



DECISION OF

Sheriff Craig

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

Mr Joe Di Rollo

Appellant

- and -

Charles White Limited

Respondent

FTS Case Reference: FTS/HPC/PF/24/4245

20 October 2025

Decision

The Upper Tribunal refuses the appellant permission to appeal to the Inner House of the Court of Session.

The appellant's request for review is refused.

Introduction

1. The appellant seeks permission to appeal the decision of the Upper Tribunal for Scotland (UTS) dated 21 August 2025. He relies on section 50(4) of the Tribunals (Scotland) Act 2014. The basis for the application is set out in the appellant's letter of 22 August 2025 where he



identifies what he says were errors in law in the decision, and argues that the case raises important points of principle and practice.

2. The application is opposed by the respondent.
3. Separately, by email dated 2 October 2025 the appellant sought a review of the decision of 21 August 2025 in terms of section 43 of the 2014 Act. He suggested that a review would be “the simplest way forward” avoiding the need for the matter to proceed as an appeal.
4. As both applications involve the same issues, in the interests of efficiency and proportionality and to avoid unnecessary duplication, this decision addresses each application.

Background

5. In 2024 the appellant made two separate applications to the First-tier Tribunal for Scotland Housing and Property Chamber (“FTS”) against the respondent, the factor appointed to manage the estate where the appellant owns a property. Both applications were refused, albeit that they were heard together for convenience.
6. In claim FTS/HPC/PF/24/1410 the appellant alleged the respondent failed to comply with the Code of Conduct for Property Factors 2012 and with its Property Factor Duties. It concerned allegations about tree surveys, the maintenance of common ground, a dispute about a sycamore tree and the terms and interpretation of the estate’s Deed of Conditions.
7. The other claim - FTS/HPC/PF/24/4245 – involved allegations of breaches of a different Code – the Code of Conduct for Property Factors 2021. That Code requires, amongst other matters, that a factor comply with data protection legislation and have a clear procedure for debt recovery which it applies properly and consistently. The appellant claimed breaches of those parts of the Code.
8. That claim involved a dispute about a sum of money the respondent sought to recover from the appellant. He complained that the respondent had referred to him as a “debtor” in correspondence with the estate’s Owner’s Association (which he said was a data protection breach) and that by imposing penalties and instructing debt collectors had increased the sum due. That had, essentially, put him in a bad light with his neighbours (at the appeal he referred to them, presumably metaphorically, “coming after him with pitchforks”). These were breaches of the Code, he claimed, when the respondent knew he would pay.
9. In application 1410 the FTS found, as fact, that the respondent had acted in line with the Deed of Conditions which, it found, gave it wide and unfettered authority on issues of maintenance.



10. In application 4245 the FTS found, as fact, it was not the respondent that had identified the appellant as the person who had not paid but that he had done so himself. It also found that the sum in dispute was an individual debt, not a debt of the Owner's Association and that, by the time of the hearing, it had been paid by the appellant. The FTS found that the respondent had not breached the Code in the matters complained about by the appellant.
11. The appellant appealed the decision in claim 4245, but not in claim 1410. The UTS refused the appeal, finding that the appellant had not identified any error in law by the FTS but instead sought to present new arguments. In brief, at the appeal hearing the appellant submitted he was not bound by a term of the Deed of Conditions that required him to make any payment to the respondent. Any such term was, he said, *ultra vires*, unenforceable, void and a breach of contract law. The appellant asked the UTS to make findings to that effect.
12. The UTS found that as that was not the claim presented to and considered by the FTS, it had not erred in law in determining the claim made. The full reasoning is set out in the decision of 21 August 2025.

Permission to appeal application

13. The appellant now seeks permission to appeal to the Court of Session. Such applications are regulated by sections 48 of the Tribunals (Scotland) Act 2014. That provides that an appeal is confined to an error of law only and that permission can only be granted if the UTS is satisfied there are arguable grounds for the appeal.
14. Those provisions are, in turn, subject to section 50. That provides that permission may not be given unless the UTS is also satisfied that a second appeal (as this would be) would raise an important point of principle or practice or, alternatively, where there is some other compelling reason for allowing it to proceed.
15. The underlying policy of the legislation is to restrict second appeals to narrow categories of cases. Accordingly, for permission to be granted the appellant requires to identify an error of law, satisfy the UTS there are arguable grounds of appeal and identify that the second appeal would raise an important point of principle or practice. The appellant does not rely on that alternative ground of some other compelling reason.
16. In essence, the first task for the UTS is to ascertain, with reference to the material submitted, whether the appellant has identified an error of law which would give a ground of appeal capable of being argued. Even where one is identified that alone is insufficient as the UTS must also be satisfied there is an important point of principle or practice that extends beyond the specific and limited interest of the appellant (*Eba v Advocate General for Scotland* [2011] UKSC 29).



17. In the application for permission to appeal, and in his email in response to the respondent's position, the appellant submits that the UTS erred in law. He submits it has "mischaracterised" his case; his position was he was not bound by any "unauthorised" term of the Deed of Conditions. He had not made new arguments before the UTS; at the FTS he had challenged the respondent's authority to impose penalties and spread them amongst proprietors. The UTS had erred by accepting the FTS's factual finding about the "disputed sums" without considering the underlying right of the respondent, whether contractual or legal, to "spread" these.
18. There was, he said, an important principle for property law and factor practice in Scotland. That was whether a property factor could lawfully impose penalties for late payment and then spread such penalties across other proprietors, without express authority in the Deed of Conditions.
19. The respondent argues that no error of law has been identified by the appellant and that permission should be refused.
20. Having considered all the points made, the UTS is not satisfied that an error of law has been identified.
21. The UTS decided that the case the appellant sought to make on appeal – that certain provisions of the Deed of Conditions were ultra vires, unenforceable and void and that the UTS should make a finding to that effect – was different to the claim made to the FTS. There can be no error of law by the FTS if a different case is presented on appeal; it has not decided that new case.
22. The UTS's records the arguments the appellant made at the appeal hearing; they were not as he suggests in his letter of 22 August 2025. The appellant now appears to argue that his position was that he only objected to certain terms of the Deed of Conditions. At best that might be regarded as a further refinement of the argument made at the appeal hearing. However the UTS is not persuaded that even if that was the appellant's argument (and, for clarity, it does not) it would amount to an arguable error of law on the part of the UTS. On either articulation it was not the case presented to the FTS.
23. It is clear from the findings of the FTS, read as a whole, that in case 4245 the appellant's claim about the payment was one alleging breach of a specific part of a Code of Conduct. Whatever the appellant might now say, it was not, and could not have been, a wholesale attack on the competency or enforceability of a deed recorded in the Register of Sasines. There may be a forum for such a dispute but the jurisdiction of the FTS in such a claim (section 17 Property Factors (Scotland) Act 2011) is confined to considering whether the



respondent, as factor, carried out its duties and complied with the Code. The FTS decided that it had.

24. The 2021 Code is designed to set out minimum standards of practice for factors and to encourage transparency in the way they conduct business. The FTS's jurisdiction is confined to considering whether a factor has met those standards. As a creature of statute it cannot have jurisdiction beyond that remit. What the appellant sought to argue, both to the UTS and in his application for permission to appeal, would involve the FTS going beyond that, which it cannot do. Section 17 does not give it jurisdiction to determine issues of vires or the contractual enforceability of registered deeds.
25. It is unsurprising that the FTS refer to the Deed of Conditions in the part of the decision considering claim 4245 given the number and variety of disputes raised by the appellant over time. It does not follow that it was deciding the arguments the appellant now makes. However, it is important to note that the FTS found, as fact, that the Deed was not relevant to the issue of the disputed payment. The appellant's letter of 22 August 2025 accepts that finding but criticises the UTS for not looking beyond it at what he described as "the underlying obligation".
26. The quintessential role of a first instance tribunal is to make findings in fact. The FTS did that. An appellate court can only revisit such findings where perversity is established. That was not argued before the UTS and the appellant is clear that he accepts the finding. That must be the end of the matter and there is no basis for the UTS to go further.
27. Drawing this together, the UTS is satisfied that the appellant has not identified an error of law and therefore there is no arguable ground of appeal. The UTS is also satisfied that no important point of principle or practice arises. While the appellant is in dispute with the respondent it is clear from the arguments he now makes that the dispute is about particular terms in a specific deed rather than on any wider point of principle.
28. The application for permission to appeal to the Court of Session is refused.
29. The appellant had also sought a review of the UTS decision. That is advanced on the basis that his arguments are well made and a review would short circuit the procedure. That application is also refused as the UTS is not persuaded that the appellant's arguments are well made. In any event, such an application should have been made within 14 days of the issuing of the decision (Upper Tribunal for Scotland Rules of Procedure 2016 schedule 1, rule 30). The application was submitted on 2 October 2025 and is out of time.



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.