

**JUDGMENT : MR JUSTICE LAWS:** Administrative Court. 12<sup>th</sup> June 1997

1. This is an originating motion brought under section 23(1) and section 23(2) of the Arbitration Act 1950. The applicants seek orders removing an arbitrator for misconduct and quashing the award that was made upon the occasion in question.
2. Mr and Mrs Ahmed, who have appeared before me in person, were tenants of the London Borough of Southwark occupying a one bedroom flat in Forest Hill between 1991 and 1996. They had complaints to make about the condition in the flat, notably dampness in the bedroom. In addition, they said there was faulty concrete above the bedroom window and the window which needed repair. The tenancy provided for arbitration by the Southwark Arbitration Tribunal. The Tribunal's rules contained this provision at paragraph 34: *"The Arbitration Tribunal can adopt whatever procedure seems appropriate as long as the Tribunal allows both sides to put their case fully and makes sure that both sides have a fair and reasonable hearing. In particular, the Tribunal must allow both sides to attend, to be represented, to be accompanied by a friend or adviser, to bring witnesses and to put questions to witnesses brought by the other side. A Member of a Council may not be the adviser, friend or representative of either party."*
3. There is an affidavit before me from Jane Ringham who is employed by the London Borough of Southwark as the Arbitration and Electoral Services Manager. In the affidavit she describes something of the history of the Southwark Tenancy Arbitration Tribunal which was established in about 1984 to deal with disputes between the Council and its tenants regarding allegations of breaches of the tenancy agreement. It comprises a pool of councillors, tenants representatives and independent chairs. A legally qualified lawyer acts as the clerk to the tribunal to offer procedural advice and to ensure a fair hearing. Miss Ringham's affidavit says since its inception the tribunal has dealt with over 8,000 cases.
4. Mr and Mrs Ahmed invoked the arbitration provision in the tenancy agreement. The matter first went before the tribunal on 22nd May 1995. In its award, the tribunal after that hearing, said this:  
*"In their application, the tenants are complaining about the following:-*  
*- that the council should replaster the concrete above the bedroom window;*  
*- that the window needs repair;*  
*- that the council should carry out anti-damp treatment in their bedroom.*  
*The tenants complained that they had requested the repairs since October 1991 and no action has been taken by the council. Walls were identified as very cold and they had suffered water penetration into the bedroom."*
5. Towards the end of the award at paragraph 4.1 the tribunal say this:  
*"We then ask the tenants if they were seeking compensation; they answered us in the negative. They wanted the repairs to be done and contemplated rehousing -- could not explain the delay in carrying out the repairs since October 1991. We have therefore not gone into the question of possible compensation for any proved delay in dealing with the work.*  
*5. We order the council to carry out the work identified in the building inspector's report dated 20/04/95 in the next 28 days."*
6. After this award had been made, the applicants applied to the County Court to set it aside. Provision for the County Court to have jurisdiction in such circumstances was apparently provided for in the Tenancy Agreement. The basis upon which that application was made need not be rehearsed. It is enough to say that the Central London County Court remitted the matter to the tribunal to consider the applicant's claim for compensation in relation to the period 1991 to 1996. Accordingly, there was a further hearing before the tribunal in June 1996 and a further award made on 23rd July 1996.
7. Mr Ahmed has put in lengthy and helpful skeleton arguments, but it was clear from the courteous submissions made by him in person to the court that in essence there is a single complaint here, which is that he was not given a fair hearing in June 1996. I am not concerned with any legal complaints about the merits of the award in May 1995. They would have been subsumed by the applicant's proceedings before the County Court. In his affidavit in support of this motion Mr Ahmed says this:  
*"34. At the hearing of the reference on 27/6/96, the chairman opened the hearing by expressing his unwillingness to go through the facts of the case and determine each and every fact and the evidence submitted to him stating that 'We shall not go through what we have been through already'.*  
*35. The chairman in preventing the applicants from presenting their case fully and explaining the evidence submitted before him was in breach of the basic rules of natural justice and consequently has misconducted himself and the procedure."*
8. There is an affidavit before the court from the Chairman himself, Mr Crow, who says:  
*"7. I asked Mr Ahmed to outline their claim for compensation. He began by outlining the history of his case and background information. He was reminded that the Panel members were familiar with the background information. He continued further and then he outlined his claim."*
9. The fact that Mr Ahmed indeed outlined his claim is, as it seems to me, borne out by the handwritten notes of the hearing exhibited to Mr Crow's affidavit. The first two pages of that document set out, as I understand it, the representations made by Mr Ahmed to the tribunal. I need not read it out. The award itself contained these passages:

- "3. The tenants told us that they were claiming compensation for the disrepair referred to the tribunal in 1995. The following repairs were necessary --
- Re-plastering the concrete above the window
  - Re-seal the window.
  - To carry out the damp treatment as assessed by the housing inspector in 1991.
- These were the matters complained of in the tenant's application dated 11th April 1995.
4. The tenants also claimed compensation for excessive heating between 1992-March 1996, personal injury in that Mrs Ahmed suffered with arthritis said to have been caused by the conditions in the property and special damages for the costs incurred by some 30 correspondence [so it is put] to the council, loss of earnings caused by the attendance at the hearings in May 1995 and June 1996, travel expenses and child care costs."
5. The tenants stated that the period of disrepair is between October 1991 and March 1996. The order of the tribunal to carry out works within 28 days was not complied with. Reports of dampness were made to the housing officer in 1991. The matter was referred to a building inspector who made various recommendations. The building inspector confirmed that it was compensation dampness, he recommended that the whole bedroom had to be replastered and redecorated. The tenants also stated that they had to make numerous contacts with neighbourhood office and all their complaints were ineffectively dealt with.
6. The council's position is that the dampness complained of is in fact condensation caused by the tenants and family all sleeping in one bedroom. The diagnosis of condensation was made known to the tenant in 1991 and by their letter dated 21st October 1991, [that letter is before the court] the tenants acknowledged this and demonstrated a willingness to share responsibility by redecorating. This building inspectors reports of 7th December 1994 noted that the 'condensation was the problem, window is never opened, water was running down window - left open' for 15 mins - water disappeared. It is clear to me ventilation is the problem. The building inspector's report dated 20th April 1995 also confirmed the cause as condensation.
10. The condensation is said to have been exacerbated by inadequate use of ventilation and excessive heating. The officer told us that he had recently taken over the management of this property in February 1996. The previous neighbourhood housing officer had left the council. He therefore could only rely on the information recorded on the file. The tenants have now been moved to alternative accommodation."
11. Under the heading "The Decision" the tribunal continue as follows:
- "Having heard all the evidence and considered all the documents, we find that the tenant is entitled to compensation for the disrepair with regards to the replastering of the concrete above the window and reseal of the window. The disrepair, in our view, was of a minor nature.*
- With regards to the bedroom, there is no doubt that the council should have displayed greater diligence, there was undue delay and the tenants complaints should have been dealt with more efficiently and quickly. However we have read the building inspectors reports, we find that the bedroom was affected by condensation, compounded by inadequate use ventilation and exacerbated by the family all sleeping in one bedroom. In those circumstances we do not find that the council has breached its repairing covenant under the tenancy agreement as there is no disrepair.*
- We therefore award compensation for the failure to comply with the tribunal's order within the timescale in the sum of £100. We award general compensation for the disrepair in the sum of £400. The total sum of £500 must be paid within the next 6 weeks, the sum may be set off against arrears of rent if any."*
12. I should also read from the last paragraph of the Chairman's affidavit in which he said: "I fail to understand the Applicants' complaint, bearing in mind that the Building Inspector's reports of October 1991, 24th December 1994 and 20th April, 1995 refers to the cause of the condensation as being due to the Applicants' sealing of the window in the bedroom and the spinner that is kept shut. Further at the hearing on 23rd June, 1996, according to the Clerk's notes, the Housing Officer's evidence is 'Damp according to B.1 at p65 condensation, very slight, moisture laden, air condensed on cold surface, black mould caused by lifestyle. Failure to provide adequate ventilation. Windows closed up tightly and sealed."
13. It is elementary that a fact-finding body such as this tribunal owes a duty to act fairly, to hear both sides, to ensure both sides are properly apprised of the case against them. Indeed, in this particular case, paragraph 34 of the tribunal's rules, which I have read, provide for no less. The question is whether Mr and Mrs Ahmed were not accorded a fair hearing. It became clear in the course of the proceedings before me that Mr Ahmed's particular complaint is that that he had no notice of the possibility of an adverse finding to the effect that the condensation in the bedroom was caused, or principally caused, not by disrepair attributable to the Council's fault, but by, as it was put in more than one of the documents, the applicant's own lifestyle. Whether such a point was specifically put to the applicant at the hearing in the Summer of 1996 was not at first clear from the affidavits and at one stage I was minded to adjourn these proceedings for further evidence. However, on being shown further documentation, I was and am satisfied that this aspect of the matter, which was at the heart of the authority's case was fully within the contemplation of the applicants.
14. I should refer, first, to a document headed "Report to Arbitration". That is a document placed before the tribunal in May 1995 by the housing officer: "The Building Inspector's report states the main cause of the condensation to be the fact number of occupants within this household and using one bedroom. This has resulted in the need for increased ventilation to the bedroom to reduce the humidity level."

15. It is plain that the Building Inspector's reports and in particular those referred to in the closing paragraph of the Chairman's affidavit (which I have read from) were before the tribunal and in the possession of the applicants. Perhaps more significant is what is contained in the notes of the hearing exhibited, as I have said, to the Chairman's affidavit, where the representations made by the housing officer are dealt with. The notice reads in part as follows:  
*"Not rising damp.  
Damp according to BI [that must be Building Inspector] P65.  
Condensation v.slight. Moisture laden air condenses on cold surface.  
Black mould caused by lifestyle.  
Failure to provide adequate ventilation. Windows closed up tightly and sealed."*
16. The reports themselves which are before me, as they were before the tribunal, included one which contains these words:  
*"Is the damp rain penetration? No.  
Condensation Problem - Window has a spinner fitted, but window is never opened.  
M/Growth [mould growth] to external wall and ceiling height. Water was running down windows - left open for 15 minutes - water disappeared. It is clear to me ventilation is the problem, (due to this man's lifestyle)".*
17. Whether or not the Tribunal Chairman himself questioned Mr Ahmed about these materials, it is plain in the end beyond any sensible doubt that the Council's case relied, fair and square, on this diagnosis of the problem; and that case was, as it seems to me, inevitably known to Mr Ahmed. It may be, and I mean no disrespect, that the procedure before this tribunal is not especially over-sophisticated. That is not to say that its duty to ensure a fair hearing is any less than such a duty owed by any other tribunal. But, in the present case, it seems to me that substantial justice was done. There is no case of misconduct here.
18. I have looked at the other complaints in Mr Ahmed's skeleton. There is, as I see it, nothing in them. Mr Ahmed accepted in terms, and rightly, that the case was about whether he had a fair hearing. In all the circumstances, I have concluded that he did and this motion must be dismissed.
19. **MISS MARSHALL:** My Lord, I would apply for the authority's costs.
20. **MR JUSTICE LAWS:** Mr Ahmed, you will not agree with the result, but you have lost the case and in the ordinary way you are liable to pay the costs, whether the Council would enforce them against you may be another matter.
21. Do you want to say anything about the costs? No?
22. Very well. You may have your costs.

THE APPLICANT appeared in person.

MISS I MARSHALL (instructed by Head of Legal Services, London Borough of Southwark) appeared on behalf of the Respondent.