FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LVM/2024/0008**
Property	**:**	**45, 47 & 47A Bellefields Road, Brixton, London, SW9 9UH**
Applicants	**:**	**Margaret McCabe** **Winston Dwyer & Scarlette McCabe** **Dominic O'Riordan** **MI Computsolutions**
Respondent	**:**	**Lyndhurst Homes Ltd**
Type of application	**:**	**Appointment of a manager**
Tribunal	**:**	**Judge N Carr** **Mr S Mason FRICS** **Mr ON Miller**
Date and Venue of Hearing	**:**	**7 July 2025** **10 Alfred Place, London WC1E 7LR**
Date of Order	**:**	**8 July 2025**

DECISION AND ORDER

ORDER

(1) The application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 is struck out pursuant to rule 9(3)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') .

(2) Pursuant to rule 8(2) of the Rules, the Applicants may not make any further application for the appointment of a manager for this property without the prior permission of the Tribunal.

(3) Any such application for permission must fully set out:

(i) The change in circumstances since this application was made;
(ii) The basis on which the application is made;
(iii) The identity of the proposed manager (who, for the avoidance of doubt, must be an individual); and

(iv) Must be accompanied by:
   a. A copy of this order;
   b. A copy of the new section 22 preliminary notice relied on;
   c. Evidence of the Applicant's notification of the proposed section 24 application, to all other leaseholders in the building;
   d. Evidence that a copy of this order has been provided to the proposed manager; and
   e. A written statement from the proposed manager confirming their willingness to act, together with the proposed management plan and remuneration, and details of any professional indemnity insurance.

(4) For the avoidance of doubt, failure to comply with all of the requirements of (2) and (3) above without good reason will result in the Tribunal giving notice to strike out any further application for appointment of manager pursuant to rule 9(3)(c) and/or (e) of the Rules.

REASONS

1. By email on 21 May 2024, someone described as a 'Senior Programme Director', from Ms Margaret McCabe's ('the First Applicant') company, sent to the Tribunal an application for an order for the appointment of a manager of the subject property under section 24 of the Landlord and Tenant Act 1987 ('the Act'), on behalf of the First Applicant.

2. The application was signed by the First Applicant and dated the same date.

3. The Tribunal issued directions on 12 June 2024, requiring the First Applicant to take several steps, including to set out her full case by 9 August 2024. The First Applicant's failed to comply with the directions prior to that step, resulting in a delay to adding additional Applicants. Subsequently, to the Respondent appointed a new managing agent. The directions were twice amended, and time for setting out the Applicants' full case was extended to 6 September 2025.

4. The hearing was initially listed for 6 December 2024, but at the First Applicant's request (supported by the now joined co-Applicants) it was postponed to allow possible settlement. Three months were provided for the negotiations to complete.

5. There was no settlement. On 2 April 2025, Judge Powell gave Further Directions in which he specifically ordered as follows:

> 1. This application for the appointment of a Tribunal manager is listed for a one-day face-to-face hearing on **Monday, 7 July 2025** at 10 Alfred Place, London WC1E 7LR and starting at 10:00 am.
> ...
> 3. By **11 April 2025**, the Ms McCabe must provide the proposed new manager, Belgarum, with copies of her application, the Directions of 12 June 2024, this Order and Further Directions, and the hearing bundle prepared in accordance with Directions 8-11 of the Directions.

4. By **16 May 2025**, Belgarum must identify a named individual who it is proposed will take on the role of Tribunal-appointed manager and that proposed new manager must prepare replacement documents as listed in Direction 4 (i.e. relating to his or her experience, previous appointments, draft management order, required confirmations, etc).

5. By **23 May 2025**, Ms McCabe must provide those replacement documents and details to the Tribunal and to all other parties, but especially to the Respondent, Lyndhurst Homes Limited.

6. By **6 June 2025**, Lyndhurst Homes Limited may, if it wishes, provide an updated response in accordance with Direction 5, limited to commenting on the matters raised in the new documents/ details and the suitability or otherwise of the proposed new manager.

7. By **20 June 2025**, Ms McCabe must update the hearing bundle (in accordance with Directions 8-11) to include the new information and she must sent a copy to the Tribunal and to all other parties, especially to Lyndhurst Homes Limited (confirming to the Tribunal that she has done so).

8. As per the earlier Directions, any applications for further directions, interim orders, variations of existing directions, or a postponement of the final hearing/determination must be made using form Order 11.

9. If the Applicant fails to comply with these directions the Tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

6. Judge Powell specifically commented that these directions were given on the presumed basis that the parties had already complied with his earlier directions of 12 June 2025 (as amended).

7. On 3 July 2025 Judge N Carr reviewed this case, no bundle having been provided. Her observations were sent to all parties by email timed at 16:53:

> In early June 2025, Ms McCabe sent a series of emails asserting that the hearing should be postponed for 6 months, due to the leaseholders (it is unclear which) "buy[ing] the freehold" of the property "and aim[ing] to give the present freeholder a chance to prove themselves".
>
> At first blush, those two statements are incapable of operating simultaneously. If the leaseholders have purchased the freehold, the current Respondent will have no responsibilities in which to prove themselves. If the leaseholders are not buying the freehold, it would appear this application is no longer pursued. The Tribunal would not

ordinarily permit a party to keep its application to the Tribunal open in circumstances where the party has a right to give a subsequent notice and bring a subsequent application at a later date (at which time circumstances will inevitably have changed so that the facts underlying the original application will require substantial updating). It is generally inappropriate to leave an application hanging as a sword of Damocles over a party's head, rather than to resolve it.

The emails were not copied to the Respondent, and Ms Bhudia [the case officer] requested a completed form Order 1 for any adjournment to be considered. No form Order 1 has been received.

By an Order and Further Directions dated 2 April 2025, Judge Timothy Powell directed that Ms McCabe take certain steps. They included:

1. Providing the documents required by paragraph 3 of the Order and Further Directions dated 2 April 2025 to Belgarum;
2. Obtaining the documents from the proposed identified individual at Belgarum as identified in the directions dated 12 June 2024 as amended, paragraph 4, which were then to be provided to the Tribunal and the Respondent by 23 May 2025;
3. Updating the hearing bundle (presumed by Judge Powell to have been provided in accordance with the directions dated 12 June 2024 as amended, paragraph 8) by 20 June 2025.

Judge Powell made it very clear in that order that all applications to vary directions or for case management must be made by form Order 1, and that failure to comply with directions may result in the application being struck out.

There is no evidence on the Tribunal file to demonstrate that Ms McCabe has complied with any of these requirements. There is no evidence available to the Tribunal of any continuing issues at the property. There is no information available to the Tribunal about the proposed manager or their plan. There is no evidence that there has in fact been any transaction in which the leaseholders have acquired the freehold (and if there has been such a transaction, it would appear that the Tribunal has no remaining jurisdiction). There is no evidence that the Respondent has been provided with the opportunity to respond to the case against it, given Ms McCabe's failure to comply with Judge Powell's Directions. It remains unclear whether the parties in fact complied with the directions of 12 June 2024 as amended, or at what stage they are in the timetable.

Fundamentally, without a bundle prepared in accordance with the Tribunal's directions from which any of this information could be ascertained, the Tribunal will not be able to make a decision in this case.

In the context of the above, **the Applicant's conduct of this case is preventing the Tribunal from coming to a timely decision and is therefore inhibiting the Tribunal's ability to deal with this case fairly and justly**, in accordance with the overriding objective.

> For the avoidance of doubt, the hearing on Monday 7 July 2025 is **not postponed**, and it will start at 10am as planned.
>
> The **first question the Tribunal will consider at the hearing on 7 July 2025 is whether Ms McCabe's application should be struck out** pursuant to rule 9(3)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. That potential consequence was made clear in Judge Powell's Order and Further Directions dated 4 April 2025.
>
> **The parties should therefore attend at the hearing prepared to address the Tribunal on reasons why the case should or should not be allowed to continue.**

8. Ms McCabe replied by email at 16:59 on 3 July 2025:

> "*Please postpone as per my previous request?*"

9. She then wrote at 17:07 on the same day:

> "*Please note I will not attend on 7th July as per my previous email. My company is involved in large scale investment raise as we launched our AI teacher Robots. It is all consuming leaving me with no time to attend. Kindly deem this email a form 1 notice?*
>
> *I believe we are proceeding to buy the freehold which is most sensible idea in the circumstances as many of us wish to sell and move on from this terrible experience.*
>
> *Thank you for your patience & professionalism. Pass my thanks onto the learned judge with the message that I continue to be so proud of and grateful for our legal system.*"

10. It should be noted that one of the parties copied in on these emails, Mr Roberto Pajares, wrote to say:

> "*Thank you for copying me in but just to confirm I am not an applicant in this case or a respondent and have nothing to do with Margaret's application*."

11. The Tribunal responded to Ms McCabe's emails the following morning, 4th July 2025, with further comments from Judge Carr:

> Your correspondence will not be dealt with before the hearing.
>
> Any application you wish to make must be made at the hearing on 7 July 2025, supported by evidence, and must address those matters raised in Judge N Carr's notice of 3 July 2025.

12. Ms McCabe responded by email at 13:31:

> "*Please note the hearing set for 7 July has been cancelled – I have sent several emails to this effect and am resending in case you did receive it.*"

13. On Judge N Carr's instruction, Ms Bhudia replied to all parties at 15:43:

> The Tribunal has confirm that the Hearing on the 7 July 2025 is not cancel. I have re attached the letter that was sent to you yesterday.

14. Ms McCabe further replied at 15:52:

> "*You have known for weeks that this is not proceeding – why make unnecessary work for the tribunal. As explained I am unable to attend for crucial work related reasons.*
>
> *I consider this matter concluded and any further contact is over & above requirement.*
>
> *Thank you for all efforts.*"

15. At the hearing on 7 July 2025, no party attended.

Decision

16. We asked ourselves whether it is the interests of justice to proceed to determine this case in the absence of the parties (rule 34).

17. We are satisfied – and the above exchanges demonstrate on the balance of probabilities – that the parties were notified of the hearing (rule 34(a)).

18. We are also satisfied that it is in the interests of justice to proceed to determine the case. In large part, they are the same reasons that we are satisfied that the application for appointment of manager should be struck out on grounds that the First Applicant's conduct is prohibiting the Tribunal's ability to deal with this case fairly and justly. We therefore deal with our reasons in the round.

19. The First Applicant designates herself a "Barrister at Law" in all her emails to the Tribunal. While there is no record of her being registered with the Bar Standards Board – either as a practising or non-practising Barrister – that is a matter for them to consider in terms of conduct. For the purpose of these proceedings she is a litigant in person, and we decided to treat her as such, We give limited weight to the fact that she purports to have a legal qualification, which if correct should lead her to understand the importance of compliance with Tribunal procedure, directions and orders.

20. In a judgment given by the then Senior President of Tribunals, Sir Ernest Ryder, the Court of Appeal decided in *BPP Holdings v HMRC* [2016] EWCA Civ 121:

> *37. There is nothing in the wording of the relevant rules that justifies either a different or particular approach in the tax tribunals of FtT and the UT to compliance or the efficient conduct of litigation at a proportionate cost.* ***To put it plainly, there is nothing in the wording of the overriding objective of the tax tribunal rules that is inconsistent with the general legal policy described in*** **Mitchell** ***and*** **Denton.** ***As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals*** *and while I might commend the Civil Procedure Rules*

Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. ***It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's.*** *If it needs to be said, I have now said it.*

38. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which should, where possible, be put in advance to the tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system including the time expended by the tribunal in getting HMRC to comply with a procedural obligation. Flexibility of process does not mean a shoddy attitude to delay or compliance by any party.

39. I found the approach of HMRC to compliance to be disturbing. At times it came close to arguing that HMRC, as a State agency, should be treated like a litigant in person and that the constraints of austerity on an agency like the HMRC should in some way excuse unacceptable behaviour. I remind HMRC that ***even in the tribunals where the flexibility of process is a hallmark of the delivery of specialist justice, a litigant in person is expected to comply with rules and orders*** *and a State party should neither expect to nor work on the basis that it has some preferred status – it does not.*

40. If there is nothing in the policy argument, then the only complaint that there can be about the exercise conducted by Judge Mosedale is as to weight, that is that she afforded two factors substantial weight when it was inappropriate to do so. That is an insubstantial basis for a second appeal on a point of law. Matters of weight are for the first instance tribunal, subject to an overall test of Wednesbury unreasonableness.

21. This Tribunal's overriding objective (rule 3) and strike-out provisions (rule 9) are identical to those in the First Tier Tribunal Tax Chamber which were then before the Court of Appeal (see paragraphs 20 – 23 of the judgment).

22. It is clear that the starting point given by the Court of Appeal is that there should be compliance, even by a litigant in person, with the Tribunal's orders and directions. Where there is non-compliance, it is incumbent on the party in default to give their "good reasons" for their failure to comply, and preferably in advance of any default.

23. Then, in light of that information, we must ask ourselves in the round whether in the interests of justice to grant a party the opportunity to regularise its position (whether by relief from sanctions where there is a sanction (automatic, implied automatic, or by order), or, as in this case, by application of rule 8 of the Rules). Any party familiar with the Civil Procedure Rules rule 3.9 (and *Denton v T H White* [2014] EWCA Civ 906 (CA)) will see the close alignment of the approach the Senior President of Tribunals sets out in *BPP Holdings*.

24. The Tribunal in this case set out a detailed process to bring this case to a hearing, and has given careful directions on four occasions since June 2024. Those directions included the specific process by which the parties could seek a case management decision on an application for, e.g., postponement of the hearing, i.e. by completion of a form order1.

25. The Tribunal record demonstrates that the Applicants have not complied with <u>any</u> of those directions. They have not yet even set out their case for the Respondent to answer. It remains unknown who the proposed manager is, or what (if any) management plan is pursued.

26. The First Applicant's correspondence with the Tribunal, as set out in Judge N Carr's letter dated 3 July 2025, did not comply with the basic requirements that (1) any case management application be made by form order1, and (2) it be copied to all other parties. The Tribunal reiterated the requirements several times throughout these proceedings.

27. The First Applicant's emails between 2 June 2025 12:18pm – 10 June 2025 9:18am met neither of these very basic requirements. In particular, they were copied <u>only</u> to two co-Applicants.

28. On 19 June 2025 12:03pm, Ms Bhudia notified the First Applicant in terms: "*you need to complete the attached Order 1 Form, then copying <u>all parties</u> including the <u>Respondent.</u> Please note this case is listed for a Hearing on the <u>7 July 2025</u>*". On 2 July 2025, Ms Bhudia sent a further reminder (reforwarding the latter email), before referring this case to Judge N Carr resulting in the exchange in paragraphs 8 – 14 above.

29. There remains no formal application for adjournment, but even were we to waive that requirement (as we are entitled to do), there remains no explanation of why an adjournment is justified.

30. By the letter of 3 July 2025, Judge N Carr gave the First Applicant an opportunity to explain why the application should be permitted to proceed. The only explanation put forward by the First Applicant is that "*I believe we are proceeding to buy the freehold which is most sensible idea in the circumstances as many of us wish to sell and move on from this terrible experience.*" This may well have been the perfect opportunity to withdraw the application, in context of the 3 July 2025 letter, but it has not been withdrawn. It is not known what Ms McCabe means by she considers the matter "*at an end*", since she repeatedly insisted the hearing be postponed (rather than withdrawing the application). We have been presented with no reason at all for the manifest failures to comply, let

alone any "*good reason*", and no understanding of what remains to be determined in the application as-brought.

31. Looking at all the circumstances of the case, it is particularly troubling that in at least one email, on 4 July 2025 13:31, the First Applicant states in terms (copied to all parties): "*Please note the hearing set for 7 July has been cancelled - I have sent several emails to this effect and am resending incase you did receive it*". We find that email was sent in direct and knowing contradiction of the Tribunal's clear refusal to postpone the hearing, either with the intention of misleading other parties, or without caring they would be misled in consequence of it. It created further work for the Tribunal to ensure that no party was misled. That is the epitome of unreasonable conduct.

32. There remains no convincing explanation for the First Applicant's, or at least *an* Applicant's, failure to attend at the hearing today. If the First Applicant was indeed "*too busy*" (of which there is no evidence; and we take into account that this application is hers to promote to resolution), there are other Applicants who could have attended. No reason has been provided why they did not. The only person who attended was an 'observer', who disavowed any interest in the case, and left the premises when it was clear that there would be no hearing.

33. The Tribunal has been put to disproportionate expense in this case. The resources required, both administrative and judicial, due to the Applicants' conduct of this case, have required undue time and attention that other Tribunal users might have benefitted from, and have cost the public purse unjustified sums (including today, for which three judicial office holders were booked for a full day for the final hearing).

34. That is in the context that the Applicants still have not set out a case for the Respondent to answer, over a year since making the application to the Tribunal.

35. The Respondent has a right to finality. No reasons have been set out by the Applicant to justify a delay, save for the assertion that the Applicants are potentially buying the freehold or 'giving the new managing agent a chance'. Neither of those reasons justifies leaving proceedings open as a sword of Damocles hanging over the Respondent's head. The Tribunal will not permit its proceedings to be used for some unidentified collateral purpose.

36. The hearing was fixed in April 2025. The First Applicant paid the hearing fee for it and knew it was going ahead. We are satisfied that she knew about the hearing, and we are satisfied she was fully aware that the hearing had not been postponed. She was told twice by Ms Bhudia to make the right application, copied to the Respondent. She ignored those instructions.

Decision

37. We find that the Applicants are in substantial breach of the directions of the Tribunal, and have shown a flagrant disregard for the Tribunal's processes. The breaches are matters of seriousness and substance, given that there has been wholesale non-compliance and this is the second listing of what ought to have been the final hearing. No explanation – let alone good reasons – have been provided for the Applicants' failures to comply.

38. Looking at all the relevant factors to determine whether it is in the interests of justice to proceed, absent the parties, to determine the case today, the Tribunal has been presented with no grounds on which it could determine that it is just and convenient to make a management order. The cumulative failures to comply with the Tribunal's directions in this case mean that it is not appropriate to postpone this matter further, the greatest support for that conclusion being found in the fact that the Applicants have not yet even provided a case for the Respondent's to reply to. Quite simply, the Tribunal has been put out of the ability to deal with this case fairly and justly otherwise than by striking out the application for all of the reasons set out above.

39. In those circumstances, we are satisfied that firstly, it is in the interests of justice to proceed to determine the application today even in the parties' absence, and secondly, it is fair and just to bring these proceedings to an end, by striking out the underlying application.

40. In those circumstances, we are also satisfied that rule 8(2) permits us to impose such conditions on any new application that might be made in connection with this property as we consider appropriate. The manifest failures by the Applicants to promote their own application, set out a positive case, comply with basic Tribunal processes, or set out any basis on which we could believe there is or will be a case to answer (if indeed they are acquiring the freehold title of the property) borders on vexatious, and the First Applicant's conduct of the email correspondence over the past three days is over that border. The Tribunal must ensure that its resources are fairly apportioned, and the Respondent is entitled to early information that might found any such application so that it can be put in a position to consider whether this decision has disposed of the case (res judicata) or the new application is an abuse of process. That is a proportionate protection in this case.

41. We are therefore satisfied it is reasonable to impose a requirement that the Applicants obtain permission to make any renewed application under section 24 of the Act. The order above sets out what we consider reasonable requirements the Applicants must meet, before permission for any further such application would be granted. Failure to comply without good reason will result in any new section 24 application being struck out.

Name: Judge N Carr **Date:** 8 July 2025

Rights of appeal

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

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

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

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

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

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