Housing and Property Chamber
First-tier Tribunal for Scotland

First-tier Tribunal for Scotland Housing and Property Chamber

Statement of Decision by the Chamber President under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules")

In connection with

Chamber Ref: FTS/HPC/PF/26/4206

Parties

Mr Richard Lews (applicant)

6 - 16 St Andrews Square, Glasgow, G1 5PJ (property)

Tribunal Member: Mrs A Devanny, Chamber President

DECISION

The Tribunal rejects the application paperwork submitted by the applicant received by the Tribunal on 7 September 2026 as there is good reason to believe that it would not be appropriate to accept the application. The rejection is made under Rule 8(1)(c) of the Procedure Rules.

REASONS

The application is made under Rule 43 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules"). The Applicant in this case is seeking a finding that the property factor has breached the property factor code of conduct in relation to Sections 2 and 4 of the Overarching Standards of Practice and Sections 3.1 and 3.2 of the code. He seeks, as resolution to his complaint, an order for removal of the charge by the property factor for the purchase of a garage remote with the purchase cost of the garage remote to be borne by the property factor. He also states that he seeks compensation because he

has been provided false and misleading information by the property factor, causing him to investigate, which has affected his mental wellbeing.

The breaches of the code alleged are

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

OSP4. You must not provide information that is deliberately or negligently misleading or false.

3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

3.2 The overriding objectives of this section are to ensure property factors:

- protect homeowners' funds;
- provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;
- make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.

The complaint is that the purchase of the garage remote by the property factor was unnecessary as alternative access arrangements already exist. However, the property factor in the response to the applicant's complaint has explained that they did not hold a garage remote for 6–16 St Andrews Square at the time the matter was identified, which prompted the purchase. In a letter response from the property factor to the applicant dated 17 August 2026, the following explanation is stated

"Without the availability of a fob, contractors have had to rely on residents permitting access to the building, which has not always been successful. This can then lead to a return visit and a potential call out fee to owners."

In summary, the position of the property factor is that the purchase of a garage remote is for the benefit of all forty-four owners of the garage to allow contractors future unrestricted maintenance access without the risk of access problems which may result in cost to the owners.

The original explanation given by the property factor for the purchase of the garage remote was amended in subsequent correspondence during the complaint's procedure.

The applicant considers that such amendment shows that the property factor breached the code of conduct and were not being honest, fair, open and transparent in their dealings and the property factor provided him with deliberately or negligently misleading or false information. Whilst the property factor accepts that the original explanation was inaccurate in some respects and an error was made, the explanation provided during the complaint's procedure does not vary materially from the original explanation. The property factor points in a letter dated 17 August 2026 to the discrepancies in their explanation and apologises for them. To be successful in relation to a claim that the property factor has not been honest, fair, open, transparent and has provided information which is deliberately or negligently misleading or false, there will need to be evidence of bad faith, negligence, or dishonest intent on the part of the property factor and the applicant has not explained the basis for this conclusion given the admission of the property factor of an error and the reason provided by the property factor for this error.

The total cost of the purchase of the garage remote was £102.00, and the applicant's share of the cost is £2.32. The applicant considers that the cost of the garage remote was incorrectly incurred and should be cancelled and the property factor should pay for this purchase from their own funds. The applicant considers that the charge for the garage remote constitutes an improper payment request as the applicant considers the property factor's purchase of the garage remote was unnecessary and shows that homeowners' funds were not properly protected. The applicant does not argue that the purchase did not take place or was not properly documented in the property factor accounts.

It is worthy of note that as one homeowner in relation to a garage owned in common, in the event that the case is made out for a remedy, the tribunal can only make an order in favour of the applicant in respect of the invoiced cost to him of £2.32. The tribunal cannot make an order for the remaining balance of the £102.00 unless all homeowners of the garage made conjoined applications.

At its highest the applicant's loss amounts to £2.32, being the cost invoiced to him. He also seeks compensation for the alleged breach of OSP2 and OSP4 but does not specify a sum nor does he provide evidence of injury to his mental wellbeing supporting his compensation claim nor does he outline the basis of any assessment of compensation. Compensation can only be considered by a tribunal in the event of establishing a breach of the code of conduct.

The application together with the submitted paperwork details the applicant's claim and the property factor's responses in the complaint's procedure. The applicant understandably may feel frustration and a degree of anger that the property factor

made an error in their original explanation, and it was only clarified when he engaged the stage 2 complaint's procedure. However, taking this application at its highest, there is no legal merit to the alleged complaints of breaches of the code, and his application will be unsuccessful.

Even in the event that this application had been technically viable, there is an argument that to proceed with this application which relates to a charge of £2.32 would be an abuse of process and disproportionate to the costs incurred of the tribunal process when the claimant has suffered no real loss. The basis of this principle relating to abuse of process is discussed in *Jameel v Dow Jones* [2005] QB 946. In that case the Court considered that "It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake." [paras. 69 and 70]. The tribunal is being expected to expend considerable resources and public funds, which would be disproportionate to the level of any award in this case or the alleged misconduct of the property factor.

The application is at the stage of being considered under Rules 5 and 8 of the Procedure Rules. The application is rejected in terms of rule 8 (1) (c) of the Procedure Rules which states

Rejection of application 8. —

(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—……

(c) they have good reason to believe that it would not be appropriate to accept the application.

Right of appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Mrs Aileen Devanny
Chamber President
25 October 2026