

# Housing and Property Chamber First-tier Tribunal for Scotland

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**Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006**

**Property: 1 Lammonbie Cottages, Lockerbie, Dumfriesshire DG11 2RN (“the Property”/ “the house”)**

**Sasine Description: All and Whole the detached cottage known as Lammonbie Number One, Balgray, Lockerbie, Dumfriesshire DH11 2JT with ground pertaining thereto, being part of the subjects more particularly described in and disposed by Disposition by the Trustees of David Jardine Paterson in favour of Michael John Jardine Paterson dated 16 May and subsequent dates and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on 2 December, all in the year 1980.**

**Chamber Reference: FTS/HPC/RT/19/3419**

**Parties:**

**Dumfries and Galloway Council Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)**

**Wellingtonia LLP, a Limited Liability Partnership incorporated in England (LLP Reg No OC416665) whose registered office is Fairview House, Victoria Place, Carlisle CA1 1EX (“the Landlord”)**

**Interested Party - Mr Ian Lamb, 1 Lammonbie Cottages, Lockerbie, Dumfriesshire DG11 2RN (“the Interested Party”)**

**Tribunal Members - George Clark (Legal Member/Chairperson) and Mike Links (Ordinary Member/Surveyor)**

Whereas in terms of their decision dated 5 March 2020, The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard. In particular, the Tribunal requires the Landlord to:

1. Carry out such repairs to the external render of the Property as are necessary to ensure it is wind and watertight.

2. Protect and make safe the electrical cabling along the outer surface of the porch of the Property by encasing it in a suitable conduit.
3. Exhibit to the Tribunal evidence of SEPA consent in respect of the septic tank serving the Property.

The Tribunal orders that the works required by this Order must be carried out within the period of six months from the date of service of this Order.

### **Right of Appeal**

**In terms of section 46 of the Tribunals (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.**

**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.**

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

**IN WITNESS WHEREOF** these presents, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 5 March 2020, before this witness, Valerie Elizabeth Jane Clark, Droman House, Lasswade.

George Clark

Valerie Clark

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... Legal Member/Chair .

Witness

# Housing and Property Chamber First-tier Tribunal for Scotland

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## **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006**

**Property: 1 Lammonbie Cottages, Lockerbie, Dumfriesshire DG11 2RN  
("the Property"/ "the house")**

**Chamber Reference: FTS/HPC/RT/19/3419**

### **Parties:**

**Dumfries and Galloway Council Strategic Housing Services, Council  
Offices, Buccleuch Street, Dumfries DG1 2AD ("Third Party Applicant")**

**Wellingtonia LLP, a Limited Liability Partnership incorporated in  
England (LLP Reg No OC416665) whose registered office is Fairview  
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**Interested Party - Mr Ian Lamb, 1 Lammonbie Cottages, Lockerbie,  
Dumfriesshire DG11 2RN ("the Interested Party")**

**Tribunal Members - George Clark (Legal Member/Chairperson) and Mike  
Links (Ordinary Member/Surveyor)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber)  
("the Tribunal"), having made such enquiries as it saw fit for the  
purposes of determining whether the Landlord has complied with the  
duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006  
("the Act"), determined that the Landlord had failed to comply with the  
duty imposed by Section 14 (1)(b) of the Act and that a Repairing  
Standard Enforcement Order should be made.**

### **Background**

- 1. By application, received by the Tribunal on 24 October 2019, the Third  
Party Applicant applied to the Housing and Property Chamber of the First-  
tier Tribunal for Scotland for a determination of whether the Landlord had  
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 the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that 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, that 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 and that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. The application was accompanied by a copy of a letter sent by the Third Party Applicant to the Landlord on 14 May 2019. The letter listed the following work which needed to be carried out and which formed the basis of the application.

"1. The structure and exterior is not in a good state of repair.

- a) The timber windows to the rear of the property are in serious disrepair, have lost structural integrity due to water ingress. They are at risk of the glazing falling out in places.
- b) There are areas of missing and cracked rendering to all three elevations.
- c) The external cavity vents have all been blocked up restricting ventilation.
- d) The fascia boards are in serious disrepair and have lost structural integrity.
- e) Areas of the timber porch are in serious disrepair and have lost structural integrity.
- f) There are areas of leaking guttering to the rear of the property.
- g) The exposed plastic pipework has become brittle and damaged due to exposure.
- h) The exposed timber front door is starting to crack due to lack of maintenance.

"2. The installations for supplying electricity to the shower is not in a reasonable state of repair as the 10mm Twin and Earth supply cable has been clipped around the external wall of the wooden porch, left exposed to the elements with no cable protection.

"3. There is no mechanical ventilation within the shower room and the window is unsafe to open.

"4. The tenant said that a toad came out of the toilet one day. It must have come up from the septic tank which the tenant believes to be in the next field.

"5. The EPC is misleading and the EICR needs to be looked at."

4. The Third Party Applicant also commented in the letter that "the heat detector has been installed within the dining area that is separated from the kitchen with an open shelved partition. This would be more effective if it was located within the kitchen area where there are more sources of heat."

5. In the application, the Third Party Applicant referred to the items in the letter as setting out the nature of the work which needed to be done, apart from the issue of the heat detector, which had already been moved.
6. On 20 December 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
7. On 10 January 2020, the Landlord's representatives, Savills, 28 Castle Street, Dumfries made written representations to the Tribunal. They referred to a letter they had sent to the Third Party Applicant on 24 May 2019, which had included an Electrical Installation Condition Report, and commented that it was not necessary to meet minimum EPC requirements until 31 March 2022. The Landlord had granted permission for works to be undertaken but had not instructed the EPC.
8. The Landlord's representatives stated that the rear windows had been replaced with uPVC units in October 2019. Works to the porch had been undertaken at the same time. The gutter joints and downpipes had been repaired, the fascia boarding had been replaced, the external electric shower cable had been covered, the PVC pipework from the kitchen had been replaced, the lack of ventilation within the shower room and the issue of the window there had been resolved by the replacement of the window, and the heat detector had been moved to the other side of the open partition. The cavity vents had been removed, cleared of sealant and refitted. Following inspection, the Landlord had decided that the current extent of the cracked render was not deemed sufficient to warrant immediate replacement, but the matter would be re-inspected during the full annual inspection in Spring 2020. The fireplace in the living room had been repaired to ensure it remained in a reasonable state of repair and in proper working order. It was acknowledged that minor joinery repairs and decoration were required to the timber front door, but the view of the Landlord was that it was still wind and watertight, The condition of the door was being monitored and it would be checked at the annual inspection in Spring 2020, with painting being carried out when the weather improved in the Spring of 2020. It had been ascertained following investigation that drainage from the Property is to a septic tank which is shared with three other cottages. The Landlord had applied on 6 January 2020 for registration of the tank with SEPA. The written representations included copies of invoices for all the works carried out.
9. The Tribunal Members inspected the Property on the morning of 6 February 2020 and were admitted by the tenant, Mr Lamb. The Third Party Applicant was represented by Mr Robert Rome and Mr Adam Black. The Landlord was represented at the inspection by Mr Matthew Law, Rural Surveyor and Mr Mark Fogden, Director, both of Savills, Dumfries.
10. The Tribunal comprised George Clark (Legal Member/Chair) and Mike Links (Ordinary Member/surveyor).

11. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

12. Following the inspection, the Tribunal held a Hearing at Moffat Town Hall, High Street, Moffat. Mr Rome and Mr Black attended the Hearing on behalf of the Third Party Applicant. The Landlord was represented by Mr Law and Mr Fogden.
13. The Parties told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection. The Third Party Applicant agreed that the works as set out in the Landlord's written representations had been carried out. The Landlord's representatives advised the Tribunal that the front windows had previously been replaced and that there had not been a radiator in the living room during the present tenancy, the coal fire being the only method of heating the room. There were no plans for immediate remedial work to the external render.
14. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

### **Findings of fact**

15. The Tribunal makes the following findings of fact:
  - The Property comprises a single storey detached cottage in a row of four, erected initially to house estate workers. Drainage is to a septic tank which is shared with the other three cottages.
  - This is a Third Party Application by Dumfries & Galloway Council.
  - The tenant is not a Party to the application but is classified as an Interested Party.
  - There is a smoke detector in the living room and a heat detector in the kitchen area. There is also a carbon monoxide monitor in the living room, where there is a coal fire.
  - The windows to the rear of the Property have been replaced with windows of modern uPVC design.
  - There is evidence of missing and cracked render to the external walls.
  - The external cavity vents are were clear at the time of the inspection.
  - The fascia boards.
  - The timber porch appears, following repair, to be structurally sound.
  - A hole at the elbow of the external pipe from the kitchen has been patched and, following repairs, there is no evidence that the gutters are leaking.

- The external plastic pipework has been repaired/replaced.
- The electrical cabling clipped in below the gutter and wall of the porch is now partially covered by the new fascia boarding.
- The new window in the shower room has remedied the issues raised about lack of ventilation and the previous window not opening safely.
- The timber front door appears to be solid and secure, with no evidence of cracking.
- The issues mentioned in the Third Party Applicant's letter to the Landlord of 14 May 2019 regarding the EICR and the EPC were not included in the application, so were not considered by the Tribunal.

### **Reasons for Decision**

16. The Tribunal was satisfied that the large majority of issues raised in the application had been resolved to the satisfaction of the Third Party Applicant, but was concerned to ensure that render repairs were carried out following the scheduled annual inspection in Spring 2020 and that the SEPA registration of the septic tank was successfully completed. The Tribunal was also concerned that, although the external electrical cabling was now partially covered by the new fascia boarding, the exposed section should be protected within a conduit in order to be safe.
17. The Tribunal accepted that some of the outstanding work was weather dependent, that the annual inspection was due in the Spring and that the Landlord had no control over the timing of the issue of SEPA consent for the septic tank, so was content to allow a period of up to 6 months for completion.

### **Decision**

18. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.
19. The decision of the tribunal was unanimous.

### **Right of Appeal**

**In terms of section 46 of the Tribunals (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.**

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George Clark  
Signed: \_\_\_\_\_, Legal Member/Chairperson  
Date: 5 March 2020



*This is the Schedule of Photographs referred to in the  
January Statute of Deeds*  
George Clark *Jan/20/20 5/14/20*

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**SCHEDULE OF PHOTOGRAPHS**

**ADDRESS: 1 LAMMONBIE COTTAGES, LOCKERBIE DG11 2RN**

**DATE: 6 FEBRUARY 2020**

**REFERENCE: FTS/HPC/RT/19/3419**



**FRONT ELEVATION**



**REAR ELEVATION**



**SIDE PORCH**



**NEW FASCIA**



**REPAIRED PIPEWORK**



**VENT - FRONT WALL**



**FRONT DOOR**



**CRACKING – FRONT**



**EXPOSED CABLE**



**HEAT DETECTOR – KITCHEN**



**CO MONITOR – LIVING ROOM**



**COAL FIRE – LIVING ROOM**

**Mr M LINKS**

**ORDINARY MEMBER (SURVEYOR)**

**HOUSING AND PROPERTY CHAMBER**

**DATE 6 February 2020**