



**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/21/0302**

**Parties:**

**Miss Wendy McMillan, 8 West Church Street, Newmilns (“the Applicant”)**

**Mr Gary Rundle, 58 Richardson Avenue, Hurlford, KA1 5DX (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application for a Time to Pay Order should be refused and the interim order dated 15 March 2021 should be recalled.**

**Background**

1. On 9 November 2020 the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) made an order for payment requiring the Applicant to pay the Respondent the sum of £6994.14.
2. The payment order arose from an application by the Respondent in respect of rent arrears under Case Reference FTS/HPC/CV/19/3664.
3. A Charge for Payment was served on the Applicant by Sheriff Officers on 2 February 2021. The sum due in terms of the Charge was £7091.53.
4. The Applicant applied to the Tribunal for a Time to Pay Order by application dated 8 February 2021. The Applicant provided the Tribunal with a copy payslip in support of the application.
5. The Tribunal requested additional information and the Applicant provided a copy of the charge for Payment.

6. The application was accepted by the Tribunal on 15 March 2021 as being competent. On the same date, an interim order to sist diligence/enforcement was granted by the Tribunal.
7. The Applicant requests that the Tribunal grant a Time to Pay Order in respect of the debt by way of instalments of £50.00 per month.
8. By letter received on 30 March 2021 the Respondent submitted objections to the application on the grounds that it would take over 11 years to clear the debt at the rate suggested and that the application should be postponed until the Applicant returned to full time work. The Respondent also submitted that the Applicant had more surplus income than had been suggested in the application. He also cast doubt on the validity of the wage slip produced by the Applicant and pointed out that previously rent had been paid from the applicant's company account and not from her own personal account.

### **The Case Management Discussion**

9. A Case Management Discussion was held by teleconference on 24 May 2021. The parties attended personally.
10. The Applicant confirmed that she had recently returned to full time work but had not yet received any salary since returning from furlough. In response to questions from the Tribunal she accepted that there was an error in her application and that her net salary should have been £575.00 per month and not £525.00 as stated. She confirmed that her regular outgoings amounted to £425.00 per month.
11. The Respondent indicated that he did not oppose a Time to Pay order being granted but he thought that an appropriate amount would be £320.00 per month. This was half the previous monthly rent.
12. The Applicant said that she was unable to afford any more than £50.00 per month as she had been on furlough for much of the last year. There then followed some discussion with regards to the Applicant's status within the company in which she was employed and how the rent had been previously paid. The Applicant explained that there had been an arrangement with her employer that the rent had been deducted from her wages by her employer and then paid to the Respondent. This was apparently because she did not have a personal bank account at that time. She said she had only received minimum wage. She said that the salary paid to her on furlough was 80% of her usual salary. The Applicant confirmed that she was a director of the company and after some prevarication eventually agreed that she had originally been the sole shareholder but now owned a half share in the company that employed her. She went on to say that she did not receive any dividends from the company.
13. The Applicant said that there was a deposit of £600.00 that was held in a Tenancy deposit scheme that could be released to the Respondent. The Respondent advised the Tribunal that the Scheme administrators had paid the

deposit to him in respect of a claim for damage to a patio door and for other damage to the property. The Applicant said she had never been contacted by the scheme administrators and was unaware of the deposit being repaid.

14. After some further discussion as regards ability to pay the Applicant increased her offer to pay by making instalments of £100.00 per month.
15. The Respondent was not prepared to accept this but agreed to accept instalments of £200.00 per month. The Applicant said she was unable to increase the instalments beyond £100.00 per month.

### **Findings in Fact**

16. The Applicant is a Director and 50% Shareholder of Inspired Vision Bath & Wetrooms Limited.
17. The Applicant has been receiving furloughed pay of about £575.00 per month but has recently returned to full time employment.
18. The Applicant has not yet received a full-time payment since returning from furlough.
19. According to the Applicant's application form she has regular monthly outgoings of £425.00 per month and no other debts.

### **Reasons for Decision**

20. In determining whether to grant a Time to Pay Order the Tribunal it is obliged to consider in terms of Section 5(2A) of the Debtors (Scotland) Act 1987 (a) the nature of and reasons for the debt; (b) any action taken by the Respondent to assist the applicant in paying the debt; (c) the Applicant's financial position; (d) the reasonableness of the Applicant's offer and (e) the reasonableness of the Respondent's objection to the offer.
21. The Tribunal considered it had sufficient information before it to allow it to reach a decision without the need for a hearing.
22. The Tribunal noted that the debt had been incurred as a result of the Applicant failing to pay rent in respect of her tenancy of property she had rented from the Respondent. Although the Applicant may feel aggrieved about the decision of the First-tier Tribunal in FTS/HPC/ CV/19/3664 that in itself has no bearing on the current application. The Respondent was not opposed in principle to a Time to Pay Order being granted and was ultimately prepared to accept instalment payments of £200.00 per month. At this rate the debt would have been repaid in a little under three years and the Tribunal would have been prepared to grant an order in these terms if the Applicant had been prepared to increase her offer. The Applicant's initial offer of instalments of £50.00 per month was totally unreasonable given that she had even on furloughed earnings a surplus income of £150.00 per month and given that on resuming her full-time work her income

would increase by a further 20% the Applicant's increased offer of £100.00 was also not reasonable. The Tribunal had some concerns about the way in which the Applicant presented herself simply as an employee of the company who had been furloughed. Her reluctance to disclose that she had been at one time the sole owner of the company and was currently a 50% shareholder was not helpful. However, the Tribunal was unable to conclude that the Applicant's earnings were any greater than that disclosed in the application.

23. The Tribunal gave the Applicant an opportunity to increase her monthly instalments to £200.00 per month but the Applicant was insistent that this was more than she could afford and therefore the Tribunal had no alternative other than to refuse the application. In so doing and recalling the interim suspension of diligence that will leave the Respondent able to carry out such further diligence on the Applicant as may be available to him in law. There would of course be nothing to prevent the parties from entering into an informal agreement between themselves to avoid such further diligence being necessary.

### **Decision**

24. The Tribunal refused the Order and recalled the Interim Order granted on 15 March 2021.

### **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.**

# G Harding

Legal Member/Chair

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**24 May 2021**  
**Date**