

THE SCOTTISH TRIBUNALS

Annual Report prepared by the President of Scottish
Tribunals

1 April 2019 – 31 March 2020



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Introduction

Rt. Hon. Lady Smith - President of Scottish Tribunals



This is the third report I have delivered as President of Scottish Tribunals and it is my last. The Right Honourable Lord Woolman will take over as my successor in August 2020. Having been the first President in the new structure for Scottish tribunals established under the Tribunals (Scotland) Act 2014, discharging its

responsibilities has been exciting but daunting, challenging but rewarding, and, thanks to the support I have received and to the quality of the tribunals'

judiciary, remarkably enjoyable. I have, throughout, been able to rely on them to fly the flag for the individuality of their separate jurisdictions, for their unique styles and for their non-negotiable commitment to their users.

Before taking up this appointment, I had for some years had the good fortune of engaging with tribunals in Scotland both in an appellate and in leadership roles and had quickly learnt that their individuality should never be sacrificed on an altar of uniformity. Having sought to ensure that lesson was embedded when the new structure was being discussed and planned, I have been glad to see that, thus far, it has been understood and applied, as will be evident from the appendices to this report. All chambers deliver justice independently and in

accordance with the rule of law. All decisions require the same quality of diligent application to fact finding and the application of the relevant law. All tribunals' judiciary require to have and demonstrate the same commitment to their own learning and development of judicial skills. But all Chambers also require the freedom to operate according to whatever style is appropriate for their jurisdictions and users. Some are markedly informal. Others are more formal. Flexibility and innovation must be key features. Together we have worked hard at making this happen over the last six years. It could not have been achieved without the collaboration of colleagues who have always delivered what was required, and more. Their attitudes, determination and ability to deliver have been exemplary, particularly when it has come to meeting difficulties such as the current pandemic.

In his 2020 Annual Report, the Senior President of Tribunals, the Right Honourable Sir Ernest Ryder, referring to the UK tribunals, observed that they “occupy a curious

hinterland alongside the long established courts”, tribunals being “their much younger cousins” and that tribunals sometimes struggle to make their approach to justice as specialist decision makers understood. The same could be said in relation to the Scottish Tribunals whose unsung heroes and heroines, its judiciary, are – although it is not always recognised - worthy of as much respect and gratitude as their court based relatives. To that end, I am glad to have been able to engage in a number of initiatives aimed at bringing the judiciaries of the courts and tribunals closer together, enhancing their mutual understanding and furthering good relationships not just within Scotland but throughout the UK.

Since 2014, the immediate tasks for the Scottish Tribunals have been twofold – transferring the tribunals that determine claims arising under devolved law into the new structure and then establishing their operation in a way that supports their fearless independence of government and its agencies, meets the needs of users and secures their efficiency. Whilst a number of

jurisdictions, as shown on the table at the start of chapter 2, are now operating within the 2014 Act structure, some important jurisdictions have yet to be transferred including the Mental Health Tribunal for Scotland, the Valuation Appeal Committees, the Police Appeals Tribunal, the Education Appeal Committees and the NHS Tribunals.

Establishing the operation of the transferred tribunals has not always been straightforward. For example, the increase in case volumes in the Housing and Property Chamber following the enlargement of its jurisdictions to encompass applications formerly within the sole jurisdiction of the sheriff court proved to be considerably greater than was predicted, recruitment to the First-tier Tribunal has not always been easy, and both primary and secondary legislation have had to be revisited and amended. Recruitment has been a persistent concern and multiple recruitment rounds have, on occasion been needed so as to achieve required numbers; fee rates and the fact that no salaried appointments are able to

be made (not even on a part-time basis) undoubtedly act as a disincentive, in my view. However, there has also been successful assignment of existing First-tier Tribunal members to chambers other than their first assignment and, on leaving the role of president I was pleased to see that a reasonable balance between assignment and recruitment of new members was being struck. Refreshment of the membership is important but so is the retention of established wisdom and experience. I would hope that that balancing is able to carry on.

Another positive has been the move of a number of tribunal jurisdictions to the Glasgow Tribunals Centre at Atlantic Quay where, enabled by Scottish Government funding, some superb facilities to meet the particular needs of individual tribunals have been established. They incorporate a ground breaking suite for vulnerable witnesses including children and have, unsurprisingly, been met with universal acclaim. None of it could, though, have been achieved without the welcome commitment and hard work of the Scottish Courts and

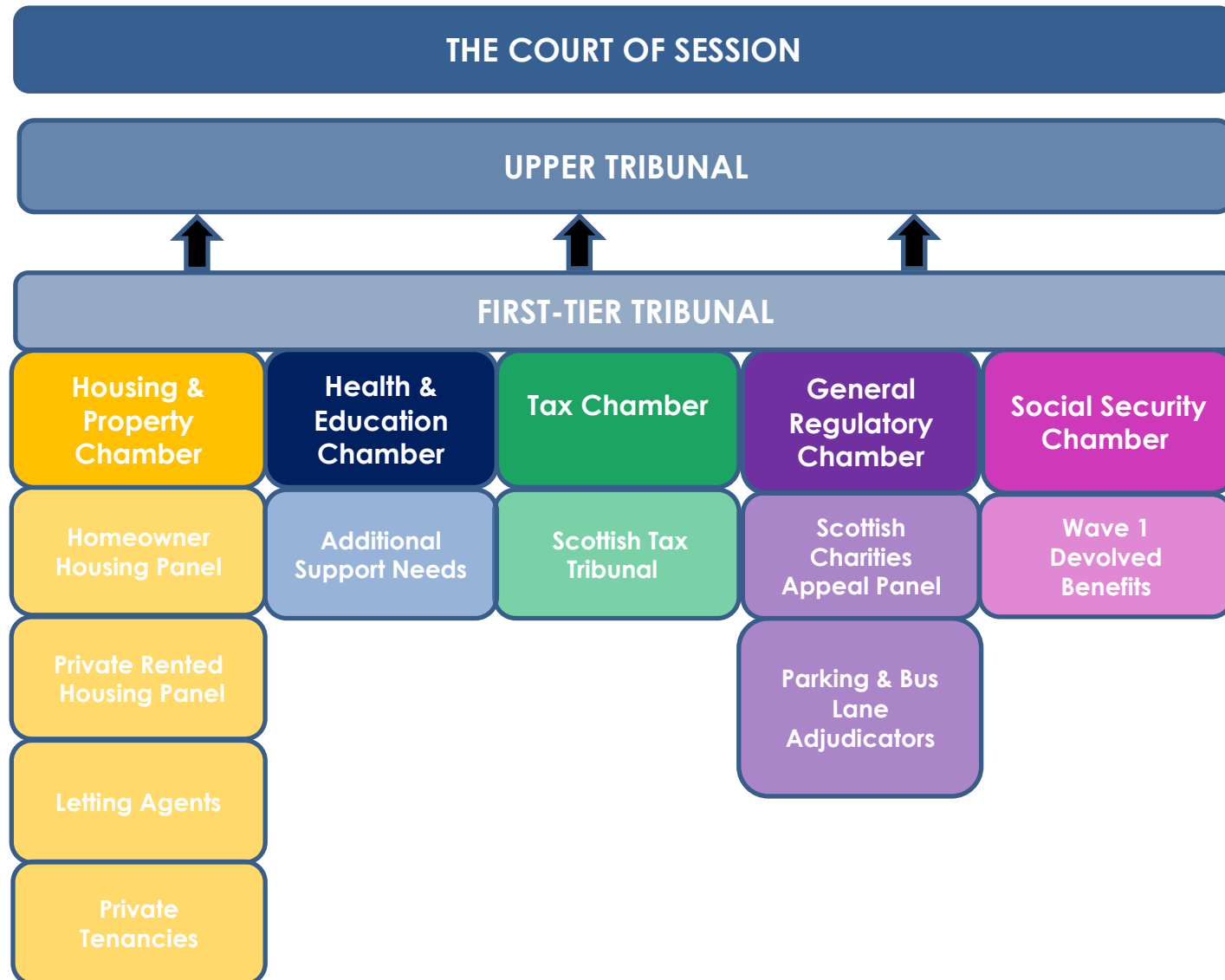
Tribunals Service together with Her Majesty's Courts and Tribunals Service whose mutual collaboration and determination to achieve a successful outcome was impressive. As a result, both devolved and reserved tribunals are now co-located in the building and proving to be good neighbours to each other.

Separately, the project to "devolve" other tribunals continued this year. I am, of course, referring to the work to achieve the devolution of the judicial leadership and administration of those tribunals in Scotland that determine claims arising under UK law, whose early green shoots first arose in 2010, were fertilised by the recommendations at page 43 of the report of the Smith Commission in 2014, and began to move towards flowering in section 39 of the Scotland Act 2016. This is an important project but, in common with much that is important, it is a very difficult one. To pursue the garden analogy one step further, it has not yet flowered but buds are appearing. The analogy has to stop there as it is clear that the project will not reach completion this

season or indeed, during the next one; I would expect it to be a few years before it is able to do so. However, much has been achieved, including the near completion of the drafting of the required Orders in Council. Matters would not have reached this stage without the application of much disciplined thinking, attention to detail and commitment of those involved, including skilled officials north and south of the border, and the unfailing and thoughtful support I have received throughout from Sir Ernest Ryder, Senior President of Tribunals. I have seen and benefitted from some excellent cross border working or which I have been very grateful and I am confident that it will continue.

This unique leadership role has afforded me tremendous fulfilment, professional satisfaction and the welcome opportunity to contribute to the administration of justice in the Scottish Tribunals for the benefit of a wide range and very large number of individual citizens. I have enjoyed it immensely. But it's people that make all the difference. I am acutely conscious of the fact that the role would not have been as rewarding without the extensive positive human engagement particular to the world of tribunals, especially with tribunal presidents north and south of the border and with tribunal members, and with those on the administrative side who have so reliably supported me, always with goodwill and with a smile. My thanks go to all in the Judicial Office who have done that over the last six years, including Steve Humphreys, Steven D'Arcy and Roddy Flinn and, more recently, to Tim Barraclough, Laura McIntosh, Ryan Gare, Paul McKinlay, Andrew Campbell and Edward McHugh. I could not have coped without them.

2. The Scottish Tribunals (as at 30 April 2020)



3. The Year at a Glance

Upper Tribunal

The Upper Tribunal continues to determine appeals from the First-tier Tribunal. It also determines complex tax cases at first instance. As we have seen every year since it was established, case volume has increased.

Further information on the Upper Tribunal can be found at Annex A.

First-tier Tribunal

By the close of this reporting period, the First-tier Tribunal had expanded. Parking and Bus Lane Adjudicators had transferred into the General Regulatory Chamber under the leadership of Chamber President Alex Green, who had taken up post in May 2019.

A report on the activity of each Chamber is included as an Annex to this report.

Membership

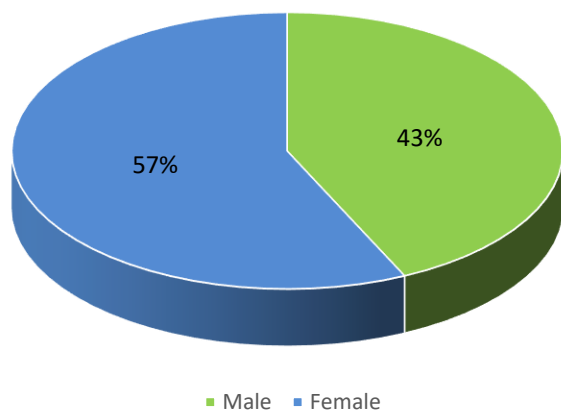
I wish to reiterate my thanks to those members who have moved on from the Scottish Tribunals this year for their hard work and wish them well in their future endeavours. It is notable that many of those resigning do so due to being appointed as full time sheriffs or summary sheriffs. I see this as well deserved recognition of the quality contributed by tribunal members to the wider judicial family in Scotland.

It is essential to maintain a balance between assignment and recruitment. Whilst assignment makes it possible to achieve the required numbers using experienced tribunals judiciary to be, the regular appointment of new members is also desirable so as to update expertise, maintain a reasonable age profile and to enhance diversity. These diagrams show the profile of first-tier tribunal members as at 31 March 2020.

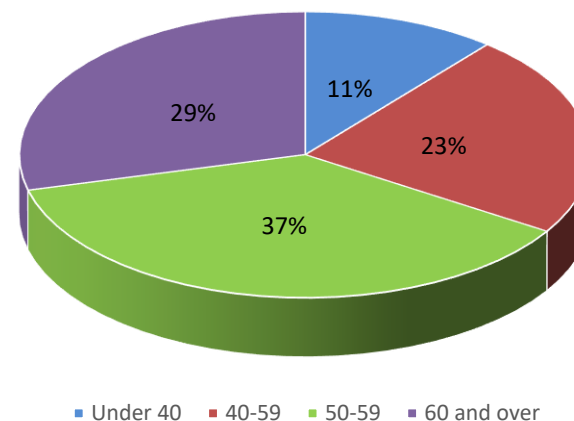
Due to increases in case volumes, internal assignment exercises for both the Social Security and General Regulatory Chamber were initiated in this reporting year. They were concluded shortly thereafter.

No external recruitment exercises were carried out by the Judicial Appointments Board for Scotland this year.

First-tier Tribunal Member Gender Profile



First-tier Tribunal Member Age Profile



Conduct Matters

The Lord President has the responsibility for making and maintaining appropriate arrangements for the determination of any matter concerning the conduct of ordinary and legal members of the Scottish Tribunals and the review of any such determination.

Any complaints about the conduct of Tribunal members are considered by the Judicial Office for Scotland in accordance with the Complaints Against Members of the Scottish Tribunals Rules 2018.

In the period from 1 April 2019 – 31 March 2020 the following number of complaints were received and concluded:

Rule	Outcome	Total
8	Dismissed by Judicial Office	4
11	Dismissed by President of Scottish Tribunals	4
12	Referred for investigation - Informal Resolution	1
20	Member ceased to hold position in Scottish Tribunals	1
	Total	10

In the period from 1 April 2019 – 31 March 2020 the following number of complaints were received under the Mental Health Tribunal Scotland's (MHTS) Interim Complaints Procedure¹.

Rule	Outcome	Total
5(3)	Dismissed by Judicial Office	0
5(5)	Complaints submitted to President of MHTS for consideration.	1

Welfare

The Judicial Office continue to support tribunal members in a wide variety of welfare matters including the organisation of workplace assessments and the subsequent provision of specialist equipment and occupational health referrals.

The Judicial Welfare and Support Committee, under the leadership of Lord Mulholland, will continue to consider the welfare needs of the Scottish judiciary, including tribunals judiciary, and make recommendations for change where necessary.

¹ Whilst MHTS had, in anticipation of their transfer into the 2014 Act structure, developed an interim procedure, following similar complaints rules.

Training

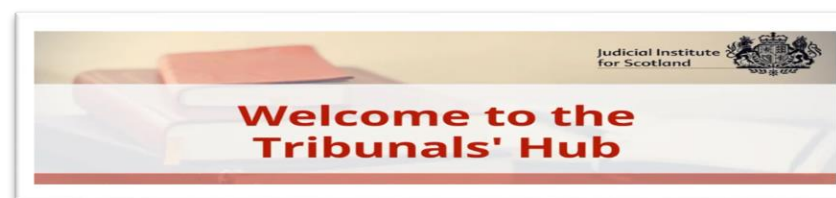
The Judicial Institute's Head of Tribunal Training, Jonathan Kidd left the organisation in December 2019, following the delivery of his tribunal training proposal.

The Judicial Education for Tribunals (JET) working group, chaired by Anne Scott, Chamber President, is responsible for providing oversight and governance in relation to training for tribunals judiciary. Its membership included all Chamber Presidents and it met on three occasions during the year. Its first objective was to formulate its strategic direction and embed it across the jurisdictions.

The group then modified and approved the Judicial Institute Framework for Tribunals, the Tribunal Training Model, Terms of Reference for JET, Training Guidelines and a Quality Assurance Framework.

On 26 November 2019 the group successfully delivered a cross jurisdictional Tribunal Craft course.

Work continues to improve the Tribunals Hub, so as to increase the range of resources available to members.



Efficient Disposal of Business

My responsibility for the efficient disposal of business in the Scottish tribunals could not be realised without the support, leadership and remarkable commitment of the Chamber Presidents which has, once again, been a constant throughout the year. My grateful thanks are due to them once again.

Chamber	President
Housing & Property	Aileen Devanny
Health & Education	May Dunsmuir
Tax	Anne Scott
General Regulatory	Alex Green
Social Security	Anne Scott (Temporary)

Full details of each Chamber and its business are included at Annexes B-F.

I also want to take this opportunity to thank the Scottish Courts and Tribunals Service Tribunals Operations, led by its Director, Martin McKenna. Staff provide unfailing support to the Scottish Tribunals and their members, without which the efficient disposal of business could not be achieved.

Review

Members' Professional Development Review continues to operate successfully, ensuring that their professional development continues.

Judicial Engagement

Engagement with both the devolved and reserved tribunals' judiciary has always been a particularly fulfilling aspect of my role as President. Proper and effective discharge of its responsibilities would not be possible

without it. That engagement has included continuing membership of the following.

Scottish Tribunals Forum & Reserved Tribunals Group

I continued to chair the Scottish Tribunals Forum and the Reserved Tribunals Group. As has become normal practice, they met twice during the year, to receive updates and discuss a wide range of matters of common concern both amongst themselves and, where appropriate, with other interested parties. Attendees continued to be encouraged to present on any topics which could be of benefit to members. Alex Green, President of the First-tier Tribunal for Scotland, General Regulatory Chamber provided one such presentation, very helpfully reflecting on his initial period as a Chamber President and drawing on his experience as a member of both devolved and reserved tribunals.

Tribunals Judicial Executive Board (TJEB)

I continued to represent the Scottish Tribunals at the meetings of TJEB, the Senior President of Tribunals discussion and decision making forum. TJEB provides leadership, strategic direction and support to the reserved tribunals judiciary, both generally and in the specific context of courts and tribunals reform, devolution and wider change initiatives affecting tribunals and their judicial office holders.

Administrative Justice Council (AJC)

I continued to attend meetings of and contribute to the work of the AJC. It comprises key stakeholders in the administrative justice system and will identifies opportunities, weaknesses and challenges in the system of administrative justice across the United Kingdom, frames and commission relevant research, and recommend practical solutions to strengthen the system.

4. Looking Forward

Covid-19

At the end of this reporting period the whole of the UK began to feel the effect of the Covid-19 pandemic. For the Scottish tribunals this meant requiring to rapidly devise new ways of working to accommodate lockdown restrictions. Preparations were swiftly being made and new practices being rapidly adopted. I must pay tribute to all those in the Scottish Courts and Tribunals Service who were working so hard to seek to ensure the continuing operation of the Scottish tribunals.

Transfer of remaining devolved tribunals

The remainder of the devolved tribunals are currently scheduled to transfer into the 2014 Act structure on the following dates:

Tribunal	Proposed Transfer Date
Mental Health Tribunal	Late 2021
Valuation Appeals Committees	April 2022
Police Appeals Tribunal	Autumn 2022
Transport Tribunals	2023
Education Appeals Committees	Late 2023
NHS Tribunals	2024

Expansion of the Social Security Chamber

The need for Scottish Government to re-direct resources in the response to Covid-19 has understandably resulted in delay to the further roll out of the Scottish Social Security benefits. This includes the launch of a child disability payment (originally due to commence summer 2020) and a Scottish benefit to replace the Personal Independence Payment (originally due to commence in spring 2021).

The timetable for the launch of Carer's Allowance, Industrial Injuries Disablement Benefit and case transfers of all benefits will also be affected. I understand that Scottish Government will be working with the Department of Work and Pensions on a complete programme re-plan and that it will take some time. Meanwhile, work continues to ensure that there will be sufficient numbers of tribunal members to handle appeals in relation to these benefits once they commence.

Devolution of Reserved Tribunals

Progress continued in relation to the devolution of the reserved tribunals operating in Scotland, albeit at a slow pace. Development of the Order in Council was at an advanced stage at the end of this reporting year. However, whilst I understand Scottish Government to remain committed to achieving the transfer of the reserved tribunals' judiciary on a "no detriment" basis, so far as their terms and conditions are concerned, detailed proposals had not been put forward. Nor was

funding in place for either the transitional period or the operation of these tribunals thereafter. Further to the resolution of these issues it was anticipated that the first tranche of tribunals to transfer into the Scottish tribunals, consisting of the employment, tax, social security and child support jurisdictions would not be before 2024, at the earliest.

Annex A: Upper Tribunal for Scotland

The Upper Tribunal determines appeals from decisions of the First-tier Tribunal, on a point of law. It also determines complex tax cases referred to it by the First-tier Tax Tribunal. Recent Upper Tribunal decisions can be found on the [Upper Tribunal section of the SCTS website](#).



As with previous years, as the number of tribunal jurisdictions transferred into the 2014 Act structure increases, the number of cases proceeding to the Upper Tribunal also grows.

Despite this growth, volumes remain relatively low. This will change significantly with the expansion of the Social

Security Chamber and work continues in preparation for this.

The current membership of the Upper Tribunal to which these appeals are allocated is as follows:

Appeal Type	Upper Tribunal Members
Housing & Property	7 Sheriffs
Tax	1 Court of Session Judge 1 Legal Member
Social Security	1 Court of Session Judge
General Regulatory	1 Court of Session Judge 2 Sheriffs
Health & Education	1 Court of Session Judge

Annex B: Housing & Property Chamber

The Chamber Jurisdictions



*Aileen Devanny,
Chamber President*

The Housing and Property Chamber (HPC) has a very wide jurisdiction, covering 50 different types of application. 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.

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 largest jurisdiction in terms of case volumes.

The three main categories of PRS application are:

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

Other categories of PRS application include:

- 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

Repairing Standard applications

Under the Housing (Scotland) Act 2006, private rented sector tenants can apply to the tribunal 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 now applies to holiday lets of over 31 days' duration. Third parties (i.e. local authorities) can also make applications, in the same way as the tenant.

Homeowner (Property Factor) applications

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

1. that the property factor has failed to carry out its duties as a property factor in relation to the management or maintenance of land

2. that the property factor has failed to comply with the statutory code of conduct for property factors.

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 2006 Act.

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 tribunal 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 tribunal can consider appeals against the level of rent set by the rent officer in relation to a private residential tenancy.

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. From that date, tenants, landlords and Scottish Ministers have been able to apply to the Chamber in relation to letting agent code of practice disputes.

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, tenants or property factors are unrepresented.

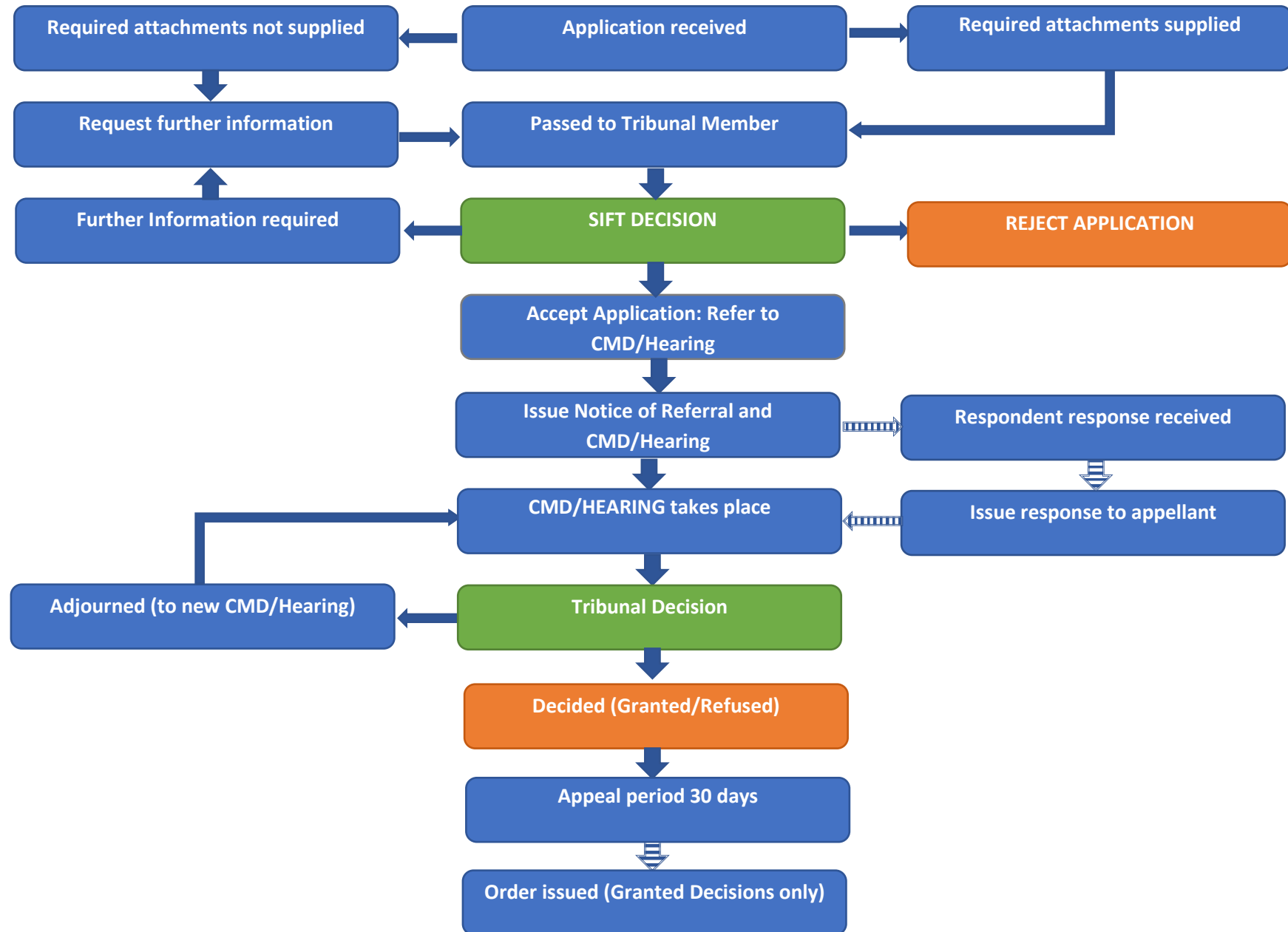
Guidance on the application process is available on the HPC website. The application can be made on a form which can be downloaded from the website and contains prompts on the required information and attachments. HPC staff are not legally qualified and cannot give case specific legal advice, but they 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 case management discussion or the hearing, the specialist tribunals 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.

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.



Key Stages of the Process

1. 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 date of lodgement), the application will be rejected.

2. 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, around 12% of all applications disposed of were rejected, generally either because they did not meet the prescribed requirements or because they did not meet this test.

3. Referral to CMD or hearing

Once accepted, private rented sector applications generally go in the first instance to a case management discussion (CMD). Then, if evidence is challenged or the tribunal has a discretionary decision to make, the application will go to an evidential hearing.² A final decision on the application can be made at the CMD. Most private rented sector cases are disposed of at a CMD by a legal member sitting alone, without the need for a further hearing. In some eviction applications, for example, the tribunal has no discretion where the application is brought on grounds under which it is mandatory to grant an order.

² Note: in a very small proportion of applications, the tribunal makes a decision on the basis of the parties' written submissions without a hearing, in terms of Rule 18 of the [Chamber's Procedure Rules](#).

In some cases, CMDs have been conducted by teleconference, and this generally appears to be working well. Teleconferences can be more convenient for the parties, while making efficient use of judicial and tribunal resources, and it is intended that they will be used more in future.

Hearings (and inspections in repairing standard cases) are 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. The HPC currently holds case management discussions and hearings at 71 venues throughout Scotland.

4. 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.

5. 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.

Timescales in eviction applications

Some concerns have been expressed that the transfer of eviction cases from the sheriff court to the HPC has led to a significant increase in the length of time the eviction process takes.³ As noted in last year's annual report, the HPC received more than three times the projected number of private rented sector applications in its first year of operation. This resulted in delays in the processing of applications during 2018-19. Measures were put in place to reduce the delays, and case disposal times have reduced as a result. There are, however, a number of other reasons why the overall eviction process may be perceived to take longer than it did before cases were transferred to the Chamber. These are discussed below.

1. The overall eviction process begins some time before the HPC becomes involved

There are clear statutory timescales for aspects of the process which precede the HPC's involvement. Housing law sets out the requirements which must be met for the various eviction grounds to apply. To give perhaps the clearest example, the most commonly used ground is non-payment of rent. For the new private residential tenancy, Ground 12 in Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 requires that a tenant must have been in rent arrears for three or more consecutive months. A recent Upper Tribunal decision found that this ground of eviction applies as at the date of service of the Notice to Leave on the tenant.⁴ This means that a landlord must wait at least three months from the tenant's initial failure to pay before a Notice to Leave can be served.

³ See for example [Scots landlords face ten months without rental income under New System](#), Scottish Housing News, 13 January 2020

⁴ [Majid and Gaffney and Britton](#) [2019] UT 59

The Notice to Leave must state the day on which the landlord expects to become entitled to apply to the HPC for an eviction order. The 2016 Act provides that this date is 28 days after the tenant receives the Notice to Leave from the landlord, and this date of receipt is deemed to be 48 hours after the Notice to Leave is sent. The landlord cannot generally make an application to the HPC until the notice period expires. This means that a period of at least four months will have elapsed since the tenant first defaults on payment before the HPC process can begin.

2. When first received, applications often fail to meet the prescribed requirements

Required attachments (such as the tenancy agreement or notice to leave/notice to quit) may be missing. Other information relating to the pre-application procedures or other essential information required to make out the case may not have been included. The HPC therefore writes to the applicant requesting the necessary information. How quickly the application is taken

forward is then dependent on the applicant responding and on the timeframe for their response.

Applications are scrutinised during the sifting process in a way that was not previously done in the sheriff courts. The paperwork provided is checked to make sure that it is valid - for example, that the required notices have been served correctly on the respondent. While this may add more time to the process at the beginning, it highlights any obvious issues at an early stage. This gives the applicant an opportunity to rectify any problems before the application is accepted and referred to a tribunal for decision, rather than risking it being refused or dismissed at a later stage. During the year, approximately 17% of eviction applications were rejected at the sifting stage.

3. Once the application is accepted, there are minimum timescales which must be followed

Minimum timescales are built into the Chamber rules for specific parts of the process, such as service of documents; the respondent making written

representations; notification of the hearing date; and lodgement of documents. Unlike the courts, the HPC serves the application documents and notification of the case management discussion (CMD) or hearing date on the parties after the application is accepted. This can involve service by sheriff officer, recorded delivery and/or service by advertisement.

The application will generally go in the first instance to a CMD. The tribunal may decide at that stage to make further inquiries and adjourn an application to give parties the opportunity to provide further information or evidence. If evidence is challenged or the tribunal has a discretionary decision to make, there will be an evidential hearing. Applications may be challenged by respondents more often than in the courts because the process is more accessible, and no fees are payable. There is also little risk of expenses being awarded against an unsuccessful party: expenses can only be awarded against a party “*where that party through unreasonable*

behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense”.⁵

Once the tribunal issues its decision to the parties, there is a statutory appeal period of 30 days, longer than the sheriff court 14-day appeal period. More appeals have been received than initially anticipated. The eviction order is not issued until the appeal process is exhausted. There is also a review process for tribunal decisions which does not apply to the courts, which allows a party to request a review of a decision within 14 days. As in the courts, there is also provision for parties to apply for a recall of the decision in eviction and in some other cases within 14 days of the decision, where the decision was made in their absence.

The eviction order is issued at the end of the appeal period, unless a decision is taken to suspend issue of the order because a permission to appeal request has been

⁵ Rule 40 of the [Chamber's Procedure Rules](#)

received. The HPC's involvement ends when the eviction order is issued to the landlord.

After the eviction order has been granted, a charge must be served on the respondent before the actual eviction can be carried out. The charge is served by sheriff officers, once they have received instructions and the eviction order from the landlord. The 14-day charge period is laid down in statute.

4. The parties may be involved in other related applications

One reason why the eviction process may be perceived as taking longer than before is that the same parties may be involved in several different related applications concerning the same property, which the HPC tries to hear together. This may result in earlier applications being held back to allow other related applications to catch up. In the vast majority of cases, this involves an eviction application accompanied by an application

for a payment order. In a small number of cases, eviction applications are heard together with repairs or other private rented sector applications. Tenants have successfully used repairing standard applications as a defence or counterclaim for compensation in relation to applications by landlords for rent arrears. This may involve the tenant completing an application to the HPC, which is heard alongside the application for a payment order.

Average timescales during the year

For applications where an order for recovery of possession was granted during the period covered by this report, the average number of days from lodging the application to the granting of the order was 92 days, or just over 13 weeks.⁶ This was in fact shorter than the average timescale for all other application types aside from right of entry and time to pay applications.

⁶ Note: this timescale is based on the date on which the tribunal made the decision to grant the order, not the date on which the order was issued. It also encompasses applications received prior to 31 March 2019 which resulted in an order being granted after that date.

In response to a recent freedom of information request, the HPC confirmed that for the 594 applications received during the reporting period where an order for recovery of possession was granted during that period, the average number of days from lodging the application to the granting of the order was 86.3 days. This demonstrates that average timescales have come down over the past year, as a result of the measures put in place to reduce delays.

It should be noted that these are average figures, which will vary depending on various factors. In particular, the time taken will depend on whether the application was complete when received, and if not, how long it took to gather the necessary additional paperwork from the applicant. The Scottish Association of Landlords published an article about the HPC process in August 2019, noting that, where the correct procedures had

been followed, some eviction orders had been granted within 8 weeks of the landlord applying.⁷

Overall case volumes during the year

During the year,⁸ the Chamber received 4112 applications across all jurisdictions, a 9% increase on the previous year. A total of 4141 applications were closed during the year. This high volume of closed cases, amounting to an increase of 30% compared to the previous year, is a direct result of the hard work of the chamber's judiciary and of the expanded SCTS administration, who have risen to the challenge of increased application volumes.

A total of 1740 applications were brought forward from the previous year, and 1711 applications were carried forward at the end of the year.

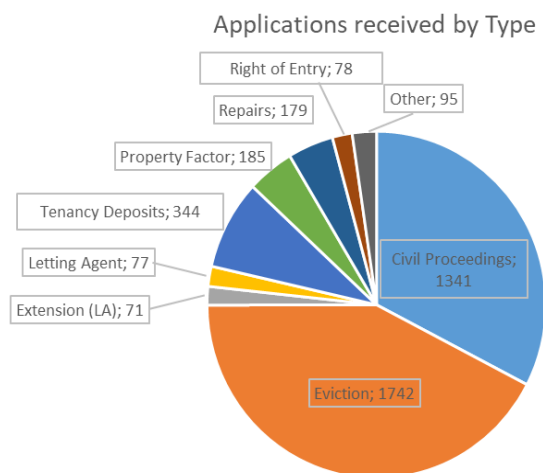
⁷ [Tribunal on Trial: 18 Months of the Scottish Housing and Property Chamber](#)

⁸ Note: the figures provided are as accurate as possible for the year to 31 March 2020. As a result of the Covid-19 pandemic, all hearings and case management discussions were postponed from 19 March 2020, and the Glasgow Tribunals Centre was closed on 25 March 2020.

Applications dealt with during the year

Applications	Brought forward	Received	Closed	Carried forward
Totals	1740	4112	4141	1711

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



As in the previous year, the vast majority (87%) of applications received fell within the private rented sector jurisdiction. As in 2018-19, more than four in ten

(42%) of all applications received were for eviction, while a third (33%) were applications for civil proceedings in relation to private tenancies. The third largest category of applications overall (8%) 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.

Rejected and withdrawn applications

Of the 4141 applications closed during the year, a total of 493 (12%) were rejected. A breakdown of the reasons why the applications were rejected is shown in the table below.

Rejected applications

Reason for rejection	Number
Frivolous or vexatious	193
Not appropriate to accept	195
Made for a purpose other than that specified in the application	87
The dispute has been resolved	18
Total	493

In total, 24% 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.

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.⁹ It should be noted, however, that a significant proportion of the Chamber's work involves managing the progress of ongoing applications which may not reach a final conclusion during the year. An application may be processed in one reporting year, for example, but it may not 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 Chamber administration. For example, during the year, a total of 514 CMDs and 74 hearings were postponed in civil proceedings cases.

Applications received and case outcomes by case type

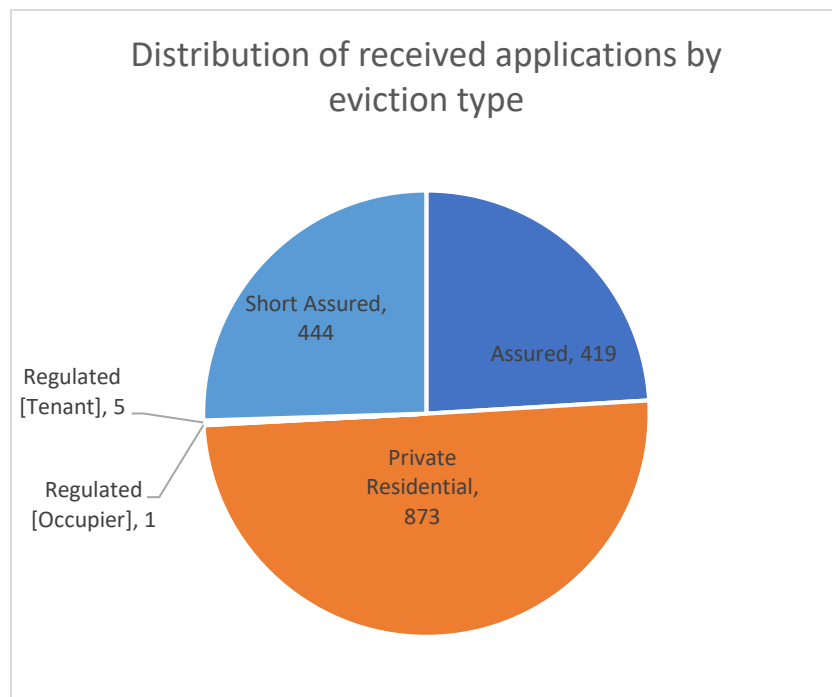
i. Evictions

In 2018-19, the majority of eviction applications involved assured/short assured tenancies. This year, as anticipated, the volume of applications concerning private residential tenancies, which were introduced on 1 December 2017, increased significantly, overtaking those involving assured/short assured tenancies.

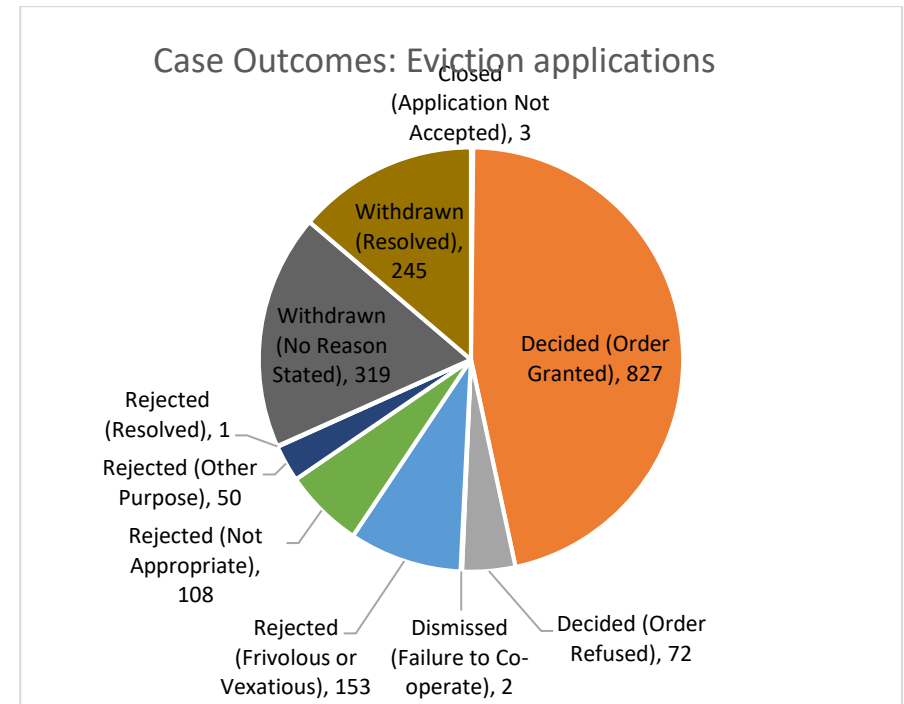
⁹ Note: in property factor, repairing standard and letting agent applications, there may not be a *final* outcome during the same year. Where the tribunal issues an

enforcement order in such cases, a final decision on whether the relevant party has complied with that order may not be made until a later date.

As shown in the chart below, 873 (50%) of the eviction applications received related to private residential tenancies. A slightly smaller number (863 or 49.5%) concerned assured or short assured tenancies. The vast majority of applications received across all tenancy types were brought on the grounds of rent arrears.



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



A total of 312 applications were rejected and 564 were withdrawn by the applicant at some stage of the process. In 245 withdrawn applications, the reason given was that the matter had been resolved. While no reason

was stated for the other 319 withdrawals, it seems likely that in a significant proportion of these, the parties may be reconsidering the situation and/or negotiating 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 (827 or 93%). In 72 cases, an order was refused, and two applications were dismissed.

ii. Civil proceedings

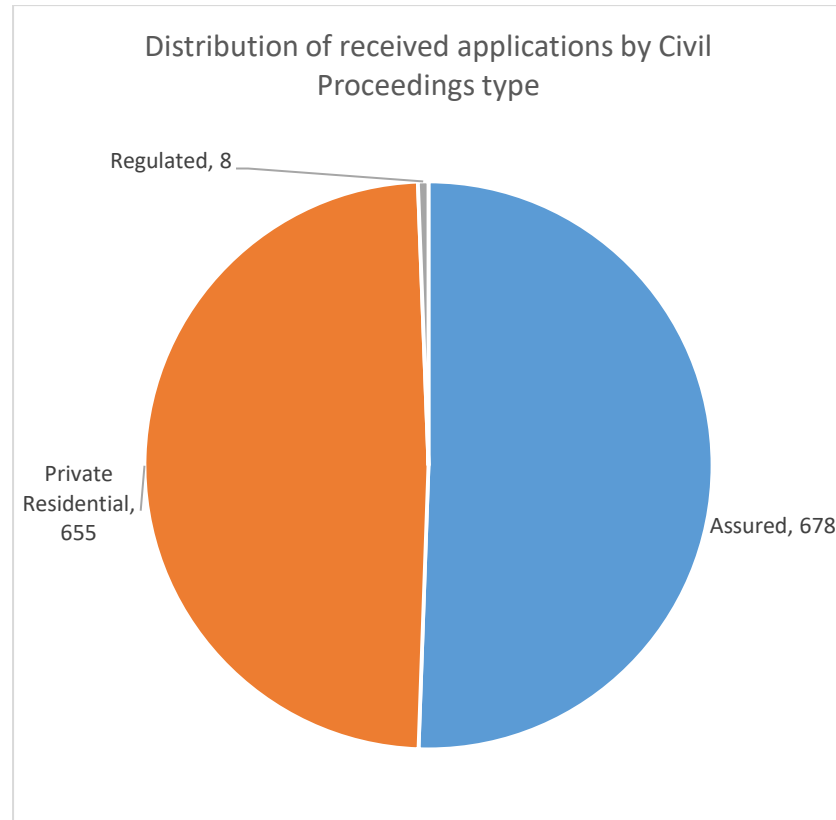
Civil proceedings applications can be brought in relation to any monetary dispute between landlords and tenants. As in 2018-19, the majority of these applications accompanied related eviction applications. These typically involve landlords seeking recovery of unpaid

rent, and often also the costs of rectifying alleged damage to the property at the end of a tenancy.

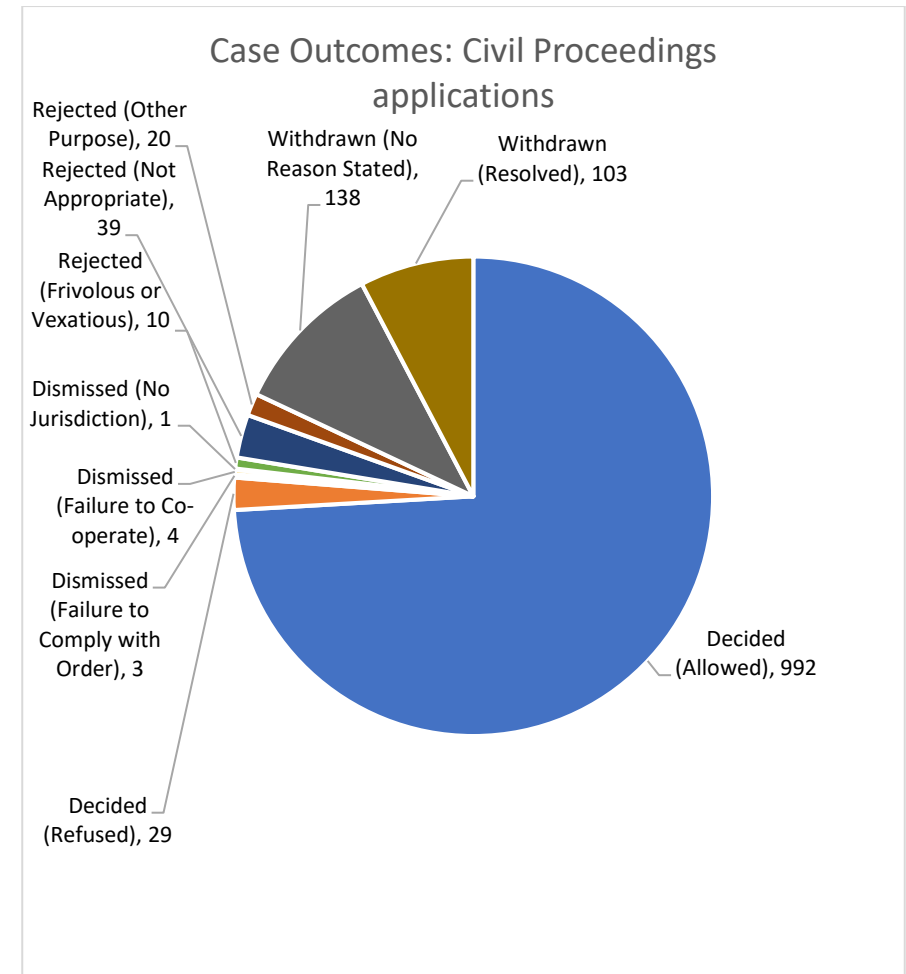
There is no limit on the amount of money that can be claimed in such cases. Civil proceedings applications can involve significant sums, which can often exceed the ordinary cause threshold of £5000 in the sheriff court. The Scottish Association of Landlords reported in August 2019 that the largest payment order issued by the HPC to date was for rent arrears totalling £39,520.¹⁰

While as expected, the proportion of civil proceedings applications involving private residential tenancies has increased significantly (655 or 49%), a slightly higher number of applications (678 or 50.5%) related to assured/short assured tenancies.

¹⁰ [Tribunal on Trial: 18 Months of the Scottish Housing and Property Chamber](#)



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



A total of 69 applications were rejected, and 241 were withdrawn. The reason stated for the withdrawal in 103 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 (992 or 96%) were granted, and 29 were refused. A further 8 were dismissed.

iii. Tenancy deposit applications

Landlords in Scotland who take a tenancy deposit from their tenant have since 2012 been required to pay the deposit into an approved scheme within 30 working days of the tenancy commencing. If they fail to do so,

the tenant can make an application to the HPC. 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 the accessibility of the Chamber's procedures. In particular, no fees are payable for making applications, unlike the position in the sheriff court. The Scottish Association of Landlords has noted that the 'big upsurge' in applications has meant that there has been better enforcement of landlord obligations.¹¹

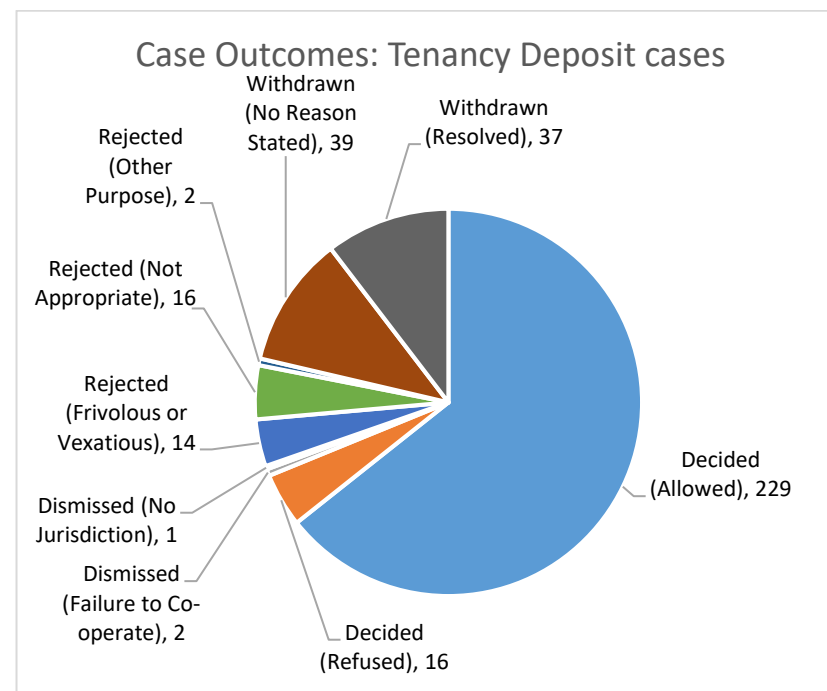
Whilst there are fewer tenancy deposit applications than evictions and civil proceedings applications, they were, as in 2018-19, the third largest category of applications received. There were 344 such applications, comprising 8% of all applications. This was very similar to the figure

¹¹ Scottish Association of Landlords – evidence to the [Local Government and Communities Committee](#) (at Annexe B, p.7)

for the previous year, when there were 353 applications. This suggests that, despite the duty having been in place since 2012, there are many landlords who are still failing to comply. While in some cases the landlord has deliberately failed to comply with the duty, research by SafeDeposits Scotland found that in most cases the landlord was either unaware of the legislation or forgot.¹²

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.

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



A total of 32 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 76

¹² [Majority of Scottish Landlords Comply with Tenancy Deposit Laws](#), Scottish Housing News, 9 January 2020

applications were withdrawn at various stages of the process. The reason stated for withdrawal in around half (37) of these applications was that the matter had been resolved. This suggests that there may have been discussion and negotiation between the parties in those cases. Such discussions can take place on the day of the CMD or hearing.

Of the 248 applications which were decided by a tribunal, the vast majority (229 or 92%) were granted in the tenant's favour. 16 applications were refused, and the remaining 3 were dismissed, due either to 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 185 property factor applications, representing 4% of all applications received. This was an 18% decrease on applications received during the previous year. The vast majority (91%) of these applications involved commercial property factors,

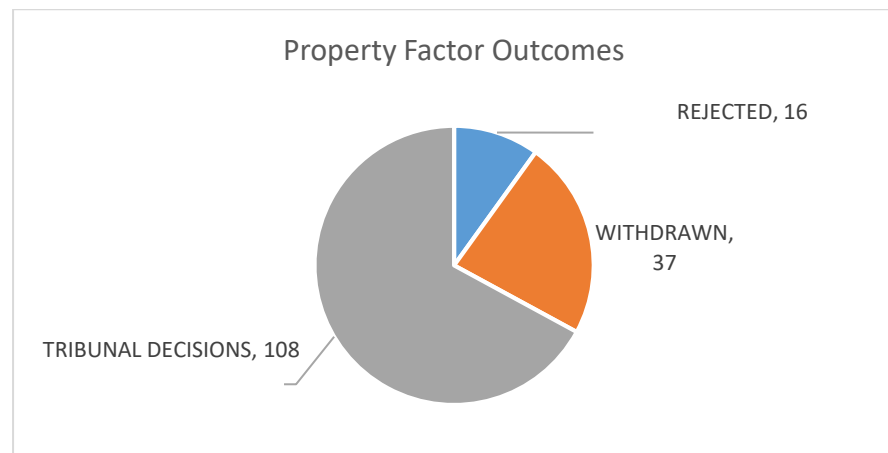
while 6% concerned housing associations and the remaining 2% involved local authorities.

Most of the applications (78%) concerned residential factoring, with just over 1 in 5 (41 or 22%) categorised as land management complaints. As in previous years, the largest categories of complaints under the code of conduct concerned communication and consultation and carrying out repairs and maintenance. More than two-thirds of applications also included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

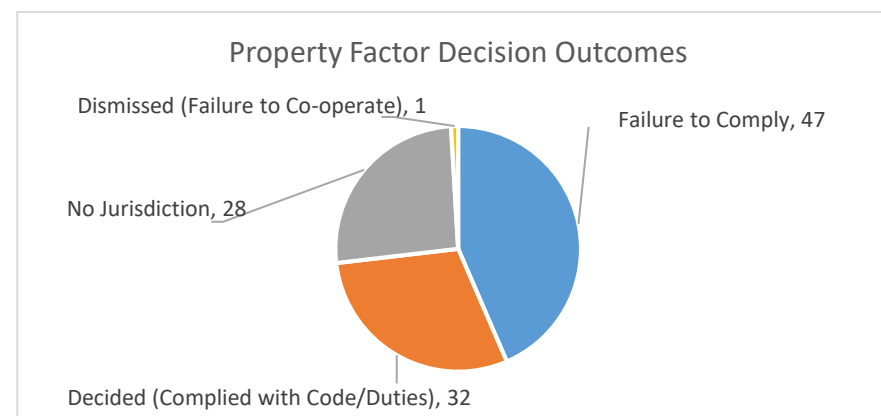
During the year, a total of 11 groups of multiple applications from different homeowners within a development or tenement were received. Most of these involved between 2 and 6 applications, but there was also one group of 18 applications and another group of 21 applications. A further 4 applications were added to an existing group of 44 related applications received during the previous year, resulting in a total of 48 in one group application. 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.

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.



Sixteen applications were rejected. A further 37 applications were withdrawn by the applicant, in most cases because the matter had been resolved. 108 applications were decided by a tribunal. The outcomes of those applications are shown in the chart below.



Of those 108 applications, the tribunal found that the property factor had complied with the code or the property factor's duties in 32 cases. The tribunal found that there had been a failure to comply with the code or property factor's duties in 47 cases. One application was dismissed due to the applicant's failure to co-operate. The remaining 28 applications were dismissed as after considering legal submissions on the issue, the

tribunal considered them to be outwith its jurisdiction. Most of these (19) related to one group application. A total of 41 Property Factor Enforcement Orders (PFEOs) were issued.

Tribunals considered whether property factors had complied with a PFEO in 78 cases.¹³ The tribunal found that there had been compliance with a PFEO in 60 cases,¹⁴ and that there was a failure to comply in 18 cases. Two-thirds (12) of these failures to comply involved one particular property factor, which has since been removed from the Scottish Property Factor Register by Scottish Ministers. A further four failure to comply decisions related to four PFEOs issued to one property factor in a group application.

¹³ Note: some of these PFEOs would have been issued in the previous year.

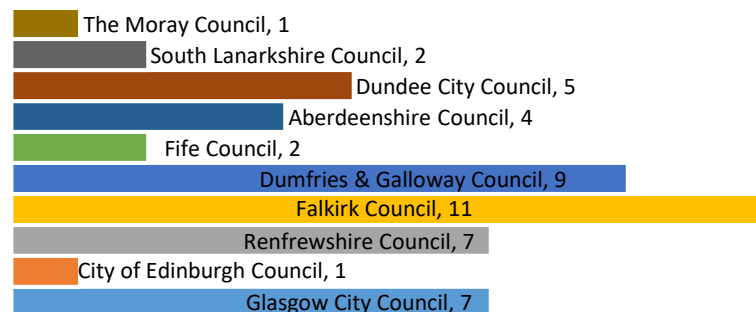
v. *Repairing standard applications*

A total of 179 repairs applications were received – very slightly below the figure for the previous year – comprising 4% of all applications. Nearly three-quarters of these (73%) were made by tenants, while, as in the previous year, around a quarter (27%) were made by third parties.

As in previous years, the volume of third-party applications remained well below the numbers initially projected when they were introduced in December 2015. As before, most third-party applications came from a small number of local authorities which have been particularly proactive. Applications were received from only 10 of the 32 local authorities, as shown in the chart below.

¹⁴ Note: this figure includes 3 cases where a PFEO was issued and then revoked because the tribunal considered that the action required by the PFEO was no longer necessary

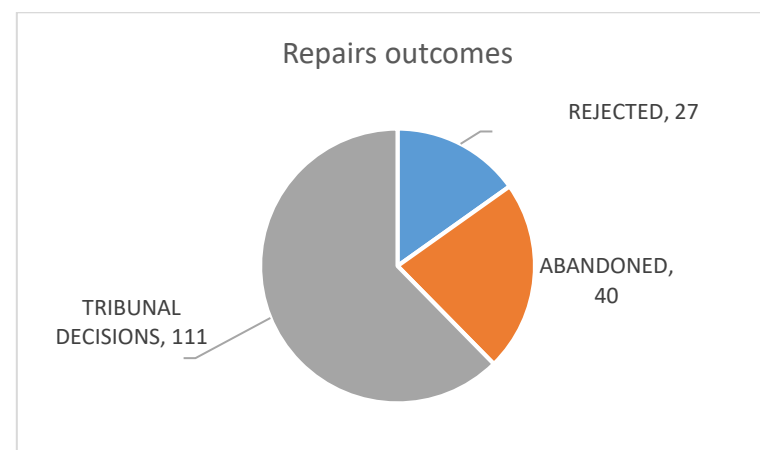
Third Party Applications received by Local Authority



The chart below indicates the outcomes of repairing standard applications which were closed and/or decided by a tribunal during the year. 'Decided' means a decision was made about whether the landlord had complied with their repairing standard duties. In cases where a Repairing Standard Enforcement Order (RSEO) is issued by a tribunal, a decision on whether the order has been complied with may not be made until a later date, depending on the time allowed for the repairs.

Some cases may not finally be closed until some years later, following a decision by the tribunal that there has been a failure to comply with the RSEO. 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 it to 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.

Repairs outcomes



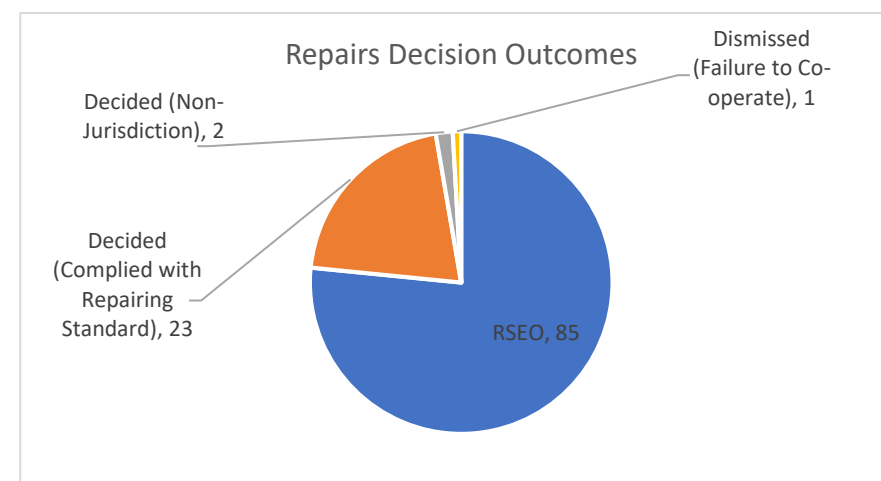
A total of 27 applications were rejected. The most common reasons for rejection were that the tenant had not responded to requests for further required

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 40 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.¹⁵ In 36 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 in the application which raised health and safety issues for others.

The decisions made on the 111 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 more than three-quarters of cases (85). In 23 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, and one application was dismissed due to the applicant's failure to co-operate.

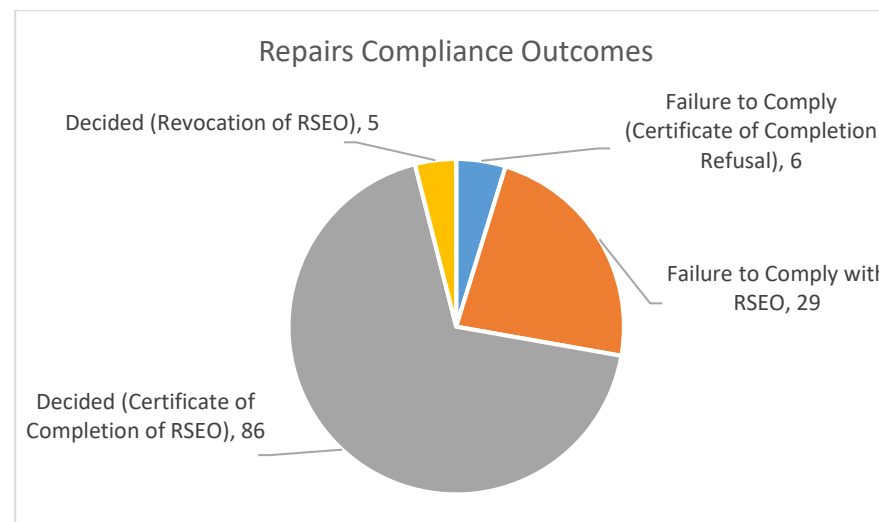


A total of 86 Certificates of Completion were issued by tribunals following compliance by the landlord with the

¹⁵ Housing (Scotland) Act Schedule 2 Paragraph 7

RSEO. A Failure to Comply decision was issued in 29 cases, and 15 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 5 cases, the tribunal revoked the RSEO because it considered that the action required by the order was no longer necessary. In 6 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.¹⁶ 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.

¹⁶ Housing (Scotland) Act 2006 section 25

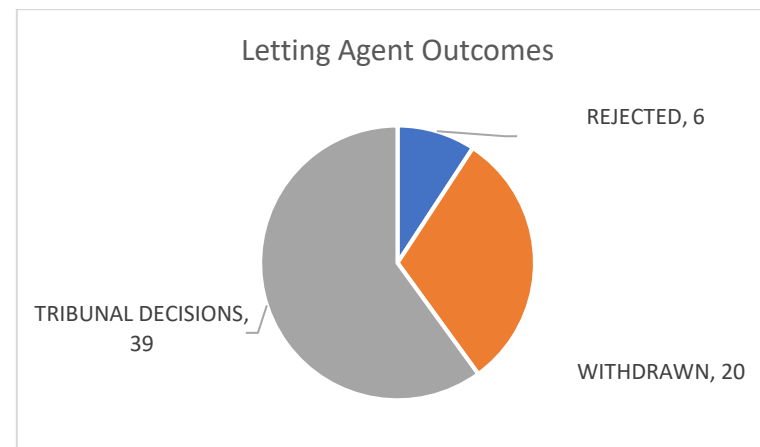
vi. *Letting agent applications*

Letting agent code of practice

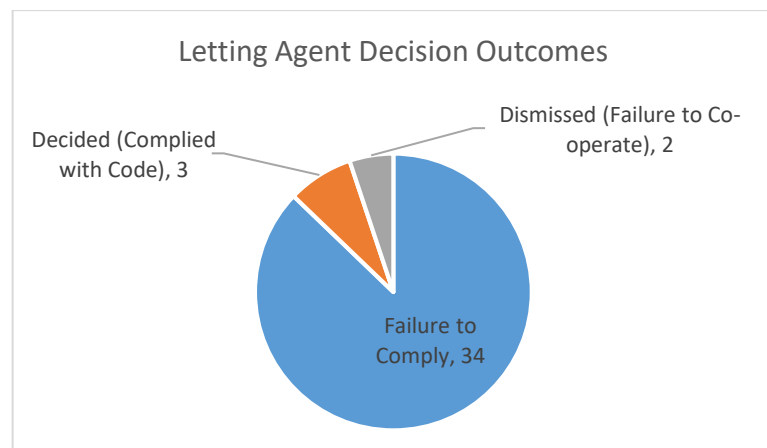
A total of 77 applications to enforce the letting agent code of practice were received during the year. It was anticipated that the number of applications received would grow this year. All letting agents were required to be registered as at 1 October 2018, and it was expected that awareness of the code of practice would start to grow among landlords and tenants. While there was a 17% increase on the previous year, the volume of applications remains significantly below the original projected figure of 240 cases per annum.

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 Standard Enforcement Order (LAEEO) is issued by a tribunal, a

decision on whether the order has been complied with may not be made until a later date.



Six applications were rejected, and 20 were withdrawn. In 12 cases, the reason given for withdrawal was that the matter had been resolved. A total of 39 applications were decided by a tribunal. The decisions made are shown in the chart below.



In the vast majority (34) 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 31 of these cases. The tribunal decided that the letting agent had complied with the code in only 3 cases. Two applications were dismissed by the tribunal due to the applicant's failure to co-operate.

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, up to two years after it came into force.

Tribunals considered whether letting agents had complied with LAEOs in 35 cases.¹⁷ The tribunal found that there had been compliance with a LAEO in 24 cases, and that there was a failure to comply in almost a third (31%) of cases. Of the 11 failure to comply decisions issued, four related to one letting agent, while another two related to a different letting agent.

Extension of time limit to determine application for letting agent registration

During the year, 71 applications were received from Scottish Ministers for an extension of the time limit to determine an application for registration as a letting agent.

Almost all (57) of the 61 applications closed during the year were granted. Three were withdrawn and one was rejected.

¹⁷ Note: some of these LAEOs would have been issued in the previous year

vii. *Landlord (right of entry) applications*

There were 78 landlord (right of entry) applications, a 10% increase on the previous year. The number of applications within this jurisdiction, while remaining relatively low, has been slowly increasing year on year since its introduction 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.

viii. *Other types of application*

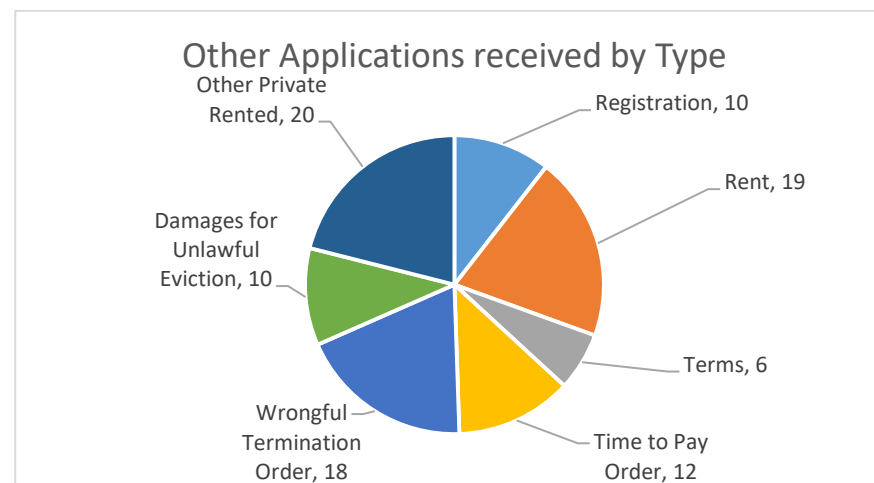
Various other types of application made up the remaining 2% of applications (95).

As in previous years, only a small number of rent assessment applications (19) were received. This represented a 27% fall on the previous year.

The remaining application types all fell within the private rented sector jurisdiction. These included 18

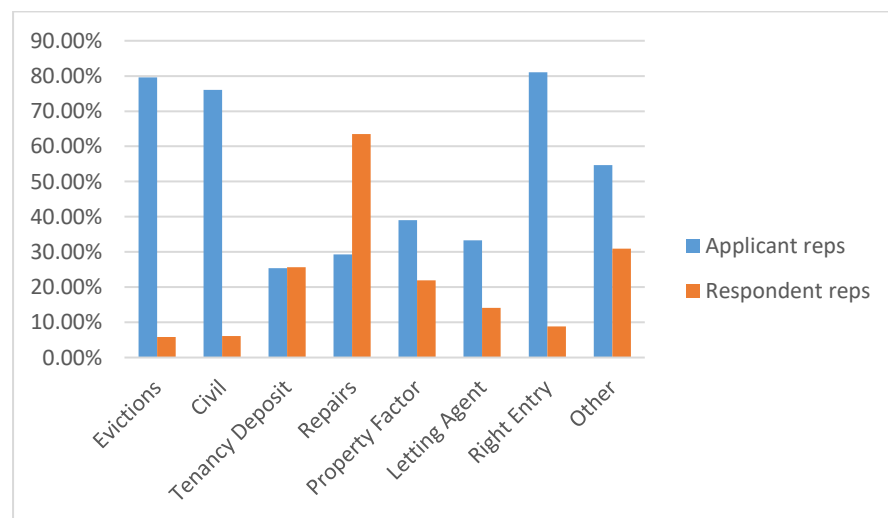
applications for wrongful termination orders; 12 applications for time to pay orders; 10 applications for damages for unlawful eviction; 10 landlord registration appeals; and 6 applications to draw up the terms of a tenancy. Smaller numbers of applications were also received relating to various other private rented sector issues.

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



Representation of parties

Whether or not parties were represented varied according to 1) the type of application and 2) whether they were an applicant or a respondent. It is not possible to determine from the data whether a party's representative was a solicitor, a letting agent, a non-solicitor adviser, a friend or a family member. The chart below shows the percentage of applications for each case type where the party named at least one representative at some stage of the tribunal process during the reporting year.



It is clear from this that in eviction and civil proceedings applications, around three-quarters of landlords but only a very small proportion of tenants (between 5-6%) were represented. The landlord's representative is likely to be a solicitor or letting agent. A small proportion of tenants may be represented by a solicitor or advice agency, while some may be represented by family members or friends.

Around three-quarters of applicants (landlords) are represented in right of entry applications, often by their letting agent or possibly a solicitor. More than half of respondents in repairs cases (landlords) are represented, often by their letting agent or sometimes by a solicitor. While more applicants (homeowners) than respondents are represented in property factor applications, only 36% of them are represented. Similarly, more applicants (who may be landlords or tenants) than respondents are represented in letting agent applications, although most of them are not.

In general, the figures suggest that landlords are much more likely to be represented than tenants, although a sizeable proportion of landlords do not have any form of representation within the tribunal process. It also appears that in some types of application, such as tenancy deposit, property factor and letting agent applications, neither party is represented in most cases. As discussed earlier, the tribunal process is intended to be inquisitorial in nature. It is also less formal than a court process. In these circumstances, parties may feel better able to represent themselves than otherwise they would.

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, turns up at a CMD or a hearing with a legal or other representative about whom they have not notified the tribunal 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.

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

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. Any application which does not meet the requirements should therefore have been rejected at that stage. In many eviction applications, where the paperwork has been correctly served on the respondent, and there is evidence that they are in three months' rent arrears, the tribunal has no discretion and is required to grant an eviction order. In such cases, whether either party is represented or not is unlikely to make any difference to the eventual outcome. In eviction and civil proceedings applications, it is common for respondents not to appear or to be represented at the CMD or hearing. In at least some instances, this may be because they are aware that this is unlikely to affect the outcome.

Members and training

As at the end of March 2020, there were 108 tribunal members (the tribunal judiciary) within the Chamber. Of these, 60 are legal members and the remaining 48 are ordinary members. These are either qualified surveyors (who sit on repairs, 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).

This year again saw a sizeable investment of time and resources by the Chamber in providing members' development through training. During the year, a total of seven days of training was delivered. This included:

- Interactive training for ordinary (housing) members on quantification of loss and damages; reflection on the role of the housing member in tribunal proceedings; managing conflict in hearings; and discussion around case management scenarios.

- Safety and awareness training for all members who undertake property inspections. This training also covered topics designed to raise awareness of vulnerable user groups and the needs of vulnerable parties.
- Induction training for ordinary (surveyor) members on the private rented sector jurisdictions to ensure that there are sufficient surveyor members trained to handle cases which involve assessment of damages and also compensation claims where the input of a property surveyor is required.
- Training for legal members on permission to appeal and reviews of HPC decisions. One of the Upper Tribunal judges who sits on HPC appeals was involved in delivery of this training. Other topics for discussion included UT decisions, decision writing and the new Private Residential Tenancy.
- Interactive training for legal members on case management issues, with scenario- based practical case studies and group discussions.

In October 2019, the Chamber President delivered training for three newly assigned Upper Tribunal judiciary.

Members engage in an ongoing process of members' development reviews. This is an opportunity for them to reflect on their work and receive peer feedback. Findings from member reviews influence the training programme for the year. During the year, 31 members' reviews were carried out.

A judicial bench book is available electronically for tribunal members. This resource contains legislation and case law relevant to the jurisdiction. Upper Tribunal decisions are circulated electronically to the membership, and a members' resource containing all important Upper Tribunal decisions relevant to the housing jurisdiction is being compiled.

Impact of recent rules changes

A number of amendments to the Chamber rules came into force during February and March 2019. These were intended to address previous legislative difficulties,

including areas where the legislation was not clear and some where the tribunal did not have powers equivalent to those which had been available to sheriffs.

The main changes introduced were:

- Allowing service by advertisement on the Chamber website as an equivalent to walls of court service where the respondent's whereabouts are unknown
- Allowing the Chamber to serve formal documentation where the respondent moves during the course of the proceedings and provides no contact details
- The introduction of a process to amend applications mid-proceedings, for example, to increase the sum claimed in payment actions
- Permitting the tribunal to regulate its own procedure. This allows a tribunal to order a delay in execution of an order at any time before it is executed for diligence; and makes further

provision for the management of group applications

- Allowing the tribunal to award interest on orders for payment
- Providing for applications for time to pay directions and time to pay orders to allow instalment payments by a debtor.

Some of these changes have made a significant impact during the year. Firstly, it was formerly not uncommon for an applicant to be unable to trace the respondent's current address. The ability to serve papers on a respondent whose whereabouts are unknown has allowed the tribunal to process a significant volume of applications which it would previously have been unable to take forward. Service by advertisement is carried out via the HPC website. A total of 436 applications were served by the tribunal by this method during the year. While the vast majority of these were civil proceedings (317) and eviction applications (85)

brought by landlords, 33 involved tenancy deposit applications brought by tenants.¹⁹

Secondly, all respondents in applications for payment orders are now sent an application to seek a time to pay direction under the Debtors (Scotland) Act 1987. These are requests for instalment payments made before a payment order is granted. Relatively few respondents have taken up this option to date. During the year, 66 applications were received for time to pay directions. Half of these (33) were granted and 29 were refused.

A further 12 applications were received for time to pay orders (requests for instalment payments made after the payment order is granted). Most of these (9) were received from landlords who were respondents in tenancy deposit cases. Five applications were rejected, mostly because they were raised prematurely, and two

were withdrawn. Of the remaining 3 applications disposed of during the year, 2 were allowed and 1 was refused.

Thirdly, a number of orders for expenses have now been granted by tribunals. Such orders are not common, however, as the test which needs to be established is that the party “through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense”. Training has been provided to members on expenses claims made by parties and the test to be applied. A recent Upper Tribunal decision also provides helpful guidance.²⁰

Other developments and events during the year

The vast majority of private rented sector applications received continue to involve evictions and civil proceedings applications for payment orders. However,

¹⁹ One application served by advertisement was to draw up the terms of a tenancy

²⁰ [Ramirez-Stich and Strachan](#) [2019] UT 64

both an Upper Tribunal appeal decision²¹ and a sheriff court judgment²² on the powers of the First-tier Tribunal have indicated that the jurisdiction of the HPC is wide in relation to cases which have transferred from the sheriff court. These suggest that the HPC has power to make awards for damages and for sanctions; declaratory orders; and interdicts. It also has powers to deal with applications in guarantee claims linked to tenancy contracts.²³

The tribunal administration has conducted an in-depth review of the process for private rented sector applications and case scheduling. This has resulted in proposed administrative changes to improve efficiency and reduce the end to end timescales.

The Chamber President gave a presentation to the Property Managers Association Scotland (PMAS)

conference in October 2019 on the Role of the Housing and Property Chamber.

On 11 March 2020, the Scottish Parliament's Local Government and Communities Committee held an evidence session on the operation of the Housing and Property Chamber. The committee took evidence from the Director of Tribunal Operations at the Scottish Courts and Tribunals Service and from the Scottish Association of Landlords; Shelter Scotland; Living Rent; the Law Society of Scotland; and the Property Managers Association Scotland.

Reviews, recalls and appeals

The Tribunals (Scotland) Act 2014 introduced a process which allows a tribunal to review a decision made either at the request of a party or at its own instance.²⁴ A party's request for review of a decision must be made

²¹ [SW and Chesnutt Skeoch Limited](#) [2020] UT 12

²² [Parker and Parker v Inkersall Investments Ltd](#) [2018] SC DUM 66

²³ [Anderson and First-Tier Tribunal for Scotland Housing and Property Chamber and Stark](#) [2019] UT 48

²⁴ Section 43

within 14 days of it being sent to them.²⁵ 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.²⁶

During the year, a total of 160 requests for review of a decision were received by the HPC, across most jurisdictions. Almost half (72) concerned property factor cases, and a similar number (74) were received in PRS cases concerning evictions (28); civil proceedings (23) and other PRS cases (23). Just over half (53%) of review requests (84) were refused, while in 40% (64) of requests, the decisions were corrected or set aside. No action was taken by the tribunal in 4 cases, while the remaining review requests were not disposed of by the end of the year.

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.²⁷

A total of 62 recall applications were received during the year. Most of these were refused (39), while 19 were granted. The remaining applications were not disposed of by the end of the year.

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

²⁵ Rule 39 of the [Chamber's Procedure Rules](#)

²⁶ Section 44 Tribunals (Scotland) Act 2014

²⁷ Rule 30 of the [HPC Procedure Rules](#)

appeals do not involve legal representatives. An appeal can, however, be made on a point of law only, 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 131 requests for permission to appeal were received across all jurisdictions. Most related to the private rented sector jurisdictions, although more than a quarter involved property factor, repairing standard or letting agent cases. The vast majority of permission to appeal requests were refused by the tribunal, with only 10 being granted either in full or in part. 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 62 appeals relating to decisions made by the HPC were considered by the Upper Tribunal for Scotland. While some decisions were still awaited at the end of the year reported on, the vast majority of those considered

(43) were refused. The Upper Tribunal upheld the appeal or quashed the original tribunal's decision in only 6 cases.

Future challenges

At the time of writing, the principal challenge faced by the HPC is the impact of the coronavirus pandemic on its business. All scheduled hearings and case management discussions were postponed from 19 March 2020 until 9 July 2020 due to the pandemic. All re-inspections or supervised access arrangements were suspended from 19 March 2020. The Glasgow Tribunals Centre, the HPC's administrative base, was closed to administration staff from 25 March 2020 and reopened again with limited staff on site on 15 June 2020. Applications continued to be accepted electronically whilst the administrative headquarters were closed, with urgent applications being processed through the sift process up to the point of notification of acceptance of the application.

Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 have made temporary changes to the statutes applicable to private sector evictions in Scotland. These changes apply only to applications lodged with the HPC relying on a prescribed notice served on or after 7 April 2020. The main changes, which apply to all three types of private tenancy (private residential tenancies; assured tenancies; and tenancies under the Rent (Scotland) Act 1984) are:

1. Mandatory grounds of eviction become discretionary during the period when the Act is in force. This permits consideration of the reasonableness of making an eviction order in each case during that period.
2. The notice periods required before an eviction application can be brought before the HPC are extended. In general terms, the extended notice periods are either for 6 months (in most cases) or 3 months for certain tenant conduct grounds

relating to antisocial or criminal behaviour and where a landlord or their family member need to move into the property. No change is made in relation to where eviction is sought on the ground that a property is vacant as it will have no impact on dealing with the pandemic crisis.

At the time of writing, plans were being put in place for the resumption of tribunal business when lockdown restrictions are relaxed. The immediate priority once this is possible will be to reschedule case management discussions and hearings which had been scheduled prior to the lockdown. Where possible, case management discussions and hearings are likely to be conducted by teleconference calls with parties, their representatives, tribunal members and tribunal clerks participating remotely. Overall case volumes for 2020-21, and how applications are dealt with, are likely to be significantly impacted by the pandemic, and by the temporary legislative changes outlined above.

Future members' training events will be arranged when more information is available on when group gatherings can be safely arranged or there is a safe alternative. Since member reviews include observation of hearings, these have been delayed meantime until hearings are resumed.

Following a recent user survey, the tribunal administration is considering whether there are potential improvements which could be made to HPC processes on the basis of the feedback received. Consideration is also being given to introducing a 'pulse survey' on the HPC website to allow users to provide feedback on the content of the website and their experiences of using it. This survey will help the HPC administration to assess the effectiveness of the website and whether any further changes should be made to improve the website and the information included on it.

Annex C: Tax Chamber

Land and Buildings Transaction Tax



Anne Scott,
Chamber President

In the year to 31 March 2020, 22 new appeals were lodged with the Tribunal. Eleven appeals were withdrawn (two of those being cases that had been sisted pending the release of two decisions in the Upper Tribunal). Ten appeals were dismissed on the basis of the papers alone. One appeal is sisted pending negotiations between the parties which have been delayed as a result of the Covid-19 pandemic. The number of appeals rose slightly due to the new 3-year LBTT return appeals but the overall case load remains light and almost all of the parties opt for a hearing on the papers.

Scottish Landfill Tax

Only two new appeals were lodged and they were by the same appellant. Two appeals were withdrawn. One appeal was heard over a period of three weeks concluding just before the lockdown for the Covid-19 pandemic and a similar appeal that had been listed for hearing in May 2020 has been sisted until suitable arrangements can be made for a hearing.

As a trial, and for the first time, the substantive appeal that was heard utilised digital storage of the extensive documentation and photographic and video evidence. The Tribunal very much appreciated the willing participation from both Revenue Scotland and Brodies LLP, solicitors for the appellants. With some modifications, and further trials, it is intended to utilise that digital solution for the appeals involving significant quantities of documents.

Annex D: Health & Education Chamber

The determination of applications in relation to provision for Additional Support Needs was the only jurisdiction in the Health and Education Chamber during the reporting year. The Scottish Government has committed to consult with stakeholders before a decision on the transfer of the 32 Education Appeal Committees is made. This consultation has not yet commenced. Transfer of the NHS Tribunal for Scotland and the National Appeal Panel for Entry to the Pharmaceutical Lists has been suspended for the time being.

This year has seen the largest volume of cases to the Additional Support Needs jurisdiction, since 2005. The past 4 years have seen a year on year increase.

Additional Support Needs Jurisdiction – Application Types

Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act)

References may be made by parents and young people²⁸ against decisions of education authorities regarding the provision of educational support, under the 2004 Act. Since 11 January 2018, children aged between 12 and 15 years who have capacity to make a reference and where their wellbeing will not be adversely affected by doing so, have been able to make two types of references - (1) A reference in relation to a co-ordinated support plan (CSP), the statutory education plan in Scotland; and (2) a reference appealing the education authority's assessment of the

²⁸ Young people are those aged 16 years and above, who remain within school education.

child's capacity or wellbeing. Capacity and wellbeing references may be made by the child or their parent. Children have no right to make a placing request.

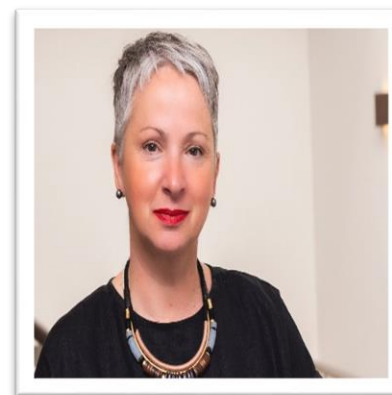
There is no presumption of capacity in the 2004 Act. There are two statutory tests relating to the child's capacity and wellbeing which the child must overcome before s/he can exercise a right under the Act. President's guidance sets out how a tribunal will approach these tests²⁹. When determining capacity, a tribunal or a legal member will assess the child's level of maturity and current understanding in relation to the specific right the child seeks to exercise. Sufficient maturity and understanding is not age specific and capacity is not a static concept. A child may lack capacity to exercise certain rights, but have capacity to exercise others.

²⁹ President's Guidance 02/2018: Capacity and Wellbeing
<https://www.healthandeducationchamber.scot/additional-support-needs/publications/42>

Equality Act 2010 (the 2010 Act)

Claims may be made by parents, children who have capacity (there are no comparable capacity and wellbeing tests here), and young people, against responsible bodies for disability discrimination in school education, under the 2010 Act. Responsible bodies include a school managed by an education authority, an independent school and a grant-aided school.

Update from the Chamber President



*May Dunsmuir,
Chamber President*

Mrs May Dunsmuir is President of the Health and Education Chamber. During the reporting year, she led its 34 members, 14 of whom were legal members and 20 were ordinary members.

There was an increase across all types of application and in the number of applications being made by children. It is clear that the new national children's support service, "My Rights, My Say", is having an impact on the exercise by children of their rights.

During the reporting year, the President continued to hear all child party cases, providing her with an opportunity to understand the developing legal landscape and any differences between child and parent applications. This also set the scene for the preparation of new guidance. Short letters explaining the tribunal's decision were issued to child parties on the conclusion of their case, and were positively received. One child described feeling "more included and valued" as a consequence of the letter.

³⁰ All guidance is published on the HEC website
<https://www.healthandeducationchamber.scot/additional-support-needs/publications/42>

Guidance and Publications in the Reporting Year

This annual report provides details of all of the guidance and information notes issued by the President, including two new guidance notes - *Asking the Child Questions* and *The Child and the Hearing* which, when taken together with earlier guidance - *Views of the Child and Capacity and Wellbeing*³⁰, completes a suite of specialist guidance on the child in the proceedings of this chamber. The chamber also published a visual guide to the sensory hearing facilities in Glasgow in 2019³¹, which can be used to build a 'social story' for a child coming to a hearing. Speech and language members very helpfully provided the President with valuable assistance in the preparation of these.

New guidance was issued to the chamber's administration and to parties on documentary evidence³². It places the responsibility for the

³¹ Going to the Glasgow Tribunals Centre
<https://www.healthandeducationchamber.scot/additional-support-needs/publications/291>

³² <https://www.healthandeducationchamber.scot/index.php/additional-support-needs/publications/279>

preparation of the 'bundle' on the respondent/responsible body (in the main, education authorities), relieving its small casework team of this burden. They have begun to reap the benefits including reductions in the size of the bundle and less duplication.

This year the President also published a *Judicial Decision Writing Toolkit*, to assist all members when drafting decisions. All decisions drafted from 1 July 2019 are Toolkit compliant and the positive benefits of this are palpable. The President was greatly assisted by members who offered comments and suggestions at the drafting stage; they were all incorporated, making this a strong resource.

Sensory Hearing Facilities

In February 2020, the President co-launched the sensory hearing facilities in Glasgow with the Minister for Children and Young People, Ms Maree Todd. The facilities have

been in use since September 2019 and appear to be working very well in meeting their objectives. The intention is to continue to improve the facilities as they bed in and as more is learnt about what accessible and inclusive justice looks like for those with additional support needs.

Covid-19

As the time came to prepare for the all members' conference, which is ordinarily the highlight that marks the end of the reporting year, lockdown hovered into view. Unfortunately, the conference had to be postponed. In a very short period of time, operations were turned on their axis and new systems and ways of working were promptly introduced. On 16 March 2020, 'social distancing' began, on 20 March all schools in Scotland closed, except those maintaining a childcare/education function for vulnerable children and the children of key workers. On 23 March a period

of 'lockdown' began and was subsisting at the end of the reporting year. Working from home became the norm and all hearings scheduled for March to June which were not time-critical, were postponed until 1 July. All non-essential cases were suspended for the same time period.

Despite all of the necessary changes and interventions, business continuity has had little interruption. The continued professionalism and commitment of the President and members, and of the staff of the Scottish Courts and Tribunals Service (SCTS), who have walked the extra mile, has been remarkable.

To assist during this period, the President issued guidance on Hearings and the Covid-19 outbreak, to members, parties and stakeholders. She introduced a triage system for new cases to identify any which were time critical and list them for a telephone hearing. Plans were also put in place to assess the potential for moving to virtual hearings, using remote video facilities, which were well embedded into the English equivalent, the Special

Educational Needs and Disability (SEND) jurisdiction of the UK First-tier Tribunal.

As the likely impact of the pandemic became apparent, the President observed:

"..... we will be entering into a brave new world – but one where I have no doubt we will rise to the challenge. What we learn from this time of global crisis will undoubtedly stand us in good stead for the future. I am confident that the HEC, its members and the staff of the SCTS will play a strong part in this"

Judicial Systems in the Health and Education Chamber

Interlocutory Work

The HEC has one In-house Convener (IHC) and a number of Duty Conveners, who provide judicial cover during periods of increased operational activity, this includes pre-allocation interlocutory work. A Handbook for Duty Conveners was introduced in 2019 to provide core knowledge and information, to advance judicial skill, and create consistency in approach.

Judicial case management meetings (JCM)

These ordinarily take place monthly, and involve the judicial review of each live case by the IHC with the casework team. This encourages case progression and can lead to instructions on case management. A minute of each meeting is provided to the President. The JCM remains an important tool during the triage of new cases and the management of suspended or postponed cases during the Covid-19 outbreak.

Covid-19 Case triage

The President introduced a case triage system on 23 March 2020. The President and IHC review all new cases lodged following lockdown to determine whether these were time critical or non-essential. Non-essential cases were suspended until 1 July (or earlier if appropriate). Time critical cases are allocated to a legal member and judicially case managed. A number of new cases related to placing requests, some for children entering

into primary schooling for the first time; these require particularly careful and judicial attention.

The President regularly reviews the progression of time critical cases; and non-essential cases, to determine if any of these have become time critical.

Judicial case management - the case conference call

Once a case is allocated, the legal member will engage in pre-hearing judicial case management. This includes one or more case conference calls with parties, to discuss how the case will proceed, witnesses, the views of the child, preliminary matters such as competence and other relevant matters. This is one of the most valuable tools in the jurisdiction. Settlement is often achieved through this process and, where the case proceeds to a hearing, the groundwork has been completed, allowing for a focused and more efficient hearing. The President's guidance on this is provided to parties, so they can prepare for the case conference call

33.

Legal members are very familiar with this process, which will act as a good foundation for remote telephone hearings.

Covid-19 Telephone Hearings

Where in-person hearings are not possible due to Covid restrictions, they will be conducted by telephone or other remote means. At the end of the reporting year, the President was preparing guidance for this, to include electronic handling of documentary evidence, taking account of relevant developments throughout the devolved and reserved tribunals, and courts. She was confident that these new systems would quickly bed in, with the continuing encouragement, enthusiasm and support of the membership.

Permissions to appeal or review

The IHC, Duty Convener or President determine permission to appeal or request for review applications for the First-tier Tribunal for Scotland (F-tT) HEC. This has proven to be an efficient process.

Appeals

Appeals may only be taken on arguable point(s) of law. If permission is refused by the F-tT, the appellant may seek permission to appeal from the Upper Tribunal for Scotland (UT). If permission is refused by the UT, the appeal is at an end. In some cases, an appeal application will raise issues which are best dealt with as a review; here, a direction will be made by the F-tT that a review takes place.

³³ PGN 06/2018 Case Conference Calls
<https://www.healthandeducationchamber.scot/index.php/additional-support-needs/publications/42>

If either the F-IT or the UT grants permission to appeal, the appeal proceeds in the UT. In cases where the UT decides an appeal, there is a limited right of further appeal to the Court of Session.

Reviews

A review involves a request that the original tribunal looks again at its decision. The test here is whether the interests of justice mean that the decision should be changed in some way. If the test is met, the review will, where practicable, be undertaken by one or more of the members of the tribunal who made the decision. Where it is not practicable to do so, the President will appoint another tribunal. If the test is not met, the application for a review will be refused. In the majority of cases the review is decided by the legal member.

Following a review, the original tribunal may issue a fresh, changed decision. Where it does so, that decision could be appealed.

Competency decisions

A number of these have arisen over the reporting year, and in the main, they have concerned interpretation of statutory provisions in the relevant legislation and/or the HEC Rules of Procedure. These have included: the definition of a 'placing request'; the meaning of 'willing to admit' a child to a school; whether a parent can make a claim of victimisation to the HEC under the 2010 Equality Act; the meaning of the term 'special school'?; whether a placing request can be made for only part of the school week?; whether a child is 'being provided with' school education; whether a parent can raise an Equality Act 2010 claim for a child; and, increasingly, questions of time-bar.

Focussed Mentoring Work

From time to time the President will identify areas of focussed mentoring for the development of a member or members. The President or IHC will then undertake targeted mentoring. This has, during the year, included mentoring on the application of the Toolkit, how to construct the draft decision and benefiting from the tribunal's specialist expertise.

Peer Discussion

Tribunal members are free to contact the President, IHC or a Duty Convener with any practice and procedure questions, either on the day of a hearing or in advance of a hearing or case conference call. This allows members to discuss any legal or procedural questions. There has been an increase in the number of these during the Covid-19 outbreak, which is a natural response to the introduction of new emergency legislation, regulations and judicial processes.

President's Updates

The President provides judicial updates to the members every two months, and more often when necessary, which has been the case during the Covid-19 outbreak. These are sent electronically with links and attachments for the ease of members.

HEC Library

The President introduced a Chamber library of resources in 2019. This is a growing and important resource. This year there have been additions in the following areas: tribunal practice; Asperger's, autism and education; United Nations Conventions; ECHR, education law, including a new education law journal and the law of evidence. All materials are available for borrowing by members from 2020 onwards, and are regularly used in the development of the President's guidance and training materials.

Judicial Support in the Health and Education Chamber

Member Training

An update by the Lead Trainer, Professor Derek P. Auchie



Regular training is an important part of the development of any judicial body. In a jurisdiction like the HEC/Additional Support Needs, with regular legal and practice changes in a complex public law field, such activity is vital.

All Members' Conference 2020

Our annual training event had to be postponed due to the Covid-19 outbreak. The title was 'An International Perspective' and, in accordance with our usual approach to training events, pre-reading materials were distributed. When the conference is re-scheduled, we will examine in some detail, through scenarios and discussion, the ECHR, the UN CRC and the UN CRPD and



how they impact on our cases. We hope that the Lord President and the Commissioner for Children and Young People in Scotland will remain available to share their important insights and perspectives, as had been planned for March.

Evening Training 2019

Two evening training events were held: one for legal members and one for ordinary members. In each event, there was an update on topical matters, including: use of specialist member knowledge; exclusion of pupils; seclusion and restraint of pupils and new government guidance on the presumption of mainstreaming.

The main part of the evening involved the scrutiny of three HEC decisions (issued prior to the Judicial Decision Writing Toolkit). This led to a lively debate about the extent to which each decision would comply with the Toolkit. These sessions were designed to illustrate the capacity of the Toolkit to make a practical difference to decision writing.

Member Reviewer Training 2019

The first tailored training session for the new Member Review Group was delivered in November 2019. The trainers were required to read mock papers relating to members' development reviews, and consider them against the competencies which lie at the heart of review processes. Two role-played review meetings took place to let the new group get the feel for how to deal with routine as well as sensitive issues which could arise during a review.

This event was followed by the issue of a comprehensive set of annotated review papers for the two cases explored in the pre-reading and role plays as well as reviewer FAQs developed partly from the training event. The Lead Reviewer, Ms Lesley Dowdalls, will have oversight over the reviews conducted within a particular year and will identify and share any training needs.

Judicial Institute: Tribunal Craft 2019/20

In consultation with other Scottish Presidents and with the support of the JI Head of Tribunal Training, the President designed the first Tribunal Craft course to be delivered by the Judicial Institute.

The President and IHC contributed to the first training event in November 2019. Delegates from a range of tribunals attended for a number of presentations from across Scottish Tribunals. The President and IHC concentrated on 'the hearing' and the practicalities of preparing for and handling evidence and submissions. The event was very well received and a repeat of it (postponed due to the Covid-19 outbreak) will be arranged as soon as possible.

Member feedback

Feedback has been gathered from all Chamber training exercises and will feed into future events. Survey Monkey provided a platform to obtain quality and in-depth member comments, which suggest that this

medium leads to a richness of data more challenging to achieve from paper feedback. Members' feedback from all training events has been very positive. The peer led model of training - now in place for over 5 years – is working very well.

Member Communication: The Bulletin

An update from the Editor, Mrs Deirdre Hanlon



"In last year's Annual Report, I wrote that I hoped to continue to provide the Chamber with a newsletter that was diverse in content and would reflect our membership in the

forthcoming year. In seeking to do so, the Bulletin has included a broad range of articles and contributions from individuals both within and outside the Chamber as well as input from a number of organisations. From highlighting reports, relevant case law, and policy or practice issues as they relate to children or young people with additional support needs, I sought as editor

to produce a Bulletin that acts as both a useful communication and learning resource for everyone.

As many HEC members who work with children and young people will already know, those working in the field of education are often keen to share their ideas about practice or services that work with and for children and young people with additional support needs. My approaches to organisations or professionals as Editor have always been met with positive enthusiasm and an eagerness to share information for the benefit of children and young people. The Bulletin has, in a sense, been shaped by this. As I look to the publication of our next edition in late spring 2020, there remains no shortage of ideas or issues to include in future editions. I will continue to encourage my fellow members to contribute to the Bulletin in this respect and look to focus on the issues that are relevant to the work of the Chamber.

I extend my thanks to everyone who has been involved in the Bulletin's production in this reporting year. In particular, thanks go to Ms Muriel Robison (legal member), who has written a helpful three-part series focussing on the application of section 15 of the Equality Act 2010. Thanks also to Professor Derek Auchie, for his IHC section which provides a regular update on crucial issues of practice as they arise within the work of the Chamber. I also thank the Scottish Courts and Tribunal staff who work hard to put each final publication together.

In the forthcoming year, I hope to continue to provide members with a practical learning resource as well as a useful reference tool as we each judicially manage our cases. I will ensure that the content of each edition includes the values and principles of the HEC and the Additional Support Needs jurisdiction."

Member Review

An update from the Lead Reviewer, Ms Lesley Dowdalls

"I am pleased to be able to contribute to the development of the Chamber in my new role as Lead Reviewer. In this complex jurisdiction many difficult areas of law and procedure arise. The review process is a good way of identifying the areas in relation to which we could all benefit from further training or additional guidance, noting good practices and providing feedback on the delivery of the judicial function. We all learn from one another, and the outcome of reviews will shape future training.

Having been reviewed myself in this and other jurisdictions, I know that the process can seem daunting. However, the review process is a supportive one. We are reviewed by our peers as it is our peers who best understand the challenges of our roles; and can engage



in constructive discussion about our learning and development. We all benefit from those discussions, and from knowing that issues of concern or identified training needs can be addressed. Other than reviews, there is little opportunity for self-reflection, or to gain independent feedback on our judicial roles; so it is a good opportunity to set aside time to get the most out of the process.

I am confident that our process of review will be supportive to members. It is a two-way discussion about experience, procedure and training. I hope to conduct reviews and support member reviewers to conduct reviews, in a manner which best encourages members to voice any concerns, knowing that it is a fair process which helps to develop good judicial practice and to make future training as relevant and instructive as possible."

President's Guidance and Information Notes

The President has issued a range of guidance to members and to the Administration; information notes; and specialist guidance. Those marked with an asterisk (*) were issued in this reporting year. Each guidance or information note is thoughtfully prepared and will often reflect the input of members. Some guidance has been prepared following consultation with specialist groups and stakeholders and others following a pilot period.

To members

PGN 01 2018	Views of the Child
PGN 02 2018	Capacity and Wellbeing
PGN 03 2018	Independent Advocacy
PGN 04 2018	Adjournments
PGN 05 2018	Postponements, Suspensions and Procedure
PGN 06 2018	Conference Calls
PGN 01 2019*	Asking the Child Questions
PGN 02 2019*	The Child and the Hearing
PGN 01 2020*	Hearings and the Covid-19 Outbreak

[To Administration](#)

PGN 01 2019*	Documentary Evidence
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[Information Notes \(for stakeholders and parties\)](#)

01 2018	Parties, Representatives, Witnesses and Supporters
02 2018	Claiming Expenses - Representatives
03 2018	Making a Disability Discrimination Claim
04 2018	Making a Reference

[Specialist guides for children](#)

Children's Guide to Making a Claim
Children's Guide to Making a Reference
Guide to the Glasgow Tribunals Centre Sensory Floor*

[Judicial Decision Writing Toolkit \(issued 1 July 2019\)](#)

The Toolkit was issued to members in July 2019, to provide support and guidance and to introduce elements of consistency in drafting in cases involving the Additional Support Needs jurisdiction. As the Chamber develops, so too will the Toolkit. A second edition is planned for 2021.

The content and quality of written decisions is crucial to the parties and to the Chamber's public reputation and standing. The President has the discretion to publish decisions. Each decision is carefully reviewed by the President prior to authorising its publication. Decisions are well read by a range of stakeholders, including education authorities, the Equality and Human Rights Commission and agents who regularly appear in our proceedings. This process led to the conclusion that a detailed guide to decision writing would be a useful tool for members.

The Toolkit provides practical tips and examples on how to write a suitably concise, tightly worded and informative decision. It will soon include sample decisions to illustrate the guidance in action. Members are obliged to follow the Toolkit when drafting decisions.

The Toolkit has been very well received by the Chamber membership. It has also attracted positive interest beyond the Chamber. An example of this is the Toolkit

training the President delivered in January 2020 to judges and specialist members of the SEND jurisdiction of the UK First-tier Tribunal, which now hears in the region of 8000 cases a year.

Case Law Developments

Midlothian Council v PD [2019] UT 52

The Upper Tribunal issued its first decision in an appeal from the F-TT/HEC in 2019 (the HEC decision was written before the Toolkit was published).

Lady Carmichael, in quashing the decision and remitting it back to a differently constituted tribunal for failure to provide adequate reasons, provides guidance on the necessary elements of findings in fact and reasons for decisions.

Findings in Fact

Lady Carmichael describes findings in fact as expressions of a conclusion as to a matter of fact, formed on the basis of evidence. In relation to an issue

essential to the decision-making process of the tribunal, a decision should set out intelligibly the findings of fact relevant to that matter. Elsewhere in the decision a tribunal should make clear what evidence those findings were based on

Reasons for Decision

Lady Carmichael goes on to state that where there has been evidence to contrary effect, the decision should set out also what that evidence was, and why the competing bodies of evidence have, respectively, been accepted and rejected, as concisely as is consistent with the nature and extent of the evidence in question. The reader ought to be able to discern how the evidence related to the facts found, and how the facts found have been employed in considering whether the legal tests have been satisfied.

Lady Carmichael reminds us that a tribunal is under no obligation to narrate all of the evidence led before them nor to narrate in detail all of the evidence they rejected. A mechanistic recital of all of the evidence should be

avoided. However, the tribunal does require to bear in mind that the audience for a decision includes not only parties who were present at the hearing, but also, potentially, an appellate tribunal. The tribunal's decision is the primary source of information for the appellate tribunal as to what the oral evidence was. It is also important more generally that a reader unconnected with the case should be able to understand why the decision was made.

Aberdeenshire Council v SS, DS [2020] UT 25

The Upper Tribunal issued its second decision in an appeal from the F-TT/HEC in March 2020.

Lady Carmichael, in refusing permission to appeal, addresses two important practical questions.

Meaning of an arguable point of law

An 'arguable' point of law must exist before permission to appeal may be granted³⁴. Lady Carmichael used the definition of that test adopted by the Upper Tribunal in an English immigration case³⁵, namely that the point of law must not only be arguable, it must be material too³⁶. It is clear from *Nixon* that an error on a material point is one where if the error had not been made, there is a reasonable prospect that this would have made a difference to the outcome of the case³⁷. In this case, Lady Carmichael was influenced by the fact that the decision was explicit on this point, and with reasons for its approach.

Where there is a point of law of public importance and where there is a public interest in its determination, the materiality test will not apply³⁸.

³⁴ Tribunals (Scotland) Act 2014, section 46(2) and (4), considered together.

³⁵ *Secretary of State from the Home Department v Nixon* [2014] UKUT 00368 (IAC), Mr Justice McCloskey, President of the Upper Tribunal Immigration and Asylum Chamber, at paragraph 5.

³⁶ *Ibid.* paragraph 6.

³⁷ This definition, used in *Nixon*, was taken from another immigration case, *Anoliefo (permission to appeal)* [2013] UKUT 00345 (IAC).

³⁸ *Anoliefo (permission to appeal)* [2013] UKUT 00345 (IAC), paragraph [16]; *Nixon*, paragraph [5].

Permission to amend the response

Under our Rules of Procedure such amendments are only permitted where there exist 'exceptional circumstances'³⁹. The respondent had sought to add an additional ground for the refusal of the placing request in question.

Three factors were considered by Lady Carmichael to be relevant to this question, two of which may be of wider interest: (1) the respondent's response had been prepared by someone who was legally qualified; and (2) the tribunal as an 'expert tribunal' would have been well aware of 'difficulty with change' being a frequent feature for children with autistic spectrum disorder.

Taking these together, Lady Carmichael decided that the F-IT had not erred in refusing permission to amend the response.

³⁹ The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, rule 19(5).

Administrative Support to the Chamber

An update from the Tribunal Operations

The caseload of the Additional Support Needs jurisdiction has once again increased and we have received the highest number of applications in a single year since the former ASNTS was established in 2005. To help us manage this increased workload, the Administration has continued to work closely with the President on changes to the case management process.

Automated Fees and E-Expenses

Automated fees and e-expenses were introduced to members of the HEC from 1 April 2019 to streamline the process for members claiming fees and expenses; and to ensure prompt payment. This means that the Administration now automatically processes member

fees when work is carried out. Members now process their expenses as they are incurred. This has reduced the need for paper expense forms and receipts to be prepared and posted to the Administration at the end of the case.

Sensory Hearing Facilities

In September 2019 we started to use the sensory hearings facilities in the Glasgow Tribunals Centre. The children who used the facilities were able to access the suite from a separate entrance where they were greeted by a member of staff and accompanied to the hearing suite in their own lift, introduced to the hearings clerk and shown the different facilities available. The facilities have been well used, including the 1-2-1 room. Feedback has been very positive and suggests that children have felt comfortable in the sensory environment.

Documentary Evidence

The President issued new documentary evidence guidance, which was implemented on 30 September

2019. The new process means that the respondent/responsible body now prepares and lodges the 'bundle' for each hearing. This has helped to streamline the process for circulating documentation in the face of growing caseload. We are now seeing other significant benefits, including a reduction in the volume of documentary evidence being lodged, and a lack of duplication throughout the bundle.

This means that documentary evidence is generally limited to documents, or the necessary parts of documents, which are directly relevant to an issue in the reference or claim and has led to smaller, more concise bundles.

Data Analysis

Throughout the reporting year the tribunal has been pursuing additional data analysis, which has led to us reviewing some of our existing administrative processes and case management system,. This has helped to develop a greater understanding of the caseload and

to provide the President with additional information to assist with future planning and decision making.

Covid-19

As a result of these efficiencies, and others that were implemented previously such as the introduction of new IT equipment for all staff and the multi-skilling of other staff, HEC was able to respond swiftly and fittingly to the Covid-19 outbreak. Key staff moved to working remotely from an early stage.

In response to the outbreak, the President suspended all hearings from 18 March to end June 2020. She also introduced a triage system which meant that all new references and claims remotely processed by the caseworkers were referred to her or an In-House Convener to determine whether they could be suspended or whether they were 'time critical'. Time-critical references and claims were able to be processed remotely. While no physical hearings took

place, Tribunal members were supported in conducting telephone hearings for time critical cases.

Much was learned from that initial period of critical activity and scope for further efficiencies was recognised, including new measures to facilitate further digital working where possible.

Children and Young People – their Influence

Launch of the Sensory Hearing Facilities (February 2020)

Representatives of schools, the SCTS, tribunal judiciary, the Children and Young People's Commissioner for Scotland, parents, children and young people attended the launch of the sensory hearing facilities by the President and Ms Maree Todd, the Minister for Children and Young People. One young person, Kerrie, gave a speech, which is reprinted here.



The President took the young people, their parents/carers and the Minister on a special tour of the facilities, which they all enjoyed. It was inspiring to see their

enthusiasm for what they had helped to create.

One young person thought we had managed to capture his ideas in a “smashing” way, and he thought the facilities were “brilliant”, particularly the 1-2-1 room.

Hi, my name is Kerrie.

When I was 15 I was given the opportunity to volunteer as a young chamber consultant for the Health and Education Chamber. I was asked to test the needs to learn website and the images that were developed as part of this. You can all see them around the facility you have seen today. I was also asked to participate in telephone training that took place with the admin team.

Both of these were developed as a result to the new rights that were introduced for 12 to 15 year olds.

As an individual I can often get caught up in the bigger picture. I know that this is a common trait for my generation given the current circumstances of the world, but I also know that despite this it is common to think that your opinion doesn't matter. At 15 I never truly believed that I could make any difference, regardless of how small, I believed that my opinion was not of the most importance and so could easily be overlooked. May, and this experience, allowed me to change that point of view.

Being asked for my opinion on the layout, images and colour scheme for the needs to learn website, which was something that at the time felt so small, made me feel that my opinion not only mattered but was valued. It is so nice to see the outcome of this work being displayed on the floor to help children and young people who will attend this hearing facility. Also being able to help during the telephone training made me feel important as I knew it had the potential to make a difference.

This unique experience has had a fair impact on my life in other ways. It has allowed me to gain much more confidence and as someone who is actually very shy I do need all the confidence that I can get. It also played

a huge part in my decision to go to university and decide on an area of study. I am now 18 in my first year of university studying Criminal Justice. This experience helped me to be accepted to University and I have this experience to thank for my confidence and ability to voice my opinion and involve myself in matters important to not only myself but others. I want to personally thank May for giving me, and other children and young people this opportunity. Maybe one day, I could become a Tribunal member.

A new hearing experience

The new sensory hearing facilities have been developed to meet the needs of children, young people and adults with additional support needs and to improve physical access to justice. These



were designed following detailed consultation with children and young people over many years who had additional support needs, including care experience.

Children have their own waiting rooms, which are next to the hearing rooms. This means they have less floor area to have to navigate around.

Each hearing room has 3 components:

King Arthur's Round Table

An area with a round table (called "King Arthur's Round Table" by one child) with equal height chairs which look the same, where the tribunal members, parties and their representatives, the child and the witness will sit during the hearing of evidence.



An area with two small sofas, where the child and the tribunal members can sit, if the child would prefer to give their views or evidence there.



A break out area, with a screen, a beanbag and small fridge, where the child can take a break from the hearing, whilst still

remaining in the room, with access to fresh water and snacks

There is also a 1-2-1 room, where a child can give their evidence to one questioner, who will have an agreed list of questions. During this experience the questioner and the legal member have a live hearing link. The tribunal members and the parties are able to see and hear the child and the questioner.

The child will be aware that others are observing but will not see or hear them. The 1-2-1 evidence room is softy furnished with two armchairs and tactile features.



Sensory Room

There is a sensory room on the sensory hearing floor where children can go to rest or de-stress during their hearing. This has proven very popular for children who attend hearings – and for those who have visited the new facilities.



A sensory hearing room, with a 1-2-1 room, has been replicated in the Inverness Justice Centre, which opened in March 2020. It is hoped that a sensory room will be added to this in due course.

Sharing the news

An article by the President on the new facilities has been published by the Judicial College in the Tribunals Journal, with a second to follow mid-Summer 2020, outlining the progress of the use of the facilities.

The BBC broadcaster, Joshua Rozenberg, visited the Glasgow facilities in January 2020 and the facilities featured in one of his “Law in Action” broadcasts on BBC radio 4.

Accessible justice - needs to learn

Following the launch of the ‘needs to learn’ section on the Chamber’s main website in February 2018, a review is regularly undertaken to ensure that the Chamber continues to provide all information in an appropriate format for children aged 12 to 15 years.

The website continues to be well used by children and by parents. Our child friendly application forms and guidance are very popular and have been used in a growing number of parent applications. In the absence of a statutory form, it is perfectly acceptable for a parent or carer to make use of the child-friendly application.

New images were designed in 2020 to add to the existing catalogue, for use on the website and in the sensory hearing facilities. The last of these images below (the

two people talking together) is the first to illustrate an older age range. This is for future work which will reflect applications made by and for young people (aged over 16 years).



Stakeholder Engagement

Tribunal (Additional Support Needs) Forum (May 2019)

This annual event was, as usual, very well attended by key HEC interest groups from across Scotland, when it was held in May 2019. With more than 50 in attendance, subjects included the role of the witness, skilled evidence, consideration of the nature and purpose of CSPs and the interaction between placing request decisions and local placement allocation panels. Questions and answers on these topics were taken, and in addition to responses on the day, a follow up note was produced for delegates.

The Note of the Forum and presentations is uploaded each year on the HEC website.

Reform consultation work

A number of material consultations took place in the reporting year, which included the Scott Review on the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Independent Review into Learning Disability and Autism. The President was interviewed for the last of these for the purpose of exploring the extent and range of powers of the Additional Support Needs jurisdiction. The President has considered how the findings of each may affect the future work of the Chamber, which will feature into planning if the recommendations are adopted.

The Scottish Government also set up a consultation group to look at the preparation of guidance following the publication of the Children and Young Peoples Commissioner for Scotland (CYPCS) report, No Safe

Place: Restraint and Seclusion in Scotland's Schools, which the President and IHC sits on.

This year, the CYPCS has invited the Law Society of Scotland to introduce accreditation for solicitors who practice in the field of education law, following multiple enquiries to the CYCPS regarding difficulties in finding experienced solicitors. The Law Society is presently considering this.

Activity in the reporting period

During the reporting period of 1 April 2019 to 31 March 2020, the Additional Support Needs jurisdiction received **146 references and claims**.

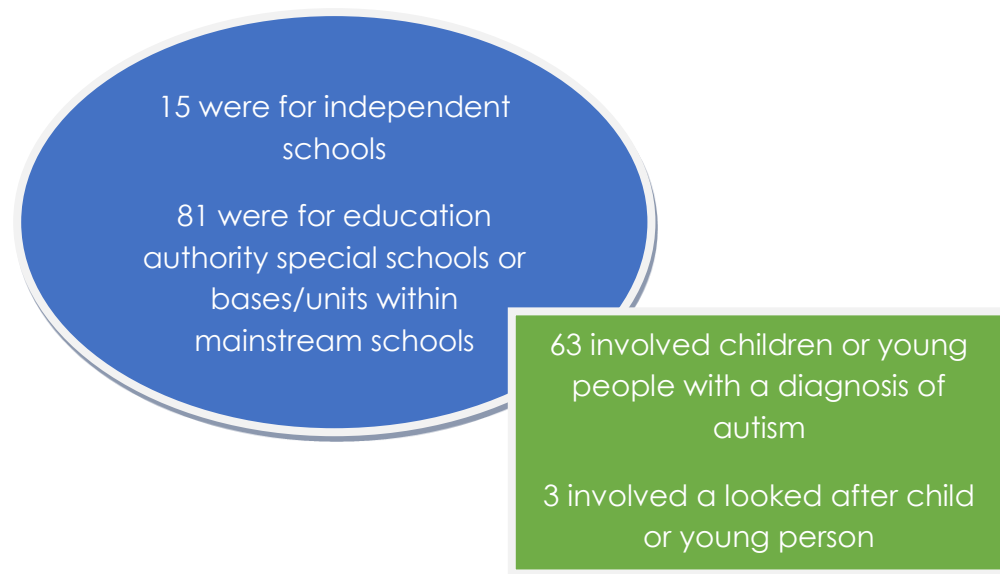
This is an increase of 33 on the 2018/19 reporting period.

Placing Requests

96 placing request references were made, representing an increase of 26 compared to the previous reporting year. 18 educational authorities were the subject of these references.

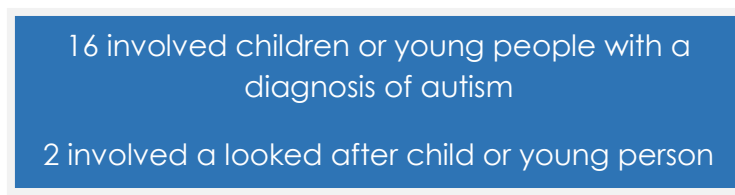
Of these:

- 4 references were decided at an oral hearing, where the decision of the education authority was upheld
- 1 reference was decided at an oral hearing, where the applicant's reference was allowed
- 2 references were dismissed as the tribunal did not have jurisdiction
- 5 references were dismissed for want of prosecution
- 44 references were withdrawn following an agreement between the parties
- 12 references were withdrawn following a change of mind by the appellant
- 4 references were withdrawn for other reasons
- 24 received during this reporting period have yet to be concluded



Transitions

1 transition reference was made, which is the same as the previous reporting year. This reference was withdrawn following an agreement between the parties.



Co-ordinated Support Plans (CSP)

25 CSP references were made, an increase of 1 compared to the previous year. 15 education authorities were the subject of these references.

- 5 references related to the contents of the CSP
- 4 references related to a deemed refusal of a CSP
- 3 references related to a failure to review the CSP
- 8 references related to a decision that a CSP was not required
- 1 references related to timescale in issuing the CSP
- 4 references related to the implementation of the CSP

Of these:

- 8 references were withdrawn
- 17 references remain outstanding

Disability Discrimination Claims

During this reporting period, 24 claims were made, representing an increase of 7 compared to the previous year. The local authority was named as the responsible

body in 19 claims and the remaining 5 were for independent schools.

- 3 claims were made on the matter of admission
- 4 claims were made on the matter of exclusion
- 4 claims were made on exclusion and another issue to do with education
- 13 claims were made on the matter of another issue to do with education

Of these:

- 1 claim was decided at an oral hearing, where the tribunal refused the claim
- 1 claim was dismissed as it was deemed not competent
- 6 claims were withdrawn following an agreement between the parties
- 1 claim was withdrawn following an agreement between the parties at the case conference call
- 1 claim was withdrawn following a change of mind by the claimant
- 14 claims remain outstanding

17 involved children or young people with a diagnosis of autism

2 involved children or young people with a diagnosis of dyslexia

1 involved a child or young person with a diagnosis of hearing impairment

4 involved a child or young person with a diagnosis of social, emotional or behavioural difficulty

9 involved a child or young person with another specific learning difficulty

2 involved a child or young person with another moderate learning difficulty

2 involved a looked after child or young person

Outstanding Cases

The previous reporting year covers 1 April 2018 to 31 March 2019. Of the applications received during the previous reporting year, there were 40 applications outstanding with no outcomes by the end of that year. Of these, 32 were references and 8 were claims. The outcomes for these cases are listed below:

Outcome	References	Claims	Total
Decided Allowed (Oral Hearing)	3	2	5
Decided Allowed (Paper Hearing)	0	1	1
Decided Refused (Oral Hearing)	7	0	7
Withdrawn	17	3	20
Outstanding	5	2	7
Total	22	8	40

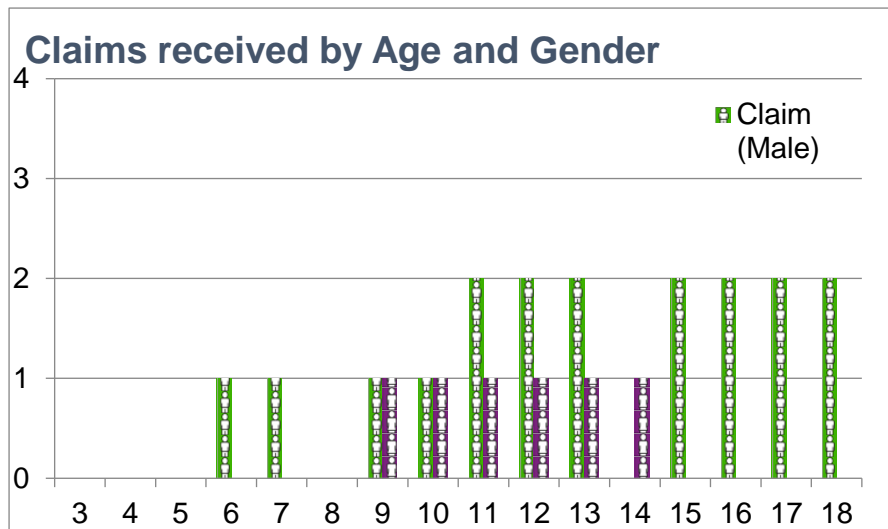
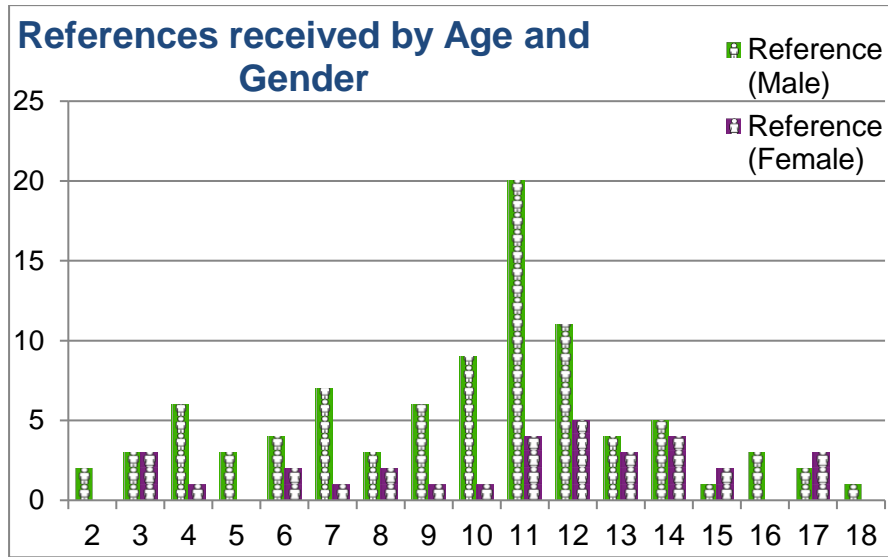
Patterns

This reporting year has seen the highest volume recorded for the jurisdiction. The figure below illustrates ASNTS/ASN jurisdiction volume over the last 3 years.

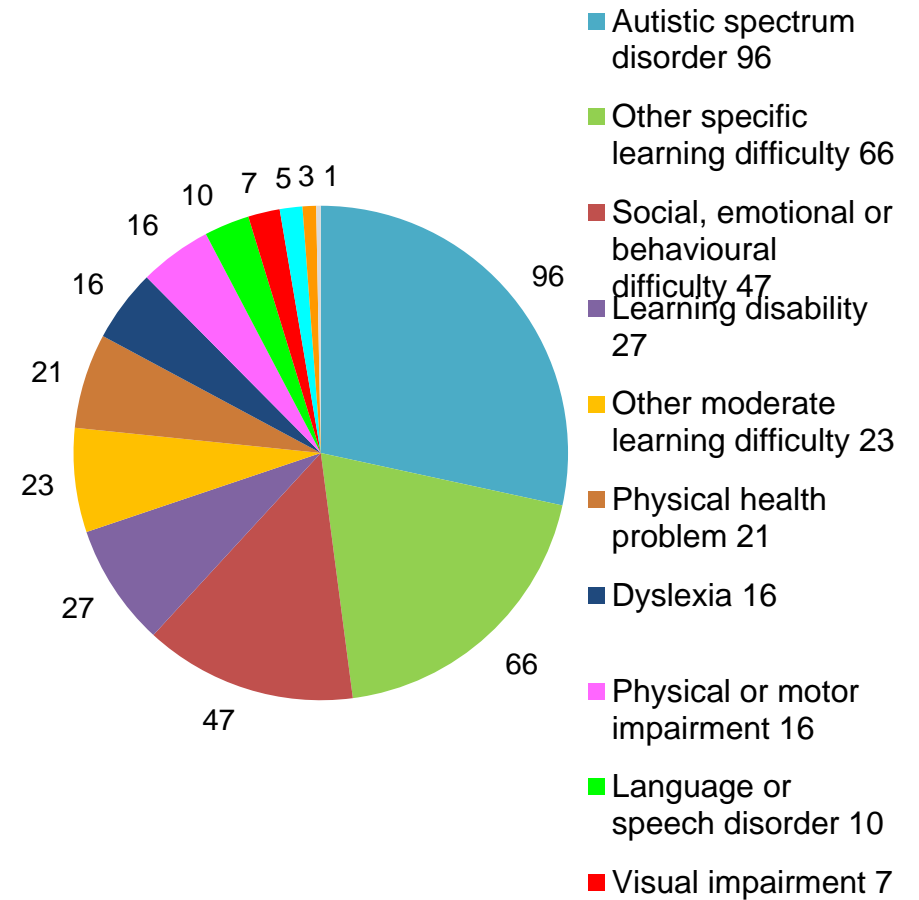
Type	2017/18	2018/19	2019/20
Placing Request	74	71	96
CSP	13	24	25
Transition	2	1	1
Claim	11	17	24
Total	100	113	146

The majority of applications continue to be for boys.

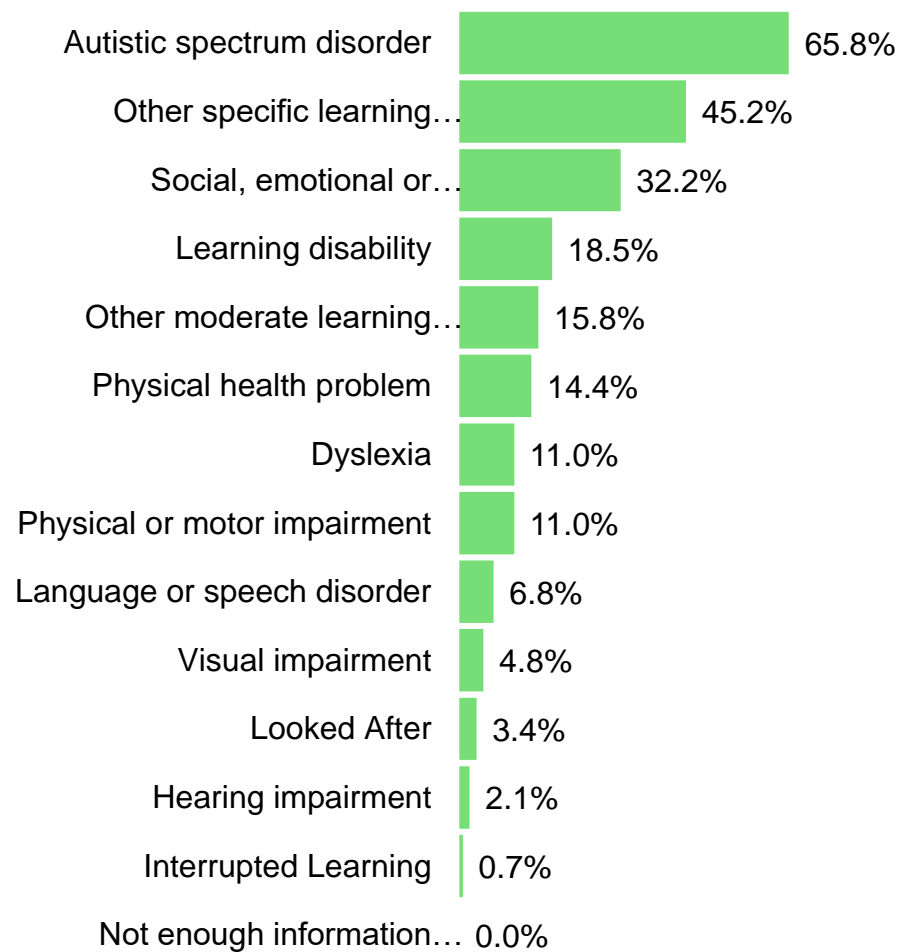
Autistic spectrum disorder remains the most frequent additional support need recorded in applications. However, children and young people often present with more than one additional support need. Instances of this are now being captured and reflected in this report.



Nature of Additional Support Needs




Nature of Additional Support Needs



Looked after children

A child or young person has additional support needs if the child or young person is looked after by a local authority⁴⁰; however, few references or claims are made by, or in respect of, looked after children or young people. The President introduced recording of looked after statistics in 2015 and continues to engage with care experienced children, schools, education authorities and organisations who represent or support care experienced children, to raise the profile and improve understanding of the ASN jurisdiction.



Of the 146
references and
claims received, **6**
involved a looked
after child.

⁴⁰ Section 1(A), 2004 Act

Appeals and Reviews

First-tier Tribunal for Scotland

8 applications for permission to appeal were lodged with the F-tT/HEC and **1** application requesting a review of the tribunal's decision.

- 4* requests for permission to appeal were refused.
- 2 requests for permission to appeal were partially granted.
- 1 request for permission to appeal fell, following outcome of review.
- 1 request for permission to appeal was granted.
- 1 application for review was refused.

2 further reviews were directed at the discretion of the F-tT/HEC.

- 1* review was granted and remitted to a differently constituted tribunal.
- 1 review resulted in no action being taken by the tribunal.

Upper Tribunal for Scotland

- 1 request for permission to appeal was granted. The UT allowed the appeal and quashed the decision of the F-tT/HEC, remitting for reconsideration.
- *1 request for permission to appeal was refused.

*One appellant made two applications to the F-tT/HEC for permission to appeal, and one to the UT for the same case. This same case was the subject of a review granted at the F-tT discretion.

President's Power to Monitor

Rule 12(b) of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018

Although the President has been asked to monitor the implementation of a tribunal's decision on a number of occasions, she had until 2019, never made a reference to the Scottish Ministers for failure to implement.

In November 2019 she made the first reference to the Scottish Ministers in connection with a claim under the Equality Act 2010, which she considered not to have been fully implemented by the responsible body (a local authority) since the order was made in 2018. The claim itself was made by a child party.

The decision from the Scottish Ministers is awaited.

Annex E: General Regulatory Chamber

Introduction



Alexander Green,
Chamber President

Alexander Green is President of the General Regulatory Chamber. He was appointed with effect from 1 May 2019. The General Regulatory Chamber has two jurisdictions: the Scottish Charity Appeals Panel and Parking and Bus Lane Appeals.

Parking and Bus Lane Appeals transferred from DVSA to the General Regulatory Chamber on 1 April 2020.

The Covid-19 crisis raised significant challenges for the General Regulatory Chamber. The main challenge was coordinating and arranging effective administrative provision and a high level of service for Parking and Bus Lane Appeals when there was no opportunity for staff to transfer physically to the new office base in George

House on 1st April 2020. All the administrative staff transferred over to SCTS whilst restricted to home working, with no planned induction or handover possible. Despite this, Parking and Bus Lane Appeals worked commendably well to maximise the possibilities of remote working and remote hearings to maintain a high level of service during this period.

The Scottish Charity Appeals Panel

The Scottish Charity Appeals Panel hears appeals against decisions made by the Office of the Scottish Charity Regulator; the body which regulates charitable activity in Scotland. It has 3 Legal Members (including the Chamber President) and 7 Non-Legal Members. In the reporting period, 2 of the Non-Legal Members retired.

There was only one appeal case for the reporting period. This was resolved between the parties prior to a formal

hearing and withdrawn by the appellant. One other separate case from the previous year proceeded through a leave to appeal request and then on appeal to the Upper Tribunal. The Upper Tribunal upheld the appeal which has now been appealed to the Inner House of the Court of Session.

We successfully ran a training event on 14 November 2019 at George House for the Legal and Non-Legal members.

Parking and Bus Lane Appeals

Parking and Bus Lane Appeals consider appeals in three areas: parking Penalty Charge Notices, Bus Lane Enforcement Charge Notices, and vehicle removals. The respondents are several Scottish local authorities participating in Decriminalised Parking Enforcement. Historically, parking enforcement was a matter for the criminal law. However, Decriminalised Parking Enforcement is a regime which enables a local authority to administer its own parking penalties. In areas with

Decriminalised Parking Enforcement, stationary traffic offences cease to be criminal offences enforced by the police and instead become civil penalties enforced by the local authority. There are currently 21 Scottish local authorities operating Decriminalised Parking Enforcement. Three Scottish local authorities issue and enforce charges for bus lane contraventions.

There are currently 3 Legal Members (including the Chamber President) in the jurisdiction. Three further Legal Members from the Charity Appeals Panel have been ticketed to hear Parking and Bus Lane Appeals and a further 3 Legal Members will be assigned to the jurisdiction from other Chambers in the First-tier Tribunal. They will receive training and induction later this year. Two legal members left the jurisdiction during the reporting period to take up shrieval appointments.

A breakdown of the work of the Parking and Bus Lane Appeals over the reporting period is provided. This is prior to their transfer on 1 April 2020.

All - All - 01/04/2019 - 31/03/2020

Received 01/04/2019 to 31/03/2020

Authority All

Appeal Type All

APPEALS RECEIVED

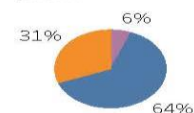
Number of appeals received:	1,444		
Number of appeals decided:	1,228		
Number of appeals outstanding:	67	Not Registered:	149
Number of appeals received on the grounds that:			

The alleged contravention did not occur.	368
The vehicle had been taken without the consent of the owner.	15
I was not the owner of the vehicle when the parking contravention occurred.	42
As a hire firm, we have provided a satisfactory hire agreement.	49
The penalty charge exceeded the relevant amount.	89
The Traffic Regulation Order was invalid.	159
The authority made a procedural error.	208
I do not know which ground of appeal is relevant.	570
I do not know which ground of appeal is relevant	222
I was not the owner of the vehicle when the bus lane contravention occurred.	15

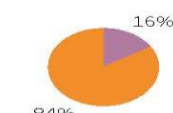
DECISION ON APPEALS

Number of appeals allowed:	256
Number of appeals refused:	668
Number of appeals reaching consent order:	1
Number of appeals not contested by the Local Authority:	269
Number of appeals withdrawn by Appellant:	34
Total number of requested Personal Hearings:	100
Total number of requested Telephone Hearings:	370
Total number of requested Postal Decisions:	757

Closed with a hearing or postal:



Closed with a hearing:



Hearing Type

- Personal Hearing
- Postal Hearing
- Telephone Hearing

The above figures for requested personal and telephone hearings, and postal decisions include non-contested and withdrawn cases.

Appeal Grounds	Allowed	Dismissed
The alleged contravention did not occur.	94	141
The vehicle had been taken without the consent of the owner.	3	7
I was not the owner of the vehicle when the parking contravention occurred.	9	10
As a hire firm, we have provided a satisfactory hire agreement.	6	24
The penalty charge exceeded the relevant amount.	8	58
The Traffic Regulation Order was invalid.	46	66
The authority made a procedural error.	44	94
I do not know which ground of appeal is relevant.	81	306
I do not know which ground of appeal is relevant	36	90
I was not the owner of the vehicle when the bus lane contravention occurred.	2	1

	Allowed	Dismissed
Personal Hearing Decisions:	26	44
Telephone Hearing Decisions:	118	251
Postal Decisions:	112	374

Annex F: Social Security Chamber

Social Security Chamber

The Chamber came into being on 22 November 2018 and the first appeal was heard in May 2019.

The Chamber hears appeals from decisions by Social Security Scotland, an Executive Agency of Scottish Government, about devolved social security assistance. Although the legislation refers to assistance and each assistance has a technical name, they are all widely known as benefits and they are referred to here by the names that are in general use.

Prior to 1 April 2019, appeals had only been lodged for Best Start Pregnancy and Baby Payment. Since then appeals have been lodged for Best Start Early Learning and School-Age Payments.

During the year appeals have latterly been received for decisions about the Funeral Support Payment and Young Carer Grant. The total number of appeals received in the year were:

Benefit	Number of appeals received
Pregnancy and Baby Payment	20
Early Learning Payment	20
School-Age Payment	21
Funeral Support Payment	5
Young Carer Grant	1

In the course of the year the Chamber decided 57 appeals and in all of those the decision of Social Security Scotland was upheld. The vast majority of those appeals did not succeed simply because the application for the benefit in question had not been made in the timescale prescribed by the legislation or the appellant had not been in receipt of a qualifying benefit.

Appellants are offered three options for their appeals, namely a decision to be made on the basis of the papers lodged with the Chamber, an oral hearing in a Tribunal venue or a telephone hearing. All of these cases were decided by a Convenor who is a legal member of the Chamber.

Only three appellants opted for an oral hearing and one of those had to be changed to a paper determination because of Covid-19. (Although that case was decided on 23 April 2020, and so is outwith the scope of this report, in fact, the appellant was successful.)

The majority of the hearings held during the year were conducted by telephone. In quite a number of appeals the appellants have not responded to communications from the Chamber after their appeal has been lodged with Social Security Scotland who then forward it to the Chamber. When that happens the Chamber writes to the appellant (and Social Security Scotland) stating that a telephone hearing has been arranged for a certain date and time. It has been very pleasing that a significant number of those appellants then do answer the telephone and explain their point of view to the Convenor.

The use of telephone hearings has proved to be very popular and it means that the Convenor can not only explain the law and the technical issues to the appellants but also explain why the Tribunal has no discretion. The hearings are usually short but every appellant has a full opportunity not only to put forward their arguments but also to ask questions. The feedback has been very positive.

No decisions are published but the President regularly posts Decision Reports on the Social Security Chamber website and those can be found at – <https://socialsecuritychamber.scot/home/about-us/decisions-report>

Those reports ensure the anonymity of appellants and summarise the points of interest that have arisen in appeals.

The Chamber website is regularly updated including an update to the “Your Hearing” section to assist the public in understanding how a hearing will be conducted. Those reports are also used for informal training of the legal members of the Chamber.

At present, in addition to the President there are two other legal members but in the course of the year, when it was anticipated that the Wave 2 benefits, including the disability benefits, would be introduced in 2020 and 2021, two recruitment exercises were launched. The first was the potential assignment of appropriately qualified

members from other Chambers and the second was via the Judicial Appointments Board for Scotland. Both are expected to be completed in summer 2020.

However, on 1 April 2020, as a consequence of the enormous implications of the Covid-19 pandemic, the Cabinet Secretary for Social Security and Older People announced that the plans for rolling out Scottish disability benefits would take place over a longer transition period. Accordingly, although assignments and appointments will be made, the expansion of the C, at the earliest, by late 2022, if not later.

Of course, the impact of government guidance, lockdown and the Covid-19 pandemic on the Chamber was felt in the last week of the 2019-2020 year. However, apart from the one oral hearing that changed to a paper determination, the Chamber was fortunate in that normal processing work continued during lockdown and all administrative staff and judiciary worked remotely at

home. An update was published on the Chamber's website advising the public that face to face hearings would not be offered until government guidance changed but telephone hearings and paper cases would continue, and they did.

Lastly, the Chamber has actively invested in two projects to develop and enhance digital capabilities for the administration side of appeals and work is ongoing in that regard.

Annex G: Tribunal Statistics

This table provides detail on the receipts, disposals and hearing days for each chamber for the reporting period.

Upper Tribunal	Housing & Property Chamber	Tax Chamber	Health & Education Chamber	General Regulatory Chamber	Social Security Chamber
Receipts 35	Receipts 4112	Receipts 24	Receipts 146	Receipts 1	Receipts 67
Disposals 16	Disposals 4141	Disposals 18	Disposals 130	Disposals 1	Disposals 57
Hearing Days 8	Hearing Days 601.5	Hearing Days 25	Hearing Days 49	Hearing Days 2	Hearing Days 17

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