

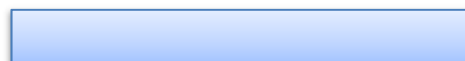
Housing and Property Chamber  
First-tier Tribunal for Scotland



## **Summary of Work of the Housing and Property Chamber**

**1 April 2021 - 31**

**March 2022**



### **Foreword by Chamber President**

Thanks to the hard work of the tribunal members and tribunal administration, the Chamber coped very well with the challenges resulting from the coronavirus pandemic. The Chamber saw a sizeable recovery in application numbers during the reporting year 2021/22, following a significant reduction during the previous year.

There was no backlog in processing most categories of application to the Chamber at the start of the reporting year. Due to covid safety risks associated with the attendance of parties and members at property inspections, the consideration of repairing standard and rent assessment cases involving property inspections had to be delayed. Following a relaxation in covid restrictions and the introduction of safe procedures and risk assessments, property inspections resumed in repairing standard cases in late May 2021.

The protections for tenants in eviction cases under the Coronavirus (Scotland) Act were extended initially to 30 September 2021 and then again until 31 March 2022. Some of the changes introduced by the Act were revoked from 30 March 2022, notably those which lengthened the required eviction notice periods before an application could be made to the tribunal. The provisions which made previously mandatory eviction grounds discretionary have been retained, and tribunals will therefore still require to consider the issue of reasonableness in eviction cases.

This summary provides details of the types of cases which are heard by the Housing and Property Chamber; the procedure the chamber applications follow; and, as with previous years, statistical information for the reporting year, which for this report is 1 April 2021 to 31 March 2022. I hope this summary is of interest.

Aileen Devanny

Chamber President

## **Introduction**

The Chamber continued to be impacted by the measures introduced during the pandemic in 2021-22. Most case management discussions (CMDs) and hearings continued to be conducted remotely, by either teleconference or videoconference, with few hearings conducted in person. Due to the covid safety risks associated with parties' and members' attendance at property inspections, the consideration of repairing standard and rent assessment cases involving property inspections had to be delayed. Following a relaxation in covid restrictions and the introduction of safe procedures and risk assessments, property inspections resumed in repairing standard cases in late May 2021. Having worked its way through a backlog of existing repairing standard applications due to the pandemic restrictions, the Chamber began to schedule inspections for new applications from 16 June 2021 onwards. Inspections in rent assessment cases were scheduled from 30 September 2021 onwards.

However, despite adapting proceedings to ensure safety measures during the pandemic were observed, remarkably there was no backlog for most categories of applications to the Chamber at the start of the reporting year on 1 April 2021.

As well as adapting procedures to incorporate the pandemic restrictions, the Chamber also faced the challenge of a sizeable recovery in application numbers during the year, following a significant drop during 2020-21. Since 1 April 2022, application volumes have continued to rise and at the time of the issue of this report, the Chamber was experiencing volumes in excess of pre-pandemic levels.

The Coronavirus (Scotland) Act 2020 made temporary but significant changes to the statutes applicable to private sector evictions in Scotland, designed to protect tenants during the pandemic where a prescribed notice was served on or after 7 April 2020. These protections were extended initially to 30 September 2021 and then again until 30 March 2022. Some of the changes introduced by the Act, notably those which lengthened the required eviction notice periods before an application could be made to the tribunal, were revoked from 30 March 2022.

However, the provisions which made previously mandatory eviction grounds discretionary remained in force after that date. Tribunals will therefore still need to consider the issue of reasonableness in eviction cases. Tribunal members have had to keep abreast of the coronavirus legislative changes when considering cases.

The statutory code of conduct for property factors was revised during the year by the Scottish Government following a consultation process. The revised code took effect on 16 August 2021.

## **1. The Chamber jurisdictions**

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

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

### ***1. Private rented sector applications***

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

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

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

Other categories of PRS application include, among others:

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

## **2. *Repairing standard applications***

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

## **3. *Homeowner (Property Factor) applications***

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

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

## **4. *Landlord (Right of entry) applications***

Private landlords can apply for assistance in exercising their right of entry to tenanted property to view the state and condition of the property and/or to carry out works to meet the requirements of the repairing standard under the Housing (Scotland) Act 2006.

## **5. *Rent assessment applications***

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

Under the Housing (Scotland) Act 1988, the HPC can consider, in relation to assured and short assured tenancies:

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

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

## **6. *Letting agent applications***

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

### **2. The HPC's approach**

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

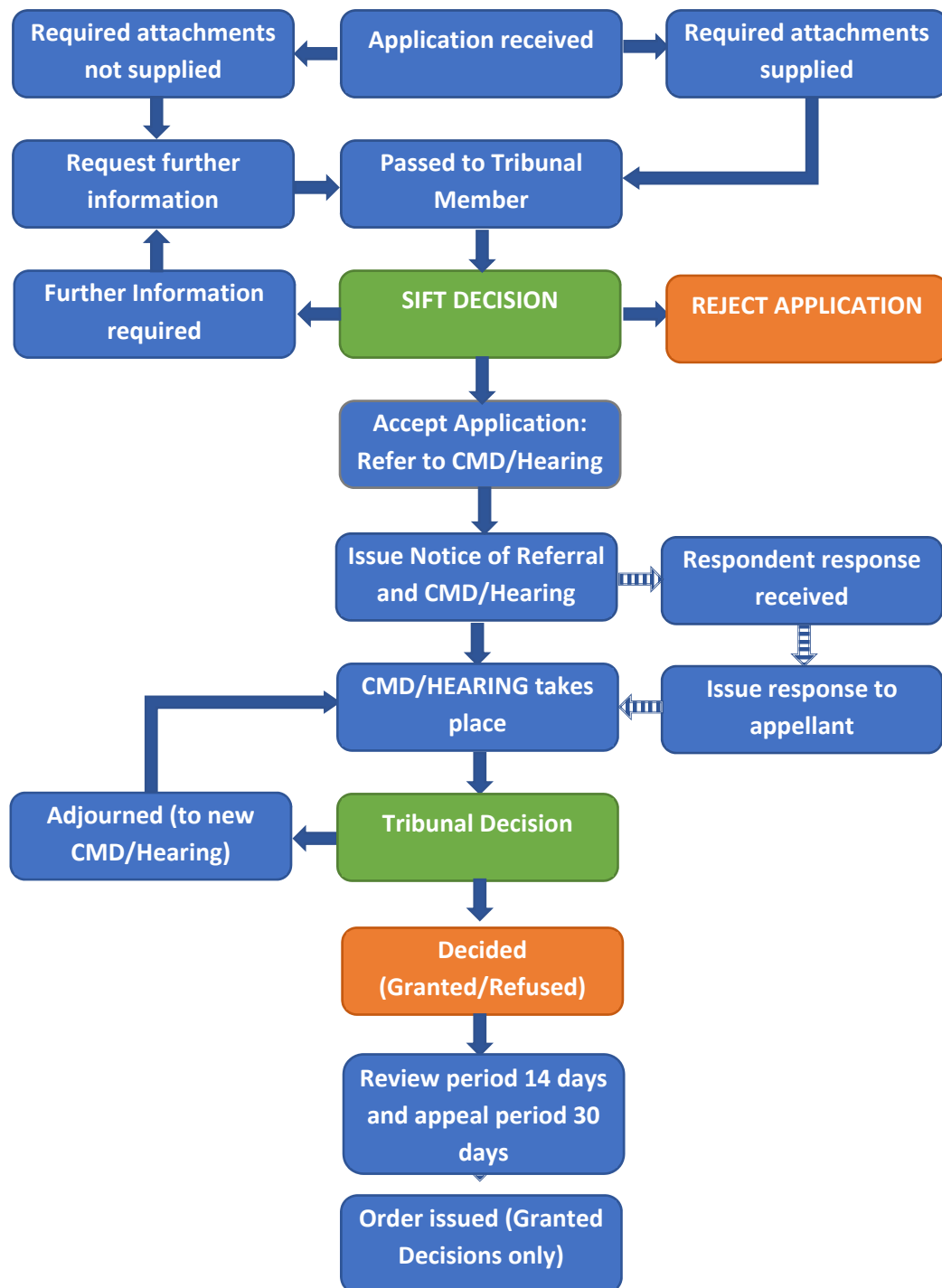
Guidance on the application process is available on the HPC website. The application can be made on a form which can be downloaded from the website and contains prompts on the required information and attachments. During the pandemic, parties were encouraged to submit applications electronically where possible and to communicate by e-mail. HPC staff are not legally qualified and cannot give case specific legal advice, but they can signpost parties to information about procedure on the HPC website.

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

### **3. The HPC process**

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

## HPC Process Flowchart



## **Key stages of the process**

### *i. Initial check on receipt of application*

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

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

### *ii. Sifting stage*

Once an application does meet the prescribed requirements, it goes through a sift to check whether it should be referred to a tribunal. The sift involves an assessment by the legal member of whether the application is so fundamentally flawed that it has no prospect of success and should be rejected. This is a high bar. During the year reported on, 12% of all applications disposed of were rejected, generally because either they did not meet this test or they did not meet the prescribed requirements, often after a request for information.

### *iii. Referral to CMD or hearing*

Once accepted, private rented sector applications generally go in the first instance to a case management discussion (CMD). A CMD is an opportunity to consider aspects of the case that may require to be dealt with in order to efficiently resolve the dispute. Then, if evidence is challenged or the tribunal has a discretionary decision to make, the application will go to an evidential hearing.<sup>1</sup> A final decision on the application can be made at the CMD. Prior to the

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<sup>1</sup> Note: in a very small proportion of applications, the tribunal makes a decision on the basis of the parties' written submissions without a hearing, in terms of Rule 18 of the [Chamber's Procedure Rules](#). During the reporting period, 13 applications were decided on this basis.

coronavirus pandemic, most private rented sector cases were disposed of at a CMD by a legal member sitting alone, without the need for a further hearing.

This changed in 2020-21, particularly in relation to eviction applications, as a result initially of the temporary changes introduced by the Coronavirus (Scotland) Act 2020. These made previously mandatory grounds of eviction discretionary. As a result, the tribunal now had to consider the reasonableness of making an eviction order in each case. During the year reported on, eviction applications continued to be referred to a two-person tribunal, comprising a legal member and an ordinary member with housing expertise. While most (85%) were still decided at the CMD, 15% of eviction applications were decided at an evidential hearing. This was slightly lower than the proportion (17%) for the previous year. The provisions which made previously mandatory eviction grounds discretionary have now been retained and continue to apply from 30 March 2022 onwards.

CMDs and hearings continued to take place largely by teleconference call, with tribunal members, parties and clerks participating remotely. As noted in the statistical report for 2020-21, the Chamber had been gathering data on the impact of the use of teleconference (and videoconference) CMDs and hearings. While the data collected from questionnaires sent to parties consisted of a fairly limited sample, the feedback was generally positive. It suggested that there had been several positive impacts resulting from the use of teleconferences. The Chamber continued to send questionnaires to parties throughout the reporting year. Overall the feedback remains positive, with a higher proportion of those responding saying that they would prefer a teleconference to attending the CMD or hearing in person. While the numbers responding are relatively small (178 questionnaires were returned during the year), 83% said that they would have preferred a teleconference to an in-person CMD/hearing. This compares with 71% of those who gave the same response between October 2020 and March 2021. The responses from those who had participated in a videoconference hearing were also generally positive, although the numbers involved were much smaller and the response rate was lower.

In 2020-21, some evidence was gathered by tribunal clerks which suggested that more parties were participating in private rented sector CMDs conducted via teleconference than was previously the case with in-person proceedings. This data compared attendance during the six-month period from August 2020-January 2021 with the figures for the same period in 2019-20. It showed that while attendance at hearings remained at similar high levels to the previous year (96% for applicants and 72% for respondents), there was a marked increase (12.5%) in attendance at CMDs by respondents, who are most likely to be tenants. While similar data was not collected during the reporting year, it is thought that attendance levels by respondents at CMDs remain higher than they were before the move to teleconference CMDs.

It is important to note, however, that while teleconferences have an important role to play, there are also some disadvantages to their use. Not everyone prefers them to in-person hearings or CMDs, and in some cases, particularly those which involve the taking of evidence

from witnesses and the hearing of substantial evidence, it can be difficult to manage teleconference proceedings effectively. In such cases, an in-person hearing may be preferable where this is possible.

In a small proportion of cases, CMDs and hearings were conducted by videoconference, where the legal member considers that this is necessary to deal with the application fairly and justly. A total of 104 applications were heard by videoconference during the reporting year<sup>2</sup>. The majority of these (70%) were private rented sector cases, but 20% were property factor cases.

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

A small number of hearings (6) were held in person during the reporting year. The first in-person hearing took place on 12 August 2021. Such hearings may be arranged where the legal member considers this to be necessary to deal with the application fairly and justly. This may happen where there would be particular challenges involved in holding the hearing by teleconference or videoconference, for example where an interpreter is required and parties also wish to call a number of witnesses.

Prior to the pandemic, hearings were generally fixed as a matter of course in the repairing standard, property factor and letting agent jurisdictions. These cases can be more complex and take longer to complete than most PRS cases, and generally remain with the same tribunal members throughout the process.

As in 2020-21, it was not possible to carry out an inspection of the property in repairing standard cases during the first few months of the reporting year for safety reasons as a result of the pandemic. CMDs therefore continued to be fixed in these cases while work was ongoing to develop a safe procedure for property inspections. The purpose of the CMD was to explore whether an inspection of the house was necessary and to gather any further information which was needed to take the application forward.

The Chamber began to schedule inspections for new applications from 16 June 2021 onwards and the procedure which had been followed prior to the suspension of cases in March 2020 was resumed. While previously an inspection of the property was immediately followed by a hearing, the hearing was now held by teleconference one week after the inspection. From

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<sup>2</sup> Note: the number of applications dealt with by videoconference does not directly correlate with the number of videoconference hearings, as some of the hearings involved two or more conjoined applications.

around 20 June 2022, however, teleconference hearings began to be scheduled later on the day of the inspection where this was possible.

In September 2021, a decision was taken that due to the complexity of property factor cases and the volumes of productions in these cases, a CMD should be scheduled in the first instance with two allocated members before a hearing is arranged. This is intended to assist with case management and allow an opportunity for directions to be issued by the tribunal. It also allows parties to focus on the areas of dispute to ascertain if any informal resolution is possible. A CMD was scheduled as part of the standard process for both property factor and letting agent applications from 27 September 2021 onwards.

*iv. Decision by the tribunal*

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

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

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

*v. Further decision on compliance*

Where an enforcement order is issued in the repairing standard, property factor and letting agent jurisdictions, the tribunal has a further role in deciding whether the order has been complied with within the timescale set out in the order. It is a criminal offence to fail to comply with a Repairing Standard Enforcement Order, Property Factor Enforcement Order or Letting Agent Enforcement Order. The HPC therefore reports such failures to the police for prosecution, and it is for the prosecuting authorities to decide if cases should proceed to court. The tribunal is also required to serve notice of the failure to comply on the local authority in repairing standard cases, and on Scottish Ministers in property factor and letting agent cases. It is for the registration bodies to then decide whether further action should be taken in light of these decisions. In the course of proceedings if it becomes apparent that a party should be registered as a landlord, letting agent or property factor and there appears to be no registration

in place, the tribunal will refer the issue to the appropriate registration body. Any further action based on this information is a decision for the registration body.

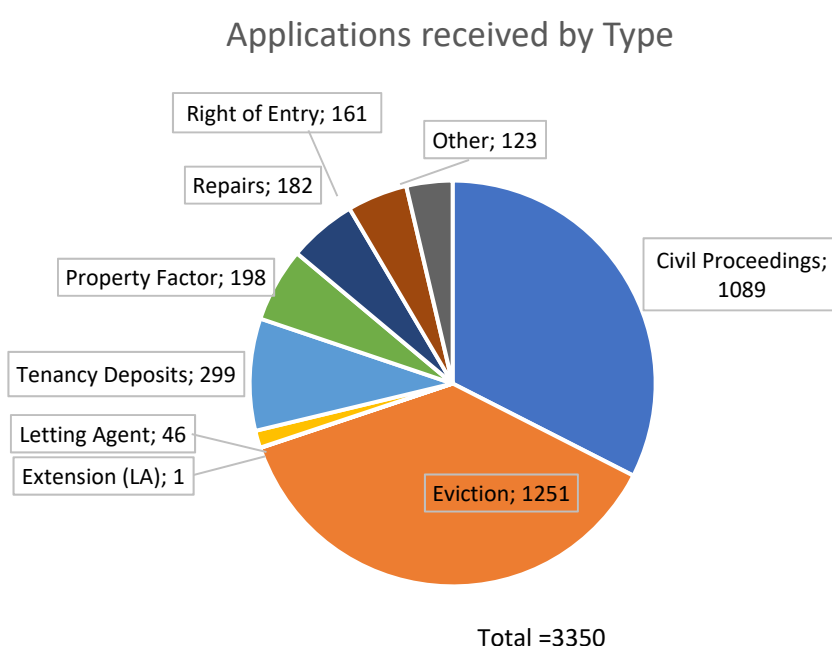
#### 4. Overall case volumes during the year

A total of 3350 applications were received during the reporting year. This was a 37% increase on the level of applications received during the previous year. While application numbers were not quite back up to 2019-20 levels, they increased to around three quarters of those received in that year. A breakdown of applications dealt with during the year is shown in the table below. The brought forward/carried forward figures reflect the ongoing nature of cases.

Applications	Brought forward	Received	Closed	Carried forward
Totals	1451	3350	3044	1757

#### ***Applications received***

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



The overall distribution of applications received was broadly similar to the two previous years. The vast majority (82%) of applications received were again within the private rented sector jurisdiction. There was one notable change in the balance within that jurisdiction, however. Although the protections under the Coronavirus (Scotland) Acts remained in place throughout the year, the number of eviction applications increased substantially, with 63% more received than in the previous year. This is likely to be at least partly due to the time taken for the

increased notice periods to take effect. The extended notice period of six months in most cases meant that the whole process from issuing a notice to leave/quit (often following three months of rent arrears) and waiting for the notice period to expire likely resulted in applications which might otherwise have been considered by the tribunal in the previous year not being made until 2021-22.

In contrast to the previous year, during which the number of civil proceedings applications overtook the number of eviction applications, the latter once again made up the largest proportion of applications received, at 37%. The second largest proportion (33%) of applications received were for civil proceedings in relation to private tenancies. This suggests that these applications are again more likely to accompany an eviction application, rather than being made separately as a result of the extended notice periods.

As in the two previous years, the third biggest category of applications (9%) was tenancy deposit applications for an order for payment of a sanction where the landlord has failed to comply with the duty to pay a tenancy deposit into an approved scheme. These applications rose by 9% compared to the previous year, although there were still fewer than in 2019-20.

It was also notable that repairs cases increased by 37%, with numbers much closer to pre-pandemic figures. The number of right of entry applications was also double that of the previous year. These figures may be indicative of landlords' and tenants' lives returning to greater normality, with less hesitation about conducting property inspections. While still low in volume (19), rent assessment applications cases also doubled, closer to 2019-20 levels.

Property factor applications were down by 7% on the previous year. Letting agent applications, which were still low in numbers, were down by 13%, perhaps reflecting decreased movement in the rental market during the year.

### ***Applications closed during the year***

A total of 3044 applications were closed during the year, 12% more than during the previous year. However, 20% more applications were carried forward into 2021-22 than in the previous year. These figures suggest that while many more applications were received than in the previous year, a higher proportion were not finalised by the end of the year. This is likely to be at least partly due to a significant increase in the number of eviction applications which went to an evidential hearing compared with 2020-21. This increase is probably due to the requirement to consider reasonableness.

### ***Rejected and withdrawn applications***

Of the 3044 applications closed during the year,<sup>3</sup> a total of 374 (12%) were rejected<sup>4</sup>. A breakdown of the reasons why the applications were rejected is shown in the table below.

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

#### **Rejected applications**

<b>Reason for rejection</b>	<b>Number</b>
Frivolous or vexatious	117
Not appropriate to accept	180
Made for a purpose other than that specified in the application	70
The dispute has been resolved	7
<b>Total</b>	<b>374</b>

Of all applications closed during the year, 27% (811) were withdrawn by the applicant at some stage of the proceedings, mostly after they were referred to a tribunal. Just over half (411) of the applications withdrawn were eviction applications. There is no requirement to state the reason for withdrawing an application and it is likely that the reason for withdrawal of a significant volume of withdrawn applications is because the dispute has been resolved by the parties. In eviction cases, this will often be because the respondent has vacated the property after they have been notified that the application has been referred to a tribunal.

### ***Work done during the year***

The figures discussed in section 6 for each category of application relate to: 1) the applications received during the year and 2) the outcomes for those applications which were closed during the year<sup>5</sup>. It should be noted, however, that a significant proportion of the Chamber’s work

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<sup>3</sup> Note: this figure relates to applications closed during the year, rather than applications received.

<sup>4</sup> The grounds for rejection are contained in Rule 8 of the [Chamber’s Procedure Rules](#) (SSI 2017 No 328). “Vexatious” is taken to mean habitually and persistently instituting proceedings without any reasonable grounds, usually with an improper motive. “Frivolous” has been interpreted as applying to an application made in good faith but which is “futile, misconceived, hopeless or academic” per Lord Bingham (as Lord Chief Justice) in *R V North West Suffolk (Mildenhall) Magistrates Court* [1998] Env LR 9 at page 16

<sup>5</sup> Note: in property factor, repairing standard and letting agent applications, there may not be a *final* outcome during the same year. Where the tribunal issues an enforcement order in such cases, a final decision on whether the relevant party has complied with that order may not be made until a later date.

involves managing the progress of ongoing applications which may not reach a final conclusion during the year. An application may be processed in one reporting year, for example, but it may not reach a CMD or hearing until the following year. An application received in the previous reporting year may have been closed during the current year.

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

## **5. Applications received and case outcomes by case type**

### ***i. Evictions***

As in the previous year, the majority of eviction applications concerned private residential tenancies, which were introduced on 1 December 2017. As might be expected, these are becoming increasingly prevalent, making up 64% of all eviction applications received (as against 60% in 2020-21 and 50% in 2019-20).

There was a corresponding decrease in the proportion of applications relating to assured or short assured tenancies, which made up 36% of applications<sup>6</sup>.

While data was not collected on the grounds on which applications were brought, it is thought that as in the previous year, the majority of applications received across all tenancy types were brought on the grounds of rent arrears. It is also believed, however, that the number of applications being brought on the grounds that the landlord intends to sell the property, or that they or a member of their family intend to live in the property, have been increasing over the past two years.

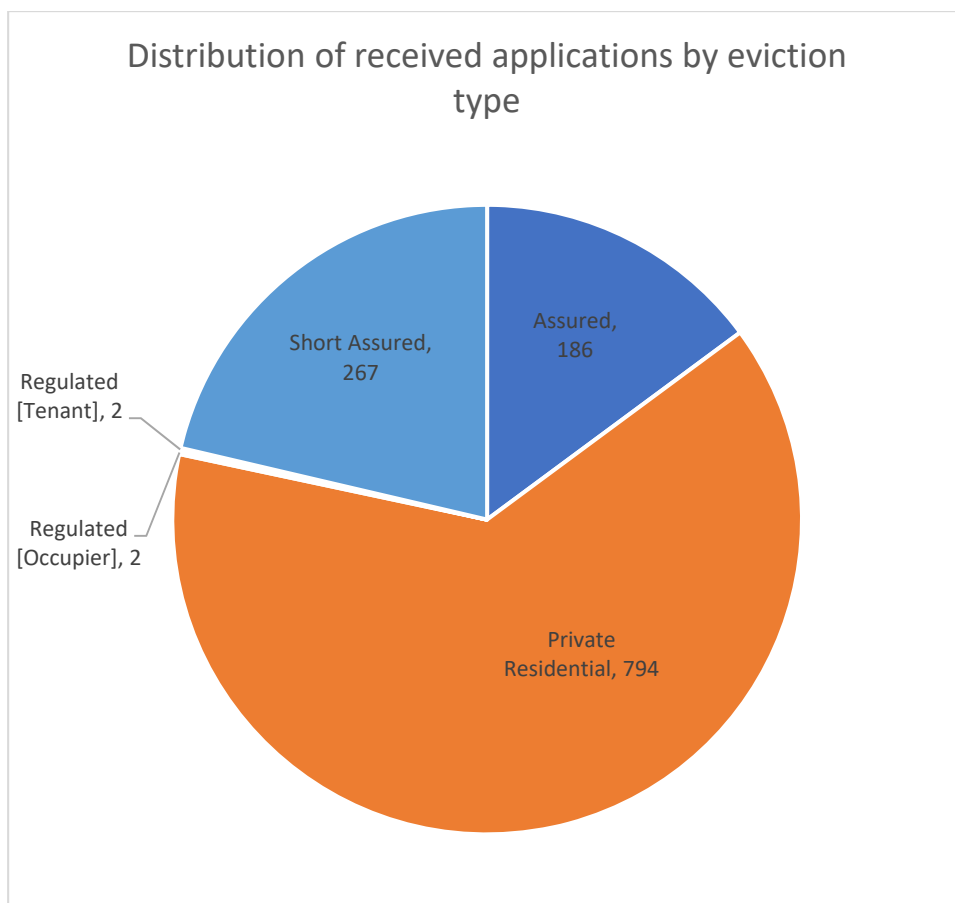
Data gathered from HPC decisions involving private residential tenancies as part of Scottish Government research showed that between September 2019 and March 2020, multiple grounds were often relied on in each application. It also found that 77.5% of applications where a decision had been made relied on ground 12 (rent arrears), while 21% relied on ground 1 (landlord intends to sell) and 15.5% relied on ground 11 (breach of tenancy agreement) as the main or additional ground<sup>7</sup>.

When compared with similar data gathered for HPC decisions published between May and November 2021, the Scottish Government research found some notable differences in how the grounds were used. Applications were less likely to be rely on ground 12 than before (52%) and slightly more likely to rely on ground 1 (23%). There was also a notable rise in the use of ground 4 (landlord intends to live in the property (14% as against 3.5% previously) and ground 5 (family member intends to live in the property) (8% as against 0.7% previously).

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<sup>6</sup> There were also two applications relating to regulated tenancies.

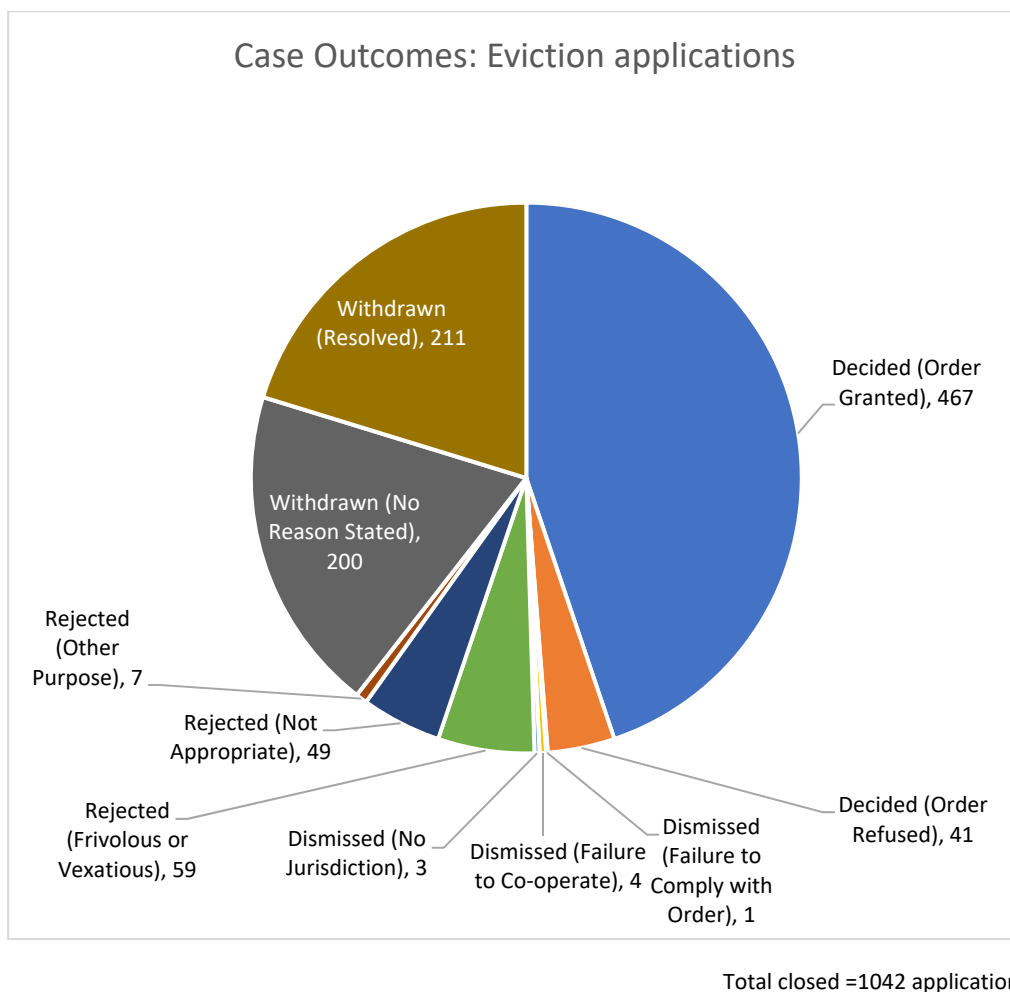
<sup>7</sup> [new-deal-tenants-draft-strategy-consultation-paper.pdf](#) (see pages 38-40 )



Total received =1251

### Case outcomes

The chart on the next page shows the outcomes for 1042 eviction applications which were closed during the year.



A total of 115 applications were rejected, while 411 were withdrawn by the applicant at some stage of the process. In 211 withdrawn applications, the reason given was that the matter had been resolved. While no reason was stated for the other 200 withdrawals, it seems likely that in some cases, the applicant may have reconsidered the situation and/or negotiated matters with the respondent. It is also likely that in some cases the respondent left the property voluntarily prior to the CMD or hearing.

Of the eviction applications which did proceed to a tribunal determination at a CMD or hearing (516), an order was granted in the vast majority of cases (467 or 91%). An order was refused in 41 cases, and eight applications were dismissed.

## ***ii. Civil proceedings***

Civil proceedings applications can be brought in relation to any monetary dispute between landlord and tenant. In 2020-21, the number of civil proceedings applications was actually higher than the number of eviction applications. This reflected the experience of tribunals that where landlords were unable to raise eviction proceedings for rent arrears due to the extended notice periods under the Coronavirus (Scotland) Act, many still brought applications for payment orders against their tenants.

During the reporting year, civil proceedings applications made up the second largest proportion (33%) of applications received. This suggests that the situation has reverted to that seen prior to 2020-21 i.e. that these applications are again more likely to accompany an eviction application, rather than being made separately as a result of the extended notice periods. These applications typically involve landlords seeking recovery of unpaid rent, and often also the costs of rectifying alleged damage to the property at the end of a tenancy.

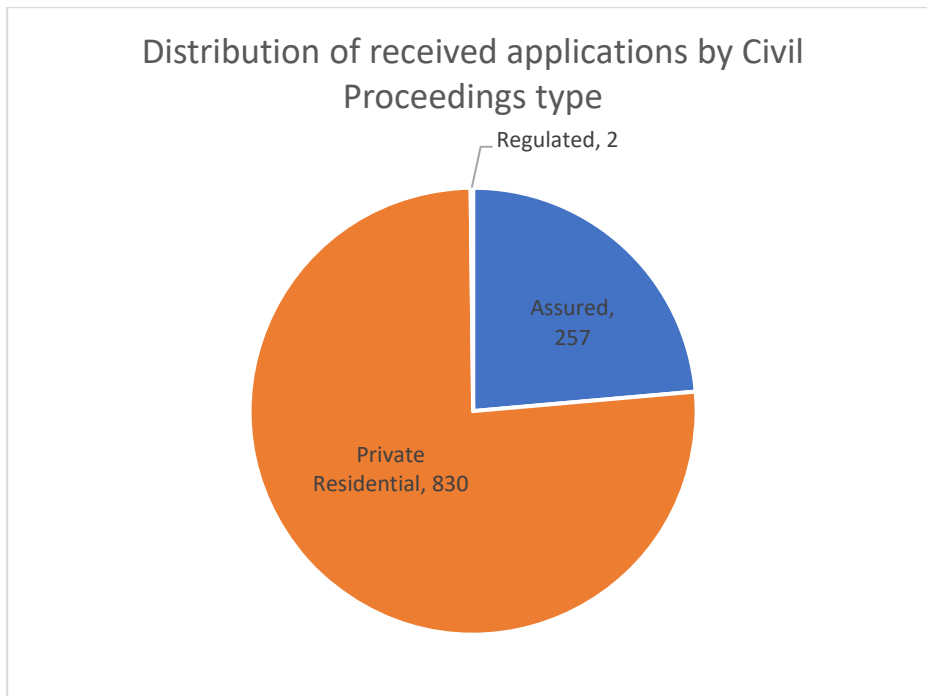
As in the previous year, a sizeable number (142) of civil proceedings applications were served on the respondent by the tribunal using service by advertisement on the HPC website, rather than by sheriff officer. This method is used where an applicant is unable to trace the respondent's current address. While this method of service was also used in smaller numbers of eviction and tenancy deposit applications, it is most common in civil proceedings applications. This generally happens where the tenant has left the property but still owes the landlord unpaid rent.

There is no limit on the amount of money that can be claimed in civil proceedings applications. These can involve significant sums, which can often exceed the ordinary cause threshold of £5000 in the sheriff court. The Scottish Association of Landlords reported in August 2019 that the largest payment order issued by the HPC to date was for rent arrears totalling £39,520.<sup>8</sup> As rents have generally continued to increase since then (and also given the lengthened notice periods which applied during the pandemic), it can now take a relatively short period of time for arrears to mount up into many thousands of pounds.

As expected, the proportion of civil proceedings applications involving private residential tenancies again increased during the year. These accounted for three-quarters (830 or 76%), compared with 66% in the previous year and 49% in 2019-20, with one-quarter (257 or 24%) relating to assured/short-assured tenancies.

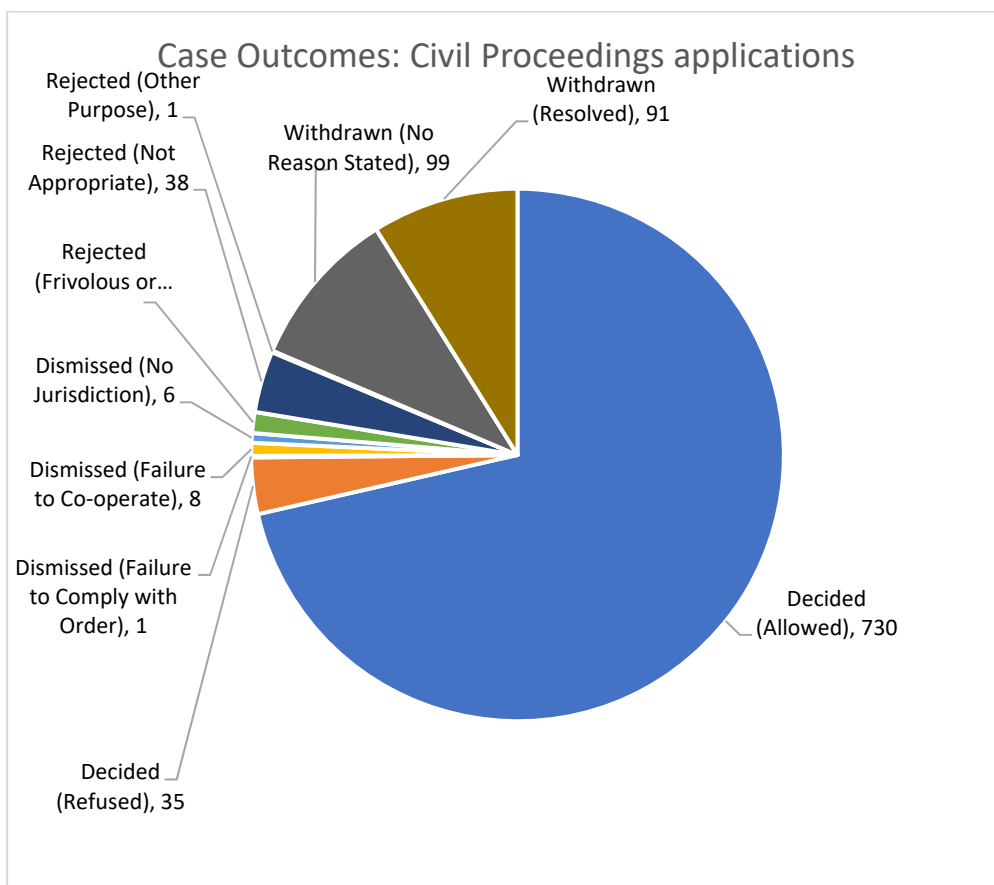
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<sup>8</sup> [Tribunal on Trial: 18 Months of the Scottish Housing and Property Chamber](#)



### Case outcomes

The chart below shows the outcomes for 1022 civil proceedings applications which were closed during the year.



Total closed= 1022 applications

A total of 52 applications were rejected, and 190 were withdrawn. The reason stated for the withdrawal in 91 (48%) of these applications was that the matter had been resolved, while no reason was given for the other 99 applications withdrawn. As in the previous year, withdrawals were less common than in eviction applications, perhaps because applicants often continue to pursue respondents for outstanding rent arrears and/or damages after they have left the property. Nevertheless, these figures suggest that in a sizeable proportion of cases, the parties may have negotiated and/or resolved the matter prior to the CMD or hearing.

As in 2020-21, in the vast majority (730 or 94%) of the applications which were determined by a tribunal, an order was granted, and 35 were refused. The remaining 14 were dismissed, either due to a failure by the applicant to co-operate or because the tribunal did not have jurisdiction.

All respondents in payment order applications are sent an application to seek a time to pay direction under the Debtors (Scotland) Act 1987. These applications allow a respondent who admits the debt owed to ask the tribunal to allow them to pay the sum owed either by instalments or as a lump sum at a later date. As in the two preceding years, relatively few respondents took up this option during the year. A total of 54 applications for a time to pay direction were received and disposed of during the year. Of these, a time to pay direction was granted in just under half (25) of applications. All but one of these involved payment by instalments rather than by lump sum. The remaining 29 applications were refused.

### ***iii. Tenancy deposit applications***

Landlords in Scotland who take a tenancy deposit from their tenant have since 2012 been required to pay the deposit into an approved scheme within 30 working days of the tenancy commencing. If they fail to do so, the tenant can make an application to the HPC under rule 103 of the tribunal's rules. The tribunal can require the landlord to pay to the tenant up to a maximum of three times the amount of the deposit. Such applications were previously made in the sheriff court. The transfer of jurisdiction to the HPC resulted in a significant increase in applications from tenants. This is likely to be a result of its more accessible procedures. In particular, unlike the sheriff court, no fee is payable for bringing an application. The Scottish Association of Landlords has noted that the 'big upsurge' in applications has meant that there has been better enforcement of landlord obligations<sup>9</sup>.

While some way behind evictions and civil proceedings applications, tenancy deposit applications were, as in the two previous years, the third biggest category of applications received. There were 299 such applications in 2021-22, a 9% increase on the previous year. This figure was however lower than that in 2019-20, when 344 applications were received. The fact that these numbers remain so high suggests that, despite the duty having been in place since 2012, there are many landlords who are still failing to comply with it. While in some cases the

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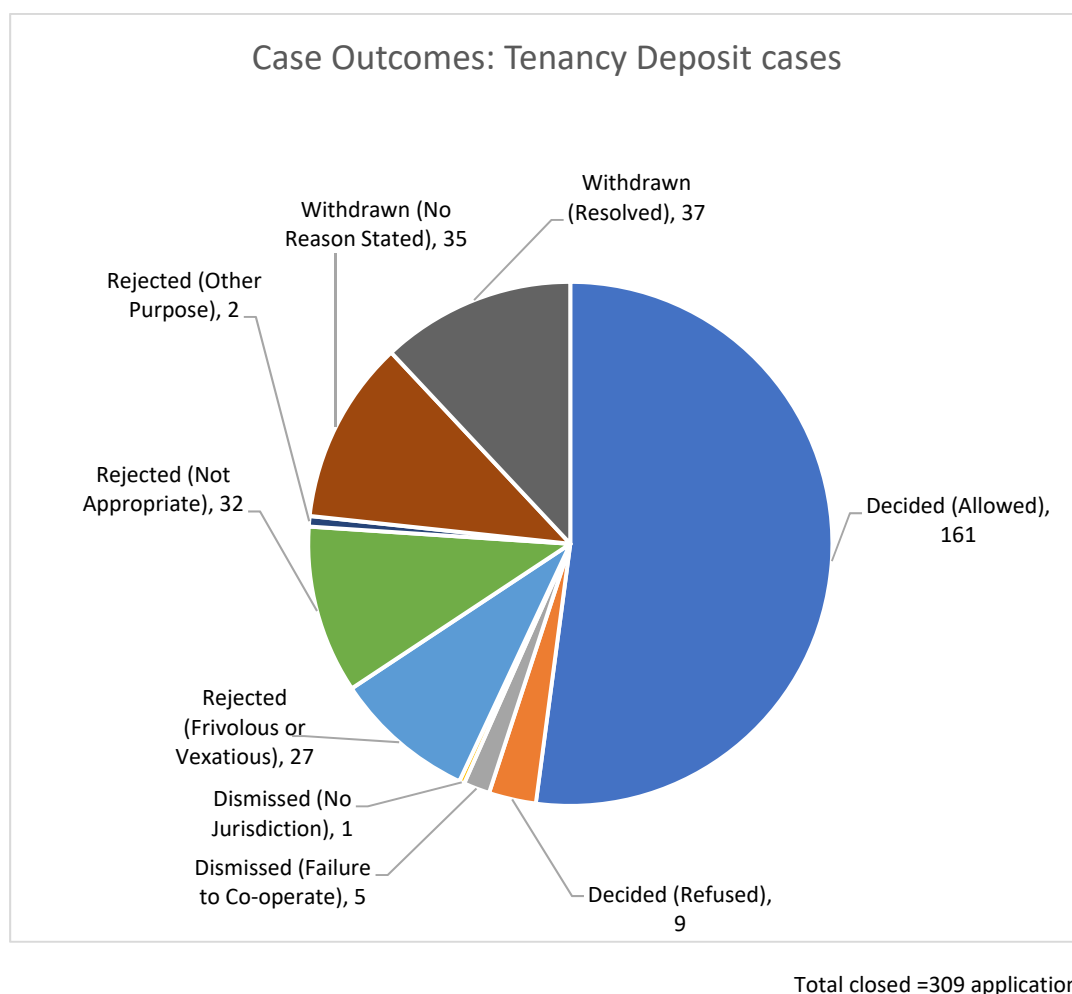
<sup>9</sup> Scottish Association of Landlords – evidence to the [Local Government and Communities Committee](#) (at Annexe B, p.7)

landlord has deliberately failed to comply with the duty, 2020 research by Safe Deposits Scotland found that in most cases the landlord was either unaware of the legislation or forgot<sup>10</sup>.

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

### Case outcomes

The chart below shows the outcomes for the 309 tenancy deposit applications which were closed during the year.



A total of 61 (20%) applications closed were rejected, double the proportion (10%) which were rejected in the previous year. In many cases, the application was rejected because the application was received more than three months after the tenancy ended, which is the statutory deadline for such applications. Most of the applications were rejected because information necessary to constitute a valid application had been requested by the tribunal and no response was received. In many cases, the rejection was because all of the information

<sup>10</sup> [Majority of Scottish Landlords Comply with Tenancy Deposit Laws](#), Scottish Housing News, 9 January 2020

required to make a valid application had not been received within three months of the end of the tenancy. A few applications were rejected because the respondent named was the letting agent rather than the landlord, or because the tenancy was not a relevant tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011, for example because it was a holiday let or the landlord was a resident landlord.

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

A total of 72 applications were withdrawn at various stages of the process. The reason stated for more than half (37 or 51%) of these withdrawals was that the matter had been resolved, while no reason was given for the other 35 withdrawals. This suggests that there may have been discussion and negotiation between the parties in those cases.

In the vast majority of the 176 applications which were decided by a tribunal (161 or 91%), an order was granted in the applicant tenant's favour. A total of 9 applications were refused, while the remaining 6 were dismissed, due to either the applicant's failure to co-operate or a finding by the tribunal that it did not have jurisdiction.

#### ***iv. Property factor applications***

There were 198 property factor applications, representing 6% of all applications received. This was a 7% reduction in applications compared with during the previous year. One possible explanation for this could be that property factors are resolving more complaints than before through their own complaints procedures before an application is made to the Chamber. As in previous years, the vast majority (90%) of these applications involved commercial property factors, while 9% concerned housing associations (or their subsidiaries) and 0.5% (one case) involved a local authority<sup>11</sup>.

As in the previous year, the vast majority of the applications received (97%) concerned residential factoring, with just 3% (down from 22% in 2019-20 and 7% in 2020-21) categorised as land management complaints. As in previous years, the most common category of complaints under the code of conduct concerned communication and consultation (68%). The most common categories of complaint after this related to complaints resolution (52%) and carrying out repairs and maintenance (51%)<sup>12</sup>. As in 2020-21, around three-quarters (74%) of applications also included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

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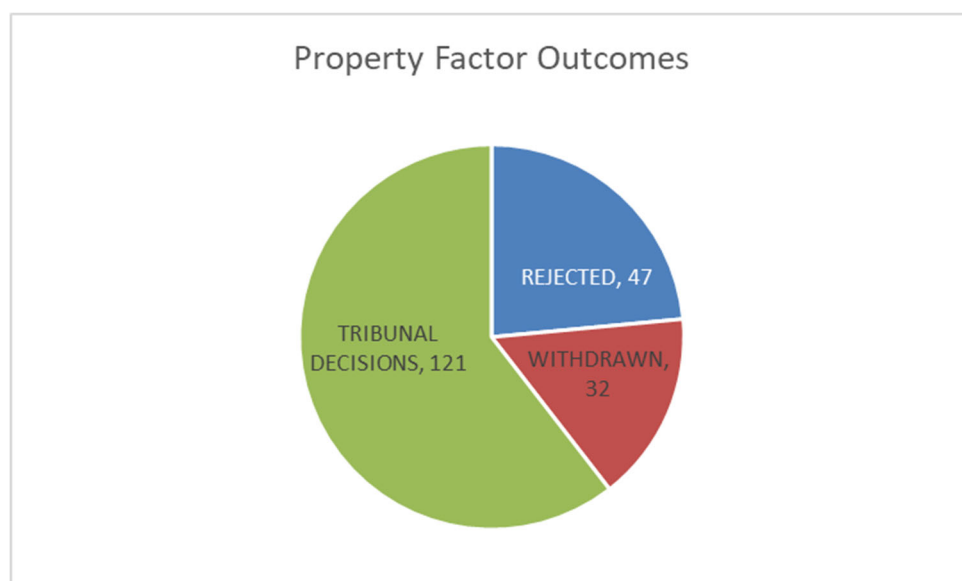
<sup>11</sup> Note: these percentages do not add up to 100% due to rounding

<sup>12</sup> Note: most applications involved more than one complaint, and many included complaints under several different sections of the code of conduct.

During the year, a total of 21 groups of multiple applications from different homeowners within a development or tenement were received. Group applications totalled 77 applications overall. While there were many more group applications than there were in the previous year (9), the numbers involved in each group were much smaller overall. Around half (11) of the groups involved only two applications. The remaining groups numbered between 3 and 8 applications, other than one group of 12 applications. These smaller groups may account at least partly for the decrease in property factor applications compared with 2020-21. Where possible, multiple applications are grouped together and heard on the same day by the same tribunal to ensure efficiency, although this can result in longer and more complex hearings.

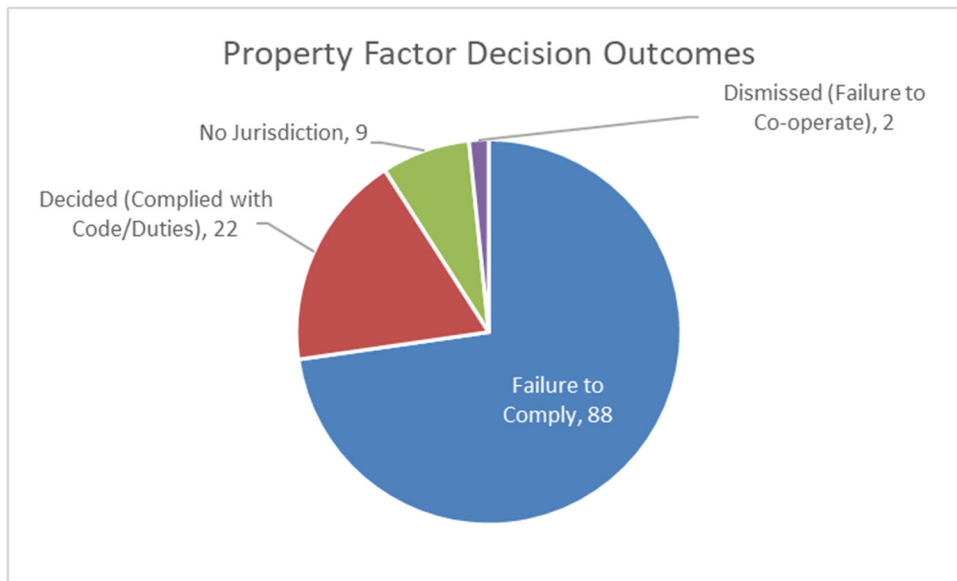
### Case outcomes

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



Total = 200

A total of 47 applications (24%) were rejected, twice the proportion that were rejected the previous year. A further 32 applications were withdrawn by the applicant: no reason was stated for most of these (28); in the other (4) cases it was because the matter had been resolved. A total of 121 applications were decided by a tribunal. The outcomes of those applications are shown in the chart below.



In almost three-quarters (88 or 73%) of those 121 applications, the tribunal found that the property factor had failed to comply with the code or the property factor's duties. The tribunal found that the property factor had complied with the code or their duties in only 22 (18%) applications.

Nine applications were dismissed as after considering legal submissions on the issue, the tribunal considered them to be outwith its jurisdiction. The remaining two applications were dismissed due to a failure to co-operate by parties.

A total of 79 Property Factor Enforcement Orders (PFEOs) were issued.

Tribunals considered whether property factors had complied with a PFEO in 61 cases<sup>13</sup>. The tribunal found that there had been compliance with a PFEO in the vast majority of these (57). The tribunal found that there had been a failure to comply with the PFEO in only four cases. As in the previous year, this indicates a high rate of compliance by property factors and is a positive outcome.

The new revised code of conduct for property factors applies to complaints which arose from 16 August 2021. Parties are recommended to refer to the guidance issued by the Chamber on the HPC website when considering the code which applies to a particular complaint<sup>14</sup>.

#### ***v. Repairing standard applications***

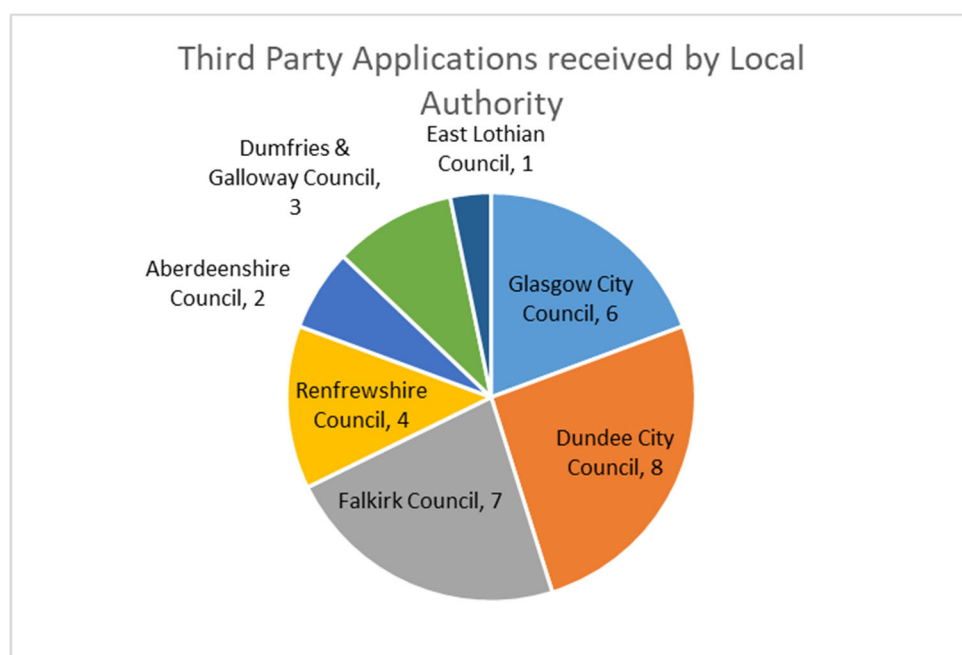
A total of 182 repairing standard applications were received, comprising 5% of all applications. Of these, 84% (152) were made by parties, while only 16% (30) were made by third party

<sup>13</sup> Note: some of these PFEOs would have been issued in the previous year. Of the 57 cases where the tribunal found that the property factor had complied with the PFEO, 26 related to three group applications.

<sup>14</sup> [New revised Code of Conduct for Property Factors commences 16th August 2021 | Housing and Property Chamber](#)

applicants. In the previous year, there had been a sharp fall in third party applications, from 27% of applications down to 10%. In the reporting year, the proportion of third-party applications therefore rose slightly.

As before, third-party applications came from a small number of local authorities which have been particularly proactive. Applications were received from only 7 of the 32 local authorities, as shown in the chart below. In 2020-21, applications had been received from only 4 local authorities. In the two previous years, the highest number of applications came from Falkirk Council. During the reporting year, the highest number of applications (8) came from Dundee Council, closely followed by Falkirk Council (7) and Glasgow City Council (6).



### Case outcomes

Coronavirus restrictions had a major impact on the consideration of repairing standard applications during 2020-21. The consideration of these applications had to be delayed for some months due to the need for property inspections to be carried out. CMDs were fixed from 11 January 2021 to take forward the 52 repairing standard cases which were suspended in March 2020, while work was ongoing to develop a safe procedure for property inspections. The purpose of the CMD was to explore whether an inspection of the house was necessary and to gather any further information which was needed to take the application forward.

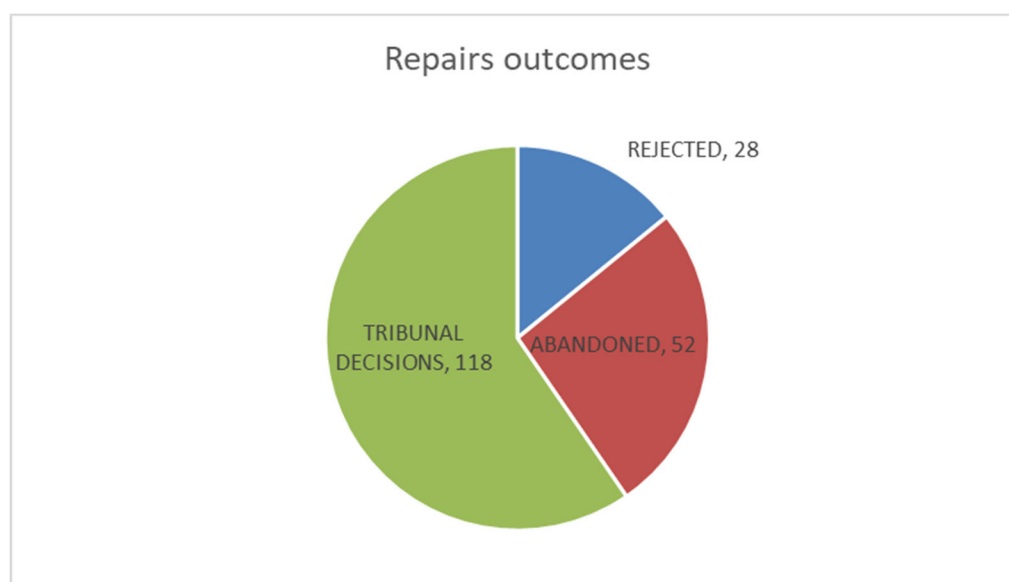
In 2020-21, the tribunal was able to make a decision on the application in seven cases only, on the basis of the other evidence before it without the need for an inspection.

Following a relaxation in covid restrictions and the introduction of safe procedures and risk assessments, property inspections resumed in late May 2021. Having worked its way through a backlog of existing applications due to the pandemic restrictions, the Chamber began to schedule inspections for new applications from 16 June 2021 onwards.

The chart below shows the outcomes of repairing standard applications which were closed and/or decided by a tribunal during the year. The tribunal decided on 118 applications during the year.

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

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



Of the other 80 applications closed during the year, 28 were rejected.

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

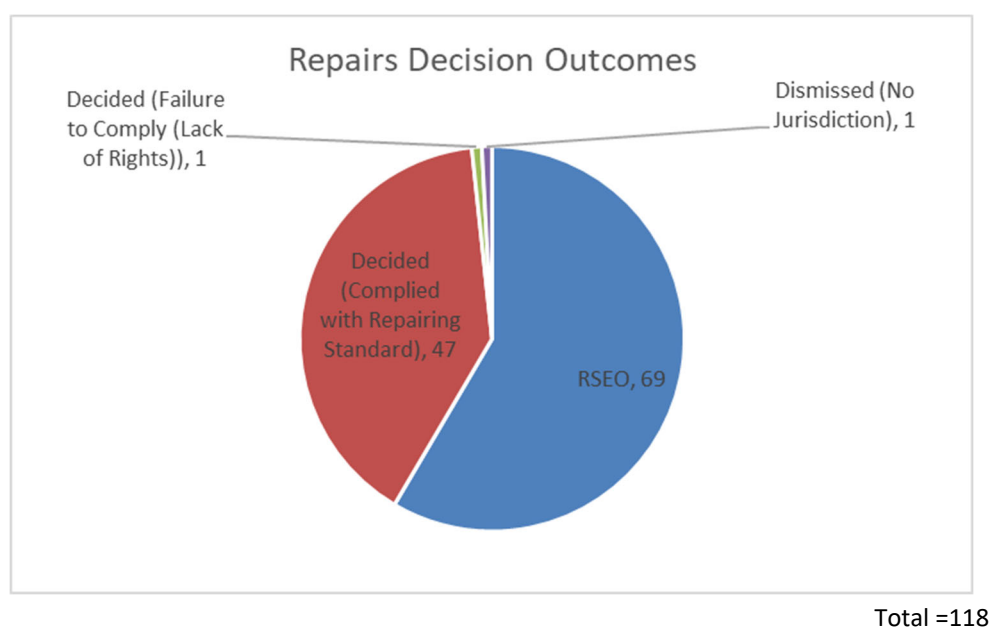
A total of 52 applications were abandoned either before referral to a tribunal or at a later stage. Where an application is withdrawn (usually because the landlord has carried out the repairs) or where the tenant leaves the property after making the application, the tribunal has power to either continue with an application or abandon it.<sup>15</sup> In 28 cases, the HPC continued with the

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<sup>15</sup> Housing (Scotland) Act Schedule 2 Paragraph 7

application and referred it to a tribunal even after the tenancy was terminated, due to the allegations made or given the nature of the repairing complaints made, which raised health and safety issues for others.

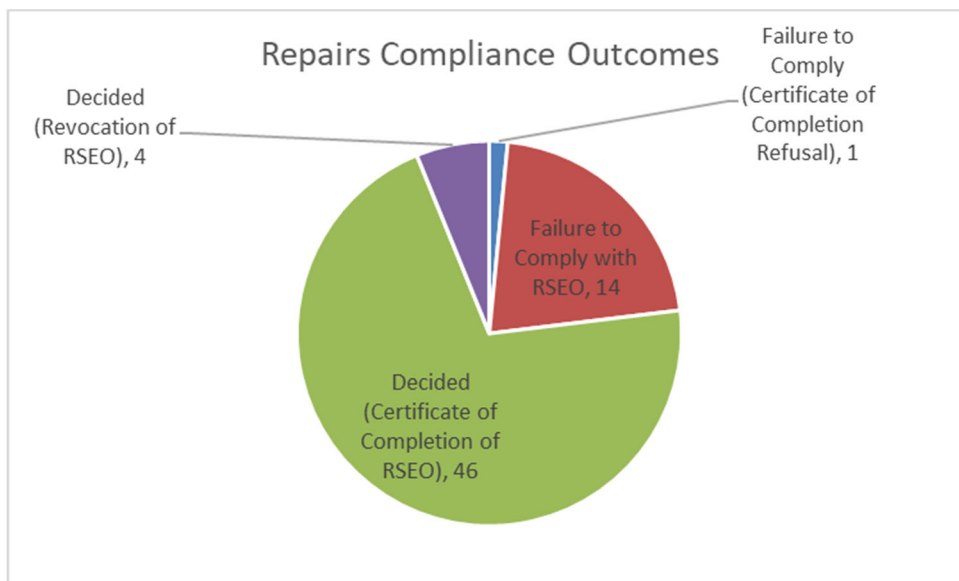
The decisions made on the 118 applications which were considered by a tribunal are shown in the chart below. The tribunal found that there had been a failure to comply with the repairing standard duty in 69 cases. A Repairing Standard Enforcement Order (RSEO) was issued in all of these cases. In 47 cases, the tribunal found that the landlord had complied with the repairing standard duty. In one case, the tribunal found that the landlord should not be treated as having failed to comply with the duty as the purported failure occurred only because the landlord lacked the necessary rights (of access or otherwise) despite having taken reasonable steps to acquire those rights<sup>16</sup>. The tribunal dismissed one application, having decided that it had no jurisdiction.



As shown in the table on the next page, 46 Certificates of Completion were issued by tribunals following compliance by the landlord with the RSEO. A Failure to Comply decision was issued in 14 cases, and 8 of these were accompanied by a Rent Relief Order. If the tenant has moved out by the stage of consideration of compliance with a Repairing Standard Enforcement Order, a Rent Relief Order cannot be considered.

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

<sup>16</sup> In terms of section 16(4) of the Housing (Scotland) Act 2006



Where a tribunal has issued an RSEO, it may later vary the order as it considers to be reasonable<sup>17</sup>. Most commonly, a tribunal will vary an order to give the landlord more time to complete the works, where it considers this to be reasonable.

#### ***vi. Letting agent applications***

A total of 46 applications to enforce the letting agent code of practice were received during the year, a 13% decrease on the previous year's figure (53), perhaps reflecting decreased movement in the rental market during the year.

All letting agents were required to be registered by 1 October 2018, and it was expected that applications would increase as awareness of the code of practice grew among landlords and tenants. While the numbers on almost all other categories of application picked up during the reporting year, the volume of these applications remains significantly below the original projected figure of 240 cases per annum. In 2019-20, there were 77 applications, and the numbers have continued on a downward trend during the two years since. While the reasons for this are unclear, this suggests that neither landlords nor tenants have many complaints about letting agents. It may also be the case that letting agents are resolving complaints at an early stage, and that landlords and tenants therefore do not need to escalate matters to the tribunal.

#### **Case outcomes**

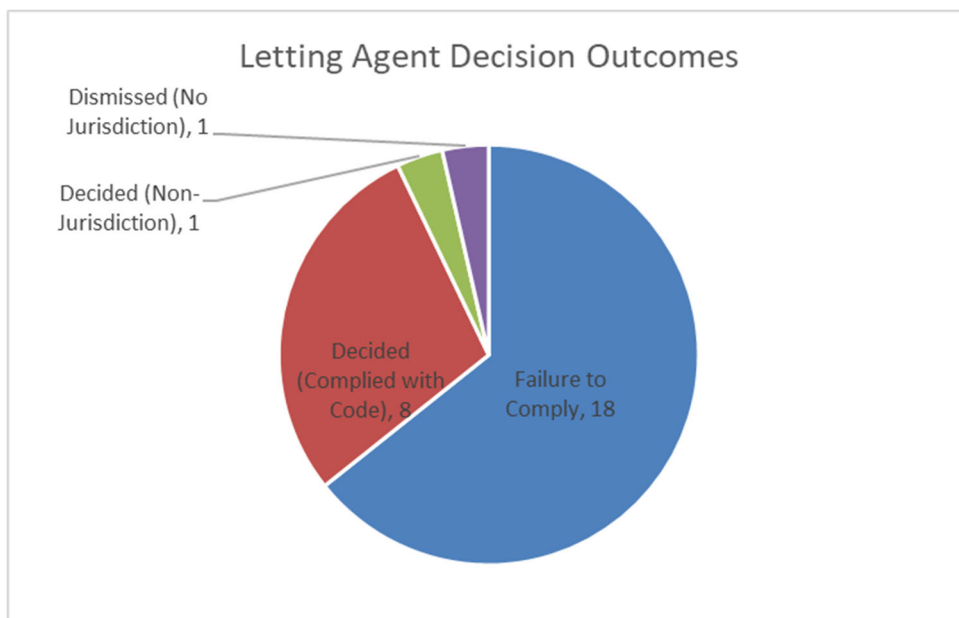
The chart on the next page indicates the outcomes of letting agent code of practice applications which were closed and/or decided by a tribunal during the year. 'Decided' means a decision was made about whether the letting agent had complied with their duties under the code of

<sup>17</sup> Housing (Scotland) Act 2006 section 25

practice. In cases where a Letting Agent Enforcement Order (LAEO) is issued by a tribunal, a decision on whether the order has been complied with may not be made until a later date.



Nine applications were rejected, and a further nine were withdrawn, with no reason stated in seven cases and the other two withdrawn because the matter had been resolved. A total of 28 applications were decided by a tribunal. The decisions made are shown in the chart below.



In around two-thirds (18) of these applications, the tribunal found that there had been a failure to comply with the code of practice. A Letting Agent Enforcement Order (LAEO) was issued in all of these cases. The tribunal decided that the letting agent had complied with the code in

eight cases. The remaining application was dismissed by the tribunal as it did not have jurisdiction.

While the level of compliance with the code of practice was an improvement on the previous year, this remains a matter of concern. This may indicate that some letting agents are still unaware of their obligations under the code, despite it having been in force for more than four years by the end of the reporting year.

Tribunals considered whether letting agents had complied with LAEOs in 19 cases.<sup>18</sup> The tribunal found that there had been compliance with a LAEO in most (12) of these cases, with a failure to comply decision in seven cases. While tribunals considered compliance in only around half the number of cases during the previous year, these figures suggest a higher rate of compliance than in 2019-20.

#### ***vii. Landlord (right of entry) applications***

There were 161 landlord (right of entry) applications, double the number received in the previous year. These figures may be at least partly indicative of landlords' and tenants' lives returning to greater normality, with less hesitation about conducting property inspections. The number of applications within this jurisdiction, while remaining relatively low, has been slowly increasing year on year since it was introduced in December 2015. Right of entry applications continue to be received in a few cases where there is also a repairing standard dispute (and on occasion an eviction or civil proceedings application) involving the same parties. Arrangements for supervised access arrangements in these cases resumed from late September 2021.

#### ***viii. Other types of application***

Various other types of application made up the remaining 3.7% of applications (123).

##### ***1. Rent assessment applications***

While still low in volume (19), the number of rent assessment applications cases was double that of the previous year, closer to 2019-20 levels.

The consideration of rent assessment cases had to be delayed during the previous year, due to the need for property inspections to be carried out and the difficulty of initiating these safely during the pandemic. Due to the covid safety risks associated with parties' and members' attendance at property inspections, the consideration of rent assessment cases involving property inspections had to be delayed. Following a relaxation in covid restrictions and the introduction of safe procedures and risk assessments, property inspections resumed from 30 September 2021.

##### ***2. Other private rented sector applications***

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<sup>18</sup> Note: some of these LAEOs would have been issued in the previous year

The remaining 104 applications were all within the private rented sector jurisdiction. Details of these applications are shown in the table below.

### **Other private rented sector applications**

<b>Application type</b>	<b>Rule number</b>	<b>Number of applications</b>
Application for a wrongful termination order	110	31
Application for a time to pay order	41H	18
Private residential tenancy terms applications <sup>19</sup>	105 106 107	13
Application for compensation for misrepresentation or concealment by a landlord	78	9
Application to revoke a notice that no rent is payable	101	9
Application to adjust recoverable rent	80	7
Landlord / letting agent registration appeals	94 99	6
Application for damages for unlawful eviction	69	3
Application to provide written tenancy agreement and weekly rent book	68	3
Application to recover unlawful premiums and loans	87	2
Application to order a person to cease obstructing a person from complying with the repairing standard	49	1
Application to determine removal expenses	67	1
Application to alter the amount of rent where the right to shared accommodation is modified	89	1
<b>Total</b>		<b>104</b>

<sup>19</sup> These include: applications to draw up the terms of a tenancy (rule 105), applications to draw up the terms of tenancy where a statutory term is unlawfully displaced (rule 106) and applications for a payment order where landlord has failed to provide information.

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

- a 50% increase in applications for a wrongful termination order compared with the previous year. While the numbers remained fairly small (31), this continued an upwards trend in these applications.
- a 64% increase in time to pay order applications (from 11 to 18), although the numbers were low.
- a 46% increase in applications to draw up the terms of a tenancy (up from 7 to 13).
- a 78% decrease in applications for damages for unlawful eviction (down from 14 to 3)

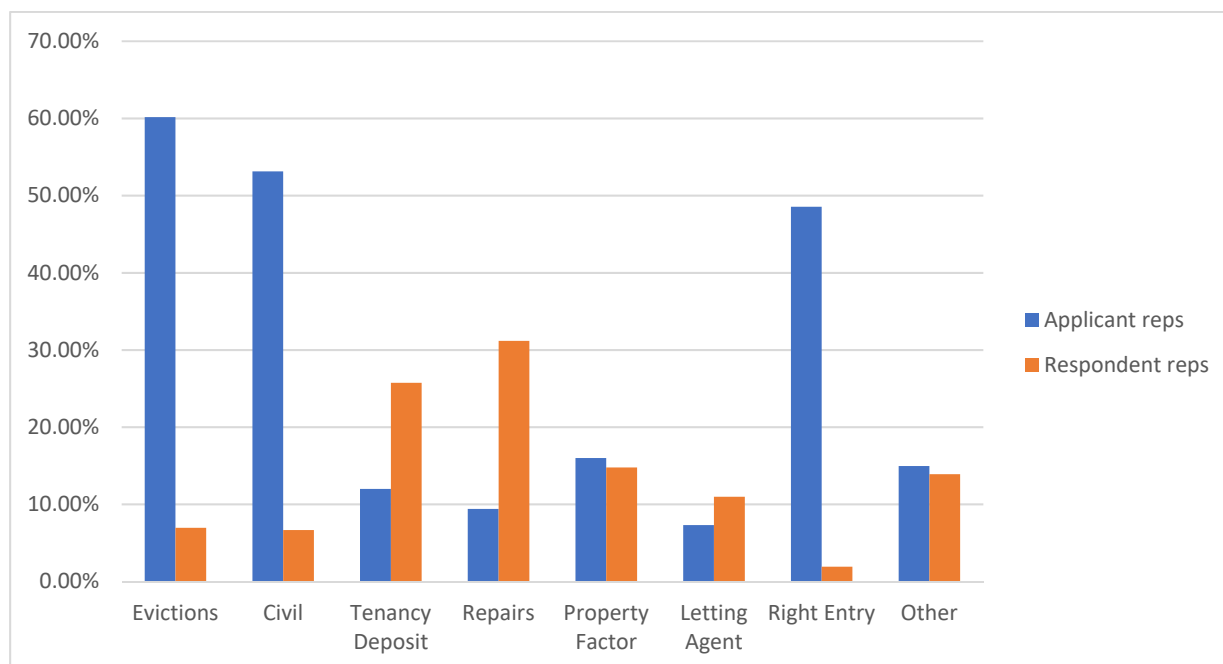
## **6. Representation of parties**

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

It is not possible to determine from the data obtained whether a party's representative was a solicitor, a letting agent, a non-solicitor adviser, or a friend or family member. The chart on the next page shows the percentage of applications for each case type where the party named at least one representative at some stage of the tribunal process during the reporting year.

In 2020-21, the number of parties with representation, particularly applicants, was significantly lower across all application types than in 2019-20.

## Levels of representation of parties



In eviction and civil proceedings applications, more than half of applicants (landlords) were represented. Representation levels in these application types were higher than during the previous year – 60% in eviction cases (compared with 47% in 2020-21) and 53% in civil proceedings cases (compared with 43%). These higher levels are, however, still significantly lower than those in 2019-20, when around three-quarters of applicants in these case types (80% in eviction cases) were represented.

The proportion of respondents (tenants) who were represented in eviction cases was slightly up on the previous year, from 5% to 7%.

In civil proceedings, the vast majority of applicants are landlords, although some are tenants. The proportion of respondents (mainly tenants) who were represented in civil proceedings applications was 7%, the same as in the previous year.

In tenancy deposit cases, the proportion of respondent landlords who were represented in tenancy deposit applications remained steady compared to the two previous years, at 26%. Fewer tenant applicants (12%) were represented, a slight fall from the previous year, when 14%, were represented and only half the proportion which was represented in 2019-20 (25%).

In right of entry cases, just under half of landlords (49%) were represented, a slight fall on the previous year's figure of 52%. This is a significant drop from the 81% of landlords who were represented in 2019-20.

Levels of representation among landlord respondents in repairing standard cases also continued to fall, with only 31% represented, compared to 43% in the previous year and 63% in the previous year.

Across all other case types, representation levels for both applicants and respondents were again down on the previous year's levels. As in the previous year, in some types of application, such as tenancy deposit, property factor and letting agent applications, neither party is represented in the majority of cases. While it remains the case that landlords are generally more likely to be represented than tenants, it is clear that aside from eviction and civil proceedings cases, the majority of landlords did not have any form of representation within the tribunal process.

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

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

Parties are also entitled to be accompanied by a supporter at a CMD or hearing. While a supporter may not represent the party, they may assist them by providing moral support; helping them to manage their papers; taking notes; and advising them on points of law and procedure and/or issues which they might wish to raise with the tribunal<sup>20</sup>. It is not uncommon

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<sup>20</sup>Rule 11 of the [Chamber's Procedure Rules](#)

for parties to bring supporters, usually family members or friends, with them to a CMD or hearing. No record is kept of cases where a party brings a supporter, however.

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

## **7. Members and training**

As at the end of March 2022, there were 103 tribunal members (the tribunal judiciary) within the Chamber. Of these, 56 are legal members and 47 are ordinary members. These are either qualified surveyors (who sit on repairing complaints, rent assessment and property factor cases) or members with specialist knowledge and experience of housing issues (who deal with applications relating to private rented sector issues, property factors, right of entry and letting agents).

In May / June 2021, legal and surveyor members attended virtual training to outline the revised covid safe process of preparation and attendance at property inspections. With the removal of covid restrictions, from mid-April 2022 property inspections are being conducted without specific risk assessments being undertaken for each inspection. A virtual training event for ordinary (housing) members who consider right of entry applications took place in September 2021.

Refresher training for legal and ordinary members on various aspects of the HPC jurisdictions took place in February and March 2022. A review of this training was carried out by a reviewer from the Judicial Institute. The review was very positive, finding that all aspects of the training – including identifying learning needs and the design, delivery and evaluation of the training – met or exceeded the required guidelines. The review concluded that the Chamber is providing a high-quality training experience for members and that all key stages of the training cycle were considered throughout the design and development of the course.

The statutory code of conduct for property factors was revised during the year by the Scottish Government following a consultation process. The revised code took effect on 16 August 2021. Tribunal members involved in property factor cases received virtual training on the revised code in May/June 2021. The training covered the introduction of the new code, management of applications received and data protection issues.

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

A judicial bench book is available electronically for tribunal members. This is a resource which contains legislation and case law relevant to the jurisdiction. Notable Upper Tribunal decisions are

circulated electronically to the membership, and a database of important Upper Tribunal decisions relevant to the Chamber's jurisdiction has been created for the use of tribunal members.

## **8. Notable successes during the year**

Thanks to the hard work of both the tribunal members and tribunal administration, the Chamber has coped extremely well with the continuing challenges brought by the pandemic. There was no backlog for most categories of applications at the start of the reporting year on 1 April 2021.

The Chamber also saw a sizeable recovery in application numbers during the year, following a significant drop during 2020-21, and 12% more applications were closed than during the previous year.

While the consideration of repairing standard and rent assessment cases had to be delayed due to the need for property inspections to be carried out, these inspections resumed in repairing standard cases in late May 2021 with appropriate procedures in place. Having worked its way through a backlog of existing applications, the Chamber began to schedule inspections for new applications from 16 June 2021 onwards. Inspections in rent assessment cases were scheduled from 30 September 2021 onwards.

Internal monitoring suggests that the use of teleconferences has resulted overall in fewer CMDs and hearings being postponed than previously. Such postponements can happen before the CMD or hearing takes place for a variety of reasons, including for example, unsuccessful service of papers by the tribunal on a respondent, or a party/representative's illness or absence on business or on holiday. It seems likely that this change is at least partly due to the increased convenience of telephone hearings, which are easier for parties and their representatives to fit around their other commitments. The decrease may also be partly due to the flexibility in work patterns during and after the pandemic which may make attendance easier for some parties.

## **9. Reviews, recalls and appeals**

### **1. Reviews**

The Tribunals (Scotland) Act 2014 introduced a review process, which allows a tribunal to review a decision made either at the request of a party or at its own instance where it is necessary in the interests of justice to do so<sup>21</sup>. A party's request for review of a decision must be made within 14 days of it being sent to them<sup>22</sup>. Where the tribunal decides to review a

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<sup>21</sup> Section 43

<sup>22</sup> Rule 39 of the [Chamber's Procedure Rules](#)

decision, it may take no action, set the decision aside or correct a minor or accidental error in the decision<sup>23</sup>.

During the year, a total of 83 requests for review of a decision were received by the HPC, across most jurisdictions. This was a decrease of around a quarter compared with the previous year, despite the significant increase in applications received. As in the two previous years, the highest proportion (29) concerned property factor cases. These were followed by other private rented sector cases (19), civil proceedings (13), evictions (12), repairs (4), letting agents (4) and time to pay orders (2).

As in the previous year, most review requests (54 or 65%) were refused. In relation to the remaining 29 decisions which were the subject of a review request, the tribunal decided to review the decision. In 21 (25%) cases, the decision was corrected or set aside. No action was taken by the tribunal in five cases, while two requests were withdrawn and one was not determined within the reporting period.

## *2. Recalls*

The Chamber's procedure rules also provide that in certain categories of proceedings (including evictions, civil proceedings and tenancy deposit applications), a party may apply for the recall of a decision within 14 days of the decision, where the tribunal made the decision in absence because that party did not take part in the proceedings or failed to appear or be represented at a hearing following which the decision was made<sup>24</sup>.

A total of 54 recall applications were considered by a tribunal during the year. Two-thirds (36) of these were refused, while the other 18 were granted.

## *3. Appeals*

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

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<sup>23</sup> Section 44 Tribunals (Scotland) Act 2014

<sup>24</sup> Rule 30 of the [HPC Procedure Rules](#)

### *Permission to appeal requests to the Housing and Property Chamber*

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

A total of 141 requests for permission to appeal to the Chamber were received across all jurisdictions, a slight reduction on the previous year. More than half (74 or 52%) related to the private rented sector jurisdictions (including eviction, civil proceedings or other PRS cases), with the remaining 48% (67) accounted for by property factor, repairing standard or letting agent cases.

The vast majority (124 or 88%) of permission to appeal requests were refused by the tribunal, with only 12 being granted either in full or in part. This represents a significant increase in refusals compared with 2020-21, when 64% of requests were refused. The remaining requests were either withdrawn by the party involved or had not been decided on by the tribunal before the end of the reporting year.

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

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

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

A total of 87 appeals/permission to appeal requests relating to decisions made by the HPC were made to the Upper Tribunal for Scotland during the year. It is likely that 12 of these were appeals, following a grant of permission to appeal by the original tribunal, and that the remainder were permission to appeal requests following a refusal. It should also be noted that 44 of these permission to appeal requests related to one property factor group application. While it is understood that these would have been counted as one application by the Upper Tribunal, they were each counted individually for the purposes of the Chamber's figures.

While the number of appeals and permission to appeal requests was significantly higher than the number in the previous year (17), much of this increase was accounted for by the 44 cases relating to the group application. Other reasons which may account for the significant increase could include the fact that the number of appeals in the previous year was significantly lower than in 2019-20, at least partly due to the coronavirus pandemic. The Upper Tribunal suspended its cases from March to June 2020, and fewer cases were closed in 2020-21 than in

the previous year. It is therefore likely that a proportion of the appeals dealt with during the reporting year related to permission to appeal requests from the previous year. There was also a 12% increase in the number of cases closed by the HPC, which may have led to more appeals to the Upper Tribunal.

Almost two-thirds (55 or 63%) of appeals/permission to appeal requests to the Upper Tribunal concerned property factor cases. The vast majority of these (44) were accounted for by the group application. All but two of the other appeals/permission to appeal requests concerned civil proceedings, evictions or other private rented sector cases.

For most of these (48), the Upper Tribunal decision was still awaited at the end of the year reported on. Of the remaining 39 appeals/permission to appeal requests, the majority (27) were permission to appeal requests which were refused. The appeal was refused in seven cases and the Upper Tribunal quashed the original tribunal's decision in three cases. The other two appeals were withdrawn.

## **10. Future developments**

Following the expiry of temporary protections for tenants under the [Coronavirus \(Scotland\) Acts \(Early Expiry of Provisions\) Regulations 2022](#), the required periods for any notices issued to tenants after 30 March 2022 reverted to those which were in place before 7 April 2020. Tribunals will, however, still be required to consider reasonableness in all eviction cases. These cases will therefore continue to be considered by a two-member tribunal at the case management discussion, and a sizeable proportion of these are likely to go to an evidential hearing to consider reasonableness.

As most notice periods reverted back to 12 weeks/2 months (depending on the type of tenancy) from 30 March 2022, this was expected to lead to an increase in evictions applications received from around mid-late June 2022.

From around summer 2022, there was indeed a steep rise in eviction and civil proceedings applications. The reasons for this are unclear, but it is thought that this could indeed be a result of the amended notice periods. It is also possible that the rise could be at least partly due to the difficult economic climate and the resulting financial constraints on parties. At the time of writing, it was also unclear what impact of the proposed rent freeze and accompanying moratorium on evictions, announced by the Scottish Government on 6 September 2022 and contained in the Cost of Living (Tenant Protection) (Scotland) Act 2022 which came into effect on 28 October 2022 might have on eviction applications to the Chamber.