



Local Government, Housing and Planning
Committee
By e-mail only

**Judicial Office for Scotland
Strategy & Governance
Parliament House
Edinburgh
EH1 1RQ**

27 June 2024

Dear Ms Burgess,

Housing and Property Chamber: First-tier Tribunal for Scotland

Thank you for your letter on behalf of the Committee seeking information on the Housing and Property Chamber of the First-tier Tribunal for Scotland. It has been passed to the Judicial Office for Scotland as it relates to matters involving judicial decision-making. As your letter contained a number of questions, they are responded to in turn below.

Can you provide a brief overview of the Tribunal's work in relation to its private rented housing caseload?

Since the transfer of this work from the Sheriff Court in 2017, the Chamber has seen steady growth in the volume of applications received for all its jurisdictions, figures for the last 7 years are shown in the table below:

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Housing and Property Chamber	1,199	3,783	4,141	2,467	3,366	4,623	5,110
Of which are Private Rented Sector	689	3,213	3,524	1,959	2,760	3,873	4,271

The Housing and Property Chamber currently manages around 2,500 live cases at any one time in relation to private rented housing. Since the transfer of this work from the Sheriff Court in 2017, the Chamber has seen a steady growth in the volume of applications received. There has been an increase in the complexity of some types of private rented housing cases, such as eviction applications, with the introduction of new legislation and a change to the factors to be considered before a determination is reached. The busiest year to date was FY 2023/24 with 4,271 applications received and 3,745 cases disposed of. It is anticipated that the Chamber will continue to see further growth in relation to private rented housing applications this financial year.

The Chamber receives a variety of applications in relation to private rented housing, which are broken down into the following application type: Civil Proceedings, Evictions, Repairing standard complaints, Landlord Registration appeals, Rent determinations, Tenancy terms, Private Rented and Time to Pay Orders. The majority of activity within the Chamber relates to evictions, at around 63%, followed by civil proceedings at around 28%, and Private Rented at around 8%. In respect of the private rented application type, the majority of the activity is in relation to tenancy deposit applications and applications for wrongful termination orders.

Following receipt of an application, the administration staff within the Scottish Courts and Tribunals Service register it before it is referred to a legal member of the Chamber for sifting. At this point, the application may be accepted, rejected, or referred back to the applicant, via the administration, for further information. All accepted applications are referred back to the administration for a Case Management Discussion (CMD) to be scheduled. If the facts are disputed or there are legal submissions to be made, it is likely that a hearing will take place.

In addition to registering the application, the administration provide support in terms of the scheduling and facilitation of the Case Management Discussions and hearings including the processing and intimation of case documentation.

Once a tribunal member is allocated to a case during the scheduling process, the administration will liaise directly with the tribunal members on any requests submitted by the applicant / respondent, for example postponement requests or request for review or permission to appeal.

What changes to the Tribunal's powers and responsibilities would be made by the Bill?

We would suggest that the Scottish Government would be better placed to answer this question on changes to the Housing and Property Chambers powers and responsibilities contained in the Bill.

Is the Tribunal sufficiently resourced to meet current demand?

In terms of the administration's current requirements, additional resources are required to enable the team to continue to deliver the business of the jurisdiction effectively due to the sustained increase in volume of applications. This has been highlighted to the Scottish Government and we are in the process of negotiating funding to recruit additional staff.

In respect of tribunal members to hear and determine applications, the Judicial Office for Scotland is currently engaging with the Scottish Government and the Judicial Appointments Board for Scotland on running a recruitment exercise for additional First-tier Tribunal members. It is anticipated that such an exercise will commence in the autumn of this year. Meantime, the availability of tribunal members is a factor which impacts on the timescales for determination of applications before the Housing and Property Chamber. As application volumes increase, more membership resource is required to judge cases.

What additional resources would be required to meet the Bill's proposed changes?

In order to understand the impact the proposed changes would have on the Tribunal and the administration, discussions on the Bill continue to take place with Scottish Government. This includes the requirement for additional administrative and judicial resource. Estimated costs have been provided for the Financial Memorandum in relation to the Bill.

What would be a realistic time period for the Tribunal to reach a decision on eviction cases if the Bill as drafted comes into force?

Applications are considered on a case-by-case basis. As there are a variety of factors that can impact different cases considered by the Chamber, it would be difficult to come to a view on a reasonable time period. For example, cases which are defended will take longer to reach a conclusion than cases which are undefended.

How does the Tribunal select its members?

The Judicial Appointments Board for Scotland is responsible for recommending individuals suitable for appointment as members of the First-tier Tribunal for Scotland to the Scottish Ministers. The President of Scottish Tribunals assigns members with the relevant experience to the Housing and Property Chamber.

What measures does the Tribunal take to ensure that its decisions on eviction cases are impartial?

The role of a judicial office holder is to interpret the law without bias or prejudice. The guidance to judicial office holders on judicial ethics, a widely accepted framework, helps to

ensure that both the judiciary and the public are aware of the principles that guide judicial office holders. There is a mechanism for members to recuse themselves if there is a conflict of interests.

Is there a case to be made for the Tribunal to comprise a wider range of members, including 'lay' people?

This is a matter for Scottish Ministers to decide.

What support do tenants currently receive during the Tribunal process, and is there a case to be made for this to be improved?

Legal advice can be obtained from a solicitor, whilst a number of organisations and charities can also assist, for example, a Citizens Advice Bureau or local authority advice centres. These services are independent from the Chamber. The Chamber itself cannot provide a party with legal advice for reasons of impartiality.

The Housing and Property Chamber website also includes a number of resources and links to assist members of the public.

To what extent do you think both tenants and landlords understand the Tribunal process and their rights in relation to it?

The level of understanding of the Tribunal process will vary between users. The Scottish Courts and Tribunals Service cannot provide legal advice, although they can explain and help tenants and landlords understand the procedure.

I hope this information is helpful.

Kelly Jack
Judicial Office for Scotland