Upper Tribunal for Scotland

[2022]UT07
Ref: UTS/AP/21/0037

DECISION OF

SHERIFF TONY KELLY

ON AN APPLICATION TO APPEAL
DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND
(HOUSING AND PROPERTY CHAMBER)

IN THE CASE OF

Mr Amer Rafique, Mrs Nosheen Rafique, c/o Pacitti Jones Legal Limited, 2-6 Havelock Street, Glasgow, G11 5JA
per Pacitti Jones Legal Limited,
2-6 Havelock St, Glasgow, G11 5JA

Appellants

- and -

Mr Ryan Morgan, Flat 1/3, 308 Clyde Street, Glasgow, G1 4NP

Respondent

FtT case reference FTS/HPC/EV/21/1664

3 March 2022

Decision

The Upper Tribunal refuses the appeal.

Background

[1] The appellants sought an eviction order against the respondent and made application to the First Tier Tribunal ("FtT"). It was said that ground 12 of schedule 3 to the Private Housing

(Tenancies) (Scotland) Act 2016 ("the 2016 Act") applied, that is that the tenant, the respondent, had been in rent arrears for three or more consecutive months. As is required by section 52 of the 2016 Act, the application to the Tribunal was accompanied by a copy of the notice to leave which had been served upon the respondent. The notice to leave was dated 30 December 2020. It provided that an application would not be submitted to the FtT for an eviction order prior to 6 July 2021 – section 54 of the 2016 Act.

[2] Upon receipt of the application, the FtT communicated with the appellants' agents highlighting a clear and obvious difficulty on the face of the notice to leave: that the tenant was not at the time of the service of the notice to leave in arrears of rent for three or more consecutive months. They were referred to the decision of *Majid* v *Gaffney* [2019] UT 59. After receiving representations, the application was accepted and a case management discussion assigned for 11 October 2021, when, after hearing parties, the FtT decided to refuse the application. Such a course is sanctioned by rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 regulations"). The FtT rejected the submissions made on the appellants' behalf calling into question the correctness of the decision in *Majid* v *Gaffney*. The FtT agreed with that decision and provided detailed reasons as to why it rejected the appellants' contentions.

[3] The FtT granted permission to appeal to the Upper Tribunal ("UT"). On 20 January 2022 a hearing in respect of the appeal was convened via Webex. The appellants were represented by Mr Taylor and the respondent, Mr Morgan, was personally present.

Appellants

[4] Mr Taylor from the outset focused his submissions upon the decision in *Majid* v *Gaffney* and why it was said to be wrongly decided. The UT held in that case that, for the notice to leave to be valid, the eviction ground relied upon had to apply at the time of the service of the notice to leave. Mr Taylor submitted that such an approach was not supported by the provisions of primary or secondary legislation. The decision focused upon section 62(1)(b) of the 2016 Act almost exclusively, overlooking the provisions of sub-section (c) of section 62(1). There was nothing in the primary legislation which said that the eviction ground required to exist at the time of the service of the notice to leave.

[5] Mr Taylor relied upon paragraph 12 of Part 3 to Schedule 3 of the 2016 Act. In particular, it was submitted that the time for ascertaining whether the eviction ground applied was set out in paragraph 12(2)(a) – "the day on which the Tribunal first considers the application for an eviction order on its merits". For Mr Taylor that was when the eviction ground fell to be tested.

[6] Mr Taylor then referred to section 62(1)(c) of the 2016 Act. It was contended that this was productive of ambiguity in that it was not made clear on the face of the provision whether the eviction ground to be relied upon before the FtT had to exist at the time of the service of the notice to leave.

[7] As to the approach to be taken to construction of the legislation, reference was made to the speech of Lord Nicholls of Birkenhead in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 A.C. 349:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context."

[8] Mr Taylor then referred to *Pepper* v *Hart* [1993] AC 593 and to a paper delivered by Lord Hodge DPSC, "*Statutory Interpretation: A Collaboration between Democratic Legislatures and the Courts?"* given to the Government Legal Service for Scotland on 10 November 2021. This set out, said Mr Taylor, three circumstances where recourse could be had to parliamentary debates -

1. The provision required to be ambiguous or obscure;
2. The comments or statements to be referred to have to be made by the Minister or promoter of the Bill; and
3. The statement relied upon must be clear and unqualified.

[9] The passages relied upon by the appellants are to be found in the deliberations of the Infrastructure and Capital Investment Committee of the Scottish Parliament on 10 February 2016 during the Stage 2 proceedings of the Bill. At column 16 Ms Burgess (Minister for Housing and Welfare) stated that:

> "Section 3 provides that the rent arrears ground is mandatory if, on reaching the Tribunal, the tenant has been in rent arrears for a continuous period of 3 months and, at any point during that time, the amount was at least one month's full rent…
>
> The Scottish Government considers that the 3 month period is sufficient and strikes the right balance…"

And at column 17:

> "I cannot support the proposal to remove the requirement for the tenant to have been in arrears for three consecutive months before he or she can be evicted, as that would impose an unreasonably low threshold of tolerance. There is no timeframe within which the three separate months need to fall, so the months in which arrears have occurred could be years apart and the arrears could long since have been paid off. Even if there was a requirement for three non-consecutive months to fall within a particular period I could not support the amendments. The

> Government's intention is that the eviction ground should apply only where there is a cumulative failure to pay all sums that the tenant is due to pay.
>
> I appreciate that Mr Johnstone might be concerned that three consecutive months could be a long time for a landlord to wait if he or she is not receiving any rent with which to pay the mortgage. That is why I have always made clear that a landlord could choose to serve notice on a tenant after one or two months. Of course the eviction ground will not be satisfied at that point, but the landlord is saying that if the eviction ground applies at the end of the notice period, he or she can go to the Tribunal without further delay."

[10] This passage was said to be "directly on point" and resolved the ambiguity that arose in the statutory provision. The tenant in receipt of the notice to leave would not labour under any misapprehension because guidance was served on him alongside the notice to leave. The language used in the forms, including the notice to leave, was required to cater for all scenarios that came before the FtT. In Mr Taylor's view the language of the form "could be improved". These infelicities did not fit particularly neatly with or compliment in full, the precise terms of primary legislation. These inconsistencies ought to be viewed as immaterial discrepancies that did not render the notice invalid.

[11] A notice to leave where non-payment of rent is founded upon, would put the tenant upon notice to deal with the issue. In the event of failing to address this issue, an application for eviction would ensue. The covering email sent to the respondent in this case asked him to make contact with a view to entering into a repayment plan.

[12] In Mr Taylor's submission the Scottish Parliament, in passing the legislation enacted as the 2016 Act, sought to balance landlords' and tenants' interests. In the event that arrears were allowed to accrue, these would be "socialised" in that the private rented sector would have to absorb the

cost of these. This may well have the effect of making letting unattractive. The appellants here were said in light of their experience to be giving thought to leaving the private rented market.

[13] Read as a whole the ambiguity could be resolved with reference to the comments of the Minister. The UT should adopted a purposive interpretation of the 2016 Act, the 2017 Regulations and the notice to leave. The appeal should be allowed.

Respondent

[14] Although personally present throughout the course of the hearing Mr Morgan, the respondent, intimated that he had no substantive submission to make.

Decision

[15] In terms of section 46 of the Tribunals (Scotland) Act 2014 a decision of the FtT may be appealed on a point of law only. *Advocate General for Scotland v Murray Group Holdings* Ltd [2015] CSIH 77; 2016 SC 201 (affirmed by UKSC in [2017] UKSC 45; 2018 SC (UKSC) 15) concerned an appeal from the Tax & Chancery Chamber of the First Tier Tribunal under section 13 of the Tribunals, Courts & Enforcement Act 2007. An appeal to the UT is available "on any point of law arising from the decision made by the First Tier Tribunal". The appeal thereafter to the Court of Session is "on any point of law arising from a decision made by the Upper Tribunal". It was in this context that the Inner House examined what was meant by "a point of law". It identified four different categories that an appeal on a point of law covers:

> "(i) General law, being the content of rules and the interpretation of statutory and other provisions;
>
> (ii) The application of law to the facts as found by the First Tier Tribunal;
>
> (iii) A finding, where there was no evidence, or was inconsistent with the evidence; and

> (iv) An error of approach by the First Tier Tribunal, illustrated by the Inner House with examples: "such as asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tax tribunal could properly reach." ([41]-[43])

[16] The appeal here proceeds in respect of the first category – that is there is an error of law on the part of the FtT concerning a point of statutory interpretation.

[17] Lord Hodge DPSC in *R. (on the application of O (a minor) v Secretary of State for the Home Department* [2022] UKSC 3; [2022] 2 WLR 343 made the following observation at [31]:

> "Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered."

[18] In endeavouring to ascertain the intention of parliament, attention is drawn to the words employed in the provision. Lord Nicholls of Birkenhead explained this in *Spath Holme Ltd*. It is worth setting out the whole passage of his observations on this point:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613: 'We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used.'"

Statutory Provisions

Section 52 of the Private Housing Tenancy (Scotland) Act 2016 provides:

> "52 Applications for eviction orders and consideration of them
>
> (1)In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
>
> (2)The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
>
> (a)subsection (3), or
>
> (b)any of sections 54 to 56 (but see subsection (4)).
>
> (3)An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
>
> (4)Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
>
> (5)The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
>
> (a)is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
>
> (b)has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

Section 54 provides:

> "54 Restriction on applying during the notice period
>
> (1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

Section 62 provides:

> "62 Meaning of notice to leave and stated eviction ground
>
> (1)References in this Part to a notice to leave are to a notice which—
>
> (a)is in writing,

(b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d)fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2)In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3)References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Paragraph 12 of Part 3 to Schedule 3 provides:

"12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit."

[19] When a landlord seeks an eviction order from the FtT he or she must submit to the FtT a copy of the notice to leave served upon the tenant – section 52(3). In terms of sub-section (5) of section 52, the FtT is precluded from considering whether an eviction ground applies "unless it is a ground which – (a) is stated in the notice to leave accompanying the landlord's application in accordance with sub-section (3)".

[20] Section 62 makes further provision for notices to leave. The notice must be in writing, specify the day upon which the landlord expects to become entitled to make application for an eviction order and state the eviction ground on which the landlord proposes to seek an eviction order.

[21] In Mr Taylor's submission, section 52(5)(a) is satisfied here because the eviction ground (ground 12) is stated in the notice to leave. Section 62 is satisfied here in that the day on which the landlord expected to be able to make application for an eviction order is specified – 6 July 2021. On one view, section 62(1)(c) is merely a repetition of the specification set out in section 52(5)(a). Aside from a statement of the eviction grounds, section 62(1)(c) provides that this also should state "the basis of which the landlord proposes to seek an eviction order".

[22] The form of notice to leave served upon the respondent, Mr Morgan, illustrates the points for and against the construction pressed by Mr Taylor. It is in the form provided for in Schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It says:

> "This notice informs you, the tenant, that your landlord is giving you notice to leave the let property, and if you do not leave the property once the relevant notice has expired, your landlord can apply to the First Tier Tribunal for Scotland (the Tribunal) for an eviction order."

[23] Details of the tenant and the landlord are to be provided. At part 2, under the heading "EVICTION GROUND(S) being used", the intimation is:

> "that if you choose not to leave the let property on the date shown in part 4 of this notice I/we intend to apply to the Tribunal for an eviction order in respect of the let property on the following grounds which is at ground(s) for eviction as set out in schedule 3 of the Private Housing Tenancy (Scotland) Act 2016:

The box ticked indicates – you are in rent arrears over three consecutive months (6 months).

[24] At part 3, under the heading "DETAILS AND EVIDENCE OF EVICTION GROUND(S)", it is stated:

> "We also inform you that we are seeking eviction under the above ground(s) for the following reasons:
>
> [State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up]."

[25] Underneath that paragraph the following handwritten addition has been made:

> "Over 3 months rent arrears, ongoing lack of contact and no repayment plan set up"

[26] There is then a prepopulated part of the form which reads:

> "It is important that the tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that. "

[27] With reference to the supporting evidence the following words are handwritten:

> "An account ledger can be supplied on request"

[28] The specification provided to the tenant in part 3 – the handwritten part telling him about being in rent arrears in excess of 3 months - was, said Mr Taylor, factually accurate. This was not challenged by the respondent. However, Mr Taylor conceded that what had been handwritten on the form did not make out or satisfy ground 12. He accepted that the landlord was speculating, not only that the state of affairs would remain (arrears of rent) but that they would deteriorate to such an extent that the circumstances in ground 12 would come to pass. That is, at some point in time (unspecified), the arrears would accrue over three consecutive months and thus application could be made to the FtT for an eviction order. For the appellants, the requirements of the notice to leave were satisfied in that it stated the eviction ground that was eventually considered by the FtT when seized of the application.

[29] On that construction, the factual basis underpinning the service of the notice to leave is nothing to the point. All that matters is that factual circumstances exist at the time of the submission of the application to the FtT to justify the application – paragraph 12(2), Schedule 3 to the 2016 Act.

[30] There are significant provisions of the legislative scheme that point to the content of the notice to leave requiring something more. As I have already noted, any application for an eviction order must be accompanied by a copy of the notice to leave – section 52(3). An eviction ground in any application for an eviction order must be stated in the notice to leave served upon the tenant – section 52(5)(a).

[31] The service of the notice to leave triggers a notice period – section 54(1). Until the expiry of that "relevant period" the landlord may not make application to the FtT for an eviction order.

The tenant must be told of the date when the landlord expects to be entitled to make application for an eviction order. That must mean at the expiry of the relevant period. However, if the factual basis does not exist at the time of the service of the notice, the landlord cannot know when there will exist a basis to apply to the FtT. The landlord will know, if the circumstances exist at the time of the service of the notice to leave, when he can apply to the FtT – that will be when the period referred to section 62(4) runs its course. It makes sense for the clock on the computation of that period to start running from when the tenant is told that he must leave and for that notice to contain information that at that point in time forms a sufficient basis in fact to amount to an eviction ground. The purpose of these requirements – the computation of the period of notice and the statement of the eviction ground – is difficult to make sense of if all that the landlord requires to intimate to the tenant when serving a notice to leave is that an application based upon a specified eviction ground may, at some unspecified point in the future, be made to the FtT.

[32] On the other hand, these aspects of the statutory scheme are given content and meaning if the notice to leave is to provide specification such that, at the time of its service upon the tenant, it can be seen that the factual premise underpinning the content of such a notice - about why the tenancy is being brought to an end - has application at that point in time.

[33] That much can also be gleaned from the statutory form which is to be used as a notice to leave. Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 provides that the notice to leave given to a tenant by a landlord must be in the form set out in Schedule 5. The statutory form enjoins the landlord, not simply to refer to the prospective ground upon which application may be made to the FtT, but also to outline the basis

of the application and to provide details of the evidence of eviction grounds. This is, after all, a notice directing the tenant to leave because a ground for eviction exists.

[34] At part 3 of the form, titled – "DETAILS AND EVIDENCE OF EVICTION GROUNDS" - the tenant is told that the landlords "are seeking eviction". Before specification is provided to the tenant, the landlord is provided with guidance about completion of the form:

> "[State particulars of how you believe the grounds have arisen…..]"

[35] After a gap for completion of the details, the form reads:

> "It is important that the tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that"

[36] The appellants' construction renders the service of the notice as a procedural nicety or technicality devoid of any real meaning or effect when it is served. That is difficult to reconcile with the consequences – procedural and otherwise - that flow from the service of the notice. If this were a sound construction, it is difficult to see why the form in Schedule 5 to the 2017 regulations has Part 3. The tick box exercise in Part 2 suffices for the appellants' construction to be given effect to. The addition of part 3 of the form as to the reasons for the landlord's action and the evidence upon which it is based would be rendered superfluous by the appellant's construction.

[37] The 2016 Act came into force on 1 December 2017: the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No 3, Amendment, Saving Provision and Revocation) Regulations 2017 – SSI346/2017. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 also came into force on 1 December 2017 – SSI297/2017, article 1(1).

Rather than seeking to explain away any inconsistency between these provisions on the basis of a lack of care in drafting it makes more sense to view them as a whole – commenced on the same date and giving effect to a coherent scheme. There appears to be a consistency in the statutory scheme. Rather than view any perceived conflict between the regulations providing for the terms of the forms to be used in a notice to be served on a tenant and the primary legislation as some deficiency of drafting I prefer to view them as parts of a complete whole. When looking to the provisions of secondary legislation the court the courts will construe those as consistent with the legislative purpose underlying enabling Act (See Bennion, Bailey and Norbury, *On Statutory Interpretation*, Eighth Edition, section 3.7, p.115).

Pepper v Hart: Parliamentary Debates

[38] For the foregoing reasons I do not detect that there is an ambiguity on the face of the statute that requires to be resolved. If I am wrong about that I should nevertheless deal with the remainder of the appellants' submission.

[39] There is limited mandate in *Pepper v Hart* for a court or tribunal to look at parliamentary debates when deciding a point of statutory construction. It ought only to be invoked to resolve true ambiguities and where the unequivocal statements of the promoter of the Bill or Minister cast light upon that perceived uncertainty. The illumination must be clear in order to avoid supplementary or subsidiary deliberations about what was meant by what was said in the course of the debate. This was discussed in the speech of Lord Hodge in *O* (*supra.*) at [32], referring to the third requirement as a "stringent" one. Lord Hodge refused to countenance referring to the parliamentary debates in that case because the conditions were not met.

[40] The answer to the question raised in this appeal, say the appellants, is not clear from the face of the statutory provisions. That much can be said of any point of statutory construction that is disputed in litigation. If the answer were made express on the face of legislation there would be no point of statutory construction that arises or an issue to be answered by the court or tribunal.

[41] It would not be correct to put on an equal footing the words used by the legislature in the 2016 Act and the content of the parliamentary debates which featured prospectively those provisions. I consider Mr Taylor was in error in rendering as synonymous with the intention of parliament what the Minister said in the course of the parliamentary committee's deliberations on the Bill. As Lord Nicholls pointed out in *Spath Holme Ltd* the court or tribunal is not concerned with the subjective intention of the Minister. What matters are the words used in the provision under consideration.

[42] When one turns to the deliberations of the Infrastructure and Capital Investment Committee of 10 February 2016 the passage of parliamentary debate relied upon does not illuminate the point at issue in the appeal. The Minister moved government sponsored amendments and resisted proposed amendments from Mr Johnstone, MSP. The amendments sought to modify the eviction ground on the basis of non-payment of rent and to allow a landlord to make application to a tribunal for an eviction order promptly, notwithstanding that there had been a previous application to a tribunal. The Minister was repeating a position she had stated in the past. No details are given of this previous statement of her position and none were provided at the appeal hearing. The Minister stated that if the eviction ground applied at the end of the notice period an application may be made to the tribunal. The Minister offered no basis for her

view, for example in the clauses of the Bill being deliberated. She said was that this was a view that she had previously stated, "I have always made clear that…"

[43] As for the content of the notice served upon a tenant, assuming that is a notice to leave, the Minister then stated that this could be served "after one or two months". Although not free from doubt, it may be assumed that this refers to arrears of rent as a ground for seeking eviction of a tenant. The Minister then recognises that this would not amount to an eviction ground at that point in time, but that if it does "at the end of the notice period", the landlord may go to the tribunal at once.

[44] Mr Taylor favoured a construction, not that the eviction ground must exist at the expiry of the notice period, but rather at the time that the FtT is seized of the application for eviction. However, that is not the construction that the passage relied upon from the parliamentary debate supports. The Minister appears to support a view that the eviction ground must exist at the time of the expiry of the notice period. The Minister offers yet another view of when the factual basis of the ground for eviction has to have crystallised – by the expiry of the period of notice to leave. That view did not make its way into the Bill.

[45] I reject the appellant's contention that there is an ambiguity on the face of the 2016 Act which requires resort to parliamentary deliberations to resolve. Even if the provision was ambiguous and resort could be had to the parliamentary debates in terms of *Pepper v Hart*, that does not assist the appellants.

Conclusion

[46] The application falls to be rejected on the basis that the appellants have failed to comply with the requirements of sections 52(5)(a) and 62(1)(c) of the 2016 Act. I agree with the FtT. I refuse the appeal.

Postscript

[47] I had deliberately refrained from reading the UT decision of *Majid v Gaffney* until the close of submissions in this case. On reading it I agree with it. I do not detect any conflict with my reasons and those of Sheriff Fleming in that case.

Order

[48] The Upper Tribunal refuses the appeal.

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.