

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.**

**Chamber Ref: FTS/HPC/RP/25/3083**

**Chromain Cottage, Sandbank, Dunoon, PA23 8PN being the subjects registered in the Land Register of Scotland under title number ARG24229 ('The Property')**

**The Parties:-**

**Michelle Hamilton of 846 Kingsway, Manchester, M20 5WQ, the executor of the late William Russell ('the Landlord').**

**Kenneth Caldwell, Solicitor, Patten & Prentice, 2 Ardgowan Square, Greenock, PA16 8PP ('The Landlord's Representative')**

**Richard Byars, Chrisna Byars and Jane (Snr) Byars residing together at Chromain Cottage, Sandbank, Dunoon, PA23 8PN ('the Applicants').**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Nick Allan (Ordinary Member).**

**Decision**

**The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. The Applicants lease the Property from the Landlord. The Applicants applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. The application stated that they considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains,

gutters and external pipes) are not in a reasonable state of repair and proper working order; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order; the fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard as (i) it does not have an interlinked system of fire and smoke alarms and adequate carbon monoxide alarms (ii) it does not comply with the relevant requirements in relation to the electrical installations for the purposes of that supply (iii) it does not have thermal insulation and (iv) it does not have an effective system for the drainage and disposal of foul and surface water.

In particular the application (including email from Richard Byars to the Landlord's Representative dated 15<sup>th</sup> July 2025) stated :-

2.1 No smoke detectors or fire precautions in the Property.

2.2 Ceiling in kitchen had damp patches on it, most likely from missing ridging on kitchen roof.

2.3 Rendering on external walls. The kitchen at west most side of Property is particularly bad and requires to be stripped and rendered.

2.4 The wall vent appears to be loose as no rendering holding it in. This is most likely allowing vermin to enter the external walls and get into the roof space above the kitchen area.

2.5 Main roof above living room, small front hall and smaller bedroom has lead edging, timber and slates missing at west most gable end fallen off due to rot and water ingress. This is causing water ingress to the living room ceiling where damp patches are noted.

2.6 The slates missing off the front roof are causing a leak in certain wind conditions to leak directly above the electrical meters in the small front hallway above the front entrance door. This is obviously a danger and is causing concern. This was told to the builder and estate agent.

2.7 There are damp patches and mould growing in small front facing bedroom ceiling from missing slates in same main roof.

2.8 Drains appear to be not functioning correctly at rear of property.

2.9 Guttering has been damaged by various storms and not working correctly.

2.10 Hot water boiler in kitchen appears to be faulty. We are scared to use it. Only cold water available in the kitchen.

2.11 Only multi fuel burner in living room area. Remaining storage heaters in both bedrooms are either old or extremely inefficient. The owner told us in November 2017 that he would install new heating system within three years.

2.12 Ineffective or no insulation in roof space above main roof covering, living room, small bedroom and small front hallway.

2.13 The front door lock on the double glazed door in the conservatory is not working. This requires to be fixed.

2.14 The shower door in the bathroom shattered when my 5 year old son was trying to exit it.

3. On 25<sup>th</sup> August 2025, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received on 15<sup>th</sup> July 2025, and he referred the application under Section 22 (1) of the Act to a Tribunal.

4. The Landlord's Representative sent the Tribunal an email dated 22<sup>nd</sup> July 2025 which stated that fire precautions had been installed.

5. The Landlord's Representative sent the Tribunal an email dated 9<sup>th</sup> February 2026 and provided copies of the following documents:

5.1 Property Schedule for Chromain Cottage prepared by Miller Stewart Estate Agents.

5.2 Tenancy Agreement dated 1st December 2017.

5.3 Letters of Administration for the estate of the late William Russell.

5.4 Energy Performance Certificate dated 4th April 2025.

5.5 Home Report by Allied Surveyors dated 7th April 2025.

5.6 Smoke Alarm Installation Certificate dated 31st July 2025.

5.7 Unsatisfactory Electrical Installation Condition Report (EICR) dated 21st July 2025.

5.8 Portable Appliance Testing (PAT) Certificate dated 31st July 2025.

5.9 Satisfactory EICR dated 19th September 2025.

5.10 Report and invoice by D&N Joinery dated 4th November 2025.

- 5.11 Legionella Risk Assessment dated 16th December 2025.
- 5.12 Invoice by D&N Joinery dated 18th December 2025.
- 5.13 Report by D&N Joinery dated 28th January 2026.

## **6. The Inspection.**

The Tribunal attended at the Property at 10.00 am on 27<sup>th</sup> February 2026. The Applicants and the Landlord's Representative were present at the inspection.

The Property, Chromain Cottage, Sandbank, Dunoon, PA23 8PN is a rural detached cottage formed over one storey and a mezzanine level. The original property is over one hundred years old and it has been extended over time. The accommodation comprises conservatory, living room/ dining area, 2 double bedrooms, kitchen and bathroom.

The Property is served by two septic tanks.

The Tribunal inspected the alleged defects and found as follows:-

### 6.1 No smoke detectors or fire precautions in the Property.

Interconnected smoke and heat detectors had been installed in the kitchen, living room and lower and upper halls of the Property.

### 6.2 Ceiling in kitchen had damp patches on it, most likely from missing slates and flashing on kitchen roof.

There was mould on the kitchen ceiling.

### 6.3 Rendering on external walls. The kitchen at west most side of Property is particularly bad and requires to be stripped and rendered.

The external rendering to the west most gable end of the Property was cracked and sections were missing.

### 6.4 The wall vent appears to be loose as no rendering holding it in. This is most likely allowing vermin to enter the external walls and get into the roof space above the kitchen area.

The external wall vent was held in position with a twig.

### 6.5 Main roof above living room, small front hall and smaller bedroom has lead edging, timber and slates missing at west most gable end fallen off due to rot and water ingress. This is causing water ingress to the living room ceiling where damp patches are noted.

The principal roof of the Property was defective as slates were missing and the gutter to the front of the Property was missing. The valley gutter was blocked. A flashing repair to the ridge of the roof was defective. A chimney pot was broken.

6.6 The slates missing off the front roof are causing a leak in certain wind conditions to leak directly above the electrical meters in the small front hallway above the front entrance door. This is obviously a danger and is causing concern. This was told to the builder and estate agent.

There was damp staining to the ceiling of the front hallway above the front entrance door.

6.7 There are damp patches and mould growing in small front facing bedroom ceiling from missing slates in same main roof.

There was damp staining to the ceiling of the front facing bedroom. There was evidence of water ingress and buckets were in position to collect water leaks.

6.8 Drains appear to be not functioning correctly at rear of property.

Mr Byars confirmed that the drains had recently been repaired.

6.9 Guttering has been damaged by various storms and not working correctly.

The guttering to the front of the Property was missing and the valley gutter was blocked.

6.10 Hot water boiler in kitchen appears to be faulty. We are scared to use it. Only cold water available in the kitchen.

Mr Byars confirmed that the hot water boiler in the kitchen had been repaired.

6.11 Only multi fuel burner in living room area. Remaining storage heaters in both bedrooms are either old or extremely inefficient. The owner told us in November 2017 that he would install new heating system within three years.

There were electric storage heaters in the two bedrooms, the living room and the dining area. Mr Byars advised that he does not use them as they are too expensive to run.

6.12 Ineffective or no insulation in roof space above main roof covering, living room, small bedroom and small front hallway.

The Tribunal did not inspect the roof space.

6.13 The front door lock on the double glazed door in the conservatory is not working. This requires to be fixed.

The front door lock to the conservatory door did not lock and was broken.

6.14 The shower door in the bathroom shattered when my 5 year old son was trying to exit it.

The glass to the shower cubicle door was missing.

Photographs were taken during the inspection and are attached as a Schedule to this report.

## **7. The Hearing.**

Following the inspection of the Property the Tribunal held an inperson hearing at 12 noon at Dunoon Sheriff Court.

My Byars and Mr Caldwell attended the hearing.

Mr Allan, the Ordinary member, referred the parties to the matters observed at the inspection. The parties advised as follows:

### 7.1 No smoke detectors or fire precautions in the Property.

Mr Byars confirmed that new smoke detectors had been installed and he wished to withdraw this complaint.

### 7.2 Ceiling in kitchen had damp patches on it, most likely from missing ridging on kitchen roof.

Mr Byars explained that the damp and mould patches on the kitchen ceiling correspond to the position of the missing flashing on the roof.

### 7.3 Rendering on external walls. The kitchen at west most side of Property is particularly bad and requires to be stripped and rendered.

Mr Byars referred to the sections of external rendering that were missing.

### 7.4 The wall vent appears to be loose as no rendering holding it in. This is most likely allowing vermin to enter the external walls and get into the roof space above the kitchen area.

Mr Byars explained that the wall vent was loose and propped up with a branch.

### 7.5 Main roof above living room, small front hall and smaller bedroom has lead edging, timber and slates missing at west most gable end fallen off due to rot and water ingress. This is causing water ingress to the living room ceiling where damp patches are noted.

Mr Byars confirmed that there were loose and missing roof slates, missing gutters and gutters were clogged with debris.

7.6 The slates missing off the front roof are causing a leak in certain wind conditions to leak directly above the electrical meters in the small front hallway above the front entrance door. This is obviously a danger and is causing concern. This was told to the builder and estate agent.

Mr Byars confirmed that in certain wind directions the front roof leaks and water ingress occurs in the front hall above the electric meters.

7.7 There are damp patches and mould growing in small front facing bedroom ceiling from missing slates in same main roof.

Mr Byars confirmed that the water ingress to the front bedroom is particularly bad. He has had to place buckets to collect the drips when it is raining. There is damp and mould staining on the ceiling of the front bedroom.

7.8 Drains appear to be not functioning correctly at rear of property.

Mr Byars confirmed that the drains had been repaired and he wished to withdraw this complaint.

7.9 Guttering has been damaged by various storms and not working correctly.

Mr Byars confirmed that sections of the guttering were missing and sections were blocked.

7.10 Hot water boiler in kitchen appears to be faulty. We are scared to use it. Only cold water available in the kitchen.

Mr Byars confirmed that the hot water boiler had been repaired and he wished to withdraw this complaint.

7.11 Only multi fuel burner in living room area. Remaining storage heaters in both bedrooms are either old or extremely inefficient. The owner told us in November 2017 that he would install new heating system within three years.

Mr Byars explained that the electrician had told him that the electric storage heaters in the Property are inefficient.

7.12 Ineffective or no insulation in roof space above main roof covering, living room, small bedroom and small front hallway.

Mr Byars explained that he suspects that there is insufficient insulation in the roof, however he has not looked in the roof space to confirm the position. Mr Caldwell advised that there was no evidence to support this complaint.

7.13 The front door lock on the double glazed door in the conservatory is not working. This requires to be fixed.

Mr Byars agreed that the lock of the conservatory front door is defective.

7.14 The shower door in the bathroom shattered when my 5 year old son was trying to exit it.

Mr Byars acknowledged that the glass of the door to the shower cubicle is missing but the shower works satisfactorily.

Mr Caldwell advised the Tribunal of the background to the application. The late Mr Russell had acquired a number of properties in Dunoon, including Chromain Cottage, and he became friends with the Applicants. Mr Byars had been an estate agent in Dunoon and in 2017 marketed Chroman Cottage for offers over £375,000. He had obtained a copy of the short assured tenancy agreement that he has produced from the Local Authority. Following the death of Mr Russell the Applicants had withheld rent for a time but recently have been paying the estate's English solicitors who are acting in connection with the administration of the estate rent of £425 per month. Mr Byars had expressed a desire to purchase the Property from the estate but agreement could not be reached. Mr Caldwell has served a Notice to Leave on the Applicants on the basis that the Landlord intends to sell the Property. His client has been doing her best to arrange for the various repairs to be carried out. However, she is aware that the roof is in a state of serious disrepair. He has produced an estimate from D & N Joinery which states that the original cottage roof needs to be completely stripped and re-slatted and that for health and safety reasons vacant possession would be required.

**8. Decision.**

8.1 The Tribunal made the following findings in fact:

8.1.1 There was mould on the kitchen ceiling.

8.1.2 The external rendering to the west most gable end of the Property was cracked and sections were missing.

8.1.3 The external wall vent was held in position with a twig.

8.1.4 The principal roof of the Property was defective as slates were missing and the gutter to the front of the Property was missing. The valley gutter was blocked. A flashing repair to the ridge of the roof was defective. A chimney pot was broken. A section of roof next to the chimney head is missing and the roof has partly collapsed.

8.1.5 There was damp staining to the ceiling of the front hallway above the front entrance door.

8.1.6 There was damp staining to the ceiling of the front facing bedroom. There was evidence of water ingress and buckets were in position to collect water leaks.

8.1.7 The guttering to the front of the Property was missing and the valley gutter was blocked.

8.1.8 The front door lock to the conservatory door did not lock and was broken.

8.1.9 The glass to the shower cubicle door was missing.

8.2 In connection with the requirements of the Repairing Standard:

8.2.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

The Tribunal determine that the (i) mould on the kitchen ceiling and (ii) damp staining to the ceiling of the front hall and front facing bedroom results in them not being wind and water tight and in all other respects reasonably fit for human habitation.

8.2.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine that the condition of the defective (i) external rendering (ii) wall vent (iii) roof (including the collapsed section next to the chimney head) (iv) valley gutter (v) ridge of the roof (vi) chimney pot (vii) missing guttering and (viii) blocked valley gutter results in them not being in a reasonable state of repair and proper working order.

8.2.3 Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order. (Section 13(1) (d) of The Housing (Scotland) Act 2006).

The Tribunal determine that (i) defective front door lock of the conservatory and (ii) the missing glass to the door of the shower cubicle results in them not being in a reasonable state of repair.

8.3 As no evidence was provided as to the condition and extent of any roof insulation in the Property or whether or not the electric storage heaters worked satisfactorily the Tribunal were unable to make a determination regarding these matters.

8.4. The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1)(a)(b) and (d) of the Act, as stated.

8.5 The decision of the Tribunal was unanimous.

## 9. Appeal

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

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

# Jacqui Taylor

.....Chairperson

23<sup>rd</sup> March 2026