

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 1 of the Debtors (Scotland)
Act 1987**

Chamber Ref: FTS/HPC/PY/19/4006

Parties:

**Mr Alistair Cairns, Mrs Jacqueline Cairns, 5 Newhaven Grove, Largs, KA30 8NS
("the Applicant")**

**Mr Ken McIntosh, c/o Acre Lettings Ltd, 6 Stanlane Place, Largs, KA30 8DA
("the Respondent")**

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a Time To Pay Order in the amount of £29 (TWENTY NINE POUNDS) per week should be made.

Background

1. An order for payment in the amount of £2950 was made against the Applicants on 17th October 2019.
2. The Applicants lodged an Application for a Time to Pay Order on 18th December 2019, having received service of a charge for payment.
3. The Tribunal issued an order on 22nd January 2020 sisting any diligence until further notice.
4. The Respondent's Agent sent an email on 17th January 2020 objecting to the Application and setting out reasons why.

The Hearing

5. The Applicants were both present. The respondent was represented by Ms Bell from Acre Lettings.
6. The Chairperson introduced herself and the Housing member, Mr Darroch. She explained the purpose of the hearing. She invited Miss Bell to put forward her opposition to the Application. Ms Bell read from a statement prepared by the Respondent. To summarise, the objections were that firstly, it would take 19 years to pay off the debt at the level offered; secondly, the Applicants had rented a more expensive property and appeared to be living beyond their means and that they should prioritise the debt, and thirdly, they had not provided any proof of their income or outgoings. The Respondent had done some calculations and stated that the current rent paid by the Applicants appeared to be £900 per month, and that, from the form they appeared to have disposable income of £479.91 per calendar month.
7. The Applicants were asked to comment. Mr Cairns stated that the family were not living beyond their means. They had three teenaged children and required a four bedroom house. Such a property was difficult to find in Largs and they had had no choice but to rent their current property. The rent was £100 per month more expensive than before. He said that they could not afford to move somewhere else as that would require finding a deposit and paying for removal costs. They had cut their budget to the bone.
8. The Chairperson pointed out that the Respondent's calculations were correct and it looked from the form that the Applicants did have a disposable income of £479.91 per calendar month. Mr Cairns said that he must have made a mistake when filling out the form. Mrs Cairns said that the benefits they received totalled £418.50 per week, and that included the tax credit of £110 per week. Mr Cairns had shown these separately on the form. Mr Cairns also said that he must have filled in the outgoings incorrectly.
9. The Tribunal went through the outgoings declared on the form. Mr Cairns did not dispute these.
10. The Tribunal made enquiry in to the benefits received. Mrs Cairns listed them as follows:

Income related ESA	£140 per fortnight
Tax Credits	£110 per week
DLA	£110 per week
Child Benefit	£139 per 4 weeks
Carers Allowance	£70 per week
Housing Benefit	£630 per 4 weeks
11. The Tribunal adjourned to consider its decision.

Reasons For Decision

12. The Tribunal gave consideration to what they had heard, and the factors they had to take in to account. Those factors are:
- a) The nature and reasons for the debt in relation to which decree is granted;
 - b) Any action taken by the creditor to assist the debtor in paying the debt;
 - c) The debtor's financial position;
 - d) the reasonableness of any proposal by the debtor to pay that debt;
 - e) The reasonableness of any refusal by the creditor of, or any objection by the creditor, to any proposal by the debtor to pay the debt.
13. The Tribunal recalculated the Applicants' disposable income and it came out to a figure £23.75 per week more than the figure given in the form. The Tribunal considered that, given the disposable income declared the offer made was not reasonable as it was a small fraction of the disposable income, and would take 17.5 years to pay off the debt. The Tribunal did not consider the Respondent's opposition to be unreasonable.
14. The Tribunal considered that a sum of £29 per week would be reasonable given the nature of the debt and the debtor's financial position.
15. The Tribunal reconvened and advised the parties of their decision.

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.

Alison Kelly

Legal Member/Chair

6/3/2020

Date