



**Decision and 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/24/0710**

**Parties:**

**Dorothy Nelson, Stephen Nelson, 53 Station Road, Broxburn, West Lothian,  
EH52 5QU (“the Applicant”)**

**Mr Stephen McCann, 9 2/2 Kaims Terrace, Livingston, West Lothian, EH54 7EX  
 (“the Respondent”)**

**Tribunal Members:**

**1. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a time to pay order ( in terms of rule 41H of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the rules’) in terms of rule 8 (c) of the rules as it would not be appropriate to accept the application as it is premature.**

**2. Background**

The Respondent made a time to pay application on 6 February 2024 in connection with an order of the Tribunal for payment of £1012.50 made on 22 January 2024.

**3. The Tribunal wrote to the Respondent on 15 February 2014 as follows:**

The application appears to be premature. The decision with statement of reasons for case reference PR/23/3651 was issued on 22 January 2024. As it is still within the appeal period, the order has not yet been issued. An application for a time to pay order can only be made once an order has been issued and the creditor has served a charge on the debtor or taken other steps to enforce the order. Please confirm if you wish to withdraw the application meantime as it cannot be accepted until diligence has started.

**4. The Applicant wrote to the Tribunal on 15 February 2024 objecting to the application.**

5. The Respondent did not respond to the Tribunal's request for information of 15 February 2024. A reminder was sent on 11 March 2024. The Respondent wrote to the Tribunal on 14 March 2024 however they did not address the principle matter raised by the Tribunal, namely whether diligence had been commenced. The Tribunal sent a further letter on 19 March 2024 as follows:

Thank you for your recent letter of 14th March, unfortunately you have not addressed the point raised in our letter of 11th February 2024 which is that an application for a time to pay order can only be made once you have received a charge for payment from sheriff officers, ie the person who can enforce the order received from the Tribunal has started diligence proceedings to do so. Without this, this application for a time to pay order is incompetent.

Please now advise if you wish to withdraw this application and reapply if and when you receive a charge for payment or it is very likely this application will be rejected. Please let us have your response within 7 days.

Please reply to this office with the necessary information by 26 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

6. No response has been received.

7. I have reviewed this application today and I have decided to reject it. Section 5 of the Debtors (Scotland) Act 1987 is undernoted. It sets out the circumstances in which a time to pay application can be made. There is no information before the Tribunal to suggest that the Respondent has been served with a charge for payment. In terms of rule 8 (c) of the rules the Tribunal President must reject an application if they have good reason to believe it would not be appropriate to accept it. I have good reason not to accept this application as it is premature. Further, the Respondent has failed to respond to the Tribunal's letter of 26 March 2024 and has failed to cooperate with the Tribunal in the execution of its duties.

Section 5 of the Debtors (Scotland) Act 1987

**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.

(2) Subject to subsections (4) and (5) below, the sheriff or 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 sheriff 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”.

(4) It shall not be competent for the sheriff or the First-tier Tribunal to make a time to pay order—

(a) where the amount of the debt outstanding at the date of the making of the application under subsection (2) above (exclusive of any interest) exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;

(b) where, in relation to the debt, a time to pay direction or a time to pay order has previously been made (whether such direction or order is in effect or not);

(c) . . . . .

(d) in relation to a debt including any sum recoverable by or on behalf of the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment or under a contract settlement;

(d) in relation to a debt including any sum recoverable by or on behalf of Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,

(e) . . . . .

(f) in relation to a debt including—

(i) . . . . .

(ii) car tax due under the Car Tax Act 1983; . .

(iii) . . . . .

(iv) . . . . .

(5) Where in respect of a debt to which this section applies—

(a) there has been a poinding of articles belonging to the debtor and a warrant of sale has been granted in respect of them but has not been executed;

articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) but no auction has yet taken place;

(aa) money owned by the debtor has been attached and removed;

(b) moveable property of the debtor has been arrested and in respect of the arrested property—

(i) a decree in an action of furthcoming has been granted but has not been enforced; or

(ii) a warrant of sale has been granted but the warrant has not been executed; or

(c) a decree in an action of adjudication for debt has been granted and the creditor has, with the debtor's consent or acquiescence, entered into possession of any property adjudged by the decree or has obtained a decree of mails and duties, or a decree of removing or ejection, in relation to any such property,

land owned by the debtor has been attached and an order under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (in this Part, the "2007 Act") granting warrant for sale of the land has been made but that warrant has not yet been executed; or

(d) property owned by the debtor has been attached by residual attachment and a satisfaction order under section 136(2) of the 2007 Act has been made but not yet executed,

it shall not be competent for the sheriff or the First-tier Tribunal to make a time to pay order in respect of that debt until the diligence has been completed or has otherwise ceased to have effect.

(5A)Where, in respect of a debt to which this section applies, an arrestment such as is mentioned in subsection (1) of section 73J of this Act has been executed, the sheriff or the First-tier Tribunal may make a time to pay order in respect of that debt only if less than 8 weeks of the period mentioned in subsection (3) of that section have expired.

(6)Without prejudice to section 9(12) of this Act, interest payable under a decree for payment of a debt in respect of which a time to pay order has been made (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.

(7)A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor not later than the date prescribed by Act of Sederunt or by rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014 occurring—

(a)in the case of an order under subsection (2)(a) above, before the date when the last instalment of the debt (other than such interest) is payable under the order;

(b)in the case of an order under subsection (2)(b) above, before the end of the period specified in the order,

stating that he is claiming such interest and specifying the amount of the interest claimed.

(8)Any sum paid by a debtor under a time to pay order shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

(8A)In paragraph (d) of subsection (4) above, “contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.

(8B)In paragraph (da) of subsection (4)—

- “contract settlement” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,
- “devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),
- “settlement agreement” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).

## 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.

**L Ward**

17 April 2024

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Legal Member

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Date