



TRIBUNALS
JUDICIARY

TIMOTHY POWELL
REGIONAL JUDGE

Mr Nilesh Solanki
2 Trevor Close
Harrow
Middlesex HA3 6AE

13 September 2021

By email only to: neilmsolanki@hotmail.com

Dear Mr Solanki

Complaint against a tribunal's decision
Ref: LON/00AQ/LSC/2020/0255
Property: 2 Trevor Close, Harrow HA3 6AE

Thank you for your email of 5 September 2021 addressed to the Chamber President, Judge McGrath. As you know from Mr Rouse's email of 6 September, this has been passed to me as I have responsibility for complaints in the London Region.

Your complaint

My role is to consider complaints of *judicial misconduct* against individual tribunal members, under the Judicial Conduct (Tribunals) Rules 2014, which are available on the following website: <https://www.complaints.judicialconduct.gov.uk/> or by writing to: The Judicial Conduct Investigations Office, 80-82 Queen's Building, Royal Courts of Justice, London WC2A 2LL.

I am grateful that you brought this matter to my attention. However, having considered your email carefully, together with the tribunal's decision of 12 July 2021 and its refusal to grant you permission to appeal dated 16 August 2021, I am unable to accept your email as a complaint against Judge Hawkes, who chaired the hearing on 1 July 2021. This is because, by rules 17 and 19, a complaint must contain an allegation of *misconduct* by a tribunal member and your letter of complaint does not do so.

I attach a copy of the relevant rules to this letter, for convenience.

Other matters you raised

Although I cannot accept your complaint under the 2014 Rules, I will still try to answer some of the points raised in your email. In order to do so, I have taken the

opportunity to discuss the tribunal's decision with Judge Hawkes. I set out your specific complaints under headings below, with my comments on them.

The tribunal did not quantify the loss that you suffered

According to your lease, you have responsibility as the leaseholder for insuring your property with a named insurer, or one nominated by your landlord, and through such agency nominated by your landlord.

You brought a claim against your landlord claiming that the insurance premiums you were required to pay to the broker, Stride Limited, were excessive by reason of the percentage commissions included in the premiums.

The tribunal set out the extent of its jurisdiction in paragraph 16 of its decision. According to paragraph 8 of the Schedule to the Landlord and Tenant Act 1985, this was to determine whether the insurance was unsatisfactory in any respect or the premiums payable were excessive. The tribunal found that between 2011 and 2019 40% of the gross insurance premium that you paid to Stride Limited represented commission, but that anything over 30% was excessive. The commissions were paid to your landlord's managing agent and to the insurance brokers but not, it seems, to your landlord.

In paragraph 31 of its decision, the tribunal confirmed these percentages, adding "We are not satisfied that, under Paragraph 8, we have power to vary the contract which the Applicant has entered into with Stride so as to require sums to be repaid to the Applicant."

In your application for permission to appeal, you calculated the amount that you considered should be returned to you by your freeholder/managing agent and asked the tribunal to consider a refund of the excess commissions to you. The tribunal dealt with that in its decision of 16 August 2021, refusing permission to appeal, saying that it was "not satisfied that it has jurisdiction under Paragraph 8 of Schedule 1 to the Landlord and Tenant Act 1985 ("Paragraph 8") to award the Applicant a refund of commission paid."

I cannot alter the tribunal's decision, but it appears to me to be correct and in accordance with the law. You paid the insurance premiums to a third party, Stride Limited, which was not involved in the proceedings. The premiums were not "service charges" payable to your landlord, which the tribunal had power to reduce. The tribunal's only jurisdiction to deal with the commission element of the payments you made was under Paragraph 8. That did not give the tribunal power to reduce payments already made, but only to require the landlord to nominate or approve a different insurer. Even when the tribunal had determined that the insurance premiums were excessive, there was no basis ("cause of action") on which the county court could order damages in respect of payments you had already made to a third party.

If, despite my impression, the tribunal is incorrect in its approach and if it should have quantified the amount of overpaid commission or ordered a refund, then its failure to do so may amount to grounds for appeal to the Upper Tribunal (Lands

Chamber), but not a complaint to the Chamber President about the tribunal or its decision.

The tribunal declined to order your landlord to reimburse tribunal fees you paid

Your landlord sought a determination that you were in breach of covenant for not insuring the property in the right amount. As the tribunal made clear in paragraph 35 of its decision, you avoided a determination of being in breach of covenant only by making payment on the day of the hearing and this, it appears, was the reason the tribunal declined to order your landlord to reimburse you for the tribunal fees that you paid.

You raised this in your request for permission to appeal and the tribunal dealt with it in its decision of 16 August 2021. Again, I cannot alter the tribunal's decision, but if it is incorrect in its approach, that may be a matter for an appeal.

The tribunal ruling is of no practical use

I have sympathy with your frustration that you brought a claim challenging the insurance premiums, that you sought a reduction and repayment of them, that you won the case when the tribunal determined the premiums were excessive, and yet you have not received any money back. As I have tried to explain above, this is because the tribunal's power to decide the matter was limited by Paragraph 8, which did not provide a remedy for the refund of monies due. These were not "service charges" payable to your landlord, which might have given you a right to repayment if they were unreasonable.

While I understand your concern, I consider that the tribunal ruling *is* of practical use for the future: first, any future commissions should be capped at 30% of the gross premium paid; and, secondly, you can still apply for relief under Paragraph 8(4)(a) or (b), whereby the tribunal may make an order requiring your landlord to nominate or approve a different insurer.

While I am sorry that you felt the need to complain, I do not consider that you have been "ill-served" by the tribunal, nor that you have insufficient detail upon which to found an appeal, if that is what you wish to do. However, given the very modest sums involved, you may wish to take further advice, perhaps from the Leasehold Advisory Service, before taking this step.

The next step

If you remain unhappy at the tribunal's original decision and its refusal to grant you permission to appeal, then you may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which this tribunal sent you notice of its refusal of permission to appeal. As you may be out of time, you would need to ask for an extension of time to seek permission to appeal and explain the reason for your delaying in applying.

The Upper Tribunal (Lands Chamber) may be contacted at the following email address: lands@justice.gov.uk, or by writing to: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL.

Right to a review

Insofar as this letter has considered whether your complaint was a complaint of judicial misconduct (which I do not think it was), then, under section 110 of the Constitutional Reform Act 2005, you may apply to the Judicial Appointments and Conduct Ombudsman for a review of my handling of your complaint on the grounds that there has been a failure to comply with prescribed procedures, or some other maladministration, provided that the application is made within 28 days of this letter. Further information about the Ombudsman's role can be found at: <https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman>; or by contacting the Ombudsman at the following email address: headoffice@judicialombudsman.gov.uk, or by writing to: The Office of the Judicial Appointments and Conduct Ombudsman, Postal Area 1.55, 1st Floor, The Tower, 102 Petty France, London SW1H 9AJ.

The Ombudsman will not consider any of the other matters I have dealt with above, which are solely to do with judicial decisions.

In the hope that this letter deals adequately with the matters you have raised, I will now treat your complaint as being closed.

Yours sincerely,

Timothy Powell
Regional Judge

Encl: Copy of rules 17 and 19

Extract from the Judicial Conduct (Tribunals) Rules 2014

Making a complaint about judicial misconduct

15. A complaint about a tribunal member must be made to the relevant President.

16. The relevant President is the President in column 2 of the Schedule to these Rules that corresponds to the tribunal member concerned in column 1 of the Schedule.

17. A complaint must contain an allegation of misconduct.

18. A complaint must be made in a complaint document unless the relevant President agrees to accept a complaint in another form.

19. A “complaint document” is a document in writing which—

(a) is legible;

(b) contains an allegation of misconduct on the part of a named or identifiable tribunal member;

(c) states the date, or dates, the alleged misconduct took place; and

(d) states the name and address of the person who is making the complaint.