



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”).

Chamber Ref: FTS/HPC/LA/24/1637

Parties:

Mariusz Biniak, formerly of 10K Craufurdland Road, Kilmarnock and now at 25B Glencraig Street, Drongan (“the Applicant”)

R & G Property Services Ltd, 18 Hardacres , Lanark (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

- 1.** The Applicant lodged an application in terms of Rule 95 of the Tribunal Procedure Rules 2017 and Section 48(1) of the Housing (Scotland) Act 2014 (“the 2014 Act”). A copy of the application was served on the Respondent, and the parties were notified that a case management discussion (“CMD”) would take place on 30 January 2025 by telephone conference call.
- 2.** The case management discussion (“CMD”) took place on 30 January 2025 at 10am. The Respondent was represented by Ms McNulty. Mr McNulty and Mr Graham were also present. Neither the Applicant nor his representative were present. They did not contact the Tribunal in advance of the CMD to advise that they would not be present. At 2.25pm on 30 January 2025, the Applicant’s representative sent in a submission and documents in relation to the Applicant’s failure to attend the CMD. Although the Tribunal Procedure Rules require all documents to be shared with the other party, the representative specifically

requested that this submission should not be crossed over. The Tribunal noted that the submission stated that the Applicant could not attend because he was in hospital, had undergone certain procedures which affected his ability to participate, and that he had been awarded certain disability benefits which prevented him from attending tribunal hearings. Documents were lodged including fit notes and outpatient appointment letters dated January 2025. No evidence was submitted that he was or had been in hospital and the Tribunal noted that the award of certain benefits does not prevent participation in judicial proceedings. The Applicant later lodged an amended submission and requested a postponement of the CMD. However, the Tribunal was not satisfied that the Applicant had provided satisfactory evidence in relation to his failure to participate in a telephone conference call and no explanation for his representative's failure to attend was given. In any event, the emails were not received until after the CMD had already taken place.

3. The Legal Member of the Tribunal advised the Respondent's representatives that it would not be possible to proceed with the CMD in the absence of the Applicant, for several reasons. The Tribunal had noted a number of issues with the application which required to be addressed by the Applicant before the Tribunal could consider his complaints under the Code of Practice.
 - (a) The Applicant required to confirm in writing if he required the services of a Polish interpreter for CMDs and hearings. He had referred to language difficulties but had not confirmed if an interpreter was required.
 - (b) The Applicant also required to confirm if he wanted to amend the name of the Respondent to R&G Estate Agents Ltd. The Respondent had lodged submissions which stated that the company that manages the property is R&G Estate Agents Ltd, a registered letting agent. R&G Property Services Ltd is not a registered letting agent and was not involved in the management of the property. Although the companies are related, they are separate legal entities, and the wrong company had been named. The Tribunal noted that the application could not succeed if the named Respondent was not the letting agent for the property.
 - (c) The third issue related to the specification of the complaints. The application form appeared to refer to sections of the Code which do not exist. For example, in relation to section 5 which is about "management and maintenance", the Applicant refers to 5.10, 5.14, 5.16, 5.18 and 5.21. However, Section 5 of the Code comprises paragraphs 73 to 96. The same issue arises with section 6.
 - (d) The Applicant also required to demonstrate that he had complied with Section 48(4) of the 2014 Act which states that the Applicant must notify the letting agent of the complaints before making the application. The letter lodged with the application is based on the template on the Chamber website. However, the first part of the letter had not been completed with the sections of the Code which apply. The Applicant therefore required to provide evidence that the Respondent was notified of the complaints. The Applicant was put on notice

that if he failed to do so, the application would be refused.

- (e) Lastly, the application contains several serious allegations against the Respondent. Although there are extensive submissions, these are lacking in specification, and no evidence has been submitted to support the allegations. This required to be addressed.
4. The Tribunal advised the Respondent's representatives that a direction would be issued in relation to the preliminary matters identified by the Tribunal. In addition, the Applicant would be asked to confirm that he would attend a CMD scheduled by the Tribunal and to advise when he will be fit to do so. The Tribunal also indicated that the next CMD would take place in person with the services of an interpreter, if required.
5. Following the CMD the Tribunal considered the submissions lodged by the Applicant representative and noted that they failed to adequately explain why neither the Applicant nor his representative attended the CMD.
6. A CMD note and direction were issued on 9 February 2025. The first part of the direction required the Applicant to confirm by 28 February 2025 that he would attend an in person CMD and to advise when he would be fit to do so. He failed to respond to the direction or an email issued on 7 March 2025. On 26 March 2025, in response to a further reminder, the Tribunal received an email sent on behalf of the Applicant which stated that he had been discharged from hospital, was disabled, could attend after 30 April 2025 and would be representing himself.
7. On 11 June 2025, the parties were notified that a CMD would take place in Russell House, Ayr on 11 September 2025. The venue was changed to Glasgow Tribunals Centre due to a problem with Russell House. The Applicant contacted the Tribunal to say that he required an afternoon hearing or transport to the venue. The afternoon of 11 September was not available, so the Tribunal arranged to convert the format to video conference due to the information provided by the Applicant about his health. Both parties confirmed that they could accommodate this format, although the Respondent indicated that they would prefer an in-person hearing.
8. Various submissions were lodged by the Applicant prior to the CMD, including some medical information which he stated should not be given to the Respondent. He responded to points 2(a), (b) and (c) of the direction. He said that the name of the Respondent is correct and referred to his tenancy agreement. He confirmed that an interpreter was required and that he would be representing himself. He failed to answer points 2(d) to (e) of the direction which required him to clarify which sections of the Code were relied upon in the application, provide evidence of prior notification of the Code complaints and better specification of the factual complaints.
9. On 10 September 2025, the Tribunal received a number of emails from the Applicant and on his behalf requesting a postponement of the CMD for health

reasons. The Tribunal notified him that a soul and conscience certificate from a doctor was required and if this was not provided the CMD would proceed. He was also notified that the application could be dismissed if he failed to participate. At 7.30pm he confirmed that he would participate in the CMD if he was not at the hospital or doctor's surgery.

10. The CMD took place by video conference on 11 September 2025. The Applicant was present. The Respondent was represented by Ms McNulty. Although he had completed a video conference test with the Tribunal clerk and the interpreter arranged by the Tribunal at 9.30am, the Applicant appeared to have technical difficulties from the outset. He could be seen by the Tribunal on screen, but it appeared that he could not be heard and at times could not hear what was being said by the Tribunal or the interpreter. He was contacted by the Tribunal clerk by telephone and provided with assistance. However, he stated that his headset was not working and from time to time he was losing connection to the video conference. Various attempts were made to resolve the issue. The Legal Member of the Tribunal then suggested that he could participate by telephone, but the Applicant said that this would prejudice him as he has hearing difficulties and may not be able to participate fully by phone.
11. At 11am the Legal Member advised the parties that the CMD would require to be adjourned. The Applicant stated that he could purchase speakers for his computer which would allow him to participate by video conference on the next occasion. The Legal Member said that, considering the technical issues, it would be preferable to arrange an in person CMD which could be arranged for an afternoon. The Applicant said that his health has deteriorated since he made that suggestion and he would prefer to participate by video conference once he had made the necessary purchases to address the technical problems he had experienced. While this was being discussed, the Applicant either hung up or experienced technical issues with his phone and connection with him was lost. The clerk telephoned but was unable to reach the Applicant. The Legal Member advised the Respondent's representative that the CMD would be adjourned and that the parties would be notified of the date and format of the next CMD in due course. After the CMD concluded, the Tribunal clerk received a telephone call from the Applicant and advised him that the CMD had ended.
12. Following the CMD, the Tribunal determined that a further CMD would be required and determined that this would take place in person unless the Applicant provided a soul and conscience certificate from his GP or other medical doctor which confirmed that he could not attend in person. The Tribunal was concerned that although he successfully completed a video conference test with the tribunal clerk immediately before the start of the CMD, the Applicant then stated that he was unable to participate in the CMD itself and declined to participate by telephone. To minimise the risk of further unnecessary postponements or adjournments, an in person CMD should be arranged. The Tribunal also determined that a further direction would be issued in relation to the soul and conscience certificate and the outstanding issues matters in the previous direction. The Applicant was notified that if he failed to

address these points to the satisfaction of the Tribunal the application might be dismissed in terms of Rule 27 of the Procedure Rules.

13. On 12 November 2025, the parties were notified that a further case management discussion (“CMD”) would take place at Glasgow Tribunals Centre, 20 York Street, Glasgow on 26 February 2026 at 2pm. The Applicant’s notification email was sent in large font, as requested by him. The CMD was arranged for the afternoon, also as previously requested by the Applicant.
14. The Applicant had previously advised the Tribunal that he wished to bring an assistance dog, a Cane Corso, with him to the CMD.
15. On 10 February 2026, an email in large font was issued to the Applicant which set out the conditions which required to be met in relation to the dog. The Applicant replied to this email and provided new contact details.
16. The CMD took place on 26 February 2026. Ms McNulty, Mr McNulty and Mr Graham attended on behalf of the Respondent. An interpreter was also present. The Applicant did not attend. He did not contact the Tribunal in advance of the CMD, or immediately afterwards, to explain his non-attendance. The Tribunal clerk endeavoured to contact him by telephone, without success.

The CMD

17. The Legal Member advised the Respondent representatives that the Applicant was not present, that he had not contacted the Tribunal and that attempts to contact him by telephone had been unsuccessful. The representatives said that the Applicant had failed to attend Tribunal hearings in the past. They confirmed that they were annoyed that this had happened again. The Legal Member said that it was not possible to make a decision on the application, based on the papers and the Respondent’s submissions. As outlined in the CMD notes, there were issues with the application which could only be addressed by the Applicant. The Tribunal had previously issued directions for these matters to be addressed, but the Applicant had failed to comply with the directions. In the circumstances, the Tribunal determined that a direction would be issued for the Applicant to provide an explanation for his failure to attend, with evidence. Should he fail to provide a satisfactory explanation and supporting evidence, if appropriate, the Tribunal would probably decide to dismiss the application in terms of Rule 27 of the Procedure Rules.
18. A CMD note and further direction were issued to the parties. On 5 March 2026, the tribunal received an email from the Applicant’s own email address. However, the email purported to be from a “Agnieszka Szozecina”. It stated that she was the authorised representative of the Applicant and acknowledged receipt of the CMD note and direction. It referred to a power of attorney. The email stated that the representative would “respond substantively to the Tribunal’s directions within the next few days”. The email also said that in light

of “new medical facts” supported by the Applicant’s GP, the Applicant requested that the proceedings be “sisted (stayed)” until full reasonable adjustments are in place for a disabled person.” The writer said that a formal request for a sist and reasonable adjustments would be made within 5 working days. It was also stated that the power of attorney was not to be crossed over to the other party. A document which is entitled “Power of attorney/statement of will” was attached, although this does not appear to comply with Scots Law. No other documents or submissions were lodged with the email, or subsequently.

Reasons for Decision

19. Rule 27 of the Procedure Rules states: -

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to –

- (a) Comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (b) Co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

20. The Tribunal is satisfied that the application should be dismissed for the following reasons: -

- (a) The application was lodged on 11 April 2024. Almost two years have passed, with little progress. The Applicant was offered the opportunity and given additional time to address certain deficiencies with the application during the application stage and subsequently. However, he failed to do so.
- (b) The Applicant has requested that the case be sisted. However, there is no provision in the Tribunal Rules of Procedure for an application to be sisted or paused. If the Applicant is unfit to proceed, he could withdraw the application and re-submit it at a later stage. There is no prejudice to the Applicant as no time limits apply to applications in terms of the Letting Agent Code of Practice. Alternatively, the Applicant could appoint a representative to attend CMDs and hearings. Although he has named two different people as representatives, these individuals have not attended the CMDs which were arranged.
- (c) The Applicant has failed to provide a satisfactory explanation for his failure to attend the first and third CMDs which were arranged. He referred to medical evidence. However, the documents lodged only confirm that he suffers from depression and do not establish that he was unfit to attend. The Tribunal has accommodated all the Applicant’s requests for reasonable adjustments, although no evidence has been produced that he is disabled. These have included a remote video conference CMD, an afternoon, in person CMD and permission to bring several supporters and an assistance dog, although no evidence was provided that the dog is a registered assistance dog. The

Tribunal has also provided an interpreter at the CMDs, although the correspondence from the Applicant suggests that he has a good command of English.

- (d) The Applicant has failed to respond to directions issued by the Tribunal. These directions were issued to address fundamental defects with the application. The Applicant was notified that failure to comply with these directions could result in the application being dismissed.
 - (e) As it currently stands, the application appears to be misconceived. The named Respondent is not a letting agent. The letting agent for the property is a related company, but not the one named in the application. The Applicant has also failed to demonstrate that he has complied with the legislation with regard to proper notification of the complaints, although he has been offered a number of opportunities to do so. In terms of the relevant legislation, the Tribunal is only able to consider complaints which have been notified.
 - (f) The Respondent has attended all of the CMDs which have been arranged and complied with all directions issued by the Tribunal.
21. The overriding objective of the tribunal, as set out in Rule 2 of the Procedure Rules, requires the Tribunal to deal with “the proceedings justly”. This includes dealing with proceedings in a manner which is proportionate to the complexity of the issues and resources of the parties ((2)(a)), seeking informality and flexibility(2(b)), ensuring that parties are on an even footing procedurally and are able to participate fully in the proceedings, including assisting them to present their case (2(c)), using the specialist expertise of the FTT effectively (2(d)) and avoiding delay, insofar as compatible with the proper consideration of the issues (2(e)). In terms of Rule 3 the Tribunal must seek to give effect to the overriding objective when managing the case.
22. The Tribunal notes that two years have passed without any progress being made with the application, due to the failure by the Applicant to attend three CMDs. The Tribunal is required to avoid delay and is satisfied that it would be inappropriate to allow the case to continue indefinitely with no indication of when the Applicant believes he will be able to participate. The Tribunal has been flexible and has made considerable efforts to assist the Applicant to present his case and to address defects with the application. The Tribunal has also provided interpreters and has accommodated almost all the Applicant’s demands for reasonable adjustments, despite the lack of evidence to support his claims that these are required. The Tribunal is also of the view that further delay would be prejudicial to the Respondent, who has cooperated fully with the Tribunal throughout the process.
23. In the circumstances, the Tribunal is satisfied that the Applicant has failed to cooperate with the Tribunal to such an extent that it is not possible to deal with the proceedings justly and fairly. The Applicant has also failed to comply with directions, having been notified that the application may be dismissed if he failed to do so. The Tribunal concludes that the applications should be dismissed.

Decision

24. The Tribunal determined that the application should be dismissed in terms of Rule 27(2)(b) of the Procedure Rules.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Josephine Bonnar, Legal Member

29 March 2026