

**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

**Firbrae, Mellerstain Estate, Gordon, TD3 6LG ("the Property")**

**Case Reference: FTS/HPC/CV/23/2525**

**The Mellerstain Trust, c/o Galbraith, 4<sup>th</sup> Floor, 18 George Street, Edinburgh, EH2  
2PF ("the Applicant")**

**Mr James Brand, Old Eckford Kirk, Eckford, Kelso ("the Respondent")**

1. The Applicant submitted an application in terms of Rule 91 of the Rules. In support of the application, the Applicant submitted an order for payment which was granted by the Tribunal on 8 September 2020, which was subject to a time to pay direction in terms of section 1(1) of the Debtors (Scotland) Act 1987. The Applicant wished the Tribunal to review the time to pay direction.

**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. The Tribunal sent an email to the Applicant's representative on 21 August 2023 advising that it was not clear what the legal basis was for the application. The Applicant was advised that on the basis of the information provided, the time to pay direction may have lapsed and in any event, the Applicant had not stated what variation was sought. The Tribunal suggested that the Applicant may wish to take advice and requested confirmation that the application is to be withdrawn.

The Applicant was asked to reply by 4 September 2023 and was advised that if the Tribunal did not receive a response, the application may be rejected.

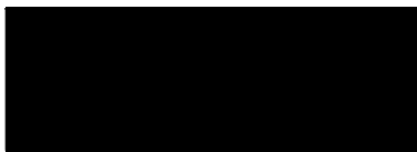
6. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
7. The Applicant has been given an opportunity to provide a response 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  
Legal Member  
15 September 2023