

Housing and Property Chamber First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Chamber Reference number: FTC/HPC/RT/18/3039

Parties:

1. Dumfries and Galloway Council per its employee Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act ("the Third -party Applicant");
2. Mr. Raymond Swan and Miss Margaret Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW ("the Tenants") per their nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Harry Dalziel residing at 6, Yarrow Court, Dumfries, DG2 9HG ("the Tenants' Representative") and
3. Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN("the Landlord"), together referred to as "the Parties".

Property: 7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects more particularly described in Disposition in favour of Albert Fergus Dodds and recorded in the Division of the General Register of Sasines for the County of Dumfries on 26 May 1986 on Sasines Search Sheet number 26551, Volume 155 and Folio 56..

Tribunal Members

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

Notice to Landlord

Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN

Whereas in terms of its decision dated 20 March 2019, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlords have failed to comply in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d) and 13(1) (g) of the Act and have failed to ensure that the Property is wind and watertight and reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health the First-tier Tribunal now requires the Landlords to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before 6 May 2019:-

1. Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the Property and (ii) to provide a fully documented report on the Property which should include a report on the roughcasting, the front wall of the bedroom at the front of the Property the living room window, the roof tiles, both external doors and their surrounds and the guttering ("the Survey Report"), the purpose of which Survey Report is to recommend works to all parts of the Property, including renewal or replacement if necessary, to ensure that the dampness in the Property is eradicated and to ensure that the Property is made wind and watertight and is in a reasonable state of repair;
2. Submit the Survey Report to the Tribunal and provide a copy to the Tenants and the Third-party Applicant;
3. Instruct a Scottish Building Federation registered building contractor capable of providing a 10- year guarantee repair to carry out all works recommended by the Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor, the date on which the works will commence and the estimated date for their completion;

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4. Complete the installation of the kitchen to include the completion of the electrical installation and the relocation of the immersion switch to a location which is lower and so easier for the Tenants to access, the fitting of all kitchen unit doors, the repair or renewal of the hob control knob and the fitting of tiling or splash-backs at all kitchen work surfaces;
5. On completion of the kitchen installation, instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord's appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards (iii) to ensure that the carbon monoxide detector in the Property is positioned to comply with current regulatory standards and (iv) thereafter to issue a complete and compliant electrical installation condition report ("EICR") in accordance with the Scottish Government statutory guidance on electrical installations and appliances in private rented property and
6. Make good any décor damaged as a result of these works.

Note to Landlord:-

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.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act,

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also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the three preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 20 March 2019 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

N Moore

Witness

K Moore

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1A) of the Act

Chamber Reference number: FTC/HPC/RT/18/3039

Parties:

1. Dumfries and Galloway Council per its employee, Mr. Robert Rome, HMO Licensing and Landlord Registration Officer, Strategic Housing, Municipal Chambers, Buccleuch Street. Dumfries, DG1 2AD as third-party applicant in terms of Section 22(1A) of the Act ("the Third -party Applicant") ;
2. Mr. Raymond Swan and Miss Margaret Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW ("the Tenants") per their nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Mr. Harry Dalziel residing at 6, Yarrow Court, Dumfries, DG2 9HG ("the Tenants' Representative") and
3. Mr. David Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN ("the Landlord"), together referred to as "the Parties".

Property: 7 Runic Place, Ruthwell, Dumfries, DG1 4NW being the subjects more particularly described in Disposition in favour of Albert Fergus Dodds and recorded in the Division of the General Register of Sasines for the County of Dumfries on 26 May 1986.

Tribunal Members

Karen Moore (Chairperson)

Mike Links (Ordinary Member)

Decision

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") in relation to the Property, determined that the

Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (d) and 13(1) (g) of the Act and has complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (e) and 13 (1) (f) and that for the reasons set out below.

Background

1. By application received on 9 November 2018 ("the Application"), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (d), 13(1) (e), 13(1) (f) and 13(1) (g) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
 - i) The PVC windows in the Property allow the passage of wind from the outside through the internal sockets via the cavity between the window frame and the brickwork;
 - ii) The external facings on the front door frame have become detached from the stonework and there is a crack in the stonework above this door allowing water ingress;
 - iii) The cast iron gutter to the front of the Property has been bridged with plastic guttering which does not appear to be water tight and the gutters in general do not appear to function properly;
 - iv) There are cracked roof tiles;
 - v) There is an area of dampness on the exterior wall to the front of the Property;
 - vi) The PVC rear door to the Property is not supported properly with a solid footing;
 - vii) There is a damaged double socket in the bedroom;
 - viii) The main light fuse blows when the living room light is switched on;
 - ix) The electric socket in the living room is faulty;
 - x) The exterior light does not work;
 - xi) The electrical supply to the cooker has been removed as part of a kitchen refurbishment which refurbishment is not complete;

- ix) The electric socket in the living room;
- x) The exterior light;
- xi) The partially complete kitchen refurbishment including the electrical supply to the cooker;
- xii) The availability of an EICR for the Property;
- xiii) The existence of a carbon monoxide detector in the living room of the Property;
- xiv) The existence of a heat detector in the kitchen of the Property and
- xv) The existence of working mains wired smoke detectors in in the Property.

6. At the Inspection, the Tribunal took dampness meter readings and digital photographs which photographs form the Schedule annexed to this decision.

Hearing

- 7. Following the Inspection, a Hearing was held at Lochvale House, Georgetown Road, Dumfries, DG1 4DF on the same day at 11.30 a.m. The Third -party Applicant was again represented at the Hearing by Mr. Robert Rome and his colleague, Mr. Adam Black. Miss Carruthers of the Tenants, the Tenants' Representative and the Landlord were present.
- 8. Miss Carruthers of the Tenants had prepared a short statement explaining why the Tenants had instructed the Tenants' Representative to act on their behalf in respect of their dealings with the Landlord. The Tenants' Representative read this statement aloud at the Hearing.
- 9. The Landlord advised the Tribunal that he had a statement he wished to read in support of his position and would do so in response to the evidence on the Application by the other parties.
- 10. The Hearing then proceeded with Mr. Rome of the Third -party Applicant explaining to the Tribunal that he had inspected the Property in September 2018 following the Tenants contacting the Third -party Applicant as the installation of the kitchen in the Property was taking an excessive time to complete and there were no cooking facilities. In addition to the incomplete kitchen installation, at his inspection, Mr. Rome noted the other matters of concern in the Property as outlined in the Application and as listed in paragraph 2 hereof.

11. Mr. Rome and Mr. Black advised the Tribunal that Mr. Rome wrote to the Landlord with Mr. Rome's inspection findings on 27 September 2018, a copy of which letter forms part of the Application and that they contacted the Landlord again by email in October and November 2018 but received no response. The Landlord agreed that he had been so contacted and had not responded. However, he explained that he had acted on the Third -party Applicant's notifications to him and had instructed the contractor, Mark Robinson of DW Systems, who fitted the PVC glazing units to call to the Property to remedy any defects and had instructed a general building contractor, DGWC of Dumfries, to carry out the works intimated to him by the Third -party Applicant. The Landlord advised the Tribunal that these contractors had called at the Property and the Tenants' Representative agreed that this was the case.
12. The Tribunal then addressed each of the items referred to in the Application and inspected at the Inspection.
13. With regard to the living room window and both doors to the Property, the Parties agreed that these items required work to be carried as they were not wind and water tight in their present condition. The Landlord explained that he had instructed the window contractor, Mark Robinson of DW Systems who installed the windows around two years previously to remedy the draughts. Mr. Robinson had called at the Property and had resealed the main part of the living room window but had not carried out any work on the hopper parts of the window which appeared to be the source of the draught ingress. The Tenants' Representative agreed that silicone had been applied to the living room window.
14. With regard to the repair works required to the doors, the Landlord explained that he had instructed DGWC, a local company of general contractors to carry out the works listed in the Third -party Applicant's letter of 27 September 2018 and that he had attended the Property with a DGWC representative and the Tenants' Representative in November 2018 and agreed a programme of works to be carried out in March and April 2019, with work to the guttering to be carried out before then. The Tenants' Representative agreed that this meeting had taken place and that work had been carried out to the gutters.
15. With regard to the internal electrical works, the Parties agreed that the sockets in the living room and the bedroom had been replaced and are in working order, that a new domestic consumer unit has been fitted in the kitchen.

16. With regard to the electrical supply to the cooker and the kitchen installation, the Parties agreed that there is now an electrical supply to a new oven hob and that, although the kitchen installation is still incomplete, it is more complete than at the date on which the Application was made. In respect of the exposed wiring in the kitchen, the Landlord advised the Tribunal that Mr. Swan of the Tenants had undertaken to carry out this work himself. In respect of the hob, the Parties agreed that one of the control knobs is defective as it does not have an adequate seal.
17. With regard to the external electrical works, the Parties agreed that the exterior light had been renewed.
18. With regard to the EICR, the Landlord produced page 1 of a five-page Electrical Installation Certificate for small installations dated 26 October 2018 and provided by A.A.E. Limited of 10, Hillview Drive Dumfries, which although it bears the NICEIC logo does not bear the contractor's reference number and appears to be in respect of the new consumer unit, smoke detectors and kitchen sockets, only. The Landlord advised that he had instructed the contractor to carry out a full EICR.
19. With regard to the broken roof tiles, the Parties agreed that there were broken roof tiles to the rear of the Property. The Landlord advised the Tribunal that, in his opinion, this damage had been caused by Mr. Swan of the Tenants climbing onto the roof to clean the chimney.
20. With regard to the dampness, the Parties agreed that the internal wall in the bedroom at the front of the Property appeared to be damp showing mould on its surface. The Landlord advised the Tribunal that he thought that this could have been caused by the Tenants removing a storage heater from the bedroom, a point which Tenants' Representative and Miss Carruthers of the Tenants disputed stating that there had been no storage heater in the bedroom.
21. With regard to the carbon monoxide detector, the Parties agreed that a carbon monoxide detector had been installed, although Mr. Rome reserved his position in respect of the positioning of it in relation to proximity to the wood- burner.
22. With regard to the smoke detectors and the heat detector, the Parties agreed that these had been installed.

23. The Landlord then read his statement in support of his position. The Landlord explained the background to how the tenancy had come about, explaining that the Tenants were known to him and his family personally and so matters regarding the tenancy were often dealt with informally. He explained that before the tenancy began, he had made it clear to the Tenants that the Property was let on an "as seen basis" in respect of the general condition and state of repair and that he had not provided cooking facilities. He explained that he had allowed the Tenants to remove the existing storage heating system and install their own wood-burner and that, at the Tenants request, he had replaced the windows. He had further allowed the Tenants to install their own bathroom, the cost of which was part local authority grant funded and the remainder of which, being £860.00, was paid by the Landlord.
24. The Landlord agreed that at the outset of the tenancy the kitchen had been in a poor condition and that he had undertaken to renew it at some point but did not have funds to do so until recently. With regard to the new kitchen, the Landlord explained that he had consulted with the Tenants in respect of style and design and that the Tenants were aware that the contractor employed to carry out the kitchen installation was a relation of the Landlord and that the work would be carried out in stages. The Landlord maintained that the Tenants hindered progress by interfering with contractor's work resulting in the relationship between the contractor and the Tenants breaking down.
25. With further reference to the progress of the kitchen installation, the Landlord advised the Tribunal that he met with Mr. Rome and Mr. Black and their manager and took from that meeting that the work carried out by his kitchen contractor was substandard, particularly in respect of the electrical work, and so, the Landlord employed another contractor to finish the work at considerable additional cost in the region of £1,900.00.
26. The Landlord accepted that work requires to be carried out to the Property and explained that this has been scheduled for March and April.
27. The Landlord advised the Tribunal that the Tenants have begun work at the Property such as renewing the driveway but have not completed it.
28. With regard to the dampness, the Landlord reiterated that in his view this is caused by the Tenants failing to heat the bedroom. Mr. Rome responded that a

cause could be the inadequate guttering at this part of the Property or the cracked stonework at the front door.

Summary of the Issues

29. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), 13(1)(d), 13(1)(e), 13(1)(f) and 13(1)(g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

30. Mr. David Leslie Stainthorpe, residing at Alandale, Ruthwell, Dumfries, DG1 4NN is the owner of the Property in terms of a Disposition in his favour and is the Landlord. Although no signed tenancy agreement was lodged with the Tribunal, it is satisfied by the actings of the parties that Mr. Raymond Swan and Miss Margaret Carruthers both residing at 7 Runic Place, Ruthwell, Dumfries, DG1 4NW are the Tenants of the Property.
31. The Property is a single storey semi-detached property constructed circa 1950. The Property is brick built with roughcast exterior and a pitched roof. The Property comprises a living room, a kitchen, hallway, three bedrooms and a bathroom with garden to the front, side and rear.
32. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:
- i) There are gaps in the frame of the hopper part of the living room window which appear to allow the passage of wind into the Property;
 - ii) The external facings on the front door frame are detached from the stonework and there are cracks in the brickwork above this door which appear to allow water ingress;
 - iii) The guttering at the Property appears to be defective;
 - iv) There are cracked roof tiles at the rear of the Property;
 - v) There is dampness on the front wall of the bedroom at the front of the Property;
 - vi) The rear door to the Property is not supported and there is cracked roughcasting and brickwork around this door;

- vii) The sockets in the Property appear to have been repaired or replaced and appear to be in working order;
 - viii) A new consumer unit and immerser switch appear to have been replaced although these have been fitted at height which are difficult to access;
 - ix) The main light fuse appears not to blow when the living room light is switched on;
 - x) The exterior light appears to have been repaired or replaced and appears to be in working order;
 - xi) A kitchen refurbishment is underway but is incomplete with some kitchen doors still to be fitted, exposed wiring to be plastered and splash-backs or tiling to be fitted;
 - xii) There appears to be no current electrical installation condition report ("EICR") for the Property;
 - xiii) There is a carbon monoxide detector in the Property although it would appear to the Tribunal that this is not sufficiently close in proximity to the wood-burner to comply with current regulations and
 - xiv) There appear to be sufficient heat and smoke detectors in the Property.
33. From the Hearing, the Tribunal accepted that the Landlord and the Tenants have had a relatively informal relationship, however, in the view of the Tribunal this does not disburden the Landlord of his statutory duties and responsibilities. The Tribunal accepted that the Landlord has instructed repair work to be carried out and that he intends to complete the kitchen installation.
34. The Tribunal accepted that the Tenants did not remove a storage heater from the bedroom and is of the view that lack of heating in the bedroom is unlikely to cause dampness of the kind displayed in that room.

Decision of the tribunal and reasons for the decision.

35. The Tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.
36. In respect of the complaint in terms of Section 13(1 (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the poor condition of both external doors to the Property, the condition of the hoppers at the living room window and the poor condition of the guttering is such that the Property is not wind and watertight, that the Property is affected by

dampness and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

37. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of both external doors to the Property and their surroundings and the poor condition of the guttering are such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
38. In respect of the complaint in terms of Section 13 (1) (d) that the Landlord has failed to ensure that any furnishings provided by him under the tenancy are in a capable of being used safely for the purpose for which they are designed, the Tribunal having heard no evidence in respect of this complaint, found that at the date of the Inspection and Hearing the Landlord had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
39. In respect of the complaint in terms of Section 13 (1) (e) that the Landlord has failed to ensure that the fixtures, fittings and appliances provided by him under the tenancy are in a reasonable state of repair and in proper working order, the Tribunal took the view that incomplete kitchen installation is such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
40. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal being satisfied that there are appear to be sufficient heat and smoke detectors in the Property, the Tribunal took the view that at the date of the Inspection and Hearing the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act.
41. In respect of the complaint in terms of Section 13 (1) (g) that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health, the Tribunal not being satisfied that the carbon monoxide detector in the Property is in the correct position to comply with current regulations , the Tribunal took the

view that at the date of the Inspection and Hearing the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act.

42. The decision is unanimous.

Repairing Standard Enforcement Order

43. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Appeal

44. 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.

Effect of Section 63

45. 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.

Signed

K Moore

Karen Moore, Chairperson

20 March 2019

20 March 2019
This is the schedule of photographs referred to
in the foregoing decision of ev- date K Moore

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



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: 7 RUNIC PLACE, RUTHWELL, DUMFRIES DG1 4NW

DATE: 6TH MARCH 2019

REFERENCE: FTS/HPC/RT/18/3039



FRONT ELEVATION



REAR ELEVATION



ILL- FITTING LR WINDOW



FRONT DOOR



CI/PVC GUTTER – FRONT



DAMP IN FRONT BEDROOM WALL



METER READING –FRT BED



FRONT BED- REPAIRED SOCKET



REAR DOOR- DOOR FRAME/RENDER



FRONT DOR LINTOL- CRACKING



KIT- SPUR AND SOCKET



KIT- SPURS AND EXPOSED CABLE



LIVING RM SOCKET



MISSING DOOR-KITCHEN CUPBOARD



KIT - OVEN/HOB & CUPBOARDS



KITCHEN SINK



CONSUMER UNIT & IMMERSER SWITCH



CO MONITOR IN LR



SOLID FUEL STOVE IN LR



NEW EXTERNAL LIGHT



REAR GUTTER

MIKE LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE: 6th MARCH 2019