Upper Tribunal for Scotland

2025UT103
Ref: UTS/AP/25/0031

DECISION

OF

SHERIFF S. REID

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

IN THE CASE OF

Mr Stephen McDougall

APPELLANT

- against -

Hacking & Paterson Management Services

RESPONDENT

(First-tier Tribunal Case Reference: FTS/HPC/PF/24/1381)

Glasgow, 17th December 2025

Decision

The Upper Tribunal for Scotland:

1. Refuses the Appellant's application for permission to appeal to the Court of Session.

Procedural Summary

1. The Appellant applied to the FTS for orders *inter alia* that the Respondent, a property factor, had breached the Property Factors Code of Conduct in multiple respects.

2. The application originated from a simple complaint that the Respondent had charged a £240 "apportionment fee" to the Appellant (which included a £120 "express late payment" fee), when the Appellant sold his property. The Appellant complained that the Respondent had no right to impose the charge *inter alia* because it was not contained within the Respondent's intimated written statement of terms.

3. In the event, this simple complaint was ultimately upheld by the FTS.

4. However, in addition, the Appellant claimed to have "uncovered" what he described as "a whole plethora of code breaches and numerous, Scottish, UK, company and financial laws being broken by the Directors and staff at Hacking and Paterson" (See Appellant's C2 Application Form dated 25 March 2024, paper apart, first page). The Appellant lists these alleged breaches as follows:

    - "Failure in duties as a Factor – multiple breaches of the Written Statement of Service and breach of title deed conditions
    - Property Factor Code of Conduct Overarching Standards of Practice OSP1, OSP2, OSP3, OSP4, OSP5, OSP6, OSP8, OSP9, OSP10, OSP11, OSP12
    - Property Factor Code of Conduct Sections 1.1, 1.2, 1.5, 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 4.2, 4.3, 7.1.
    - Breaches of Financial Conduct Authority (FCA) rules,
    - Breaches of Consumer law
    - Breaches of UK Companies Act
    - Breaches of the Company Directors Disqualification Act
    - Breaches of Consumer Protection from Unfair Trading Regulations
    - Breaches of numerous competition laws"

5. At the end of his FTS Application Form, he sought the following outcomes to resolve his complaint:

- "Full apology from all of Hacking and Paterson's Directors
- Compensation for every code breach and law they broke to try and con and rip me off along with compensation for my time and the stress I've had to deal with trying to get justice.
- Re-issue of my final bill with the £240 fee completely removed so there is no record of it ever being applied.
- Disciplinary action (dismissal) of all staff (including Senior Management) found to have broken the Code of Conduct and/or the law.
- Criminal action taken against all Directors/staff who broke the code and/or the law.
- All of Hacking and Paterson's Directors removed from the Factors Register (including those Directors who are also on the Factors Register for any other factor) for breaking the code and also for failing the "fit and proper person" test.
- All of Hacking and Paterson's Directors reported to the UK Government Insolvency Service to have them banned from being a director of any company.
- Hacking and Paterson reported to the relevant authorities (including FCA) to investigate any breaches of financial and consumer/competition laws.
- Retraining of all staff on the Code of Conduct.
- The banning of factors seeking payment from solicitors.
- Stricter and more frequent (annual) checks on "fit and proper person" test and people removed from the Register if they break any Code of Conduct or any other.
  business/financial/company/consumer/competition laws.
- Getting David Doran and the other Directors to answer my questions that they refused to answer (see below)..."

and there then followed a list of 16 proposed "questions" to the Respondent's directors, of which the following are illustrations:

> "Why do you allow and encourage your staff to bully, intimidate and blackmail your customers into dropping their complaints? You really need to look into Craig Cosgrove's conduct!";

and:

> "Why do you think you and your fellow Directors are "fit and proper" people to be on the Property Factors register when it's clear you're not up to the job and have made no effort to improve your customer service as

> illustrated by all the poor 1* reviews Hacking and Paterson are scoring on all the ratings websites?"

6. On any view, the Appellant's FTS application was lengthy, dense, repetitive, confused, and confusing.

7. The application (in Form C2) is 51 pages long.

8. The detail appears in a separate attached sheet, which extends to "a whopping 43 pages" (per the Appellant's own description in his email dated 25 March 2024 to the FTS).

9. None of the pages in the attached sheet is numbered.

10. None of the paragraphs in the attached sheet is numbered.

11. The Appellant lodged a further 318 pages of supporting documents with his application. The documents are neither identified in an accompanying inventory nor paginated.

12. Even on a cursory analysis, the form and content of the Appellant's FTS application should have set alarm bells ringing as to its fundamental competency and suitability for acceptance.

13. In <u>form</u>, aside from the single original complaint (concerning the disputed £240 apportionment fee), his FTS application is rambling, repetitive, scatter-gun in nature, confusing, unstructured, and lacking in specification as to the essential nature (or basis) of many of the complaints despite its prolixity. (Interestingly, the Appellant appears to exhibit some insight into the presentational defects of his application defects. In his cover email to the FTS dated 25 March 2024, he stated that he had "contemplated splitting this [i.e. his attached sheet] into separate complaints" but decided to "keep it all together", purportedly

to provide a full understanding of "all the code-breaking and law-breaking Hacking and Paterson do".)

14. In substance, his FTS application was patently incompetent in multiple respects. The FTS has no jurisdiction to adjudicate upon, enforce or sanction (i) "breaches of Financial Conduct Authority (FCA) rules", or (ii) "breaches of consumer law", or (iii) "breaches of UK Companies Act", or (iv) "breaches of the Company Directors Disqualification Act"; or (vi) "breaches of Consumer Protection from Unfair Trading Regulations" or (vii) "breaches of numerous competition laws" (whatever that means).

15. In addition, the FTS has no power to grant a swathe of the remedies sought by the Appellant. For example, it has no power to order or initiate "disciplinary action" against the Respondent's staff; or "criminal action" against the Respondent's directors; or to "report" the Respondent to "the relevant authorities" to "investigate any breaches of financial, consumer or competition laws" (whatever that may mean). Likewise, the Appellant's insistence that the Respondent's directors attend personally before the FTS for interrogation can be seen as symptomatic of the Appellant's erroneous belief that the FTS has some wider regulatory, investigative or prosecutorial jurisdiction than it actually possesses.

16. Within the body of his 43 page "attached sheet", the Appellant made further complaints and sought further orders against the Respondent. These are not readily visible from his previous head-line summaries. By way of illustration:

    a. Firstly, the Appellant alleged that the Respondent "deliberately hide[s] their accounting statements from the public". The Appellant sought an order from the FTS that the Respondent should disclose financial information to the Appellant (including the Respondent's "latest financial statements", "a Balance Sheet and a

Profit and Loss account", and "notes to the accounts") so that the Appellant can make "a proper assessment of [the Respondent's] viability. He claimed that:

> "… unless Hacking and Paterson make their financial statements public then they could be breaching numerous **Companies Act and financial laws** resulting in severe penalties and prosecution…"

This complaint and the order sought are *ex facie* incompetent. The FTS has no investigative, enforcement or prosecutorial jurisdiction in relation to supposed breaches of the Companies Acts or "financial laws" *a fortiori* when such alleged breaches (however supposedly "numerous") are unspecified.

The Registrar of Companies, the Financial Conduct Authority, the Lord Advocate, or the police may perhaps have investigative, enforcement or prosecutorial jurisdiction in such matters, if intelligibly specified.

The FTS does not.

b. Secondly, the Appellant alleged that directors of the Respondent had acted in a "conflict of interest" situation, in breach of their obligations under the Companies Act 2006, by acting as directors of another factor called "Your Local Factor Ltd". The Appellant requested that the FTS "fully investigate" if the Respondent's directors "correctly followed the Companies Act when declaring their conflicts of interest". He also requested that "the Scottish Government" provide him with an explanation as to why it allows directors to work for, and to own, two competing factors. He sought to draw an analogy with the "dual ownership of football clubs".

Again, this complaint and the orders sought are *ex facie* incompetent. The FTS has no investigative or enforcement jurisdiction in relation to alleged breaches by directors of their duties under the Companies Act 2006.

Shareholders or co-directors of the companies in question may have an interest in such matters of internal corporate law governance. The FCA may have a locus or interest.

The FTS does not.

Besides, the FTS cannot competently make an order against the Scottish Government (which is not even a party to these proceedings) compelling it to provide to the Appellant "an explanation" about anything. If the Appellant has a grievance with the Scottish Government, he should pursue that grievance through appropriate political channels or appropriate legal process (such as judicial review), if he can establish a title and interest to do so.

c. Thirdly, the Appellant alleged that the Respondent's directors had disregarded (unspecified) rules and regulations "causing distress to customers". The Appellant invited the FTS to refer the Respondent's directors to the "UK Government Insolvency Service" to be banned from acting as directors of any company.

This complaint and the order sought are *ex facie* incompetent. The FTS has no investigative or enforcement jurisdiction in relation to the disqualification of directors.

The Secretary of State for Business & Trade may have such a jurisdiction under the Company Directors Disqualification Act 1986.

The FTS does not.

d. Fourthly, the Appellant invited the FTS to refer the Respondent's terms of service to the UK Competition and Markets Authority to make a ruling on the Respondent's "unfair" terms and fees. The Appellant asserted that he "strongly suspect[s]" that the Respondent is "breaking numerous laws here and this must be investigated with the Directors facing the full force of the law".

   Again, this complaint and the order sought are *ex facie* incompetent. The FTS has no over-arching investigative or enforcement jurisdiction in relation to suspected "unfair" contract terms.

17. Pausing there, I observe that the formal statutory requirements for an application of this nature are minimal. It must be in writing and it must contain certain basic information (rule 5, First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules")).

18. However, the Chamber President (or legal member acting under delegated powers) "must" reject an FTS application in certain defined circumstances, including if there is "good reason to believe" that it would not be "appropriate" to accept the application (2017 Rules, rule 8). This is an important gate-keeping role.

19. However, in my respectful judgment, an *ex facie* absence of jurisdiction to adjudicate upon a swathe of issues raised in an application; the pursuit of a host of *ex facie* incompetent remedies; a patent failure adequately to explain the grounds on which large parts of an application proceed (*Colraine v Bridges* [2023] 1WLUK 493, para 16, per Sheriff D. O'Carroll); and a blizzard of rambling, unstructured, vague and unspecific allegations, may, individually or cumulatively, justify the conclusion that it is "appropriate" to reject such an application (2017 Rules, rule 8). The rejection of such a muddled and misconceived application at the outset would be consistent with the over-riding objective (2017 Rules,

rule 2) *inter alia* to ensure the efficient and proportionate use of judicial resources and to achieve expeditious case-management and adjudication.

20. Be that as it may, despite its patent deficiencies, by Order dated 18 April 2024 this application was accepted by the FTS, processed, and formally intimated upon the Respondent.

21. The FTS ordered that written representations should be submitted by the Respondent no later than 16 May 2024, in advance of a Case Management Discussion that had been assigned for 8 July 2024.

22. On 13 May 2024, the Respondent duly submitted written representations to the FTS. They were brief, fairly general in nature, but timeously lodged.

23. On 8 July 2024, at a case management discussion, to its credit the FTS sought to strip out a number of patently incompetent issues from the application, by stating that it did not intend to adjudicate upon them.

24. The FTS issued two separate Directions to the Appellant (the first on 10 September 2024, the second on 22 October 2024) *inter alia* ordering the Appellant to lodge with the FTS "a simple table" showing (i) each paragraph of the Code that was allegedly breached by the Respondent, with a corresponding explanation of how and when the breach allegedly occurred, and a cross-reference to the evidence in support of that breach; and (ii) a separate "simple table" showing each of the factor's duties allegedly breached by the Respondent, with a corresponding explanation of how and when the breach allegedly occurred, and a cross-reference to the supporting evidence.

25. Clearly, the FTS was struggling to understand the Appellant's application. That may be unsurprising, given its form and content.

26. In the event, the two "simple tables" ordered by the FTS were never produced by the Appellant.

27. The Appellant refused to comply with both Directions.

28. Instead:

    a. On 22 October 2024, the Appellant lodged five separate requests for directions from the FTS seeking *inter alia* to have the FTS compel the Respondent to lodge evidence to prove their compliance with the Code and to appear personally before the FTS;

    b. On 6 November 2024, the Appellant sought to lodge with the FTS productions extending to almost 2,000 pages;

    c. On 20 November 2024, the Appellant lodged a further eight requests for Directions from the FTS; and

    d. On 27 November 2024, the Appellant lodged written submissions extending to 132 pages, much of it repetitive, rambling and confused in content.

29. The FTS refused to grant the Appellant's first five (and subsequent eight) requests for Directions.

30. By email dated 9th December 2024, the Appellant claimed he had not received notice of the forthcoming Hearing (on 10 December 2024) and that the matter had been reported to the police. In an email to the FTS dated 10th December 2024, the Appellant stated:

> "The tribunal have failed to be impartial and have shown bias towards the property factor. The tribunal, the President, HPC, SCTS and the Judicial Office for Scotland have all been reported to the Police. This is now a Police matter and the tribunal cannot progress until the SCTS can provide me with an impartial tribunal! The current tribunal are unfit to judge my case! Do I make myself clear?!"

31. On 10 December 2024, the application called at a Hearing before the FTS. The Appellant was in attendance. The Respondent declined to attend. The FTS proceeded to consider the merits of the application on all the material before it, including the Appellant's evidence and submissions, and the written representations from the Respondent.

32. On 17 December 2024, the FTS ordered that the Respondent lodge further representations in relation to two specific issues: (i) the basis of their authority to act as property factor of the development of which the Appellant's property formed part; and (ii) the basis of their authority to charge an administrative fee for amending their terms of service, in preparation for the 2021 Code of Conduct coming into force.

33. Again, on 8 January 2025, the Respondent replied by submitting written representations to the FTS.

34. By a decision dated 3 February 2025 (issued to the parties on 4 February 2025), the FTS concluded that the Respondent had failed to comply with the Property Factors Code of Conduct 2021 (namely, with paragraph 1.5A thereof) in certain relatively minor respects, in breach of section 14 of the Property Factors (Scotland) Act 2011.

35. None of the other (multiple) breaches of the Code alleged by the Appellant was upheld by the FTS.

36. Having determined that the Respondent had failed to comply with the Code, the FTS decided to make a Property Factor Enforcement Order ("PFEO"). In compliance with section 19 of the 2021 Act, the FTS gave notice to the parties of the proposed PFEO and invited representations thereon.

37. Before the procedure for ingathering representations on the PFEO was completed, the Appellant applied for a review of the FTS decision dated 3 February 2025.

38. By a decision dated 24 February 2025, the FTS refused the review application on the ground that it was totally without merit.

39. The Appellant then sought permission from the FTS to appeal the decision dated 3 February 2025.

40. By a further decision dated 2 April 2025, the FTS refused the Appellant's application for permission to appeal, on the ground that the multiple proposed grounds of appeal did not raise arguable points of law.

41. The Appellant then sought permission from the UTS to appeal against the decision dated 3 February 2025.

42. By a decision dated 7 August 2025, the UTS granted the Appellant permission to appeal to the UTS on one single ground only. *Quoad ultra* the Appellant was refused permission to appeal because the remaining grounds of appeal did not raise an arguable point of law.

43. On 17 October 2025, the appeal called before the UTS at a hearing (by WebEx video conference call). The Appellant appeared personally; the Respondent was represented by a solicitor. Having considered the parties' written and supplementary oral submissions, the UTS refused the Appellant's appeal.

44. The Appellant now seeks permission to appeal to the Inner House of the Court of Session against the UTS decision dated 17 October 2025.

The legal test

45. Subject to the further hurdle referred to in paragraph 49 below, the UTS may grant permission to appeal to the Court of Session if "satisfied that there are arguable grounds for the appeal" (Tribunals (Scotland) Act 2014, section 48(4)).

46. The threshold of arguability is relatively low. It is certainly a lower threshold than "a real prospect of success".

47. An appellant requires to set out the basis of a challenge from which can be divined a ground of appeal capable of being argued at a full hearing. In essence, the task of the UTS is to ascertain, with reference to the material submitted, whether the appellant has identified an error of law that is capable of being stated or argued before the Court of Session at a hearing.

48. This is an important qualification or condition on appealing. It serves a useful purpose. If no arguable ground of appeal is capable of being formulated, there is no point in wasting further time and resources in the matter proceeding. The respondent in a hopeless appeal ought not to have to meet any further or additional procedure in a challenge with no merit. It is also in the wider interests of justice that a ground of appeal which is not arguable is stopped in its tracks

49. However, an addition hurdle applies when an appellant seeks permission to appeal to the Court of Session. The UTS may not give permission to appeal unless it is also satisfied that an important point of principle or practice, or some other compelling reason, exists for allowing the appeal to proceed (2014 Act, sections 50(3) & (4)). The clear purpose of this additional hurdle is to restrict the scope for a second appeal (*Eba v Advocate General for Scotland* 2012 SC (UKSC) 1, para 48, per Lord Hope of Craighead).

The proposed Grounds of Appeal

50. The Appellant advances multiple proposed grounds of appeal to the Court of Session. Helpfully, he has sought to group these grounds under distinct headings. I discern that permission to appeal is being sought on twelve discrete grounds.

Ground 1: Misapplication of the burden of proof

51. First, the Appellant submits that the UTS erred in law by misapplying the onus of proof ("Ground 1"). (This Ground 1 overlaps to some extent with Ground 2, below.)

52. The Appellant submits that the UTS erroneously held that the legal burden lay entirely upon the Appellant, as the homeowner, to prove breaches of the Property Factors Code of Conduct. This was said to "misapply" section 14 of the Property Factors (Scotland) Act 2011 which, it was submitted, imposes a statutory duty on factors to comply with the Code. The Appellant submits that once a *prima facie* case was raised by him, as homeowner, the evidential burden shifted to the Respondent, as property factor, to demonstrate compliance with the Code because such compliance is peculiarly within the Respondent's knowledge and records.

53. The Appellant also submits that the FTS and UTS "misapplied" section 17 of the 2011 Act. The Appellant submits that he duly "set out" his reasons for considering that the Respondent had failed to carry out its duties under the Code; the application was "accepted" by the Chamber President; therefore, he submits, the onus transferred to the Respondent to provide evidence to rebut the Appellant's case by demonstrating its compliance with the Code. The Appellant submits that the FTS and UTS erred by "refusing to recognise this shifting burden" and thereby "undermined the statutory consumer-protection purpose" of the 2011 Act.

54. Ground 1 echoes the dominant and recurring theme of the Appellant's submissions before the FTS and the UTS. That theme was that, since the Respondent had failed to appear or be

represented at the Hearing, the FTS should simply have accepted the Appellant's claim in its entirety and found the alleged breaches of the Code to be established.

55. In a similar vein, the Appellant submitted that, under statute, the onus lay on the Respondent (as the property factor) to prove its compliance with the Code. Standing the Respondent's failure to appear at the Hearing, or to lead any witnesses, the Appellant maintained that it necessarily followed that the Respondent had failed to prove compliance with the Code. Likewise, the Appellant submitted (before the FTS and UTS) that the FTS had inverted the proper onus by imposing upon the Appellant a duty to prove the Respondent's non-compliance with the Code; that it had unreasonably failed to accept the unchallenged evidence produced by the Appellant in support of his assertions (that the Respondent had breached the Code in multiple respects); and that it had wrongly concluded that the Appellant had failed to prove his allegations.

56. In my judgment, Ground 1 is not arguable for the following reasons.

57. Firstly, it is incontrovertible that a party who submits an application of this nature to the FTS bears the legal onus of satisfying the FTS that his claim is well-founded, in fact and in law. Therefore, in this case, it was for the Appellant to discharge that legal onus by producing sufficient material (in oral or written form) to satisfy the FTS that the claim was well-founded.

58. This conclusion derives from the general legal principle that the onus lies upon the party who is making a claim, or asserting a fact, to prove it (*Abrath v North Eastern Railway Co* (1883) 11 QBD 440, 456; *Dickinson v Minister of Pensions* [1953] 1QB 228, 232). It also accords with the principle that a party should not generally be required to prove a negative. It is also consistent with section 19 of the Property Factors (Scotland) Act 2011 which expressly provides that an application by a homeowner to the FTS for a determination of whether a property factor has failed to carry out its duties (including the section 14 duty to comply

with the Code) "*must… set out the homeowner's reasons* for considering that the property factor has failed to carry out [the duties]". Therefore, the onus lies on the Appellant to set out his stall (that is, to explain the alleged breach(es) founded upon) and, by logical extension, to *prove* those alleged breach(es) to the satisfaction of the FTS.

59. The proposition that the FTS was *obliged* to accept the Appellant's submissions and evidence, merely because the Respondent failed to appear (or lead any witnesses) at the Hearing is neither correct nor arguable. The FTS correctly identified the Appellant's error in its Decision dated 3 February 2025 (at paragraph 89) where it stated:

> "The Homeowner appeared to be under the impression that if he made an allegation and the Property Factor did not answer it either by written representations or by attending the hearing, the Tribunal should find in his favour, without requiring to see any appropriate evidence or clarification."

60. Secondly, in terms of the 2017 Rules, the Respondent was not obliged to appear (or call any witnesses) in opposition to the FTS application. A respondent is perfectly entitled to submit only written representations in response to a FTS application. The 2017 Rules expressly provide that the FTS may take any such written representations into account when adjudicating upon the application.

61. Thirdly, the 2017 Rules make no express provision for the grant of a "decree in absence" against a non-appearing party, akin to the procedure followed in ordinary actions within the sheriff court or the Court of Session. On the contrary, the 2017 Rules plainly envisage that a Hearing will usually be assigned to consider the merits of the application, whether or not a respondent appears. (The 2017 Rules do allow an application to be decided on the papers, but only in defined circumstances.) If any analogy is to be drawn with sheriff court procedure, the present FTS application is more akin to a summary application, not an ordinary action. Under summary application procedure, there is likewise no express provision for the grant of a decree in absence against a non-appearing party. Instead, under

summary application procedure, the sheriff must generally be "satisfied" that it is appropriate to grant the crave of the summary application, even if it is undefended. To that end, the summary application rules confer a broad discretion on the sheriff to determine further procedure in defended and undefended processes. The 2017 Rules confer a similar broad discretion on the FTS.

62. Fourthly, the Appellant's proposition (that the FTS must find in favour of an applicant if there is no appearance by a respondent) is novel and unvouched. As a judicial body, it would be surprising if the FTS were obliged to accept a claim, submission or evidence presented to it. It is an inherent function and prerogative of the FTS, as a judicial body, to assess and adjudicate upon the quality of a claim, submission and evidence presented to it. It is novel to suggest otherwise, absent express provision to the contrary (such as the express provision for the grant of decree in absence in ordinary procedure within the sheriff court or Court of Session).

63. Of course, in certain circumstances, the usual legal onus can be inverted by express or implied provision to the contrary. But no such statutory provision exists in the present case.

64. It is also well-recognised that, in the course of an evidential inquiry, the so-called tactical or provisional or evidential onus can shift, from time to time, depending upon the strength or weakness of the evidence adduced. That is a matter of common sense. But, again, that did not happen here.

65. Instead, according to the FTS Decision dated 3 February 2025, it is evident that the greater part of the Appellant's claim failed simply because the FTS concluded that the Appellant's evidential material was poor in quality and unpersuasive.

66. It is the function and prerogative of the FTS to assess the value and weight to be attached to the evidential material before it. There is no basis to conclude that it erred in doing so.

The Appellant did not help himself by presenting an application that was rambling, repetitive, confused, and "scattergun" in approach (per para 89, FTS Decision). The Appellant also did not help himself by stubbornly failing to comply with two FTS Orders to present "a simple table" explaining which duties and Code provisions had allegedly been breached; how and when those breaches occurred; and what evidence supported his claims. His claim might have been more persuasive if he had done so.

67. In essence, the Appellant disagrees with the FTS's assessment of the value and weight to be attached to that material. By itself, that is not a meritorious ground of appeal. No legitimate basis is advanced to entitle the appellate court to interfere with the FTS's assessment of the quality of that evidence.

68. Accordingly, permission to appeal on Ground 1 is refused.

Ground 2: Erroneous characterisation of the application as "defended"

69. Second, the Appellant submits that the UTS erred in law by erroneously characterising the application as "defended" when it was, in fact, "undefended". In doing so, the Appellant submits that the FTS and UTS wrongly distinguished *Woro v Brown* 2022 SLT (Tr) 97, and thereby wrongly embarked upon a scrutiny of the evidential merits of the Appellant's claim. The Appellant submits that this imposed an unfair procedural burden upon him. The application, being properly characterised as "undefended", the Appellant submits that the FTS should simply have found in his favour ("Ground 2").

70. Ground 2 also echoes the dominant and recurring theme of the Appellant's submission before the FTS and the UTS that, since the Respondent had chosen not to appear or be represented at the Hearing, the FTS should simply have accepted the Appellant's claim in its entirety and should have found the alleged breaches of the Code to be established without further ado.

71. In my judgment, Ground 2 is not arguable for the following reasons.

72. Firstly, again, the underlying error in the Appellant's Ground 2 is the proposition that the FTS was obliged to accept the Appellant's claim, submissions and evidence, merely because the Respondent failed to appear (or lead any witnesses) at the Hearing. That proposition is neither correct nor arguable for the reasons set out in relation to Ground 1 above.

73. Secondly, the high-water mark for the Appellant's proposition is the UTS decision in *Woro v Brown, supra.* However, *Woro* is clearly to be distinguished from the present case. In contrast with *Woro*, the Respondent in this case had indeed, at the outset, submitted timeous written representations in opposition to the application, the content of which was tolerably sufficient to engage with and oppose ("defend") the Appellant's application. Indeed, in response to a subsequent FTS Direction, the Respondent timeously lodged a further written reply, again tolerably sufficient in content to constitute "representations" on that Direction also.

74. (By way of clarification, when I had previously granted the Appellant leave to appeal from the FTS to the UTS by decision dated 7 August 2025, I had erroneously understood that the Respondent had not lodged *any* written representations to the application: see paragraph 3, UTS Decision dated 7 August 2025). In fact, written representations dated 13 May 2024 were timeously lodged by the Respondent.)

75. Therefore, the low threshold for engagement, sufficient to render the proceedings "defended" in the *Woro* sense, was easily crossed by the Respondent in the present case, in light of the timeous lodging of its written representations on 13 May 2024. It is unarguable that the proceedings were "defended", even in the *Woro* sense. Therefore, *Woro* provides no assistance to the Appellant.

76. Thirdly, in any event, *esto* the present application were to be characterised as "undefended", in my judgment Ground 2 is still unarguable because the FTS was plainly not thereby *obliged* to find in favour of the Appellant.

77. As explained in relation to Ground 1 above, there is no provision in the 2017 Rules for the automatic grant of a "decree in absence" against a respondent who fails to engage in FTS proceedings. That peculiarity of sheriff court and Court of Session procedure (in ordinary actions) does not apply to FTS proceedings. Instead, the procedure to be followed in the FTS is regulated by the 2017 Rules (and, if anything, is more akin to summary application procedure in the sheriff court). That procedure is essentially *discretionary*. The FTS has a wide discretion as to how it shall conduct the case (2017 Rules, paragraph 16A). It has a wide discretion to make "such inquiries" as it thinks fit (2017 Rules, paragraph 20). Those "inquiries" may include "consideration of any written representations made in good time" by or on behalf of the parties (2017 Rules, paragraph 20(3)). The 2017 Rules also envisage that a Hearing (to be held in public) will indeed usually be convened in most cases (paragraph 24, 2017 Rules).

78. In the present case, the FTS properly exercised its (wide) discretion as to the procedure to be followed to determine the merits of this (opposed) FTS application. No error is discernible in its decision to convene a Hearing, or to consider and assess the merits of the whole material before it (including the Appellant's evidence and submissions, and the "written representations" of the Respondent). In its discretion, it was perfectly entitled to follow that procedure.

79. Accordingly, permission to appeal on Ground 2 is refused.

Ground 3: Alleged failure properly to apply the Section 14 duty

80. Third, the Appellant submits that the FTS and UTS erred in law by incorrectly referring to a "minor" breach of paragraph 1.5A of the Code, thereby minimising its significance. The Appellant submits that section 14 of the 2011 Act draws no distinction between "minor" and "major" breaches ("Ground 3").

81. In my judgment, Ground 3 is not arguable.

82. Firstly, read in context, the use of the impugned adjective is of no practical consequence whatsoever. The Appellant was successful before the FTS in establishing a breach by the Respondent of paragraph 1.5A of the Code. Whether that breach is described as "minor" had no impact upon the other conclusions (of the FTS or UTS), because the other (unsuccessful) grounds were not dismissed by reason of their immateriality. Instead, they were dismissed by reason of their lack of legal and factual merit. The Appellant advances a "non-point". Secondly, it is objectively correct to describe the Appellant's established breach as "minor" in the context of the Appellant's other more voluminous and evidently more serious (but unsuccessful) allegations.

83. Accordingly, permission to appeal on Ground 3 is refused.

Ground 4: Alleged misunderstanding of Tribunal's role & powers

84. Fourth, the Appellant submits that the FTS and UTS erred in law by misunderstanding the role and powers of the FTS. Specifically, the Appellant submits that the FTS and UTS erred (i) in characterising FTS proceedings as "wholly adversarial", thereby allegedly denying any obligation to investigate compliance; (ii) by "believing" that a factor has to right to choose not to attend an FTS Hearing and by "allowing" the factor not to attend; (iii) by the FTS refusing to exercise its "inquisitorial" powers to compel the attendance of witnesses

for the Respondent and to compel the production of documents; and (iv) by failing to hold the FTS or UTS Hearings "in public" ("Ground 4").

85. In my judgment, Ground 4 is not arguable.

86. First, the FTS proceedings are, unquestionably, adversarial in nature. The fact that the FTS has certain powers that may allow it to make inquiries does not negate the essential truth that the proceedings are adversarial.

87. Second, the Respondent is, unquestionably, not obliged to attend (or be represented) at the FTS Hearing. That is a decision (and risk) for the Respondent to take as it sees fit. Much as the Appellant might wish the Respondent's witnesses to be in attendance personally in order to interrogate them (per his 16 proposed questions), the Respondent is at liberty not to attend, unless compelled to do so.

88. Third, the powers of the FTS to make Orders to compel the production of documents and the attendance of witnesses are entirely discretionary. Therefore, it is incumbent upon the Appellant to explain how the FTS fell into error in the exercise of that discretion. He fails to do so.

89. Fourth, the Hearings before the FTS and UTS were "in public", in the sense that they were accessible to the public on request. If any such request had been made, for the public to attend remotely or in-person, such access would have been afforded. In the event, no such request was made. Besides, neither party objected to the mode of Hearings (before the FTS and UTS). If a party had done so, the Hearings could readily have been held in another mode. The Appellant acquiesced in the mode of all Hearings. His belated objection, only now being advanced, is opportunistic and without merit.

90. For these reasons, permission to appeal on Ground 4 is refused.

Ground 5: Error in restricting grounds of appeal to UTS

91. Fifth, the Appellant submits that the UTS erred in law by restricting the permitted grounds of appeal (from the FTS to the UTS). By narrowing the appeal to a single permitted ground, the Appellant submits that the UTS misapplied the legal test for permission to appeal, thereby excluding arguable points of law from consideration ("Ground 5").

92. In my judgment, Ground 5 is not arguable as a stand-alone ground of appeal.

93. Instead, the Appellant is at liberty to open up and re-visit on appeal any alleged underlying error in law in the reasoning of the FTS, but any such error must be identified as stand-alone ground of appeal. Ground 5 does not do so.

94. However, applying a benevolent interpretation, if this Ground 5 is intended as a repetition of each of the previous (seven) proposed grounds of appeal originally presented to the UTS (when permission to appeal from the FTS was sought) (including, for example, alleged bias on the part of the FTS), this Ground 5 is not arguable for the following reasons:

    a. The first three grounds of appeal (as originally presented to the UTS in the context of the Appellant's proposed appeal to the UTS against the FTS decision) are not arguable for the reasons explained above in relation to Grounds 1 & 2;
    b. The remaining four grounds of appeal (as originally presented to the UTS in the context of the Appellant's proposed appeal to the UTS against the FTS decision) are not arguable for the reasons previously explained in the UTS decision dated 7 August 2025, the terms of which are adopted for the sake of brevity.

95. Accordingly, permission to appeal on Ground 5 is refused.

Ground 6: Alleged failure to consider all relevant facts

96. Sixth, the Appellant submits that the UTS erred in law because it "did not consider all the facts and legal issues raised by the Appellant", and that the "failure to consider all relevant facts" allowed the property factor to "break the law" ("Ground 6").

97. In my judgment, Ground 6 is not arguable.

98. In the first place, there is no adequate specification of which "relevant facts" the UTS allegedly failed to consider.

99. In the second place, it is not the role of the UTS hear evidence or adjudicate upon the facts. The UTS is only concerned with errors of law. In this Ground 6, the Appellant fails to set out an intelligible and arguable error of law.

100. Accordingly, permission to appeal on Ground 6 is refused

Ground 7: Alleged failure to apply statutory provisions

101. Seventh, the Appellant submits that the UTS erred in law because it failed to apply "relevant statutory provisions". Three instances are cited, namely: (i) that neither the FTS nor UTS "checked with the FCA" to see if "the activities" of the Respondent require FCA registration; (ii) that the Consumer Protection from Unfair Trading Regulations 2008 and "other consumer law provisions" may be breached if "misleading information" is provided to homeowners; and (iii) that the FTS and UTS failed to "seek evidence from... specialist bodies" before concluding that the Respondent had complied with the Code, specifically, that the neither the FTS or the UTS had evidence from the Financial Conduct Authority and Competition and Markets Authority that the Respondent's "actions and fees fully" complied with "all legislation" ("Ground 7").

102. In my judgment, Ground 7 is not arguable.

103. In the first place, there is a basic lack of specification and clarity as to which "statutory provisions" were allegedly not applied; which "activities" are said to require FCA registration, and why non-registration is said to be relevant to the present application; what particular "misleading information" is alleged to have been provided by the Respondent, which "consumer law provisions" were allegedly breached, and the relevance of any of the foregoing to the present application; which "actions and fees" of the Respondent are said to be non-compliant with "legislation", which legislative provisions are being referred to, and the relevance of any of the foregoing to the present application.

104. In the second place, this proposed Ground 7 again exposes certain fundamental misconceptions in the Appellant's reasoning.

105. Firstly, he is labouring under the misapprehension that FTS proceedings are inquisitorial in nature. They are not. They are adversarial. It is for the parties to set out their respective claims and to bring evidence to the FTS in support of those claims. It is then for the FTS to adjudicate upon that competing evidence and those competing claims. While it is correct that the FTS has certain discretionary powers to make inquiries (including to order production of documents or compel the attendance of witnesses), the mere existence of those powers does not alter the fundamental adversarial nature of the proceedings. Contrary to the implication of the Appellant's assertions, the FTS is not conducting a public inquiry. Instead, it is merely conducting, in public, an adversarial hearing of private law rights. The two concepts are different.

106. Therefore, no error of law arises by virtue merely of the FTS choosing not to "check" with (or choosing not to "make enquiries" of) a third party statutory body (such as the FCA or CMA) on a matter that might have arisen in the FTS proceedings.

107. The pertinent question is whether the FTS, in so acting (or omitting to act), has exercised its discretionary powers erroneously. No such erroneous exercise of discretion is made out by the Appellant in this Ground 7. The Appellant relies only upon the bare fact that no such enquiry was made. Such an omission, in itself, does not constitute an erroneous exercise of discretion, without further explanation.

108. Secondly, the Appellant is labouring under the misapprehension that the FTS has jurisdiction to adjudicate upon *inter alia* (i) "breaches of Financial Conduct Authority (FCA) rules", or (ii) "breaches of consumer law", or (iii) "breaches of [the] Consumer Protection from Unfair Trading Regulations. It does not. It is for other regulatory bodies to investigate, enforce, and, where appropriate, sanction any such breaches. The FTS is not a universal regulatory or investigative body in all matters of legal compliance.

109. Accordingly, permission to appeal on Ground 7 is refused.

Ground 8: Alleged failure to investigate ultra vires conduct

110. Eighth, the Appellant submits that the UTS erred in law by failing to seek "evidence" from the FCA and CMA before ruling on whether the Respondent's fees and practices complied with the Code. The Appellant characterises this failure as a failure to make enquiries into whether the Respondent was acting *ultra vires* ("Ground 8").

111. In my judgment, Ground 8 is not arguable.

112. I repeat the reasoning set out above in relation to Ground 7.

113. Accordingly, permission to appeal on Ground 8 is refused.

Ground 9: Alleged failure to address fraud or misrepresentation

114. Ninth, the Appellant submits that the FTS erred in law by failing to "investigate or sanction" fraud or misrepresentation by the Respondent and the provision by the Respondent of "false information" to the FTS. The "false information" is said to be "in relation to" a litany of matters, including "intimidation", "change to management fees", "fake social media posts" and "blocking emails" ("Ground 9").

115. In my judgment, Ground 9 discloses no arguable error of law.

116. In the first place, again, there is a basic lack of specification and clarity as to what "false information" is said to have been provided. Since the Appellant is alleging fraud on the part of the Respondent, it is incumbent upon the Appellant to be specific and clear in his allegations. He fails in that enhanced duty.

117. In the second place, in any event, insofar as they are understandable, the Appellant's allegations of "false information" or "fraud" or "misrepresentation" appear to be founded solely upon the failure of the FTS to accept the Appellant's assertions, allegations or evidence. In other words, the Appellant asserts that information from the Respondent was "false" merely because the Appellant disagrees with it (and because the FTS did not accept the Appellant's allegations or evidence to the contrary).

118. In essence, the Appellant disagrees with the FTS's assessment of the value and weight to be attached to the Appellant's allegations and evidence. By itself, that is not a meritorious ground of appeal. No legitimate basis is advanced to entitle the appellate court to interfere with the FTS's assessment of the quality of that evidence. It is not the function of the appellate court to revisit the fact-finding of the FTS, absent a discernible error in law.

119. Accordingly, permission to appeal on Ground 9 is refused.

Ground 10: Denial of a fair procedure

120. Tenth, the Appellant submits that the FTS erred in law by denying him a "fair procedure", in respect that it accepted "false evidence" and ignored "statutory breaches" ("Ground 10").

121. In my judgment, Ground 10 discloses no arguable error of law.

122. In the first place, again, there is a basic lack of specification and clarity as to what "false evidence" was allegedly accepted by the FTS or which "statutory breaches" were allegedly ignored.

123. In the second place, insofar as Ground 10 is predicated upon the same "false information" as is relied upon in Ground 9, the Appellant's proposed ground of appeal amounts to no more than a complaint that the FTS did not accept the Appellant's evidence. No legitimate basis is advanced to entitle the appellate court to interfere with the FTS's assessment of the quality of that evidence. It is not the function of the appellate court to revisit the fact-finding of the FTS, absent a discernible error in law.

124. Accordingly, permission to appeal on Ground 10 is refused.

Ground 11: Incorrect assumption regarding factor's authority to act

125. Eleventh, the Appellant submits that the FTS erred in law by making an "incorrect assumption" about the basis of the Respondent's authority to act (specifically, with no evidential foundation, by concluding that such authority derived from custom and practice). The Appellant submits that there was no evidence before the FTS that the Respondent had any legal authority to act as factor; that the FTS failed to consider that the Respondent may have had no authority at all; and that the Respondent misled both the Appellant and the FTS by falsely claiming such authority ("Ground 11").

126. In my judgment, Ground 11 is not arguable.

127. To explain, before the FTS, the Appellant challenged the provenance of the Respondent's authority to act, as recorded in the Respondent's written statement of services ("WSS") (see FTS Decision dated 3 February 2025, paragraph 56).

128. The WSS (paragraph 2.1) stated that the Respondent obtained its authority to act from "custom and practice". The Appellant disagreed. He submitted that the WSS was incorrect because the Respondent had been appointed by Clause ELEVENTH of the title deed.

129. Ultimately, the FTS agreed with the Appellant that the WSS was indeed incorrect: the source of the Respondent's authority to act was not "custom and practice" (see FTS Decision dated 3 February 2025, paragraph 82).

130. Instead, the FTS concluded that the true source of the Respondent's authority to act was the Deed of Conditions registered on 9 August 2000 (see document CF192), as applied to the development of which the Appellant's property formed part by Clause ELEVENTH of the title deed. The FTS also concluded that the Respondent was appointed as the first factor in terms of that Deed of Conditions and that the Respondent had subsequently issued a WSS to the Appellant in 2015.

131. Therefore, the Ground 11 is misconceived. It is predicated upon a misunderstanding of the FTS decision.

132. Contrary to Ground 11 as drafted, the FTS did not conclude that the Respondent's authority derived from custom and practice at all. On the contrary, the FTS expressly decided that the factor's authority did not derive from custom and practice; instead, it derived from the Deed of Conditions.

133. However, the Appellant advanced a further submission before the FTS, namely that the Respondent had no legal authority to act *whatsoever*, and that therefore all of the Respondent's fees should be refunded to the Appellant (see FTS Decision, *supra*, paragraph 83).

134. The FTS rejected that further submission. There was a clear evidential basis for the rejection of that further submission (namely, the Deed of Conditions, the title deed, and the WSS issued in 2015). No error is discernible in the assessment of that evidence by the FTS.

135. For these reasons, permission to appeal on Ground 11 is refused.

Ground 12: Breach of Article 6, ECHR

136. Twelfth, the Appellant submits that "the cumulative effect of these errors amounts to a breach of Article 6 of the European Convention on Human Rights" ("Ground 12").

137. In my judgment, Ground 12 discloses no arguable error of law.

138. Since all of the preceding alleged "errors" are themselves not arguable, it follows that they can have no "cumulative effect" to breach Article 6, ECHR.

139. Accordingly, permission to appeal on Ground 12 is refused.

The second stage test

140. The Appellant submits that the appeal passes the second stage of the statutory legal test (under sections 50(3) & (4) of the 2014 Act) because it raises important points of principle regarding (i) the allocation of burdens of proof under the Property Factors (Scotland) Act 2011; (ii) the proper role of tribunals in "consumer-protection contexts"; (iii) the scope of tribunal discretion to restrict grounds of appeal; (iv) the proper test for permission to

appeal; (v) the fundamental requirement for property factors to prove authority to act; and (vi) the right to a fair trial under Article 6, ECHR.

141. Since none of the Appellant's proposed Grounds of Appeal discloses an arguable error of law, I need not consider whether the second stage is satisfied.

142. However, *esto* Grounds 1 or 2 were arguable (which is refuted), I would have concluded that those two issues may constitute important points of principle, in terms of section 50 of the 2014 Act, namely: (a) where the onus of proof lies in FTS applications under the 2011 Act, and (b) how such applications should be treated procedurally by the FTS, if they are assessed as being "undefended" (that is, not opposed) by a respondent. Those two issues apart, I would have concluded that no important point of principle arises in respect of any of the Appellant's proposed grounds, and that there is no other compelling reason to allow the appeal to proceed.

143. In the event, however, no arguable error of law is disclosed in any of the Appellant's proposed grounds of appeal, so this second stage of the legal test is not reached.

Decision

144. For the foregoing reasons the Appellant has failed to satisfy me that any of his proposed grounds of appeal discloses an arguable error of law.

145. Accordingly, permission to appeal to the Court of Session is refused.

Sheriff S. Reid
Member of the Upper Tribunal for Scotland

GLASGOW, 17th December 2025

NOTE:

Notification in terms of Regulation 33(3)(b) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016

A party 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 Court of Session within 42 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.