

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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Decision Under Section 6 of the Debtors (Scotland) Act 1987 and Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/PY/21/1293

Parties:

Ms Anna Rutkowska, 45 Park View, Mintlaw, Peterhead, AB42 5TA ("the Debtor")

Ms Jill Garvie, 24 Cornhill Road, Perth, PH1 1LR ("the Creditor")

At Glasgow on 10<sup>th</sup> August 2021, Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

1. This is an application by the Debtor for a Time to Pay Order under the Debtors (Scotland) Act 1987 It is dated 30<sup>TH</sup> June 2021.
2. The application is in respect of an Order for Payment made by the Tribunal on 25<sup>h</sup> September 2021
3. The Order requires the Debtor to pay the sum of £667.71 to the Creditor.

4. Section 5 (1) of the Debtors (Scotland) Act 1987 states:

*Time to pay orders.*

*(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.*

5. Rule 41H of The First –tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) states:

*Applications for time to pay orders*

*41H.—(1) A party who intends to apply for a time to pay order under section 5 of the Debtors (Scotland) Act 1987 must serve a copy of the application mentioned in subsection (2) of that section on the creditor.*

*(2) An order by the First-tier Tribunal under section 6(4) of the Debtors (Scotland) Act 1987 (creditor to furnish particulars of decree or other document) must require the creditor to provide—*

*(a) the date of the order,*

*(b) the names of the parties,*

*(c) details of the debt and any interest due, and*

*(d) any other information the First-tier Tribunal considers necessary.*

6. On 14<sup>th</sup> July 2021, the Debtor was written to and advised that an application for a time to pay order can only be made once enforcement of the order has commenced. The Debtor was asked for further information: confirmation as to whether or not a charge had been served or an arrestment lodged, a copy of the payment order and confirmation as to whether or not a copy of the application had been sent to the Creditor.

7. On 9<sup>th</sup> August 2021, the Debtor responded to the request for information and advised that she did not have an address for the Creditor. The Debtor provided no response in respect of the other information requested.

8. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President or another member acting under delegated powers if “*they consider that an application is vexatious or frivolous*”.

“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”.

9. I consider this application to be frivolous which has no reasonable prospect of success given that the procedure in terms of such applications has not been followed. The Tribunal, given the response of the Debtor, is entitled to find that a copy of the application has not been sent to the Creditor and no evidence has been produced that enforcement of the order has commenced.
10. Further, in terms of Rule 8 (1) (c) of the rules I have good reason to consider that it would not be appropriate to accept this application. The provisions of Rule 41(H) of the Rules have not been complied with.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Martin J. McAllister  
Legal Member  
10<sup>th</sup> August 2021

