

**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

Flat 4.3, 15 Victoria Road, Glasgow, G42 7AB (Property)

Case Reference: FTS/HPC/PF/25/5070

Mr Ron Marsay (Applicant)

1. The Applicant submitted an application in terms of Rule 43 of the Rules which was sent by email on 24 November 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 18 December 2025, the Tribunal issued a detailed email to the Applicant advising that the application was incorrect and incomplete and asking for further information to be provided by 22 January 2026. The Applicant responded by email on 18 December 2025 asking for clarification. On 19 December 2025, the Applicant sent a further email to the Tribunal advising that he was abroad for health reasons. He asked for a review of his application based on the information already submitted. On 14 January 2026, the Applicant sent a further email advising that he wished the Tribunal to intervene in relation to his communication with the Property Factor.
6. On 29 January 2026, the Tribunal issued an email to the Applicant in the following terms:-

A legal member of the Tribunal with delegated powers of the Chamber

President has considered your various communications since you were written to on 18 December 2025. You will require to supply the information contained in that letter in order for your application to be considered. Failure to do so may lead to the President rejecting the application. I attach the email again for your convenience.

On the same day, the Applicant responds asking what information was required. The Tribunal responded on the same day providing a copy of the email of 18 December 2025. The Applicant sent a further email on 29 January 2026 advising again that he is abroad for medical reasons. He also stated *"I feel that you are delaying this complaint because you are too busy ignoring my serious medical condition"*.

7. On 21 March 2026. The Tribunal sent a further email to the Applicant in the following terms:-

Your application to the Chamber under Section 17(1) of the Property Factors (Scotland) Act 2011 has been reviewed by a Legal Member of the Tribunal with delegated powers of the Chamber President. He has indicated that further information is required before a decision can be made on the validity of your application or whether it should be referred to a tribunal:

- The application submitted by you is not valid for the reasons set out in the email to you of 18 December 2025.*
- Your latest email of 29 January suggests that the Tribunal is delaying because it "is too busy ignoring my serious medical condition". Your application is not proceeding because in its present form it cannot be progressed. It is nothing to do with your medical condition.*
- You will require to deal with the matters set out in the email to you of 18 December 2025 by 20 April 2026, failing which the application will be rejected.*
- Please advise if more time is required to respond.*

The Applicant responded by email on 21 March 2026 advising that he is abroad dealing with health issues. No further information was provided.

8. The Applicant has been several opportunities to provide further information and has failed to do so. The application does not meet the requirements of Rule 43 for the following reasons:-

- (a) The form submitted is for alleged breaches of the 2012 Code for matters arising prior to 16 August 2021 but the detail of the complaint indicates that the issues all post date August 2021. The Applicant should have submitted

form C2 form.

- (b) The application form submitted has not been completed correctly. At Section 7 it states: “tick the appropriate box which specifies the part of the Code which you believe has been breached, and in the space provided list the paragraphs of the code which you feel the Property Factor has failed to comply with.” The Applicant has ticked boxes but has failed to list the paragraphs of the Code said to have been breached.
 - (c) Section 17 (3) of the Property Factors (Scotland) Act 2011 states that no application can be made to the Tribunal unless the homeowner has notified the property factor in writing as to why it is considered that the property factor has failed to carry out the property factor’s duties or comply with the Code and the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner’s concern. The Applicant has failed to provide evidence of notification to the Property Factor about the paragraphs of the Code said to have been breached.
 - (d) The Applicant has completed section 7B of the application form but has not specified which of the Property factor’s duties which he contends have been breached, nor has he produced evidence of notification to the Property Factor. The Tribunal provided the Applicant with a template notification letter
 - (e) In terms of Rule 43 (2) (d) of the Tribunal Rules, an application has to be accompanied with the written statement of services issued to you by the property factor. The Applicant has failed to produce this.
9. For the reasons set out above, 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
Legal Member
17 May 2026