



**DECISION OF**

Sheriff Susan A Craig

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

Mrs Magdalene Porteous

Appellant

- and -

Archerfield House Hotel Management Ltd,  
Per Ennova Law

Respondent

FTS Case Reference: FTS/HPC/LM/24/1848

3 March 2025

**Decision**

Permission to appeal is REFUSED.

**Introduction**

1. The Appellant, along with another, made an application to the First-tier Tribunal for Scotland Housing and Property Chamber (“FTS”) under Section 17(1) of the Property Factors (Scotland) Act 2011. They claimed the respondent had failed to comply with its duties in terms of the Code of Conduct for Property Factors (“the 2021 Code”) in respect of twenty five separate heads thereof.

# Upper Tribunal for Scotland

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2. In a decision dated 30 September 2024 the FTS dismissed the application, finding that the Respondent had not failed to comply with the 2021 Code, and had not failed to carry out its duties as Property Factor.
3. On 6 November 2024 the FTS refused the appellant's application to appeal that decision.
4. The appellant wishes to appeal the FTS decision. That is a matter which is regulated by section 46 of the Tribunals (Scotland) Act 2014 (the "2014 Act"). That provides:
  - (1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.
  - (2) An appeal under this section is to be made—
    - (a) by a party in the case,
    - (b) on a point of law only.
  - (3) An appeal under this section requires the permission of—
    - (a) the First-tier Tribunal, or
    - (b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.
  - (4) Such permission may be given in relation to an appeal under this section **only** if the First-tier Tribunal or (as the case may be) **the Upper Tribunal is satisfied that there are arguable grounds for the appeal** (emphasis added).
5. The issue before the Upper Tribunal at this stage was therefore - does the appellant have arguable grounds to appeal on a point of law in relation to the decision of the FTS? That of course is not a determination of the merits of the appeal; it is instead a consideration of whether there are arguable grounds. If permission is granted the merits will be considered on another occasion.
6. No application for permission to appeal has been lodged by the other party to the original application.

## Application for Permission to Appeal

7. In her application dated 30 November 2024 the appellant stated she challenged the FTS decision on a number of respects. Specifically she referred to its findings in relation to her claims that the respondent had breached its duties in terms of paragraphs 2.3, 3.2, 3.4 and 3.5 of the 2021 Code.



8. In a paper apart to the application the appellant appeared to refer, in addition, to claims made under paragraphs 2.4, 2.7, 3.11 and OSP 11. In a letter from the appellant (also dated 30 November 2024) additional points said to be error on the part of the FTS were identified, a number of which overlapped and can be summarised as:
  - Arriving at a decision no reasonable tribunal could reach by making findings without a basis in evidence, failing properly to seek or consider evidence, and giving undue weight to irrelevant matters
  - Failing to ensure a fair hearing given the appellant was a lay person and unrepresented
9. Further submissions were lodged by the appellant shortly before the permissions hearing but, essentially, these were a refinement and restatement of the arguments set out in the previous submissions.
10. The appellant also relied on two first instance decisions, one from the FTS Housing and Property Chamber and one from the Homeowner Housing Panel as predecessor to that Chamber in matters concerning factor's duties. In the paper apart she refers to those as providing support for the propositions she had advanced in her original claim. The appellant was not a party in either of these claims.
11. The respondent opposed the application for permission. There had been no error by the FTS and it made its decision on the evidence presented by parties. It was not required to seek further evidence and had given parties every opportunity to present whatever evidence they wished. That evidence had been fully considered by the FTS, which was its role. That it did accept the respondent's evidence is not an error of law.
12. The appellant had failed to identify any error in law on the part of the FTS and could not use the appeal process as a route to relitigating the issues determined by the FTS. That she was unhappy about the FTS's factual conclusions was not an error in law.
13. A hearing on the application for permission took place on 25 February 2025. Both parties appeared. The appellant was unrepresented; the respondent was represented by Ms Forrester. I reminded parties that the purpose of the hearing was to consider whether I should grant permission to appeal. That required the appellant to identify (i) a point of law on which it could be said the FTS had erred and (ii) that there was an arguable ground for appeal. I reminded parties that the hearing was not an opportunity to revisit the detail of the factual matters ventilated before the FTS; the appellant required something more than being dissatisfied with its findings.
14. Having heard from the appellant it was clear that that was, indeed, what she sought to do. In her submissions she sought to explain, in detail and at length, why she was right



and that the FTS conclusions on the facts were wrong. It is unnecessary to repeat those submissions here at length, but, read short, they were to the effect that she had provided the FTS with what she described as ample evidence to demonstrate the respondent had failed in their duties. She argued that where the FTS rejected that evidence they had erred in law. That was demonstrated by, amongst other matters, the additional documents on which she sought to rely at the permissions hearing.

15. Neither the submissions nor the material identified an error in law on the part of the FTS. Instead they were focused on why the FTS was wrong to make the factual findings it made, and wrong on the facts it did make to find against her. That does not amount to an error of law. The closest she came to identifying an error was in her original submission where she argued the FTS had reached a decision that no reasonable tribunal could reach. That, in principle, can amount to an error in law but there was nothing at all within her submissions that would support an arguable suggestion that the FTS had gone wrong to that extent, or at all.
16. It is certainly not enough for the appellant to argue – as she did – that the FTS should have accepted her evidence, rejected the respondents and / or sought further evidence from her. It was clear from the decision that the FTS had given both parties the opportunity to produce such evidence and make such submissions as they wished to, and the FTS cannot be criticized for that.
17. Indeed, the decision of the FTS is detailed, explains at some length its approach to the material before it under each head of claim and explains why, where there was a conflict in that material, they resolved it as they did. That is the quintessential function of first instance fact finders and not something an appellate tribunal will interfere with save where there is clear error of law.
18. The application for permission referred to the appellant feeling disadvantaged by being unrepresented at the original hearing. The precise disadvantage was not entirely clear. In its decision the FTS recorded that the appellant agreed to the procedure that was adopted and was given an opportunity at the end to present anything additional on her behalf.
19. It is entirely common place for one or other or both parties at such hearings to appear on their own behalf and first instance tribunals are used to hearings with unrepresented parties. That she was unrepresented does not of itself amount to error on the part of the FTS and there was nothing within the submissions to support any claim of prejudice or disadvantage that would indicate error. As an observation, given the volume of material submitted to the FTS and the detail contained in her application, the appellant appeared able to articulate her position without difficulty or hindrance from her unrepresented status. Similarly, the material before the UTS was lengthy and detailed



and the appellant took the opportunity, more than once, to lodge additional papers for consideration at the hearing.

20. The appellant sought to rely on two decisions from first tier tribunals which, she argued, demonstrated errors on the part of the FTS as the earlier decisions found for the particular applicants. The appellant was not a party in either of these cases and it is clear that they were decided on their own particular set of facts. Neither were binding on the FTS and created no precedent. They are of no assistance in identifying an error in law on the part of the FTS.
21. For completeness, and although not specifically identified as an error on the part of the FTS, it may be helpful to observe what is required for a decision of a FTS for it to amount to adequate reasons.
22. The classic test for adequacy of reasons in Scotland is found in Wordie Property Co Ltd v Secretary of State for Scotland [1984] SLT 345. A tribunal must  
  
“...give proper and adequate reasons for [its] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader ... in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it” (see also DS v SSWP [2019] UKUT 347 at paragraphs 5 to 15). Reasons, to be adequate, do not require to involve consideration of every issue raised by the parties or deal with every piece of material in evidence. The decision of the FTS has to be read as a whole, in a straightforward manner, and recognising it is addressed to parties well aware of the issues involved.”
23. In this case, it is not arguable that the FTS erred in law by failing to give adequate reasons.
24. Permission can only be granted if there are arguable grounds of appeal on a point of law (section 46 of the Tribunals (Scotland) Act 2014). As that statutory test is not met, permission is refused.