

**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

20F Niddrie Mill Crescent, Edinburgh, EH15 3ET ("the Property")

Case Reference: FTS/HPC/EV/25/3114

Mrs Lorna McHardy-Barrett (Applicant)

1. The Applicant submitted an application in terms of Rule 109 of the Rules on 18 July 2025.

DECISION

2. The Legal Member considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

- 3. After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

5. On 5 August 2025, the Tribunal issued an email to the Applicant in the following terms:-

Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member asks you to provide information as follows:

- 1. Please amend the application to reflect a valid Ground for eviction. Ground 12A has been repealed. If you intend to rely upon Ground 12 please amend.*
- 2. Please provide a rent statement in the format dates and amounts of rent due, dates and amounts of rent paid and a running total of arrears.*
- 3. Please provide proof of service of the Notice to Leave on the Respondent.*

4. *Please provide a copy of the lease.*
5. *Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority.*
6. *Please provide evidence of compliance with the rent arrears pre-action protocol.*

Please reply to this office with the necessary information by 19 August 2025. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

6. On 2 September 2025, the Tribunal issued a further email to the Applicant in the following terms:-

With reference to your application for an eviction order, we wrote to you on 5 August 2025 asking you to attend to the following;

1. *Please amend the application to reflect a valid Ground for eviction. Ground 12A has been repealed.*
2. *Please provide a rent statement in the format dates and amounts of rent due, dates and amounts of rent paid and a running total of arrears.*
3. *Please provide proof of service of the Notice to Leave on the Respondent.*
4. *Please provide a copy of the lease.*
5. *Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority.*
6. *Please provide evidence of compliance with the rent arrears pre-action protocol.*

We asked you to reply by 19 August 2025 but you have not done so. Please now provide the information requested or, if you are not able to do so, consider withdrawing your application and starting afresh.

If we do not hear from you by 14 September 2025, the President is likely to decide to reject your application.

No response was received.

7. The Applicant has been given two opportunities to provide further information and has failed to do so. The Legal Member therefore determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Nicola Irvine

Nicola Irvine
Legal Member
6 October 2025