



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

Chamber Ref: FTS/HPC/PY/23/4473

Parties:

Darren Whyte, 129G Arbroath Road, Dundee, DD4 6LP ("the Applicant")

A BACKGROUND

1. On 8 December 2023 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under rule 41H of the Procedural Rules.
2. On the relevant form the applicant did not indicate the Respondent’s details and did not indicate how enforcement of the payment order to which the application relates had commenced. The only information provided was the case reference for the payment order to which the application relates. No indication was given that the application had been served on the creditor.
3. On 21 December 2023 the Tribunal wrote to the applicant’s representatives requesting the following information to be submitted by 4 January 2024 as follows:
“An application for a time to pay order can only be made when the creditor has taken action to

enforce the debt. In this case the written decision was only issued on 5 December 2023. The order for payment is not due to be issued until after the appeal period on 5 January 2024. Thereafter, the creditor has to start diligence to enforce the debt. Usually a charge will be served by Sheriff officer. It is only once the charge has been served that you can make the application. Before doing so you must send a copy of the application to the creditor and you must submit a copy of the charge which has been served with the application to the Tribunal. Please confirm that you wish to withdraw the application at this state and re-submit it once the charge has been served. “

4. No reply has been received.
5. The documents are referred to for their terms and held to be incorporated herein.

B DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. **After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C REASONS FOR DECISION

1. The Application is made under Rule 41 H of the Procedural Rules and S 5 of the Debtors (Scotland) Act 1987.
2. S 5 of the 1987 Act states "Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which —
(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."
3. The Tribunal had requested evidence that one of the above conditions is met. The only information provided to date is the case reference to which the application relates. No documentation has been provided to show that any of the conditions stated above currently apply.
4. The applicant has not evidenced that, as required by rule 41H of the Rules of Procedure, a copy of the application had been sent by him to the creditor.
5. The application at present appears to be premature.
6. It would not be appropriate for the Tribunal to accept an application that does not meet the requirements of the section under which the application is being made. The application is thus rejected.

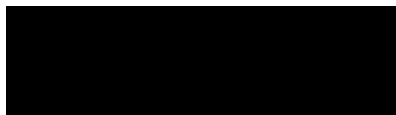
What you should do now

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.



Petra Hennig McFatridge
Legal Member
18 January 2024