



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/PY/20/2619

Parties:

Anna Rutkowska, 45 Park Veiw, Mintlaw, Peterhead, AB42 5TA ("the Applicant")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application for Time to Pay (TTP) was received by the Tribunal on 17 December 2020. The application sought a TTP order.
2. On 13 January 2021 the Tribunal emailed the Applicant in the following terms:

"In order for the Tribunal to consider your application please complete part 2 b of the application and submit 1. A copy of the order made against you as required under part 2 a of the application 2. A copy of the relevant document showing that one of the situations stated in number 2 b has taken place such as a copy of the charge served on you if this is applicable. 3. Please explain how a payment of £20 per month can be considered reasonable when this would mean that it would take over 2 years to clear the debt. Please provide the above within 14 days. The application as it has been submitted would otherwise have to be rejected as incomplete. "

3. No response was received. The Tribunal wrote again on 4 February 2021 in the following terms:

"Before a decision can be made, we need you to provide us with the following:

I refer to our further information request letter dated 13 January 2021, a copy is attached for your reference.

We have not received a response to this letter.

Please reply to this office with the necessary information by 18 February 2021. If we do not hear from you within this time, the President may decide to reject the application. "

4. No response was received.

Reasons for Decision

5. The Tribunal 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;-

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

(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."

6. '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"*.
7. The Applicant failed to provide information necessary for the determination of the TTP application.
7. In light of the lack of response from the Applicant the Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that the failure to provide necessary information

constituted good reason why the application should not be accepted. The application is accordingly rejected.

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.



Legal Member/Chair

4 March 2021

Date