

Mr Stan Gallagher
Arden Chambers
2 John Street
London WC1N 2ES

Ms Noëlle K-Dit-Rawé
3 Jefferson House
11 Basil Street
London SW3 1AX

(By special delivery)

20 January 2004

Dear Mr Gallagher

- **Summary of events, on Gallagher's page;**
my Comments to 13.11.03 'reply' to Rachman
Andrew David Ladsky's 21.10.03 Part 36 offer
- For my complaints:
- **Doc library # 2.3 , # 2.4 and # 3.2;**
- **Legal Services Ombudsman # 4**

Complaint to the General Council of the Bar

1. I intend to complain to the General Council of the Bar about the way you have handled my case.

As question #9 of the complaint form asks whether I have raised my complaint with the barrister concerned, I am offering you the opportunity to respond to the following on which I intend to base my complaint.

2. **My complaint is that you have written a reply to what Cawdery Kaye Fireman & Taylor described as a "Part 36 Offer"** ¹ that did not contain the points we had agreed at the 28 October 2003 meeting
3. **You made no reference to the fact that the lack of/insufficient specification identified by the LVT had not been addressed**
4. In preparation for the meeting, my surveyor, Mr Brock of LSM Partners, had produced a summary of his assessment of the offer – of which he gave you (and Ms Lisa McLean of Piper Smith & Basham) a copy. One of this key concerns was the fact that, although more than four months had elapsed since the 17 June 2003 report by the Leasehold Valuation Tribunal, the lack / insufficient specification on items amounting in total to £144,745.87 (exc. VAT and management fees) – which had prevented the LVT from coming to a decision on these items – had still not been addressed.
5. This was of great concern and discussed at length during the three-hour meeting - taking up a large part of it. It was agreed that this fact would be included in the reply – as Ms McLean captured in her Attendance Memo. ² In particular:

"In the covering letter if we were to accept the offer we would say that we were not happy that the specifications remain unchanged and the LVT had commented on the same fact, there had been no re-tendering of any sort, the matter had stayed with the same contractor etc etc.."

6. In the 'notice of acceptance' you (given that 'you' copied me on the first and only draft I ever saw which you sent at 15h32 on 13 November) wrote "...your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings...". ³ While I do not understand what this means, one thing for sure, it does not capture what we agreed i.e. as per point #5 above.
7. In your email of 13 November 2003, 15:32 ⁴, to which you attached the 'notice of acceptance' (and 'draft consent order') you stated: "*I attach the acceptance and the draft order NB though a matter for my solicitors, I do not think that it would be right not to include the reference in [] to the major works in the letter of acceptance...*"

¹ Document from CKFT, dated 21 October 2003 and described as a "Part 36 Offer"

² Attendance notes from Ms Lisa McLean, Piper Smith & Basham, of the 28 October 2003 meeting

³ 'Notice of acceptance', drafted by Mr Stan Gallagher, received on 13 November 2003

⁴ Email from Stan Gallagher, sent on 13 November 2003 at 15h32, and on which I was copied

8. The comment in the square brackets (last sentence of the penultimate paragraph on the 'notice of acceptance) reads: "[You will note that, for the avoidance of doubt, the draft order makes specific reference to the major works the costs of which are the subject of this claim]".

Neither does this capture what we agreed would be included in the reply i.e. point #5 above.

9. In your email of 13 November at 10h12⁵ you stated: *"..Instructions are needed on whether Ms Rawe wishes to accept the offer, subject only to the possibility of tweaking it as discussed in conference, or to reject it and put forward a counter-offer"*
10. In my reply to your email at 12h26⁶ I wrote: *"Although my views and wishes as to what 'should be said' and 'should happen' remain as expressed in my communication of 7 and 13 November - I am accepting your advice: to accept the offer - as you have extensive experience of handling this type of cases on behalf of lessees rather than landlords.*

Can you please thus, be kind enough to draft a reply for my review - with the 'tweaking' you detailed"

i.e. what you had said in your 10h12 email: *"tweaking as discussed in conference"*

11. This is not what went in the documents.
12. On 13 November, at 9h11, I sent you a document by fax⁷ (as well as to Mr Richard Twyman, Piper Smith & Basham) in which I stated *"That I am being exceptionally generous in my reply to Steel Services' offer considering that"*:
- the offer includes an amount not supported by evidence - which, since the 28 October meeting, I had calculated as £1,735.74
 - I had not been provided with the 2002 accounts
13. In relation to my first point above *"the offer includes an amount not supported by evidence"*, you evidently opted to block-out the information you were presented with by Mr Brock. In particular – (and in addition to the fact that you did not include a statement about the lack of specification not having been addressed - as detailed above), in your 12 November 2003 email of 17h09⁸ to Mr Twyman, you stated: *"It is virtually certain that the claimant will beat it..."*.
14. As I wrote to Ms McLean (who, like you, opted to ignore / block-out the findings from the LVT) – (as well as in my attached letter of complaint to Piper Smith & Basham (point 3.6)⁹): *"Because of the lack of specification identified by the Tribunal (and initially by Mr Brock), it cannot be determined what, if any of this amount (i.e. £144,745.87) is actually due by residents. Consequently, if the Tribunal cannot determine the reasonableness of the sum demanded for these items, how can the Court rule that I should pay even £1.00 of it?"*

Your assessment is therefore incorrect.

15. Furthermore, on 12 November 2003, in your email of 17h09 to Mr Twyman, you misrepresented what Mr Brock had presented at the 28 October meeting, by stating that *"his calculations showed*

⁵ Email from Mr Stan Gallagher, dated 13 November 2003, 10h12

⁶ My 13 November 2003, 12h26, email reply to Mr Stan Gallagher

⁷ My 13 November 2003, 9h11 fax to Mr Stan Gallagher (and Mr Richard Twyman)

⁸ Email from Mr Stan Gallagher to Mr Twyman, dated 12 November, 17h09 (in appendix 5 above)

⁹ My letter of complaint, dated 2 December 2003, to Mr Richard Berns and Mr Ian Skuse, Piper Smith & Basham

that this sum could not be bettered"¹⁰. This is not true. Mr Brock has neither stated, nor demonstrated this.

16. The evidence for this is that he cannot do this for two reasons. Firstly, the boilers account for a large part of the £144,745.87, for which the LVT was unable to make a decision. As Mr Brock stated during the Tribunal hearing, he is not qualified to comment about the boilers – other than say that the specifications are so vague that it is impossible to determine the type of boiler required – and hence the costs. (A point endorsed by the Tribunal in its 17 June 2003 report: *"...the Tribunal was frustrated by the lack of detail in the specification and in Mr Gale's evidence. Works were not clearly identified, were not measured where they clearly could have been, and there was some element of duplication. Some items were not specified at all e.g. the types and capacity of the boilers"*).
17. The second reason is that Mr Brock did not: (1) draw-up the specifications for the remaining items (for which the Tribunal said to have no/insufficient specification); (2) put them out to tender to three contractors – and nor did I ask him to do it.
18. In my fax of 20 November 2003 to Ms McLean, I pointed out your misrepresentation of Mr Brock's presentation on 28 October: *"I would also point out that contrary to Mr Gallagher's comment in his 12 November email to Mr Twyman, Mr Brock did not say that "I could not better the sum offered". Rather, he said that my insisting on having the outstanding specification redrawn, or tightened up i.e. in relation to items amounting to £144,745.87, would add to my advisory costs and I had to balance this against my share of the costs of these works"*¹¹.
19. In my fax to you of 13 November 2003 at 9h11, I also stated that the offer *"was in breach of the Civil Procedure Rules"* and explained this by referring to the Ford vs. GKR Construction, 2000 case, in particular:

"If the process of making Pt 36 offers before the commencement of litigation is to work in the way in which the CPR intend, the parties must be provided with the information which they require in order to assess whether....to accept that offer...If a party has not enabled another party to properly assess whether or not... to accept an offer which is made because of non-disclosure to the other party of material matters , or if a party comes to a decision which is different from that which would have been reached if there had been proper disclosure, this is a material matter for a court to take into account in considering what orders it should make"
20. At the 28 October meeting, you did not make any comment about the requirements for the working of Part 36 offers. I found this out from my own research. And the reason I undertook this research is because, as I explained in my letter of complaint to Piper Smith & Basham (point #3.9) I felt, at the meeting, that the situation ought to be handled differently, but my lack of knowledge of legal matters prevented me from challenging the discussion.
21. In your email of 13 November, 10h12, you stated: *"Moreover, the terms of response that Ms Rawe sets out in her faxes [NB: you were referring to my faxes of 7 and 13 November] do not constitute a realistic basis for settling the claim and will not be accepted by the Claimant. I must advise that I cannot see the point of responding in those terms. By this I do not mean to be unkind, but it must be remembered that the point of making an offer is not to debate the issues in dispute, but to set out a realistic basis to compromise the claim and (if the claim is not settled) to protect the litigant's position on costs"*.

¹⁰ Mr Gallagher' email, dated 12 November, 17h09, to Mr Richard Twyman (in appendix 5 above)

¹¹ My fax, dated 20 November 2003, to Ms McLean

22. In my fax of 7 November 2003 to Mr Richard Twyman¹² I did set-out points which I felt ought to be included in the reply.

In essence, the major additional point relative to what we had discussed on 28 October was my view that a 55% reduction in the original sum demanded, (equivalent to £8,050.00), vindicated my position. Consequently, the Claimant should be paying for my costs.

23. In your 12 November email of 17h02 you wrote: “...I am bound to say that it is not a realistic assessment of the strengths of the parties’ respective positions”

Your point reinforces my earlier assessment: that you opted to ignore the findings and conclusions from the Tribunal (which I reiterated in my 7 November 2003 fax).

24. Due to the use of what I can only describe as ‘bullying and intimidation tactics’ by Richard Twyman – whom I viewed as taking advantage of both, my lack of experience and knowledge of this type of situation, and of the fact that I was at work - on 13 November I did not raise this point again.

25. It ‘may be’ that the latter part of my 7 November letter warrants your comment “...By this I do not mean to be unkind, but it must be remembered that the point of making an offer is not to debate the issues in dispute...” but **I do not accept your comment** “...the terms of response that Ms Rawe sets out in her faxes do not constitute a realistic basis for settling the claim..”

26. In particular, given the CPR Part 36 guidelines - pointing out that I am accepting the offer – even though I have not been provided with the necessary information to assess it - is not only relevant, it is absolutely essential – as you ought to know - if the case proceeds to a Court hearing.

27. A reference to the CPR, in particular Lord Woolf’s opinion in relation to **Ford v GKR Construction Ltd** [2000] 1 All ER 802, should have been made in the reply.

28. The only comment you made about the offer in the ‘notice of acceptance’ is: “Your offer is not a Part 36 Offer as it departs from the automatic cost consequences imposed by Part 36: see CPR 36.14 and see generally the Whitebook-s commentary”.

29. Within one hour of receiving your documents, I faxed them back to you (and Richard Twyman). On the notice of acceptance I wrote “+Non-compliance with Section 20 for some items, as a consequence of which the LVT was unable to take a decision” – as a reminder that the lack of specification identified by the LVT had to be included.

(By then, and contrary to my instructions to let me review the drafts prior to sending them (my faxes of 7 and 13 November, and my 12h26 email of 13 November), the documents had apparently been sent by Richard Twyman to CKFT. But this is a complaint in relation to Piper Smith & Basham, to be dealt with by the Office for the Supervision of Solicitors).

30. **Contrary to what you had advised on 28 October, you included the interest on the ‘draft consent order’**

31. At the meeting on 28 October you said that CKFT could not charge me interest because the costs had not been incurred, as the works had not yet started. Yet, in the ‘draft consent order’ you included the interest¹³

32. To my query Ms McLean replied on 18 November¹⁴ “...there appears to be just one point to clarify namely the interest point you have highlighted on the draft Consent Order. I have in fact spoken to Mr Gallagher and he confirms that were the matter to go to trial, the interest point is an argument that we would raise and we would argue that rather than pay

¹² My letter of 7 November 2003 (sent by courier) to Mr Richard Twyman

¹³ ‘Draft consent order’ produced by Mr Stan Gallagher on 13 November 2003

¹⁴ Letter from Ms McLean, dated 18 November 2003

them interest on sums, any interest should go into the trust fund. However, for the purposes of settling this case and giving the amount of interest, the advice would be to settle on the terms as set out in that order".

33. I replied that this amounted to a change of position relative to what had been agreed at the 28 October meeting ¹⁵ and viewed it as another 'off-line' action that had been agreed without consulting me.
34. I view your opinion as detailed by Ms McLean as incorrect, and in fact, more to the point, view your original opinion as also incorrect.

The demand for interest is a matter that should have been addressed in the reply – and not because the works had not started, but because Steel Services is demanding payment in advance – in a manner which does not comply with the terms of my lease. Therefore, it *cannot* demand interest from me.

35. Steel Services, *can* under the terms of my lease – **of which you had a copy** – ask me for payment in advance. However, my lease states:

Include in the relevant year... the sum or sums.. which the lessor shall expect to incur at any time after the end of the relevant financial year... as the accountant may in his reasonable discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by way of provision for expected future costs expenses and outgoings) in the amount of the service charge for the relevant financial year"

(f) *"As soon as the accountant shall have determined the amount of the service charge payable by the lessee for the relevant financial year... the accountant shall prepare a written statement containing a summary of the costs expenses and outgoings incurred by the lessor during the relevant financial year together with any future sums indicated by the accountant pursuant to Clause 2 (2) (e).. and specifying the amount of the service charge payable by the lessee...and in the accountant's certificate, shall certify:*

- (i) *"that in his opinion the said summary represents a fair summary of the said costs and outgoings set out in a way which shows how they are or will be reflected in the service charge"*
- (ii) *"that in his opinion the said summary is sufficiently supported by accounts receipts and other documents which have been produced to him"*
- (iii) *"that the sum specified as aforesaid represents the amount of the service charge payable by the lessee.."*

At the 28 October meeting, I specifically drew your attention to these terms in my lease.

The original demand of £14,400.19 for advanced payment of the major works was dated 17 July 2002. The 2001 accounts do not refer to any major works. Therefore, Steel Services was at the time, in breach of the terms of my lease by demanding payment (a fact I pointed out at the time to Steel Services, as well as in my defence to the claim in December 2002).

On 9 October 2003 I sent a (recorded delivery) letter to the managing agents for the block, Martin Russell Jones, requesting a copy of the year-end 2002 accounts within fourteen days. (This was noted in my fax to Richard Twyman of 7 November 2003 – which you saw). I should therefore have received the accounts at the latest by 23 October i.e. two days after CKFT sent the offer. (I am still awaiting a copy at the date of writing).

36. The only reference you made to the terms of my lease was, point #1 on the 'notice of acceptance': *"The absence of due compliance with the service charge certification provisions prescribed by the lease"*

¹⁵ My letter to Ms McLean, dated 23 November 2003

37. You should have expanded on the terms of my lease in a way that should have been used to challenge the demand for interest (as well as the amount of the offer leading to my being unable to assess the offer – as per Lord Woolf's point in relation to Ford v GKR Construction).
38. As an aside, I would also point that the demand for interest is based on £6,350.85, which includes £1,735.74, for which there is no proper justification.
39. **Two points which, at the 28 October, you said were not worth mentioning account for 50% of the contents of the 'notice of acceptance'**
40. At the 28 October meeting you said that we could point out the issue about the rateable value and the arbitration clause but that it would be pointless to do so. This was captured by Ms McLean in her attached Attendance Memo: *"Whilst those were arguments that we could run he (i.e. you) thought that the likelihood of success would be limited"*.
41. Yet, you included both points in the 'notice of acceptance' leading them to account for 50% of the contents. I raised this point with Ms McLean in my letter of 26 November 2003¹⁶
42. I note in your 12 November email of 17h02 that you wrote: *"The agreed strategy was for me to settle: 1. a covering letter raising a number of technical and ultimately unmeritorious points, the purpose being to distract attention from the tweaking exercise"*
- When was this 'strategy' agreed? I certainly was not party to it.
43. The space used by this 'unobjectionable padding' would have been better utilised by focusing on relevant points – as I have detailed above.
44. Of course, this would not have served the objectives of Steel Services – as suggested by the fact that:
- on 22 December 2003 CKFT took delivery of correspondence from me which included the major points I detailed in this letter – and in which I agreed to: (1) their offer of £6,350.85; (2) the condition that each party pays its own costs; (3) included a cheque for £4,095.78 (as I had already paid £2,255.07). The only part of the offer I said I could not agree to pay was the interest (£147.50).
 - to date I have not received a reply, nor has my cheque been cashed.
45. Your involvement in my case has achieved nothing other than cause me a lot of distress, as well as financial loss.
46. This letter forms the basis of the complaint I intend to lodge with the General Council of the Bar.
47. On the basis of my above assessment, I refuse to pay your fees – and have communicated this to Piper Smith & Basham¹⁷
48. I trusted you Mr Gallagher. I am absolutely appalled by your handling of my case.

Yours sincerely,

Noëlle K-Dit-Rawé

¹⁶ My letter to Ms McLean, dated 26 November 2003

¹⁷ My letter to Piper Smith & Basham, dated 20 January 2003

