FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UM/HIN 2023/0040/BS
Property	**:**	69 Emerald View, Warden, Sheerness, Kent ME12 4PQ
Applicant	**:**	Kevin Granger
Respondent	**:**	Swale Borough Council
Representatives	**:**	San Nyunt – Senior Housing Environmental Health Officer Helen Ward – Legal Officer.
Type of Application	**:**	Appeal against an Improvement Notice: section 11 and Schedule 1 Part 3 10(1) of the Housing Act 2004.
Tribunal:	**:**	Judge T. Hingston Richard Waterhouse FRICS Jayam Dalal
Date of Decision	**:**	22nd July 2024

DECISION

SUMMARY OF DECISION

The Improvement Notice of 12th October 2023 is varied, so as to require the Respondent only to renew the wooden sill and ensure that all closing and locking mechanisms of the patio doors are working correctly, within 28 days of the service of the amended Improvement Notice.

ISSUES FOR DETERMINATION.

1. By an Application dated 31st Oct 2023, under Section 10 of the Housing Act 2024 (as attached, Appendix 1) the Applicant appeals against an Improvement Notice which was issued in respect of the above property on 12th October 2023.

2. The Applicant has also sent with the application a copy of a demand (also dated 12 October 2023) for Recovery of Expenses of £275.14 incurred by the Local Housing Authority in connection with the matter, and disputes that this amount is payable.
(Note: Section 49 (7) of the Housing Act 2004 states that where a tribunal allows an appeal against an Improvement Notice, it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of that notice.)

3. A paginated bundle has been provided to the Tribunal.

4. There is no issue with the content, form, procedure or timing of the Improvement Notice. The question for the Tribunal is whether the Notice should have been issued at all, and/or whether it should be confirmed, quashed or varied.

5. All parties acknowledge that by the time of the Tribunal hearing on the 25th of June 2024 all outstanding 'defects' had been satisfactorily resolved, except for one remaining item of works relating to the defective patio door.

6. However, the Notice was issued on 12th October 2023 on the basis that a number of Category 2 hazards (under the Housing Health and Safety Rating System) at levels E, F and G existed at the time of the inspection on 30th January 2023. It was stated that the landlord had failed to comply with the requirements of the Initial Defect Letter of 1st March 2023.

6. Attached to the Notice was a 'Statement of Reasons' (Page 25 of the bundle) explaining the decision, which stated as follows:

'It is considered that the service of an Improvement Notice is the most appropriate action to minimise or remove the Category 2 hazards identified in the premises within a reasonable and defined period of time. When hazards are combined, they become more serious as the occupants are exposed to multiple hazards. In addition, the owner was given an opportunity to comply with the legal obligations informally, but has ignored it, hence the service of Improvement Notice to ensure compliance.'

7. The same document conceded that: -
'*The hazard encountered does not pose an imminent risk to the health and safety to occupiers and visitors to the property.*'

Note: the Tribunal considered carefully the HHSRS (Housing Health & Safety Rating System) scores, as well as the variables and calculations. However, as the Applicant did not specifically challenge the hazard scores, the Tribunal has not re-calculated those scores but has assessed whether the various issues, even combined together as per Paragraph 6 above, were sufficiently serious to justify the Local Authority in using its discretion to issue an Improvement Notice.

8. The Tribunal conducted a re-hearing of the matter under the provisions of the Housing Act 2004 Schedule 1 Part 3 Paragraph 15 (as to Appeals, see Appendix 1). In doing so, it was important to examine the history of the case and consider the whole of the evidence (including evidence as to the nature of the alleged hazards and the actions taken or not taken by all concerned) when determining the necessity and appropriateness of the Improvement Notice as at the time that it was issued in October 2023.

BACKGROUND AND CHRONOLOGY OF KEY EVENTS.

9. The Applicant/Appellant landlord is the co-owner (with Ms. Christine Lucien) of the subject property, 69 Emerald View, Warden, Sheerness, which is a 3-bedroom semi-detached house.

10. The Tenant of the property is Ms. Kinslow, who moved in with her family on 8th April 2018.

11. On 3rd of November 2022 Ms. Kinslow sent a text to Mr Granger, stating that she had a problem with her back patio door and that the frame was so 'rotten and badly damaged' that it would not 'open or shut'.

12. Despite correspondence between Ms Kinslow, Mr. Granger and the co-owner Ms. Lucien during December 2022 and into January 2023, and despite several visits to the property by Mr. Granger, the issues with the patio door proved difficult to resolve. It appeared that there were problems (initially) with obstruction of the runners by accumulated dirt and pieces of metal, and also a problem with one of the 'bearings.'

13. In December 2022 Mr. Granger had informed the Tenant of his intention to increase the rent on the property.

14. On the 19th of January 2023 Ms. Kinslow contacted Swale Borough Council, complaining of a number of issues including the 'defective' patio doors.

15. The Job Summary Sheet (Exhibit SN1 Page 160) records the following: -
'Very distressed lady who is living alone and has a back door that won't close, damp, mould, no heating or hot water and her landlord is refusing to help and her partner has left her she desperately needs help dealing with her landlord.'

16. Mr San Nyunt was assigned to the case. On the 23rd of January 2023 he gave the landlords notice of his intention to inspect on the 30th of January, stating: -
'The allegations Mandy made are defective patio door, dampness and associated mould and issues with heating.'(P. 67 of the bundle)

17. The landlords replied by email immediately, confirming their agreement to the inspection and stating that Mr. Granger would be visiting the property again the next day (the 24th January) in an effort to resolve any issues.

18. On 30th January SN inspected the property, in the presence of Mr. Granger and the tenant Ms. Kinslow. His notes of that inspection (together with photographs) are attached to his statement as Exhibit SN6 (Page 169).

19. On the 6th of February Mr. Granger sent the Electrical Installation Conditions Report to Mr. Nyunt as requested.

20. On 1st March 2023 an 'Initial Defect letter' was issued to the landlord, requiring him to take remedial action in respect of certain items.
In summary, the first attached Schedule referred to:

i) Damp and mould (bathroom)
ii) Excess cold (throughout)
iii) Inadequate hot water supply to kitchen, and
iv) Stiff patio door ('*difficult to operate and badly rotted sill causing misalignment*')
v) Two windows being difficult or impossible to operate.

21. Schedule 2 required the landlords to do the following: -
i) Undertake extensive works to the ventilation systems within the next 2 months (by 1st April),
ii) Install a completely new central heating system, either Gas, Electric storage heaters or space heating (within the next 3 months, by 1st June)
iii) Remedy the kitchen hot water system within the next 3 weeks (by 23rd of March)
iv) Replace the timber sill to the patio door (by 1st May) and
v) Repair or replace the awkward windows (by 1st May).

22. There was further correspondence between Mr. Granger and Mr. Nyunt following the Initial Defect letter, and there was some dispute as to the nature of the defects, the causes thereof and the appropriate remedies.

23. For example, in respect of the alleged 'Cold and damp', some of the comments were as follows: -

i) Mr. Granger stated - *'You are correct the heaters downstairs have had the plugs cut off by the tenant. And rightfully they are ineffective in their current state but why are you assuming once connected to electricity they are ineffective? Could you please explain?*

ii) Mr. Nyunt replied - *'My assessment is for the whole system not just the inoperative ones. Even if that one was working during my visit, my assessment would be the same.'*

iii) Mr. Granger asked - '*Could you please explain your hygrometer readings? I was present at the property all day and no heating were on. The tenant returned home 30 mins before you arrived and turned on 2 portable electric oil heaters, one in the lounge, one in the landing.'*

iv) Mr. Nyunt replied - *'I did ask the tenant to put the heating on, so she did turn on the heaters in bedrooms in addition to the ones you mentioned when she was back from her work before my visit. The purpose of the measurements is to help me make an informed decision when there is an opportunity. If I carried out the inspection during the summer with no chance of measuring the temperatures, my assessment would be the same.'*

24. Mr. Nyunt also queried the energy efficiency of the property, raising questions about cavity wall insulation and loft insulation. Mr. Granger pointed out that this was a relatively modern property (1980s), and in due course it was established that there was indeed cavity wall insulation and there *was* loft insulation but it had been moved around or piled up in such a way as to render it less effective.

25. Nevertheless, by an email of 13th of March 2023 Mr. Granger appeared to agree to carry out all the remedial works within an extended timescale (Page 192.)

26. On the 14th of March Mr. Granger emailed Ms. Kinslow to arrange access for electrical works on 23rd of March. Access was agreed, but there was then a dispute about monies owed by Ms. Kinslow for rent and for repairs carried out as a result of damage which she was said to have caused to the property.

27. On the 16th of March Ms. Kinslow referred the financial dispute to Mr Nyunt, alleging harassment by the landlords.

27. Mr. Nyunt replied the next day, copying in Ms. Lucien, advising Ms. Kinslow to '*ignore any demands'* which were '*baseless and unreasonable'* and assuring her that the local authority legal department were closely monitoring whether Mr. Granger's behaviour amounted to harassment and/or unlawful eviction.

28. Mr. Granger objected to Mr Nyunt's intervention and asked him to retract this email, but the reply from Mr. Nyunt appears to refer to past disagreements between the two of them and implies that Mr. Granger is making false 'allegations' against 'Mandy' and that he has made false allegations against other tenants in the past.

29. From this point onwards the interaction between Mr Granger and Mr Nyunt seems to have deteriorated. There were further problems with the patio door (during May), and communications between the parties which resulted in further disagreement and mutual criticism.

30. On the 22nd of May Mr Nyunt emailed the landlords, referring to an incident where the patio door had apparently come off its runners and had to be lifted back into place by a neighbour. He urged Mr Granger to complete the remedial works pending an imminent compliance inspection.

31. Mr. Granger replied on the 26th of May, asking for clarification as to whether a full replacement of the patio doors was now required, or whether a repair to the sill would be sufficient.

32. There was no clear response to this inquiry.

33. However, all the required works apart from the patio door repairs were duly carried out over the next few months, including the installation of a full new space heating system which was funded by a government grant.

34. There were some 'snagging issues', in that in the course of their work the contractors (Taggas) apparently caused a small amount of damage to the kitchen ceiling, through which there was a leak which affected the 4-ring cooking 'hob' below. Taggas accepted responsibility and arranged the supply of a new hob to replace the existing faulty one.

35. On the 27th of June (email Page 85) Ms. Kinslow complained to Mr. Granger that she had had '*…no cooker for over 2 weeks*' because every time she turned it on the trip switch was activated. When Mr. Granger attended he found that in fact 2 or 3 of the 4 rings on the hob were still working, as were the oven and grill.

36. On the 14th of August Mr. Granger informed Mr Nyunt (email Page 88) that the bulk of the works had been completed, and he stated that although they had planned to install new windows and doors, because of Ms. Kinslow's '*continued abuse of the property*' they had decided to leave it until after she had left. He mentioned in brackets: '*fire outside the doors…'* and stated that he had instructed a carpenter to splice in a section of new sill for the patio door rather than replacing the whole unit.

37. In response to this communication, Mr. Nyunt proposed a further visit or 'Compliance inspection', which was eventually fixed for the 28th of September 2023.

38. On the 16th of August 2023 the landlords served an Eviction Notice (under Section 21 of the Housing Act 1988) on Ms. Kinslow, requiring her to vacate the property by 19th October 2023.

39. The inspection went ahead at 16.00 pm on the 28th of September 2023, in the presence of Ms. Kinslow and Mr. Granger. The concerns which were said to have either '*emerged*' or '*remained unaddressed*' (Mr. Nyunt's statement, Page 157) were as follows: -

i.) Smoke Alarms*: 'The Property lacked a functional smoke alarm on the first floor, and the ground floor's smoke alarm was found to be defective, missing its cover, with the battery insecurely attached'.*

ii.) Electric Cooker and Ceiling Damage: *'Three out of four hobs on the electric cooker were malfunctioning, consistently triggering electrical trips when activated. Additionally, an area of the ceiling above the cooker was observed to be cracked and damaged, with loose plaster and flaking paint, measuring approximately 30cm by 20cm.'*

iii.) Patio Sliding Door*: 'The condition of the patio door had deteriorated further, specifically the timber sill, which compromised the door's functionality. The door was extremely difficult to operate, with the sliding mechanism being both loose and shaky. Additionally, the runners and rollers were stiff, and the door dropped, contributing to the door's instability and necessitating excessive force to open or close. The risk of misalignment or dislodgment was significant.'*

40. Mr. Nyunt recorded his findings in an HHSRS report, dated the 2nd of October 2023 (Page 122).

41. On the 12th of October 2023 the Improvement Notice was issued, together with a demand for £275.14 administration costs.

42. Schedule 1 of the Notice set out a list of four category 2 hazards:

i) Food safety (Band G) -
Three out of the 4 hobs were said to be 'not working', as the trip switch kept going when they were turned on.

ii) Fire (Band F) It was noted that there was a smoke alarm missing from the first floor, and the smoke alarm on the ground floor had '*...a missing cover with a battery hanging to the wire.'*

iii) Position and operability of amenities (Band E),
It was stated that: -
'The sliding patio door is extremely difficult to operate, and brute force is required to close or open it. This is due to partly damaged and rotted timber sill and stiff rollers, allowing the door to become misaligned or disengaged from the track.'

iv) Structural collapse and falling elements (Band F)
This hazard was partly a repeat of point iii) above, recording as follows: -
'The sliding patio door is extremely difficult to operate. This is due to partly damaged and rotted timber sill and frame, compromising its function to provide rigidity and support, which is compounded by stiff rollers, and absence of anti-lift device. Brute force is necessary to open and close the door.
This can result in the door being(sic) bouncing off the runner and falling over the operator.'

50. Schedule 2 of the Notice set out the remedial actions which were required, as summarised below: -

i) Food Safety -
The landlords were required to instruct a competent electrician to investigate the 'tripping' problem, and the electrical works necessary to resolve the issue were to be signed off by that electrician, with completion certificates submitted to Mr. Nyunt.
The damaged 'ceiling plaster' was to be taken down and replaced.

ii) Fire -
The landlords were required to repair or replace the two smoke alarms.

iv) Amenities (position and operability) -
'Completely overhaul or renew the patio door and its wooden sill.
Take out the defective patio door and damaged or otherwise rotted wooden frame and sill complete and set aside reusable ironmongery. Provide and fix into prepared opening a new pre-primed door frame of suitable design and construction and point up externally. Refix architraves renewing where necessary. Provide and hang suitable quality patio door on adequate hinges, runners and anti-lift devices. Refix previously set aside ironmongery, making out with new where necessary. Leave

whole sound, weatherproof and in proper working order, upon completion. Alternate option of replacing the patio door with a new UPVC unit of suitable design will also be considered appropriate.'

v) Structural collapse and falling elements -
(The requirements for this element were a duplication of iv.) above.)

51. In the 'Statement of Reasons' for the service of the Improvement Notice (Page 24/25) Mr. Nyunt justified the decision to issue the Notice as set out in point 6 above, suggesting that Mr Granger had 'ignored' the authority's concerns and failed to cooperate with the 'informal' process and therefore the I.N was necessary.

52. On the 17th of October Mr Granger sent an email in reply to Mr. Nyunt's Improvement Notice. (Page 98-101).

53. In respect of Hazard i) – 'Food safety' - he explained that there was a new hob waiting to be installed (as all parties were aware) but that he was having difficulties getting contractors to repair the ceiling (which logically needed doing first) because Ms. Kinslow had been abusive to some of the workmen.

54. In respect of Hazard ii) – 'Fire' – Mr. Granger stated that the tenant had damaged or removed 4 previous smoke alarms, but that he would of course replace them again. He argued that because the tenant was responsible for damaging the alarms despite his attempts to ensure safety, an Improvement Notice was not justified.

55. In respect of Hazards iii) and iv) Mr. Granger referred to various issues with the patio door, accepting that the rollers were stiff (he stated that this was due to 'gunk' and broken pieces of the tenant's chain-metal flyscreen in the runners) but a new bearing was all that was needed. He disputed Mr. Nyunt's analysis of the problem and his proposals for a completely new door as a solution, and again reiterated that he was having trouble getting contractors to do the work because of Ms. Kinslow's behaviour.

56. Accordingly, on the 31st of October 2023 Mr. Granger lodged his Appeal against the Improvement Notice and the matter was referred to the Tribunal. Following various Directions having been made, the hearing was conducted on the 25th of June 2024.

HEARING

57. The Tribunal members conducted the hearing at Havant Justice Centre in person. Mr. Granger, Mr. Nyunt, Ms. Kinslow, and Helen Ward (Legal officer for Swale Borough Council) all attended via video link.
No inspection was carried out as none had been requested by the parties.

APPLICANT'S CASE.

58. Mr. Granger's case was set out in the documents which he had submitted including his statement, exhibits, correspondence, photographs and videos, together with his oral evidence given at the hearing.
The Applicant's arguments are summarised below under the following headings:

59. Mould, damp and Excess cold.
In respect of the 'Initial defects' identified by Mr. Nyunt, Mr. Granger considered that the problems with mould, damp and cold were largely caused by the tenant's own actions. The panel wall heaters had been either disconnected or cut off and the temperature was found to be low during the inspection because no heating had been turned on until the last minute. (The inspection was timed for 4 pm and the tenant had only turned some of the remaining operational heaters on when she got back from work). Mr. Granger argued that the condensation and mould had been caused by inadequate use of both available ventilation and heating systems, and that the alternative heating systems suggested by Mr. Nyunt would be much more expensive to run.

60. Water supply.
Following the Initial Defects letter it was found that the hot water flow to the kitchen sink had also been turned down by the tenant and the problem was easily remedied.

61. Patio door
Essentially, Mr, Granger argued that the initial problem of stiffness with moving the patio door had been caused by Ms. Kinslow allowing the runners to become blocked and obstructed by 'gunk' and pieces of metal (fly-screen), and that several times (during December 2022 and January 2023) he had attended and apparently managed to free it up (as per the video evidence which he submitted) but afterwards it reverted to being difficult to operate. He acknowledged that there was some damage to the end of the sill underneath the door (which he suggested could have been fire damage caused by the tenant putting her cigarette butt container close to it) but he expressed the view that this could be quite adequately dealt with by splicing in a new section of timber, or possibly by replacing the whole sill.

62. Mr. Granger denied that the door had been either stuck partially open, leaving a gap, or impossible to lock, stating that on all his visits to the property the lock was functioning correctly.

63. He also denied that the anti-lift mechanism was missing or faulty, claiming that if the door came off its runners at any stage that must have been due to extreme force and mishandling.

64. Mr. Granger explained that he had been involved in selling and fitting double glazing units for many years, and in his professional opinion the patio doors, frame and architraves (vertical weathering strips) did not need replacing. However, it was accepted that the roller bearings were damaged, and Mr. Granger explained that he had, with some difficulty, succeeded in sourcing a replacement part which he himself could fit within the next week.

65. If a complete new patio door was required, Mr Nyunt was insisting that a FENSA registered contractor should be used, in which case they would have the power to self-certify the thermal properties of the window.
If Mr. Granger undertook to replace the patio door himself, given that he had been a door and window fitter for many years, he explained that he would need to get Building regulation approval on the thermal properties of the new glass, which would involve a fee. Even so, this would be several thousand pounds less expensive than instructing outside contractors.

If Mr. Granger merely repaired the wooden sill and vertical weathering strips, he would not need to replace the glass, and so no certification process would be needed.

66. Mr. Granger told the Tribunal that he had always been quite willing to resolve the patio door issues and had done his best to do so, but that Mr. Nyunt had not been clear or logical in his demands and some of the works required were unreasonable and unnecessary. As for complete renewal, Mr, Granger stated that in due course he planned to do this, but he was reluctant to do the work with the present tenant in occupation because he feared that she would damage it, as she and her family had damaged other doors in the house.

67. Cooker/Hob
Mr. Granger confirmed that in June 2023, whilst installing the new central heating system, the contractors had caused some damage and a hole had been made in the kitchen ceiling which allowed fluid to leak down onto the 4-ring electric cooking hob below. As a result it appeared that one or two of the rings could not be used, because when they were turned on the electric trip-switch went off.

68. Mr. Granger told the Tribunal that Ms. Kinslow had complained that she had no means of cooking for her family at all (see Para. 35 above), but he found that in fact two or three out of the four hobs were working and in any case there was also a separate oven, grill and microwave which were unaffected by the leak. If there had been only one of the rings working, he said that he would have replaced the whole unit as soon as possible. However, he did not remove the faulty hob immediately because the trip switch was doing its job, there were adequate cooking facilities until the replacement was arranged, and he did not consider that there was any safety risk.

69. Mr. Granger stated that the repairs to the ceiling had been delayed by the tenant, who had shouted at the Taggas workmen. He had been obliged to do a temporary repair himself with polyfilla (as shown in the photographs) but he said that this was perfectly adequate.

70. Compliance with Initial Defect letter.
At the time of the 'Compliance inspection' on the 28th of September 2023, Mr. Granger stated that all items on the Initial Defect letter were viewed and found to be in order (Damp and mould, Excess cold, and Water supply) except for the patio doors. It had been difficult to comply with the tight timescales but everything had been done. The patio doors were still stiff to operate but not impossible to close and lock, and he had agreed to repair the damaged sill.

71. The ventilation and central heating systems had been completely renewed, with expensive humidity-controlled extractor fans, heat pumps and solar panels, some of which had been funded by the government grant. The hot water issue had been remedied, with both pressure and temperature restored.

72. In respect of the recent problems with the cooking hob, these had arisen since the Initial Defects letter and, as far as Mr. Granger was concerned, at least 2 of the 4 hobs or rings were working correctly, as were the oven, grill and microwave. Replacement of the hob was already in hand.

73. Mr. Granger gave evidence that once the Compliance Inspection was apparently completed on the 28th of September Mr. Nyunt asked him to leave the property, and the discussion between Mr. Nyunt and Ms. Kinslow continued for some time after he had left.

74. Shortly after the inspection, on 12th October, he was surprised to receive the Notice of Improvement, which required a total overhaul or renewal of the patio doors and stated that not 2, but 3 of the 4 cooking rings were allegedly unusable. He felt that he had done what was required of him by way of compliance, but now several new issues were being raised.

75. Necessity for Improvement Notice.

i) Food Safety:

a) Mr. Granger pointed out that the kitchen ceiling and cooker hob problems were new, and there was no question of him ignoring any requirements of the Initial Defect letter because neither of these matters had been an issue at the time. The ceiling, he said, was not plastered but was made up of plasterboard and Artex paint, and he disputed that a small hole could be hazardous or dangerous.

b) As for the requirement for a qualified electrician to assess and deal with the cooker situation, Mr. Granger submitted that it was totally unnecessary for any assessment to be undertaken or certification done. It was clear what had caused the problem in the first place, he could remove the faulty hob and put in the replacement which had been paid for and supplied by Taggas, and it did not require a qualified technician to install the new appliance. These matters were in hand and there was no need for an Improvement Notice.

ii) Smoke alarms:

a) Mr. Granger stated that he had ensured that the property had the requisite number of smoke alarms in good working order. The absence of operational alarms at the time of the Compliance Inspection was due to the actions of the tenant and/or her family in removing or damaging previous installations. The issue could be easily and immediately remedied without the need for an Improvement Notice.

b) Besides, the smoke alarms had not been mentioned in the Initial Defects letter and therefore, once again, there was no question of him having 'ignored' the requirements of the authority.

iii) Patio Doors (operability of amenity and structural collapse and falling elements):
As above, Mr. Granger accepted that he had probably taken too long to fix the problem, but he denied that an Improvement Notice was necessary or appropriate in the particular circumstances.

76. In summary, Mr Granger submitted that the demands of the local authority, as set out by Mr. Nyunt, were excessive, unfair and unrealistic. He felt that the correspondence had been threatening and confrontational, with frequent references to the possibility that he would face a £30,000 fine if he did not comply.

77. He queried whether Mr. Nyunt was unreasonably biased against landlords in general and him in particular, and whether he was attempting to assist Ms. Kinslow in her resistance to the rent increase and eviction notice by exaggerating any issues with the property that there might be.

78. In conclusion Mr. Granger told the Tribunal that he had 'booked in' two days to do the remedial works to the patio doors later that same week (after the hearing). He asked the Tribunal to find that the Improvement Notice had been unnecessary and should be quashed.

RESPONDENT'S CASE.

79. The Respondent's case was set out in the statements and oral evidence of Mr Nyunt and Ms. Kinslow, in the documents, reports, photographs and videos exhibited therewith, and in the Skeleton Argument dated 18th June 2024.

80. The relevant provisions of the Housing Act 2004 were referred to, and the Tribunal's attention was drawn to the Housing Health and Safety Rating system which underpins the law, together with the Enforcement Guidance: Housing Conditions, 2006.

81. The Tribunal's attention was also drawn to the Guidance as to assessment of hazards, and it was noted that such assessments under HHSRS are based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, *'...authorities should use their judgement to take account of the current occupant.' (Paragraph 4.9)*

82. It was noted that: *'Authorities have a general power under section 7 to take enforcement action in relation to category 2 hazards. But aside from hazards which are at the upper range, in band D for example, residential property may contain a number of more modestly rated hazards which appear to create a more serious situation when looked at together. There may for example be a minor hazard to health from damp in the bathroom ceiling, plus a moderate fall hazard from a loose but not actually broken handrail on the stairs, plus a food hygiene hazard from old-fashioned preparation facilities in the kitchen. In this example, the hazards do not combine in any measurable way. However the situation in the property may be considered unsatisfactory because the occupants encounter one hazard after another as they move around. Such a property may be perceived as less safe than one with a single high-scoring hazard.' (Paragraph 4.16)*

83. Further provisions from the Guidance were cited as relevant to the consideration of whether to take action against a landlord or not.

84. The Skeleton Argument, at Paragraph 20, reiterates the Statement of Reasons to the effect that '*...the owner was given an opportunity to comply with the legal obligations informally, but has ignored it, hence the service of Improvement Notice to secure compliance.'*

85. It was conceded that: '*In respect of the hob, ceiling and smoke alarms, these were individually assessed at the inspection on 28 September 2023 as Category 2 hazards and accordingly were included within the Notice to ensure that they were dealt with*

promptly. The Applicant has, since the issue of the Notice, rectified these issues.' (Paragraph 21.)

86. So far as the patio doors were concerned, however, it was said that '*...the Applicant had been made aware on a number of occasions over the preceding ten months that a permanent fix was required to deal with rotten sills and the integrity of the frame. The failure of the Applicant to take any appropriate action to fix the patio door resulted in further deterioration of the structure. Accordingly by the time of the inspection on 28 September 2023, a full overhaul of the doors was required, as detailed on the Notice.*' (Paragraph 22.)

87. It was submitted that the Applicant had been inconsistent in his analysis of the patio door problems, and that in May 2023 he was informed that he was too slow at resolving the issue and he was putting the resident '*at risk'* for longer than necessary (Para 24 (e)).

88. Ms. Ward, on behalf of the Respondent, stated that the authority had taken a 'stepped approach' to the case, starting with an informal procedure and then moving on to action when the informal method did not work. She said that the common thread was Mr. Granger's reluctance to resolve issues, and escalation was necessary because they had no confidence that action would be taken.

89. Mr. Nyunt gave evidence of his professional experience and confirmed the history of his involvement with the case, stating that 'Mandy' had first contacted them about problems with her back door in January 2023. She also complained of: '*dampness, mould, and inadequate heating and hot water*'. (Mr. Nyunt's statement, Page 154)

90. At his first inspection on January 30th he had found that there was 'some debris' in the runners of the patio doors and that the support or sill was compromised, making the door misaligned and more difficult to operate. However, he said that he had been happy to look at reasonable proposals, and at that stage he thought that if the sill and the roller bearing were replaced, that would solve the problem.

91. The landlord had agreed that there were some issues, notably with the patio door, and Mr. Nyunt allowed an extension of time for the work to be achieved. Despite this the patio door problem persisted and by October 2023 he had decided that the timber frame and surround were rotten as well and a 'like for like' replacement would be better, hence the issuing of the Improvement Notice.

92. Mr. Nyunt stated that he could have issued the Improvement Notice straight away in January 2023, because of Mr. Granger's non-compliance in the past with another property, but he did not do so.

93. Mr Nyunt agreed that by the time of the Inspection in September 2023 Mr. Granger had complied with all the other requirements of the Initial defects letter.

94. On the particular issues as set out above, Mr. Nyunt's comments were as follows:

i) <u>Excess Cold</u>
In respect of the original electric panel heaters in the property, he agreed that the heater in the living room had been disconnected, and the ones in the kitchen and

bathroom were not working when he attended in January 2023. He maintained, however, that the heating system was inadequate even if all heaters had been working.

ii) Damp and Mould
In his response to Mr. Granger's comments on this subject (as to the tenant's refusal to use the ventilation systems or provide adequate heating due to the expense), Mr Nyunt replied (Page 70) '*We do provide advice on mould if the tenant lifestyle is a contributory factor, which is not the case. The condensation and mould to your property are mainly due to deficiencies in heating system, insulation and ventilation, which is your responsibility. Hence, we are taking action against you.'*

iii) Smoke alarms
He stated that one of the smoke alarms was missing at the time of his first visit, but it was not mentioned in the Initial Defects letter because Mr. Granger said that he would replace it.

iv) 'Food safety' (Cooker/hob)
He agreed that the hob was a separate appliance, but he maintained that a qualified electrician was needed to assess the situation.
He said that initially only one ring was activating the trip switch, but when he attended for the Compliance Inspection in September 2023 he discovered, after Mr. Granger had left, that there were 3 unusable rings. He (Mr. Nyunt) had asked Mr. Granger to leave because '*Mandy was not able to be with him at that time.'*
In respect of the kitchen ceiling, Mr Nyunt said that the solution would depend on how bad the damage was, which was difficult to ascertain. He personally did not know what was going on up there.

v) Patio doors.
Mr Nyunt said that at the first inspection in January he noted that there was some 'sogginess' and 'brittleness' of the sill and the timber around it, and it looked 'fibrous and stringy.' He had seen that the sill looked blackened, and he thought that the rollers had been oiled and some of the oil must have splashed onto it. He did not know whether the frame was hardwood or not.
When closing the door you had to pull hard, and the bottom runner was a bit shaky, moving up and down.
The next day Mr. Granger had done a temporary fix, but it did not last.
Mr Nyunt considered that the broken roller was a consequence of the sill problem.
As to the locking mechanism, he did not try it himself: he did not recall what kind of lock it was and he was unable to say whether it was functioning or not.
When questioned as to what he considered the most appropriate course of action in respect of the patio doors now, he said that there were still two options: repair or replacement.

95. Ms Kinslow had filed a statement (Page 131 of the bundle), and she gave oral evidence at the hearing. In respect of the particular issues with the property she stated as follows:

i) Excess cold,
Ms. Kinslow denied tampering with any of the panel heaters in the house or disconnecting them or cutting the plugs off them as alleged by the Applicant. She

claimed that either Mr Granger or the electrician who attended the house with him prior to the January inspection must have done something to them.

She asserted that both the defective windows and the faulty patio door left her and her family 'open to the elements', and that there was a 2cm gap between the patio door and the door jam because it would not close properly, into which they had been obliged to stuff tea-towels.

ii) Damp and Mould
Ms. Kinslow did not comment on the reasons for the damp and mould in the house.

iii) Smoke alarms
She agreed that there had been smoke alarms both upstairs and downstairs when they moved in, and she had sometimes had to replace the batteries. She was unable to explain how or why the alarms had gone missing on more than one occasion or how they had been damaged: she stated she had not touched them and it was not possible that her partner or any of the children (including her teenage son) could have done it. She stated that Mr. Granger must have taken one of the alarms down on the day of the inspection.

iv) Cooker/hob and ceiling
Ms. Kinslow agreed that initially there was only a problem with one of the cooking rings after the leak in the new heating system on the 9th of June 2023, but then two other rings became unusable. She said that the new hob was not installed until 30th November 2023.
Ms. Winslow queried the efficacy of the 'fix' to the ceiling with Polyfilla.

v) Patio doors
Apart from her evidence about the patio door not closing and not locking, Ms. Kinslow stated that in May 2023 the door came off its runner and was left hanging by one corner. Her evidence was not clear as to how this had happened but a neighbour had helped to put it back in place.
Ms. Kinslow also claimed during the hearing that she had been unable to lock the patio door for a period of 18 months, but when pressed as to when the lock ceased to function she said that it had been sometime in 2023 ('last year'). She conceded that in the video produced by Mr. Granger the door could be seen apparently closing fully, but she said that it was difficult and you had to lift it.
During the inspections by Mr. Nyunt the lock had not been discussed or demonstrated, but Ms. Kinslow stated that the lever was now broken off so it now didn't work at all.

Ms Kinslow suggested that the rent increases and lack of response to her complaints were indicative of the landlord's wish to get her out, as confirmed by the Section 21 Eviction Notices of Aug 2023 and Jan 2024.

FINDINGS AND DETERMINATION.

96. In respect of the different issues in the case, in relation to both the justification for the 'Initial Defects' letter, and the necessity for the Improvement Notice the Tribunal found as follows:

i) <u>Excess Cold -</u>
The Tribunal did not accept Mr. Nyunt's approach to the question of adequate heating, in that he wrongly dismissed any reference to the fact that the heating system had been partly 'disabled' and/or not turned on prior to his inspection. It was also illogical for him to have concluded that his assessment would have been the same regardless of the season, and regardless of whether all elements of the heating system had been in use and in proper working order. (Page 71)
In terms of any investigation into the allegation that the tenant had deliberately damaged some of the heaters, Mr. Nyunt appears to acknowledge that the plugs had been cut off but does not draw any conclusions from this fact. In the email correspondence at Page 71 Mr. Granger states: - '*I offered to rewire the plugs but you declined*' and Mr. Nyunt replies: - '*You and your electrician went in the property early morning, so why did you not look into this and address it in the first place? Secondly, you are not an electrician to fix that issue*.'
This appears to indicate a lack of willingness to accept the tenant's contribution to the inefficient heating system.

Nevertheless, the Tribunal noted the requirement for a landlord to provide adequate and affordable heating, and on a strict interpretation of the HHSRS guidance it is arguable that the lack of such heating in this case (whatever the cause) amounted to a 'hazard', with a risk of harm to the health and safety of the occupier. Thus the Initial Defects letter was appropriate.

ii) <u>Damp and Mould</u> -
The Tribunal found that Mr. Nyunt had given insufficient weight to the evidence that the tenant had not kept the house adequately heated and ventilated, and that she had not used the existing heating and ventilation systems properly, thus causing damp and mould to develop. His correspondence with Mr Granger (as per Paragraph 94 (ii) above) referred to these issues being '*…mainly due to deficiencies in heating system, insulation and ventilation, which is your responsibility.'*
Given that the insulation (both cavity wall and loft) was found to be present (although some of the loft insulation had been displaced) this was factually incorrect, and no consideration was given to the tenant's contribution to the problems. The Tribunal did not find that this issue amounted to a significant hazard which justified the 'Initial Defects' letter: the matter should have been dealt with informally.

iii) <u>Smoke alarms.</u>
Whilst the Tribunal acknowledges the requirement for a landlord to install proper and working smoke alarms, it is not possible for any landlord to visit the property on a daily basis to ensure that they have not been tampered with. The Tribunal did not accept Ms. Kinslow's denial that she or any of her family had, or could have, removed or interfered with the alarms. In this respect Mr. Granger's evidence that he had provided (and then replaced several times) the smoke alarms was accepted.
There was no 'ignoring' of any local authority requirement on the part of Mr. Granger in this respect: the absence of alarms was a hazard of the tenant's own making. The alarms could be easily and inexpensively replaced and Mr. Granger had expressed his willingness to do this.

The Tribunal determined that this was not a reasonable ground or 'hazard' to be combined with others in justifying an Improvement (or other) Notice.
No formal action was required, so this element of the Improvement Notice was varied by striking it out.

iv) Cooker hob and Kitchen ceiling – 'Food safety' -
The problem with the leak through the kitchen ceiling and the faults with the hob (which post-dated the Initial Defects letter by 3 months) were caused not by negligence or neglect by the landlord, but by the acknowledged fault of the heating contractors.
Once the issue with the electric hob was identified, Mr Granger immediately satisfied himself that there was, in fact, still adequate provision for cooking (despite Ms. Kinslow's assertion that she had been unable to use the cooker for 2 weeks) and then he planned and intended to fit the replacement as soon as possible. The Tribunal accepted that a qualified electrician was not required to deal with this particular matter.
The Tribunal also accepted Mr. Granger's evidence that it was sensible to repair the ceiling first, and his unchallenged evidence that he had had trouble arranging for this to be done because of Ms. Kinslow's behaviour. As for the extent of the damage to the ceiling and the risk to safety, there was no evidence that there had been any further problems after the initial 'leak' on the 9th of June 2023, or that there was likely to be any falling 'debris' (as suggested in the HHSRS Report, Page 123).
Mr. Granger stated that the ceiling was made up of plasterboard and Artex, and the repair was not particularly complex.
In the circumstances there was no finding that the landlord had ignored or unreasonably failed to comply with any local authority requirements, or that the cooker and ceiling condition amounted to an appreciable hazard to the health and safety of the occupiers.
The Tribunal was not satisfied that this issue amounted to a significant hazard, and an Improvement Notice (whether or not combined with other matters) on this ground was not justified. The problems could have been resolved informally, so this element of the Notice was varied by striking it out.

v) Patio doors -
a)The Tribunal found that the local authority requirements in respect of the patio doors had not always been logical or consistent. However, the evidence of Mr. Granger's expertise in the matter of double-glazing doors and windows was not disputed, and from the video and photographic evidence the Tribunal was able to make findings as to what was reasonable and what was not.

b) The initial complaint from Ms. Kinslow in November 2022 was that the doors '*would not open or shut'* (Paragraph 11 above). This was not strictly accurate: the doors would open and shut but it was agreed that they were stiff and difficult to move. (Note: No reference was made to any problems with locking the doors at this stage, and Mr. Nyunt never made any finding as to difficulty in locking.)

c) The Tribunal noted that both Mr. Granger and Mr. Nyunt referred to some 'gunk' or 'debris' in the runners, and black matter of some kind- together with apparent pieces of chain metal – can be seen in the photographs and videos. Ms. Kinslow stated that her ex-partner had poured cooking-oil onto the runners, but it is not clear what else may have been causing the obstruction.

d) In the video Mr. Granger can then be seen scraping some of this matter away with a screwdriver, and thereafter the door appears to slide to and fro relatively easily (Exhibit KG22).

e) However, it is also obvious from the video and photographic evidence that the end of the timber 'sill' underneath the doorframe is very badly blackened (possibly charred/burnt?) and damaged, with part of it missing. As a result, there is some 'misalignment' and the frame 'dips' and moves slightly when the door is closed. In some of the videos it is clear that Ms. Kinslow is having difficulty in pushing the door open and closed, but at no time in any of the footage is there an occasion when it completely fails to close and leaves a visible 'gap' between the door and the vertical door-jam or frame.

f) All parties appear to have agreed in the end that the door has a 'roller bearing' at its base which has been damaged. It is not clear whether the damage was caused by debris in the runners, and it could not have been examined without removing the door, but the evidence is that the 'part' was extremely difficult to replace because of its age.

g) By the Initial Defects letter of 1st March 2023 Mr. Granger was required to replace just the sill beneath the door, but during the next few months there appears to have been disagreement as to whether this was a suitable solution.

h) By the time of the Improvement Notice in October 2023 Mr. Nyunt was saying that the whole door and frame needed replacing, but Mr. Granger's evidence was that Mr. Nyunt was looking at the timber architrave on the external face of the frame when drawing this conclusion, and that in his view the remainder of the timber frame, (apart from the sill) and the aluminium unit and doors were still in reasonable condition.

i) The Tribunal, with the benefit of its own knowledge and experience, accepted Mr. Granger's evidence that the whole door and frame did not need replacing entirely, but it found that the best course of action would be to take out the unit, replace the timber sill with a new one, replace the faulty roller bearing with a new one, and reassemble the whole thing. This work could be done relatively quickly: Mr. Granger said that he could complete it in a couple of days and he was planning to do so within a week of the hearing.

j) The Tribunal did not accept Ms. Kinslow's evidence of long-term locking failures (except perhaps more recently, after the locking lever was broken) or significant gaps that let in the cold: there was no confirmation from either Mr. Nyunt or Mr. Granger that this was ever the case.

k) The Tribunal did not consider that Mr. Granger's stated intention to replace the door completely at some stage in the future was indicative of an admission that it was inherently unsatisfactory or inadequate.

l) The Tribunal did not find that there was a real risk of the door becoming dislodged from its runners in the course of ordinary and reasonable everyday use. ('Structural collapse and falling elements.')

m) However, the issues with the door (difficulty with operation) had persisted over a very lengthy period, and Mr. Granger admitted that he had probably taken too long to resolve them. He could have done more to comply with the requirements of the Initial Defects letter.

In the circumstances it was found that there was a risk to the health and safety of the occupiers because of the condition of the door (whatever had caused it). The problem had persisted over many months and the local authority therefore correctly assessed the Category 2 hazard and had good reason to issue the Improvement Notice on this ground alone. This element of the Notice was confirmed accordingly.

97. Other findings -
i) As to the question of Mr. Granger's history of compliance and the necessity and appropriateness of an Improvement Notice, the Tribunal found that the authority in general, and Mr. Nyunt in particular, had not adopted a particularly professional, reasonable or constructive attitude to the problems. The correspondence between the parties is indicative of this, as demonstrated by the yellow highlighted responses from Mr. Nyunt to Mr. Granger's queries and requests (Pages 70-78).

ii) The Tribunal found that Mr. Nyunt's manner of referring to and addressing Ms.Kinslow in correspondence and in the hearing as 'Mandy' demonstrated a degree of informality that could be interpreted or perceived as bias towards her. In addition, his willingness to become involved in her financial disputes with the landlord further led to a perception of prejudice. Despite Ms. Kinslow's admission that there were indeed some arrears of rent in January 2023 (pending a payment from Universal credit) and despite Mr. Granger's evidence that he had had to pay for repairs (which were the tenant's admitted responsibility, e.g. the window broken by her children), Mr. Nyunt wrote to Ms. Kinslow saying that she should '*ignore any demands'* which were '*baseless and unreasonable*' (Para 27 above). Such involvement was inappropriate and contentious.

iii) At the Compliance Inspection on the 28th of September 2023 the authority quite properly invited the landlord Mr. Granger to be present, but it is admitted that the inspection continued and the issues with the cooker were examined and identified after he had been asked to leave. Mr. Granger was then served with an Improvement Notice in respect of one matter at least (the three apparently inoperative electric hobs) of which he was previously unaware and to which he had been given no opportunity to respond. This was unprofessional and unreasonable.

iv) As to the question of cooperation and compliance, it is significant that by the time of the Compliance Inspection in September 2023 the heating system and the ventilation devices had been completely overhauled and replaced: in fact the work was completed before the end of June. The original date for completion was the 1st of June, and an extension of time had been granted.

v) The Skeleton Argument (Paragraph 2) refers to the Inspection in September 2023 which was scheduled to '*review compliance…*' '*…with a number of concerns… raised by Ms. Kinslow… as highlighted on previous inspections and in correspondence.'*
It is now clear that there was only one remaining concern – the patio door – which had been highlighted at the previous inspection.

vi) Regardless of who paid for what, no credit is given for the fact that Mr. Granger had responded to the Initial Defects letter by arranging for many thousands of pounds' worth of extensive works to be undertaken and completed within a relatively short time. All the major issues had been resolved, but the local authority justify their decision to issue an Improvement Notice by referring to Mr. Granger's *'reluctance to resolve issues*' and they accuse him of '*ignoring the opportunity'* which he had been given to comply with their requirements ' so that they had '*…no confidence that action would be taken.'*
The Tribunal found that the authority's conclusion in this respect was not justified.

vii) The Tribunal made no determination in respect of any other dispute which may exist between the Applicant and the tenant on other matters, but in respect of which no finding is required for the purpose of determining this application.

viii) In summary the Tribunal found that most of these matters could and should have been resolved by better communication and a more reasonable approach to the issues, without the need for any formal action. It is to be hoped that in future the parties will be able to cooperate more effectively and constructively to the benefit of all concerned.

CONCLUSION AND ORDERS

98. In the light of the above findings, the Tribunal orders that the Improvement Notice shall be varied, so that all items are removed from it apart from the requirements concerning the patio doors.

99. The requirements in Schedule 2 of the Notice should be amended, to read as follows:-

'Take out patio doors, replace timber sill supporting the frame, replace damaged roller bearing, clean and refit.'

100. The Applicant shall have 28 days from the date of the amended Improvement Notice in which to comply.

101. Because some elements of the original Improvement Notice were found to be unreasonable and excessive, the Administration fee of £275.14 is amended so that only £137 is payable. Any amount above that figure which has already been paid by the Applicant should be refunded forthwith.

APPENDIX 1.

RELEVANT LAW

1. The relevant law is contained in the Housing Act 2004 ("the Act") and the particular law in respect of appeals is more particularly set out in Schedule 1 to the Act.

2. The Act introduced a new system for assessing the condition of residential premises operating by reference to the existence of Category 1 and Category 2 hazards. Section 2 of the Act defines Category 1 and 2 hazards and provides for regulations for calculating the seriousness of such hazards. Those are to be applied by local Councils to the properties in their area.

3. A hazard is defined in section 2(1) as:

> "any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)."

4. Category 1 hazard is defined in section 2(1) as follows:

> "(1) In this Act-
>
> Category 1 hazard means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method of calculating the seriousness of hazard of that description, a numerical score of or above a prescribed amount;"

5. Category 2 hazards are similarly defined.

6. Section 2(3) provides that regulations made may prescribe a method of calculation of the seriousness of hazards. The relevant regulations are the Housing, Health and Safety Rating System (England) Regulations 2005 ("HHSRS").

7. If the local housing authority considers that a Category 1 hazard exists, section 5 imposes a duty to take the appropriate enforcement action- action is mandatory.

8. Section 5(2) sets out the various courses of action available to the authority, including as one option the service of an Improvement Notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice. Where more than one course is available, the local authority must take the most appropriate: where only one course is available, the authority must take that course.

9. If on such an inspection the local housing authority considers that a Category 2 hazard exists, section 7 confers a power to take the appropriate enforcement

action but does not impose a duty to do so. Section 8 provides that the local authority must give reasons for taking enforcement action.

10. The HHSRS sets out a method for calculating the seriousness of hazards by way of a numerical score. That is achieved by applying the prescribed methodology in regulation 6, taking in to account the likelihood of the harm occurring and the severity of the harm if it were to occur. There are a number of steps and variables.

11. There are 10 bands of hazard prescribed, A to J. Band A is the band for hazards scoring 5000 or more. Band B includes hazards with a score of 2000 to 4999 and Band C includes hazards scored at 1000 to 1999. More serious hazards are classed as Category 1 hazards, where a hazard falls into Category 1 if the numerical score is 1000 or above and so into Band A, B or C. Lesser hazards, those within the other 7 bands, are in Category 2.

12. In order to arrive at the relevant Band, the local authority must first assess the likelihood of a relevant occupier suffering any harm during the 12 months beginning with the date of the assessment as a result of the particular hazard. There are 16 ratios of likelihood. For each, there is what is described as a representative scale point. It is that which needs to be applied subsequently.

13. An assessment must then be made of which of the four classes of harm a relevant occupier is most likely to suffer. Those are named as Classes I to IV. Class I harm is "such extreme harm as is reasonably foreseeable as a result of the hazard in question, including….a) death from any cause…….regular severe pneumonia……." and also a number of other severe conditions. Class II is "severe harm", Class III "serious harm" and Class IV "moderate harm". The last of those includes regular serious coughs and colds.

14. A hazard is of a prescribed description where the risk of harm is associated with any of the matters that are listed in Schedule 1. By way of example, that included "Exposure to low temperatures". The "relevant occupier" varies according to the nature of the hazard and depends on the matters in Schedule 1.

15. In addition to assessing which class of harm is most likely, an assessment must also be made of the possibility of each of the other three classes of harm occurring, within a range of percentages of possibility. For each range of percentages of possibility there is set out a further representative scale point, this time of the percentage range" ("RSPPR").

16. Having determined the percentage possibility of each of the three less likely classes of harm, the local authority must then bring the total of RSPPRs for the four classes up to 100%, by assigning the percentage left to the most likely class of harm.

17. After that, a numerical score is produced of the hazard for each of the four classes or harm. The likelihood of each class of harm is multiplied by the RSPPR and then by a further factor which weights the seriousness of the classes of harm. The factor is 10,000 for Class 1, 1000 for Class II, 300 for Class III and 10 for Class IV.

18. The last step is to add the four individual numerical scores to produce a single numerical score that can be related to the ten prescribed Bands.

19. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to Category 1 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section. Section 12 of the Act sets out the statutory provisions regarding Improvement Notices relating to Category 2 hazards.

20. The information which must be specified in relation to a hazard includes, by s. 13(2)(b) and (d), "the nature of the hazard and the residential premises on which it exists" and "the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action". By s. 13(5) the premises in relation to which the remedial action is to be taken are referred to in Part 1 of the Act as the "specified premises".

21. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act. In particular, their functions under chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that a local housing authority must have regard to any such guidance.

22. The office of the Deputy Prime Minister issued guidance under section 9 relating to Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).

23. The Operating Guidance explains that a "deficiency" is to be treated as the failure to meet the "Ideal". The "Ideal" is the optimum standard at the time to prevent, avoid or minimise the hazard.

24. The Guidance further says that the assessment is to be made based on assessment of the potential effects on a member of the relevant vulnerable group. That group is defined as being the age group for whom the risk from the hazard is greater than for other age groups.

25. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 10 provides that a person on whom an Improvement Notice is served may appeal against the notice to the Tribunal. Of particular importance in respect of such appeals is that the appeal is to be by way of a re-hearing- paragraph 15(2)- and therefore the Tribunal shall reach its own decision as to the correct approach to take.

26. The appeal may be determined having regard to matters of which the Respondent was unaware. The Tribunal has the power to confirm, quash or vary the Improvement Notice- paragraph 15(3).

27. The Tribunal is required in light of the above to consider housing standards and must make findings as to the alleged deficiencies. The Tribunal must then consider the appropriate enforcement.

Section 12 Housing Act 2004 –

1. Improvement notices relating to category 2 hazards: power of authority to serve notice if:

A. The local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

B. No management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an improvement notice under this section in respect of the hazard.

2. An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

3. Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

4. An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

5. An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

6. The operation of an improvement notice under this section may be suspended in accordance with section 14.

Schedule 1 Part 3 Housing Act 2004: Appeal against improvement notice.

10 (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

11 (1) An appeal may be made by a person under paragraph 10 on the ground that: -

(a) one or more other persons, as an owner or owners of the specified premises ought to - take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist or include the ground mention in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

12 (1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are -

(a) making a prohibition order under section 20 or 21 of this Ac

(b) serving a hazard awareness notice under section 28 or 29 of this Act; and

(c) making a demolition order under section 265 of the Housing Act 1985 (c.68).

13 (1) The relevant person may appeal to a residential property tribunal against -

(a) a decision by the local housing authority to refuse to revoke or vary an improvem

(2) In sub-paragraph (1) "the relevant person" means -

(a) in relation to a decision within paragraph (a) of that provision, the person on whom the notice was served;

(b) in relation to a decision within paragraph (b) of that provision, the person who applied for the revocation or variation.

14 (1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) a residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

15 (1) This Paragraph applies to an appeal to the tribunal under Paragraph 10.

(2) The appeal -

(a) is to be by way of a re-hearing, but

(b) may be determining having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the Improvement Notice 4

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.