



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/00CG/HIN/2023/0045**

**Property** : **153 Dundas Road, Sheffield, S9 1SX**

**Applicant  
Represented by** : **You Are Fired Limited  
Ms Fatima Ali (Company Director)**

**Respondent** : **Sheffield City Council**

**Type of  
Application** : **Improvement Notice. Schedule 1, Paragraph  
10, The Housing Act 2004.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA.  
Mrs S. A. Kendall, BSc, MRICS**

**Date of Decision** : **8 August 2024**

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**DECISION**

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## **Application and Background**

1. The Applicant You are Fired Limited is the owner of 153 Dundas Road, Sheffield, S9 1SX “the property”. The Applicant is represented by its Company Director, Ms Fatima Ali. The property is subject to a management agreement, dated 12 October 2022. The second party to the management agreement is Prokope Property Solutions Limited, “Prokope”. This document purports to be signed as lease (this is stated to be the case on the last page of the document where parties to the lease are required to sign the document), but it is not signed on behalf of the Applicant and has not been witnessed. The legal status of this document is of prime importance to the case.
2. The management agreement requires Prokope to pay to the Applicant rent of £600 per month.
3. After 12 October 2022, the Applicant and Ms Ali left management decisions up to Prokope. At some stage before August 2023 three tenants were permitted to reside in the property, upon payment of rent to Prokope.
4. During August 2023 Ms Ali contacted Sheffield City Council “the Respondent”, via a portal on the Respondent’s web site to report that she suspected that the property was now being used in such a way as to have become a House in Multiple Occupation “HMO” that requires a licence and that it was not licenced. Ms Ali also reported that she had concerns as to health and safety matters at the property.
5. On 26 September 2023 tenants at the property reported the fact that they were being harassed in an attempt to bring about an unlawful eviction of them from the property. Further, they complained that a fourth tenant called Andrew had been moved into the front ground floor room of the property. Further still, the tenants reported that Ms Ali or her family had damaged the front door to the property and the central heating gas boiler in such a way to stop it providing hot water to heat the property or provide domestic hot water. The Police were involved as was a Respondent’s Tenancy Relations Department. These matters are still pending a resolution.
6. Since there were allegations that the central heating boiler was not working the Private Housing Standards Department became involved and that part of the case was given to Alan McMurdo, Senior Private Housing Standards Officer “Officer McMurdo” to investigate.

7. On 9 October 2023 Officer McMurdo inspected the property. During this visit Officer McMurdo saw that the central heating boiler was not working and that there were other issues of disrepair at the property.
8. On 11 October 2023 Officer McMurdo issued a Nuisance Abatement Notice to the Applicant, requiring that the central heating boiler be put into working order (pursuant to section 80 of the Environmental Protection Act 1990).
9. On 31 October 2023 Officer McMurdo issued a formal notice pursuant to section 239 of the Housing Act 2004 “the Act” indicating that Officer McMurdo would inspect the property again on 3 November 2023. This inspection was to enable Officer McMurdo to make a full assessment of the faults in the building pursuant to the Housing Health and Safety Rating System.
10. On 3 November 2023 Officer McMurdo carried out a second inspection of the property, during which Officer McMurdo states that he found that the condition of the property was the same as it had been on 9 October 2023. There were 1 Category 1 Hazard and 4 Category 2 Hazards at the property.
11. On 7 November 2023 Officer McMurdo issued an Improvement Notice and served it on the Applicant. It is against this Improvement Notice that this appeal has been brought before the Tribunal. Officer McMurdo also withdrew the Nuisance Abatement Notice.
12. On 14 February 2024 Officer McMurdo carried out a further inspection of the property. Officer McMurdo states that the required remedial action required by the Improvement Notice had not been completed.
13. By an application dated 29 November 2023 the Applicant appeals against the issue of the Improvement Notice. The primary ground of appeal is that from the date of the management agreement (12 October 2022) the Applicant was not the manager of the property, management having passed to Prokope. There are an additional 14 grounds of appeal.
14. On 9 February 2024 Tribunal Directions were issued. These anticipate an inspection of the property and an oral hearing.
15. A hearing bundle of 350 pages has been created. This includes a Respondent’s bundle of 216 pages and an Applicant’s bundle of 69 pages. Additionally, the Respondent served a further statement of Officer McMurdo and photographic exhibits (7 pages). The Applicant served additional evidence of 10 pages, including an Order of the Sheffield County Court. The Respondent served a skeleton Argument of 23 pages.

16. The written evidence is far too long to summarise here. The Tribunal will refer to written evidence where that is appropriate.

### **Inspection**

17. The Tribunal's inspection commenced at 10 am on Monday 29 July 2024. The Applicant was represented by Ms Ali, who afforded us access to the property through the front door. The Respondent was represented by Officer McMurdo. There were three other persons present who were permitted to observe the inspection. Two of these persons were employees of the tribunal service, who were present throughout the inspection and hearing but were not permitted to take any part in the decision making process undertaken by the Tribunal.
18. The property is a brick built end of terrace property, the main roof being of slate. It has two first floor bedrooms. There is an off shot bathroom on the ground floor, that part of the building having its own pitched roof. The remainder of the ground floor is a kitchen/dining room and front room. There is a cellar trap door in the kitchen, but it was not necessary to access the cellar because the inspections conducted by Officer McMurdo did not include the cellar.
19. On approach to the front exterior door the Tribunal could see that door has been repaired. The chipboard (approximately 6 foot high) that had been affixed to the door had been removed and left inside the front room. The frame of the door was original, but the panel that occupies the centre of the door has been replaced, this panel containing a window. The door is now a functioning uPVC door. Ms Ali stated that she did not know if any of the tenants were at home, or whether they were still tenants of the property.
20. Officer McMurdo stated that he had not had access to this front room during his inspection, the room had been occupied by the tenant, Andrew. The room contains a smoke alarm and an electric fire. The door that divides the room from the rest of the house has a sliding bolt attached to it so prevent that door being opened from the rest of the property.
21. The property has a central heating system with radiators in most rooms.
22. The kitchen/dining room has a wall mounted gas fired central heating boiler that has no make or model displayed upon it. The boiler appears to be old. Officer McMurdo attempted to check to see if the boiler was working only to discover that the electricity supply to the property had been switched off. Ms Ali stated that she had not paid for the boiler to be repaired and that she believes it to remain in an unusable condition. There is a heat detector on the ceiling. There is rising damp on the wall of the alcove which contains the trap door to the cellar, evidenced by the presence of mould. There is a burglar alarm box on the wall, Ms Ali

indicated that she had never attempted to use the burglar alarm system. The missing kitchen door has now been replaced and although inspection failed to ascertain whether or not this internal door is as required by the remedial action, the Tribunal gives the Applicant the benefit of the doubt on this issue. There is a Honeywell timer thermostat system for the central heating boiler.

23. The rear lobby has an exterior uPVC door and a door that leads into the off shot bathroom. There is a plate fixed to ceiling that should have a smoke alarm fitted to it. There is no smoke alarm at this location.
24. The bathroom has an old suite of a toilet, bath (with electric shower over) and sink. The ceiling is covered in wood panelling that appears to be dry, but the plaster ceiling underneath is not visible.
25. The stairs have an area of damp and mould at the bottom of them to the gable end wall. There is a mark to the ceiling on the stairs that indicates that there has in the past been a leak of water coming from the location of the cylinder tank on the first floor but it did not appear to be damp now.
26. Both first floor bedrooms have hasp and staples fitted to the doors and door frames so that these could have a padlock affixed to them to secure the doors.
27. The front bedroom has a widow that without a restrictor would open very wide and could obviously cause a risk of falling to the exterior ground floor. The window now has a restrictor fitted to it that, by the means of a key that is provided, will release the restriction on the window so that it can be used as a fire escape. This room had been occupied by one tenant at the time of the inspections carried out by Officer McMurdo. The Tribunal inspected the wall at the side of the window, towards the gable end. The plaster under the wallpaper is uneven and at the lower end of the wall the wallpaper is lifting off the plaster, but there is no evidence of damp or mould.
28. The rear bedroom that was occupied by two tenants at the time when Officer McMurdo inspected the property contains the frame of bunk beds that has been partly disassembled. This frame had to be moved so that we could gain access to the cylinder cupboard. The cupboard contains a hot water cylinder with an insulating jacket over it. There is an immersion heater fitted to the hot water cylinder, but the cap of the immersion heater has been taken off and was lying on the top of the insulation jacket. That top is corroded with rust falling off it. The wires of the immersion heater are exposed and the earth is clearly not attached to the earth connection. There is an on/off switch mounted to the wall inside the cylinder cupboard. Officer McMurdo could not gain access to the cylinder cupboard during his inspections because of the bunk beds that were in use at the time and were blocking access to the cylinder cupboard and neither could the tenants. The

Tribunal considers this immersion heater to be in a dangerous condition. There is an area where the wall plaster has perished and there is damp and mould.

29. From this rear bedroom the ridge tiles above the off shot bathroom are clearly visible. The missing ridge tile has not been replaced, but the hole left by the absence of the tile has been filled with mortar that has been rounded off so that it fits the hole. This is an unusual method of repairing a ridge of tiles, but since the ceiling of the bathroom underneath the ridge cannot be seen the Applicant has to be given the benefit of the doubt as to whether it is a watertight repair.
30. Although Ms Ali did not know if any of the tenants were still resident at the property, the Tribunal concludes that they are not. There is currently no electricity supply to the building and therefore no lights. It is common ground that the central heating boiler is not working and therefore there is no hot water to wash hands or kitchen utensils or to heat the property. There is furniture within the property, but no beds capable of being slept on, no clothing or personal effects, no towels etc.

### **The Improvement Notice**

31. The important features of the Improvement Notice, issued on 7 November 2023 are now summarised.
32. Damp and mould, category 2 hazard.
  - There is a leak from the hot water tank above the stairs in the rear bedroom, causing damage to the ceiling above the stairs with drips of water falling into a container.
  - Penetrating damp on front elevation in front bedroom
  - Missing ridge tile on pitched roof above off shot bathroom.
33. Excess cold, category 1 hazard.
  - Wall mounted hot water boiler in kitchen not functioning.
  - Front entrance to property is damaged with a chip board repair
34. Food safety, category 2 hazard.
  - Hot water boiler not functioning so the tenants are unable to hygienically wash their hands or cutlery and crockery.
35. Falls between levels, category 2 hazard.

- Front and rear bedroom windows are top hung and persons could fall through them to the ground.
36. Fire, category 2 hazard.
- The property is a two storey HMO. Automatic fire detection was noted to comprise a single smoke alarm in the first-floor hallway.
  - Missing door between entrance hall and kitchen. If a fire starts in the kitchen, flame and smoke can enter the escape route, unrestricted.
37. Remedial action to commence by 11 December 2023.
38. By 25 December 2023 the central heating boiler to be functioning providing effective central heating and an on demand supply of hot water to all taps. Resolve the leak from the hot water cylinder. Repair or replace the exterior front door.
39. By 11 February 2024 investigate the cause of the penetrating damp and remedy that fault. Repair roof ridge above the off shot bathroom. Fix restrictors to the bedroom windows with an override mechanism for use in the event of a fire.
40. Fit an interlinked smoke alarm system of BS5839-6: 2019 for grade D, LD3 system, having a heat detector in the kitchen and smoke detectors to both levels of the means of escape, lounge and cellar. Fit a new door to the kitchen as it meets the lobby. The door to close tightly to minimise the passage of smoke into the escape route.

### **The management agreement**

41. There is a management agreement dated 12 October 2022, between You Are Fired Limited and Prokope Property Solutions Limited, relating to the property. The terms of the agreement are summarised as follows.
42. The agreement commenced on 17 October 2022. There are two versions of the agreement, one is signed on behalf of Prokope only and the second is not signed at all. The agreement is said to be signed as a deed and places provided for both companies to sign the agreement, but there are no places provided for witnesses to sign and in fact there are no signatures from witnesses.
43. The Applicant is defined as the landlady who is responsible for insuring the building. Prokope is defined as the manager who is responsible for letting out the whole or parts of the property on assured shorthold tenancies, collecting the rent and effecting some repairs, but excluding repairs to the central heating boiler and system, and electrical installations. The lease is

defined as being a contractual relationship between the Applicant and Prokope. Prokope will pay rent of £600 per month to the Applicant. The Applicant retains responsibility for the external parts of the property.

44. As such the Tribunal determines that on the face of the agreement the Applicant has at all times relevant to this agreement remained responsible for maintenance of the central heating boiler, the front exterior door, the roof ridge above the off shot bathroom and the two bedroom windows as they form part of the exterior of the property.

## **The Law**

### **The Housing Act 2004**

#### **CHAPTER 2**

#### **IMPROVEMENT NOTICES, PROHIBITION ORDERS AND HAZARD AWARENESS NOTICES**

##### ***Improvement notices***

#### **Section 11 Improvement notices relating to category 1 hazards: duty of authority to serve notice**

- (1) If-
- (a) the local housing authority are satisfied that a category 1 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,
- serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
- (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 subsections (3) to (5) and section 13.
- (3) The notice may require remedial action to be taken in relation to the following premises-
- (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;
  - (b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
  - (c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).



- (4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied-
  - (a) that the deficiency from which the hazard arises is situated there, and
  - (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
- (5) The remedial action required to be taken by the notice-
  - (a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
  - (b) may extend beyond such action.
- (6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
- (7) The operation of an improvement notice under this section may be suspended in accordance with section 14.
- (8) In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

**Section 12 Improvement notices relating to category 2 hazards: power of authority to serve notice**

(1) 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.

**Section 263 Meaning of “person having control” and “person managing” etc.**

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises. Housing Act 2004 Page 267

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises

(a) receives (whether directly or through an agent or trustee) rents or other payments from

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it

**SCHEDULE 1, PART 3**  
**APPEALS RELATING TO IMPROVEMENT NOTICES**  
**Appeal against improvement notice**

**Para 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).

**Para 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).

**Para 15**

- (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.
- (2) The appeal-
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may by order confirm, quash or vary the improvement notice.
- (4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

**The hearing**

45. The hearing commenced at 11.30 am on 29 July 2024 at Sheffield Magistrates Court. Persons present at the inspection were again present for the hearing with the addition of Ms Ferguson, employed solicitor for the Respondent.

46. At the commencement of the hearing Judge Tonge informed the Parties that he sits on tribunals for the Northern Region of the Residential Property Tribunal (this case) and also for the Midland Region. Officer McMurdo is a member of the Midland Region Panel as a surveyor and expert tribunal panel member. Officer McMurdo has this morning made Judge Tonge aware that some years ago they both sat on the same case for Midlands in a video platform hearing. Judge Tonge has no memory of the case or of Officer McMurdo.

47. Judge Tonge asked if either of the Parties to the case have any objection to Judge Tonge continuing to sit on the case. Both Parties indicated that they consent to the case continuing with Judge Tonge presiding over the hearing.
48. The fact that the Tribunals bundle contains 65 pages that were not included in either of the hearing bundles was discussed. The reason for this is that letters sent by the tribunal case officer and Directions, along with some duplication, have been included in the 350 page bundle. All accept that this will make reference to specific pages within the hearing bundles more difficult.
49. Officer McMurdo was called to give evidence. The Tribunal accepts his two witness statements, exhibiting all exhibits with an AM reference as his evidence in chief.
50. Officer McMurdo gave evidence about the inspection at the property this morning comparing it to what he had seen during his earlier inspection that led to the Improvement Notice being served and the inspection when it was ascertained that the remedial action had not been completed. The Officer confirmed that had tested the hot water taps at the property during his inspections and there had not been any hot water. Officer McMurdo had not tested the room temperatures at any time and had not consulted a thermostat present on a wall in the kitchen of the property.
51. Officer McMurdo had not received any complaints from the tenants of the property that they were in fact cold. He added that the winter was at that point coming and that outside temperatures were about to drop. He went on to explain that in calculating a risk he is required to assess that risk over a period of 12 months into the future and assume that vulnerable persons might be resident in the property during that period. He agreed that he asked Ms Ali to provide three electricity convector heaters for use by the tenants, but this was not a way of complying with the Nuisance Abatement Notice that he had issued, it was required as a temporary measure to help in the short term, until the central heating boiler was fixed. That Notice requires that the Applicant provide “on demand heating and hot water”. Officer McMurdo stated that the Applicant could have done this at any time by repairing the boiler.
52. Overall, after reflection and cross examination, Officer McMurdo agrees that the remedial action now taken by Ms Ali is sufficient to satisfy some of the remedial action required by the Improvement Notice. The main fault still remaining is the lack of a working central heating boiler. This is now exacerbated by the fact that the immersion heater is clearly not safe to use.

53. Officer McMurdo had requested an interlinked, hard wired, fire detection system to be installed, but that was for a property being used as an HMO. Officer McMurdo was prepared to accept that if the Tribunal concludes that the tenants have moved out of the property, so that the property is no longer being used as a HMO, that the fire detection system in place at the moment would just be sufficient for occupation by one family unit. Officer McMurdo accepted that the property didn't look as if it were presently occupied by tenants.
54. Officer McMurdo was questioned about the choice of action to take. Ms Ali suggesting that it should have been a remedial action notice requiring repairs to be carried out on a voluntary basis. Ms Ali stated that she would have complied with such a notice but went on to admit that she would not have repaired the central heating boiler. Questions were asked about other action that could be taken, including prohibiting the use of the property as a HMO. The Officer stated that the correct action to take was an Improvement Notice. The existence of a category one hazard meant that the case was too serious for the use of a hazard awareness notice and that some enforcement action had to be taken. At that stage the nuisance abatement notice had not been complied with and even now the Improvement Notice has still not been complied with, nearly seven months later.
55. Ms Ali asked Officer McMurdo about the inspection on 3 November 2023. The notice that she had received informing her of the time of the inspection had stated that it would commence at between 2 pm and 4pm. She had remained at the property until 3.30 pm and the Officer had not arrived. The Officer agreed that the inspection that day had commenced a little later than expected, but that this is not in any way fatal to the case. The inspection took place on 3 November 2023, this is confirmed by the existence of exhibited time stamped photographs.
56. Ms Ali gave evidence on behalf of the Applicant. Her statement was accepted as her evidence in chief.
57. In relation to the management agreement, Ms Ali states that she intended that the document should be a binding lease of the property to Prokope. Ms Ali had thought that when she returned her copy of the agreement to Prokope that the computer would indicate that she had "signed" it. She agreed that the document had not been witnessed and that sections 44 and 45 of the Companies Act 2006 requires her signature to be witnessed, otherwise the document is not a lease.

58. Ms Ali states that she did try to comply with the Nuisance Abatement Notice and blames Officer McMurdo for not permitting her time to do so indicating that on 31 October 2023 he had sent her an email telling her he would not communicate with her further until after the inspection on 3 November 2023. That is not what the email says, rather it states that Officer McMurdo will contact her again after the inspection. Officer McMurdo restated that Ms Ali could have, and should have, complied with the Nuisance Abatement Notice, but had not done so.
59. Ms Ali stated that she or her agents had not damaged the central heating boiler. The damage could only have been caused by one of the resident tenants or by an employee of Prokope. It was partly because of this damage having been done that she did not want to pay for the repair of the boiler, because it could be damaged again.
60. Ms Ali accepted that she had redacted some of the exhibit that she had produced in relation to an inspection of the boiler by a heating engineer. Ms Ali stated that she did not want the Respondent or the Tribunal to know how much the repair would cost.
61. Ms Ali was asked why it is that the case papers have two different copies of the management agreement. The first has a logo on the front page and appears to be signed only by someone on behalf of Prokope. The second does not have a logo on the front and is not signed at all. Ms Ali had no explanation for this.
62. Ms Ali had reported the matters as described to the Respondent (see paragraph 4, above) because she had contacted Prokope and been told that the property did not need a HMO licence, but she did not believe what they had told her. Further, Ms Ali was concerned about a lack of health and safety at the property.
63. The hearing was running short of available hearing time, ending at 5pm. It had not been possible to deal with the Applicant's sixteenth additional ground of appeal in the closing speeches. Written submissions contend that in 12 different ways the Respondent had failed to comply with its own Intervention and Enforcement Policy. The Tribunal agreed that it would carefully consider these 12 points before making any final decision in the case.
64. The Tribunal members agreed to sit on this case again, in private session, on 8 August 2024 to determine the issues in the case.
65. On 30 July 2024 the Applicant sent an email to the tribunal's case officer that was forwarded to Judge Tonge. The Applicant asks for permission to serve new evidence and further written submissions.

On 1 August 2024 Judge Tonge considered this request and refused to grant permission, authorising a response in the following terms. “Ms Ali was present throughout the inspection and should have brought the attention of the Tribunal to anything that Ms Ali thought the Tribunal should have seen. The oral hearing, lasting four and a half hours, has concluded and it is now too late for additional evidence to be served or additional submissions to be made.”

## **Determination**

66. At 10 am on 8 August 2024 the Tribunal sat again in private session lasting four and a half hours, to determine the issues raised.
67. The first issue to be decided is whether or not the management agreement, dated 12 October 2022 is effective as a deed.
68. Section 52(1) of the Law of Property Act 1925 states that ‘All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed’. Section 52(2) details various exceptions to this rule, however none are applicable.
69. The Law of Property (Miscellaneous Provisions) Act 1989 section 1(2) and 1(2)(b) state that an instrument shall not be a deed unless it is validly executed as a deed. Further, the same section (3) states that an instrument is validly executed as a deed if it is signed in the presence of a witness who attests the signature.
70. The Companies Act 2006, section 44 and 46 require a signature on behalf of a company on a deed to be made by a director of the company, in the presence of a witness who attests the signature.
71. The Tribunal notes that Ms Ali has stated that she intended to create a valid deed and that she believed that in accepting the agreement that she thought that the agreement would be signed on her behalf by the computer programme. However, it is clear that neither of the two versions of the agreement exhibited in the case papers is in fact signed by Ms Ali. Further, it is also clear that no one was asked to witness any signature that might be made on the agreement. The Tribunal determines that the agreement is not a deed and that therefore it does not create any estate in the property at all. The property has at all times been the responsibility of Ms Ali to manage on behalf of the Applicant, You Are Fired Limited.
72. The Tribunal has determined that Prokope has been collecting rent from three of the tenants at the property on behalf of the Applicant and paying a £600 per month over to the Applicant. The

management agreement states that this commenced on 17 October 2022. It is not clear when or if this agreement has been brought to an end. During the Tribunals inspection on 29 July 2024 it was clear to us that the tenants had moved out of the property, Ms Ali making it clear to us that she did not know if that had happened. The Tribunal notes that there is an ongoing case in the County Court where the Applicant is seeking possession of the property from Prokope and all other occupiers (this must also include all tenants at the property, whether or not placed in the property by Prokope). The Applicant has exhibited a County Court Order, dated 25 July 2024, listing a possession hearing for 12pm on 28 August 2024. Ms Ali submits that Prokope has not paid the Applicant rent collected for the Applicant since August 2023 and also exhibits emails demanding payment of the rent for three months after that. The emails have not been responded to by Prokope and that company has not involved itself in this case.

73. The Tribunal notes that Officer McMurdo inspected the property on 3 November 2023 and based upon that inspection issued the Improvement Notice on 7 November 2023. On those dates the Tribunal determines that Prokope had three tenants in the first floor bedrooms and was required by the terms of the management agreement to collect rent from those tenants and pay £600 per month to the Applicant. A further occupier called Andrew had been moved into the ground floor front room of the property on behalf of the Applicant. There is no evidence as to whether this person was a licensee, a tenant or if he was paying rent to the Applicant.
74. Section 263 of the Act defines the person having control of property and the person managing property. Prokope have been receiving rent from tenants on behalf of the Applicant and have been required to pay the Applicant £600 per month to represent that rent. The Tribunal determines that pursuant to sub-sections (1) and (2) this results in the Applicant being the person in control of the property and that pursuant to sub-section (3) the Applicant is the person managing the property.
75. As such the Applicant is the correct legal person to be made subject to the Improvement Notice in this case.
76. The Applicant, in her written evidence, submits that although the heating engineer that she had sent to her property had not fixed the central heating boiler, he had ensured that the immersion heater fitted to the hot water cylinder had been working. This is supported by a redacted report from the engineer. As such the Applicant submits that there was a means by which the tenants at the property could have access to hot water.



77. The Respondent's case is that Officer McMurdo could not gain access to the hot water cylinder because a set of bunk beds were blocking access to the cylinder cupboard. However, the Officer had checked the hot water taps during his inspections and there had not been any hot water.
78. As such the Tribunal made a point of gaining access to the hot water cylinder, moving a partly disassembled bunk bed frame so that we could inspect the immersion heater and we have seen that the protective cap is not fitted to the top of the immersion heater and that the cap is rusty, with the exposed wires not connected properly. It is our opinion that the immersion heater is dangerous and should not be used.
79. During the hearing Officer McMurdo asked whether the Tribunal could add additional faults to the Improvement Notice, in this regard. The Tribunal will not add a further fault to the Improvement Notice as the Tribunal considers this to be for Officer McMurdo to investigate now, if he considers this to be necessary.
80. The Tribunal determines that even if the immersion heater had been working during the time period relevant to this case, that the on/off switch would not have been accessible to the tenants due to the cylinder cupboard being blocked off by the bunk beds that were then in use. Further, there is no way to control the temperature of the hot water supply to the taps. Further still, the Tribunal determines that on the evidence that we have read, seen and heard it is unlikely that the immersion heater was working during the period that is relevant to this case.
81. The Applicant submits that an Improvement Notice was not the proper action for the Respondent to take, suggesting that any of the other forms of dealing with a hazard could and perhaps should have been taken. The Tribunal determines that the decision as to how to deal with a category 1 hazard and 4 additional hazards was the Respondents. Sections 5 and 11 of the Act point towards the issue of an Improvement Notice. The issue of a Nuisance Abatement Notice had not resulted in the central heating boiler being made functional again. Officer McMurdo sets out his reasons for the issue of an Improvement Notice at page 8 of the notice. The Tribunal determines that the issue of the Improvement Notice is a perfectly proper use of the Officer's discretion.
82. The Applicant states that since an appeal against the Improvement Notice has been lodged with the Tribunal, that appeal negates the requirement in the Improvement Notice to carry out the remedial

works. The Tribunal determines that the appeal prevents any action by the Respondent as to prosecution in the Magistrates Court or issue of a financial penalty for failure to carry out the remedial works. However, such an appeal cannot excuse leaving tenants in a property without heating or hot water for 10 months. The Nuisance Abatement Notice relating to the central heating boiler was issued on 11 October 2023 and the Tribunal's Decision relating to the appeal is being made today, 8 August 2024. The Applicant should have complied with the remedial action as required by the Improvement Notice. In fact the Tribunal has seen that most of the remedial action has been complied with except for repair or replacement of the central heating boiler and installation of an interlinked smoke alarm system of BS5839-6:2019 for grade D, LD3 system (see paragraph 40 above).

83. The Tribunal now turns to the Applicant's document 'A Full Statement of Reasons for the Appeal'. The Tribunal goes through the twenty additional grounds of appeal as set out by the Applicant in that document.
84. The first additional ground of appeal relates to a submission that the Improvement Notice has no effect because it is addressed to the company secretary of the Applicant, this being a position that does not exist within the company. The Tribunal determines that this does not have any effect on the validity of the Improvement Notice that has been served on the Applicant and acknowledged by Ms Ali, on behalf of the Applicant.
85. The second and third additional grounds of appeal relate to the submissions that it was not necessary to issue an Improvement notice when a Nuisance Abatement Notice had been issued. Further, the Applicant submits that the Nuisance Abatement Notice was being complied with. The Tribunal determines that it was perfectly proper for the Respondent to issue an Improvement Notice. The Nuisance Abatement Notice, issued on 10 October 2023 had not been complied with when the Improvement Notice was issued on 7 November 2023. The Applicant was fully aware from the content of the Nuisance Abatement Notice that the Applicant had to make sure that there was an effective gas fired central heating boiler in the property and has failed to do this even by today's date. The administrative fee relating to the Improvement Notice has been properly charged to the Applicant.
86. The fourth additional ground of appeal relates to the decision to hold the Applicant responsible for the hazards at the property, rather than Prokope. This has already been dealt with. The Applicant is responsible for the condition of the property and is the proper

person to receive the Improve Notice, requiring the Applicant to remedy the faults specified in the notice.

87. The fifth additional ground of appeal relates to the fact that on page 8 of the Improvement Notice the Applicant is incorrectly referred to as U R Fired, submitting that this invalidates the Improvement Notice. The Tribunal determines that the Improvement Notice is addressed to You Are Fired Limited and is valid.
88. The sixth additional ground of appeal relates to the Statement of Reasons for issue of the Improvement Notice, submitting that such a notice was not necessary as the reasons are not valid reasons. The Tribunal does not agree with the Applicant. The Nuisance Abatement Notice had not been complied with because the central heating boiler was not functional. The Respondent was seeking a quick resolution of the excess cold and food safety hygiene hazards resulting from the lack of a functioning gas fired central heating boiler. These are valid reasons that should have, and were, taken into account. In fact the Improvement Notice has still not been complied with because there is still not a functioning gas fired central heating boiler.
89. The seventh additional ground of appeal. The Applicant submits that Prokope should be responsible for the remedial action required by the Improvement Notice and that Ms Ali had already told Officer McMurdo this. The Tribunal has already determined that the Applicant is responsible for the remedial action under a properly served and valid Improvement Notice.
90. The eighth additional ground of appeal relates to the category 2 hazard of damp and mould. The Applicant submits that there is no leak of water through the stairs ceiling onto the stairs. The Tribunal has read Officer McMurdo's statement and seen a photograph of the leak taken on 3 November 2023, with a container placed to catch drips of water. The Tribunal in its inspection has seen that there are marks on the stairs ceiling that indicate that there has been a water leak in the past. The Tribunal determines that as of 3 and 7 November 2023 there was a leak of water at this location. However, the Tribunal agrees with the Applicant that the water leak appears to have been remedied.
91. The Applicant submits that there is no penetrating damp to the front elevation of the front bedroom. During our inspection the Tribunal saw that the plaster under the wallpaper is not even and the wallpaper has lifted off the plaster to the bottom corner of the wall. However, the Tribunal agrees with the Applicant that as of our inspection the Tribunal did not see any evidence of damp.

92. The Applicant submits that the missing ridge tile was not permitting rainwater to enter the roof above the off shot bathroom. The Tribunal notes that the ceiling of the off shot bathroom is covered in wood panelling and cannot be seen, but that the Tribunal could see no evidence of any ingress of rainwater.
93. The ninth additional ground of appeal relates to the category 1 hazard of excess cold. The Applicant submitting that it is not responsible for the lack of a functioning gas fired central heating boiler because the Applicant's heating engineer had reported that deliberate damage had been caused to the boiler. This submission presupposes that the Tribunal will take the view that either the tenants or Prokope caused deliberate damage to the gas fired central heating boiler. The Tribunal does not take this view. Why would Prokope damage the Applicant's boiler? Why would the tenant's take action that would result in them having no heating and no on demand hot water for hygiene purposes? The suggestion is not realistic and we reject it. It is far more likely that Ms Ali or persons acting on her behalf caused the damage in an effort to get the tenants to leave the property.
94. Further, the Applicant submits that the chipboard fixed over the broken front door was such as to prevent any air getting through the door and that the room inside the broken exterior door was not being used as a sleeping room. The Tribunal determines that there is absolutely no evidence that the chip board repair provided an airtight fit. The room inside the front door had been divided off from the remainder of the property by the installation of a door bolt and was being occupied by Andrew, who in all probability was sleeping in that room. Mr McMurdo's statement and photographs show a poorly repaired exterior door that is likely to have been admitting cold drafts into a property with no heating.
95. The tenth additional ground of appeal deals with the category 2 food safety hazard, submitting that it is improperly added to the Improvement Notice because it cites the lack of a functioning gas fired central heating boiler as a contributory factor when this is also a contributory factor the excess cold hazard. The lack of a functioning gas fired central heating boiler is common to both hazards, but both hazards did exist at the property on 3 and 7 November 2023.
96. The eleventh additional ground of appeal deals with the category 2 hazard of falls between levels but is not properly a ground of appeal. The Applicant simply comments upon the hazard. The Tribunal having inspected these windows confirms that they do require

restrictors to be fitted to them, otherwise there is a hazard of a risk of persons falling out of the windows. The Tribunal is content with the restrictors that have been fitted by the Applicant.

97. The twelfth additional ground of appeal deals with the category 2 fire risk, submitting that Prokope must have removed the kitchen door that has now been replaced and pointing out that the Applicant does not agree the number of smoke alarms as listed by the Officer. The Tribunal determines that as a HMO occupied by 4 persons (three tenants as placed in the property by Prokope and Andrew), with a missing kitchen door, the Improvement Notice and its remedial action was correct. However, the Tribunal notes that the property does not now appear to have any tenants. Officer McMurdo stated in oral evidence that for a property that is not being used as a HMO fire detection was at a level that he could accept. As such the Tribunal will vary the Improvement Notice to delete this hazard, but only on the basis that the property will not be used as an HMO in the future.
98. The thirteenth additional ground of appeal deals again with the Respondent's decision to use an Improvement Notice rather than the other options available under the Act. The Tribunal determines that the Respondent's decision was correct.
99. The fourteenth additional ground of appeal suggests that there has been insufficient discussions between Officer McMurdo and the Applicant before taking enforcement Action. The Tribunal determines that it is wrong to criticise Officer McMurdo in this way and we approve his decisions.
100. The fifteenth additional ground of appeal suggests that the Respondent should have decided to carry out the remedial action itself and reclaim the costs of doing so. It is clear to the Tribunal that this would not have been appropriate as the Applicant would have contested the repayment of those costs.
101. The sixteenth additional grounds of appeal is the ground that the Tribunal did not have time to deal with properly during the speeches at the end of the oral hearing. The Applicant submits that the Respondent has failed to follow its own Intervention and Enforcement Policy "the Policy" in 12 ways, itemised (a) to (l). The Tribunal has considered each instance referred to by the Applicant.
102. The Policy at section A has an introduction in which, in summary, the Respondent states that most people want to cooperate with the Private Standards Housing Department and that landlords will normally be given the chance to cooperate unless the circumstances of the case merit immediate enforcement. This is a property that

was being used as a HMO. Officer McMurdo inspected the property on 9 October 2023 and issued a Nuisance Abatement Notice on 11 October 2023 to attempt to remedy the lack of a functional gas fired central heating boiler, the Tribunal accepting that this is a matter that did require urgent action. By 3 November 2023 the Nuisance Abatement Notice had not been complied with and an Improvement Notice was issued. Again the Tribunal considers this to be an action that was urgently required. As such there was no reasonable prospect of the Policy being followed as it relates to voluntary or cooperative working. The part of the Policy that is appropriate is section 12, dealing with cases in which formal intervention is considered to be appropriate straight away, paragraph 12.2 being particularly relevant in these circumstances.

103. The Respondent's views on this approach have been confirmed as correct in the fact that ten months after the issue of the Nuisance Abatement Notice the remedial action there required has not been completed.
104. In relation to the Applicant's points (a) to (k) the Tribunal deals with these points together. The Tribunal considers this to be a case meriting immediate enforcement action, taken as described above. There was never any reasonable opportunity for liaison, communication or voluntary cooperation to bring about a repair to, or replacement of, the gas fired central heating boiler.
105. The remaining point (l), in which the Applicant submits that an Improvement Notice should be served on all relevant parties. The Applicant submits that the Respondent has failed to serve the Improvement Notice on Prokope. This submission is repeated in ground 17 of the additional grounds of appeal so that it is convenient to deal with them at the same time.
106. The issue was not put by Ms Ali to Officer McMurdo in cross examination, so the Tribunal does not know what Officer McMurdo would have said on this issue. Further, because the issue was not pursued by the Applicant in the hearing the issue has not been addressed by the Respondent's solicitor. The Tribunal has not seen any evidence to suggest that Officer McMurdo did not serve the Improvement Notice on Prokope as agents of the Applicant. The Tribunal comments that if that had been done it could only have been for information purposes as the Improvement Notice remedial action is clearly the responsibility of the Applicant. The Tribunal determines that this point has not been pursued properly by Ms Ali on behalf of the Applicant and has no effect on the validity of the Improvement Notice.

107. The eighteenth additional ground of appeal is framed in three parts, but the overview of the submission is that the Improvement Notice should have been served upon Prokope for that company to be responsible for the remedial action. The Tribunal has already dealt with this. Prokope are not responsible for undertaking the remedial action.
108. The nineteenth additional ground of appeal. This relates to the section 239 notice (exhibit AM35) that was sent to Ms Ali in preparation for the inspection on 3 November 2023, leading to the issue of the Improvement Notice. The Applicant submissions are in five parts, challenging the notice itself and whether Officer McMurdo is authorised to carry out such inspections. AM35 states that Officer McMurdo will enter the property at between 2pm and 4pm on 3 November 2023 to carry out an inspection to determine whether any powers under Part 1 of the Act should be exercised.
109. The Tribunal determines that this is a perfectly proper notice and the fact that Officer McMurdo was delayed in the commencement of the inspection has no effect on the validity of the inspection. Officer McMurdo has added to the end of the Respondent's bundle the authorisations that he has to carry out all of the functions that he has carried out in this case.
110. The twentieth ground of appeal is not in fact a ground of appeal and does not need to be dealt with.
111. The Tribunal determines that as of 3 and 7 November 2023 the Improvement Notice containing one category 1 hazard and four category 2 hazards was valid and properly required the Applicant to carry out the remedial action detailed within it.
112. However the Tribunal is able to take into account matters that the Respondent did not know about as this appeal is now dealt with. The primary new evidence is that gathered in the Tribunal's inspection of the property.
113. For the reasons stated above the Tribunal will vary the Improvement Notice in the following ways.
114. Delete the category 2 hazard of damp and mould and its remedial action.
115. The category 1 hazard of excess cold will remain, but the reference to the front entrance door shall be deleted. The Tribunal has considered Officer McMurdo's calculation of risk (Officer McMurdo's witness statement, page 10 and exhibit AM38). The

Tribunal confirms this hazard as a category 1 hazard even having deleted the front entrance door from the risk calculation. Remedial action as it refers to the gas fired central heating boiler will remain.

- 116. The category 2 hazard of food safety will remain. Remedial action will remain.
- 117. The category 2 hazard of falls between levels and the remedial action will be deleted.
- 118. On the basis that the property is not now being used as a HMO, the category 2 hazard relating fire and the remedial action will be deleted
- 119. The remedial action is now less urgent than it was in November 2023 because the property is now vacant. Remedial action must now commence within two weeks of service of the varied Improvement Notice and must be completed within six weeks of commencement of the work.

### **Decision**

- 120. The Tribunal decides that as of 3 November 2023 and 7 November 2023 this Improvement Notice was a properly issued and valid Improvement Notice.
- 121. For the reasons stated above the Tribunal decides that it will vary the Improvement Notice pursuant to paragraph 15(3) of Part 3 of Schedule 1 of the Housing Act 2004, to delete three of the category 2 hazards from the improvement notice. The improvement notice will now consist of one category 1 hazard and 1 category 2 hazard as detailed in paragraphs 114 to 119, above.
- 122. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal to that Tribunal must first ask for permission to appeal from this Tribunal by delivering to this Tribunal, within 28 days of the Decision being sent to them, a document setting out the grounds for the appeal, particulars of each ground and the result that the party seeks to achieve by making the appeal.

Judge C. P. Tonge

13 August 2024