

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/HMF/2025/0663**
Property	**:**	**2 Preacher's Court, Charterhouse, Charterhouse Square, London EC1M 6AU**
Applicant	**:**	**Mr Merryck Lowe**
Applicant's Representative	**:**	**In person**
Respondent	**:**	**The Governors of Sutton's Hospital in Charterhouse**
Respondent's Representative	**:**	**Mr Shomik Datta (of counsel)**
Type of application	**:**	**Section 41 of the Housing and Planning Act 2016**
Tribunal member	**:**	**Judge Stewart, Mr Morris FRICS and Mr Miller**
Date of hearing	**:**	**28 September 2026**
Date of decision	**:**	**1 October 2026**

DECISION

Decisions of the tribunal

1) The Tribunal strikes out the claim for a rent repayment order ("RRO") under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") brought by the Applicant on 2 January 2025 for the following reasons:

    a. Under Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") the Tribunal finds that the Applicant failed to comply with Tribunal directions which stated that failure by the Applicant to comply

with the direction could lead to the striking out of the proceedings or case.

b. Under Rule 9(3)(b) the Tribunal finds that the Applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the case fairly and justly.

c. Under Rule 9(3)(e) the Tribunal finds that there is no reasonable prospect of the Applicant's case succeeding.

2) The Tribunal did not find that the application should be struck out under Rule 9(3)(d) as it did not consider that the proceedings or case, or the manner in which they were being conducted were frivolous or vexatious or otherwise an abuse of the process of the tribunal.

3) The Tribunal orders, under the powers set out in Rule 17, that all medical information pertaining to Alden Lowe be removed from the Applicant's bundle including, but not limited to, pages 289-313.

4) No order is made under Rule 13 of the Rules as no cost information was provided by either party to allow an assessment of costs incurred. Either party may make a separate application under Rule 13 providing the details of any costs incurred should they so wish.

The Background

1. The RRO application asserted that the Respondent committed an offence under s.72(1) of the 2004 Act of having control of or managing a house in multiple occupation, which is required to be licensed but was not so licensed. The Applicant contends that the property, 2 Preacher's Court ("the Property") forms part of a Building ("the Building") that is a converted block of flats to which section 257 of the 2004 Act applies.

2. The Applicant previously applied in 2020 for an RRO in relation to the Property which was dismissed in a decision by Judge Sheperd in July 2021 ("the 2021 Decision") on the basis that the self-contained accommodation was not an HMO under section 254(4) of the 2004 Act.

3. The Applicant now seeks an RRO for the period 1 July 2021 to 30 June 2022 in the maximum sum of £33,276. On 18 August 2025 the Respondent applied for the case to be struck out on the basis that the application was out of time. On 9 September 2025, a case management hearing was held following which Judge Donegan produced a decision on 23 September 2025 confirming that the strike out application was unsuccessful as the rent repayment period for an offence under s.40(3) of the 2016 Act can be any 12 month period during which the landlord was committing the offence.

4. A further case management hearing was held on 14 October 2025, following which Judge Donegan gave directions on 17 October 2025 ("the October Directions") that the parties could rely on the evidence of one expert building surveyor each although the Applicant's expert, Mr Lord, who is an environmental health officer, was permitted to give evidence of fact. The Tribunal would decide at the final hearing, which then was set to be 21 and 22 May 2026 but which took place on 28 September 2026, (a) whether the Building is a converted block of flats to which s.257 of the 2004 Act applies, (b) whether to make an RRO and, if so, (c) for what amount.

5. Dates were agreed between the parties for witness statements to be exchanged, and for the parties' experts to inspect the building by 4pm on 20 January 2026, produce a joint statement by 4pm on 17 February 2026, and then exchange expert reports on matters which were not agreed by 4pm on 17 March 2026 ("the Expert Directions"). As is set out below, the Expert Directions were revised multiple times prior to the final hearing.

6. On 28 August 2026 the Respondent applied for the case to be struck out. On 4 September 2026 Judge Stewart ordered that the strike out application would be considered as a preliminary issue at the hearing on 28 September 2026.

The Hearing

7. The Applicant appeared in person and the Respondent was represented by Mr Shomik Datta (of counsel). In Amended and Varied Directions dated 9 April 2026 ("the Amended Directions"), the Applicant had been required to submit a bundle 21 days prior to the hearing. The Applicant sent their bundle of 346 pages at 6:20am on the morning of 28 September. The Applicant sent their witness statement (due on 10 July 2026) at 3:42am on 28 September and their skeleton argument at 11:59pm on 27 September. The Respondents also produced a skeleton argument on 25 September.

8. The Respondents had sent in a bundle of 421 pages on Wednesday 23 September on which both parties relied. Page numbers in square brackets in this decision are from the Respondent's bundle. The Tribunal permitted the Applicant to use his own bundle when replying to the strike out application following confirmation from Mr Datta that he had no objection. References to that bundle are in square brackets with an 'A' prefix.

9. During the hearing, the Tribunal noted that there was sensitive medical information in the Applicant's bundle pertaining to his son, who is a minor. The Tribunal made an order under Rule 17 that confidential

material relating to Mr Lowe's son's medical history, with particular reference to pages 289-313, should be removed from the bundle.

10. Mr Datta started the hearing by setting out the case for the Strike Out Application. Mr Lowe then replied both before and after lunch. The Tribunal then adjourned to make its decision which was read out in summary ex tempore and is set out here in full. The Tribunal is grateful to both Mr Datta and Mr Lowe for their assistance to the Tribunal in making their case.

The Strike Out Application

11. The Respondent claimed that the Applicant's case should be struck out under Rule 9 of the Rules. Firstly, the claim was that he failed to comply with directions which stated that failure to comply with them would lead to strike out. The various failures catalogued by the Respondent are:

    a. On 6 January 2026, Mr Lowe applied for the directions to be varied as he had been evicted on 5 January and was unable to arrange access for his expert which was due on 20 January 2026. This was refused by the Tribunal [50] on 7 January 2026.

    b. On 23 January, Mr Lowe wrote to the Respondent's solicitor at the time, Mr Carter, to request an extension to the deadline to the service of his witness statement and supporting reliance documents, as he had had technical issues assembling the document into a single usable format [54]. The witness statement was due on 20 January 2026.

    c. On 23 February, having missed the first two deadlines in the Expert Directions, Mr Lowe wrote to the Tribunal proposing changes to those directions [56]. He wrote again on 8 March [61]. The reasons given were his own medical issues and those of his son. This resulted in the Order and Varied Directions dated 17 March 2026 from Judge Martyński which amended the October Directions to allow the witness statement to be exchanged on 30 May, and for the deadlines for the Expert Directions to be moved to 4 April, 2 May and 30 May respectively [68].

    d. On 7 April Mr Lowe wrote to the Tribunal to update his medical record with a medical certificate confirming incapacity for work from 17 March to 17 May 2026 [72]. He asked for a further extension which was granted on 9 April [75] by Judge Stewart following which any witness statements were to be exchanged by 10 July, and the deadlines for the Expert Directions were extended to 22 May, 19 June and 10 July.

    e. On 18 May, following a chasing email from the Respondent's solicitor, Mr Lowe confirmed (copying in the Tribunal) that steps

were being taken to instruct an appropriate expert [85]. However, he then asked for an extension to the expert evidence timetable reflecting his medical incapacity. On 4 June [91] the Tribunal extended the deadlines for the Expert Directions to 26 June, 24 July and 14 August, confirming that failure to comply with these directions may lead to the tribunal striking out or barring the parties. No extension to the deadline for providing witness evidence was requested.

f. On 26 June, the Respondent's solicitor wrote to the Tribunal to confirm that the 26 June deadline had not been met. Mr Lowe then wrote to the Tribunal to confirm that he had identified a suitable expert and had formally instructed Mr Easton on 23 June, an appointment which Mr Easton accepted on 26 June [95].

g. On 6 July, Judge Stewart wrote to the parties to make it clear that the "Tribunal directions are not suggested guidelines. They are directions made in accordance with the parties' submissions and the Tribunal's own resources which, if not complied with, will lead to the Applicant's case being struck out." She then warned that, if by 4pm on 24 July the parties' experts had not provided a joint statement setting out agreed matters, she was minded to strike out the application [97].

h. On 16 July, Mr Lowe asked for access to the Building for his expert [98] and proposed a date that the Respondent could not accommodate [99]. Mr Lowe then suggested another extension of time, copied to the Tribunal [103] on the basis that he had not been offered any alternative inspection dates. He also reiterated that the original non-compliance arose during a period of medical incapacity ending on 17 June and reassured the Tribunal that since then he had appointed an expert and sought to secure an inspection window [105]. The Tribunal provided a new Order dated 30 July 2026 in which the dates for the Expert Directions were, again, extended to 14 August, 21 August and 4 September.

i. On 31 July, Mr Lowe wrote to the Respondent's solicitor to confirm that he had asked his expert for availability [118] and on 3 August he offered 11 August as a date for inspection [120] which was agreed. This was confirmed by Mr Lowe on 6 August [122] when he wrote to the Respondent's solicitor stating 'We can be there for 10am on 11th if this would work". The solicitor responded 'That is agreed'. However, when, on 10 August, the solicitor asked Mr Lowe to confirm the identity of his expert as a Mr Belasco, Mr Lowe responded that 'my expert has replied that this confirmation has come too late to allow him to attend tomorrow' [123].

j. The solicitor then responded that Mr Lowe's expert could attend the site after 1400 on 14th August. Mr Lowe went back to ask if 17 August would work instead [128]. However, in the meantime Mr Belasco had written to the Tribunal [130] confirming that he was considering withdrawing due to the conduct of the Applicant. On 21 August he confirmed that he had withdrawn, and provided reasons including inadequate instructions, insufficient information and no agreement to terms and payment [132].

k. On 28 August, Mr Lowe wrote to the Tribunal to ask for a further extension to 15 September so he could serve his substantive response and supporting evidence, and for new directions so that Mr Easton could inspect the Building in the week commencing 5 October [135]. Judge Stewart responded with an Order dated 4 September confirming that the strike out application which had been made by the Respondent's solicitors on 28 August would be heard as a preliminary issue, and that the Tribunal would not provide any further revised directions whether in relation to the expert evidence or otherwise. In addition, she stated by failing to comply with the many revised Expert Directions, the Applicant had forgone the opportunity to rely on expert evidence in the hearing.

12. In conclusion, Mr Datta said that there was still no witness evidence in support of the RRO application (although he did permit Mr Lowe to rely on his witness statement and bundle in his submissions on the strike out order). The Tribunal could not determine the proceedings fairly and justly as they could not make out the case made by Mr Lowe. Five separate orders had not been complied with. Mr Lowe had not particularised which building or part of a building is said to be an HMO, which works of conversion he was relying upon, nor how those works of conversion do not comply with the requisite building regulations.

13. Mr Datta also argued that the Applicant's conduct was frivolous and vexatious, as the majority of his correspondence had been 11th hour requests for extensions, leading to expense and wasted time on behalf of the Tribunal and the Respondent.

14. Lastly, Mr Datta argued that on the documentation in front of the Tribunal there was no reasonable prospect of Mr Lowe succeeding in his application. The claim for a rent repayment order requires the Applicant to prove the offence to the criminal standard. This would require him to satisfy the Tribunal that the Building is a converted building in accordance with section 257 of the 2004 Act and establish to a criminal standard of proof that such works of conversion do not meet the standard required by the Building Regulations 1991. The only admitted expert evidence from Ian Alexander [408] goes positively against this contention and therefore there is no real prospect of the application proceeding.

15. In the hearing, Mr Lowe claimed that his case was made out, but relied on arguments that were not contained within his Amended Statement of Case [177]. These arguments have not been included in this decision. In relation to the arguments the Tribunal can take account of, Mr Lowe stated that he had been unable to work on his application from 6 January 2026 when he was, in his words, evicted. He then went through a period of medical incapacity due to an illness following an assault on his son, and his own reaction to it. This period only ended on 17 June 2026. Medical certification was produced from a Doctor Joiris in Luxembourg (where Mr Lowe resides) which support Mr Lowe's claim that he had difficulty sleeping from 14 October 2025 (when his son was assaulted). Dr Joiris also provided his medial opinion that the Applicant had been unfit to work from 14 October until 16 March 2026 [A288]. This period was then extended to 17 May 2026 in a subsequent certificate [A313].

16. Mr Lowe then explained the situation between Mr Easton and Mr Belasco, confirming that when his incapacity ended on 17 June, he found that Mr Easton (who he had tried to engage) was not available. He then sought to appoint Mr Belasco who was also fully engaged. When Mr Lowe had finally arranged a date for the inspection, Mr Belasco 'was dissatisfied that he was going to have to get up at 4am and it was uncertain he would have access'. He went on to say that 'the arrangements all unravelled, not because he was remiss, but because everything was sought to be done at very short notice. The window was only 2 weeks.'

17. Mr Lowe went on to say that he believed his case had a reasonable prospect of success on the basis that he only needed to show that the Building breached building regulations from February 2021 to 3 January 2024 (being 12 months before Mr Lowe applied for the rent repayment order). He would be able to do that if he were able to arrange for his expert, Mr Easton, to inspect the Building. Mr Lowe proposed what he called a fair response without prejudice to the Respondents in which Mr Easton would act as a single joint expert, both parties be permitted to refresh their witness statements and for the Tribunal to provide new directions for a final hearing.

Reasons for the Tribunal's decision

18. The Tribunal agrees with the parties that it is the lack of expert evidence and any witness statements which makes it impossible for the Applicant to make their case and that there is no evidence before the Tribunal to support the Applicant's case. This is despite repeated extensions allowed to the Applicant by the Tribunal.

19. In relation to the witness statement, the Tribunal extended the original deadline from 20 January 2026 to 10 July 2026. However, despite the wording in his email to Mr Carter, the Respondent's solicitor, on 23 January that it was only a technical hitch that was preventing him sending

in his witness statement, the Applicant failed to do so until 3:42am on the morning of the hearing, 28 September 2026.

20. In relation to the Expert Directions, these were repeatedly extended to take into account Mr Lowe's ill health. Mr Lowe himself has confirmed that he was fit from 17 June 2026, and yet despite these further extensions failed to meet the Expert Directions. The Tribunal has given Mr Lowe considerable leeway and has taken into account all of his concerns. This is Mr Lowe's own application which the Tribunal would expect would take precedence and it has been clear, most recently following the very late filing of the skeleton, witness statement and bundle, that it has not always. Mr Lowe has provided evidence of other matters which have been taking his time and energy, including proceedings at the Supreme Court, but these are not relevant so far as the Tribunal is concerned.

21. That said, the Tribunal is not convinced by the Respondent's argument that the conduct of the Applicant meets the threshold of being frivolous, vexatious or otherwise an abuse of the process of the Tribunal as required for a strike out under Rule 9(3)(d). This is a very high bar, which the Tribunal is not satisfied has been met. However, ultimately, as Mr Lowe submitted himself in the hearing, he failed to comply with the Tribunal directions.

22. Mr Lowe contends that he is now in a better position and would like things to be reset. He acknowledged that there was no evidence before the Tribunal about the factual position in the apartment, by which the Tribunal understood he meant that there was no evidence that the Building was one to which section 257 of the 2004 Act applied.

23. In the hearing, Mr Lowe suggested an adjournment of the hearing, and a 'refresh' of the directions to once again allow him to obtain the expert evidence he requires in order to make his case. The Tribunal has been extremely patient, but its resources are not unlimited. It must also be mindful of the resources of the Respondent. Given the failure by the Applicant to take advantage of the repeated extensions allowed to him by the Tribunal, the Tribunal has no confidence that any further extensions would yield a different result. On that basis, the claim is struck out.

Name: **Judge Stewart** **Date: 1 October 2026**

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).