



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
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

794 Flat 0/2 Pollockshaws Road, Glasgow, G41 2AY ("the Property")

Case Reference: FTS/HPC/PF/21/2337

Stacey Mackintosh ("the Homeowner")

Macfie &Co. Management Services Ltd ("the Property Factor")

1. Mr Deryck de Maine Beaumont submitted an application to the Tribunal dated 26th September 2021 in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 6th October 2021 the Tribunal issued a request for further information. Mr de Maine Beaumont was asked to provide confirmation that he had authority from the Homeowner to submit the application and he responded on 19th October 2021 indicating that, because of the Homeowner's illness he was unable to provide this. He said that he had known her for many years and considered that he had her authority. He did not produce evidence of him being the Homeowner's Guardian or Attorney. On 27th October 2021 the Tribunal wrote to Mr de Maine Beaumont and stated that he had until 22nd December 2021 to provide evidence that he had authority to make the application on behalf of the Homeowner. On 23rd December 2021, Mr de Maine Beaumont sent a communication to the Tribunal in which he stated that the Homeowner had chosen him to represent her. He stated that he is an enrolled solicitor although he does not have a Practising Certificate and was

the Homeowner's lay representative. Mr de Maine Beaumont stated that the Homeowner has returned from hospital and that he is satisfied that he is "receiving properly informed instruction" from her. Mr de Maine Beaumont has not produced a letter of authority or mandate from the Homeowner. He has not produced evidence that he is an Attorney or Guardian of the Homeowner.

DECISION

2. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. "

3. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 43 and Section 17 of the 2011 Act.**

REASONS FOR DECISION

4. The application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out “the homeowner’s reasons for considering the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty” (Section 17(2)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states, “(1) In addition to the homeowners reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act; (b) any response provided by or on behalf of the property factor to that notification;...(d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.”

5. Before considering whether or not the Homeowner has complied with the requirements of the 2011 Act and Rule 43, the Tribunal has to determine whether or not, in the particular circumstances before it, the application could be considered further. It determined that, in the absence of being satisfied that the Homeowner had given authority to Mr de Maine Beaumont to submit an application on her behalf or an appropriate Guardianship Order or Power of Attorney being produced to it, the application should be rejected as it was not satisfied that, in terms of Section 17(1) of the 2011 Act an application had been made by a homeowner. The status of Mr de Maine Beaumont as a person who is on the roll of solicitors is considered to be irrelevant. He does not have a practising certificate. The Legal Member determines that the application cannot be accepted as it has not been evidenced that it has been properly made by the Homeowner. 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.

Martin J. McAllister, Legal Member
10th January 2022