



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,  
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED  
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Rules")**

**in connection with**

**Flat 1/1, 60 Sinclair Street, Helensburgh, G84 8TP ("the Property")**

**Case Reference: FTS/HPC/PF/25/2377**

**John Kelly and Mary Kelly ("the Applicant")**

1. The Applicant submitted an application to the Tribunal on 4 June 2025, in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 26 July the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide evidence that the Property Factor had been notified of the concerns of the Applicant in relation to alleged breaches of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code") and its alleged failure to comply with the property factor's duties and was also asked to clarify certain matters regarding the application. The Applicant was also asked to provide a copy of the written statement of services provided by the property factor.
2. The Applicant did not respond and on 6 August 2025, the Tribunal issued a further request for information and incorporated in that letter the contents of the letter of 16 July 2025.
3. No response has been received to either request for information.

## Decision

4. The Legal Member considered the application in terms of Rule 5. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “
5. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rules 8(1) (c) and 43 (2) (a) of the Rules. Rule 8 (1) (c) states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” Rule 43 (2) (a) states that the homeowner must attach to the application a copy of the notification from the homeowner to the property factor for the purposes of section 17 (3)(a) of the 2011 Act. Rule 43 (3) states that an application requires to be accompanied by the written statement of services provided to the homeowner by the property factor.**
6. **The basis of the decision is that the Applicant has failed to comply with Rules 5, 8 and 43.**

## **REASONS FOR DECISION**

7. The Application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 (3 (a) of the Act states that an application to the Tribunal cannot be made unless the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty must set out "the homeowners reasons for considering the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty."
8. The Applicant has failed to provide evidence that he has given such notification.
9. The Applicant has failed to provide information, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules.
10. The Applicant has not provided a copy of the written statement of services.
11. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

### **What you should do now**

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Martin J. McAllister, Legal Member  
2 September 2025