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

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| **Case Reference** | **: MAN/16UC/HIN/2024/0045** |
| **Property** | **: 4G Steamer Street, Barrow-in-Furness, Cumbria LA14 2SG** |
| **Applicant** | **: Mr Olugbenga Shobooye** |
| **Respondent** | **: Westmorland and Furness Council** |
| **Type of Application** | **: Appeal against an improvement Notices – Housing Act 2004 Schedule 1, Paragraph 10(1)** |
| **Tribunal Members** | **: Tribunal Judge L Brown**<br>**Mr. J Elliott** |
| **Date of Decision** | **: 20th January 2026** |

**DECISION**

The appeal is allowed in part. The Tribunal confirms the Improvement Notice dated 20 August 2024 dealing with Category 1 and Category 2 hazards at the Property, save as varied as set out in paragraphs 40 and 41 of this Decision.

## Background

1. By an application dated 5 September 2024, ("the Application"), the Applicant appealed against an Improvement Notice (the "Notice") under paragraph 10 of Schedule 1 to the Housing Act 2004, (HA 2004). The Notice was dated 20 August 2024, relating to Category 1 hazards and concerning Category 2 hazards which the Respondent had identified affecting the Property.

2. Initial Directions dated 19 June 2025 were issued pursuant to which both parties submitted written representations. Later Directions dealt with an application to strike out the Applicant's case and the timetable for supplying evidence.

3. A hearing listed on 13 October 2025 could not proceed due to unavailability of the Applicant.

4. Each party presented their own bundle of documents – that of the Applicant comprising 134 pages, and for the Respondent 295 pages. On the day before ethe video hearing the Applicant provided as late evidence documents which he wanted to rely upon to demonstrate remedial works had been undertaken at the Property regarding previous action by the Respondent. There was no objection from the Respondent to this late evidence and as the documents had relevance to the Applicant's case the Tribunal granted permission for them to be added into evidence.

5. The Application was heard by video link on 24 October 2025. We found no difficulty with the technology for the hearing. The Applicant attended and gave oral evidence and made submissions to the Tribunal. In addition, he had provided a written statement dated 1 July 2025. The Respondent was represented by Mr B Admas, Counsel. The Respondent's witnesses were Mr S Kendall, Housing Standards Manager and Ms J Davis, Private Sector Housing Enforcement Officer. They provided written statements dated respectively 12 September 2025 and 11 July 2025. We accepted the written statements as the main evidence of the statement makers.

**<u>The Law</u> (also see within Reasons, below)**

6. The Housing Health and Safety Rating System (HHSRS) was introduced by the HA 2004, for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.

7. Hazards are categorised as Category 1 and Category 2 hazards.

8. Section 5 of HA 2004 provides:

   *(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.*

   *(2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)—*

   *(a) serving an improvement Notices under section 11;*

   *(b) making a prohibition order under section 20;*

   *(c) serving a hazard awareness Notices under section 28;*

*(d) taking emergency remedial action under section 40;*

*(e) making an emergency prohibition order under section 43;*

*(f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);*

*(g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.*

*(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.*

*(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.*

.....

9. Section 7(2) of HA 2004 sets out five types of enforcement action which a local authority may take in respect of a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. One of these is an improvement notice.

10. An improvement notice is a Notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the Notices: sections 11 and 12, relating to Category 1 and Category 2 hazards, respectively.

11. Paragraph 5(1)(a) of Part 3 of Schedule 1 to HA 2004 provides that an improvement notice must be served on "*...every other person, who, to their knowledge...has a relevant interest in any specified premises*". "*Relevant interest*" is defined in paragraph 5(2) as "*an interest as freeholder, mortgagee or lessee*".

12. The person on whom an improvement notice is served may appeal to the Tribunal (Schedule 1, para.10(1) of HA 2004).

13. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority was unaware, (para. 15(2)(b)).

14. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

## Outline

15. It is not intended to record here all of the parties' arguments, but only persuasive evidence found by the Tribunal relevant to its determinations. If our summaries do not reflect every point, that does not mean we have ignored them.

16. The Tribunal understood from the papers that the Property is a 2 bedroom flat located on the top floor of the Building (as described later).

17. Some important background information is relevant to the Application and we are grateful to Counsel for the Respondent, on whose Skeleton Argument we rely as found to contain pertinent summaries for points at issue. Where we now quote from that document (excluding references to documents in the hearing bundle) it is because we have found it to be accurate as a statement of fact.

18. On 13 August 2024, the Respondent sent a letter addressed to the address given for the landlord in the tenancy agreement giving notice of an intended inspection. On 20 August 2024, the Respondent served the Notice on the Applicant. The Respondent also served improvement notices on the Freeholder and Holdens. These notices have not been appealed.

## The Issues

19. The Tribunal analysed the Applicant's appeal and agreed with counsel for the Respondent that the issues raised were:

    Issue 1: Was the notice served on the correct person?;

    Issue 2: Was the applicant aware of the category 1 hazards?;

    Issue 3: Were repairs "in hand" in respect of the category 1 hazard in the bedroom?;

    Issue 4: Did the category 2 hazards exist?; and

    Issue 5: Should the Respondent instead have served a hazard awareness notice?

## The Applicant's position

20. By reference to his statement and from oral evidence and submissions, the Tribunal identified that the Applicant's principal reason for the appeal was

    (i) the nature of the alleged defects concerned structure of the building for which he did not have responsibility under the terms of ownership, in particular they fell within obligations of the Freeholder and / or RTM company (see later);

    (ii) he had complied with presentation of Gas Safety Certificate, Electric Installation Condition Report and Energy Performance Certificate;

    (iii) certain repairs were put in hand and had been completed regarding floorboards in the Flat affected by wear and tear, despite difficulty in identifying a contractor to carry out the work;

(iv) some of the alleged defects were due to neglect by the occupier of the Flat, for example due to their failure to report a broken extractor fan – which in any event now had been repaired;

(v) the Respondent had "*…consciously and deliberately served an improvement notice rather than hazard awareness notice or prohibition order in hope to profit from administrative charges of issuing one and for the Local Housing Authority to continue receiving council taxes.*"

21. Regarding disrepair issues at the Property in 2019, there had been compliance with enforcement notices from the Respondent (as demonstrated by his late evidence documents).

**The Respondent's position**

22. By reference to the statement of Ms Davis, the Tribunal noted the following, as an initial point "*On review of the inspection documentation, I noted a data entry error on the HHSRS Scoring Sheet for the property on 20 August 2024 (RB-11). The likelihood was recorded as a raw value rather than the representative scale point. In my opinion this does not alter the Hazard categorisation or the decision to serve the Notice as outlined within the Statement of Reasons for Service (RB-07). This part of the scoring relates to the likelihood of an occurrence over the next twelve months to which the hazard could cause harm requiring medical attention to a member of the vulnerable age group who might occupy or visit the dwelling. In my view this does not drastically impact on the scores given in the assessment, and, were the scores corrected, it would not negate the need for an Improvement Notice to be served on the property.*"

23. Further, Ms Davis reported that she had undertaken an internal and external inspection of the Property on 19 August 2024 and her findings lead to the Notice). She recorded that the Property became vacant around 5 September 2024. She presented "*I noted from the case file that the tenant's brother, Aiden Pattinson, had made a complaint about disrepair on 30th October 2018 for the same property. This was investigated by Steven 9 Kendall, previous Private Housing Enforcement Officer……. The property was inspected on 26th February 2019 where some of the same defects were highlighted, for example the visible wet patch in the living room was acknowledged as were the ill-fitting windows. Following an inspection, a Hazard Awareness Notice had been served to Mr Shobooye on 1st March 2019 for Excess Cold. There was also a secondary Structural Collapse Hazard for the lounge window which had dropped. The Hazard Awareness Notice was escalated to an Improvement Notice due to failure to adhere to the prior Notices. From reviewing the case file there was no evidence that the work had been undertaken and the case was closed on 12th October 2023 due to lack of contact from the tenant.*"

24. She undertook HHSRS scoring and found that the condition of the Property had deteriorated since the last inspection. She found no evidence that the

previous hazards from 2019 had been addressed. She described the matters considered, leading to the Notice: *"Within the Council's Private Sector Housing Enforcement Policy there is advice given to Landlords that, where there is a clear history of non-compliance or the breach is serious, the Council may take enforcement action immediately. If the Landlord had not had a history of non-compliance, or, had demonstrated previous compliance, a Hazard Awareness Notice or other form of informal action would have likely been used. As a local authority, where appropriate, informal action is our preferred option for enforcement. Informal action forms the basis for the majority of the Council's enforcement cases as it is often cost effective, time effective, and maintains good relations with the majority of landlords who have property in the Council's area*."

25. On 29 August 2024 Ms Davis was contacted by an officer of the managing agent, Holdens (see below). Her statement set out "*She advised that some work had already been done to the guttering and that they would investigate if further work to the pointing could be done to prevent damp and mould. She stated that the work to the windows was the responsibility of the landlord and that he had been notified of the hazard previously. Sammy advised that the cracks (in bedroom two) would be checked by a surveyor, but the dropped floorboards were the landlord's responsibility. Sammy stated that the landlord had been made aware of the ventilation issues and the peeling paint in the bathroom and this was also his responsibility*."

26. Ms Davis acknowledged that she had been telephoned by the Applicant on 2 September and with an email of 6 September 2024 he had provided "*….copies of an Electrical Installation Certification Report (EICR) and a Gas Safe Certificate. As outlined in the EICR it was recorded as 'unsatisfactory' as it did not pass the required standard for a domestic dwelling. To date, the Council has not received a valid or 'Satisfactory' EICR."*

## Tribunal's findings and Reasons

27. The Tribunal is satisfied that the Applicant's appeal has been made under the general right of appeal under paragraph 10, Part 3 of Schedule to the Act.

28. Having considered carefully the title and lease documents the Tribunal adopts the description by Counsel for the Respondent of the various legal obligations:

*"On 1 August 2014, Tramore Estates granted an underlease of the Flat to the Applicant. The underlease was for a term of 99 years from and including 1 October 2011 (i.e. until 2110) for a premium of £42,000 and at an annual rent of £250 (subject to review) ("the Underlease"). The Underlease recites that the building in which the Flat is located comprises 104 units (102 flats and 2 retail units) ("the Building"). The freehold to the Building is owned by Tuscola ("the Freeholder"), who was also a party to the Underlease. The Underlease obliges the Applicant to keep the "Premises" (i.e. the Flat) in good repair and condition. The Underlease obliges the Freeholder to maintain the structure and exterior of the Building ("the Common Parts").*

*In 2021, Steamer Street RTM Company Limited ("the RTM Co") was incorporated. The Respondent believes that the RTM Co has exercised the right to manage in respect of the Building. At the time of the improvement notice, the RTM Co's managing agents were Holdens' Chartered Surveyors ("Holdens").*

*On 28 March 2023, the Applicant let the Flat pursuant to an assured shorthold tenancy ("the Tenancy Agreement"). The Tenancy Agreement names Bryony Pattinson ("the Occupant") as the tenant; it did not name a landlord but did warrant that the "landlord" was the sole freehold or leasehold owner of the Flat (i.e. the Applicant). The tenancy agreement reserved a monthly rent of £425. The Tenancy Agreement obliged the Occupant to maintain the Flat (items for which the landlord was responsible were excepted). The Applicant agreed to comply with the repairing obligations in s. 11(1) of the Landlord and Tenant Act 1985 ("LTA 1985")."*

29. The Tribunal had to consider a legally technical point about whether the Applicant was the correct recipient of the Notice. Having considered carefully the relevant law, the Tribunal found no reason to doubt the analysis by Ma Adams and its effect:

*"Part 1 of Schedule 1 provides for the service of improvement notices:*

*21.1. HMOs: Where the specified premises are an unlicensed HMO , the authority 8 9 must serve the notice either (i) on the person having control of the HMO; or 10 11 (ii) on the person managing it (Sch. 1, para. 2)*

*21.2. Flats: Where the specified premises are an unlicensed flat, the authority must serve the notice either: (i) on a person who is (a) an owner of the flat and 12 (b) in the authority's opinion ought to take the action specified in the notice; or (ii) on the person managing the flat. (Sch. 1, para. 3).*

*21.3. Common Parts: Where the specified premises are common parts of a 13 14 building containing one or more flats , the authority must serve the notice on a person who is (a) an owner (which has an extended definition ) of the 15 common parts and (b) in the authority's opinion ought to take the action specified in the notice (Sch. 1, para. 4)"*

We record also:

*"owner" (a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion; and (b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years (s. 262(7) HA 2004)*

*"common parts", in relation to a building containing one or more flats, includes– (a) the structure and exterior of the building, and (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats (s. 1(5) HA 2004)*

*"building containing one or more flats" does not includes an HMO (s. 1(5) HA 2004)"*

30. The Tribunal also noted that for the purposes of Sch. 1, para. 4: 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 (para. 4(3)). In consequence of these legal points, we found that freeholders and lessees are owners within this definition but a RTM Company is not (this is confirmed by the Upper Tribunal case presented by the Respondent of *Hastings Borough council v Braear Developments Limited, [2015] UKUT 0145 (LC),* at paragraph 58, Deputy President martin Rodger QC).

31. We agreed with Mr Adams that in this appeal "*...the Tribunal is required to take account of the matters specified in para. 16(3) of Schedule 1:*

*... 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."*

32. We found that Clause 3.5 of the Underlease (see paragraph 28) makes the Applicant responsible for the condition of "the Premises" (as defined by Clause 1.15 and the First Schedule). The Premises includes: "*the plaster and other finishes on the inner sides of the walls*" and "*the windows and their frames*". The Premises extends "*from the upper side of the floor slab/floor joists immediately below the Premises*" and therefore includes the floorboards.

Clause 6.1 of the Underlease makes the Freeholder responsible for the Common Parts: the main structure of the Building including the exterior walls and roof. On acquisition of the right to manage by the RTM Co, these management functions would have become functions of the RTM Co. The Freeholder is prevented from exercising these functions.

**Decision - Issue 1**

33. We found that as recipient of the rent from the letting of the Flat, in accordance with his rights under the Underlease the Applicant is the owner of the Flat. (We note that the Freeholder also falls into the definition of owner.) The RTM Co is not the Freeholder, nor able to receive rent and neither it nor its managing agent, Holdens, can on the facts be an owner or a person managing the Flat – see statutory definitions, paragraph 29.

34. The Applicant is responsible for the condition of the Flat - clause 3.5 of the Underlease. Therefore, the Applicant was the appropriate recipient of the Notice; not the Freeholder.

35. We had no reason to doubt that the Building is a converted block of flats and therefore a HMO (under section 257 HA 2004). Regarding Common Parts, the Applicant - and the other lessees of flats - are persons in control of the Building, because they receive the rent for the flats in it. We found that none of the Freeholder, the RTM Co or Holders is a person in control of the Building or a person managing the Building, as they do not receive the rents.

36. For completeness, we confirm that we had no persuasive argument before us to disagree with Mr Adams that if the Building is not an HMO, a notice relating to the Common Parts should be served on an owner of the Common Parts. The extended definition of "owner" includes the Freeholder, the Applicant and the other lessees of flats in the Building but not the RTM Co or its agent, Holders. The acquisition of the right to manage would mean that the Freeholder is not the owner who ought to take the action in the Notice

37. The law on this issue is not straight-forward, but in accordance with the law set out above, the Tribunal was satisfied that the Applicant was an appropriate recipient of the Notice regarding both the Flat and the Common Parts and it could not validly have been served on the RTM CO or Holders.

**Decision – Issue 2**

38. The Applicant contends that, because his repairing obligations pursuant to s. 11(2) LTA 1985 require knowledge, he should not be subject to enforcement action in respect of hazards of which he was not aware. The Tribunal disagreed. There is no pre-requirement for the recipient of the Notice to have prior knowledge of the hazard. The Respondent is subject to a duty to take appropriate enforcement action if a category 1 hazard exists on residential premises, and here took action.

**Decision – Issue 3**

39. The Tribunal found that works planned by the Applicant, or in hand, was not a reason to challenge the Notice. The Respondent made its decision based upon findings at inspection and the law does not require it in deciding to issue an improvement notice to investigate what an owner may be considering regarding the Property's condition.

**Decision – Issue 4**

40. On this matter, the argument concerned production of certificates regarding gas and electrical safety at the Property. We find that the Applicant has produced evidence of the existence of a gas safety certificate, which was dated 15 May 2024 and therefore it was in force on 20 August 2024 when the Notice was issued. The Tribunal varied the Notice so as to remove the Category 2 Hazard

requirement for production of the relevant certificate (point 6 on the Notice for "Carbon Monoxide and Fuel Combusted products").

41. As to the electrical safety report produced, dated 8 July 2023, the parties and the Tribunal noted it describes the condition of the electrical installations as "*unsatisfactory*". However, the certificate does not state they are dangerous or potentially dangerous and it identifies "class 2 observation", which are recommended to be attended to. The Notice for category 2 hazard relevant to this report merely requires production "….of your valid Electrical Installation Condition Report…" and the Tribunal found that the Applicant has done so. The Tribunal varied the Notice so as to remove the Category 2 Hazard requirement for production of the valid Electrical Installation Condition Report.

## Decision – Issue 5

42. The Tribunal was sympathetic to the Applicant's arguments that being recipient of the Notice may impose on him burdens for certain Hazards identified for which under the terms of his legal interest in the Building he may not have direct responsibility (in broad terms, regarding structural problems affecting the Building) and in response to which he can only press to respond those with obligations according to their title. Ms Davis explained that following the Notice reaching Holders they provided information on 29 August 2024 about repair matters regarding the structure of the Building However, the Tribunal has explained its reasoning as to why he is the correct recipient of the Notice (Issue 1).

43. Regarding whether an alternative step, such as a Hazard Awareness Notice should have been issued instead of the Notice, the Tribunal found the evidence of Ms Davis and Mr Kendall, persuasive. The Respondent's Private Sector Housing Enforcement Policy, which was before the Tribunal, encourages informal steps, but specifies that where there is a history of non-compliance (or hazards have persisted), then formal action is warranted. The Tribunal took account of the Applicant's late evidence, but notwithstanding it indicating pro-active works to the Property after the action taken by the Respondent in 2019, it was apparent that the Respondent could not have been satisfied that all previously identified hazards had been remedied. Ms Davis' opinion of deterioration in condition upon her 2024 inspection carried weight before us. Therefore, we found that the Respondent's decision to proceed with an improvement notice was reasonable, in accordance with its Policy, because the 2019 action had not secured necessary improvement to the Property and in 2024 category 1 and 2 hazards were newly identified.

## Conclusion

44. In consequence of our findings, we confirmed the Improvement Notices dated 20 August 2024, save as varied as set out in paragraphs 40 and 41.

L Brown
Tribunal Judge

## 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).