

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Helen Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/PY/21/1356

Parties:

Mr David McCrystal ("the Debtor")

Ms Kimberley Nicholas ("the Creditor")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 41H on 4th June 2021. The Debtor was seeking a Time to Pay Order to pay the sum of £1200 by instalments of £50 per month.
2. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 23rd June 2021, whereby the Debtor was asked to provide a copy of the payment order and paperwork in relation to the action of adjudication.
3. By email dated 7th July 2021, the Debtor responded and enclosed bank correspondence indicating that sum of £631.70 had been arrested by HBOS.

4. The information was considered by a legal member of the Tribunal and further information was requested by letter dated 26th July 2021 as follows:

(1) The documents produced show that two sums have been arrested by HBOS, namely £179.68 and £452.02 (totalling £631.70). Please confirm whether you have authorised HBOS to pay these sums to the creditor and if so, provide proof of the same.

(2) The orders for payment were requested and have not yet been provided (you have submitted copies of the decisions only).

(3) Paperwork in relation to action of adjudication was requested and has not yet been provided.

5. The Debtor responded by email dated 9th August 2021. The requested information was not provided.
6. The application was considered by a legal member of the Tribunal and a further letter dated 24th August 2021, was issued requesting the outstanding information.
7. By email dated 7th September 2021, the Debtor lodged copy letters from HBOS and stated the following:

Please find attached Notification of Arrestment of my account and schedule Reference Numbers for sums £452.02 and £179.68 in regards to Kimberley Nicholas. I have also included my account statement showing that these amounts were successfully debited from my account.

8. The application was considered by a legal member of the Tribunal and a further letter dated 6th October 2021 was issued as follows:

Having considered the documentation submitted it appears that the reason you are applying to the tribunal for a time to pay order is actually not, as stated in your application, that an action of adjudication has commenced (which is what was stated in your application and which is why the Tribunal has requested the relevant documentation for such a process) but that in terms of S 5(1)(b) an arrestment has been executed. It also appears that by now the debt outstanding is no longer the sum stated in your original application. Can you please amend the original application accordingly and confirm how much is now outstanding. We cannot process the application in its current format without the documentation required. You may wish to seek further advice from a solicitor or free advice services such as the CAB.

9. By email dated 22nd October 2021, the Debtor responded and enclosed an amended application for a Time to Pay Order.

10. An interim order to sist diligence was made by a legal member of the Tribunal on 12th November 2021.
11. The application was served on the Creditor by letter dated 17th November 2021.
12. The application was considered by a legal member of the Tribunal and a letter dated 21st December 2021 was issued as follows:

The Tribunal has received no reply to the application from the Respondent. However, before the Tribunal can process the application further can you please provide the following:

1. Please contact your bank and establish whether or not the funds which were arrested in your accounts have actually been paid over to the creditor/ Sheriff Officers who carried out the arrestment. Please also contact the Sheriff Officers who served the arrestment and confirm the position with them. The reason this is requested is that it has to be clear what the current outstanding sum is and the arrestment documentation you have provided from your bank so far only confirms that the sums have been frozen and taken off your account but not that they have actually been paid to the person who is carrying out the arrestment and thus reduced the amount outstanding at present. It may be easiest to obtain from the Sheriff Officers a current balance of the outstanding debt and to then advise the Tribunal of any changes in the originally claimed sum and the current outstanding sum. The Tribunal has to ensure that the amounts stated in any decision are correct and up to date.

2. Please confirm that the total charge the matter relates to is actually £1304.04 as per the documents from Sheriff Officers you had provided in your correspondence regarding case PR/20/0637 and CV/20/0639. If this is not the case please advise immediately to what charge the application for time to pay relates. It is in your interest to have the matter finally determined and to provide the above so that the matter can be progressed.

13. By email dated 4th January 2022, the Debtor responded as follows:

I have emailed both Helen McHugh at www.lsa.org.uk and Graham Kirk at Kirk and company Sherriff officers to request that they confirm a total of £631.70 had been arrested as per the correspondence I had previously sent across from the bank of Scotland The account the funds where taken from has since been closed. The LSA represented the client in this case and I will revert back to you as soon as I receive a response.

14. The application was considered by a legal member of the Tribunal and a letter dated 28th January 2022 was issued as follows:

Before a decision can be made, we need you to provide us with the following:

1. Please contact your bank and establish whether or not the funds which were arrested in your accounts have actually been paid over to the creditor/ Sheriff Officers who carried out the arrestment. Please also contact the Sheriff Officers who served the arrestment and confirm the position with them. The reason this is requested is that it has to be clear what the current outstanding sum is and the arrestment documentation you have provided from your bank so far only confirms that the sums have been frozen and taken off your account but not that they have actually been paid to the person who is carrying out the arrestment and thus reduced the amount outstanding at present. It may be easiest to obtain from the Sheriff Officers a current balance of the outstanding debt and to then advise the Tribunal of any changes in the originally claimed sum and the current outstanding sum. The Tribunal has to ensure that the amounts stated in any decision are correct and up to date.

2. Please confirm that the total charge the matter relates to is actually £1304.04 as per the documents from Sheriff Officers you had provided in your correspondence regarding case PR/20/0637 and CV/20/0639. If this is not the case please advise immediately to what charge the application for time to pay relates.

15. By email dated 28th January 2022, the Debtor responded to say he was awaiting information.
16. By email dated 28th January 2022, the Creditor contacted the Tribunal requesting information and stating that papers had been served at her old address.
17. By email dated 29th January 2022, the Creditor emailed written representations and documentation to the Tribunal, failing to respond to the application for a Time to Pay Order.
18. By email dated 4th February 2022, the Creditor informed the Tribunal that all sums had been paid by the Debtor.
19. By email dated 11th February 2022, the Debtor informed the Tribunal that he had been informed that all sums had been paid but he had no means of confirming this with the bank.
20. The application was considered by a legal member of the Tribunal and a letter dated 1st March 2022 was issued asking the Debtor to confirm that payment had been made and the application could be withdrawn. The Debtor was asked to respond by 15th March 2022. No response was received.
21. The application was considered by a legal member of the Tribunal and a letter dated 13th April 2022 was issued requesting a response to the letter of 1st March

2022 by 27th April 2022 and stating that the application would be rejected if no response was received. No response was received.

22. The application was considered by a legal member of the Tribunal on 19th May 2022.

Reasons for Decision

23. The Tribunal 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;·
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

24. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".*

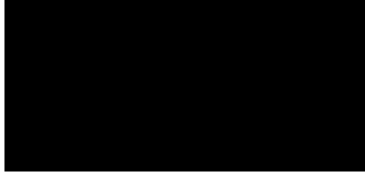
25. It would appear that the Time to Pay Order is unnecessary as both parties state that the sum has been paid in full. In the absence of the requested information from the Debtor, the application cannot proceed.

26. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

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.



Legal Member/Chair

19 May 2022

Date