Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act")

Chamber Ref: FTS/HPC/LM/24/3764

19 Matthews Drive, Newtongrange, EH22 4DE ("the Property")

Parties:

Mrs Jocelyn Martin ("the Applicant/Homeowner")

Charles White Ltd ("the Respondent/Property Factor")

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Section 5.4 of the Property Factor Code of Conduct 2021 ("the Code") but decided not to make a Property Factor Enforcement Order.

Background

1. By application received on 19 August 2024, the Applicant (the Homeowner) applied to the Tribunal for a determination on whether the Respondent (the Property Factor) had failed to comply with several paragraphs of the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors ("the Code") in terms of section 14(5) of the 2011 Act. The background to the complaint was to do with costs and other issues concerning the common insurance policy, primarily in respect of a playpark within the development, and the repair of the playpark. It was alleged that the Respondent had failed to provide clarity or properly answer queries and formal complaints from the Applicant. It was alleged that there had been a lack of accountability and responsibility shown, indifferent to the Applicant's complaint, a poor complaints process, failures in communication with homeowners, a lack of care in the

Respondent's delivery of their services, and that they had failed to provide an acceptable level of support and management. The Applicant wished the Respondent to be held accountable for their failings and sought compensation. Supporting documentation was also submitted by the Applicant, including detailed written representations, a timeline of events, a copy of the Respondent's Written statement of Services and a large volume of prior correspondence between the parties, including insurance and other documentation.

2. On 26 August 2024, a Legal Member on behalf of the Chamber President accepted the application and referred it to a Tribunal for a Case Management Discussion ("CMD"). Both parties were notified of the details of same.

3. On 19 May 2025, the Respondent lodged detailed written representations in response to the application, explaining the background, their position in respect of the insurance premium and providing their comments on each of the paragraphs of the Code they had allegedly breached. They considered they had fully explained their position regarding the playpark and insurance premium and denied the alleged breaches of the Code. They explained the steps they had taken to try and resolve the Applicant's complaint, including written apologies, a credit to the Applicant's account in respect of 6 months' management fee in July 2024 and an additional goodwill offer of £200 which the Applicant rejected. They lodged supporting documentation including a copy of their Written Statement of Services and Complaints Procedure, a copy of Minutes of a Meeting with the Homeowners on 8 November 2023 and copy correspondence between the parties. The Respondent stated that they were no longer the Property Factor in respect of the development, as of September 2024.

Case Management Discussion

4. The CMD took place by telephone conference call on 5 June 2025 at 2pm. The Applicant, Mrs Jocelyn Martin, and Ms Robyn Rae, Associate Director of the Respondent company were in attendance.

5. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained. Reference was made to the application and supporting documentation lodged by the Applicant and the Respondent's detailed response, also with supporting documentation.

6. Mrs Martin was asked initially if there had been any change in her position in respect of the various paragraphs of the Code she had included in her application, in view of the response and documentation which had been lodged by the Respondent. She stated that there was no change in her position. She does not consider that the Respondent has adequately answered her complaints or that they provided a good service to the homeowners. She stated that the homeowners had had no say in the Respondent's appointment as Property Factor and that the Respondent had been imposed upon them. There

is now a new Property Factor in place who is making much better progress with matters than the Respondent did.

7. Mrs Martin was asked by the Tribunal Members as to the outcome she was seeking from this application, given that the Respondent is no longer Property Factor in respect of the development. It was explained that, in such circumstances, there is a limit as to what the Tribunal can include in a Property Factor Enforcement Order (PFEO) even if the Tribunal finds the Respondent to be in breach of the Code. The application is personal to the homeowner concerned, so any practical measures which the Tribunal could otherwise order the Property Factor to make to address issues raised, would be of no practical benefit to her now and would not be enforceable. It was explained that, in such circumstances, the Tribunal is generally limited to making an award of compensation and that this may not be as much as the Applicant may be anticipating. It was noted, for example, from Mrs Martin's application that she had mentioned that the lack of maintenance of the playpark was going to result in the homeowners incurring substantial maintenance costs. It was explained that this was not the type of compensation that the Tribunal makes to homeowners in applications concerning breaches of the Code. Mrs Martin confirmed that she had looked at previous decisions against property factors on the Tribunal website. She also stated that compensation was not her primary goal. She wishes the Respondent held to account for their failings, to have a finding against them for breaches of the Code, with a view to them improving their practices and the way they treat homeowners like herself.

8. Mrs Martin was also asked about the steps already taken by the Respondent in an attempt to resolve her complaints and reference was made, in particular, to the letter from the Managing Director of the Respondent to Mrs Martin dated 23 July 2024, which was lodged with the Tribunal. It was noted that this letter referred to several apologies they had already made to Mrs Martin; that they were reviewing their written complaints process in view of her complaints, that they had taken steps to provide the revised insurance documentation to homeowners, had amended homeowners' accounts to reflect the correct charges; had credited Mrs Martin's account with 6 months' of management fees; and had offered Mrs Martin a further £200 goodwill gesture. Mrs Martin stated that she had not been satisfied with this response. She did not think that the apologies had been sincere or that the remedial action went far enough. She does not believe their explanations for the errors that they had made. She thinks they were disingenuous and arrogant and that many of their responses were simply 'cut and pasted' from previous responses. They did not adequately answer her queries and their explanations for things did not add up. Mrs Martin stated that she had only been offered £200 to try and persuade her against taking the matter to the Tribunal. She does not know if the Respondent has changed their written complaints process or not as they stopped factoring the development soon after this.

9. Ms Rae was asked for her comments. She made reference to their detailed written response and documentation produced. She is confused regarding the purpose of the application as they are no longer managing the development but

welcome the input of the Tribunal. She confirmed that the 6 months' of management fees amounted to £54.86 and that she disagrees with Mrs Martin's comments. Their apologies had been sincere. They had accepted that there had been errors in documentation produced by their brokers which they had missed and that they had taken steps to rectify the situation. Ms Rae confirmed that they had since amended their complaints process, to take account of the issues Mrs Martin had raised regarding the previous version.

10. The Tribunal Members were in agreement that the application would require to be adjourned to an Evidential Hearing at which all of the issues would be fully considered and evidence heard from the parties and any witnesses. There was also discussion regarding the manner in which the Tribunal would wish the parties' documentation presented to try and ensure the smooth-running of the Evidential Hearing and that unnecessary evidence was not heard. The Tribunal stressed the importance of the Applicant's claim being focused towards the particular sections of the Code that the Respondent had allegedly breached, linking her written representations to the documentary evidence produced, but also responding to the written representations and documentation now lodged by the Respondent in respect of those alleged breaches of the Code. The Respondent would then have a further opportunity to lodge anything further. This would allow the Evidential Hearing to proceed with the Tribunal and parties knowing in advance what was in dispute and the issues requiring to be determined. It was also recommended that the Applicant considers if she wishes to proceed with all of the Code breaches alleged, in view of the response from the Respondent and the discussions which had taken place at the CMD. It was also explained that she would require to properly quantify her claim for compensation, again linking it to the specific Code breaches. There was some brief discussion regarding timescales for further documentation to be lodged by the parties, in terms of a formal Direction to be issued by the Tribunal. Parties were thanked for their attendance and the CMD concluded.

11. Following the CMD, the application was adjourned to an Evidential Hearing, subsequently scheduled to take place by way of video-conference on 21 October 2025 at 10am. The Tribunal issued a CMD Note detailing the discussions which had taken place, together with a Direction to parties, both dated 5 June 2025.

Direction

12. The Direction directed the parties as follows:-

"1. The Applicant is required:-

(a) To amend and further specify her application, focusing it on the particular sections/paragraphs of the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors ("the Code") which she alleges the Respondent has breached, providing written representations as to how she considers the Respondent has breached each paragraph, linking same to any documentary evidence lodged and the written

representations/documentation now lodged by the Respondent; and to further specify/quantify her claim for compensation;

(b) To lodge any existing or further documentary evidence in support of her written representations, together with a numbered covering inventory/list of the documents produced; the documents should be numbered to correspond with the numbers shown in the covering list, and each page of lengthier documents also being numbered.

The above documentation should be lodged with the Chamber no later than 15 July 2025.

2. The Respondent is required:-

(a) To lodge any further written representations that they wish to make in response to the Applicant's further submission in terms of paragraph 1 above, linking their representations to any documentary evidence lodged;

(b) To lodge any existing or further documentary evidence in support of their written representations, together with a numbered covering inventory/list of the documents produced; the documents should be numbered to correspond with the numbers shown in the covering list, as well as each page of lengthier documents also being numbered; and

(c) A copy of their amended written complaints process.

The above documentation should be lodged with the Chamber no later than 15 August 2025.

3.The Applicant and Respondent are required to lodge a list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing, and to make arrangements for the attendance at the Hearing of any such witnesses.

The documentation referred to in paragraph 3 above should be lodged with the Tribunal Administration no later than 14 days prior to the Evidential Hearing to be fixed in respect of this application."

Further Procedure

13. On 7 July 2025, the Applicant requested an extension of time to comply with the Direction, due to holiday leave. The Tribunal granted the Applicant an extension to the end of July 2025 and a corresponding extension to the Respondent to the end of August 2025.

14. On 30 July 2025, the Applicant lodged updated written submissions by email, in accordance with the Direction, together with an index of the documentary evidence she had already lodged with the Tribunal. She indicated that she had no further evidence to produce. She maintained her claim that there had been failures to comply with the Overarching Standards of Practice (OSP) 2, 3, 4 and 6 and Sections 2.4, 5.4, 5.11, 6.4 and 7.1 of the Code. She had linked each of the alleged Code breaches to her numbered index of documentary evidence,

as had been requested by the Tribunal. The Applicant also outlined the consequences and harm suffered as a consequence of the alleged breaches, the resolution sought by her and justification for the compensation she was now seeking of £500.

15. On 26 August 2025, the Respondent lodged updated written submissions by email, in response to the Tribunal's Direction and the response of 30 July 2025 from the Applicant. They further commented on each of the alleged breaches of the Code, denied all of same and provided some additional comments in response to the compensation of £500 now sought by the Applicant. They also lodged some further documentary evidence in support of their submissions, including copy correspondence issued to the Applicant regarding proposed homeowners' meetings on 1 and 8 November 2023 and related issues, insurance documentation, Minutes from the meeting on 8 November 2023 and further correspondence.

16. Neither party intimated details of any witnesses that they proposed to have attend the Evidential Hearing on their behalf.

Evidential Hearing

1. The Evidential Hearing took place by video-conference on 21 October 2025, commencing at 10am. The Applicant, Mrs Jocelyn Martin, and Ms Robyn Rae, Associate Director of the Respondent company were in attendance.

2. Following introductions and introductory remarks, it was ascertained that neither party had any witnesses and that they had each had sight of the other's further written submissions, lodged in response to the Tribunal's Direction. No issues were raised as regards the contents of the CMD Note, issued following the CMD (as narrated above). Both parties wished to proceed and the Tribunal heard evidence from both Mrs Martin and Ms Rae. The Tribunal Members also asked a number of questions of both parties.

3. Initially, the Legal Member sought some clarification from parties regarding the background circumstances relating to the development. It was confirmed that the Respondent had been factoring the development since 2003 and had ceased being the factor in August 2024, having been voted out by the homeowners. There is now a new factor in place. Ms Rae confirmed that they had initially factored the development as 'one development' but, in 2023, it was realised by the Respondent that there were, in fact, two separate title deeds and that the development should accordingly be 'split' and essentially factored as two separate developments. The Respondent had also decided to move to an annual budgeting system, rather than quarterly. A homeowners' meeting was arranged to discuss these matters. As part of the development split, it was necessary to have two separate public liability insurance policies put in place, rather than a single policy for the whole development. One consequence of this was that the costs per household for insurance increased as the policy premiums were now being divided between fewer homeowners. There was also

an increase to cover a change in the level of cover provided in respect of a playpark situated within the Applicant's part of the development. It was clarified by Mrs Martin that there was, however, also a second playpark that was now situated in the 'other' part of the development.

Evidence of Mrs Jocelyn Martin – Applicant/Homeowner

4. Mrs Martin then gave detailed evidence and reference was made throughout to the supporting documentation lodged. Much of the information provided at the CMD, as narrated above, was reiterated. Mrs Martin stated that homeowners were not advised that there were changes in insurance costs relating to the development being split. There were material changes to the insurance cover of which they were not made aware and this had an impact on homeowners. The meeting which took place with homeowners on 8 November 2023 was the first such meeting to take place and they were told that further information would be provided if there were to be changes in the insurance costs. They were not advised of any changes before the invoice was issued in May 2023, increasing the insurance costs, and this was the main reason Mrs Martin had first emailed them raising her complaints. Her questions were not answered and repeated emails were sent. The whole thing just ended up as one big email trail. She was made to feel she was being a difficult customer. She was badly treated and her questions were not answered. It was a protracted process and was quite a stressful situation to deal with. Other homeowners knew she was seeking answers and would ask her for updates. Mrs Martin has worked with public sector complaints' processes and found the Respondent's process to be really poor, starting with them refusing to deal with it as a formal complaint. As to the condition of the playpark itself, Mrs Martin stated that she had not complained about this previously as her children were older, but that a lot of homeowners were at the meeting and it was clear that there were concerns. The Respondent was supposed to be providing a service to homeowners but the playpark had not been given any attention, despite the various reports which had been produced about its condition and concerns regarding erosion. Mrs Martin considers that the Respondent had let the whole street down by not attending to this and they seemed ignorant of the fact that things were wrong. Despite undertakings given at the meeting, the Respondent did not produce maintenance contract details or costings for various options which had been discussed. She disagreed with the Respondent's explanation that this was because the homeowners had rejected repairs. It was actually that the homeowners wanted more information and options before deciding. Mrs Martin confirmed that no further meetings were arranged to discuss these issues.

5. As to the Respondent's complaints process, Mrs Martin criticised the fact that she was initially told she could not make a complaint as she was not complying with their process. She was asked to refer to the legislation and specify exact Code breaches which is unreasonable. They were putting barriers in place. There was no reference number allocated to her complaint. It was one long email chain, which was confusing and the Respondent did not answer her questions. They did not listen and she felt her concerns were ignored which is

unacceptable. They did not escalate her complaint properly at the beginning and there was not a clear two-stage process. Although she accepts that the Respondent has made changes to their written complaints procedure, it still does not reflect all her criticisms of the written process. It also makes no difference to the way her complaint was handled by the Respondent.

6. Mrs Martin accepts that she got most of the insurance information she had been seeking in the end but that there were delays in producing a breakdown of costs and dates and figures were wrongly stated. She was told that she could not get all the information due to "Data Protection" which angered her as she works with Data Protection and knows how it works. She was told that the insurance company was responsible for the errors but does not consider this excuses the Respondent from their obligations to check information they are providing to homeowners, especially when they were being informed by her that the information was incorrect and did not make sense. She accepts that apologies were eventually given by the Respondent but that she did not think these were genuine. She considers that there was incompetence, a 'fudging' of issues and an element of dishonesty on the part of the Respondent. Mrs Martin is still not satisfied that the explanation received for the insurance figures is the true explanation. She considers it very coincidental that the adjusted figure for the new insurance premium was simply the original premium figure quoted less insurance premium tax. There was detailed information provided regarding the insurance figures and dates originally and subsequently provided. Mrs Martin's concerns were that she was not given the explanation by the Respondent until much later that the reason for the increased insurance premium was to cover 'material damage' which they were told had not previously been part of the cover. The insurance had just suddenly been tripled, without explanation and it was suspected by the homeowners that the increased costs was more to do with the condition of the playpark, which was due to the Respondent's neglect over the years. The Respondent had repeatedly said that the relevant information was on the portal or contained within newsletters, which it was not. Mrs Martin said this had been very frustrating, especially as the Respondent subsequently admitted that this had been another error, but was again due to fault on the part of a third party. She thinks it unacceptable that, again, the Respondent had failed to verify the information they were providing to her, when she told them repeatedly that the information was not on the portal.

7. Mrs Martin was then asked to make any additional comments on the particular sections of the Code that she considered the Respondent had breached, further to the evidence that she had already given.

8. As to what was being sought from the Tribunal, reference was made to Mrs Martin's written representations to the Tribunal regarding the 'consequences and harm' she considered she had suffered and the 'resolution sought'. She stated that there had been unexplained costs which she had legitimately queried but that, in her view, the Respondent's attitude had not changed. There was a lack of respect to her as a customer and she saw no evidence of them having 'learned lessons'. In justification of her claim for compensation of £500, Mrs Martin referred to the protracted and frustrating nature of her exchanges

with the Respondent. She works full-time and has had to spend a lot of time in the evenings and at weekends dealing with this matter and just wants an end to it. Over and above this, Mrs Martin considers that she has suffered financial harm as a result of the Respondent's failings in respect of the playpark maintenance and engagement with her and the other homeowners regarding this. This has resulted in ongoing costs to her and it may be that the playpark will require to be completely replaced.

Evidence of Ms Robyn Rae – Associate Director of Respondent/Property Factor

9. Ms Rae then gave detailed evidence and reference was made throughout to the supporting documentation lodged. Much of the information provided at the CMD, as narrated above, was reiterated. She confirmed that the public liability costs had increased as a result of the development being split, meaning that all the common charges were then divided between the 32 homeowners within Mrs Martin's part of the development, rather than 60 as it had previously been. However, the main change in the insurance costs was due to 'material damage' being added to the policy cover which would cover the situation where the playpark equipment was maliciously damaged. The need for this type of cover seemed to have been realised by the Respondent as part of their review of the title deeds, when the need to split the development into two separate developments was also discovered. Ms Rae conceded that twenty years was a long time for them to have factored the development before discovering these issues. She referred to property factoring arrangements only becoming more formalised after the 2011 legislation required them to have a written statement of services and make reference to the provisions in the title deeds. Ms Rae explained the background to the homeowners' meetings being proposed, originally to take place by Zoom on 1 November 2023 but subsequently changed to in-person on 8 November 2023. She explained that they had gone to the insurance broker and requested the changes to the insurance policy and that the broker had subsequently provided the new insurance schedule from the insurance company. She accepts that there were errors in the initial insurance information produced but that they were unaware of this when they communicated the information to Mrs Martin and the other homeowners, when issuing the common charges invoice dated 1 May 2024. There were errors in the figures and the dates stated in the documentation and a complication with the insurance changes being backdated to November 2023, when the changes had taken effect. They had sought to clarify the figures for Mrs Martin, in response to her complaints and explain regarding the 'material damage' cover being the main reason for the increase in insurance costs. Ms Rae maintained that the condition of the playpark was not relevant and that they had not been trying to 'cover their tracks', as suggested by Mrs Martin, for failures in maintaining the playpark properly. She went through the various figures and confirmed that the amended information which had subsequently been produced by the insurance company was correct. The new insurance premium was higher but the increased costs to Mrs Martin were slight as she was only paying a 1/32 share. When the errors were realised, amended documentation had been issued and Mrs Martin and the other homeowners were credited with

the amount they had been over-charged in the May 2024 invoice (which worked out at 72 pence each). As to the other issue Mrs Martin had complained about, concerning the maintenance contract, Ms Rae confirmed that the specification of the contract which had been requested at the homeowners' meeting was included with the amended Minutes subsequently issued. She conceded there had been an oversight in getting back to homeowners following the meeting, about the various costings options concerning the playpark, although quotes had been raised on their system. No repairs to the playpark were subsequently progressed as the Respondent had then stopped factoring the development.

10. As to the complaints process criticisms from Mrs Martin, Ms Rae reiterated that they had accepted that they should review their original written process to address some of the issues raised and subsequently did so. They had changed the name from being a 'feedback form' to being a 'written complaints process' and had clarified the wording. Ms Rae explained that there had, however, always been a two-stage process for complaints and that timescales for their responses to complaints and escalation of complaints had all been outlined in the original written procedure and had also been followed by them when dealing with Mrs Martin's complaints. Ms Rae explained that, when Mrs Martin first emailed them, they had considered this as an 'invoice query' type of matter, which, in terms of their written processes, was not covered by their formal complaints process. The reason behind this was to try and distinguish between actual complaints and more routine enquiries. As Mrs Martin had emailed on 6 May 2024, and included queries about the invoice dated 1 May 2024, the Respondent had initially dealt with this is an invoice query. However, they had still responded to it and sought to answer her enquiries. At Mrs Martin's request, they then started treating it is a formal complaint. When they asked Mrs Martin for clarification regarding the specific Code breaches she was alleging, they were not trying to block her complaint or to be difficult, as she had suggested. They were simply trying to get as much information as possible concerning the complaint at an early stage. They have found, through being involved in applications to the Tribunal, that this helps to distinguish how best to respond to a complaint at the earliest stage and has successfully reduced the number of complaints. The first stage of Mrs Martin's complaint was dealt with by Ms Jill Clarkson, the Client Relationship Manager, who had also attended the homeowners' meeting on 8 November 2023. When Mrs Martin was not satisfied with Ms Clarkson's responses, the matter then escalated to Ms Rae, who dealt with the second-stage of the complaints procedure. Ms Rae explained that, in asking Mrs Martin for clarification, she had not meant to cause annoyance. She had found the communications confusing as she had been forwarded the full chain of emails between Mrs Martin and Ms Clarkson. She was simply trying to obtain clarification in order to fully understand and then seek to diffuse the situation. She had not been trying to drag out the process longer than was necessary, as suggested by Mrs Martin. Ms Rae explained that Ms Backler, the Managing Director of the Respondent became involved because Ms Rae was finishing up on holiday. Ms Rae had answered Mrs Martin as fully as she could at that stage and had informed Mrs Martin that she would be in further contact on her return from holiday. However, Mrs Martin was not happy about that and asked for the matter to be dealt with by someone else in Ms Rae's absence.

11. Ms Rae maintained that the Respondent had dealt with Mrs Martin's complaints appropriately and within their timescales and processes. They had answered all of Mrs Martin's questions and produced the documentation requested by her, insofar as they were able to. Although they accept that there were some errors made in the figures and other insurance documents and that there had been a mix-up regarding the information uploaded to the portal, Ms Rae maintained that this had been down to human error and explained that they had been reliant on third parties in respect of some of the issues. The Respondent explained that they are not insurance experts and are guided by an insurance broker in these matters. The errors in the first version of the insurance information produced was due to error on the part of the insurance company/broker. They also had to await amended documentation being issued by the insurance company through the broker, and explanations from the broker, which caused some of the delays in communications with Mrs Martin. However, Ms Rae considered that they had explained this to Mrs Martin and had informed her what they were doing or awaiting. Ms Rae explained that, when the development was split, the online customer portal to which documents were uploaded remained 'live' but continued only in respect of the other part of the development. A new portal had required to be created for Mrs Martin's part of the development but, unfortunately, the relevant documentation was not uploaded to the new portal and Mrs Martin was therefore unable to access this. Again, Ms Rae stated that they were reliant on a third party to administer the portal and had been unaware of the situation with the new portal at the time they were directing Mrs Martin to it. Ms Rae reiterated that the Respondent had explained and admitted their errors and the misunderstandings which had arisen, as soon as they were aware of these. They had repeatedly apologised to Mrs Martin and sought to rectify matters by obtaining and issuing amended insurance and other documentation, rectifying the slight over-charge in the common charges by crediting Mrs Martin and the other homeowners' accounts appropriately and writing to Mrs Martin and the other homeowners' regarding these matters and explaining the position.

12. Ms Rae was then asked to make any additional comments on the particular sections of the Code that Mrs Martin considered the Respondent to have breached, further to the evidence that she had already given.

13. As to the remedies sought by Mrs Martin from the Tribunal, Ms Rae disagrees that no lessons have been learned. They have made several admissions in respect of errors made but sought throughout to answer all Mrs Martin's questions and to resolve the complaint as quickly as possible. Three separate managers of the Respondent were involved in seeking to resolve Mrs Martin's complaint including, ultimately, the Managing Director. They rectified errors, refunded Mrs Martin in respect of the slight overcharge and apologised in writing several times, including an apology from their Managing Director. They took the complaint seriously and their apologies were not disingenuous. As Mrs Martin had remained dissatisfied, the Respondent had refunded her 6 months' management fees, offered an 'ex gratia' payment of £200 to seek to resolve the matter without reference being made to the Tribunal and also invited Mrs Martin

to discuss if the Respondent could do anything further to resolve matters with her and offered a meeting, which offer Mrs Martin declined. Ms Rae does not consider that Mrs Martin should be awarded financial compensation of £500 and pointed out that she had indicated at the CMD that it was not compensation that she sought from this application. Ms Rae explained that the £200 offered to Mrs Martin had been conditional on Mrs Martin not referring the matter to the Tribunal. Ms Rae denied that it was the Respondent's fault that Mrs Martin may have to meet ongoing costs in respect of the playpark. She denied that they had been negligent in their handling of the playpark maintenance and repairs. Costings had been given to the homeowners' at the meeting on 8 November 2023 and they had decided not to proceed with the proposed repairs at that time and had sought further options/costings in the matter. Ms Rae stated that the Respondent could not proceed with any repairs without instructions from the homeowners.

14. It was noted by the Tribunal that the playpark equipment was around twenty-four years old and Mrs Martin conceded that it had been there since she moved in.

Summing-up

15. Mrs Martin mentioned the importance of the supplier/customer relationship and does not consider that the Respondent has demonstrated the necessary standards of skill and care in how they handled these matters. She referred to the defensive tone of their communications. They required to listen, investigate then answer. She did not see any proof that they had investigated her complaint properly and if they had, a resolution would have been achieved much more quickly. There had been no need for it all to take as long as it had.

16. Ms Rae stated that, from start to finish, this had been a complex and 'out-of-the-ordinary' situation, starting with the split of the development and then the frustrations caused by the incorrect insurance documentation. However, she considered that they had done their best to explain and resolve matters with Mrs Martin, including offering her further clarification or a meeting to discuss, which was declined.

17. Parties were thereafter thanked for their preparation for, and attendance at, the Evidential Hearing, informed that the Tribunal would now deliberate and that they would be issued with a written decision in due course. The hearing concluded.

Findings-in-fact

1. The Applicant (Homeowner) is the proprietor of 19 Matthews Drive, Newtongrange, EH22 4DE ("the Property").

2. The Respondent (Property Factor) was the property factor in respect of the Property from in or around 2003 until in or around August 2024.

3. The Respondent's most recent written statement of services was contained in a document entitled "Charles White Limited Written Statement of Services for the Matthews Drive Development", effective from 2014 but updated several times, most recently in 2024.

4. The Respondent had a written complaints handling procedure, most recently entitled "Complaints Handling Procedure" but previously entitled "Customer Feedback Information Sheet."

5. In or around 2023, the Respondent decided that they required to 'split' the original development within which the Property was situated into two separate developments, to conform with the title deeds.

6. In or around 2023, the Respondent also decided to move from an annual budgeting system to a quarterly system in respect of the development(s).

7. A homeowners' meeting was initially arranged by the Respondent to discuss the budgeting system changes to take place remotely by video on 1 November 2023, per letter to the Applicant dated 23 October 2023.

8. This meeting was subsequently re-arranged by the Respondent to take place in-person on 8 November 2023 and homeowners were informed it would now be an AGM to discuss the current management of the development, following investigation of the title deeds, per letter to the Applicant dated 30 October 2023.

9. Draft Minutes were produced by the Respondent following the meeting on 8 November 2023, which were subsequently amended following comments from homeowners and final Minutes produced to the homeowners, per letter to the Applicant on 2 February 2024.

10. The Minutes stated that the Respondent had informed homeowners at the meeting regarding the requirement to split the development, that two separate public liability insurances would now be required and that homeowners would be updated on the insurance costs once known.

11. The Minutes stated that there were also discussions at the meeting regarding concerns raised by some homeowners about the maintenance and associated maintenance costs of the playpark situated within the development and various options discussed.

12. On or around 1 May 2024, the Respondent issued to the Applicant their common charges invoice for the period 2 February 2024 to 1 May 2024, which included a charge for the Applicant's (1/32) share of the public liability insurance premium.

13. The Applicant emailed the Respondent on 6 May 2024, querying various aspects of the common charges invoice and also regarding the gardening contract, stating that her communication was a complaint.

14. The Respondent initially responded to the Applicant by email dated 9 May 2024 but indicated that the Respondent was not treating this is a formal complaint as the Applicant had not followed their correct complaints procedure.

15. As a consequence of further correspondence, the Applicant's complaint was subsequently dealt with by the Respondent through their formal two-stage complaints process.

16. The parties engaged in a lengthy course of email correspondence regarding these matters until on or around 23 July 2024 when the Respondent's Managing Director issued her final response to the Applicant's formal complaint.

17. At the end of her email dated 23 July 2024, the Respondent's Managing Director asked the Applicant to respond if she wished clarification on any matter or would like a meeting to further discuss.

18. During the course of the correspondence narrated above, the Respondent had responded to the Applicant's complaints, requests for information and explanations sought; had produced documentation requested by the Applicant, including amended documentation correcting errors in previous documentation; and had apologised in writing several times for errors which had been made.

19. The Respondent had also issued the Applicant with an amended common charges invoice; credited the Applicant's account in respect of a slight over-charge of 72 pence in the original invoice in respect of insurance costs; refunded 6 months' of management fees amounting to £54.86 by way of an apology to the Applicant in respect of the errors and misunderstandings which had occurred; indicated that they were revising their formal written complaints procedure in response to the Applicant's criticisms of same; and offered a meeting to further discuss matters.

20. On 29 July 2024, the Applicant emailed the Respondent to inform them that she was not satisfied with their final response to her complaint and was referring the matter to the Tribunal.

21. On 30 July 2024, the Respondent emailed the Applicant asking if there was anything further they could do to resolve her complaint, rather than involving the Tribunal.

22. On 9 August 2024, the Applicant responded, stating that the Respondent had already had sufficient time to deal with the matter and was declining their invitation.

23. On 12 August 2024, the Respondent responded, offering the Applicant a 'without prejudice' goodwill gesture of £200 on the understanding that the Applicant would not apply to the Tribunal.

24. The Applicant's application was lodged with the Tribunal on 19 August 2024, alleging a number of breaches of the Code by the Respondent.

25. The Respondent opposed the Applicant's application and denied having breached the Code.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation; the further written representations and supporting documentation from the Applicant; the initial and further written representations, together with supporting documentation, from the Respondent, and the oral evidence given at the Evidential Hearing by Mrs Martin and Ms Rae.

2. The Tribunal considered that both parties had complied with the Tribunal's Direction issued following the CMD and presented their respective positions to the Tribunal thoroughly and clearly. The Tribunal found both Mrs Martin and Ms Rae to be credible witnesses and to have given their oral evidence to the Tribunal in a straightforward manner and to have answered the questions put to them throughout the proceedings.

3. <u>Breaches of the Code</u>

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

   The Tribunal accepted the evidence of Ms Rae that the errors in the insurance information originally provided to Mrs Martin were due to incorrect data from the broker/insurance company concerned, not deliberate or dishonest conduct on the part of the Respondent. The Tribunal was satisfied that the Respondent had corrected mistakes once discovered and that there was no evidence of bad faith, deliberate withholding of information or intent to mislead. The Tribunal did not therefore find that there had been a failure to comply with OSP2.

   OSP3. You must provide information in a clear and easily accessible way.

   The Tribunal considered that information had generally been made available to homeowners by the Respondent online via the portal and by way of letters and meetings. The Tribunal was satisfied that the Respondent communicated regularly with Mrs Martin. It was conceded by the Respondent that documents intended to be available to Mrs Martin and other homeowners following the

development ‘split’ were missing from their portal, due to an error but this was rectified and does not, in the Tribunal’s view amount to a breach of OSP3.

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

It was conceded by the Respondent that some of the third-party insurance figures and other details produced had been incorrect but was corrected once discovered. The Tribunal was satisfied that Ms Rae’s explanation regarding their reliance on broker/insurance company data and subsequent correction was reasonable in the context. The Tribunal did not therefore consider it established that the Respondent had deliberately or negligently issued erroneous insurance information, nor that they intended to mislead or deliberately hold information back from Mrs Martin. The Tribunal did have some sympathy for Mrs Martin’s position, and understood her frustration, when she was referred more than once to the portal for information that was not there. It would clearly have been better had the Respondent double-checked the position regarding the portal at an earlier stage, before conveying the same wrong information to Mrs Martin, especially as a third-party software provider was involved in the portal set up and administration. Whilst this demonstrated a degree of carelessness on the part of the Respondent, the Tribunal considered this to fall short of ‘negligence’. The Tribunal did not, therefore, consider there to have been a failure to comply with OSP4.

OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

As to the issues concerning maintenance and repair of the playpark, the Tribunal was satisfied from the documentary evidence produced that playpark inspections were carried out; that the 2022 inspection did not reveal any high priority issue; and the 2023 inspection had resulted in one high priority issue being identified, a price was obtained by the Respondent, the matter was discussed at the homeowners’ meeting in November 2023 but the homeowners did not wish to proceed with the works proposed at that time. Mrs Martin confirmed that she had not previously complained or raised concerns regarding the playpark with the Respondent and was not aware if other homeowners had done so. The Tribunal considered that communication from the Respondent prior to the meeting could have been better, but that the meeting itself clarified the issues for the homeowners and further steps were agreed. Ms Rae had explained that delays in obtaining alternative quotes for the works after the meeting were due to the availability of contractors for the specialist nature of the proposed works. The Tribunal considered that the Respondent’s process in obtaining several quotes for consideration by homeowners was in accordance with standard factoring practice. The proposed works did not progress any further as the homeowners had subsequently decided to remove the Respondent as property factor for their development.

As to the provision of the insurance and related documentation to Mrs Martin in response to her complaints, the Tribunal was satisfied that the Respondent had used reasonable care and skill and had been relying on third parties in respect of insurance documentation and in respect of the portal information. The Tribunal did not consider that there had been undue delays in answering any of Mrs Martin's communications or requests for information/documentation. Where there were delays, such as when clarification or information was awaited from third parties, the Respondent had informed Mrs Martin of this. The Tribunal did not consider that it had been established that there were any issues with staff training or knowledge that required to be addressed.

Accordingly, the Tribunal did not find that there had been any failure to comply with OSP6 in their provision of the above services to Mrs Martin.

Section 2: Communication and Consultation
2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

The Tribunal was satisfied that the Respondent had supplied or made available to Mrs Martin the information she had requested and to which she was entitled, albeit that they were not in a position to make amended insurance documentation available immediately, as this had to be queried with the broker and obtained from a third party. As narrated above, the Tribunal considered that the Respondent had, in good faith, directed Mrs Martin to the portal for certain information only to discover subsequently that the information was not, in fact, available to Mrs Martin on the relevant portal. The availability of the documentation to Mrs Martin had been delayed as a consequence but the Tribunal did not consider this to have been the Respondent's intention. Whilst Mrs Martin was clearly entitled, as a homeowner, to seek clarification regarding the insurance costs and cover, the Tribunal was not persuaded that this extended to a right to see communications between the Respondent and broker/insurance company. The Tribunal therefore did not consider that the Respondent's refusal to provide this additional information to Mrs Martin was unjustified. The Tribunal accordingly found no failure to comply with Section 2.4.

Section 5: Insurance
5.4 Homeowners must be notified of any substantial change to the cover provided by the policy.

The Tribunal considered that the change to the public liability insurance in respect of the playpark to cover 'material damage' was a "substantial change to the cover provided", albeit that the increased premium per homeowner was not substantial. Although the Respondent had notified the homeowners regarding the change in cover and costs and the explanation for that, this notification had taken place 'after the event'. It had not been communicated to homeowners after the meeting on 8 November 2023, although the Respondent

had undertaken at that meeting to do so. The first notification to the homeowners that their insurance costs had increased was when they were issued with the common charges invoice dated 1 May 2024. This included the insurance costs increase per homeowner which had been backdated to November 2023 when the change in insurance cover had taken effect. It appeared to the Tribunal that it was only as a consequence of Mrs Martin's complaint and persistence regarding this matter, that the Respondent had eventually properly notified homeowners of the change in the insurance cover. There had been no prior mention of 'material damage' cover being added to the policy at the homeowners meeting. Although the Tribunal considers that the Respondent did subsequently comply with Section 5.4 of the Code, it was satisfied that there had been a failure to comply at the relevant time due to the Respondent's failure to communicate the change in insurance cover timeously to homeowners. The Tribunal considers that it would have been more in keeping with this section of the Code for the Respondent to advise homeowners in advance of the change in cover taking effect or, at the very least, at the time of the change taking effect, not some 8 months afterwards. The Tribunal does accordingly find that there was a breach of Section 5.4 of the Code.

5.11 On request, a property factor must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, and the terms of the policy and the name of the company providing insurance cover.

The Tribunal does not consider there to have been non-compliance with this section of the Code. The method of apportionment was outlined in the Respondent's Written Statement of Services and their share of the costs (a 1/32 share) clearly shown in the invoice documentation. The terms of the policy and the name of the insurance company were provided in terms of the insurance policy schedules produced. The Tribunal considers that the insurance information required was provided to Mrs Martin on request. Unfortunately, as narrated above, there were errors in the original documentation emanating from the insurance company and Mrs Martin's position was that she was not therefore provided with "clear details" regarding the insurance. However, as stated above, the Tribunal is of the view that the Respondent did respond to Mrs Martin's complaint, did investigate the issues with the broker and did subsequently provide the amended information, together with an explanation as to what had happened. It was clear from Mrs Martin's evidence that she had still not been satisfied with the figures contained in the insurance documentation but the Tribunal considered that, looked at objectively, the previous errors in the insurance documentation had been sufficiently explained by the Respondent and rectified by the issuing of the amended documentation to homeowners. The Tribunal considered that transparency requirements had been met and that there was no failure to comply with Section 5.11.

Section 6: Carrying out Repairs and Maintenance
6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed

with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

The Tribunal makes reference to their comments in the first paragraph under heading *OSP6* above. The Tribunal did not consider it established that there had been a failure by the Respondent to comply with Section 6.4.

Section 7: Complaints Resolution
7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WWS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*

- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*

- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*

- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*

- *Where the property factor provides access to alternative dispute resolution services, information on this.*

The Tribunal was satisfied that the Respondent had a written complaints procedure, albeit it was originally called something else. It had been made available to Mrs Martin and the Tribunal considered the Respondent had followed their complaints procedure in dealing with Mrs Martin's complaint. The original written procedure did contain all the necessary bullet points of Section 7.1 of the Code above. Mrs Martin had criticised many aspects of the Respondent's written complaints procedure, as well as the way her complaint had been handled. She had experience in her employment of dealing with complaints and outlined in her evidence a 'model' complaints procedure. The Respondent had responded to Mrs Martin's criticisms by reviewing their written complaints procedure and thereafter issuing a new Written Complaints Procedure. Mrs Martin did not consider that the new procedure addressed all her criticisms of the previous version. The Tribunal agreed that there may still

be scope for improvement of the Respondent's current Written Complaints Procedure. In particular, the Tribunal did not consider it particularly 'user-friendly' to require a homeowner to specify the Code breaches alleged at the outset of making a complaint to a property factor, albeit that this is a requirement when notifying the factor of the homeowner's intention to refer the matter to the Tribunal. The Tribunal, however, is of the view that both versions of the Respondent's written complaints procedure complied with the requirements of Section 7.1 of the Code.

In summary, the Tribunal accordingly determined that the Respondent had failed to comply only with Section 5.4 of the Code.

4. The Tribunal then considered the terms of Section 19(1) of the 2011 Act which states as follows:-

"19. Determination by the First-tier Tribunal
(1) The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide-
(a) whether 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, and
(b) if so, whether to make a property factor enforcement order."

The Tribunal considered the representations of Mrs Martin as to the remedies she was seeking and also the representations from the Respondent in this regard. As the Tribunal had only found the Respondent to be in breach of Section 5.4 of the Code, the Tribunal required to consider whether the making of a Property Factor Enforcement Order ("PFEO") was appropriate or necessary in order to remedy the breach or, alternatively to compensate Mrs Martin. As the Respondent no longer factored the development, the Tribunal considered that there was no purpose in requiring the Respondent to review their policies and procedures in respect of notifying homeowners of any substantial changes in the cover provided by their insurance policy. In any event, the Respondent had subsequently rectified matters by notifying the homeowners in Mrs Martin's development of the changes in insurance cover and the insurance costs, issuing them with corrected insurance documentation and refunding a small over-charge in respect of the insurance costs that they had previously been charged. As to the compensation that Mrs Martin was seeking for financial loss/increased future maintenance costs of the playpark within the development, the Tribunal did not consider that there was any evidence presented to it of such losses/costs being incurred as a result of the Respondent's non-compliance with Section 5.4 of the Code. Nor did the Tribunal consider it appropriate or reasonable to compensate Mrs Martin for the time spent, frustration or stress that she stated she had endured during the formal complaint process with the Respondent or thereafter in bringing her application to the Tribunal. It was the Tribunal's view that the Respondent had made every effort to resolve Mrs Martin's complaint before she referred it to the Tribunal. They had dealt with her complaint appropriately and timeously and in accordance with their written procedure. They had rectified, explained and apologised

for their errors; issued amended and other documentation requested; refunded Mrs Martin in respect of an overcharge in insurance costs; refunded 6 months' management fees to Mrs Martin by way of further apology; offered her a further ex gratia payment of £200 rather than Mrs Martin referring the matter to the Tribunal; and offered a meeting and further final attempt at resolution. Mrs Martin had declined the £200 offered and the offer of a final attempt at resolution by the Respondent. She had explained to the Tribunal that she wished the Respondent to be 'held to account' in respect of the breaches of the Code alleged. Mrs Martin was entitled to bring her complaint to the Tribunal but, as had been discussed at the CMD, she may perhaps have had unrealistic expectations as to the type of remedies that the Tribunal would be likely to apply in respect of any breaches of the Code established, given the remedial action already taken by the Respondent and the fact that they no longer factored the development. It appeared, in any event, that Mrs Martin and the other homeowners in the development had already taken matters into their own hands and expressed their dissatisfaction with the Respondent's services by voting to remove them as property factor as from August 2024 and appointing a new factor. The Tribunal accordingly decided not to make a PFEO.

5. The Tribunal's decision is unanimous.

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.

_____ **21 October 2025**

Legal Member/Chair **Date**