

## Property factor applications to First Tier Tribunal for Scotland (FTT) 2020/21

### Context:

**Total number of Factors Registered** - The figures below are based on information supplied by registered property factors as of 30 June 2020.

249 Private Factors - Factored properties - 425,411

20 Local Authority's - Factored properties - 81,893

117 Registered Social Landlord's - Factored properties - 177,471

Total - 386 factors - 684,775 properties

### Summary:

There were 211 Property Factor applications to the FTT and a higher number than normal of these were part of group applications. 48 of the 211 were either rejected or withdrawn. There were 71 Property Factor Enforcement Orders issued. When considering the number of factored properties in Scotland – almost 685,000, this is a very tiny number.

Many complaints had a variety of categories included. The most common category of complaints under the code of conduct concerned communication and consultation (80%), financial obligations (60%), complaints resolution (58%) and the written statement of services (55%). More than three-quarters (78%) of applications also included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

These percentages make it clear that, in working to avoid clients escalating complaints to the FTT, the three issues where attention should be paid are clear communication that keeps to promises made, good financial consideration and explanation, and careful complaint resolution.

### Source/detailed information:

Extract from:

#### **'Summary of Work of the Housing and Property Chamber 1 April 2020 – 31 March 2021'**

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

The vast majority of the applications (93%) concerned residential factoring, with just 7% (down from 22% in 2019-20) categorised as land management complaints. As in previous years, the most

common category of complaints under the code of conduct concerned communication and consultation (80%). The most common categories of complaint after this related to financial obligations (60%), complaints resolution (58%) and the written statement of services (55%).<sup>1</sup>

More than three-quarters (78%) of applications also included a complaint that the property factor had failed to carry out its property factor's duties under the 2011 Act.

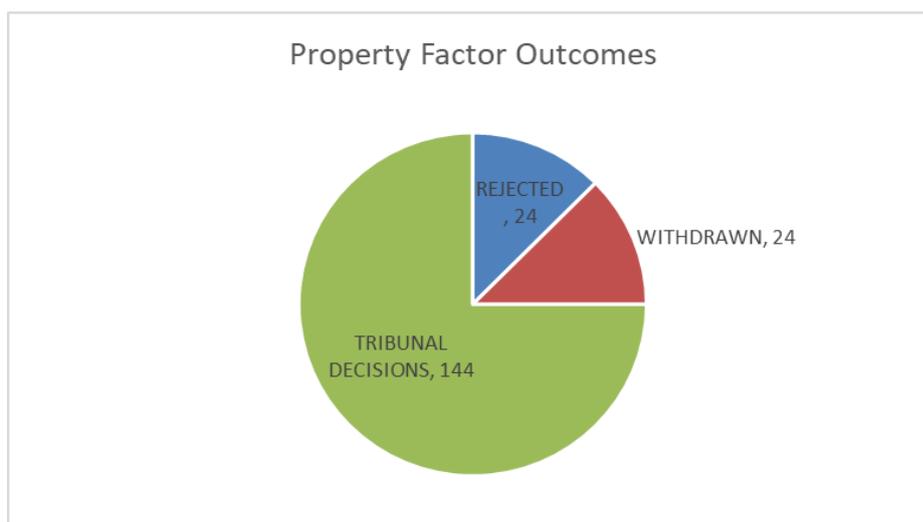
During the year, a total of 9 groups of multiple applications from different homeowners within a development or tenement were received. Group applications totalled 114 applications overall; these therefore accounted for more than half of all applications. Most of the groups involved between 3 and 7 applications, but there was also one group of 22 applications and another group of 56 applications.

Some of these groups were larger than in the previous year, and this may account at least partly for the increase in property factor applications compared with 2019-20. Where possible, multiple applications are grouped together and heard on the same day by the same tribunal to ensure efficiency, although this can result in longer and more complex hearings.

### Case outcomes

The chart below indicates the outcomes of property factor applications which were closed and/or decided by a tribunal during the year. 'Decided' means a decision was made about whether the property factor had complied with the code of conduct and/or the property factor's duties. In cases where a Property Factor Enforcement Order (PFE0) is issued by a tribunal, a decision on whether the order has been complied with may not be made until the following year.

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



<sup>1</sup> Note: most applications involved more than one complaint, and many included complaints under several different sections of the code of conduct.

## Property Factor Decision Outcomes

*No Jurisdiction, 30*

*Decided (Complied with Code/Duties), 16*

*Failure to Comply, 98*

In more than two-thirds (98 or 68%) of those 144 applications, the tribunal found that the property factor had failed to comply with the code or the property factor's duties. This is a considerably higher proportion of cases than in the previous year, when a failure to comply was found in only 44% of decided applications.

The tribunal found that the property factor had complied with the code or their duties in only 16 (11%) applications. While on the face of it, this apparent fall in the level of compliance with the code/property factor's duties is a matter of some concern, the figures in fact largely reflect the numbers of group applications involved. The majority of applications where a failure to comply was found - 58 of 98 applications – were group applications (one group of 42 applications and another group of 16).

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

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

Tribunals considered whether property factors had complied with a PFEO in 60 cases.<sup>2</sup> The tribunal found that there had been compliance with a PFEO in every one of these cases. This is a much higher rate of compliance than in the previous year and is a positive outcome.

<sup>2</sup> Note: some of these PFEOs would have been issued in the previous year. Of the 60 cases where the tribunal found that the property factor had complied with the PFEO, 39 related to three group applications.