

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24**

**Chamber Ref:** FTS/HPC/RP/17/0091

**Title no/Sasines Description:** BER7290

**Property address:** Garden House, Ayton Castle, Eyemouth TD14 5RD  
("The house")

**The Parties:** Ms Moira Brown, Garden House Ayton Castle,  
Eyemouth TD15 5RD ("the tenant")

Mr Brian Parsons and Mr Richard Syred ("the  
landlords")

Whereas in terms of their decision dated 9 June 2017 the First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlords have failed to ensure that the house meets the repairing standard in respect that the installations in the house for the supply of water, gas, electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order in accordance with Section 13(1)(c) of the Act.

The Tribunal now requires the landlords to carry out such work as is necessary for the purpose of ensuring the property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order. In particular the Tribunal requires the landlords to ensure the water system provides a water supply that is wholesome.

The Tribunal order that the work specified in the order must be carried out and completed within the period of six months from the date of service of this Notice.

On completion of the above works the landlord should obtain from Scottish Borders Council analysis of the private water supply to the house to analyse the lead content of the water and for those results to be made available within one month of the date of completion of the works to the Tribunal.

### Right of Appeal

A landlord or tenant or third party applicant aggrieved by the decision of the Tribunal may apply 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 from the date the decision was sent to them.

Where such an appeal is made, the effect of the decision will be treated as having effect from the date on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page are executed by Mark Thorley, Chairperson of the Tribunal at Edinburgh on the 23rd day of June 2017 before this witness:-

Alison Gibson

witness

ALISON GIBSON name in full

51 SOUTH BRIDGE Address

EDINBURGH

EH1 1LL

Mark Thorley

chairperson

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

Housing (Scotland) Act 2006 Section 24(1)

Chamber Reference: FTS/HPC/RP/17/0091

Title Number: BER7290

Property Address: Garden House, Ayton Castle, Eyemouth TD14 5RD  
("the house")

The Parties: Ms Moira Brown, Garden House, Ayton Castle,  
Eyemouth, TD14 5RD ("the tenant")

Mr Brian Parsons and Mr Richard Syred ("the  
landlords")

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

### Decision

The Tribunal, having made such enquiries as is fit for the purpose of determining whether the landlords have complied with the duties imposed upon them by Section 14(1)(b) in relation to the property concerned, and taking account of the evidence presented in the written and oral representations, determine that the landlords have failed to comply with their duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

## Background

1. By application received on 8 March 2017, the tenant applied for a determination of whether the landlords have failed to comply with duties imposed by them under Section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application by the tenant narrated that the landlords have failed to comply with their duty to ensure the house meets the repairing standard and in particular the landlords have failed to ensure compliance with Section 13(1)(c) of the Act. The tenant's complaint set out the following:
  - a. That the landlords have failed to provide a safe supply of tap water.
3. In the documentation provided by the tenant it was established that the tenant had a lease commencing on 26 September 2006.
4. The tenant subsequently provided further written information from Scottish Borders Council of test results on the water supply to the house taken on 16 March 2017 and contained within an emailed report dated 23 March 2017.
5. The Tribunal consisted of the following members:-
  - a. Mark Thorley – Legal Member
  - b. Debbie Scott – Ordinary Member
6. The Tribunal inspected the house on the morning of Friday 19 May 2017. Ms Moira Brown was present within the property. The landlords were represented by Mr Simon Jones, Factor to Ayton Castle, Mr Kenneth Mackay and Ms Lauren Fettes both of Thorntons Law LLP.
7. The matter was dealt with upon the basis of the inspection together with the representations made by the tenant and by the landlords' legal agents together with the oral representations made at the hearing by the landlords' legal agents and factor.

### Summary of Issues

1. The issue of whether the house meets the repairing standard as set out in Section 13(1)(c) of the Act and whether the landlords have complied with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

### The Inspection

1. The Tribunal members examined the house and in particular the kitchen area of the house.
2. During the inspection, photographs were taken by the ordinary member and a schedule of photographs is attached to the decision.
3. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

### The Hearing

1. The hearing took place at Eyemouth Community Centre, Albert Road, Eyemouth. The tenant was not present. Mr Simon Jones, the Factor, together with the landlords' legal agents Mr Kenneth Mackay and Ms Lauren Fettes were present.
2. It was acknowledged on behalf of the landlords that there was lead contamination within the water supply to the house. As a result of that the tenant had been provided with a filter in her kitchen in order to filter the water as it came into the house. In addition the tenant was being provided with bottled water.
3. Subsequently a further sample was taken by Scottish Borders Council on 16 March 2017 with the test results being intimated on 23 March 2017. In terms of those results the comments are as follows:-

“Following the installation of a carbon filter, the overnight lead sample taken from this property remains unsatisfactory, however, a subsequent flush sample confirms that flushing the water to waste reduces the level significantly, but the level increases following a further 30 minute stagnation period. Given that

replacement of the tap may not secure a better quality product, it is essential that users are made aware to flush the tap to waste for a short period of time prior to consumption/use. NB. The lead fail considerations accompanying this table require to be considered in relation to this premises.”

4. The advice given by Scottish Borders Council narrated that the water supply is unsatisfactory and does not meet the required standards. A copy of the report is attached to this decision.
5. On behalf of the landlords it was narrated that the overnight stagnation fail was a marginal fail (the maximum limit being “10” and the sample result from the overnight stagnation being 10.2).
6. The difficulty for the landlords was in identifying the source of the lead. The water to the Castle and surrounding properties came from a private water supply. There were a significant distance of pipes.
7. Primarily on behalf of the landlords an adjournment of the hearing was sought in order for the landlords to instruct a suitably qualified expert who could examine (a) whether the water supply to the house continued to fail to meet the required standard and (b) what options were available to the landlords in order to create a satisfactory water supply namely that the water supplied be wholesome.
8. At the hearing it was acknowledged by the landlords’ agents that to rectify the problem required either (a) connecting the Castle and houses on the estate to the public water supply or (b) carrying out further investigations on the site to identify the source of the lead. There was a suggestion from the landlords it was said that running the cold water tap may produce water good enough to drink.

1. The application to continue the Hearing.

The Tribunal considered the application. It was noted that the initial identifications of lead contamination was identified on about 11 October 2016. Subsequent to that time the tenant has been using bottled water and in addition a filter has been fixed in her kitchen. Despite the use of the filter the meter readings as obtained by Scottish Borders Council on 16 March 2017 and in the report on 23 March 2017 still disclosed a contaminated supply having regard to the overnight stagnated water. The advice



from the Council is the water supply is unsatisfactory and does not meet the required standard namely that the water supply be wholesome.

1. The Tribunal considered whether deferring the matter for the landlords to obtain a specialist report was appropriate. It was noted that this matter had clearly come to the attention of the landlords from October 2016, the further report from the Council on 23 March 2017 and at the hearing which took place on 19 March 2017.
2. The Tribunal concluded that sufficient time had been available to the landlords in order to obtain any necessary reports.
3. In the circumstances the Tribunal determined to refuse the application to adjourn the hearing.

#### Findings in Fact

The Tribunal made the following findings in fact:-

1. The tenant had entered into a lease with the landlords for the rent of the property at Garden House, Ayton Castle, Eyemouth TD14 5RD.
2. The property is a detached property within the Ayton Castle Estate.
3. The weather at the time of inspection was dry and sunny.
4. That the water supply to Garden House is unsatisfactory and does not meet the required standards.

#### Reasons for decision

1. The Tribunal, determining the application had regard to the terms of the application, the findings of the inspection, the documentary evidence and the oral representations made at the hearing.
2. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a determination of the application.
3. Despite the introduction of a filter to the water supply to the property the overnight lead samples taken from the property remains unsatisfactory. The test

performed by Scottish Borders Council on 16 March 2017 and reported on 23 March 2017 advises that the water supply is unsatisfactory and does not meet the required standards. Accordingly the Tribunal concluded that the water supply is not in a reasonable state of repair and requires the landlords to repair or replace the system to ensure a water system that provides a fit wholesome water supply.

### Decision

1. The Tribunal determined that the landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act in respect of the matter raised by the tenant.
2. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).
3. The decision of the Tribunal was unanimous.

### Observations

Although not subject to the application made by the tenant the following was noted.

1. In the shower room there appears to be areas of damp to the walls and ceiling.
2. There did not appear to be carbon monoxide detectors or heat detection units.

### Right of Appeal

A landlord or tenant or third party applicant aggrieved by the decision of the Tribunal may apply 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 from 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 date on which the appeal is abandoned or so determined.

These presents type written on this and the six preceding pages are executed by Mark Thorley, Solicitor, 51 South Bridge, Edinburgh EH1 1LL, Chairperson of the Tribunal at Edinburgh on the 12th day of June Two Thousand and Seventeen:-

Mark Thorley

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Chairperson

**Avton Castle PWS - 16/03/17 Interim Lead sample results**

Sample Location	Sampled Date	Sample Number	Lead (µgPb/l)	Comments
NORTH LODGE - KITCHEN MIXER (OVERNIGHT STAGNATION)	16/03/2017 11:15	9792625	9.4	The overnight, flush and stagnation samples taken from this property on the 16/03/17 were found to be unsatisfactory for lead. Following the installation of a carbon filter, the lead samples taken on the 16/03/17 were found to be satisfactory. However, it is important to note that the overnight and 30 minute stagnation samples are elevated. The flush sample appears to confirm that flushing the tap to waste reduces the level significantly. Given that replacement of the tap may not secure a better quality product, it is essential that users are made aware to flush the tap to waste for a short period of time prior to consumption / use. NB. The lead fail considerations accompanying this table require to be considered in relation to this premises.
NORTH LODGE - KITCHEN MIXER (3 MIN FLUSH)	16/03/2017 11:18	10125855	0.3	
NORTH LODGE - KITCHEN MIXER (30 MIN STAGNATION)	16/03/2017 11:58	10125856	4.5	
SOUTH LODGE - KITCHEN MIXER (OVERNIGHT STAGNATION)	16/03/2017 10:41	8101479	55.8	Following the installation of a new tap and metals filter, the overnight sample taken from this property was found to be unsatisfactory for lead. A subsequent flush sample confirms that flushing the water to waste reduces the level significantly, but the level increases following a further 30 minute stagnation period. It is essential that users are made aware to flush the tap to waste for a short period of time prior to consumption / use. NB. The lead fail considerations accompanying this table require to be considered in relation to this premises.
SOUTH LODGE - KITCHEN MIXER (3 MIN FLUSH)	16/03/2017 10:44	8730508	0.5	
SOUTH LODGE - KITCHEN MIXER TAP (30 MIN STAGNATION)	16/03/2017 11:34	9792623	9.7	
GARDEN HOUSE - KITCHEN MIXER (OVERNIGHT STAGNATION)	16/03/2017 10:20	9792620	10.2	Following the installation of a carbon filter, the overnight lead sample taken from this property remains unsatisfactory, however, a subsequent flush sample confirms that flushing the water to waste reduces the level significantly, but the level increases following a further 30 minute stagnation period. Given that replacement of the tap may not secure a better quality product, it is essential that users are made aware to flush the tap to waste for a short period of time prior to consumption / use. NB. The lead fail considerations accompanying this table require to be considered in relation to this premises.
GARDEN HOUSE - KITCHEN MIXER TAP (3 MIN FLUSH)	16/03/2017 10:23	9792621	1.9	
GARDEN HOUSE - KITCHEN MIXER (30 MIN STAGNATION)	16/03/2017 11:03	9792622	3.6	

**Key:**

Bold red text / yellow box = Unsatisfactory result / fail

Orange box = Satisfactory result / pass, but elevated or close to limit



Please ask for: Louise Madden  
Tel: 01896 661384  
E-Mail: [placehealth@scotborders.gov.uk](mailto:placehealth@scotborders.gov.uk)  
Date: 23 March 2017

## CHEMICAL FAILURE OF DRINKING WATER SUPPLY

Name of Private Water Supply: Ayton Castle  
Sample Location: South Lodge & Garden House  
Date of Sample: 16 March 2017

### ACTION REQUIRED (by all water supply users)

Scottish Borders Council has received early notification that the above water sample is contaminated with lead which may pose a risk to the health of those using the supply. Therefore, the water supply does not meet the required standards and, because you are a relevant person for the supply, you must now take **immediate** action.

Until the cause of this unsatisfactory result has been investigated and remedied, the water **should not** be used for human consumption purposes unless appropriate measures are taken prior to use.

A **Do Not Use Your Tap Water Notice** is included with this notification that details the precautions and action that should be taken by consumers of the water to prevent illness. **PLEASE READ IT CAREFULLY.**

This result demonstrates the quality of the water at the time and location sampled only. The quality may be better or worse at the other properties served by the supply, depending upon the presence of and maintenance of suitable treatment systems. The contamination may also be localised to individual properties or sections of pipework. However, until such time as information to the contrary is provided to this Service, this result is being treated as representative of the quality of the water to all of the properties served by the supply.

### ACTION REQUIRED (by all relevant persons)

As a relevant person, you are now **required** to notify in writing all consumers of the water at the properties that you are responsible for about the unsatisfactory result and the steps that must be taken to protect their health. It is **strongly recommended** that you consider using copies of the Do Not Use Your Tap Water Notice for this purpose.

You **must** also undertake appropriate action to ensure that the water supply meets the required standards at all of your properties. If you require any assistance and guidance to achieve this, please contact this Service as detailed.

Once you have taken appropriate action, please contact this Service to arrange further sampling, to ensure that the water supply at your properties meets the required standards.

**Please confirm your intentions to comply with the above legal obligations WITHIN 14 days of the above date, otherwise formal action may need to be taken by this Service.**

### FURTHER INFORMATION

You will be informed of the final result of the water sample upon receipt by Scottish Borders Council.

If you require any further information in the meantime, please do not hesitate to contact this Service as detailed or alternatively visit the Scottish Government website [www.privatewatersupplies.gov.uk](http://www.privatewatersupplies.gov.uk).

**What does a sample failure mean?**

The legal maximum level of lead in water is 10 µg/l, which is in line with the limit recommended by the World Health Organisation (WHO).

An elevated level of lead in water is usually caused by the presence of lead in pipework, fittings, tank linings or solder. Acidic water (pH below 7) will also increase the rate at which the lead will dissolve into the water.

Lead is a neurotoxin, which means that it affects the brain. Consumption of water with even slightly elevated levels can lead to long term adverse health effects.

**Pregnant or lactating women, and very young children (less than 2 years), should be especially careful to avoid consumption of water with elevated levels of lead.**

**Boiling high-lead water to "treat it" will only concentrate the lead due to evaporation of the water, and water should not be taken from any hot tap for drinking or cooking purposes.**

For small water supply systems, the best approach is the replacement of lead-containing materials with non-leaded alternatives.

(18) If this is undertaken, and lead is still being detected at elevated levels, the plumbing fittings may need further consideration - e.g. all brass fittings will have a lead content. This is because lead is used in the manufacturing process of brass plumbing fittings. It is added to aid machining requirements of the particular fittings and the actual content will vary by manufacturer and product quality. With the substantial range of fittings that are available, it is not possible to predict the leaching characteristics of any particular installation, except that the concentrations will be highest immediately following installation and will reduce over time.

In the short term and until the replacement works have occurred, exposure to lead **may** be minimised by running the cold water tap for a few minutes to flush out the water that has been standing in the pipes for a length of time (such as overnight or if the property has been unoccupied). This should especially be done before use for drinking, cooking and/or brushing teeth. However, the effectiveness of this will vary from property to property, depending on the location of the lead in the pipework leading up to the property and/or the length of the section of the lead pipework.

If in any doubt, it is **recommended** that bottled water be used for drinking and cooking purposes until the lead level is reduced below the limit.

If you would like further information or assistance to improve the supply, please contact Regulatory Services on 0300 100 1800, email your enquiry to [PLACEhealth@scotborders.gov.uk](mailto:PLACEhealth@scotborders.gov.uk) or alternatively visit [www.scotborders.gov.uk/privatewatersupplies](http://www.scotborders.gov.uk/privatewatersupplies).

**PRHP**

**SCHEDULE OF PHOTOGRAPHS**

**taken on 19 May 2017**

**Garden House, Ayton Castle, Eyemouth  
TD14 5RD**

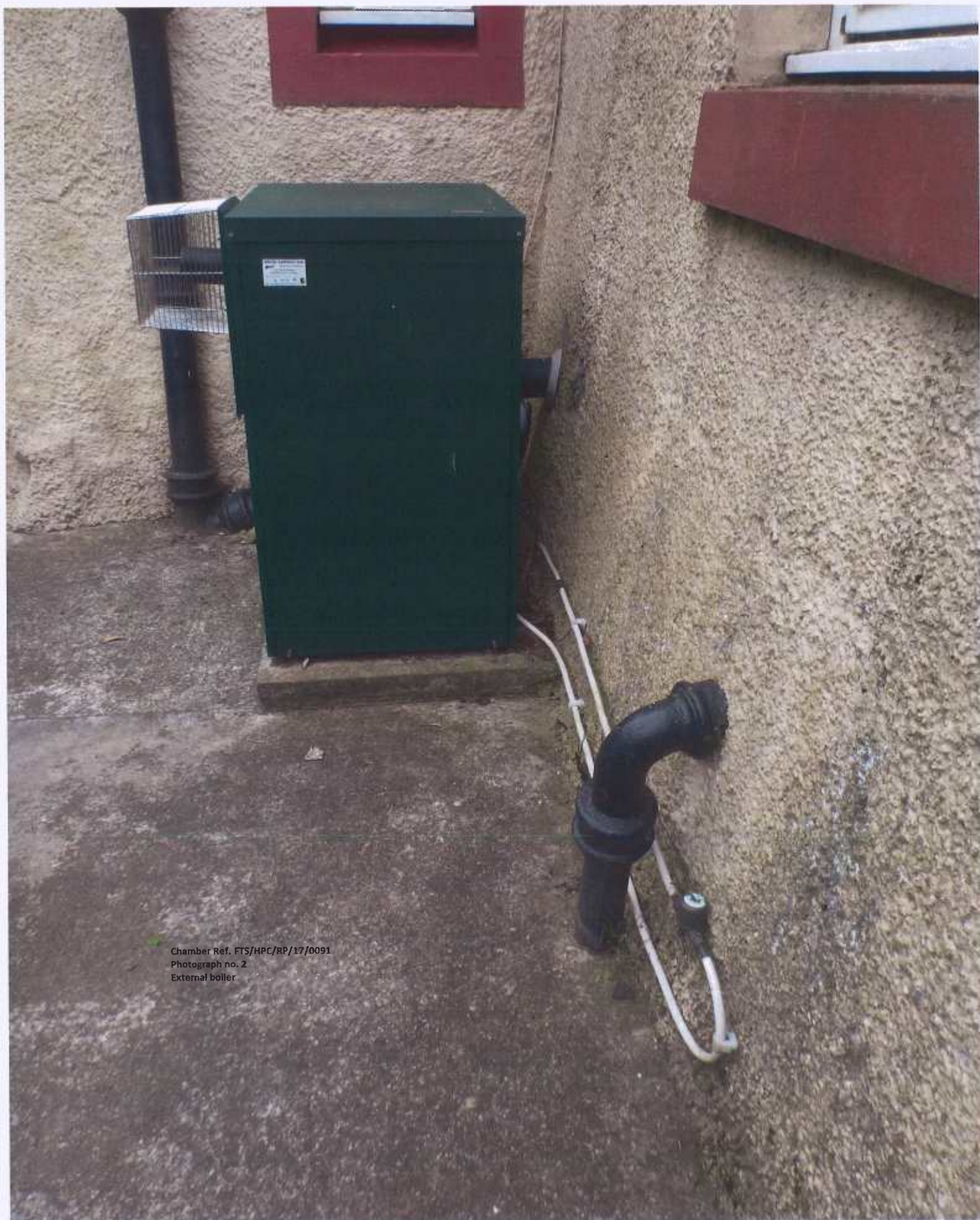
**Chamber Ref. FTS/HPC/RP/17/0091**

1. Bathroom
2. External boiler
3. Front elevation
4. Patch repaired roof



Chamber Ref. FTS/HPC/RP/17/009-  
Photograph no. 1  
Bathroom





Chamber Ref. FTS/HPC/RP/17/0091  
Photograph no. 2  
External boiler



Chamber Ref. FTS/HPC/RP/17/0091  
Photograph no. 3  
Front elevation



Chamber Ref. FTS/HPG/RP/17/0091  
Photograph No. 4  
Patch repaired roof

