Upper Tribunal for Scotland

2026UT21
Ref: UTS/AP/24/0049

DECISION OF

Sheriff Colin Dunipace

ON AN APPEAL
IN THE CASE OF

Mr Federico Garcia Lopez De La Torre

Appellant

- and -

Aberdeen City Council
per Aberdeen City Council Legal Services

Respondent

FTS Case Reference: FTS/HPC/PF/21/2375

10 February 2026

Representation
Appellant: Self-represented
Respondent: Mr Grant Milne

Decision

[1] The Appeal is refused.

Introduction

[2] The Appellant in the present case, Mr. Federico Garcia Lopez De La Torre (hereinafter referred to as "the Appellant") has lodged an appeal against Aberdeen City Council (hereinafter

referred to as "the Respondents") against a decision of the First-tier Tribunal (hereinafter referred to as "the Tribunal") dated 14 March 2024.

[3] The Appellant originally lodged an application with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 (hereinafter "the 2017 Rules") and Section 17 of the Property Factor (Scotland) Act 2011 Act (hereinafter "the 2011 Act"), following upon which the Tribunal determined that the Respondents had failed to comply with a number of sections of the Property Factor Code (hereinafter "the Code") by changing a lock on the drying room without notifying him that they had done so; and thereafter by failing to provide him with a new key following this change. A written decision with statement of reasons with a proposed Property Factor Enquiry Order (hereinafter a "PFEO") was issued.

[4] The Appellant appealed against this decision to the Upper Tribunal, which upheld aspects of his appeal, determining that the Respondents had also failed to comply with other aspects of the Code, and thereafter remitting the matter back to the Tribunal, who subsequently issued an amended proposed PFEO, inviting further representations regarding its provisions in terms of Section 19(2) of the 2011 Act. The Appellant lodged detailed submissions and documents, and at a further hearing the Appellant submitted that the Tribunal should make a PFEO which fully compensated him for all those losses suffered by him which he attributed to the actions and failures of the Respondents. The Appellant submitted that the Tribunal should deal with his appeal as if he had raised court proceedings for damages based on contract or delict, citing Section 19(4) of the 2011 Act, which stated that:

> *"Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court of tribunal"*

The Appellant considered that these provisions had precluded him from raising proceedings in the Sheriff Court, and accordingly the Tribunal had the power to award any amount they considered appropriate, including a sum which fully compensated him for all of his losses.

[5] The Appellant referred to a letter from his insurers which he asserted demonstrated the Respondents' acceptance that water ingress and damage to his property in 2016 had been caused by contractors carrying out roof-works, and submitted that the Upper Tribunal decision had specifically instructed the Tribunal to assess causation and quantification for this damage. He also claimed compensation for five days loss of earnings given that he had to remain at home following the water ingress and that he could not leave his property unattended. The Insurers had eventually paid him £6296 and £630 for the damage, which he said was only a contribution to his losses, and did not cover other matters including redecoration costs of £3331, given that every room in the property had been affected. He was also given £500 for disturbance.

[6] The Respondents disputed liability for the aforementioned losses, not accepting the interpretation that the Upper Tribunal decision had in fact indicated that the Appellant should be compensated in this way. A claim for delictual compensation should have been raised in the Sheriff Court, and further the sums claimed were outwith the remit of the Tribunal, with no reasonable evidence having been submitted to support his claim that his alleged losses were demonstrably connected to a breach of the Code.

[7] The Appellant further claimed loss of earnings for collecting a replacement key, and for two bicycles stolen on 19 December 2020, which he believed were taken by someone opening the room using a non-unique key. The Respondents position was that that they could not be held liable for the criminal acts of others, and that there was no evidence to support the Appellant's claim for loss of earnings. He had also had the benefit of factoring services provided to him, and as such was not entitled to a refund of any fees.

[8] In determining the appeal. The Tribunal accepted the following facts:

- The Appellant experienced water ingress at his property between 15 October 2016 and 22 October 2016.
- He received £7426 from his insurer for the damage caused to his property by water ingress.

- The Appellant did not make a claim against either the Respondents or the contractor who replaced the roof, for the damage to his property caused by water ingress.
- The Appellant did not use these sums to carry out repairs to his property caused by the water ingress.
- On 25 November 2019 the Appellant discovered that the lock was changed on the drying room he owned in common with two other proprietors.
- The Appellant contacted the Respondent and collected a replacement key, which did not open the lock. A working replacement key was received on 12 March 2020.
- A further lock change took place on 7 July 2020.
- The Appellant discovered that two bicycles were removed from the drying room on 19 December 2020.
- On 19 December 2020 he discovered his drying room could be opened by another drying room key.

[9] The Tribunal also found that the Appellant had not been precluded from raising proceedings against the Respondents in the Sheriff Court for damages in terms of section 19(4) of the Property Factor (Scotland) Act 2011 for the following reasons, namely:

(a) The losses forming the basis of his submissions related to events between 2016 and 2021, which the Appellant had not pursued timeously.

(b) The Tribunal's jurisdiction was restricted to determining whether a property factor had complied with the 2011 Act, and not in relation to all disputes between factors and their clients.

(c) Unless otherwise agreed by parties, the Courts have jurisdiction to deal with contractual disputes and actions based on delict.

(d) In court proceedings both parties have the benefit and protection of strict rules of procedure and evidence. A Pursuer requires to fully specify their case, factually and legally, in written pleadings and a failure to do so may result in a

case being dismissed without evidence being led. The Appellant was believed to have sought to circumvent this process and the protection it afforded to Defenders.

[10] The Tribunal noted the Appellant's submissions that any rights of action against the Respondents may have prescribed, but determined that the Appellant had made a conscious decision not to pursue them at the relevant time. The 2011 Act was not meant to be a means to avoid the consequences of the law on prescription. The Tribunal concluded that Section 19(4) did not prevent aggrieved homeowners raising court proceedings against property factors for losses or damages incurred because they had failed to comply with a statutory, contractual or delictual obligation owed to a homeowner.

[11] The Tribunal also determined that there were no provisions in the 2011 Act which *obliged* a Tribunal to award compensation. Whilst a PFEO must be issued if a breach is established, this did not have to be accompanied by a monetary award. The Tribunal had the power to make an order for payment, where "appropriate," a power which was wholly within its discretion, with the only qualification being that the Tribunal must consider any sum awarded to be "reasonable." If a monetary award was made, the Tribunal required to demonstrate how it reached that figure and identify those factors considered. Whilst these factors might include losses suffered by a homeowner directly attributable to the breach, the legislation did not stipulate that the Tribunal *must* make an award on that basis.

[12] The Tribunal disagreed with the Appellant's suggestion that the Upper Tribunal, had "instructed" them to assess "causation and quantification." It had remitted the matter back to the Tribunal to determine what, *if any*, remedy should be granted in light of their decision. This involved consideration of whether and to what extent the PFEO dated 29 August 2022, required to be altered. They had simply stated that "determination of questions of causation and quantification remained live."

[13] The Respondents submitted that the Tribunal should make the final PFEO in the same terms as the proposed PFEO which should not relate directly to the alleged losses given they were not attributable to the breaches established. In contrast the Appellant argued that the sum awarded should be increased, focussing on section 6.9 of the Code, which stated that a Factor must pursue a contractor or supplier to remedy defects caused by inadequate work or services provided. The Tribunal determined that the Appellant's submissions were misconceived for several reasons. Whilst the Code required a property factor to "pursue" a contractor to "remedy the defects in any inadequate work or service provided," there had been later incidents of water ingress from 2018 onwards which were probably unrelated to the 2016 works. The Appellant had also conceded that he did not use the sums received from the insurance company to re-instate his property in 2017, and the evidence did not establish that the condition of the property following the water ingress in 2016 was due to any failure by the Respondent to pursue the contractors. The Respondents believed the issue was remedied in 2016, with no further problems until 2018.

[14] The Appellant's complaint was said not to be that the Respondents failed to make the contractors correct their defective work, but that they did not re-instate his property, arrange for the roofing contractor to do so, or compensate him for the damage he experienced. While that might give a right of action against the Respondent and/or the contractor, it was not established that any losses were attributable to the Respondents failing to "pursue" the contractor to take the necessary steps to fix the roof. Even if the Tribunal had been satisfied that any losses were caused by the breach of this section, the largest part of the "claim" related to the difference between the sum paid by the insurance company and what the Appellant claimed was necessary to reinstate his property. It was submitted that the insurance company payment had been intended to cover re-instatement of the property to its previous condition and given the Appellant did not use it for this purpose, it was impossible to ascertain whether the sum he received was adequate. Further it was not clear why he paid for a survey report, and various other fees. If he had pursued a claim or court action, legal and other costs may have been recoverable, but he had chosen not to do so. Any evidence relating to loss of earnings was also said to be inadequate.

[15] The Tribunal dealt also with complaints relating to the installation of a lock which did not have a unique key, thereby allowing access by unauthorised persons; failing to communicate effectively between departments of the Council; and failing to address/provide an appropriate response to various complaints made. He sought compensation for the Respondents not providing the key, their failure to communicate, and for the theft of two bicycles, together with a refund of management fees paid. In this regard the Tribunal had noted:

(a) The loss and damage followed a criminal act.

(b) The bikes were stored permanently in a room to be used for drying clothes and not storage.

(c) The drying room was not owned exclusively by the Appellant and was shared with two other properties whose owners/tenants' keys to the room.

(d) The bikes were stolen 5 months after the lock change.

(e) There was no evidence that, prior to the lock change, the key was unique.

(f) The Appellant was aware the key was possibly not unique and continued to store his bikes in the drying room.

(g) The Appellant did not submit an insurance claim for the loss.

(h) There was no evidence of the value of the older bike or its condition when taken.

(i) The evidence produced in relation to the newer bike was the receipt for purchase two and a half years before the theft.

[16] The Tribunal ultimately found the Appellant to be entitled to:

- an award of £300 for a breach of the Code
- an award of £650 for delay and inconvenience.
- An award of £150 in respect of the key.

The Tribunal also concluded that the Appellant had received a very poor service and that a PFEO should be issued requiring the Respondents to pay him £1200.

Leave to Appeal

[17] Leave to appeal against this decision was sought by the Appellant on a number of grounds, namely:

- That the Tribunal erred in law by reaching a finding that is contrary to the evidence in holding that the Respondent negligently provided false or misleading information.
- That the Tribunal erred in law by (1) failing to have regards or sufficient regards to material evidence and considerations and (ii) by failing to give sufficient weight to its own findings when it decided to award no compensation for incidents of water ingress in 2016.
- That the Tribunal erred in law by asking the wrong questions during the hearing and providing inadequate reasons as to why the Appellant is not entitled to compensation if he belongs to a class protected by the 2011 Act. Also, by providing inadequate reasons "as to how a failure to provide compensation would conflict" the Tribunal Procedure Rules.
- The Tribunal misdirected itself in law as to the meaning and effect of the 2011 Act.
- The Tribunal erred in law by failing to adhere to the Tribunal Procedure Rules during the hearing.
- The Tribunal erred in law by making a fundamental error in its approach to the case by taking into account manifestly irrelevant considerations.
- The Tribunal erred in law by failing to give adequate reasons for not awarding compensation for the loss of 2 bicycles and a padlock, by failing to make findings in fact crucial to its decision and by failing to take into account material evidence.
- The Tribunal had misdirected itself in law by holding that there is no evidence that the failure by the Respondent to provide a unique key directly led to the theft of the bikes.
- The Tribunal had erred by making a finding contrary to the evidence namely that the insurance companies' payment was based on the cost of restoring the property to its previous condition.

[18] Having heard parties over the course of two days by WebEx, permission to appeal was granted on the following grounds:

- **In reaching a conclusion recorded in the Tribunal's decision of 14 March 2024, at paras 25(b), 37 and 38, the Tribunal erred in law in the following manners:**
  It misdirected itself in law as to the meaning and effect of the Property Factors (Scotland) Act 2011 by holding that:
  (a) The Tribunal did not have jurisdiction in relation to all disputes between homeowners and property factors and consequently that that he had no right to recover his losses and obtain compensation for the interference with his rights resulting from the Respondent's breaches
  (b) if the Applicant wished to recover his losses in respect of a fee for a survey report quantifying the damage following a water ingress incident, he should attempt to recover those losses by bringing a claim in court.
  (c) any other uninsured losses should have been claimed by.
  bringing a claim in court.

- **The Tribunal has erred in law by making a finding contrary to the evidence available to them, namely: finding that the insurance company's payment was based on the cost of restoring the property to its previous condition**.

[19] Permission to appeal on the remaining grounds was refused.

[20] Following the issuing of the decision restricting permission to appeal to the aforementioned grounds, the Appellant contacted the Upper Tribunal in the following terms:

I refer to the above and to the application PTA to the Court of Session a decision of the UTS under section 48 of the Tribunal (Scotland) Act 2014 which was lodged yesterday 10 April 2025.

For avoidance of doubt, I attach the following documents with the intention to be lodged in support of my application for PTA to the Court of Session a decision of the UTS under section 48 of the Tribunal (Scotland) Act 2014 which was lodged yesterday 10 April 2025.

Also, just to clarify, I believe that the UTS will have to asses my application for PTA to the court of Session of yesterday 10 April 205 and provide answers and reasons why they refuse or grant permission to appeal with the obligation to notify me that I have 30 days from the date of the UTS response to submit an application to the Court of session to further escalate the case. Can you please confirm?

[21] Having considered this application, it was deemed to be incompetent for the following reasons:

- The appellant sought to appeal against the refusal of permission to appeal in terms of section 48 of the Tribunals (Scotland) Act 2014, which states:

  48 Appeal from the Tribunal

  (1) A decision of the Upper Tribunal in any matter in a case before the Tribunal may be appealed to the Court of Session.

  (2) An appeal under this section is to be made—

  (a) by a party in the case,

  (b) on a point of law only.

  (3) An appeal under this section requires the permission of—

  (a) the Upper Tribunal, or

  (b) if the Upper Tribunal refuses its permission, the Court of Session.

  (4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.

  (5) This section—

  (a) is subject to sections 43(4) and 55(2),

  (b) does not apply in relation to an excluded decision.

- Whilst the aforementioned section outlined the procedure whereby permission to appeal to the Court of Session can be sought, initially from the Upper Tribunal and thereafter if this is refused, to the Court of Session itself, these provisions expressly state at section 5 (a) that this section is subject to sections 43(4) and 55(2) of the Tribunals (Scotland) Act 2014.
- Section 43(4) relates to review proceedings and has no relevance in relation to this appeal. Section 55(2) however states:

  55 Process for permission

  (1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 46(3) or 48(3) must be sought.

  (2) A refusal to give the permission required by section 46(3) or 48(3) is not—

  (a) reviewable under section 43, or

  (b) appealable under section 46 or 48
- This section accordingly makes clear that decisions made in terms of section 46 of the Tribunal (Scotland) Act 2014 are not appealable. The appellant was refused permission to appeal in terms of section 46(3)(b), therefore the terms of section 55(2) make clear that it is not competent for a party to appeal against such this decision.
- The appellant had sought permission to appeal in terms of section 46 of the Tribunals (Scotland) Act 2014, and a number of his grounds of appeal were considered and refused in terms of section 46(3) of the foregoing Act.
- Whilst the Appellant sought permission to appeal to the Court of Session in terms of section 48 of the Tribunals (Scotland) Act 2014 against the decision made in terms of section 46(3) of the aforementioned Act, this was not competent having regard to the terms of section 55(2) of the 2014 Act.
- The application seeking permission to appeal against the refusal of permission to appeal in terms of section 46(3) was therefore refused as being incompetent having regard to the terms of section 55(2) of the Tribunals (Scotland) Act 2014.

[22] Where in circumstances such as these there is no right to appeal or to make another application, such a decision refusing permission to appeal may be challenged by way of judicial review if:

(i) The case raises and important point of principle: or

(ii) There is another compelling reason for the case to be subject to review. [1]

The Hearing

[23] A hearing subsequently took place by WebEx. The Appellant self-represented and the Respondents were represented by Mr Milne. The Appellant stated that the evidence demonstrated that upon any proper application of the Act it was apparent that there had been clear breaches of Section 6.9 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors, which states:

> *6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.*

[24] He submitted that this was particularly the case considering their failure to pursue the contractors following the issues raised with their work. He had suffered financial losses as a result of these failings which could be directly attributed to the breach of the aforementioned duty by the Property Factors. Accordingly, the Property Factor had failed to carry out its duties in terms of section 19(1)(a) of the 2011 Act and as such a Property Factor Enforcement Order in terms of section 19 (1)(b) of the aforementioned Act was appropriate, which thereafter would trigger the terms of section 20(1)(b) of the aforementioned 2011 Act and enable the Tribunal:

> *"(b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable."*

[1] R (Cart) v Upper Tribunal [2012]1AC 663 and Eba v Advocate General for Scotland [2012] 1 AC 710

[25] The Appellant submitted that the sums sought by him were reasonable in the circumstances and that the provisions to award "compensation" required to be consistent with the Property Factors' refusal to comply with the requirements. He submitted that he did not accept the decision of the Tribunal and that it was not appropriate for them to withhold compensation in terms of section 20(1)(b) which had the effect of defeating the aims of the statutory scheme.

[26] The Appellant referred to the following documents from his Inventory of Productions:

- Document 20/2 being an email from Covea Insurance dated 31 July 2017 This correspondence was in response to the Appellant's contemporaneous email to his insurance company seeking that they confirm that the offer only covered the cost of the repair of the internal damage and did not compensate him for delays, inconvenience, loss of earnings etc.
- Documents 12/3/ and 12/4, being a letter from the Financial Ombudsman dated 20 June 2017, following a complaint by the Appellant against the aforementioned insurers. The Appellant highlighted the following passages from this correspondence:

  > *"Our investigator didn't think Covea had done anything wrong. He said the council had taken responsibility for the damage straight away- and had confirmed they were responsible for any repairs needed. So our investigator thought any successful claim settled under Mr G's policy would be counter-productive and may result in Mr G benefitting twice…Covea said they were prepared to cover the internal damage – and would aim to reclaim the costs back from the council…..My final decision is that Covea Insurance plc's offer to cover the internal damage to Mr G's apartment is a fair and reasonable offer*."

- Document 12/5 demonstrated that the Appellant had accepted this decision.
- Document 8/13 showed that the costs of the work were quoted as being £8,458.09 and as such there was a shortfall between the aforementioned offer and the sum quoted, which meant that he was not in a position to have the work carried out.
- Document 9/2 was a quote for decoration, which again he could not afford.

- Document 7/3 represented the Appellant's timeline of events and referred to a phone call from Alison MacLeod on 7 April 207 arranging an appointment to discuss water ingress. A further entry on 11 April 2027 referring to this appointment with Alison MacLead and Jaimie Ireland when he was offered £2,500 to bypass insurance, an offer which he rejected. The contractors had therefore, some six months after the leak, offered £2,500, meaning he would have suffered a shortfall.
- Document 6/1 was a letter from solicitors to a neighbour, showing that these issues also affected his neighbours.
- Document 6/2 was a letter from Aberdeen Council to an upstairs neighbour confirming that the water ingress had resulted in damage to that neighbour's belongings, that he would be entitled to compensation, and if proved that the fault was the contractor's that they would pursue the contractors.

[27] The Appellant believed that the foregoing evidence demonstrated that the Council accepted liability for all of the damage to his property. The award in respect of the shortfall was necessary as he was unable to restore his property, and he had been seeking that the Tribunal use their powers to allow him to restore his property.

[28] The Appellant submitted that the foregoing documentation demonstrated the Council's acceptance of liability to a third party, which clearly flew in the face of their failure to accept liability to him, and which continued to cause him undue expense. He maintained also that this demonstrated that a breach of section 6.9 of the Code had taken place. He also referred to Document 32/1 of his Inventory of Productions, being a statement of services and responsibilities for his property, with Document 32/16 setting out definitions in relation to these services.

[29] The Appellant stated that it would have been unsustainable for him to pursue his losses in the Sheriff Court, and he did not think he would have been successful if he had pursued matters in the Sheriff Court. In any event he considered that the Property Factor Act (Scotland) 2011 was

specifically designed to stop homeowners requiring to raise proceedings in the Sheriff Court by providing redress without recourse to the Courts. He considered that there would be no justice if he did not receive compensation.

[30] The Appellant stated that it was not factually accurate to say that he had received full compensation for his losses as he had not received adequate compensation and been forced to live in poor conditions for almost a decade.

[31] The Respondents relied on their previous submissions, believing that the Tribunal was correct when confirming that they do not have jurisdiction in all disputes between property factors and homeowners, giving by way an example the fact that property factors must raise proceedings in the Sheriff Court if a homeowner fails to pay common charges. The Tribunal was not satisfied that the alleged loss was attributable to a breach of the Code, and a breach of section 6.9 of the Code had not led to the damage to the property, which was due to water ingress caused by a defect in the work undertaken by the contractor, an argument which also applied to any other losses.

Legal Basis of Appeal

[32] This appeal is brought by the Appellant under the provisions of section 46 of the Tribunals (Scotland) Act 2014 ("the 2014 Act") and the procedural rules contained within The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 ("the 2016 Regulations").

[33] An appeal under section 46 of the 2014 Act can only proceed on a point of law (section 46(2)(b)) where permission has been provided in terms of section 46(3) of the 2014 Act.

[34] In Advocate General for Scotland v Murray Group Holdings Ltd,[2] concerning an appeal from the Tax & Chancery Chamber of the First Tier Tribunal under section 13 of the Tribunals,

[2] [2015] CSIH 77; 2016 SC 201 (affirmed by UKSC in [2017] UKSC 45; 2018 SC (UKSC) 15)

Courts & Enforcement Act 2007, an appeal to the Upper Tribunal was held to be available "on any point of law arising from the decision made by the First Tier Tribunal." In this context, the Inner House confirmed that "a point of law," covered four distinct categories namely:

(i) General Law, being the content of rules and the interpretation of statutory and other provisions;

(ii) The application of law to the facts as found by the First Tier Tribunal;

(iii) A finding, where there was no evidence, or was inconsistent with the evidence; and

(iv) An error of approach by the First Tier Tribunal, illustrated by the Inner House with examples: "such as asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tax tribunal could properly reach."

[35] In the present appeal the Appellant proceeds on the points of law mentioned in the two grounds of appeal in respect of which he had been allowed permission to appeal.

Grounds of Appeal

[36] The First Ground upon which this appeal was provided permission to appeal states as follows:

"That in reaching the conclusion recorded in their decision of 14 March 2024, at paras 25(b), 37 and 38, that the Tribunal erred in law by misdirecting itself in law as to the meaning and effect of the Property Factors (Scotland) Act 2011 by holding that:

(a) The Tribunal did not have jurisdiction in relation to all disputes between homeowners and property factors and consequently that that he had no right to recover his losses and obtain compensation for the interference with his rights resulting from the Respondent's breaches

(b) if the Applicant wished to recover his losses in respect of a fee for a survey report quantifying the damage following a water ingress incident, he should attempt to recover those losses by bringing a claim in court.
(c) any other uninsured losses should have been claimed by bringing a claim in the Sheriff Court. "

[37] The Second Ground upon which permission to appeal was granted states as follows:
"The Tribunal has erred in law by making a finding contrary to the evidence available to them, namely: finding that the insurance company's payment was based on the cost of restoring the property to its previous condition.

Discussion

[38] Dealing with Ground One of the Appellant's Appeal, there appear to be two elements to part (a) of this appeal ground, namely the suggestions: (1) that the Tribunal erred in stating that it did not have jurisdiction in relation to all disputes between Property Factors and Homeowners, and (ii) that they stated that he had no right to recover his losses and obtain compensation for the interference with his rights resulting from the Respondent's breaches.

[39] Dealing with the first element of this ground, the Appellant appears to make his assertion in the absence of any authority for that proposition. The general rule is that any provision which seeks to oust the jurisdiction of the courts will be interpreted strictly.[3] However it is apparent that the courts will always accept and respect the autonomy of a Tribunal within its jurisdiction, to the extent that the courts will not allow a party to bring court proceedings where the proper venue for the substance of a dispute is an appropriate Tribunal.[4] However does not mean that a Tribunal necessarily has exclusive jurisdiction in relation to all matters, and the decision of a Tribunal in

[3] Anisminic Foreign Compensation Commission [1969] 2 AC 149 at 170
[4] Barraclough v Brown [1897] 615

relation to the limits of its jurisdiction is to be respected. A Tribunal has jurisdiction to determine the extent of its own jurisdiction in particular circumstances, [5] and is under a duty to take any jurisdictional points on its own initiative. It will be treated as determining any such issues when they have arisen as it has in the present instance.

[40] Accordingly it is correct for the Tribunal to hold that it does not have jurisdiction in all matters relating to disputes between Property Factors and property owners. The Tribunal rejected the Appellant's submissions that the effect of Section 19(4) of the 2011 Act was to preclude him from raising proceedings for damages against the Property Factor in the Sheriff Court at paragraph 25 of their determination by holding that:

- His losses related to various events between 2016 and 2021, and he did not pursue these against the Respondents until 30 September 2021.
- The Tribunal's jurisdiction was said to be restricted to a determination of whether a property factor had complied with the 2011 Act, and it did not have jurisdiction in relation to all disputes between factors and their clients, citing by way of example, the situation if a homeowner failed to pay their factoring charges;
- The Courts retained jurisdiction to deal with contractual disputes and actions based on delict.

[41] The Tribunal had also observed that in court proceedings that parties have the benefit and protection afforded by rules of procedure and evidence, with a requirement for written pleadings. It determined that the Appellant had expected the Tribunal to enable him to circumvent this process. It was also noted that the Appellant had conceded that even if he still had a right of action against the Respondents in the courts, that this right may have become time-barred, and the Tribunal did not accept that a failure to exercise rights timeously should be excused by an application in terms of the 2011 Act. Broadly the Tribunal determined that this Act was not a mechanism to avoid the consequences of time bar and prescription, thereby leaving a Property

[5] R v Fulham, Hammersmith and Kensington Rent Tribunal ex parte Zerek [1951] 2 QB 1

Factor open to claims for an unlimited period. These were compelling reasons for the Tribunal to accept that they did not have jurisdiction in relation to all matters involving disputes between Property factors and their clients. These findings were well-founded in law.

[42] That was not to say however that the Tribunal had necessarily indicated that it did not have jurisdiction to deal with all of the matters in dispute, and indeed it is clear that the Tribunal did in fact deal with a number of matters which it considered to be within its jurisdiction. Accordingly, and dealing with the second element of the Appellants' Ground (a), it is factually incorrect to state that the Tribunal asserted that he had no right to obtain compensation for the interference with his rights resulting from the Respondent's breaches of the Code of Conduct. As a matter of fact the Tribunal did consider his claim for compensation and the reason that they decided not to award the Appellant the sums sought was not due to any jurisdictional point but rather was due to the fact that they did not consider that the sums sought were reasonable. In fact the Tribunal awarded the Appellant the sum of £1200 for the breach of the PFEO by way of compensation, thereby demonstrating that they had accepted jurisdiction and an element of jurisdiction, and in their acceptance thereof they had made a determination in his favour. The issue of the Appellant therefore is not solely in relation to jurisdiction as stated but rather in relation to the amount of the award of compensation.

[43] The Appellant had sought the sum of £5645 for the purported breach of section 6.9 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors, broken down into the following components, namely solicitor's costs, £260; survey fee, £144; loss of earnings, £378; and re-instatement costs of £4683, the latter sum being the difference between the sum paid to him by the insurance company and the actual cost of reinstating the property. The Tribunal at paragraph 34, had observed that this section of the Code required a property factor to "pursue" a contractor to:

> *"remedy the defects in any inadequate work or service provided".*

[44] The Tribunal found in fact that between 15 October 2016 and 22 October 2016 that the Appellant had experienced water ingress at his property, and that he had accepted the sum of £7426 from his insurer for this damage to his property occasioned by this ingress of water. However, the Tribunal also found that there were other instances of water ingress at the property, and indeed at the hearing the main focus had been in relation to later instances of ingress from 2018 onwards, caused by a damaged stack pipe and which was in all probability unrelated to the 2016 works. Further the present condition of the Applicant's property was also found to be largely attributable to the fact that the Appellant had not used the sums received to re-instate his property in 2017. The Tribunal had found that the evidence did not establish that the condition of the property following the water ingress incidents in 2016 was due to a failure by the Respondent to pursue the contractor in relation to defective work, and it had set out in detail its reasons for so finding. These were factual matters which the Tribunal as fact finder was entitled to make and it is not the function of this Tribunal to interfere with these findings in fact.

[45] In relation to element (b) of this ground the Tribunal had found that the Appellant had not established why he had to pay for a survey report, particularly as this was in the form of a quote for work and the Tribunal found that this was not a reasonably incurred expense having heard the evidence. Awards of expenses in terms of section 64 of the Tribunals (Scotland) Act 2014 are matters for the discretion of the Tribunal involved and an appellate body will not lightly interfere with the award of otherwise of expenses. From an examination of the Tribunal's determination at paragraph 37, it is clear that the Tribunal considered carefully whether to make an award in relation to this matter and for the reason given they determined not to make any such award. Their decision in this regard cannot be seen as an unreasonable exercise of their discretion.

[46] In relation to element (c) the Tribunal set out in detail at paragraphs 33 – 40 why it considered that the losses sustained by the Appellant were not due to a breach of the 2014 Code. The Tribunal explained that the Appellant's losses may have been due to a number of other factors not related to a breach of the Code, and that in relation to these factors that it would have been

open to the Appellant to bring other proceedings in another forum. That does not mean that these factors had not been considered in the context of a possible breach of the Code, and indeed the opposite was the case given that they were clearly considered by the Tribunal. However, having done so, the Tribunal had found in fact that any losses sustained by the Appellant were not due to any such breach. Again this was a finding the Tribunal was entitled to make and it is not for this Tribunal to interfere with that decision. Simply disagreeing with a decision of the Tribunal is not a reason to interfere with its decision.

[47] In relation to the second ground of appeal to the effect that the Tribunal had erred in law by making a finding contrary to the evidence available to them, namely that the insurance company's payment was based on the cost of restoring the property to its previous condition, the Appellant asserted that an email sent by the insurance company on 31 July 2018, confirmed that the payment was only for the repair of the building, and was never intended to include the cost of redecoration to restore his property to its previous condition. The Appellant asserted that this evidence demonstrated that the insurance company did not fully compensate him for the costs of restoring the property to its previous condition. In their original decision the Tribunal had stated that there were two available possible interpretations; one being that the Appellant did not receive the full amount required to re-instate his property; and the second being that he did, with only his policy excess being deducted from the figure paid. The Appellant was said to have highlighted some aspects of the evidence and ignored those others which favoured the second interpretation. Given he did not carry out any repairs to re-instate his property, he could not in fact demonstrate whether there had in fact been a shortfall. Further the Applicant was said to have laboured under the misapprehension that even if the Tribunal was satisfied that the payment was insufficient to reinstate the property, that they were obliged to make an award equating to the shortfall. They stated that the loss or damage sustained was not due to a breach of the Code, rather it was occasioned by a leak caused by defective roof repair work carried out by a contractor which was resolved as soon as it came to light. The 2011 Act did not give homeowners a right to compensation for the loss of or damage to property, rather it provided a right to obtain a finding that the property

factor had failed to comply with the Code and/or carried out their duties to a reasonable standard, which if established, allowed the Tribunal to determine what the property factor required to do to address their failure. This could include compensation, however there was no automatic right to this, which was at the discretion of the Tribunal. An award of compensation had in fact already been made to the Appellant for the breach of the Code.

[48] The Appellant continued to assert that the Tribunal had erred and that the email sent by the insurance company on 31 July 2018, had confirmed that the payment was only for the repair of the building, and as such the payment made by the insurance company was never intended to include the cost of redecoration to restore his property to its previous condition. The Appellant asserts that the evidence demonstrated that the insurance company did not fully compensate him for the costs of restoring the property to its previous condition.

[49] The email referred to by the Appellant is of 31 July 2018 was sent by the Insurance company at 16.17 and was in response to an email from the Appellant to the Insurance company on the same date sent at 15.16. The email from the Appellant stated:

> *Dear Mr Brown,*
>
> *I am writing regarding your offer of £6,976.93 after deduction of my £250 policy excess.*
>
> *Can you confirm that your offer is only to cover the cost for the repair of the*
>
> *internal damage? It is not, in any case, any form of compensation for delays, inconvenience, loss of earnings, etc. These monies are, simply, help with the costs of the repairs.*
>
> *I look forward hearing from you.*

The response from the Insurance Company stated:

> *Dear Mr Garcia*
>
> *The payment of £6296.93 is for the building repairs only, and is subject to my manager's approval.*
>
> *If you have any further questions, please do not hesitate to contact me.*
>
> *Kind regards*

Dameon Brown

Specialist Home Claims Handler

[50] Having considered both emails, it would appear that the Appellant sought confirmation that the payment offered was simply in respect of "internal damage," and did not cover, "any form of compensation for delays, inconvenience, loss of earnings, etc." It was apparent therefore that the Appellant was requesting confirmation that the Insurance Company was providing recompense in respect of the physical damage to his property and not any other heads of claim he might have in relation to the matters mentioned. The reference to "internal damage" appears to be somewhat vague and could on any reasonable interpretation relate to damage to the physical integrity of his property, which would include the costs of redecoration. Similarly, the response received was to confirm that the payment was to address the building repairs and specifically stated that it did not cover the other heads of compensation, including inconvenience, loss of earnings etc. Again, the reference to "building repairs" could also include internal redecoration, and this was also capable of interpretation.

[51] Having regard to the findings of the Tribunal, it was the case that there the Tribunal considered the available interpretations referred to above in relation to the evidence produced. The interpretation the Tribunal chooses to place upon that evidence is a matter for their discretion, and an appeal body must be slow to interfere with the exercise of this discretion unless it can be demonstrated that this exercise was in the circumstances unreasonable. Having regard to the terms of the correspondence referred to above it certainly cannot be said that the interpretation chosen by the Tribunal could be said to be unreasonable.

[52] Accordingly having regard to the foregoing it cannot be said that it has been demonstrated that the Tribunal have erred in their interpretation of the law, and where they have exercised their discretion, it has not been demonstrated that this was done erroneously. Further the Tribunal have

clearly set out their reasoning and in these circumstances the Appeal is refused in relation to both grounds.

Conclusion

[53] The appeal is refused.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Sheriff Colin Dunipace
Member of the Upper Tribunal for Scotland