



DECISION OF

Sheriff Craig

**ON AN APPEAL
IN THE CASE OF**

Mr Joe Di Rollo

Appellant

- and -

Charles White Limited

Respondent

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

21 August 2025

Decision

The appeal is REFUSED.

Introduction

1. This appeal concerns a claim by the appellant against the respondent, a firm of property factors. There were two claims, but only one (#4245) was appealed.
2. The respondent manages a housing development, Kings Manor, in Edinburgh, having been appointed in terms of a Deed of Conditions granted in 1995 when the development was first built. That was registered in the General Register of Sasines. The Deed of Conditions regulates a number of matters including obligations on the development's proprietors, the establishment of an Owners' Association and delegation of certain rights and powers to the



factor appointed under the Deed. Those powers can include a factor acting on behalf of the Owners' Association to recover money due to the Association.

3. The appellant owns a property at 20 King Malcolm Close, Edinburgh, EH10 7JB. That is part of the Kings Manor development and so the appellant and respondent have a relationship of proprietor and factor.
4. As factor, the respondent is subject to various obligations and duties which, if breached, can be brought before the First-tier Tribunal for Scotland Housing and Property Chamber ("FTS") for determination.
5. Over time there have been various disputes between the appellant and respondent about a number matters including tree management within the development and how much the appellant, as a proprietor, should pay, either as factor's fees or to the Owners' Association.
6. In March 2024 the appellant applied to the FTS arguing the respondent had failed to comply with the Code of Conduct for Property Factors 2012 and with its Property Factor Duties. That application was given reference number FTS/HPC/PF/24/1410.
7. Separately, in September 2024 and following a Case Management Discussion in claim 1410, the appellant lodged a second application. In that he claimed the respondent was in breach of a different Code – Code of Conduct for Property Factors 2021. Specifically he claimed it had breached Section 2.2 (Communications and Consultation) and Sections 4.4 and 4.9 (Debt Recovery) of that Code.
8. The new application was given reference number FTS/HPC/PF/24/4245.
9. Both applications were heard by the FTS and both were refused. The appellant appealed the decision in application number 4245 only (his emails of 4 March and 12 May 2025).
10. Although there were two separate claims which involved different and separate jurisdictions, for convenience the FTS heard those together at a single hearing and issued a single decision. It made forty-five findings of fact and dismissed both applications.
11. Application number 1410 had involved, amongst other matters, the appellant's allegations about tree surveys, the maintenance of common ground, a sycamore tree and the terms and interpretation of the Deed of Conditions.
12. The FTS found the respondent had acted in line with the Deed of Conditions which, it decided, gave it a wide and unfettered authority on issues of maintenance.



13. Read short, application number 4245 concerned the appellant's objection to the way the respondent referred to in correspondence with the Owners' Association about a sum of money which was outstanding. He said it had breached data protection obligations when it disclosed that he owed them money. The appellant claimed they should not have referred to him as a "debtor" but should, instead, have made it clear that, from his perspective, he was someone refusing to pay because he disputed liability.
14. The FTS made a finding in fact that it was the appellant who had identified himself to his co-owners as the person who had not paid.
15. In the other limb of that application the appellant complained about the respondent's debt recovery procedures. Had they been consistently and reasonably applied or had the respondent "deliberately inflated" what was due? Was it entitled to divide up what he was due and share that out among his neighbours?
16. The FTS noted that whatever had been due, it had been paid by the time of the hearing.
17. The FTS rejected the appellant's arguments and found there had been no breaches of Sections 2.2, 4.4 or 4.9 of the Code.

Leave to appeal

18. The appellant sought leave to appeal from the FTS in relation to both applications. Leave was granted although in the event he only proceeded with the appeal in 4245.
19. Leave is a prerequisite of an appeal to the Upper Tribunal. Either the FTS grants leave or, if refused, the Upper Tribunal can be asked to consider the matter. Either way, an appeal can only be on a point of law, in the sense of an identified error of law on the part of the FTS (section 46 of the Tribunals (Scotland) Act 2014 (the "2014 Act")).
20. In this appeal it was not clear to the Upper Tribunal why and on what basis leave was granted. Although not wishing to be unduly critical of the FTS, it is difficult to follow its decision in granting leave. It appears the FTS took, at face value, the appellant's assertions that it had made errors of law without properly analysing or interrogating those assertions. By way of example, simply accepting the appellant's criticism that there had been "procedural and legal error regarding the Property Factor's imposition of penalties, which were *ultra vires*" without asking the obvious question – in what way – is of no assistance to the Upper Tribunal in understanding what issue it is being asked to consider.
21. Just to expand on that, if a question of *vires* (in other words, power or authority) had properly been before the FTS that ought to have been referred to in its decision, but it was not. Such a point would engage a number of obvious legal arguments – not least being a



question of jurisdiction and whether the FTS would have the power to declare void a condition within a deed recorded in the Sasine register.

22. Similarly, the FTS appear simply to have accepted the appellant's assertion that there were "breaches of privacy and misleading communication that resulted in harm to me as a householder" as a "point of law" without any consideration of the basis for the assertion.
23. The FTS decision to grant leave on that point was not explained. It had found, as fact, that it was the appellant, not the respondent, who identified himself as the person in dispute about money. The FTS's function was to make findings of fact, and it did that. It is not the role of the Upper Tribunal to look behind those finding except where the finding itself was an error of law.
24. However the FTS did not appear to ask what miscommunication there was by the respondent that "resulted in harm" to the appellant in such a way that it led the FTS to err in law in its decision. The FTS had found there were no breaches of the part of the Code that related to data protection so it is entirely unclear why it would then accept – apparently without question - that a point of law had been raised.
25. It is unsatisfactory that the matter should come before the Upper Tribunal with no proper attempt to focus the issue it was being asked to consider. There was no proper consideration by the FTS of where it may have erred in law and no analysis of the points made by the appellant. It is not enough for him to assert that there were errors of law; it is the FTS's function to analyse and consider the points made before granting leave.
26. The Upper Tribunal was only considering the appeal in claim number 4245. Those claims were narrow in scope (dealing with procedural rather than substantive issues) and turned on the FTS's findings in fact. There was no clarity about what error of law was said to have occurred.

The appeal hearing

27. Both parties appeared at the appeal hearing and were unrepresented. As neither were responsible for the lack of clarity for the basis of the appeal, in the interests of fairness and to allow the hearing to make progress, I asked the appellant to identify the error of law relied on in relation to claim 4245.
28. None was identified. The appellant said there was a factual error. He did not accept he had "outed" himself as owing money, and only did that when his neighbours came after him with "pitchforks" because they had learned he was responsible for their having to pay an additional sum. He agreed he had paid some of what was due and that the rest was written



off by the respondent. Beyond that, he accepted that the respondent did have a debt recovery procedure.

29. It became clear however that the key issue for the appellant was his assertion that he was not bound by any term of the Deed of Conditions requiring him to make payment to the respondent. Any such term was, he said, *ultra vires*, unenforceable and void; it was a breach of scots contract law and the Upper Tribunal should make a finding to that effect.
30. However, that is a new argument and not one made before the FTS. The Upper Tribunal cannot therefore consider whether there was error on its part because it has not decided the point. It is a fresh ground of challenge and that is not permitted.
31. Moreover, as the appellant was focused on the issue of liability to the respondent under the Deed of Conditions that could only relate to claim 1210. The Upper Tribunal noted that the FTS had found, as a fact, that the disputed payments (which had in any event largely been paid by the appellant) were not factor's fees but instead sums due to the Owner's Association. Had there been an issue about the appellant's liability to the respondent as factor that could only arise in claim 1210.

Conclusion

1. The Upper Tribunal cannot hear arguments not made to the tribunal below.
2. The appellant could not identify any error in law made by the FTS in claim 4245.
3. The issue of enforceability of an obligation arising from a Sasine recorded deed does not fall within the jurisdiction of the Upper Tribunal in an appeal such as this.
4. It was clear the appellant had an ongoing and longstanding dispute with the respondents. However, in as far as this appeal is concerned, no errors of law were identified and so the appeal must be refused.

Post script

5. As a post script, much of this could have been avoided if the FTS had taken time to consider, properly, the application for leave to appeal. The FTS knows what matters were argued before it; it knows what turned on the facts and what those facts were; it knows if there were legal arguments made and how and in what way it decided them. It is not the function of the Upper Tribunal to act as gatekeeper of appeals in the first instance; that falls, quite properly, to the tribunal. It is hoped that, going forward, first tier tribunals take these observations on board.

Upper Tribunal for Scotland



*A party to this case who is aggrieved by this decision 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 Upper Tribunal within **30 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.*

Sheriff Craig
Member of the Upper Tribunal for Scotland