



**Decision on Application for Review under section 39 of the First-tier Tribunal
Housing and Property Chamber Rules of Procedure 2017**

Chamber Ref: FTS/HPC/CV/20/2654

**Re: Property at Flat 2/1, 2 Overton Crescent, Johnstone, PA5 8JB (“the
Property”)**

Parties:

Mr Martin Docherty, 36 High Street, Johnstone, PA5 8AH (“the Applicant”)

**Mr Kenneth McCarthy, 11 Walker Lane, Paisley, Renfrewshire, PA1 2BU (“the
Respondent”)**

Tribunal Member:

Ruth O'Hare (Legal Member)

Background

- 1** Reference is made to the decision of the Tribunal dated 19 April 2021 in terms of which the Tribunal made an order for payment by the Respondent to the Applicant in the sum of Six hundred and forty pounds (£640).
- 2** On 23rd April 2021 the Tribunal received a time to pay application from the Respondent offering payments at the rate of £50 per week. The time to pay application was not before the Tribunal when it took its decision of 19 April 2021. The Tribunal therefore issued a Notice of Review and Direction to the parties dated 29 April 2021 intimating the intention to review the decision in order to consider the Respondent's time to pay application. The Tribunal directed the parties to submit any comments on the notice of review by 19th April 2021, together with any view on whether the matter could be determined without a hearing.
- 3** On 5th May 2021, the Applicant's agent emailed the Tribunal to advise that the Applicant would accept the offer of £50 per week, albeit they had concerns about the Respondent's ability to sustain payments at that rate in light of his income and expenditure. The Applicant would therefore be prepared to accept payment at the rate of £20 per week. There was no response from the Respondent to the Notice and Direction.

Relevant Legislation

- 4 The provisions regarding review of a Tribunal decision are contained with Rule 39 of the Procedural Rules and section 44 of the Tribunals (Scotland) Act 2014:-

“39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal’s provisional views on the application.

(5) In accordance with rule 18, the decision may be reviewed without a hearing.

(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.”

“44 Actions on review

(1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—

(a) take no action,

(b) set the decision aside, or

(c) correct a minor or accidental error contained in the decision.

(2) Where a decision is set aside by the First-tier Tribunal in a review, it may—

(a) re-decide the matter concerned,

(b) refer that matter to the Upper Tribunal, or

(c) make such other order as the First-tier Tribunal considers appropriate.

(3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—

(a) may re-decide the matter concerned or make such other order as it considers appropriate,

(b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.

(4) Where a decision is set aside by the Upper Tribunal in a review, it may—

(a) re-decide the matter concerned, or

(b) make such other order as it considers appropriate.

(5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.”

Decision

- 5** The Tribunal determined to set aside its decision of 19 April 2021 and grant an order for payment in the sum of £640 payable at the rate of £20 per week until the full amount has been paid.

Reasons for Decision

- 6** The Tribunal was satisfied that it was in the interests of justice to review its decision of 19th April 2021 in order to consider the time to pay application submitted by the Respondent. The Tribunal noted the Applicant's position, in that they had no objection to the application and in fact had proposed a lesser amount to ensure the Respondent could sustain payments towards the debt. On that basis the Tribunal considered it reasonable to make a time to pay direction at the lesser amount of £20 per week as proposed by the Applicant.

Ruth O'Hare

Legal Member: 

Date: 15 June 2021