

TCA 2023/0015

REPORT

MICHAEL DISTRICT COMMISSIONERS

The following Submissions and Responses contain no analysis or commentary by the TCA. That analysis forms part of the reasoning and conclusions in this Report. In particular, the TCA makes no observations concerning accuracy, completeness or relevance. It is the policy of the TCA neither to exclude nor to edit any comments and materials which have been provided. The TCA hopes thereby to eliminate to the greatest extent possible any unconscious bias or prejudice which might otherwise be inferred from a partially reproduced or summarised account.

Correspondence and documentation between third parties to which the Listed Authority was not a party and of which the Listed Authority has not been made aware has not been excluded but as the TCA does not have authority to investigate matters “at large” is not weighed in the TCA’s conclusions.

References to office holders are to those individuals who held such office at the relevant time(s).

Submissions and Responses¹

1. By e mail dated 16 September 2023 17:58 the Complainant informed Ms Angela Main Thompson² of a complaint against Michael District Commissioners:

I am writing to you on the advice of [named official] (Local Authority Unit, DOI) and my MHK [named], who both believe³ I should make you aware of the behaviour and decision making of the current Michael Commissioner Board. The facts are as follows:

¹ In drafts of this Report prior to March 2025 this section was titled “Statement of Facts”. References to the “Statement of Facts” in correspondence/documentation prior to March 2025 which is reproduced or referred to in this Report have been retained.

² Ms Angela Main Thomson’s term of office as TCA ended on 31 October 2023.

³ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: “who both believe” – this is infactual. I have spoken to both of these individuals and the advice I received does not support the statement in this paragraph. The MHK advised that I place the matter in the hands of our insurance company and let them deal

On 13th March 2023 while my vehicle ([details of vehicle]) was parked in [location] Kirk Michael it was extensively damaged by a trampoline (see photograph attached). If the circumstances had been different and someone had been in the area (which is a playing field containing a children's play park) and the trampoline had hit them the severity of this incident would have been catastrophic.

This trampoline had been left untethered on Michael Commissioner land for some considerable time. The trampoline itself belonged to a serving Michael Commissioner, [Neighbour]⁴ who lives in the property (plot [plot number provided] of the attached plan) adjacent to the Michael Commissioner land.⁵

The damage to my vehicle was caused when the trampoline blew across open land (approx. 75 metres) into the area where my vehicle was legally parked. [The Neighbour] admitted liability at the time, however my motor insurance could not claim off [their] home insurance for reasons unknown.

As I was aware the trampoline was situated on Michael Commissioner land immediately prior to the incident I contacted the Clerk to inform [them] of the incident on 14th March 2023. The Clerk stated that the strip of land that the trampoline was on, was privately owned according to the deeds of the householder. During a telephone call to Michael Commissioners the Clerk admitted that [they] had not seen these deeds and that [the Neighbour] had shown the deeds to the Chairman (at the time) [name of chair].

Around the same time, I double checked that I was right regarding the land ownership and visited the Land Registry. The land did belong to Michael Commissioners and not [the Neighbour]. Land Registry documents clearly show that [Developer]⁶ had previously owned this land prior to signing over ownership to Michael Commissioners. The Clerk was made aware of this.

with it, which I did once the two parties had finished their insurance/private claim and the Complainant came back to me to request I do so.

Neither of these individuals have raised at any time that they have any concerns about the decision making or behaviour of the current Michael District Commissioners. We have had a lot of contact with members of DOI up to Minister level and have received very favourable comments regarding the current Board.

⁴ The person concerned is referred to in this Report as Neighbour, but the TCA notes the person's capacity as a serving Commissioner of Michael District Commissioners both at the time of the events which are the subject of this Report and at the date of this Report. The Neighbour's right to anonymity under section 19(3) Tynwald Commissioner for Administration Act 2011 has been observed.

⁵ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The Neighbour has provided photographic evidence that the trampoline was tethered.*

⁶ Details of the Developer have been made available to the TCA. The Developer's right to anonymity under section 19(3) Tynwald Commissioner for Administration Act 2011 has been observed.

I then received an email from the Clerk of Michael Commissioners on 21st March 23 which stated that as the damage was caused by [the Neighbour's] trampoline and [they] had admitted this to me, it was therefore a civil matter between the two of us. There was no clarification in this email regarding ownership of the land.

After my vehicle had returned from three weeks in the garage, there was an outstanding insurance cost. I therefore text [the Neighbour] on 17 June 23 to inform [them] of this. [The Neighbour] replied on the same day stating that [they] could not afford to pay the outstanding amount before going on to accuse me of being threatening and intimidating. This was not the case and I have a screenshot of the text messages which I can supply to you on request.

On 17 July 23 I contacted [named official], Health and Safety Inspector for DEFA. He informed me that when he contacted the Clerk of Michael Commissioners, [they] stated that they had never owned the land in question and that they (Michael Commissioners) were already in discussion with Land Registry to correct the error.

On 21st July 23 I, along with other residents on the [location] estate received updated boundary information from Land Registry. This contained a link to the current boundaries of all properties within the estate following the recent adoption which was updated on 20th July 23. This shows Michael Commissioners own the land concerned. The information pack also contained a map of the previous boundaries prior to 20th July 23 which also shows Michael Commissioners owned the land before the adoption date.

On 28th July 23 I received an email from the Clerk of Michael Commissioners stating that the matter had been passed over to their insurers and that they would not be discussing the matter during their monthly public meetings. This was the last correspondence that I received from Michael Commissioners.

On 5th August 23 I replied to the Clerk of Michael Commissioners requesting the complaints procedure, they did not reply. I have sent a further email on 31st August 23 requesting the complaints procedure again and informing them that I had not heard anything from their insurance company, again they did not reply.

Now, six weeks later [the Neighbour's] shed, old car and various other rubbish are still on Michael Commissioner land (see photograph attached – this photograph clearly shows [the Neighbour's] boundary fence, a public footpath and [their] car, [they] still on Michael Commissioner land. This is the area which the trampoline was positioned). I've still have had no contact from Michael Commissioners insurance company nor the Commissioners themselves. I am still waiting for their complaint's procedure.

Aside from reclaiming the costs incurred from the incident, as a rate payer I also have several concerns regarding the integrity and transparency of the current Michael Commissioner board. I am alarmed that none of them have grasped the seriousness of the incident from a Health & Safety prospective. Their lack of communication with myself over the past 6 months leads me to believe that they are not following the correct procedures and possibility out of their depth. Their behaviour has now led me to question the following:

- 1) Are Michael Commissioners still attempting to change land ownership to [the Neighbour]?*
- 2) Is [the Neighbour] benefiting financially (increasing value of property) from being a serving Commissioner at the expense of the rate payer?⁷ Have all the correct procedures been followed?*
- 3) Have Michael Commissioners given [the Neighbour] permission to leave various items on their land and if so, have they followed the correct Health & Safety mitigations? Where is their risk assessment.*

I am not confident that Michael Commissioners are acting in the best interest of the rate payer, and I would respectfully request that you investigate this matter thoroughly. I have the evidence for all the statements made in this letter along with photographs, deeds maps etc.

2. The TCA by e mail dated 9 December 2023 08:43 asked the Complainant to provide copies of the various items of correspondence and supporting evidence referred to in their complaint and drew to their attention the guidance provided on the TCA website,⁸ and in particular what conduct can be investigated and what suffering “injustice or hardship” means.

3. By e mail dated 10 December 2023 14:36 the Complainant replied (the yellow highlighting being that of the Complainant):

⁷ The TCA does not have authority to investigate this point.[Under s 11 Local Government Act 1985 questions of pecuniary interest are subject to review by HM Attorney General.]

⁸ www.tynwald.org.im/ombudsman

Regarding your comment below re section 2 on the website.

- **Hardship** – although my insurance company settled the claim for the damage on the vehicle, it did not cover any other incidental expenses. i.e. loss of earnings, disruptions to my business and my customers, potential increase in insurance premiums.
- **Injustice** – lack of interest from the start from Michael Commissioners who denied it was even their land. Even after Land Registry confirmed it was Commissioner land Michael Commissioners have continued to allow [the Neighbour] (a serving Commissioner) to keep [their] shed, car and other property on the land. The Commissioners failed to have the correct health and safety risk assessment provisions in place to mitigate this risk.

In my opinion maladministration has been committed in the areas highlighted in yellow below. I have included a brief reason as to why I think this.

Competency:

- **Incompetence** – denied the land belonged to the Commissioners even though land registry confirmed they did, they took a serving Commissioners word without investigating properly⁹
- Ineptitude
- Giving misleading or **inadequate advice** – Poor communication throughout from Michael Commissioners¹⁰

⁹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: **Completely misrepresents what happened. Land Registry does not confirm boundaries as has been repeatedly explained by the clerk to the daughter. The board did not take that serving member's word, the board relied on the official Supplementary plan supplied to the 2009 board.** By e mail to the TCA dated 7 December 2024 13:31 the Daughter responded: **I have not had any correspondence with the Clerk regarding this matter since the very beginning, so [they have not] 'repeatedly explained to me'. [They] did however say this at the time of the incident (20 months ago).**

¹⁰ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: **The clerk has answered every communication received with promptness, thoroughness and professionalism.**

Procedure:

- *Faulty procedures or failing to follow correct procedures – do not understand Health and Safety requirements and risk assessment. Just because someone wasn't seriously hurt doesn't mean it's acceptable to ignore!*¹¹
- *Mistakes in handling claims – failed to investigate correctly even after being told it was their land*¹²
- *Avoidable delay – ignoring emails, refusing to discuss at monthly meeting*¹³
- *Neglect – neglect their position by denying responsibility and insisting they don't own the land*¹⁴
- *Arbitrariness*

¹¹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Health and Safety requirements is not relevant on equipment we do not own. We are fully compliant on equipment we own and maintain yearly inspections.*

¹² By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The complainant saying this is the Board's land does not make it a fact.* By e mail to the TCA dated 7 December 2024 13:31 the Daughter responded: *It was not based on 'my word' my comments were based on documentation that Land Registry had given me.*

¹³ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This could not be discussed in a public meeting until all facts were established with insurance companies and various parties . GDPR requires us to maintain confidentiality. The clerk has responded to all received correspondence and we followed all our procedures to protect parties identity.* By e mail to the TCA dated 7 December 2024 13:31 the Complainant responded: *if this was due to GDPR, why was this not explained at the time and a private meeting arranged. I was willing to go in and discuss my concerns with the Commissioners, but this was not an option offered to me.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The Agenda was set for the Monthly meeting and the decision to not include this matter for discussion was due to the fact that it was in the hands of the insurance company and nothing new had been raised, we took the decision to wait for their response to the claim. At no time did either party indicate that they would like a meeting with the Commissioners. The early contact with the Clerk was regarding the incident with the trampoline and the ownership of the land query. The other items in this complaint gradually came to light once the matter was with the TCA and were never raised prior to this. Once we were aware of what was being stated our Clerk investigated all matters raised fully.*

¹⁴ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The owner of the trampoline has accepted liability. The complainant has not offered any proof that Michael District Commissioners own the land.* By e mail to the TCA dated 7 December 2024 13:31 the Complainant responded: *the proof Michael District Commissioners own the land is through public records held at Land Registry. Why should I prove these documents are correct. Surely if the Commissioners do not agree with Land Registry then they should be taking action to correct the public record. Are they doing this? Have they done this? Where is the evidence?* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *As stated Land Registry do not confirm legal ownership and we have taken every available avenue to establish the ownership of this land. We have recently provided the TCA with proof from the Developer that the strip of land was sold to the Neighbour. The reason for this is so that the Neighbour would be able to cut their side of the hedge which was on the original plans. This hedge was never planted and we cannot find any correspondence showing why the hedge was not put in place. The path at the side of the house is not adopted by DOI but belongs to the four terraced households as it is for their own use to access the rear of their properties only. The adoption of the roads paperwork does not clarify this point clearly. The parking spaces at the front of the properties are also not adopted by DOI which has also caused issues over the years. The Developer has confirmed [redacted – see paragraph 30 of this Report].*

- Refusing to answer reasonable questions – ignored emails¹⁵
- Not telling an individual about appeal rights – did not reply when the complaints procedure was requested¹⁶
- Not offering an adequate remedy when one is due – took them 5 months to contact their insurance company and this was also 5 months after they were told to do so by our MHK¹⁷

Attitude:

- Bias, unfairness or prejudice – failing to investigate an incident involving their land and one of their commissioners¹⁸
- Inattention – have appeared disinterested throughout, not providing updates even when requested¹⁹
- Perversity and lying
- Discourtesy and lack of respect – do not respect rate payers concerns²⁰
- Turpitude (depraved or wicked behaviour or character)

¹⁵ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The clerk has reasonably asked for copies of said emails and has not received any response. All received emails have been responded to promptly.* By e mail to the TCA dated 7 December 2024 13:31 the Complainant responded: *The Clerk has never asked me to supply [them] with copies of the emails, so I am presuming [they are] meaning you as the Tynwald Commissioner in footnote [15]*

¹⁶ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The clerk informed the complainant by email and phone that the procedure was available on the MDC website. The clerk did explain that the process was in progress.*

¹⁷ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This 5 month period was because the claim was being dealt with between insurance companies of the trampoline owner and the complainant. The MHK advised us to leave it to the insurance companies to sort out. It was reported to our insurance company to investigate the claim. However this is not an admission of liability.*

¹⁸ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Please see clerks response.*

¹⁹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This an opinion without merit. The clerk has spent many hours on this issue.* By e mail to the TCA dated 7 December 2024 13:31 the Complainant responded: *the Clerk has spent hours on this since contacted by the Tynwald Commissioner (which I appreciate), however my comments relate to the period which lead me to contact the Tynwald Commissioner.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The Clerk has responded to all contact received. Extensive hours have been spent on researching the matter even whilst it was in the hands of the two insurance companies prior to the TCA's involvement and the Clerk has contacted various departments of the Government for advice on the land ownership query.*

²⁰ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The clerk has spent many hours on this issue and it has taken a disproportionate amount of time to double check all complaints from this individual.*

- **Corruption –** *with further investigation into why this happened I think this may be able to be proved.*²¹

3A By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented on paragraph 4 above (the Clerk's comments highlighted in yellow):

Incompetence – denied the land belonged to the Commissioners even though land registry confirmed they did, they took a serving Commissioners word without investigating properly

*Incompetence - We listened to both sides and requested that Land Registry advise further. On recommendation of Land Registry, a Rectification request was put in to clarify the matter. I have personally put in a lot of hours looking into this, searching through years of Minute books, archiving and paperwork to try to establish what has led to this dispute on the boundary. We also took and followed the advice from our MHK, our Insurers and other relevant experts.*²²

Mistakes in handling claims –failed to investigate correctly even after being told it was their land

Mistakes in handling claims - This matter has been investigated and we have followed the relevant authorities advice and guidance.

Avoidable delay – ignoring emails, refusing to discuss at monthly meeting

Avoidable delay - The Commissioners have stated that this is a civil matter between the two parties. The Land ownership is ongoing to establish the correct boundary and the damaged vehicle is an insurance matter between the Neighbour and the Complainant.

²¹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This is totally without merit and is dangerously near to being libellous. If there is any proof of this accusation we urge the complainant to take it to the police immediately for investigation.*

²² By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *Can we ask who were these relevant experts?* By e mail to the TCA dated 6 January 2025 11:54 the Commissioners commented: *The people and departments we have requested information from includes Land Registry, Planning Department, our Insurance Company, Health and Safety, Property Experts, Internal Auditors, our Lawyer, Department of Infrastructure, Department of Enterprise and our MHK.*

Refusing to answer reasonable questions – ignored emails

Refusing to answer reasonable questions - can they please advise which emails were ignored?²³

Not telling an individual about appeal rights – did not reply when the complaints procedure was requested

Not telling an individual about appeal rights - I advised the Complainant in a phone call conversation that the Complaints procedure could be downloaded from our website and explained the procedure. I did not receive a complaint form.²⁴

Not offering an adequate remedy when one is due – took them 5 months to contact their insurance company and this was also 5 months after they were told to do so by our MHK

No offering of adequate remedy when one is due. - The claimant states [...], that [they] contacted the Neighbour on 17th June 2023 to inform [them] of the outstanding bill for the vehicle. It is my understanding that the insurance matter was ongoing between the two parties at this time. I had not received any correspondence to state otherwise. The Claimant contacted me on 21st July to advise that [they were] wanting to go ahead with an insurance claim against the Commissioners as the Neighbour could not afford to pay [them] anything and that [their]

²³ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *This is outlined in this report but includes the email requesting the complaints procedure and health and safety risk assessment.* By e mail to the TCA dated 6 January 2025 11:54 the Commissioners commented: *No request verbally or written has been received by our Clerk for Health and Safety Risk Assessment. The Clerk was asked if we had the documents and affirmed we did for all equipment owned by ourselves, but no request for copies was made. The Complaints procedure was discussed in a phone call. See Footnote [24].*

²⁴ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *I can not recall this information being given during a phone call. In fact, I only recall 1 possible 2 telephone calls with the Clerk very early on after the event. Soon after this I was advised to communicate by email. An email was sent requesting the complaints procedure 4 months after the incident which was not replied to.* By e mail to the TCA dated 6 January 2025 11:54 the Commissioners commented: *There was a phone call when our Clerk advised the Complainant that the matter was now with our insurers and [Clerk] was still investigating the land ownership query. Our Clerk advised that the Complaints form was on our website and could be printed off from there. [Clerk] advised the Complainant that if [Complainant] was not happy with the outcome from our insurance company that [Complainant] could come back to [Clerk]. The last correspondence with the Complainant was an email on 31/08/24 to advise that [Complainant] had not heard from our insurance company. Our Clerk advised that [Clerk] would chase the insurance company for a response. No other correspondence was received until the email from the TCA on 05/04/24. We also note that in March 2023 the complainant stated via email that [Complainant] was going to do a Freedom of Information request but this was never received either.*

claim against the Commissioners was considerably higher than the amount [they] requested from the neighbour. I contacted our insurance company with the details of the claim. I also chased up our insurers when requested to do so by the Complainant.²⁵

4. The Complainant provided the TCA with electronic copies of the evidence on which they seek to rely, which the TCA accessed on 19 December 2023:

4.1 Exchanges of e mails between the Complainant and Daughter with [named] MHK (March to July 2023) discussing the incident and the damage suffered by the Complainant, linked to the question of the ownership of the land on which the trampoline was situated (on the assumption that the land was owned by the Commissioners). Included in the correspondence is the following e mail from the Daughter to [named MHK] dated 26 July 2023 19:41:

[Name] has informed me that when [they] spoke to [name] from [the Developer] he confirmed that prior to signing the land over the Michael Commissioners, [Developer] previously owned the land in question (not [the Neighbour]). He confirmed the piece of land in question was part of the land which [Developer] had signed over to Michael Commissioners. Ownership of the land was then confirmed by land registry as belonging to Michael Commissioners.

This is all related to when we (the old board) told [the Neighbour] to remove [their] property from Commissioners land and provided [them] with border maps; [they] refused insisting [they] owned the land and has a document to prove it. [They were] asked to produce a legal document proving the land was [their] but [they] never did. The majority vote from the board was not to pursue a legal case against [the Neighbour] with rate payers money. I am sure [name] will confirm this on the telephone if you contact her.

²⁵ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *It took them 5 months as up to this point the Commissioners were saying the trampoline was not on their land and the matter was between myself and [Neighbour]. After [Neighbour] said [they were] unable to pay, I contacted the Commissioners again on 17th June as all the records I had obtained clearly showed the trampoline was on Commissioner land and I still had outstanding costs/expenses.* By e mail to the TCA dated 6 January 2025 11:54 the Commissioners commented: *The matter was ongoing between the Complainant and the Neighbour who had admitted liability. We were not contacted again until 27/07/23 when the Email "Incident 13th March 2023" was received. The email states that the Complainant contacted the Neighbour on 17/06/24 by text to inform [Neighbour] of the outstanding costs of £1,250 and [Clerk] cannot find an email to the Commissioners office at 17/06/23. Upon receiving the email dated 27/07/23 email [Clerk] contacted our Insurance Company with the details and filled in the relevant paperwork.. ([Clerk] had already contacted them in March regarding this matter).*

There should be no reason for the current board of Commissioners to honestly believe that Michael Commissioners have never owned the land as it has been well documented that they do. It is also obvious to the average person that it is part of the playing field.²⁶

I appreciate there is nothing much you can do to recover the outstanding costs, but surely local authorities should not be behaving like this – especially when the person is [sic] question is one of their Commissioners!²⁷

4.1.1 The named MHK, who had stated, in an e mail to the Daughter dated 14 March 2023 12:18, that [they were] unable to answer any questions on liability, concluded that the matter be raised by the Complainant with the Commissioners.

4.2 Exchanges of e mails between the Complainant and their insurance brokers in March 2023, the insurance brokers advising that the Complainant's insurers would not accept liability for the claim and recommending that the Complainant seek to recover from the Neighbour's house insurers.

4.3 Exchanges of e mails between the Complainant with a Senior Inspector of Health and Safety in July 2023 in which the Complainant questioned whether, if (as the Complainant believed from the evidence they had obtained) the Commissioners did own the land in question, a risk assessment was in place and why the trampoline had not been removed. The Senior Inspector concluded by e mail to the Complainant dated 18 July 2023 14:09:

This type of incident is not normally something that we would get involved with as it's a civil matter between yourself and the owner of the trampoline, no work was being undertaken.

However I do understand that you believe that the KM Commissioners, who are employers, are

²⁶ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The MDC board vehemently disagree with all the above. Where is all this documentation? And it is not clear from the minutes as to what has been discussed and decided.* By e mail to the TCA dated 6 January 2025 11:54 the Commissioners commented: *This comment is based upon the Daughter's experience with her own house purchase and is based upon an off site plan. The Neighbour's claim is based on a Supplementary Plan which is still in existence. The two matters are not the same and the previous Boards did not decided that the matter was settled as to ownership.*

²⁷ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *A non disclosure agreement is in place with the previous clerk that prevents any discussion about all and any MDC business. We are considering seeking advice as to whether a breach of this non disclosure has taken place.*

*allowing the owner of the trampoline to erect it on their land. I will contact the commissioners and give them the appropriate advice regarding this aspect of your complaint.*²⁸

4.3.1 In an e mail to the Complainant dated 19 July 2023 10:38 the Senior Inspector wrote:

*The commissioners have confirmed that they have never owned the land the trampoline was on and that they are already in discussion with land registry to correct the error in registry's records.*²⁹

4.4 Copies of e mail exchanges with the Clerk to the Commissioners (see paragraph 10 of this Report).

4.5 An exchange of e mails between the Complainant and an Executive officer, Local Government Team, Central Support and Change Division, Department of Infrastructure ("Executive Officer").

4.5.1 In response to an initial enquiry from the Complainant the Executive Officer by e mail dated 20 July 2023 15:55 replied:

Thank you for your email which I acknowledge by way of this email.

I am sorry to hear of the damage to your vehicle and that there has been no resolution since March 13th.

Before I go any further may I explain that the Department can not intervene in issues that are the legal responsibility of a local Authority unless it is explicitly set out in legislation.

That being said I was actually made aware of this incident back in the Spring as I was rang by [named MHK] (which I understand is your MHK) seeking advice from myself. I explained to

²⁸ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *MDC have never been asked, or given permission for, any private equipment to be placed on MDC land. This is in no way an admission that MDC owns the land in question. The reference to MDC being an employer is an irrelevant point.*

²⁹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *MDC have only ever sought clarification and not correction in relation to land ownership.*

him at that time that the incident appeared to be something that needed to be dealt with through insurance and/ or through a legal route. The Local Authority are an entirely independent legal body from the Department and are therefore responsible for dealing with this issue. What response have you had from the Commissioners?

The Commissioners should have a complaints procedure which you may have already considered using, if you do not receive a satisfactory response to your complaints there is a mechanism whereby you can ask the Tynwald Commissioner for Administration to look into the case.

I must admit I cannot recall the full details of the case so I cannot really comment further. I highly recommend that you either seek resolution from the Commissioners through either insurance claim and/or complaints or if neither of those succeed you may wish to seek further legal redress.

I trust that this assists. If there is anything else you feel that I can do (within my powers) to assist please let me know.³⁰

4.5.2 By e mail to the Executive Officer dated 20 August 2023 14:04 the Complainant replied:

Further to your email on 20th July 2023, I did request the formal complaints procedure via [name] the Clerk to Michael Commissioners on 5th August 2023 and received no reply.

The last correspondence that I received from Michael Commissioners on 28th July 2023 was that they had apparently finally instructed their insurance company. I believe this is an admission of guilt. However I have not been contacted by their insurance company, nor have I received the requested copy of their insurance policy which was in place on the day of the incident.³¹

In an email to [name] (from DEFA H&S team) [the Clerk] stated the land did not belong to the Commissioners and that they were looking to correct this with Land Registry. Less than a week later everyone on the estate received outline plans of the estates boundaries clearly showing [the Neighbour] doesn't own the land in question. Three weeks later [the Neighbour's] shed,

³⁰ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *MDC agree with the above that it is an insurance matter. We note the date on this email is July 2023. MDC cannot find email dated 5th August 2023.*

³¹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Instructing an insurance company is in no way an admission of guilt. All public liability insurers insist that they be contacted with any potential third party claims. Michael District Commissioners do not accept liability and do not feel there is any wrong doing on their part.*

old car and various other rubbish are still on the site. I have attached a screenshot from the gov.im as of today (20/08/23) which again clearly shows [the Neighbour's] shed is not within [their] boundary. The trampoline was situated approximately 2 metres in front of the shed.³²

I would also like to highlight a few areas which I feel not only I, but other rate payers within Michael District need answers to.

1) What basis did Michael Commissioners believe Land Registry were wrong? Did they just take [the Neighbour's] word or does a mystery document exist that does not form part of [their] deeds in land registry (I have a copy of these)? Or did Michael Commissioners not investigate the incident in the correct manner, and if so why not?³³

2) I am under the impression that Michael Commissioners are requesting to change ownership of the land to [the Neighbour]. How are they doing this? Are they following the correct procedure? Are they selling it to [them] at market value? Where has this been advertised?³⁴

3) As [the Neighbour] has already told me that [they do] not have the funds to settle my claim. I am unsure how [they] would purchase the land. Therefore is this land being gifted? This would mean [the Neighbour] is benefiting financially (increasing value of property) from the transfer. How is this fair to the ratepayer? Has this only happened because [they are] a serving Commissioner (Vice-Chair)?³⁵

As you have stated below that you could not remember to exact facts of the incident, I have attached various emails for you to read through. I have more information; photographs, deeds, other correspondence etc. I am happy to meet with you to discuss further.

Please could you investigate (or pass on to the correct person to look into) the behaviour of Michael Commissioners and my concerns in points 1, 2, and 3 above, which I believe could be against local authority legislation.

³² By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The clerk did not say that we were going to ask for a correction in land registry, but we did ask for clarification of the boundary as far as land registry can.*

³³ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Michael District commissioners are satisfied that this matter was dealt with in the correct manner, adhering to all legal and regulatory requirements.*

³⁴ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This is not correct and the current board has made no attempt to change ownership of any land.*

³⁵ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *We cannot comment on the neighbour's financial situation, as it is none of Michael District Commissioner's business to know such things.*

*Please could you also provide me with the complaints procedure for the Tynwald Commissioner for Administration, as Michael Commissioner are clearly disinterested and/or out of their depth.*³⁶

4.5.3 By e mail to the Complainant dated 22 August 2023 16:06 the Executive Officer replied:

I acknowledge receipt of your further email on this issue, I have now reviewed the information that you have provided. First of all I am not in a position to investigate this matter. As explained previously the Local Government Team and the Department are not able to involve themselves in legal disputes of this nature. I didn't appreciate that the trampoline in question was on a Local Authority Member's property at the time of the incident. I of course understand the detail provided about the dispute about the ownership of the land concerned.

In the latest email correspondence from the Commissioners provided in your correspondence it seemed that the Commissioners had referred the incident to their insurers, that was about three weeks ago. Have you chased the Commissioners or asked your insurers if they have heard from their insurers? It is also not clear if the Local Authority had liability insurance in place on the date of the incident (that is something that would require legal challenge I'm afraid!)

In terms of your 3 points below. I will take these in turn.

I am not really able to comment , this seems to be about the Commissioners (a legal entity) challenging the land registry (a legal entity) or failing to check properly the ownership of the land in question. The responsibility of the Authority is clear here. If you do not feel that the incident was investigated properly , you are entitled to complain to the Commissioners (if they do not provide you with details of their complaints procedure or adequately deal with your complaint then you may wish to complain to the Tynwald Commissioner for Administration (TCA). Details of the TCA and how to contact them are set out in this link.

<https://www.tynwald.org.im/ombudsman>

Please note that there are certain instances that the TCA cannot investigate and I am not sure if this is would fall into those areas or not.

³⁶ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *We strong [sic] disagree with the above statement and are treating it as vexatious.*

In terms of a change of ownership of land owned by the Commissioners, you are correct that there is legislation that relates to this and should be followed by the Commissioners. I am not clear as to what exactly is being suggested but we would expect that the Local Authority would seek legal advice on this before carrying out any transaction of this nature. Section 25 of the Local Government Act 1985 states the following

25 (1) A local authority may, subject to the following provisions of this section, purchase, sell, exchange, take on lease or let any land, within or outside its district, for the purpose of its functions under any enactment.

(2) No transaction within subsection (1), other than the letting of any land for a term not exceeding 7 years, shall have effect without the consent of the relevant Department.

The relevant Department is in most cases the Department of Infrastructure so if this is definitively the proposal by the Local Authority I would suggest that this is pointed out to the Commissioners. We are only able to action these transactions if the Local Authority contacts us and seeks to carry out such a transaction. I would hope that their legal advice would point this out to them.

The answer to this is also set out above in my answer to point 2. In usual circumstances a local authority cannot gift land to anyone without approval and certainly any transaction would need to be recognisant of the provisions of the relevant legislation.

I hope that this assists.

5. The TCA met the Complainant (together with the Complainant's daughter, herself a former Michael District Commissioner – referred to in this Report as "Daughter") on 24 January 2024. Following the meeting the TCA prepared the following summary of the discussion, which was sent to the Complainant by e mail dated 26 January 2024 15:50:

- *[Daughter] explained [Earlier employment history redacted by the TCA at the request of Daughter] and that she had sat as a Commissioner in Michael for five years (but has since stepped down).*
- *[Daughter] gave me her recollection of ownership and use of the land on which the trampoline (and other items) had been placed. The [Developer] had conveyed a parcel of land (unbuilt) to Michael Commissioners and retained a further parcel. That further parcel was to be a children's play park operated by Michael Commissioners, but ownership of the land became an issue when considering the right to fence it. [Developer] then conveyed that further parcel to Michael Commissioners. Subsequently. The Commissioners became aware*

that a shed had been placed on the land earmarked for the playpark, by [the Neighbour] (who at that time was not [themselves] a Michael Commissioner but later became one). The Commissioners questioned [their] right to do so. [The Neighbour] is believed to have spoken to the then Clerk [named], who on checking with [Developer] was told that at no time had [Developer] given permission for [the Neighbour] to place [their] shed on the land; though [Developer] may have been aware that it was there. The Commissioners subsequently wrote to [the Neighbour] demanding that the shed be removed within 28 days; but in a meeting of the Commissioners voted against pursuing a civil action against [the Neighbour]. Meetings of the Commissioners were then interrupted during the Covid Pandemic.

- *[Daughter] mentioned that [the Neighbour] has maintained that the land in question belonged to [them].*
- *At the following local government elections, all serving Michael Commissioners apart from the Chairman³⁷ (including [Daughter]) stepped down. There was no election in Michael as the number of candidates (which included [the Neighbour]) matched the vacancies.*
- *[Daughter] understands that [the then Clerk] expressed concerns that records of the Commissioners may have been destroyed.³⁸*
- *[The Complainant] said that [their] recollection was that Michael Commissioners may have approached the IOM Land Registry (where records showed that the land in question was owned by Michael Commissioners) for rectification, presumably in favour of [the Neighbour]. [The Complainant and Daughter] thought this strange, as ownership of the land by the Commissioners had been established to the satisfaction of those earlier Commissioners who has since stepped down, and the records (including Minutes) of the Commissioners ought to have reflected this.³⁹*

³⁷ The words “apart from the Chairman” added as a further comment from the Complainant in their e mail to the TCA dated 22 March 2025 15:16.

³⁸ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This is a libellous comment and should be withdrawn immediately. As stated before, and reinforced by our present clerk, no documentation has illicitly been destroyed. If the daughter feels that she has evidence of any wrongdoing, it should be reported to the police. The previous clerk has signed a non-disclosure agreement and this should be respected.*

³⁹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *There is no minuted proposal (as stated above) for this land to be recognised as Michael District Commissioners land and no vote recorded. An email from the daughter as vice chair, stated that nothing was decided as some land was being handed over and this might involve the neighbour. It was not subsequently addressed by the board at the time. Minutes from 2009 indicates that the neighbour brought this issue of*

- *[The Complainant and Daughter] referred to a claim by a former Chair of Michael Commissioners that there exists a letter formally clarifying the ownership of the land. The nature of the letter and its contents are however unknown to them.*⁴⁰
- *[The Complainant] questioned whether a health and safety assessment as regards the safety of the play park had been obtained by Michael Commissioners.*⁴¹
- *[The Complainant] questioned whether complaints procedures (in the case of [their] complaint to them) had been followed by Michael Commissioners. [The Complainant] noted that [the former Clerk] is no longer in post and that there is a new clerk.*

We also looked at the email which you sent to Angela Main Thompson dated 16 September 2023 5:58pm and the three questions which you posed. I explained that it is outside my power of investigation to question policy decisions of listed authorities (though I am entitled to investigate the process by which that policy decision was arrived at). Question 1 concerning a possible attempt by Michael Commissioners to convey the land in question to [the Neighbour] is something I can raise with them (though the matter may be regarded by them as commercially confidential), and also your question 3 asking whether [the Neighbour] has at any time been given permission by Michael Commissioners to leave various items on the land and the health and safety implications of this.

Whether or not [the Neighbour] as a serving Michael Commissioner has a conflict of interest (your question 2) is outside my jurisdiction. Under section 11(2)(k) Tynwald Commissioner for Administration Act 2011 I have no jurisdiction in respect “any action of which the complainant has a statutory right of appeal or reference to, or review by, an adjudicator, tribunal or other body”. In the case of a conflict of interest of the kind you believe may exist, the “other body” is HM Attorney General under sections 11 and 12 Local Government Act 1985.

All questions which you pose will be referred to in my Report, even if only to explain why a particular issue is outside my jurisdiction.

ownership to the then commissioners' attention. The then Commissioners asked for clarification from land registry and [Developer] but there is no record of an outcome to be found.

⁴⁰ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Until the letter appears we cannot comment.*

⁴¹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This is totally irrelevant to this issue*

5A. By e mail to the TCA dated 5 June 2024 20:22 the Complainant commented on the discussion summary set out in paragraph 5 above. The Complainant's comments are interlineated, highlighted in yellow:

- *[Daughter] explained [earlier employment history redacted by the TCA at the request of Daughter] and that she had sat as a Commissioner in Michael for five years (but has since stepped down).*
- *[Daughter] gave me her recollection of ownership and use of the land on which the trampoline (and other items) had been placed. The [Developer] had conveyed a parcel of land (unbuilt) to Michael Commissioners and retained a further parcel. That further parcel was to be a children's play park operated by Michael Commissioners,*

The piece of land [the Developer] retained as the car park and surrounding playing field. This piece of land was eventually signed over to Michael Commissioners in Spring 2021. Leaving the option to fence to the new board

but ownership of the land became an issue when considering the right to fence it.

The Commissioners were looking into fencing the children's play park (which the commissioners owned) and the playing field (owned at the time by [the Developer])

[Developer] then conveyed that further parcel to Michael Commissioners. Subsequently. The Commissioners became aware that a shed had been placed on the land earmarked for the playpark, by [the Neighbour] (who at that time was not [themselves] a Michael Commissioner but later became one). The Commissioners questioned [their] right to do so. [The Neighbour] is believed to have spoken to the then Clerk [named],

*At the time [the Neighbour] also stated the land belonged to [them] and the previous Clerk asked to see [their] deeds, which [the Neighbour] did not produce*⁴²

⁴² By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *We repeat the previous clerk is under a non disclosure agreement.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Please see attached Minutes from December 2009. The Previous Clerk has Minuted that the deeds were presented at a Board Meeting at this time. The issue was also discussed in subsequent monthly meetings which are Minuted by the Previous Clerk.* [See paragraph 5A/INSERT of this Report]

who on checking with [Developer] was told that at no time had [Developer] given permission for [the Neighbour] to place [their] shed on the land; though [Developer] may have been aware that it was there. The Commissioners subsequently wrote to [the Neighbour] demanding that the shed be removed within 28 days; but in a meeting of the Commissioners⁴³ voted against pursuing a civil action against

This was a motions (sic) with the majority of the board stating that they did not wish to pursue civil action with rate payers money

[the Neighbour]. Meetings of the Commissioners were then interrupted during the Covid Pandemic.

- [Daughter] mentioned that [the Neighbour] has maintained that the land in question belonged to [them].
- At the following local government elections, all

2 serving Commissioners [named] who had been elected in the previous 12 months stayed on, along with the Chairman (who resigned shortly after the new board was in place). [Name] restood after resigning in June 2020. [Name] was a member of the previous board May 2016 – June 2020. [Name] was vice-chair 16/17 and Chair 17/18.

serving Michael Commissioners (including [Daughter]) stepped down. There was no election in Michael as the number of candidates (which included [the Neighbour]) matched the vacancies.⁴⁴

5A/ INSERT (a) By e mail dated 6 January 2025 11:54 the Clerk commented: *The ownership of the land has been an issue since the Neighbour raised the matter with the old Board in December 2009. (Minutes attached). This was mentioned in later Minutes by this Board who requested that the Previous Clerk contact the Developer to get clarification of the boundaries and was raised directly by the old Board to the representative of the Developer. [Clerk] can find no correspondence regarding this*

⁴³ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *There is no minuted evidence of this and no evidence of a letter in the backups.*

⁴⁴ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The chairman stated above resigned in March 2023 as a standing member only not as a chair.* By e mail to the TCA dated 7 December 2024 13:31 the Daughter responded: *Re footnote [44 and 46]. This reference to chairman is to the person who was chairman before the election who then was reelected as a commissioner before resigning.*

issue. Whilst the previous Board might not have been fully aware of the issue as there is no information handover in place. We are hoping that Sharepoint will help with this sharing of information between Boards in future.

(b) The following extract from the Minutes dated 2 December 2009 was provided to the TCA by the Clerk:

[Name] welcomed residents from [the relevant housing estate]. [Name] read out the correspondence that had been received from [name of firm of Advocates], informing the Commissioners of a dispute that had arisen due to a Planning Application. A discussion ensued regarding the boundaries of the properties involved. The Commissioners explained to the residents that they could not really help and that it would be a good idea to speak to the owner of the land, to see if agreement could be reached. A further issue of the boundary, belonging to the resident of number [] was also discussed. The resident showed the Commissioners [their] paperwork, which stated that [they] owned the pathway at the side of [their] property and also some of the grass verge of the play area that the Commissioners had been given by [the site developer]. The Commissioners asked the residents to keep them informed of any further developments. [Name], director of [the site developer] had promised a detailed boundary plan, and the Clerk was asked to remind [them].

[The TCA notes that according to the Office Copy and Plan provided to the TCA, “number []” is the house presently owned by the Neighbour.]

(c) Copy correspondence and copy Minutes provided to the TCA by the Clerk (not reproduced in this Report) concerning a planning application by an unrelated property owner at the development site in 2010 and extracted copy Minutes of the Commissioners dated 15 June 2016, 7 February 2018, 6 February 2019, 3 April 2019 and 12 June 2019 concerning the positioning of playground fencing at the development site support the Clerk’s statements (in paragraph 5A/INSERT(a) above) concerning continuing uncertainties as to the position of property boundaries on the development site.

- [Daughter] understands that [the then Clerk] expressed concerns that records of the Commissioners may have been destroyed.

*This was after the new board had started and while the previous Clerk was on sick leave.*⁴⁵

- *[The Complainant] said that [their] recollection was that Michael Commissioners may have approached the IOM Land Registry (where records showed that the land in question was owned by Michael Commissioners) for rectification, presumably in favour of [the Neighbour]. [The Complainant and Daughter] thought this strange, as ownership of the land by the Commissioners had been established to the satisfaction of those earlier Commissioners who has since stepped down, and the records (including Minutes) of the Commissioners ought to have reflected this.*⁴⁶
- *[The Complainant and Daughter] referred to a claim by a former Chair*

This is the former Clerk not Chair

of Michael Commissioners that there exists a letter formally clarifying the ownership of the land. The nature of the letter and its contents are however unknown to them.

- *[The Complainant] questioned whether a health and safety assessment as regards the safety of the play park had been obtained by Michael Commissioners.*

⁴⁵ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The relief clerks were two highly regarded clerks from other authorities and at no time were commissioners given access to any records. The previous clerk is under a nondisclosure agreement.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk amended the foregoing comment: *The relief Clerks were two highly regarded Clerks from other Local Authorities, appointed with the approval of the Department of Infrastructure until a new Clerk could be appointed. The Commissioners were given access to the office and Store Room by the relief Clerk who was happy to give them the keys when handed them by the Previous Clerk. Please refer to [paragraph 18.2 of this Report] for further clarification on destruction of paperwork.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *Our Clerk has recently received a list of all documentation that the Public Records Office recorded on their previous visit to the Commissioners office. This contains all documents in the filing systems and their locations and states if the Public Records Office took the paperwork or left it with the Commissioners. This list can be used to highlight any that are no longer in the filing system. There is nothing that aids this investigation listed but does provide confirmation of what was held at the time of the visit. We have a list of documentation sent for destruction in 2022 when the Commissioners removed documents which were no longer required under GDPR regulations. The Commissioners have had GDPR Training prior to this. Our Clerk has also implemented a new procedure to record the destruction of paperwork so that an audit trail can be found with the decision why removed.*

⁴⁶ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *The chairman stated above resigned in March 2023 as a standing member only not as a chair.*

⁴⁶ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Already answered.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The Neighbour approached Land Registry in 2023 and copied in our Clerk on this matter to question why there were two titles of ownership on the same piece of land. Land Registry looked at the documents and advised that they could not establish legal ownership. At no time did Michael District Commissioners request that the boundary be changed. There is no records to be found that establish that any Board obtained confirmation of the ownership of this land, though the question was raised in Minutes on a number of occasions and the various Boards requested clarification from the Developer on a number of occasions.*

*A previous H&S [health and safety] assessment had been completed by the old board when purchasing the new play equipment and making enquiries into fencing and this was documented.*⁴⁷

- *[The Complainant] questioned whether complaints procedures (in the case of [their] complaint to them) had been followed by Michael Commissioners. [The Complainant] noted that [the former Clerk] is no longer in post and that there is a new clerk.*

5B. By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented on paragraph 5 above:

*There is only one adoption of land in the files which is for the 0.5 acre of land that is the play area and 3 very small patches of grass. I cannot find anything regarding the other half of the grass.*⁴⁸

*The timeline becomes a little unclear [in paragraph 5]. The Commissioners adopted the play area in 2012 so the Developer's interest in the land would have finished. The shed was not placed on the land until much later. I am unable to find anything supporting the comments regarding the Commissioners meeting or any letters.*⁴⁹ *The only Minuted report I have found is dated 12th June 2019 and discusses fencing of the play area. (copy attached).*⁵⁰ *No mention of a shed is made in this report.*

The last point on page 11 states that the "ownership of the land by the Commissioners had been established to the satisfaction of those earlier Commissioners who had since stepped down, and

⁴⁷ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: **Agreed.**

⁴⁸ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *I do not know why the Commissioners do not have this information. However, I have checked and it is publicly available at Land Registry.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: **Yes, the Clerk downloaded this from the Land Registry website but the information was not filed in the office or on the computer systems/archives. I am aware that there had been issues with administration and changes in the computer systems and backup systems in the past.**

⁴⁹ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *The original play area was replaced in approx. 2017/2018. This is when the shed issue was highlighted. All play areas were upgraded in the village during this time and records should be in the office. The fencing of the area was discussed after the new park was installed.*

⁵⁰ The Minute of the meeting of the Commissioners dated 12 June 2019 held at 7pm at point 10.5 reads: "The Clerk was asked to contact [name of organisation] for a price for a Bucket Swing and a new Slide in [location] and also a gate still needed pricing and signage to be renewed. This matter is ongoing. [The] Playground fencing was discussed. Update for Bye-Laws are required and pricing for the type of fencing and all three options, is now being sought. Timber Bollards are also to be priced for the area to stop vehicles parking." By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: **Yes, the fencing of the playground was discussed in July 2019. But did not go ahead. There is no evidence of a shed being discussed. The only correspondence I can find on sheds is from Planning applications (found online, no hard copy of letters in the office filing/archives) which does not refer to the Neighbours property. There is correspondence from various residents of the estate objecting to any fencing of the area during the previous Boards time.**

that the records (including Minutes) of the Commissioners ought to have reflected this" Again, I cannot find any record supporting this comment in the office or archives.

An annual Health and Safety and risk assessment is carried out on all play areas by a reputable company who offer this service to a number of Local Authorities on the Island.⁵¹

The Complaints procedure was discussed during a phone call with the Clerk and the Complainant. No paperwork for a complaint has been received to date.⁵²

Since the decision was taken by our insurers to deny the claim, there has been no contact from either party until the Tynwald Ombudsman contacted me.

No attempt has been made to convey the land in question to the Neighbour. We have only requested a rectification of Land Registry documents. We have no power to sway the decision of Land Registry and they have told me that they will not make a statement on legal ownership.

The Neighbour has not been granted permission to put any equipment on our land and has not requested to do so.

5C. By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented on paragraph 5A above:

There is only one adoption of the 0.5 acre (half of the open ground at the end of [location]) and three small patches of grass which happened in 2012 not 2021? No further parcels of land are showing either in the filed paperwork or on Land Registry. It is my understanding that the decision not to fence the play area was decided by the previous Board which the Daughter was a part of.⁵³

If I follow the conversation [in paragraph 5A] the Daughter is stating that the Developer still owned the land behind the car park area in 2021? I have found no record of adoption for this piece of land. I will query this with the Developer and our advocates for clarification as the

⁵¹ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *I requested to see this but it was never supplied. If they had one why wouldn't they send me a copy of invite me in to see it?* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The annual Health and Safety was instigated in February 2020, (see copy of attached minutes) to be carried out annually. We were only asked if we had the assessments in place but no request to see a copy was received either verbally or in writing.* [Copy Minutes dated 8 January 2020 provided to the TCA; noted but not reproduced in this Report]

⁵² By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *I do not recall a phone call. The complaints procedure was a requested by email and not replied.*

⁵³ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *The second parcel of land was not signed over to the Commissioners until Spring 2021, therefore it was left for the new board to decide on fencing due to the election in May 2021.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Agreed that the adoption took a number of years to complete but it is likely that the objections by local residents to fencing the open area which was handled by the previous Board was a reason for it not happening.*

Commissioners thought they only owned half of the open area though our contractor does cut the whole area to keep it tidy.

Planning was put in place for play equipment on the land in 2009 and again in 2017 by The Commissioners who adopted the play area in 2012 (0.5 acre) though the adoption process commenced in 2009.

The Neighbour advised me that [their] discussion with the Clerk was regarding another resident who tried to claim the land at the back of [their] house. The Neighbour also advised me that [they] did show the Clerk [their] deeds to clarify the query about the land at the back of [their] house, but did not attend any Board Meetings⁵⁴ regarding the strip to the side of [their] house. I will leave this to be addressed by the Neighbour directly with yourself.

The first contact I received was the phone call from the Daughter regarding this matter. I advised the Daughter that I would record in writing the conversation, so that I could look into the matter accordingly. I had been off the Island and was back in the office working through emails and post when the Daughter phoned me. I did advise her that I had not yet had time to read the email in question.

I will leave the Neighbour to comment on the matter of a written letter demanding removal of the shed within 28 days as this is not something I can comment on other than to say there is no record of any correspondence in the files in the office regarding this matter.

There are no motions, minutes or records that I can find anywhere in the office or the archives to reflect that the Board ever discussed this matter or that they reached a decision regarding ownership of the land or removal of the shed.

I have found a mention in the Minutes of 12th June 2019 which state "[The] Playground fencing was discussed. Update for Bye-laws are required and pricing for the type of fencing and all three options, is now being sought. Timber Bollards are also to be priced for the area to stop vehicles parking." I have attached a copy of the page.⁵⁵

⁵⁴ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *As far as I know [Neighbour] was never invited to a board meeting. A letter was sent to [them] then conversations took place between [them] and [a former Clerk] and [they were] requested to bring [their] deeds into the Commissioners. [Neighbour] has always maintained that the land was [theirs] and I do honestly believe that this is what [they think] despite previous queries over land ownership. I am happy for this to be included in the report.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *It is understood that the Daughter was not advised of the earlier Minutes discussions regarding the Neighbours contact with the Old Board and the relevant request for clarification from the Developers of the Boundaries. There is no evidence to be found of any correspondence from the Previous Clerk to the Neighbour regarding their deeds or their shed. I will leave it to the Neighbour to advise further on this matter as to what correspondence [they] received.*

⁵⁵ See footnote 83

I take very seriously the allegations that the previous Clerk claims that records of the Commissioners may have been destroyed and will be seeking advice on this matter.

I can state that the Neighbour along with the other Commissioners does not have access to the office or the Archives room as the keys are in my office. Only two of the Commissioners hold keys to my office and this is for printing purposes only.

The Complainant is correct that I have approached Land Registry for advice on the boundary due to the Neighbour having documents that [they claim] show [them] owning the land 6 years prior to our adoption paperwork, but the Commissioners do not have any authority to sway their decision so the assumption that the Commissioners can amend the boundaries in their own favour is not correct. As I pointed out to both parties during phone conversations, Land Registry do not establish legal ownership of the land and I have been advised by Land Registry that disputes would need to be settled by the Courts. The Current board agrees with the previous Board decision.

Again I have not seen any documentation that supports an earlier Board discussing the boundary dispute on [location].

The former clerk has stated that a letter exists that formally clarifies ownership of the land. Who is this letter from? Who has authority to establish legal ownership? If it is a letter from the previous Clerk? I cannot find anything in the files or archives regarding this.

Health and Safety - This is a matter that is taken very seriously. Recently we have carried out health and safety and risk assessments on [location] regarding new football nets and under expert advice it was decided that we are unable to find suitable portable football nets that would be safe enough. Our grass cutting contractor is also an experienced installer of playground equipment and carries out inspections on a regular basis. We also have an annual inspection carried out by an off-Island company once a year who send an inspector over to do a full report on all our equipment.

We have the correct insurance in place for playgrounds with our insurers who I have spoken to on a number of occasions prior to this event, to ensure we are up to date on all aspects of insurance.

The current Board choses to be guided by expert advice regarding Health and Safety on all matters. This includes an annual inspection by an independent Internal Auditor.

6. By e mail to the TCA dated 2 March 2024 15:09 the Complainant commented:

Thank you for your email. I am content with everything you have outlined in your email below. I have attached the two emails that I previously mentioned to you that I do not think you have seen.

One is an email received from Michael Commissioners on 28/07/23, stating that the matter was with their insurers and that they would not be discussing the matter at their next meeting. The second is the email I received from their insurers ([named insurance company]) two months later on 21/09/23 denying liability due to the weather, and not land ownership. This would imply that at this point the Commissioners were in agreement that the land did belong to them. However, at the same time [the Neighbour's] shed, car, and other belongings were still on the land in question.⁵⁶

Second to this, [named insurance company] has stated that Michael Commissioners were not negligent in any way. How can this be possible when they have public liability insurance and the incident was due to their negligence and ignorance?⁵⁷

The Commissioners have still not accepted that the damage to my vehicle only occurred because they allowed it to happen through various failures and omissions. They seem to be missing the point that the trampoline belonging to [the Neighbour] should never have been there. The weather is irrelevant in this, if the trampoline was never there what relevance would the weather be?

My concern is that they do not seriously understand the health and safety implications surrounding this incident, and this is supported by the Commissioners not supplying me with the risk assessment when requested.

Please could you progress with my complaint?

6A. By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented on paragraph 6 above:

the Board did not give permission to anyone to use their own equipment on any of the play areas. We had no knowledge of the trampoline and I had been on site doing an assessment for planning applications for play equipment prior to this date and had not seen a trampoline at

⁵⁶ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *Our insurers would only be dealing with the matter of the Trampoline. To "imply" ownership is not a legal definition of the boundary.*

⁵⁷ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *Our insurance company found that the Commissioners were not negligent. Having Public Liability Insurance is a legal requirement of insurance and holding this insurance does not imply "negligence or ignorance." The Neighbour has admitted the trampoline was [their] property and has admitted liability.*

that time, I would have asked about it if I had.⁵⁸ All of our equipment is properly installed (mostly by previous boards) and has been fully inspected as fit for purpose. We are replacing and modernising some of the equipment and are listening to the young residents as to what they would prefer in the play areas and carrying out Health and Safety Checks with the help of experts where needed.⁵⁹

6.1 The e mail exchange with the Commissioners to which the Complainant refers in paragraph 6 above is as follows:

[E mail from the Complainant to the Clerk sent on 27 July 2023 20:26]

Incident Facts

On 13th March while my vehicle ([details of vehicle]) was parked in [location]. A trampoline belonging to a serving Michael Commissioner, [the Neighbour], was blown by wind into the area where my vehicle was parked and hit my vehicle causing extensive damage. Immediately prior to hitting my vehicle this trampoline was situated on land owned by Michael Commissioners. Ownership of the land has been confirmed by land registry.

Previous Correspondence

In an email sent from Michael Commissioners dated 14/03/23 you stated that the strip of land the trampoline was on immediately before hitting my vehicle was privately owned according to the deeds of the householder. During a phone call to my daughter you admitted that you had not seen these deeds and that [the Neighbour] had shown the deeds to the Chairman [name of serving Chair]. You stated [name of serving Chair] had confirmed to you that the land belonged to [the Neighbour]. As per the Incident facts above we now know the land does not

⁵⁸ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *the owner of the trampoline was a Commissioner so how can they say the board had no knowledge of the trampoline being there? Also, even the DOI Mapping photo (previously supplied) shows the trampoline in situ prior to the date.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The fact that the Neighbour is a Commissioner is irrelevant to the Board knowledge of the Trampoline. The Neighbour did not mention it to the Board as [they believe] the land is [their] property as per the Supplementary Plan in [their] deeds. I will leave the Neighbour to advise of [their] conversation with the Developer at the time of Purchase that is the basis of [their] claim of the land since 2006.*

⁵⁹ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *I do not have an issue with the Health and Safety of the play equipment, and therefore I do not see the relevance of this statement.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *This comment is to show that we do take the Health and Safety of our equipment seriously and are up to date with what is required.*

belong to [the Neighbour] and in fact belongs to Michael Commissioners as I originally thought.

In an email sent from Michael Commissioners dated 21/03/23 you stated that as the damage was caused by [the Neighbour's] trampoline and [they] had admitted this to me, that it was therefore a civil matter between the two of us. There was no clarification in this email regarding ownership of the land.

Update

My vehicle has recently returned after spending three weeks in the garage. My motor insurance company could not claim off [the Neighbour's] house insurance. I therefore text [the Neighbour] on 17/06/23 to inform [them] of the outstanding costs of £1,250. I did not however include my loss of earnings for 3 weeks as I was trying to be neighbourly. The approximate loss of earning is in the region of £4,500 which I can back up with P&L accounts. [The Neighbour] replied on the same day stating that [they] could not afford to pay the outstanding amount before going on to accuse me of being threatening and intimidating. I have a screenshot of the text messages which I can supply you on request.

As the trampoline was situated on Michael Commissioners land, I believe that the Commissioners have liability along with [the Neighbour] to compensate my losses. As [the Neighbour] is unable or unwilling to pay, I feel that Michael Commissioners should pay the full amount of £5,750.

On 17/07/23 I contacted [named official], Health and Safety Inspector for DEFA. He has informed me that when he contacted you he was told that Michael Commissioners have never owned the land in question and that you were already in discussion with Land Registry to correct the error.

On 21/07/23 I, along with other residents on the [location] estate received updated boundary information from Land Registry. This contained a link to the current boundaries of all properties within the estate following the recent adoption which was updated on 20/07/23. This shows Michael Commissioners own the land concerned. The information pack also contained a map of the previous boundaries prior to 20/07/23 which also shows Michael Commissioners own the land before the adoption date. When I visited Land Registry back in March 23 their documents clearly showed that [Developer] had previously owned land prior to signing over ownership to Michael Commissioners.

As a local authority you have a duty to know what land belongs to you. A professional body should not be taking [the Neighbour's] word that [they own] the land and neglect to carry out simple checks with land registry. Considering this incident also involves a serving Michael Commissioner, my treatment from Michael Commissioners over the past few months has lead me to question the integrity and transparency of the board of commissioners.

Other Information

As you are aware my wife and I contacted [named MHK] in [their] capacity as our MHK back in March and [they] requested that you contact your insurance company and reply to my previous email. No reply was ever received. I have since met again with [named MHK], hence why [they are] copied into this email. I have also copied in my [Daughter].

Next Steps

Please advise me in writing by Thursday 3rd August 2023 on how the Commissioners would like to resolve the matter.

I have set this deadline as it will give you sufficient time to discuss at your monthly meeting on Wednesday 2nd August 2023.

[E mail in reply sent on 28 July 2023 16:48]

Dear [Complainant]

Thank you for your update. This matter is with our insurers and will be dealt with accordingly. Our next meeting is on the 9th of August but will not include this matter as it is now in the hands of the insurance companies.

Kind regards

[name] Clerk to Michael District Commissioners

6.2 The e mail from the named insurance company is dated 21 September 2023 11:45 and attaches a letter to the Complainant from which the following extract is taken:

We have been notified by our client Michael Commissioners that an incident occurred on or around 13 March 2023 of a trampoline causing damage to your vehicle and you hold them responsible for this damage.

Please be advised that liability is denied as our client has not been negligent in any way and it was the wind that blew the trampoline up causing damage.

7. On 1 April 2024 the TCA wrote to the Clerk of the Commissioners as follows:

I have assumed jurisdiction concerning a complaint raised with me by [the Complainant], which relates to [their] interaction with Michael District Commissioners following an incident on 13 March 2023. [Their] vehicle was damaged by a trampoline belonging to [the Neighbour] which was on land belonging to the Commissioners and which was blown from there, hitting and damaging [their] vehicle.

[The Complainant] alleges that the Commissioners have not followed their own complaints procedure when called upon by [them] to do so and, further, have maintained in correspondence with [them] that the land on which the trampoline was situated was not in the ownership of the Commissioners but was instead owned by [the Neighbour] (although ownership by the Commissioners has been shown subsequently to be the case). [They] also questions whether in permitting (or not preventing) the use of the land by [the Neighbour], specifically [their] placing the trampoline on it, the Commissioners have abrogated applicable health and safety procedures.

You will be aware that as Tynwald Ombudsman I have no power to award damages or to mediate or arbitrate in any way. My investigation is confined to matters of alleged maladministration on the part of the Commissioners. My powers, and a definition of what constitutes maladministration, are explained on the Tynwald Ombudsman website [Tynwald Commissioner for Administration](#) to which I would refer you.

I shall prepare a draft Statement of Facts which will form the core of my Report, and shall send this both to [the Complainant] and to the Commissioners for their review and comment. Before I do so, I would be grateful for the Commissioners' input, and in particular would ask that I be provided with copies of the Minutes of all meetings of the Commissioners at which (a) this incident and any subsequent actions (or proposed actions) of the Commissioners relating to it and (b) the ownership of the land in question were discussed.

The Statement of Facts is not intended to contain any analysis or commentary from me. That analysis will form part of the reasons and conclusions in the Report, but that Report will be

written only after the text of the Statement of Facts has been finalised to the satisfaction both of [the Complainant] and of the Commissioners. Where there is continuing disagreement, both points of view will be included in full.

It will not be my practice to circulate a draft Report prior to delivery to Tynwald.

Should the Commissioners wish to meet me, I shall make myself available.

8. The Clerk replied by e mail dated 5 April 2024 09:18:

I will forward our comments and supporting paperwork once I have collated them all. The main point which we have tried to get across to [the Complainant] is that ownership of the strip of land has not been established as [the Neighbour] has deeds showing a strip of grass belonging to [their] property which were issued a number of years prior to the Commissioners adopting the land from [Developer].

9. By e mail to the Clerk dated 7 April 2024 10:36 the TCA replied:

The question of the ownership of the land is a key element, and I would therefore be grateful if you could send me copies of all paperwork in their possession or under their control supporting the Commissioners' understanding of its ownership (including copies of documents filed at the Land Registry).

Documentation provided by the Clerk

10. By e mails to the TCA dated 3 May 2024 09:00, 14:23 and 14:25 the Clerk provided copies of the following (identified in paragraphs 10.1, 10.2, 10.3, 10.4 and 10.5 of this Report):

10.1 E mail exchanges in March 2023 when the incident was first brought to the attention of the Clerk:

10.1.1 An e mail from the Complainant to the Clerk dated 13 March 2023 09:40:

Hi. I would like to report extensive damage to my vehicle which was parked in the road in [the location]. This was caused by a trampoline which was sited on the commissioners land that has overnight hit my vehicle. This trampoline has been site on this land your many years [sic] and

in my opinion is the responsibility of the local commissioners to resolve asap. Due to this damage I have to take my vehicle to a repairers today and leave it there causing uninsured losses to be borne. The person who owns this trampoline has been around and accepted responsibility. [Their] name is [Neighbour + address]. Please contact me ASAP.

10.1.2 An e mail from the Clerk to the Neighbour dated 13 March 2023 15:22:

Hi [Neighbour]. Is this trampoline owned by the Commissioners? I will contact [the Complainant] regarding this matter and will be asking for further information on [their] comments about “uninsured costs” and advise [them] that the matter will have to go through our Insurers. [They] can’t just take it to a garage and expect us to pick up the bill even if it is our trampoline. Can you please let me know the details around this so I don’t give [them] the wrong information.

10.1.3 An e mail from the Neighbour to the Clerk dated 13 March 2023 17:21:

No, it’s mine, but it’s not on commissioners land, it’s on my land. I’m happy to step back for you all in this as obviously I have a conflict of interests. Attached is a photo with mark up position, any or all are welcome to come see the marks where it’s been pulled out of the ground. I’ll give [the then Chair of the Commissioners] a copy of my land registry deeds.

10.1.4 An e mail from the Clerk to the Neighbour dated 13 March 2023 17:30:

Thanks [Neighbour]. Hope you are ok. It’s not nice having to deal with stuff like this. I will send the [person] in question a reply to [their] e mail below.

10.1.5 An e mail from the Clerk to the Complainant dated 13 March 2023 17:45:

Sorry to hear about the damage to your vehicle. Unfortunately this is not a matter for the Commissioners as the trampoline belongs to [the Neighbour] who I believe has given you [their] insurance details already. Hopefully the insurance companies will deal with this matter swiftly.

10.1.6 An e mail from the Clerk to the Complainant dated 14 March 2023 15:35:

I have been advised that the strip of land which the trampoline was positioned on is not Commissioners land but privately owned according to the deeds of the householder.

10.1.7 An e mail from the Complainant to the Clerk dated 14 March 2023 15:46:

Thanks for your reply. If that is the case then I will need to have it verified. I am in the opinion that it is indeed not. I will be taking legal advice with this case as the damage to my van is between £5 - £7k. The initial response from [the Neighbour's] insurance is that they are not covering the claim. I do know that the issue was discussed at length in various meetings in the past and I will also be applying for freedom of information details of meetings and discussions.

10.1.8 An e mail from the Complainant to the Clerk dated 15 March 2023 16:53:

To comply with data protection and GDPR I give full permission for you to communicate with [Daughter] regarding any matters relating to my claim.

The claim being that my van [registration number] has received extensive damage after being hit by a trampoline owned by [the Neighbour] which was situated on commissioner owned land.

As requested by my daughter earlier this morning please as a matter of urgency (within 24 hours) confirm liability of my claim so I can advise my insurers and legal team accordingly.

Please be aware I am only interested in the liability of who is responsible to compensate my claim and not the politics relating to the land ownership and the reason behind why [the Neighbour] had [their] property sited on commissioners land.

10.1.9 The Clerk replied by e mail dated 21 March 2003 20:46 asking for a certified Power of Attorney (in order to communicate with the Daughter) and adding:

The Commissioners are of the opinion that it is a civil matter between yourself and [the Neighbour] as the damage was done by the trampoline belonging to [the Neighbour] and [they have] admitted this to you. Therefore the matter is between yourselves.

10.1.10 The Complainant replied by e mail dated 21 March 2023 20:58:

Thank you for your response. However this does not clarify who owns the land that the trampoline was on. I am fully aware that the trampoline was owned by [the Neighbour] and that [they have] admitted liability. However I still need to have clarification of who owns the land that the trampoline was situated on to pursue a claim to recover any additional costs.

10.1.11 An e mail from the Clerk to the then Vice Chair of the Commissioners dated 21 March 2023 21:20:

I am not sure what “additional costs” [they are] referring to. Do I need to speak to our insurers just in case to see where we would stand if [they do] decide to sue the Commissioners.

10.1.12 An e mail in reply from the then Vice Chair of the Commissioners dated 22 March 2023 11:20:

[They] should not be continuing to ask you and the Michael Commissioners questions that should be directed to [the Neighbour], who is the property owner and has already agreed it is [the Neighbour's] responsibility. It is between [them] and [the Neighbour] – presumably there are site plans of each house that every owner has in their possession. [The Neighbour's] photo was very clear. The legs of the trampoline were right next to the house. My response would be to tell [them] and [their] insurers to take to [the Neighbour] and [the Neighbour's] insurers.

10.1.12A By e mail to the TCA dated 5 June 2024 20:22 the Complainant commented on paragraph 10.1.12 above:

[Referring to photographs and site plan provided to the TCA by the Complainant] this was not the case. The trampoline was approx. 2 metres from the public pathway which runs alongside [the Neighbour's] house.

10.1.13 In reply to the then Vice Chair of the Commissioners by e mail dated 22 March 2023 12:28 the Clerk wrote:

For background. [The Complainant] has stated that the Land registry shows the boundary as being on the fence which means according to [the Complainant], it is the Commissioners' land.

The deeds [the Neighbour] has were allegedly from the off-sight plan and not the final deeds which is where they claim the confusion came from. I have not checked this out yet but will double check what the situation is. If [the Neighbour] has been using this land for 17 odd years (2006 was the original date of the house build) then it's possible [they] can claim the land. I will also need to check if anyone else in the district has a similar claim as this could set up legal challenges for future.

So [the Complainant's] argument is that we are the owners of the land and somehow responsible. I don't see what [the Complainant] is trying to achieve other than force us to pay as [the Neighbour's] insurance company have said [they are] not covered and [the Complainant] will probably have to claim via [the Complainant's] own insurance or sue through the courts. I have no idea why the land would make us responsible as we were not aware it was our land as [the Neighbour] was also under the impression it is [their] land due to the deeds [they have]. I think they are just trying to force us to pay up.

Considering [the Complainant's] daughter was chair of the Board⁶⁰ that did not fix this issue previously and she admits that the Board at the time did not resolve this matter, nor did they pass the information on to successive Boards, how was [the Neighbour] or ourselves to know that this was not [their] land.

10.1.13A By e mail to the TCA dated 5 June 2024 20:22 the Complainant and Daughter commented on paragraph 10.1.13 above. The Complainant's comments are interlineated, **highlighted in yellow**:

For background. [The Complainant] has stated that the Land registry shows the boundary as being on the fence which means according to [the Complainant], it is the Commissioners' land. The deeds [the Neighbour] has were allegedly from the off-sight plan

All home owners on the estate were given off-sight plans but these were not legally binding. For example both myself and my neighbour had off-sight plans showing that we both owned the same piece of land at the front of our properties. We had to seek legal advice and our advocates said the boundary was the fence line. [Daughter's comment]⁶¹

⁶⁰ By e mail to the TCA dated 7 December 2024 13:31 the Daughter commented: *I was never chairman of Michael Commissioners.*

⁶¹ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This advice from the advocates about the boundary refers to the daughter's boundaries – not the land in question.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Daughter is basing her decision on land ownership on the outcome of her own experience. Unfortunately, she is basing it on different documentation to the Neighbour and on her own circumstances. This was not the decision made by the*

and not the final deeds which is where they claim the confusion came from. I have not checked this out yet but will double check what the situation is. If [the Neighbour] has been using this land for 17 odd years (2006 was the original date of the house build) then it's possible [they] can claim the land. I will also need to check if anyone else in the district has a similar claim as this could set up legal challenges for future.

So [the Complainant's] argument is that we are the owners of the land and somehow responsible. I don't see what [the Complainant] is trying to achieve other than force us to pay as [the Neighbour's] insurance company have said [they are] not covered and [the Complainant] will probably have to claim via [the Complainant's] own insurance or sue through the courts. I have no idea why the land would make us responsible as we were not aware it was our land as [the Neighbour] was also under the impression it is [their] land due to the deeds [they have].

[The Neighbour] was well aware by this point that ownership of the piece of land had been questioned before, so hasn't really got an argument that [they] thought the off-sight plan was [their] final deeds. The previous Clerk also pointed this out to [them], and [they were] told then to speak to [their] advocate if [they] thought [they] did in fact own the land.

I think they are just trying to force us to pay up.

Considering [the Complainant's] daughter was chair of the Board that did not fix this issue previously and she admits that the Board at the time did not resolve this matter, nor did they pass the information on to successive Boards, how was [the Neighbour] or ourselves to know that this was not [their] land.

[The Clerk] hasn't got [their] facts here. I [Daughter] was the vice chair 19/20/21 and not Chair, the matter was resolved at the time by a motion and documented. All this documentation was left for the new board (if they looked). We were not permitted to do a handover to the new board, however [name] was a Commissioner for most of the period in question. [Daughter's comment]⁶²

previous Board or the Old Board. The Neighbour has a Supplementary Plan that is still in existence (confirmed by Land Registry November 2024). The current Board agree with the Previous Board that it would not be a suitable use of Ratepayers funds to take the matter to Court to settle. Land Registry have advised that any disputed Boundaries can only be legal settled by a Court of Law.

⁶² By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *As mentioned there is no record of a proposal and vote minuted. It is mandated for the clerk of any local authority, to smooth the introduction and handover to new commissioners.*

10.1.14 In reply the then Vice Chair by e mail dated 22 March 2023 14:24 commented: *I think your approach is wise.*

10.1.15 By e mail to the Clerk dated 22 March 2023 23:14 the then Chair of the Commissioners commented: *I did not realise that [the Neighbour's] insurance were not agreeing to paying,* to which the Clerk replied by e mail dated 23 March 2023 09:01: *Yes [the Neighbour] said [the Complainant] will have to claim from [the Complainant's] own insurance. But they had already started their demands to us prior to the insurance company decision being known.* To which the then Vice Chair of the Commissioners added by e mail to the Clerk dated 23 March 2023 17:40: *They should have talked to their own insurance company before anything else!*

10.1.15A By e mail to the TCA dated 5 June 2024 20:22 the Complainant commented on paragraph 10.1.15 above. The Complainant's comments are interlineated, highlighted in yellow:

I did not realise that [the Neighbour's] insurance were not agreeing to paying, to which the Clerk replied by e mail dated 23 March 2023 09:01: *Yes [the Neighbour] said [the Complainant] will have to claim from [the Complainant's] own insurance.*

*This is interesting, so, on 23 March the Commissioners knew [the Neighbour's] insurance was not going to accept responsibility. However [the Neighbour] was still messaging me in June (3 months later) saying I should contact [their] insurance. I have these messages if you need to see them.*⁶³

But they had already started their demands to us prior to the insurance company decision being known. To which the then Vic Chair of the Commissioners added by e mail to the Clerk dated 23 March 2023 17:40: *They should have talked to their own insurance company before anything else!*

This was done, in fact on the day of the incident, hence why ownership of the land has been questioned.

⁶³ By e mail to the TCA dated 8 July 2024 20:06 the Complainant provided the TCA with copies of text correspondence between the Complainant and the Neighbour concerning the Neighbour's correspondence with their insurers covering the period 13 March to 2 July 2023. The TCA has noted this. The correspondence is not reproduced in this Report.

10.1A By e mail to the TCA dated 17 July 2024 08:38 the Clerk provided a transcript of a conversation between the Clerk and the Daughter:⁶⁴

D. *You can't trust the Commissioners, the Board will drop you in it.*⁶⁵

C. *Umm, Can I ask what the problem is, I am only just back in the office and catching up on e mails. If it's ok with you I will write down what you are telling me so I have a record of the incident and can look into it for you.*

D. *Our Van was hit by trampoline belonging to [the Neighbour]. [They] admitted it was [their] fault. The trampoline was on your land. You are responsible so you will have to pay as you were negligent.*⁶⁶ *It could cost up to £10,000 to fix the van.*

⁶⁴ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *I can't recall the Clerk telling me that [they were] noting the conversation and this is not a 100% true account of the conversation but instead appears to be a brief summary in the Clerk's words. So I have changed the wording to summary notes. The chronology is out too and it doesn't make sense in places, other parts are incorrect. I've tried to address it below. If you are including this in your final report please could you also include a summary of my comments below or I could supply you with a full written account. If not my comments are for your information when making your decision on this.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The phone call report is the notes I recorded on the first contact I had regarding this matter. I have many years training and experience of the process of record keeping. I asked for permission to write down what was being said in the call so that I had the information to look into it. I immediately wrote up the notes on completion of the call. The Daughter's summary notes are a mixture of two calls and emails. In the initial call I could not comment on deeds or the trampoline as I had no idea who was calling me, what had happened and needed to write down the information presented and look into the matter further.*

⁶⁵ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *This is not how the conversation started and is missing why these comments came about. The Clerk informed me that the Trampoline was not on Commissioner land and that [Neighbour] had the deeds stating [they] owned the land. I asked [the Clerk] if [they] had seen these deeds to which [they] replied 'YES' when I asked if [they were] sure [they] had seen them [they] replied 'NO. [Neighbour] HAS SHOWN [named Commissioner]'. I informed the Clerk that I was aware that [they were] new in post and not to trust everything [they were] being told by the Commissioners (to help [them]) and suggested [they look] at the Deeds [themselves] and made enquiries with Land Registry. I also suggested [they] contacted the previous Clerk.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *This was the second call after I had spoken to the Neighbour to understand the matter from both sides. I did advise that the Neighbour claimed to own the land and that [they] had shown [their] deeds to one of the Commissioners. I had requested a copy of the deeds which the Neighbour provided. The comment about "not trusting the Commissioners" was made very early in the first phone call. I understand that the Daughter claims she was attempting to "helping" me as I was new to the role, but that was not the tone of the initial call and I felt very unsettled and uncomfortable about the wording being used. The Daughter did suggest that I contact the Previous Clerk who she advised she had already been in touch with regarding this matter. I chose not to do this as I felt it would be unprofessional to do so at this time.*

⁶⁶ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *This is in the Clerk words, the conversations was the Commissioners were part responsible as it was on their land and I knew this from being a previous Commissioner, as risk and liability was the reason the letter was sent to [Neighbour] in the first place. I then gave the history of the area (which appears to be further down in [their] notes). Again this information was given to fill in the details for the Clerk who wasn't there at the time.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *No evidence can be found of a letter to the Neighbour. The words in this part of my report are what was said by the Daughter.*

C. *I didn't know we owned a trampoline. I have no knowledge of any such item. I will have to speak to [the Neighbour] about this.⁶⁷ I do not have the authority to speak on negligence in this matter. That would be for the insurance companies to decide.*

D. *[The Neighbour] claims its [their]land but its not. [They] bought off plan, we all did but its blurred boundaries.⁶⁸ The Commissioners adopted the play area the official boundary was to the fence so its your land. I spoke to [named individual, role unidentified] and she said it is Commissioners land. Unless its been sold or signed off. [The Neighbour] showed [their] documents to [a former Clerk] but they were not official. It not [the Neighbour's] Deeds, you own the land I have checked Land Registry and they told me its your land. [Named individual, role unidentified] minuted years ago about this piece of land. There should have been a civil case against [the Neighbour] for the shed but it was prior to Covid and the Board did not go ahead. [Named individual, role unidentified] thought it was around Christmas but [they] could be wrong. [Passage concerning previous employment of Daughter and of a sibling redacted by the TCA at the request of Daughter]*

C. *Thank you, I am aware of culpable homicide.⁶⁹ But thankfully no one was hurt, so can you please give me the facts so I can look into this further.*

D. *There has been parking issues with cars being dumped and anti social behaviour in the past. [Named resident] at [number of property] tried to buy some land, he is [details of the person's employment redacted by the TCA to preserve that person's anonymity] but he was refused. [Another named individual] was on the Board at the time then left. [A further named individual] is involved. There used to be 1-2 claims a year on insurance in 2016.⁷⁰*

⁶⁷ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *It was never mentioned that the trampoline belonged the Commissioners as [Neighbour] had already said it was [theirs] to both us and [named Commissioner] and the Clerk. The conversation was about risk and liability of it being on Commissioner land.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *I was trying to establish the facts so that I could look into the matter properly.*

⁶⁸ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *I mentioned to the Clerk here my comment further above in this report whereby draft plans showed that my neighbour and I owned the same piece of land and that the advocates had stated the boundary was the fence line.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Yes and as I have explained the fact is that the paperwork is different and each case is different. Only a Court of Law can determine legal ownership as per Land Registry and legal advice.*

⁶⁹ By e mail to the TCA dated 7 December 2024 13:31 the Daughter commented: *I never used the words culpable homicide.*

⁷⁰ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *This does not make sense, and I cannot recall the context of these notes, other than maybe the first sentence was [named Commissioner] was on the board at the time and then left. I have no idea what [the Clerk] means by 'There used to be 1-2 claims a year on insurance in 2016'. I did not say anything on this.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *No it didn't make sense to me either, but I wrote it down as that was what was stated.*

C. *I will investigate this matter and respond to your [parent's] e mail. I will require [their] written approval to discuss the matter with you any further.*⁷¹

10.2 An e mail dated 5 April 2023 from the Neighbour (a copy of which was made available to the Clerk to the Commissioners) addressed to an official in the Central Registry stating:

As discussed I have an issue with my boundary line being incorrectly marked at the land registry and it is currently causing a significant issue.

My deed and title have a map attached confirming our boundary line but it seems an error has occurred during the process of registry transfer of the area next to my property and that paperwork has caused an overlap of the title which should not be the case.

I appreciate that this is not something that should have occurred, it is an error that should have been noticed at the time of the play area transfer and corrected as there cannot be 2 title on the same area. I request that the error is corrected.

I have copied in the clerk from Michael District Commissioners here as obviously the play area title I believe would be there's [sic] for full transparency.

10.2A By e mail to the TCA dated 5 June 2024 20:22 the Complainant and Daughter commented on paragraph 10.2 above. The Complainant's comment is highlighted in yellow:

I appreciate that this is not something that should have occurred, it is an error that should have been noticed at the time of the play area transfer and corrected as there cannot be 2 title on the same area. I request that the error is corrected.

⁷¹ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *I also said that my [parent] and I would be going to land registry to request copies of deeds and to mapping and I would let [them] know the outcome. Which I did via text message on 15/03/24. I have this message if you need a copy.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Yes I was advised that they would be going to Land Registry. I also confirmed that I would be in touch with Land Registry also. I did not answer the text message instead responded to emails and phone calls. It is interesting that my comments to them about Land Registry's advice that only a Court of Law could settle disputes on legal ownership of land and that they were welcome to do this at their own expense if they wished to, have not been mentioned. This has been my comment since I spoke to Land Registry after the initial call and got their advice on the matter.* By e mail to the TCA dated 7 December 2024 13:31 the Daughter provided a copy of the text message: *14 Mar 2023 at 15:54 Hi, this is urgent. Please call me back before 5pm. Thank you. [Daughter] ex vice chair: 15 Mar 2023 at 12:37 Hi [Clerk], I've been to land registry today and have the clare [sic] boundary maps and [Neighbour's] deeds and the deeds to the playing field. It clearly shows that commissioners own the land where the trampoline was allowed to be situated (and [their] shed). Can you please verify liability as a matter of urgency now you know the facts? Please email [address] and cc me [address]. Thank you.*

It was noticed, hence why the previous board had questioned it and [the Neighbour] was made aware of this.⁷²

10.2.1 By e mail dated 6 April 2023 09:55 the official replied:

In terms of the registered land parcels we will have to recall the initial registration documents and then in conjunction with the Land Registrar look at what action to take. It may require a rectification request for both titles [...]

10.2.1A By e mail to the TCA dated 5 June 2024 20:22 the Complainant commented on paragraph 10.2.1 above:

The whole estate received confirmation of boundaries 3 months after this, which still confirmed the land belonged to Michael Commissioners.

10.2.1B By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented on paragraph 10.2.1A above:

Why would the whole of the estate receive confirmation of boundaries in 2023?⁷³ We did not have the rectification decision from Land registry so there would be no change to the documents on file at this time.

⁷² By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This comment appears to be from the daughter (a previous commissioner) rather than the claimant (a private individual).* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Neighbour raised this issue in 2009 with the Old Board.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The Minutes reflect that the Neighbour raised the issue of the strip of land with the Previous Board. This was queried on number of occasions by the previous Board since 2009. There is no record to be found of this matter being resolved and no correspondence between the office and the Developers office of this matter in the archives or files.*

⁷³ By e mail to the TCA dated 4 August 2024 13:15 the Complainant commented: *this is a very good question. I always thought the Commissioners had requested for these to be sent, however it would appear that someone else has instigated this.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Not all off the estate got copies of this document. The Commissioners definitely never received a copy and it was not until we chased it that we were advised of the matter. The documents might have been triggered by the Neighbour's request for clarification from Land Registry as to why there are two titles of ownership of this piece of land. The documents produced clearly state that these are general boundaries and not guaranteed to be exact positions of boundaries as title plans show general boundaries only. They are using best indication not definitive.*

10.3 Copies of e mail exchanges in July and August 2023 between the Clerk and the insurance brokers of the Commissioners relating to the Complainant's e mail to the Clerk sent on 27 July 2023 20:26 (see paragraph 6.1 of this Report). The letter from the insurers dated 21 September 2023 11:45 (see paragraph 6.2 of this Report) followed.

10.3.1 Among the exchanges is the following, addressed by the Clerk to an insurance broker by e mail dated 28 July 2023 16:32 (forwarding the Complainant's e mail to the Clerk sent on 27 July 2023 20:26):

The trampoline belonged to [the Neighbour] (one of our commissioners), who has admitted responsibility. [The Neighbour's] insurers have not paid out for this damage and so the van owner's daughter [Daughter] has decided to demand that we pay the full amount including loss of earnings.

The rest of the Board have kept away from this matter and [the Neighbour] has kept [their] side away from the office.

[The Neighbour's] deeds show a wider boundary than the later one at time of Adoption and this is where the confusion comes in.

[The Neighbour] has previously shown [their] deeds (which predate those of [Developer's] adoption to the Commissioners) to the previous Board who [Daughter] was a member of at the time. None of the current Board members were involved in this.

I have asked the Land Registry about this matter regarding which deed is correct, as I thought the earlier dated deed would stand over a later one and wanted clarity on this but have not yet received an answer.

Land Registry have not confirmed ownership of the land. They pointed out to me that they do not do this.

10.3.1A By e mail to the TCA dated 5 June 2024 20:22 the Complainant and Daughter commented on paragraph 10.3.1 above. The Complainant's comment is highlighted in yellow:

The trampoline belonged to [the Neighbour] (one of our commissioners), who has admitted responsibility. [The Neighbour's] insurers have not paid out for this damage and so the van owner's daughter [Daughter] has decided to demand that we pay the full amount including loss of earnings.

This is incorrect, all correspondence with them after they told me [Daughter] I would need to be (sic) Power of Attorney was with [the Complainant]. [With which the Complainant concurs]

10.3.2 In his reply by e mail dated 28 July 2023 16:53 the insurance broker writes:

Thank you for your email and background. I Don't see that the Authority are liable as the Trampoline was not on the property of the Commissioners or for Public use.

I believe ownership of the land is a moot point, especially as the trampoline was believed to be on the owner's own land by both the owner and the Commissioners.

10.4 A report in the form of a chronology prepared for the TCA by the Clerk:

Trampoline Incident

Disputed Boundary

[The Neighbour] holds deeds which show ownership of a strip of land beyond the path at the side of [their] house which [they have] owned since 2006. [The Neighbour] advised me that [they] double checked this at the time of purchase and is insistent that [they own] the path and a strip of grass at the side of [their] property.

DOI adopted the pathways and roads in [the location] in 2008

Michael District Commissioners adopted the playing field and other smaller parts in [the location] in 2012. The site plan shows a different boundary line to that on [the Neighbour's] paperwork.

The current Board of Commissioners have no previous knowledge of this dispute or the existence of the trampoline prior to this incident.

Land Registry have not confirmed ownership and have advised that disputes need to be resolved by the Courts.

No Minuted documents can be found to date in the Office, archives or on the office PC regarding these matters. I will speak to Public Records to see if they have any documents from Michael District Commissioners and will continue to search the Archives.

I have consistently advised both [the Complainant] and [Daughter] during phone calls that I do not have authority to state who owns land and that any dispute would need to go down the legal route.

I have advised [the Complainant] and [Daughter] that the Commissioners are of the opinion that the matter is a civil one between the two parties as the Trampoline was not our property and we have never given permission for it use on our land.

Incident details

Phone call from [Daughter] was first I knew of incident. I logged the information provided and requested the information be sent via email so there is a written record of the Complaint. [Daughter] advised me that she was on a previous Board and that the matter of the land had been resolved by the previous Clerk and told me that the

13/04/2023 paperwork would be in the office.⁷⁴

I spoke to [the Neighbour] who is a current Commissioner who advised me that yes [their] trampoline had hit [their] van due to the bad weather and that [they] had accept responsibility and had passed the details to [their] insurance company who were dealing with the incident. [The Neighbour] told me that the trampoline had been on [their] own

13/03/2023 land and agreed to bring [their] deeds in to show me.

14/03/2023 I emailed [the Complainant] to advise [them] of the above.

I phoned the Land Registry to ask their advice. They told me that they cannot comment

14/04/2023 on boundaries and that any disputes would have to go to the Courts to be settled.

I took this information to the Chair, [name] and Vice Chair [name] who both agreed this was a civil matter between [the Neighbour] and [the Complainant] and that the Commissioners could not use ratepayers' money to settle the land boundary query. [The Neighbour] has claimed this land for 18 years and the first any of us had heard of the

⁷⁴ By e mail to the TCA dated 4 August 2024 13:15 Daughter commented: *The Chronology is out here. My phone call with the Clerk was on 14/03/24, after my [parent] had sent the original email via the Commissioner website. The phone call took place after the Clerk had spoken to [Neighbour] as the Clerk informed me on the call that [Neighbour] owned the land and [named Commissioner] had seen [their] deeds. I still have the text messages to the Clerk which I sent on 14/03/24 asking [them] to urgently phone me. I can provide this if needed.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The first initial contact about this matter was a phone call from the Daughter. The Clerk had been off island and was working through the emails when the Daughter's phone call came in.* By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *For clarification - I had just got back to the office and was working through the emails when the call came from the Daughter regarding the matter. I had not yet seen the text message which was sent prior to the call or reached the email from the Complainant at this time. During this initial call, in which I advised I would be writing down notes so I would have the information to hand to investigate the matter, I was unable to confirm land ownership as I did not have any knowledge of the incident and could not advise or comment on the matter without looking into the situation further and obtaining the facts of the matter.*

existence of the trampoline or that there was a discrepancy in the ownership of the land was when it was reported to us.

I spoke to our insurance company who advised that we had adequate cover for instances
14/04/2023 *like this.*

[The Complainant] stated that the matter had been discussed at length in various meetings in the past. I have looked through the available Minutes and the files/paperwork in the Civic Hall but cannot find any mention of this matter. I have also searched the archived files on the office computer and cannot find anything regarding [the location] that relates to this matter. I will continue to look for anything mentioning this query.

[The Neighbour] contacted Land Registry to query [their] Deeds with the Registry [The Neighbour] advised the Board via email of the incident and advised that [them] insurers were dealing with the matter. It was agreed that this was a civil matter between [the Neighbour] and [the Complainant] and that the Board would not need to be involved. [The Neighbour] advised that as [they] had a conflict of interest that [they] would set back from any discussions on this matter with the Board.
15/03/2023

There was no emails between 21/03/23 and 27/07/23 when I received the Incident of Facts. I then passed the matter to our insurance company and advised [the Complainant] of this.

[The Complainant] contacted me on the 31/08/23 to advise [they] had received nothing from our insurance company. I contacted them for an update and they advised that they would contact [them] directly.

The next correspondence I received was from yourself.

I have not received a Freedom of Information request for these matters.

I am currently working on the Procedures for the Commissioners as this passing on of knowledge needs to be logged and addressed so that information does not get lost. We have recently introduced a new Office System which I hope will help with this and I have instigated a report book for phone calls and incidents going forward.

10.4A By e mail to the TCA dated 5 June 2024 20:22 the Complainant and Daughter commented on paragraph 10.4 above. The Complainant's comment is highlighted in yellow:

Michael District Commissioners adopted the playing field and other smaller parts in [the location] in 2012.

This will be under the previous board. As I [Daughter] became a Commissioner in 2016, after that board all stood down.⁷⁵

The site plan shows a different boundary line to that on [the Neighbour's] paperwork.

The current Board of Commissioners have no previous knowledge of this dispute or the existence of the trampoline prior to this incident.

Land Registry have not confirmed ownership and have advised that disputes need to be resolved by the Courts.

No Minuted documents can be found to date in the Office, archives or on the office PC regarding these matters. I will speak to Public Records

Public Records will not have these. They only hold Michael Commissioners Records after the 25 year retention period. It is the responsibility of Michael Commissioners to retain minutes for 25 years before submitting to PRO. All minutes were pasted into the Minute Books by the previous Clerk and stored at the Commissioners Offices, if the new Clerk can't find these, what has happened to them?⁷⁶

to see if they have any documents from Michael District Commissioners and will continue to search the Archives.

⁷⁵ By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented: "Agree with first highlighted comment. Yes the adoption was under a previous Board."

⁷⁶ By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented: "I can confirm that all the Minutes books are safely under lock and key in the archive store upstairs. I have been through all of them from 1992." The Clerk added: "The previous Minute Books prior to 2017 are all safely under lock and key in the archive room. I have not found anything in these books discussing this matter." By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *There is no problem accessing the minutes.* By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Clerk is happy to produce the Minutes if anyone who wants to review them but has not been asked to do so. All Minutes since 1992 are safely stored in the Archive room upstairs in a locked room. After 1st May 2019 the minutes are available to see online on the Commissioners website.*

I have consistently

Interesting wording as very few phone calls have taken place between us [the Complainant and Daughter] and the Clerk, as early on we were advised only to communicate by email. Are we able to ask [them] for the dates of these phone calls? And copies of [their] notes/emails detailing the calls?⁷⁷

advised both [the Complainant] and [Daughter] during phone calls that I do not have authority to state who owns land and that any dispute would need to go down the legal route.

I have advised [the Complainant] and [Daughter] that the Commissioners are of the opinion that the matter is a civil one between the two parties as the Trampoline was not our property and we have never given permission for it use on our land.

Incident details

Phone call from [Daughter] was first I knew of incident.⁷⁸

This is incorrect as originally they claimed not to have received the email. I notified them via their website using the contact us webmail link at 12 noon on the 13th March 2023.

I logged the information provided and requested the information be sent via email so there is a written record of the Complaint. [Daughter] advised me that she was on a previous Board and that the matter of the land had been resolved by the previous Clerk and told me that the paperwork would be in the office.

I spoke to [the Neighbour] who is a current Commissioner who advised me that yes [their] trampoline had hit [their] van due to the bad weather and that [they] had accept responsibility and had passed the details to [their] insurance company who were dealing with the incident. [The Neighbour] told me that the trampoline had been on [their] own land and agreed to bring [their] deeds in to show me. I emailed [the Complainant] to advise [them] of the above.

⁷⁷ By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented: “By consistently I did not state how many phone calls there were but that I repeated myself by stating I do not have authority to state who owns the land and that this could only be decided by the courts as per Land Registry's advice. The first time I was made aware of this matter was the phone call from the Daughter. [See paragraph 10.1A of this Report] I had been off Island and was only just back in the office working through emails when the call came in. I did not read the email until after the phone call so my statement is correct even though the email was sent prior to the phone call being made.”

⁷⁸ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *The phone call was the first point of contact.*

I phoned the Land Registry to ask their advice. They told me that they cannot comment on boundaries and that any disputes would have to go to the Courts to be settled.

I took this information to the Chair, [name] and Vice Chair [name] who both agreed this was a civil matter between [the Neighbour] and [the Complainant] and that the Commissioners could not use ratepayers' money to settle the land boundary query.

Can we ask if this was a motion that was voted on? Due to the seriousness of the issue I [Daughter] would have expected there to have been a motion, even if the resolution was the same as the previous board.⁷⁹

[The Neighbour] has claimed this land for 18 years and the first any of us had heard of the existence of the trampoline or that there was a discrepancy in the ownership of the land was when it was reported to us.

I spoke to our insurance company who advised that we had adequate cover for instances like this. [The Complainant] stated that the matter had been discussed at length in various meetings in the past. I have looked through the available Minutes and the files/paperwork in the Civic Hall

The previous Clerk pasted all minutes into the Minute books, where have these gone?⁸⁰

but cannot find any mention of this matter. I have also searched the archived files on the office computer and cannot find anything regarding [the location] that relates to this matter. I will continue to look for anything mentioning this query.

[The Neighbour] contacted Land Registry to query [their] Deeds with the Registry

[The Neighbour] advised the Board via email of the incident and advised that [them] insurers were dealing with the matter. It was agreed that this was a civil matter between [the Neighbour] and [the Complainant] and that the Board would not need to be involved. [The Neighbour] advised that as

⁷⁹ By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented: "I have attached a copy of the Private meeting where the neighbour recused [themselves] after advising the Board of the situation with [their] trampoline. The Board decided this was an insurance matter between the two parties." The TCA has reviewed the Minutes dated 5 April 2023 which are marked "Private" and for the purposes of this Report observes that the Minutes confirm that having advised the Board of the trampoline incident and accepted full responsibility for it, the Neighbour "then recused [themselves] and signed the Red Book". The Minutes record that the remaining members of the Board "discussed the matter and agreed that [the Clerk] would look into the matter with the Land Registry and investigate the discrepancy between [the Neighbour's] deeds and the Commissioners adoption paperwork". By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *Clerk can provide minutes of meeting.*

⁸⁰ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *All minutes that were recorded are accessible.*

[they] had a conflict of interest that [they] would set back from any discussions on this matter with the Board.

There was no emails between 21/03/23 and 27/07/23 when I received the Incident of Facts. I then passed the matter to our insurance company and advised [the Complainant] of this.

[The Complainant] contacted me on the 31/08/23 to advise [they] had received nothing from our insurance company. I contacted them for an update and they advised that they would contact [them] directly.

There is no mention here of the emails requesting the complaints procedure, did they not keep them, were they deleted, are they claiming they were not received?

I [the Complainant] sent an email to the Clerk on 5 August 2023, this was in response to the clerk's email regarding their insurance, the text of my email being

Thank you for your reply, however at the present time I have not had any communication from your insurers at all asking for any facts or particulars.

Although I appreciate finally Kirk Michael Commissioners appear to accept ownership of the land in question as per details held in registry I do feel that this fiasco needs to be resolved with utmost urgency.⁸¹

Can you send me details by return of the complaints procedure you have in place to allow me to escalate correctly.⁸²

10.5 Enquiries before Contract sent by the Neighbour's Advocates at the time of the purchase of the Neighbour's property, with replies from the Developer's Advocates attached; together with an Office Copy and Plan of the Neighbour's property issued by the Isle of Man Land Registry on 3 July 2006.⁸³

⁸¹ By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Commissioners have been clear that they have do not have the authority to state ownership of the land as the matter can only be settled by the Courts of Law to establish the Legal Boundary and they are in agreement with the previous two Boards that this is not a suitable use of Ratepayers funds.*

⁸² By e mail to the TCA dated 8 July 2024 20:06 the Complainant provided the TCA with a copy of their e mail to the Clerk dated 5 August 2023 10:18 in the terms which the Complainant quotes in this comment. This e mail was in response to the Clerk's e mail to the Complainant dated 28 July 2023 16:48 which is quoted in paragraph 6.1 of this Report.

⁸³ The Neighbour has confirmed by e mail to the TCA dated 20 May 2024 09:54 that these documents (copies of which the Neighbour had supplied to the Clerk) may be referred to in the present Report.

10.5.1 In their answers to the Enquiries before Contract, the Developer's Advocates refer to the Office Copy (which has been provided to the TCA) and to the Filed Plan and the Agreement for Sale to which Transfer Form 3 is annexed, copies of which have not been provided to the TCA.

Comments on first (2 June 2024) draft Statement of Facts

10.6 By e mail dated 9 June 2024 21:45 addressed to the TCA the Clerk commented on the first (2 June 2024) draft of the then titled Statement of Facts:

Thank you for this draft. I am very concerned about some of the points raised in this email and will send a full answer tomorrow but felt it important to answer the following items first.

Insurance - At no time since I have been in my role, have we been without insurance cover. We renew in April each year and our insurance company contact us 4 - 6 weeks prior to the renewal.

The land is not being sold, leased, rented etc. We are trying to rectify an administration error where a lack of due diligence has resulted in this discrepancy in the deeds for the small strip of land. [The Neighbour] will not be gaining any financial gain as either [they own] the land or we do and there will be no change of ownership or transfer of legal owner. I have found another adoption which was not completed correctly and has resulted in a query with streetlights. Part of my workload is to identify and implement correct procedures for future Commissioners and Clerks.

A number of comments have been made without any supporting backup. This is especially concerning regarding the destruction of paperwork. I have been in my role since September 2022 and prior to my taking over the role there were two temporary Clerk's, [names provided] (both very experienced Clerks). I will discuss these matters with [named officer] from DOI to see how best to address these issues.

We have an annual inspection of all playgrounds we look after which is done by [named organisation] who are a professional playground provider and carry out inspections all over the Island and UK. This covers both risk assessment and maintenance of equipment.

We also have an Internal Audit carried out each year by [named auditors] who are very experienced in these matters and the Trampoline was one of the items discussed with them.

I contacted our insurers in March regarding this matter and they advised that we wait for the outcome of [the Neighbour's] insurers which is what we did. Once we were contacted in July to say that the matter was still outstanding we then contacted our own insurers.

Regarding the claim of Corruption, I will be passing this matter to [named officer from DOI].

I have taken additional advice regarding culpable homicide and will ensure this is part of the procedures given to all new and existing Commissioners.

10.6A By e mail to the TCA dated 8 July 2024 20:06 the Complainant asked the following questions (highlighted in yellow) about the Clerk's e mail quoted in paragraph 10.6 above:

The land is not being sold, leased, rented etc. We are trying to rectify an administration error where a lack of due diligence has resulted in this discrepancy in the deeds for the small strip of land. [The Neighbour] will not be gaining any financial gain as either [they own] the land or we do and there will be no change of ownership or transfer of legal owner.

Can we ask when they conclude (sic) the land in question doesn't belong to [the Neighbour].

Will [they] then be told to remove [their] shed, car and various other items?

This covers both risk assessment and maintenance of equipment.

Can we ask why they did not supply this when requested?⁸⁴

We also have an Internal Audit carried out each year by [named auditors] who are very experienced in these matters and the Trampoline was one of the items discussed with them.

Can we ask what was discussed about the Trampoline? When did this discussion occur? Can it be requested from the notes from the meeting to be disclosed?⁸⁵

⁸⁴ By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: *This was not requested, evidence of request required.*

⁸⁵ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *Discussion with Internal Auditors. This was not a minuted meeting. The Internal Audit is carried out by a professional third party and is an independent process that evaluates our internal controls, corporate governance, processes and methods. The main goal is to assess the effectiveness of internal rules, manage risk and ensure compliance with relevant*

10.7 The TCA replied to the Clerk by e mail dated 10 June 2024 08:01:

Thank you for your further comments. As I mentioned when sending the draft Statement of Facts, this is a neutral document without any commentary or analysis by me.

I would however draw your attention to footnote 4 on page 3 of the draft, and the limitation on my powers of investigation, which will be expanded upon in the reasoning and conclusions in the Report.

[Renumbered as footnote 7 in this Report, it refers to the review power of HM Attorney General in questions of pecuniary interest under section 11 Local Government Act 2011.]

10.8 By e mail dated 9 June 2024 21:45 addressed to the TCA the Clerk commented further:

I understand the limitation of your powers of investigation and that it is not within your scope to carry out any investigations.

I handed this matter over to our insurers once [the Complainant] advised me that the claim with [the Neighbour] was not proceeding further. I was advised by both [named MHK] and our insurance company that this matter was best handed to the Insurance company who would address the matter with the claimants and I followed this advice.

Since looking into this matter I have become aware of a number of historical issues surrounding registering of deeds within the district which has thrown up discrepancies on ownership which will need addressing. Procedures are being put in place for future adoptions in the hope of preventing these issues in future.

Regarding the email requesting our complaints procedure, I had a phone call with [the Complainant] when [they] phoned me after sending the email and I advised [them] that our complaints procedure could be downloaded from our website. I was under the impression that [they were] willing to wait for the insurance company to make a decision and the next conversation I had with [them] was requesting I chase the insurance company up which I did. I did not hear anything further, nor did I receive a complaint form from [the Complainant].

regulatory laws. I mentioned the trampoline incident and their advice was to leave the matter in the hands of the Insurance Company.

10.8A By e mail to the TCA dated 8 July 2024 20:06 the Complainant asked the following questions (highlighted in yellow) about the Clerk's e mail quoted in paragraph 10.8 above:

I was under the impression that [they were] willing to wait for the insurance company to make a decision and the next conversation I had with [them] was requesting I chase the insurance company up which I did. I did not hear anything further, nor did I receive a complaint form from [the Complainant].

Can we ask why didn't [the Clerk] replied (sic) to the e mail which I sent requesting the complaints procedure?⁸⁶

11. By e mail to the TCA dated 8 July 2024 20:06 the Complainant asked:

It is my understanding the previous Clerk was willing to speak to you when I originally contacted the Tynwald Commissioner. [The previous Clerk] would be able to clarify the issue around the minutes, destruction of documents, and which current serving Commissioners knew about the previous questioning over the land ownership. Is this something that could be useful to you?

Third draft (24 July 2024) Statement of Facts

12. The third draft of the then titled Statement of Facts was sent by the TCA by e mail to the Commissioners and to the Complainant dated 24 July 2024, for their respective review and comment.

13. By e mail to the TCA dated 30 July 2024 15:27 the Complainant suggested a further meeting with the TCA and commented:

Following the Commissioner's most recent responses there are further comments that I would like to make. However, I would like to talk about these with you first, as I feel the Commissioners have not taken any responsibility for their actions. Their responses also do not appear to be and are not addressing my complaint or the issue over land ownership.

⁸⁶ By e mail to the TCA dated 5 May 2025 16:33 the Clerk commented: *I have no record of an email requesting the complaints procedure. All emails are kept in folders on our system and I cannot find anything from either of the Complainant's email addresses regarding this matter.*

In the meantime, I have also received the attached email from [named former Commissioner] which I would like to put forward as evidence in your report. [Named former Commissioner] was a Michael Commissioner on the previous two boards. He has given me permission to include his email in your report.⁸⁷

14. By e mail to the Complainant dated 1 August 2024 10:00 the TCA replied:

At this stage I would prefer to receive your comments on draft 3 of the Statement of Facts in writing. I would ask you to bear in mind the following:

- *I do not have authority to determine who owns the land in question. My remit is to assess the manner in which the question of ownership has been addressed by the Commissioners in light of the evidence available to them.*
- *Nothing in the Report which will be issued may be referred to in any court proceedings. Under section 22(3) Tynwald Commissioner for Administration Act 2011:
(a) no statement made or answer given by any person in the course of an investigation by the Commissioner is admissible in evidence against any person in any proceedings (whether in court or otherwise); and (b) no evidence of proceedings before the Commissioner may be given against any person.*

15. The TCA contacted the former Commissioner whose comments the Complainant had suggested be included in the present Report. By e mail to the TCA dated 1 August 2024 14:53 the former Commissioner gave their consent to the inclusion. The TCA has however determined that the comments, general in nature and including unspecified allegations of “land grabbing” on the part of residents at the location, are unsubstantiated and therefore must be excluded.⁸⁸

16. By e mail to the TCA dated 1 August 2024 08:22 the Clerk provided preliminary comments:

[The Complainant] and [their] damaged van seems to have almost disappeared from this complaint. I cannot find the email [they refer] to dated 5th August 2023 nor do I recall that

⁸⁷ By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Commissioners have made it clear that they believe this is a civil matter between the Complainant and the Neighbour. They have taken this matter very serious and the Clerk has spent many hours looking into the matters raised. The land ownership is still under investigation as our Clerk is looking into further information raised by our legal advisor.*

⁸⁸ By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The comment on “land Grabbing” is very interesting and has been noted. (This comment will not be used in any legal proceedings as noted in the TCA report).*

email. At the time I was off Island quite a lot due to a family bereavement and I will apologies if I missed answering [their] query. I do recall discussing the matter with [them] in a phone conversation but do not have a record of dates/times.

I will address the individual parts in my next email but wanted to clarify a few parts now.

Pecuniary Interest - The previous Clerk left emails confirmations showing what interest each Commissioner holds. Annually I ask each Commissioner to advise if there are any changes to this Disclosure and record their responses in the red Disclosure Book. All have reported no changes

The land ownership query - I am waiting for a decision on this from my lawyer and will forward this to you hopefully with my email later this week.⁸⁹ I agree with the Claimants that the fence is the boundary to the adopted land, the query is where the fence should be and this is the matter I am hoping to have resolution to.

I have also approached another independent source by asking a local architect who deals with a lot of boundary disputes to advice where he feels the boundary line should be. I have only asked him to look at the various plans and not given any indication of what the issue behind this request is. Unfortunately, he is off Island until next week so I will not have this update until I meet with him.

Some of the Commissioners are off Island at present for Holidays and I need to talk to them about the latest situation regarding this matter so can I please ask if you are able to wait until I have updated them all or do you need this matter settling earlier?

Regarding the matter of Destruction of paperwork - My first question would be why this was not raised previously. Secondly, I would like to point out that we have a cloud backup system called Carbonite, that records ALL use of the Computer on a regular basis, therefore I can confidentially state that any documents raised on the PC would be safely stored in the cloud backup. This could not be altered, deleted or changed by anyone other than the previous clerk as none of the Commissioners had access to it.

I stopped [name of IT service provider] from downloading information from our PC shortly after starting work and have since replaced the PC as I do not like to use an overseas cloud platform for Local Authority work preferring to work with local providers.

⁸⁹ A copy of the legal advice has not been provided to the TCA. However, by e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Our Lawyer has raised another avenue to research which I am awaiting an update from Land Registry on. Once I have this I will forward the update to you.*

*I have found some letters regarding sheds but none to [Neighbour]. I will forward these to you later today when I am in the office.*⁹⁰

17. By e mail to the Clerk dated 1 August 2024 10:14 the TCA replied:

One point to bear in mind is that I do not have authority to determine who owns the land in question. My remit is to assess the manner in which the question of ownership has been addressed by the Commissioners in light of the evidence available to them.

I would also mention that nothing in the Report which will be issued may be referred to in any court proceedings. Under section 22(3) Tynwald Commissioner for Administration Act 2011:

(a) no statement made or answer given by any person in the course of an investigation by the Commissioner is admissible in evidence against any person in any proceedings (whether in court or otherwise); and (b) no evidence of proceedings before the Commissioner may be given against any person.

Please take the time you need.

18.1 By e mail to the TCA dated 4 August 2024 13:15 the Complainant and Daughter commented on the third draft of the then titled Statement of Facts (a draft which did not therefore include the comments of the Commissioners on that third draft which are referred to in paragraph 22 of this Report). These have been included as footnotes in this Report. In their covering e mail the Complainant wrote:

Please find attached further comments on the Statement of Facts and a copy of an email I have received from [name], the previous Clerk of Michael Commissioners. I feel that this email is very relevant, and [name], has told me that [they are] happy for it to be included in your report. [They are] also willing to answer any further questions that you may have and is happy for you to contact [them] directly.

⁹⁰ The Clerk has provided the TCA with copies of these letters which relate to a separate property and are not reproduced in this Report. They are however referred to in paragraph 5A/Insert(c) of this Report. By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Copies of letter to planning sent by Previous Clerk attached. These are the only letters I can find regarding sheds. They were not on our archived systems but were found by looking on Planning Applications for properties near to the Neighbours.*

Although I am aware it is not the Tynwald Commissioners remit to establish who owns the land in question. I believe that Michael Commissioners should know what land belongs to them, especially after previous disputes over the piece of land with a now-serving Commissioner. My understanding is that documents lodged at the Land Registry are legal documents and at the time of this incident documents at the Land Registry proved the land where the trampoline was situated was indeed, the Commissioners. I find it very frustrating that Michael Commissioners do not have the aptitude to be able to reach the same conclusion.⁹¹

Even now, aware of the Tynwald Commissioners' involvement, Michael Commissioners are neglectful by still allowing a shed, old car and various other items to be situated on their land, which happens to be a children's play area. I am perplexed after nearly 18 months of questioning the risk the trampoline posed in this incident that they would allow an old car and other junk to be dumped not only on their land but on a children's play area. They clearly do not understand the health and safety implications that these items pose to the public.

I still feel Michael Commissioners have demonstrated a lack of interest and respect for my concerns. Their responses, even to this report, in places are unprofessional and they are missing the point entirely.⁹²

Michael Commissioners have still not

- 1) Confirmed they own the land the trampoline was situated on*
- 2) Explained why my email requesting the complaints procedure was ignored*
- 3) Provided me access to the Health and Safety risk assessment at the time of the incident*

18.2 The e mail from the former Clerk to which the Complainant refers is addressed to the Complainant and dated 3 August 2024 21:05:⁹³

⁹¹ . By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The previous disputes over the land were originally raised by the Neighbour (See minutes December 2009) with a copy of [their] deeds shown to the Board and Minuted by the Previous Clerk.* [The Minutes referred to are in paragraph 5A/INSERT of this Report.]

⁹² By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *The Commissioners are not "missing" the point. They unable to advise who owns the land and are trying to get a resolution to suit all parties. They have been clear in their views on this matter.*

⁹³ By e mail to the Former Clerk dated 11.11.24 11:38 the TCA asked the Former Clerk for confirmation that they consented to the inclusion of this e mail in the present Report and that the Former Clerk was not subject to any restraint in this regard. By e mail to the TCA dated 11.11.24 18:38 the Former Clerk wrote: *I can confirm that I give consent for the e mail to be included in your report, as this is a true statement of account.*

I am writing to confirm that during my time as the Clerk to Michael District Commissioners [dates provided] the [person] in question [Neighbour] was issued with a letter to remove [their] shed off Commissioner land. On receipt of this letter [Neighbour] came into the office to see me stating that the shed was on [their] land. I requested that [they] came back in to show me [their] deeds. [Neighbour] did bring in [their] Deeds to the office, however the documentation [they] presented did not clarify land ownership. As a result of this I first of all contacted [named contact at Developer] who has now unfortunately left. [Named contact at Developer] confirmed it was previously land belonging to [Developer] and therefore following sign over was now Commissioners Land. I also went to Land Registry to check their records which stated the land in question belonged to the Commissioners. It was established that the land on the sea side of the path was the Commissioners and belonged to the playground.

This issue was discussed over several Commissioner meetings. As [Neighbour] would not remove [their] shed off Commissioner land, it would have meant that we would have needed to instruct an advocate to deal with the situation, the board voted on taking legal action, but the majority vote was not to pursue this course of action. This was obviously before the other items appeared on the land such as the trampoline and a car that is in a bad condition and is obstructing the public path.

I had written to [Neighbour] on a few occasions regarding this matter and the paperwork was stored in the cabinets upstairs in the locked office. [Named] trained me that these documents were private and confidential at all times. Commissioners were only meant to come into my office when I was in there.

The new board started in May 2021 and [Neighbour] became a Commissioner. I resigned shortly after this in 2021 as I fractured my humerus and was signed off for a while. I have been advised by another previous member of the board that the documents and minute books which I always took to the Public Records Office have instead been taken by Doxbond so can't be viewed.

I am happy to speak to the Tynwald commissioner directly if so required.⁹⁴

⁹⁴ By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: *Previous Clerk's Email. There is no evidence in the archives that this letter was ever produced/sent. The Neighbour will have to advise further on this matter. The Neighbour had already shown the Previous Clerk [their] deeds in 2009 as per the December 2009 Minutes. How did the Previous Clerk decide that the documents shown did not clarify land ownership. How was this decision arrived at and who took responsibility for this decision? Land Registry do not confirm legal ownership as per their paperwork and present Clerk's contact with them. There is nothing Minuted and nor correspondence to be found regarding discussion about the Shed.*

18A. By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented:

The current Clerk has looked at all the paperwork in both offices and can confirm that anything that would be a matter of GDPR or Data Protection is kept separate to the rest of the Paperwork under [their] control/access only. The remainder of the paperwork is available to the Commissioners, if required as most are public documents. Correspondence is kept backed up to the cloud which the Clerk controls. The current Board of Commissioners operate to the latest guidelines of the Local Authority Handbook and the Code of Conduct.

When the Previous Clerk left the employment of the Commissioners, it was necessary for the Board to have access to the office to enable the running of the District to continue until a new Clerk could be appointed. This access was approved by the two very experienced relief Clerks.

I have spoken to the Commissioners who have confirmed the following regarding the materials sent to Doxbond in August 2023:

“The paperwork was mainly old brochures, old Government acts and legislation that was now out of date, Whiteny Council paperwork (latest copy kept), Receipt books from Glen Wyllin Camp Site as these were kept in boxes on the landing (not under lock and key) and contained personal details. The Commissioners (two of whom had attended GDPR Training) felt this was no longer required as the Commissioners had not been responsible for the Campsite for a number of years. Old posters and other items that were no longer required. The Commissioners did not remove any of the Minute Books and no Correspondence was removed.”

I have personally checked the upstairs files and can confirm that the filing cabinets are overflowing, the storage boxes are full. The Commissioners were very clear to myself from the start of my employment that Public Records held a list of documents and were due to come back to have a look at the remainder of the documentation. This was to be done prior to any paperwork being discarded unless it was deemed to be no longer required or not relevant to the Commissioners office.

The Previous Clerk's comment about “destruction of documents” is not first hand and therefore hearsay. Can we please request that the person mentioned as “another member of board” who told the Previous Clerk about this destruction, be contacted by the TCA to ascertain what they witnessed so we can reply to actual facts and not conjecture. I am happy to arrange for the Minute Books to be viewed at a time to suit if anyone is interested in viewing these.

19. By e mail to the TCA dated 14 August 2024 23:00 the Clerk commented:

I have to point out that the Commissioners are still not of the opinion that ratepayers funds are justified in using for this matter. I have sort [sic] advice from a legal expert⁹⁵ regarding the boundary issue and shown him the deeds. He has advised that the land does belong to [Neighbour] [They were] told that [they] could only buy the property from the Supplementary plan attached to [their] deeds and was responsible for the pathway up until DOI adopted the roads and pathways. This is backed up by the document from Land Registry dated July 2023 which is a reclassification of boundaries within the [location] when Supplementary Plans would be rectified. This means that at the time of the incident [Neighbour] owned the land in question, not the Commissioners.

I have not shown the Draft Statement to this legal expert, only the deeds, adoption and maps and asked him for his opinion on where he thinks the boundary should be.

19A. By e mail to the TCA dated 5 May 2025 16:33 from the Clerk, the Commissioners commented on paragraph 19 above (and on footnote 95):

Not sure what the point being raised here is? Legal advice or advice from legal “expert”? We would only seek advice from the proper channels (ie advocates), so not sure what “expert” is being referred to.

It did not take 20 months to seek this advice. We have spoken to two advocates who are very experienced in property matters and have followed a number of different leads that they advised us of. Our initial stance that this was a civil matter between the Neighbour and the Complainant has not changed. The amount of research that our Clerk had to do due to vague statements, hearsay and unclear timelines has also meant that the matter took longer than expected as initially we were told the timeline was approximately just before Christmas prior to Covid when the actual timeline dates back to 2009.

The Commissioners have been mindful of the cost to the Ratepayers and their duty of care of Ratepayers funds is always at the front of their minds. This follows on from the previous Boards decision to not use Ratepayers funds to deal with this matter.

Following on from these investigations our Clerk has provided a copy of an email from the Developer [see paragraph 30 of this Report] which confirms that the strip of land was sold to the Neighbour and we feel that this clarifies the ownership of the land. The Developer states that the strip of land was sold to the Neighbour in order, to allow them to cut their side of the

⁹⁵ By e mail to the TCA dated 7 December 2024 13:31 the Complainant commented: *is this legal advice or advice from a legal ‘expert’? These could be two different things. Also while I appreciate the commissioners have now 20 months on sought ‘advice from a legal expert’, why was this not undertake at the time?*

hedge, that was on the original plans for the area. We are unable to find any record of why this hedge was not put in as per the original plans. If it had of been planted, there would have been no queries about ownership of land.

The Board feel that following points are relevant:

The small concrete strip going onto the grass defines the hedge border.

The question should be raised as to why the hedge was never put in as per the original plans.

The Neighbour's supplementary plans (not site plans) are still in existence. There are a number of other Supplementary Plans on the Estate which are also still in existence.

The adoption by Michael Commissioners four years after the Neighbour purchased [their] property does not show the hedge, therefore due to a lack of due diligence, the boundary was incorrectly marked on the Commissioners adoption plan.

The TCA has been shown a copy of the email confirmation from the Developer confirming that the strip of land was sold to the Neighbour and is [their] property. [see paragraph 30 of this Report] Our advocate can see no issues with this email.

We have set up new procedures to deal with the retention and access to information for future Boards and Clerks so that important information is available, recorded and easily accessible.

The Commissioners would like to point out that having inherited this historic boundary dispute, which several previous boards of Commissioners and the previous clerk should have fully investigated and resolved over various occasions, that having not done so has resulted in untold stress and pressure to the whole family. We fully support that the previous Clerk and Boards of Commissioners have failed this resident and family several times.

As a result of this, the now Clerk and the current Board of Commissioners have been on the receiving end of malicious allegations, mainly based on hearsay, which have no foundation and has resulted in a cost to the ratepayers for the Clerk's additional time and the cost of legal advice.

The Clerk would like to add to this that having worked with the Board of Commissioners for over two years, I have seen no evidence that they are not complying with the Nolan Principles and that they always put their duties to the ratepayers at the forefront of their minds in all matters.

20. By e mail to the Clerk dated 15 August 2024 08:57 the TCA reminded them of the scope and nature of the present investigation:

I have no authority to investigate matters “at large”, and the current investigation relates solely to the trampoline incident and to the manner in which [the Complainant’s] complaint has been handled by the Commissioners. The ownership of the land (and the Commissioners’ understanding of who owns the land) is an element, but I have no authority to determine that ownership. So, for example, the fact that the Commissioners have taken legal advice on the question of ownership is an aspect of the manner in which [the Complainant’s] complaint has been processed: that advice remains legally privileged and confidential in the hands of the Commissioners. I am grateful to you for the summary.

The Statement of Facts contains all the information which I have received, but it is simply a record of that information – no analysis or comment on my part is made or implied, and the materials in the Statement of Facts, in so far as they come within the scope of the investigation, will be addressed in the reasoning and conclusions in the Report. It is my practice to include in the Statement of Facts everything which I have received, without editing or summarising that material, so as to avoid to the greatest extent possible any suggestion of partiality or bias.

TCA meeting with the Clerk and Commissioners 3 September 2024

21. The TCA met the Clerk and several of the Commissioners on 3 September 2024. Following that meeting the TCA by e mail to the Commissioners dated 3 September 2024 summarised the points covered:

Further to our meeting together with representatives of the Board this morning, I am writing to record the points we touched upon:

1. *The Commissioners will comment on the current draft of the Statement of Facts (draft 3, 24 July 2024)*
2. *I shall add an opening explanation when preparing my Report highlighting that the inclusion of material in the Statement of Facts is in accordance with my policy of not editing or summarising information which has been sent to me (in order to minimise to the greatest extent any possibility of bias or prejudice), that the Statement of Facts is not intended to contain any analysis or commentary from me (as to its relevance, accuracy or completeness) but instead that analysis will be found in the reasoning and conclusions in the Report. I shall also emphasise that references to officer holders are to those individuals who held such office at the relevant time(s).*

3. Section 22(3) Tynwald Commissioner for Administration Act 2011 states:

(3) Except in proceedings for perjury or under section 18 (obstructions and contempt) or subsection (4)— (a) no statement made or answer given by any person in the course of an investigation by the Commissioner is admissible in evidence against any person in any proceedings (whether in court or otherwise); and (b) no evidence of proceedings before the Commissioner may be given against any person.

4. *A copy of the non-disclosure agreement to which you referred in earlier correspondence will be made available to me (following formal confirmation from the Board).*⁹⁶

22.1 By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners on the third draft of the then titled Statement of Facts (a draft which did not therefore include the comments of the Complainant on that third draft which are referred to in paragraph 18 of this Report). These have been included as footnotes in this Report.

22.2 The Clerk commented:

I have been back to Land Registry regarding the land query and have been advised that the Supplementary plan for [number] still stands and that the Boundaries in [location] have not yet been finalized. I am going to look into this further as this contradicts the information from the report sent to some of the residents in July 2023 (the Daughter claimed this report was sent to all residents but this is not the case). As soon as I have further information I will advise accordingly.

[Summary provided by the Commissioners 6 November 2024]

22.3 In addition, the Clerk provided a summary which the Commissioners requested be included in full in this Report. It reads:

Michael District Commissioners Board Summary 6th November 2024.

In summary, this complaint arose from a civil matter between a Neighbour whose trampoline damaged the complainant's car. The Neighbour has always accepted liability for the damage.

⁹⁶ A copy of the non-disclosure agreement has not been provided to the TCA.

[Their] insurance company refused the claim as storm damage and therefore an Act of God and it seems to have been at this point that the complainant decided to try and involve the Commissioners in the matter. While the Board of MDC have sympathy for the damage suffered by the complainant it did not and does not accept any liability.

When the Commissioners denied liability, the complainant has made an increasing number of allegations about the Commissioners which seem to be based on the memory of the complainant's daughter of records and meetings from when she herself was a serving member of the Commissioners. Although the daughter states these supposed facts as being undisputed, the evidence does not support her position.

She states that the land ownership issue was fully discussed within Board meetings (presumably at the time she was a Commissioner), but despite extensive searches this is not supported by the recorded minutes or any of the available documentation.

She states that the previous Clerk will make assertions about potentially irregular destruction of records. There is no evidence to support this, and to the contrary all minutes, email exchanges and so on have been located stored in the Cloud and are available. Please note that the previous Clerk is subject to a non-disclosure agreement as part of the agreed termination of [their] employment. If [they] were to discuss any of these matters with a member of the public [they] would be in breach of this agreement.

All the comments relating to Health and Safety checks are all moot as the land ownership issue has never been resolved and the equipment did not belong to the Commissioners. The Neighbour believed the disputed strip of land to be [theirs] and as it is, [they have] enjoyed unrestricted use of it since 2006, it seems unlikely that a challenge to [their] ownership would be in the best interest of the Ratepayers. The current members of the Board were never made aware that there could be a potential issue regarding ownership of the land. The daughter appears to be trying to hold to account the current Board of MDC for the unevidenced actions or inactions of her previous Board.

Many, many hours have been spent investigating this matter and responding to new questions, by the current Clerk and elected Board members.

The previous systems employed have made this an extremely laborious job. The Board of MDC are all satisfied that they have behaved correctly in regard to this complaint and are concerned

that for reasons unknown, this complaint has magnified into what amounts to a personal vendetta against certain Board members.

Please finally note that the Neighbour whose trampoline caused the damage is a serving Commissioner. [They] recused [themselves] at the outset and has been entirely excluded from this issue.

Fourth draft (13 November 2024) Statement of Facts

23. The TCA sent draft 4 of the then titled Statement of Facts (13 November 2024) under cover of e mails to the Complainant and to the Clerk each dated 13 November 2024 and invited comment.

24. By e mail to the TCA dated 7 December 2024 13:31 the Complainant commented (the further comments to which they refer have been included (highlighted in grey) as footnotes in this Report):

Sorry for the delay, I have now had chance to go through the document and have made a few extra comments (see attached). I have also attached a screenshot of the text messages my daughter sent to the Clerk on 14th & 15th March 2023. These were sent to the mobile number listed as the contact number for the Commissioners on Facebook.

Although I appreciate that finally the Commissioners have taken some form of legal representation and advice to verify land ownership, this has taken 20 months. Over this period a considerable amount of my time and research has gone into this and I find it insulting that the Commissioners have stated that I have some personal vendetta against members of the board, this is completely untrue. However I do feel that the tone in the Commissioners responses has been very unprofessional and it is clear that they have taken my complaint personally.

Regarding their comments in paragraph 1 of their most recent response (6th November 2024). I contacted the Commissioners straight away back in March 2023, together with gaining documentation from Land Registry to assist both me and the Commissioners to confirm land ownership. I believed then, and still do now that the Commissioners own the land in question at the time of the incident, and not [the Neighbour]. I appreciate the trampoline did not belong to the Commissioners, and I would like to point out that my own insurance paid out to repair the damage after [the Neighbour's] insurance refused.

It appears from the Commissioners more recent responses that documents can not be found. This incident would not have occurred if the Commissioners (previous board) or [the Neighbour] had followed up on the information given years ago, and seeked legal advice. I

appreciate the original decision was made in favour not to use rate payers money to clarify the land ownership, however this is exactly what rate payers money should be used for to prevent situations like this from happening. Therefore I feel the Commissioner (current board) need to formalise the land ownership asap and update public records with the correct information (if it is in fact currently incorrect).

24A By e mail to the TCA dated 18 May 2025 21:18 the Clerk commented on paragraph 24 of this Report:

The Commissioners have not taken the Complainant's complaint personally. They have issues with the lack of a clear timeline, and the assumptions and allegations used without any evidence and based on third party hearsay.

Whilst the Complainant did contact us back in March 2023, it was seen as a civil matter between the Complainant and the Neighbour who were in contact regarding this matter. (See Neighbours notes 02/07/2023 [paragraph 29 of this Report]). It was after this that we were contacted again in July 2023 when the matter was passed to our Insurance Company as we were advised that it was not progressing with the Neighbour's insurance company. In the meantime we had attempted to clarify the land ownership query. We heard nothing further from the Complainant once our insurance company contacted [them] until the TCA contacted us on 01/04/2024.

The Complainant is still insisting that the Commissioners own the land but has given no legal proof of this claim. Land registry is not a legal proof of land ownership when there is a dispute.

"Documents cannot be found" – the assumption made is that the Commissioners have destroyed documents. This is not the case. The facts are that the documents cannot be found as in all probability they never existed. If the documents had been produced, a copy would be found on the Cloud system that the previous Board were using which copied and stored all documentation in real time. No one on this Board had access to this Cloud system and I have been the only person to access it since the Previous Clerk left, and this access was only initiated in March 2024. The system does not allow for the destruction of documents on the platform. Therefore, it is most probable that the documents cannot be found because they never existed. Also the minutes do not show any evidence of these documents or discussions.

Now that we have the confirmation from the Developer that the land is owned by the Neighbour, the Commissioners have requested that I take the necessary steps to formalise the boundary of

this piece of land, which is now in the process of happening.⁹⁷ I will be writing to the Complainant with a copy of the documentation to show that the Developer has confirmed that the Neighbour has owned the piece of land since [they] purchased it in 2006 and that therefore, an error occurred when the play area was adopted in 2010. This documentation will be part of the paperwork going to Land Registry so will be publicly available.

25. By e mail to the TCA dated 6 January 2025 11:54 the Clerk provided the Commissioners' comments on draft 4 of the then titled Statement of Facts which have been included (highlighted in pink) as inserts and as footnotes in this Report.

Fifth draft (8 January 2025) Statement of Facts

26. The TCA sent draft 5 of the then titled Statement of Facts (8 January 2025) under cover of e mails to the Complainant and to the Clerk each dated 8 January 2025, informing them that the draft would also be sent to the Neighbour and suggesting that further comment on their part be deferred until comments, if any, from the Neighbour had been received.

27. By e mail dated 8 January 2025 15:58 the TCA wrote to the Neighbour:
- Since we last corresponded, the Statement of Facts which will form the core of my Report has gone through several revisions. Attached is draft 5, on which I invite you to comment. Your right to comment is found in section 15(2) Tynwald Commissioner for Administration Act 2011:*
- 15(2) If an investigation is pursuant to a complaint, the Commissioner must give — (a) the listed authority in question; and (b) any other person who is alleged in the complaint to have taken the action which is its subject; an opportunity to comment on any allegations contained in the complaint.*
- You are not personally the subject of any complaint, and your input should you wish to comment is purely evidential for the purposes of my investigation.*
- Should you wish to meet me to discuss any aspect of this, I would be happy to do so.*

28. On 27 January 2025 the TCA and the Neighbour spoke on the telephone and by e mail to the Neighbour dated 27 January 2025 15:12 the TCA wrote:
- Following on from our telephone call just now, please feel free to comment on any aspect of the draft Statement of Facts.*
- As I explained, the focus of my investigation is the manner in which the Commissioners dealt with the Complainant's complaint.*

⁹⁷ Paragraph 30 of this Report.

Comments received from the Neighbour

29. By e mail to the TCA dated 7 March 2025 12:46 (within a timescale agreed by the TCA) the Neighbour provided their comments on draft 5 of the then titled Statement of Facts (8 January 2025).⁹⁸

I would like to ask whether it is felt there are 1 or 2 complaints? As I read it, I would suggest that there are 2 complaints with 2 complainants and possibly therefore requires dividing up. I have divided here for my response.

Complaint 1: “Did Michael District Commissioners (MDC) investigate the issue of land ownership thoroughly?” from [the Complainant]

For which my comments are:

I was contacted by the MDC Clerk, I was asked to attend the office with my house deeds as [they were] investigating the ownership of the land. [They] took copies of my deeds and asked me a few questions, so [they] could understand my perspective. [They] informed me at that time my deeds differed from the Land Registry map.

I contacted the Land Registry 05/04/2023 and spoke to [named Land Registry officer]. [They] confirmed that my title deed had been overlapped when the playing field was transferred to MDC, [Named Land Registry officer]. confirmed in the call that “two titles could not exist on the same piece of land” as this was an issue that had been highlighted. I followed my call with an email and included the MDC clerk as it was a joint issue NOT CREATED BY ME. I do not believe for one moment that it is normal practice to change a boundary line of a property and not inform the property owner.

I include here a copy of my email [dated 5 April 2023], and the reply received from [named Land Registry officer]:

As discussed I have an issue with my boundary line being incorrectly marked at the Land Registry and it is currently causing a significant issue. My deed and title have a map attached confirming our boundary line but it seems an error has occurred during the process of registry transfer of the play area next to my property and that paperwork has caused an overlap of the title which should not be the case.

⁹⁸ By e mail to the TCA dated 3 April 2025 12:01 the Neighbour confirmed, having been given an opportunity to comment on draft 6 of the Submissions and Responses, that they had no further comments to make.

I appreciate that this is not something that should have occurred, it is an error that should have been noticed at the time of the play area transfer and corrected as there cannot be 2 title [sic] on the same area, I request that the error is corrected.

I have copied in the clerk from Michael District Commissioners here as obviously the play area title I believe would be theirs for full transparency.

[From the named Land Registry officer (undated in the copy provided) addressed to the Neighbour and to the Clerk]:

In terms of the registered land parcels we will have to recall the initial registration documents and then in conjunction with the land registrar look at what action to take. It may require a rectification request for both titles but we will know more on review of the documents. If you could both bear with us we will be back in touch as soon as possible.

The current MDC Clerk has since followed this up with Land Registry 20/06/2024. [E mail from the Clerk to the named Land Registry officer dated 20 June 2024]:

This matter is I believe still outstanding. Can you please update what the status is and if there is anything further you require from ourselves.

I always understood that the map included with my deeds was subject to finalisation, but as I am sure any property purchaser would expect at the time of any update or amendment we would be informed and therefore have a right to reply, which had not occurred between 2006-2023. My understanding is that to date the SUPPLEMENTARY PLANS, which were what was included with my deeds is still the map applicable to this date 19 year after purchase.

[photograph of a section of the Supplementary Plan provided, and noted by the TCA]

We have recently received a revised mapping document for [the estate] sent to each resident, at which point I had owned this property 18 years, this was delivered AFTER the incident with my trampoline. I have held off contacting regarding it as this issue was in motion. I will be taking up the content of this with the relevant departments in due course.

Also worth noting that in this letter received states that residents were all issued on purchase with a map stating "provisional" which is not the case, my map with my deeds stated "Supplementary".

So, my answer to this complaint would be – The MDC clerk investigated and questioned all parties involved with the land and defined that there was a DISPUTE/ERROR regarding the land ownership that needed resolving.

I believe the 2nd Complaint has been made by the complainants daughter, and include a very serious allegation of destruction of documents by the current MDC Clerk/ previous Temporary Clerk or the current Board, this I believe is alleged to have taken place since the previous clerk left [their] position.

My understanding of Complaint 2: “The destruction of copies of letters and correspondence with me regarding my trampoline and children’s play shed by the current MDC Board”.

The suggestion is that the previous MDC board gave an instruction to the previous clerk - and I believe that the previous clerk has written comments in the document you have supplied to agree with this - that letters have been sent to my address.

For which my comments are: I must state that I have never witnessed or heard of any mention of the disposal or destruction of any MDC community related records while serving as an MDC Board member.

The only physical documents that were sent for destruction with Doxbond that I am aware of during my term as a commissioner were records relating to the running of [named campsite facility] by the MD commissioners.

While clearing out the upstairs hallway of the MDC building in advance of renovation works a number of boxes containing personal details of camper who had booked in while the commissioner ran the site many years ago were found, these paper which were in a publicly accessible area of the building contained personal information of people who had booked pitches at the site – names addresses, phone numbers which we deemed to be unnecessary to keep, there were also many till rolls we assumed from the shop till. IT was agreed by the current board that these documents were not required for any future purpose and posed an unnecessary GDPR risk.

I will state here for the record, I have never received a letter to my address or had a conversation with the any clerk or MDC board member and asked to remove my children’s items, this covers all time periods to date.

I STRONGLY suggest that these are libellous statements from both parties.

If at a point in time the board discussed and agreed that an action was required, then there would be record of this – confirmation that it was discussed as a board, a motion tabled and voted on by the board to instruct the clerk to send me a letter– all of this would be recorded in

meeting minutes, which as I mentioned earlier in my statement, were as is process printed off in hard copy at the time of signing by the chair and stuck into a physical book.

I have no awareness of any record of this being voted on in the historical minute books.

All the physical meeting minute books I am sure would be available to view if requested of the Clerk as part of your investigation.

Also I would like to include, in case the above step was not actioned as is standard practice, that if the previous clerk or a member of the previous MDC board decided to write a letter on the Clerks office PC it would be included in the backup system that is in place which records all saved documents from the clerks office PC to a cloud backup software. It would though have been outside of normal processes to take an action like this without the proper steps of a board vote.

About the Back up software: During the time of the previous Clerk, under the instruction of the previous MDC Board, a cloud-based software service was selected to back up the office PCs with on-going process of saving data and files. I cannot be sure of the exact timing of the implementation of the software, or even the name of it but from my conversations during my term, regarding upgrading the office IT, it is a software that has been in place for a number of years and is still live now. My understanding is that back-ups are taken continuously, and you CANNOT delete information stored within the online portal.

So, as a double check the back up system can be checked for any letter being sent to me regarding this, or anything else that it's felt the commissioners may have written to me about since I purchased my property in 2006.

Again, I am sure that the current MDC Clerk could offer to show you through the documents contained in the back-up software's portal if you need this as part of your investigation.

As the complainants daughter has stated "I appear to believe it is my property" this is absolutely correct. Had any party at any point stated differently a paper trail would definitely exist. Had there been a letter sent to me at any time by the previous clerk I would have responded to it, and I would have as I did in 2023 when the issue was highlighted to me of the "overlapping title" contacted Land Registry.

So, my answer to this complaint would be – I believe that there are steps that can be taken, should the Ombudsman see necessary, to verify using a qualified IT Technicians to confirm whether documents exist or have every existed within the MDC office computer systems.

My impression is the original complaint is being exploited by parties that appear to be using this event to grind a preexisting axe with MDC Clerk and the current MDC Board.

There are a couple of other things that I want to include in my response here, as others have said a lot of things, and I would like my side covered also:

1. A timeline and background of my Trampoline and its positioning, and the unfortunate accident that occurred with [the Complainant's] van.

My daughter received a trampoline for her 4th birthday in May 2016. Initially, we placed it in our back garden but soon realised it was too large and created noise concerns. To mitigate these issues, we moved it to the strip of land beside the path outside our fence. Given our exposure to strong winds, we secured the trampoline with ground screws and straps, in addition to digging the legs into the ground for extra stability. The trampoline remained in this location during the spring and summer months alongside a children's play shed.

10/03/2023 – Weather Conditions

- *Two amber weather warnings were issued for snow and ice, leading to the closure of Isle of Man schools. <https://www.three.fm/news/isle-of-man-news/two-amber-weather-warnings-in-place-today/>*

12/03/2023 – Sudden Weather Change

- *The temperature increased by 6°C overnight, causing all snow to melt rapidly. Concurrently, wind speeds and gusts doubled, resulting in saturated ground conditions. These factors led to the trampoline being uprooted and displaced despite prior securement. Notably, no weather warnings were issued for the sudden rise in temperature or significant wind gusts. <https://www.worldweatheronline.com/douglas-weather-history/im.aspx>*

13/03/2023

- *06:11 AM: A friend informed me that my trampoline had damaged a vehicle [Picture attached]⁹⁹*
- *07:00 AM: I knocked on the complainant's door and informed [them] of the accident.*

⁹⁹ Noted by the TCA

- 08:15 AM: The complainant visited my house, where I provided my insurance documents, and we exchanged contact details.
- 09:00 AM: I contacted my insurance broker, who advised that the complainant should first contact [their] own insurer who would in turn contact my insurer.
- 15:22 PM: The Clerk of Michael District Commissioners informed the board of commissioner [sic] (including myself) via email that the complainant had contacted the office through their website. At this point, I declared a conflict of interest and removed myself from the matter.

[Copies of text messages exchanged between the Complainant and the Neighbour on 13 March 2023 between 08:30 and 09:37 provided:

- Neighbour to Complainant: "I'll message you as soon as I've spoken to my house insurance.
- Neighbour to Complainant: "I spoke to my insurer, they said that your insurer would need to process from their side, you have all my insurance policy details from your picture?"
- Complainant to Neighbour: "Ok. I will send it in to them. Fyi, the window has now come out and the vehicle is not secure. I am taking it to a garage shortly.
- Neighbour to Complainant: "I thought it would go. Thanks, I know you also didn't need this today."]

17/06/2023

09:20AM: Complainant confirmed via text that the van had been repaired, text message chain:

- Complainant to Neighbour **[17 June 2023 09:20]**: "My van has now been repaired through my insurance, there are expenses that my insurance do not cover including policy excess etc. This amounts to £1,250. As you have admitted the damage liability can you pay this into my account directly [account details provided]."
- Neighbour to Complainant: "Are you [sic] insurance company not contacting mine about this? Apologies if I misunderstood our last conversation? I personally cannot pay for this which is why I have insurance which I supplied to you? Yes it was my trampoline but I didn't move it to hit your van it was pulled out from the ground, dug in 30cm deep which I assume your insurance company came to assess? I am happy to ring my insurance company and ask them the steps for a claim to be initiated?"
- Complainant to Neighbour: "This is unfortunate, I have looked into the legalities and have at my own expense contacted various parties and attained [sic] details from the planning office to verify who owns the land the trampoline emulated [sic] from, I did contact the commissioners who I am assuming you also know about. I will now be following up via legal representation

which may incur further additional costs. I did not want this scenario and my initial figure of £1,250 is a very low estimate as it took 3 weeks to repair the van and I had a loss of earnings for 3 weeks is in excess of £3,000.”

- *Neighbour to Complainant: “My insurance is who should be contacted, I did say this on the very first day when I knocked on your door to let you know and then gave you my insurance documents, they told me that it was insurance company to insurance company and we should not need to be involved. I have my title deeds to my house and photographic position of the trampoline, showing its position and also the holes in the ground where the legs and anchors were ripped out, date stamped. I’m not sure what the commissioners connection is? I had a contact from the office a few months back and noted my conflict of interest in the accident and therefore know nothing more on that side of things. As you have stated you have investigated a course of action here that you feel is appropriate – that is your right – my course of action would be to contact the insurance company/ies who should be dealing with all expenses for what was a very unfortunate accident.”*
- *Complainant to Neighbour: “I cannot deal with your insurance company I am afraid as my vehicle is not insured with them and I cannot insist how my insurance company deals with the claim. I would suggest you speak to your insurance company and get them to either speak to [name of Complainant’s insurers] about this or initially speak to me. I did pass on your details on the day of the loss, that’s as far as my responsibility lies on this.”*
- *Neighbour to Complainant: “I can of course, as I said above call them and ask what steps can be taken and I will of course let you know what they say. I am upset by the felt need to intimidate me above with the mention of additional costs being added and legal contact with me personally on this, this I feel is unnecessary. If all lines of communication had broken down and all avenues exhausted obviously it would be your right, but I do not feel it is in any way appropriate now and I personally found the tone quite threatening with your felt need to add it at this stage of communication. I will as stated above revert back with any information from my insurance company on Monday.”*
- *Complainant to Neighbour: “I have no intention to intimate [sic] you at all, I am merely as a neighbour advising you that if it goes further it could cost us both considerably more. However I would rather pursue it through your insurance company if you can speak to them about the situation.*
- *Complainant to Neighbour [23 June 2023 12:41]: “Can you confirm the decision of your insurance company. If they are willing to settle this claim, I will be happy to discuss with them.”*

- *Neighbour to Complainant: "I've had a significant issue with one of my children this week which has taken all of my attention so my apologies for not having my attention for this, I've left a message for them to call me back."*
- *Complainant to Neighbour: "Ok."*
- *Neighbour to Complainant [26 June 2023 09:57]: My insurance company have emailed me some details of how you can proceed to approach them with a claim. Do you have an email address I can forward it to for you?"*

[The Complainant provided their e mail address, and on 2 July 2023 09:52 advised the neighbour that no e mail had been received, which the neighbour said [they] would check and resend]

02/07/2023

I forwarded an email from my insurance broker to the complainant regarding further claim details.

[E mail dated 23 June 2023 15:42:54 to the Neighbour from a named account executive of the Neighbour's insurance company]

Good speaking with you earlier and thanks for advising us of the situation with your neighbour and the damage caused to their vehicle by your trampoline earlier in the year.

I have spoken to our claims manager and can confirm that what I told you is correct. It does not work that as it was your trampoline, you are automatically responsible to pay for the damage to the third-party vehicle, or any out-of-pocket expenses incurred. Cases of liability hinge on the principle of negligence and the fact that your trampoline caused the damage does not mean you were negligent. If, as you have told me, the trampoline was secured then it could be argued that you have taken reasonable steps to ensure its safety and therefore not negligent as you cannot control the weather.

Cases of liability have to be proven by the claimant and should always be dealt with via an insurance company rather than directly, so under no circumstances should you give any money to your neighbour, nor should you get into protracted discussions with them about this matter. I would suggest in this instance that you copy the messages that have been sent to you regarding this matter and send them to us at [e mail address provided], so we can have them on file. If you can also provide us with relevant details, i.e. date of incident and the neighbours name and address we can then set up a claim file on our system. If you tell your neighbour that you have placed the matter in the hands of your

insurer and request that they contact our claims team directly with the evidence of their out-of-pocket expenses, we can then deal with it although please note that until we have registered the claim properly, we will not discuss it with them in detail.

Your neighbour should contact [their] vehicle insurer in the first instance and request they pursue recovery for the damage to the vehicle and our claims team are more than happy to correspond with them directly once a formal claim has been notified to us along with the supporting evidence required.

I trust the above is ok for you, but please contact our claims department to discuss further.

19/02/2025

I contacted my insurance broker and to date they received no communications regarding a claim for out-of-pocket expenses from either the complainant or the complainants van insurance company.

[E mail to the neighbour dated 19 February 2025 from a named personal insurance claim advisor]

I can confirm that no claim was made in respect of holding you negligent to [sic] the damage to your neighbour's vehicle from your trampoline because of the weather conditions at the time. We did not receive any correspondence from any insurers holding you responsible therefore our files were settled and closed.

As a statement regarding my Trampoline's securing to the ground was made during your investigation, I am including pictures here taken on the 13/03/2023 showing the holes in the ground where the trampoline was ripped out of the soft ground. Significant steps were taken for H&S, and as acknowledged in the 2nd complaint, the Trampoline was confirmed as being in that position for a number of years.

[Photograph provided. Noted by the TCA but not reproduced in this Report.]

The avenue to contact my insurance company and make an out-of-pocket expenses claim was always open.

2. A timeline of my interactions with the MDC office regarding the land that the trampoline was secured on, and what I believe shows systematic continuous failings over 16 year to me as a resident of Michael District by the previous MDC Clerk to clarify on the position of this

land, but on each occasion it has been ignored and I CAN NOW SEE THAT I HAVE BEEN FAILED EACH AND EVERY TIME I HAVE PRODUCED MY DEEDS TO THE PREVIOUS CLERKS OFFICE.

2005/2006: During my house purchase, I sought legal advice regarding the “brown footpath” and the adjacent strip of land. My concern was that it was an unfair burden for myself and three neighbours to be responsible for a publicly accessible path. Regarding the strip of land, I was advised by [the developer] that if I did not wish to take responsibility for it, I should reconsider purchasing the house. Fully understanding the boundary lines, I proceeded with the purchase.

[Unfortunately the correspondence from the time no longer exists, we used [name of firm of Advocates] as the conveyancing firm for our house, they have now been taken over by [name of firm of Advocates] and records do not need to be kept for longer than 7 years]

2009: Children playing football against my house prompted me to seek a fencing solution. I attended a commissioners’ meeting with my property deeds to discuss options with [Developer] and the then-clerk. I also at the time consulted with [Named MHK], one of my MHKS at the time, and [they] confirmed that I could erect a fence on my boundary line after looking at my deeds.

[Copy of the first two pages of the Minutes of a Meeting of Michael District Commissioners dated 2 September 2009 at 7pm provided, of which the following is a highlighted extract:
“A discussion then ensued regarding the boundaries at [the estate] and the playing field that the Commissioners own. [Named Commissioner] said that the land registry do not have detailed enough plans and as the Commissioners are looking to put a fence up, they need to be aware of how far they can go. [Named visiting official, otherwise unidentified] told the Board that [they] would get clarification and come back to the Board as soon as possible.”]

2011/2012: Following my neighbouring residents applying to extend their gardens, which led to long running tension with another villager. Following a police-involved incident, I presented my deeds to the attending officers, confirming that the side/ rear path was private property. The following day, I visited the Commissioners' office, where the then-clerk took copies of my deeds. I requested that they inform the concerned villager that the path was not publicly accessible. I have contacted the Police Registry team to obtain a copy of the report for the date, so a definitive check of the MDC Clerks computer system could take place for the date range.

2019: The Commissioners proposed fencing off the [estate] playing field, which I and other residents opposed due to the lack of justification for public expenditure. Again, I presented my deeds to the previous MDC clerk office and attended a commissioner meeting with other [estate] residents where we discussed in an open meeting our strong objection to the proposal. The proposal I believe was subsequently withdrawal by the previous MDC commissioner's board.

2021: I became an MD Commissioner.

2023: As a current serving MDC Commissioners member, I was informed via email about a raised contact form completed on the website, which mentioned me by name, concerning "a trampoline incident." I immediately declared a conflict of interest and removed myself from all discussions.

I hope that you have all the information that you could possibly need from me, I do not envy the job you have to do here.

29A. By e mail to the TCA dated 18 May 2025 21:18 the Clerk commented on paragraph 29 of this Report:

These comments have been answered in the body of the report, but I have included a summary response.

- All emails received were responded to. I am unable to find the email regarding the complaints process.*
- We did report to our insurance company from the start but due to the ongoing matter between the Complainant and the Neighbour it was advised to wait the outcome of their claims. As soon as the Complainant came back to us, we went back to our insurance company.*
- I am unable to find the email regarding the complaints process request. No emails have been ignored.*
- We have explained that we are not in a position to state Legal ownership and the matter would have to go to the Courts as per Land Registry and Legal advice. I advised that if that was the route they wished to take they should do so (this was during the second phone call). Land Registry DO NOT establish legal ownership in disputed matters and this has been pointed out numerous times.*
- Health and safety and risk assessments were discussed. I was asked if we had them, confirmed we did and that we were up to date. At no time was a request made to see copies of these documents.*

- *We have held the rate payers in mind at all times. The Complainant would have had to take the Commissioners to court (if they felt they had a claim) to settle the matter which did not happen.*

No destruction of documents has occurred that was not for GDPR purposes and nothing sent for shredding has been of use to this complaint.

This is not relevant information but hearsay and third party mis-information. No proof has been offered by the parties involved and we have answered what documentation has been removed and why. The fact that documents mentioned cannot be found does not prove that the documents ever existed.

The information is not relevant or factual and it is concerning that information is being shared outside the Commissioners' office which is not in the Public domain.

We do not dispute that previous Boards discussed the Neighbour's ownership, in fact we have provided evidence to confirm that this is the case from our investigations.

Clarification of land ownership

30. By e mail to the TCA dated 20 March 2025 15:47 the Clerk provided evidence obtained from the Developer in the form of a lengthy e mail from the Developer's in-house counsel to the Clerk dated 19 March 2025 21:36 that the land upon which the trampoline was positioned, which land the Complainant believes to be in the ownership of Michael District Commissioners, is and from the date of the Neighbour's purchase of the property has always been owned by the Neighbour. The TCA notes the exchange and further notes that the Developer's in-house counsel expressly states that their comments are not to be taken as legal advice to Michael District Commissioners.¹⁰⁰

Concluding comments of the Complainant

¹⁰⁰ The Clerk in their e mail to the TCA dated 20 March 2025 15:47 has confirmed that the Developer has not been made aware by Michael District Commissioners of the present investigation by the TCA. The TCA notes that this exchange of e mails between the Clerk and the Developer's in-house counsel is not contemporaneous with the events which have given rise to the Complainant's complaint. The TCA has no authority to determine ownership of the land. The TCA has therefore exercised their discretion not to reproduce the exchange of e mails in this Report but instead to take cognisance of the fact that ownership of the land is and always has been capable of being determined. And see paragraph 19A of this Report for further comments received from the Clerk. By e mail to the TCA dated 18 May 2025 21:18 the Clerk further commented: *I have confirmation from the Commissioners' legal representative that they can find no issue with the Developer's comments in the e mail.*

31. By e mail to the TCA dated 22 March 2025 15:16 the Complainant provided their final comments (including clarification of certain references to the Complainant and to the Daughter which have been included in this Report):

Following [the Neighbour's] comments, I'd like to confirm again that my complaint is not against [the Neighbour] and relates to the treatment I received from Michael Commissioners between reporting the incident on 13 March 2023 and making my original complaint to the Tynwald Commissioner on 16 September 2023. This treatment included:

- *Failure to investigate my concerns correctly appearing disinterested throughout failing to provide updates when requested*
- *Failing to report the incident to their insurance company for 5 months*
- *Poor communication including ignoring emails, for example did not reply to the email requesting the complaints procedure*
- *Stating the land did not belong to the Commissioners and neglecting their position by denying responsibility even though Land Registry stated differently*
- *Not understanding the Health and Safety requirements and risk assessment, and not providing the documents when requested*
- *Lack of respect towards rate payers' concerns*

My complaint also does not relate to destruction of documents by the current MDC Clerk/ previous Temporary Clerk or the current Board. This is relevant information which has come to light as part of my complaint, but it does not form my complaint.

I have been made aware that there is a third previous Michael Commissioner who is willing to make a statement to the Tynwald Commissioner; to confirm that the previous board had discussed [the Neighbour's] ownership of the land in question, if you need these details I can pass them onto you. However, I am keen to have this matter resolved and I feel you already have this information from the previous Clerk and two ex-Commissioners.

Concluding comments of Michael District Commissioners

32. On 8 April 2025 the TCA met the Clerk to discuss a number of concerns on the Clerk's part not previously brought to the TCA's attention and it was agreed that the Clerk would provide further written comments accordingly. These were provided by e mail to the TCA from the Clerk dated 5 May 2025 16:33. These comments have been included in the body of this Report.

REASONING AND CONCLUSIONS¹⁰¹

Scope of authority and defined terms

33. The TCA has under the Tynwald Commissioner for Administration Act 2011 (“the Act”) the power to investigate a complaint by a member of the public only if a person is claiming to have sustained injustice or hardship

- as a result of a service failure; or
- in consequence of maladministration in connection with any administrative action of a listed authority.

34. The terms “injustice or hardship” and “maladministration” are not defined in the Act. Parliamentary Ombudsmen have been appointed worldwide over the past fifty years, and a huge amount has been written about the meaning of these terms. The TCA draws on this shared experience.

35. The TCA interprets injustice and hardship to mean not necessarily that an injury or loss of some kind must have been suffered (though this may be the case), but also where there is a sense of outrage on the part of the complainant, aroused by unfair or incompetent administration. A general sense of outrage at the behaviour of or procedures adopted by a Listed Authority would not be sufficient to activate the TCA’s powers of investigation. There must be a connection between what is complained of and the complainant themselves.

36. Authority for the adequacy of “outrage” as corresponding to injustice or hardship, and that there is no requirement that loss should have been suffered (though loss may have been suffered nonetheless) is found in established English authorities. The following passage appears in A W Bradley, K D Ewing and C J S Knight, *Constitutional & Administrative Law* (18th edition, 2022)¹⁰² on page 724:

¹⁰¹ Numbers in square brackets [] refer to those paragraphs in this Report in which supporting evidence is to be found.

¹⁰² <https://www.pearson.com/en-gb/subject-catalog/p/constitutional-and-administrative-law/P200000007128/9781292402765>

Even if maladministration has occurred, this does not mean that injustice has thereby been caused to the individual. Conversely, injustice and hardship may exist, caused not by maladministration but by legislation or a judicial decision. Injustice for this purpose means not merely injury of a kind that a court may remedy, but includes 'the sense of outrage aroused by unfair or incompetent administration, even where the complainant has suffered no actual loss'¹⁰³. It is not restricted to a concept such as damage within the meaning of tort law.

37. The TCA defines maladministration to include the following:

Competency:

- Incompetence
- Ineptitude
- Giving misleading or inadequate advice

Procedure:

- Faulty procedures or failing to follow correct procedures
- Mistakes in handling claims
- Avoidable delay
- Neglect
- Arbitrariness
- Refusing to answer reasonable questions
- Not telling an individual about appeal rights
- Not offering an adequate remedy when one is due

Attitude:

- Bias, unfairness or prejudice
- Inattention
- Perversity and lying
- Discourtesy and lack of respect
- Turpitude (depraved or wicked behaviour or character)
- Corruption

¹⁰³ *R v PCA, ex p Balchin* [1998] 1 PLR 1 (Sedley J) and *R v PCA, ex p Balchin No. 2* [2000] 2 LGR 87 (Dyson J). The TCA recognises that decisions at first instance of the English Courts are not binding in the Isle of Man, but recognises equally that in the absence of any decision of the Isle of Man Courts to the contrary, it is open to the TCA to apply established English principles of administrative justice.

38. Maladministration therefore is not confined to unlawful conduct. Unlawfulness is neither a precondition of, nor concomitant to a finding of maladministration. There may be maladministration without unlawfulness, and vice versa.

Brief summary: the trampoline incident

39. Full details of the trampoline incident which took place on 13 March 2023 are contained in the Submissions and Responses. [1, 6.1, 6.2, 10.1, 10.4, 22.3, 29 and *passim*] For ease of reference only (the definitive account being in the Submissions and Responses) the incident and its aftermath may be summarised briefly as follows:

- On 13 March 2023 the Complainant's van was damaged when struck by a trampoline which had been blown against it.
- The owner of the trampoline is referred to in this Report as the Neighbour.
- The trampoline had been secured with ground screws and straps but adverse weather conditions (rapid snow melt, saturated ground and high winds) on 12 and 13 March 2023 were considered by the Neighbour to be the reason why the trampoline was uprooted.
- The Complainant's motor insurers allowed a claim but this did not cover ancillary losses (which the Complainant identified as a £1,250 policy excess and loss of earnings in excess of £4,500).
- The Neighbour's home insurers were of the opinion that there was no negligence on the part of the Neighbour, reasoning that the trampoline having been secured, the cause of the incident was adverse weather. The matter is however moot, as the Neighbour was informed by their personal insurance claim advisor on 19 February 2025 that no claim had been received by the Neighbour's home insurers for out-of-pocket expenses from the Complainant's motor insurers or from the Complainant directly and that the file had therefore been closed.
- The Complainant believed (on the basis of records held by the Isle of Man Land Registry) that the trampoline had been placed on land belonging to the Commissioners.
- The Neighbour has maintained throughout that the land belonged to the Neighbour.
- The Complainant informed the Clerk to the Commissioners of the incident on 14 March 2023.
- On 28 July 2023 the Clerk informed the Complainant that the matter had been passed to the Commissioners' insurers. [On 21 September 2023 the Commissioners' insurers informed the Complainant that liability was denied, the Commissioners not having been negligent and the cause of the incident being the wind.]

- There then followed exchanges of correspondence and telephone calls between the Complainant (and the Complainant's daughter, a former Michael District Commissioner, representing their parent, referred to in this Report as the Daughter) and the Clerk concerning the ownership of the land on which the trampoline had been placed, the Commissioners maintaining that the land belonged to the Neighbour and the Complainant stating that on the basis of publicly available records at the Isle of Man Land Registry the land belonged to the Commissioners.
- By e mail dated 16 September 2023 to the former TCA Ms Angela Main Thomson the Complainant brought the complaints which have been the subject of the present investigation.

Injustice and hardship: Complainant's assertions

40. The Complainant asserts:

- **Hardship** – *although my insurance company settled the claim for the damage on the vehicle, it did not cover any other incidental expenses. i.e. loss of earnings, disruptions to my business and my customers, potential increase in insurance premiums.*
- **Injustice** – *lack of interest from the start from Michael Commissioners who denied it was even their land. Even after Land Registry confirmed it was Commissioner land Michael Commissioners have continued to allow [the Neighbour] (a serving Commissioner) to keep [their] shed, car and other property on the land. The Commissioners failed to have the correct health and safety risk assessment provisions in place to mitigate this risk. [3]*

41. The TCA is satisfied that his powers of investigation have been activated.

Preliminary: questions regarding insurance liability on the part of the Neighbour and of the Commissioners

42. In the present Report the TCA has not excluded from the Submissions and Responses exchanges (in whatever form) concerning a potential insurance liability on the Neighbour's part between the Complainant and the Neighbour and the Neighbour and their home insurers, nor has the TCA excluded commentaries by the Clerk/Commissioners on those exchanges, notwithstanding that this was a purely civil law matter between the Complainant and the Neighbour.

43. The TCA has not excluded from the Submissions and Responses exchanges (in whatever form) concerning a potential insurance liability on the Commissioners' part between the Complainant and the Clerk.

44. The TCA has concluded that it was the inability on the part of the Complainant to secure redress against the Neighbour's home insurers which prompted the Complainant to turn for redress to the Commissioners from whose land (as the Complainant believed) the Neighbour's trampoline had been blown into, and had damaged, the Complainant's van. The earlier exchanges between the Complainant and the Neighbour concerning insurance liability provide the necessary background and context to the Complainant's subsequent complaint(s) against the Commissioners. The exchanges between the Complainant and the Clerk concerning insurance liability illustrate the nature of the redress sought.

45. The TCA does not have authority to investigate any aspect of the insurance arrangements entered into by the Commissioners, whether this be the scope or the commercial adequacy of such arrangements. Section 11(2)(j) Tynwald Commissioner for Administration Act 2011 excludes the TCA's powers of investigation as regards "action taken in matters relating to contractual or other commercial transactions" (subject to exceptions, of which the entering into of a contract of insurance is not one). The TCA has no authority to adjudicate or intervene in any possible civil claim to be made by the Complainant against the Commissioners, on the basis of an insurance dispute or otherwise. The TCA's role is confined to matters of maladministration.

Scope of the Complaints and the Complainant's assumptions

46. The complaints under investigation are those made by the Complainant against the Commissioners, as a Listed Authority under the Tynwald Commissioner for Administration Act 2011.

47. Complaints (express or implied) against the Neighbour or against the Developer which are contained in the Submissions and Responses have no bearing on the present investigation. They are included in this Report solely because it is the policy of the TCA neither to exclude nor to edit any comments and materials which have been provided.

48. Believing on the basis of records maintained by the Isle of Man Land Registry that the Commissioners owned the land upon which the trampoline had been placed, yet faced with an assertion by the Commissioners that this was not the case, the Complainant made a number of assumptions, drawing in part on the Daughter's own experience as a former Michael District Commissioner, the Complainant attributing motives and alleging systemic failures on the part of the Commissioners and its officers both past and present

49. The coming to light at what has proved to be the end of the investigation of compelling evidence that the land has throughout been owned by the Neighbour [30] has dealt a fatal blow to a number of the Complainant's complaints.

50. The TCA does not regard those complaints as having been made frivolously. The TCA has no doubt that the Complainant genuinely believed, on the basis of public records and taking into account the Daughter's previous experience as a Michael District Commissioner, that the land did indeed belong to the Commissioners and that in consequence the Complainant would have a legitimate reason to question the Commissioners' assertion that the land belonged to the Neighbour.

51. The initial complaints were:

- 1) Are Michael Commissioners still attempting to change land ownership to [the Neighbour]?*
- 2) Is [the Neighbour] benefiting financially (increasing value of property) from being a serving Commissioner at the expense of the rate payer? Have all the correct procedures been followed?*
- 3) Have Michael Commissioners given [the Neighbour] permission to leave various items on their land and if so, have they followed the correct Health & Safety mitigations? Where is their risk assessment?*

I am not confident that Michael Commissioners are acting in the best interest of the rate payer, and I would respectfully request that you investigate this matter thoroughly. [1]

52. The Complainant after reviewing the definition of maladministration on the TCA website¹⁰⁴ further articulated their concerns: [3]

In my opinion maladministration has been committed in the areas highlighted in yellow below. I have included a brief reason as to why I think this.

Competency:

- **Incompetence** – *denied the land belonged to the Commissioners even though land registry confirmed they did, they took a serving Commissioners word without investigating properly*
- Giving misleading or **inadequate advice** – *Poor communication throughout from Michael Commissioners*

Procedure:

- **Faulty procedures or failing to follow correct procedures** – *do not understand Health and Safety requirements and risk assessment. Just because someone wasn't seriously hurt doesn't mean it's acceptable to ignore!*
- **Mistakes in handling claims** – *failed to investigate correctly even after being told it was their land*
- **Avoidable delay** – *ignoring emails, refusing to discuss at monthly meeting*
- **Neglect** – *neglect their position by denying responsibility and insisting they don't own the land*
- **Refusing to answer reasonable questions** – *ignored emails*
- **Not telling an individual about appeal rights** – *did not reply when the complaints procedure was requested*
- **Not offering an adequate remedy when one is due** – *took them 5 months to contact their insurance company and this was also 5 months after they were told to do so by our MHK*

Attitude:

- **Bias, unfairness or prejudice** – *failing to investigate an incident involving their land and one of their commissioners*
- **Inattention** – *have appeared disinterested throughout, not providing updates even when requested*
- **Discourtesy and lack of respect** – *do not respect rate payers concerns*

¹⁰⁴ <https://www.tynwald.org.im/ombudsman>

- **Corruption –** *with further investigation into why this happened I think this may be able to be proved.*

53. Throughout the investigation, suggestions (or implications) that relevant documentation had been destroyed were made by the Complainant and Daughter, and replies from the Clerk (and others) were received refuting those suggestions as set out *passim* in the Submissions and Responses. By e mail to the TCA dated 22 March 2025 the Complainant in their concluding comments clarified their position: [31]

My complaint also does not relate to destruction of documents by the current MDC Clerk/ previous Temporary Clerk or the current Board. This is relevant information which has come to light as part of my complaint, but it does not form my complaint.

53.1 The TCA has no authority to investigate matters “at large” which are unrelated to a specific, valid complaint. The TCA therefore makes no finding concerning the possible destruction of documentation, but notes the exchanges concerning such possibility which are retained, unredacted, in the Submissions and Responses.

54. Each complaint is considered in turn.

[Are Michael Commissioners still attempting to change land ownership to \[the Neighbour\]?](#)

55. The point is moot, as there is compelling evidence [30] that land in question has belonged throughout to the Neighbour.

[Is \[the Neighbour\] benefitting financially \(increasing value of property\) from being a serving Commissioner at the expense of the rate payer? Have all the correct procedures been followed?](#)

56.1 The point is moot, as there is compelling evidence [30] that land in question has belonged throughout to the Neighbour. No evidence to support the suggestion that the Neighbour may have obtained a pecuniary interest has been produced.

56.2 The TCA notes for the avoidance of doubt that questions of pecuniary interest are subject to review by HM Attorney General under s 11 Local Government Act 1985 and therefore, in accordance with the provisions of s 11(2)(k) Tynwald Commissioner for Administration Act 2011, are excluded from the TCA's jurisdiction (as the Complainant has a statutory right of review by HM Attorney General).

56.3 For further avoidance of doubt, as concerns procedure, the TCA notes that the Neighbour recused themselves at the earliest opportunity on 5 April 2023: [fn 79]

By e mail to the TCA dated 17 July 2024 08:38 the Clerk commented: "I have attached a copy of the Private meeting where the neighbour recused [themselves] after advising the Board of the situation with [their] trampoline. The Board decided this was an insurance matter between the two parties." The TCA has reviewed the Minutes dated 5 April 2023 which are marked "Private" and for the purposes of this Report observes that the Minutes confirm that having advised the Board of the trampoline incident and accepted full responsibility for it, the Neighbour "then recused [themselves] and signed the Red Book". The Minutes record that the remaining members of the Board "discussed the matter and agreed that [the Clerk] would look into the matter with the Land Registry and investigate the discrepancy between [the Neighbour's] deeds and the Commissioners adoption paperwork". By e mail to the TCA dated 8 November 2024 10:22 the Clerk provided the further comments of the Commissioners: Clerk can provide minutes of meeting.

Have Michael Commissioners given [the Neighbour] permission to leave various items on their land and if so, have they followed the correct Health & Safety mitigations? Where is their risk assessment?

57. The point is moot, as there is compelling evidence [30] that land in question has belonged throughout to the Neighbour, to which any Health and Safety Policy of the Commissioners would not apply. The TCA merely notes the exchanges concerning health and safety issues and concerns, which are retained unredacted in the Submissions and Responses.

Incompetence – denied the land belonged to the Commissioners even though land registry confirmed they did, they took a serving Commissioners word without investigating properly.

Bias, unfairness or prejudice – failing to investigate an incident involving their land and one of their commissioners

58. Fundamental to the complaint under investigation has been whether the land on which the trampoline was placed belonged to the Neighbour or alternatively belonged to the Commissioners. As the TCA in correspondence with the Complainant [14] and the Clerk [17, 20] has made clear, the TCA has no authority to determine questions of land ownership. The TCA's remit is to assess *the manner* in which the question of ownership has been addressed by the Commissioners in response to the Complainant's assertions, in light of the evidence available to them; and whether the counter-assertion by the Commissioners of ownership on the part of the Neighbour - though there has subsequently come to light compelling evidence [30] that land in question has belonged throughout to the Neighbour – was based on anything other than an unverified assumption. To ascertain this, it is necessary to address what steps had been taken historically by the Commissioners to ascertain ownership boundaries in general and those of the Neighbour in particular.

Chronology and background

58.1 On 8 January 2025 the TCA invited **comments from the Neighbour**, it being the Neighbour's right to do so under section 15(2) Tynwald Commissioner for Administration Act 2011. [27] By e mail to the TCA dated 7 March 2025 the Neighbour commented: [29]

I was contacted by the MDC Clerk, I was asked to attend the office with my house deeds as [they were] investigating the ownership of the land. [They] took copies of my deeds and asked me a few questions, so [they] could understand my perspective. [They] informed me at that time my deeds differed from the Land Registry map.

I contacted the Land Registry 05/04/2023 and spoke to [named Land Registry officer]. [They] confirmed that my title deed had been overlapped when the playing field was transferred to MDC, [Named Land Registry officer]. confirmed in the call that "two titles could not exist on the same piece of land" as this was an issue that had been highlighted. I followed my call with an email and included the MDC clerk as it was a joint issue NOT CREATED BY ME. I do not believe for one moment that it is normal practice to change a boundary line of a property and not inform the property owner.

[...]

I always understood that the map included with my deeds was subject to finalisation, but as I am sure any property purchaser would expect at the time of any update or amendment we would be informed and therefore have a right to reply, which had not occurred between 2006-

2023. My understanding is that to date the SUPPLEMENTARY PLANS, which were what was included with my deeds is still the map applicable to this date 19 year after purchase.

We have recently received a revised mapping document for [the estate] sent to each resident, at which point I had owned this property 18 years, this was delivered AFTER the incident with my trampoline. I have held off contacting regarding it as this issue was in motion. I will be taking up the content of this with the relevant departments in due course.

Also worth noting that in this letter received states that residents were all issued on purchase with a map stating “provisional” which is not the case, my map with my deeds stated “Supplementary”.

So, my answer to this complaint would be – The MDC clerk investigated and questioned all parties involved with the land and defined that there was a DISPUTE/ERROR regarding the land ownership that needed resolving.

[...]

A timeline of my interactions with the MDC office regarding the land that the trampoline was secured on, and what I believe shows systematic continuous failings over 16 year to me as a resident of Michael District by the previous MDC Clerk to clarify on the position of this land, but on each occasion it has been ignored and I CAN NOW SEE THAT I HAVE BEEN FAILED EACH AND EVERY TIME I HAVE PRODUCED MY DEEDS TO THE PREVIOUS CLERKS OFFICE. [Neighbour’s emphasis]

2005/2006: During my house purchase, I sought legal advice regarding the “brown footpath” and the adjacent strip of land. My concern was that it was an unfair burden for myself and three neighbours to be responsible for a publicly accessible path. Regarding the strip of land, I was advised by [the developer] that if I did not wish to take responsibility for it, I should reconsider purchasing the house. Fully understanding the boundary lines, I proceeded with the purchase.

[Unfortunately the correspondence from the time no longer exists, we used [name of firm of Advocates] as the conveyancing firm for our house, they have now been taken over by [name of firm of Advocates] and records do not need to be kept for longer than 7 years]

2009: Children playing football against my house prompted me to seek a fencing solution. I attended a commissioners’ meeting with my property deeds to discuss options with [Developer] and the then-clerk. I also at the time consulted with [Named MHK], one of my MHKS at the

time, and [they] confirmed that I could erect a fence on my boundary line after looking at my deeds.

[Copy of the first two pages of the Minutes of a Meeting of Michael District Commissioners dated 2 September 2009 at 7pm provided, of which the following is a highlighted extract:

“A discussion then ensued regarding the boundaries at [the estate] and the playing field that the Commissioners own. [Named Commissioner] said that the land registry do not have detailed enough plans and as the Commissioners are looking to put a fence up, they need to be aware of how far they can go. [Named visiting official, otherwise unidentified] told the Board that [they] would get clarification and come back to the Board as soon as possible.”]

2011/2012: *Following my neighbouring residents applying to extend their gardens, which led to long running tension with another villager. Following a police-involved incident, I presented my deeds to the attending officers, confirming that the side/ rear path was private property. The following day, I visited the Commissioners' office, where the then-clerk took copies of my deeds. I requested that they inform the concerned villager that the path was not publicly accessible. I have contacted the Police Registry team to obtain a copy of the report for the date, so a definitive check of the MDC Clerks computer system could take place for the date range.*

2019: *The Commissioners proposed fencing off the [estate] playing field, which I and other residents opposed due to the lack of justification for public expenditure. Again, I presented my deeds to the previous MDC clerk office and attended a commissioner meeting with other [estate] residents where we discussed in an open meeting our strong objection to the proposal. The proposal I believe was subsequently withdrawal by the previous MDC commissioner's board.*

2021: *I became an MD Commissioner.*

2023: *As a current serving MDC Commissioners member, I was informed via email about a raised contact form completed on the website, which mentioned me by name, concerning “a trampoline incident.” I immediately declared a conflict of interest and removed myself from all discussions.*

58.1.1 The Clerk acknowledges (6 January 2025) that the question of the boundaries of the Neighbour's property was raised with the Commissioners (but unresolved) in December 2009 [5A/INSERT]:

The ownership of the land has been an issue since the Neighbour raised the matter with the old Board in December 2009. [...] This was mentioned in later Minutes by this Board who requested that the Previous Clerk contact the Developer to get clarification of the boundaries and was raised directly by the old Board to the representative of the Developer. [Clerk] can find no correspondence regarding this issue. Whilst the previous Board might not have been fully aware of the issue as there is no information handover in place. We are hoping that Sharepoint will help with this sharing of information between Boards in future.

The following extract from the Minutes dated 2 December 2009 was provided to the TCA by the Clerk:

[Name] welcomed residents from [the relevant housing estate]. [Name] read out the correspondence that had been received from [name of firm of Advocates], informing the Commissioners of a dispute that had arisen due to a Planning Application. A discussion ensued regarding the boundaries of the properties involved. The Commissioners explained to the residents that they could not really help and that it would be a good idea to speak to the owner of the land, to see if agreement could be reached. A further issue of the boundary, belonging to the resident of number [] was also discussed. The resident showed the Commissioners [their] paperwork, which stated that [they] owned the pathway at the side of [their] property and also some of the grass verge of the play area that the Commissioners had been given by [the site developer]. The Commissioners asked the residents to keep them informed of any further developments. [Name], director of [the site developer] had promised a detailed boundary plan, and the Clerk was asked to remind [them].

[The TCA notes that according to the Office Copy and Plan provided to the TCA, “number []” is the house presently owned by the Neighbour.]

58.1.2 The Clerk comments (5 May 2025): [fn72]

The Minutes reflect that the Neighbour raised the issue of the strip of land with the Previous Board. This was queried on number of occasions by the previous Board since 2009. There is no record to be found of this matter being resolved and no correspondence between the office and the Developers office of this matter in the archives or files.

58.1.3 The TCA observes that in 2009 it was suggested that the Developer be approached in the hope of clarifying the question of boundaries, and that this was not done. Nor does a detailed boundary plan

appear to have been obtained. The Neighbour had brought to the meeting evidence of her ownership. This appears not to have been noted but not otherwise considered by the Commissioners. The Commissioners in effect stepped back, suggesting that the residents themselves contact the Developer. There appears to have been no further investigation on the part of the Commissioners at that time.

58.2 The former Clerk to the Commissioners (immediate predecessor to the present Clerk) provided background to the Complainant at their request in an e mail dated 3 August 2024 21:05: [18.2]

I am writing to confirm that during my time as the Clerk to Michael District Commissioners [dates provided] the [person] in question [Neighbour] was issued with a letter to remove [their] shed off Commissioner land. On receipt of this letter [Neighbour] came into the office to see me stating that the shed was on [their] land. I requested that [they] came back in to show me [their] deeds. [Neighbour] did bring in [their] Deeds to the office, however the documentation [they] presented did not clarify land ownership. As a result of this I first of all contacted [named contact at Developer] who has now unfortunately left. [Named contact at Developer] confirmed it was previously land belonging to [Developer] and therefore following sign over was now Commissioners Land. I also went to Land Registry to check their records which stated the land in question belonged to the Commissioners. It was established that the land on the sea side of the path was the Commissioners and belonged to the playground.

This issue was discussed over several Commissioner meetings. As [Neighbour] would not remove [their] shed off Commissioner land, it would have meant that we would have needed to instruct an advocate to deal with the situation, the board voted on taking legal action, but the majority vote was not to pursue this course of action. This was obviously before the other items appeared on the land such as the trampoline and a car that is in a bad condition and is obstructing the public path.

I had written to [Neighbour] on a few occasions regarding this matter and the paperwork was stored in the cabinets upstairs in the locked office. [Named] trained me that these documents were private and confidential at all times. Commissioners were only meant to come into my office when I was in there.

The new board started in May 2021 and [Neighbour] became a Commissioner. I resigned shortly after this in 2021 [...]

58.2.1 By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented: [fn 94]

Previous Clerk's Email. There is no evidence in the archives that this letter was ever produced./sent. The Neighbour will have to advise further on this matter. The Neighbour had already shown the Previous Clerk [their] deeds in 2009 as per the December 2009 Minutes. How did the Previous Clerk decide that the documents shown did not clarify land ownership. How was this decision arrived at and who took responsibility for this decision? Land Registry do not confirm legal ownership as per their paperwork and present Clerk's contact with them. There is nothing Minuted and nor correspondence to be found regarding discussion about the Shed.

58.3 The Daughter's recollection as a former Vice Chair of Michael District Commissioners was expressed in a meeting with the TCA on 24 January 2024 [5], and subsequently expanded upon by her (comments highlighted in yellow) [5A]:

The [Developer] had conveyed a parcel of land (unbuilt) to Michael Commissioners and retained a further parcel. That further parcel was to be a children's play park operated by Michael Commissioners,

The piece of land [the Developer] retained as the car park and surrounding playing field. This piece of land was eventually signed over to Michael Commissioners in Spring 2021. Leaving the option to fence to the new board

but ownership of the land became an issue when considering the right to fence it.

The Commissioners were looking into fencing the children's play park (which the commissioners owned) and the playing field (owned at the time by [the Developer])

[Developer] then conveyed that further parcel to Michael Commissioners. Subsequently. The Commissioners became aware that a shed had been placed on the land earmarked for the playpark, by [the Neighbour] (who at that time was not [themselves] a Michael Commissioner but later became one). The Commissioners questioned [their] right to do so. [The Neighbour] is believed to have spoken to the then Clerk [named],

At the time [the Neighbour] also stated the land belonged to[them] and the previous Clerk asked to see [their] deeds, which [the Neighbour] did not produce

who on checking with [Developer] was told that at no time had [Developer] given permission for [the Neighbour] to place [their] shed on the land; though [Developer] may have been aware that it was there. The Commissioners subsequently wrote to [the Neighbour] demanding

that the shed be removed within 28 days; but in a meeting of the Commissioners voted against pursuing a civil action against

This was a motions (sic) with the majority of the board stating that they did not wish to pursue civil action with rate payers money

[the Neighbour]. Meetings of the Commissioners were then interrupted during the Covid Pandemic.

58.3.1 The TCA notes that the Clerk confirms [fn 43] that there is no minuted evidence that a demand had been made by the Commissioners that the Neighbour's shed be removed and that there is no evidence of any letter from the Commissioners.

58.3.2 The Clerk comments (17 July 2024) [5C]:

I will leave the Neighbour to comment on the matter of a written letter demanding removal of the shed within 28 days as this is not something I can comment on other than to say there is no record of any correspondence in the files in the office regarding this matter.

There are no motions, minutes or records that I can find anywhere in the office or the archives to reflect that the Board ever discussed this matter or that they reached a decision regarding ownership of the land or removal of the shed.

[...]

The Complainant is correct that I have approached Land Registry for advice on the boundary due to the Neighbour having documents that [they claim] show [them] owning the land 6 years prior to our adoption paperwork, but the Commissioners do not have any authority to sway their decision so the assumption that the Commissioners can amend the boundaries in their own favour is not correct. As I pointed out to both parties during phone conversations, Land Registry do not establish legal ownership of the land and I have been advised by Land Registry that disputes would need to be settled by the Courts. The Current board agrees with the previous Board decision.

Again I have not seen any documentation that supports an earlier Board discussing the boundary dispute on [location].

The former clerk has stated that a letter exists that formally clarifies ownership of the land. Who is this letter from? Who has authority to establish legal ownership? If it is a letter from the previous Clerk? I cannot find anything in the files or archives regarding this.

58.3.3 The Clerk comments (5 May 2025): [fn72]

The Minutes reflect that the Neighbour raised the issue of the strip of land with the Previous Board. This was queried on number of occasions by the previous Board since 2009. There is no record to be found of this matter being resolved and no correspondence between the office and the Developers office of this matter in the archives or files.

58.3.4 The TCA notes the absence of supporting documentary evidence.

58.4 One source of confusion regarding boundaries and ownership appears to be **a mismatch between off-sight plans and title deeds**. The Clerk comments (22 March 2023) [10.1.13]:

For background. [The Complainant] has stated that the Land registry shows the boundary as being on the fence which means according to [the Complainant], it is the Commissioners' land. The deeds [the Neighbour] has were allegedly from the off-sight plan and not the final deeds which is where they claim the confusion came from. I have not checked this out yet but will double check what the situation is. If [the Neighbour] has been using this land for 17 odd years (2006 was the original date of the house build) then it's possible [they] can claim the land. I will also need to check if anyone else in the district has a similar claim as this could set up legal challenges for future.

58.4.1 The Daughter commented on the passage quoted in paragraph 58.4: [10.1.13A]

All home owners on the estate were given off-sight plans but these were not legally binding. For example both myself and my neighbour had off-sight plans showing that we both owned the same piece of land at the front of our properties. We had to seek legal advice and our advocates said the boundary was the fence line.

58.4.2 The Clerk in turn commented on the Daughter's observations: [fn 61]

The Daughter is basing her decision on land ownership on the outcome of her own experience. Unfortunately, she is basing it on different documentation to the Neighbour and on her own circumstances. This was not the decision made by the previous Board or the Old Board. The Neighbour has a Supplementary Plan that is still in existence (confirmed by Land Registry November 2024). The current Board agree with the Previous Board that it would not be a suitable use of Ratepayers funds to take the matter to Court to settle. Land Registry have advised that any disputed Boundaries can only be legal settled by a Court of Law.

58.4.3 The TCA notes the policy decision of the Commissioners not to seek the assistance of the Court in the rectification of title plans.

58.5 The **Commissioners** commented (5 May 2025) [fn 46]:

The Neighbour approached Land Registry in 2023 and copied in our Clerk on this matter to question why there were two titles of ownership on the same piece of land. Land Registry looked at the documents and advised that they could not establish legal ownership. At no time did Michael District Commissioners request that the boundary be changed. There is no records to be found that establish that any Board obtained confirmation of the ownership of this land, though the question was raised in Minutes on a number of occasions and the various Boards requested clarification from the Developer on a number of occasions.

58.5.1 The TCA notes the admission that the Commissioners at no time obtained confirmation of ownership of the land.

58.6 Following the commencement of the present investigation, the Clerk provided the following timeline [10.4] reporting that on 14 March 2023:

I phoned the Land Registry to ask their advice. They told me that they cannot comment on boundaries and that any disputes would have to go to the Courts to be settled. I took this information to the Chair, [name] and Vice Chair [name] who both agreed this was a civil matter between [the Neighbour] and [the Complainant] and that the Commissioners could not use ratepayers' money to settle the land boundary query. [The Neighbour] has claimed this land for 18 years and the first any of us had heard of the existence of the trampoline or that there was a discrepancy in the ownership of the land was when it was reported to us.

[...]

[The Complainant] stated that the matter had been discussed at length in various meetings in the past. I have looked through the available Minutes and the files/paperwork in the Civic Hall but cannot find any mention of this matter. I have also searched the archived files on the office computer and cannot find anything regarding [the location] that relates to this matter. I will continue to look for anything mentioning this query.

[The Neighbour] contacted Land Registry to query [their] Deeds with the Registry [The Neighbour] advised the Board via email of the incident and advised that [them] insurers were dealing with the matter. It was agreed that this was a civil matter between [the Neighbour] and [the Complainant] and that the Board would not need to be involved. [The Neighbour] advised that as [they] had a conflict of interest that [they] would set back from any discussions on this matter with the Board.

58.6.1 The TCA notes the policy decision of the Commissioners that their involvement in the dispute would be unnecessary. The TCA also notes that it was at this point that the Neighbour recused themselves after advising the Commissioners of the trampoline incident. [fn79]

58.7 On 9 June 2024 the Clerk commented:

*The land is not being sold, leased, rented etc. **We are trying to rectify an administration error where a lack of due diligence has resulted in this discrepancy in the deeds** for the small strip of land. [The Neighbour] will not be gaining any financial gain as either [they own] the land or we do and there will be no change of ownership or transfer of legal owner. I have found another adoption which was not completed correctly and has resulted in a query with streetlights. Part of my workload is to identify and implement correct procedures for future Commissioners and Clerks. [TCA's emphasis] [10.6]*

Since looking into this matter I have become aware of a number of historical issues surrounding registering of deeds within the district which has thrown up discrepancies on ownership which will need addressing. Procedures are being put in place for future adoptions in the hope of preventing these issues in future. [10.8]

58.8 On 14 August 2024 the Clerk commented:

I have to point out that the Commissioners are still not of the opinion that ratepayers funds are justified in using for this matter. I have sort [sic] advice from a legal expert regarding the boundary issue and shown him the deeds. He has advised that the land does belong to [Neighbour] [They were] told that [they] could only buy the property from the Supplementary plan attached to [their] deeds and was responsible for the pathway up until DOI adopted the roads and pathways. This is backed up by the document from Land Registry dated July 2023 which is a reclassification of boundaries within the [location] when Supplementary Plans would be rectified. This means that at the time of the incident [Neighbour] owned the land in question, not the Commissioners.

I have not shown the Draft Statement to this legal expert, only the deeds, adoption and maps and asked him for his opinion on where he thinks the boundary should be.

58.9 On 8 November 2024 the Clerk commented:

MDC have only ever sought clarification and not correction in relation to land ownership.

[fn 29]

The clerk did not say that we were going to ask for a correction in land registry, but we did ask for clarification of the boundary as far as land registry can. [fn32]

There is no minuted proposal (as stated above) for this land to be recognised as Michael District Commissioners land and no vote recorded. An email from the daughter as vice chair, stated that nothing was decided as some land was being handed over and this might involve the neighbour. It was not subsequently addressed by the board at the time. Minutes from 2009 indicates that the neighbour brought this issue of ownership to the then commissioners' attention. The then Commissioners asked for clarification from land registry and [Developer] but there is no record of an outcome to be found. [fn 39]

I have been back to Land Registry regarding the land query and have been advised that the Supplementary plan for [number] still stands and that the Boundaries in [location] have not yet been finalized. I am going to look into this further as this contradicts the information from the report sent to some of the residents in July 2023 (the Daughter claimed this report was sent to all residents but this is not the case). As soon as I have further information I will advise accordingly. [22.2]

58.10 By e mail to the TCA dated 6 January 2025 11:54 the Clerk commented:

The Commissioners have been clear that they have do not have the authority to state ownership of the land as the matter can only be settled by the Courts of Law to establish the Legal Boundary and they are in agreement with the previous two Boards that this is not a suitable use of Ratepayers funds. [fn 81]

58.11 By e mail to the TCA dated 5 May 2025 16:33 from the Clerk, the Commissioners commented: [19A]

We have spoken to two advocates who are very experienced in property matters and have followed a number of different leads that they advised us of. Our initial stance that this was a civil matter between the Neighbour and the Complainant has not changed. The amount of research that our Clerk had to do due to vague statements, hearsay and unclear timelines has also meant that the matter took longer than expected as initially we were told the timeline was approximately just before Christmas prior to Covid when the actual timeline dates back to 2009.

The Commissioners have been mindful of the cost to the Ratepayers and their duty of care of Ratepayers funds is always at the front of their minds. This follows on from the previous Boards decision to not use Ratepayers funds to deal with this matter.

Following on from these investigations our Clerk has provided a copy of an email from the Developer [see paragraph 30 of this Report] which confirms that the strip of land was sold to the Neighbour and we feel that this clarifies the ownership of the land. The Developer states that the strip of land was sold to the Neighbour in order, to allow them to cut their side of the hedge, that was on the original plans for the area. We are unable to find any record of why this hedge was not put in as per the original plans. If it had of been planted, there would have been no queries about ownership of land.

[...]

The Neighbour's supplementary plans (not site plans) are still in existence. There are a number of other Supplementary Plans on the Estate which are also still in existence.

The adoption by Michael Commissioners four years after the Neighbour purchased [their] property does not show the hedge, therefore due to a lack of due diligence, the boundary was incorrectly marked on the Commissioners adoption plan.

The TCA has been shown a copy of the email confirmation from the Developer confirming that the strip of land was sold to the Neighbour and is [their] property. [see paragraph 30 of this Report] Our advocate can see no issues with this email.

We have set up new procedures to deal with the retention and access to information for future Boards and Clerks so that important information is available, recorded and easily accessible.

The Commissioners would like to point out that having inherited this historic boundary dispute, which several previous boards of Commissioners and the previous clerk should have fully investigated and resolved over various occasions, that having not done so has resulted in untold stress and pressure to the whole family. We fully support that the previous Clerk and Boards of Commissioners have failed this resident and family several times.

58.12 By e mail to the TCA dated 18 May 2025 21:18 the Clerk commented: [24A]

Now that we have the confirmation from the Developer that the land is owned by the Neighbour, the Commissioners have requested that I take the necessary steps to formalise the boundary of this piece of land, which is now in the process of happening. [Paragraph 30 of this Report] I will be writing to the Complainant with a copy of the documentation to show that the Developer has confirmed that the Neighbour has owned the piece of land since [they] purchased it in 2006 and that therefore, an error occurred when the play area was adopted in 2010. This documentation will be part of the paperwork going to Land Registry so will be publicly available.

Has there been maladministration on the part of the Commissioners?

59. The investigation approaches this on two levels:

59.1 *The correct answer:* In the context of the complaint made by the Complainant that the Commissioners' assertion that the land was owned by the Neighbour was incorrect – an assertion which compelling evidence [30] appears to refute – there is no maladministration on the part of the Commissioners. The answer given to the Complainant, that the Neighbour owned the land, was indeed correct. It was however unsupported by evidence available publicly at the Isle of Man Land Registry. The TCA in noting this takes into account that plans held by the Isle of Man Land Registry are not definitive and that the final arbiter of any boundary dispute is the High Court. Nevertheless, in the absence of rectification of the plans showing the boundary between the Neighbour's land and that owned by the Commissioners, the Complainant was not acting unreasonably in pressing their complaint. This begs the question, were the Commissioners *at any time* aware of the disputed boundary and if so, in their not seeking rectification of the plans, is evidence of maladministration present?

59.2 *The Commissioners' policy decision.* The chronology shows that the Commissioners decided not to intervene in boundary disputes affecting the estate in question, determining that this would not be an appropriate use of ratepayers' funds. The TCA observes that there is a significant difference between a refusal to engage in disputes between third parties (owners of properties on the estate) on the one hand, and a refusal to engage in a boundary dispute with a party whose property is contiguous with that of the Commissioners themselves on the other.

59.2.1 The TCA investigates service failures and maladministration, and it is important to be aware that the *only* concern of the TCA is *administration*. The TCA does not have power to question the merits of *policy* decisions. The TCA does not - and cannot - override the legal discretionary entitlement of a listed authority to act unless the administrative process which led to the exercise of that discretion has been so flawed that the policy decision itself is called into question, and only then when that decision *directly* concerns the complainant.

59.2.2 In the present case, that the exercise by the Commissioners of their discretion in deciding not to intervene in the boundary dispute with the Neighbour directly concerns the Complainant is apparent. The question of land ownership is fundamental to the Complainant's complaint.

59.2.3 The decision of the Commissioners is a matter of policy. The issue to be determined by the TCA is whether the administrative process leading to the policy decision was flawed in the sense of being unreasonable under the *Wednesbury* test, a decision of the English Courts recognised and applied in the Isle of Man.¹⁰⁵ Applying this to the powers of the TCA:

- The TCA is entitled to investigate the action of the Commissioners with a view to seeing whether they have taken into account matters which they ought not to take into account, or conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the Commissioners it may still be possible to say that, although the Commissioners have kept

¹⁰⁵ Lord Greene MR, *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223, as further considered by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374

within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.

- *Wednesbury* unreasonableness applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

60. The Commissioners assert that in seeking to ascertain the correct boundaries the Commissioners contacted the Isle of Man Land Registry, the Planning Department, the Commissioners' insurers, the Health and Safety at Work Inspectorate (DEFA), "property experts" (not identified), the Department of Infrastructure, the Department of Enterprise, the Commissioner's internal auditors and external legal adviser, and the local MHK [fn22].

61. The TCA notes that the list of those consulted does not include the Developer.

62. The position adopted by the Commissioners is that the Isle of Man Land Registry does not confirm boundaries, that the Commissioners did not rely upon the Neighbour's word; but that the Commissioners relied on a supplementary plan which had been provided to them in 2009 [fn 9].

63. The TCA concludes that *the Commissioners had never come to grips with the question of land ownership and boundaries on the estate in question*, specifically (as concerns the present investigation) those of the Neighbour's bordering property, *prior to the efforts of their recently newly-appointed Clerk following receipt of the Complainant's complaint and the involvement of the TCA, culminating in the Commissioners' most recent correspondence with the Developer* [30].

Opportunities were missed as early as 2009 which, had they been taken, and had definitive, rectified plans been prepared at that time, would have had the collateral effect of rendering the present investigation unnecessary. Repeatedly, the Commissioners failed to engage with the Developer which, as has become apparent at the conclusion of the present investigation, would have provided clarification and compelling evidence of ownership by the Neighbour to support an application to the Court for the rectification of the plans filed at the Isle of Man Land Registry.

64. Applying the first limb of the *Wednesbury* test is problematic as the records, on the Commissioners' own admission, are incomplete. Assuming however that the first limb is satisfied, the Commissioners fail on the second limb. The historic and repeatedly reenforced decisions of the Commissioners to step back from a boundary dispute which concerned land bordering their own (and not an unrelated dispute elsewhere on the estate) on the express grounds of avoiding the expenditure of ratepayers' funds, when – the TCA presumes – it was not inappropriate for those funds to be called

upon in the process of determining the nature and extent of the Commissioners' own property, defied logic. It evidences maladministration.

[Giving misleading or inadequate advice – Poor communication throughout from Michael Commissioners](#)

[Inattention – have appeared disinterested throughout, not providing updates even when requested](#)

65. The question of misleading or inadequate advice has been considered above in the context of the determination of land ownership. The Complainant distinguishes between communications with the Commissioners prior to the involvement of the TCA and those subsequent to the TCA's involvement [fn19]. The TCA finds no evidence in the Submissions and Responses to support an allegation of poor communication, including updating, on the part of the Commissioners in the person of the Clerk. [fn 10; 10.4, 10.4A]

[Faulty procedures or failing to follow correct procedures – do not understand Health and Safety requirements and risk assessment. Just because someone wasn't seriously hurt doesn't mean it's acceptable to ignore!](#)

66. The question of Health and Safety has been addressed above (paragraph 57).

[Mistakes in handling claims –failed to investigate correctly even after being told it was their land.](#)

[Neglect – neglect their position by denying responsibility and insisting they don't own the land.](#)

67. The question of the investigation of land ownership has been addressed above (paragraph 58).

[Avoidable delay – ignoring emails, refusing to discuss at monthly meeting](#)

[Refusing to answer reasonable questions – ignored emails](#)

68. The TCA finds no evidence in the Submissions and Responses to support an allegation that correspondence was ignored by the Clerk. [fn 15, fn 23] The frequency of discussions internally by

the Commissioners, the setting of agendas and discussions in public meetings are matters for the Commissioners. [fn 12] The historic position with regard to land ownership has been addressed above (paragraph 58).

Not telling an individual about appeal rights – did not reply when the complaints procedure was requested

69.1 The Complainant comments [1]:

On 5th August 23 I replied to the Clerk of Michael Commissioners requesting the complaints procedure, they did not reply. I have sent a further email on 31st August 23 requesting the complaints procedure again and informing them that I had not heard anything from their insurance company, again they did not reply.

69.2 The Clerk responds:

I advised the Complainant in a phone call conversation that the Complaints procedure could be downloaded from our website and explained the procedure. I did not receive a complaint form.
[3A]

The Clerk did explain that the process was in progress. [fn 16]

Regarding the email requesting our complaints procedure, I had a phone call with [the Complainant] when [they] phoned me after sending the email and I advised [them] that our complaints procedure could be downloaded from our website. I was under the impression that [they were] willing to wait for the insurance company to make a decision and the next conversation I had with [them] was requesting I chase the insurance company up which I did. I did not hear anything further, nor did I receive a complaint form from [the Complainant].
[10.8]

69.3 the Complainant commented:

I can not recall this information being given during a phone call. In fact, I only recall 1 possible 2 telephone calls with the Clerk very early on after the event. Soon after this I was advised to communicate by email. An email was sent requesting the complaints procedure 4 months after the incident which was not replied to. [fn 23]

69.4 The Commissioners commented: [fn 23]

There was a phone call when our Clerk advised the Complainant that the matter was now with our insurers and [Clerk] was still investigating the land ownership query. Our Clerk advised that the Complaints form was on our website and could be printed off from there. [Clerk] advised the Complainant that if [Complainant] was not happy with the outcome from our insurance company that [Complainant] could come back to [Clerk]. The last correspondence with the Complainant was an email on 31/08/24 to advise that [Complainant] had not heard from our insurance company. Our Clerk advised that [Clerk] would chase the insurance company for a response. No other correspondence was received until the email from the TCA on 05/04/24. We also note that in March 2023 the complainant stated via email that [Complainant] was going to do a Freedom of Information request but this was never received either.

69.5 The Clerk commented further:

I have no record of an email requesting the complaints procedure. All emails are kept in folders on our system and I cannot find anything from either of the Complainant's email addresses regarding this matter. [fn 86]

69.6 The TCA concludes that although the Complainant did not engage with the formal Complaints Procedure of Michael District Commissioners,¹⁰⁶ the Complainant was not thereby prejudiced or unfairly disadvantaged. The TCA assumed jurisdiction, which corresponds to Stage 4 of the Complaints Procedure [7] and the Commissioners engaged in the substantive investigation.

[Not offering an adequate remedy when one is due – took them 5 months to contact their insurance company and this was also 5 months after they were told to do so by our MHK](#)

70. The TCA does not have authority to investigate any aspect of the insurance arrangements entered into by the Commissioners or to adjudicate or intervene in any possible civil claim to be made

¹⁰⁶ The Complaints Procedure is available online at: <https://michael.gov.im/media/pdf/misc/Complaints%20Procedure/Complaints%20Policy%20and%20Procedure%20April%2021.pdf>

by the Complainant against the Commissioners, on the basis of an insurance dispute or otherwise. This is addressed above (paragraphs 42 to 45).

Discourtesy and lack of respect – do not respect rate payers concerns

71. This complaint lacks specificity. In so far as it relates to concerns expressed by the Complainant, the responses of the Commissioners have been assessed in this Report. The TCA finds no evidence of a lack of respect on the part of the Clerk or of the Commissioners towards the Complainant or the Daughter. In so far as the complaint refers generally to ratepayers subject to Michael District Commissioners, the TCA has no authority to investigate matters “at large”.

Corruption – with further investigation into why this happened I think this may be able to be proved.

72. Corruption comes within the definition of maladministration adopted by the TCA. The investigation of alleged corruption is however a matter for the Isle of Man Constabulary. The TCA confirms that on the basis of the Submissions and Responses it has been neither necessary nor advisable for the TCA to make any report to the Isle of Man Constabulary.

Advocate Paul R. Beckett

Tynwald Commissioner for Administration

27 May 2025