

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(a) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PY/25/1939

Parties:

Mr James Dunlop, 89 Bangorshill Street, Thornliebank, Glasgow, G46 8LU (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member with delegated powers from the Chamber President

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered that the application received by it from the Applicant on 7 May 2025 is frivolous. The Tribunal therefore rejects the application under Rule (8)(1)(a) of the Rules.

Background

- 1 This is an application under Rule 41H of the Rules and section 5 of the Debtors (Scotland) Act 1987. The Applicant applied for a time to pay order following orders made by the Tribunal on 23 April 2025 under case references FTS/HPC/CV/24/3495 and FTS/HPC/PR/24/3496.
- 2 The application was reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President in order to determine whether it had been lodged in the required manner. On 9 May 2025 the Tribunal wrote to the Applicant in the undernoted terms:-

*“A time to pay application can only be competently made after
(a) a charge for payment has been served on the debtor;
(b) an arrestment has been executed; or
(c) an action of adjudication for debt has been commenced.*

As orders have not yet been issued, your application is premature. Please confirm that the application is to be withdrawn. When diligence has commenced you may submit an application for time to pay at that stage. In the event that you do not confirm that the application is to be withdrawn, it is likely that the application will be rejected due to incompetency.

Please reply to this office with the necessary information by 23 May 2025.”

3 The Tribunal received no response from the Applicant.

Reasons for decision

- 4 Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9. At page 16 he states:- *“What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”*.
- 5 I consider that this application is futile and has no prospects of success. An application under Rule 41H can only be made where diligence has commenced. The orders had not been issued by the Tribunal when the application was made and the application is therefore premature and futile in its current form. On that basis, I have no option but to reject the application under rule 8(1)(a).

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.

R O'Hare

28 May 2025

Legal Member/Chair

Date