



DECISION OF

Sheriff P. Di Emidio

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

Mr Stuart Massie

Appellant

- and -

James Gibb Property Management

Respondent

FTS Case Reference: FTS/HPC/PF/24/2666

8 July 2026

Decision

1. The Tribunal refuses the appellant permission to appeal for want of insistence in respect of the decision of the First-tier Tribunal for Scotland dated 14 October 2025 that the respondent was not in breach of paragraphs 3.5, 3.6, 3.8, 4.5, 4.11, 6.4 and 6.6 of the Property Factor Code of Conduct of 2021.
2. The Tribunal refuses the appellant permission to appeal in respect of the decision of the First-tier Tribunal for Scotland dated 14 October 2025 that the respondent was not in



breach of paragraphs 2.1, 3.1, 3.2, 4.1, 4.4, 6.1 and 7.1 of the Property Factor Code of Conduct of 2021.

3. The Tribunal Grants the appellant permission to appeal in respect of the decision of the First-tier Tribunal for Scotland dated 14 October 2025 in so far as it determined that the respondent was not in breach of paragraphs 4.3 and 7.2 of the Property Factor Code of Conduct of 2021.

Reasons for Decision

Introduction

[1] The appellant made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“FTS”) in which he alleged a number of breaches of the 2021 Property Factor Code of Conduct (“the Code”). On 14th October 2025, the FTS upheld two of the grounds of complaint brought by the appellant. His other claims were all rejected. The FTS made an award of compensation by way of a Property Factor Enforcement Order against the respondent property factors.

[2] On 14th of January 2026, FTS refused the appellant permission to appeal in respect of his rejected complaints. The appellant now seeks permission to appeal from this tribunal. He has set out six short grounds of appeal in his application. A hearing on his application for permission to appeal was fixed because the written application did not relate his written grounds of appeal to any specific part of the decision of the FTS. The purpose of the hearing was to seek clarification of which conclusions he wished to appeal and the grounds for permission. The appellant explained the underlying rationale of his proposed grounds of appeal at the hearing.

[3] The appellant made complaints under many provisions of the Code, but it is important to note that the underlying trigger for the appellant's complaint was a late demand for payment by the respondent property factor a considerable time after the appellant had sold the property. The



respondent made certain written submissions to the FTS but otherwise did not take part in the proceedings there.

[4] In determining this application, I require to decide whether it is arguable that the FTS erred in law having regard to the terms of section 46 of the Tribunals (Scotland) Act 2014. The decision to grant permission on two matters does not imply any concluded view has been reached on either of them.

[5] The appellant confirmed that he did not seek permission in respect of certain of the grounds of complaint which the FTS rejected, as is explained more fully below. His concerns about the decision of the FTS can be classified under several headings. He complained that the FTS:

- a. did not make sufficient findings in fact;
- b. failed to give due account to the evidence he presented; and
- c. the respondent failed to provide a proper explanation of its findings so that the FTS was led to conclusions that involved illegitimate speculation as to what had been done.

[6] For the reasons set out below the appellant is to a degree well founded when he submits that the FTS did not make sufficient findings in fact. However, it was for the FTS to assess the evidence for itself and reach conclusions on it as the primary fact finder in these proceedings. An appeal is not an opportunity to re-run the arguments in front of another judge. Put broadly, except where it has gone so far wrong that it has erred in law, such as by reaching a perverse conclusion or one for which there was no evidence, it is not for this Tribunal to interfere.

[7] The appellant also complained that some of the language used by the FTS was an expression of opinion rather than of decision. In particular, he drew attention to passages where the FTS stated that it was "not persuaded" as to certain matters, for instance at paragraph 25. As regards this matter, I had the impression that the appellant had misunderstood some passages of the FTS's decision. When the FTS stated that it is "not persuaded" of certain matters, I interpreted



that to mean that it has decided to opposite effect. Simpler and blunter use of language and avoidance of euphemism and double negatives in the FTS's decision might have avoided some confusion. Despite these comments as to use of language, I do not agree with the overall submission. The FTS clearly decided the matters in dispute before it.

[8] The FTS noted that the respondent had accepted as a matter of fact that some of its communication with the appellant had fallen short of the service level that a homeowner was entitled to expect. It apologised for those shortcomings but, as the FTS noted in paragraph 17, it made no concessions that it had breached any sections of the Code. The result was that the FTS had to consider all the sections of the Code put in issue before it by the appellant and make decisions on them.

[9] The FTS found in fact that the respondent delayed in issuing an invoice for work apparently carried out on 22 November 2022 until 21 May 2024 and gave no explanation for the delay. The appellant had ceased to own the property on 20 January 2023. The demand for payment was not received until some 18 months after date of the work and about 16 months after the appellant had sold the property factored by the respondent. The FTS concluded that the respondent had breached paragraph 2.7 of the Code by failing to respond to three emails from the appellant and paragraph 3.7 by having no good reason for failing to provide final financial information within 3 months. It might have focused matters more sharply, and saved time, if the respondent had made concessions that it had breached paragraphs 2.7 and 3.7. The FTS's conclusions were inevitable given the facts that had been admitted by the respondent.

[10] The FTS gave reasons for rejecting the complaints of breaches of paragraphs 3.5, 3.6, 3.8, 4.5, 4.11, 6.4 and 6.6 of the Code but the appellant confirmed during the hearing that he was not seeking permission to appeal these conclusions. The tribunal is grateful to him for this clarification. Therefore, permission to appeal in respect of these matters is refused as the appellant declined to seek such permission.



Live Grounds of appeal

[11] The appellant continues to seek permission to appeal in respect of alleged breaches of paragraphs 2.1, 3.1, 3.2, 4.1, 4.3, 4.4, 6.1, 7.1 and 7.2 of the Code. The remainder of this decision focuses on these matters. As the FTS grouped paragraphs 3.1 and 3.2 together, this requires consideration of eight separate complaints on which permission is sought.

Paragraph 2.1 of the Code

[12] Paragraph 2.1 deals with Communication and Consultation. The FTS dealt with this complaint at paragraph 18. The complaint was that the respondent had failed to communicate promptly and had no willingness to find resolution. The FTS discussed this complaint in a somewhat rambling and opaque way. The FTS observed that the appellant appeared to have been able to access information about the works done by the respondent. It had earlier noted (at paragraph 12) that an apology had been offered for poor communication. It is regrettable that the FTS did not make express findings relevant to the complaint. However, it is clear from its discussion that it did consider the relevant evidence, and its factual findings as to what information was available to the appellant about the works can be inferred from its reasoning. The FTS was entitled to reach the conclusion that there was no breach of paragraph 2.1. Permission to appeal on this proposed ground is refused.

Paragraphs 3.1 and 3.2 of the Code

[13] Section 3 of the Code is concerned with Financial Obligations. Paragraph 3.1 states that transparency is important in the full range of services provided by a property factor. Paragraph 3.2 sets out the overriding objectives of section 3 including the need to provide clarity and transparency. These two paragraphs are introductory to later paragraphs of Section 3 of the Code. I have already noted that the FTS found a breach of paragraph 3.7. Paragraphs 3.1 and 3.2 were dealt with together at paragraph 20 of the FTS's decision. The FTS's discussion of the complaint discloses that it concluded as a matter of fact that the appellant knew what he was being asked to pay for and how the charges had been calculated. Therefore, there was no



improper charge or a failure to provide clarity and transparency. Whilst it failed to make express findings in fact, the FTS did consider relevant evidence and reached conclusions it was entitled to reach of the facts that it found. Permission to appeal on this proposed ground is refused.

Paragraph 4.1 of the Code

[14] Paragraph 4.1 introduces Section 4 which deals with Debt Recovery. It requires property factors to make homeowners aware of the implications of late payment and to have clear procedures. The FTS dealt with this complaint at paragraph 24 of its decision. The issue was a late payment fee. The FTS concluded that the complaint was misconceived as the Written Statement of Services (“WSS”) gave notice that he could be liable for a late payment fee if he did not settle an invoice. Whilst it failed to make express findings in fact, the FTS did consider the relevant evidence and reached conclusions it was entitled to reach. Permission to appeal on this proposed ground is refused.

Paragraph 4.3 of the Code

[15] Paragraph 4.3 provides that any charges a property factor imposes must not be unreasonable or excessive and clearly identified on any relevant bill. The FTS dealt with this complaint at paragraph 25 of its decision. The FTS noted, without making formal findings, that the respondent issued letters to the appellant on 17 June 2024 and 9 July 2024 stating that a late payment fee could be added if an invoice issued on 21 May 2024 remained unpaid. The FTS was not persuaded that the late payment fee was unreasonable. It does not appear to explain why it reached this view. It is arguable that this is an error of law. Permission to appeal is granted as regards the rejection of the complaint that there was a breach of paragraph 4.3 of the Code.

Paragraph 4.4 of the Code

[16] Paragraph 4.4 requires property factors to have clear written procedures for debt recovery which should be applied consistently. The FTS dealt with this complaint at paragraph 26 of its decision. Without making formal findings in fact, the FTS noted that the WSS provided for a debt recovery process, and it found that there was no evidence that the procedure had been applied



inconsistently. This was a decision the FTS was entitled to reach on the evidence before it.

Permission to appeal on this proposed ground is refused.

Paragraph 6.1 of the Code

[17] Section 6 deals with “Carrying out Repairs and Maintenance”. Paragraph 6.1 introduces more detailed provisions and states that a property factor can help to prevent damage and deterioration by seeking to make prompt repairs to a good standard. The FTS dealt with this complaint at paragraph 29 of its decision. The appellant had submitted that this section was breached because no repairs were carried out to the downpipe. He asserted that the damp issue persists. The FTS noted the unsatisfactory nature of the evidence produced by the respondent showing a downpipe but giving no information about which downpipe it was or when the photograph was taken. There is a degree of possible speculation about the terms of an invoice that was before the FTS. There is little to guide the reader as to why the complaint was rejected as there is no assessment of the evidence led by the appellant. Having regard to the introductory terms of paragraph 6.1, summarised above, it is not arguable that the FTS erred in law when it rejected this complaint. Permission to appeal on this proposed ground is refused.

Paragraph 7.1 of the Code

[18] Paragraph 7.1 requires property factors to have a Complaints Handling Procedure and sets out certain minimum requirements. The FTS dealt with this complaint at paragraph 32 of its decision. The complaint related to the alleged lack of a complaints procedure. Though it did not make an express finding in fact, it is clear from its decision that the FTS found that the respondent did have a complaints procedure. This was a decision the FTS was entitled to reach on the evidence before it. Permission to appeal is refused on this proposed ground is refused.

Paragraph 7.2 of the Code

[19] Paragraph 7.2 provides that when a property factor’s in-house procedure is exhausted without resolving the dispute, the final decision must be conformed in writing. The FTS dealt with this complaint at paragraph 33 of its decision. The complaint was that the respondent failed



to issue a final decision on the appellant's complaint. The appellant appears to have given evidence on this matter, but the FTS concluded without apparent explanation, that there was no material before it to indicate that the complaints procedure was followed by the appellant. It is arguable that this is an error of law. Permission to appeal is granted as regards the rejection of the complaint that there was a breach of paragraph 7.2 of the Code.

Conclusion

[20] For the reasons given above permission to appeal is granted in respect of the FTS's decisions on paragraphs 4.3 and 7.2 of the Code and permission is refused on all other matters that the appellant sought to appeal.

Sheriff P. Di Emidio
Member of the Upper Tribunal for Scotland