



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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

Application for Time to Pay Order in terms of Rule 41H of the Procedure Rules

Case Reference: FTS/HPC/PY/20/2050

**Gillian Martin, 3 Signal Station, Battery Road, North Queensferry, Fife ("the
Debtor")**

Ana Moreno, 71 Priory Lane, Dunfermline ("the Creditor")

1. By application received on 24 September 2020, the Debtor seeks a time to pay order in relation to an Order issued by the Tribunal under Tribunal reference PR/20/0992, for payment by the Debtor to the Creditor of the sum of £675.
2. On 14 October 2020, the Tribunal issued a request for further information to the Debtor. The Debtor was asked to explain the basis for the application as a time to pay direction had been made by the Tribunal when the Order was granted, in terms identical to those specified in the application. No response was received. The Tribunal wrote again to the Debtor, on 5 and 19 November 2020, requiring her to provide a response the request. No response has been received.

DECISION

3. 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.”

- 4. 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

5. '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.

6. The Legal Member notes that a Payment Order was granted by the Tribunal on 17 August 2020, against the Debtor. The Creditor was awarded the sum of £675. The Tribunal made a time to pay direction with the Order which stated that the Debtor was to pay £115 per calendar month, until payment in full had been made. The Order was issued to the Creditor on 22 September 2020. The Debtor has submitted an application to pay the sum due at the rate of £115 per month.
7. The Legal Member is satisfied that the Debtor already has a time to pay direction from the Tribunal, in identical terms to the order which is sought. She has been asked on three occasions to explain the basis for the application, and has failed to do so.
8. The Legal Member 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.

Josephine Bonnar
Legal Member
14 December 2020