



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/21/2623

Re: Property at Pulcree Farmhouse, Rusko Estate, Gatehouse of Fleet, DG7 2BS ("the Property")

Parties:

Right Honourable Richard Hubert Gordon Gilbey, Baron Vaux of Harrowden, c/o G M Thomson and Co, 10 Victoria Street, Newton Stewart, DG8 6BT ("the Applicant")

Mr Mark Vincent, Pulcree Farmhouse, Rusko Estate, Gatehouse of Fleet, DG7 2BS ("the Respondent")

Tribunal Member:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing & Property Chamber) ("the tribunal") unanimously determined that the Applicant is entitled to an eviction order under Section 33 of the Housing (Scotland) Act 1988.

Findings-in-Fact

1. The tribunal makes the following findings in fact:-

- 1.1 The Applicant is the heritable proprietor of the Property.
- 1.2 The Property is situated on and forms part of Rusko Estate.
- 1.3 The Applicant acquired Rusko Estate including the Property on 24 March 2016.
- 1.4 By Minute of Lease dated 7 February 2013 Lord Vaux leased the Property to the Respondent with effect from 8 February 2013.
- 1.5 Prior to the commencement of the lease Messrs GM Thomson & Co on behalf of Lord Vaux issued to the Respondent a Form AT5 Notice under Section 32 of the Housing (Scotland) Act 1988 ("the 1988 Act") dated 6 February 2013 and acknowledged by the Respondent on 7 February 2013.
- 1.6 The tenancy constituted by the Minute of Lease is a Short Assured Tenancy under Section 32 of the 1988 Act.
- 1.7 The landlord in terms of the Minute of Lease, Lord Vaux, was the father of the

- Applicant.
- 1.8 The Applicant is in right of the landlord's interest in the Minute of Lease with effect from 24 March 2016.
 - 1.9 The Minute of Lease was agreed to be for a term of 6 months terminating on 9 August 2013 and continued month to month thereafter all in terms of Clause SECOND thereof.
 - 1.10 Mr Dougal Evans of GM Thomson & Co is employed as a Rural Practice Chartered Surveyor.
 - 1.11 Mr Evans started working for the Applicant's father around 30 years ago doing *ad hoc* estate management and he carried on in that role when the Applicant acquired Rusko Estate.
 - 1.12 GM Thomson & Co deal with the day to day management of leased properties on the Estate including contact from tenants, problems with properties, the employment of tradesmen and collection of rent.
 - 1.13 Prior to the Applicant's acquisition of the Estate the properties had not been upgraded or modernised for some time.
 - 1.14 The programme of works undertaken by the Applicant across the properties on the Estate has involved significant cost and is ongoing.
 - 1.15 The objective of the programme of works is to achieve the required EPC ratings and to make the properties fit for modern use.
 - 1.16 With the exception of Ornockenoch Stables, the refurbishments that had taken place to date had been carried out when the properties fell vacant.
 - 1.17 Mr Evans inspected the Property for the first time in November 2019.
 - 1.18 Mr Evans subsequently reported to the Applicant that meeting the regulatory standard was increasingly difficult due to the age and state of the Property, and on that basis, recommended to the Applicant to terminate the Respondent's tenancy in order to do undertake the necessary works.
 - 1.19 The Applicant accepted Mr Evans' recommendation and instructed him to terminate the Respondent's tenancy to allow him to undertake the works required to renovate the Property..
 - 1.20 On 4 February 2020 the Applicant per his agents, GM Thomson & Co, served on the Respondent by Sheriff Officers a Notice under Section 33 of the 1988 Act together with a Notice to Quit in terms of which the Applicant sought the Respondent's removal from the Property by 8 April 2020.
 - 1.21 Due to the COVID19 pandemic and inevitable difficulties in the Respondent finding alternative accommodation the Applicant withdrew the Notices served on 4 February 2020.
 - 1.22 Further Notices to quit the Property were served on the Respondent in or around June and August 2020, the content of which was erroneous due to incorrect notice periods being used.
 - 1.23 On 8 April 2021 the Applicant per his agents, GM Thomson & Co, served on the Respondent by Sheriff Officers a Notice under Section 33 of the 1988 Act together with a Notice to Quit in terms of which the Applicant sought the Respondent's removal from the Property on or before 9 October 2021.
 - 1.24 The service of multiple Notices does not constitute harassment or intimidation of the Respondent.
 - 1.25 Mr David Porter is an employee of Messrs David and Neil Austin.
 - 1.26 Mr Porter is employed as a farm worker/labourer at Lagg Farm, Gatehouse of Fleet.
 - 1.27 Mr Porter's duties include looking after farm stock which may require him to travel up and down the track running past the Property multiple times each day.
 - 1.28 The Respondent made Mr Porter aware that he had been asked to leave the

- Property.
- 1.29 Relations between Mr Porter and the Applicant were at some time civil.
 - 1.30 An incident took place involving the dogs of Mr Porter and the Respondent. Mr Porter asked the Respondent to keep his dogs under control.
 - 1.31 The Respondent would photograph or video the Respondent going about his work.
 - 1.32 Mr Porter did not try to "set up" the Respondent.
 - 1.33 Mr Porter did not intimidate the Respondent to secure the Respondent's removal from the Property or otherwise.
 - 1.34 Mr Porter was not directed by the Applicant or any other person on his behalf to intimidate the Respondent.
 - 1.35 Mr Porter did not leave dead animals at or near the Property to intimidate the Respondent.
 - 1.36 The Respondent did not intimate any animal welfare concerns to the appropriate authorities.
 - 1.37 Mr Neil Pickthall is a local builder and a part-time gamekeeper. He was previously employed for maintenance tasks by the Applicant's father.
 - 1.38 In December 2017 the Respondent intimated to GM Thomson & Co that he did not want Mr Pickthall anywhere near the Property in the future.
 - 1.39 The choice of contractor to be used to carry out repairs is that of the Applicant and his agent.
 - 1.40 Subsequent to December 2017 the Applicant either directly or per his agents instructed Mr Pickthall to carry out two repairs at the Property in 2018 and 2019.
 - 1.41 Mr Pickthall did not intimidate the Respondent to secure the Respondent's removal from the Property or otherwise.
 - 1.42 Mr Pickthall was not directed by the Applicant or any other person on his behalf to intimidate the Respondent.
 - 1.43 The Applicant's instruction of Mr Pickthall did not intimidate the Respondent.
 - 1.44 Mr Evans did not intimidate the Respondent nor was he directed by the Applicant to do so or have others do so.
 - 1.45 Mr Matthew William Prentice Bridge, Building Surveyor of Bridge & Company Building Surveyors Limited inspected the Property on 7 June 2022 and prepared a Report of that inspection dated 10 June 2022.
 - 1.46 Mr Bridge is an experienced building surveyor.
 - 1.47 Following his acquisition of Rusko Estate in March 2016 the Applicant had embarked upon a programme of works across the properties on the estate to upgrade the properties to take account of Government imposed increasing energy efficiency standards and to make the properties fit for modern use.
 - 1.48 Mr Bridge has been working with the Applicant on upgrading the properties across the Estate for a period of around 5 years.
 - 1.49 The Property is an old traditional farmhouse of stone and slate with lath and plaster walls.
 - 1.50 The Property is rural in a poor state and has not been modernised or renovated for a long time.
 - 1.51 The Property needs substantial upgrading.
 - 1.52 Water is penetrating the stonework into an upstairs bedroom within the Property.
 - 1.53 The windows are single glazed and there is storage heating.
 - 1.54 The energy performance rating of the Property is currently Band G.
 - 1.55 There is no insulation between the plaster and stone and the floors of the Property are not insulated either.
 - 1.56 The existing storage heating cannot adequately keep the Property warm.
 - 1.57 There are high levels of condensation in the Property with dark mould affecting the windows and window woodwork and with condensation spotting on walls and

- symptomatic of the Property being cold.
- 1.58 The electrics are inadequate and the Property requires new plumbing and new drains.
 - 1.59 There is woodworm in the Property which will require treated or affected timbers removed and replaced.
 - 1.60 The fabric of the Property is generally basic.
 - 1.61 The kitchen will be replaced.
 - 1.62 Remedial works will be required to the kitchen chimney externally.
 - 1.63 The Applicant wishes to achieve an energy performance rating of Band C in respect of the Property having regard to the government's intention to introduce regulations in 2025 requiring all private rented sector properties to reach a minimum standard equivalent to EPC "C" by 2025 where technically feasible and cost effective at change of tenancy, with a backstop of 2028 for all remaining existing properties.
 - 1.64 The walls of the Property require stripped back to bare stone to achieve a Grade C Band energy performance rating, the floors also require to be insulated which will enable underfloor heating also to be installed which allows the installation of a ground sourced or air sourced heat pump. Thereafter the Property can be refitted and re-decorated with new electrics being installed, new plumbing and new drains in a logical fashion. These works are extensive and disruptive.
 - 1.65 The Applicant's intention is to create a new building within the existing shell of the Property. These works are extensive and disruptive. It is impractical for the works to be effectively and efficiently carried out with the Respondent in occupation. There will be no sanitation, no kitchen and no services.
 - 1.66 The renovations to the Property to include the works necessary for the Property to achieve a Band C energy rating could take 8 to 12 months.
 - 1.67 The renovations to the Property to include the works necessary for the Property to achieve a Band C energy rating have previously been priced at £150,000 which assumes no works are needed to the roof. Prices have increased since that estimate was prepared.
 - 1.68 Carrying out the works, to include the works necessary for the Property to achieve a Band C energy rating, with the Respondent in occupation of the Property would increase the costs significantly.
 - 1.69 The Applicant first became aware of a problem with the water supply serving the Property on 19 February 2020 when he was telephoned by Mandy Friels of the Environmental Health Department of Dumfries & Galloway Council. This was following service of the Notices to Quit on the Respondent on 4 February 2020. The Respondent had tests carried out around 19 February 2020 and the supply failed bacteriological tests.
 - 1.70 A plumber, Ian McMillan, was instructed by the Applicant to investigate and he checked and changed the filters and UV bulbs and sterilised the pipes.
 - 1.71 Further tests were carried out by Environmental Health on 5 March 2020 and the water supply serving the Property passed those tests.
 - 1.72 The Respondent had not previously intimated to the Applicant any issue with the water supply.
 - 1.73 The Respondent had further water tests carried out on 15 July 2020. The supply failed on bacteriological tests and metals.
 - 1.74 The Applicant thereafter supplied and continues to supply bottled water to the Respondent. He supplies 60 litres every 4 weeks.
 - 1.75 The water tank serving the Property was replaced.
 - 1.76 Further water tests were undertaken by Environmental Health on 7 January 2022. The copper and lead results failed.

- 1.77 The Applicant's motivation to recover possession of the Property is not predicated on the issues identified with the water supply thereto.
- 1.78 The water supply requires upgraded and the Applicant will address the water supply issues as part of the overall renovations to the Property, in particular pipework will be removed and replaced.
- 1.79 The water source for the water supply is situated on land owned by a third party.
- 1.80 The Applicant received from Mr Robert Rome, HMO Licensing and Landlord Registration Officer of Dumfries & Galloway Council a letter dated 20 March 2020 with regard to the condition of the Property. The Applicant passed the letter to Mr Evans of GM Thomson & Co to deal with and answer.
- 1.81 As a consequence of Mr Rome's letter works were undertaken at the Property, in particular, the stove was replaced on 29 July 2020.
- 1.82 It was difficult to appoint contractors and get works done at that time due to the Covid19 pandemic.
- 1.83 Mr Rome was satisfied with the steps being taken by the Applicant relative to the Property given the Applicant was in the course of seeking to recover possession of the Property.
- 1.84 As at the Case Management Discussion on 19 April 2022 and as at the final day of the Hearing on the application, namely 15 August 2023 the Respondent was renting another private residential property in Annan leased to him by DG Housing Partnership as well as renting the Property.

Findings in Fact and Law

- 1.85 The water supply to the Property does not meet the Repairing Standard in terms of the Housing (Scotland) Act 2006.
- 1.86 The water supply to the Property does not meet the tolerable standard in terms of the Housing (Scotland) Act 1987.
- 1.87 It is reasonable to grant an order for the Respondent's eviction from the Property in favour of the Applicant.

Statement of Reasons

2. The Hearing

- 2.1 This Application called for a Hearing on 31st October 2022 and continued on 1 November 2022, 31 January 2023, 18 and 19 April 2023, and 15 August 2023. The Hearing took place by telephone conference on each day.
- 2.2 At the Hearing the Applicant was present from time to time and was represented by Mr Adam Turnbull of Gillespie, Gifford & Brown, Solicitors, Kirkcudbright. The Respondent was present each day. He was represented by Mr Ian Cowan, Highland Environmental Law, Edinburgh on 31 October and 1 November 2022. Thereafter the Respondent represented himself.
- 2.3 At the Hearing on 31 October 2022 Ms Rachel Connor was also in attendance as an observer.
- 2.4 Subsequent to the Tribunal's Decision dated 27 September 2022 and prior to the Hearing the Tribunal received on behalf of the Applicant the following additional documents:-

- Two emails dated 28 October 2022.

2.5 Prior to the Hearing the Tribunal also received on behalf of the Respondent the following additional documents:-

- Sixteen emails dated 17 October 2022;
- Email dated 20 October 2022; and
- Two emails from Mr Cowan dated 25 October 2022.

2.6 At the outset of and during the Hearing the Respondent and his representative sought to lodge additional documents, although late. These are addressed at paragraphs 5.1, 9.44, 9.90 and 10.85 below.

3. The Application

3.1 In the Application dated 19 October 2021 the Applicant seeks an order for the Respondent's eviction from the Property under Section 33 of the Housing (Scotland) Act 1988. The Applicant states that he "wishes to renovate the Property".

3.2 The Application proceeds under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

4. Case Management Discussion ("CMD")

4.1 The Notes of the CMD on 19 April 2022 record the issues in dispute between the parties as being:-

- i. In that the Applicant seeks an eviction order under Section 33 of the Housing (Scotland) Act 1988 on the basis that the Applicant wishes to renovate the Property, to what extent are renovations required and is vacant possession needed for those renovations to be effected?
- ii. To what extent has the Applicant sought and been refused access to the Property by the Respondent?
- iii. Is the Applicant's true motivation to evict the Respondent the inadequate private water supply affecting the Property.
- iv. Has the Applicant deliberately failed to carry out repairs to the Property notified by the Respondent?
- v. Has the Applicant by his employees, David Porter and/or Neil Pick fall, intimidated the Respondent in an effort to secure his removal from the Property?
- vi. Is it reasonable for an eviction order to be granted?

5. Preliminary matters

5.1 At the outset of the Hearing on 31 October 2022 the Tribunal allowed although late the documents lodged with Mr Cowan's email dated 20 October 2022. The Applicant had no objection to the late lodging.

5.2 Mr Cowan for the Respondent also made reference to his email of 25 October 2022 and the issue of EPC ratings raised therein. Mr Turnbull for the Applicant conceded the observations contained in Mr Cowan's email to be correctly stated.

5.3 Mr Cowan also suggested that the Tribunal should reconsider the terms of the CMD Notes of 19 April 2022. He said the Respondent was unrepresented at the time and

the CMD Notes did not correctly record the Respondent's position. The Tribunal refused to revisit the CMD Notes of 19 April 2022. If there had been any issue with the accuracy of the CMD Notes that ought to have been raised by way of review or appeal in terms of the Rules. That was not done and it was too late to challenge the terms thereof. The Hearing therefore proceeded on the basis of the CMD Notes of 19 April 2022 and the agreed and disputed issues recorded therein.

6. *Evidence*

- 6.1 The Tribunal heard evidence from the following witnesses for the Applicant:-
- i. Mr David Porter;
 - ii. Mr Matthew William Prentice Bridge;
 - iii. The Applicant; and
 - iv. Mr Douglal Fraser Ross Evans.

- 6.2 The Tribunal also heard evidence from the Respondent. The Respondent called no witnesses.

7. *Evidence of Mr David Porter*

- 7.1 Mr Porter joined the Hearing on 31 October 2022 from his mobile telephone. He stated that he was at work at Pulcree Farm and, at the time of the call, was sitting on his own in a tractor in the yard.

Examination in Chief -

- 7.2 Mr Porter gave his full name as David Andrew Porter, born 23 July 1971. He stated that he is employed as a farm worker/labourer at Lagg Farm, Gatehouse of Fleet. His employers are Neil and David Austin and he stated that he had never worked for the Applicant. Mr Porter stated that Messrs Austin contract farm at Pulcree.
- 7.3 Mr Porter's employment began on 10 April 2017. He had previously attended Pulcree when he worked for a previous employer who used to provide weekend help. As a result he knew the Respondent and would speak to him at his garden gate. He first spoke with the Respondent in Summer 2017.
- 7.4 Mr Porter stated that the Property is situated down a farm track around 30 to 40 yards from various farm buildings and beyond the track continues to a shed where sheep work is carried out. Mr Porter would pass the time with the Respondent. The conversation was civil. The Respondent made Mr Porter aware that he was being asked to leave the Property. Mr Porter had been told by his employer that the situation was nothing to do with them (i.e. the Austins) and involved a different part of the estate.
- 7.5 Mr Porter referred to an incident in around 2019 after a day of lambing when he called on his dog as he shut the shed door. He heard a rumble behind him and saw a dog on top of his dog. He grabbed the dog's neck and chased another 2 away. Mr Porter approached Mr Vincent at his garden gate and asked him to keep his dogs away. The Respondent shoved Mr Porter with his chest and was poking him. Mr Porter drove away. Mr Porter reported the incident to his employer. Mr Austin told him to call the Police who came out and spoke to him.

- 7.6 On another occasion, as Mr Porter went down the farm track the Respondent was there pointing his phone at the shed and down towards the fields and was either taking photographs or recording. Mr Porter called the Police again. He had been told to tell the Police of anything that might entice aggravation. The Police spoke to the Respondent again. He denied what had happened and the Police told him that if he did the same again they would ask to see his phone. This was around July or August 2022.
- 7.7 Mr Porter described the supply of water to the fields and to the Property. He referred to the adjustment of pressure by switching on and off stop cocks installed. Water is required for 3 farm troughs. Turning off the water supply to the troughs has no negative bearing on the Property.
- 7.8 Mr Porter was asked whether he had any other contact with the Respondent between the 2 incidents described above. Mr Porter said no. He said that he would pass the Property but never blocked the Respondent's access. He was asked whether he had intimidated and harassed the Respondent. Mr Porter did not know what that allegation meant, he was just going about his job. He was asked whether he had been directed by the Applicant to act in an intimidating fashion. Mr Porter said that no-one had asked him to act in that way. He simply spoke to the Respondent to be civil. He simply told the Respondent to keep his dogs on leads and in the garden and the Respondent "kicked off". Since then Mr Porter has tried to keep away and get on with his job. He requires to use the farm road to get up and down to the farm. He is employed to look after the stock and that's what he has been doing. The stock belongs to Messrs Austin.

Cross-Examination -

- 7.9 Mr Porter said he was paid by Messrs Austin. He had previously been told they contract farm the land. The contract is with "the Gilbeys" and started with the Applicant's father.
- 7.10 Three quarters of the farm buildings are at the top of the farm and there is a hangar at the bottom. Through April and June in each year Mr Porter can drive up and down the farm track around 10 times each day to check the ewes and lambs etc. Mr Porter said he would clip sheep at the bottom of the track and then bring them up the farm road. The road provides access to 50% of the stock and is used by Mr Porter and others. The hangar is located below the garden of the Property.
- 7.11 Mr Porter confirmed that the "run in" with the Respondent happened three lambings ago after the Respondent had been given notice to leave the Property. Mr Cowan for the Respondent challenged that position on the basis that the first Notice to Quit given to the Respondent was served in February 2020. Mr Porter replied that the Police have his statement as to when the incident happened. His boss had told him to call the Police who spoke to the Respondent at that time too. He said the incident was not the fault of the dogs. He never thought he would need to give evidence so didn't write down the date.
- 7.12 Mr Cowan asked whether the incident could have taken place in April 2020. Mr Porter repeated that his statement had been given to the Police on the instructions of his boss and that the incident happened around 9 to 9.30pm at night. Mr Cowan asked whether the dogs were on leads. Mr Porter stated that working dogs in their place

of work do not need to be on a lead. He said they were pretty well under control. He denied leaving the dogs overnight in the stabling.

- 7.12 Mr Porter was also asked whether the event could have taken place in April 2021. Mr Porter accepted that could be the case. The Police have his statement. He just wanted the Respondent to keep his dogs under control and on leads if out of their garden.
- 7.13 Mr Porter was asked if he was strong and well-built and if he did shepherding. He said that he did do quite a lot of shepherding but was not strong and well built. He had good health and kept fit enough to do his job.
- 7.14 Mr Porter was asked about the Applicant's Affidavit and the statement there that the Respondent intimidated Mr Porter. Mr Porter stated that the Respondent would stand at his gate as Mr Porter drove down the track. Mr Porter had put his dog under his left arm to keep her away when the Respondent came chest to chest with him. Mr Porter then put his dog in his pick-up and told the Respondent to keep his dogs in his garden. He said he didn't want involved.
- 7.15 Mr Cowan referred to page 176 of the Applicant's productions, being an email from Mr Dougal Evans of GM Thomson (the Applicant's agent) to Mr Rome of Landlord Registration, Dumfries & Galloway Council dated 23 March 2020 in which Mr Evans stated "*Mr Gilbey has other plans for [the Property] involving his farming operation*", and asked whether Mr Porter knew about these plans. Mr Porter stated that he is just a worker looking after stock and these issues don't involve him. He stays in another house off the estate which he rents. Mr Cowan asked whether there were any plans for Mr Porter to be housed at the Property. Mr Porter replied that any business decisions were taken by his boss and he didn't know.
- 7.16 Mr Cowan then referred to pages 120, 123 to 126, 129 and 130 of the Respondent's Productions being photographs of dead animals. Mr Porter stated that there was a collection point for dead animals on the farm. Collection should take place 48 hours from when the animals have been put there for uplift. Mr Porter said he would text the person to lift dead animals.
- 7.17 Mr Cowan asked if the dead animals, which included a dead fox, had been there longer than 48 hours. Mr Porter stated that the dead fox was nothing to do with him. He referred to a dead calf not being lifted as the mother cow was upset so the calf was left for one night and picked up the next day. Mr Porter said he was told to leave the calf for 24 hours. He was asked to stay out of the corale for his own safety. Under questioning from the Tribunal, Mr Porter stated that the corale is at the top of the field where the calf had been left. He said there is a designated area for dead animals to be uplifted from. He didn't know whether the sheep in the photographs were in the designated area. He described the location of the designated area as being 400 to 500 yards away from the Property. He said that there are badgers and foxes about which could claim a carcass in a day.
- 7.18 Mr Porter was asked about the images on pages 122 and 123 of the Respondent's Productions, being photographs of dead animals. Mr Cowan said it was necessary to ask Mr Porter questions about these images as it formed part of the Respondent's position that there was a campaign of intimidation against him. Mr Porter stated

that the calf had been left for safety's sake and was subsequently picked up and notified. Mr Porter reported the position by telephone to his boss.

- 7.19 Mr Cowan asked whether Mr Porter had a conversation with the Respondent during which the Respondent asked him to stop throwing dead stock into the burn. Mr Porter denied such a conversation had taken place.
- 7.20 Under questioning from the Tribunal, Mr Porter confirmed that his dogs are border collies and he would generally have 3 or a maximum of 4 dogs with him. On the evening of the incident with the dogs he only had one dog with him, "Nell". He was doing his last round of the farm then heading home. Mr Porter could not tell what type of dogs attacked Nell. The Police saw them too. They were around the same size as Nell, spaniel size. As they came round the corner one dog was ahead of the other 2 and it was that dog that got Nell first. He said this had been the first and only incident with the dogs.
- 7.21 The Tribunal asked what the normal process was for dealing with animals that had died. Mr Porter stated that they should be found and lifted as soon as possible. As the incident was on a Friday the cow shed would be locked until the Monday and the calf was put there. Another company would then lift and take the dead animal away, "TC Services". Mr Porter would phone or text as required and hopefully the animal would be removed by the evening. Mr Porter stated that weeks can pass with there being no dead animals then at lambing time there can be a disaster of a day with one animal after another dying. He described getting "a bad run".

Re-examination -

- 7.22 Under re-examination, Mr Porter stated that if a dead animal is left near badgers, they will strip the carcass to head and bones within 24 hours. He referred to a sheep that might have been missed from being lifted.
- 7.23 Mr Turnbull asked whether the dead animals had been left to intimidate the Respondent. Mr Porter said no. The Respondent is going into the fields to photograph the dead animals, Mr Porter is not taking them to him.

8. *Evidence of Mr Matthew William Prentice Bridge*

- 8.1 Mr Bridge joined the Hearing on 31 October 2022 by telephone. He stated that he was in his office on his own at the time.

Examination in Chief -

- 8.2 Mr Turnbull for the Applicant referred Mr Bridge to pages 83 to 99 of the Applicant's Productions where Mr Bridge's Report dated 10 June 2022 could be found.
- 8.3 Mr Bridge stated that his full name is Mr Matthew William Prentice Bridge, born 27 April 1960. His address is per the Report which is both his home and his office. He is a Building Surveyor and has been working as such since 1982. Since 1997 he has been running his own business carrying out all works of a Building Surveyor. In terms of qualifications he has a BSc Degree in Environmental Sciences. He is not a Chartered Surveyor.

- 8.4 Mr Bridge accepted that there was an error in his report in that he hadn't then noted that the deadline for the minimum EPC standard being raised had been deferred to 2028.
- 8.5 Mr Bridge stated that he had been working with the Applicant for 5 years. He began by converting stables into an art studio and then renovated the main house followed by Ornockenoch House, then Cuil Cottage and now Ornockenoch Stables. He had a lot to do to bring the properties up to the necessary standards to achieve the required EPC ratings.
- 8.6 Mr Turnbull asked Mr Bridge if there was a programme of works across the wider estate. Mr Bridge confirmed that when he started working for the Applicant the houses had not been looked after for a long time and now the objective was to achieve the required EPC ratings so the properties were fit for modern use. He said that the Applicant had spent a lot of money on the properties and that a main contractor was employed to do the works which Mr Bridge supervises on site.
- 8.7 The Tribunal asked how many properties were involved across the estate and Mr Bridge stated that there were 8 properties in total not including the main house and the stables. Ornockenoch House, Cuil Cottage and stables, Garden Cottage and the Lodge had all been done together with the main house and stables. The first property was refurbished 4 to 5 years ago which was Garden Cottage followed by the Lodge at the end of the drive. Ornockenoch House is a holiday letting which the Applicant previously lived in. Cuil Cottage is rented out. Ornockenoch Stables comprises 2 flats which are rented out. Garden Cottage and the Lodge are rented out. Upper Riscoll Farmhouse, Upper Riscoll Cottage and Woodhead Cottage are rented out. Mr Bridge could not confirm whether these properties were rented out to individuals occupying them as their only or principal home.
- 8.8 Mr Bridge was asked whether the remedial works were carried out with tenants in occupation. He stated that Ornockenoch Stables was refurbished with tenants in occupation. Only minor works to the roof were intended but other work was uncovered during the process. The others had been refurbished empty.
- 8.9 With regard to the Property, Mr Bridge visited with Mr Turnbull and the Respondent on 7 June 2022. He said this was the only time he has been inside or immediately outside the Property. He said that the Property is in a very poor state and has not been modernised or renovated for a long time. The Property has not been decorated and is very tired with structural problems externally and works are required to bring the Property up to the necessary standard for thermal insulation. The structure requires to be addressed. The walls require stripped back to bare stone and to achieve a Grade C Band, the floors require to be insulated which will enable underfloor heating also to be installed which allows the installation of a ground source heat pump or air sourced. Once these works are done the Property can be re-decorated with new electrics being installed, new plumbing, new drains – effectively creating a new building within the existing shell. Conducting the remedial works in this way will give the best chance of the Property being useable. The roof will require to be re-slatted in all likelihood as there is a suggestion of nail failure given the age. The works are very major.
- 8.10 Referring to page 93 of the Applicant's productions, being a photograph of the exterior of the Property, Mr Bridge was asked whether he had only seen the Property from the

ground and he stated that given his experience of other properties on the estate he saw no reason why the Property would be any different.

- 8.11 Mr Bridge was referred to page 92 of the Applicant's productions, being a photograph of the exterior of the Property showing the chimney in particular, and was asked about remedial works to the chimney of the kitchen. He stated that he had walked around the outside of the Property but there had not been proper investigations. However, he considered there would certainly need to be some form of intervention. He referred to there being a fracture in the back of the gable adjacent to the chimney stack. He did not know what might have caused that fracture and, as a minimum, work would require to be done to cut out and stitch that fracture back together. He said that he did not want the external walls any thicker than they needed to be but by stripping the lath and plaster any problems can be found and the best finish obtained. He said that by proceeding as suggested the work can be carried out in a logical fashion like a new house build.
- 8.12 With regard to timing Mr Bridge stated that at the time of writing his report the contractor said the work could be done in 4 to 6 months but at Cuil Cottage the position was the same and in fact the remedial works took 8 months. In reality therefore the contract could be an 8 to 12 month duration.
- 8.13 He said that other factors would have a bearing on the timing, for example the contractor previously lost several workmen that they were unable to replace. Also materials had not been available when required. Steps had been taken to try and pre-empt these issues but these did not always work. Slates were also in short supply.
- 8.14 Referring to pages 87 and 88 of the Applicant's Productions, being interior photographs of the Property, Mr Bridge was asked about woodworm. Mr Bridge stated that if there is an active outbreak of woodworm in the Property it would be necessary to treat the entire property. This would mean lifting every other floor-board on the first floor and on the ground floor having a new floor laid. He said dry rot is endemic in all properties in the area. All timbers would need to be treated in that event. He said that dry rot is a fungus which is spread by spores from the initial outbreak and transported by water to other parts of the building to grow. Brickwork and masonry can be devastatingly affected. In all old buildings historic outbreaks would be found. He said that woodworm completely destroys timbers if active. The woodworm eats until nothing is left when the beetles fly off to other timbers and the cycle continues. In this area woodworm is present in almost every old building which will be affected to some extent and when exposed will require treated as a matter of course to prevent recurrence.
- 8.15 Mr Bridge stated that when the Property was built lime mortar was used. That allows the structure to flex as the mortar does not set hard like cement. When a leak occurred the re-pointing has been done with cement and sand which sets hard. That cement and sand mortar then fractures and more water penetrates becoming trapped within the walls and causing damage from frost. The cement and sand mortar requires replaced with lime based mortar. This can be done by the cement and sand being raked out and re-pointed. This involves time, money and effort. He said that patched repairs are common in the area and are still being done.

- 8.16 With regard to the electricity he described the supply as woefully inadequate and that the contractor would require to start again and re-wire to modern standards.
- 8.17 With regard to the water supply which the parties agreed to be inadequate, Mr Bridge stated that a new system would require to be designed but that was not part of his remit. The water supply would certainly need to be done as part of the overall works and may have an adverse effect on the implementation of the works. He said that all new pipework would require to be installed and that the water source for the Property is not on the Applicant's land. He was not sure how that situation would be resolved.
- 8.18 With regard to the practicalities of undertaking the necessary works he was asked whether these could be done with the Respondent in situ. Mr Bridge stated that from a health and safety point of view it would be impossible to carry out the works as they should be done. The costs would be enormous and there would be serious health and safety implications. He did not think it a sensible or viable proposition and would not give the finished job that the Applicant was trying to achieve. He said that the Property requires to be brought up to modern standards. He said there is no point doing the works if not bringing the shell up to the required thermal values and therefore the building needs to be attacked as one. He said that with the Respondent in occupation monies would be wasted and further upgrades would require to be done at a later date.
- 8.19 Mr Bridge was asked whether wilful neglect of the Property had caused the deterioration. Mr Bridge stated that he considered maintenance to have played a part and the decision by the Government with regard to thermal values is nothing to do with that. However, major works are required to achieve those thermal values otherwise the rest could be done by redecoration and refitting. The sensible approach, he said, is to replace the interior of the building.

Cross Examination -

- 8.20 Under cross examination Mr Cowan queried Mr Bridge having no qualifications in building surveying. He replied saying that he had a great deal of experience and practice albeit he never took exams. He had worked his entire adult career in building surveying. He agreed that he had learnt on the job and stated that he had worked with the Applicant for 5 years.
- 8.21 Mr Bridge was asked whether he had any social interaction with the Applicant. He stated that this was only relative to pressing apples in the orchard. He was asked whether he had been game shooting with the Applicant and Mr Bridge confirmed that he had done so at the invitation of the Applicant's mother when he was involved with her house.
- 8.22 Mr Bridge was asked whether the installation of cement mortar was carried out by the handyman, Neil Pickthall. He said he didn't know but whilst cement mortar was inappropriate it was common in the local area.
- 8.23 Mr Bridge was asked what he meant by bringing the Property up to standard and whether he had heard of the "Repairing Standard". Mr Bridge confirmed he had heard of the Repairing Standard and by bringing a property up to standard he meant in terms of the remedial works needing done. There is also the requirement to bring the properties up to thermal standard.

- 8.24 Mr Cowan asked whether the house is fit to live in and Mr Bridge stated that work needs done to it. He said it is tired and whilst probably still fit to live in, it needs decorated and improved thermal insulation. Referring to page 88 of the Applicant's productions, being a photograph of a bedroom in the Property, Mr Bridge was asked whether he would sleep in it. Mr Bridge replied "probably not".
- 8.25 Referring to page 90 of the Applicant's productions, being a photograph of the gable of the Property, Mr Bridge was asked whether he could see anything similar to the photograph on page 88. He stated that he had not carried out a full inspection of the building. However, he referred to work being carried out outside that window.
- 8.26 The Tribunal referred to page 37 of the Applicant's productions, being a photographs showing the back door. The Tribunal asked if any cement repair could be seen there. Mr Bridge could not tell from the photograph.
- 8.27 By reference to page 138 of the Respondent's productions, being photographs and commentary attached to a letter from Mr Robert Rome, HMO Licensing & Landlord Registration Officer, Dumfries & Galloway Council to the Applicant dated 20 March 2020, Mr Bridge was asked whether he was surprised at the level of deterioration in the back bedroom shown. He stated that he could now see where water would be entering. He could not say when the mortar fell away but clearly a defect was allowing water in.
- 8.28 With regard to energy ratings, Mr Cowan asked whether Mr Bridge accepted that the current minimum rating is Band C. Mr Bridge agreed. Mr Cowan asked whether a Band C rating could be achieved for the Property. Mr Bridge agreed that a Band C rating had been achieved on Cuil Cottage but a serious amount of insulation had been put into the floor. That could be achieved at the Property. He said achieving a Band C rating certainly increases the scope of works but was certainly achievable. He referred to the possibility of the Government making certain relaxations but he did not know what these were likely to be. He said it was unfortunate that the EPC target had been lifted to Band C and he understood that, thereafter, the Property could not be used as a holiday or short term let but could be used for personal occupation.
- 8.29 Mr Bridge stated that every building is different and the way the algorithms are used it is hard to work out what is required to achieve the necessary target rating. At Cuil Cottage the ground floor was completely renewed to current building standards with insulation to achieve Band C. An EPC Surveyor would feed into what works would be necessary to meet the band rating. By installing in a new structural floor Mr Bridge was more optimistic the rating could be achieved.
- 8.30 Mr Bridge confirmed that the Property has 3 reception rooms and 4 bedrooms. He was challenged by Mr Cowan on whether vacant possession is needed to carry out the works. Mr Cowan suggested the work could be carried out in two halves. Mr Bridge stated that from a health and safety perspective he would not be happy with that arrangement and it would not be practicable to do the works in that way. He suspected working in that manner would double the cost.
- 8.31 Mr Cowan questioned why, if struggling with materials and labour, a phased approach might not work better. Mr Bridge said that he did not consider that to be the case and that stripping out to a clean shell and thereafter instructing the trades in the usual

way was preferable. He said stopping and starting was not logical and would increase costs.

- 8.32 Mr Cowan again challenged Mr Bridge on whether it was possible to carry out the works in the way Mr Cowan was suggesting. Mr Bridge said that most things were possible but not necessarily sensible nor practical. The cost of doing the work is extremely high and the Applicant would be unlikely to see any return. He wants to do the work in the most cost effective way.
- 8.33 Mr Cowan asked whether the shell of the Property is structurally sound. Mr Bridge referred again to the issues of stone-work previously discussed. He was not sure how serious these issues are. In other properties on the estate he has found inner timber lintels needing replaced, for example in the main house these were replaced with steels.
- 8.34 Mr Cowan challenged Mr Bridge making decisions based on a cursory look at the Property. Mr Bridge said that he had achieved a reasonable indication of what would be required.
- 8.35 Mr Cowan suggested that the fractures in the exterior of the Property just indicated that the cement had come out. Mr Bridge disagreed and said that the way the fractures run from course to course looks more like movement having occurred.
- 8.36 Mr Cowan stated that the Respondent had observed the property over 10 years and had not seen any movement. Mr Bridge replied that there might not have been movement in 10 years. He had not suggested that movement was ongoing. He said that if there was no ongoing movement then the fractures may just need stitched over.
- 8.37 Mr Cowan asked whether Mr Bridge expected something to have been done before now. He agreed that the issue should have been looked at if reported by the Respondent.
- 8.38 Mr Cowan asked if lack of maintenance has played a part and, but for the energy issue, the remedial works are largely decorative. Mr Bridge said it would be easier to put the Property right if upgrading thermal efficiency of the building was not required but that is a major issue in the approach being taken at this time.
- 8.39 Mr Cowan asked if Mr Bridge had been involved at Rusco Stables. He confirmed he had but could not remember precisely when. He agreed that new bore holes had been dug there.
- 8.40 The Tribunal asked about the programme of works and how the people aspect of the works would be managed if the Property was not empty. Mr Bridge stated that this was outwith his remit but apart from Ornockenoch Stables all properties had been vacant when the contractor had been working on them.
- 8.41 Mr Bridge stated that they had never carried out works on more than one property at a time on a sequential basis. The Applicant had paid for major materials up front, for example, at Cuil Cottage all major parts had been purchased ahead which helped enormously.

- 8.42 With regard to the order of renovating the properties, Mr Bridge stated that logically the Property is the next one to be done but he proceeds as instructed by the Applicant. Previously the renovations were undertaken as the properties fell vacant.

Re-examination -

- 8.43 Mr Turnbull suggested that where pointing had fallen out there could be a failure to maintain but where cement repairs had been carried out, clearly maintenance had been attempted. Mr Bridge agreed and referred to Nick Pickthall having carried out repairs in recent times.
- 8.44 With regard to the EPC rating, Mr Turnbull referred to the current rating at the Property as Band G. Mr Bridge agreed that the Property starts from a very low point and therefore the extent of the works required is very large.
- 8.45 Mr Turnbull asked how Cuil Cottage compared. Mr Bridge stated that Cuil Cottage comprised 2 bedrooms, 2 reception rooms and a bathroom. That property is very small but the approach taken similar to that being proposed. Replacing the ground floor helped enormously. It is difficult to predict the result of the level of achievement relative to the EPC rating and the Property is more than twice the size of Cuil Cottage.
- 8.46 Mr Turnbull asked whether by reference to undertaking the works on a room by room basis, this would be affected by the water supply being turned off. Mr Bridge stated that the design of the water supply was outwith his remit. However, there would be times when the water supply was completely disrupted. He said it would be much better to completely re-wire in one fell swoop rather than in dribs and drabs.

Supplementary examination for Respondent -

- 8.47 Mr Cowan asked why Mr Bridge had only carried out a cursory inspection of the Property. Mr Bridge stated that the visit took place after 6pm in the evening. The Respondent followed videoing him the entire time and told him that he wanted them to leave. The Respondent did not want them to look at the outside and were ushered around the building.
- 8.48 Mr Cowan asked whether Mr Bridge had any involvement in the specification of an arsenic filtration system installed on Rusco estate and Mr Bridge confirmed that he had definitely not been involved.

9. Evidence – The Applicant

- 9.1 The Applicant joined the Hearing on 31 October 2022 and his evidence continued on 1 November 2022 all by telephone from his house in London. He was alone when giving his evidence.

Examination in chief -

- 9.2 The Applicant's full name is Richard Hubert Gordon Gilbey. His date of birth is 16 March 1965, and his principal address is Rusko House. He is a member of the House of Lords and runs Rusko Estate.
- 9.3 Mr Turnbull referred the Applicant to his Affidavit, dated 10 June 2022, included at pages 100-136 of the Applicant's productions.

- 9.4 The Applicant acquired Rusko Estate on 24 March 2016, a couple of years after his father died. He purchased the estate out of a trust that his mother was a beneficiary of. The Applicant explained that his father was a beneficiary under the trust and his mother had a life interest.
- 9.5 At the point of purchasing the Estate, the Respondent already had a tenancy of the Property which had been entered into between the Respondent and the Applicant's father. The Tenancy Agreement runs in the name of Lord Vaux, the Applicant's father.
- 9.6 The Applicant stated that there are twelve houses on the estate, including flats and stables. Of that number nine are let out, including the Property.
- 9.7 The day-to-day management of the leased properties is carried out by G M Thomson and Co. Day-to-day, G M Thomson deal with any contact from tenants, problems with the properties, the employment of tradesmen for small jobs, they liaise with the Applicant in respect of bigger jobs to agree how these should be dealt with, and they also collect rent.
- 9.8 The Applicant stated that when he first took over the estate, he met G M Thomson. He was aware that the properties had not been modernised for decades and was concerned if they met the required standards. He asked G M Thomson to deal with that. The Applicant referred to the excel spreadsheet detailing a schedule of works found at pages 110 to 136 of the Applicant's productions.
- 9.9 Mr Turnbull asked the Applicant if there was any rationale to the order of renovation of the properties. The Applicant stated that it made sense to undertake the works as the properties became vacant. Accordingly, the timing of the works was driven by when vacant possession became available.
- 9.10 Upper Rusko was one of the first properties to be renovated. The Applicant stated that Upper Rusko is approximately the same size as the Property, being a 6 or 7 bedroomed house. Mr Turnbull referred the Applicant to paragraph 6 of his Affidavit and the Applicant confirmed the works to be substantial. However, no insulation was installed.
- 9.11 Mr Turnbull asked whether or not the experience at Upper Rusko informed the renovations relative to the Property. The Applicant stated that at Upper Rusko, the rewiring had to be done after the property had been replastered. Undertaking tasks in the right order made more sense. At Upper Rusko, it was thought the works were finished, but new electrics were needed. Also, the works at Upper Rusko were done before the new EPC ratings were put in place, and therefore further works will require to be done again.
- 9.12 Referring to paragraph 7 of the Applicant's Affidavit, Mr Turnbull asked whether the works at Cuil Cottage had been done with the tenant in occupation. The Applicant stated that a full renovation was not attempted. The tenant had lived there since the mid-sixties and used to work on the estate. The state of the property was unacceptable. She didn't want any work done, but he could not leave it as it was. Accordingly, the Applicant renovated the kitchen, bathroom, and electrics, but couldn't really do what was needed. So, when the tenant subsequently removed, the works started again, with the earlier work therefore having been wasted. However, the Applicant was motivated to comply with the Repairing Standard.

- 9.13 With regard to paragraph 8 of the Applicant's Affidavit and relative to Rusko Lodge, the Applicant stated that all other properties were vacated by tenants by the time the renovations were undertaken. There are two properties left to renovate, namely the Property and Woodhead.
- 9.14 The Applicant stated that the works have been fairly consistent across the properties involving floors, windows, roofs and central heating. Most of the properties only have storage heating.
- 9.15 With regard to paragraph 9 of the Applicant's Affidavit relative to Garden Cottage, the Applicant was asked by Mr Turnbull about his relationship with Neil Pickthall. The Applicant stated that Mr Pickthall was brought in as a part-time gamekeeper by his father, and his main role was as a local builder. He moved into Garden Cottage either during the Applicant's father's ownership of the Estate, or that of his mother. He also said that Neil Pickthall had bought a house in Gatehouse which gave him the opportunity to modernise the property. Garden Cottage was then used as a holiday let. Mr Pickthall was employed by the Applicant's father for maintenance jobs too. As time has gone on, however, he has been employed less and less. His builder work is not the best and that is reflected in works done by him at the Property.
- 9.16 Mr Turnbull referred to page 152 of the Applicant's productions, being an invoice dated 14 November 2016 relative to the Property. The Applicant confirmed Mr Pickthall had undertaken that work and other works on the roof. The invoice value was £6,750, and is recorded on the spreadsheet previously mentioned. Electrical upgrading had been done too.
- 9.17 Mr Turnbull referred to page 149 of the Applicant's productions, being an invoice dated 13 June 2016 from Ian McMillan relative to the Property. The Applicant confirmed that Mr MacMillan does plumbing on the estate, but not more complex work.
- 9.18 Mr Turnbull referred to pages 150 and 151 of the Applicant's productions, being invoices of C S McKerlie dated August and September 2016 relative to electrical work, which the Applicant stated was incurred to have the properties meet the repairing and tolerable standard after his acquisition of the estate.
- 9.19 Mr Turnbull asked the Applicant whether Mr Pickthall intimidated or was directed to intimidate the Respondent. The Applicant replied, "absolutely not". The Applicant stated that Mr Pickthall complained to him about being filmed by the Respondent. The Applicant said he always told Mr Pickthall not to engage or take any action. The Applicant did not want the situation to escalate and told Mr Pickthall, David Porter and the Austins not to get involved.
- 9.20 With regard to paragraph 12 of the Applicant's Affidavit, the Applicant confirmed that there had been an extensive refurbishment exercise across the estate which had cost him a lot of money, probably around £600,000 by now, with £150,000 being estimated as required for the Property, which assumes the roof is okay. Since these numbers were prepared, there has been a substantial increase in costs.
- 9.21 With regard to paragraph 11 of the Applicant's Affidavit, the Applicant stated that the costs relative to the Property are not complete, and there will be other works on top of that.

- 9.22 With regard to the spreadsheet, the items noted in red are renovations and those noted in black are maintenance works. The Applicant confirmed that he has not shirked maintenance since he took control of the estate, and almost every penny of rent received has gone into the maintenance of each house.
- 9.23 With regard to paragraph 14 of the Applicant's Affidavit, the Applicant stated that G M Thomson inspected all the houses. Mr Evans of G M Thomson carried out an inspection of the Property in November 2019 and reported back advising that meeting the regulatory standard was increasingly difficult due to the age and state of the Property, for example, there is no central heating, therefore, damp is an issue. On that basis, the Applicant decided it was time to do the works properly and terminate the Respondent's tenancy in order to do so.
- 9.24 At that time, the required notice period was only two months and the Applicant told Mr Evans to give as much notice as possible. The notice was served in 2020, but Covid then occurred, and it would be difficult for the Respondent to find somewhere else to live. As this was a temporary situation, he instructed the Applicant to withdraw the notice to remove. This seemed the fair thing to do.
- 9.25 Mr Turnbull asked the Applicant whether a number of notices to quit were served as a means to harass the Respondent. The Applicant stated that the first notice was rescinded because it was not fair to proceed with it. Subsequent notices, unfortunately, contained the wrong notice periods. The Applicant stated that it was not in his interests to prolong the position. The passage of time has cost him a lot of money, and he said inflation had affected his costs.
- 9.26 With regard to paragraph 16 of the Affidavit, Mr Turnbull asked the Applicant whether the inadequate water supply affecting the Property was a motivation to evict the Respondent. The Applicant stated that he first became aware of the problem with the supply on 19 February 2020 when he was telephoned by Mandy Friels of the Environmental Health Department of Dumfries & Galloway Council. She advised that the supply had failed bacteriological tests. He required to have the supply looked at and resolved. The Applicant stated that he did not undertake any tests at that time, nor did the Environmental Health Department. The Applicant never saw the results referred to. A plumber investigated on the Applicant's behalf and sterilised pipes. This was in March 2020. The water supply subsequently passed on all counts. The Applicant thought the situation was resolved. Further tests were carried out by the Respondent in July. The Applicant did not know these samples had been taken. The supply failed on bacteriological tests and metals. The Applicant was surprised. This did not tally with the previous tests undertaken. However, he took the situation seriously and provided the Respondent with bottled water.
- 9.27 Further tests were undertaken in 2022. Bacteriological tests were okay, but the lead results were not. Copper was okay. The Applicant stated that he hoped the lead problem would be resolved by replacing the pipes as part of the renovations. The Applicant said they needed to get to the source of the lead, as the water cannot be treated. Over the last couple of years, the Applicant stated that he had spent £100,000 trying to sort out water supply issues on the Estate.
- 9.28 The Applicant stated that with regard to the water supply, they have been keeping the Environmental Health Department informed. A reverse osmosis system has been discussed, but this is not a whole house system, so not acceptable. An approach has

been made to the Environmental Health Department again more recently regarding the installation of such a system in the kitchen alone. The bathrooms would remain a problem.

- 9.29 Meantime, the Applicant continues to supply water to the Respondent. He makes a delivery every four weeks, and provides 12 x five litre bottles, being sixty litres. This is calculated on the basis of two litres per day, over 28 days.
- 9.30 The Applicant stated that he has offered the Respondent more water if needed on at least two occasions, but that offer has been refused. The Respondent is aware that he can have more water if required. The Applicant delivers the water supply personally, but on one or two occasions, his wife has done so. The water packs were previously placed on a bench at the backdoor of the Property. More recently, and at the Respondent's request, the packs of water are placed on the ground outside the gate of the Property. The Applicant stated that the Respondent is rarely there when he attends and if he is present, the Applicant asks if more water is needed. On those occasions when the Applicant and the Respondent have met, the Applicant stated that he asks if anything else is needed. Usually the Respondent says no, but on one occasion after a previous notice failed, the Respondent told the Applicant that he was keen to beat him at a tribunal.
- 9.31 Mr Turnbull asked the Applicant about his motivation for removing the Respondent. Is this because of the water supply issue? The Applicant stated that the Respondent has not discussed the water supply issue with him. The Respondent says the water supply is contaminated from lead mines in the hills around. The Respondent has involved a journalist in all of this. The journalist spoke to the Applicant to the effect that the Applicant was trying to terminate the tenancy because the Respondent was complaining about the water supply. This was the Respondent's initial argument. However, the timelines do not support that position and the Respondent therefore dropped that line.
- 9.32 Mr Turnbull then took the Applicant through Doctor Rachel Connor's report dated 13 June 2022 which had been produced by the Respondent. At paragraph 1 the Applicant stated the information was provided by the Respondent. At paragraph 18 it was not 48 litres of water supplied but 60 litres. At paragraph 22 the Applicant said the tank and the sediment had been removed entirely. With regard to paragraph 23, this was not true. No-one had alleged any form of illness other than the Respondent's friend at Woodhead, Mr Woodburn, who is a tenant there. He had not formally complained either. The Applicant referred to paragraph 43 as being entirely inaccurate. He said the water comes from the fields. The area where the water originates is fenced off in accordance with regulations. The animals cannot access that area and have never been able to do so.
- 9.33 Referring to the photographs of dead animals as produced by the Respondent, Mr Turnbull asked whether these had been put into the water supply or had been left to intimidate the Respondent. Page 260 of the Applicant's productions also refers. The Applicant said this was impossible and the animals were nowhere near the water supply.
- 9.34 With regard to paragraph 50 of Dr Connor's Report the Applicant said a representative of Watersense did visit the Property with the Applicant. They didn't access the house due to Covid but did inspect the water supply and the Applicant believed a risk

assessment report was produced. He referred to the "Risk Assessment Summary Report" at page 359 of the Applicant's productions.

- 9.35 With regard to paragraph 7 of the Dr Connor's Report the Applicant said he could not comment on the position prior to his ownership of the estate. He said the filter was definitely changed in July 2017. If not changed the water will stop. Referring to page 149 of the Applicant's productions, being an invoice from Ian McMillan Plumbing & Heating dated 13 June 2016, the UV tube was changed in June 2016 by Mr McMillan.
- 9.36 The Applicant stated that when notice was given to terminate the Respondent's tenancy he was not aware of any problems with the water supply. When made aware, he took action and the supply arrangements passed in March 2020. He therefore did not think anything further was needed. Further tests were then done in July 2020. He did not know where or when. He took the position seriously. Tests done in 2022 showed issues with copper and lead. The Applicant said the copper was coming from the pipework within the water supply system and these pipes would be removed and replaced as part of the overall renovations.
- 9.37 Under questioning from the Tribunal as to whether the issues with the water supply were known about at the time of subsequent notices being served the Applicant confirmed that to be the case and that other issues had come to light by then too.
- 9.38 The Applicant disputed conclusion 3 of Dr Connor's report.
- 9.39 Turning to the evidence of Mr Porter, the Applicant confirmed Mr Porter to be an employee of the farm contractors, Austin. Mr Porter is around the farm a lot as he works there and the Applicant runs into him from time to time and they chat.
- 9.40 Mr Porter had raised with the Applicant and the Austins that the Respondent films him when he is going about his business and when with his daughter. He complained to the Applicant a number of times and the Applicant told him not to react and to keep clear. The Applicant did not want the situation to escalate.
- 9.41 Asked whether the dead stock was left to intimidate the Respondent, the Applicant said this was nonsense. He referred to there being rules on dead stock, notification has to be given of stock losses. There is no suggestion of any wrong-doing and there is no record of any issues arising. The Applicant said that if Mr Porter behaved as the Respondent suggested, he would not be employed. Such behaviour would not be acceptable.
- 9.42 With regard to the photograph of the dead calf, the Applicant said he first saw this photograph on the Respondent's Facebook page. He made enquiries of the Austins and was given an explanation that the calf was born early and was dead. The mother cow was upset and dangerous and it was too risky to get in to pick up the calf which was therefore left for 24 hours. In the interim animals such as badgers and foxes pulled the carcass apart. The Applicant was referred to pages 385 and 386 of the Applicant's productions.
- 9.43 Mr Turnbull asked the Applicant about the letter dated 20 March 2020 from the HMO Licensing & Landlord Registration Officer, Mr Robert Rome being page 172 of the Applicant's productions. The Applicant stated that he passed the correspondence to Mr Dougal Evans of GM Thomson and he followed up with Mr Rome. The Applicant

referred to page 176 of the Applicant's productions being Mr Evans' email response to Mr Rome dated 23 March 2020. Much of Mr Rome's report referred to issues that the Applicant would be dealing with as part of the renovations, some were more urgent and were dealt with under the restrictions of Covid. As a consequence the stove was replaced and the chimney sorted and other items which were urgent or involved safety were attended to.

Cross Examination -

9.44 At the outset of Mr Cowan's cross-examination of the Applicant on behalf of the Respondent he asked the Tribunal to be allowed to lodge further documentary evidence although late. He said that the evidence of the Applicant called into question the truthfulness of the Respondent in a way that was not expected. He said the Applicant was adamant that the water supply did not affect anyone else. He wished to produce additional evidence that Mr Woodburn had water tests done.

The Tribunal refused Mr Cowan's request to lodge further late documentation. The Tribunal was not prepared to consider further documentation being lodged on a piecemeal basis. The evidence of the Applicant could have been anticipated (his Affidavit was lodged as a production for the Applicant) and additional documentation lodged by the Respondent prior to the Hearing. No reasonable excuse existed in terms of Rule 22(2) of the Rules.

9.45 Under cross examination the Applicant was asked by Mr Cowan whether he was aware of e-mails sent by Mr Woodburn to GM Thomson with regard to the water supply in 2015. The Applicant said he was not aware of such e-mails as they pre-dated his ownership of the estate. The Applicant said it was incorrect to suggest that other residents were affected.

9.46 The Applicant was asked whether he agreed that the evidence from Scottish Water explained the illness of others. The Applicant did not accept that. He said he had spoken to the tenant of Upper Rusko who denied any illness and that he had spoken to Mr Woodburn too. He said no other tenant had complained. Mr Cowan asked whether others did not complain due to intimidation. The Applicant said there had been no intimidation of any tenant.

9.47 Mr Cowan suggested, by reference to pages 358 and 359 of the Applicant's productions, being the "Risk Assessment Summary Report", that Watersense visited the water supply but not the Property. The Applicant said he accompanied Mr McCulloch on the site visit and he did visit the Property.

9.48 The Applicant stated that the overall supply risk score was normal.

9.49 By reference to page 363 of the Applicant's productions, being page 6 of the "Risk Assessment Summary Report", Mr Cowan asked about the carbon block filter referred to in the last paragraph thereof. The Applicant said he could not comment on property owned by someone else.

9.50 Mr Cowan asked whether GM Thomson managed the estate for the Applicant's parents. He said no, GM Thomson simply managed the let properties.

9.51 The Applicant was asked about a lead mine on Meikle Bennan Hill (or Little Bennan Hill). The Applicant said he was aware of the lead mine there but it was not within

the catchment area for the Property. The Applicant said any suggestion that the water supply to the Property is contaminated at source does not stand up as there are no lead mines near the Property. The Applicant referred to the mine being on the other side of the hill some miles away. He said the risk of contamination was highly unlikely. The water had not been tested at source.

- 9.52 Mr Cowan referred to the Test Report of Scottish Water at page 289 of the Respondent's Productions, the Test Report being dated 2 March 2020, and referred to the results showing more than bacteriological failures. The Applicant said he was not sent these test results and had been told of biological failures by Mandy Friel of Dumfries & Galloway Council. He said he took the action that was required and subsequent test results passed. The Applicant said he did not know whether the test results were provided to Mr Dougal Evans. He only received a telephone call from Mandy Friel on 19 February 2020 and further tests passed one month later.
- 9.53 Mr Cowan referred to the heavy metal test results on page 301 of the Respondent's productions, being a Test Report of Scottish Water dated 27 July 2020. The Applicant said he did not know who took the samples or where. However, because the results were out of specification he took them seriously.
- 9.54 The Applicant was asked how often private supplies should be sampled and the Applicant stated this should be done every year. He was asked whether he had seen any sample results that pre-date the one produced at page 298. The Applicant said the estate ought to have done samples. Turning to page 171 of the Applicant's productions, being an email from the Applicant to Mr Evans dated 19 February 2020 reporting on a call with Elsa Hall of Environmental Health, the Applicant said he was advised what to do and did it. It is normal to sterilise the pipes so the water is not re-contaminated by the pipes. Sterilising the pipes removes bugs and a tablet in the filter washes through.
- 9.55 The Applicant was asked whether he was surprised that the metals test results passed after treatment. The Applicant said he was not. The sterilising had been done weeks prior to the test results.
- 9.56 Mr Cowan asked whether elevated arsenic levels came from pipes within the water supply system. The Applicant said he did not believe so. Referring to page 302 of the Respondent's productions being a Test Report of Scottish Water dated 13 January 2022, the Applicant stated that the test results were within specification and there was no risk of arsenic in this water supply. The tests were carried out by the Environmental Health Department.
- 9.57 The Applicant agreed that it is his responsibility to ensure that the water within the Property is safe to drink. He was asked whether he had put measures in place to ensure this water was free of arsenic. The Applicant said there was no need to take such steps as the test results did comply.
- 9.58 Mr Cowan referred to the "Risk Assessment Summary Report" at page 370 (page 14 thereof) and asked whether the Applicant accepted the entry relative to arsenic. The Applicant said he did accept what was said within the report which shows the result to be within required limits.

- 9.59 Mr Cowan asked why a reverse osmosis unit was installed. The Applicant said the test results failed on copper and lead and the reverse osmosis system would deal with that as a temporary solution. He said that after Dumfries & Galloway Council tested the system in March 2020 it passed and was therefore in compliance with the necessary regulations such that no further action was required. The Applicant said that Scottish Water does not take the water samples. Scottish Water follows the Council's requirements and has done so.
- 9.60 Mr Cowan asked whether the Applicant accepted that of all the samples taken only one passed in every respect and the Applicant agreed.
- 9.61 Mr Cowan asked whether between 2016 and 2020 the water supply had been inspected or tested for heavy metals and the Applicant agreed that it had not. He agreed that it was odd that tests had not been done with the benefit of hindsight.
- 9.62 Mr Cowan asked the Applicant about the source of the water supply to the Property. He referred to paragraph 19 of the Applicant's Affidavit and page 361 of the Applicant's productions. The Applicant explained that the water supply feeds the Property and the fields below. He said there was no question of cross contamination. Mr Cowan asked why there would not be contamination in the absence of a back syphoning valve. The Applicant stated that he did not know whether the supply has such a valve. Water in any event, he said, runs downhill.
- 9.63 Referring to page 364 of the Applicant's productions, being page 7 of the "Risk Assessment Summary Report" which contains a list of recommendations of physical measures to be put in place, Mr Cowan asked the Applicant whether a stock proof fence had been installed as suggested at paragraph 4. The Applicant said this had not been done as he did not own the land in question. The Applicant was asked whether he had spoken to neighbours. He said he would deal with the water supply as a whole once he recovered possession of the Property. With regard to paragraph 17 of the recommendations, he repeated that the water supply requires overhauled anyway.
- 9.64 With regard to paragraph 6 of the list of recommendations, Mr Cowan asked whether the tank had been replaced to which the Applicant answered "yes". With regard to the stock proof fence the Applicant stated this had not yet been installed but would be done if the Property is retained. Mr Cowan asked whether there is stock in the field in question and the Applicant confirmed it was used from time to time for that purpose.
- 9.65 The Applicant accepted that it was his responsibility to ensure the Property is safe.
- 9.66 Mr Cowan referred to page 172 of the Applicant's productions being the letter from Mr Rome of Dumfries & Galloway Council dated 20 March 2023 containing a checklist of 13 issues. Reading issues 1 to 11 he asked the Applicant whether the Property sounded safe and the Applicant agreed that it did not. Mr Cowan asked whether the Property is fit to live in and the Applicant said those matters had been remedied as soon as he had been made aware of them. He was asked whether the back door had been repaired. The Applicant said this was not a safety issue. Mr Evans had responded immediately to Mr Rome about what is required. Reference was made to Mr Evans' email response to Mr Rome dated 23 March 2020 at page 176 of the Applicant's productions. Mr Cowan asked whether the Applicant's objective is to make sure the Property is safe rather than meet the Repairing Standard in full. The

Applicant indicated his primary motive is to make sure the Property is safe. He said that with regard to the Repairing Standard he was advised by Mr Evans that the Property met the Repairing Standard barely.

- 9.67 Mr Cowan suggested the Applicant had not shown much concern for the Respondent's comfort. The Applicant agreed that to be correct. Mr Cowan suggested he was trying to avoid unnecessary expense. The Applicant said he was looking to sort the Property and needed to deal with the Dumfries & Galloway Council's list and certain items could wait for the more general renovations. He said all of this happened only after notice to remove was given. Mr Cowan replied "I am aware of that".
- 9.68 Mr Cowan referred to productions 134 – 143 of the Respondent's bundle being Mr Rome's letter to the Applicant dated 20 March 2020 with attachments. Mr Cowan indicated that the Applicant appeared keen to point out that he supplied 60 litres of bottled water every 28 days for drinking but expected the Respondent to bathe and wash pots in the tap water. The Applicant answered "yes". Mr Cowan asked whether the Applicant was aware of the standard for all uses and the Applicant responded that he was so aware, bottled water had been supplied for drinking and he wished to sort out the water supply more generally as part of the renovations.
- 9.69 Mr Cowan asked whether the Applicant expected the Respondent to bathe and wash pots in water that is failing. The Applicant replied that the water supply had passed tests in March 2020. Nothing had indicated that the water was a problem for bathing. The Respondent had made allegations about arsenic that were nonsense. There is no risk.
- 9.70 Mr Cowan asked how the Applicant could know that water with a lead content of 4 times the normal is fit to bathe in. The Applicant challenged that suggestion saying he had seen no evidence to the contrary.
- 9.71 Mr Cowan referred to pages 136, 137 and 138 of the Respondent's productions showing the stove and fireplace, missing mortar externally and an internal view from the same room showing a damp patch respectively. He asked the Applicant whether the Property was fit to live in. The Applicant repeated that he was advised that the Property met the necessary requirements. Mr Cowan asked whether the Applicant would be happy to live in the Property. The Applicant answered saying that the Respondent took on the Property knowing its basic state. The advice he had was that the Property met the necessary requirements. He wants the Property renovated. He accepts that the Property needs substantial renovations.
- 9.72 Mr Cowan asked about an inspection of the Property in 2016 and whether the Applicant had seen that report. He could not remember. Mr Cowan asked whether the Property would have met the Repairing Standard in 2016. The Applicant said he could not remember what had been produced at that time. The Applicant said that the Property does not meet the Repairing Standard now. Following the Council's report discussions took place and action was taken but then Covid hit.
- 9.73 Referring to page 160 of the Applicant's productions, being an e-mail from G M Thomson to the Applicant dated 27 November 2019, the Applicant stated that he was advised by Mr Evans that the property scarcely met but nevertheless met the tolerable standard. Mr Cowan asked whether the Applicant knows the difference between the tolerable standard and the Repairing Standard. The Applicant said he relies upon his

agent as to whether or not a property meets the necessary regulations. Referring to page 173 being page 2 of Mr Rome's letter dated 20 March 2020, the Applicant accepted that it is his liability to ensure the Property meets the Repairing Standard. Mr Cowan questioned why that document did not mention the Repairing Standard. The Applicant said Mr Evans would require to answer that query. The Applicant said he took the report at face value. He assumed the Property met the Repairing Standard from the wording used.

- 9.74 Referring to pages 160 and 161 of the Applicant's productions, being the e-mail from G M Thomson to the Applicant dated 27 November 2019, Mr Cowan asked whether the Applicant took any steps to improve the Property. The Applicant said he did not take any such steps at that time but that was when he decided to give notice to renovate and modernise the Property.
- 9.75 Mr Cowan asked whether when the Applicant registered with the Council as a landlord he signed a document confirming that all his properties met the Repairing Standard. The Applicant said he could not remember when that was but he would have so signed. He had previously been a registered landlord. Mr Cowan asked whether the Applicant had ever received a warning letter which the Applicant denied. The letter from Dumfries & Galloway Council dated 20 March 2020 was the only such letter received. Mr Cowan asked whether the landlord registration department had given a warning to the Applicant and he answered yes but only after notice to remove had been served.
- 9.76 Mr Cowan asked why the Applicant did not do anything in November 2019. The Applicant said Mr Evans' report did not provide that level of detail.
- 9.77 Mr Cowan asked how much had been spent between November 2019 and winter 2020. The Applicant said nothing was spent on the Property during that period.
- 9.78 Mr Cowan asked whether the Applicant accepted that the stove and fireplace within the Property are the only sources of heating. The Applicant did not accept that to be the case. He said there are storage heaters throughout. He referred to Mr Rome's report stating that these had not been turned on.
- 9.79 Mr Cowan asked the Applicant whether, when he acquired the properties, he went through them to see what was required for them to meet the repairing standard. The Applicant said GM Thomson advised and electrical works and work to the roof was carried out.
- 9.80 Mr Cowan suggested that any repairs done were as a consequence of the Respondent's complaints to GM Thomson and the Applicant replied that he did not believe that to be true. Works were done to ensure electrical certificates were up to date. Roof repairs might have been undertaken as a result of the Respondent pointing out problems.
- 9.81 The Applicant accepted that he was under a statutory obligation to produce Electrical Installation Condition Reports and when he took over the properties these needed to be fully up to date. He could not comment on the position prior to his ownership. He understood inspections were carried out by GM Thomson every year.

- 9.82 Mr Cowan asked why in November 2019 the Property was in such a sorry state. The Applicant said the Property was in the same condition as when he took it over and at a rent of £320 per month the Property was in a basic state.
- 9.83 Mr Cowan asked the Applicant whether he felt any shame letting the Property out in that condition. The Applicant said he did not let the Property out in that condition. He took it on and when he did so he asked if it met the necessary standard and carried out works to a value of £17,000. He said the Property needs renovated and modernised. He had nothing to be ashamed of. He wants to bring the Property up to a good and modern standard and the issues raised by the Respondent only arose after service of the notice to remove.
- 9.84 Mr Cowan asked if the Applicant was embarrassed about the warning letter from the Council. The Applicant said the letter highlights what needs done and he has been undertaking big jobs when properties on the estate became empty. He said £17,000 had been spent on the Property.
- 9.85 Mr Cowan asked if David Porter is an employee of the farm contractors. The Applicant explained that Rusko farms the whole estate. However, farming is part contracted to Messrs Austin and Mr Porter is an employee of theirs. The Applicant said Rusko covers all estate business including forestry, letting, farming etc. The Applicant said he had no interest in the business of Austin. Mr Cowan asked whether the Applicant knew the legal status of that entity. He said the business was run by Neil and David Austin but could not remember if they traded as a limited company. He was asked whether he was a limited partner and he said no. The farming was done under contract, a typical farm contract arrangement.
- 9.86 Mr Cowan asked whether the Applicant had any relationship with Mr Porter. The Applicant repeated that he was employed by David and Neil Austin and he had no direct relationship with him. The Applicant said he had known Mr Porter since he had started working for the Austin's in 2017 or 2018. He did not know him well but would run into him once a month or maybe less. Mr Cowan asked whether the Applicant trusted Mr Porter and the Applicant stated that he had no reason not to do so.
- 9.87 Mr Cowan asked the Applicant when Mr Porter told him about the incident with the Respondent. The Applicant said that, in the first instance, David or Neil Austin told him. He supported the involvement of the Police. The Applicant has spoken directly with David Porter and he complained to the Applicant about being videoed by the Respondent whilst with his 13 year old daughter. The Applicant told Mr Porter to keep clear and not to respond to any provocation and to involve the Police if anything happened that is serious. Mr Cowan asked the Applicant whether he had this conversation with Mr Porter whilst preparing his statement. The Applicant said no, he cannot remember when he spoke with Mr Porter but it was within the period shortly after the incident.
- 9.88 Mr Cowan asked whether there had been any previous complaints about the Respondent. The Applicant said there had been complaints from Mr Porter and others about the Respondent videoing them.
- 9.89 Mr Cowan asked whether the Applicant's evidence was hearsay and the Applicant replied that he has already stated where information is second hand. His first hand

evidence is unequivocal. He told Mr Porter to keep clear and not to engage. He did not want the position to escalate and Mr Porter should keep clear because of the allegations of intimidation. The Applicant said he never told anyone to intimidate the Respondent. His position was the exact opposite. The Applicant said it was not the case that there had been any intimidation of the Respondent. Any intimidation was in the other direction by him videoing people going about their business.

9.90 At this juncture in the evidence of the Applicant Mr Cowan suggested that he would like to lodge further late documents. The Tribunal refused Mr Cowan's request, as previously, there being no reasonable excuse for documents not being lodged timeously.

9.91 Mr Cowan asked the Applicant if Mr Pickthall was an employee. The Applicant advised that Mr Pickthall is a self-employed builder who does some part-time gamekeeping. The Applicant confirmed Mr Pickthall would invoice him.

Referring to page 155 of the Applicant's productions, an internal email dated 15 December 2017 between two members of staff at GM Thomson which states that the Respondent rang them and refuses to have Neil Pickthall anywhere near the property, the Applicant couldn't say when but after the work was done on the roof of the Property, probably after the May 2017 work on chimney, the Respondent refused to allow him back.

9.92 Referring to pages 125 to 128 of the Applicant's productions, being the Spreadsheet of costs incurred, the Applicant confirmed the chimney work was done in May 2017. Mr Cowan referred to page 155 of the Applicant's productions, being a file note of GM Thomson & Co dated 15 December 2017 noting that the Respondent "refuses to have NP anywhere near the house in the future". Mr Cowan asked whether the Applicant was aware that the Respondent did not want Mr Pickthall near at that time. The Applicant could not say when he was made aware of the Respondent's position. Mr Cowan referred to 2 further jobs being carried out by Mr Pickthall in 2018 and 2019 and asked whether he had any say in those jobs being awarded to Mr Pickthall. The Applicant could not recall. The Applicant explained that G M Thomson & Co has the ability to appoint contractors for smaller jobs. He could not remember if they reverted to him or not in that connection.

9.93 Mr Cowan referred to page 165 of the Applicant's productions, being an e-mail from Mr Dougal Evans of GM Thomson & Co to the Applicant dated 19 February 2020 and asked the Applicant whether he had any veto on whether Neil Pickthall was employed. The Applicant said that Mr Pickthall does bits and pieces on the estate. He is used for smaller jobs but for a job of £120,000 to £150,000 in value the Applicant would expect to be asked about a job of that size.

9.94 Mr Cowan asked the Applicant to read the final paragraph of the document at pages 160 to 161 of the Applicant's productions, being an email from GM Thomson & Co to the Applicant dated 27 November 2019. He asked the Applicant whether the sentence referring to the Respondent refusing to have Mr Pickthall anywhere near the house is the reason for getting the Respondent out of the Property. The Applicant denied that to be the case. He said it was categorically not the reason and laughable to suggest that Neil Pickthall was the reason to evict the Respondent.

- 9.95 Mr Cowan asked why Neil Pickthall is “so special”. The Applicant said he would not use Mr Pickthall for bigger jobs. He said Mr Pickthall doesn’t like him doing that but the Applicant does not think he is up to bigger jobs. He is happy to use him for jobs that are suitable for him to do.
- 9.96 Referring to the file note in 2017, being page 155 of the Applicant’s productions (a file note of GM Thomson & Co dated 15 December 2017) Mr Cowan asked the Applicant why Mr Pickthall was given 2 further jobs. The Applicant said that a tenant has no right to prevent a landlord using whatever contractor he chooses. The Respondent cannot veto contractors that the Applicant wishes to use to renovate his properties.
- 9.97 Mr Cowan asked whether it was appropriate for the Applicant to employ Mr Pickthall again due to him putting the Respondent’s life at risk due to inadequate work on the chimneys. The Respondent did not agree with that scenario.
- 9.98 The Tribunal asked the Respondent whether repairs had been deliberately not carried out as notified by the Respondent. The Applicant said that the houses had not had work done for some time, some had not been modernised since the 1960’s. The Applicant’s concern was ensuring the properties met whatever rules applied. He is not a property expert. He wanted to know what was needed from a regulatory point of view. He referred to an inspection 6 or 7 years ago and various works having been identified on that basis. Thereafter further repairs were done when reported by tenants. He said GM Thomson & Co will get someone to deal with small problems based on cost or likely cost. Common sense applied.
- 9.99 Under questioning from the Tribunal, the Applicant confirmed that Woodhead is still occupied. That property has had damp issues and has been surveyed by specialists who have confirmed the problem is almost certainly caused by condensation. The property has rotten windows and the heating requires upgrading. It is his intention to put in air flow. He does not know if the property needs full renovations.

Re-examination –

- 9.100 There was no re-examination of the Applicant.

10. *Evidence – Mr Douglas Fraser Ross Evans*

Mr Evans joined the Hearing on 31 January 2023 from his office in Newton Stewart. His evidence continued on 18 April 2023.

An Affidavit of Mr Evans was produced in the Applicant’s productions at pages 137 to 148.

Examination-in-chief -

- 10.1 His full name is Mr Douglas Fraser Ross Evans, known as Dougal. His date of birth is 16 July 1954. He is employed as a Rural Practice Chartered Surveyor. He has been in practice as a Surveyor for 40 years and as part of his job he is intimately involved in let properties on landed estates. In his early career he inspected and valued residential properties. He is a fellow of the RICS and qualified in 1983.
- 10.2 Mr Evans started working for the Applicant’s father around 30 years ago doing *ad hoc* estate management and he carried on in that role when the Applicant “inherited” the Estate in the mid 2000’s. Following the closure of GM Thomson’s Castle Douglas

office, the Property was managed from his Newton Stewart office which led to his inspection of the Property in November 2019 when he went to see the Property with a colleague from the office to meet the Respondent.

- 10.3 Mr Evans stated that he had a familiarity with the other properties on the estate but was not intimately involved. He was aware of works being done to other properties as the Applicant would refer to these refurbishments but the Applicant was dealing with these himself. He said he was aware that Upper Rusko and Cuil Cottage were being done up and that Innockenoch had been renovated to a good standard. He said these renovations had not been done with tenants in occupation.
- 10.4 His inspection of the Property in 2019 was a routine inspection. He accompanied his colleague as he had never seen the Property previously. He had no prior dealings with the Respondent.
- 10.5 With regard to the condition of the Property, he was very concerned. This led Mr Evans to e-mail the Applicant and make recommendations that it would be unwise to carry on letting the Property as it needed a lot of work done. Mr Evans referred to his e-mail of 27 November 2019. He explained that the whole letting property scene was changing very rapidly. Regulations were more difficult to comply with particularly due to insulation requirements. The Property had no insulation, only space heating from night storage heaters, and there was no chance of these being capable of producing an acceptable living temperature. The Property is an old traditional farmhouse of stone and slate with lath and plaster walls. There is no insulation between the plaster and stone. Space heating could not adequately keep the Property warm. The external walls need insulated as well as the loft and below the floors to create a satisfactory atmosphere. He said it was not surprising that there are high levels of condensation in the Property with dark mould affecting the windows and window woodwork and with condensation spotting on walls and all of that is symptomatic of the house being cold. He said the Respondent would heat the stove but the warm air would condense on the cold walls. This is very common. He said the fabric of the Property is generally basic. He quickly came to the conclusion that to keep the Property in the rented sector would be dangerous and would be challenged as not complying fully with the Repairing Standard. The Property needs substantial upgrading. To attempt to refurb the Property on this scale would not be possible with someone living in it.
- 10.6 With regard to the wiring, although the wiring certificate is satisfactory, Mr Evans stated that once plaster and floors are removed the wiring cannot be retained and put back in. It is much easier and cost effective to replace which gives an opportunity to reconfigure. Everything therefore comes out, namely wiring, plumbing, heating etc. At least 100mm of insulation is needed between the stonework and the plasterboard and therefore the wiring cannot go back where it used to be.
- 10.7 With regard to the kitchen, Mr Evans said it is very basic and there is an opportunity to take out and refit a modern kitchen.
- 10.8 Following Mr Evans' e-mail to the Applicant, a date was agreed to serve papers to bring the tenancy to an end in order to recover vacant possession of the Property.

(At this point during Mr Evans evidence the Respondent complained that a shepherd was driving his vehicle up and down outside the Property “endlessly”, “giggling at the window”. He asked the Tribunal to note the position.)

- 10.9 The Notices to remove were served in February 2020. Mr Evans was referred to page 164 of the Applicant's productions, being a letter sent by him to the Respondent dated 4 February 2020 enclosing Notices to Quit the Property. After service of the Notices and due to Covid, the Applicant withdrew the Notices. Mr Evans said a letter was sent to the Respondent in March 2020 withdrawing the Notices.
- 10.10 Following service of the Notices, Mr Evans said there was a torrent of e-mail correspondence from the Respondent regarding various aspects of the Property which is when the water supply issue was raised. Other repairs were also brought to his attention. He referred to the replacement of a multi-fuel stove due to a problem with the flue and also an issue with the power-line from the house to the steading which was tangled in a tree which needed trimmed. He said there was no danger as the wire was fully insulated. Mr Evans said he asked the Respondent to test the night storage radiators but access was refused.
- 10.11 Under reference to page 169 of the Applicant's productions, being a letter sent by Mr Evans to the Respondent dated 19 February 2020, he said the Respondent had obtained a water test which had failed and Mr Evans advised him not to drink the water and provided him with bottled water.
- 10.12 Mr Turnbull asked Mr Evans what works were done to the water supply. Mr Evans stated that the ultraviolet filters need to be kept clean and changed as often as possible. The main challenge was access by the plumber to keep the ultraviolet filters working. Mr Turnbull asked Mr Evans whether he was aware that the Applicant had been contacted by Dumfries & Galloway Council in March 2020. He said he was aware of contact by the Landlord Registration department.
- 10.13 Mr Turnbull referred to page 172 of the Applicant's productions, being a letter dated 20 March 2020 from Mr Rome, HMO Licensing & Landlord Registration Officer of Dumfries & Galloway Council to the Applicant. He also referred to page 176, being Mr Evans' reply dated 23 March 2020. Mr Evans stated that the main item under discussion was the stove and flue. But Neil Pickthall had sorted that. The Respondent had told Mr Evans that he was getting shocks from the sink. The Respondent had also said the stove was smoking so he had disabled the smoke detection equipment. Mr Evans said the water had been re-tested and was satisfactory and re-served the Notices to remove on the Respondent.
- 10.14 Under reference to page 178 of the Applicant's productions, being Mr Rome's response to Mr Evans dated 24 March 2020, Mr Evans stated the Council was not unhappy. A reasonable attempt was being made to deal with the issues as appropriate and there was little point spending money on a quick fix when the issues would be part of bigger works. The stove was replaced entirely later in the year. Mr Evans had to wait for Covid to ease to allow access and contractors had completely shut down. It was difficult to get work done at that time. Referring to pages 180 – 184 of the Applicant's productions being various photographs of the Property, page 184 showed the previous stove.

- 10.15 With regard to external pointing, Mr Evans stated that this was not a huge factor relative to what was going on inside the Property. A stove wall is almost 3 foot thick with a rubble core and therefore water is diverted down the rubble core. There were not huge problems of penetrating damp only an odd spot here and there but not a major problem.
- 10.16 With reference to page 185 being Mr Rome's e-mail to Mr Evans dated 19 June 2020, Mr Evans stated that Mr Rome had been called out by the Respondent who wanted to know what they were doing. He was satisfied given Covid and the resultant difficulties.
- 10.17 Mr Turnbull referred to pages 215 and 219 to 220 of the Applicant's productions relative to the electricity supply, Mr Evans stated that at random times it was reported that the power was off. The cables were re-fixed to outbuildings and trees were trimmed to prevent interference with the lines.
- 10.18 By reference to page 219 of the Applicant's productions, being an email from Adam Black, Team Leader Community Enforcement at Dumfries & Galloway Council dated 29 July 2020, Mr Evans agreed with Mr Turnbull's suggestion that the Respondent's complaints were not being ignored.
- 10.19 Under reference to page 238 of the Applicant's productions, being the e-mail from Mr Rome to Mr Evans dated 31 July 2020, Mr Turnbull asked about the failed test carried out by Scottish Water. Mr Evans stated that he was not aware prior to the e-mail that a test had been done of a sample taken and provided by the Respondent. From then bottled water has been supplied. Initially the Environmental Health Department of the Council supplied some drinking water but refused to supply more and the Applicant thereafter took over and continues to supply bottled water to this day. By reference to page 246 of the Applicant's productions being an email from Mr Evans to Mr Rome dated 1 August 2020, Mr Evans stated that the Property still had at that time a satisfactory electrical report and a copy was sent to the Respondent.
- 10.20 Under reference to page 250 of the Applicant's productions, being a further email from Mr Evans to Mr Rome dated 1 August 2020, Mr Evans confirmed that communication expressed his views on the issues arising. He said Dumfries & Galloway Council were happy in general terms that they were doing the best they could in the circumstances and in the expectation that vacant possession would soon be recovered to allow refurbishment to take place.
- 10.21 With regard to the service of Notices, Mr Evans stated that some had been served with the wrong date and had to be withdrawn. He could not recall what was served and when. Under reference to page 275 of the Applicant's productions, being an email from Mr Evans to Mr Rome dated 5 August 2020, Mr Evans agreed that access to the Property was being refused by the Respondent. He said it had proved difficult to get access to do works.
- 10.22 Under reference to page 284 of the Applicant's productions, being an e-mail from Mr Evans to Mr Rome dated 7 August 2020 giving an update, and page 307 being an email from Mr Evans to the Respondent dated 16 September 2020 relative to access, Mr Evans said they were still trying to tidy up 3 matters and arrange access.
- 10.23 Mr Evans said he had not been in the Property since November 2019. He said he had seen the report of Mr Bridge. He said Mr Bridge's report backs up what Mr Evans

had said in 2019 and more. He said that when the process had begun vacant possession was anticipated within a couple of months of serving the Notices, not 3 years. If vacant possession had been recovered straightway a beautiful property would be available for rent.

- 10.24 Mr Turnbull asked whether Mr Evans could comment on Mr Pickthall's relationship. Mr Evans said he could not comment. He had no detailed knowledge only what he had heard third hand. He had no dealings with David Porter and had never met him. He had met Mr Pickthall on several occasions and was involved in using him for repairs on other parts of the Estate. With regard to the Property Mr Pickthall was not instructed by Mr Evans but by the Applicant. Mr Evans was not present when any incidents took place.
- 10.25 Mr Turnbull asked whether there was any suggestion that pressure should be applied to the Respondent. Mr Evans said absolutely and categorically not.
- 10.26 Mr Turnbull asked whether any instructions had been given to Mr Evans regarding the incidents. He said the whole tone of the Applicant's conversations were to avoid creating any dangerous situation that might be misconstrued and to back off.
- 10.27 With regard to the water supply, Mr Turnbull asked if anything had been done to mitigate this. Mr Evans said Dumfries & Galloway Council had done a risk assessment of all the Estate approximately 1 year ago and had hired in a Consultant for that purpose. The risk assessment is at page 358 of the Applicant's productions.
- 10.28 With regard to the Property, the water supply is complex. The supply rises from land not owned by the Estate and also supplies another cottage. Therefore any work needs to be done with the knowledge and compliance of those proprietors. Mr Evans said some of the contamination within the supply is due to the pipework within the Property which would be removed and would resolve that issue.
- 10.29 Mr Evans was asked whether all of the issues identified could be attended to with the Respondent in occupation. Mr Evans said no the whole supply would need treated in a similar way to the house.
- 10.30 With regard to the duration of the works, Mr Evans said that depended upon what is uncovered. There is at least a year's work together with decoration and therefore 18 months from start to finish might be required. He said the Applicant's preference is to use the team which he has worked with for a long time. He may need to wait to get them. A specification of work is required but any attempt to get access for that purpose is refused.

Cross-examination by the Respondent –

- 10.31 By reference to the Affidavit of Mr Evans and paragraph 3 thereof Mr Evans explained that as houses on the Estate became vacant they were renovated by the Applicant.
- 10.32 The Respondent asked the Applicant whether obtaining vacant possession included the tenants getting "a wee nudge". He suggested that it was not coincidental that long-term tenants decided to leave. The tribunal asked the Respondent what he meant by "a wee nudge" and the Respondent referred to intimidation at the hands of the gamekeeper whereby long-term tenants were intimidated out. Mr Evans said he had no knowledge of any intimidation on the estate.

- 10.33 By reference to paragraph 6 of the Affidavit the Respondent asked why the Property was still in a state in 2019 when his tenancy commenced in 2013. He asked why the Property had not been brought up to a tolerable standard before then. Mr Evans replied that the first time he set foot in the Property was in the 2019. In the intervening years after the tenancy commenced the Repairing Standard was brought in and was being applied more forcibly by relevant authorities. It was against that backdrop that Mr Evans made recommendations to the Applicant that it was inevitable that the Property required to be refurbished. He said every property came to that point in life. He said an increase in standards was being foisted upon the landlord sector. He said that what was acceptable 6 years ago was not acceptable now.
- 10.34 With reference to paragraphs 15 and 16 of Mr Evans' Affidavit, the Respondent asked why there is no mention of water tests done on 17 February and 19 February 2020. He said in total there had been 3 different tests by Scottish Water. Mr Evans said his remit was to answer to the Applicant after his inspection. He was not hiding behind anything.
- 10.35 Referring to paragraph 17 of the Affidavit the Respondent suggested to Mr Evans that the Notices to remove were withdrawn due to the letter from the Landlord Registration Unit dated 20 March 2020 (page 172 of the Applicant's productions). Mr Evans said that he had been instructed by the Applicant to withdraw the Notices as the Applicant was concerned that the Respondent would be put out the Property during Covid and would have difficulty finding alternative accommodation.
- 10.36 The Respondent asked whether Mr Evans is aware that the Property should meet the Repairing Standard at the start of the tenancy and throughout. Mr Evans confirmed he was so aware which was why he made recommendations to the Applicant to recover the Property and refurbish. The Respondent asked again whether the withdrawal of the Notices was due to the letter of 20 March 2020 received from Mr Rome of Dumfries & Galloway Council. Mr Evans stated that he acted when he was told to withdraw the Notices.
- 10.37 The Respondent asked who in the Landlord Registration Unit said that it was acceptable to supply bottled water in order to meet the Repairing Standard. Mr Evans said Mr Rome had indicated such as supply was a solution in his calls with him – not a complete solution – but one that was sufficient in respect in that other works were being done.
- 10.38 By reference to page 246 of the Applicant's productions being the email from Mr Rome to Mr Evans dated 31 July 2020 the Respondent challenged Mr Evans that the wording there was at odds with his position. Mr Evans stated that the letter set out the legal situation. However the practical situation required to be addressed.
- 10.39 The Respondent asked Mr Evans whether at the meeting on 22 November 2019 Mr Evans recalled the conversation about Mr Neil Pickthall. Mr Evans said he was struggling to remember what was said but the Respondent left the impression that he did not rate him as a tradesman and did not want him back.
- 10.40 Under reference to page 155 of the productions, being GM Thomson & Co's file note dated 15 December 2017, the Respondent suggested that the Applicant was forcing tradesman on him and was therefore complicit in intimidation. He said he did not

remember. Mr Evans explained that "Nikki" is a former employee of GM Thomson based at their Castle Douglas office. Under reference to page 154 of the productions being a file note of GM Thomson & Co dated 11 September 2017 Mr Evans stated that "Rose" was also an employee before the office shut.

- 10.41 The Respondent said Mr Evans did not explain that the reason for McKerlies' visit in 2017 was to measure up for a cable for a new shower that the Respondent had been promised since 2016. Mr Evans said this took place 2 years before he set foot in the Property.
- 10.42 By reference to page 1 of the Respondent's productions, being an email from GM Thomson & Co to the Respondent dated 2 June 2016, the Respondent asked about jobs carried out. Mr Evans said he was not in a position to comment as this occurred 3 years prior to his involvement. The Respondent asked whether an electric shower is a basic necessity. Mr Evans said there is an electric shower in the Property. However the Property is not on a mains water supply. The Respondent suggested the shower did not work and referred to an electric immersion heater. Mr Evans confirmed the shower had still not been supplied. However, he said that there was an immersion heater and a bath which both worked. The Respondent asked whether the phone line had been replaced. Mr Evans said he had no knowledge of any issue with a phone line. The Respondent asked whether pest control had been dealt with. Mr Evans said he didn't know. Mr Evans made reference to an email from himself to the Applicant, dated 28 April 2022, which provides details of when access was denied by the Respondent. The Respondent replied saying that he was unable to allow access during the 'lockdown'. The Respondent also referred to an email from himself to Mr Evans, dated 25 July 2020, this states that he has taken a day off work to allow the contractor access to fit a stove.
- 10.43 The Respondent asked Mr Evans whether he had relayed his reported complaints to Mr Gilbey. However, Mr Evans said his correspondence with his client is private and the Respondent was not entitled to insist on seeing that documentation. The Respondent asked whether Mr Evans was refusing access to such reports. Mr Evans said if these were between himself and his client then, yes, access would be refused.
- 10.44 With reference to page 3 of the Respondent's productions, being an email from GM Thomson & Co to the Respondent dated 5 April 2017, the Respondent asked about the timeframe for filters to be dropped off. Mr Evans said that should only take a few days or a week. He also said that the UV bulb should be changed every 6 months.
- 10.55 Referring to page 172 of the Applicant's productions, being Mr Rome's letter to the Applicant dated 20 March 2020, the Respondent asked if the second water test carried out set alarm bells ringing with Environmental Health and the Applicant. Mr Evans said that they wanted to test against a backdrop of increasing involvement of Councils in private water supplies. This is the modern world we live in with increasing regulation.
- 10.56 The Respondent asked Mr Evans about the "2017 Private Water Supplies Regulations Scotland". Mr Evans said he is aware of them but not sure what they say.
- 10.57 The Respondent asked Mr Evans if he was aware of Type A and B water systems. Mr Evans referred to one being a single supply and the other supplying several properties.

- 10.58 The Respondent suggested Type A water supplies are for commercial properties and that he rented the Property under a Type A supply. Mr Evans said he might be right about that. The Respondent asked Mr Evans if he was aware that all water supplies in Rusko estate were all erroneously under Type B. Mr Evans said he was not aware of how the supplies were classed.
- 10.59 The Respondent asked if Mr Evans realised the difference between Type A and B and therefore issues relative to the water test being carried out. Mr Evans said he was not an expert in that field. The Respondent suggested Type B supplies did not need water tests unless the owner decided to do them. Mr Evans said he did not know about that. The Respondent asked whether Mr Evans was aware that the Environmental Health Officer who contacted the Applicant had erroneously put the Property and all other properties under Type B when they should have been under Type A. Mr Evans said he was not so aware.
- 10.60 Under reference to page 171 of the Applicant's productions, being an email from the Applicant to Mr Evans dated 19 February 2020, the Respondent asked Mr Evans whether that email warned of the consequences of the 17 February and 19 February 2020 water tests at that time. Mr Evans said he took the correspondence at face value. The Applicant had a call that the supply had not been tested and was advised to make sure it was regularly tested and equipment serviced. He said that by upgrading the system is the way that they do business. The Respondent asked whether there were any records from 2016 in GM Thomson's Castle Douglas office. Mr Evans repeated that his evidence began from November 2019.
- 10.61 The Respondent asked if Mr Evans was suggesting there had been no sampling done before 19 February 2020. The Respondent said that was not the case. His involvement began in November 2019 and he was not in a position to answer questions prior to that. The Respondent asked why Mr Evans was here and he answered that he was here to obtain an order to have the Property refurbished. He was not in a position to speak to what previous colleagues did.
- 10.62 The Respondent asked how much had been spent on upgrading the water systems. Mr Evans said this was not relevant.
- 10.63 The Respondent asked whether it was true that the Applicant had spent £20,000 on a new borehole where others tenants are located. Mr Evans said that he did not know, that this was not relevant anyway, and that he would not be divulging anything.
- 10.64 The Respondent referred to a call made on 12 February 2020 after phoning round when Scottish Water agreed to come out and test on 3 occasions. He said this chain of emails instigates intimidation and harassment to get him out of the Property. Mr Evans said this was not the case.
- 10.65 The Respondent suggested that his refusal to have Neil Pickthall anywhere near the Property and the intimidation was all to do with the Applicant forcing him out. Mr Evans said "absolutely not". He said he inspected and made recommendations on trying to get the Respondent evicted. This was nothing to do with David Porter or Neil Pickthall. This was due to the likely failure of the Property to comply with regulations.

- 10.66 The Respondent asked if Mr Evans had passed onto the Applicant all water test results. Mr Evans said the Applicant had seen all water tests annually and these were sent to GM Thomson in duplicate.
- 10.67 The Respondent challenged Mr Evans on his statement that no work had been done on the water system. Mr Evans qualified that by referring to a new water holding tank being installed when it failed. The Respondent asked what failed. Mr Evans said the structure failed and the tank had to be replaced.
- 10.68 With reference to the pipework (serving the tank), Mr Evans said it remained the same and didn't need replaced. Mr Evans said the Applicant had instructed this directly and the tradesman does what he needs to do. He is not "holding the plumber's hand".
- 10.69 The Respondent asked whether Mr Evans was aware that the night before the tank was replaced the water supply was turned off and the Applicant had not informed him that the tank would be taken out. Mr Evans said he did not know but when the tank failed it needed replaced as soon as possible. The Respondent asked whether Mr Evans was aware that the tank had been leaking since prior to the tenancy. Mr Evans said he was not aware. He said that in dry weather, having a leaking tank is not good for a private water supply.
- 10.70 The Respondent asked Mr Evans what the Applicant intends to do with the Property once renovated. Mr Evans said that decision was still in its infancy. There was no specification for refurbishment of the Property and he did not know what the Applicant intends to do.
- 10.71 Under reference to page 176 of the Applicant's productions, being the email from Mr Evans to Mr Rome dated 23 March 2020, the Respondent challenged Mr Evans that this document is at odds with what he said. Mr Evans denied that be the case and repeated that he does not know the Applicant intends to do.
- 10.72 The Respondent asked Mr Evans if David Porter is the sole farm operative looking after stock on the estate. Mr Evans said the stock was owned by Messrs Austin who employ Mr Porter to look after the stock. Mr Evans said the Applicant does not direct operations. The Respondent asked whether the Applicant draws an income from the Austin Partnership. Mr Evans said he was not privy to that.
- 10.73 The Respondent asked Mr Evans whether he remembered emails about walls being knocked down at the Property. Mr Evans said he did not remember that. Mr Evans said the Respondent had made a lot of spurious accusations.
- 10.74 The Respondent asked whether every time a tenant requests jobs done these are run past the Applicant. Mr Evans said he has to get authorisation to spend money.
- 10.75 The Respondent asked whether Mr Evans had dealt with the water failures and the issues raised by the Environmental Health Department at the insistence of Andrew Rideout of Dumfries & Galloway NHS in January 2022. Mr Evans said he did not know. He said the Respondent had been provided with bottled water. He said the ultraviolet bulbs and filters had been kept up-to-date and much of the heavy metals coming from the pipework contained within the Property would be addressed by the renovations.

- 10.76 The Respondent asked whether Mr Evans had sight of the pipework in the Property. He said he had seen some of it. He was asked whether he had seen lead pipework. Mr Evans said he was not aware. The Respondent asked whether the plumber had seen lead pipework. Mr Evans said he was not aware of that. When the floorboards were lifted there were several different pipes there – copper, lead etc.
- 10.77 The Respondent asked whether Mr Evans was aware that in 2017 McKerlies ripped up the floors to wire in alarms. Mr Evans said he was not aware of that as he was not then involved.
- 10.78 The Respondent asked Mr Evans if he was still maintaining that the pipework was responsible for the heavy lead, manganese and arsenic in the water supply. He said they were contributory.
- 10.79 The Respondent asked whether it was true that the Property had not met the tolerable standard since 2013. Mr Evans said his concerns were summarised in his email to the Applicant. The house is old and needs upgrading and vacant possession is required for those works.
- 10.80 The Respondent referred to page 166 of the Applicant's productions, being an email from the Applicant to Mr Evans and another dated 19 February 2020, and asked whether Mr Evans was aware that Scottish Water had carried out the testing. Mr Evans said he did not know who took the tests. He said if Scottish Water took the tests, that was fine but he doubted that at the time.
- 10.81 With reference to page 165 of the Applicant's productions being an email from Mr Evans to the Applicant dated 19 February 2020 the Respondent asked why Mr Pickthall had been instructed. Mr Evans said the Respondent had made it clear that he did not want Mr Pickthall. However he seeks his client's instruction and checks which tradesman he wants used.
- 10.82 The Respondent suggested to Mr Evans that he had a duty of care to tenants not to force a bullying man onto a tenant. Mr Evans replied that no work had been instructed and the Respondent had not had to deal with him.
- 10.83 Referring to the spreadsheet at page 110 of the Applicant's productions from May 2019 onwards, the Respondent asked why Mr Pickthall was still being forced onto tenants who have stated they don't want him. Mr Evans said Mr Pickthall worked on the estate for a long time. There were not huge number of tradesmen in the area. He is perfectly adequate to deal with slates and outside work and therefore he had minimal contact with the Respondent.
- 10.84 On page 4 of the Respondent's productions the Respondent referred to an email he sent to "Nicky" (dated 5 April 2017). He asked the name of the individual who came out with Nicky McFarland. Mr Evans said he did not know. The Respondent said the visit was on 23 May 2016 and various issues were found. However, by 5 April 2017 these had still not been addressed. He asked Mr Evans whether this was a fair period and Mr Evans said no.
- 10.85 The Hearing adjourned and continued on 18 April 2023. At the outset of the Hearing on 18 April 2023 the Respondent sought to lodge further late documents/submissions comprised within or attached to two emails dated 16 April 2023 and a further email

dated 17 April 2023 headed "Submissions". Mr Turnbull for the Applicant opposed the material contained within or attached to the emails dated 16 April 2023 as being too late. He said the email dated 17 April 2023 appeared to be a summary of the Respondent's own evidence.

Once again, there was no reasonable excuse advanced by the Respondent for the late lodging of documentation as required in terms of Rule 22(2) of the Rules. The Tribunal therefore refused the email dated 16 April 2023 timed at 10:39. In that the email dated 16 April 2023 timed at 19:09 sought to challenge the CMD Note of 19 April 2022 that challenge came too late and should have been dealt with by review or appeal in terms of the Rules. Accordingly that email was also refused.

With regard to the email dated 17 April 2023 which comprised a summary of the Respondent's evidence the Tribunal indicated it would consider that email as part of the Respondent's evidence and address the content at that point in the proceedings.

- 10.86 The Respondent referred Mr Evans to pages 48 to 52 of the Respondent's productions, being screenshots of various text messages. In doing so the Tribunal reminded the Respondent of the scope of the disputed issues for determination between the parties.
- 10.87 The Respondent asked Mr Evans whether it was fair that tenants were being put in a state of fear and alarm. Mr Evans stated that Mr Porter and Mr Pickthall were not employees of the Applicant. Mr Evans stated that he had no knowledge of particular events but it was not acceptable for any tenant to be harassed in their home. He said there were never any instructions to carry out intimidation and he would never do so.
- 10.88 The Respondent referred to page 275 being an e-mail from the Respondent to Mr Evans dated 5 August 2020 regarding access by an electrician.
- 10.89 The Tribunal asked when the electrician's visit took place. Mr Evans said he could not remember. It was after the Notices to remove had been served. There were concerns about cables being tangled in a tree. The Respondent allowed access to get the cables switched off. Allan Smith from Mckerlies was also asked to take access to the Property to check the night storage radiators were working as the Respondent had complained about them. The smoke detectors also required checked. Mr Smith was told they were working. The Respondent made reference to sleeping in his car due to the smoke coming down the chimney. Mr Evans said he stood corrected in that the Respondent had allowed access on some occasions but it was difficult and tiresome for staff to arrange until recently.
- 10.90 The Respondent referred again to page 1 of his productions being an email from GM Thomson to the Respondent dated 2 June 2016 and to there being a problem relative to pest control and the shower. Mr Evans repeated that he had no involvement prior to 2019.
- 10.91 The Respondent referred to page 2 of his productions being an e-mail from him to GM Thomson dated 2 June 2016. Mr Evans said the e-mail sounded constructive. With regard to page 3, being an e-mail from GM Thomson to the Respondent dated 5 April 2017, Mr Evans accepted that there appeared to have been no problem getting into the Property. He referred to page 4 being an e-mail from him to GM Thomson dated 5 April 2017 and asked whether there was any problem between him and Mr Evans' staff. He also referred to e-mails from July 2020 on pages 283 and 284 sent by the

Respondent to Mr Evans and asked whether these looked like he was denying access. Mr Evans said, no.

- 10.92 The Respondent referred to page 147 of the Applicant's productions being an e-mail dated 28 April 2022 sent by Mr Evans to the Applicant and attached to the Applicant's affidavit and the Respondent made reference to him suffering with dyslexia and having heart problems possibly caused by lead. He asked Mr Evans whether it was acceptable to force entry into a vulnerable person's home during a national lockdown without masks and without using hand gel which he had provided on the kitchen table. Mr Evans said this would not be acceptable but life carried on and if they needed to inspect they would do their best to keep matters moving forward. They had to keep the business going.
- 10.93 The Respondent referred to him being unvaccinated and in a vulnerable group.
- 10.94 By reference to page 303 of the Respondent's productions, being an e-mail dated 25 January 2021 from the Respondent to Mr Evans, Mr Evans said he understood the document and they were trying to operate as best they could given the regulations which were constantly changing at that time. The Respondent suggested Mr Evans only applies the regulations when it suits him. He said the fact the Gamekeeper went shooting was perfectly legal at the time.
- 10.95 At that point the Tribunal refused to allow the Respondent to question Mr Evans on intimidation by virtue of his correspondence. This is not part of the disputed issues.
- 10.96 Under reference to page 214 of the Applicant's bundle, being an e-mail from the Respondent to Mr Evans dated 25 July 2020, he asked whether he had denied access. Mr Evans said he had not because that was to everyone's benefit. He agreed access had been allowed and for the estimate previously.
- 10.97 The Respondent referred to pages 267 and 268 being an e-mail dated 2 August 2020 from the Respondent to Mr Evans with a letter dated 19 February 2020 screenshot therein. He asked whether Mr Evans accepted that the Respondent had asked for copies of reports of annual inspections and access to those reports had been denied. Mr Evans said yes, he did not copy the Respondent into private correspondence with his client. The Respondent suggested that those reports should contain all his complaints regarding the Property, the water supply etc. Mr Evans said the agent's function is to filter out what is right, wrong and reasonable. A tenant can make all sorts of requests, some will be valid, some not. He has no obligation to pass on to the Applicant absolutely everything. His obligation is to filter out what is needed for the Property to be maintained.
- 10.98 The Respondent asked whether the reports made any reference to the quality of the water. Mr Evans said no, in 2019 when he inspected the property there was no issue of water which only arose after service of the Notices to Quit.
- 10.99 The Respondent asked whether it was acceptable after refusing upgrades to the Property to expect him to take time off work "to sit there and rub my nose in it" when evicting him in favour of a new tenant. Mr Evans said he understood the position would be irritating from the Respondent's perspective but he had a job to do. It was never thought Covid would take so long.

- 10.100 With regard to Mr Evans's inspection in November 2019, the Respondent asked if this was an annual inspection. Mr Evans said it was and for him also to become familiar with the Property. The Respondent asked if it was fair that Mr Evans had tricked him. The inspection was not an annual inspection but to serve Notice to Quit papers. Mr Evans said this was not the case, Notice to Quit papers were not served until 4 February 2020.
- 10.101 The Respondent said that on 19 February 2020 Mr Evans wanted access again therefore the previous inspection was not an annual one. Mr Evans said he did not set out to trick anyone. At the inspection he was not happy with the condition of the Property and made recommendations in the interim to get vacant possession to completely refurbish the Property.
- 10.102 The Respondent suggested the Mr Evans' e-mail to the Applicant (dated 27 November 2019, pages 160 and 161 of the Applicant's productions) stated that they should make sure they were careful not to make it appear that they were trying to force the Respondent out. Mr Evans said he was aware of the bad blood between them.
- 10.103 The Respondent asked if it was true that in e-mails about the reverse osmosis system that Mr Evans wanted to fit and then sent out Environmental Health for a test. Mr Evans said he wanted potable water required and needed to know if the reverse osmosis system was working.

Re-examination -

- 10.104 Mr Turnbull referred Mr Evans to correspondence with "Emma" and "Nikki" and suggested that whilst there were no difficulties with them in 2016/17, Mr Evans' involvement was from 2019 and there was then a difference in attitude. Mr Evans said that there had been a turning point in relations because of serving Notices but they were also instructed to withdraw these during the early days of Covid. Mr Evans said that the Respondent was naturally upset this course of action had been chosen and taking a balanced view the Property had reached the end of its useful life. It was not fit for purpose and the proverbial bar had been raised in terms of requirements. It was not an easy or cheap job to do.
- 10.105 Mr Turnbull asked Mr Evans if it was feasible to do the works without vacant possession. Mr Evans said that could not happen. There would be no sanitation, no kitchen, no services.
- 10.106 With regard to the suggestion that Mr Woodburn had been intimidated, Mr Turnbull asked if Mr Evans had ever had complaints or enquiries from the Police regarding harassment by Mr Porter and Mr Pickthall. Mr Evans said no.
- 10.107 Mr Turnbull asked whether the water supply is the true motivation for the Respondent's eviction from the Property and that was not known to be an issue at the time of the inspection in 2019. Mr Evans said the first water test result on 19 February 2020 was after the first Notices were served.
- 10.108 Under questioning from the Tribunal Mr Evans was asked the current situation regarding the refurbishment of other properties. Mr Evans said that the most recent refurbishment was of Cuil Cottage which had been completed. Mr Porter lives there. Mr Evans thought 5 properties had been refurbished. He said that he believed there

was another 2 to refurbish including the Property. He said all of the properties were let. Nothing was lying empty. He said none of the original tenants had returned.

10.109 The Tribunal asked, given the level of investment, if the rent had increased. Mr Evans said he thought there would be an increase but could not be sure of the amounts before and after.

10.110 The Tribunal asked whether Mr Evans now had a programme of cyclical maintenance in place. Mr Evans said he was semi-retired but his firm remains involved and do twice yearly inspections of every house.

10.111 The Tribunal asked what the original process was for reporting repairs. Mr Evans said these went directly to the Applicant or to his office. The Tribunal asked if there was an out of hours contact number. Mr Evans could not say but this was a small community and everyone knows where the Applicant resides. Regarding the intimation of repairs what advice was given Mr Evans said that repairs can be raised at any time. He said there are 2 members of staff in the Dumfries office who deal with repairs specifically. The Tribunal asked how long it would take from a complaint to be received to a tradesman attending. Mr Evans said it was impossible for him to say. There is no published timescale.

11. *Evidence – The Respondent*

11.1 The Respondent's evidence was given by telephone call on 18 April 2023 and continued on 15 August 2023. On both occasions the Respondent was at home at the Property.

The Tribunal stated that it would treat the Respondent's e-mail of 17 April 2023 as his written evidence and the Respondent referred to that document as he gave oral testimony.

Examination in Chief -

11.2 The Respondent stated that his date of birth is 17 November 1967 and that he is employed as a fabricator welder.

11.3 Under reference to page 176 of the Applicant's productions being Mr Evans' email to Mr Rome dated 23 March 2020, he stated that Mr David Porter is still working on the estate. Referring to the final paragraph of page 176 the Respondent stated that if his intention was not to do work why was access needed. The Applicant was trying to evict him and Mr Porter was causing him stress and this was harassment.

11.4 The Respondent stated that he had spent his savings on a campervan during the pandemic in case he had been forced out the Property.

11.5 He referred to pages 51 to 105 of the Respondent's productions which he said were a sample of text messages recording what was going on day and night throughout the Covid lockdown and these proceedings. By reference to page 52 he said he realised that Mr Porter was trying to set him up. He referred to Mr Porter's child and girlfriend being involved. Referring to page 53 he said that after seeing the photographs and e-mails the Police said they had had a word and acknowledged the activities were still happening.

- 11.6 Referring to page 54 the Respondent said that he used to sit in his garden with his dogs. Mr Porter would come back after working hours and drive his quad bike. He would cover the Respondent in dust. He said it was warmer outside than in the house and that Mr Porter would fly up and down "to press [the Respondent's] buttons". He said that Mr Porter would shine a light from the tractor into his livingroom window and that he would put the forks of the tractor up in the air and bang them up and down for no reason. (This alleged activity was not put to Mr Porter in cross-examination as ought to have been the case had the Respondent intended to rely upon it.) Mr Woodburn was watching on video chat and the Respondent could turn his camera around and let him see what was going on.
- 11.7 The Respondent referred to page 56. He said that Neil Austin was in partnership with Mr Gilby on the farm. He referred to page 57 and said that referred to an e-mail from Professor Waterston.
- 11.8 Referring to page 69 the Respondent referred to his outside dog kennels and said he had to rehome the dogs as they were terrified. On page 70 he said the reference to "she" is the girlfriend of David Porter. Page 71, he said, also refers to David Porter when he was sitting in his garden on the bench.
- 11.9 Referring to page 72 the Respondent said Mr Andy Woodburn was disabled. He was worried when the intimidation would be directed at him. Mr Woodburn would be parked in the village and Mr Porter would stare as he drove by.
- 11.10 Referring to page 73 he said this is all about David Porter.
- 11.11 Referring to page 79 he said that during lockdown he was living at the Property alone and only saw Neil Pickthall, David Porter and sometimes the Austins. He said it felt like house arrest. Every 2 weeks he would go out for shopping. He had no contact with his parents other than by the landline.
- 11.12 Referring to page 80 he said again that they were "trying to press [his] buttons". He said it was predictable and disgraceful. He said that a parcel containing a fishing rod had been left against his gate addressed to the Applicant hoping that the Respondent would take it. He sent e-mails to Mr Evans and the Applicant to pick up. A bag of feed was also left near his gates hoping he would take it for his chickens.
- 11.13 Referring to page 81 the Respondent said that by this time he had got rid of most of his dogs and had bought dog cages for the other 2. One was blind and the other middle aged. Referring to page 84 the Respondent said he got home from work at the same time every day.
- 11.14 Referring to page 86 and the ultra-violet system he said everything was just screwed to the wall. There was no PAT test. He was changing the filter and moved a cable. He got a shock. There was a crack in the cable and it was touching the copper pipes. He said that he moved into the Property in February 2013 and there had still been no PAT testing.
- 11.15 Referring to page 88 he said this happened over a period of days.
- 11.16 Referring to page 91 he said he picked up with GM Thomson and was advised that they would speak to the Applicant. The Respondent sent the Applicant an e-mail to

stop turning the water off and on. Bottled water was being supplied but he had run out. The Applicant said the bottled water was for drinking only.

- 11.17 Referring to page 92, the Respondent said it would be days or weeks before GM Thomson would reply. He was black when he came home from work. He was running out of water. He is a vulnerable person and could easily drink the same supply again.
- 11.18 Referring to page 98, he said this makes reference to the regulator, DWQR.
- 11.19 Referring to page 99 the Respondent stated that on the night before he contacted the Applicant, employees had turned the water off. This had been done to drain the tank. The tank was ripped out when he was at work. He referred to there being asbestos pipes. He has undertaken asbestos training. He said the workmen had been told to bury the pipes again. The pipes should have been taken away.

The Tribunal reminded the Respondent that this line of evidence did not form part of any of the disputed issues.

- 11.20 The Respondent referred to page 123 of his productions. He said this was one of several photos at the time and he has more. He said the Pulcree Burn runs through the estate and passed the Property to the River of Fleet. He said the photo was taken 30 yards from where he sits inside his house. He referred to there being a high mortality rate with sheep and the need to pay for dead animals to be taken away. He said the dead animals were being thrown into the Burn when in spate to go into the estuary. He said he saw the sheep being put in by David Porter from his quad bike. Alternatively, he leaves the animals to be eaten by foxes and badgers.
- 11.21 The Respondent said that Mr Porter gave really dishonest information. He said he had been involved in countryside matters all his life and in pest control. Referring to page 122 of his productions he referred to the black mark where the carcass had rotted down. He said the sheep had been a full dead sheep and would have been eaten 4 or 5 weeks after it had been first left. He said badgers and foxes do not like fresh carcasses. He referred to the track being the main access to the fields which David Porter drives up and down every day. He said the carcass had been left on the track.
- 11.22 Referring to page 130 of his productions being a further photo of a dead sheep he said this is at the bottom of the same track and on the same day as the incident with the calf which Mr Porter said he could not get near. He said the animal had been dead for at least 2 weeks. He said the location is 200 yards or so from the Property.
- 11.23 Referring to page 259 of the Applicant's productions being a photograph of dead animals he said the calf and the sheep were 15 yards apart. He said the calf had been alone in the field which is around 4 acres in size. He referred to there being health and safety issues. He said that everywhere he turned he saw dead stock.
- 11.24 He referred to pages 124 to 126 of his productions, being further photos of dead animals. He said theses are a snap-shot on the side of the drive. There were flies everywhere. He said bluebottles could be seen on the bags which came into the house. He couldn't leave his windows open. He said this was completely illegal.

- 11.25 Referring to page 118 of his productions being a photograph of blood on the ground he said this is in the fields below the garden where the ewe was stuck. It was put back on its feet. This was before the hostilities. The same happened the next day. The ewe's eye was pecked out by crows. It was still there the next day. The Respondent reported to David Porter again and the day after it was picked up. There was a bang outside the gate and the Respondent saw the sheep being dragged back up the drive. This was all part of the intimidation of the Respondent.
- 11.26 The Respondent referred to the noise of the cows when their calves are taken away. He referred to this happening for 2 or 3 days.
- 11.27 Under questioning from the Tribunal the Respondent confirmed that the Property is located on a working farm. The Respondent said that animals only started to be killed or were left dying around the Property in the period from February 2020. The only thing that he had witnessed previously was when David Porter's nephew was in charge of the stock and he was sacked due to animal welfare issues. The Respondent said he had a really good working relationship with the Applicant's father, Tony Gilbey, and David Austin.
- 11.28 The Tribunal asked whether the Respondent raised these welfare concerns with the proper authorities. The Respondent said he raised them with Tony Gilbey who thanked him for telling him what was going on.
- 11.29 Referring to page 132 of his productions being a photograph of a hand with nails on it, the Respondent said this was a picture of his hand. He was picking up nails on a daily basis during the eviction process. The Respondent said he did not know who threw the nails in. They were left where he parked his car. He referred to Neil Pickthall being a roofer.
- 11.30 Referring to page 133 of his productions being a photograph of a fireplace and stove, the Respondent said the stove heats water with a back-boiler. He uses the stove more in winter leaving the power off and the fire on. He referred to there being no carbon monoxide detector.
- 11.31 He referred to pages 51 and 52 of his productions, the latter being "crucial". He said that unknown to him, David Porter was trying to get the Respondent to video him. This was the start of the fabrications. He was involving his child and girlfriend and made false allegations against him. He said this was on the 1st or 4th April 2020. The Respondent said he sat in his garden. They would come down. The Respondent would get up and go into his house. There was no reason for them being there. He would text Andy Woodburn. He would ask what they were doing. They went to Andy Woodburn's house on a Sunday afternoon. David Porter said he could tell the Police. The Applicant had friends in high places. When home, Mr Woodburn sent the text message. The Respondent advised him to call the Police. There was then a knock at the door and 2 Police Officers were there. The Respondent showed the Police his phone and the message from Mr Woodburn. The Police started scrolling through the Respondent's messages and the photos of the dead animals. They handed the phone back to the Respondent and told him to phone the RSPCA. The Respondent said to the Police that they were trying to get him out of the Property. The Police warned David Porter. The Police phoned the Respondent back to ask if the activities had stopped.

- 11.32 The Respondent referred to page 65 of his productions being a text message dated 11 April 2021 regarding the call back by the Police.
- 11.33 Referring to page 108 of the Applicant's bundle at paragraph 24 (being the Applicant's Affidavit), the Respondent said this was nonsense. The location where pheasants are shot is 400 to 500 yards from the Property.
- 11.34 The Respondent said he could have asked Neil Pickthall face to face but sent a message instead. The Police said if allegations were made they would be looking for a statement from him.
- 11.35 Referring to page 155 of the Applicant's productions, being a file note of GM Thomson & Co dated 15 December 2017, the chimney sweep said he would put a report in to GM Thomson for the attention of Nicky McFarlane. He was angry. He said the Respondent could have been dead. He referred to what happened to a family in Ireland and told Nicky the same.

The Tribunal asked what the relevance of this reference was to the issues in dispute. The Respondent said he refused to have Neil Pickthall at the Property. The Tribunal said that this incident happened in excess of 2 years before the Notices to Quit were served. There was no thought for the Respondent's removal at that time. The Respondent said the Applicant had a motive and the situation subsequently escalated.

- 11.36 The Respondent referred to an e-mail dated 24 June 2020 from him to Mr Evans - being page 28 of the Respondent's productions - which makes clear the discussions about what was required at the Property.
- 11.37 The Respondent referred to page 39 being a photograph of a dead fox and said there was a pattern of refusing to follow Government regulations. He referred to the fox at the side of the water system. Andy Woodburn took the photograph.

Again the Tribunal questioned the relevance of these matters to the disputed items identified. These issues had not been raised at the CMD and are not part of the disputed issues for determination.

- 11.38 The Respondent said the only person allowed to do pest control was Neil Pickthall. The Tribunal asked whether the Respondent saw the fox being put there by him. He said no. The Tribunal asked if the information had been conveyed to him by another tenant and the Respondent agreed. Under questioning from the Tribunal, the Respondent was asked whether Mr Woodburn is still a tenant. The Respondent said he thought so. He said "they're next to be evicted". The Tribunal asked whether the Respondent is in regular contact with Mr Woodburn. He said he had been in regular contact and had sent e-mails. However, after a visit from the Applicant contact with the Respondent had stopped. The Respondent did not go up the valley and did not want to put him under pressure. Again the Tribunal reminded the Respondent that what might happen to other tenants in the future was not relevant to the disputed issues.
- 11.39 Referring to pages 160 and 161 of the Applicant's productions, being e-mails of 27 November 2019 between Mr Evans and the Applicant, he said the Property did not meet the tolerable standard. The windows are at odds with what Mr Bridge said. He said they were in good condition.

- 11.40 With regard to the flue the Respondent said there are 2 different fireplaces. The flue in the front room was installed by Neil Pickthall. The chimney sweep asked who installed that flue. The flue in the other livingroom at the back of the house is used on a day to day basis. A cannonball was used down that chimney and broke the fireplace. The Respondent thinks there is a mix up in the content of that e-mail.
- 11.41 The Respondent said he was not given meter readings at the beginning of the tenancy agreement. He said this was a form of harassment. The Tribunal again reminded the Respondent that such matters did not form part of the disputed issues.
- 11.42 The Respondent said that with regard to the arcing of the electricity, the Applicant and Mr Austin are in partnership. The Respondent said he had moved the cable from the ultra-violet bulb. He said the reference to Neil Pickthall ties into the Notice to Quit served and withdrawn. This was intimidation. He said all his complaints culminated with the water supply. He said that prior to any eviction notices being served, he believed that David Porter ran back and told the Applicant he would be having the water tested.
- 11.43 The Respondent referred to again to pages 176, 155, 163 and 186 of the Applicant's productions. With regard to page 185 he said that he had pointed out the required amount of time and the Notices to remove were withdrawn as a result.
- 11.44 He referred to page 119 of his productions and the photograph there which he took showing David Porter and Neil Pickfall blocking his drive on purpose. The Photograph on page 131 was taken after. The Respondent said he went to get his car. David Porter reverses his car and faces the other way as he was told by the Police not to look at the Respondent. The other vehicle was empty. This other vehicle belonged to David Austin.
- 11.45 At page 128 of his productions the Respondent said that the photograph showed a filter taken out by the plumber and thrown in his garden. The plumber refused to use a mask and gel. The filter was washed in the Respondent's sink and shows the state of the water filter in the property.
- 11.46 The Respondent referred to pages 304 to 305 of his productions being his e-mail to Mr Evans dated 31 July 2020 regarding the water being turned off and on.
- 11.47 The Respondent said that the Applicant forced Neil Pickfall on tenants to force them out their home. The Respondent said he knew then nothing about ultraviolet filters, osmosis etc. He said the Applicant's refusal to do maintenance forced all tenants into using toxic supplies.
- 11.48 Referring to page 171 of his productions being an e-mail from the Applicant to Mr Rome dated 19 June 2020, the Respondent said it had taken him many months to get any information using Freedom of Information requests to the local authority which was not acceptable. He said when the second water tests were done on 19 February 2020 three houses were tested and the tenants would verify those tests taken. He said that was the only time the pipes in the Property were sterilised. Referring to pages 289 to 292 of his productions, the Respondent said that the first water test was commissioned by the Respondent and took place on 17 February 2020. Three sets of tests were done on the Property alone.

- 11.49 With regard to the water tank for Pulcree show in a photograph at page 291 of the Respondent's productions, one pipe serves the Property and the other splits to the neighbour where an intricate carbon filter system is installed. The Respondent said that these photographs were taken at the time of the Risk Assessment. The lid of the tank was never opened. He said Scottish Water took pictures of all of the tanks and said they would condemn every water system from those pictures. The Respondent said this was the catalyst to force him out. He said the Applicant wanted the Respondent out the Property before this got anywhere near a Tribunal therefore he was given extended notice to remove. The Respondent said the only reason this matter was put to the Tribunal is due to the sequence of events and that to change all water systems would cost hundreds of thousands of pounds.
- 11.50 The Respondent said Mandy Friel of Dumfries and Galloway Council asked if there were any children on the estate. The Respondent said Winston and Jacqueline have children.
- 11.51 The Respondent then referred to pages 316 to 347 of the Applicant's productions being the Risk Assessment Summary Report for Rusko dated 29 August 2021. At page 332 in particular he said this illustrated a double arsenic filtration system in Rusko House installed in 2017 or 2018 prior to any of the water tests referred to. He said that the region of Pulcree is prone to elevated arsenic.
- 11.52 At page 371 of the Applicant's productions being part of the Risk Assessment Summary Report for Pulcree dated 11 May 2021 the Respondent said it was not true that not all outlets were sampled. All have been sampled and show elevated levels of manganese. He said this does not come from the lead mine but rather from the pipes in the Property.
- 11.53 Referring to page 359 of th the Respondent said the Risk Assessment had been done remotely without a site visit apparently due to access issues.
- 11.54 The Respondent said that the Applicant and Mr Evans made up falsehoods in their evidence. He said it was not right that the pipework was the only cause. The water in the area is highly contaminated. He said they have been shown to not be telling the truth.
- 11.55 The Respondent said that if one looked at the Risk Assessment for the Applicant's house, there is a large system that clears the supply but here at the Property equipment is on the wall and on the water tap.
- 11.56 Referring to page 363 being page 6 of the Risk Assessment Report dated 11 May 2021 the Respondent said that a claim has been made that the tests at Pulcree Cottage are the same as at the Property. He said this was not the case. He said the tests for Pulcree Cottage will pass as it has a complicated system whereas the Property does not.
- 11.57 At this stage Mr Turnbull on behalf of the Applicant interjected to concede again that the water supply to the Property is not compliant with the Repairing Standard.
- 11.58 Referring to pages 381 to 384 being page 24-27 of the Risk Assessment Report dated 11 May 2021, the Respondent stated that his water supply is not treated for heavy

metals and is not put through any intricate system. He has been knowingly exposed to arsenic and other toxic metals. He referred to the tank and the 10 inch carbon filters. He referred to page 383 showing 2 more filters on the side of the garage wall and page 384 showing 2 ultraviolet bulbs on the wall.

- 11.59 With regard to page 356 of the Applicant's productions being a Scottish Water Test Report dated 13 January 2022 and the water tests detailed therein, the Respondent stated that Dumfries & Galloway Council instructed that test. The Respondent telephoned Dr Andrew Rideout who is part of the public protection team at the Council. This was on 23 December 2021. Dr Rideout said in meetings to check if x-rays had been done to pick up lead in the Respondent's bones. The Respondent said no annual water tests were undertaken. Dr Rideout said he'd arrange these. He by-passed Environmental Health.
- 11.60 The Respondent said that Andrew Gray came out and told the Respondent not to turn the taps on. He talked of mines in the area and read the list of samples taken on 7 January 2022. The Respondent got nothing back and started phoning. Dr Rideout hadn't received them. The Respondent called Mr Gray. He did not have them. The Respondent referred to having to fight for everything. The Applicant gets anything he wants. He said the results of these tests had been withheld from him.
- 11.61 Referring to pages 246 and 247 of the Respondent's productions headed "Pulcree Farmhouse Tap" the Respondent directed the Tribunal to the failures. He said the test results on page 247 were very important. He said that as part of the Risk Assessment tests should be done at source and at the tap. He said the only test had been done at the pipework and should have been done every year. Lead was still present in the area. This, he said, proves the lead is in the region not in the Property.
- 11.62 The Applicant had kept quiet that lead had been in the area since 2017. There is no lead in the house.
- 11.63 Referring to page 134 of his productions being the letter from Mr Robert Rome to the Applicant dated 20 March 2020, the Property does not meet the Repairing Standard. The work of Neil Pickfall damaged the Property and made the conditions more intolerable. The Respondent said he was never given documentation in 2013 and then only got the electrical report from 2016 rather than 2013.
- 11.64 At page 135 of his productions being an attachment to the letter on page 134, the Respondent said this shows the bulb and filtration system and the loose wire against the copper piping causing sparks. The cable had been folded up and shoved behind the pipe. There had been no PAT testing on the house, the fridge or cooker or the ultraviolet system. He referred to pages 136-140.
- 11.65 The Respondent referred to page 255 of his productions being an email from Mr Rome to Mr Evans dated 31 July 2020, regarding electrics not having been done and documents that required to be produced.
- 11.66 At page 176 of the Applicant's productions being an email from Mr Evans to Mr Rome dated 23 March 2020 the Respondent said the Applicant had lied to Landlord Registration.

- 11.67 At page 41 of his productions the Respondent referred to a letter sent to Mr Andy Woodburn. The property was not on the list. At page 42, being an email dated 10 March 2022 from the Respondent to Mr Andrew Gray in connection with a Freedom of Information Request, Mr Gray said he had called the house, calling the landline and mobile. He said he doesn't have a landline which is one of his grievances. The Respondent said he emailed Dr Rideout. He arranged a date with him for 7 January 2022. He wanted the samples taken anytime before 10 January.
- 11.68 He said all tests were arranged for 10 December and the Respondent's tests were only arranged on 23 December. He said the Applicant is conniving to make out that the Respondent is obstinate and he was simply wanting the Risk Assessment and water tests done.
- 11.69 The Respondent said that living in a couple of rooms in the Property would not phase him if there were builders in the house. He said he had worked in the building trade for 10 years. He said the fractures where mortar had fallen out are of no issue and can be pointed in. He said more worryingly, someone was at the house a week or so before the Tribunal Hearing with ladders up and cleaning the gutters. Large pieces of pointing were thereafter in the garden trying to make it look like more work was needed than is actually the case. He said he had taken photographs. The Respondent referred to Mr Bridge saying the windows were okay given no maintenance. He said that Mr Bridge has no more influence than the Respondent. This is just remedial work as part of a maintenance plan. The Respondent agreed that woodworm is present but has not got worse since he moved in. He said that with regard to his furniture, in the feet of the sofa and a set of drawers there looks to be woodworm but that can be treated. Floorboards can be lifted or sprayed. The issue is not structural. He said that with regard to the roof there are a few slates missing but this is remedial work.
- 11.70 With regard to the bedrooms, these were all useable when he moved in. They only became unusable when Mr Pickfall removed barge boards and replaced with flagstones and when he replaced the rhones as a result of which water now comes in. He said the 3 bedrooms are now water damaged and one is unusable with plaster from the roof.
- 11.71 The Respondent said that all the Applicant's witnesses were involved with him on a personal basis. He could have asked another building firm to do a survey.
- 11.72 The Respondent said that the rent is low because the Property is not up to standard. Mr Evans and the Applicant put pressure on tenants to move. Once they move the properties are stripped and they charge double the rent. Where Winston and Jacqueline live is similar to the Property. The rent is just under £800 per month now. The Respondent pays £320 with no benefits.
- 11.73 He said the Applicant has not addressed reasonableness. He has too much to hide.

Cross Examination

- 11.74 Referring to page 160 of the Applicant's productions being Mr Evans' email to the Applicant dated 27 November 2019 Mr Turnbull asked if the Respondent disagreed with Mr Evans's assessment that the Property scarcely achieved the tolerable standard. The Respondent said that no one could argue with that as the Property had been left for 10 years. A reason had been manufactured to recover possession. The Respondent agreed in principle but not in every aspect, for example the windows are in remarkable

condition for their age. The Respondent said remedial work is needed but an independent surveyor should have been used. An independent surveyor would not have given what the Applicant wanted.

- 11.75 Mr Turnbull asked whether the Respondent accepted that the Property is not now commensurate with current standards. The Respondent said that those standards are not due yet. Mr Bridge accepted that the timescales for energy sufficiency had changed. He said that with reference to the insulation Mr Bridge was never in the attic. He doesn't know what insulation is there.
- 11.76 Mr Turnbull challenged the Respondent by saying that Mr Bridge would know about wall construction and asked the Respondent what evidence he had to contradict Mr Bridge. The Respondent said that he is the only person between Mr Bridge, Mr Evans and Mr Turnbull who had looked in the attic. He said to Mr Turnbull that he should have looked in the attic and didn't do so.
- 11.77 Mr Turnbull asked the Respondent if he had anything to support his contention and the Respondent referred to the Energy Sufficiency Certificate. Mr Turnbull referred to page 208 of the Applicant's productions being the Energy Performance Certificate for the Property and asked whether the Respondent accepted that there is no insulation in the floors or walls. The Respondent said he didn't know if there was insulation in the walls or in the floor. He said these were assumptions made in the EPC.
- 11.78 Mr Turnbull asked the Respondent whether he accepted that there is no central heating in the Property. The Respondent said there is one potbellied stove at the front which was renewed and a stove at the back which is used for the back boiler and hot water. Mr Turnbull asked if the Respondent would agree that did not meet modern expectations. The Respondent said some would say it is adequate for countryside period houses. The Respondent said he now sleeps in the room with the open fire due to the water damage. The Tribunal asked the Respondent whether there is a source of heat in the bedrooms. The Respondent said one of them has a night storage heater. The Tribunal asked whether that heater would meet the Repairing Standard and the Respondent said no it probably didn't. The Tribunal suggested that a property would not meet the Repairing Standard if there was no source of heat in the bedrooms. The Respondent agreed. The Respondent said the Property is so cold in winter. He said the valley is prone to lightning strikes and therefore no electricity therefore he has to be able to cook on the stove.
- 11.79 The Respondent was asked how he would live in the Property when the Property was being renovated. He replied that he had done so for 12 years. It was suggested that the situation would be worse with no electricity. The Respondent said he had generators in the garden and could run electricity from that. A mobile toilet could be installed or a small caravan. He referred to there being a six berth caravan opposite the Applicant's house which could be used or he could be moved to Cuill Cottage. He said there are several options.
- 11.80 Mr Turnbull asked about the Applicant's rented house in East Riggs as another option. The Respondent said he had no options. He had spent £4,500 on a campervan as he was so worried during the pandemic. He has continued to pay rent on the other property at East Riggs but it is not suitable. However it is the only other option he has. He said he will need to phone and hand the keys back. He referred to the Tribunal "kicking the can down the road" and then withdrew that remark.

- 11.81 Mr Turnbull asked whether the Respondent accepted that maintenance had been undertaken to the Property. The Respondent said that any maintenance had only made the condition worse. The Applicant had stated that Neil Pickfall was not a very good builder.
- 11.82 Mr Turnbull suggested the Applicant's position was that he had spent £16,000 on the Property and did the Respondent accept that was a considerable amount of money. The Respondent said the Applicant had only made efforts where the law required him to do so. He sent in electricians in 2016 who did a survey and then spent 2 days putting in an RCD unit and wiring all for his own benefit.
- 11.83 Mr Turnbull suggested that works carried out comply with legal obligations. The Respondent said one attempt had been made to put in for an electrical installation condition report and came to measure for cabling for the RCD unit to the shower. However, they never came back and the shower was not fitted.
- 11.84 Mr Turnbull asked if the Respondent accepted that the Applicant was fulfilling his obligations as a landlord. The Respondent said the Applicant accepted work has not been done to standard. It has only been done for his own good. He said there was human sewage over the garden and it took 3 months for anyone to be sent out.
- 11.85 Mr Turnbull referred to the Respondent's communications with Mr Evans in 2017 and of him making the point he did not want Mr Pickthall back. He asked about the period 2018 to 2020. The Respondent said that there were emails from Mr Evans regarding the shower. He assumed there was a genuine record of all complaints. However Mr Evans then said he would filter complaints to the Applicant so the Respondent asked for those reports and was advised they were private. The Respondent said he verbally made complaints at the inspection. He said he showed everyone at every opportunity. Nicky took notes and photos. She stood at the kitchen tap and said the Respondent was paying too much rent already having regard to the water.
- 11.86 Mr Turnbull said the Respondent had nothing to corroborate all of this. He said he had asked Nicky McFarlane to be a witness but she said she did not want to be involved.
- 11.87 The Tribunal reminded the Respondent that it was not appropriate to relay what potential witnesses might have said when they were not here to give evidence.
- 11.88 Mr Turnbull asked when the intimidation by Mr Pickthall commenced. The Respondent said this was when the barge boards were replaced.
- 11.89 Mr Turnbull suggested to the Respondent that Mr Pickthall's only conduct is not being a good builder. The Respondent said that was not the case. He made the bedrooms leak. The Applicant came down with Neil Pickthall and insisted that he do other things. The Respondent said this was in 2016. He said that when the eviction papers were in, Mr Pickthall would sit around the Property in his pick-up with his windows down staring at the Respondent and the Respondent realised he was trying to set him up. At 9:30pm or 10pm he would sit in his vehicle in the fields with the lights turned off. After half an hour he put the lights on and drove away. This continued during lockdown. He would walk up and down past the Property staring in.

- 11.90 Mr Turnbull asked whether the road in question served other properties or farm buildings. The Respondent said that there is a courtyard where cars are parked. The farm is separate to the farmhouse and 50 yards from his front gate. He said there is another pre-fab type hangar and the road goes down to the fields.
- 11.91 Mr Turnbull put it to the Respondent that David Porter's work took him up and down the road. He had legitimate reasons to be there even during lockdown. The Respondent accepted that David Porter had legitimate reasons to be there but not Neil Pickthall. He had people in his car who were not family members.
- 11.92 Mr Turnbull asked about the dates of the photographs and the Respondent said he would supply them.
- 11.93 Mr Turnbull asked about any other conduct by Neil Pickthall. The Respondent said he told him about arsenic that had killed a bird of prey when the Applicant had said there was no arsenic in the ground. Mr Turnbull asked whether the Respondent had reported this to the authorities. He said he hadn't done so as he was terrified to do so and Mr Woodburn was in a similar position. He said that no one wants evicted or intimidated.
- 11.94 The Respondent was challenged as to why he had not reported these issues having been served with Notices to remove. The Respondent said he was worried about the future and his physical wellbeing. He was worried about repercussions from Neil Pickthall's brothers and referred to being kidnapped and beaten up.
- 11.95 Mr Turnbull asked whether the Respondent did anything about the intimidation. The Respondent said that when the Police came down he gave a statement he told them what was going on. The Police spoke to Mr Porter about the intimidation and harassment and they said that the Respondent should phone the RSPCA.
- 11.96 Mr Turnbull asked whether the Respondent had anything to corroborate that. He said he had tried to lodge documents. Mr Turnbull said that the issue of intimidation had been in existence since the CMD and why did the Respondent leave lodging evidence to the last minute. The Respondent said that there were text messages with Andy Woodburn that expressed concern that the same things were being done to him. These were on video messenger and could see what he had witnessed.
- 11.97 The Respondent's evidence continued on to 15 August 2023.
- 11.98 Mr Turnbull referred to the inspection of Dougal Evans on 27 November 2019 which prompted service of the Notices to remove and asked if there is any evidence predating that inspection that shows the Applicant was aware of issues with the water supply. The Respondent said that the Applicant was well aware of the issues of supplies on Rusko Estate as an arsenic filtration system had been put into his own property. The Risk Assessment shows the filtration system in its entirety and even that failed. He said the system was a multi-thousand pound system and he questioned why the Applicant was testing for arsenic on his own supplies and not of those on the Property.
- 11.99 The Respondent agreed that the Risk Assessment was carried out in 2021 but referred to the arsenic filtration system having been installed in 2018 or 2019. He said Mr Bridge stated to that effect. The Applicant knew there was a problem then.

- 11.100 Mr Turnbull asked whether the water supply for the Property was on a different supply. The Respondent stated that the Applicant had been testing for arsenic since 2017. The Applicant's supply is less than 400 yards away from that of the Property. He said the arsenic has been in his system since 2022 as has been shown and that his system is a groundwater one in the same vicinity.
- 11.101 Mr Turnbull asked whether the Respondent accepted that they were not the same supplies or from the same source. The Respondent said both supplies were from the same hills. Mr Turnbull suggested to the Respondent that the Applicant's supply is from a borehole. The Respondent said it is now from a borehole which was put in 2017. Why would the Applicant install a filtration system if he did not know of contamination in the hills?
- 11.102 Mr Turnbull asked the Respondent how the Applicant would know that the Property was affected. The Respondent said this was due to the location of the mines and the original water supplies. The Respondent said that Cuill Cottage water system supplies the Applicant's water supply. The Applicant's water supply has failed. The Respondent said he knew that from Freedom of Information Requests. He referred to Cuill Cottage and the intricate filtration system there. This was shown in the Risk Assessment at page 381 of the Applicant's bundle. Included in that filtration system is a 10 inch carbon filter to take out heavy metals. He said the Applicant seems to suggest that because the Property uses the same system as Cuill Cottage that it is okay but the supply for the Property is taken before it reaches the filtration system. The Respondent said that as far back as 2015 Mr Woodburn of Woodhead Cottage sent an email asking the Respondent to forward copies of tests done and was ignored.
- 11.103 Mr Turnbull asked the Respondent whether he accepted that the tests carried out in March 2020 (page 312) by Dumfries & Galloway Council established the supply to be satisfactory. The Respondent did not accept that to be the case. The Respondent said he was suffering with his memory and was worried about that. He said he was awaiting test results. He thought he might have got nerve damage. Mr Turnbull asked if the Respondent was referring to Dr Connor's report. He agreed. Mr Turnbull said the test results are within normal range. The Respondent said one of the markers of heavy metal poisoning is low iron. Dr Connor cannot understand how Dumfries & Galloway Council conduct their tests regarding lead. How can there be two times more lead in blood than water. Reference was made to Dr Connor's report of 14 June 2022. The Respondent said Cuill Cottage and the Property are on the same supply but the supply leaves the tank and is heavily filtered for the Cottage.
- 11.104 The Tribunal intervened at this juncture to reiterate that there is no dispute between the parties that the water supply is inadequate. The issue is one of motivation. The Tribunal asked the parties to focus on that.
- 11.105 Mr Turnbull asked the Respondent what evidence existed that arsenic was a motivating factor for the Notices to remove to be served. The Respondent said there were several factors. The Respondent made statements that he intended to have the supply tested. He told Mr Porter that. The Respondent said he was dyslexic and can't deal with paper. He thought that by raising these issues they would be dealt with. That hasn't been the case. The Respondent referred to Andy Woodburn and said that there is evidence that shows they had been broaching the subject of the water supply since 2015.

- 11.106 Mr Turnbull asked the Respondent to refer to supporting documents. The Respondent said he wasn't sure but there was verbal communication with Nicky McFarlane who was aware and saw the colour of the water. Filters were promised in 2016 and were not delivered until 2017.
- 11.107 Mr Turnbull challenged the Respondent's position as being incorrect. He referred to page 149 of the Applicant's productions being invoices providing evidence of filters being changed. The Respondent said the invoices did not state that they referred to the Property.
- 11.108 Mr Turnbull referred to pages 1 and 4 of the Respondent's productions being emails of 2 June 2016 and 5 April 2017. Mr Turnbull challenged the Respondent that these emails made no reference to the water supply.
- 11.109 Mr Turnbull asked again if the failure of the supply was a motivating factor. The Respondent said that he and Andy Woodburn had been complaining about the supply. He referred to an email of 19 February 2020.
- 11.110 Mr Turnbull referred to pages 312 and 313 of the Applicant's productions and the Test Reports there. The Respondent said that he had fetched in Scottish Water on 17 February 2020. The water supply failed. Three tests were done prior to the involvement of Environmental Health including one on 19 February 2020. There was no disinfecting of water systems for a long time and there had been complaints to the Applicant for years. Dumfries & Galloway Council's Environmental Health Department came out to warn tenants. They phoned the Respondent but not the others. They were never told. The Tribunal sought clarification from the Respondent that his position was that the issues with the water supply predated service of the Notices to remove on 4 February 2020.
- 11.111 Mr Turnbull referred to page 356 of the Applicant's productions being page 8 of the Risk Assessment Summary Report dated 11 May 2021 and asked the Respondent whether he accepted that the tests for arsenic carried out in January 2022 were not out of specification. The Respondent said he instigated those tests. He said Dr Rideout was so concerned that he sent another member of staff to test. He said the Worldwide Health Organisation states that no level of arsenic is acceptable. It destroys eyesight. The Respondent said he has trouble with his eyesight. He said that arsenic is carcinogenic and there is no safe level.
- 11.112 Mr Turnbull referred to page 390 regarding the guidelines for Local Authorities. The Respondent said that there must be monthly water tests done (page 387). Mr Turnbull asked if these were images from the Respondent's Facebook page. He agreed. He agreed this was set up in July 2020. Mr Turnbull suggested that there had been a great deal of activity by the Respondent post February 2020 and very little before. The Respondent said he had been looking on the internet. He was talking to the wife of his boss in the office and she said a friend had had tests done through Scottish Water. He said he raised the issues every single year with GM Thomson representatives. He said he also raised the issue with Mr Evans.
- 11.113 Mr Turnbull challenged the Respondent and said Mr Evans doesn't mention issues with the water supply. The Respondent said that Mr Evans's job is to make money for the Applicant. Mr Turnbull asked again if the Respondent accepted that there is no reference to the water supply in Mr Evans's report. The Respondent said he would take

Mr Turnbull's word for that. On that basis said Mr Turnbull, the water supply cannot be a motivating factor. The Respondent did not accept that. He said he had been quite vocal to the Applicant's mother and father about the water supply systems. He said at every inspection he would go through in great detail what was wrong, the colour of the water, sickness and symptoms. It all fell on deaf ears so he got on with it himself. He put his foot down at the November meeting with Mr Evans and told him he had a duty of care to sort it. The Respondent said he decided to do up the Property himself by laying laminate flooring, painting cupboards. They discovered he wouldn't move.

11.114 Mr Turnbull suggested to the Respondent that service of the Notices to quit was a motivating factor for the Respondent to resist eviction. The Respondent said that he put up with so much. He asked again and again and nothing was done. Then a Notice to quit was served. The Applicant is looking to upgrade the property for a new tenant. Yes, he said, that was a motivating factor. He said they thought it would be easier to force him out. They were rubbing his nose in it. They were doing upgrades that were making living conditions worse. He said they were not successful in forcing him out so Notices were served.

11.115 Mr Turnbull asked the Respondent about the cement work not being successful as stated by Mr Bridge and whether the Respondent accepted repairs were instructed. He referred to page 154 and said that when the chimney was blocked and there was a risk of carbon monoxide poisoning the repairs were instructed. Then Mr Pickthall did the barge boards. The Respondent said there was a lot of water damage caused by his work as referred to by Mr Rome.

11.116 The Tribunal interjected that the issue of water damage is not a disputed issue for determination by the Tribunal.

11.117 The Respondent said that he had met Nicky McFarlane and she said they were trying to get another builder in but the Applicant still wanted Mr Pickthall. His workmanship was shoddy. They would force entry for any reason. They were sending Notice to Quit after Notice to Quit.

11.118 Mr Turnbull asked again whether the Respondent accepted that repairs were effected in 2020. The Respondent said there were different versions. He would say there was vandalism and his life was put at risk therefore he did not want Mr Pickthall anywhere near. They knew the Respondent would be intimidated by him and the Applicant wanted to keep sending him out. He said Mr Evans made several appointments and did not turn up.

11.119 Mr Turnbull asked the Respondent whether he accepted there had been engagement between Mr Evans and Mr Rome regarding repairs. The Respondent referred to the email from Mr Evans to the Applicant and to Mr Rome stating that the Applicant did not want to spend money on the property until after the Respondent had been evicted. He referred to page 176 of the Applicant's productions, final paragraph.

11.120 Mr Turnbull asked the Respondent whether he accepted that the stove had been replaced and referred to the email dated 24 March 2020. The Respondent said the stove was indeed replaced but there was no air vent for the flue. This was done to keep Mr Rome at bay until the Applicant managed to force the Respondent out.

- 11.121 Mr Turnbull referred to David Porter and the suggestion that he was part of a campaign to intimidate the Respondent to move out. The Respondent said this was absolutely the case so that Mr Porter could move in. He was losing his cottage on the other side of the valley. He said the Applicant wants the Property back for his farming interests. Mr Porter is the only one who works on the farm day to day. He said Mr Porter was asking a lot of questions about whether the Respondent would be staying to further his own cause. He said these conversations took place prior to the Notices being served. They took place in front of Andy Woodburn. Mr Turnbull suggested this was all just small talk. The Respondent said that this was not the case. He had told Mr Porter about the water supply. He now realised Mr Porter was going to the Applicant to get him out the Property. That's the reason he wants the Property back, not to refurbish. He referred to page 176 of the Applicant's productions.
- 11.122 Mr Turnbull asked the Respondent whether his position was that the reference to farming operations meant Mr Porter. The Respondent said he was not speculating. Mr Porter was the only one on the farm day to day and was losing his house. He is now put up by the Applicant in Cuill Cottage. This has happened since the efforts to force the Respondent out have been unsuccessful.
- 11.123 Mr Turnbull asked the Respondent whether he felt comfortable raising these issues with Mr Porter. The Respondent said he was gullible and Mr Porter was trying to gain his confidence to relay information back to the Applicant and force a wedge between him and the Applicant. He said this was a long time before the Notices to Quit were served. Mr Turnbull asked when things changed. The Respondent said he'd caught Mr Porter out and realised he was not as honest or friendly as he thought. Mr Porter said the Property would be ideal for him.
- 11.124 Mr Turnbull asked the Respondent whether his position was that Mr Porter had designs on the Property when+ he started the intimidation. The Respondent said that he could not put a date on it but it was before the lockdown then escalated and Mr Porter needed the Respondent gone. He would arrive at 8pm at night. He knew the Respondent's movements and would start putting lights into the living room and banging and banging the bucket for 10-15 minutes to draw the Respondent out to a confrontation. The situation got worse and worse per the messages with Andy Woodburn. He has lodged only a small selection but the Respondent said there were hundreds of them. Mr Turnbull challenged the Respondent and said that Mr Porter was just going about his business using the road past the farmhouse. The Respondent disagreed and questioned why Mr Porter would keep coming back in the pitch dark in the middle of winter banging buckets, walking up and down and making false accusations to the Police.
- 11.125 Mr Turnbull challenged the Respondent suggesting that the only incident Mr Porter spoke about was with regard to the dogs. The Respondent agreed and said that he accused the Respondent's dogs of attacking his dog, Nell. He was trying to provoke the Respondent. It was a complete set-up. When the Police arrived they said they were about to phone him. He handed over the phone and showed Andy Woodburn's messages. The Police scrolled through the messages and started looking at the photos of dead stock and domestic abuse which the Respondent stopped. The Police asked why the Respondent had not told them before. He said he was "old school" and explained in detail. They said they may be back to take a statement and said to phone the RSPCA regarding the dead stock. They had a word with Mr Porter and warned him of harassment. They got in touch thereafter and asked if the harassment had stopped.

The Respondent said no, Mr Porter was sitting in his vehicle. He couldn't enjoy the peace and quiet of his garden.

11.126 Mr Turnbull suggested to the Respondent that the eviction process was already far down the line. Mr Turnbull asked what happened prior to service of the Notices. The Respondent said Mr Porter throwing stock into his garden, swearing, turning up at the Property at all times of day and night. The exchange of messages were the Respondent's diary at that time.

11.127 The Tribunal asked whether the Respondent had any messages that predated the Notices served reflecting the intimidation. The Respondent said he couldn't answer that and would need to look at all the messages.

11.128 Mr Turnbull asked the Respondent whether fallen animals were a byproduct of stock and questioned the Respondent as to how these could be attributed to a pattern of intimidation. The Respondent said Mr Porter knew his movements and he would come home to dead sheep on the path. He said the Animal Welfare Act is clear on the disposal of stock. He would drive by a half-eaten calf for days and never deal with it. He would drive up and down the track several times a day ignoring rotten sheep.

11.129 Mr Turnbull challenged the Respondent and suggested that the animals had been left to be collected. The Respondent said this was utter lies. He said the animals must be stored and disposed of within 2-3 days. They were there for several weeks or months. Other stock was being taken away. They should be in a waterproof environment and vermin proof sealed container. They weren't. Effluent was draining onto the track where the water pipes come to the house.

11.130 Mr Turnbull asked the Respondent whether the Respondent reported all of this. The Respondent said he reported to the Applicant and his agent and nothing was done. He did this verbally and in email to Mr Evans and to Mr Rome and reported the intimidation to the Applicant at the front gate. The Applicant said Mr Porter was not his employee.

11.131 Mr Turnbull suggested to the Respondent that in emails from March 2020 the Respondent attempted to resist eviction. The Respondent said this was nonsense. He put his position in writing to Mr Evans who did nothing about it. Whether he involved the Applicant doesn't matter. In November 2019 when Mr Evans did the inspection the Respondent told him that the Applicant was complicit in the actions of Mr Pickthall and Mr Evans said yes. Mr Turnbull asked what evidence of that was before the Tribunal. The Respondent referred to photographs taken some time ago. He could not say when responsibility for the stock moved from David Porter's cousin to David Porter. He said they were so desperate they lied to the Police. He believed David Porter was given a warning. He is still flying up and down the driveway. He said he is trying to goad him. He said Mr Evans and the Applicant tried to goad him out.

Re-Examination

11.132 The Respondent said the Applicant's ulterior motive was to get him out. That was the reason for the harassment. He said the issues with Mr Pickthall have stopped. However they are ongoing with the Applicant and his representative.

11.133 Under questioning from the Tribunal the Respondent was asked whether he mentioned his concerns about the condition of the Property after moving in and why he did not raise the issues of repair formally as a breach of the Repairing Standard.

The Respondent said he previously wasn't aware of the Repairing Standard existing or of the tolerable standard. He said he didn't know he could do this, he said he never got a tenant pack. He was never given a chance to read the documentation.

11.134 The Tribunal asked whether during his contact with the Local Authority the Respondent was not given advice to make an application at that stage. The Respondent said Scottish Water got in touch with Environmental Health and the Environmental Health Department got in touch with the Respondent. This was Mandy Frail. She said that Landlord Registration had more powers.

11.135 The Tribunal asked whether the Respondent still had the other tenancy running and the Respondent agreed that he had. He said he was still looking in Yorkshire too. He was looking for something rural. He had dogs and had never had neighbours.

Submissions

11.136 At the conclusion of the evidence the Applicant's representative and the Respondent both agreed that they would prefer final submissions to be dealt with in writing.

The Tribunal agreed and issued a Direction to that effect.

The parties Submissions were lodged by Mr Turnbull for the Applicant and by the Respondent by emails dated 12 and 11 September 2023 respectively.

11.137 The Respondent's Submissions are worthy of some commentary. Whilst allowing for the fact that the Respondent initially and latterly represented himself in these proceedings and notwithstanding oral direction given to the Respondent and the Applicant's agent at the conclusion of the Hearing as to the purpose of such Submissions the Respondent's submissions contain new evidence and references to alleged breaches of legislation none of which had previously been articulated by him at the CMD and which do not form part of the disputed issues identified for determination.

11.138 For example on page 2 of his Submissions he narrates detail around an allegation said to have been made by Mr Pickthall relative to fireworks and quotes a crime reference number. He also alleges a breach of the Protection from Harassment Act 1997. On page 3 he gives evidence about conversations with the Applicant's father, Mr Tony Gilbey, and with Nikki McFarland of GM Thomson as well as the operation of the filtration UV system. On page 4 he gives evidence about conversations with Mandy Friel and with Mr Woodburn and other tenants. He also refers to "a shot tower... built at nearby cree town". On page 5 he refers to alleged breaches of the Health & Safety at Work Act 1974 and the Occupiers Liability (Scotland) Act 1960. On page 6 the Respondent again refers to the Protection from Harassment Act 1997, the Health & Safety at Work Act 1974 and alleged breaches of the Letting Agent Code of Practice. On page 7 a screenshot of text messages is included. On page 8 he refers to documents being falsified and to the circumstances of various payments. On page 9 he questions the Applicant's evidence that he bought the Estate from a trust. No such questions were put to the Applicant in cross-examination.

11.139 In considering the Respondent's Submissions the Tribunal has not taken into account any new evidence narrated therein and not referred to during the Hearing, and the

Tribunal has not considered the references to the legislation or the Letting Agents Code of Practice outlined above.

Reasons for Decision

12. *Recovery of Possession Legislation*

12.1 Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") states:-

"33.— Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section."

Reasonableness

12.2 In assessing reasonableness under Section 33(1)(e) of the 1988 Act the Tribunal must consider the whole circumstances in which the Application is made. Cumming v Danson [1942] 2 All ER 653 at 655F/G where Lord Greene MR states:-

"..it is, in my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way, as a man of the world and come to his conclusion giving such weight as he thinks fit to the various factors in the situation."

12.3 The Tribunal also had regard to the comments of the Upper Tribunal in Manson & Downie v Turner 2023 UT 38 in which Sheriff Collins KC stated at paragraphs 9 and 42:-

"9.....The question of whether it is reasonable or not to issue an eviction order is always a matter for the judgment of the FTS in the circumstances of the particular case, attaching such weight as it considers appropriate to the evidence before it. This may include evidence from the landlord bearing on reasonableness - that is, additional to evidence of the facts in sub paragraphs 2(a) and (b) – as well as from the tenant. But there is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa."

"42.....the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b)."

Repairing/Tolerable Standard Legislation

12.4 Section 14(1) of the Housing (Scotland) Act 2006 ("the 2006 Act") states:-

"14 Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

- (a) at the start of the tenancy, and*
- (b) at all times during the tenancy."*

12.5 The Repairing Standard is defined in Section 13 of the 2006 Act which states:-

"13 The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*
- (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and*

(h) the house meets the tolerable standard."

12.6 The tolerable standard is defined in Section 87 of the Housing (Scotland) Act 1987 ("the 1987 Ac") which states:-

"86.— Definition of house meeting tolerable standard.

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(ca) has satisfactory thermal insulation;

(d) has an adequate piped supply of wholesome water available within the house;

(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;

(f) has a water closet [or waterless closet]² available for the exclusive use of the occupants of the house and suitably located within the house;

(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;

(g) has an effective system for the drainage and disposal of foul and surface water;

(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; "the electrical installation" is the electrical wiring and associated components and fittings, but excludes equipment and appliances; "the relevant requirements" are that the electrical installation is adequate and safe to use;

(h) has satisfactory facilities for the cooking of food within the house;

(i) has satisfactory access to all external doors and outbuildings;

(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;

(k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health,

and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly."

13. *Assessment of Evidence*

13.1 The Tribunal considered carefully the evidence of the witnesses, both written and oral, together with substantial documentary evidence referred to all having regard to the

standard of proof to be applied in these proceedings, namely the balance of probabilities.

- 13.2 The Tribunal considered the evidence of the Applicant, Mr Bridge, Mr Evans and Mr Porter to be credible and reliable. Their evidence was given in a straightforward fashion without embellishment or exaggeration. Whilst both Mr Bridge and Mr Evans have an ongoing professional working relationship with the Applicant the Tribunal did not consider their evidence to be tainted in any way by that connection. Mr Porter is not an employee of the Applicant.
- 13.4 The Tribunal accepted Mr Bridge to be a very experienced building surveyor. Whilst he had conducted only one survey of the Property in June 2022 he has been intimately involved in the other properties already renovated by the Applicant on the Estate and the works done there to achieve EPC ratings anticipated to be required by the government in due course and to make the properties fit for modern use. The Respondent did not present any evidence from another building surveyor to counter Mr Bridge's findings and conclusions relative to the Property. The Respondent is a fabricator welder. In so far as the evidence of Mr Bridge and the Respondent was at odds relative to the need for, extent and effect of proposed renovations, the Tribunal preferred and accepted the evidence of Mr Bridge.
- 13.6 The evidence of the Respondent was not considered credible or reliable on matters of importance relative to the issues for determination. In very many respects, his oral testimony was entirely unsupported by established facts, was speculative or based on supposition. He did not call witnesses who could have provided support. He did not present expert evidence. The Tribunal was not therefore persuaded that the Respondent's testimony and the views he expressed were credible or reliable.

Dealing with each of the disputed issues in turn –

14. *Issue 1 - In that the Applicant seeks an eviction order under Section 33 of the Housing (Scotland) Act 1988 on the basis that the Applicant wishes to renovate the Property, to what extent are renovations required and is vacant possession needed for those renovations to be effected?*

- 14.1 This disputed issue is in two parts – firstly to what extent are renovations required and, secondly, is vacant possession needed for those renovations to be effected?

To what extent are renovations required?

- 14.2 It was a matter of agreement between the parties - quite correctly – that the water supply serving the Property does not meet the Repairing Standard. The Repairing Standard is defined in Section 13 of the 2006 Act. There was no dispute that the Repairing Standard applied to the Property and no submissions that any of the exceptions articulated in the legislation could apply.
- 14.3 It cannot possibly be the case that the water supply meets the Repairing Standard where bottled water is being supplied by the Applicant to the Respondent for drinking purposes. It is quite obvious too that the Property does not therefore meet the tolerable standard as defined in Section 87 of the 1987 Act in that it does not have "*an adequate piped supply of wholesome water available within the house*".

- 14.4 There was a difference of opinion between the parties as to the extent and effect of the contamination of the water supply and as to whether the source of any contamination is from the pipework within the Property or from the source of the supply a distance away from the Property on land owned by a third party, or a combination of both these possibilities.
- 14.5 No expert evidence was heard from any witness on this issue. No evidence was heard from those who took or analysed the water samples, produced the results or authored the Risk Assessment Summary Reports for Rusko and Pulcree. The Tribunal gave no weight to the Report of Dr Rachel Connor dated 13 June 2022. She did not give evidence therefore neither spoke to her report nor was available to be cross-examined thereon.
- 14.6 In the absence of skilled evidence on these matters, the Tribunal could not make any determination as to the extent, effect or source of the contamination to the water supply serving the Property from the documentary evidence produced which was extensive and upon which lengthy evidence was heard. But it is not necessary for the Tribunal to make such a determination. On any view and by agreement of the parties it is acknowledged that the water supply requires remedial work.
- 14.7 However, there are many other issues of repair affecting the Property also not in dispute. The Property is rural and in a poor state and has not been modernised or renovated for a long time. The Respondent's representative referred to the Property as being "*in a sorry state*". The Property requires substantial upgrading. That is apparent from the documentary and oral evidence of the Applicant, Mr Bridge, Mr Evans and the Respondent, and can readily be seen internally in the photographs produced at pages 42 to 82 of the Applicant's productions.
- 14.8 Water is penetrating the exterior stonework into an upstairs bedroom within the Property. The Respondent said he sleeps in the room with the open fire due to the water damage.
- 14.9 The windows are single glazed and there is storage heating which cannot adequately keep the Property warm. Although it appeared the Respondent did not use the storage heating anyway, he agreed in his evidence that the heating would not meet the Repairing Standard.
- 14.10 In the walls there is no insulation between the plaster and stone, and the floors of the Property are not insulated either. The Respondent said he did not know if there was such insulation. The Tribunal accepted Mr Bridge's evidence that there is not.
- 14.10 There are high levels of condensation in the Property with dark mould affecting the windows and window woodwork and with condensation spotting on walls symptomatic of the Property being cold. Mr Evans said the Respondent would heat the stove but the warm air would condense on the cold walls.
- 14.12 The Property requires new plumbing and new drains.
- 14.13 There is woodworm in the Property which, depending upon the extent, will require treated or affected timbers removed and replaced.
- 14.14 The fabric of the Property is basic.

- 14.15 None of these issues were contested.
- 14.16 The Property may have structural problems externally. Mr Bridge identified features of concern in the stonework. The Respondent disputed that proposition by Mr Bridge, suggesting only some repair was needed but led no expert evidence to that effect. The Tribunal could not determine whether there are structural problems or otherwise. Further investigations are clearly required. Quite simply, the parties do not know as matters presently stand.
- 14.17 The current energy performance rating of the Property is Band G (per the Energy Performance Certificate dated 21 January 2011 – page 208-213 of the Applicant's productions).
- 14.18 The Tribunal noted the current position relative to energy performance and the government's intention to introduce regulations in 2025 requiring all private rented sector properties to reach a minimum standard equivalent to EPC "C" by 2025 where technically feasible and cost effective at change of tenancy with a backstop of 2028 for all remaining existing properties. This was not in dispute.
- 14.19 The Repairing Standard requires that the Property *"has satisfactory thermal insulation"*. On any view, that is not the case as matters presently stand as described above.
- 14.20 In his letter dated 20 March 2020 (pages 134-143 of the Respondent's productions) Mr Robert Rome, HMO Licensing & Landlord Registration Officer of Dumfries & Galloway Council determined that the Property did not meet the Repairing Standard at the time of his inspection on 12 March 2020. He referred to various issues requiring attention. He also referred to the Respondent having told him that he sometimes sleeps in the car as the Property is too cold. In his evidence the Respondent again conceded that the Property is very cold and that the Property did not meet the Repairing Standard. Mr Rome refers to evidence of dampness in the Property requiring that the heating be put on, that the windows are draughtproofed, and that attention be given to missing masonry externally which is possibly allowing water to enter the Property.
- 14.21 Whilst the Respondent challenged Mr Turnbull on the issue of whether there is insulation in the loft (the current energy performance certificate suggests that there is such insulation at "300+mm") Mr Rome states in his letter that the Respondent told him there was no insulation in the loft and Mr Rome commented on that the fact that the loft hatch is too small to fit a roll of insulation through. No photographic or oral evidence was given to the Tribunal to establish the presence of insulation in the loft one way or the other. None of the Applicant's witnesses had looked into the loft and the Respondent did not state in terms that the loft is insulated. The only evidence of the loft being insulated is in the energy performance certificate. However, even if insulation is present in the loft, from the other evidence available to the Tribunal, the overall insulation of the Property is patently inadequate for the size and construction of the Property.
- 14.22 As a very experienced building surveyor the Tribunal paid particular regard to the evidence of Mr Bridge. Mr Bridge described works proposed to be done to the Property. Mr Bridge discussed dryrot being endemic in the area and the devastating effect dryrot

can have on both masonry and timber. He referred to the likely presence of woodworm and the effect on timbers and treatment needed. He said the electrics are "*woefully inadequate*". He said the Property would require re-wired to modern standards.

- 14.23 Mr Bridge said that to achieve a Grade C Band energy rating, the walls require stripped back to bare stone and the floors require to be insulated which will enable underfloor heating also to be installed which would allow the installation of a ground source or air sourced heat pump. He said an EPC Surveyor would feed into what works would be necessary to meet the band rating. By installing in a new structural floor Mr Bridge was more optimistic the rating could be achieved. He said "*very major*" works are required to achieve those thermal values.

But for this requirement, he said the rest of the works could be done by redecoration and refitting.

The Band C energy rating is not immediately required but given the government's previous position and statement of intent as to the regulations to be passed in 2025 one can see why it might be desirable to deal with works necessary to achieve that rating as part of other likely significant refurbishments being undertaken, all in the interests of achieving efficiency and economy and to avoid later duplication of cost and effort and just as has been done across the rest of the renovated properties on the Estate. This point is addressed further in considering the issue of reasonableness below.

- 14.24 Mr Bridge referred to a new building effectively being created within the existing shell. He said that conducting the required remedial works in this way would give the best chance of the Property being useable.

Is vacant possession needed for those renovations to be effected?

- 14.25 In his Affidavit at paragraphs 4 to 8 Mr Evans narrates the condition of the Property and the works considered necessary. At paragraph 8 he states:-

"Given all of the works required I cannot see that they can be reasonably undertaken with a tenant in occupation. The property will essentially be stripped back to the bare walls and will be without electricity and running water potentially for a significant period of time. That is only dealing with the issues that are immediately obvious and in my experience it is quite possible, if not probable with the houses of this age, that further issues will be identified once we start lifting the floorboards and stripping back. It seems to me that the works will not be completed for approaching a year."

- 14.26 In his evidence Mr Bridge stated that from a health and safety point of view it would be impossible to carry out the works as they should be done with the Respondent in situ. He did not think it a sensible or viable proposition and would not give the finished job that the Applicant was trying to achieve. He said that the Property requires to be brought up to modern standards and that there is no point doing the works if not bringing the shell up to the required thermal values. The Property he said "*needs to be attacked as one*". He said that with the Respondent in occupation the costs would be enormous, monies would be wasted and further upgrades would require to be done at a later date.

- 14.27 Under cross-examination Mr Bridge was challenged on whether vacant possession is needed to carry out the works. It was suggested the work could be carried out in

two halves. Mr Bridge stated that from a health and safety perspective he would not be happy with that arrangement and it would not be practicable to do the works in that way. He suspected working in that manner would double the cost. If the availability of material and labour was an issue (something Mr Bridge had referred to in his evidence relative to the renovation of other properties on the Estate) he was asked if a phased approach might not work better. Mr Bridge said that he did not consider that to be the case and that stripping out to a clean shell and thereafter instructing the trades in the usual way was preferable. He said stopping and starting was not logical and would increase costs. Mr Bridge said that most things were possible but not necessarily sensible nor practical. The cost of doing the work is extremely high and the Applicant would be unlikely to see any return. He wants to do the work in the most cost effective way.

- 14.28 In his evidence the Respondent said that living in a couple of rooms in the Property whilst builders were working in the Property would not phase him. He was asked by Mr Turnbull how he would live in the Property when the Property was being renovated and with no electricity. The Respondent said he had generators in the garden and could run electricity from that. A mobile toilet could be installed or a small caravan. He referred to there being a six berth caravan opposite the Applicant's house which could be used or he could be moved to Cuill Cottage. He said there are several options.
- 14.29 The Tribunal concluded that, given the extent of the renovations required and assuming the renovations include the works necessary to bring the property up to a Band C energy rating, these could not be reasonably carried out with the Respondent in occupation of the Property. Vacant possession would be needed. The works are too extensive, requiring that the Property be stripped out to a bare shell and rebuilt/refitted within that shell. There would be no electricity and no pipework or heating. It is not reasonable to accommodate the Respondent within a couple of rooms during the process. The effect of the Respondent living in the Property would be to significantly increase the time and cost associated with the works in question all as stated by Mr Bridge and accepted by the Tribunal. No contrary professional evidence was heard from the Respondent.
- 14.30 Mr Bridge stated that but for the requirement to bring the Property up to a Band C energy rating, the rest of the works could be done by redecoration and refitting. The Tribunal therefore required to determine whether it is reasonable for the Applicant to deal with the works necessary to achieve that rating as part of the other refurbishments being undertaken, all in the interests of achieving efficiency and economy and to avoid later duplication of cost and effort and just as has been done across the rest of the renovated properties on the Estate. As stated above, this point is addressed further in considering the issue of reasonableness below.
15. *Issue 2 - To what extent has the Applicant sought and been refused access to the Property by the Respondent?*
- 15.1 Evidence of the Applicant (directly or through his agents) seeking and being refused access to the Property was relatively sparse.
- 15.2 Mr Evans attached to his Affidavit at page 147 an email from him to the Applicant dated 28 April 2022 recording a chronology of certain events including issues of access. He was also cross examined by the Respondent on issues of access.

- 15.3 There was clear historic evidence of access being allowed as required, for example, in May 2016 and in April 2017 and on other occasions for repairs or remedial works or the like. That was not in dispute. The Tribunal considered the position with regard to access in 2016/17 too historic to be terribly relevant one way or the other.
- 15.4 In September and October 2019 Mr Evans records two instances of access requests being ignored by the Respondent but he gave access for an inspection subsequently in November 2019. The Tribunal does not consider the Applicant can make much of that state of affairs.
- 15.5 Mr Evans email of 28 April 2022 records access being denied for the preparation of a schedule of works in February 2020 shortly after service of the first Notices to Quit and again in September 2020 and January 2021 for plumbing inspections and water tests respectively. However, there was evidence of access being allowed in July 2020 and offered in August 2020 too. The Respondent was understandably anxious about allowing access during periods of lockdown due to Covid without appropriate protective measures being observed by those visiting. He has various health conditions and is vulnerable to that extent (this wasn't challenged by the Applicant). The Respondent's position in that connection was therefore entirely reasonable.
- 15.6 The Tribunal does not consider that the Applicant seriously seeks to make much, if anything, of the issue of access relative to the eviction application. Refusing access is not a basis for the eviction order being sought having regard to the Applicant's application. Indeed, it's difficult to see the relevance of the issue at all frankly.
- 15.7 The Tribunal therefore attaches no weight to the issue of access in considering whether or not it is reasonable to grant an eviction order.
16. *Issue 3 - Is the Applicant's true motivation to evict the Respondent the inadequate private water supply affecting the Property.*
- 16.1 The Tribunal gave no weight to the Report of Dr Rachel Connor dated 13 June 2022. She did not give evidence therefore neither spoke to her report nor was available to be cross-examined thereon.
- 16.2 The Tribunal was satisfied that the issue of the contamination of the water supply was first raised by the Respondent in February 2020 following service of the first Notices to Quit on 4 February 2020, and was a direct reaction by the Respondent to service of the Notices. The Respondent produced no evidence of any sort that indicated any problem with the water supply prior to that date or that any such problem had been brought to the Applicant's attention or the attention of his agents prior to that date. In that regard the Tribunal preferred the evidence of the Applicant.
- 16.3 The Respondent said in his evidence that Mr Andy Woodburn had raised issues about the water supply with the Applicant as early as 2015. No evidence was produced and Mr Woodburn did not give evidence. The Tribunal did not therefore take that remark into account.
- 16.4 The Notices to Quit served on 4 February 2020 were very obviously a response to Mr Evans' inspection of the Property in November 2019. His email to the Applicant dated 27 November 2019 following that inspection recommended that Notices to remove be served with an extended notice period given the condition of the Property and that it

"is scarcely achieving the tolerable standard". The Applicant accepted that recommendation and instructed Mr Evans accordingly.

16.5 Whilst the 4 February 2020 Notices were withdrawn due to Covid and subsequent Notices to Quit were issued with erroneous content culminating in the Notices to Quit being served on 8 April 2021 which form the basis for these proceedings, the Tribunal preferred the evidence of the Applicant and was entirely satisfied that all of the Notices were served due to the need to renovate the Property generally and extensively and that the Applicant's motivation to remove the Respondent did not arise as a result of the water supply issue although ultimately the Applicant now accepts that the water supply is one of the issues which requires to be resolved as part of those overall renovations. As stated above the Respondent produced no evidence that the Applicant was aware of water supply issues relative to the Property prior to service of the first Notices on 4 February 2020.

17. *Issue 4 - Has the Applicant deliberately failed to carry our repairs to the Property notified by the Respondent?*

17.1 The Tribunal accepts the Applicant's evidence that following his acquisition of Rusko Estate in March 2016 he has embarked upon a programme of maintenance of properties situated there all at significant cost. In his Affidavit the Applicant states that costs to date have been in excess of £400,000. He acknowledged that, on acquiring the Estate, none of the properties had been modernised for some time – in some cases going back decades. These refurbishments have generally been done as properties have naturally become vacant. There was no evidence of any description whatsoever that the tenants of those properties had received "a wee nudge" or some form of intimidation to remove as suggested by the Respondent.

17.2 At the point of acquiring the Estate the Applicant became in right of the landlord's interest in the lease of the Property to the Respondent and the Applicant therefore accepted the condition of the Property as it was at that time.

17.3 The Tribunal did not accept that the suggestion that the Applicant has deliberately failed to carry out repairs to the Property notified by the Respondent. This suggests that in order for the Property to achieve a sufficiently dilapidated state for the Applicant to recover possession to renovate and refurbish as now sought by virtue of this application he has intentionally neglected repairs. Whilst not notified by the Respondent, the Applicant instructed a plumber, Ian McMillan, to attend the Property to check and change the filters and UV bulb on the same day he was first contacted by the Environmental Health Department of Dumfries & Galloway Council relative to the water supply being 19 February 2020. When contacted by Mr Rome, HMO Licensing & Landlord Registration Officer by letter dated 20 March 2020 he immediately instructed his agent, Mr Evans, to deal with and answer the issues raised. A new multi-fuel stove was subsequently installed.

17.4 Evidence was heard and documents considered relative to repairs sought and undertaken by contractors appointed for and on behalf of the Applicant in 2016 and 2017. The Tribunal struggled with the relevance of such historic examples.

17.5 In his evidence, the Respondent complained that there had been no PAT testing on the house, the fridge or cooker or the ultraviolet system. Even if correct, that does not

equate to the Applicant deliberately failing to carry out repairs notified by the Respondent.

- 17.6 The Respondent said that said that any maintenance to the Property had only made the condition worse. That does not meet the terms of the issue as framed either. In his evidence the Respondent did not articulate what items of repair he had intimated to the Applicant that he had deliberately failed to carry out.
- 17.7 Having regard to the evidence and on the balance of probabilities, the Tribunal did not accept that the Applicant had deliberately failed to carry out repairs notified by the Respondent.
18. *Issue 5 - Has the Applicant by his employees, David Porter and/or Neil Pickthall, intimidated the Respondent in an effort to secure his removal from the Property?*
- 18.1 The Tribunal heard and accepted that Mr David Porter is not an employee of the Applicant. He is an employee of David and Neil Austin. Mr Porter and the Applicant both gave evidence to that effect. The Respondent produced no evidence to the contrary but even in his submissions the Respondent persists in referring to Mr Porter as the Applicant's employee. He is not.
- 18.2 The Tribunal accepted the evidence of the Applicant that he had not instructed or been complicit in any intimation of the Respondent. The Tribunal accepted that he had sought to avoid any tensions between Mr Porter and the Respondent escalating and had encouraged Mr Porter not to engage. He said Mr Porter had complained to him on a number of occasions about being filmed going about his work and when with his daughter. He said the suggestion that Mr Porter left dead animals on the estate to intimidate the Respondent was nonsense.
- 18.3 The Tribunal heard evidence from Mr Porter. His evidence was accepted by the Tribunal. Relations between Mr Porter and the Respondent appeared to have been civil but, at some stage, turned sour. The Tribunal noted the two incidents to which Mr Porter referred involving the dogs and being filmed or photographed by the Respondent as he went about his work. He reported these incidents to his employers and to the Police as instructed by his employers. Whilst some time was spent during the Hearing considering photographs of dead animals on the estate the Tribunal did not accept the Respondent's position that Mr Porter left these animals to intimidate him. Mr Porter denied that to be the case. If the Respondent considered there to be animal welfare issues on the Estate he ought to have reported these to the proper authorities. He accepted that he didn't do so. That was unexplained and curious given the apparent significance of these alleged events. Mr Porter's evidence was preferred being more credible and reliable.
- 18.4 No evidence was led from Mr Pickthall. The Tribunal accepted the Applicant's evidence that he did not direct Mr Pickthall to intimidate the Respondent. The Applicant stated that Mr Pickthall complained to him about being filmed by the Respondent. (The Respondent filming third parties was a theme running through the evidence generally.) The Tribunal accepted that the Applicant told Mr Pickthall not to engage or take any action. The Applicant did not want the situation to escalate and told Mr Pickthall, David Porter and the Austins not to get involved.

- 18.5 At it's highest the Respondent's evidence relative to Mr Pickthall was that the Applicant (or Mr Evans on the Applicant's behalf) continued to send Mr Pickthall to the Property to undertake repairs when the Respondent had asked that he not attend, and that this amounted to intimidation. The Tribunal did not accept that to be the case.
- 18.6 In his evidence the Respondent referred to a parcel containing a fishing rod addressed to the Applicant and a bag of feed having been left against the gate of the Property hoping that the Respondent would take them. There was absolutely no evidence to that effect and no witness was asked by the Respondent about these alleged incidents. The Tribunal had no regard to them.
- 18.7 On the balance of probabilities the Tribunal determined that neither the Applicant, David Porter nor Neil Pickthall intimidated the Respondent in an effort to secure his removal from the Property.

19. *Issue 6 - Is it reasonable for an eviction order to be granted?*

- 19.1 In assessing reasonableness the Tribunal has considered carefully whether it is reasonable that works to be carried out include those associated with bringing the Property up to a Band C energy rating. The rest of the works, according to Mr Bridge, could be done by redecoration and refitting. Is it reasonable for the Applicant to include the works necessary to achieve that rating as part of the other refurbishments being undertaken, all in the interests of achieving efficiency and economy and to avoid later duplication of cost and effort as has been done across the rest of the renovated properties on the Estate.
- 19.2 As narrated at 12.2 above, in assessing reasonableness the Tribunal is required to act in "*a broad, common sense way, as a man of the world and come to his conclusion giving such weight as he thinks fit to the various factors in the situation*". The Tribunal must also "*weigh and balance all the relevant facts found by it which bear on reasonableness*".
- 19.3 The Tribunal does not consider it reasonable for the Applicant to undertake extensive renovations to the Property and leave out works associated with achieving a Band C energy rating. The government had previously committed to the introduction of regulations to ensure properties in the private rented sector reached a Band D rating by 2025. However due to the Covid pandemic the position changed and the government has stated its intention to introduce regulations in 2025 requiring all such properties to reach a minimum Band C rating by 2025 where technically feasible and cost effective at change of tenancy, with a backstop of 2028 for all remaining properties. This allows private sector landlords additional time to undertake necessary works albeit to achieve a Band C rating rather than Band D as previously proposed.
- 19.4 The issue of a change to acceptable energy ratings of properties in the private rented sector is not speculative or theoretical. It is the stated intention of the government to introduce regulations in 2025. Accordingly, whilst renovations to the Property to achieve a Band C rating are not immediately required it is common sense that in carrying out extensive remedial works now the additional works associated with achieving a Band C rating should be done too. These works are very significant. To do otherwise will result in the Applicant incurring considerable additional cost and duplicating effort at a later date all as articulated by Mr Bridge. The Property cannot

be left as it is. It does not meet the Repairing Standard. It does not meet the tolerable standard.

- 19.5 In assessing reasonableness the Tribunal attaches no weight to any complaints of lack of access to the Property.
- 19.6 The Tribunal is entirely satisfied that all of the Notices to Quit were served due to the need to renovate the Property generally and extensively and that the Applicant's motivation to remove the Respondent does not arise as a result of the water supply issue although ultimately the Applicant now accepts that the water supply is one of the issues which requires to be resolved as part of those overall renovations.
- 19.7 The Tribunal does not accept that the Applicant had deliberately failed to carry out repairs to the Property notified by the Respondent.
- 19.8 In assessing the reasonableness of granting an eviction order the Tribunal rejects the Respondent's suggestion that there has been intimidation by the Applicant, Mr Porter or Mr Pickthall to secure his removal from the Property.
- 19.9 At the CMD on 19 April 2022 the Respondent intimated to the Tribunal that he was then renting another residential property in Annan leased to him by DG Housing Partnership as well as renting the Property. At the CMD he stated that the Annan property was not suitable. It is a small bungalow with neighbours on each side. He said he had not had neighbours for 20 years. The Property is rural. He has 3 dogs. He felt compelled to accept the lease of the Annan property as he had been advised that he would otherwise be considered to be intentionally homeless.
- 19.10 As at the last day of the Hearing on 15 August 2023 when the Respondent concluded his evidence he stated that he continued to rent the Annan property. However, he said he was still looking for more rural accommodation given his dogs and that he has never had neighbours. He said he was looking in Yorkshire too.
- 19.11 In assessing the reasonableness of granting an eviction order, the Tribunal takes into account that the Respondent has alternative accommodation available to him and has had that accommodation available to him from at least 19 April 2022. He has chosen not to live there but to remain in the Property.
- 19.12 In all the circumstances the Tribunal considers that the Applicant's need and desire to extensively renovate the Property to include the works associated with achieving a Band C energy rating outweigh the Respondent's desire to remain in occupation of the Property as a tenant. The Tribunal considers that, given the extent of the renovations required and the works necessary to bring the property up to a Band C energy rating, the renovations could not be reasonably carried out with the Respondent in occupation of the Property. Vacant possession would be needed. The works are too extensive, requiring that the Property be stripped out to a bare shell and rebuilt/refitted within that shell. There would be no electricity and no pipework or heating. It is not reasonable to accommodate the Respondent within a couple of rooms during the process. The effect of the Respondent living in the Property would be to significantly increase the time and cost associated with the works. That is not reasonable. The Applicant does not require to offer the Respondent alternative accommodation. The Tribunal takes into account that the Respondent already has alternative accommodation in Annan and has been paying rent for that accommodation since at

least April 2022. Therefore he will not be homeless or require to find alternative accommodation if an eviction order is granted. He has made those arrangements already. This adds further weight to the reasonableness of an eviction order being granted.

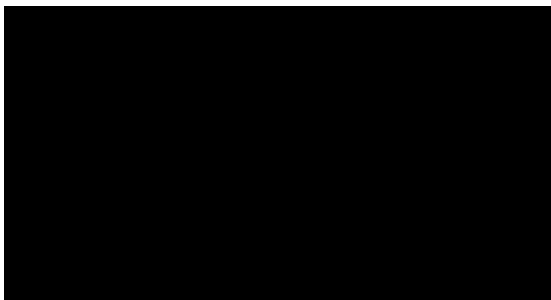
19.13 The Respondent made a great deal of the extent and effect of the contamination of the water supply serving the Property. It is somewhat curious that, against that backdrop, the Respondent chooses to continue to live there when he has safe alternative accommodation and the only reason he has not moved to Annan is that he would have neighbours in close proximity.

Decision

The Tribunal grants the Application and makes an eviction order in favour of the Applicant against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

22 January 2024
Date