



**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

26 The Paddock, Hamilton, ML3 0RB ("the Property")

Case References: FTS/HPC/pf/22/0862 and FTS/HPC/PF/22/1866

Jack Fortune Ltd ("the Homeowner")

Speirs Gumley Ltd ("the Property Factor")

1. The Homeowner submitted two applications to the Tribunal ("the FTT") in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). One application was dated 22nd March 2022 and the other was dated 25th March 2022. The first application was in respect of alleged failings of the Property Factor prior to 16th August 2021 and the second was in respect of alleged failings of the Property Factor after that date. The first application concerned alleged failure to comply with the 2012 Code of Practice for Property Factors and the second concerned alleged failure to comply with the 2021 Code of Practice for Property Factors. Both applications stated that the Applicant considered that the Property Factor had also failed to carry out the property factor's duties.
2. On various occasions, the FTT issued requests for further information and documents to the Homeowner. The Homeowner was asked to provide better specification of the complaints and to provide evidence that the Homeowner had notified the Property Factor of the complaints referred to in the applications

and a copy of any response. The Homeowner was also asked to provide a copy of the Property Factor's written statement of services.

3. In its letters to the Homeowner date 6th April, 2022, 16th May 2022, 1st July 2022 and 20th September 2022, the FTT set out what was required. Additional letters from the FTT reminded the Homeowner of the information which was sought.
4. The Homeowner did provide responses to some of the letters of the FTT but gave no substantive information in relation to the matters which it had been asked to address. For example, rather than reply to the FTT's request to provide evidence of notification to the Property Factor as required by Section 17 of the 2011 Act, the Homeowner responded by stating that the Property Factor had knowledge of the matters complained about and that their solicitors were aware of the issues. As a further example, the FTT had queried the Homeowner's application relating to breaches of the 2021 Code because it stated that the Property Factor had not complied with all twelve of the Overarching Standards of Practice ("OSP") including OSP7: *"You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation."* The Homeowner was asked why it considered OSP7 could apply to a limited company. It responded in general terms relating to directors. As yet another further example of the Homeowner's failure to provide clarity in relation to the applications, it had stated in its application relating to the 2021 Code that the Property Factor had failed to comply with all the paragraphs contained in sections 4, 5, 6 and 7 of the 2021 Code which comprises a total of 40 paragraphs. When asked to clarify its position, the Homeowner provide no reasonable explanation as to why it considered this to be the case and provided no evidence that it had notified the Property Factor that it considered that it had failed to comply with these paragraphs of the 2021 Code.

DECISION

5. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. 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. “

6. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which 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.” The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 43 and Section 17 of the 2011 Act.**

REASONS FOR DECISION

7. The Homeowner’s applications are in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application 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” (Section 17(2)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states,

“(1) In addition to the homeowners reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act; (b) any response provided by or on behalf of the property factor to that notification;...(d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.”

8. The Homeowner has failed to provide the information and documents required by Rule 43 of the Rules and Section 17 of the 2011 Act. The Homeowner has also failed to provide this information and documentation, having been directed to do so in a request for further information by the FTT, in terms of Rule 5(3) of the Rules. 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
7TH November 2022