

You can contact me on:

Our reference: EN-69099/0048

g.uk

In Confidence
Ms Noelle Klosterkötter-Dit-Rawé



29 July 2010

Dear Ms Klosterkötter-Dit-Rawé

Your complaint to the Parliamentary Ombudsman

I enclose a copy of a letter I have sent to Sir Malcolm Rifkind MP, in which I have set out the reasons why the Ombudsman will not investigate your complaint about the Residential Property Tribunal Service and HM Courts Service.

I am sorry that the Ombudsman will not help you on this occasion. I also apologise for the extensive delay in informing you of this decision, and any inconvenience or distress this delay may have caused you.

Yours sincerely

/ James Harrigan
Assessor

Millbank Tower
Millbank
London SW1P 4QP

Enquiries: 0345 015 4033
Fax: 0300 061 4000

Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

In Confidence
Rt. Hon. Sir Malcolm Rifkind MP
House of Commons
London
SW1A 0AA



29 July 2010

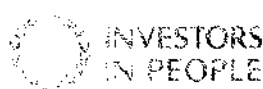
Dear Sir Malcolm,

Ms Noelle Klosterkotter-Dit-Rawé

1. Thank you for referring to the Parliamentary Ombudsman (the Ombudsman) Ms Klosterkotter-Dit-Rawé's complaint about the Leasehold Valuation Tribunal (LVT), which is part of the Residential Property Tribunal Service (RPTS), and HM Courts Service (HMCS). I am sorry for the long delay in informing you of our decision. We have carefully considered Ms Klosterkotter-Dit-Rawé's detailed submissions and the additional documentary information that is available on her website, www.leasehold-outrage.com. For the reasons I will go on to explain, however, we have decided not to investigate her complaint.

The complaint

2. Ms Klosterkotter-Dit-Rawé's complaint about the RPTS relates to the Leasehold Valuation Tribunal's (LVT) handling of an application made by the landlord of a building she owns a leasehold property in. She contends that by mismanaging the process for hearing the application, colluding with the landlord and breaching its mandate, the LVT caused her to incur nearly £30,000 of professional fees, along with significant anxiety and distress from the way she was treated.
3. Ms Klosterkotter-Dit-Rawé's complaint about HM Courts Service concerns their handling of two different civil claims brought against her by her landlord. She raises concerns about whether the claims should have been proceeded with, and how they were eventually proceeded with. She states that the courts involved repeatedly ignored her correspondence about the claims, and says that her subsequent complaints about these matters were not dealt with properly. She says that these failings caused her to incur additional financial costs and further stress and anxiety.



Millbank Tower
Millbank
London SW1P 4QP

Enquiries: 0345 015 4033
Fax: 0300 061 4000

Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

4. Ms Klosterkotter-Dit-Rawé asks for her financial costs to be reimbursed, and for 'very substantial compensation' for the treatment she received. She also asks for disciplinary action to be taken against the relevant officers involved in these matters, and for both RTPS and HM Courts Service to submit to the Ombudsman the steps they will take to ensure there is no recurrence of their failings.

The Ombudsman's jurisdiction

5. The Ombudsman's role is defined in the Parliamentary Commissioner Act 1967 (the Act), and is limited to considering complaints about the administrative actions of government departments, their agencies and other public bodies listed at Schedule 2 to the Act as being within her jurisdiction. HM Courts Service are listed here, so the Ombudsman can, in principle, consider complaints about how they carry out their administrative functions.
6. Members of the judiciary are not listed in Schedule 2 to the Act, however, so the Ombudsman cannot consider complaints about their actions or decisions. Furthermore, Section 6 of Schedule 3 to the Act precludes the Ombudsman from considering complaints about '*the commencement and conduct of civil or criminal proceedings before any court of law in the United Kingdom*'. This means that the Ombudsman cannot consider a number of the concerns Ms Klosterkotter-Dit-Rawé has raised about the two civil claims, including: the decision to proceed with hearing the claims despite there being numerous doubts about their legitimacy; decisions to stay certain hearings and not stay others; the decision to award her only one-quarter of the costs she says were incurred in disputing the second claim; and any other action or decision regarding the claims that was taken in the exercise of judicial authority.
7. RTPS are also not listed in Schedule 2 to the Act, so the Ombudsman cannot consider complaints about the actions or decisions of the LVT or any of its individual members. Consequently, much of Ms Klosterkotter-Dit-Rawé's complaint about the LVT cannot be investigated. RTPS is however listed as a 'relevant tribunal' in Schedule 4 to the Act. This means that the Ombudsman can, in principle, investigate the administrative actions of the LVT's administrative staff, but only in circumstances where those actions are not carried out under the express or implied authority of the Tribunal or any of its individual members. At this point I should mention that the Ombudsman cannot take disciplinary action against the staff of a body in her jurisdiction, though she may recommend that the body itself consider taking such action if she deems it appropriate in the circumstances.
8. The Ombudsman is also precluded by section 5(2)(a) and (b) of the Act from investigating any matter where the aggrieved party has or had a right of appeal before a relevant tribunal, or a remedy by way of proceedings in law, unless she considers that it would not in the circumstances be reasonable to expect them to resort, or have resorted to it. In Ms Klosterkotter-Dit-Rawé's case, it would seem that the appropriate avenue by which to have disputed the LVT's decision was by

appealing to the Lands Tribunal, and in respect of any decisions made by the judiciary on either of the civil claims, these would seemingly have been more appropriately challenged by way of an appeal to a higher court.

9. Where a complaint does fall within the Ombudsman's jurisdiction to investigate, she will normally only do so if it indicates that the aggrieved party has suffered an unremedied injustice as a direct result of the body in question not acting properly or fairly, or providing a poor service. She also expects an investigation to have a realistic prospect of providing a satisfactory outcome or remedy for the aggrieved party.

Reasons for our decision

10. I turn first to Ms Klosterkötter-Dit-Rawé's complaint about the LVT. As explained in the seventh paragraph of this letter, much of this part of the complaint cannot be investigated by the Ombudsman. For those elements of the complaint that do appear to be within her remit, the available information suggests that RPTS's administrative staff might not always have provided a reasonable standard of service. For instance, there appears to have been a delay in informing all the leaseholders in Ms Klosterkötter-Dit-Rawé's building of the landlord's application, and in informing them of a pre-trial hearing. The apparent failure to provide all the leaseholders with copies of the information appended to the landlord's application may also have been a purely administrative failing.
11. However, the financial costs Ms Klosterkötter-Dit-Rawé says she incurred in her dealings with RPTS do not appear to have arisen as a consequence of these potential administrative shortcomings. From the information we have seen, it seems that her decision to hire professional representatives stemmed from her dissatisfaction with the way in which the Tribunal itself was handling the claim; indeed her complaint to the Ombudsman indicates that the Tribunal's '*blatant obvious collusion*' with her landlord prompted her to obtain professional representation. This, as explained before, is not something the Ombudsman can look into.
12. We note that Ms Klosterkötter-Dit-Rawé does not appear to have ever received a clear explanation from RPTS of how these potential administrative failings occurred. It is understandable that this may have added to her general distress and dissatisfaction with the way in which her landlord's application was dealt with. However, an investigation into these administrative matters alone does not, in our view, have reasonable prospects of achieving an outcome that will satisfy Ms Klosterkötter-Dit-Rawé. An investigation would almost certainly not result in her receiving any reimbursement of the professional costs she incurred, or the '*very substantial*' compensation she seeks. Furthermore, the passage of time since these events took place (the LVT's handling of the application concluded seven years ago) seems likely to have a real impact on our ability to determine precisely what happened in the incidents in question.

13. We are similarly not persuaded that Ms Klosterkotter-Dit-Rawé's complaints about HM Courts Service can be resolved satisfactorily through an investigation by the Ombudsman. The judicial handling of both civil claims seems to underpin these complaints, but as mentioned in the sixth paragraph of this letter, the Ombudsman is precluded from investigating such matters.
14. There appear to have been some shortcomings in HM Courts Service's administrative handling of the first civil claim, particularly with regard to the relevant court not always responding to Ms Klosterkotter-Dit-Rawé's correspondence thoroughly and timeously. Also, while the administration of the claim may have been rather more complex than usual (there were numerous defendants to the same claim, all of whom had to be copied into correspondence that related to the claim as a whole but did not necessarily relate to each individual case), it seems that the court could have, but did not take measures to minimise the confusion this had the potential to cause. As a result, it seems that Ms Klosterkotter-Dit-Rawé occasionally received correspondence from the court indicating that further civil action was pending against her when in fact it was not, which might understandably have added to any stress she was suffering with.
15. There appear to have been similar shortcomings in HM Courts Service's administrative handling of the second civil claim. We note that after Ms Klosterkotter-Dit-Rawé indicated her intent to contest the court's jurisdiction to hear the claim, the court issued a notice that inaccurately represented her stance, and then took over six months to issue an amended notice. HM Courts Service's replies to her subsequent complaints also seem somewhat confused and inconsistent (particularly their explanation of an issue regarding payment of a counterclaim fee), and rather unsympathetic to her distress, given that their administrative failings appear to have contributed to her situation.
16. As with the complaint about RPTS, however, an investigation into HM Courts Service's potential administrative shortcomings does not appear to hold any prospect of satisfying Ms Klosterkotter-Dit-Rawé, or providing any of the outcomes she is seeking. The costs she claims to have incurred do not appear to have arisen as a consequence of those potential failings (and in respect of the second civil claim, a decision on costs has already been made by the Supreme Court Costs Office, which the Ombudsman cannot challenge). Nor do we consider those potential failings to be serious enough, even if proven, to warrant payment of substantial compensation. Finally, while we note Ms Klosterkotter-Dit-Rawé's concern to see HM Courts Service improve the standard of service it provides in the future, in the specific circumstances of this case we are not persuaded that the Ombudsman should investigate her complaint on that basis alone.

17. I realise that Ms Klosterkotter-Dit-Rawé will be disappointed that the Ombudsman will not help her on this occasion. However, I hope that this letter has clearly explained our reasons for that decision. I have sent her a copy of this letter for her information.

Yours sincerely

James Harrigan
Assessor