



2025UT84

Refs: UTS/AP/25/0044

UTS/AP/25/0072

UTS/AP/25/0073

DECISION OF

Sheriff Jillian Martin-Brown

ON AN APPLICATION FOR PERMISSION TO APPEAL

(DECISION OF UPPER TRIBUNAL FOR SCOTLAND)

IN THE CASE OF

Sir Adrian Shinwell and Lady Lesley Shinwell

Appellants

- and -

Charles White Limited

Respondent

FTS Case References: FTS/HPC/PF/23/1454; FTS/HPC/PF/23/2449; FTS/HPC/PF/23/2731

Forfar, 30 October 2025

Decision

Permission to appeal is REFUSED.



Reasons For Decision

Case References

1. By application dated 14 December 2023, the appellants sought a property factor enforcement order against the respondent under the Property Factors (Scotland) Act 2011. They alleged failures to comply with overarching standards of practice (OSPs) 1, 2, 3, 4, 6, 8, 11 and 12 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code of Conduct”). Their complaint also related to a failure to carry out the property factor’s duties. This application was given the references FTS/HPC/PF/23/4521 and UTS/AP/25/0043.
2. A second application dated 2 April 2024 alleged failures to comply with OSPs 1, 2, 3, 4, 6, 7, 8 and 12; sections 2.1, 2.2, 3.5, 18.1 and 18.7 of the property factors’ written statement of services (“WSS”); and section 5.5 of the Code of Conduct. That application was given the reference FTS/HPC/PF/24/1454 and UTS/AP/25/0044.
3. A third application dated 30 May 2024 alleged failures to comply with OSPs 2, 3, 4, 5, 6, and 7; section 1.2 of the WSS and sections 2.6, 2.7 and 7.1 of the Code of Conduct. That application was given the references FTS/HPC/PF/24/2449 and UTS/AP/25/0072.
4. A fourth application dated 17 June 2024 alleged failures to comply with OSPs 2, 3, 4 and 8 and sections 18.1 and 1.2 of the WSS. That application was given the references FTS/HPC/PF/24/2731 and UTS/AP/25/0073.

Lead Case

5. In an email dated 17 August 2025, the appellants applied for an order that case UTS/AP/24/0043 be the lead case and cases UTS/AP/25/0044, UTS/AP/25/0072 and UTS/AP/25/0073 be sisted. The respondent did not oppose the application and an order was granted on 19 August 2025 treating UTS/AP/24/0043 as the lead case.
6. During the appeal hearing on 25 August 2025, it emerged that there were additional grounds of appeal that were not contained within the papers for the lead case. The Upper Tribunal for Scotland (“UTS”) determined that a second hearing would be required in order that parties could address it on those additional grounds.
7. Permission to appeal for the lead case was refused on 26 August 2025. A second hearing on the additional grounds relating to the three sisted cases was scheduled for 28 October 2025 by WebEx.



Background

8. The First-tier Tribunal for Scotland (“FTS”) decided on 24 January 2025 that the property factors had failed to comply with OSP4, OSP6 and section 2.7 of the Code of Conduct. The FTS unanimously decided to make a property factor enforcement order and that the sum of £250 would be fair, reasonable and proportionate by way of compensation.
9. On 12 February 2025 the appellants applied to the FTS for permission to appeal its decision to the UTS on the basis that in the interests of clarity and justice, the UTS should be asked to rule on whether the Lifting Operations and Lifting Equipment Regulations 1998 (“LOLER”) applied to residential blocks of flats. The FTS determined that no stateable ground of appeal on a point of law had been made. Permission to appeal was refused on 13 March 2025.
10. At the same time as applying for permission to appeal, the appellants asked the FTS to review its decision. Typographical errors were highlighted as well as issues that the appellants thought had not been addressed in the FTS’ decision. The FTS accepted accidental slips and corrected its decision, but noted this had no bearing on the outcome of the applications. The FTS indicated it had considered carefully the representations of the appellants and decided it was not necessary in the interests of justice to review its original decision. The request for review was assessed as wholly without merit and was refused on 13 March 2025.
11. The appellants submitted an application to appeal to the UTS on 11 April 2025. A permission to appeal hearing took place on 28 October 2025 by WebEx, attended by Sir Adrian Shinwell on behalf of the appellants and Ms Robyn Rae on behalf of the respondent.

Grounds of Appeal

12. The application of 11 April 2025 sought leave to appeal on seven grounds as follows:
 - (i) whether the Lifting Operations and Lifting Equipment Regulations 1998 (“LOLER”) could ever be said to constitute best practice if they did not apply to the property;
 - (ii) whether the issue of the application of LOLER was a hypothetical situation;
 - (iii) whether the FTS erred by rejecting the appellant’s application to issue directions to the respondent;



- (iv) whether the FTS erred in deciding a full evidential hearing would not be necessary;
 - (v) whether the FTS erred in advising that the issue of the appointment of the respondent did not form part of the applications;
 - (vi) whether the FTS should have accepted the respondent had made an honest mistake in relation to the minutes of the meeting of 26 June 2023; and
 - (vii) whether the FTS ought to have considered the means of appointment of the respondent and the extent of the respondent's powers and delegated authority.
13. Grounds (i) and (ii) were considered and refused in the lead case. The hearing was therefore confined to grounds (iii) – (vii).

Submissions

14. Beginning with ground (iii), the appellants submitted that the respondent made a number of assertions which were unsupported. The appellants therefore lodged an application seeking supporting evidence to be lodged.
15. The respondent submitted that it followed all directions issued by the FTS.
16. In relation to ground (iv), the appellants submitted that they were not given the opportunity to address the FTS on whether an oral hearing should take place.
17. The respondent submitted that the FTS indicated an oral hearing could be requested by parties but the respondent was content for a paper-based determination.
18. In relation to ground (v), the appellants submitted that the FTS failed to look into the appointment of the respondent. They ought to have required sight of the appointment documentation and properly considered the terms and extent of any such appointment.
19. The respondent submitted that it was appointed as property factor on 17 October 2012.
20. In relation to ground (vi), the appellants submitted that the FTS took no cognisance of the differences in three versions of the minutes of the meeting of 26 June 2023 and instead ought to have drawn inferences about the respondent's credibility.
21. The respondent submitted that the minutes were in draft format until they were approved at the next meeting.



22. Finally, in relation to ground (vii), the appellants submitted that there was no contractual basis for the appointment of the respondent and therefore no basis for their powers and delegated authority.
23. The respondent submitted that it had been the factor for over ten years, which the homeowners had accepted by paying their bills. No one had disputed otherwise.

Decision

24. Beginning with ground (iii), it was clear from the letter of 17 July 2024 addressed to the appellants that the FTS *considered* the appellants' request for directions to the respondent to lodge and serve a statement of evidence to support the assertions made by them. The FTS considered it was *not necessary* in the interest of justice to issue such directions. Instead it was for the respondent to provide the FTS with any evidence they wished in support of their position and the FTS would in due course determine the applications on the basis of all evidence, written and oral, presented to it.
25. I determined that it was entirely reasonable for the FTS to allow the parties to exercise their own judgment in relation to what evidence should be provided in order to support their respective positions. Such a decision was a discretionary one taken in the exercise of its power to regulate further procedure and I did not consider that the FTS had erred in law. Accordingly, I refused this ground of appeal.
26. In relation to ground (iv), the FTS explained in its decision of 24 January 2025 at para. 55 that it was of the view that a full evidential hearing was not necessary. The appellants had provided many hundreds of pages of written representations and documentation and there were no matters of fact on which the FTS felt that further evidence was required.
27. I determined that it was entirely reasonable for the FTS to proceed with a paper-based determination in light of the high volume of written representations and documentation provided. Again, such a decision was a discretionary one taken in the exercise of its power to regulate further procedure and I did not consider that the FTS had erred in law. Accordingly, I refused this ground of appeal.
28. In relation to ground (v), the FTS indicated in its decision of 24 January 2025 at para. 57 that the appellants' complaints in relation to all four applications were made under a large number of OSPs and sections of the Code of Conduct. In its request for a review, the appellants questioned whether the respondent had ever been properly appointed.



The FTS explained at para. 6 of its decision of 13 March 2025 that the question did not form part of the applications and so was not considered further by it.

29. I determined that it was entirely reasonable for the FTS to restrict the scope of the appeal to the grounds specified in the applications. There were four applications and a large number of complaints, therefore it was appropriate to restrict the scope of the appeal in order to make efficient use of parties' and FTS' time. Once again, such a decision was a discretionary one taken in the exercise of the FTS' power to regulate further procedure and I did not consider that it had erred in law. Accordingly, I refused this ground of appeal.
30. In relation to ground (vi), the FTS explained at para. 62 of its decision of 24 January 2025 that minutes were a contemporaneous record of discussions and decisions and it was always open to anyone who did not regard them as accurate or complete to seek amendments. They were not finalised until approved at a subsequent meeting. The respondent amended them accordingly in response to points raised by the appellants.
31. I determined that it was entirely reasonable for the FTS to not to make an adverse finding in relation to the respondent's credibility solely on the basis that the minutes were inaccurate whilst in draft format. Assessments of credibility and their application to factual disputes are matters which the FTS is best placed to make, having the opportunity to consider all the evidence, oral and written, together with all the supporting documents presented to it and submissions made thereon. I did not consider that it had erred in law and accordingly, I refused this ground of appeal.
32. Finally, ground (vii) was repetition of ground (v), namely the FTS' decision to restrict the scope of the appeal to the grounds specified in the applications and not to consider the contractual basis for the appointment of the respondent, their powers and their delegated authority.
33. As explained above, I determined that it was entirely reasonable for the FTS to restrict the scope of the appeal to the grounds specified in the applications in order to make efficient use of time. Such a decision was a discretionary one taken in the exercise of the FTS' power to regulate further procedure and I did not consider that it had erred in law. Accordingly, I refused this ground of appeal.

Refusal of Permission

34. Permission can only be granted if there are arguable grounds of appeal on a point of law (section 46 of the Tribunals (Scotland) Act 2014). As that statutory test was not met in



relation to any of the five grounds for the three sisted cases, permission was refused in respect of all three cases.

Sheriff Jillian Martin-Brown
Member of the Upper Tribunal for Scotland