



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 5 of the Debtors (Scotland)
Act 1987**

Chamber Ref: FTS/HPC/PY/20/2202

Parties:

Mr Steven Sibbald, c/o 28 Dryden Gardens, Edinburgh, EH7 4PP (“the Applicant”)

Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

Background

This was an application dated 14th October 2020 and brought in terms of Rule 41H (Applications for time to pay orders) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought a time to pay order in respect of an order of the Tribunal dated 24th August 2020 for payment by the Applicant to the Respondent of the sum of £5,850.00 in respect of application FTS/HPC/CV/19/3957.

The Respondent served a charge for payment dated 2nd October 2020, and the Tribunal issued an interim order to sist diligence/enforcement dated 27th October 2020 in response to this application and pending its determination.

A Hearing was held at 10.00 on 7th January 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Tribunal noted that the Applicant had not lodged any vouching or supporting documentation to evidence his financial position. The Applicant explained that he did not realise that he needed to do so.

The Applicant further explained that some of the figures he provided, particularly in respect of rent/mortgage payments, utilities and the like were estimates of what he might expend once he obtained accommodation. He explained that he was of no fixed abode, and was moving between houses of friends and relatives at the moment.

The Tribunal confirmed that for this reason, all correspondence should be sent to him at his e-mail address. He provided a c/o address of a relative of 28 Dryden Gardens, Edinburgh EH7 4PP.

The Respondent confirmed that he objected to the application, as he did not believe the assertions made by the Applicant. The Respondent explained that he had recently served a further charge for payment on the Respondent of the sum of £2,301.35 in respect of the order of the Tribunal against the Applicant in favour of the Respondent in application FTS/HPC/CV/20/1819.

The Tribunal confirmed with the Applicant that he had been served with this further charge for payment. The Applicant explained that he had taken no action in respect of that charge for payment, as he wanted to see the outcome of this application before resolving that matter.

The Tribunal noted that repayment in respect of that charge for payment might well affect his outgoings, which might be relevant to this application.

The Tribunal briefly adjourned to consider matters, and upon resuming indicated to the parties that it felt it needed further information in order to justly determine this matter.

The Tribunal issued a direction on the Applicant to produce various vouching and information as evidence of his financial position, and on the Respondent to produce a copy of the second charge for payment.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a Hearing.

The Tribunal considered it to be reasonable to adjourn the Hearing in the whole circumstances in terms of Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered that it was in the interest of justice, and consistent with its overriding objective of dealing with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to adjourn the Hearing for the purpose of obtaining further information, which was clearly capable of being obtained, to assist it in reaching a determination.

The Tribunal clerk identified a date with the Tribunal members, and with the parties, of 15th February 2021, when all were available to attend a continued Hearing.

In response to the direction, the Respondent produced a copy of the second charge for payment. The Applicant produced 1) a letter from Starling Bank confirming that the Applicant continues to have a sole trader business account with them; 2) mobile phone screenshots showing only certain payments into his business account; 3) mobile phone screenshots showing only certain payments of child support to his ex-wife from an unidentified bank account; 4) invoices from him using his trading name "Harbr" to Kingsford Commercial Ltd; and 5) a small number of mobile phone screenshots relating to child maintenance and payment to him of Universal Credit including the housing element.

The Continued Hearing

A continued Hearing was held at 10.00 on 15th February 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant had e-mailed further documents which he wishes to rely upon to the Tribunal's administration at 4.50pm on Friday 12th February and at 9.07am on the morning of the Hearing, both of which e-mails had not yet been processed by the Tribunal's administration by the start of the Hearing.

After the Tribunal obtained these and copied them to the Respondent, the Hearing was briefly adjourned to allow the Tribunal and Respondent to view them.

Upon resuming, the Respondent objected to these documents being allowed late, upon the basis that there was no reason why they could not have been lodged much earlier. He argued that it would be unfair for the documents to be allowed late where he had no opportunity to investigate and respond to them.

The Applicant asked the Tribunal to allow the documents to be lodged late, explaining that he had only recently received some of the information.

The Tribunal again briefly adjourned to consider its decision regarding whether the Applicant should be allowed to lodge the further documents late.

Upon again resuming, the Tribunal noted that the direction provided that documents should be lodged no later than 22nd January, and that Rule 22 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that copy documents should be sent to the Tribunal no later than 7 days prior to any hearing.

These new documents had been sent very late and outwith these time-limits. The documents were 1) further copy invoices from the Applicant to Kingsford Commercial Ltd dated 2nd December 2020 and 3rd January 2021; 2) a copy of an e-mail with a link to a draft consultancy agreement from Kingsford Commercial Ltd; and 3) various documents apparently showing payments made to creditors in the year 2020.

None of these documents appeared particularly relevant to the Applicant's case, but in any event, the latest dated item in the documents was 26th January 2021, and most were from dates significantly before then.

There was no good reason provided as to why these documents could not have been provided by the end of January 2021 at the latest. In those circumstances, the Tribunal accepted that it would be unfair to allow these to be lodged at such a late stage and to deprive the Respondent of the chance to fully reflect on them and to respond to them.

Rule 22(2) provides that before allowing a document to be lodged late, the Tribunal must be satisfied that the party has a reasonable excuse. The Tribunal was not so satisfied and for that reason did not allow the documents to be allowed late.

Thereafter, both parties gave evidence.

The Applicant asserted that he wished to pay off his debts, and would endeavour to do so with a time to pay direction in place.

In response to the Tribunal, he confirmed that he had a fixed (albeit temporary) address at 44 Rosslyn Crescent, Edinburgh. He was initially reluctant to provide that address to the Tribunal. He explained that he paid £1,250 per month for rent of the property which included utilities and council tax.

The Applicant also confirmed that he anticipated that on Wednesday 17th February 2021, he would lose all benefit payments which he had been receiving. That would leave him with monthly income of £2,000 and monthly outgoings of £2,760. The Applicant explained that some of these outlays related to loans from friends which he did not have to pay if he had insufficient funds, and that he also hoped to obtain new employment in early April 2021 earning approximately £3,500 to £3,750 per month.

The Applicant explained that he had applied for a new position on that salary, and was hopeful that he would in due course obtain that new employment. He conceded that he "did not have a handle" on what ultimately his "stable" future income might be.

He confirmed that in addition to the sum of £5,947.39 specified in the charge for payment in this matter, he had further credit card debt of approximately £7,000.

In response to the Tribunal's enquiry about the very selective information which he had provided, the Applicant stated that he only gave the Tribunal the information which he felt was relevant to his application.

He accepted that 1) he had not provided full monthly statements in relation to his business account, but merely excerpts showing payments received from Kingsford Commercial Ltd; 2) he had not provided any information in relation to his personal account from which he paid his monthly outgoings as he considered that this information was not necessary to determine this application; 3) he had been receiving the housing element of Universal Credit throughout the period when he was of no fixed abode, and was moving between houses of friends and relatives; 4) he had not provided any confirmation from Kingsford Commercial Ltd that they employed him and

on what basis, as he did not consider this to be necessary; 5) he had not provided any information about the various loans (including amounts and repayment terms) from his friends, nor confirmation or evidence of the credit card debt which he had referred to; and 6) he had provided no written evidence confirming his application for employment in a new role on an increased income.

The Respondent gave evidence in short compass. He stated that he simply did not trust the Applicant. The Applicant had made no effort since he incurred the rent arrears which formed the subject of the charge for payment to pay anything in respect of those, had been evasive about revealing his current whereabouts, and had not provided any meaningful vouching to evidence his assertions about his true financial position. For these reasons, he opposed the application.

Statement of Reasons

The parts of section 5 of the *Debtors (Scotland) Act 1987* as amended relevant to this application are as follows:

“(1) Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which—

- (a) a charge for payment has been served on the debtor;
- (b) an arrestment has been executed; or
- (c) an action of adjudication for debt has been commenced.

(2) Subject to subsections (4) and (5) below, the First-tier Tribunal, on an application by the debtor, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (2A) below, make an order that a debt to which this section applies (including any interest claimed in pursuance of subsections (6) and (7) below) so far as outstanding, shall be paid—

(a) by such instalments, commencing at such time after the date of intimation in accordance with section 7(4) of this Act to the debtor of the order under this subsection, payable at such intervals; or

(b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the First-tier Tribunal may specify in the order.

(2A) The matters referred to in subsection (2) above are—

- (a) the nature of and reasons for the debt in relation to which the order is sought;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and
- (e) the reasonableness of the objection by the creditor to the offer by the debtor to pay that debt

(3) An order under subsection (2) above shall be known as a “time to pay order”.

The Tribunal accordingly must be satisfied that it is reasonable in all the circumstances to make a time to pay order having regard to the matters set out in section 5(2A).

The Tribunal was not so satisfied for the following reasons.

The Applicant has incurred substantial rent arrears due to the Respondent, both in relation to the order of the Tribunal to which this application relates, and in relation to the order which forms the basis for the subsequent second charge for payment served on the Applicant by the Respondent. The Respondent stated that he had previously been willing to entertain any proposals for payment of those arrears, but until this application none have been made by the Applicant.

The Applicant has been reluctant to provide the Tribunal with a full and frank statement of his finances. For example, he has not disclosed details of the personal loans from his friends nor provided any information concerning their identities, the amounts owed, and the terms of the agreements. He was reluctant to provide his current address. He has provided very little written evidence of his expenditure, and notably has not provided copies of the bank statements from his personal account.

The information which he did provide was highly selective. For example, he did not provide full bank statements from his business account, but merely certain entries relating to certain payments he had received. He did not provide full details of his benefits payments and the basis upon which he received those. The Tribunal particularly noted that the payment of the housing element of Universal Credit for a period when the Applicant asserted he was of no fixed abode requires proper explanation.

Most importantly, the Applicant provided absolutely no confirmation from his apparent employer of his employment and its terms, but instead provided only copies of invoices prepared by him, and screenshots of certain apparent payments made to him. It should not have been difficult for the Applicant to obtain, for example, a short letter from his employer confirming his employment with it.

Crucially, the Applicant accepted that his current outgoings will significantly exceed his income after his benefits are likely to cease two days after the date of the continued Hearing. In those circumstances, the Tribunal would require convincing evidence that his income would be likely to increase in the near future.

The Applicant asserted that he believes that he is likely to obtain employment in early April 2021 at a greatly increased monthly income, but he has provided no evidence of that beyond his own assertions. Again, he has not provided any details of the position for which he has applied, the written application which he made to his prospective employer, nor any confirmation whatsoever from that prospective employer that he has applied to it for a post.

The Tribunal noted in particular that the application form to the Tribunal lists only "loans and Credit Cards - 7,000" in section 6(b) of the form. In his evidence, the Applicant asserted that he owed £7,000 in credit card debt alone, and did not confirm how much in total he owed in personal loans made to him by his friends.

Finally, the Applicant in his own evidence stated that he "did not have a handle" on what ultimately his "stable" future income might be. There appears no certainty that he will obtain the employment which he seeks, and the Tribunal was provided with no evidence about that employment.

For all these reasons the Tribunal was not satisfied that it is reasonable in all the circumstances to make a time to pay order, when so much of the Applicant's future income is speculative, and he has failed to provide a complete and frank account with evidence of his financial position. In those circumstances it is impossible for the Tribunal to assess the reasonableness of the Applicant's proposal to pay the debt, and the Tribunal considers the Respondent's objection to the proposal in those circumstances to be reasonable.

Decision

In these circumstances, the Tribunal will refuse the application for a time to pay order.

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.

N Kinnear

Legal Member/Chair

15th February 2021

Date