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 (1) of the Property Factors (Scotland) Act 2011 ("The Act")

Chamber Ref: FTS/HPC/LM/23/1919

Re: Property at John Walker Drive, Kilmarnock ("the Property")

The Parties:

Miss Linda Marshall, 11 Bowmore Place, Kilmarnock, KA3 1TF ("the Applicant")

Scottish Woodlands Ltd, Landscaping Division, Research Park, Riccarton, Edinburgh, EH14 4AP ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Ms M. Lyden (Ordinary Member)

Introduction

[1] The above Application called for a Hearing in person at Glasgow Tribunals Centre for two days of evidence on 24 September 2024 and 15 January 2025. The Applicant was personally present. Mr Sinclair, solicitor, appeared for the Respondent. The Tribunal heard evidence from the Applicant and from Mr Duncan Gilchrist on behalf of the Respondent. At the end of evidence each party had the opportunity to make closing submissions. Parties were also allowed three weeks to submit any further written submissions.

[2] Prior to the Hearing, The Tribunal had considered that extensive case management was required before the Tribunal could begin hearing evidence. The Application referred to a vast array of allegations of failings in respect of numerous aspects of the Code of Conduct of Property Factors under the Property Factors (Scotland) Act 2011 ("The Code"). There were many hundreds of pages of documentary evidence before the Tribunal. The Application referred to breaches of both the 2012 Code and the 2021 Code and alleged breaches by the Respondent of their "*Property Factor's Duties*" within the meaning of Section 17 (5) of the Act.

[3] The Respondent had helpfully submitted fully paginated and indexed bundles which assisted in organising the vast documents submitted to the Tribunal. These included a document which helpfully sought to set out as succinctly as possible each allegation and the Respondent's defence to it, in a user-friendly document. It itself was still however a significant document. The Tribunal had before it an extremely large volume of written material. After each party gave evidence, the other party had the opportunity to cross-examine the other. Due to the extent of the allegations and the technical content therein, the Tribunal proceeded on the basis that each party's evidence was based on their respective written submissions as supplemented by the parole evidence heard by the Tribunal.

Property Factor's Duties

[4] At part 7B of the relevant Form C2 submitted, the Applicant had indicated that the Application did not relate to "*a failure to carry out the Property Factor's duties*". This had been confirmed by the Applicant in subsequent correspondence with the Tribunal administration. It was therefore apparent that the Application was premised on alleged breaches of the Code as opposed to "*Property Factor's duties*". Mr Sinclair pointed out that many of the allegations within the Application were in fact allegations that the Respondent had failed to carry out their "*Property Factor's duties*". "*Property Factor's Duties*" is defined in the Act. As such it was said they those allegations should be rejected and not taken forward to the hearing of evidence. The Tribunal therefore required to consider whether any of the Applicant's allegations, if successful, were properly to be construed as alleged breaches of "*Property Factor's Duties*" and therefore rejected on the basis that the Form C2 excluded these from consideration.

The Hearing

[5] After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence, each party had the opportunity to make closing submissions and to submit those submissions in writing also if they so wished. The Tribunal asked questions throughout to ensure the Tribunal could understand the allegations made and responses given as far as possible.

Introduction to witnesses

[6] Ms Linda Marshall is an electrical control and implementation designer by profession. Mr Duncan Gilchrist is the Respondent's "*Head of Division for Landscaping*" and overseas the Respondent's divisional operations. He is a qualified forester and has qualifications in playpark inspection and health and safety. He has worked with the Respondent for around 22 years. The Respondent itself manages around 74 sites. The development which is the subject of this Application and which is referred to as "*the Development*" is generally referred to as "*Alton Hill*". The house developer who built the houses on the Development

is the nationwide housebuilder, Taylor Wimpey. Taylor Wimpey then appointed an organisation called Greenbelt Group to manage the open ground at the Development and the Respondent as the relevant Property Factor for certain other areas in the Development. The areas under the management of the Respondent are as set out in the Respondent's Written Statement of Services (WSS), albeit this is part of the focus of the some of the Applicant's particular allegations.

[7] The Tribunal now considers the position of each party in respect of each allegation in turn. Given the nature of the first allegation and its closely linked alleged sub-breaches, the Tribunal considers them each together.

1. *"The Respondent do not respond to queries and complaints in a timely manner."* This general allegation had eight specific sub complaints and it was alleged that as a result of these failings the Respondent had breached Paragraphs 1.1, 2.3, 2.5, and 4.5 of the 2012 Code and OSPS 1, 5, 6, 11 and paragraphs 1.2, 2.7, 3.1, 4.1, 4.4, 4.6, 7.1 of the 2021 Code.

    a) *No response to query regarding who should be responsible for path repairs on an area of land still under planning Conditions, despite chasing the Respondent for a response. Communications stop when the query is passed to Mr Gilchrist*
    b) *No response to request for site visit reports. Again communications stop when query passed to Mr Gilchrist*
    c) *No response to request for information following 2020/2021 invoice*
    d) *No response to request for information following 2021/20222 invoice*
    e) *No response to request for information following 2022/2023 invoice*
    f) *I was not kept up to date with progress of complaint and again had to chase for a response, after finally getting contact with the Respondent via the Managing Director when postal contact failed due to the Respondent moving*
    g) *No response to email again once passed to Mr Gilchrist*
    h) *Partial Response received on queries on 2023/24 invoice, then no further communication once passed to Mr Gilchrist. When chased for a response the Respondent advised that they would not discuss the matter further out with the Tribunal."*

Applicant's position

[8] The Applicant explained that she received no response to her queries regarding who should be responsible for path repairs on an area of land in the Development which the Applicant states is "*still under planning Conditions*". The area in question is greenspace adjacent to John Walker Drive, Kilmarnock within the Development. She described how she continually pressed the Respondent for a response but all communications stopped when the query was passed to the Respondent's own, Mr Duncan Gilchrist. The issue was about who was liable for path repairs as the Applicant considered that there was a lack of clarity about whether this was the responsibility of Taylor Wimpey or the

Respondent. The Applicant was of the view that that she had not received a satisfactory response. The Applicant had submitted copies of email correspondence sent by her to the Respondent dated 6 August 2020 which was at page 75 of the Applicant's bundle which the Applicant suggested had been ignored along with other communications. These included further emails dated 12 July 2021 at page 80 of the Applicant's bundle which simply went unanswered. The Applicant explained that when any complaints were forwarded on to Mr Gilchrist, the matter simply came to a dead end and that Mr Gilchrist then appeared to completely ignore the issues.

Respondent's position

[9] The Respondent had accepted in their written representations that they had delayed unreasonably in responding to the Respondent's queries. These representations explained that before the Respondent could answer some of the Applicant's queries, the Respondent required to contact Taylor Wimpey for further information. The Respondent explained that Taylor Wimpey then sought a legal opinion from their own solicitors on the matter. The Respondent explained that the Respondent was beholden to Taylor Wimpey's timescales in then replying to the Applicant. They recognised that they should have been better at communicating the position to the Applicant.

[10] The Respondent's written representations indicated that they apologised for the delay in responding to the Applicant's queries and explained that the site visit reports for the relevant period 2020-2023 had now been sent to the Applicant. The Respondent also explained that the reason that there was no acknowledgement to the letters sent by post was because the Respondent changed their address in April 2021. The Respondent acknowledge that no letter was sent out informing all residents of this change of address. They explained that all subsequent invoices/correspondence sent to the residents since had the correct updated address on it. The also explained that the Respondent had offered to credit the Applicant's outstanding balance in settlement of her complaints. This was rejected by the Applicant who explained that she had raised Tribunal proceedings. The Respondent explained that they therefore thought it best to maintain one method of communication and provide a full response to the issues raised through the Tribunal process than to the Applicant outside the Tribunal process.

Tribunal's findings in fact

[11] The Respondent failed adequately to communicate with the Applicant and respond to her queries. Numerous emails over a prolonged period were sent by the Applicant to Mr Gilchrist and were simply then ignored. The Respondent did ultimately supply playpark reports for the period 2020-2023 to the Applicant. The Respondent did not act unreasonably when it declined to continue dialogue with the Applicant about her concerns when she had raised Tribunal proceedings.

[12] The Respondent breached OSP11 of the 2021 Code." *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure*"

[13] The Respondent breached Paragraph 2.5 of the 2012 Code "*You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement."*

Disposal

[14] The Respondent explained that they had expanded their customer care team by taking on two new customer care administrators and promoting one the of their customer care administrators to senior customer care administrator. The Respondent also explained that they had implemented a new property management system which provides more clarity on residential bills and more efficiency in dealing with the financing of the various developments. The Respondent also explained that new staff members receive training when they are hired and that all staff receive annual training and that additional training is offered whenever necessary. The Applicant took the view that despite creating the new customer care roles, the Respondent was still falling short in meeting their obligations under the Codes and their own statement of services when responding to queries. She suggested that additional training should be undertaken.

Disposal.

[15] The Tribunal notes that the failings found established can be framed and considered against many different parts of the Code. However, the Tribunal considers it most expedient and straightforward to consider that the Respondent breached the above sections of the Codes which appear most directly relevant to the allegations. The Tribunal notes the efforts made by the Respondent to address the concerns. However, the Tribunal does not consider that this is sufficient as it does not compensate the Applicant for the frustration of being ignored over a sustained period. The Tribunal considers that the Respondent should also credit the Applicant's account with a payment of £250.00 and will include such an order in a proposed property factor order.

Allegation 2.

2. *"The Respondent make improper payment requests":*

a. *"The Respondent charge for non-routine maintenance items when these should be covered by the cumulative maintenance fund."*

Applicant's position.

[16] Ms Marshall explained that the Respondent charges for non-routine maintenance items when these should be covered by the cumulative maintenance fund (CMF) as stated in the WSS. The Applicant states that the Respondent cannot increase their charges by more than inflation and that the Annual Maintenance Charge (AMC) is set at a level that creates and maintains a cumulative maintenance find which is likely to be sufficient to pay for all non-routine and emergency repairs in the future as when they arise. The Tribunal also noted that the issue regarding whether the Respondent could increase their charges above inflation was itself the subject of a detailed allegation. This is considered separately below.

Respondent's position

[17] Mr Gilchrist spoke very knowledgeable about all aspects of the work undertaken by the Respondent and how this was charged. Much of the Respondent's position regarding the CMF had however already been laid out in the Respondent's written representations. Mr Gilchrist effectively adopted this position as his own evidence on this matter. That position was that the CMF is encompassed within the annual maintenance charge. The annual maintenance charge (AMC) is defined in the relevant Deed of Conditions at Page 14. The Tribunal was referred to the relevant documents and the definitions therein which stated:

"Annual maintenance charge means the pro rata share applicable to each plot of the total annual costs incurred by the open ground proprietors in effecting the Management Operations, together with reasonable estate management remuneration, insurance premium and charges (plus all value added tax eligible thereon) for the relevant year, which pro rata share shall in the case of each plot be calculated by reference to the total number of plots constructed or permitted to be constructed upon the Development with each plot bearing annually a proportion of the said costs, remuneration, premiums and charges (and so that by way of illustrative example only, if the said total number of plots amounts to 100, each plot shall bear a 100th share of the said costs, remuneration, premiums and charges annually).

The "*Management Operations*" are then defined on page five of the Applicant's title sheet as:-

"Management Operations" means all works and others comprised in the management, maintenance and where necessary renewal of the Open Ground as landscaped open spaces, footpaths, attenuation ponds, filtration trenches, landscaped buffer and play areas with fixed

equipment and generally at all times in accordance with Management and Maintenance Specification…"

[18] The AMC accounts for all works, which includes non-routine costs. In order to allow for large items of non-recurring expenditure, the Respondent maintain a CMF. A contribution to the CMF is charged by the Respondent as part of the AMC. All non-routine costs are to be paid by the proprietors in terms of the Deed of Conditions. These costs can either be paid by the residents as part of their annual bill or taken from the CMF.

[19] The Respondent has calculated the contribution to the CMF on the basis of an assumption that the CMF will only be called on for large items of expenditure (such as replacement of play equipment or relaying the surface in a play park). They have proceeded on the basis that more moderate one-off costs will be paid as part of the annual bill. If they had proceeded on the basis that the CMF was to pay for all non-routine costs, the contribution called for into the CMF each year would be higher.

[20] The Respondent goes on to explain that an invoice is raised annually on or around July. These invoices are raised in respect of the AMC, which includes the CMF. The invoices breakdown items such as administration fee, contribution to the CMF, insurance, play area works etc. These invoices are broken down this way to give residents more detail in how the costs are being allocated. However, ultimately all costs are covered under the AMC and the Deed of Conditions details that residents are liable for these costs

Tribunal's findings in fact

[21] The Respondent legitimately charge for non-routine maintenance items and manage the cumulative maintenance fund appropriately.

Comment-

[22] The Tribunal was impressed with Mr Gilchrist's knowledge of the CMF and what it was used for. The Tribunal could find no impropriety. The Applicant could not adequately explain to the Tribunal how the Respondent was acting contrary to any sections of the Code in their management of the CMF.

Allegation

b. *"The Respondent charge for two play park inspections a month (one included under the supervisory inspection charge and one under the operational play area inspection charge) when only one is required."*

Applicant's position

[23] The Applicant explained that the Respondent's charge for the "*supervisor inspection*" already includes a play park inspection and that there should be no second "*playpark inspection charge*".

Respondent's position

[24] The Respondent's position is that there is only one monthly charge for the play area. The Respondent charges for a monthly site visit a (supervisor inspection) for the whole Development. The supervisor inspection is a general review of the whole site. The play area inspection is a specific inspection of the play area- looking for signs of wear and tear. The only other charge in relation to the play area is an annual charge. This charge relates to the safety inspection of the play area and must be carried out by a qualified contractor once a year.

Tribunal's finding in fact.

[25] The Respondent carries out appropriate play park inspections and separate monthly site visits. The Respondent charges for these appropriately.

Comment

[26] The Tribunal could not conclude that the Applicant had presented sufficient evidence to find that the Respondent's methods were in conflict with their obligations under the Code.

Allegation.

c. *"The Respondent charged for minor fence repairs but there is no evidence that this was required. Minor repairs form part of the contractor's scope of work".*

Applicant's position

[27] The Applicant referred to the "*maintenance specification*" of the Development which requires "*the contractor*" (appointed by the Respondent rather than the Respondent themselves) to carry out minor repairs to fencing. The Applicant refers to this maintenance specification also being stated in the WSS. One of the Applicant's complaints was that the Respondent was doing repairs which should have been carried out by a contractor on their behalf. The Applicant also referred to inspection reports which she said indicated that there was no damage to any fence noted during 2021. She referred to the subsequent lack of any "*customer care report*" and referred to there being such an entry when a fence repair was required in 2022. The Applicant wanted evidence of there being any such repair required in 2021 as there was a charge to the residents for such a repair.

The Applicant however was unsatisfied that there was sufficient evidence to justify any such repair being necessary.

Respondent's position

[28] The Respondent explained that a fence at the end of the cul-de-sac had blown over and that this was reported by adjacent residents and that this had to be repaired. The Respondent pointed out that regardless of whether the work was done by the contractor or an employee of the Respondent, the residents are responsible for paying for this under the Deed of Conditions.

Tribunal's finding in fact

[29] The Respondent arranged for a fence to be repaired in 2021. That this was carried out by the Respondent directly rather than by a contractor has not caused the residents any financial detriment. The Respondent should have retained some documentary evidence of what happened so that the situation could have been explained to any residents with concerns or future queries.

Comment

[30] The Tribunal notes that the Respondent is not in a position to provide documentary evidence of what happened to a minor fence repair in 2021. The Tribunal cannot conclude that this amounts to a breach of the Respondent's obligations under the Code.

Allegation

d. *"The Respondent charged for bark mulch application but this forms part of the contractor's scope of work."*

Applicant's position

[31] The Applicant again referred to the maintenance specification of the Development which can be found at page 30 of the Applicant's bundle. Here, in an annex to the WSS titled "*Maintenance Schedule*", the Respondent informs the reader of the nature of the work that "*the contractor*" will carry out in the Development. The Applicant also referred to her Title Deeds which in the burdens section states that "*Where specified in the Schedule of Work, the Contractor shall supply and spread composted bark mulch to achieve an even layer of approximately 100mm depth*" The Applicant referred to the WSS at page 30 of her bundle which again suggested that this work should be carried out by the "*contractor*".

[32] The Applicant also referred to the Respondent's own submissions at page 296 of her bundle in which they stated that "*When we appoint the maintenance contractor for each development, they are appointed based on a schedule of work which covers the routine maintenance*

items." The Applicant was therefore of the view that the Respondent was charging for works that they were carrying out themselves but which were within the remit of what "*the contractor*" appointed by the Respondent should be doing.

Respondent's position

[33] The Respondent's position was that much like with the fence repairs, regardless of whether the work is done by a contractor (or another employed party), the residents are responsible for paying for this work under the Deed of Conditions.

Tribunal finding in fact.

[34] The Respondent charges for "*bark mulch application*" directly despite the Deed of Conditions and even the WSS stating that this work is to be carried out by "*the contractor*" appointed by the Respondent. There is no evidence that this has caused any additional or unnecessary expense to residents. There is no evidence to suggest that this is currently anything other than an issue of semantics. The Tribunal cannot conclude that this amounts to a breach of any Paragraphs of the Code.

Comment.

[35] Whilst the Tribunal considers the specific allegation raised to be somewhat a matter of semantics which is of no practical concern, the Applicant has correctly identified an area which could potentially cause confusion in other circumstances. The Respondent appears to be in technical breach of their "*property factor's duties*" within the meaning of Section 17 (5) of the Act in that they are not strictly adhering to their duties in relation to the management of the common parts of the development as per Section 17 (5) (a). It has already been noted that this Tribunal cannot competently make any finding in respect of any breach of the "*property factor's duties*" in this Application. Accordingly, the Tribunal will make no such finding. Nevertheless, the Respondent may wish to clarify these matters with the residents in order to resolve any further difficulties. Residents should expect clarity regarding why the Respondent carries out some work directly and outsources other jobs at times to a contractor.

Allegation

e. *"The Respondent charged for replacement planting when there is no evidence it was required".*

Applicant's position

[36] The Applicant notes that replacement planting was charged in March 2021 and thereafter the annual inspection reports recorded the stocking level of shrub beds as acceptable from April 2021 onwards. The Applicant is aggrieved that if the stock levels were recorded as having been "*acceptable*", then there should have been no requirement for replacement planting which was charged for in 2021, 2022 and 2023.

Respondent's position.

[37] The Respondent's position is that planting must be replaced in order to meet planning requirements. They explained that a site inspection is carried out annually which includes an inspection of the plants. The inspector walks round the site and accounts for any dead/ missing trees and plants. These are accounted for in a spreadsheet and only those that are required are ordered again. The Respondent had supplied these spreadsheets for the plants ordered in 2020-2021, 2022-23 and 2024-2025. Mr Gilchrist spoke to these spreadsheets and took the Tribunal through the extensive list of plants and planting information in some detail. The Tribunal was impressed with Mr Gilchrist's technical knowledge and was satisfied that the Respondent took great care in respect of these matters and had retained the relevant documentation.

Tribunal's finding in fact.

[38] The Respondent has not charged for replacement planting which was not required.

Comment

[39] There is insufficient evidence to make any finding that the Respondent is charging residents for replacement planting when it is not required. The evidence that was produced appeared to more than adequately address any concerns.

Allegation

f. "The Respondent charge for maintenance of an area still under planning Conditions and which, as confirmed by the Respondent, is not complete".

Applicant's position

[40] The Applicant drew the Tribunal's attention to page 45 of the Applicant's bundle which contained a plan of the Development produced by the Applicant. The area of land this sub complaint related to was described as being "*land adjacent to john walker drive- beside the broarras court."* The Applicant described this land as representing about a third of the size of the Development. The Applicant said in her evidence that her position was

that the Respondent made "*a mistake in taking that area on*" and that they decided that it was almost complete and "*took it on prematurely*". The Tribunal studied the area on the plan and was referred to the more detailed descriptions of the allegation contained within the papers.

[41] The WSS at page 26 of the Applicant's bundle states that the Respondent *"has been appointed by your Developer to be the land management company (LMC) for shared open space components of the housing estate within which your property lies ("The Housing Estate"). These areas "The Strategic Open Space") are highlighted on the plan attached to this document. We will be responsible for the strategic open space, the ownership of which has been transferred (or will be transferred) to us by your Developer. To comply with the Property Factors (Scotland) Act 2011, we are providing you with this Statement of Services which details our appointment and the services we deliver."*

[42] The Applicant produced a copy of a planning decision made by East Ayrshire Council at page 48 of her bundle. The Applicant drew the Tribunal's attention to paragraph 6 on page 51 of the bundle in which it is stated that: "*The landscaping scheme as proposed in the approved drawings… shall be fully implemented prior to the occupation of the last house within the development and shall thereafter be maintained for a period of five years, with all losses being replaced with equivalent species within one planting season of such losses occurring."*

[43] The Applicant summarised her position by pointing out that the WSS states that the Strategic Open Space has been landscaped by the Developer as approved by the local authority planning department. She pointed out that there was no mention that the area could be partially complete and challenged the Respondent to advise where in the Deed of condition it states that costs can be recovered for an area still under planning Conditions.

[44] The specific detail of the allegation as set out at page 297 of the Applicant's bundle suggests that the Applicant actually considered that Taylor Wimpey were in breach of the relevant planning condition 6 because landscaping of the area in question was not completed prior to occupation of the last house.

[45] As to the rights and wrongs of the specific allegation, The Tribunal noted that the Applicant herself stated in her evidence that *: "I accept myself that there's not a definite answer."*

Respondent's position

[46] The Respondent's position was set out at page 297 of the Applicant's bundle. This provided a detailed response to the allegation and which narrated the complex and lengthy history of planning applications in the development. The Respondent's position was that the Respondent still required to put in a plant bed in the area under planning

Conditions described by the Applicant. They advised that as the plant bed area has still not yet been put in, the residents have not yet been charged for the costs of maintaining this area. They also state that the grass that is currently in that area and maintenance of such will be split amongst all the current residents and that the Deed of Conditions entitles the Respondent to recover these costs from all residents, even where they relate to an area of land still under planning condition.

Tribunal's finding in fact.

[47] There is an insufficient basis to conclude that the Respondent has charged for maintenance of any areas inappropriately. There is no legitimate basis for concluding that the Respondent have breached their obligations under the Code.

Comment

[48] Having considered the facts and the relevant documentation, the Tribunal is not in a position to conclude that the Respondent is not correct in their assessment of the matters or that the Respondent has breached the Code. The legal position regarding the planning permissions for the site is clearly something that is capable of generating extensive analysis. The allegation made by the Applicant does not adequately demonstrate that the Respondent has breached their obligations. Neither does it show the Respondent's position to be unsound. The Tribunal cannot conclude that the Respondent has acted inappropriately. This Tribunal is not tasked with conducting a forensic review of the planning law history of the Development. The Tribunal is required to establish whether the Respondent has breached the Code. The Tribunal cannot conclude that the Respondent has fallen short of expectations in either regard. The Tribunal notes that in the Applicant's evidence she herself accepted that she was unsure of the position. The Applicant herself therefore is unconvinced that the Respondent has acted inappropriately.

g. *The Respondent charged for production of homeowners packs for a new area of the development, this should have been covered by the deposit for start-up costs taken from these properties*

Applicant's position

[49] The Applicant's position was largely self-explanatory given the terms of the allegation.

Respondent's position

[50] The Respondent referred to their WSS at page 28 of the Applicant's bundle which states that "*The Annual Maintenance Charge also allows for our expenditure, where required on… provision of Statement of Service packs, provision of and updating to Site Management Plans*." The Respondent's position was therefore that the WSS expressly addressed this issue. They further pointed out that the Respondent is obliged to send out the homeowner information pack every time a sale takes place on the development and not just in relation to a new area. The Respondent further explained that the homeowner packs are now available online for homeowners to download (which will reduce the need to post these packs).

Tribunal's finding in fact

[51] The Respondent does not inappropriately charge for the production of homeowners packs.

Comment:

[52] There is no basis for concluding that the Respondent has inappropriately charged for the production of homeowners packs. The Respondent is entitled to charge for the production of these homeowner packs and makes that clear in the WSS. The Respondent has not breached their obligations under the Code.

Allegation

3. *"The Respondent do not follow their own inhouse procedures regarding debt recovery".*

Applicant's position

[53] The Applicant's position about the Respondent failing to pursue in house debt recovery rules is somewhat unusual because it relates to the Applicant's own debts. Effectively the complaint relates to the Respondent's alleged failure to adequately pursue and recover debts from the Applicant herself.

[54] The detail of the allegation is that payments due to the Respondent which the Applicant withheld in 2020 were not pursued by the Respondent and neither did the outstanding sums appear as an outstanding balance in subsequent invoices. With reference to the Respondent's evidence in response, The Respondent disputes that this was because of the more limited functionality of an older accounting system which was replaced in or around February 2022. Her reasoning for this is that the Applicant also withheld payments again in July 2022 and that in the "*11 weeks it took her to have contact with anyone at the Respondent*", she was not "*pursued for this money*". The Applicant points out that the new WSS states that first reminders are supposed to be issued for unpaid debts after 14 days.

Respondent's position

[55] The Respondent explained that their previous accounting system was replaced in February 2022. It did not have the functionality to carry forward outstanding balances from the previous year. Unpaid balances were absorbed by the Respondent as a cost. They explain that the new system now has this capability and that as a gesture of goodwill and because of the limits of the old system, these balances were not actively pursued.

Tribunal's finding in fact

[56] The Respondent has not breached their obligations under the Code in respect of their debt recovery policy.

Comment

[57] The Tribunal notes that the Respondent's approach to debt recovery appears somewhat generous in that debts were written off and absorbed by the Respondent as a goodwill gesture to those who may not have reciprocated that goodwill to the Respondent. It is not for this Tribunal to question how the Respondent runs its business provided that the services are delivered in keeping with the obligations under the Code. The Tribunal cannot consider that the Respondent's actions amount to any sort of breach. The Respondent's actions have in fact been financially advantageous to the Applicant and there is no evidence of any financial harm to any other residents as a result of the Respondent's previous practices regarding pursuing non-payment. Whilst the Respondent might not have issued payment reminders after 14 days as stated in the WSS, the Tribunal cannot consider that the Respondent's action amount to a breach of their obligations under the Code. This may be strictly construed as a breach of the Respondent's "*Property Factor's Duties*" but as previously stated any such finding is out with the scope of this Application.

Allegation

4. *"The Respondent provides inaccurate and false information both in their email communications and site reports. Contractor reports also do not meet the requirements of the Title Deeds and WS:"*

    a) *"The Respondent stated that only one maintenance visit was missed during Covid (in April) however there is no evidence of a management inspection in March and the details recorded in the April inspection suggest there had been no maintenance at all in April."*

Applicant's position

[58] The Applicant's position is that the Respondent has stated to her that they only missed one maintenance visit to the development "*during Covid*" and that this was in April 2020. The Applicant however also states that there no evidence of a management inspection in March 2020 and that the details recorded in the April inspection suggest that there had been no maintenance at all in April. The Applicant's response to the Respondent's position speculated that as there was no monthly inspection for March, it would suggest that Mr Gilchrist's diary entry was perhaps when Mr Gilchrist planned to visit the site but was unable to. The Applicant then referred to the inspection report dated 24 April 2020 at page 188 of the Applicant's bundle. The Applicant suggested that that this evidenced that there had been no maintenance visit because of the low scores recorded in that subsequent inspection report.

Respondent's position

[59] The Respondent's position is that an inspection was carried out in March 2020 and that there is a diary entry which shows that this took place on 27 March 2020. The Respondent's position is that they only missed one inspection whilst they put measures in place to adapt to the new government rules set around conducting essential work in a covid safe way. Mr Gilchrist gave convincing parole evidence around this entire matter that also gave a detailed account of how the Respondent adapted to the challenges cause by the Covid lockdown restrictions.

Tribunal's finding in fact

[60] The Respondent missed one maintenance visit in April 2020. The Respondent adapted as well as could have been expected to the sudden and severe restrictions imposed on their business operations during the covid government restrictions. The Respondent has not provided inaccurate or false information to the Applicant.

Comment

[61] The Tribunal was impressed with Mr Gilchrist's evidence regarding this matter. He explained clearly the challenges faced by the Respondent and the Tribunal was impressed his dedication to his duties notwithstanding the government restrictions imposed. The Tribunal considers that the Applicant herself can only speculate that the Respondent didn't inspect the site on 27 March 2025. The Tribunal sees no reason not to accept Mr Gilchrist's evidence on the matter.

Allegation

b) *"no maintenance reports have been provided"*

Applicant's position

[62] The Applicant's position was that the reports which are required are the maintenance site visit reports which are listed at page 67 of the Applicant's bundle. This email was sent by the Applicant to the Respondent on 10 July 2020. It is related to Allegation 4 (a) because the theme of that email is the Applicant challenging the Respondent about inspections which were alleged by the Applicant to have been missed.

[63] In her parole evidence the Applicant acknowledged *"I didn't get them until recently- they sent me four years worth of play park inspection reports – one was missed, March 2020*."

Respondent's position

[64] The Respondent's position is that all site inspection reports and play area inspection reports have been provided. The Applicant's email of 10 July 2020 speaks of missing reports somewhat generally and states that the production of these reports is a condition of the Title Deeds. In any event the Applicant's parole evidence acknowledged that all reports have been provided apart from the March 2020 inspection report which the Respondent acknowledges was missing as a result of the Covid disruptions.

Tribunal finding in fact

[65] The Respondent has not provided inaccurate or false information by failing to provide maintenance reports. The Respondent has supplied the Applicant with various reports which she has requested. The only report not supplied is the inspection report from April 2020 which was not completed as a result of the covid disruption. The Respondent has not provided inaccurate of false information or breached their obligations under the Code.

Allegation

c) *"I was advised I had been sent all play park inspections and site inspections carried out by the Site Manager from 2020-2023. This was not what was actually provided. This was also not what had been requested".*

Applicant's position

[66] This allegation seemed to be substantially similar to the immediately previous allegation. The Applicant appeared in her evidence to accept that she had since been

supplied with all relevant reports. The Tribunal comes to the same conclusion regarding this allegation.

Tribunal finding in fact

[67] The Respondent has not provided inaccurate of false information by failing to provide playpark and site inspection reports.

Allegation

d) "Play park inspections carried out by different people have differing content"

Applicant's position

[68] The Applicant's position here was self-explanatory. Her position was she expected play park inspections to be more formulaic.

Respondent's position

[69] The Respondent's position was that all play park inspections are conducted by RPII registered individuals with relevant experience and qualifications. The qualifications do not proscribe a form to fill out when conducting the inspections. The Respondent created a style form to use but it is up to the individual inspector as to how they complete the form. The Respondent provided the example of how one inspector might describe a climbing frame and a slide as two separate items whereas another may consider them to be considered as a "*multi play*" item. The Respondent pointed out that it was perfectly reasonable and appropriate for different inspectors to exercise their own judgement about how to complete their reports.

Tribunal's finding in fact.

[70] The Respondent's practices regarding the completion of play park reports are compliant with the Code.

Comment

[71] The Tribunal could not establish any basis for concluding that the Respondent's practices were not compliant with their obligations under the Code.

Allegation

e) *"Play park inspections have missing items"*

Parties' positions.

[72] This allegation seemed closely related to the previous allegation and the Respondent adopted the same response.

Tribunal's finding in fact.

[73] The Respondent's practices regarding the completion of play park reports are compliant with the Code.

Allegation

f) *"The Respondent lied that there was no previous damage to the play park surface but it is clearly shown in the inspection reports that there was previous damage prior to the vandalism."*

Applicant's position

[74] The Applicant's position is that she reported vandalism to the play park across from her house to the Respondent on 18 July 2025. The Applicant's position is that the Respondent lied about the extent of the vandalism as the relevant playpark inspection reports showed that there was already "*damage*." The Applicant refers to an entry on the previous play park inspection report which records "*wear hole under swing, abacus informed will visit site this week and repair*". The Applicant points out that the report is dated 14 July 2023 which was four days prior to the vandalism reported by the Applicant on 18 July 2025.

Respondent's Position

[75] The Respondent explain that the play park's safety surface was repaired at the end of 2022/2023. They point out that there is a distinction to be made between wear and tear, damage and vandalism. They state that normal wear and tear is to be expected and that there is a judgement to be made at each inspection as to whether or not anything needs to be replaced or is not safe. The Respondent states that prior to the vandalism reported, no damage was noted that required repairs. They point out that this does not mean that there was not some noticeable wear and tear. When wear and tear turns into damage this is when further repairs might need to be taken.

Tribunal finding in fact

[76] There is an insufficient basis to conclude that the Respondent "*lied*" about the condition of the playpark prior to the vandalism. The Respondent has not breached their obligations under the Code.

Allegation

> *g) Contractor reports provided shows a yes/no list of work to be done. The report should detail the work carried out along with the methods employed to achieve the required standard.*

Applicant's position

[77] The Applicant's position was that the contractor's work report which was contained on pages 184-187 of the Applicant's bundle was inconsistent with the requirements of the Deed of Conditions and the WSS. The Applicant stated that these reports should detail work carried out and methods employed to achieve the required standard.

Respondent's position

[78] The Respondent's position was that the contractor reports are prepared to assist the Respondent's management and are not intended to be circulated to residents. They explain that it is a matter for the Respondent to ensure that the reports supply them with sufficient information to comply with their obligations. The inspection has to be done to the standard required of anyone qualified to conduct the checks. It involves checking items on a list. Any more detailed work would lead to unnecessary additional costs for no benefit.

Tribunal's finding in fact

[79] There is insufficient evidence to conclude that the Respondent have breached their obligations under the Code in respect of their use of contractor reports.

[80] The Tribunal inspected these reports themselves. They were not, as the Respondent advised, intended for general circulation. These looked like reports prepared by the contractors to make sure they considered all the areas of the Development they were supposed to. They were only marked with a "*No*" if something required further maintenance. If no "*no*" was recorded, the area in question was deemed to be acceptable. Mr Gilchrist had taken the Tribunal through these reports and explained that. They seemed unremarkable and the Tribunal could establish no impropriety.

Allegation

h) *Supervisor inspections details work required on an area that is not currently shown on the site plan as being the responsibility of the residents.*

Applicant's position

[81] The Applicant's position here was largely self- explanatory

Respondent's position

[82] The Respondent's position was that the Applicant has not been charged for any of these areas. The Tribunal considered that there was little evidence to rebut the Respondent's response to this which seemed to adequately address the Applicant's concern.

Tribunal finding in fact

[83] There is insufficient evidence to conclude that the Applicant or any other resident has been charged by the Respondent for the maintenance of any area of land that is out with the scope of the Respondent's responsibilities.

Allegation

5 *The Respondent increase their charges by more than permitted amounts and it is unclear how the charges are being applied:*

a) *When explaining how invoices are calculated the Respondent used the individual property charge from one year to the next ensuring their percentage increase is not above the rate of inflation*
b) *The details contained within the title Deeds state that it is the overall charge that can not increase by more than inflation, so while my individual fee doesn't rise by more than inflation, with the increase in properties the overall charge does indeed increase by more than permitted*
c) *In 2019/2020 the overall charge increased by 8.9 per cent*
d) *In 2020/2021 the overall charge increased by 6.2 per cent*
e) *Within the Respondent' written representations from September 2023 they state that the administration and management fees are a set fee charged to each*

resident however this is not explained within the WSS nor is it detailed as such on the invoices.

[84] The Tribunal considers it expedient to consider these sub-allegations together.

Applicant's position

[85] Again, the Applicant's position is largely self-explanatory and is as set out in the details of the allegations.

Respondent's position

[86] This allegation was the subject of much parole evidence during the Hearing. The Respondent's position was as per their comprehensive response to the allegation set out in the papers. They referred to the Deed of Conditions which the Tribunal fully considered against the specific allegation made. Having done so the Tribunal concludes as follows. The Applicant had little to counter the Respondent's position. Having considered the matter, the Tribunal found no reason not to accept the Respondent's position.

[87] The Deed of Conditions details the relevant inflation restriction referred to. It states that "*The costs of effecting the Management Operations shall not be permitted to Increase in any relevant year by a margin or amount which exceeds the relevant increase for that year in the rate of inflation as measured by the UK Index of Retail Prices provided always that the limit of increase shall not apply in respect of the increase in the said costs applicable at the end of the fifth year following on the date of registration of this Deed of Conditions and every fifth year in perpetuity so as to ensure that at the end of such relevant period of five years the pro rata share applicable to each plot for the succeeding year reflects any actual increase in the costs of the Management Operations*.

[88] The "*Annual Maintenance Charge*" means the pro rata share applicable to each plot of the total annual costs incurred by the open ground proprietors in effecting the Management Operations, together with reasonable estate management remuneration, insurance premium and charges (plus all value added tax eligible thereon) for the relevant year. The "*Management Operations*" means "all works and others comprised in the management, maintenance and where necessary renewal of the Open Ground"

[89] The Annual Maintenance Charge is made up of different categories of charges such as the costs of carrying out the Management Operations, reasonable estate management remuneration and insurance premia and charges. Whilst the Management Operations costs cannot exceed inflation, it is possible for other charges (management remuneration/fee, insurance premium) to exceed inflation. These amounts cannot be included in the inflation increase calculation as they are not covered by the Inflation Restriction. The Respondent submits therefore that the Applicant's position that the

overall charge cannot increase is incorrect. The Management Operations costs are part (but only part) of the AMC.

[90] The costs of the Management Operations have not been increased above inflation. Where additional properties are added to the development, the administrative burden on the Respondent has grown commensurately. The Respondent charge a management and administrative charge to these additional properties. This has had the effect of increasing the total amount received by the Respondent above the level of inflation. The amount received by each proprietor has not increased above that level. The costs of carrying out the Management Operations have not increased beyond inflation.

Tribunal's finding in fact.

[91] The Respondent has not therefore breached the Code by increasing their charges beyond permitted amounts**.**

Allegation

6 *The Respondent does not apply their charges evenly across the development or in line with their Written Statement of Services.*

a) *The WSS states there are or will be 650 properties contributing, this number has never been used.*
b) *In 2020/2021 713 houses were charged but in 2021/2022 this number reduced to 708. The Respondent has repeatedly failed to provide a reason for this.*

Applicant's position

[92] The Applicant states that the WSS states that there are or will be 650 properties contributing but that this number has never been used. In respect of the Respondent's position in answer, The Applicant acknowledges that Taylor Wimpey wrongly informed the Respondent of the number of houses and that the Respondent wrote off the loss. She accepts that this "*could indeed be the case*".

[93] However the Applicant also points out that on examination of the costs breakdown supplied, the residents of the 670 properties who contributed the previous year paid enough to cover the costs without the need for the additional houses contribution, whether that was an additional 43 or 33 houses. The Applicant therefore suggests that there was '*no loss*" and that the Respondent credited balances with the money from the underspend. The Applicant also points out that Taylor Wimpey are not just supposed to inform the Respondent of the number of houses required to contribute, but that "*they hand over a £125.00 plus VAT deposit to cover the first year's maintenance*." The Applicant suggests

that the Respondent should write to these houses with their homeowners pack and advise that their deposit was being used for the coming year's maintenance.

[94] The Applicant refers to one of her own invoices for 2020-2021 which was issued in 2020 with the net amount due being £118.80. She notes that this would have been the charge for all the 670 units which contributed the previous year. The Applicant states that this shows a total net amount of £79,596.00. The Applicant notes that the Respondent's statement of account for 2020/2021 at page 78 states that the total costs are £78,064.25. and that the net charge is £84,971.00. The Applicant suggests that the accounts make clear that the amount paid by the existing houses more than covers the total costs which were increased by 6.2 per cent "*to cover the administration required for the extra houses*".

Respondent's position

[95] The Respondent acknowledge their obligations under the Act to detail the number of units who contribute to the Respondent's costs. The Respondent state that when their WSS was drafted the correct number of units contributing was thought to be 650. They explain that they relied on Taylor Wimpey informing them of when a property was sold. They explain that Taylor Wimpey have not always provided them with the correct information. They further explain that in 2020-2021 Taylor Wimpey advised that there would be 713 units. However, it was subsequently discovered that 703 was the actual number. The Respondent confirms that they wrote off the loss and did not seek for other residents to make up the shortfall. The Respondent confirms that in 2021-2022 a bill was issued to 708 units which was accurate and reflected the residents in occupation at the time. The number of residents has since risen to 728. This is after extensive searches were conducted by the Respondent physically inspecting the site and comparing this with the relevant property Deeds obtained.

[96] The Respondent advises that a budget reconciliation will be conducted based on the 728 units and this will be credited to the resident's accounts that have already contributed in the upcoming year.

Tribunal's finding in fact

[97] The Respondent's calculation of their charges across the Development have been hampered by being supplied with erroneous information by the developer, Taylor Wimpey. The Respondent has taken steps to try and address these issues and advise that a budget reconciliation will be conducted based on the correct number of units and that sums may be credited to resident's accounts. There is nothing to suggest that the Respondent has intentionally sought to deceive or been reckless, however it may be that certain errors have remained as of yet unchecked by the Respondent. The Tribunal considers that the Respondent has not been able adequately to demonstrate compliance with paragraph 3.1 of the 2021 Code which is in the following terms:

"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."

[98] The Tribunal considers that the Respondent has not been able adequately to demonstrate compliance with paragraph 3 of the 2012 Code which is in the following terms*:*

"*While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved"*

Disposal

[99] The Tribunal considers that all parties and the residents would benefit by the Respondent taking action to resolve these issues and demonstrate the steps taken in a transparent manner. The Respondent should therefore conduct a thorough budget reconciliation and share their findings with all the residents within 2 months and inform the residents of the steps taken to address the issues raised.

Allegation

7 *The Respondent's Written Statement of Services contains inaccurate information.*
   a) *The WSS states that the Respondent are responsible for the maintenance of the SUDS and requirements for same are detailed in the maintenance specification that the contractors apparently use for the basis of the annual price.*
   b) *The WSS was not updated with new contact details when the Respondent moved in 2021. The Respondent stated that the Applicant would have been charged for a re-issue of the WSS, however as the code of conduct changed in 2021, an updated WSS should have been provided to meet the terms of the new code.*
   c) *No accurate detail of the number of responsible properties, number quoted has ever been used*
   d) *No list of work that may incur additional fees*
   e) *No target times for taking action on repairs*
   f) *There is no reference to the types of work in addition to the core service which will incur additional charges. Although if the Respondent paid for these non-routine items from the cumulative maintenance fund a list would not be required.*
   g) *The management fee is not detailed, or the policy for reviewing it and increasing it.*
   h) *The proportion of fees and charges that each homeowner is responsible is detailed but is incorrect.*
   i) *Late fees are not listed*
   j) *The privacy notice and registration details are not listed*

k) *There is no detail on how the homeowners may change the service arrangements*
l) *There are no details on when and how a homeowner should inform of an impending change in property ownership.*

[100] The Tribunal considers it appropriate to consider this complaint and sub-complaints together.

Applicant's position

[101] The Applicant's position is again largely self-explanatory based on the details of the allegations themselves.

Respondent's position

[102] The Respondent accepts allegation 6 (a) as well founded and state that they have issue a new WSS which does not refer to the SUDS. In respect of 6 (b), and as referred to in previous allegations, the Respondent elected not to incur the cost of producing a new WSS with the correct up to date contact details because of the cost and because they advise that the new address was already detailed on invoices the website and at the bottom of email signatures. The Applicant however points to her having received emails from Mr Gilchrist and the customer care team which contained no such electronic signatures. In respect of 7 (c) the Respondent states that every invoice has had the number of properties on it as required by the Code. The Respondent points out that as per a previous allegation, until a site is finished the number of properties changes throughout the year until completion.

[103] In answer to 7 (d), the Respondent refers to allegation 2 (a) which relates to the issue of the Cumulative Maintenance fund. The Tribunal is unsure how that specifically addresses the allegation in 7 (c). The Respondent appears to accept 7 (e) as a valid complaint and they explain that a new WSS addresses this by listing the appropriate response times. In respect of Allegation 7 (f) the Respondent again refers to their substantive position regarding the Cumulative Maintenance Fund. The Respondent deny that they are required by the Code to detail their management fee or provide information regarding their policy of reviewing and increasing it. However, the 2021 Code does explicitly contain such an obligation at 1.5.C (6) of the 2021 Code and 1.C E of the 2012 Code. In respect of allegation 7 (h) the Respondent refers to their substantive response to allegation 6 which relates to the allegation that the Respondent do not apply their charges evenly across the development or in line with the WSS. In response to allegation 7 (i) the Respondent states that late fees are not listed because these have not previously been charged. They point out that these are listed in the new WSS issued. The Tribunal therefore does not find there to be any breach in respect of the non-listing of late fees as these cannot be listed if they are not actually being charged.

[104] In respect of allegation 7 (j), the Respondent points out that the registration details are listed on the footer of all letters and the WSS itself. They also point out that the Privacy Notice is available on the Respondent's website and that they are considering adding a link to the privacy notice on the website to the section on data protection in the new WSS. The Tribunal is satisfied that the Respondent's privacy notice and registration details are adequately provided on the WSS. The Tribunal therefore does not find there to be any breach in this regard. In respect of Allegation 7 (k) the Respondent explains that the Deed of Conditions governs the service arrangements and the homeowners cannot change the Respondent's appointment as the Land Manager as their obligation to maintain and right to receive payment arises from their ownership of the relevant land. The Applicant states that her concern is regarding the clarity provided around changing the service arrangements. She points out that the Title Deeds have a means to amend the management operations and or management and maintenance schedule. The Applicant states that this information should be in the WSS. The Tribunal agrees that as this is a relatively unusual situation in that the Respondent actually owns the land that the Respondent's WSS should set out clearer information regarding how to change the service arrangements.

[105] In respect of allegation 7 (l), the Respondent states that this information is set out in the Deed of Conditions and that residents are supposed to notify the Respondent. The Tribunal considers that this is not compliant with 1.G.19 of the 2012 Code as expecting readers of a WSS to cross reference that to a Deed of Conditions is unhelpful.

Tribunal finding in fact

[106] The Respondent's previous WSS did not comply with the Respondent's obligations under the Code in respect of the inappropriate reference to the area under management (the SUDS), the failure to ensure that the WSS contained the Respondent's correct contact details, failing to list the response times for taking action on repairs and failing to set out the management fee charged and the policy for reviewing and increasing it. The WSS did not also comply with 1.G.19 of the Code as the WSS was not sufficiently clear about what a resident should do if there was an impending change in property ownership. The WSS also did not adequately set out how the residents might change the service arrangements.

[107] The Respondent's previous WSS therefore was in breach of the following paragraphs of the Codes:

2021 Code: 1 (5) B (4); 1.5C (6); 1.5D (13); 1.5.G.19 and 1.5.G.20.

2012 Code: 1 B (c); 1 C (e) and 1.F

Comment

[108] The Respondent themselves indicate that they have issued a new WSS albeit the Applicant similarly raises complaints about whether that new WSS is itself compliant. The Respondent however also then says that they are considering yet a further WSS that then responds to the deficiencies identified by the Applicant.

Disposal

[109] The Tribunal considers that the most logical step is to order the Respondent to ensure that their WSS is compliant with their obligations and to demonstrate compliance by issuing a WSS which is compliant. However, given the overlap with the Applicant's next allegation regarding a subsequent WSS issued by the Respondent, the Tribunal will not make any Property Factor Enforcement Order in respect of this allegation as it makes more sense to do so in respect of the 8th allegation regarding the new WSS.

Allegation

8 *The Respondent's new Written Statement of Services does not comply with the Code of conduct and contains inaccurate information*
   - a) *The changes to the WSS are not clearly indicated or noted in a summary of changes*
   - b) *There is no reference to the types of work in addition the core services which will incur additional charges. Although if the Respondent paid for these non-routine items from the cumulative maintenance fund a list would not be required.*
   - c) *The management fee is not detailed or the policy for reviewing it and increasing it*
   - d) *The proportion of fees and charges that each homeowner is responsible for is not detailed*
   - e) *The timing and frequency of billing is not detailed*
   - f) *The privacy notice and registration details are not noted*
   - g) *The Respondent has not declared their financial interest in the land*
   - h) *There is not detail on how the homeowners may change the service arrangements*
   - i) *There is no detail on the cumulative maintenance fund amount and payment process*
   - j) *Despite stating it is the Statement of Service for the Applicant's development it contains a lot of generic information as opposed to specific to the development*
   - k) *The WWS states "We offer a ground maintenance service" but then details "property inspections"*
   - l) *The Statement on common charges on P150 is incorrect*
   - m) *The Statement in Debt Recovery on P150 regarding the detailed invoices that will be provided is currently not being carried out by the Respondent*

[110] The Tribunal likewise considers it appropriate to consider this complaint and sub-complaints together and proceeds on the basis that the Applicant's position on the allegations are self-explanatory unless otherwise stated.

Respondent's position

[111] The Respondent appears to accept the merits of Allegation 8 (a) and suggests that a summary of changes will be appended to the WSS in due course. In respect of allegation 8 (b), the Respondent points out that a new section in the WSS headed as "*Additional Fees*" which lists circumstances that may lead to additional work which may attract extra charges. They say that it is not possible to list all potential additional fees as not everything is predictable foreseeable. The Applicant notes that the New WSS also states that "*occasionally additional services may be required on your development and these may incur further expenditure*". The Applicant states that this falls short of meeting 1.5 B (5) of the Code which states that "*the types of services and works which may be required in the overall maintenance of the land in additional to the core service and which may therefore incur additional fees and charges (this may take the form of a "menu" of services) and how these fees and charges are calculated to homeowners."* The Tribunal does not however accept that the Applicant's criticism here is well founded. The Respondent's position is right that it is simply not practicable or possible to list all and any potential additional fees. The Respondent's additional information seems to comply with 1.5.B (5) of the Code.

[112] In respect of Allegation 8 (c), the Respondent again confirms that they are considering making yet further amendments to the WSS in relation to this complaint. This allegation is substantially similar to the same allegation directed against the previous WSS. The Tribunal agrees that the new WSS is deficient in that it says nothing about the management fee or its policy regarding its review. In response to allegation 9 (d), the Respondent points out that the WSS states that: "*The relevant number of people contributing towards the maintenance of the Development can be found on your invoice or budget reconciliation."* The Respondents point out that if they were to manually put the number into the WSS every time there was a change to the number of residents it would lead to additional costs in supplying a new WSS. The Tribunal accepts this approach as not being in conflict with the Respondent's obligations under the Code.

[113] In respect of allegation 9 (e), the Respondent points out that the new WSS details that the accounting will be done in accordance with the Deed of Conditions. They state that the residents are billed annually on or around July. The Tribunal considers that whilst the reference to the Deed of Conditions is just about compliant with the Code it would be helpful if the Respondent simply said when they issued bills as it perhaps seemed less that helpful to ask residents to have to cross reference the WSS to the Deed of Conditions. In response to allegation 7 (f) regarding the privacy notice, the Respondent refers to their answer to the same allegation as directed to the allegation in 7 (j). In respect of allegation 8 (G), the Respondent replies that the new WSS adequately deals with this by addressing the matter. The Tribunal reviewed the relevant document. The Applicant disputes that this adequately deals with the matter and states that the Respondent does receive an income from the land they own. Having considered the appropriate part of the WSS, the Tribunal cannot conclude that the Respondent's wording is inadequate or misleading. It is apparent that the Respondent charges for their services. The Applicant's allegation

appears premised on the Respondent referring to a gross profit charge on their invoices. But that Tribunal does not see that as being in conflict with the wording set out in the WSS.

[114] Again in respect of Allegation 8 (h), the Respondent takes the same position as in the analogous allegation in 7 (k). The Tribunal comes to the same conclusion as before. Further information about how to change the service arrangements should be included. In respect of allegation 8 (i), the Respondent appears to accept that there should be more information about the cumulative maintenance fund amounts and the payment process in the WSS and suggest that they are considering making amendments to this. The Tribunal agrees. There should be a transparent explanation of the existence and role of the CMF in the WSS. The Respondent's position regarding allegation 8 (j) is that they deny the allegation and call upon the Applicant to specify what parts of the code are alleged to have been breached. The Applicant refers to paragraph 1.1 of the code which states that a Property Factor must provide each homeowner with a comprehensible WSS setting out in a simple structured way the terms and delivery standards. The Tribunal does not uphold this allegation. The allegation that the WSS contains "*a lot of generic information*" does not provide a sufficient basis to conclude that the Respondent is in breach of their Obligations under the Code.

[115] In respect of Allegation 8 (k), the Respondent's position is to call upon the Applicant to clarify the complaint. The Applicant then does so by stating that "*this is not a complaint, it is an example of the generic information contained in the WSS.*" As the Applicant confirms that this is not a standalone complaint, the Tribunal does not consider it further in the context of the matters which require the Tribunal to consider whether there have been any breaches of the Code. The relevant paragraph of the new WSS seems unremarkable. Whilst the Applicant might consider the simple statement that "*we offer a grounds maintenance service*" to be rather simplistic, given that the Respondent is not a traditional factor who manages common parts of property, the Tribunal finds that that simple statement is likely to be helpful to readers. In respect of Allegation 8 (l) the Respondent again calls upon the Applicant to provide clarity about how the statement is incorrect. The Applicant then refers to page 150 of her bundle for further information. On this page, the Applicant has annotated some comments on the relevant section of the new WSS. These comments are "*contractor's and suppliers invoices can't have already been paid as you bill for works not yet done. You hold resident's funds, however it is noted that you are not authorised by the FCA to do so.*" The Tribunal considers that this presumes that the interplay of the "*FCA*" and the Respondent is well known to the Tribunal and that the Tribunal are to understand that the Respondent's paragraph re "*common charges*" is clearly incompatible with whatever the requirements are said to be of the FCA. From reviewing the paragraph and having considered the Applicant's comments, the Tribunal cannot conclude that there is any impropriety and that the Respondent is in breach of any sections of the Code. The relevant paragraph in the new WSS appears unremarkable.

[116] In respect of allegation 8 (m), the Respondent again seeks further clarity and states that invoices are issues which detail the payments due along with a description of the work. They state that contractor and supplier invoices are redacted. The Applicant makes further comments that the Respondent's statement of account has insufficient detail of the work undertaken. She gives example of invoice entries which include the words "*replacement planting*" and "*site inspections*". Having considered the allegation, the Tribunal finds the Respondent's entries to be reasonable and somewhat unremarkable. They appear to convey the required information and little else which seems an acceptable approach. The Tribunal cannot conclude that this is in breach of the Respondent's obligations under the Code.

Findings in fact

[117] The Respondent's new WSS does still not comply the relevant Code. The matter only relates to the 2021 Code and the relevant paragraphs which are in breach are:

2021 Code: 1(2); 1.5C (6); 1.5D (13); 1.5.G.19 and 1.5.G.20.

Disposal

[118] The Tribunal considers it appropriate to group its disposal of allegations 7 and 8 together given that they both relate to the WSS. The Tribunal will order that the Respondent prepare a new and improved WSS that addresses the concerns set out in this decision and the breaches found established.

Allegation

9 *The Respondent's new statement of account documents do not comply with the Code. There is no detailed description of activities and work carried out.*

Applicant's position

[119] The Applicant's position is that a property factor must provide to homeowners, in writing, at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and detailed description of the activities and works carried our which are charged for. The Applicant gives examples of instances were the relevant entries record: "*Regular Maintenance; KY Inv SI-155873- Maintenance March 2023; or Maintenance July 2022*."

Respondent's position

[120] The Respondent's position is that the Statement of Account and invoices adequately identify the description of the work and cost associated with this. The Respondent state that the Statement of Account and the WSS read together provide a detailed description of the activities and work carried out and costs associated with it.

Tribunal's finding in fact.

[121] The Respondent's statement of account and invoices adequately identify the description of the work and the cost associated with this.

Comment-

[122] The Tribunal considered the statement of account itself supplied at page 122 of the Applicant's bundle. The Tribunal considered that the account was self-explanatory and clearly identified what the costs were. Yes, there were some numbers that appeared opaque and technical- most likely internal references. But as whole the entries were self-explanatory and unremarkable. The Tribunal did not find the Applicant's allegations here to be well founded. The Account was self-explanatory and unremarkable.

Summary

[123] The Tribunal therefore upheld some of the Applicant's allegations and refused others.

The Allegations upheld were:

Allegation 1.

OSP 1 of 2021 Code and 2.5 of 2012 Code.

Allegation 6.

3.1 of 2021 Code and paragraph 3 of 2012 Code-

Allegations 7 and 8

2021 Code: 1 (5) B (4); 1.5C (6); 1.5D (13); 1.5.G.19 and 1.5.G.20.

2012 Code: 1 B (c); 1 C (e) and 1.F

2021 Code: 1(2); 1.5C (6); 1.5D (13); 1.5.G.19 and 1.5.G.20.

Proposed Property Factor Enforcement Order

[124] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[125] The Tribunal considers that appropriate remedy for the breaches established, is to order that the Respondent "*execute certain action*" in terms of Section 20 (1) (a) of the Act. The action that will be ordered is as follows:

Action to be taken

[126] The Respondent is to:

1. Make a monetary payment to the Applicant in the sum of £250.00 to account for the stress and inconvenience caused as a result of the Respondent's breaches of the Code.
2. Conduct a thorough budget reconciliation and share their findings with all the residents within 2 months and inform the residents of the steps taken to address the issues raised in this Decision.
3. Prepare a new and improved WSS that addresses the concerns set out in this Decision and the breaches found established.

[127] The Tribunal orders that the above be actioned within 30 day unless otherwise stated.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin **27 August 2025**
Legal Member **Date**

APPEAL PROVISIONS

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.