



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

**Case Reference** : **CAM/38UC/HIN/2013/0007**

**Property** : **2 Clinton Close, Oxford OX4 4US**

**Applicant** : **HM Estates Limited**  
**Representative** : **John Marks and Khuja LLP**

**Respondents** : **Oxford City Council**

**Date of Application** : **5<sup>th</sup> June 2013**

**Type of Application** : **An appeal against the service of an Improvement Notice served under section 12 of the Housing Act 2004**

**Tribunal** : **Judge JR Morris**  
**R Brown FRICS**  
**Mrs N Bhatti**

**Date of Hearing** : **9<sup>th</sup> September 2013**

---

**DECISION**

---

© CROWN COPYRIGHT 2013

**Order:** The Tribunal Orders that the Improvement Notice dated 15<sup>th</sup> May 2013 be confirmed and determines that the charge of £300.00 for enforcement action is reasonable and payable.

**Application**

1. On 15<sup>th</sup> April 2013 the Respondent served an Improvement Notice on the Appellant in relation to a Category 2 hazard pursuant to section 12 of the Housing 2004 Act.

2. On 5<sup>th</sup> June 2013 the Appellant appealed to the Residential Property Tribunal.
3. The Appeal was heard on 9<sup>th</sup> September 2013. Mr Tariq Khuja represented the Applicant and the Respondent's Representatives were Miss Rebecca Jeffries (Environmental Health Officer) Mr Beech Senior Environmental Health Officer and Mr Paul Fitzgerald (Private Sector Safety Team Manager)

### **The Law**

4. The legislation relating to the issues raised is Part 1 Chapter 1 and Chapter 2 Housing Act 2005.
5. Part 1 of the Act established a system for assessing housing conditions and enforcing housing standards. The assessment is carried out under the Housing Health and Safety Rating System. This involves the classifying of hazards according to a Hazard Score – a numerical representation of the overall risk of the hazard. The Score is based on the evaluation of the likelihood of an occurrence and of the probable spread of harms that could result.
6. Those hazards which score 1000 or above (Bands A-C) are classed as Category 1 hazards. If a local housing authority makes a Category 1 hazard assessment, it is mandatory under section 5(1) for it to take appropriate enforcement action. Hazards with a score below 1000 (Bands D-J) are Category 2 hazards, in respect of which the authority has discretion to take enforcement action.
7. Section 3:
  - (1) *A Local Housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under subsection (2).*

Subsection 2 amongst other actions provides for the Authority to take action under Part 1 of the Act.
8. Section 4
  - (1) (a) *as a result of any matter of which they have become aware in carrying out their duty under section 3 or*  
  
*(b) for any other reason*

*that it would be appropriate for any residential premises to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises the authority must arrange for such an inspection to be carried out.*

9. Section 5:

(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 notice under section 11;*

*[Other Remaining provisions relate to other actions not relevant to this application]*

10. Section 7

(1) *The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they would consider that a category 2 hazard exists on residential premises*

(2) *The provisions are-*

*(a) section 12 (power to serve an improvement notice)*

*[Other provisions relate to actions not relevant to this application]*

11. Sections 11 and 12 provide that 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 notice.

12. Section 13 Contents of improvement notices.

(1) *An improvement notice under section 11 or 12 must comply with the following provisions of this section. .*

(2) *The notice must specify, in relation to the hazard (or each of the hazards) to which it relates— .*

*(a) whether the notice is served under section 11 or 12, .*

*(b) the nature of the hazard and the residential premises on which it exists, .*

*(c) the deficiency giving rise to the hazard, .*

*(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action, .*

*(e) the date when the remedial action is to be started (see subsection (3)), and*

- (f) *the period within which the remedial action is to be completed or the periods within which each part of it is to be completed. .*
- (3) *The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served. .*
- (4) *The notice must contain information about— .*
  - (a) *the right of appeal against the decision under Part 3 of Schedule 1, and .*
  - (b) *the period within which an appeal may be made. .*
- (5) *In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.*

13. Section 15 Operation of improvement notices

- (1) *This section deals with the time when an improvement notice becomes operative. .*
- (2) *The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule). .*
- (3) *The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals). .*
- (4) *If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends. . This is subject to subsection (5).*
- (5) *If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends). .*
- (6) *If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.*

14. Section 239

- (1) *Subsection (3) applies where the local housing authority consider that a survey or examination of any premises is necessary and any of the following conditions is met-*
- (a) *the authority consider that the survey or examination is necessary to carry out an inspection under section 4(1) or otherwise to determine whether any functions under any parts 1 to 4 or this part should be exercised in relation to the premises*
- (3) *Where this subsection applies-*
- (a) *a person authorised by the local housing authority (in a case within subsection (1))*
- (b) *may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises*
- (5) *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-*
- (a) *to the owner of the premises (if known) and*
- (b) *to the occupier (if any)*

**Inspection**

15. The Tribunal inspected the Property in the presence of the Appellant's and Respondent's Representatives and Mr Breach the Occupier.
16. The Property is a two storey semi-detached house with brick elevations under a tile roof constructed in the 1960s. The Property comprises an entrance hall with stairs rising to the first floor, a cloak room with wash hand basin and w.c, a living room and kitchen on the ground floor and a bathroom and three bedrooms on the first floor. There are gardens to front and rear.
17. The Property was in fair condition externally and internally. It appeared that the hazards to which the Improvement Notice referred had been remedied by the time of the inspection. It was noted that the electrical consumer unit was an 'old style' fuse board type.

**The Notice**

18. The Tribunal was provided with a copy of the Improvement Notice being appealed. The Notice stated that the Respondent considered that

a category 2 hazard existed on residential premises, namely the Property. The Notice went on the state:

*The Authority therefore serves this Improvement Notice under section 12 the operative date being 13<sup>th</sup> May 2013 and requires you to take the remedial action specified*

*Details of the Category 2 hazard are contained in Schedule 1 and the remedial action required are contained in Schedule 2 to this notice*

*The person on whom the improvement notice is served may appeal to a residential property tribunal against the notice within the period of 21 days beginning with the date on which the improvement notice was served.*

*Dated 15<sup>th</sup> May 2013*

19. Schedule 1, Hazards and Deficiencies, of the Notice stated:

*Category 2 Hazard: 2 – Electrical Hazards (23)*

*The deficiency giving rise to the hazard:-*

- 1. Several sockets in the house and the electrics to the outbuilding in the rear garden did not work indicating that the electrical system has not been adequately*
- 2. There was a leak form the first floor bathroom affecting the wall mounted light fitting in the wc downstairs.*

20. Schedule 2 - Schedule of works to remedy category 1 and 2 hazards stated:

*Category 1 Hazard: Electrical Hazards (23)*

- 1. Engage a qualified electrician approved by the NICEIC (National Inspection Council for Electrical Installation Contracting), the ECA (Electrical Contractor Association) or equivalent approved contractor to investigate the condition of the existing electrical power and lighting circuit and on completion, provide the Council with an appropriate, current and valid inspection certificate.*

*Where necessary, carry out all repair works to the existing power and lighting circuit as recommended by the approved electrician to leave it in a safe condition.*

*All works and wiring must comply with BS 7671:2008 17<sup>th</sup> Edition of the IEE Regulations and all works must be carried*

*out in accordance with Approved Document P of the Building Regulations 2000.*

2. *Thoroughly investigate the leak from the first floor bathroom and carry out all repairs necessary to prevent reoccurrence.*

*The date on which the remedial action is to be started is:-  
13<sup>th</sup> June 2013*

*The period within which the remedial action is to be completed:  
27<sup>th</sup> June 2013*

21. A statement of reasons for decision to take enforcement action under section 8 of the Housing Act 2004 was provided. It was not in issue that were an enforcement action required an improvement notice would be the most appropriate.

### **Issues**

22. The Appellant submitted that an enforcement action was not required and the enforcement action taken was ineffective because the notices were defective.

### **Background**

23. In written representations the Respondent stated that the background to the service of the Improvement Notice was as follows:
24. The Council was first contacted by email on 21<sup>st</sup> November 2012 regarding the Property by Councillor Antonia Bance to whom a complaint had been made by the Occupant. The Occupant's details and the nature of the complaint were confirmed on the 4<sup>th</sup> December 2012 and the Occupant was telephoned on the 12<sup>th</sup> December 2012. The complaint was that there were concerns about the lack of a gas safety certificate and also with regard to the electrical installation, namely that some sockets did not work, a lack of residual current devices and circuit breakers, a gap behind the plug socket in the kitchen and a leak from the bath on the first floor affecting the light in the ground floor below.
25. An appointment was made with the Occupant on the 12<sup>th</sup> December 2012 and a letter was sent to Mr Tariq Khuja trading as Letting and Property Management, 154 Cowley road, Oxford OX4 1US to notify of the intention to enter to inspect the Property on the 21<sup>st</sup> December 2014. It was said that this provided the Landlord via the Agents and the Tenant with more than 24 hours notice of intention to enter the Property as required by section 239 of the Housing Act 2004.
26. On 21<sup>st</sup> December 2012 an inspection was carried out by Rebecca Jeffries, the Environmental Health Officer. It was noted that there were several items wrong with the electrics and the installation appeared

dated, in disrepair and poorly maintained. A Housing Health and Safety Rating System assessment was made for Electrical Hazards and the hazard was rated as a category 2 hazard with regard to the national worked examples. A copy of the HHSRS assessment was provided.

27. On 10<sup>th</sup> January, following the inspection and assessment, the Letting Agents were sent an informal schedule of electrical works to be carried out and a covering letter requiring copies of an electrical safety certificate and gas safety certificate to be produced. The works were to be carried out and the certificates provided by 25<sup>th</sup> January 2013.
28. On 25<sup>th</sup> January an answer machine message was left with the Letting Agents to find out whether the works had been carried out and why the certificates had not been received. There was no response and the Agents were telephoned on 4<sup>th</sup> February 2013 when it was said that the certificates would be sent by the end of the week.
29. On 22<sup>nd</sup> February 2013 as the certificates had not been received the Health and Safety executive were informed and on 28<sup>th</sup> February the Health and Safety Executive provided copies of the gas safety certificate which showed that the gas safety check had been carried out on 13<sup>th</sup> February 2013, 6 weeks after the schedule of works had been sent on 10<sup>th</sup> January. No evidence was provided of previous gas safety certificates
30. On 27<sup>th</sup> February 2013 a Land Registry search was carried out which showed the proprietor to be HM Estates Limited of 154 Cowley Road, Oxford OX4 1UE, a copy was provided. A section 16 requisition was sent on 28<sup>th</sup> February 2013 and returned on 15<sup>th</sup> March 2013 stating that rents were payable to HM Estates limited. A copy of the requisition was provided.
31. On 4<sup>th</sup> April 2013 an email was sent to Mr Tariq Khuja requiring the electrical safety certificate and a warning of formal action if this was not received.
32. On 15<sup>h</sup> April 2013
  - a section 12 Improvement Notice including
  - a section 8 statement of reasons for the decision to take enforcement action and
  - a section 49 power to charge for certain enforcement action noticewere served by hand on HM Estates Limited and copies were sent to the mortgage provider and the Occupant. Costs incurred by the Council were said to be higher than the standard fee of £300.00 charged. Copies of the Notices and the fee demand were provided.
33. The “operative date” on the Improvement Notice was pointed out as being incorrectly typed as the 13<sup>th</sup> May 2013 instead of 15<sup>th</sup> may 2013. It was said that this did not affect the timescales of the Notices and the



correct length of time for appeal was given. It was submitted that this was not fatal to the notice and copies of Decisions of Residential Property Tribunals were provided where it said that appeals against such administrative errors had been dismissed.

34. The Council did not receive an electrical certificate until the 6<sup>th</sup> June 2013 and the electrical inspection was dated 7<sup>th</sup> March 2013. There are three items listed on the certificate that require improvement and that one requires urgent attention, a subsequent satisfactory certificate indicating that “all repair works to the existing power and lighting circuit as recommended by the approved electrician to leave it in a safe condition” has not been provided. Therefore the Notice has not been complied with.

### **Evidence**

35. On the Application Form the Appellant raised 5 issues as follows:
1. *The Improvement Notice is defective in that it was not correctly served.*
  2. *The Local Housing Authority failed to provide the relevant notice to enter the Property*
  3. *The “operative date” is prior to the service of the Improvement Notice*
  4. *The works to which the Improvement Notice seeks to have carried out were completed prior to the service of the Improvement Notice*
  5. *The Local Housing Authority is not entitled to seek its costs of the Improvement Notice as it has not incurred the costs claimed and the Appellant appeals the charge.*

### **Issue 2**

36. Issue 2 was dealt with first for chronological reasons in that it related to the alleged failure by the Respondent to serve a notice to make an inspection prior to the serving of an Improvement Notice. In oral representations the Appellant’s Representative referred the Tribunal to section 239 (5) of the Housing Act 2004, which 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-*

- (a) *to the owner of the premises (if known) and*
- (b) *to the occupier (if any)*

37. The Applicant’s Representative said that the Respondent informed the occupier but failed to inform the owner. The Applicant’s Representative identified two elements, first, that the owner of the premises should be known and, second, that if known the owner should be given notice.

38. The Applicant's Representative said the Respondent knew who the owner was or should be deemed to have notice of who the owner was in that they would have community charge and similar records in their possession to which they could refer to find the name and address of the owner.
39. The Applicant's Representative said that the notice under section 239 was a formal notice and should be served as such. The letter sent on the 12<sup>th</sup> December 2012 to Mr Tariq Khuja trading as Letting and Property Management, 154 Cowley Road, Oxford OX4 1US to notify of the intention to enter to inspect the Property on the 21<sup>st</sup> December 2014 was not the same as giving notice to the owner pursuant to section 239(5). Letting and Property Management were the agents not the owner. He argued that merely because the agents and the owner have the same address or the same officer, Mr Tariq Khuja, this does not mean that service on one is service on the other. They are companies and have separate identities. To be properly served, the notice should have been addressed to the owner not the agent. The Appellant's Representative referred to *Salomon v Salomon & Co* with regard to the separate identity and to a previous tribunal decision (CAM/38UH/HIN/2008/0009) in which no 24 hour notice had been served on the owner and the tribunal in that case determined that the assessment was invalid. He submitted that the same principle should apply here. Copies of both cases were provided.
40. The Tribunal asked the Respondent's Representatives why the 24 hour notice to inspect was addressed to Mr Tariq Khuja trading as Letting and Property Management, 154 Cowley Road, Oxford OX4 1US rather than to HM Estates Limited at the same address. The Respondent's Representatives stated that they asked Mr Breach, the Occupier, to whom he paid his rent and he had replied that it was to Mr Khuja at Letting and Property Management. It was said that when a hazard was reported urgent action may be required and it will be quicker to ask the occupier, who is probably a tenant, to provide details of the owner or agent than to trawl through the Respondent's records or make a Land Registry search. The Respondent took the view that the purpose of the 24 hour notice was to give the owner or the owner's representative an opportunity to be present at the inspection so that remedial action can be taken. Service of notice of inspection was not the same as the service of the Improvement Notice, the service of which is governed by Schedule 1 Part 1 of the Housing Act 2004.
41. The Tribunal asked the Appellant's Representative whether, as an executive of both the Owner and Agent companies he knew about the inspection in advance. He said that he did but that it did not alter the fact that notice of the inspection should have been served correctly on the Owner as a company and it was not.

### ***Issue 1 and 3***

42. The Appellant's Representative then addressed issues 1 and 3 which it was said made the Improvement Notice defective. The first reason put forward for the Notice being defective was because it referred to an "operative date" of the 13<sup>th</sup> May 2012 which was before the date of service of the Notice which was the 15<sup>th</sup> May 2012. The Appellant's Representative said that this was not a mere administrative error but was the date from which the time for appeal was to be assessed i.e. 21 days from the "operative date".
43. In response to this point the Respondent's Representatives conceded that the "operative date" was incorrectly typed as the 13<sup>th</sup> May 2013 instead of the 15<sup>th</sup> May 2013. However, it was said, that this did not affect the timescales of the notice and the correct length of time was given for the appeal process. It was submitted that this is not a fatal error and does not invalidate the notice. The Respondent's Representatives referred to a number of previous tribunal cases which it was said supported this view as follows:  
BIR/17UB/HPO/2006/0002 which stated that the operative time was the period within which an appeal may be made;  
MAN/20UE/HIN/2006/0002 in which an error in a revocation notice led to the re-issue of the revocation notice;  
CAM/00MB/2006/0001 in which a discrepancy as to the date of receipt of a notice was found not to be important because it was clear that the notice was served within the statutory 7 days.
44. The Tribunal referred the parties to section 13 of the Housing Act 2004 which sets out the required contents of improvement notices. The Tribunal commented that it could not find any reference to a requirement that an "operative date" was to be specified. However it did find that there was a requirement under 13(4) that:
- The notice must contain information about-*  
*(a) the right of appeal against the decision under part 3 of Schedule 1,*  
*and*  
*(b) the period within which an appeal may be made.*
45. This co-related to section 15 which sets out the provision for the operation of an improvement notice. This section states that:
- (1) *This section deals with the time when an improvement notice becomes operative.*
- (2) *The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under part 3 of that Schedule).*

46. In this case the Respondent's Representatives said that the "operative date" is meant to refer to the date of service from which the period of 21 days for appeal begins. However, the Tribunal was of the opinion that it could alternatively mean the date when the notice took effect (became operative) under section 15 i.e. at the *end* of the period of 21 days beginning with the day on which it is served. The Tribunal suggested that the inclusion of the date may be superfluous and merely cause confusion and did not appear to be a requirement under section 13.

47. The second reason put forward by the Appellant's Representative for the Notice being defective was because the Schedule to the Notice stated that:

*The date upon which the remedial action is to be started is:  
13<sup>th</sup> June 2013.*

This was submitted to be less than 28 days after the date upon which the Notice was served because the date of service was the 16<sup>th</sup> May 2013. The Appellant's Representative said that as there was less than 28 days between the date of service of the Improvement Notice and the date upon which the remedial action was to be commenced it was contrary to section 13 (3) which states:

*The notice may not require any remedial action to be started earlier than the 28<sup>th</sup> day after that on which the notice is served.*

48. In response the Respondent's Representatives stated in oral evidence that the Improvement Notice was served correctly on the 15<sup>th</sup> May 2013. It was said that a Land Registry search was undertaken, confirmed by a returned section 16 Requisition for Information Notice, which showed that HM Estates Ltd of 154 Cowley Road, Oxford OX4 1UE were the correct recipient under paragraph 2(a) Schedule 1 Part 1 of the Housing Act 2004. It was added that copies of notices were served on the mortgage provider and the occupant. Ms Jeffries stated that she served the Improvement notice personally.

49. The Appellant's Representative asked in cross examination when the Notice had been served to which Ms Jeffries replied that it was after 4.30 p.m. but before 5.00 p.m. The Appellant's Representative referring to the Companies Act 2006 and to Part 6 of the Civil Procedure Rules stated that a document or notice served personally on a company after 4.30 p.m. was effective the following day i.e. 16<sup>th</sup> May 2013.

50. In response the Respondent's Representatives stated in oral evidence that according to their calculations the Improvement Notice would still have been served 28 days before the 13<sup>th</sup> June 2013 when the remedial action was to be started.

#### **Issue 4**

51. The Appellant's Representative stated that the Improvement Notice was unnecessary because the remedial work required had already been completed before it was served. He said that the Notice was served on 16<sup>th</sup> May 2013 and the gas safety check had been carried out and certificate issued on 13<sup>th</sup> February 2013 and the Respondent was aware of this on the 28<sup>th</sup> February 2013. He said that an electrician had inspected the installation on 7<sup>th</sup> March 2013 and identified matters to be remedied and this work had been carried out. A witness statement was provided from Sameera Hayatt signed and dated 24<sup>th</sup> July 2013 in which she said that she was employed as Mr Khuja's personal assistant and was instructed:

*to liaise with Mr Khuja's appointed electrician to carry out an inspection to 2 Clifton Close, Oxford. I was instructed to obtain the inspection report and to send one copy to Oxford City Council and one copy to be given to Mr Khuja and for one copy to be placed in the properties file.*

*I received the inspection report in March 2013, I am unable to recall the exact date. I provided a copy of Mr Khuja and posted 1 copy to Oxford City Council's Environmental health Department as instructed to do so.*

52. A copy of the electrician's certificate was provided but Sameera Hayatt was not available.
53. In response the Respondent's Representatives stated that the electrician's certificate was not received until 6<sup>th</sup> June 2013. The certificate identified three items which required attention, one urgently. There has been no follow up certificate to show that this work has been carried out in compliance with the Improvement Notice. It was added that in line with its Enforcement Policy the Respondent had sought to deal with the matter without recourse to an Improvement Notice as follows:  
10<sup>th</sup> January 2013 informal schedule served requiring works to be completed and certificate sent by 25<sup>th</sup> January 2013  
4<sup>th</sup> February 2013 letting agent contacted who made assurances that the works and certificate had been completed  
4<sup>th</sup> April 2013 e mail sent to Mr Khuja requesting completion of the works and the certificate.
54. The Respondent's Representatives added that, notwithstanding the assurances, according to the Appellant's own evidence the inspection and works were not carried out until March. However, the Respondent would have been unaware of this because no inspection report or certificate was provided until 6<sup>th</sup> June 2013, after the Improvement Notice had been served on 15<sup>th</sup> or 16<sup>th</sup> May 2013. The Respondent's Representatives submitted that in any event the Notice had not been

complied with until a certificate certifying the work had been carried out was provided.

55. On this latter point the Appellant's Representative stated that the Notice had not required him to provide a certificate of completion of the works only an inspection certificate.
56. The Tribunal questioned the Appellant's Representative regarding the electrician's inspection certificate. In particular the form did not appear to be a NICEIC (National Inspection Council for Electrical Installation Contracting) or an ECA (Electrical Contractor Association) form and no unique serial number was pre-printed on it. It was not clear who Kewtech, whose name appeared at the top of the inspection report, were and the electrician did not appear to be a member of a contractor certification scheme. The name of the contractor was indecipherable and the contractor's address was given as being that of the Appellant's Agent. The Tribunal also noted that no mention of the 'old style fuse board consumer unit was made on the report.
57. The Appellant's Representative speaking as a director of the Appellant said that the Appellant had a number of associated companies including a construction company which carried out works for the Appellant. The inspection may therefore have been undertaken by an independent contractor or an employee of the company but he was not able to state which. He could give no further details about the certificate only that so far as he was aware it was provided by a qualified electrician.

### ***Issue 5***

58. The Appellant's Representative submitted that if the Improvement Notice was invalid as he contended then the claim for the enforcement fee of £300.00 should not be payable. In addition he stated that if the Tribunal did decide the Improvement Notice was invalid then he should be allowed his own costs, details of which he could provide once the Tribunal had made its decision.
59. The Respondent provided a detailed schedule of the enforcement costs which came to £1,678.01. The Respondent's Representatives said that the schedule went to show that the actual costs incurred were substantially more than the fee claimed, however, the £300.00 was a standard charge.

### **Decision**

60. The Tribunal considered each of the issues raised by the Appellant in turn.

## **Issue 2**

61. With regard to the notice of inspection under section 239 (5) of the Housing Act 2004 the Tribunal agreed with the Respondent that when a hazard was reported urgent action may be required and a council could not be expected to make an exhaustive investigation as to the owner. Nevertheless, there was a duty to notify the owner where known and reasonable inquiries should be made, such as asking the occupier, if a tenant, to whom the rents were paid. The Tribunal considered that a purposive approach should be taken to interpreting section 239. The purpose of the provision was to ensure that where possible the owner or representative was able to attend the inspection. In this case it was reasonable for the Respondent to inform the Agent whose executive was also a director of the Appellant.
62. The Tribunal noted the previous tribunal case referred to by the Appellant's Representative and found in that case the respondent council knew who the owner and the owner's agent were but did not notify either that an inspection and assessment was to take place. The Tribunal distinguished the present case and found that the Respondent had complied with section 239(5).

## **Issues 1 and 3**

63. With regard to the Improvement Notice the Tribunal noted the content, service and operation were specifically set out in sections 12, 13 and 15 and Schedule 1 part 1 paragraph 2. In looking at these provisions the Tribunal could not find either a definition of an "operative date" or a requirement that it should be stated. At the hearing the Respondent's Representatives said the "operative date" referred to the date of service from which the period of 21 days for appeal begins. The Tribunal said an alternative interpretation was that it is date when the notice took effect (became operative) under section 15. With either interpretation it required the drafter to anticipate the date of service. Whichever is the correct interpretation the date is not required in the Notice.
64. The Tribunal found that the Notice was sufficiently clear and compliant with regard to its operation by stating:

*The person on whom the improvement notice is served may appeal to a residential property tribunal against the notice within the period of 21 days beginning with the date on which the improvement notice was served.*
65. The Tribunal agreed with the Appellant's Representative that under Part 6 of the Civil Procedure Rules a document or notice served personally on a company after 4.30 p.m. was effective the following day i.e. 16<sup>th</sup> May 2013. It also agreed with the Respondent's Representatives that the service of the Improvement Notice on 16<sup>th</sup> May 2013 still gave 28 days before the 13<sup>th</sup> June 2013 when the remedial action was to be

started. However, the Tribunal found that in this case the Respondent had set itself an unnecessary tight timeline.

66. The tribunal therefore found the Improvement Notice not to be defective.

#### ***Issue 4***

67. The Tribunal considered that it was for the Appellant in this case to demonstrate that there had been compliance with the informal schedule sent on the 10<sup>th</sup> January 2013 to avoid the service of an Improvement Notice. The Tribunal found that the letter of the 12<sup>th</sup> December 2012, the schedule and letter of the 10<sup>th</sup> January 2013, the contacts on the 4<sup>th</sup> February 2013 and the 4<sup>th</sup> April 2013 after the informal compliance date of 25<sup>th</sup> January 2013 were together sufficient warning. It was also clear from the date of the Inspection Report that the Appellant had not carried out the work within the informal time limits. The failure to produce the Report meant that so far as the Respondent was concerned the Appellant had not complied at all. The Respondent was therefore justified in serving an Improvement Notice.
68. The Tribunal was not convinced that the Inspection Report met the requirements of the Improvement Notice but as this was not put in issue by the Respondent no finding is made.

#### ***Issue 5***

69. The Tribunal determines that the Respondent is able to claim its costs having decided that the Improvement Notice was validly served and that the Respondent was justified in serving it.
70. The Tribunal examined the schedule of costs it considered that at least £300.00 of costs had been reasonably incurred.

Judge JR Morris

Date: 1<sup>st</sup> November 2013