Upper Tribunal for Scotland

2026UT84
Ref: UTS/AP/26/0081

DECISION OF

Sheriff Jillian Martin-Brown

ON AN APPLICATION FOR PERMISSION TO APPEAL (DECISION OF UPPER TRIBUNAL FOR SCOTLAND) IN THE CASE OF

Stephen McDougall

Appellant

- and -

Hacking and Paterson Management Services Limited

Respondent

FTS Case Reference: FTS/HPC/PF/24/1381

Forfar, 4 November 2026

Decision

Permission to appeal is REFUSED.

Reasons For Decision

Background

1. By application received in the period between 25 March and 16 April 2024, the applicant applied to the First-tier Tribunal for Scotland ("FTS") for a determination on whether the respondent had failed to comply with numerous paragraphs of the Property Factors Code of Conduct.

2. A Case Management Discussion took place on 8 July 2024 by teleconference, during which the FTS explained the restricted scope of the appeal and that it would not considering

matters, or requesting or providing any further information, as suggested by the applicant, in relation to a number of issues. .

3. Following various procedural decisions on directions and productions, a hearing took place on 10 December 2024 by teleconference. Only the appellant was in attendance.

4. In its decision of 3 February 2025, amended on 24 February 2025, the FTS found that the respondent had failed to comply with the Code and decided to make a Property Factor Enforcement Order. Parties were provided with 14 days to make representations on a proposed order.

5. On 6 May 2026 the FTS issued a PFEO in the following terms:

> "The Property Factor is required, within 30 days of the making of this Property Factor Enforcement Order, to:
>
> (i) Issue a fresh Written Statement of Services to the Homeowner which deletes the reference to custom and practice as the source of its authority to act and states the correct basis of authority as being derived from the Deed of Conditions registered by Taywood Homes Ltd. on 9 Augst 2000;
>
> (ii) Repay to the Homeowner the sum of £5 incorrectly charged as an administration fee for amending the Written Statement of Services;
>
> (iii) Make payment of the sum of £200 as compensation for its failure to comply with the Code of Conduct and the failure to carry out its property factor duties."

6. By email dated 18 May 2026, the appellant applied for a review of the FTS' decision. On 26 May 2026, the FTS found the application for review to be wholly without merit.

7. By email dated 18 May 2026, the appellant also applied for permission to appeal the decision to the Upper Tribunal. On 27 May 2026, the FTS found that the grounds of appeal did not raise any arguable points of law and refused permission to appeal.

8. The appellant submitted an application to appeal to the Upper Tribunal on 25 June 2026. A permission to appeal hearing took place on 26 October 2026 by WebEx, attended by the appellant only. The respondent elected not to attend the hearing but indicated by email dated 30 September 2026 that permission to appeal was opposed on the basis that no arguable error of law was disclosed.

Grounds of Appeal

9. The appellant was candid that he had used AI to help draft his grounds of appeal but unfortunately, as is so often the case, that resulted in vague, lengthy written submissions which did not make much sense. After discussion during the hearing on 26 October 2026, the appellant clarified that his grounds of appeal were as follows:

    (i) the FTS erred by finding in fact that the respondent's authority to act was derived from the Deed of Conditions for the development dated 9 August 2020 and refusing to adopt an inquisitorial role;

    (ii) the FTS erred by restricting its decision to the appellant's property and not applying it to the other home owners;

    (iii) the FTS erred in awarding £200 compensation, which was too low;

    (iv) the FTS acted with the appearance of bias because the appellant had complained about one of the tribunal members;

    (v) the FTS erred in not specifying the content of the Written Statement of Services; and

    (vi) the FTS erred in not reporting the respondent to the police.

Submissions

10. Beginning with ground (i), at the hearing on 10 December 2024, the appellant submitted that the FTS only looked at the title deeds to make their decision. They ought to have adopted an inquisitorial role and investigated whether the appropriate mechanism for appointment had been followed. They did not order evidence to be produced.

11. Turning to ground (ii), the appellant submitted that any decision by the FTS should apply to all home owners. The £5 refund amounted to a significant sum if it applied to all home owners.

12. In relation to ground (iii), the appellant submitted that in a case dealing with the same issues £500 had been awarded for compensation. In another case £750 had been awarded, which was increased to £1,000 due to non-compliance by the property factor. The appellant submitted that compensation of around £1,000 was an appropriate amount for this case.

13. In relation to ground (iv), the appellant submitted that he had made a complaint about the legal member, which was subsequently rejected. The case ought to gone to a differently constituted tribunal to determine permission to appeal.

14. In relation to ground (v), the appellant submitted that the FTS only required a fresh written statement of services to be issued and did not make sure that what was subsequently issued was compliant with the code of conduct.

15. Finally, in relation to ground (vi), the appellant submitted that the FTS should have reported the respondent to the police because they were not legally appointed as property factors.

Decision

16. Beginning with ground (i), in its decision of 24 February 2025, the FTS rejected the respondent's representations that their authority to act operated from custom and practice for over 20 years (para. 82). It also rejected the appellant's submission that in the absence of any formal signed agreement by the majority of homeowners, the respondent had not been legally appointed and all fees paid over the past 20 years should be refunded (para. 83). Instead, the FTS relied on the Deed of Conditions to make a finding in fact that that the respondent's authority to act was derived from that Deed of Conditions, registered on 9 August 2000.

17. The appellant's detailed submissions appeared to be predicated upon a misunderstanding of the burden of proof upon him in the appeal. It was not the responsibility of the FTS to conduct further investigations into what took place at the time of appointment, nor how the appointment was carried out. Those were matters for the appellant to address.

18. The FTS therefore adopted the correct approach to the hearing. Whilst it was clear that the appellant disagreed with the adversarial nature of proceedings and would have preferred an inquisitorial approach to have been adopted, I did not consider that he had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

19. Turning to ground (ii), at the Case Management Discussion on 8 July 2024, the FTS explained that it would not be considering a number of issues suggested by the appellant, including carrying out an investigation to determine how many customers' terms of service failed to meet the requirements of the Code.

20. Again, the appellant's submissions appeared to be predicated on a misunderstanding, this time about the scope of his appeal. The FTS' decision of 6 May 2025 was restricted to the complaint between the appellant and the respondent and whether the respondent had failed

to comply with the Code. It was not the responsibility of the FTS to consider remedies for other homeowners. Those were matters for other home owners to address in their own applications, should they wish to do so.

21. The FTS therefore adopted the correct approach to the hearing. Whilst it was clear that the appellant was keen for the FTS to investigate other homeowners' charges, I did not consider that he had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

22. In relation to ground (iii), in its decision of 6 May 2025, the FTS considered the appellant's representations about other cases (para. 3) and highlighted that each case had to be considered on its own facts and circumstances (para. 7). In its decision of 26 May 2025 refusing the application for review, the FTS acknowledged that higher awards had been made in other cases, but also highlighted that lower awards had been made too (para. 14). It was satisfied that the sum of £200 was fair when the facts and circumstances of the appellant's case were considered, which were not identical to those cases where higher amounts had been awarded.

23. The appropriate level of compensation depends entirely on the particular facts and circumstances of each case. £200 was clearly within the range of previous awards. I did not consider that the appellant had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

24. In relation to ground (iv), the FTS explained in its decision of 24 February 2025 that although the appellant had emailed on 10 December 2024 indicating that he had reported the FTS; the President of the Scottish Tribunals; the Housing and Property Chamber; and Judicial Office for Scotland to the police, there had been no notification of any police involvement and the FTS was in a position to proceed with the hearing. The appellant indicated he *wished to proceed* with the hearing (para. 23).

25. The FTS was correct to proceed with the hearing in the absence of notification of any police involvement and in accordance with the wishes of the appellant. Such an approach did not give rise to the appearance of bias. That his complaints were subsequently rejected is further confirmation of the propriety of the FTS. I did not consider that the appellant had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

26. In relation to ground (v), in the PFEO of 6 May 2025, the FTS ordered the respondent to issue a fresh Written Statement of Services which stated the correct basis of authority to act as being derived from the Deed of Conditions.

27. Again, the appellant's submissions appeared to be predicated on a misunderstanding about the scope of his appeal. The FTS' decision was restricted to the Written Statement of Services that was in force at the time of the appeal. It was not required to keep the appeal open indefinitely and consider future versions of the Written Statement of Services. It remained open to the appellant to bring another case before the FTS in the event that he considered there to have been subsequent breaches of the Code.

28. The FTS therefore adopted the correct approach to the hearing. Whilst it was clear that the appellant did not want his appeal to conclude and instead wanted to be able to raise any new issues that arose with the FTS, I did not consider that he had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

29. Finally, in relation to ground (vi), at the Case Management Discussion of 8 July 2024, the FTS explained it did not have a remit to inform other authorities of alleged breaches of the law and that it was for the appellant to report those to the relevant authorities if he believed there had been breaches (para. 3).

30. It appeared from the email of 10 December 2024 that the appellant did report a number of parties to the police, albeit no subsequent action was taken against them. He remained free to do so in relation to the actions of the respondent or any other party if he wished to do so. However, I did not consider that the appellant had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

Refusal of Permission

31. 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 is not met in relation to any of the six grounds, permission is refused.

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