FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/OOHG/HIN/2025/0611
Property	:	Eleanor House, George Place, Plymouth, PLI 3NZ
Applicant	:	Mark Weaver with others listed below.
Respondent	:	Plymouth City Council
Type of Application	:	Appeal against an Improvement Notice, Schedule 1, para 10 (1) Housing Act 2004
Tribunal Members	:	Tribunal Judge W H Gater FRICS Mr M Woodrow MRICS Mr M Jenkinson
Venue	:	Exeter Law Courts Keble House Exeter
Date of Hearing	:	9 October 2025
Date of Decision	:	10 November 2025

DECISION

Decisions of the Tribunal

(1) The Tribunal confirms the Improvement Notice dated 8 May 2025 subject to the following variations:

(a) Fire.

Schedule 2 - Schedule of works reference 3 is amended to delete reference to the entrance doors of individual flats.

(2) The Tribunal makes an Order under Para 16(2) of Schedule 1 of the Act that in addition to the nine members of the RTM company the leaseholders of the remaining 3 flats shall be liable to pay to the Applicant the costs of compliance with the Improvement Notice in the proportion set out in their lease. They are: -

Flat B1 - TNT Investment Properties Ltd
Flat C1- Dennis Compton
Flat D2 - Tobias Barnaby Eaton

(3) The Tribunal notes that the parties have independently agreed an extension of time limits for compliance with the works under the Notice so that dates of 1 December 2025 are now extended to 1 March 2026.

Background

1. This is an application by the Applicant to appeal against an Improvement Notice, served by the Respondent, dated 8 May 2025, and served pursuant to sections 11 and 12 of the Housing Act 2004 (the Act). The application to appeal was received by the Tribunal within the 21 days permitted to appeal.

2. The Improvement Notice was served under Schedule 1 paragraph 4 of the Act where the 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.

3. The Property comprises 12 flats each held on a long lease in a converted Victorian building in Plymouth.

4. The Applicant is one of nine leaseholder members of the Right to Manage Company (RTM) relating to the Property. The remaining three leaseholders are not members of that company.

5. The Applicant's appeal against the Improvement Notice may be summarised as:

- That the three remaining leaseholders should also pay part of the cost of the action and that the Respondent should have served a notice on all twelve leaseholders.
- Most of the improvements specified in the notice should be the responsibility of the individual owner. All internal improvements to individual flats, including fire resistant entrance doors, smoke alarms and carbon monoxide alarms, should be the sole responsibility of individual leaseholders.
- The Applicant also submits that the required work should be undertaken in default by the Respondent and recharged to the individual flat owners.

The Hearing

6. The hearing was conducted in person. The Applicant, Mr Mark Weaver, was in attendance and represented himself. Ms Cathy Morley, solicitor with Plymouth City Council appeared for the Respondent with Miss Kate Lea, Senior Housing Officer and Mr Andrew Elvidge Technical Lead, both from Plymouth City Council, observing.

7. The hearing took the form of a re-hearing of the Applicant's application, as required by paragraph 15(2) of schedule 1 of the 2004. Act. In doing so, the Tribunal had regard to the requirements of the 2004 Act, the Respondent's Enforcement policy and considered the submissions of both parties.

8. The Tribunal was provided with a bundle running to 327 pages, a Skeleton Argument on behalf of the Respondent and further submissions in the form of emails from the Applicant. The parties were enabled to make submissions in respect of these documents at the hearing.

Preliminary matters were dealt with at the outset of the hearing.

9. The Applicant had submitted a Case Management Application to admit further submissions in the form of emails received relating to non-payment of service charges. The Respondent raised no objection and in the interests of justice the Tribunal admitted these documents.

10. The Tribunal noted from documentation the assertion that the Applicant accepts that "the Improvement Notice issued is fully justified". At the hearing the Tribunal confirmed with the parties that there was no issue regarding the fact that an Improvement Notice was justified and that the remaining issues were whether all 12 leaseholders should be included in the notice and whether certain works required were the responsibility of individual owners and did not relate to common parts.

11. It was also noted that the Respondent has offered to amend the Improvement Notice to remove fire doors to Flats A2, B2, C2 and D2 but that offer had not been accepted by the Applicant.

12. The Tribunal notes the identity of ownership of the flats whom the Tribunal accepted as joining in the application as follows: -

Flat A1 Mohanaraj Loovin Gabriel

Flat A2 Basirat Funsho

FlatB2 Mark and Karen Weaver

Flat C2 Benjamin and Julia Perry

Flat D1 P G Butler

Flat E Divaydeep Sikri and Apurva Sharma

Flat F Bhaskar Babubhai and Elizabeth Tailor

Flat G Mitesh Pankhania

Flat H Martin and Marie Ritchie

13. References to "Applicant" in this decision relate mainly to the submissions made by Mr Weaver as the original Applicant who, at the hearing, was the sole representative of the nine leaseholders who are collectively the Applicants.

14. These nine leaseholders are members of the Right to Manage Company. The remaining three flats are owned by leaseholders not members of that company and who have not been served an Improvement Notice. They are: -

Flat B1 TNT Investment Properties Ltd
Flat C1 Dennis Compton
D2 Tobias Barnaby Eaton

15. Following the hearing, the Applicant submitted a further case management application, dated 16 October 2025, which sought to admit further submissions. These were in the form of email correspondence. The Tribunal determined on 23 October 2025 that the application sought to reopen matters which had been previously discussed at the hearing and the application was refused. At the same time the Tribunal issued directions for the parties to submit plans of the property which were missing from the original submissions and these were duly complied with.

The Law

16. The principal ground of appeal cited by the Applicant invokes paragraph 11 of Schedule 1 of the Act which states:-

> *"11(1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—*

(a) take the action concerned, or

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

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

17. The powers of the Tribunal in such an appeal are set out in paragraph 16 of Schedule 1 of the Act.

16(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.

(2) On the hearing of the appeal the tribunal may—

(a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal in accordance with paragraph 11; or

(b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority.

(3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner—

(a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);

(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and

(c) the relative degree of benefit to be derived from the taking of the action concerned."

Submissions

18. As the Applicant was an unrepresented litigant in person, the Tribunal invited the Respondent's submission first in order to engender a clear understanding of the issues by both parties.

The Respondent

19. The Respondent set out the statutory framework for the notice and appeal, referencing Schedule 1 Paragraph 4 of the Act in submitting that the Council must serve any improvement notice on a person who is an owner of the specified premises concerned, and in the authority's opinion ought to take the action specified in the notice.

20. The Respondent addressed each of the Applicants grounds in turn as follows.

21. Ground A: (i)"One or more other persons, as an owner or owners of the specified premises, ought to pay part of the cost of taking action". (ii) The LHA should have served on all 12 leaseholders."

22. It was not appropriate to serve the improvement notice on the three remaining flat owners. Paragraph 4 of Schedule 1 of the Act stipulates that the local authority must serve the notice on a person who a) is the owner of the specified premises and b) in the authority's opinion ought to take the action specified.

23. The Respondent was satisfied that the Freeholder of the building was an owner but the fact that the management of the building was now under control of the RTM company meant that the freeholder had no power to undertake any works. The Applicant had accepted that the Freeholder should not be served the Improvement Notice.

24. The Respondent referred the Tribunal to Hastings BC v Braear Developments Limited [2015] UKUT 0145 (LC), [Hastings] in which the Deputy President Martin Rodger KC stated at 59:

> *"Where an RTM company has* the *management of the building the freeholder will have no power to undertake works and no entitlement to recoup the costs of works from lessees. The cumbersome mechanisms suggested in paragraph 38 above by which the freeholder who receives such a notice may comply with it are all indirect and time-consuming means of procuring improvements. In circumstances where the freeholder is precluded from undertaking work except by one of those methods, because an RTM company manages the building, the better course would seem to be to direct any improvement notice at those lessees who are members of the company and who are therefore collectively in a position to exercise control over its decisions. In the ordinary case the RTM company will be in a position both to carry out the necessary works and to recoup the expense of doing so from those who, by the terms of their leases, have agreed to bear that expense."*

25. The Respondent further submitted that at paragraph 52 of the decision of Wood v Kingston Upon Hull City Council [2015] UKUT 0165 (LC) , [Wood] Martin Rodger KC, the Deputy President of the Upper Tribunal, addressed the question "on whom should the improvement notice have been served?" and said:

> *"52. On the appeal Mr Wood said that his main concern was to establish clearly who ought to be responsible for carrying out the work, and he complained that the City Council's approach of serving the same notice on two owners with different interests was likely to promote confusion and dispute. I agree."*

26. Therefore, whereas it was appropriate for the Council to serve the Notice on a number of leasehold owners with the same interest (i.e. leasehold owners who are also members of the RTM Company), it would not have been appropriate for the Council to have served the Notice on leasehold owners who are not RTM members nor on freehold owners because their respective interests were different.

27. The Respondent's opinion was that only the nine leaseholders met the statutory ownership and capability conditions and only they should be served the notice.

28. The Respondent went on to state that as leasehold owners, the three flat owners should be required to pay their share of the costs of compliance under the terms of their leases. It was not appropriate however to include them in the notice for the reasons stated and the Respondent has no powers to make them pay.

29. The Respondents referred to Para 16(2) of Schedule 1 of the Act which states that –

> *"(2) On the hearing of the appeal the tribunal may: -*
>
> *(a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal in accordance with paragraph 11; or*
>
> *(b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority."*

30. The Respondent would not object to the Tribunal making an order under (b) above if the Applicant so wishes.

31. With regard to specific repairs the Respondent addressed the Category 1 and 2 matters namely: -

32. Fire. An offer to exclude the doors to Flats A2, B2, C2 and D2 had not been taken up by the Applicant but remains open. This offer was made on the grounds that these doors have separate access points and do not open out on to a primary escape route.

33. Dampness and mould referred to in Flat B1 was included in the Hazards section of the Improvement Order on common parts as on inspection it was found that the source of the defect was observed in common parts. No objection to this inclusion had been received from the Applicant.

34. Further ground: - That the work should be undertaken by the council in default.

35. The Respondents submitted that the power to undertake works in s.31 and Schedule 3 of the Act are discretionary. Furthermore, the Notice is not

currently operative whilst under appeal and will only become operative after a decision on appeal which confirms the notice.

36. In relation to the powers of the Tribunal they do not extend to requiring the authority to carry out works.

37. In addition, Schedule 3 of the Act that any action taken by the local authority [in default] shall be taken at the expense of the person on whom the notice is served. The additional expense of the Respondent undertaking these works is likely to be significant and the authority would only be able to recover expenses from the leaseholders on whom the notice was served.

38. The Respondent may consider acting in default when appropriate but states that this would inevitably increase the cost for leaseholders.

39. In closing the Respondent addressed the service charge issue and stated that it had sought the most timely and least expensive solutions. The service charge funds must have some funds built up despite poor payers.

40. On questioning from the Applicant, the Respondent indicated that doors to B1, C1 and D2 are owned by leaseholders outside of the RTM and as such should be repaired by the RTM as common parts.

41. A short adjournment was allowed after which the parties agreed to extend dates for compliance so that dates of 1 December 2025 are now extended to 1 March 2026.

The Applicant

42. The Applicant submitted that all 12 leaseholders should be served with the notice and that the authority should immediately move to carrying out the works in default.

43. He stated that this would save costs, the works would be done more quickly and that debt recovery would be more efficient.

44. He detailed the history of difficulty in recovery of unpaid service charges from certain leaseholders. There remain significant arrears even before works have commenced. The financial burden of the entire works on 9 leaseholders could lead to bankruptcies.

45. The Applicant submitted that under 1.6 of Schedule 1 of the lease , *"the doors and windows and their frames, fittings and glass"* are part of the leasehold properties and not common parts.

46. He also referred to the decision on Hastings BC in stating that the individual leaseholders are beneficiaries of improvement works and therefore each leaseholder ought to receive the Improvement Notice.

47. The Applicant challenged the valuations submitted by the Respondent based on the Nationwide Building Society House Index indicating an increase

in value of 35.57% between an actual sale price in the 2nd quarter of 2016 and the 2nd quarter of 2025

48. He cited the sale of B1 in 2022 at £20,000 and A2 which sold at £20,000 in an uninhabitable state in August 2025. He considered that actual values have dropped by 50% over the period.

49. The Applicant set out the history of poor payment by a number of leaseholders and the difficulties in recovering debts. Seven of the twelve leaseholders have each paid £3,500 p.a. during the year 2024-beteween 2025.

50. Some of the specified works could already have been done were it not for poor payers. The Applicant himself has paid for certain scaffolding.

51. He sought to distinguish this case from the findings in Hastings BC because in this case the level of leaseholder debt and the difficulty in recovery means it is unreasonable to burden the nine members of the RTM. In effect the fact that three leaseholders have not been served with the Improvement Notice is a reward to them. Each will be exempt from a potential large fine and other consequences.

52. Questioned by the Respondent, the Applicant affirmed that the doors to the flats are within their demise and not common parts.

53. He agreed the value of the flats may rise when all works are complete.

54. On questioning, the Applicant said that a Tribunal Order for the three non-RTM members would be of assistance.

55. The cost of works has not been fully updated due to the cost of surveys. The balcony repairs alone were costed at £270,000 a year ago.

Discussion and decision

Should the Respondent Authority serve the Improvement Notice on all twelve leaseholders?

56. The Applicant maintains that they are all owners and that the burden of the works would be more evenly shared. The Respondent states that the three leaseholders not members of the RTM are not capable of undertaking works to the common parts and the Respondent has no power to make them undertake such works.

57. Paragraph 4(2) of Schedule 1 of the Act requires that the Council must serve the Improvement Notice on a person who: -

i) is an owner of the specified premises concerned i.e. the common parts in the notice and
ii) in the Respondent's opinion ought to take the action specified in the notice.

58. The Tribunal determines that the use of the word "and" means that the notice must be served on persons who satisfy both criteria.

59. Owner: Under the Act, Owner is defined at Paragraph 4(3) of Schedule 1: *"a person is an owner of any common parts of a building if he is an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised."*

60. In this case the Agreed Terms of the lease state that the Building as Eleanor House and that a flat is part of the Building.

61. Those who are owners under the Act are therefore, the 12 leaseholders and the freeholder.

62. With regard to the Freeholder, the Tribunal accepts the submission by the Respondent, supported in Wood above, that whilst the Freeholder is also an owner it would not be appropriate to include the Freeholder having a different interest in the Property as it may promote confusion and dispute. The Tribunal notes that this is now not contested by the Applicant.

Ought to carry out the works

63. The Tribunal finds that the nine leaseholders listed above are members of the RTM and that the remaining three are not. The parties do not dispute this.

64. The Tribunal must next determine whether the Respondents opinion on who "ought" to carry out the works was justified.

65. Regarding RTM companies, Section 96 of the Commonhold and Leasehold Reform Act 2002, relating to RTM companies, states:-

> *"96. Management functions under leases*
>
> *(1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.*
>
> *(2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company."*

66. The Tribunal determines that the formation of the RTM removed the right of the Freeholder to carry out management functions at the Property, in this case to repair the common parts. The word "instead" in the Act means that the RTM stands in the place of the Freeholder in this respect.

67. After examination of the lease, the Tribunal determines that none of the leaseholders has the right to repair or maintain the common parts. It determines that only the RTM can do that.

68. The Tribunal finds that those who are capable of carrying out the works to the common parts are the nine members of the RTM company. It determines that the Respondent's exercise of an opinion that these persons ought to carry out the works is justified.

69. The Tribunal accordingly determines that the Improvement Notice was served on the appropriate persons who were both owners and capable of undertaking works to the common parts. Neither the Freeholder nor the three remaining leaseholders who are not members of the RTM fall into the definition under Paragraph 4 of Schedule 1 of the Act.

Should the Respondent Authority carry out the works in default and recharge the leaseholders?

70. The Applicant set out the potential advantages of the works being carried out by the Respondent authority and recovering costs from the leaseholders. These relate to speed of delivery, debt recovery and cost savings using known contractors.

71. The Respondent points out that the Notice is not operative until confirmed on appeal. It submits that the power to act in default is discretionary under section 31 and Schedule 3 of the Act and that costs would be significantly increased in default due to the need to pay the authority's costs in addition to the main charges.

72. The Tribunal finds that Schedule 3 of the Act, both at Part 1 Action by Agreement and Part 2 Action without agreement, states that the authority *may* take such action. It therefore finds that the power to act in default is discretionary insofar as it relates to this case.

73. Furthermore, the power of the Tribunal set out in Schedule 1, para 16(2) does not extend to requiring the authority to exercise its discretion to act in default.

74. In the case of Marshall v Waltham Forest LBC [2020] UKUT 35 (LC), [2020] 1 WLR 3187 at 77 Judge Cooke stated:

> *"77. Where a re-hearing on appeal does not involve the appellate tribunal starting afresh, the appellate tribunal may still be required to make up its own mind on the application in place of the original decision maker. But even then, if the decision involves the exercise of a discretion, or judgment, by another person or body, the appellate tribunal will not interfere with the original decision unless, having afforded it what is variously described in the authorities as "great respect", or "considerable weight", it is satisfied that the decision was wrong. In making that evaluation the appellate tribunal must pay proper attention to the decision under challenge and the reasoning behind it. If the decision is based on the application of a lawful policy, it must ask itself whether the impugned decision, and any different*

decision that it proposes to make, is in accordance with that policy. The burden lies on the party challenging the decision to satisfy the appellate tribunal that it should take a different view from the primary decision maker."

75. The Applicants plea to have the works carried out by a competent authority speedily and recovering the cost from individual leaseholders is understandable from the point of view of the nine leaseholders, although it does ignore the potentially high additional cost of the authority's involvement which must be borne by the recipients of the notice as served.

76. This plea does not however satisfy the Tribunal that it should take a different view from the Respondent as primary decision maker. The Respondent is following a perfectly logical process in that default action is not ruled out, but that such action would be premature at the present time. The Tribunal accepts that the Act provides the Respondent with power to act but that action is not mandatory. Furthermore, such action cannot be undertaken whilst an appeal is in process. The Applicant has not provided evidence of sufficient weight to demonstrate that the discretion and judgement exercised by the authority was wrong. The Tribunal will not interfere with the logical application of a lawful policy. Accordingly, this ground fails.

Are there improvements to individual flats in the notice which are the responsibility of the flat owner?

77. The Applicant submits that all internal improvements to individual flats, including fire resistant entrance doors, smoke alarms and carbon monoxide alarms, should be the sole responsibility of individual leaseholders.

78. The Respondent takes the position that the work specified in Schedule 2 of the notice is work to the common parts and therefore the responsibility of the collective group of leaseholders.

Fire doors

79. The improvement notice refers to fire doors in two places, under Schedule 1 Hazards and Schedule 2 the Schedule of Works.

80. There is a contradiction between the two. Schedule 1 at Fire, in two places, states that flat entrance doors are excluded. Despite this Schedule 2: Schedule of Works specifies works to ensure fire and smoke resistance on doors at Flats A1, A2, B2, C2, D1 and Flats E, F, G and H.

81. (It is noted that the Respondent maintains an offer to remove Flats A2, B2, C2 and D2 from this list on the grounds that these do not lead on to the primary escape route.)

82. The omission of the doors to flats B1, C1 and D2 is not explained.

83. The lease defines Common Parts as parts "that are not part of the property or the flats, and which are intended to be used by the tenants and

occupiers of the building." The only door mentioned as being in Common Parts is the front door of the building.

84. Schedule 1 of the lease defines the individual flat: under "the Property", and at clause 1.6 it includes "the doors and windows and their frames, fittings and glass." It does not distinguish between external doors, fire doors or internal doors.

85. The Tribunal finds that the individual flat entrance doors are therefore part of the flat and not common parts. Accordingly, they are outside of the scope of this Improvement Notice issued under Schedule 1 paragraph 4 of the Act which relates to common parts.

86. It follows that neither the freeholder nor the RTM company have the duty or right to maintain the entrance doors to individual flats. Only the leaseholder of a particular flat qualifies under this definition and ought to carry out such works.

87. Accordingly, the Tribunal finds that all the entrance doors to the individual flats should be excluded from the Schedule 2 works specified in the Improvement Notice. It is not necessary to amend Schedule 1 in relation to these doors as that schedule expressly excludes the entrance doors to the flats. For the avoidance of doubt any doors not demised to a flat are not excluded and should remain in the notice.

Heat and smoke detectors. Under Category One Hazards, the Improvement Notice states at 3 that there is a lack of heat/smoke detectors and no alarm system. It does not identify where these are missing.

88. Under the Schedule of works at reference 3 the notice requires the installation of a Grade A fire system in accordance with BS5839 and smoke detection to the communal area.

89. This level of protection was specified in an Enforcement Notice served by Devon and Somerset Fire and Rescue Service under the Regulatory Reform (Fire Safety) Order 2005: Article 30 on 10 July 2023.

90. It goes on to specify that a heat detector is to be provided within the entrance lobby of each flat.

91. The Tribunal finds the following facts.

92. The entrance lobby to each flat is not within the common parts under the lease and at first sight is not an area which can ordinarily be maintained by the RTM.

93. However, the specified system requires a common central control panel and heat detectors within individual flats as part of a larger central means of fire control.

94. The Freeholder (the RTM in this case) does have access to the flats to "install/replace service media". The lease defines Service media as "all media for the supply or removal of heat, smoke……and equipment ancillary to those media".

95. Schedule 7 of the lease provides for services to include operating and replacing fire prevention detection…equipment and fire alarms on the common parts. Schedule 7, 1.1.14 contains very broad terms giving discretion to the landlord to carry out any other service in the interest of good estate management.

96. The Tribunal considered the practicalities of the RTM installing the required centrally controlled alarm system but relying on the individual leaseholders to install heat detectors and connect them to the central system. This would be against common sense and the principles of good estate management.

97. The Tribunal finds: that the Improvement Notice requires a centrally controlled heat detection system as specified by the fire authority. That the terms of the lease are broad enough to permit the RTM company to access the individual flats to extend the central system to provide detectors in the lobby of the flats as part of a common, central system. It accordingly determines that the RTM company are the persons who ought to carry out these works under the Act. The requirement to install this system should therefore remain in the notice.

98. The cost of such works would be recoverable as service charges under the lease.

Order under Paragraph 16(2) of Schedule 1 of the Act,

99. The Respondent has indicated that it would not object to an order of this type being made to make the three non-RTM leaseholders responsible for a share of the cost of compliance with the notice. The Applicant has indicated that such an order would be of assistance.

100. Paragraph 16 (3) of the Act states that:-

> (*3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner —*
>
> *(a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them).*
>
> *(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and*

(c) the relative degree of benefit to be derived from the taking of the action concerned.

(3)(a) Relative interests, rights and obligations

101. The lease contains typical terms dealing with service charges including defining services and the means of recovery of service costs. It provides for each of the leaseholders to pay a fair and reasonable proportion, determined by the Landlord, of the Service Costs. The principal terms are contained in Schedule 7.

102. The parties confirm that leases are identical in terms.

103. The Tribunal finds in relation to (3)(a) that the lease makes all 12 leaseholders responsible for their share of service charge costs and the works specified in the Improvement Notice fall under that category. Accordingly, it finds that the relative interests of the 12 leaseholders are similar if not identical and satisfy the needs for an order.

(3)(b) Relative responsibility for the state of the premises

104. No substantive evidence has been put forward to suggest that there is any one or group of parties more responsible for the state of the premises. The building appears to have gradually declined over a period of years. The Applicant emphasised that failure by some to pay service charges has been a significant hindrance. That alone does not demonstrate that any party or parties is relatively more responsible for the state of the premises. The costs of repair involved far exceed the stated arrears. In the absence of such clear evidence the Tribunal finds that the three non-RTM leaseholders are equal in responsibility to the others and satisfy the requirement for an order.

(3)(c) Relative degree of benefit.

105. The parties disagree on the value of the flats at the present time and refer to indexed valuations. The Respondent suggests higher valuations using average indices and the Applicant points to the state of the Property and the actual recent sales at low to nominal values.

106. They do agree however that on completion of the works, the value of each flat will rise.

107. The Tribunal finds that the relative degree of benefit from taking the action required is similar for all 12 flats and on this ground the three non-RTM leaseholders should be subject to an order under (16)(2).

108. Accordingly, the Tribunal makes an Order under Para 16(2) of Schedule 1 of the Act that in addition to the nine members of the RTM company, the leaseholders of the remaining three flats shall be liable to pay to the Applicant the costs of compliance with the Improvement Notice in the proportion set out in their lease. They are: -

Flat B1 TNT Investment Properties Ltd
Flat C1 Dennis Compton
Flat D2 Tobias Barnaby Eaton

Miscellaneous matters

109. Damp and mould. Schedule 1 of the notice at reference 1, deals with damp and mould affecting Flat B1. A flat is not part of Common Parts. Whilst the first three bullet points highlight the effect of the damp ingress on the flat, the last three points indicate external causes.

110. Schedule 2 sets out investigation to prevent further ingress and remove defects.

111. The Tribunal accepts the Respondent's uncontroverted evidence that the defect originates from common parts and that the Schedule of Works addresses the cause and remedial works necessary. As such the Tribunal declines to amend or vary the order for this item.

Accordingly, the Notice is confirmed on terms summarised above.

Right to appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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

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

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