

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/0538**

**Re: Property at 14 Moor Park, Prestwick, Ayrshire, KA9 2NJ ("the Property")**

**Parties:**

**Mrs Jacquie McCurdie, 55 Forehill Road, Ayr, KA7 3DU ("the Applicant")**

**Mr Scott D McClure and Mrs Valerie McClure, 14 Moor Park, Prestwick, Ayrshire, KA9 2NJ ("the Respondents")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that**

**Decision**

- 1.1 At the Hearing, which took place by telephone conference on 14 November 2024, the Applicant was in attendance and was represented by Mr Haswell of James Guthrie & Co, Solicitors, Kilmarnock. The First Respondent was also in attendance and the Respondents were represented by Mr David Anderson of Ayr Housing Aid Centre.
- 1.2 Prior to the Hearing Mr Haswell on behalf of the Applicant lodged an Inventory of Productions and a List of Witnesses by email dated 5 November 2024. These documents were lodged late. However, Mr Anderson for the Respondents had no objection to them being allowed although late and the Tribunal therefore allowed them to be considered at the Hearing.
- 1.3 Mr Anderson on behalf of the Respondents also lodged an Inventory of Productions and a List of Witnesses by emails dated 30 October and 31 October 2024 respectively.

**Background**

- 2.1 A CMD had previously taken place on 26 August 2024. That CMD was adjourned to the Hearing to allow disputed issues identified between the parties to be determined by the Tribunal.

- 2.2 The Notes of the CMD record that only the reasonableness of granting an eviction order is a matter of dispute between the parties and identifies the issues to be resolved as:-
- i. In that the Applicant and her husband require the proceeds of sale of the Property to fund repairs/modifications to their own home, what are the precise repairs and modifications to be undertaken and when, and what costs will be incurred in attending to these?
  - ii. Are there any care and repairs type scheme available to the Applicant and her husband to assist with the cost of funding the works referred to in i. above.
  - iii. What is the extent of the ill health of the Applicant and her husband?
  - iv. Balancing the interests of the Applicant and the Respondents, is it reasonable to issue an eviction order?

### **The Hearing**

- 3.1 At the Hearing the Tribunal heard evidence from the Applicant, the Applicant's husband Mr Brian McCurdie, and the First Respondent.

#### *Evidence of Applicant*

- 3.2 The Applicant's date of birth 22 August 1962 and she lives at 55 Forehill Road, Ayr, KA7 3DU ("the Applicant's home").
- 3.3 The Applicant owns the Property along with her husband, Mr Brian McCurdie.
- 3.4 The Respondents are tenants in the Property having moved in on 1 October 2019.
- 3.5 With regard to the photographs lodged in the Applicant's Inventory of Productions those marked "1" show the pointing at the front of the Applicant's home having fallen out and in need of repair. The failed pointing is more extensive than the photographs show but access could not be obtained to take more photographs. The failed pointing does not look good and in February 2023 the Applicant obtained a quotation from JG Carr Sandstone Restoration Specialists for remedial works to the entire front of the Applicant's home in the sum of £1850.
- 3.6 With regard to the photographs of the driveway at the Applicant's home marked "2" these show holes in and the crumbling driveway. Mr McCurdie has no feeling in his feet. It is therefore difficult for him to negotiate the driveway when dark. The driveway needs repaired for safety and cosmetic reasons and the undated quotation of Mr Resin Driveway is in the sum of £13,200 including VAT.
- 3.7 With regard to the photograph of the steps at the Applicant's home marked "3", a handrail requires to be installed to assist Mr McCurdie getting up and down the steps. At present he uses the wall but he has no feeling in his hands and cuts them. A quotation for the installation of the handrail is from Ian Hitchman Fabrications Ltd in the sum of £147.60. The handrail will assist Mr McCurdie in getting in and out the Applicant's home. The works to the driveway also include extending the surface to the steps where the stone chips are otherwise difficult to negotiate.
- 3.8 Internally the photograph of the boarded up doorway at the Applicant's home, marked "4", arises as a result of the kitchen previously being extended but the Applicant has no money to finish the works and have the hallway decorated. Within the kitchen and lounge photographs have also been lodged. The walls need painted - only one coat has been applied so far - and the Applicant cannot afford to buy new furniture as a result of which the room is very bare. The quotation from the Ian MacShannon is for the decoration works required to the hall to the kitchen/living area.
- 3.9 The quotation of Thistle Help limited dated 13 September 2024 includes a chair and a bed. Mr McCurdie does not sleep and watches television. He will get stuck in a chair and requires an alternative chair which will help him get up during the night to save

- the Applicant having to get up to assist him. Mr McCurdie's feet and legs swell due to oedema and the specialist chair costing £1638 will make him more independent and promote his comfort.
- 3.10 With regard to the bedroom photographs relative to the Applicant's home, these illustrate the nursery furniture within the room. The Applicant has no money to purchase new furniture. There is no wardrobe space and furniture is required.
- 3.11 The Applicant stated that the Applicant's home is a bungalow which is ideal for Mr McCurdie. However, she wants to make the property comfortable for them in their retirement and they therefore need to sell the Property in order to do that.
- 3.12 The Applicant spoke to the document marked "7" headed "ii Care and Repair" prepared by her. She said she fractured her spine in 2015 and continues to have back pain. The situation is exacerbated by her working in the care sector. The Applicant has no OT assessment pending. The Applicant and her husband want to do the required works themselves if they can.
- 3.13 The Applicant knows that her breast cancer will come back and has suffered mental health issues last year all of which causes her stress and anxiety. She is waiting on a referral to Dumfries House and is seeing a mental health nurse.
- 3.14 Walking and standing is difficult. It is also challenging to work as a result.
- 3.15 Document "7b" prepared by the Applicant records the results of x-rays taken in February 2024. She has shoulder and back pain and there are degenerative changes in her spine.
- 3.16 Document "7d" is a letter from the Applicant's manager, Lesley Waterston, which records that she is being given shorter shifts with clients that do not require manual handling as a consequence of her conditions.
- 3.17 The Applicant said she has never had mental health difficulties in her life but burst into tears when she visited her GP who said she needed to see someone for support.
- 3.18 Document "7c" is a Diagnostic Imaging Report from an examination on 30 January 2024. Cancer treatment makes bones weaker. However, no evidence of that was found.
- 3.19 Document "7e" reflects that the Applicant is registered with South Ayrshire Carers as a carer for her husband. The carers meet once a month for a coffee which she finds helpful.
- 3.20 The Applicant stated that financially she is unable to retire. Her husband has no pension. She would like to retire and has had to reduce her work hours due to back pain.
- 3.21 The Applicant stated that Mr McCurdie is deaf due to his medical conditions and, in particular, vasculitis. The deafness happened overnight. He has brain fog and gets muddled. He has Addison's Disease which results him getting angry that he cannot control. He has no real understanding of his conditions.
- 3.22 Document "8" refers to Mr McCurdie having GPA Vasculitis which is a rare form affecting all major organs. His adrenal glands do not work. His body cannot produce hormones to repair itself.
- 3.23 The Applicant referred to documents "8a" to "8q" which include photographs of Mr McCurdie's emergency injection kit and specific contact information at the hospital should any admissions be required. The Applicant also referred to the various medical letters and other documentation lodged to vouch Mr McCurdie's health issues which she said are true and accurate. His condition is ongoing and will get progressively worse.
- 3.24 Under cross examination the Applicant stated that there is no mortgage on any property owned by the Applicants. The rent on the Property was increased by only 3% last year.

- 3.25 Mr McCurdie is not in receipt of any state pension nor any state benefits. The Applicant described him as a "proud working man" who won't make any such claim even although he would qualify for a range of benefits. The Applicant stated that Mr McCurdie was a driver of a 40 foot articulated truck in the petrochemicals industry. He relinquished his HGV licence in June 2024.
- 3.26 Mr McCurdie is not able to work and has been assessed as having chronic fatigue.
- 3.27 The Applicant said the repairs and adaptations required at the Applicant's home had been in contemplation since around February or March 2023. She said that they had not had spare cash to do these repairs previously.
- 3.28 With regard to the Property she said that repairs had been required. She also had to pay her landlord insurance as well as landlord registration costs. Factoring fees required to be paid and the boiler serviced and maintained as well as a legionella check. The Applicant said that she has had to pay a lot to be landlord.
- 3.29 The Applicant was asked whether she would sell with the Respondents in occupation. She said that had not been considered. The Applicant and her husband had worked hard to buy two properties and had hoped to buy a property in Malta to retire to. That cannot now be done and she questioned why she could not live comfortably in her own home. Notice to the Respondents was given in August 2023 and she had been planning to sell the Property for a long time.
- 3.30 The Applicant was asked whether the cost of repairs is an outlay of any landlord. The Applicant agreed but stated that she had assumed the Respondents would leave by 1 February 2024 and had that happened the additional bills incurred would not then have arisen.

*Evidence of Mr Brian McCurdie.*

- 3.31 Prior to Mr McCurdie's evidence the Tribunal made it clear that there were no matters of dispute relative to Mr McCurdie's health and there was no need to take evidence from Mr McCurdie that required him to discuss the details of his health conditions.
- 3.32 In very brief evidence in chief Mr McCurdie stated that he knew documentation relative to his health had been lodged and that he had nothing further to add.
- 3.33 There were no questions for Mr McCurdie in cross-examination.

*Evidence of Mr Scott McClure*

- 3.34 The Respondents have two sons - Ryan aged 22 years and Lucas 14 years.
- 3.35 Their youngest son suffers from Autism.
- 3.36 The location of the Property is ideal for what Lucas requires. It is quiet with access to parks and places to unwind.
- 3.37 The Respondents' routine revolves around where they stay. Lucas does not cope well with change. Change is a major factor and the Respondents know they cannot live in the Property indefinitely and need to find other accommodation.
- 3.38 Referring to the letter from Mr C Wood, Principal Teacher of Guidance at Queen Margaret Academy, the First Respondent stated that the Respondents do not interact with many people outwith their family circle. Even attending a supermarket can be a stressful experience.
- 3.39 Lucas is in third year at school. He does not cope with changes at school. It is unthinkable to change school and contemplate how such a change might affect him. His existing school is excellent.
- 3.40 With regard to the Respondents' search for alternative accommodation, if a three-bedroom house becomes available they put their names down for that property. The property has to be in the right area and accepting of pets. They might get onto a

shortlist but there is a double deposit to pay for pets. They have subscribed to a property search engine and are doing what they can to move. There is not much to consider. They want to be in control of where they are going and time is all they are asking for.

- 3.41 They have applications for housing with the local authority and housing associations but have had no offers of accommodation.
- 3.42 The Respondents' eldest son is in cyber security. However, he has been furloughed through lack of work and is only paid when he is employed. He does not claim benefits in between. He is still a dependent of the Respondents.
- 3.43 With the Second Respondent now working the Respondents are building towards a double deposit and to pay rent. They would like to ask for three years before they have to move but know that is not possible.
- 3.44 Under cross examination the First Respondent stated that the Property is situated approximately 3 miles from Lucas' school. He travels there by school taxi. Other children are picked up by the same taxi. No taxi would be available outwith Prestwick. Their home needs to be within the catchment area of the school.
- 3.45 The First Respondent was asked if some situations, like attending the supermarket, cannot be avoided. The First Respondent accepted that Lucas cannot be left on his own and therefore he will have to go to the supermarket if need be.
- 3.46 The First Respondent accepted that it is a necessary stress to move house at some point. However he said the prospect of an eviction and emergency housing is a last resort scenario. A private let would be best in order that the Respondents can be in control of the position.
- 3.47 The First Respondent was asked if the eldest son is looking for full-time employment. He said work is not there for him at the moment but there will be work further down the road. Ryan enjoys working for his employer and is called in a day or two each week. He does not contribute to the household expenses.
- 3.48 The First Respondent said that the Applicant had first mentioned possession proceedings in about August 2023 serving notice thereafter in November 2023 and the Respondents have been trying to leave since then but have not been accepted.

### *Submissions*

- 4.1 Mr Haswell for the Applicant submitted that the evidence shows the Applicant has followed due process and has grounds for an eviction order being granted. Sufficient evidence has been lodged and heard to establish a need for the Property to be sold to improve the health of the Applicant and her husband. Mr Haswell suggested there is sufficient housing in the area for the Respondents to relocate within a three-mile radius of the school such that transport continues to be provided. He urged the Tribunal to grant an eviction order.
- 4.2 Mr Anderson for the Respondents submitted that the Tribunal requires to weigh and balance the interests of the Applicant and the Respondents. Whilst there was no dispute about the health conditions of the Applicant and her husband they had failed to show urgency. Their arguments rely on a lack of finance. The Respondent's pay the rent. The Applicant's husband is not claiming benefits. An eviction order would cause significant disruption to arrangements for Lucas attending school. Mr Anderson suggested any eviction order granted should be delayed until the school breaks up for the Summer holidays in order to minimise disruption.

### **Findings in Fact**

The Tribunal made the following findings in fact:-

- 5.1 The Applicant and her husband, Mr Brian McCurdie, are the heritable proprietors of the Property.
- 5.2 The Applicant leased the Property to the Respondents in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 1 October 2019.
- 5.3 On 6 November 2023, the Applicant's letting agent served on the Respondents by email a Notice to Leave requiring the Respondents remove from the Property by 1 February 2024.
- 5.4 The Notice to Leave proceeds upon Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- 5.5 The Applicant relies upon a letter of James Guthrie & Co, Solicitors, Kilmarnock dated 1 February 2024 as evidence of the intention to sell the Property in terms of which that firm indicates its willingness to sell the Property once vacated by the Respondents.
- 5.6 The pointing on the front elevation of the Applicant's home at 55 Forehill Road, Ayr, KA7 3DU ("the Applicant's home") has fallen out and is in need of repair. In February 2023 the Applicant obtained a quotation from JG Carr Sandstone Restoration Specialists for remedial works to the entire front of the Applicant's home in the sum of £1850.
- 5.7 The driveway at the Applicant's home has holes and is crumbling. Mr McCurdie has no feeling in his feet. It is therefore difficult for him to negotiate the driveway when dark. The driveway needs repaired for safety and cosmetic reasons and the undated quotation of Mr Resin Driveway for that work is in the sum of £13,200 including VAT.
- 5.8 A handrail requires to be installed to assist Mr McCurdie getting up and down the exterior steps and in and out of the Applicant's home. At present he uses the wall but he has no feeling in his hands and cuts them. A quotation for the installation of the handrail is from Ian Hitchman Fabrications Ltd in the sum of £147.60.
- 5.9 The works to the driveway at the Applicant's home also include extending the surface to the steps where the stone chips are otherwise difficult to negotiate.
- 5.10 Internally within the Applicant's home the boarded up doorway in the hallway arises as a result of the kitchen previously being extended. The hallway requires decorated at a cost of £1400.
- 5.11 Within the kitchen and lounge the walls need painted at a cost of £1100.
- 5.12 The Applicant cannot afford to buy new furniture, in particular a specialist reclining chair at a cost of £1638 to assist Mr McCurdie getting up during the night to save the Applicant having to get up to assist him. Mr McCurdie's feet and legs swell due to oedema and the specialist chair will make him more independent and promote his comfort.
- 5.13 A care and repair type scheme is operated by the local authority. However, the waiting time for an occupational therapy ("OT") assessment is in excess of 12 months and thereafter additional time is required for any referral to be approved and works done.
- 5.14 The Applicant has no OT assessment pending for care and repair by the local authority.
- 5.15 The Applicant wants to make the Applicant's home comfortable for her and Mr McCurdie in their retirement.
- 5.16 The Applicant has various serious health issues including back pain.
- 5.17 The Applicant works part-time.
- 5.18 Mr McCurdie has various serious health issues. He is unable to work.
- 5.19 He has no income and refuses to claim state benefits to which he is entitled.
- 5.20 There is no mortgage on the Property or on the Applicant's home.
- 3.49 The Respondents were first notified of the Applicant's intention to sell the Property in August 2023.
- 3.50 The Respondents have two sons - Ryan aged 22 years and Lucas 14 years.
- 3.51 The Respondents younger son suffers from Autism.

- 3.52 The location of the Property ideal for what Lucas requires. It is quiet with access to parks and places to unwind.
- 5.21 The Respondents' routine revolves around where they stay. Lucas does not cope well with change.
- 5.22 The Respondents know they cannot live in the Property indefinitely and need to find other accommodation.
- 5.23 Due to Lucas' condition the Respondents do not interact with many people outwith their family circle. Even attending a supermarket can be a stressful experience.
  - 5.24 Lucas is in third year at Queen Margaret Academy. He does not cope with changes at school. The school is excellent for his needs where he has a supported and nurturing environment, an individualised tailored timetable and a comprehensive support plan. The Property is situated approximately 3 miles from the school. Lucas travels there by school taxi.
  - 5.25 The Respondents have been searching and continue to search for alternative accommodation that allows pets. They have applications for housing with the local authority and housing associations and are looking in the private sector too. A three bedroomed property is required.
  - 5.26 The Respondents' eldest son, Ryan, is still dependent upon them and does not contribute to their housing costs.
  - 5.27 The Applicant has served on South Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **Reasons for Decision**

- 7.1 The Tribunal considered the Applicant and the First Respondent both credible and reliable in their evidence. Mr Brian McCurdie spoke only briefly in his evidence and to that extent he was credible and reliable. The evidence of each party was largely unchallenged by the other and there were almost no contentious matters of fact, the only exception being relative to the timing of the Respondents vacating the Property.
- 7.2 The Application proceeds upon Ground 1 of Schedule 3 of the 2016 Act which states:-
  - "(1) It is an eviction ground that the landlord intends to sell the let property.*
  - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
    - (a) is entitled to sell the let property,*
    - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
    - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
  - (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
    - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
    - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."*
- 7.3 The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof along with her husband. That matter is not in dispute.

- 7.4 Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a letter of James Guthrie & Co, Solicitors, Kilmarnock dated 1 February 2024 in terms of which that firm indicated its willingness to sell the Property once vacated by the Respondents. The Tribunal accepted this evidence to be sufficient and the Respondents accepted that position too.
- 7.5 The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). Only the reasonableness of granting an eviction order is a matter of dispute between the parties.

In *Manson & Dowie v Turner & Turner* (2003) UT 38 referring to the assessment of reasonableness in the context of a Private Residential Tenancy the Upper Tribunal stated:-

*"As noted above, the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b). The intentions of the landlord are therefore clearly relevant, and the FTS is entitled if not bound to consider whether they are reasonable. Furthermore the FTS would be entitled, at least in principle, to find that the landlord's intentions outweighed the matters put in evidence by the tenant. Put another way, the FTS would be entitled in principle to conclude both that the landlord's intentions were subjectively reasonable, and that they made it objectively reasonable to issue an eviction order. The FTS' emphasis in its written reasons on the respondents' intentions is therefore not of itself sufficient to establish that the FTS has departed from the "all the circumstances" approach to which it correctly directed itself. The FTS' errors in this case were in relation to fact finding and in failing to explain why the respondents' interests and intentions outweighed those of the appellants, not its general approach to assessment of reasonableness."*

In *Stainthorpe v Carruthers and Swan* (2024) UT 30 in considering the assessment of reasonableness the Upper Tribunal stated:-

*"Is it Reasonable to Grant an Order for Possession?"*

*74. The UTS must establish, consider and properly weigh the "whole of the circumstances in which the application is made" ( Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.*

*75. Its decision on reasonableness is not in itself a finding in fact, but instead a concept or conclusion determined by an exercise of judgment ( City of Edinburgh Council v Forbes 2002 Hous. L. R. 61, at paragraph 7-16 , per Sheriff Principal Nicholson QC). Its assessment as to whether it is reasonable for the UTS to make an order for possession must take account all relevant circumstances as they exist*



*at the date of the hearing ( Cumming v Danson [1942] All ER 653 at 655 ). It may take into account in assessing reasonableness whether the parties' intentions are subjectively reasonable and it must "objectively balance the rights and interests of both parties" ( Manson and Downie v Turner (2003 UT 38 at paragraphs 41 and 42; see also City of Glasgow District Council v Erhaigonoma 1993 S.C.L.R 592 ).*

*76. The relevant circumstances on the appellant's side are his legal right to use and dispose of his property as he thinks fit within the constraints of planning and building law, and his subjectively reasonable wish to reconstruct the house for transfer to his stepson for use as a family home. Those on the respondents' side are their long period of occupancy of the house, emotional attachment to it, the age of the second respondent, the reduced state of their health, their difficulties in finding a house to rent of equivalent amenity, the loss of their supportive neighbours, and their subjectively reasonable wish to live in the house indefinitely."*

The Upper Tribunal further stated:-

*"81. Ultimately, the subjectively reasonable intention of the appellant to reconstruct the house and eventually transfer ownership to his stepson to benefit his stepson and his stepson's wife, and the diminution in the standard of living of the respondents if they are required to remove from the house that they enjoy living in, deserve equal consideration. These are therefore countervailing circumstances.*

*82. Accordingly, I consider the deciding factor to be that the appellant exercises a right of property, whereby he can use or dispose of the house as he thinks fit. I therefore agree with the appellant's submission that those interests must take precedence over the wishes of the respondents to continue in occupation of the property indefinitely.*

*83. The proper balance between the parties' interests can in my opinion appropriately be struck in this case by postponing the date for possession to allow the respondents time to find alternative accommodation, and the appellant time to complete his plans by instructing the contractor, finalising his financial arrangements and obtaining his building warrant. I have so ordered."*

7.6 The Tribunal therefore carefully considered all of the parties' circumstances and each of the disputed issues for determination.

- i. In that the Applicant and her husband require the proceeds of sale of the Property to fund repairs/modifications to their own home, what are the precise repairs and modifications to be undertaken and when, and what costs will be incurred in attending to these?
- ii. Are there any care and repairs type scheme available to the Applicant and her husband to assist with the cost of funding the works referred to in i. above.
- iii. What is the extent of the ill health of the Applicant and her husband?
- iv. Balancing the interests of the Applicant and the Respondents, is it reasonable to issue an eviction order?

7.7 *In that the Applicant and her husband require the proceeds of sale of the Property to fund repairs/modifications to their own home, what are the precise repairs and modifications to be undertaken and when, and what costs will be incurred in attending to these?*

The Applicant's oral evidence and the supporting documentation produced by her satisfied the Tribunal that there are a number of repairs/modifications required to the Applicant's home, that those repairs are required now and that those repairs/modifications have been costed. In particular, pointing on the front elevation of the Applicant's home has fallen out and is in need of repair. In February 2023 the Applicant obtained a quotation from JG Carr Sandstone Restoration Specialists for remedial works to the entire front of the Applicant's home in the sum of £1850. The driveway at the Applicant's home has holes and is crumbling. The driveway needs repaired for safety and cosmetic reasons at a cost of £13,200 including VAT. The works to the driveway at the Applicant's home also include extending the surface to the steps where the stone chips are otherwise difficult to negotiate. A handrail requires to be installed to assist Mr McCurdie getting up and down the exterior steps and in and out of the Applicant's home at a cost of £147.60. Internally the hallway requires decorated and the kitchen and lounge the walls need painted at a total cost of £2500. A specialist reclining chair is required to assist Mr McCurdie getting up during the night to save the Applicant having to get up to assist him at a cost of £1638. Mr McCurdie's feet and legs swell due to oedema and the specialist chair will make him more independent and promote his comfort. None of these issues were disputed by the Respondents. The Applicant gave evidence that these repairs/modifications could only be funded by the proceeds of sale of the Property, that she had initially given to the Respondents informal notice of her intention to sell the Property in August 2023 (which was not in dispute) and that she and Mr McCurdie wished to live comfortable in their own home in their retirement.

**7.8** *Are there any care and repairs type scheme available to the Applicant and her husband to assist with the cost of funding the works referred to in i. above.*

The Applicant's evidence was to the effect that a care and repair type scheme is operated by the local authority. However, the waiting time for an occupational therapy assessment is in excess of 12 months and thereafter additional time is required for any referral to be approved and works done. This issue was not disputed by the Respondents.

**7.9** *What is the extent of the ill health of the Applicant and her husband?*

Detailed oral and documentary evidence was produced substantiating the ill health of the Applicant and her husband, which was not in dispute. Both have serious and limiting conditions.

**7.10** *Balancing the interests of the Applicant and the Respondents, is it reasonable to issue an eviction order?*

The Tribunal carefully weighed and balanced all the relevant facts found by it which bear on reasonableness.

The Tribunal is satisfied that the Applicant intends to sell the Property as soon as vacant possession is recovered. The Tribunal is satisfied that the Applicant intends to sell the Property to release capital to fund repairs and modifications to the Applicant's home which she shares with her husband in order to make their lives and their retirement more comfortable. These repairs and modifications are needed now. Whilst it is obvious that the financial situation of the Applicant and her husband might be eased to some extent by Mr McCurdie applying for state benefits to which he would very obviously be entitled and it is indeed somewhat curious that he refuses to make

any such applications, nonetheless the funds required for the repairs and modifications to the Applicant's home are considerable and pressing.

The Tribunal understood too the Respondents' desire to remain in occupation of the Property with their sons. Their younger son, Lucas, has serious conditions which mean that any change for him is particularly challenging. The location of the Property, in particular, suits the Respondents well given its proximity to Lucas' school to which he benefits from school transport and where he is clearly very settled and very well provided for. It is entirely understandable that any change to Lucas' school is difficult to contemplate. None of these issues were in dispute.

The Respondents have sought to find alternative accommodation in the public and private sectors without success as yet. In the private sector their endeavours are likely hampered by their need to accommodate a pet and the double deposit said by the First Respondent to be required as a result. That narrows their options to some extent. The Respondents accept they cannot live in the Property indefinitely.

Both parties' positions deserve equal consideration. However, the Applicant's intention to sell the Property to fund repairs/modifications to the Applicant's home to accommodate her and her husband's immediate needs and to make life comfortable in their retirement is subjectively reasonable and her legal right to dispose of the Property for that purpose must take precedence over the Respondents' genuine desire to continue in occupation of the Property for the sake of their younger son and his schooling arrangements in particular.

On that basis the Tribunal concludes that it is reasonable to grant an eviction order.

- 7.11 Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondents with an extended period of time to secure alternative accommodation. Accordingly, the Tribunal determined that the order cannot be enforced until after 31 March 2025.

### **Determination**

- 7.12 The Tribunal determined that an eviction order should be granted against the Respondents in favour of the Applicant suspended to 12 noon on 1 April 2025.

### **Right of Appeal**

**8.0 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.**

Gillian Buchanan

**Legal Member/Chair**

— **27 December 2024**  
**Date**