

Upper Tribunal for Scotland



2025UT67

Ref: UTS/AP/25/0043

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 Reference: FTS/HPC/PF/23/4521

Forfar, 26 August 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 this application as the lead case.

Background

6. 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.
7. On 12 February 2025 the appellants applied to the FTS for permission to appeal its decision to the Upper Tribunal for Scotland (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.
8. 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.

9. The appellants submitted an application to appeal to the UTS on 11 April 2025. A permission to appeal hearing took place on 25 August 2025 by WebEx, attended by Sir Adrian Shinwell on behalf of the appellants and Ms Robyn Rae on behalf of the respondent.

Extension of Time

10. The appellants requested an extension to the time limit to appeal. However, the FTS' decision on permission to appeal was sent to the appellants on 19 March 2025 and the appellants submitted an application to appeal on 11 April 2025, within the 30 day time limit. There was accordingly no need to extend the time limit to appeal for this case.

Grounds of Appeal

11. The application of 11 April 2025 sought leave to appeal on two grounds as follows:
 - (i) whether LOLER could ever be said to constitute best practice if it did not apply to the property; and
 - (ii) whether the issue of the application of LOLER was a hypothetical situation.
12. Towards the end of the hearing, the appellants identified five further grounds of appeal, which were not contained within the application for this case and which may have been contained in one of the other three applications for appeal. The UTS having decided to treat this case as the lead case, the respondent was not in a position to respond to the additional five grounds. I determined that I would restrict the scope of this appeal hearing to the two grounds submitted in this application. As a result, a further hearing may be required in due course to deal with any grounds raised in the other three applications that are not affected by the decision in this lead case.

Submissions

13. Beginning with ground (i), the appellants submitted that if LOLER did not apply to the property then it could not be best practice to follow LOLER. No evidential basis was led about the advice the respondent claimed to have received from a specialist in lift insurance. The FTS ignored advice from the Health & Safety Executive's Safe Use of Lifting Equipment Approved Code of Practice 2014 ("the Code of Practice"), para 48 of which indicated that a passenger lift in a block of flats was not work equipment as it was primarily for the use of members of the public who lived in the block of flats.

14. The respondent submitted that at the case management discussion by telephone on 12 November 2024, the respondent had accepted that lift inspections were not mandatory. It was the respondent's position that it was best practice to include lift inspections because postmen, engineers and tradesmen used the lift. It was not just a passenger lift for residents.
15. In relation to ground (ii), the appellants submitted that if the respondent took advice on best practice by reference to LOLER, then it was not hypothetical. It could not be hypothetical in one situation and not the other.
16. The respondent submitted that the issue of whether LOLER applied was entirely hypothetical. The appellants were asking the UTS to make a decision on an issue that no longer existed. The matter was dealt with before it reached the FTS because the lift insurance policy had been cancelled and would remain cancelled. The respondent accepted it had misled the appellants in suggesting that the lift insurance was a requirement. In the event that the UTS ruled on the issue and agreed with the appellants, there would be no change to the current situation.

Decision

17. In relation to ground (i), the FTS explained in its decision of 24 January 2025 that it regarded the communication by the respondent relating to lift engineering insurance as confusing to the appellants. They had indicated initially that there was a requirement to have biannual lift inspections as per LOLER. When questioned whether LOLER applied to lifts in residential blocks, the respondent did not answer the question. Instead the respondent produced a waiver for the appellants to sign, essentially absolving the respondent of any liability for any consequences of the appellants not being prepared to put in place the policy that it had recommended. In response to a complaint, the respondent did not maintain the position that there was a statutory requirement for insurance and inspections under LOLER but said that they use LOLER and the Provision and Use of Work Equipment Regulations (PUWER) as best practice on all lifts they maintained. Consequently, the FTS upheld the appellants' complaints under OSP4 and OSP6 to the extent that the information was negligently misleading and the respondent had not used reasonable care and skill to ensure their explanation to the appellants were accurate and timely.
18. Paragraph 48 of the Code of Practice relied upon by the appellants provides as follows:

Passenger lift in a block of flats

48 A passenger lift in a block of flats is not 'work equipment' as it is primarily for the use of members of the public who live in the block of flats. It is not therefore subject to the requirements of LOLER, but should satisfy the requirements of section 4 of the HSW Act instead. If such lifts are subjected to the safety requirements of LOLER and PUWER they will probably satisfy these legal duties.

19. Given that the Health & Safety Executive has made *specific reference* to the requirements of LOLER in relation to passenger lifts in its Code of Practice, I determined that it was entirely reasonable for the respondent to regard the requirements of LOLER (and PUWER) as best practice in order to meet the requirements of the Health & Safety at Work etc. Act 1974. I did not consider that the appellants had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.
20. In relation to ground (ii), the FTS indicated in its decision of 24 January 2025 that the appellants *accepted* that it would not pronounce on whether LOLER applied to lifts in blocks of flats. In its subsequent decision of 13 March 2025, the FTS reiterated that the appellants stated that they understood that it would not be making a finding on whether LOLER applied to residential blocks of flats. The FTS did not consider it appropriate to ask the UTS to determine a point of law in what would be a hypothetical situation.
21. It was clear from submissions that neither the appellants, nor the respondent, were arguing that LOLER applied to residential blocks of flats. In such circumstances, there was no need to determine whether that view was correct, since nothing turned on that point. The issue was whether it was appropriate for the respondent to regard the requirements of LOLER as best practice, which for the reasons outlined above, I determined was reasonable. I did not consider that the appellants had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

Refusal of Permission

22. 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 either of the two grounds, permission is refused.

Member of the Upper Tribunal for Scotland