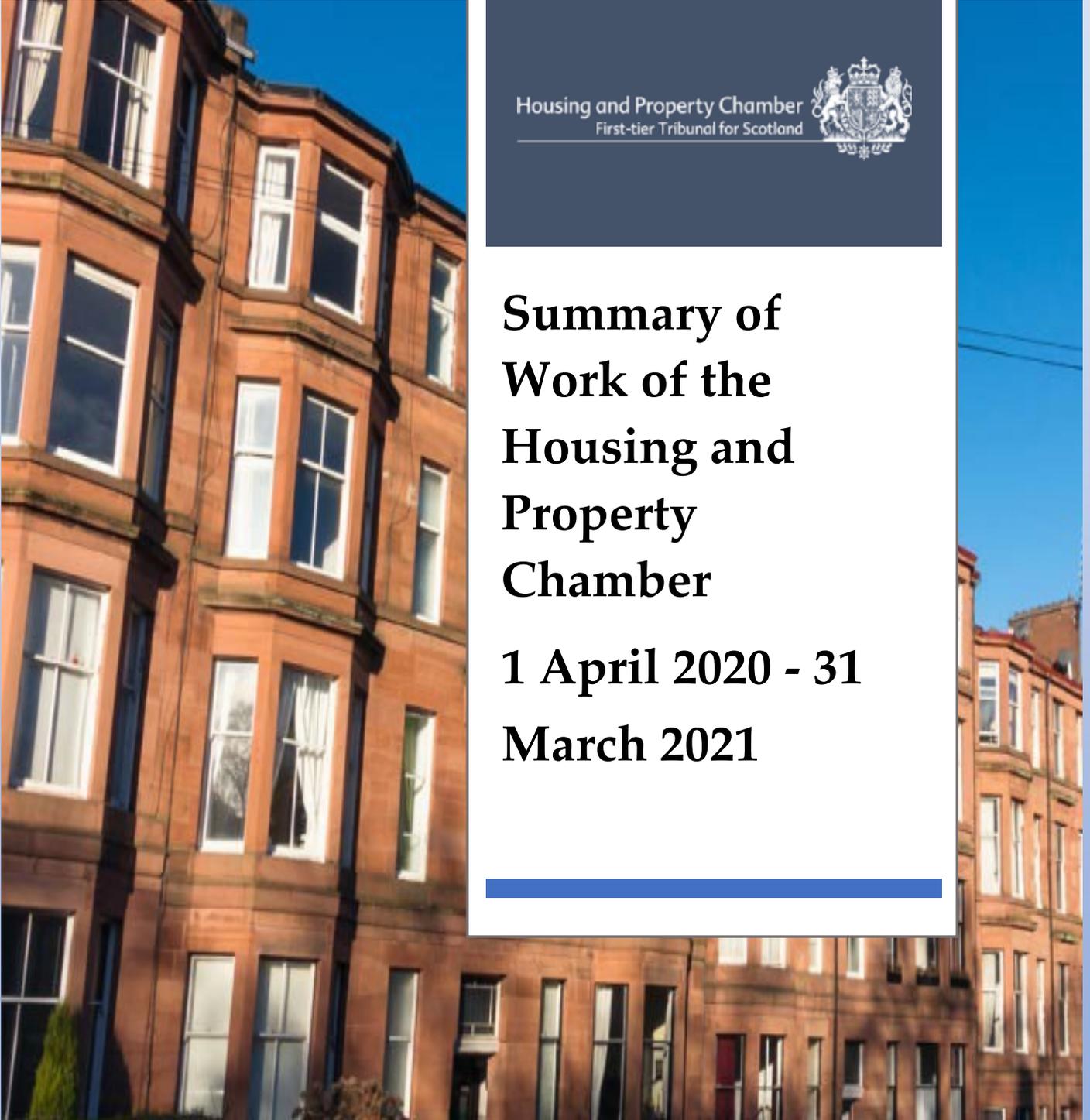


Housing and Property Chamber
First-tier Tribunal for Scotland



Summary of Work of the Housing and Property Chamber

**1 April 2020 - 31
March 2021**



Foreword by Chamber President

The year 1 April 2020 to 31 March 2021 has not been without its challenges. At the start of the period Covid safety measures resulted in the closure of the Glasgow Tribunals Centre and a suspension of tribunal business; this was followed on 9 July 2020 by the introduction of remote hearings with the tribunal members and parties participating from different locations using teleconference; and by the end of the period, all Housing and Property Chamber work had been recovered with plans in place for property inspections to resume. The chamber has weathered well the challenges of 2020. Apart from cases which involve property inspections and a handful of cases which were proving difficult to complete digitally, the chamber was by the end of the reporting period progressing cases without delays. This is due to the hard work, flexibility and resilience of those tribunal judges and SCTS staff who work within the chamber jurisdiction. My thanks go to them for the commitment and to parties to proceedings for their patience and cooperation.

This summary provides details of the types of cases which are heard by the Housing and Property Chamber, the procedure the chamber applications follow and, as with previous years, statistical information.

I hope this summary will be of interest.

Aileen Devanny

Chamber President

1. Introduction

As might be expected, the biggest challenge faced by the Housing and Property Chamber (HPC) during the year was dealing with the impact of the coronavirus pandemic on its business. All scheduled hearings and case management discussions (CMDs) were postponed from 19 March 2020.

Glasgow Tribunals Centre, the HPC administrative base, was closed to administration staff from 25 March 2020 and reopened again with limited staff on site on 15 June 2020. Initially, at the start of lockdown, only limited numbers of Scottish Courts and Tribunals Service (SCTS) staff were able to remotely action any urgent or time critical applications. As time went on, that situation improved with SCTS staff who work within HPC being given laptops which allowed remote access to the necessary case management systems. As resources allowed, applications which were received electronically and by post were processed with judicial decision-making through the sift stage to the point of notification of acceptance of the application in readiness for fixing a case management discussion (CMD) or hearing. Until the end of June 2020, three part time tribunal judges of HPC and the Chamber President assisted remotely with the urgent sifting of applications due to the time critical nature of some applications because of time bar rules.

The Chamber President was involved in regular operational meetings on recovery planning with SCTS managers and with administration team leaders for the different jurisdictions within HPC. There are 50 different types of applications which may be brought to the Chamber. There are 5 administration teams dealing with different jurisdictions, depending on application types.

As at 24 June 2020, 453 CMDs and 237 hearings required to be scheduled / rescheduled. On 9 July 2020, the HPC resumed hearing cases. Initially, CMDs were scheduled for the first few weeks using teleconference calls. Evidential hearings shortly followed with parties, tribunal judges and clerks sitting remotely and dialling in. New and revised practical guidance was issued to clerks and tribunal judges on the conduct of teleconference CMDs and hearings. Instructions are also issued to parties. For those cases where it is difficult to hear the case fairly by teleconference, an option of a video conference hearing was initiated. However, it is unlikely for the foreseeable future that video conference hearings will be available for all cases of the Chamber given the pressures which currently exist on the SCTS digital support team.

No face-to-face hearings have taken place since 18 March 2020. A system is in place to allow members of the public to listen or to observe remote CMDs and hearings, depending on the digital format used for the proceedings. The Chamber is gathering data on user feedback on the remote HPC proceedings.

All inspections and re-inspections in repairing standard and rent assessment cases and supervised access arrangements in landlord right of entry cases were suspended from 19 March

2020 to await a safe procedure for property inspections, and it was not possible to reintroduce these until after the end of the reporting year. However, from 11 January 2021 case management discussions took place with parties to take forward claims relating to defective rented houses in the absence of an option for property inspections.

The [Coronavirus \(Scotland\) Act 2020](#) has made temporary but significant changes to the statutes applicable to private sector evictions in Scotland, designed to protect tenants during the pandemic¹. These apply where a prescribed notice was served on or after 7 April 2020. The main changes are:

1. Mandatory grounds of eviction become discretionary, requiring the tribunal to consider the reasonableness of making an eviction order in each case. In rent arrears cases, since 30 September 2020, this includes considering the extent to which a landlord has complied with the prescribed pre-action requirements.²
2. The notice periods required before most eviction applications can be brought before the HPC are extended. The extended notice periods are generally either 6 months (in most cases) or 3 months depending on the grounds used.³

The Chamber has weathered well the challenges of 2020. Apart from cases which involve property inspections and a handful of cases which were proving difficult to complete digitally, the Chamber was by the end of the reporting period progressing cases without delays. This is due to the hard work, flexibility and resilience of those tribunal judges and SCTS staff who work within the HPC jurisdiction.

2. The Chamber jurisdictions

The 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 Section 2 and Schedule 1. Note: the changes apply to all three types of private tenancy (private residential tenancies; assured tenancies; and tenancies under the Rent (Scotland) Act 1984).

² Where a notice to quit/leave was served on or after 7 April 2020 and the arrears occurred wholly/ partly on or after 27 May 2020: [The Rent Arrears Pre-Action Requirements \(Coronavirus\) \(Scotland\) Regulations 2020](#)

³ Where a notice was served after 3 October 2020, the notice period for certain tenant conduct grounds relating to antisocial or criminal behaviour was reduced to its previous length of 28 days: [The Coronavirus \(Scotland\) Act 2020 \(Eviction from Dwelling-houses\) \(Notice Periods\) Modification Regulations 2020](#)

a. 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 become by far the biggest jurisdiction in terms of case volumes.

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

- i. Eviction and recovery of possession.
- ii. *Civil proceedings* seeking payment orders.
- iii. *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.

b. 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.

c. 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:

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

d. 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.

e. 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.

f. Letting agent applications

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

3. The HPC's approach

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

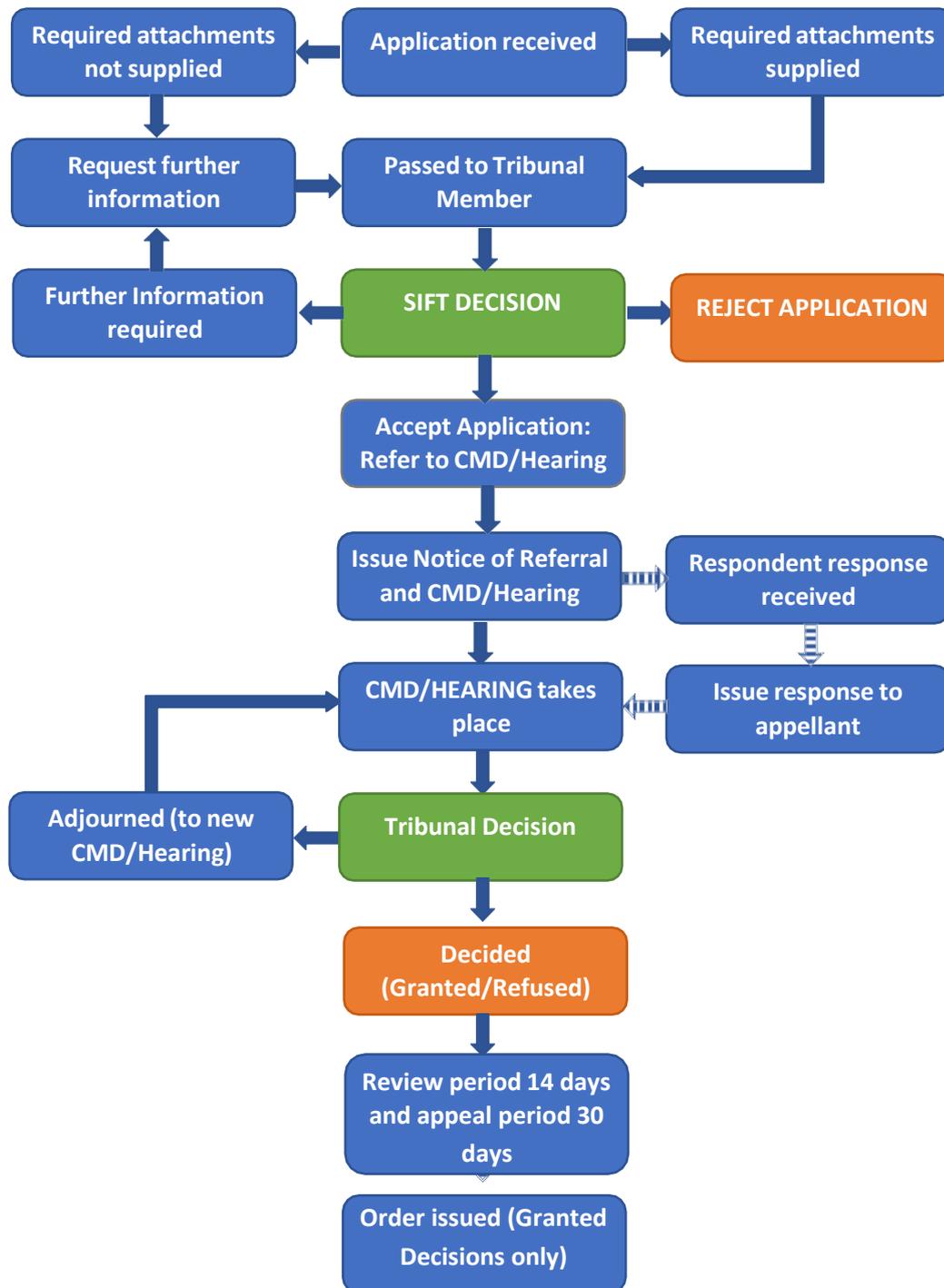
Guidance on the application process is available on the HPC website. The application can be made on a form which can be downloaded from the website and contains prompts on the required information and attachments. HPC staff are not legally qualified and cannot give case specific legal advice, but they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

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

4. The HPC process

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

HPC Process Flowchart



Key stages of the process

i. Initial check on receipt of application

When an application is made, it must meet the requirements prescribed by the relevant HPC procedure rule. The application first goes through a process where a tribunal judge (legal member) must decide whether it meets the prescribed requirements for that type of application. When they are first received, applications often fail to meet the prescribed requirements. Required attachments may be missing, while other information relating to the pre-application procedures or other essential information to make out the case may not be included. In property factor, letting agent and repairing standard cases, it is common for applicants to have failed to notify the other party of their complaints, 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, 14% of all applications disposed of were rejected, generally because either they did not meet the prescribed requirements or because they did not meet this test.

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.⁴ A final decision on the application can be made at the CMD. Prior to the

⁴ 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, 10 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. However, this changed during the year covered by this report, particularly in relation to eviction applications. As a result of the temporary changes introduced by the [Coronavirus \(Scotland\) Act 2020](#), previously mandatory grounds of eviction are now discretionary. The tribunal must therefore now consider the reasonableness of making an eviction order in each case. As a result, eviction applications where the prescribed notice was served on or after 7 April 2020 were referred to a two-person tribunal, comprising a legal member and an ordinary member with housing expertise. While most were still decided at the CMD, possibly because a number of cases coming before a tribunal pre-dated the temporary legislative changes, almost twice as many eviction applications (17%) were decided at an evidential hearing than in the previous year (9%).

Hearings are 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.

Prior to the suspension of cases in March 2020, the standard procedure in repairing standard cases was to arrange an inspection of the property, immediately followed by a hearing. During the reporting year, however, it was not possible to carry out an inspection of the property for safety reasons. The consideration of these applications was therefore suspended for some months. CMDs began to be fixed in repairing standard cases from 11 January 2021, 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.

Since CMDs and hearings recommenced on 9 July 2020, these have taken place by teleconference call, with tribunal members, parties and clerks participating remotely. In a small proportion of cases, CMDs and hearings have been conducted by videoconference, where the legal member considers that this is necessary to deal with the application fairly and justly. Only 20 applications were heard by videoconference between 9 July 2020 and 31 March 2021, mostly in private rented sector cases. A considerable amount of forward planning is required in advance of a videoconference to ensure that the hearing runs smoothly on the day.

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.

5. Overall case volumes during the year

A total of 2449 applications were received during the year across all jurisdictions. As might be expected in the circumstances, this was a significant (40%) reduction on the number of applications received during the previous year. A breakdown of applications dealt with during the year is shown in the table below.

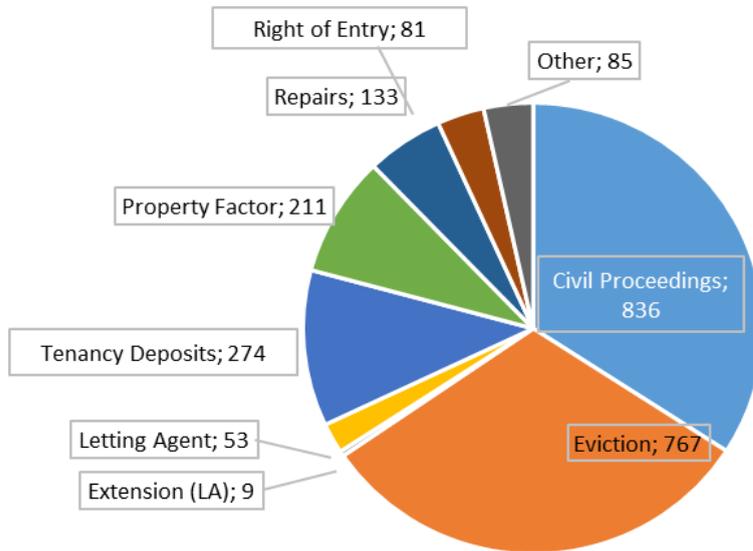
Applications dealt with during the year

Applications	Brought forward	Received	Closed	Carried forward
Totals	1712	2449	2720	1449

Applications received

A breakdown of the categories of application received is shown in the chart on the next page.

Applications received by Type



As in the previous year, the vast majority (80%) of applications received fell within the private rented sector jurisdiction. Overall, 31% of applications concerned eviction, which was a significant drop compared to the previous year. While previously this was the biggest category of applications received, the number of applications was only 44% of that received in 2019-20. While there may be many reasons for this, it seems likely that the main driver for the reduction was the Coronavirus (Scotland) Act changes.

The largest proportion (34%) of applications received were for civil proceedings in relation to private tenancies.

As in the previous year, the third biggest category of applications (11%) 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. The level of these applications was high, at 80% of 2019-20 levels.

Applications in all other case categories were also down, with the exception of 1) property factor applications, which actually increased by 14% compared with the previous year and 2) landlord (right of entry) applications, which were up slightly by 4%.

Applications closed during the year

A total of 2720 cases were closed during the year, equivalent to two-thirds (66%) of the previous year's figure, reflecting the fact that no CMDs or hearings were held for a period of almost four months. The decrease in application volumes is reflected in the lower number of closed cases.

Rejected and withdrawn applications

Of the 2720 applications closed during the year,⁵ a total of 381 (14%) were rejected⁶. A breakdown of the reasons why the applications were rejected is shown in the table below.

The applications rejected included cases 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

Reason for rejection	Number
Frivolous or vexatious	101
Not appropriate to accept	127
Made for a purpose other than that specified in the application	144
The dispute has been resolved	9
Total	381

In total, 23% of applications closed during the year were withdrawn by the applicant at some stage of the proceedings, mostly after they were referred to a tribunal. 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 those applications is because the dispute has been resolved by the parties.

Work done during the year

The figures discussed in section 6 for each category of application relate to: 1) the applications received during the year and 2) the outcomes for those applications which were closed during the year.⁷ It should be noted, however, that a significant proportion of the Chamber’s work involves managing the progress of ongoing applications which may not reach a final conclusion during the year. An application may be processed in one reporting year, for example, but it may

⁵ Note: this figure relates to applications closed during the year, rather than applications received.

⁶ 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

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

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.

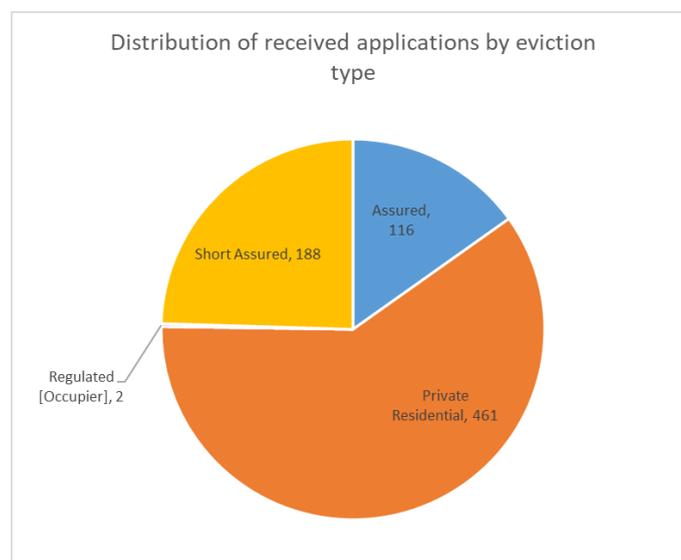
An application may be dealt with at several CMDs and/or may be postponed / adjourned on one or more occasions for a variety of reasons. This can involve a significant amount of work for the tribunal and for the HPC administration. As discussed further at section 9 of this report, since the introduction of teleconference CMDs and hearings in the vast majority of cases, there have been fewer postponements in private rented sector CMDs and in some types of hearings than was previously the case.

6. Applications received and case outcomes by case type

i. Evictions

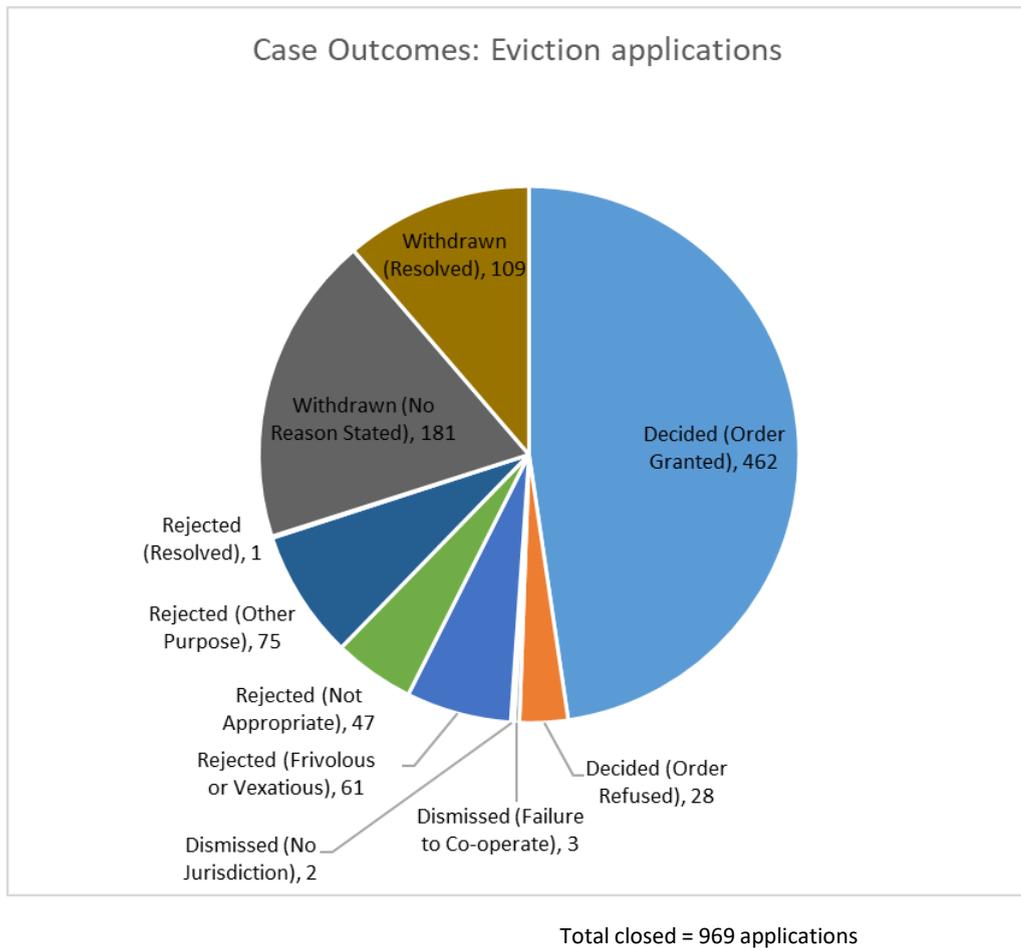
As in the previous year, the majority of eviction applications concerned private residential tenancies, which were introduced on 1 December 2017. As might be expected, these are becoming increasingly common, making up 60% of applications as against 50% in 2019-20.

There was a corresponding decrease in the proportion of applications relating to assured or short assured tenancies, which made up 40% of applications. 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.



Case outcomes

The chart below shows the outcomes for 969 eviction applications which were closed during the year.



A total of 184 applications were rejected, while 290 were withdrawn by the applicant at some stage of the process. In 109 withdrawn applications, the reason given was that the matter had been resolved. While no reason was stated for the other 181 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, an order was granted in the vast majority of cases (462 or 94%). An order was refused in 28 cases, and three applications were dismissed.

ii. Civil proceedings

Civil proceedings applications can be brought in relation to any monetary dispute between landlord and tenant. In previous years, the majority of these applications accompanied related eviction applications. These would 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.

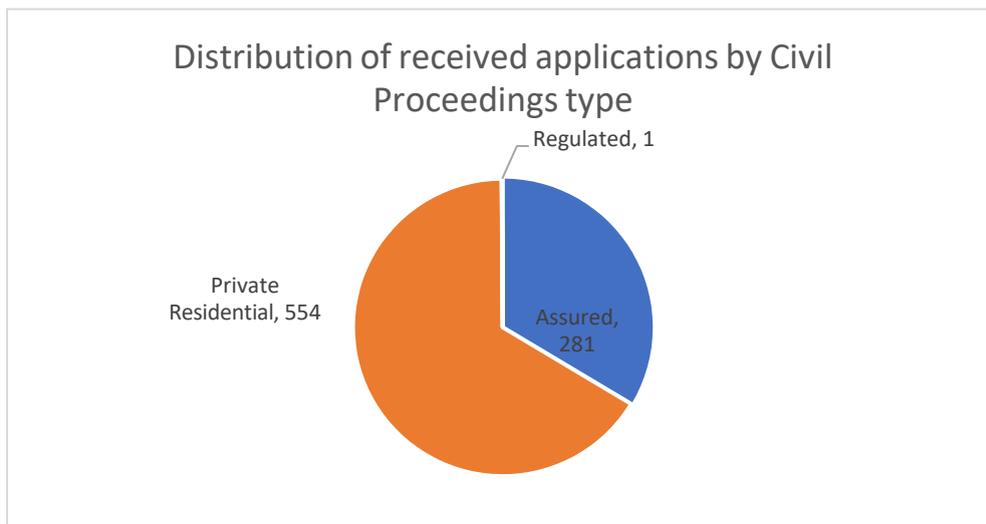
During the reporting year, however, the number of civil proceedings applications was actually higher than the number of eviction applications. This reflects the experience of tribunals that

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.

As in the previous year, a sizeable number (145) 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 £39,520.⁸

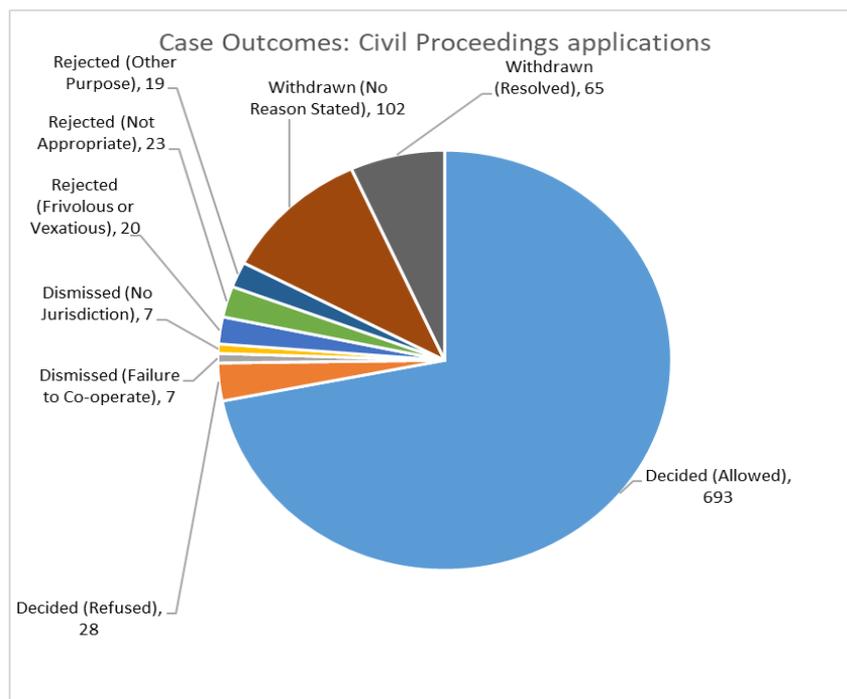
As expected, the proportion of civil proceedings applications involving private residential tenancies again increased during the year. These accounted for two-thirds (554 or 66%) of applications compared to half (49%) in the previous year, with one-third (34%) relating to assured/short-assured tenancies.



Case outcomes

The chart below shows the outcomes for 964 civil proceedings applications which were closed during the year.

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



Total closed= 964 applications

A total of 62 applications were rejected, and 167 were withdrawn. The reason stated for the withdrawal in 65 (39%) of these applications was that the matter had been resolved. 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, this suggests that in a sizeable proportion of cases, the parties may have negotiated and/or resolved the matter prior to the CMD or hearing.

Of the applications which were determined by a tribunal, the vast majority (693 or 94%) were granted, and 28 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 previous year, relatively few respondents took up this option during the year. A total of 45 applications were received. In half of those applications disposed of during the year (21), a time to pay direction was granted. Of these, the vast majority (19) involved payment by instalments. The remaining half (21) of applications were refused.⁹

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

⁹ Note: there was no outcome in the remaining 3 applications as at the end of the reporting year.

commencing. If they fail to do so, the tenant can make an application to the HPC. 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 has 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.¹⁰

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 274 such applications. While the actual number of applications received was down by 20% on the previous year, they accounted for an increased proportion of all applications. They comprised 11% of all applications, up from 8% in 2019-20. These figures suggest that, despite the duty having been in place since 2012, there are many landlords who are still failing to comply with it. While in some cases the landlord has deliberately failed to comply with the duty, research by Safe Deposits Scotland found that in most cases the landlord was either unaware of the legislation or forgot.¹¹

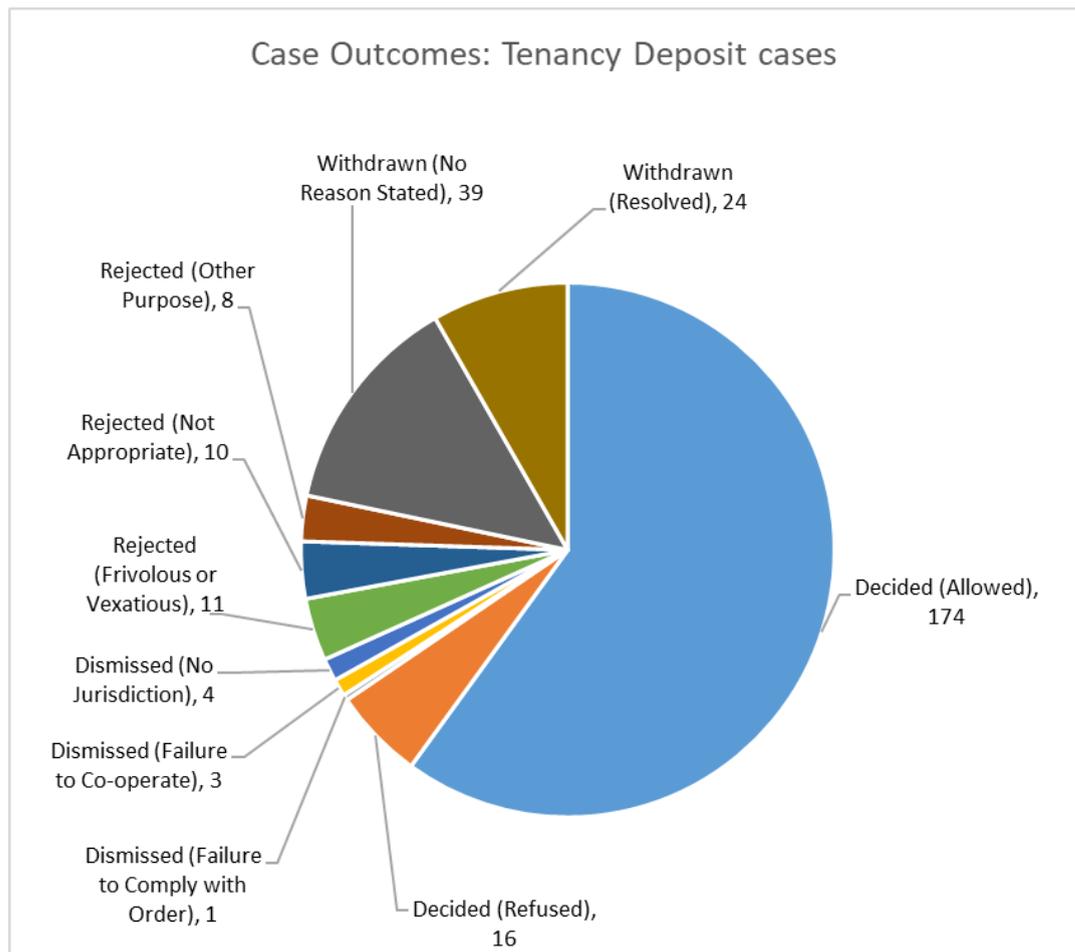
The same research found that the average award made by a tribunal was 1.7 times the value of the deposit. It also found that landlords had been ordered to pay a total of £321,609 to tenants, averaging £1,109 per case. The highest award to tenants was £7,500 in relation to a rented property in Edinburgh,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

Case outcomes

The chart below shows the outcomes for 290 tenancy deposit applications which were closed during the year.

¹⁰ Scottish Association of Landlords – evidence to the [Local Government and Communities Committee](#) (at Annex B, p.7

¹¹ [Majority of Scottish Landlords Comply with Tenancy Deposit Laws](#), Scottish Housing News, 9 January 2020



Total closed =290 applications

A total of 29 applications were rejected. In some cases, this was because the application was received more than three months after the tenancy ended, which is the statutory deadline for such applications. A total of 63 applications were withdrawn at various stages of the process. The reason stated for 38% (24) of these withdrawals was that the matter had been resolved. This suggests that there may have been discussion and negotiation between the parties in those cases.

Of the 197 applications which were decided by a tribunal, the vast majority (174 or 88%) were granted in the applicant tenant’s favour. A total of 16 applications were refused, while the remaining 7 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

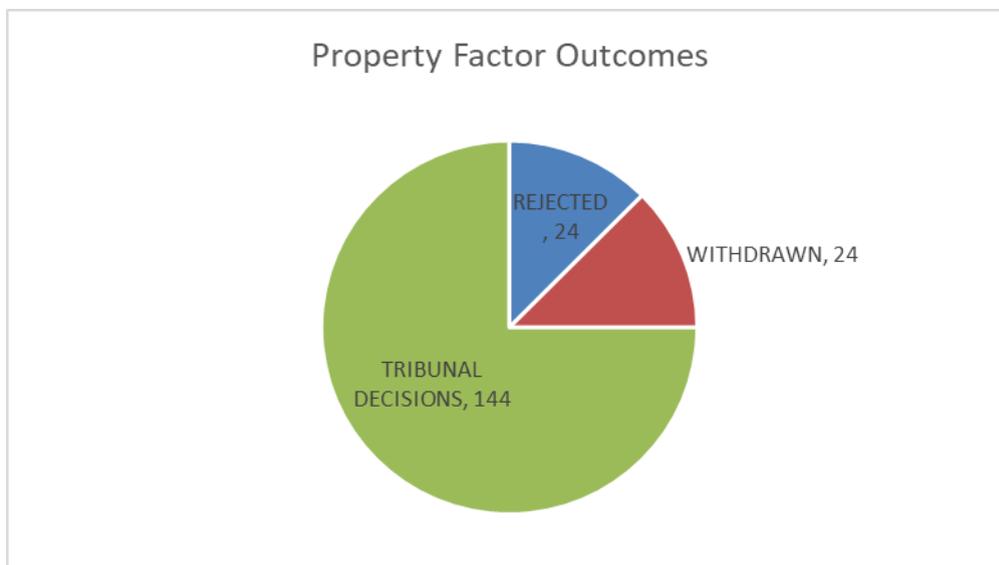
There were 211 property factor applications, representing 9% of all applications received. This was a 14% increase on applications received during the previous year. As in previous years, the vast majority (91%) of these applications involved commercial property factors, while 8% concerned housing associations (or their subsidiaries) and the remaining 1% involved local authorities.

The vast majority of the applications (93%) concerned residential factoring, with just 7% (down from 22% in 2019-20) categorised as land management complaints. As in previous years, the most common category of complaints under the code of conduct concerned communication and consultation (80%). The most common categories of complaint after this related to financial obligations (60%), complaints resolution (58%) and the written statement of services (55%).¹² More than three-quarters (78%) of applications also included a complaint that the property factor had failed to carry out its property factor’s duties under the 2011 Act.

During the year, a total of 9 groups of multiple applications from different homeowners within a development or tenement were received. Group applications totalled 114 applications overall; these therefore accounted for more than half of all applications. Most of the groups involved between 3 and 7 applications, but there was also one group of 22 applications and another group of 56 applications. Some of these groups were larger than in the previous year, and this may account at least partly for the increase in property factor applications compared with 2019-20. 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.

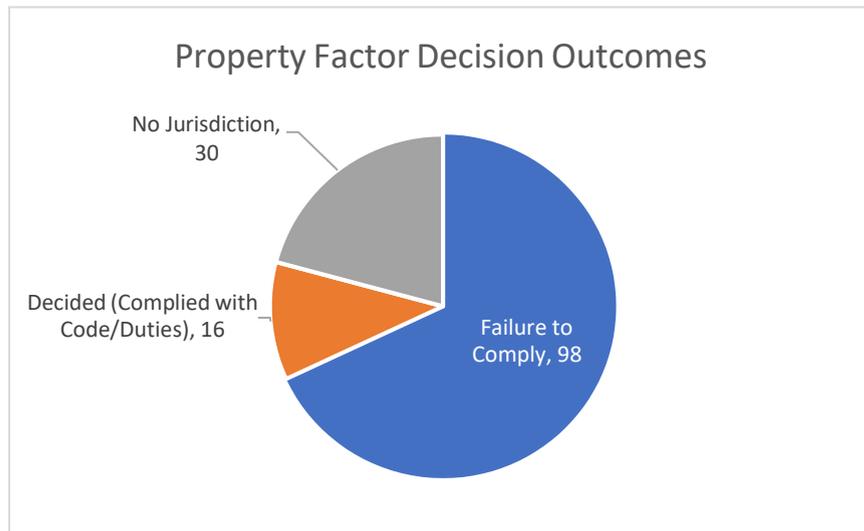
Case outcomes

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 (PFE0) is issued by a tribunal, a decision on whether the order has been complied with may not be made until the following year.



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

A total of 24 applications were rejected. A further 24 applications were withdrawn by the applicant, with no reason stated for most of these (21); in the other 3 cases it was because the matter had been resolved. A total of 144 applications were decided by a tribunal. The outcomes of those applications are shown in the chart below.



In more than two-thirds (98 or 68%) of those 144 applications, the tribunal found that the property factor had failed to comply with the code or the property factor's duties. This is a considerably higher proportion of cases than in the previous year, when a failure to comply was found in only 44% of decided applications. The tribunal found that the property factor had complied with the code or their duties in only 16 (11%) applications. While on the face of it, this apparent fall in the level of compliance with the code/property factor's duties is a matter of some concern, the figures in fact largely reflect the numbers of group applications involved. The majority of applications where a failure to comply was found - 58 of 98 applications - were group applications (one group of 42 applications and another group of 16).

The remaining 30 applications were dismissed as after considering legal submissions on the issue, the tribunal considered them to be outwith its jurisdiction. This apparently high number is explained by the fact that all but 3 of these related to group applications; 19 of the 30 applications were accounted for by one group application.

A total of 71 Property Factor Enforcement Orders (PFEOs) were issued.

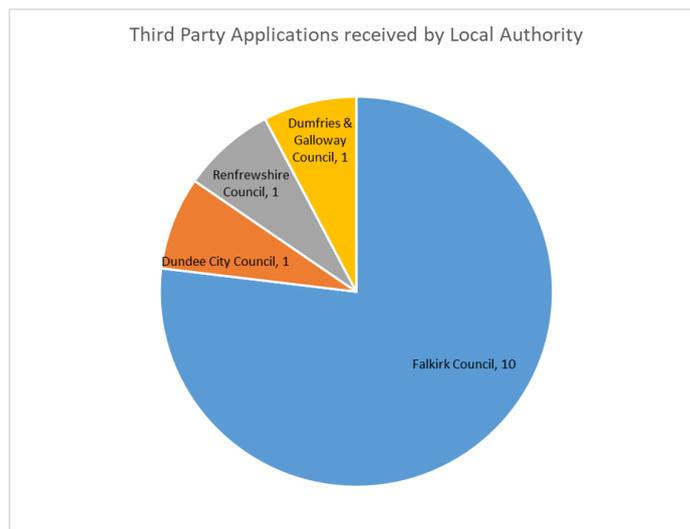
Tribunals considered whether property factors had complied with a PFEO in 60 cases.¹³ The tribunal found that there had been compliance with a PFEO in every one of these cases. This is a much higher rate of compliance than in the previous year and is a positive outcome.

¹³ Note: some of these PFEOs would have been issued in the previous year. Of the 60 cases where the tribunal found that the property factor had complied with the PFEO, 39 related to three group applications.

Repairing standard applications

A total of 133 repairing standard applications were received – a quarter (26%) reduction on the figure for the previous year - comprising 5% of all applications. Of these, 90% (120) were made by parties, while only 10% (13) were made by third party applicants. Although the number of applications made by tenants was down slightly (a reduction of 10 compared to the previous year), the main factor driving the number of applications down was a sharp fall in third party applications, from 27% of applications down to 10%. It is likely that this was due to issues arising from the coronavirus pandemic and the related restrictions.

As before, third-party applications came from a small number of local authorities which have been particularly proactive. Applications were received from only 4 of the 32 local authorities, as shown in the chart below. In 2019-20, applications had been received from 10 local authorities. In both years, the highest number of applications came from Falkirk Council.



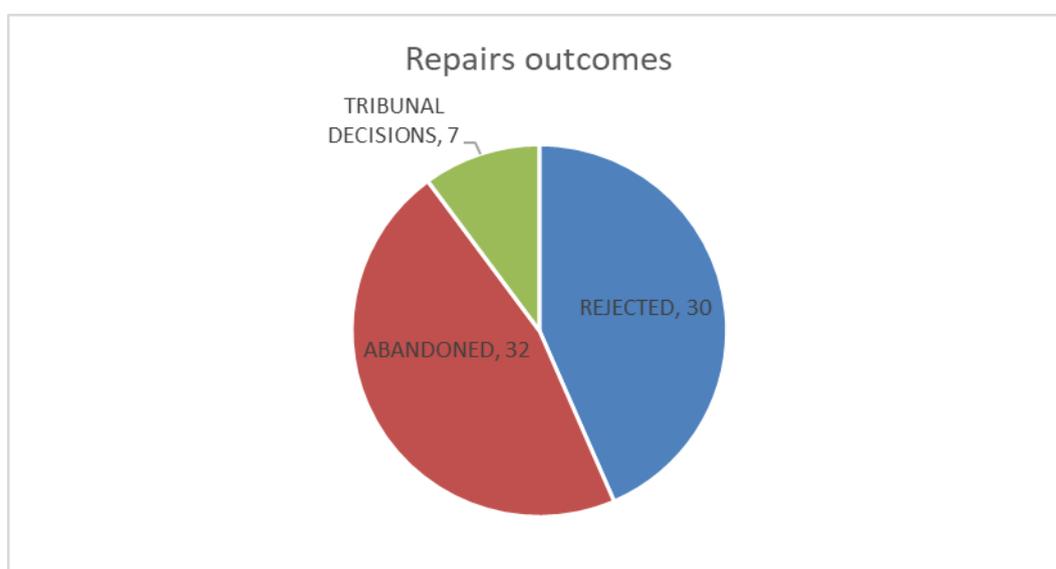
Case outcomes

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 a few cases, the tribunal was able to make a decision on the application on the basis of the other evidence before it without the need for an inspection.

The chart below shows the outcomes of repairing standard applications which were closed and/or decided by a tribunal during the year. Only 7 applications were actually decided by a tribunal during the year, for the reasons outlined above. All of these decisions were made in the absence of a property inspection.

‘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.



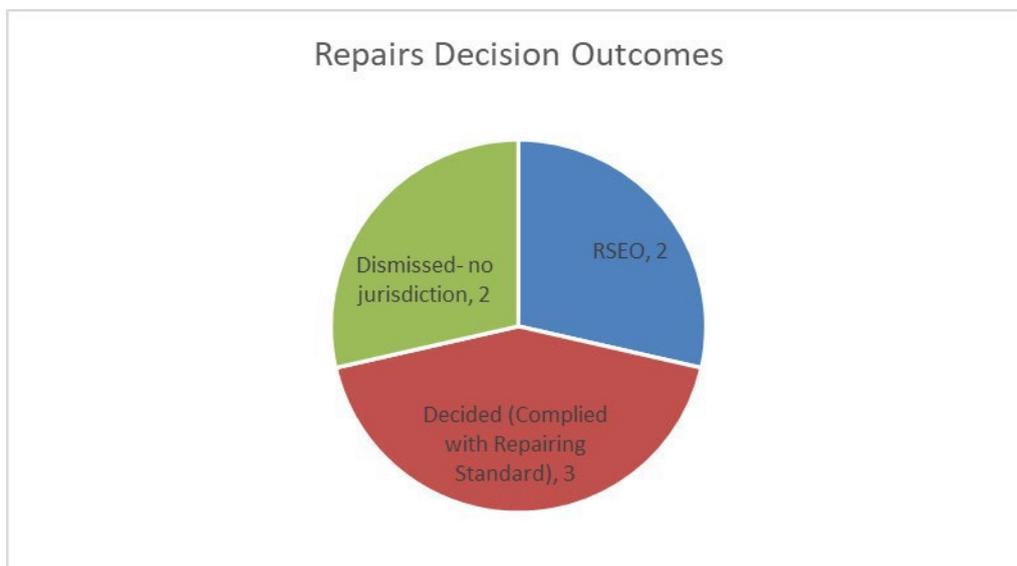
Of the other 62 applications closed during the year, 30 were rejected. The most common reasons for rejection were that the tenant had not responded to requests for further required information; that the applicant was no longer a tenant at the time the application was made; and that the tenant had failed to send the required notification of repairs to the landlord.

A total of 32 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.¹⁴ In 28 cases, the HPC continued with the application and referred it to a tribunal even after the tenancy was terminated, due to the allegations made or given the nature of the repairing complaints made, which raised health and safety issues for others.

¹⁴ Housing (Scotland) Act Schedule 2 Paragraph 7

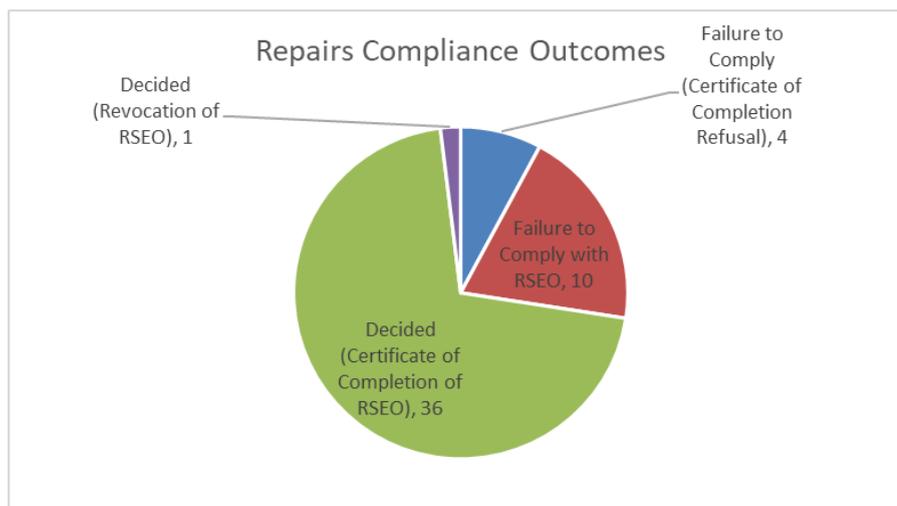
The number of tribunal decisions is lower than in previous years because of the inability during the reporting year to carry out safe inspections due to the coronavirus pandemic, as explained elsewhere in this report.

The decisions made on the 7 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 and issued a Repairing Standard Enforcement Order (RSEO) in two cases. In three cases, the tribunal found that the landlord had complied with the repairing standard duty. In two applications, the tribunal found that it had no jurisdiction.



A total of 36 Certificates of Completion were issued by tribunals following compliance by the landlord with the RSEO. A Failure to Comply decision was issued in 10 cases, and 4 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 1 case, the tribunal revoked the RSEO because it considered that the action required by the order was no longer necessary. In 4 cases where a Failure to Comply decision had previously been issued, and the landlord subsequently contacted the HPC to say the works had been completed, the tribunal decided that the work was still not complete and refused to issue a Certificate of Completion.



Where a tribunal has issued an RSEO, it may later vary the order as it considers to be reasonable.¹⁵ 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. During the reporting year, tribunals varied the RSEO in some cases to give the landlord more time to carry out the works due to coronavirus restrictions which meant that contractors were unable to enter the property to carry out the required works.

v. Letting agent applications

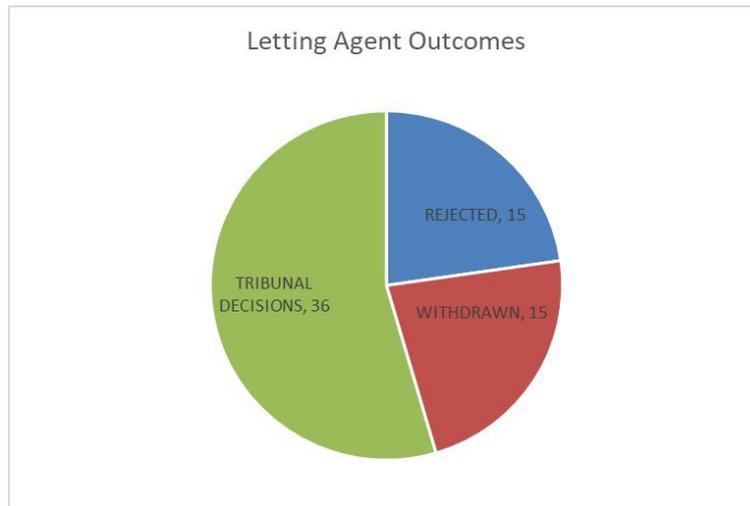
1. Letting agent code of practice

A total of 53 applications to enforce the letting agent code of practice were received during the year, a 31% decrease on the previous year's figure. 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 almost all categories of application were down during the reporting year, the volume of these applications remains significantly below the original projected figure of 240 cases per annum.

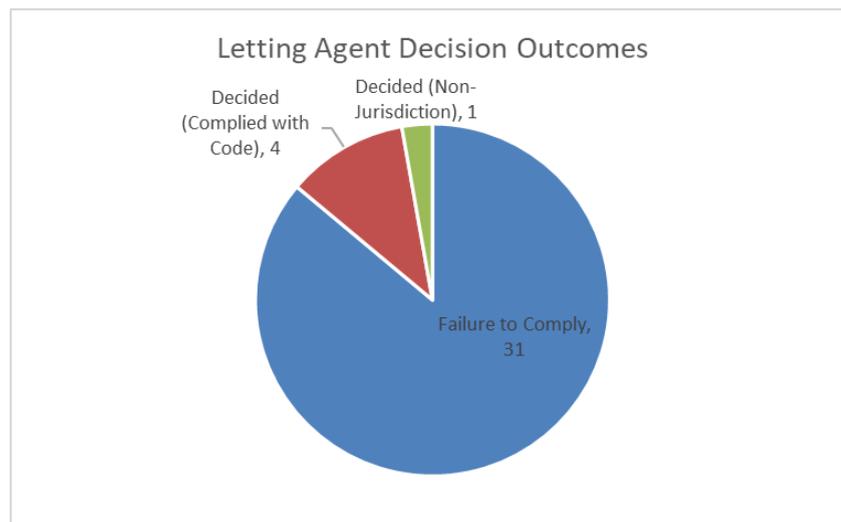
Case outcomes

The chart below 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 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.

¹⁵ Housing (Scotland) Act 2006 section 25



Fifteen applications were rejected, and a further 15 were withdrawn, with no reason stated for the withdrawal. A total of 36 applications were decided by a tribunal. The decisions made are shown in the chart below.



In the vast majority (31) 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 almost all (29) of these cases. The tribunal decided that the letting agent had complied with the code in only 4 cases. The remaining application was dismissed by the tribunal as it did not have jurisdiction.

The low level of compliance with the code of practice is 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 3 years by the end of the reporting year.

Tribunals considered whether letting agents had complied with LAEOs in 18 cases.¹⁶ The tribunal found that there had been compliance with a LAEO in most (14) of these cases, with a failure to comply decision in only four cases. While tribunals considered compliance in only

¹⁶ Note: some of these LAEOs would have been issued in the previous year

around half the number of cases during the previous year, these figures suggest a higher rate of compliance than in 2019-20.

2. Extension of time limit to determine application for letting agent registration

During the year, 9 applications were received from Scottish Ministers for an extension of the time limit to determine an application for registration as a letting agent.

Case outcomes

Of the 19 applications closed during the year, ten were withdrawn and nine were granted.

vi. Landlord (right of entry) applications

There were 81 landlord (right of entry) applications, a 4% increase on the previous year. The number of applications within this jurisdiction, while remaining relatively low, has been slowly increasing year on year since it was introduced in December 2015. Right of entry applications continue to be received in a few cases where there is also a repairing standard dispute (and on occasion an eviction or civil proceedings application) involving the same parties.

During the reporting year, coronavirus restrictions meant that the tribunal was unable to provide supervised access arrangements in these cases if required. In light of this, ordinary (housing) members endeavoured to actively assist parties to reach agreement over access arrangements. Supervised access arrangements resumed after the end of the reporting year.

vii. Other types of application

Various other types of application made up the remaining 3.5% of applications (85).

1. Rent assessment applications

Only a small number of rent assessment applications (10) were received. This represented a significant (47%) fall on the previous year, continuing the decline in these applications over recent years. The consideration of rent assessment cases had to be delayed during the year, due to the need for property inspections to be carried out and the difficulty of initiating these safely during the pandemic. Inspections resumed after the end of the reporting year.

2. Other private rented sector applications

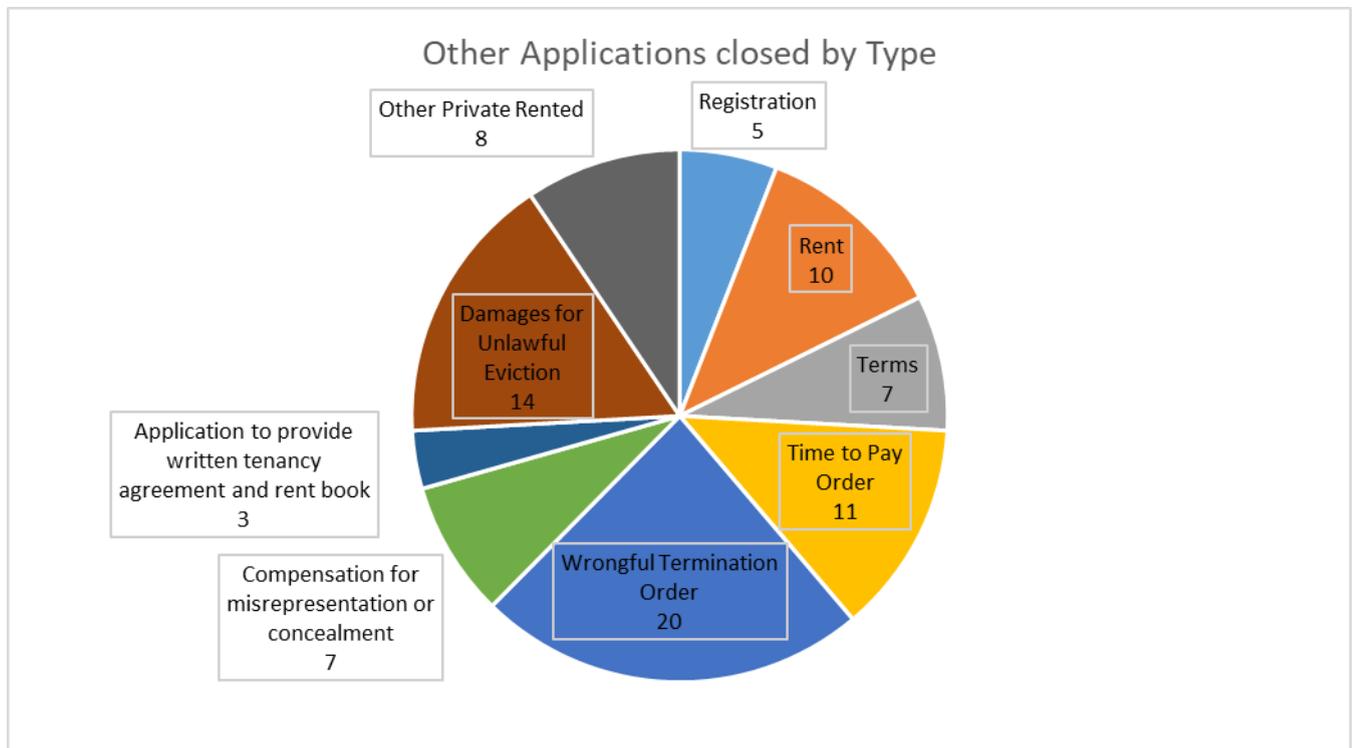
The remaining applications were all within the private rented sector jurisdiction. These included:

- 20 applications for wrongful termination orders (representing a slight increase on the previous year)
- 14 applications for damages for unlawful eviction (a 40% increase on the previous year)

- 11 applications for time to pay orders
- 7 applications to draw up the terms of a tenancy
- 7 applications for compensation for misrepresentation or concealment by a landlord
- 5 landlord /letting agent registration appeals
- 3 applications to provide written tenancy agreement and weekly rent book.

A further eight applications were also received relating to various other private rented sector issues.¹⁷

The breakdown of ‘other’ applications received is shown in the chart below.



7. Representation of parties

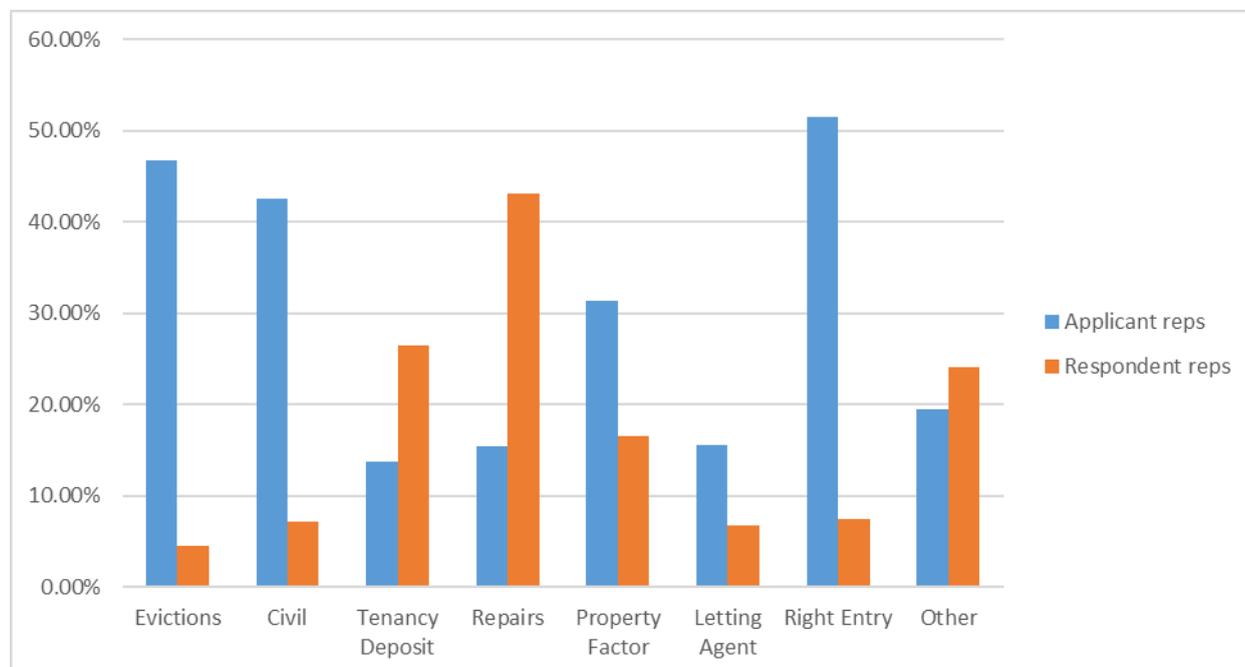
As in the previous year, whether parties were represented in the tribunal process during the year varied according to 1) the type of application and 2) whether they were an applicant or a respondent. That said, overall the number of parties with representation, particularly applicants, was significantly lower across all application types than in 2019-20.

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

¹⁷ Note: these were mainly single applications under a particular rule, namely rules 75, 80, 87, 90, 100 and 101.

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

Levels of representation of parties



In eviction and civil proceedings applications, fewer than half of applicants were represented - 47% in the former, and 43% in the latter. This was in sharp contrast to the previous year, when around three-quarters of applicants (80% in eviction cases) were represented in these cases. Applicants in eviction cases are of course landlords, while respondents are tenants. The proportion of respondents who were represented in eviction cases was also down on the previous year, but only marginally so (down from 6% to 5%).

In civil proceedings too, the vast majority of applicants are landlords, although some may be tenants. The proportion of respondents who were represented in civil proceedings applications was actually slightly higher than the previous year, up from 6% to 7%.

While the proportion of respondent landlords who were represented in tenancy deposit applications remained steady compared to 2019-20 at 26%, fewer tenant applicants were represented (14%, down from 25%). The highest levels of landlord representation were in right of entry cases, where 52% of landlords were represented. This was a significant drop from the 81% of landlords who were represented in 2019-20. While case numbers were down in repairing standard cases, only 43% of landlords were represented, down from 63% in the previous year.

Across all other case types, representation levels for both applicants and respondents were

substantially 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 most cases. While more respondents attended CMDs than previously (as discussed in section 9 below) it remains the case that in general, landlords are more likely to be represented than tenants. It is clear however that (other than in right of entry applications) the majority of landlords did not have any form of representation within the tribunal process.

There could be a number of possible reasons for the reduced levels of representation during the reporting year. It could be partly due to the reduced case numbers: unrepresented applicants may have been more likely to bring applications during the year than those with access to representation. If so, unrepresented applicants would make up a larger proportion of those who did make applications than in the previous year. It is also possible that parties found it more difficult to obtain representation due to reduced availability as a result of coronavirus restrictions.

Another possible explanation is that parties felt more able to represent themselves at a teleconference than 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 and more accessible to parties.

It should be noted that the figures shown above do not tell the whole story. Firstly, 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.¹⁸ It is not uncommon for parties to bring supporters, usually family members or friends, with them to a CMD or hearing.

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

¹⁸ Rule 11 of the [Chamber's Procedure Rules](#)

submissions from both parties at a CMD. It follows that any application which does not meet the requirements will generally have been rejected at the sifting stage.

8. Members and training

As at the end of March 2021, there were 102 tribunal members (the tribunal judiciary) within the Chamber. Of these, 56 are legal members and 46 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).

Legal members of the tribunal received virtual training on the impact of the emergency changes introduced by the Coronavirus (Scotland) Act in October 2020, as new eviction applications affected by the legislation were starting to come through the application system.

Further virtual training was also planned for legal and surveyor members to outline the revised Covid safe process of preparation and attendance at property inspections. Training was also planned for members involved in property factor cases, covering the introduction of the new property factor code of conduct, management of applications received relating to the new code and the old code, and data protection issues. Both training sessions were held in May/June 2021.

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 member reviews influence the training programme for the year. Members' reviews were paused during the year due to the coronavirus pandemic, but these resumed again using teleconference or videoconference hearings from October 2020.

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 now been created for the use of tribunal members.

9. Successes during the year

Thanks to the hard work of both the tribunal administration and tribunal members, the Chamber has coped extremely well with the challenges brought by the pandemic. Following the reintroduction of CMDs and hearings in July 2020, the processing of outstanding applications was back on track by the autumn. There was no backlog in relation to private rented sector, property factor and letting agent applications by the end of the reporting 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, property 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.

During the year, work to produce a searchable database of all notable Upper Tribunal decisions in HPC cases, going back to 2017, was completed. This was a major undertaking, as more than 120 UT decisions (and three Inner House decisions) had been issued in relation to HPC appeals by the end of the reporting year. The database is intended to assist tribunal members in their work. It will continue to be updated on a regular basis.

Positive impacts of teleconference CMDs and hearings

The Chamber has been gathering data on the impact of the use of teleconference (and videoconference) CMDs and hearings. This suggests that there have been several positive impacts resulting from the use of teleconferences, as further discussed below.

- a. From October 2020 onwards, questionnaires were sent to all parties or their representatives who had attended a CMD or a hearing by teleconference, seeking their views on their experience of the process. Questionnaires were also sent retrospectively to those who attended CMDs or hearings from 7 July 2020 onwards. Between October 2020 and March 2021, a total of 108 surveys were returned.¹⁹ While this is a fairly limited sample and the results should therefore be treated with caution, the feedback was generally very positive. The vast majority of those who returned the questionnaires said that they had found it very easy or easy to join the teleconference. Most also said the audio quality was very good or good, and that the process and structure of the teleconference was very good or good. Overall, seven in ten (71% over the total period) said that they found participation in a teleconference hearing or CMD preferable to attending in person.

A comparison of the data for the first three months (October- December 2020)²⁰ with the following three-month period (January-March 2021) shows that the number of positive responses to each question increased over time. For example, while during the first three-month period, 66% of attendees said that they found participation in a teleconference hearing or CMD preferable to attending in person, this figure increased to 78% during the second three-month period. This suggests that as parties/their representatives became more used to teleconference hearings, they saw more benefits

¹⁹ Note: due to the methodology used, it is not possible to confirm how many questionnaires were sent out during the period, or therefore what proportion of these were returned.

²⁰ Some of which is likely to relate to CMDs/hearings held during July-September 2020.

in doing so. These might include ease of access, time and travel savings and convenience.

While these findings are very positive, it should be noted that data was not collected on the nature of the attendees who responded to the survey. It is not clear, therefore, how many of these were applicants or respondents, or how many were solicitors or other representatives. It seems likely that solicitors, for example, would find teleconferences preferable as they require less time out of the office. We also know, as discussed below, that applicants are much more likely to attend CMDs and hearings than respondents. It should also be noted that almost one-quarter of attendees who responded would have preferred an in-person CMD/hearing.

- b. There is some evidence from data collected by tribunal clerks that more parties are participating in private rented sector CMDs conducted via teleconference than was previously the case with in-person proceedings. The increase is almost entirely due to increased attendance at CMDs; the attendance figures for hearings were virtually unchanged.

Initial data gathered for private rented sector applications during the six-month period from August 2020-January 2021 found that parties' attendance at CMDs was 6% higher than during the same six-month period in 2019-20. Attendance by applicants was almost unchanged, but these levels were already very high (around 95% in both years). It is notable, however, that there was a marked increase (12.5%) in attendance by respondents, who are most likely to be tenants. Overall, 45% of respondents in private rented sector applications attended the CMD. Although this is a substantial increase, this means that more than half of respondents did not attend. It may be that many respondents are unaware of the impact of the Coronavirus (Scotland) Act changes on the consideration of eviction applications brought on previously mandatory grounds, and therefore believe that whether or not they attend is unlikely to affect the outcome.

There was less scope for an increase in levels of attendance at hearings, as these were already higher (significantly so for respondents) than attendance levels at CMDs. From August 2019 - January 2020, 96% of applicants attended hearings, as did 72% of respondents. These figures were virtually unchanged²¹ for the same period in the reporting year.

While the increase in attendance at CMDs can be seen as a positive development in terms of access to justice, there is little evidence that this has made any significant difference to the eventual outcome of cases. The very high proportion of orders granted

²¹ In both cases, the variation was less than 0.6%

in civil proceedings and eviction applications which were determined by a tribunal was similar to that during 2019-20. That said, as noted in section 4 of this report, almost twice as many eviction applications were decided at an evidential hearing than in the previous year. It is also possible that more applications were withdrawn following discussion between the parties. Regardless of the outcome, it is also important to parties to feel that the procedure has been fair. They have the opportunity to put their case before a tribunal, and to have this considered by the tribunal. It is also possible that where a respondent appears at a CMD, the tribunal may in some cases be more likely to delay execution of an eviction order to give them more time to find somewhere else to live.

- c. There is also some evidence that the use of teleconferences has generally resulted in fewer CMDs in private rented sector cases, and fewer hearings in property factor and letting agent cases, being postponed than before.²² 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.

10. **Reviews, recalls and appeals**

a. 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.²³ A party's request for review of a decision must be made within 14 days of it being sent to them.²⁴ Where the tribunal decides to review a decision, it may take no action, set the decision aside or correct a minor or accidental error in the decision.²⁵

During the year, a total of 107 requests for review of a decision were received by the HPC, across most jurisdictions. This figure was around a third lower than during the previous year, which is not unexpected given the significant decrease in applications closed during the year. As in the previous year, the highest proportion (44) concerned property factor cases, followed

²² When compared with the postponement figures for the same month the previous year (or in 2019 during the months when there were no hearings or CMDs in 2020). There has, however, been an increase in postponed PRS hearings during some months, although the number of hearings is far lower than that for CMDs.

²³ Section 43

²⁴ Rule 39 of the [Chamber's Procedure Rules](#)

²⁵ Section 44 Tribunals (Scotland) Act 2014

by civil proceedings (32) and other private rented sector cases (16). As in the previous year, most review requests (64 or 60%) were refused. A further nine were withdrawn.

Of the other 34 review requests, the tribunal decided to review the decision in 29 cases. In 12 of these cases, the decision was corrected or set aside. No action to alter the decision was taken by the tribunal in the other 17 cases. The remaining five review requests received were not disposed of by the end of the year.

b. 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.²⁶

A total of 48 recall applications were considered by a tribunal during the year. Most of these (30) were refused, while 18 were granted.

c. 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.

A total of 150 requests for permission to appeal were received across all jurisdictions, a 14% increase on the previous year. More than half (54%) related to the private rented sector jurisdictions (including eviction, civil proceedings or other PRS cases), with the remaining 46% accounted for by property factor, repairing standard or letting agent cases. Almost two-thirds (96) of permission to appeal requests were refused by the tribunal, with only 6 being granted either in full or in part. The remaining requests were withdrawn by the party involved.

Even if a permission to appeal request is refused by the tribunal, an application can be made to the Upper Tribunal for permission to appeal.

A total of 17 appeals relating to decisions made by the HPC were considered by the Upper Tribunal for Scotland during the year, only 27% of the number in the previous year. This is likely

²⁶ Rule 30 of the [HPC Procedure Rules](#)

to be due to a variety of factors, including the impact of the coronavirus pandemic. The Upper Tribunal also suspended its cases from March to June 2020, and fewer cases were closed than in the previous year. There was also a significant drop in the number of appeals received by the Upper Tribunal compared with the previous year. It is possible therefore that, following an unsuccessful permission to appeal request to the HPC, fewer parties proceeded with a permission to appeal request to the Upper Tribunal than during 2019-20.

While some decisions were still awaited at the end of the year reported on (and two applications were withdrawn), all but two of those considered (9) were refused. The Upper Tribunal upheld the appeal or quashed the original tribunal's decision in the other two cases.

10. Future developments

The statutory code of conduct for property factors has been revised by the Scottish Government following a consultation process. The revised code was due to take effect on 16 August 2021, subject to approval by the Scottish Parliament. Tribunal members involved in property factor cases received training on the revised code in May/June 2021.

The protections in eviction cases under the Coronavirus (Scotland) Act have been extended several times. The [Coronavirus \(Extension and Expiry\) \(Scotland\) Bill](#), which extends the protections until 31 March 2022, was passed by the Scottish Parliament on 24 June 2021.

In September 2021, the Scottish Government announced new grant funding for local authorities to provide grants to tenants who have fallen into rent arrears as a result of the pandemic and are therefore at risk of eviction. The grant funding, which will be available until the end of March 2022, may have an impact on the numbers of future eviction applications made to the HPC.