FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UB/HIN/2024/0008 and 009**
Property	**:**	**Flats B and M, Cotefield House, Bodicote, Banbury OX15 2AQ**
Applicant	**:**	**Tariq Qume Khuja**
Representative	**:**	**Unrepresented**
Respondents	**:**	**Cherwell District Council**
Representative	**:**	**Peter Savill of counsel**
Type of application	**:**	**Appeal against improvement notices under paragraph 10(1) of Schedule 1 of the Housing Act 2004**
Tribunal	**:**	**Judge A. Arul** **Gerard F. Smith MRICS FAAV**
Date of hearing	**:**	**14 February 2025**
Date of decision	**:**	**2 June 2025**

DECISION AND REASONS

Decisions of the Tribunal

(1) The Improvement Notice for Flat B was justified in scope and timescales but is varied in accordance with the terms of this decision.

(2) The Improvement Notice for Flat M was justified in scope and timescales but is varied in accordance with the terms of this decision.

(3) The charges in respect of both notices remain payable.

REASONS

The Application

1. By two applications, each dated 1 March 2024, the Applicant freeholder appeals against two improvement notices each dated 13 February 2024 (the Improvement Notices) served upon him by the Respondent pursuant to sections 11 and 12 of the Housing Act 2004 (the Act).

2. The appeals are made pursuant to paragraph 10(1) of schedule 1 to the Act against the Improvement Notices and further seek to appeal pursuant to paragraph 11(1) of schedule 3 to the Act against the demands for recovery of charges levied.

3. The Improvement Notices relate to residential flats known as Flats B and M, each situated within Cotefield House, Bodicote, Banbury OX15 2AQ (the Property).

4. On 10 October 2024, the Tribunal gave directions (the Directions) for filing and serving evidence, which had been partly complied with. The Respondent asserted that the Applicant had submitted a non-compliant bundle (various defects are listed in a note dated 19 December 2024) and it therefore filed and served a supplemental bundle containing the missing documents and appropriate pagination. Insofar as there was a breach of the Directions, both parties had substantially complied and the Tribunal had before it the relevant papers with sufficient time to read them in advance. Therefore, we were prepared to proceed without imposing any sanction for non-compliance and are grateful to the Respondent for its assistance in ensuring the papers were before us in an orderly form.

5. The Directions note that the applications were received within the 21-day time limit specified by paragraph 14 of schedule 1 to the Act. The Tribunal therefore proceeded on this basis, there being no challenge to the timing of the applications. There was a jurisdictional challenge

raised by the Applicant for the first time at the hearing and this is addressed later in this decision.

The Inspection and the Hearing

6. The Tribunal inspected parts of the Property, comprising both Flats B and M and some common parts, on the morning of the hearing day. The hearing then took place at a nearby venue.

7. The parties all attended. The Applicant was not formally represented but a friend accompanied and assisted him. The Respondent was represented by Mr Savill of counsel.

8. The Respondent had submitted written statements, and it was confirmed that it adopted those statements as its evidence, which the Tribunal took as read. Live evidence was heard from Ms Carolyn Arnold (an Environmental Health Officer) and Mr David North (a Housing Grants and Standards Team Leader), both employed by the Respondent in its Housing Standards Team. Ms Arnold and Mr North had each produced two statements, one for each flat.

9. The Applicant had not submitted a statement for himself or any witness. He did not, therefore, give live evidence. He had the opportunity to ask questions of Ms Arnold and Mr North and both parties were able to make submissions.

10. The Tribunal had the benefit of bundles of documents from each of the Applicant and the Respondent. The Applicant's bundle (as updated by the Respondent) runs to 54 pages and contains copies of the applications, the Directions, official copies of the title entries for the Property, transcripts of telephone conversations, emails and photographs. The Respondent's bundle runs to 257 pages and contains a statement of reasons for opposing the appeals and witness statements from Ms Arnold and Mr North along with extensive exhibits. The exhibits include, amongst other things, the Improvement Notices, demands for enforcement charges, various correspondence including emails and other documents such as HHSRS assessments. References to page numbers in this decision are references to page numbers in the bundles.

11. In the hearing, the Applicant produced a further bundle of documents running to 79 pages. This was unsatisfactory both in terms of timing and that insufficient copies were made available so the Tribunal had to share some documents and had loose duplicates of others. Mr Savill was only provided with this bundle at some time on the day of the hearing. Notwithstanding, he did not object to the Applicant being able to rely upon it, citing that the Applicant was acting in person. That in itself is not an excuse for seeking to rely on very late documents on the

day of the hearing. Further, the Applicant presented this bundle to the Tribunal as 'authorities'. The additional documents were accepted on this basis but it later transpired during submissions that this bundle included some new evidence. This is addressed later in this decision.

Agreed Facts

12. The Property comprises a period non-standard construction building, built mainly of sandstone walls. It stands in a plot with various garden and parking areas. There is a large basement. The building itself has been converted to be subdivided into 13 flats, named consecutively A to M. We were only concerned with flats B and M. There was evidence before us of historical discussions between the parties about other flats and common areas. This evidence was disregarded for the purposes of the hearing and this decision insofar as it was not relevant to the matters in issue.

13. The Applicant is the sole registered proprietor of the freehold interest in the Property. We were shown official copies noting that he has owned the Property since 29 July 2005.

14. Each of the flats within the Property are let on assured shorthold tenancies to residential tenants.

15. Flat B is a ground floor flat. It has an open plan style living room and kitchen, two bedrooms and a bathroom. It was occupied at the material times including the day of the inspection and hearing.

16. Flat M is a second floor flat. It has a living room, bedroom, bathroom and kitchen. It was occupied at the material times including the day of the inspection and hearing.

17. It is common ground that there have been some historical complaints from the respective tenants to the Respondent about the condition of each flat (and some features of the common parts). The extent to which those complaints were justified or accurate, and the motivations behind them, were not agreed between the parties.

The Improvement Notices

18. The Improvement Notices are both dated 13 February 2024. Schedule 1 to the notices sets out the hazards identified. Schedule 2 sets out the required remedial action to include the date by which those works must be completed. The date for completion of the works to remedy all hazards was 30 April 2024 for flat B and 7 May 2024 for flat M.

19. There was no issue about proper service of the Improvement Notices upon the Applicant however a challenge was made to their validity, which is addressed below.

20. The Improvement Notices are each supported by a statement of reasons. Also in evidence was the Housing Health and Safety Rating System (HHSRS) hazard scoring forms completed by the Respondent in respect of each hazard identified for each flat.

21. In broad terms, for flat B, the principal hazards which the Improvement Notice relates to are inadequate heating and damp and mould growth. The Applicant says this is due to the tenant drying clothes internally and failing to adequately ventilate the flat. The Applicant also asserts that the complaints by the tenant have an ulterior motive, namely, to help secure alternative housing. The Respondent does not accept these arguments but, in any event, says that they are immaterial. As to the remedial works required, the Applicant says that the works are not required, are excessive and that the timescales are wholly inadequate. The Respondent maintains that the Improvement Notices were reasonable in scope and timescales.

22. In broad terms, for flat M, the principal hazards which the Improvement Notice relates to are inadequate heating and damp and mould growth. There are also complaints of lack of insulation, risk of pest infestation and that the Property is not secure. The Applicant says that the condition of the flat has been caused or contributed by the tenant, who has not cooperated in granting access for works and has been threatening and aggressive toward him. The Respondent does not accept this but, in any event, says that it is immaterial as remedial works were still possible and additional time was given to reflect any difficulties gaining access. The Applicant says that works have been ongoing, and the Improvement Notice was premature given the above circumstances.

The Law

23. Part 1 of the Act provides for a system of assessing the condition of residential premises, and the way in which this is to be used in enforcing housing standards. It provides for the HHSRS, which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.

24. Local Authorities apply the HHSRS to assess the condition of residential property in their areas. The HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.

25. Section 2(1) of the Act defines a hazard 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)*'.

26. Section 2(3) of the Act provides that: '*... regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur*'. Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005 and implement the HHSRS.

27. Section 5 of the Act requires that, if a Local Authority considers that a Category 1 hazard exists in respect of any residential premises, it *must* take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. The types of enforcement action that a Local Authority may take following identification of a Category 1 hazard include service of an Improvement Notice. There are others, which are briefly considered later in this decision.

28. Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include service of an Improvement Notice. The power is discretion and not mandatory; unlike for Category 1 hazards.

29. Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.

30. Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Category 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person upon whom it is served to take such remedial action in respect of the hazard as specified in the Improvement Notice.

31. Section 11(8) of the Act defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Improvement Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard; but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard and contains similar provisions to that in section 11.

32. An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act.

33. The Appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority is unaware. The Tribunal may confirm, quash or vary the Improvement Notice. The function of the Tribunal on an Appeal against an Improvement Notice is not restricted to a review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.

34. Paragraphs 1 to 5 of Part 1 of Schedule 1 to the Act deal with the requirements for the service of Improvement Notices, including identifying the person on whom a notice must be served. Four distinct situations are catered for, each of which identifies the recipient of the notice by reference to the nature of the specified premises in the improvement notice; the expression 'specified premises' is defined in section 13(5) as premises in relation to which remedial action is to be taken in respect of the hazard. The situations are:

    (a) Where the specified premises are licensed under Part 2 or Part 3 of the Act, the notice must be served on the licence holder.

    (b) Where the specified premises are not so licensed and are not a flat then notice must be served on 'the person having control of the dwelling' or in the case of an HMO on either the person having control of the HMO or the person managing it.

    (c) Where the specified premises are a flat which is either a dwelling not licensed under Part 3 of the Act, or an HMO which is not licensed under Parts 2 or 3 the notice must be served on 'the person managing' the flat, or on a person who is both an owner of the flat, and in the authority's opinion ought to take the action specified in the notice.

    (d) Where any specified premises are common parts of a building containing one or more flats, or any part of such a building which does not consist of residential premises, the notice must be served on a person who is an owner of the specified premises and who in the local authority's opinion ought to take the action specified in the notice.

35. Paragraph 5 of Part 1 of Schedule 1 to the Act further provides that a copy of the notice must be served on every other person who to the knowledge of the Local Authority has a relevant interest in the specified premises or who is an occupier of such premises.

36. The provisions in Schedule 1 of the Act for identifying the proper recipient of an improvement notice therefore make it important to be able to identify the 'owner', the 'person having control', and the 'person managing' the specified premises.

37. Section 262 of the Act defines amongst other expressions the meaning of 'owner' as a person who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion and also includes a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years.

38. Section 263 of the Act defines the meaning of the expressions 'person having control' and 'person managing'. 'Person having control' means the person who receives the rack rent of the premises (whether on his own account or as an agent or trustee of another person), or who would so receive if the premises will let at a rack rent (section 263(1)). In broad terms, section 263(1) defines the person managing as the person receiving the rents.

39. Finally, section 49 of the Act permits a Local Authority to make a charge relating to the service of an Improvement Notice. Section 49(7) gives the Tribunal power to reduce, quash or order repayment of sums paid in relation to such charges.

The Issues

40. The Tribunal identified the following issues for determination, as recorded at paragraph 5 of the Directions.

    (a) Did the Respondent go through the necessary steps prior to issue of each Improvement Notice?

    (b) Do hazards exist and, if so, in what category?

    (c) Should the Respondent have taken enforcement action?

    (d) If so, what enforcement action was appropriate?

    (e) If an Improvement Notice was the correct action, should the terms be varied (e.g., specified remedial works and/or timescales)?

    (f) If an appeal is allowed for each or both Improvement Notices, should an order be made reducing, quashing or requiring the repayment of the charge of £480 per notice which the Respondent has demanded?

Service of the Improvement Notices

41. It is necessary to consider the nature of the hazards identified and the remedial actions required when determining whether Improvement Notices ought to have been served. A preliminary point is the process undertaken.

42. The Tribunal heard evidence from Ms Arnold that the Improvement Notices were served on the Applicant as the proprietor of the freehold interest in the Property. We were shown official copy entries and correspondence confirming the ownership and method of service.

43. The Property is a flat which is not licensed under either Part 2 or Part 3 of the Act. The requirements for service of the Improvement Notice are therefore governed by paragraph 3 of Part 1 of Schedule 1 to the Act (which is set out above). The Improvement Notices were therefore required to be served on the owner of the flat and person who in the Respondent's opinion ought to take the action specified in the notice, or on the 'person managing' the flats. The owner of the Property (applying the definition of 'owner' set out in section 262(7) of the Act) as well as the person managing the flats is the Applicant. Accordingly, the Tribunal is satisfied that the Improvement Notice were properly served on the Applicant in accordance with the requirements of paragraph 3 of Part 1 to Schedule 1 of the Act.

44. At the hearing, the Applicant raised a challenge to the process which was followed by the Respondent prior to issue of the Improvement Notices. There were two principal points in this challenge. Firstly, that the requirement under section 239 of the Act to give at least 24 hours' notice of a visit was not followed. Secondly, that the Improvement Notices were not signed by someone having the necessary authority.

45. These challenges were not mentioned in either application, nor in any document submitted prior to the hearing day. Mr Savill on behalf of the Respondent objected to them being raised for the first time at the hearing. The Respondent's statement of reasons and witness evidence address in detail the process which was followed. The Applicant produced no evidence in reply, save for a scheme of delegation, which we address below.

46. Insofar as the Applicant challenges compliance with section 239 of the Act, and whether the Improvement Notices were validly signed/authorised, this is a jurisdictional challenge. It is not something raised in the applications. Even on a broad reading, the Applicant makes no mention of the Improvement Notices being defective on process grounds. We consider the raising of this on the day of the hearing, with a new bundle of 79 documents in support, to be an unfair ambush of the Respondent. Mr Savill was prepared to allow those

documents to be admitted so we heard submissions from both sides as to their relevance.

47. This appeal operates as a re-hearing. The Tribunal can consider material which was not before the Respondent. However, we are still constrained by the grounds, unless permission is given to amend the application where there is good reason to do so. The jurisdictional challenge goes far beyond those grounds but if the Tribunal does not have jurisdiction, then that is a matter of fact and not dictated by when and how the point came to its attention. It is therefore with some reluctance that we do consider it appropriate to consider the new challenge.

48. It is important to set out briefly the process which the Respondent followed in determining to serve the Improvement Notices. In summary, this was as follows:

(a) On 2 August 2023, the tenant at Flat B complained via email to a generic inbox operated by the Respondent about the condition of the flat.

(b) On 8 August 2023, following an exchange of emails between Ms Arnold and the tenant, a visit to Flat B took place without notice to the Applicant.

(c) On 8 September 2023, the tenant at Flat M complained via email to a generic inbox operated by the Respondent about the condition of the flat.

(d) On 12 and 13 September 2023, there were email exchanges between Ms Arnold and the Applicant about proposed inspections of both flat B and flat M.

(e) On 15 September 2023, a formal inspection of flat B took place, at which the Applicant and the tenant were present. Following this inspection, the Respondent undertook an assessment of flat B using the HHSRS.

(f) On 19 September 2023 a formal inspection of Flat M took place, at which the Applicant was not present but which the tenant attended. Following this inspection, the Respondent undertook an assessment of flat M using the HHSRS.

(g) On 28 September 2023, Ms Arnold wrote two letters to the Applicant, relating to respectively to each flat, offering an informal opportunity to resolve issues which were identified in those letters arising from the HHSRS assessments. In broad

terms, a deadline was given to address the damp and mould hazard in flat B of 31 October 2023, and the insulation work in respect of the excess cold hazard by 22 December 2023. Further, a deadline was given to address the excess cold and entry by intruders' hazard in flat M by 31 October 2023, and all other work by 22 December 2023.

(h) On 17 October 2023 and 1 November 2023, there were further visits to flat B and the basement below. These were attended by Ms Arnold and the Applicant and were designed to ensure the parties understood the issues and facilitate exploration of potential solutions.

(i) On 23 November 2023, Ms Arnold carried out a further visit to flat B during which measurements of each room and of the radiators were taken to enable estimates of the heating requirements of the flat and data loggers were left to gather humidity and temperature readings for seven days. The Applicant was not informed of this visit, nor did he attend.

(j) In January 2024, there were several further activities. Firstly, the tenant of flat B complained of continuing mould issues. Secondly, Ms Arnold contacted the Applicant seeking an update on progress. Thirdly, additional inspections of flat M took place on 9 and 25 January 2024 including the loft area. Following these events, the HHSRS assessments were reviewed by the Respondent.

(k) There are other communications between the parties over these months, relating to the subject flats and others. These have not been rehearsed here where not material to the process leading up to service of the Improvement Notices; they are set out in the Respondent's witness evidence and were not challenged.

(l) On 13 February 2024, the two Improvement Notices were served upon the Applicant. They were accompanied by a 'statement of reasons' under section 8 of the Act and a notice under section 49 of the Act relating to charges of £480 for each Improvement Notice.

49. The Tribunal is satisfied that appropriate steps were taken to resolve the concerns raised and that the relevant statutory requirements were met prior to service of the Improvement Notices.

50. Section 239(5) of the Act states that: *'… before entering any premises in exercise of the power conferred by subsection (3), the authorised person or proper officer must have given at least 24 hours' notice of the intention to do so- to (a) the owner of the premises (if known), and (b) to the occupier (if any)'.*

51. This provision cannot be read in isolation. It applies if the powers under subsection (3) are being exercised. That subsection gives the officer the power of entry i.e., *'… [they] may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises'*.

52. The email of 8 August 2023 from Ms Arnold to the tenant of flat B says: *"Can I visit you to review conditions and determine what needs to be done?"* The follow up email on 18 August 2023 refers to having to consider wider issues before making any decisions on what to do. We find that this is an examination of the premises, which is consistent with Ms Arnold's own evidence that she undertook an inspection and Mr North's evidence that the Respondent's policy is to sometimes undertake a pre-visit or scoping visit. We accept this evidence but find that the visit was more than merely scoping, given that Ms Arnold took photographs and notes sufficient to go away and undertake a HHSRS assessment.

53. Nonetheless, Ms Arnold needed to be exercising a power of entry for section 239(5) to be engaged. We find that she was not. The visit was originally arranged with consent of the tenant at a time when very little was known about the complaints being made. It was reasonable to respond to a tenant's enquiry by attending the Property, no enforcement was contemplated at that time and very little information was contained within the tenant's initial email. As Mr Savill put it, it would be absurd to expect Local Authorities to given section 239 notice to landlords every time a tenant complained about something. The Tribunal's view is that the statutory requirements were not yet triggered. A formal inspection, with notice, then took place on 15 and 19 September 2023. The Applicant stated that there were 'half a dozen' visits which he did not have notice of; but when asked he clarified these were at least 4. He referred to 8 August 2023, 23 November 2023, 21 January 2024 (which may have been intended to be 25) 30 May 2024. The latter was after the Improvement Notices so would not invalidate them. We have explained that the first was not a statutory inspection. The other two were also conducted with tenant consent so did not involve the Respondent exercising a statutory power of entry.

54. We were referred by the Applicant by way of a summary sheet to the case of *Metlane ltd v. Amber Valley District Council* BIR/17UB/HIN/2012/0007. We were not provided with a copy of the judgment and note that this is a rather dated first instance decision. First instance decisions from other tribunals are not binding on this Tribunal and have no precedent value. The summary suggests an improvement notice may be quashed if section 239(5) of the Act is not complied with. It further suggests that notice of visit need not be in writing but must be brought clearly to the recipient's attention. We accept both as correct propositions of law, notwithstanding the absence of a copy of the judgment and that the decision would not appear to be binding on this Tribunal. However, this does not assist on the facts,

where we have found that the statutory power of entry was not being exercised on 8 August 2023 or any of the other occasions raised by the Applicant which pre-dated the Improvement Notices.

55. The second challenge made to jurisdiction relates to the issue of delegation of authority. At the heart of the Applicant's submission is that the Respondent is a Local Authority, and any exercise of its powers can only be made by a duly authorised person. The Respondent has a published scheme of delegation. As noted above, a copy of this was purportedly produced at the hearing along with a notice under section 235 of the Act for an unrelated property signed by an officer of the Respondent called Nicola Riley. Whilst Mr Savill did not object to these documents being admitted so late, we have in mind that they are in any event effectively the Respondent's own documents and in the public domain, or at least accessible. However, we emphasise that these documents comprise evidence of fact, not authorities, as we were led to believe when the documents were handed over. Notwithstanding, we have considered the documents carefully.

56. The Applicant's submissions were to the effect that the Improvement Notices were signed by Ms Arnold, who had produced a signed authority from Nicola Riley, an Assistant Director, Wellbeing and Housing, of the Respondent. The scheme of delegation which we were shown (which was undated and appeared to be part of a larger document which we were not given) indicates that, for the purposes of all parts of the Housing Act 2004, the proper officer or authorised officer is the Head of Regeneration and Housing. We were told that neither Ms Arnold nor Ms Riley is that person. The scheme of delegation does state that: *"Officers with delegated powers may in writing authorise another officer or officers to exercise those powers."* Such authorisations may be subject to limits or conditions and a register must be kept.

57. The Applicant produced no evidence as to what the reporting line into the Head of Regeneration and Housing is or was. The Respondent clearly had no advance notice of the point so could not be expected to have done so. The list of responsibilities of the Head of Regeneration and Housing summarised in the scheme of delegation is long. The Applicant invited us to find that only the incumbent to that role could sign the Improvement Notices. We reject that proposition, based on the express terms of the scheme quoted above, which allow for delegation. We further observe that a blanket requirement for only one person to authorise every action of a Local Authority would be unworkable in practical terms. It is clear from the written and signed certificate which we were shown that Ms Riley authorised Ms Arnold to exercise functions under the Act including the service of Improvement Notices and undertaking of inspections related to them. We have no evidence to say how, if at all, Ms Riley obtained her authority from the Head of Regeneration and Housing. We accept, on the balance of probabilities, that there is likely to be such authority on file. The

Applicant cannot prove a negative in the sense of proving that no such authority exists. However, his argument that only one person can exercise all functions of the Head of Regeneration and Housing is inherently implausible. The lateness with which the point has been raised means that no other evidence is available to us from which to form a contrary view.

58. We were pointed to authority, being section 234 of the Local Government Act 1972 and the case of *Fitzpatrick v. Secretary of State for the Environment and another* [1990] 1 PLR 8. Neither assist the Applicant. We accept that section 234 allows for a notice to be signed by a proper officer and that a notice may be invalid if not properly signed. In *Fitzpatrick* the appeal was dismissed on the basis that there is a presumption that a document purporting to be signed by the proper officer is valid until proven otherwise and delegation is possible. We accept these propositions of law. On the given facts, we have found that Ms Riley did, and does, have the relevant authority to delegate to Ms Arnold.

59. Insofar as it might be implicit from both of the challenges made by the Applicant that the service of an Improvement Notice was not in any event the appropriate enforcement action to take we were not taken to any alternative avenues. For example, that the more appropriate action would have been the service of a Hazard Awareness Notice that would have allowed the Applicant to address and consider what he felt were more appropriate timescales for carrying out work to the Property dependent upon cooperation from the tenants.

60. It was a matter for the Respondent to consider what was the most appropriate course of enforcement action. As we have set out earlier in this decision, steps were taken to secure voluntary cooperation from the Applicant. The service of a Hazard Awareness Notice would not have been appropriate as that would not provide dates for work to be carried out, it just made a landlord aware of the hazards. The benefit of an Improvement Notice was that it set out a timescale for work be carried out.

61. The Tribunal has given careful consideration in relation to all of the hazards identified in the Improvement Notices as to whether in the circumstances that was the most appropriate enforcement action to take. Sections 5(2) and 7(2) of the Act identify the different types of possible enforcement action. None of the hazards which are set out in the Improvement Notices represented, in our view, imminent danger to the health and safety of any occupants of the flats and that rules out the options of Emergency Remedial Action, an Emergency Prohibition Order or a Prohibition Order. Patently, the condition of the Property and the nature of the deficiencies rule out the radical options of demolition or clearance. The choice is therefore between an

Improvement Notice (with the possibility of suspending the improvement notice) and a Hazard Awareness Notice.

62. There is clearly a history of inspections and communications between the parties in respect of the state of repair of the flats dating back some six months prior to the Improvement Notices. Since that time there was some degree of repair work carried out. A Hazard Awareness Notice advises the owner of a property of the existence of a hazard and the deficiency causing it. It requires no action to remedy the deficiency on the part of the owner. In the view of the Tribunal, not least given the risk of harm and health represented by the hazards identified, a Hazard Awareness Notice would not be appropriate. The hazards required remedying. There is no suggestion by either party that the Improvement Notices be suspended nor does the Tribunal think it would be appropriate to do so. Given the nature of the defects identified in the Improvement Notices, in particular in relation to the Category 1 hazards identified, it was appropriate for a timescale to be imposed for the completion of the required works and in those circumstances the service of Improvement Notices was the appropriate action for the Respondent to take. As we have indicated, the process leading up to that was lawful and the issue of the Improvement Notices was properly authorised.

63. None of the procedural/jurisdictional challenges succeed and Tribunal therefore considers that it has jurisdiction to consider the substantive application i.e., it has jurisdiction over the Improvement Notices.

The Hazards and Proposed Remedial Actions

64. The purpose of the Act is to enable a Local Authority to assess housing conditions and to enforce appropriate housing standards. It does so by the application of the HHSRS to evaluate the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria. Defects found are categorised into either Category 1 or Category 2 hazards depending upon the HHSRS score achieved. Where a Category 1 hazard is found the Local Authority *must* take appropriate enforcement action (section 5(1)). Where a Category 2 hazard is found it has *power* to take enforcement action.

65. For Flat B there were both Category 1 and 2 hazards alleged and we deal with each in turn.

Flat B Category 1 Hazards

66. The hazard identified is: Hazard (2) Excess Cold. *This category covers the threats to health from sub-optimal indoor temperatures.*

67. The Respondent's assessment resulted in a Band C, Category 1 hazard.

68. The main issues alleged were an undersized radiator, meaning inadequate heating, and deficient insulation. The flat is heated by gas central heating and there is a boiler in the living room and a thermostat on the wall. There is a double convector radiator and, on our inspection, a new smaller radiator. The flat has high ceilings. The building has sandstone walls which are not insulated. There is a basement below. We could not adequately inspect the presence or not of insulation below the suspended floor. Above is another heated flat. The windows are uPVC double glazed.

69. Mr North gave evidence about the heating. He visited with Ms Arnold on 23 November 2023 and measured room sizes and radiator sizes. He told us that he used an App. The App did not have an option for sandstone walls nor an unheated basement below. Mr North accepted this meant potential inaccuracies as he had to use substitute settings, but he said the readings still gave an indication of the likely heating deficiencies. It was not intended to be exact. He maintained that the heating was inadequate as the flat could not be heated to required temperatures within a reasonable time. The remedial action required comprised extending the radiator provision and improving the insulation beneath the floor.

70. The Tribunal accepts Mr North's rationale and finds that there were properly identified heating deficiencies at the time that the Improvement Notice was served.

71. However, an additional small radiator was subsequently installed in the living room underneath the window sometime in late October 2024. Hence, by the time of the site inspection, the setup had changed. The main living room and other rooms appeared warm; one smaller bedroom was slightly colder. There were some marks on the living room carpet which appeared to be historical staining rather than fresh mould. Overall, there has been an improvement with no further assessment information to suggest continued concerns over heating adequacy. We inspected those parts of the basement which were accessible. The basement was ventilated by grilles. There were some brick ceilings and some plaster or boarded over ceilings. As noted above, we could not assess the presence or not of insulation however it did not appear that any recent work had been carried out.

72. Ms Arnold accepted in her evidence that, now the small radiator had been added, there was no longer a Category 1 hazard relating to excess cold.

73. In terms of the remedial actions required under the Improvement Notice, the new small radiator is in our view suitably sized and positioned. We were not supplied with any new assessment suggesting that room heating was deficient since installation of the radiator. There had been no relevant works requiring making good. This leaves the

requirement for insulation. The action required was to make proposals to the Respondent's officers with technical detail of method and materials to be used. There was no evidence of works undertaken to install or upgrade insulation. This remains outstanding but would likely constitute a Category 2 hazard.

74. The Tribunal is satisfied from the evidence before us that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice was reasonable.

Flat B Category 2 Hazards

75. The hazard identified is: Hazard (1) Damp and mould growth. *This category covers threats to health associated with increased prevalence of house dust mites and mould or fungal growths resulting from dampness and/or high humidities. It includes threats to mental health and social wellbeing which may be caused by living with the presence of damp, damp staining and/or mould growth.*

76. The Respondent's assessment resulted in a Band E, Category 2 hazard.

77. The main issues alleged were that the heating provision in the flat was undersized and that it sustained high humidity levels which are likely to support mould growth.

78. We had seen photographs of historical mould patches on furniture and carpets. On inspection, as above, the flat was warm. The living room is open plan with a kitchen. We observed that the tenant had some washing hanging up. This, together with regular cooking, would inevitably create moisture making the flat prone to condensation damp and mould. We agree with the Respondent that a dwelling should be able to cope with normal occupant moisture producing activities without persistently high relative humidities. Occupants would reasonably be expected to be able to undertake some drying of clothes within the property at times, especially where there was no dedicated external space available to do so.

79. That said, the small radiator appears to have improved the damp and mould issues indicated in the photographs as there were no fresh indications of this on the day of the site inspection. The Tribunal considers that there is no longer a Category 2 hazard.

80. The Tribunal is satisfied from the evidence before us that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice was reasonable.

81. The Applicant produced some emails between the tenant of this flat and the Respondent, mostly Ms Arnold. These were between 2 Augst 2023 and 19 September 2023. They show the initial complaint and arrangements for inspections of the Property. There are two notable features in the email chains. Firstly, the relationship at times appears over familiar, for example Ms Arnold reveals that her pet cat had sadly been unwell and put to sleep. Secondly, there is some mention of housing options, for example the priority scheme and eviction processes. The Tribunal considered these emails and Ms Arnold's evidence. We found Ms Arnold to be an experienced housing officer and her evidence to us came across as factual and not embellished in any way. By way of example, she voluntarily made appropriate concessions as noted above. We find that it would not be surprising if tenants do not fully appreciate the distinctions between different officers involved in housing and Ms Arnold will inevitably receive enquiries outside of her remit. We do not find that the dialogue with the tenant is evidence of any collusion or that any sympathy for the tenant unduly influenced Ms Arnold's decision making. We have insufficient information by which to make a finding about the tenant's own motivations for complaining however, we have had found above, at least some of those concerns were justified at the time and Ms Arnold was duty bound to consider them.

82. For Flat M there were both Category 1 and 2 hazards alleged and we deal with each in turn.

Flat M Category 1 Hazards

83. The first hazard identified is: Hazard (2) Excess Cold. *This category covers the threats to health from sub-optimal indoor temperatures.*

84. The Respondent's assessment resulted in a Band C, Category 1 hazard.

85. The main issues alleged were that the boiler was said to be in poor repair and there was no room thermostat. Radiators had thermostatic radiator valves, but the working condition was not known. There were also concerns about the adequacy of loft insulation.

86. Mr North's evidence on the temperatures was similar to that relating to flat B, in that he had undertaken tests using an App and these were not intended to be exact but indicated inadequate heating. We understood that a gas certification had since been carried out. The flat appeared warm on the day of the site inspection.

87. Ms Arnold accepted in her evidence that some work had been carried out. Ms Arnold's evidence was that there was still some staining over the ceiling in the living room. The rafter was covered over so could not be satisfied of the work (as to which, see below). The depth of the

insulation in the loft was not clear, it appeared to be 270-300mm. She accepted this was no longer a Category 1 hazard.

88. In terms of remedial actions, the Applicant was required to commission a boiler service and repair the controls. This appeared to have been completed by the time of the inspection. The Applicant was also required to renew loft insulation and clean the skylight, neither of which appeared to have been fully completed however there was some evidence of new insulation upon a visual inspection.

89. The Tribunal is satisfied from the evidence before it that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice is reasonable.

90. The second hazard identified is: Hazard (12) Entry by Intruders. *This covers difficulties in keeping a dwelling secure against unauthorised entry and the maintenance of defensible space.*

91. The Respondent's assessment resulted in a Band C, Category 1 hazard.

92. The main issue alleged was that the door entry system did not allow occupants to buzz people in. The front door latch was loose so the door could be open if pushed hard. A keypad system was added but occupants had no control over who had the code.

93. In terms of remedial actions, the Applicant was required to repair or replace the lock to the front door. This was resolved by the time of the site inspection. It did not appear to be in dispute that there was a historical issue.

94. The Tribunal is satisfied from the evidence before it that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice is reasonable.

<u>Flat M Category 2 Hazards</u>

95. The first hazard identified is: Hazard (1) Damp and mould growth. *This category covers threats to health associated with increased prevalence of house dust mites and mould or fungal growths resulting from dampness and/or high humidities. It includes threats to mental health and social wellbeing which may be caused by living with the presence of damp, damp staining and/or mould growth.*

96. The Respondent's assessment resulted in a Band D, Category 2 hazard.

97. The main issues alleged related to damp and mould in the bathroom, although there were issues in other parts of the flat. There is some history that is relevant here because there had been roof leak from the main roof valley. This had penetrated into the bathroom, which had led to the rafter beam becoming rotten. The entire room had become damp and this led to tiles in the bathroom falling down and, it was said, onto the tenant. There had been damp staining to the walls. There was dampness in the bedroom as well as the living room and hallway and we heard evidence from Mr North who had taken some readings at the time of his inspection in November 2023.

98. In terms of remedial actions, this largely relates to the roof valley repairs and making good in the bathroom. The rafter was to be repaired or replaced.

99. Our inspection revealed that the bathroom ceiling had been repaired and redecorated. We could not inspect the external roof but were told that the valley had been repaired. The rafter had been covered up. There were no signs that it had not been repaired. We were told by the Applicant that it was a repair, not replacement. There had been some decoration in the bathroom. There were no obvious signs of continued leaks. There might well be some further decorative work, to cover further stains for example, but we could identify no further hazard.

100. The Respondent's evidence was that, since the Improvement Notice was issued, damp, mould and staining issues had persisted with the tenant reporting damage to his possessions in September 2024 and high dampness readings found to the bedroom walls at an inspection on 10 September 2024. We heard no evidence from the tenant nor did we have current readings. As above, the main issue of the bathroom appeared to have been resolved, on our inspection the flat was warm and there was no significant sign of damp. There was some staining on walls but not sufficient to be a hazard.

101. The Tribunal is satisfied from the evidence before it that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice is reasonable.

102. The second hazard identified is: Hazard (29) Structural Collapse and Falling Elements. *This category covers the threat of whole dwelling collapse, or of an element or a part of the fabric being displaced or falling because of inadequate fixing, disrepair, or as a result of adverse weather conditions. Structural failure may occur internally or externally within the curtilage threating occupants, or externally, outside the curtilage putting at risk members of the public.*

103. The Respondent's assessment resulted in a Band G, Category 2 hazard.

104. The main issues alleged relate to the historical roof valley leak, leading to rotting timbers in the bathroom and sagging to the living room ceiling.

105. In terms of remedial actions, this also largely relates to the roof valley repairs and making good in the bathroom and the living room ceiling.

106. As above, the roof appeared to have been repaired by the time of the site inspection and the rafter repaired, covered and made good. It is not for the Tribunal to comment on the standard of repair or making good, however it was noted that some additional decoration may be required or desirable. The living room ceiling was not even but there were no signs of significant sagging such as to create a hazard.

107. The Tribunal is satisfied from the evidence before it that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice is reasonable.

108. The third hazard identified is: Hazard (15) Domestic Hygiene, Pests and Refuse. *This category covers hazards which can result from: a) poor design, layout and construction such that the dwelling cannot be readily kept clean and hygienic; b) access into, and harbourage within, the dwelling for pests; and c) inadequate and unhygienic provision for storing and disposal of household waste.*

109. The Respondent's assessment resulted in a Band H, Category 2 hazard.

110. The main issues alleged relate to concerns that the roof space was inadequately insulated, with old insulation being unevenly laid and having been contaminated by birds or rodents.

111. In terms of remedial actions, this required renewal of loft insulation and an inspection/proof to prevent pigeon access.

112. On a cursory inspection of the loft space from a ladder provided by the Respondent on site, it was apparent that some new insulation material had been installed. This was potentially between 270mm to 300mm but it was difficult to assess. There was older material visible also.

113. The Tribunal is satisfied from the evidence before it that the deficiencies identified in the Improvement Notice were properly made out at the time and that the proposed remedial action as set out in the notice is reasonable.

114. The Applicant produced some transcripts of telephone conversations which he says took place between him and the tenant of flat M on 7

September 2023. We did not hear evidence from either the Applicant or his tenant about this, did not have the recordings and had no way to verify the veracity of the transcripts. Nonetheless, they showed some acrimony with the tenant. However, during the site inspection, the Tribunal were shown that some works were carried out, for example to the bathroom ceiling. We do not need to resolve the veracity of these messages therefore to conclude that, whilst on the balance of probabilities we accept some acrimony with the tenant, this did not completely prevent access. In addition, as the Respondent identified in its submissions, section 35 of the Act allows the court powers to make an appropriate order if the tenant had been obstructing works required under the Improvement Notices. It follows that we do not accept that the Applicant was unable to undertake relevant works as required. We deal with the issue of whether the timescales were reasonable and what should now happen later in this decision.

Requirement and Timing of Remedial Works

115. The Improvement Notices dated 13 February 2024 provided (in schedule 2 respectively) that all remedial works were to be completed by 30 April 2024 for flat B and 7 May 2024 for flat M. In each case, between 2.5 and 3 months. The Applicant had, of course, also had notice of the hazards complained of and works required for several months prior (save for the pest infestation which was a later addition).

116. The question for the Tribunal is whether the Respondent was wrong to serve the Improvement Notices it did, when it did and in the form that it did, including timescales. Works carried out since the service of the Improvement Notices cannot undermine the validity of its decision, nor is there any requirement for the Respondent to justify or reformulate them in the light of those works.

117. In the view of the Tribunal, hazards identified and remedial works required were reasonable at the time, notwithstanding that much of the works has been completed since.

118. In the view of the Tribunal the timescales were reasonable but have, of course, now passed.

119. The Tribunal varies the Improvement Notices in respect of the timescale for the works to be carried out for each hazard profile as set out in schedule 2, as varied, to read as follows:

(a) *Flat B – all hazards*

Completion dates for all works: 31 August 2025

(b) *Flat M – all hazards*

120. The Tribunal records that, in its view, the only remaining matters to complete are the provision of a report relating to the basement insulation for flat B and the relevant satisfaction regarding insulation to the roof of flat M. These are matters likely to rely on third party contractors carrying out investigations and producing a report hence additional time is reasonable to facilitate this. Enforcement has been suspended pending this application and a period of approximately 3 months post decision has been allowed.

Summary of Decision

121. The Tribunal concludes that the Respondent did go through the necessary steps prior to issue of each Improvement Notice.

122. The Tribunal concludes that the hazards specified in schedule 2 of each Improvement Notice did exist at the time that the notices were served.

123. The Tribunal concludes that it was appropriate and reasonable for the Respondent to take enforcement action when it did.

124. The Tribunal concludes that it was appropriate and reasonable for the Respondent to enforce by way of Improvement Notices.

125. The Tribunal concludes that it is appropriate to vary the terms of the Improvement Notices only as to the timescale for compliance.

126. The Tribunal therefore confirms the Improvement Notices dated 13 February 2024 save for the variations to time for compliance recorded at paragraph 119 above.

127. The Tribunal has not allowed the applications and therefore declines to make any order reducing, quashing or requiring the repayment of the charge of £480 per notice which the Respondent has demanded.

128. In all our determinations we are satisfied that hazards existed at the time of the Improvement Notices. Whilst the Applicant rightly highlighted to us that some matters were based on assumption, we felt these were fair assumptions to make. This finding has two consequences. Firstly, it reinforces our finding that they were properly served and that the charges were properly levied. Secondly, the Applicant referred us to the decision of the Upper Tribunal in *Curd v Liverpool City Council [2024] UKUT 218 (LC)*. In that case it was emphasised that this Tribunal could not vary an improvement notice

where it was not satisfied that a hazard existed. Considering our findings, the case has limited application.

129. No application for a refund of fees was made, nor would an order be appropriate in circumstances where the appeal has not succeeded. The Tribunal makes no order in respect of the same.

Name: Judge A. Arul **Date: 2 June 2025**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).