeowners and property factors. They help homeowners to focus on the service levels expected of property factors, resulting in applications which specify relevant issues within the Panel's jurisdiction. They also assist property factors in cases where there is uncertainty about the stage reached in the procedure. They provide better detail about homeowners' complaints, and provide a further opportunity for property factors to engage their complaint handling procedure. This results in a reasonable prospect that the dispute may be resolved between the parties.

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

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

It is not uncommon for an application to be received where there is correspondence from the homeowner which is clearly a notification of concerns to the property factor under section 17(3), setting out the sections of the code with which they believe the factor has failed to comply, and which the property factor has responded to in a way which suggests they are still not dealing with the matter as a complaint and are not initiating their complaint handling procedure. A delay by a property factor in initiating their staged complaint handling procedure is likely to result in referral of the application to a Committee as arguably the property factor is unreasonably delaying in attempting to resolve the homeowner's concerns.

Where there are delays in initiating the complaint resolution procedure, rather than resolving the homeowner's concerns, this usually has the opposite effect, causing frustration and escalating the dispute.

As in 2013, it is notable that the majority (87%) of applications received concern commercial property factors. While it is not surprising that a high proportion of applications relate to this sector given that 60% of factored properties are managed by commercial factors, the figures do suggest that commercial factors are overrepresented in terms of applications to ho hp. A reason for this could be that registered social landlords and local authorities require to be registered as property factors irrespective of whether they charge for their management services, and homeowners may be less likely to make applications if they do not pay for the service.

Another conclusion that might be drawn from these services is that registered social landlords and local authorities are generally better at dealing with complaints as they are required to operate a model complaint handling procedure published by the Scottish Public Services Ombudsman, which provides a definition of a ‘complaint’ and a clear and structured staged complaint procedure. This ensures certainty as to the stage at which the internal complaint handling procedure should be initiated and sets clear stages through which the complaint should be progressed.

While it is evident from some applications received that some commercial property factors are also operating clear and structured complaints handling procedures, and initiating these at an early stage, the experience of the Panel remains that there is still considerable evidence of poor complaints handling practices amongst some property factors within the sector. Some consideration might perhaps be given to the commercial property factoring industry adopting a standard complaints handling procedure with a definition of a complaint which triggers the start of that procedure.

## Good Practice in Complaints Handling

The adoption of such a procedure by the industry would be likely to reduce the number of applications received by the Panel regarding commercial property factors. It would ideally follow best practice complaints handling principles, starting with a clear definition as to what constitutes a complaint, as distinct from an enquiry. Section 17(3) (a) of the 2011 Act makes reference to the homeowner requiring to notify the property factor of “concerns” and any definition of complaint should be consistent with that terminology. The British Standards Institute defines a complaint as “*an expression of dissatisfaction made to an organisation, related to its products, or the complaint handling process itself, where a response or resolution is needed.*”

Once a complaint is recognised as such, it is then clear at what point the complaints handling procedure should be initiated. The complaints process should be simple, timely, efficient and have as few stages as possible. It should be objective, impartial and fair, and clear reasons should be given for the decision. The service provider should also learn from complaints in order to improve their service.<sup>13</sup>

## The difficulties experienced by homeowners

It is clear from the correspondence received by the Panel that homeowners often experience real frustration and difficulty in trying to understand and navigate the complexities of the application process, particularly as regards the need to comply with section 17 (3) of the Act. Section 17(3) states that an application may not be made until the Section 17(3) (a) and (b) requirements have been met. Given the issues

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<sup>13</sup> Further information about good practice in complaints handling can be found on the hohp website at: [https://hohp.scotland.gov.uk/sites/default/files/news\\_attachments/Good%20Practice%20in%20Complaint%20Handling%20Presentation.pdf](https://hohp.scotland.gov.uk/sites/default/files/news_attachments/Good%20Practice%20in%20Complaint%20Handling%20Presentation.pdf)

described above, Section 17(3) has been interpreted by the President to mean that an application will not be considered for referral to a Committee or rejection until these tests are met. Unless it was interpreted in this way, most applications would be rejected on receipt, which would be contrary to the aim of access to justice, and the aims of the Code of Conduct and the Act. This can often result in considerable correspondence between the Panel and the homeowner, which means that a substantial period of time can elapse in some cases before an application can be treated as validly lodged and referred to a Homeowner Housing Committee.

The 2012 regulations also provide that the homeowner must attach copies of certain documents, as set out on page 11, to his/her application. While it is particularly common for the homeowner to fail to submit a notification in writing to the property factor for the purposes of the Section 17(3) (a) of the Act, homeowners also often fail to include a copy of the factor's written statement of services and/or copies of correspondence between the parties.

It also remains the case that some homeowners have expectations as to what the process can deliver for them which cannot possibly be met, given the role and jurisdiction of the Panel and its committees. It is clear from the applications and other correspondence received from homeowners that they are sometimes seeking an outcome which ho hp is unable to provide them with, even if their complaints are upheld. It is not uncommon, for example, for a homeowner to be seeking the dismissal of their property factor, its removal from the register, or a change to the terms of their title deeds. It is not within the powers of the Panel or committees to order these things to be done, and as a result some homeowners, even where the committee finds in their favour, remain dissatisfied and frustrated with both the process and the outcome.

While a minority of homeowners are represented by either solicitors or advice agencies in relation to their case, the majority are unrepresented. As noted in the 2013 report, there is still little evidence that homeowners are approaching independent advice agencies for assistance, or that such agencies are becoming involved in ho hp cases.

### **Dealing with multiple applications from the same development**

The 2011 Act provides that only a homeowner can bring an application to ho hp. There were an increased number of enquiries received in 2014 from residents' associations or groups of owners, seeking to make group applications on behalf of all owners within a particular development. An application by an owners' association is not competent under the Act. However, there is nothing to prevent all of the individual homeowners making identical applications and naming the same representative to attend and represent them at a hearing. This occurred in one case in 2013, where the Panel successfully dealt with 148 applications from 75 homeowners from one development. All of the applications were disposed of at two separate half-day hearings, which took place in 2014.

This case study demonstrates the flexibility of the proceedings, as the 2012

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

In 2014, there were a number of cases where more than one application was received from the same development. The Panel now actively seeks to identify such cases and, where possible deal with these together, in order that they might all be considered by the same committee. While this can cause some practical difficulties in some instances, as some applications which have reached a more advanced stage in the process may not progressed until other later applications have 'caught up' with them, there are clear benefits for both the Panel and the parties in taking this approach.

### **Written statements of services**

It is also becoming clear that there is considerable variation in the content and level of detail of the written statements of services which have been issued by property factors. While section 1 of the Code of Conduct for Property Factors sets out the required content of the written statement of service (WSS), the way in which this is interpreted by factors varies considerably. It appears that some property factors are unsure as to exactly what is required of them, and how much detail they need to provide. A number of Property Factor Enforcement Orders issued by committees have required property factors to amend the wording of particular sections of their WSS.

As with complaints procedures, there may be merit in exploring whether examples of good practice in this area, or even a model WSS, might be produced. Again, this might help to clarify certain issues for both homeowners and property factors, and perhaps help to reduce the number of hohp applications received in the future.

## 6. Pilot Mediation Service

### Background

In January 2014, the Panel introduced a pilot mediation service to assist the resolution of disputes at an early stage and without the need for a hearing before a Homeowner Housing Committee. Experience of the applications received within the Panel's first year of operation suggested that some complaints might be resolved by better communication between the parties. This is borne out by the number of applications which have been withdrawn because the matter has been resolved after the homeowner was prompted to notify or re-notify complaints before the application is considered for referral to a Committee for determination. There are also a number of cases where it is assumed that the complaint has been resolved as the homeowner has been prompted to notify their complaints with sufficient detail and the Panel hears nothing further.

The President therefore took the view that mediation could be a useful tool to allow parties to exchange information and views in an informal way, and to explore ways of resolving the dispute to their mutual satisfaction. Mediation is a way of settling disputes informally without the expense, time and bad feeling often involved in using formal procedures. It is practical, confidential, relatively quick and free of charge. Those who negotiate their own settlements often feel more empowered and pleased with the outcome than those who use a third-party decision maker. Crucially, the evidence suggests that in most cases, whether it results in a settlement agreement or not, mediation helps to improve relations between the parties. Where there is likely to be an on-going relationship, such as that between a homeowner and a property factor, a negotiated agreement can be much easier for everyone to live with, and to take forward, rather than having a formal judgement imposed where one side or the other "wins."

Choosing mediation therefore allows the homeowner and the property factor to work out a solution best suited to their needs, instead of having a solution imposed upon them by a Committee. Once they have had the opportunity to talk through the issues, each party is better able to understand the other party's point of view, which can improve the relationship between the homeowner and the property factor. Because the parties have found their own solution to their problems, they are more likely to actually do what they have agreed to do.

### How the mediation service works

The offer of mediation is made at the point that the case is ready for referral to a Committee for determination. Some cases are better suited to mediation than others, and the circumstances of the case are considered in deciding if an offer of mediation should be made. Mediation is suggested in a high proportion of cases, but examples of

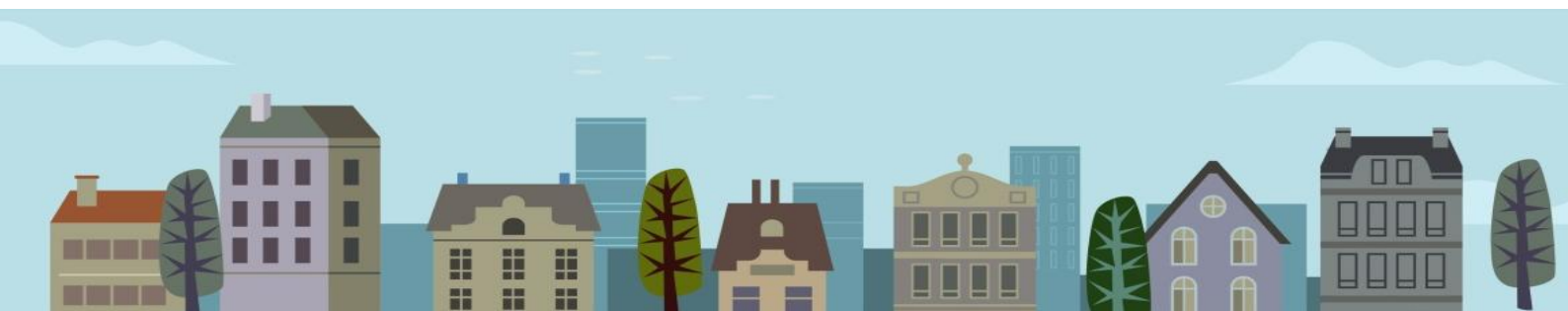
cases where it is not considered suitable, and is not therefore offered, include the following:

1. Where it is clear from the papers that either party wishes to raise legal challenges or debate legal issues.
2. Where the case involves a point of principle or practice which may have an impact on others.
3. Where criminal conduct is alleged.
4. Where the correspondence passing between parties is of a high conflict nature where it is unlikely that the parties would engage in any sort of meaningful dialogue with each other.
5. If there appears no scope for negotiation.
6. Where meetings between the parties have already taken place and mediation is unlikely to succeed.
7. Where mediation in relation to the dispute has taken place already and was unsuccessful.
8. If the same issues of complaint are being raised repeatedly against a property factor by a number of homeowners and the confidentiality of mediation is not appropriate.

Where a case is identified as suitable for mediation, it is offered first to the homeowner. If s/he agrees to mediation, it is then offered to the property factor. If the property factor agrees to it, mediation is arranged. The hohp mediation service is free of charge, flexible and confidential. The Panel mediators are trained impartial people who are skilled in helping establish common ground. There are 19 trained mediators amongst the judicial membership, who have all undertaken an accredited mediation course.

If mediation is successful, the parties will sign up to an agreement which ends the Panel's involvement in the case, unless either party complains that the agreement has been breached. If no agreement is reached, or arguably the mediation agreement is not adhered to by one or both parties, the application is then referred to a committee for determination. The committee which deals with the case will not include panel members who acted as mediators in relation to that application.

A leaflet providing further information on the mediation process is available on the hohp website.



## Mediation statistics for 2014

Of the 91 valid applications which proceeded to committee referral stage in 2014<sup>14</sup>, 53 offers of mediation were made in relation to 65 applications. In 48 of these offers, mediation was offered to a homeowner with a single application. In the other cases, mediation was offered to a representative/s of homeowners involved in a group application.

Of the 53 offers made, nearly one-third, 16 offers (in respect of 17 applications- i.e. one offer involved 2 applications from 1 homeowner) were accepted by the homeowner/their representative. The remaining 37 mediation offers (for 48 applications) were declined by the homeowner/ representative.

Subsequent to accepting an offer, a homeowner withdrew his application before the factor could respond to the offer of mediation as the dispute with the property factor had been resolved. In every case where an offer of mediation was made to a property factor, the offer was accepted by the factor. Therefore, this resulted in 15 cases (in respect of 16 applications) where the offer was accepted by both parties. However, mediation could not proceed for the group case involving 2 applications for logistical reasons. Therefore a total of 14 mediations took place each involving a single application.

Of the 14 mediations, 9 written mediation agreements were reached, and in 2 cases, a partial written agreement was reached and the applications went to committee hearings on the outstanding complaints only. One application was withdrawn on the day of the mediation after the property factor provided the information sought by the homeowner, and there was no agreement by the parties in the other 2 cases. In these 2 cases where there was no agreement, the cases were referred to committees for determination.

Of the 9 applications where written mediation agreements were reached, 7 agreements were fully complied with and the applications subsequently withdrawn, and the remaining 2 mediation agreements were not complied with and the applications were referred to a committee for determination.

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<sup>14</sup> Of 204 applications received and processed in 2014, 70 were rejected by the President and 43 were withdrawn by the homeowner, as discussed in more detail in Chapter 4, leaving a total of 91 valid applications which progressed to referral stage

## Mediations 2014

<b>Cases Deemed Suitable for Mediation Offer</b>	53
<b>Applicants</b>	
Offers accepted for single applications	15
Group case accepted (representing 2 applications)	1
Offers declined	37
<b>Factors</b>	
Offers accepted for single applications	14
Group case accepted (representing 2 applications)	1
Application withdrawn by applicant before response from factor due to resolution	1
<b>Cases Continued to Mediation</b>	
Single applications	14
Group case (representing 2 applications) cancelled for logistical reasons	1
<b>Mediations- Outcomes</b>	
Mediation agreements made	9
Partial agreements	2
No agreement reached	2
Application withdrawn at mediation without need for written agreement	1
<b>Outcomes of written mediation agreements</b>	
Fully complied with and applications withdrawn	7
Failure to comply with agreements and applications referred to a Committee	2

## Conclusions

While it is perhaps too early to draw any firm conclusions from the statistics after less than one year of operation, the figures for the take up of mediation and for successfully mediated outcomes are encouraging. Of those applications which did go to mediation, the majority resulted in a full or partial agreement. While the take up of mediation by homeowners was at a rate of just under a third, the early signs are encouraging, and the experience so far in 2015 suggests that take-up may be increasing. There are signs that some homeowners may be reluctant to engage in mediation for a variety of reasons such as reluctance to agree to confidentiality, frustrations with the complaint handling procedure or in some instances lack/ delays in initiation of it, delays in the process or wish to go to a public hearing. The take up by factors to date suggests, however, that if more homeowners can be encouraged to try mediation, factors will be willing to use it too.



## 7. Continuous Improvement Within Hohp

### Overview

One of the key objectives of the wider Scottish Tribunals Service<sup>15</sup> is the ongoing effort to improve processes and services by the use of Continuous Improvement techniques. The administration staff within hohp have further strengthened their commitment to Continuous Improvement, and were involved in a number of areas of development and improvement of services during 2014. These include the drafting of a number of quality checklists, which both staff and management use to ensure accuracy and consistency. A quality checklist is a tool used to aid staff in ensuring they consider all aspects of the process quality. The purpose of a well-planned repeatable quality management system is to ensure the delivery of services to an agreed standard. These checklists are also used to provide positive feedback for new and existing staff, helping them to become familiar with best practice during the process of an application.

The hohp has continued to update and utilise a database of standard operating procedures (desk instructions) to ensure consistency of practice. The staff have found that having standard operating procedures gives them confidence in the building of their knowledge and also increased job satisfaction, allowing them to provide the best service that they can. STS and staff within hohp continue to encourage and embrace the use of multi-skilling throughout the teams, and the use of Standard Operating Procedures allows for a better informed workforce across all of the tribunals within Glasgow.

Hohp staff have worked together to identify key areas of improvement within our Case Management System (CMS) This has led to increased functionality within CMS, including a helpful calendar page, which instantly allows staff to see what is coming up and to plan ahead. There is also a facility which allows staff to view an easy to read notes page. Further developments include an increased facility for the provision of a number of statistical reports at the touch of a button.

In 2014, staff within hohp and the wider STS benefited from a number of internal and external training courses. Within hohp, staff have undertaken a call handling training course, an online Data Protection course, and an online Health and Safety Course. Managers within hohp and the wider STS also benefited from a Coaching Skills course, allowing for increased development in managerial and leadership skills.

### Training for Judicial Members

We are committed to relevant and high quality training of members, to equip them to carry out their roles effectively and efficiently as members of decision making committees. A members' training committee has been set up to provide support and deliver training to panel members. In addition, the Panel continues to circulate information to members on jurisdictional issues, and circulates committee decisions to

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<sup>15</sup> Note: as from 1 April 2015, the Scottish Tribunals Service merged with the Scottish Court Service to form the new Scottish Courts and Tribunals Service

help ensure consistency of decision making. This ensures that members are equipped with relevant knowledge to help them to decide cases brought before the Panel.

An all members' one day conference was held in Glasgow in February 2014. This allowed all member types to come together and reflect on experiences of both ho hp and The Private Rented Housing Panel (prhp). The conference included sessions on the Housing (Scotland) Bill, tribunal reform, smoke detector guidance, electrical safety and energy efficiency. Various workshop sessions were available for members to attend delivered by speakers from external organisations. For example: tackling problems of common repairs in private housing, the role of housing benefit, the best way to approach dispute resolution and information around landlord registration.

A mediation training day was also held in January 2014 for panel members who are trained as mediators. The training, on mediating within a statutory scheme, was delivered by Professor Charlie Irvine from the University of Strathclyde.

## **Website**

During 2014 there were 43,952 visitors to the ho hp website seeking information. All decisions of the Panel continue to be published on the website. The website was upgraded in summer 2015.

## **Complaint handling procedure**

During 2014, STS continued to comply with the complaint handling procedures provided by the Scottish Public Services Ombudsman (SPSO). Complaints relating to the administration of the ho hp are handled in the first instance by the ho hp itself. If the complainer remains dissatisfied with the ho hp's decision on the complaint or the way it has been handled, they can then take the complaint to the SPSO. Complaints about the conduct of a Panel member are referred to the President or Vice President of the ho hp for investigation.



## 8. Working with Others

### Scottish Courts and Tribunals Service

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

It is recognised that there is a need to preserve the identity and ethos<sup>16</sup> of the individual tribunals, and to retain within each individual tribunal the existing administrative staff with specialist knowledge and experience of the jurisdiction of each tribunal.

### Increasing public awareness about the work and processes of the Panel

During the year, the President welcomed Judge Siobhan McGrath, President of the First Tier Tribunal (Property) Chamber for England and Wales, to the Panel's offices to meet hohp and prhp staff and to explain the workings of the Panels. The President was invited to the office of the Scottish Legal Complaints Commission in Edinburgh to discuss approaches to mediation and alternative dispute resolution.

The President also attended seminars on merit and diversity organised by the Judicial Appointments Board for Scotland; on administrative justice organised by the Scottish Tribunals and Administrative Justice Advisory Committee; on informal dispute resolution at Queen Margaret University, Edinburgh; and was invited to give a presentation at the Scottish Housing Best Value Network conference on factoring, and on tribunal reform at the Shelter conference, and at National Landlord's day.

In August 2014, the President held a successful and well attended HOHP User Group Event, designed for organisations which represent property factors, homeowners and other relevant stakeholders. The purpose of the event was to give the Panel's stakeholders the opportunity to meet the President, the Vice President and members of the Secretariat, and to learn more about the hohp process. There was an opportunity for questions to the President. The presentations and questions to the President and her answers were posted on the hohp website to allow a wider circulation of the material to interested users.

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

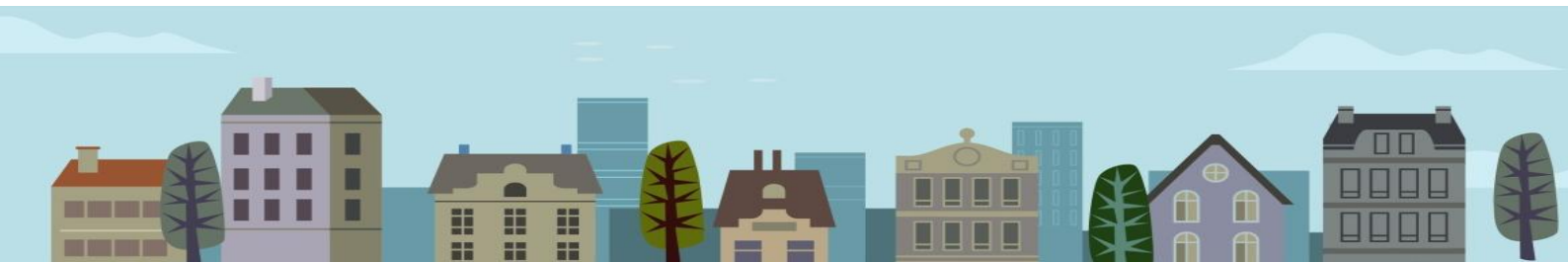
There is a statutory requirement on property factors to bring the existence of the Homeowner Housing Panel to the attention of their customers.

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<sup>16</sup> Since 1 April 2015, following the merger of the Scottish Court Service and the Scottish Tribunals Service  
Note: the SCTS now also supports the Tax Tribunals for Scotland, which were established in April 2015

## Scottish Tribunals Forum

During the course of the year the President attended regular meetings of the Scottish Tribunals Forum for senior office holders of the devolved and reserved tribunals to explore best practice with other Scottish tribunal presidents, members of the judiciary and senior civil servants and to discuss the implementation of tribunal reform following the passing in 2014 of the Tribunals (Scotland) Act and the Housing (Scotland) Act. More details in relation to this are provided in section 9 of the report.



## 9. Looking to the Future

### Tribunal reform

1. The next few years will mark a period of major change for the prhp and the hohp. In April 2015, the Scottish Tribunals Service was merged with the Scottish Court Service to form the Scottish Courts and Tribunals Service. The new body is fully independent of Government, with a board chaired by the Lord President as head of the courts and tribunals judiciary. It is not envisaged that the front-line operational delivery of tribunals will be affected, as the current specialist staff and venues for tribunals will remain. The reforms should therefore have little direct impact on users of the prhp and the hohp.

2. The Tribunals (Scotland) Act 2014 introduces major tribunal reform in Scotland. The Act :

- Creates two new tribunals – the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland – to be known collectively as the Scottish Tribunals.
- Allows for the creation of Chambers to house the tribunals in the First-tier – grouped by similar subject jurisdiction and led by Chamber Presidents, who will have responsibility for business within their Chamber.
- Allows for the creation of Divisions in the Upper Tribunal.
- Makes the Lord President of the Court Session Head of the Scottish Tribunals, bringing judicial leadership of the Scottish Tribunals within his remit.
- Establishes a new office – the President of the Scottish Tribunals – with powers delegated from the Lord President. The Rt Hon. Lady Smith was assigned to this role in July 2014
- Gives responsibility for welfare, training and discipline to the Lord President, including the power to suspend a tribunal member, if considered necessary in the public interest.
- Brings tribunal appointments under the remit of the Judicial Appointments Board for Scotland.
- Will give responsibility for making tribunal rules to the Scottish Civil Justice Council.

3. The establishment of the Scottish Tribunals and the transfer-in of jurisdictions into the new chambers will be phased. A number of Chambers are expected to be in place next year including a Housing and Property Chamber. The first jurisdictions to transfer-in will deal with Housing and Property matters, specifically the prhp and the hohp. These tribunals are currently scheduled to transfer-in to the Chamber at the end of 2016. The new jurisdictions created by the Housing (Scotland) Act 2014, as discussed below, will be added to the Chamber in 2017.

4. The Housing (Scotland) Act 2014 will introduce a new tribunal jurisdiction within the

First-tier Tribunal Housing and Property Chamber, which will deal with private rented housing cases which are currently dealt with in the sheriff court. These will include repossession cases under the Housing (Scotland) Acts 1984 and 1988; various non-repossession cases under the 1984 and 1988 Acts; cases relating to other landlord-tenant disputes about compliance with individual tenancy agreements; and civil cases relating to landlord registration under the Antisocial Behaviour etc. (Scotland) Act 2004.

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



## 10. How to Contact Us

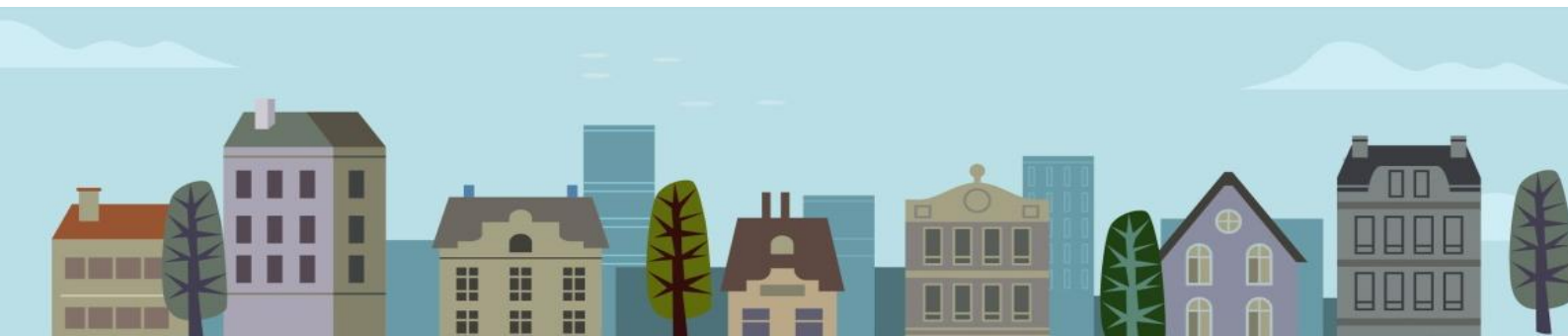
Address: Europa Building, 450 Argyle Street, Glasgow G2 8LH

Telephone: 0141 302 5820

Fax: 0141 302 5901

Email: [hohpadmin@scotcourtsribunals.gov.uk](mailto:hohpadmin@scotcourtsribunals.gov.uk)

Web: <https://hohp.scotland.gov.uk>



## APPENDIX A

### Members of the Private Rented Housing Panel and Homeowner Housing Panel

Chairperson
Mr David Bartos- LLB (hons) FCI Arb
Mr Jim Bauld- LLB (hons) Dip L.P NP
Mr George Clark- LLB (hons) Dip LP
Mr Andrew Cowan- LLB(hons) Dip LP
Mrs Aileen Devanny- PRESIDENT- LLB NP DCPPDip
Mr Pino Di Emidio- LLB (hons) LLM
Mr Paul Doyle- LLB Dip LP NP
Mr Ron Handley- BA LLB
Mrs Judith Lea- LLB Dip L MBA MSC WS
Mr Martin McAllister- LLB NP
Mrs Anne McCamley- BA LLB
Mr John McHugh- LLB (hons) Dip LP NP
Mr Richard Mill- LLB Dip LP NP
Mr James Millar- LLB NP
Mr Ewan Miller- LLB (hons) NP
Mrs Karen Moore- LLB
Mr Maurice O'Carroll- LLB(hons) Dip LP LARTPI
Ms Sarah O'Neill- LLB (hons) Dip LP NP MBA
Mr David Preston- LLB NP
Mrs Patricia Pryce- MA LLB Dip LP NP
Miss Simone Sweeney- BA (Hons) LLB Dip LP NP
Mrs Jacqui Taylor- LLB (hons) Dip LP NP MBA TEP
Mr Steven Walker- LLB (hons) Dip LP
Surveyors
Mr Angus Anderson- MRICS
Mr Mark Andrew- FRICS FAAV
Mr Kingsley Bruce- MRICS
Mr Robert Buchan – VICE PRESIDENT- BSc FRICS
Mr Richard Burnett- MA FRICS FIRPM
Mr George Campbell- DPA MSc CEng CEnv MICE FRICS
Mr Alexander Carmichael- FRICS
Mr David Godfrey- MRICS
Mr Colin Hepburn- MRICS
Mrs Sara Hesp- LLB(hons) BA(hons) MRICS ACI Arb
Ms Carol Jones- MA MRICS
Mr Mike Links- FRICS
Mr Donald Marshall- BA (hons) FRICS
Mr Ian Mowatt- BSc FRICS
Mr Ian Murning- TD LLB (hons) LLM DPA FRICS MCI Arb MInst RE
Mrs Susan Napier- BSc FRICS
Mr Andrew Taylor- MRICS
Mr Charles Reid Thomas- MSc Med MRICS MIED
Ms Geraldine Wooley- MA Med MRICS MIED



Housing Members
Mrs Christine Anderson- BA
Mrs Helen Barclay- Dip Hsg CIHCM
Mr John Blackwood- LLB BD
Mrs Susan Brown- BA (hons) Dip Hsg Dip human resource management, Dip Youth and Community Work
Mr A Scott Campbell- Dip public health inspection REHIS
Mr Colin Campbell- FCIH
Mrs Elizabeth Dickson- HNC in Building with Building Regulations, Law and Administration
Mr David Hughes Hallett- FRICS
Mr Christopher Harvey- BA (hons) MA (hons)
Mrs Brenda Higgins- CIXHM MBA BA Dip housing administration
Ms Carolyn Hirst- BSc (hons) MBA CIHM FRSA
Mr Tom Keenan- BA DPA
Mr Ahsan Khan- MA BSc (hons) MPhil MCIH
Ms Irene Kitson- BA CFCIPD
Mrs Mary Lyden- Bed PG Dip housing studies
Mrs Ann MacDonald- MA MCIH
Mr Douglas McIntyre- Bsc (hons) MCIOB Cert CIH
Ms Elaine Munroe- FCIH MBA ICIOB
Mr James Riach- MREHIS
Mrs Linda Robertson
Mr Mike Scott- BSc (hons) MSc MRTPI FCIH
Mrs Susan Shone- CICHM PG dip
Mrs Jean Thomson- DHS CBA FCIH
Mrs Sally Wainwright- BA(hons)
Mr John Wolstencroft- BSc (hons) PG Dip CIHM

### Panel Numbers:

President and Vice President comprising 1 female and 1 male

23 Legal Chairpersons comprising 8 female and 15 male

19 Surveyor Members comprising 4 female and 15 male

25 Housing Members comprising 14 female and 11 male

# APPENDIX B

## HOMEOWNER HOUSING PANEL

Expenditure Statements for the financial years 2013/2014 and 2014/15\*

Expenditure Item	Actual 2013/14 £'000's	Actual 2014/15 £'000's
<b>Staff Salaries and Expenses:</b>		
Support Staff	81.0	71.0
Members Expenses	3.0	1.0
<b>Members Expenses:</b>		
Members Fees	132.9	191.0***
Members Expenses	8.9	0
<b>Committee Costs:</b>		
Expenses	20.1	0
Venue & Hearing Costs	0	4.2
<b>Central Costs:</b>		
Accommodation	0	0
General Expenses	11.3	11.6
Postal Costs	4.0	7.5
Computer charges/Website**	17.1	18.8
<b>TOTAL</b>	<b>278.3</b>	<b>305.1</b>

\* The above expenditure is shown on the basis of the financial years 1<sup>st</sup> April to 31 March.

Support Staff 4

\*\* This expenditure in 2014/15 includes the cost of hosting the HOHP website, the development of the CMS system and depreciation costs.

\*\*\*This figure is a total for member's fees and expenses including fees for training for 2014/15 only. The members fees for training in 2013/14 were included under Committee Costs: Expenses.



## APPENDIX C

### Public Services Reform (Scotland) Act 2010

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

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

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

The Homeowner Housing Panel has made no payments in the above categories for the accounting period 1 January 2014 until 31 December 2014.

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

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

- The Panel has promoted the use of electronic systems with more use of email communication and scanning and electronic sending of paper records and documents.
- The Panel administration has increased its use of the Scottish Government and local authority venues for hearings, provided it does not involve the need for participants to travel long distances. The Panel uses the conference facilities in Scottish Government venues for training events.
- To recycle paper, print cartridges and other resources where possible.
- To explore sharing of resources and specialist services among the Scottish-based Tribunals of the Scottish Tribunals Service (STS).<sup>17</sup>
- To evaluate and explore refinements within the statutory framework to our application and case management processes. We have carried out various continuous improvement tools such as process mapping to improve efficiency within our processes.

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<sup>17</sup> Note: from 1 April 2015, STS became part of the merged Scottish Courts and Tribunals Service (SCTS)