



**PRIVATE RENTED HOUSING PANEL /
HOMEOWNER HOUSING PANEL**

ANNUAL REPORT

2015



Laid before the Scottish Parliament by the Scottish Ministers under section 29(4) of the Housing (Scotland) Act 2006, and section 27(3) of the Property Factors (Scotland) Act 2011 February 2017

SG/2017/16

Contents

President's Foreword	P1
1: The Private Rented Housing Panel (PRHP)	P4
2: PRHP Key Statistics	P7
3: The Homeowner Housing Panel (HOHP)	P15
4: HOHP Key Statistics	P17
5: Finance	P29

President's Foreword



It is my pleasure to present the Annual Report of the Private Rented Housing Panel (and Homeowner Housing Panel) for the year 2015.

This year I have decided to condense the information provided in the Annual Reports for PRHP and HOHP and to incorporate them within one report. The procedures for making applications to HOHP and PRHP are now well established and there is no longer a need to detail these procedures in an annual report.

However, the same level of statistical information, as provided in previous years, is reported.

This Report, in accordance with statute, covers the period from 1 January 2015 until 31 December 2015. In certain topics within the report, such as mediation, information has been provided for the reporting period and extends into 2016 to provide a full picture of outcomes, and where this occurs it is highlighted in the text. It has to be remembered that the report covers a specific period of ongoing processes.

Traditionally, the Panels have dealt with cases relating to the assessment of private sector rents under the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 and also referrals from tenants concerning the landlord's duty to meet the repairing standard under the Housing (Scotland) Act 2006. The repairing standard covers the legal obligations of private landlords to ensure that a house meets a minimum physical standard. Since October 2012, the Homeowner Housing Panel has considered applications brought by homeowners complaining that their property factor does not meet minimum service levels laid down in a statutory Code of Conduct and/or has failed to carry out the duties of a property factor. The definition of "property factor" is widely stated in the Property Factors (Scotland) Act 2011 and covers land management and building related disputes where the property factor is a commercial business, housing association or local authority.

This year has seen the judicial members and the panel administration working towards the introduction of third party reporting in repairing standard cases which was introduced by the Housing (Scotland) Act 2014. This gives third parties (currently defined as local authorities) the ability to take cases to PRHP relating to the landlord's duty to meet the repairing standard. The ability of local authorities to bring such cases was introduced in a phased basis between December 2015 and June 2016 with all Local Authorities able to bring an application by 1 June 2016.

On 1 December 2015 we also saw the extension of the repairing standard to include provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. From that date landlords became subject to a duty to ensure electrical safety inspections are carried out at five year intervals. Statutory Guidance has been issued by Scottish Ministers which outlines requirements in these areas. We take seriously the need

to provide information to stakeholders in relation to these legislative requirements. Our website was updated during 2015 to try to make it easier for users to access this information, as well as easier to search all written decisions issued by Committees of HOHP and PRHP.

The third change introduced in December 2015 was the introduction of a new jurisdiction for private landlords to make applications to PRHP to assist them in exercising their legal right of entry to a property to ensure compliance with the repairing standard. The legislation for this was contained in the Private Rented Housing (Scotland) Act 2011.

During 2015 recruitment exercises were conducted for legal chairpersons and surveyor members to increase the pool of judicial members to service the projected increase in applications as a result of third party applications. Generally, the committees in rent and repairing standard cases involve two members, a surveyor member and a legal chairperson, whilst the housing members, sitting alone, consider right of entry applications. Members are selected for HOHP Committees depending on the nature of the dispute and any specialism required to determine the issue.

During the year attention turned toward proposals for further changes which will impact on the panels in 2016 and 2017. These changes involve the creation of a Housing and Property Chamber which will sit within the First-tier Tribunal for Scotland following the passage of the Tribunals (Scotland) Act 2014. The PRHP and HOHP will form the core of the Chamber with further new jurisdictions being added in 2017 following the implementation of Parts 3 and 4 of the Housing (Scotland) Act 2014. This involves the transfer of the sheriffs' jurisdiction for civil cases relating to the private rented sector in Scotland to the First-tier Tribunal and the creation of a regulatory framework for letting agents operating in Scotland. This is intended to give landlords and tenants in the private rented housing sector access to a specialist, accessible and consistent decision making body. A new tenancy regime is also to be introduced and the dispute resolution mechanism is by application to the First-tier Tribunal. From the end of 2017, the registration of letting agents will be compulsory and compliance with a statutory code of practice for all registered letting agents will be mandatory. There will be a means of redress for tenants and landlords to the First-tier Tribunal in relation to letting agent code of practice disputes; and a route of appeal for letting agents on decisions by Scottish Ministers in relation to entry to, or removal from, the letting agent register.

With all the changes implemented in 2015 and future changes proposed, it has been a busy year for everyone connected with the Panels. However, we are aware that despite ongoing changes, our focus must remain the delivery of a high quality and user centred service for judicial decision making within the housing/property jurisdictions.

The report discloses that during 2015, PRHP applications increased by 20% with a corresponding decrease in HOHP applications of 20%. A high proportion of applications to the panels originated from Glasgow City, followed by City of Edinburgh, with Dundee City and South Lanarkshire also showing significant volumes. In about a third of repairing standard applications, the committee determined that by the time of the Committee inspection and hearing the house, which was the subject of complaint, met the repairing standard. From the

information available, it appears that in some instances the mere action of bringing an application results in works being carried out to the property.

In HOHP the trend continued from previous years of a high proportion of complaints relating to communication, consultation and complaint handling, although there is evidence from outcomes in the reported figures of some service improvement in these areas. In comparison with previous annual report figures, a significantly higher proportion of applications were withdrawn by homeowners before a committee hearing and this may be a result of encouraging parties to meet to discuss their complaints, either through informal dialogue or mediation. The mediation figures for HOHP are encouraging with 32 applications being considered at mediation resulting in closure of 22 applications.

Finally, I would like to recognise the enthusiasm and talents of the Panels' judicial membership and of the administrative staff assigned to the Panels by the Scottish Courts and Tribunals Service (SCTS). I thank them for their considerable commitment and support throughout the year in delivery of a user focussed and professional service.

Ever mindful of costs, I congratulate the team on production of this annual report without incurring printing costs.



Mrs Aileen Devanny
President

1. The Private Rented Housing Panel

The Private Rented Housing Panel (prhp) is a Scottish tribunal established by the Housing (Scotland) Act 2006. The objective of prhp is to resolve disputes between tenants and landlords in the private rented housing sector by the use of informal and flexible procedures.

The Panel considers issues relating to:

1. determining applications from tenants concerning the landlord's duty to meet the repairing standard under the Housing (Scotland) Act 2006.
2. considering objections to Fair Rents fixed by Rent Officers for regulated tenancies under the Rent (Scotland) Act 1984
3. determining market rents for short assured tenancies and terms and/or market rents for statutory assured tenancies under the Housing (Scotland) Act 1988

Repairing Standard Cases

The Housing (Scotland) Act 2006 introduced a mechanism for tenants in the private rented sector to seek to compel their landlord to carry out necessary repairs to ensure that the property meets the "repairing standard". The Act imposes a duty upon a landlord to ensure that a house meets that standard at the start of the tenancy and at all times during the tenancy.

The repairing standard is set out in section 13 of the 2006 Act. A house meets the repairing standard if -

- a. the house is wind and water tight and in all other respects reasonably fit for human habitation;
- b. the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- c. the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- d. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- e. any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- f. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

- g. the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health¹

The repairing standard applies to most tenancies in the private rented sector. An application can only be accepted from a current tenant of a property and from 1 December 2015 (on a phased basis) from a Scottish Local Authority.

Applications by tenants under the 2006 Act have become the primary area of work for the prhp, and the volume of applications has been increasing in recent years.

New statutory guidance relating to electrical installations and carbon monoxide detectors was introduced on 1 December 2015. These changes place stricter criteria on private landlords to meet electrical safety standards and add a requirement for suitable carbon monoxide detection. This is in addition to the existing statutory guidance on satisfactory provision for detecting and giving warning of fires. Links to the statutory guidance referred to in this paragraph are available on our website.

Rent Assessment Cases

The prhp has jurisdiction in rent assessment cases under the Rent (Scotland) Act 1984 (the “1984 Act”) and the Housing (Scotland) Act 1988 (the “1988 Act”).

Under the 1984 Act, the Panel considers appeals by landlords or tenants against rents registered by Rent Officers in relation to regulated tenancies, and determines fair rents for properties in accordance with the provisions of that Act.

Under the 1988 Act, the Panel considers, 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.

Full details about the prhp and how it works can be found on our website.

Changes from 1 December 2015

The [Housing \(Scotland\) Act 2014](#) amended the Repairing Standard legislation to allow a Third Party (specifically the local authority) to make applications in the same way as the tenant. The local authority must take the same notification action as a tenant prior to making the application.

¹ Since 1 December 2015

A phased approach was taken to the implementation of third party applications. See below for a list of the commencement dates and which local authorities belonged to each phase:

- Phase 1 - to commence from 1 December 2015
- Phase 2 - to commence from 1 April 2016
- Phase 3 - to commence from 1 June 2016

Phase 1 - 1 December 2015: Glasgow City; Dundee City; Dumfries and Galloway (3 authorities)

Phase 2 - 1 April 2016: City of Edinburgh; Aberdeen City; Renfrewshire; Highland; North Lanarkshire; North Ayrshire; Aberdeenshire; West Lothian; East Dunbartonshire; Comhairle nan Eilean Siar; East Ayrshire; East Lothian; Moray; Orkney Islands; Shetland Islands. (15 authorities)

Phase 3 - 1 June 2016: Fife; South Lanarkshire; East Renfrewshire; Scottish Borders; Stirling; Angus; Argyll and Bute; South Ayrshire; Midlothian; Perth and Kinross; Clackmannanshire; Falkirk; Inverclyde; West Dunbartonshire. (14 authorities)

Guidance on the third party procedure is available on our website.

The Private Rented Housing (Scotland) Act 2011 made a further amendment to the Housing (Scotland) Act 2006 which allows a private landlord to apply to prhp 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 2006 Act. Once an application for right of entry is received it is allocated to one member of the panel. This is usually a housing member.

Guidance on right of entry applications is available on our website.

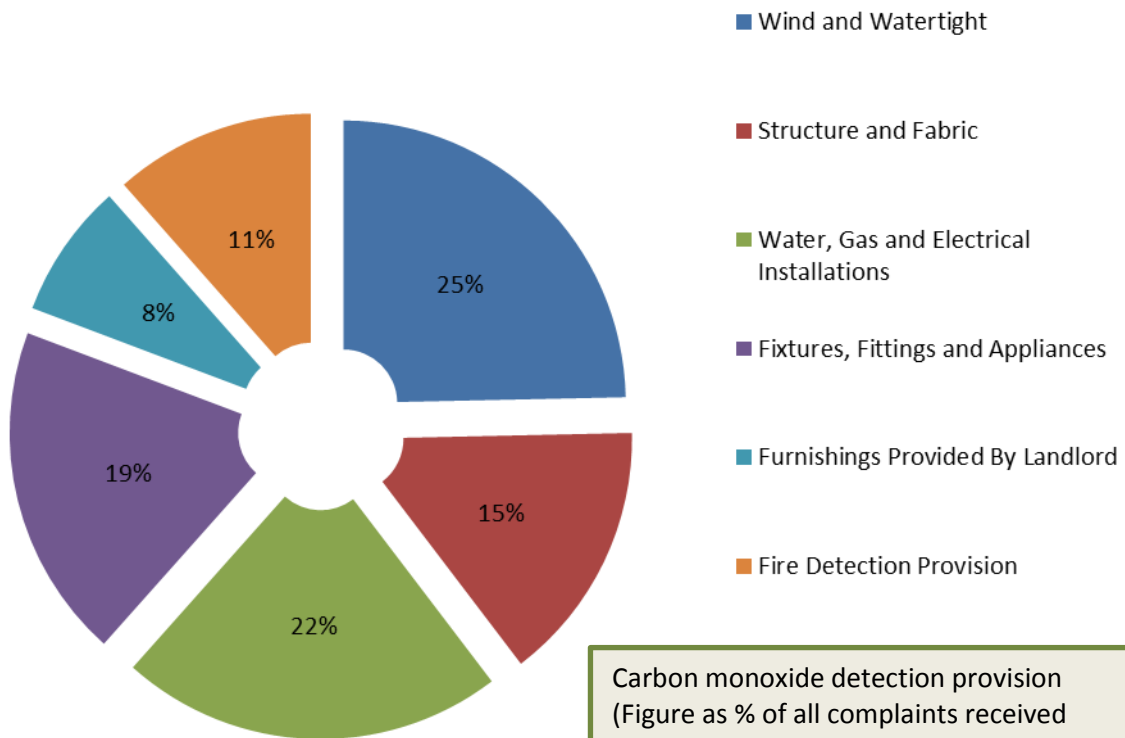
2. PRHP Key Statistics

APPLICATIONS RECEIVED 355	Repairing Standard 319	Rent 33	Right of Entry 3
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59 from Glasgow City Council area	30 from Dundee City Council area
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43 from City of Edinburgh Council area	23 from Aberdeen City Council area
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Complaint Category chosen by applicant



Carbon monoxide detection provision
(Figure as % of all complaints received from 1 December 2015)

13%

Complaints considered 818	Committee Decisions issued 230	Complied with Duty 73
		RSEO issued 133

Background²

The private rented sector in Scotland has expanded significantly in recent years. In 2000, only 6.7% of all homes were privately rented. By 2015, 14% of the housing stock in Scotland was within the sector, an estimated 192% increase in the numbers of households.³ The proportion of privately rented homes varies across Scotland, and the cities tend to have higher levels of private rented housing.⁴

The majority of landlords in the private rented sector in Scotland own a small number of properties. In 2009, 84% of privately rented dwellings were owned by 'individuals, a couple or a family', with 14% being 'owned by a company, partnership or property trust', and just 2% owned by an institution. Around 70% of landlords own one property, and the vast majority (95%) own between 1 and 5 properties. However, the 5% of landlords that own more than five properties account for around 40% of the sector. Many landlords, in particular those entering the sector in recent years, may be letting a property they have inherited or have been unable to sell. There are also a significant number of 'buy-to-let' landlords within the sector.⁵

Applications received during 2015

A total of 355 applications were received, an increase of 20% on the previous year.

Application Type	Received
Rent (Assured)	10
Rent (Regulated)	15
Rent (Short Assured)	8
Repairs (Tenant)	319
Repairs (Third Party)	0
Right of Entry	3
TOTAL	355

As the vast majority of applications which now come before the prhp are repairing standard applications rather than rent assessment cases, the discussion within this chapter relates primarily to repairing standard cases.

² Note: parts of the proceedings can occur over 2 calendar years – e.g. a hearing in 2014, with a decision issued in early 2015, or a hearing in 2015, with a decision issued in early 2016. We have recorded in this section only events occurring in 2015.

³ Scottish Government (2015) Scotland's People Annual Report: Results from the 2015 Scottish Household Survey <http://www.gov.scot/Resource/0050/00506173.pdf>

⁴ Source: Scottish Government (2014) Housing Statistics for Scotland 2014: Key Trends Summary <http://www.scotland.gov.uk/Publications/2014/08/2448/5>

⁵ Source; Scottish Government (2013) A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland: <http://www.scotland.gov.uk/Publications/2013/05/5877/4>

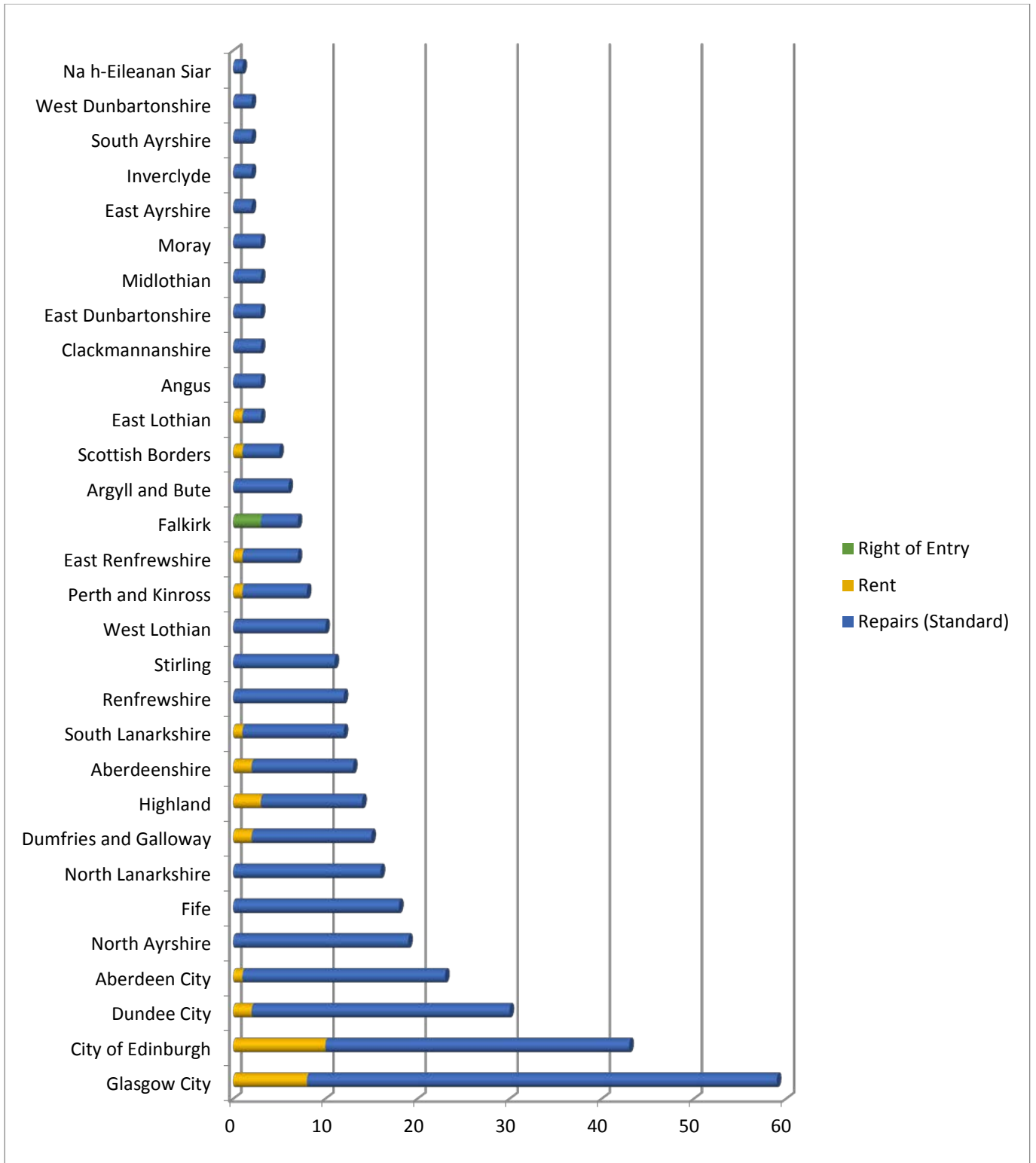
Nature of the applications received

Repairing standard applications were received under all seven grounds set out in the 2006 Act, including the new ground relating to carbon monoxide provision, which was introduced on 1 December 2015.

Repairing Standard	Number	As % of Applications received in 2015
Wind and Watertight	201	63
Structure and Fabric	122	38
Water, Gas and Electrical Installations	179	56
Fixtures, Fittings and Appliances	156	49
Furnishings Provided By Landlord	63	20
Fire Detection Provision	94	29
Repairing Standard	Number	As % of Applications received in December 2015
Carbon Monoxide Provision	3	13

Where the applications came from

Applications were received from across Scotland in 2015, with at least one application from 30 of the 32 Scottish local authority areas. While the majority of applications came from urban areas with a high population density, a considerable number came from rural areas of Scotland.



Rejected repairing standard applications

A total of 64 applications were rejected by the Panel President before being referred to a Committee. A breakdown of the reasons why these applications were rejected can be found in the table below.

Reasons for Rejection	
(a) that it is vexatious or frivolous application	4
(b) where the tenant has previously made an identical or substantially similar application in relation to the same house that a reasonable period of time has not elapsed between the applications.	0
(c) that the dispute to which the application relates has been resolved. (Of which 3 were resolved after compliance with mediation agreement)	60
TOTAL	64

Mediations

In 2007, prhp became the first tribunal body in Scotland to introduce an in-house mediation service as an alternative form of resolving disputes. The take-up of mediation to date has, however, been very disappointing. There are a number of possible reasons for this, including the termination of tenancies before the application progresses, which is fairly common. This invalidates any attempt to resolve the dispute by agreement, as there are no longer two parties involved. Even where there has been a successful mediation, the tenant often leaves before the agreement has been implemented, which makes it difficult to find out whether the landlord has carried out the actions set out in the mediation agreement.

A total of 5 repairing standard applications went to mediation in 2015. A mediation agreement was reached in 4 cases. In 3 of these cases, there was compliance with the agreement and the case was closed. In the remaining case where there was agreement, the agreement was not complied with, and the application was referred to a committee, which later issued a complied decision. The application in relation to which an agreement was not reached was referred to a committee, which issued a complied decision.

Applications withdrawn by the tenant

If the tenant withdraws their application or the tenancy is terminated (in which case, the application is deemed to have been withdrawn) before the application is referred to a Committee, the President can decide whether to abandon the application or to continue to determine it. Where the withdrawal or termination of tenancy occurs after the application has been referred to a Committee, the Committee can decide whether to abandon or continue to determine the application. Before making such a decision, the President or the Committee will look at all the circumstances of the case, and in particular whether the repairs alleged in the application may give rise to health and safety issues for future occupants.

A total of 138 applications were withdrawn by the tenant (including those where the application was deemed to be withdrawn because the tenant had moved out from the property). Of these applications, 60 were continued by the President/or a Committee, and 78 were abandoned. In 50 of the abandoned applications, the tenant withdrew the application because the repairs issue had been resolved.

Committee decisions

Once an application has been accepted by the Panel President, it is referred to a Private Rented Housing Committee, which comprises a legal chairperson and a surveyor member. The members of the committee are drawn from the Panel's judicial membership.

Before making a decision on a repairing standard application, the Committee will usually inspect the house concerned. Following the inspection, a hearing usually takes place in a nearby venue, and a written decision is later issued by the Committee. If the Committee decides that the property meets the Repairing Standard, it issues a 'complied' decision. If it decides the landlord has failed to comply with the repairing standard duty, the Committee will issue a Repairing Standard Enforcement Order (RSEO). This Order specifies the works which require to be carried out at the house and a time limit for completion of these works.

A total of 230 decisions were issued by Committees in 2015. Of these, 19 related to rent cases - a rent was determined in 18 cases, and the Committee determined it had no jurisdiction to make a determination in one case.

DECISION OUTCOMES OF COMMITTEES	Number
Repairing Standard Enforcement Order issued as house did not meet standard	133
House complied with standard at date of the Inspection and Hearing	73
House did not comply with standard due to Landlord's lack of rights which resulted in no Enforcement Order	1
Application abandoned at a Hearing	4
Rent Determination	18
Non-jurisdiction (rent cases)	1
Total	230

The figure for abandoned cases here (4) is included in the overall total of 78 abandoned cases mentioned previously. These 4 are noted here as they were abandoned on the day of the hearing, whereas the majority of decisions by the President or Committees for abandonment or for continuation occur prior to a hearing taking place.

Repairing Standard Enforcement Orders (RSEOs)

In many cases, the RSEO related to more than one ground where there had been a failure to comply with the repairing standard. The table on the next page shows the number and frequency of grounds which were included in RSEOs.

Analysis of Repairing Standard Issues included in Enforcement Orders

STANDARD	Number	as % of RSEOs
Wind and Watertight	94	71
Structure and Fabric	55	42
Water, Gas and Electrical Installations	88	67
Fixtures, Fittings and Appliances	71	54
Furnishings Provided By Landlord	28	22
Fire Detection Provision	47	36
Carbon Monoxide	0	0

Compliance by landlords

Once the time has passed for completing the works required by the RSEO, the property is re-inspected by the surveyor member of the Committee, and if the works are completed satisfactorily, a Completion Certificate is issued.

If the works have not been completed to a satisfactory standard, the Committee can issue a Failure to Comply Notice. The Committee can also decide to grant a Rent Relief Order, reducing the rent payable by the tenant by up to 90%.

In cases where compliance with the RSEO was assessed in 2015, the decisions issued by the Committee are shown below.

RSEO – Final Outcome of Order	Number
Certificate of Completion	68
Failure to Comply with RSEO	36
Revocation of RSEO (Order no longer deemed necessary)	11
Variation of RSEO (e.g. extension of time limit for compliance)	32

31 Rent Relief Orders were issued in 2015 reducing the rent payable by tenants.

Appeals

Parties have a right to appeal to a court against a decision made by a Private Rented Housing Committee. In relation to repairing standard cases under the 2006 Act, there is a right of appeal to the Sheriff Court. In relation to rent assessment cases under the 1984 Act and the 1988 Act, parties have the right of appeal to the Court of Session.

Four appeals from landlords against prhp decisions were lodged in the sheriff court in 2015. Of these, two were dismissed. In one case, there was an agreement to allow the RSEO to be quashed, and in the fourth case, the appeal was allowed by agreement and the decision and RSEO quashed, due to jurisdictional issues.

Tenancy management complaints

Under section 29 of the Housing (Scotland) Act 2006, the prhp must record and report the frequency with which applications to the Panel include complaints about the landlord's management of the tenancy. However, the prhp has no power to deal with complaints about the landlord's management of the tenancy. This is made clear in the information leaflets which give details of the services provided by the Panel.

There is a tenancy management complaint form on our website, but there were no tenancy management complaints recorded during 2015. This should not be regarded as evidence that problems relating to the landlord's management of the tenancy do not exist. It is clear from the terms of some of the applications received that some tenants have experienced problems with letting agencies acting on behalf of landlords, even if they have not specifically reported this as a problem.

Forthcoming changes introduced by the Housing (Scotland) Act 2014 are likely to have a major impact as regards complaints about the management of tenancies. The Act will introduce a compulsory register and a code of practice for letting agents in Scotland, and will allow both tenants and landlords to apply to the new First-tier Tribunal (Housing and Property Chamber) in respect of alleged failure to comply with the code of practice.

3. The Homeowner Housing Panel

The Homeowner Housing Panel (hohp) is a Scottish Tribunal set up under the Property Factors (Scotland) Act 2011 (“the 2011 Act”). 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.

The hohp offers dispute resolution for disputes occurring between homeowners and their property factors. 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.

A ‘property factor’s duties’ 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.

The objective of the hohp is to resolve disputes between homeowners and property factors by providing informal and flexible proceedings. In accordance with its overriding objective⁶, the Panel seeks to deal with proceedings justly in a way that is proportionate to the complexity of the issues and the parties’ resources.

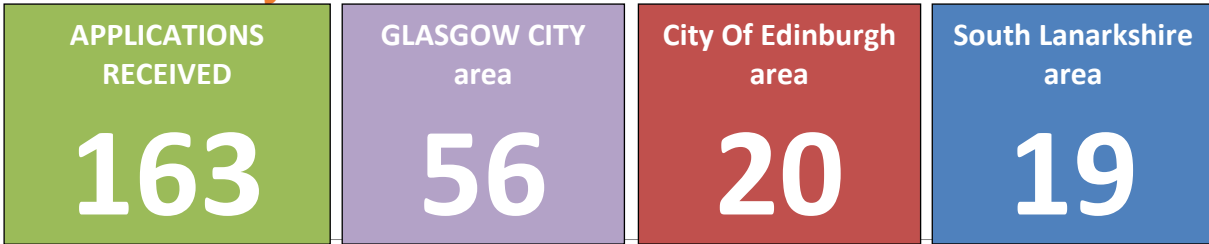
The 2011 Act covers all property factors operating in Scotland. This includes residential

⁶ Set out in the Homeowner Housing Panel (Applications and Decisions) Regulations 2012

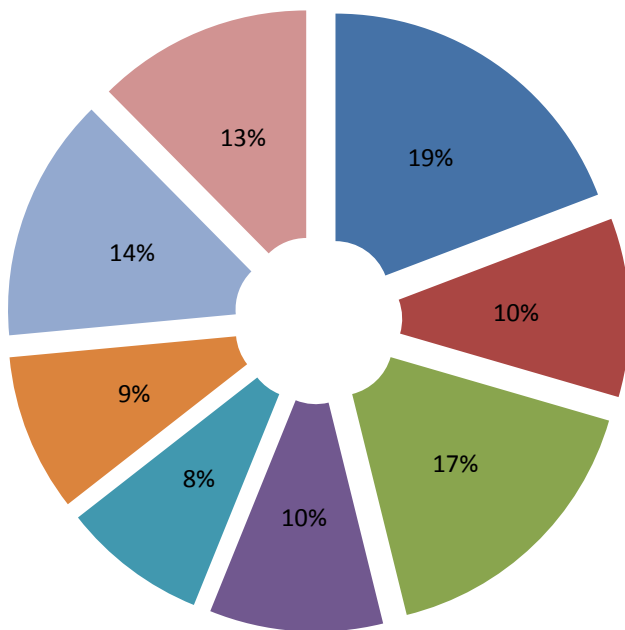
property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations. It also includes land owning land management companies – it applies to land which is available for the use of neighbouring or adjoining homeowners, provided that the homeowners are obliged by their title deeds to contribute to the management and maintenance costs of the land.

Full details about the ho hp and how it works can be found on our website.

4.HOHP Key Statistics

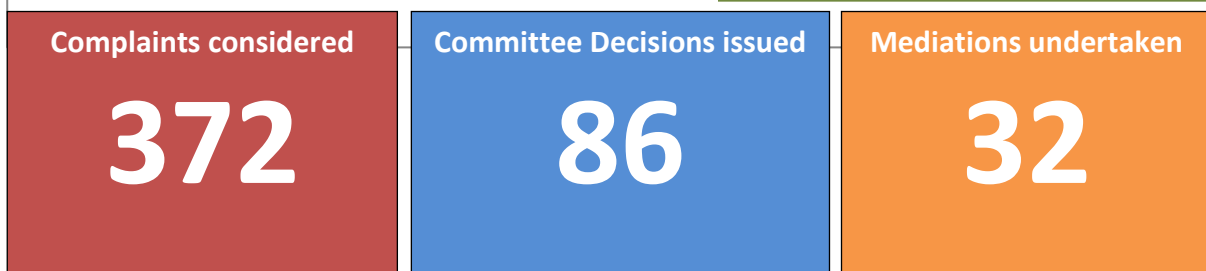
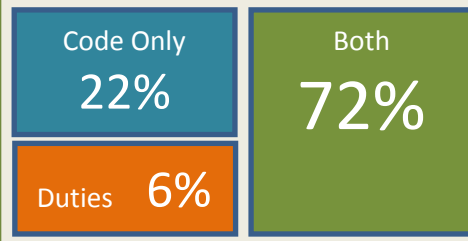


Comparison of complaint categories chosen

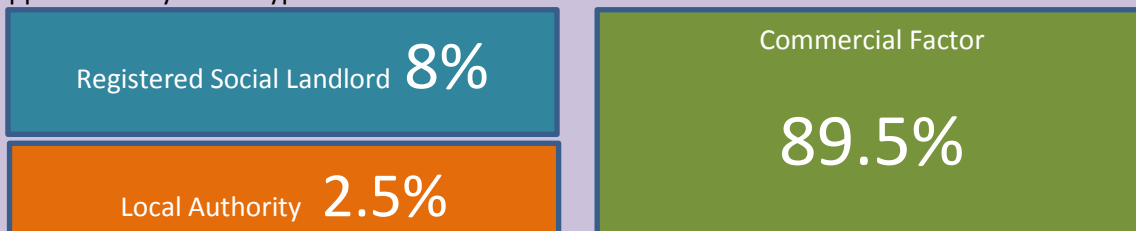


- Property Factor Duties
- Section 1 - Written Statement of Services
- Section 2 - Communication and Consultation
- Section 3 - Financial Obligations
- Section 4 - Debt Recovery
- Section 5 - Insurance
- Section 6 - Carrying Out Repairs and Maintenance
- Section 7 - Complaints Resolution

Applications by category:



Applications by factor type:

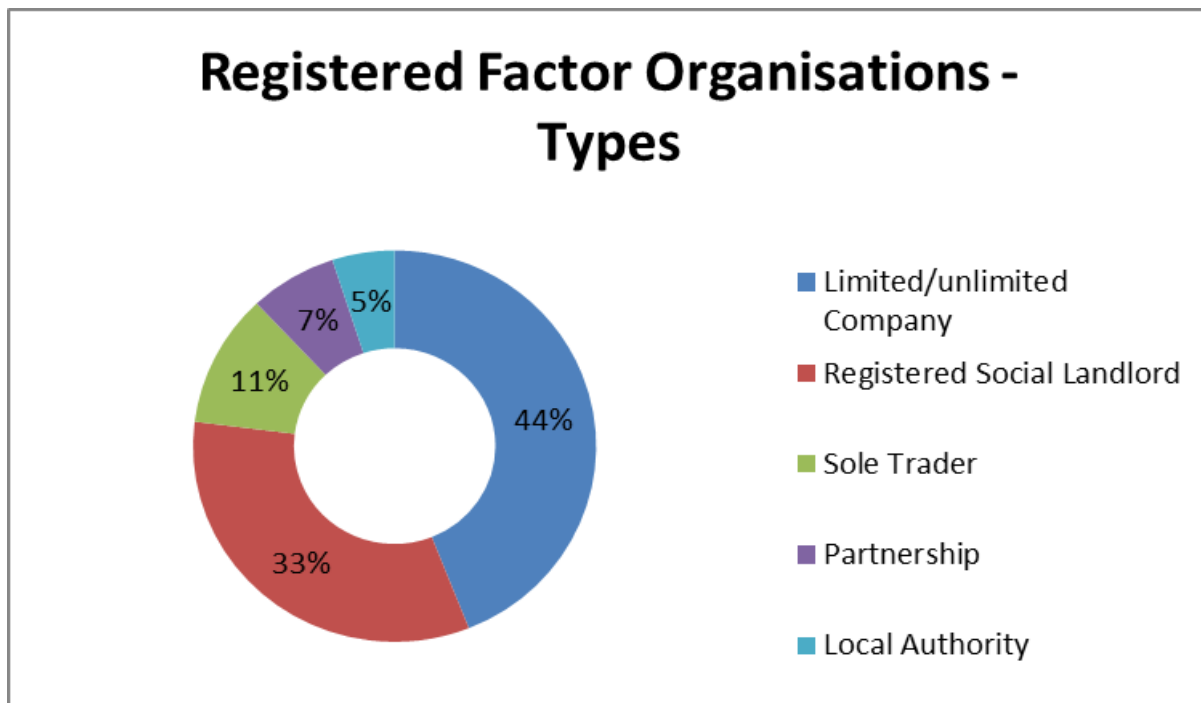


Proposed PFEOs: 55

PFEO's issued: 40

Background⁷

As at 31 March 2015, there were 377 registered property factors operating in Scotland.⁸ This represents a 9% increase on the previous year. This increase is almost entirely due to an increase in the number of commercial property factors.



There were a total of 624,274 properties factored by registered property factors for the year ending 31 March 2015. Of these properties, 58% were factored by commercial property factors,⁹ 30% by registered social landlords¹⁰ and 11% by local authorities.¹¹

⁷ Note: parts of the proceedings can occur over 2 calendar years – e.g. a hearing in 2014, with a decision issued in early 2015, or hearing in 2015, with a decision issued in early 2016. We have recorded in this section only events occurring in 2015.

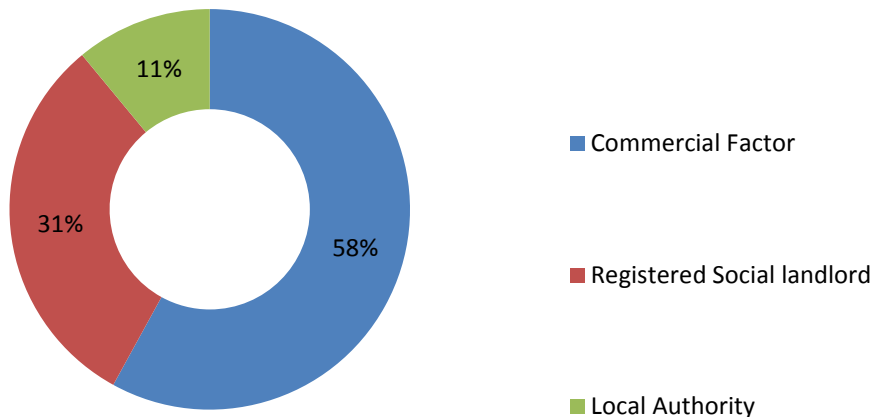
⁸ All figures provided by the Scottish Government Property Factor Registration Team

⁹ This figure comprises those property factors classifying themselves as either a limited company, unlimited company, a partnership (including limited liability partnerships) or a sole trader

¹⁰ This figure includes subsidiaries owned by registered social landlords

¹¹ Around 1% of properties were factored by a property factor registered as 'other', which is an owners and residents' association.

Portfolio size by factor type



Around 43% of all property factors manage fewer than 100 properties, with the two largest property factors managing between 40,000 – 70,000 properties.

Property Factor Portfolio Size

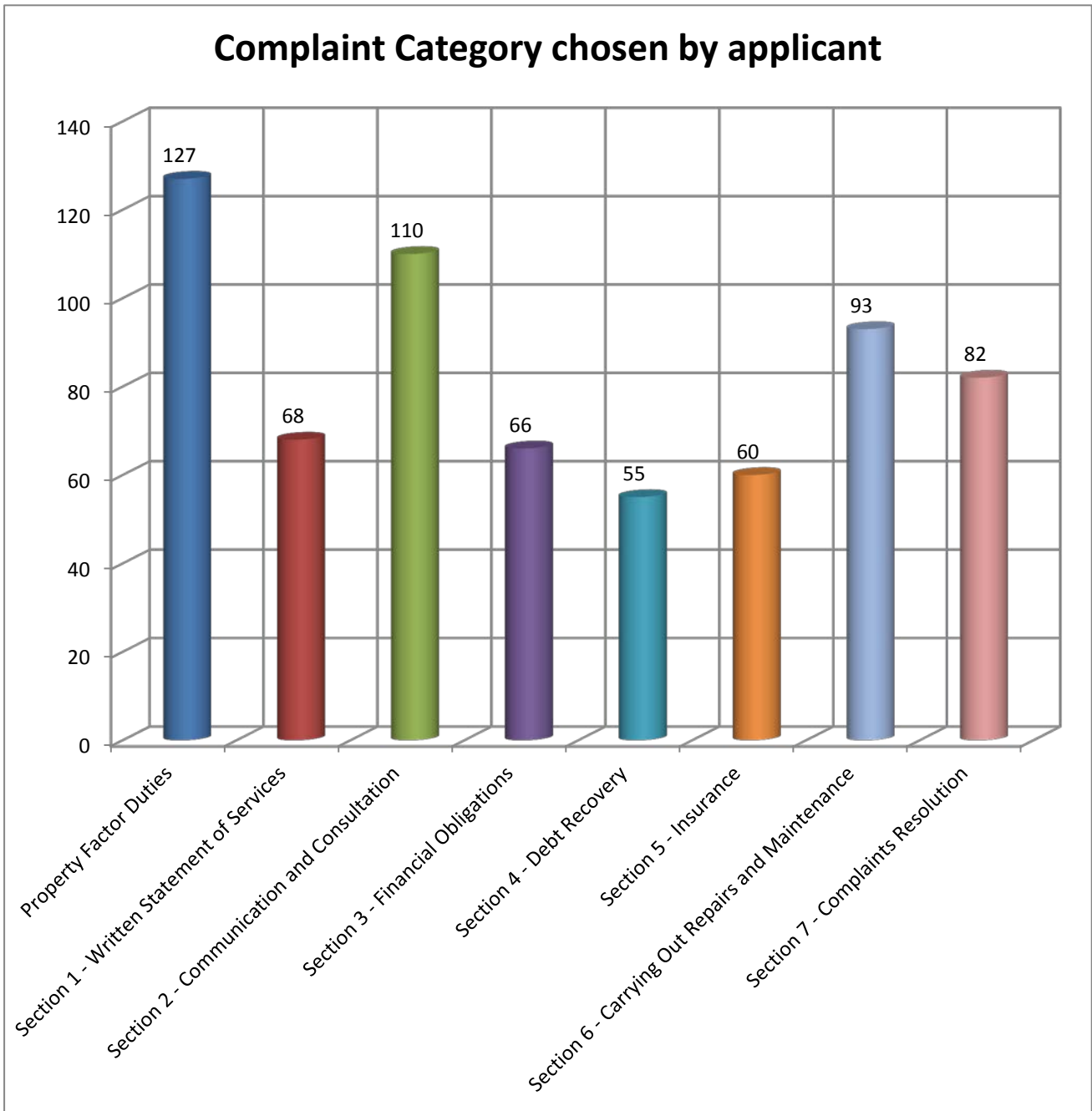


Applications received during 2015

A total of 163 applications were received by hohp in 2015, a decrease of 20% compared with the previous year.

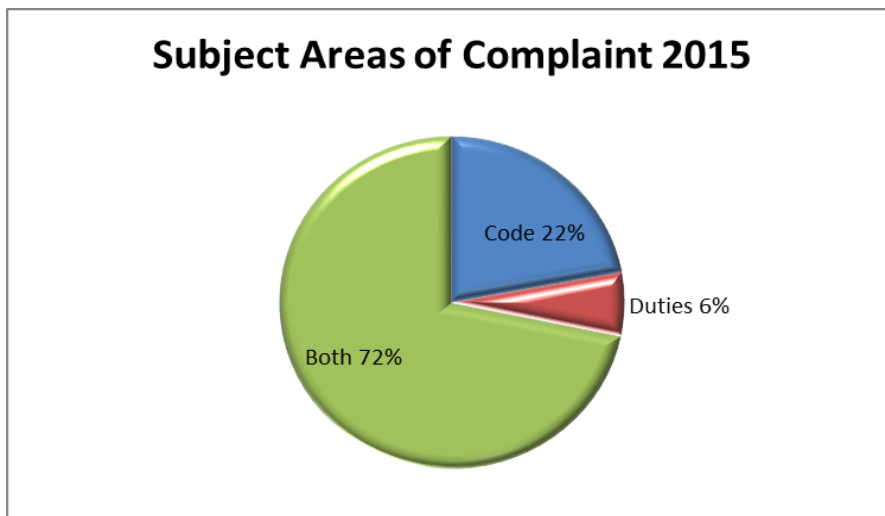
Nature of the applications received

Of the 163 applications received, 78% were about a failure to carry out the property factor's duties. The next largest complaint type was Section 2 of the Code of Conduct for Property Factors relating to Communication and Consultation which was present in 67% of applications. The chart below shows the breakdown by number of applications for each category of complaint.



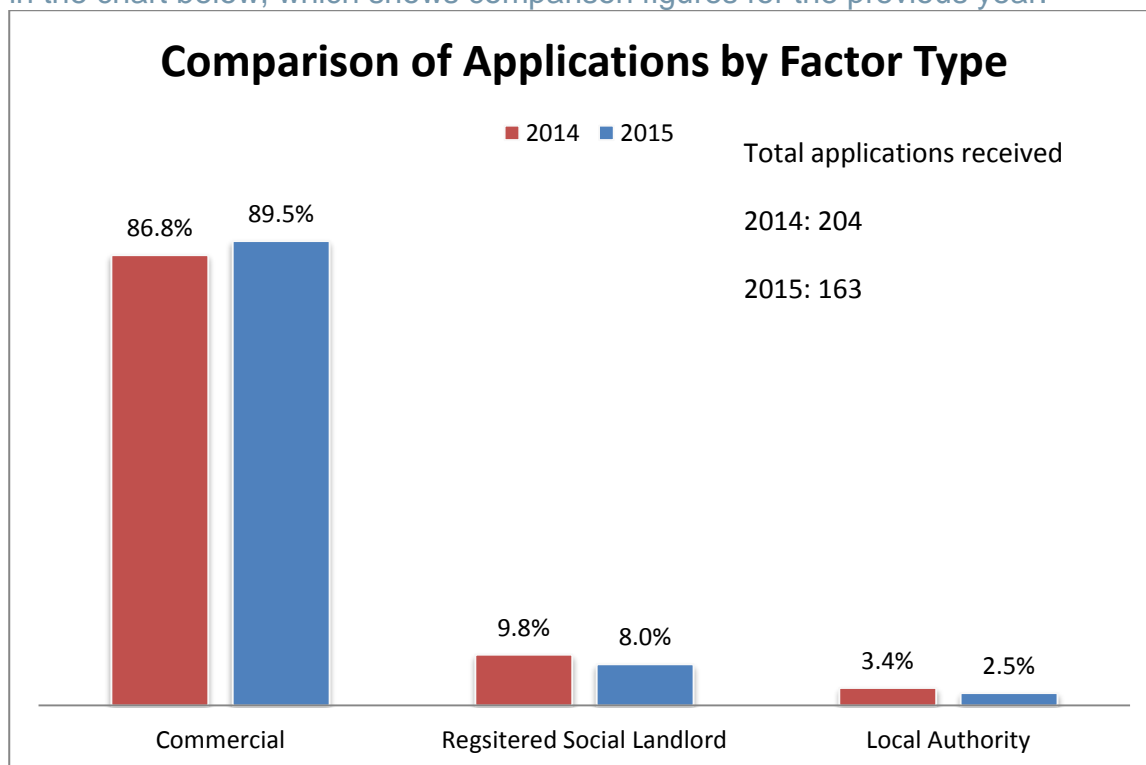
This diagram shows similar trends to complaints under each heading compared to the figures reported in the 2014 annual report.

The proportions under each subject area of complaint in the diagram below are similar to the figures reported in the 2014 annual report



Applications by property factor type

The number and type of property factors which were the subject of applications is set out in the chart below, which shows comparison figures for the previous year.

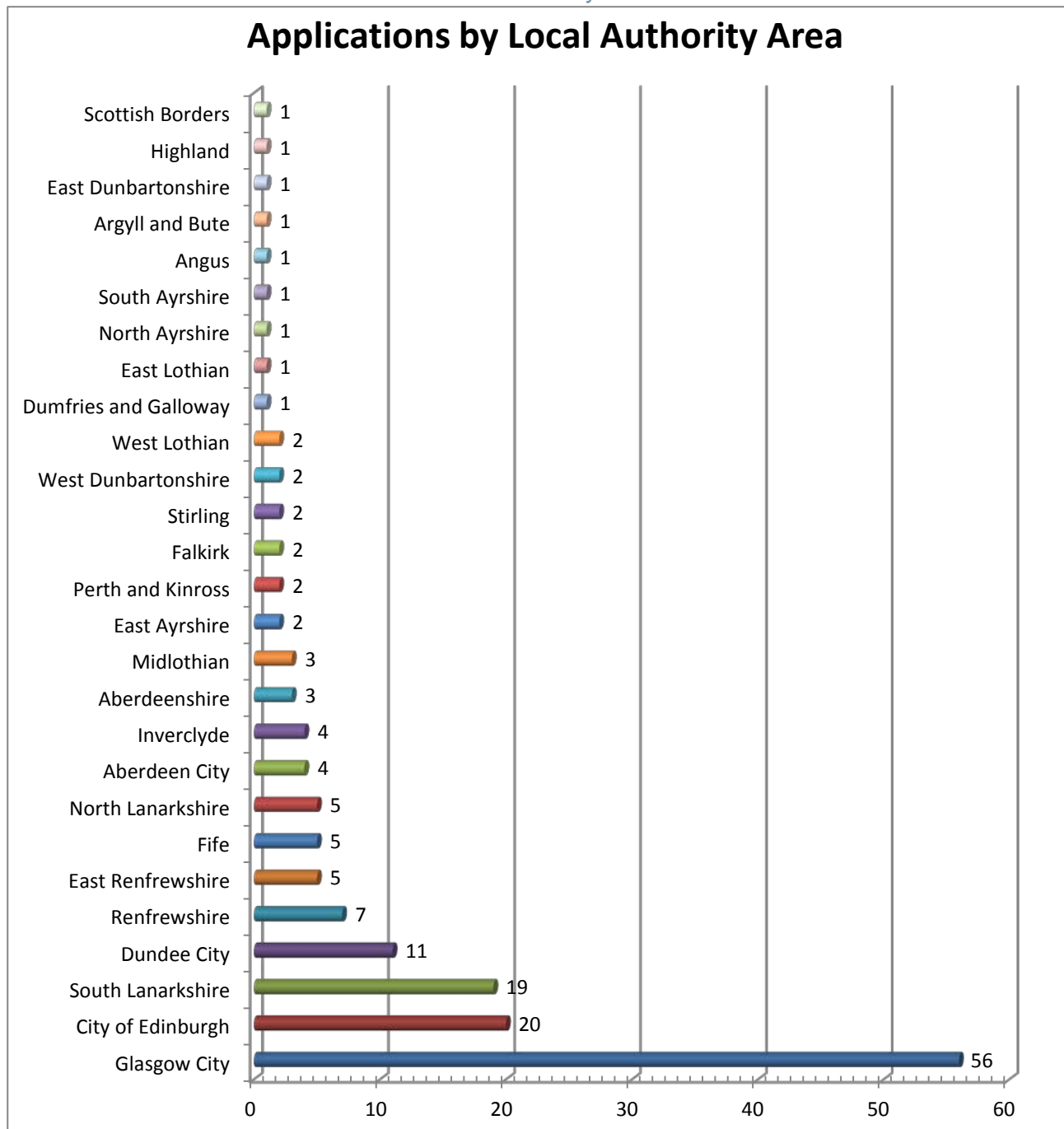


The table shows that while the number of applications was down across all categories, the vast majority of applications received concerned, as in 2014, commercial property factors. While this is not surprising, given that approximately 58% of factored properties are managed by commercial factors, the figures suggest that commercial property factors are over represented in terms of hohp applications. 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 an application if they do not pay for the service. Another reason could be that registered local landlords and local authorities are required to operate a clear and structured complaints procedure laid down by the Scottish Public Services Ombudsman which may result in better complaint handling compared with some commercial property factors. There is evidence of good complaint handling by some commercial firms but the standard of complaint handling is variable across this sector.

Where applications came from

Applications were received from across Scotland in 2015. At least one application was received from 27 of the 32 Scottish local authority areas.



Rejected applications

Of the 168 applications closed during 2015, a total of 40 were rejected by the President before being referred to a Committee.

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

Reasons for Rejection	2015
(a) that it is vexatious or frivolous application	9
b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute	1
(c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications	0
(d) that the dispute to which the application relates has been resolved (including 5 applications following evidence of compliance with a mediation agreement)	30
TOTAL	40

Mediations

The Panels have 30 trained mediators amongst their membership, who have all undertaken an accredited mediation course. In February 2014, a mediation service was introduced into the Homeowner Housing Panel's procedure.

Mediation has been more successful in hohp cases than in prhp cases, perhaps because of the nature of the disputes, as well as the ongoing relationship between the parties which allows for monitoring of any agreement. 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. 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.

A total of 32 hohp mediations took place in 2015 at 18 mediation sessions. While 14 of these sessions involved the consideration of one individual application, other sessions dealt with multiple applications. At one mediation session, 12 applications from separate homeowners in one housing estate were considered, while 3 mediation sessions considered 2 applications.

The outcomes of the mediations and resulting case outcomes are listed on the next page.

Mediation outcome	Case Outcome	Number of applications
<u>Settlement agreement reached</u> 28 applications	Closed – mediation agreement complied with in full and no referral to committee	22*
	Partial agreement reached and referred to committee on issues remaining in dispute	1
	Mediation agreement not complied with and referred to committee	5
<u>No agreement reached</u> 4 applications	Referred to committee	4

* Note: this total includes a settlement agreement in the multiple mediation involving 12 applications

Of the 22 cases that were closed as a result of mediation compliance, 17 were withdrawn in writing by the homeowner with confirmation of full compliance. The remaining 5 were rejected by the Panel President on the basis of evidence of compliance.

These figures show that where both parties agreed to mediation, a settlement agreement was reached in the vast majority (88%) of cases. There are still signs that some homeowners are reluctant to engage in mediation for a variety of reasons. These include: reluctance to agree to confidentiality; frustrations with the lack of initiation of a complaint handling process or delays in processing complaints by the property factor; a feeling that they have already tried to resolve the matter for some time without success; a wish to go to a public hearing; or a perception that they may achieve a higher financial award from a committee than any amount which may be agreed at mediation. This perception that a higher financial award will be imposed by a committee is not borne out by the evidence before the Panel. In fact, in some cases it has been noted that the homeowner has rejected an offer of settlement at mediation, and following a committee determination has received a lower award, or indeed no award. If homeowners agree to mediation, the take up of mediation by property factors is high.

Applications withdrawn by the homeowner

A total of 58 applications were withdrawn by the homeowner. The reasons why these applications were withdrawn are set out in the table below. In the majority of cases, the dispute had been resolved either by the parties or through mediation. The number of applications withdrawn following resolution by parties or at mediation totalled 43 which is a higher figure than the equivalent figure of 18 for the previous year. This may show a growing tendency for parties to engage in dialogue following receipt of an application resulting in mutually agreeable outcomes.

Reasons for Withdrawal	2015
Resolved by Parties	26
Process too long/complicated	2
Other reason/No reason given*	13
Resolved Through mediation	17
TOTAL	58

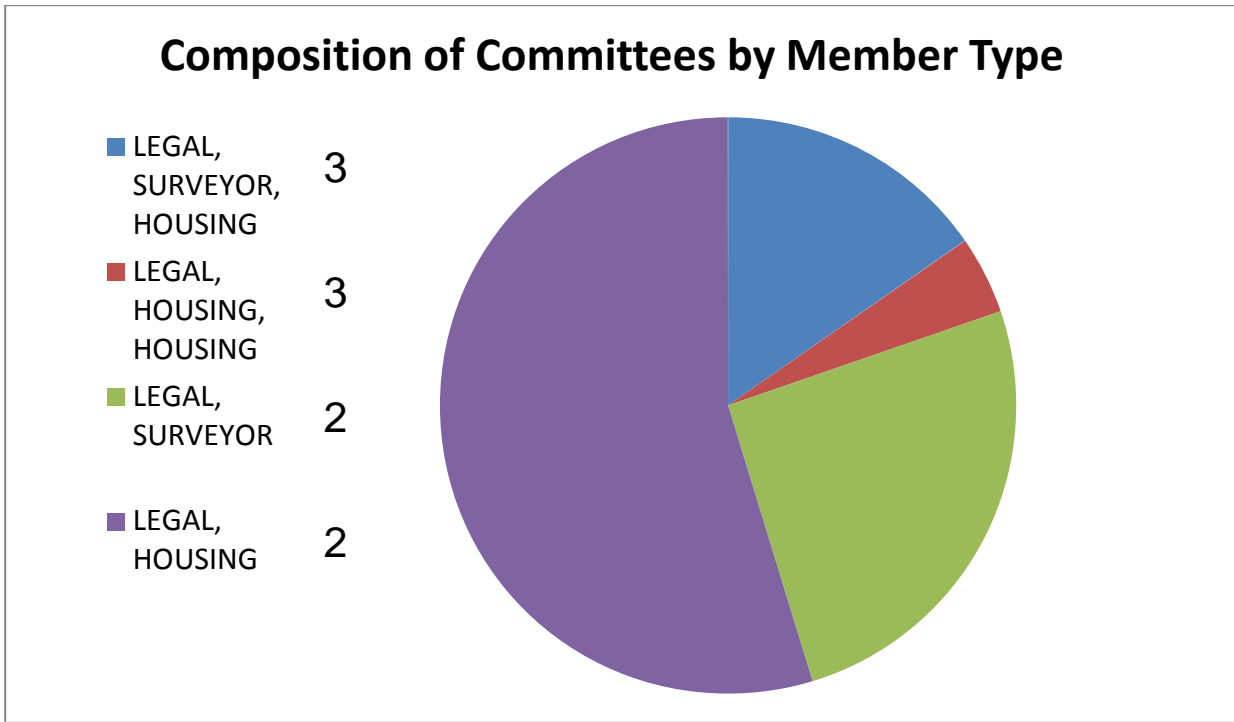
*parties are not required to give reasons for withdrawing their application, and reasons can be diverse so they are grouped together when they don't come under one of the other general categories monitored.

Committee composition

After an application has been accepted by the President of the Panel, it is referred to a Homeowner Housing Committee for determination. The members of the Committee are drawn from the Panel's membership. 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.

Of the hearings arranged for 2015, the composition of the Committees dealing with the applications is shown in the chart on the next page.¹²

¹² This data is gathered from all arranged hearings, and includes: applications with multiple hearings (e.g. adjourned hearings and compliance with PFEO hearings); and applications that were resolved or withdrawn leading to proceedings being subsequently cancelled.



Committee decisions

The committee issues a written decision 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 not failed to carry out its factoring duties or comply with the Code of Conduct, it issues a complied decision. If it decides, however, that the property factor has failed to carry out its 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 it considers reasonable. It is a criminal offence not to comply with a PFEO without reasonable excuse.

In 2015, committees issued 20 complied decisions and upheld all or part of the homeowner’s complaint in 59 cases.

The majority of Committee decisions were reached after an oral hearing, with 8 decisions being made on the basis of written representations.

DECISIONS ON APPLICATION	NUMBER
Complaints in application not upheld (complied decisions)	20
Some or all complaints in the application upheld	59
Other*	7

*this includes decisions where preliminary jurisdictional issues prevented the Committee from being able to proceed to make a determination so were decided as non-jurisdictions or incompetent applications.

As in previous years, the most common reason for a complaint under the Code of Conduct to be upheld was a breach of section 2, which is about communication and consultation requirements. There was, as in comparison with 2014, a marked increase in the number of these complaints. More than 50% of complaints made under Section 2 of the Code were upheld.

The number of complaints about a failure to carry out the property factor's duties was also higher than in 2014, with about 50% of these being upheld.

While fewer applications were received than in 2014, the overall number of complaints considered and also the number of complaints upheld were significantly higher than the previous year. This suggests that homeowners are including a greater number of individual complaints within each application than in 2014.

COMPLAINTS CONSIDERED/UPHELD IN 2015

CODE SECTION/DUTIES	COMPLAINTS CONSIDERED	COMPLAINTS UPHELD
Section 1: Written Statement of Services	42	9
Section 2: Communication and Consultation	67	42
Section 3: Financial Obligations	43	19
Section 4: Debt Recovery	34	15
Section 5: Insurance	23	8
Section 6: Carrying Out Repairs/Maintenance	54	22
Section 7: Complaints Resolution	49	23
Property Factor Duties	60	30
TOTALS	372	168

Compliance with Property Factor Enforcement Orders (PFEOs)

Where a PFEO has been issued, the committee makes a decision on compliance with the PFEO after the period for compliance stated in the PFEO has expired. 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 issues a Failure to Comply decision. It also advises the Property Factor Registration Team at the Scottish Government of this failure, and refers the matter to the Police/Procurator Fiscal for prosecution, as it is an offence not to comply with a PFEO.

In 2015, a certificate of compliance was issued by the committee in 23 cases where a PFEO had been issued. A failure to comply decision was issued in 8 cases.

Appeals

Parties have a right to appeal to the sheriff court against a decision made by a Homeowner Housing Committee. In 2015, one appeal by a property factor was lodged in court, and was dismissed in 2016.

5. Finance

Prhp and hohp are funded by Scottish Government. This annual report covers the calendar year 1 January to 31 December 2015, in terms of Section 29(5) of the Housing (Scotland) Act 2006. The financial year for the prhp and hohp, however, like all government sponsored bodies, runs from 1 April until 31 March. Since this annual report straddles two financial years, the accounting figures shown for the year 2015 include the budgets for both financial years.

Both prhp and hohp respond to the number of applications received and provide a demand-led service. It follows that the number of cases they consider during the year can be variable, and the Panels have little control over service demand.

Tribunal Jurisdiction Year	PRHP				HOHP		
	Repairing Standard & Rent		Third Party Applications*	Right of Entry S35*			
	2014/15	2015/16	2015/16	2015/16	2014/15	2015/16	
Expenditure items	all figures are £'000's						
Staff Salaries and Expenses (Figure includes staff salaries and expenses)	113.0	90.3	199.4	40.6	46.0	95.1	
Members Expenses (Figure includes Members Fees, Members expenses & training expenses)	270.0	393.6	25.6	14.3	195.2	208.7	
Central Costs (Figure includes accommodation costs, general expenses, postal costs, and computer/website charges.)	61.0	86.1	235.5	53.4	33.9	42.0	
TOTAL	444.0	570.0	460.5	108.3	275.1	345.8	

*these jurisdictions commenced in 2015/16 financial year so have no expenditure for 2014/15