

- Summary of events, on Gallagher's page; my Comments to his 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

Ms Noëlle Klosterkotter-Dit-Rawé
3 Jefferson House, 11 Basil Street, London SW3 1AX
Complaint against Mr Stan Gallagher, Arden Chambers, London
5 April 2004
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cc. Mr Andrew Arden QC, Complaints Officer – inc. all enclosures and completed Bar Council Complaint form

This is a complaint against Mr Stan Gallagher of Arden Chambers, London, for abuse of fiduciary relationship by giving me biased, unbalanced advice, ignoring highly material facts and non-compliance with what had been agreed in relation to a 'Landlord-Tenant' £14,400.19 service charge dispute with Steel Services represented by Cawdery Kaye Fireman & Taylor, solicitors (CKFT) – with detrimental consequences, including on my physical and emotional health, as well as financial position

SUMMARY OF COMPLAINT (contained in pages 1 - 5)

(NOTE: Throughout this 23 page document, references are made to source documents. Those included as an appendix with this complaint are identified with a "*" after the reference number. Other documents are available on request)

I personally chose Mr Gallagher to advise me in relation to what Steel Services' solicitors, CKFT, described as a "Without prejudice Part 36 Offer"^{1*} they faxed to my then solicitors, **Piper Smith & Basham** on 21 October 2003.

I asked **Ms McLean**, Litigation Assistant, Piper Smith & Basham, to set-up a meeting with Mr Gallagher which took place on **28 October 2003**. In preparation for this meeting, Ms McLean sent Mr Gallagher instructions, as well as supporting documents^{2*}. In addition to Ms McLean and myself, **my surveyor, Mr Tim Brock, LSM Partners, London**, also attended the 28 October 2003 meeting.

Aside from Ms Lisa McLean, **Mr Richard Twyman**, Partner, Piper Smith & Basham was also involved in my case. (NB: I have lodged a complaint against Piper Smith & Basham with the Office for the Supervision of Solicitors – please see attached the 5 page summary^{3*})

This summary is based on details contained in the main body of this supporting document, which comprises 2 sections (contained from pages 6 - 23):

- Background to the case (page 6 & 7)
- My complaint about Mr Stan Gallagher relates to his handling of the response to what Steel Services' solicitors, CKFT, described as a "Without prejudice Part 36 Offer" (page 7-23)

I initially addressed my letter of complaint, dated 20 January 2004, to Mr Stan Gallagher^{4*}. He suggested that I go through his Chambers' complaints channel by writing to Mr Andrew Arden QC, Complaints Officer^{5*}. I did this by writing a letter to Mr Arden on 26 January 2004 in order to give Mr Gallagher the opportunity to respond to my complaint^{6*}. **It is now more than two months since I sent the letter. To date, I have not received a reply.**

1 **Giving me incomplete and wrong advice and not taking the opportunity to remedy the situation in spite of my highlighting the shortcoming of the advice / emphasising the binding nature / relevance of legal documents (an action which, as the client, I should not have had to take) – leading me to suffer a detrimental outcome**

- 1.1 In spite of my bringing this up at the 28 October 2003 meeting (an action which, as the client, I should not have had to take) avoiding to discuss the highly relevant terms of my lease: *need for advanced payment to be certified by an accountant* – which had a high material impact on the response to the offer given that, **even at the date of writing, Steel Services cannot ask me to pay a single penny** towards the cost of the major works as I have not been provided with the accounts (page 9, 13)
- 1.2 Scoffing at my 7 November 2003 request that the reply should be conditional on my being provided with the 2002 year-end accounts for Jefferson House: "...Similarly, adding conditions for

¹ * Steel Services' offer, described as a "Without prejudice Part 36 Offer"

² * "Instructions to Counsel to advise in conference, Tuesday 28 October 2003", sent by Ms McLean to Mr Gallagher, including details of supporting documents

³ * Summary of complaint lodged with the OSS against Piper Smith & Basham, dated 16 March 2004

⁴ * My letter of complaint, dated 20 January 2004, addressed to Mr Stan Gallagher

⁵ * Mr Gallagher's emails, dated 21 and 23 January 2004

⁶ * My letter to Mr Andrew Arden, QC, Arden Chambers, dated 26 January 2004

the disclosure of accounts and details of trust fund arrangements can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms..." - (while also knowing that the 2001 year-end accounts made no reference to the major works – yet, the initial demand for £14,400.19 in advanced payment for the works was made in July 2002) (page 13)

- 1.3 Continuing to do this in reply to my 13 November 2003 correspondence, (while being also patronising): *"The terms of response that Ms Rawé sets out in her faxes 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"*.
 - 1.4 Not advising me that the Claimant's offer, described as a "Part 36 Offer", is not compliant with CPR guidelines (Lord Woolf's recommendations on the requirements for the working of Part 36 Offers in *Ford v GKR Construction Ltd* [2000] 1 All ER 802 – as the offer was not supported with the information necessary for me to assess it. I found this out from undertaking my own research.
 - 1.5 Opting to exclude any reference to the requirements for the working of Part 36 Offers in the reply to the Claimant – in spite of my (as the client!) bringing it up to the attention of Mr Gallagher (page 11, 12, 13, 16, 17) – remarking instead on the fact that the Claimant's *"offer does not rely on the automatic cost consequences provided by Part 36 of the CPR"* (page 11)
 - 1.6 Stating, during the 28 October 2003 meeting, that Steel Services could not charge me interest because the works had not started (page 8). As I considered this at a later stage, I concluded that this advice was wrong. The key issue is that Steel Services had not (and still has not) provided me with a demand certified by an accountant. Hence, as it *cannot* demand payment from me in advance, I do not owe any interest. (In addition to which £1,735.74 of the sum demanded is not supported by evidence)
- 2 **Acting against my best interests by superficially treating / crafting the wording of highly material points as to make them incomprehensible / mask the real issues – and misrepresenting the facts in support of his position**
- 2.1 Making a generic comment about non-compliance of the offer with the terms of my lease – thereby not addressing the issue. In the Notice of Acceptance Mr Gallagher wrote: *"The absence of due compliance with the service charge certification provisions prescribed by the lease"*. In no way does this address the issue which is that **Steel Services cannot ask me to pay a single penny as it has not provided me with a demand certified by an accountant** (page 13, 15)
 - 2.2 In effect, opting to ignore the findings contained in the 17 June 2003 report from the Leasehold Valuation Tribunal (LVT) - (principally that some £200,000 of works are not specified/ lack specification) as the only reference to this in the reply reads: *"...your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings..."* – thereby, (as in the case of the reference to my lease), making it impossible to understand the issue (page 12, 13, 15, 17, 18, 19)

This is in spite of my surveyor having, for the 28 October 2003 meeting: **(i)** documented his assessment of Steel Services' revised costs supplied with the offer; **(ii)** taken Mr Gallagher through a detailed explanation of his assessment, including referring extensively to the LVT report in the process of explaining his conclusions. (Mr Gallagher had been provided with a copy of the LVT report ahead of the meeting) (page 8)

The consequence of this is that, by applying my 1.956% share of the service charge, **the offer contains the sum of £1,735.74 which is not supported by evidence – and which I therefore do not owe** (page 15)
 - 2.3 Making the claim that my *"surveyor's calculations had demonstrated that this sum (i.e. the total sum offered) could not be bettered"*. This is simply not true. Mr Brock neither stated, nor demonstrated this – the reason for this is that he simply could not (page 12)
- 3 **Making critical changes to the reply to the Claimant's offer without my consent**

- 3.1 Accepting a condition - payment of interest - which had been agreed at the 28 October 2003 meeting would not be accepted (page 8, 16)

According to Ms McLean, 5 days after sending the reply to CKFT (for which Piper Smith & Basham did not get my consent), she said to have spoken to Mr Gallagher because she had seen on the draft Consent Order I had faxed back to Mr Gallagher and Mr Twyman (within less than one hour of receiving the drafts) that I had written next to 'interest': "*On 28 October: Mr Gallagher said 'no' because works had not started*". (page 16)

Her letter states: "*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 them interest on sums, any interest should go into the trust fund. (NB: What??) However, for the purposes of settling this case and giving (sic) the amount of interest, the advice would be to settle on the terms as set out in that order*" (page 17, 18)

- 3.2 Including points that had been agreed would not be included (references to clauses in my lease). (These made up 50% of the reply) (page 9, 15, 16)

4 Abuse of the fiduciary relationship by taking advantage of my lack of knowledge and experience of legal matters and processes, placing great emphasis on – in Mr Gallagher's view - the likelihood that a court would find against me – and thereby assisting Piper Smith & Basham in implementing their coercion tactics to push me into a decision against my will (page 9, 10, 11, 13, 14, 17, 21, 22)

- 4.1 Endorsing the opinion of Piper Smith & Basham which I knew to be wrong, but leading me to doubt my own belief because a 'barrister' – whom I trusted – was saying otherwise - Mr Gallagher's email of 12 November 2003: "*I can only repeat my advice and that of Ms McLean, that if this offer is not accepted and the matter proceeds to trial it is virtually certain that the Claimant will beat it and Ms Rawé will be ordered to pay the Claimant's costs*" (page 9, 12, 14)

Not only does Mr Gallagher's comment ignore the findings from the LVT, it also totally ignores the terms of my lease.

- 4.2 In the same email of 12 November he states, in relation to my wanting to be provided with a copy of the year-end accounts that my request: "*... can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms...*"

- 4.3 Mr Gallagher labours the point in his email of 10h12 on 13 November: "*the terms of response that Ms Rawé sets out in her faxes do not constitute a realistic basis for settling the claim and will not be accepted by the Claimant*" (page 13)

- 4.4 Although, in this same email, Mr Gallagher suggests the possibility of letting the offer lapse if I reject it and making a 'counter offer' (page 14), because of: **(i)** the uncertainty and worry he has managed to lodge in my mind by his above comments; **(ii)** the fact that I do not understand the implication of 'making a counter offer' and Mr Twyman has point blank refused to advise me (page 10); **(iii)** the impression I get from Mr Gallagher is that opting for this option would have very serious consequences on myself – I conclude that I should not consider it (page 14)

- 4.5 While I find Mr Gallagher's assessment to be very biased and unsound, and this worries me greatly – I am reassured by the fact that in his email of 10h12 on 13 November he states: "*...accept the offer, subject only to the possibility of tweaking it as discussed in conference*". (page 13, 14)

Because of this, and his emphasis on 2 occasions in that same email that: "*I strongly advise Ms Rawé to accept the offer*", I replied - with a lot of anguish at the time – that I am accepting his advice (page 13, 14)

- 4.6 In effect, communicating to me the message that 'I should be grateful for the offer' by emphasising the fact that Steel Services' offer "*... proposes that there be no order for costs*" - instead of pointing out that the offer is in fact in breach of the requirements for the working of Part 36 Offers.

- 4.7 Mr Gallagher's manoeuvring in tandem with Piper Smith & Basham's has also meant that I gave up on my objection to the term in the offer that 'each party pays for its own costs' (page 10, 14)

- 5 **Playing an active role in what I view as Mr Twyman's engineering of the situation calculated to take advantage of the fact that I am at work so that I would not have the time to review the response to CKFT** (page 10, 11)
- 5.1 Mr Gallagher had received 3 documents from me in which I explicitly stated that I wanted to review the reply before it was sent to CKFT: on 7 November 2003 and twice on 13 November 2003 (page 12, 14, 17)
- 5.2 Mr Gallagher sent the first – and only draft Consent Order and draft Notice of Acceptance I ever saw – as an attachment to an email to Mr Twyman at 15h32 on 13 November 2003 (deadline for the reply) and on which he copied me (page 15)
- 5.3 At the end of his covering note Mr Gallagher wrote: "*Presumably this ought to be served by 4.00pm today*". Why did Mr Gallagher mention a 16h00 deadline? As I discovered subsequently, a 16h00 deadline only applies to the courts. Surely, as a barrister, he should be aware of this (page 15)
- 5.4 Twenty-one minutes after Mr Gallagher had sent his email, Mr Twyman sends me an email stating that he will be "*sending the reply to the other side in the next 10 minutes or so as advised by Mr Gallagher*". (page 15, 16, 17)
- 6 **Causing me an enormous amount of stress, anguish, torment and distress from 13 November 2003 onwards, leading to serious consequences on my physical and emotional health requiring the need to seek medical treatment** (page 14, 17, 18, 21)
- 6.1 As a direct result of Mr Gallagher's actions which were actively supported and endorsed by Piper Smith & Basham, I went through the most horrendous and stressful time from 13 November onwards as I battled with Piper Smith & Basham to get them to send a substitute reply to CKFT which included the points it had been agreed would be included (pages 17 – 23):
- 6.1.1 Loss of nearly a stone in weight in the space of one month (weight I did not need to lose given that I weighed under 10 stones and my height is 5ft 9in)
- 6.1.2 Loss of sleep, as well as depression, leading me to consult my doctor on 18 November 2003
- 6.1.3 I was told that I "*look like death*". I certainly felt absolutely awful: very weak, very tired and close to a nervous breakdown
- 6.1.4 I was in such a state that, for Christmas, I spent a week in a centre in France to help me recuperate. At the initial consultation the doctor could see that I was suffering from exhaustion. She diagnosed that I had low blood pressure. My family and friends could not believe the way I looked.
- 6.1.5 Added to this was the worry that I did not want my work to suffer
- 7 **Causing me loss of earnings as I had to take time off work to:**
- 7.1 write letters upon letters to Piper Smith & Basham fighting with them to send a substitute reply to CKFT – as evenings and weekends were proving insufficient;
- 7.2 consult other legal advisers to get a more balanced – and more accurate – assessment of my position (page 9, 10)
- 7.3 do my own desk research as I was doubting Mr Gallagher's advice (consulting law books on Part 36 Offers, Landlord & Tenant Acts).
- 7.4 The total cost of this time off work is **£400.36**^{7*} (This is based on hours recorded on my employer's timesheet and a previous note of 'Confirmation of earnings' from my employer, dated 8 August 2003, for the purpose of claiming costs in relation to a court hearing^{8*}. If required, a similar note can be produced from my employer to substantiate my claim)
- 8 **Causing me other financial loss**
- 8.1 The 28 October 2003 meeting was a complete and utter waste of time which cost me:

⁷ * Details of costs incurred as a direct consequence of Mr Gallagher's actions

⁸ * My employer's 'Confirmation of earnings', dated 8 August 2003

8.1.1 My surveyor's fees of **£646.25** ^{9*}

8.1.2 The 3.5 hours time off work I had to take in order to attend the meeting, plus disbursements

NOTE:

Regarding Piper Smith & Basham's fees, while I did not receive an invoice, they had a credit balance on my account. In my letter of complaint to the OSS I have asked for a refund of all the fees I have paid to Piper Smith & Basham.

As to Mr Gallagher's fees, he sent an invoice to Piper Smith & Basham for £ 1,439.38 ^{10*}. In their 18 December 2003 letter Piper Smith & Basham asked me if they could settle the account from the credit on my balance. I replied to Mr Ian Skuse, Complaints Partner, that I forbade him to do so ^{11*}. **On what grounds can Mr Gallagher charge me fees?** Not only was the 28 October 2003 meeting a complete and utter waste of time, more tragically, it has since had very costly consequences on myself with the likelihood of more to come.

8.2 Needing to resort to use a solicitor, Sheratte Caleb & Co to send, on 16 January 2004, a copy of the documents I had sent to CKFT on 19 December 2003 as they were not replying to my letter – nor cashing my cheques. (Quite clearly, unlike the reply written by Mr Gallagher, they did not like mine) (page 22). This cost me **£50.00** ^{12*}.

8.3 Spending a very significant amount of money on postage (special and recorded deliveries to Piper Smith & Basham, CKFT). Cost estimated at **£100.00**

9 Causing me the loss of the majority of my spare time since 13 November 2003

10 As a direct result of Mr Gallagher's mishandling of my case I am still in a state of anguish due to uncertainty as to how my case will develop. In addition, not only do I still have to use a large part of my spare time dealing with the consequences of his actions (e.g. writing letters to CKFT; writing this letter of complaint), I am also incurring further financial loss as: (i) I continue having to take time off work (recent visit to the court) (ii) continue spending a considerable amount on postage (special and recorded deliveries), as well as other items (page 23)

11 Conclusions

I purposely selected Mr Gallagher because his profile indicated that he tends to act for lessees rather than landlords. As a lessee, I therefore expected that he would provide me with expert, impartial advice – with a focus on ensuring that my best interests were met.

The reality is very different. He has abused my trust and his fiduciary relationship: he was bound to act in my best interest. He did not. His advice has been incomplete, unbalanced and biased. I provided him with the opportunity to redress the situation. He did not take it.

As a result of non-performance of his duty of care – and with the active cooperation of Mr Twyman and Ms McLean - since the 28 October 2003 meeting I have been going through the most horrendous and stressful time with serious consequences on my physical and emotional health. An experience that has also cost me, not only the majority of my spare time since the meeting, but also loss of earnings as well as other financial loss.

The total 'quantifiable' cost to date is **£1,217.61**. But, what cost do I attribute to: (i) spending Christmas week in a centre in France in an attempt to recuperate instead of spending it with my family? (ii) spending the majority of my spare time writing letters instead of seeing family and friends? What is going to be the long term cost to my health of going through this sheer hell? What further costs am I likely to incur as the battle goes on with CKFT?

As a result of his mishandling of my case, I am now very concerned as to how my case will be finally resolved.

I trusted Mr Gallagher implicitly. I feel very let down. I am absolutely appalled by the way he has handled my case and I now view him as a disgrace to his profession.

⁹ * Mr Brock's invoice for attending the 28 October 2003 meeting

¹⁰ * Invoice from Mr Gallagher, dated 18 December 2003

¹¹ * My letter to Piper Smith & Basham, dated 20 January 2004

¹² * Letter from Sheratte Caleb & Co, dated 16 January 2004

1. Background to the case

My case (which you may have heard of through the press ¹³) relates to a service charge dispute for major works at Jefferson House where I have been the lessee and permanent resident of flat 3 since 1986. The sum I have been disputing is a demand of £14,400.19 for major works.

How my case started was that I asked the **managing agents, Martin Russell Jones**: "*you want £14,400.19 from me for major works to the block, what are you going to spend it on?*"

Aside from not being provided with the necessary information to which I am entitled, other factors which, among others, led me to pursue an answer to my question were:

- I suffered extensive harassment, intimidation, as well as assault from the time that I challenged Martin Russell Jones on the true nature of the major works at Jefferson House
 - the demand for £14,400.19 was sent in July 2002. Four months before sending me the demand, i.e. in March 2002 – once the landlord's surveyor, **Brian Gale** had completed his assessment survey – Martin Russell Jones wrote to residents: "*our surveyor estimates that the total cost could be well in excess of £1million + VAT and management fee*" - which, in my case would translate in a demand of £30,000.00+ (for a studio flat!)
2. As many residents were objecting to the July 2002 service charge demand, in August 2002 the **landlord, Steel Services**, through Martin Russell Jones, made an application to the Leasehold Valuation Tribunal (LVT) to "*determine the reasonableness of the global sum demanded*" (amounting to £736,206.00 – including VAT and management fee)
 3. Concurrently, through its solicitors, **Cawdery Kaye Fireman & Taylor (CKFT)**, Steel Services also pursued the same action under a second jurisdiction: West London County Court where it filed a claim against me (and ten other residents representing 13 flats) in November 2002 ^{14*} (Enclosed is a copy of my defence to the claim as **this was provided to Mr Gallagher** ^{15*})
 4. Although several residents were involved in the early part of the process with the LVT, by the time of the first LVT hearing on 5th February 2003, I was the only resident left to challenge Steel Services.
 5. The LVT issued its **report on 17 June 2003 (Ref LVT/SC/007/120/02)**. **Mr Gallagher was supplied with a copy of the report.**
 6. I asked my surveyor, **Mr Tim Brock, LSM Partners, London**, to review the LVT report. Based on his assessment ^{16*} – **which was provided to Mr Gallagher**, the LVT:
 - (i) disallowed 23.02% of the global sum demanded because it related to "*improvements*" (£129,958.00 exc. VAT and management fee)
 - (ii) said to be unable to make a decision on a further 25.64% of the global sum demanded due to lack/insufficient specification (£144,745.87 exc. VAT and management fee)
 - (iii) felt that the reserve/contingency fund should be used as contribution towards the cost of the major works as the lease was quite clear on this. At the time of the hearing the contingency fund was said to amount to £141,977.00 – or 19.28% of the global sum demanded inc. VAT and management fee.

¹³ Recent press coverage includes: (i) "*My property nightmare – Extortionate service charges*", Sunday Telegraph, 19 October 2003; (ii) "*Left homeless for £25*", Evening Standard, 12 December 2003

¹⁴ * Steel Services West London County Court claim, dated 29 November 2002

¹⁵ * My defence to Steel Services' West London County Court claim, dated 17 December 2003

¹⁶ * Mr Tim Brock's assessment of the 17 June 2003 LVT report, dated

7. In June 2003 Steel Services had requested a Court hearing where I represented myself – and won (on the basis that I had 17 days leave of appeal to the Lands Tribunal).

For this hearing, Steel Services had reduced the sum demanded of me (and 5 other residents who were still fighting the case) by 24.19% i.e. was demanding £10,917.27 from me vs. the original £14,400.19^{17*}

8. In August 2003 Steel Services requested a 'case management' and 'summary hearing'.

While I have learnt a great deal about the legal aspects of my case, I am not a lawyer and therefore not familiar with legal procedures and terminology.

9. It is for this reason that, on 18 August 2003, I asked **Piper Smith & Basham** to represent me at the 26 August 2003 West London County Court hearing. (**NB:** In April 2003, they had approached my then solicitor, Oliver Fisher, to ask about developments with the case as they said to be representing two residents).

Piper Smith & Basham acted as my solicitors until December 2003.

10. For additional background information, please see my attached **Witness Statement**, dated 19 October 2003^{18*} - **a copy of which was provided to Mr Gallagher**. (**NB:** in relation to your handling of this document, please note that **(i)** my case may still go to a court hearing; **(ii)** I have not been provided with the Claimant's Witness Statement)

11. **MY COMPLAINT AGAINST MR STAN GALLAGHER RELATES TO HIS HANDLING OF THE RESPONSE TO WHAT STEEL SERVICES' SOLICITORS, CKFT, DESCRIBED AS A "WITHOUT PREJUDICE PART 36 OFFER"**

12. The directions set by West London County Court to which I and CKFT had agreed in Court (on 26 August 2003) stated that the exchange of Witness Statements had to take place on 21 October 2003 and were due to be delivered to West London County Court by 16h00 on that date¹⁹

13. I had my Witness Statement hand-delivered to Ms McLean, Piper Smith & Basham, at 9:02 a.m. on 20 October 2003.

14. **Before receiving the offer, I had informed Ms McLean, Piper Smith & Basham, that I wished Mr Gallagher to be involved in my case**

15. For the 26 August 2003 West London Court hearing, Piper Smith & Basham had selected Mr David Pliener, London, to represent me. I did not like the fact that, at the hearing, Mr Pliener ended-up taking advice from CKFT in relation to the £1,800 surveyor cost I wanted to claim (he came back from talking to the CKFT representative saying: "*she is right, you cannot claim these costs until the hearing*").

16. I subsequently informed Ms McLean that "*I need a barrister experienced in handling my type of case*". I therefore undertook my own research to find a barrister with the appropriate experience. This led me to identify Mr Gallagher. I communicated this to Ms McLean on 19 October 2003^{20*}

17. On 21 October 2003 - at 17h43 - CKFT faxed Piper Smith & Basham what they described as a "***Without prejudice Part 36 offer***". (**This was supplied to Mr Gallagher**)

18. Ms McLean said that the offer needed to be discussed with a barrister. I asked her to phone Mr

¹⁷ * Revised schedule of costs issued by Martin Russell Jones, managing agents, and handed to me by CKFT at the 24 June 2003 West London County Court hearing

¹⁸ * My Witness Statement, dated 19 October 2003

¹⁹ Directions set by West London County Court, dated 26 August 2003

²⁰ * My letter to Ms McLean, dated 19 October 2003

Gallagher to set-up a meeting, which she did for 28 October 2003. I also contacted my surveyor, Mr Tim Brock to ask him to attend the meeting.

19. In preparation for this meeting, Ms McLean sent Mr Gallagher instructions as well as supporting documents
20. On 28 October 2003, Ms McLean, myself, and my surveyor, Mr Brock met (for 3 hours) at Mr Gallagher's office to discuss the offer and response.
21. **Three key points to be included in the reply were discussed at the 28 October 2003 meeting. (Not all were captured by Ms McLean in her Attendance Memo, but proof is provided through subsequent documents).**

22. It was agreed that the following points would be made in the reply:

(1) The fact that the specifications for a number of items have not been redrawn. My surveyor identified as a key concern the fact that, although more than four months had elapsed since the 17 June 2003 report by the LVT, 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. My surveyor gave a copy of his assessment of Steel Services' offer to Mr Gallagher (as well as to Ms McLean) ^{21*}

23. 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 of 28 October 2003:

"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..." ^{22*}

24. (2) Because of this, the reply would specify that the payment was made "in full and final payment of my share of the major works"

From Ms McLean's Attendance Memo: *"Tim Brock said that whilst the offer seemed to be a good one he was not happy that the specifications remained unchanged and provided we could have some sort of proviso in the agreement that this payment was in full and final settlement of the current major works and so that no further demands in respect of these current major works would be charged to the client we would then be happy"*.

25. (3) Mr Gallagher said that interest could not be charged as the works had not started. (This point was not captured by Ms McLean in her Attendance Memo. However, proof that it was said during the meeting will be evidenced later on in this document).

(NB: Thinking about this since, this is an incorrect argument. Steel Services can ask me for payment in advance but, under the terms of my lease, the demand must be certified by an accountant. (See next point, below)

The original demand for payment of the £14,400.19 is dated 17 July 2002. The 2001 year-end accounts for Jefferson House do not make any reference to major works. In spite of asking numerous times, *to this day*, I still have not been provided with the 2002 year-end accounts. Therefore, Steel Services *cannot* demand interest from me). (Nor, indeed, can it demand me to pay a single penny of the sum demanded).

²¹ * Mr Tim Brock's assessment of Steel Services' offer, dated 28 October 2003

²² * Ms McLean's Attendance Memo of the 28 October 2003 meeting with Mr Gallagher (and Mr Brock)

26. **A fourth, highly material point to consider when replying to the offer: 'the terms of my lease' was deflected by Mr Gallagher during the meeting**

27. At the meeting, I (as the client!) drew attention to the terms of my lease pointing out that the demand was in breach of the terms. I did this by using a letter I had sent to Ms McLean on 21 September 2003 in which I included comprehensive extracts from my lease – on page 3 and 4^{23*}. **(Mr Gallagher had been provided with a copy of my lease prior to the meeting).**

Neither Mr Gallagher (nor Ms McLean), actually picked-up on this. I felt that they were both uneasy at my bringing this up.

28. Instead, Mr Gallagher remarked on the rateable value, as well as arbitration clause, but dismissed both points as not worth pursuing.

This was captured by Ms McLean in her Attendance Memo:

"Counsel then said that there were various matters that we could raise by way of argument for example the rateable value apportionment, the fact that the lease referred to having the matter referred to arbitration etc etc. Whilst those were arguments that we could run he thought that the likelihood of success would be limited"

29. **Although Mr Gallagher did not pick-up on the terms of my lease, I of course assumed the relevant part of the terms would be referred to in the reply.**

30. **At the 28 October 2003 meeting, there was a palpable lack of support for my case from Mr Gallagher (as well as from Ms McLean who spent a substantial part of the time focusing on the negatives – placing strong emphasis on potential threats - instead of ensuring that I receive a balanced view)**

31. I felt troubled by the evident lack of support for my case at the 28 October 2003 meeting. In my view, the reply ought to be handled differently but, both my lack of experience of this type of situations, as well as lack of knowledge of legal matters prevented me from challenging the discussion.

32. In an attempt to summon support, I pointed out during the meeting that *I had ended up in this situation through no fault of my own*, other than having asked the following question: "You want £14,400 from me, what are you going to spend it on?" I added that we were in the year 2003, not medieval times. Yet, not only was I put in this situation because I had dared to ask the question, I had also, as a result, suffered extensive harassment and intimidation, as well as assault, resulting in my being constantly in fear for my life. (Some of my comments were captured by Ms McLean in her Attendance Memo)

33. I also felt under quite a lot of pressure to not argue and 'get it over and done with'. On two occasions Ms McLean repeated what she had already told me 2-3 times previously: *"If you go to a hearing and the Court decides that the amount you have to pay is just £1.00 more than the offer, then you will have to pay for Steel Services costs"*.

As on these previous occasions, I replied that, because of the lack/insufficient specification identified by the Tribunal, it could not be determined what, if any of this amount was actually due by residents. Consequently, if the Tribunal could not determine the reasonableness of the sum demanded for these items, how could the Court rule that I owed even £1.00 more?

While I do not recall Mr Gallagher endorsing Ms McLean's opinion at the time, as will be demonstrated later on, **Mr Gallagher subsequently aligned himself with Ms McLean's**

²³ * My letter to Ms McLean, dated 21 September 2003

opinion as a means of influencing my decision.

34. **After the 28 October 2003 meeting I consulted another lawyer, as well as did my own desk research in order to get a better, more balanced – and more accurate - assessment of my position and communicated this to Mr Twyman, Piper Smith & Basham, on 7 October 2003 – asking him to liaise with Mr Gallagher**
35. Given my uneasiness at the 28 October 2003 meeting with Mr Gallagher and Ms McLean, I stated, at the meeting, that I would be seeking additional legal advice.
36. After consulting another lawyer, as well as doing some desk research, on 7 November 2003 I sent a letter to Mr Twyman containing points, which I felt, should be included in the reply^{24*}.

I highlighted various points in this letter:

- (i) false statements by Steel Services in its offer;
- (ii) the fact that the lack of specification identified by the Tribunal had not been addressed which, by then, I had calculated that, in my case, it resulted in an overcharge of £1,735.74;
- (iii) emphasised the fact that the demand did not comply with the terms of my lease;
- (iv) disagreed to the payment of interest.

The main difference relative to what had been discussed at the 28 October 2003 was that I was disagreeing with a term of the offer, namely that *"each party pays for its costs"* – asking instead that Steel Services pays for my costs.

At the end of the letter I emphasised the fact that I wanted to review the draft: *"Thank you in anticipation of your liaising with Mr Gallagher to obtain a draft for my review"*

37. On Thursday 6 November 2003, I had left a message on Mr Twyman's voicemail around 13h00 to let him know that I would have my reply hand-delivered to him first thing the following day – which I did. (The courier's log shows that receipt of my letter was signed for at 9h00). This **left five full working days to the deadline** of 13 November.
38. **It is very clear to me that the situation was engineered to minimise the probability of my being able to input into the reply**
39. On Tuesday 11 November 2003 I phoned Mr Twyman asking about the status of the situation. He was extremely curt with me and refused to discuss my reply - other than say *"you have rejected their offer"*. When I tried to explain, he said that he did not have the time to discuss. He said he had just sent my letter to Mr Gallagher and *"hope that he will have the time to look at it"*.
40. I did not understand the implication of what he had said: *"you have rejected their offer"*. It worried me that I was doing something that would have serious consequences. Very clearly, Mr Twyman was playing on my lack of knowledge and experience of this type of situation.
41. It is my very strong belief that, like Ms McLean's, Mr Twyman's tactics – which I can only describe as bullying and intimidation - relied on the following facts:
- (1) my lack of experience and knowledge of legal matters
 - (2) it would be very difficult for me to appoint another lawyer due to the extensive learning curve required
 - (3) I work during the day
 - (4) the deadline for reply was now very close and, at the time, I was under the impression that I HAD to reply

²⁴ * My letter to Mr Twyman, dated 7 November 2003

(4) I have spent the better part of my life savings' on professional fees fighting this case

42. Given my telephone conversation with Mr Twyman on Tuesday 11 November 2003, I tried to speak to him again on Wednesday 12 November 2003 and was told that Mr Twyman was "out of the office all day". I tried to speak to his secretary. She was unavailable. I left a message asking her to phone me back. She did not.
43. Thursday 13 November 2003 – the day of the deadline for replying to the offer.

I was in a frantic state: I did not know whether Mr Gallagher had looked at my reply of 7 November 2003, nor did I know whether Mr Twyman would again be unavailable.

Because of this uncertainty, I opted to contact Mr Gallagher directly explaining my reasons for doing so: the events of the last two days. I made this contact **by fax**, which I sent at 9h11 to Mr Gallagher and also faxed my letter to Mr Twyman (at 9h26) (and Mr Brock) ^{25*}

NB: A point that will become relevant later on: because the fax machine had not been reset to winter time, all my faxes showed the time sent as being one hour later (e.g. the time on my fax to Mr Gallagher was recorded as 10h11).

44. **Mr Gallagher (and Mr Twyman) opted to ignore the highly material point I had raised in my 13 November 2003 fax in relation to the requirements for the working of Part 36 Offers (and which I had identified myself)**
45. Subsequent to my letter of 7 November 2003 to Mr Twyman, I had undertaken desk research on Part 36 Offers. During the course of this research, I came across **Lord Woolf's recommendations on the requirements for the working of Part 36 Offers in *Ford v GKR Construction Ltd* [2000] 1 All ER 802.**

I included my findings in the fax I sent to Mr Gallagher at 9h11 on 13 November 2003 (and to Mr Twyman on the same date, at 9h26), stating:

"I will take the opportunity to add other points to be included in the reply.

1. That I am being exceptionally generous in my reply to Steel Services' offer considering that - as stated in my draft reply of 7 November 2003, I have not been provided with the necessary information:

(i) details of specifications, followed by tendering - to help me determine whether or not I am actually liable under the terms of my lease to pay £1,735.74 of the sum demanded

(ii) nor have I been provided with a copy of the 2002 year-end accounts

***This is in breach of the Civil Procedure Rules"** and I 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"

²⁵ * My fax of 13 November 2003, 9h11, to Mr Gallagher – (also faxed to Mr Twyman and Mr Brock)

Preceding this – using a mix of bold typeface, and bold italic typeface – I had written: **“Can you please ensure that your draft of the reply to Steel Services is also faxed to me on the following”** (giving the fax number)

46. **Neither Mr Gallagher (nor Mr Twyman) provided me with any feedback on the extracts from the Ford v GKR case I had included in my fax to them of 13 November 2003.**

47. **And of course, at the 28 October 2003 meeting, neither Mr Gallagher (nor Ms McLean) mentioned the requirements for the working of Part 36 Offers**

48. After sending the fax to Mr Gallagher (and Mr Twyman), I switched on my computer and found an email sent by Mr Twyman at 8h40 (on 13 November 2003) which stated:

Dear Madam, Please see urgent advice attached. May we please have your clear and unequivocal answer - will you accept their offer as advised or do you wish to refuse it? This must be dealt with today.^{26*}

49. Below his email, was an email sent the previous day i.e. 12 November 2003, at 17h09^{27*}, by Mr Gallagher to Mr Twyman. It includes a number of points with which I am unhappy for a number of reasons. For example:

50. **Not true:** The claim that my *“surveyor’s calculations had demonstrated that this sum could not be bettered”*. This is simply not true. Mr Brock neither stated, nor demonstrated this. (I pointed this out to Ms McLean in my fax of 20 November 2003²⁸)

51. The evidence for this is that he cannot do this for three reasons:

Firstly, in the revised costs sent by CKFT with the offer, the lack of specification identified by the Tribunal, for items amounting to £144,745.87, has not been addressed.

Secondly, the boilers account for a large part of the £144,745.87, for which the LVT said to be 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”*).

The third 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.

52. **Ignoring the facts:** *“...I can only repeat my advice, and that of Ms Mclean, that if this offer is not accepted and the matter proceeds to trial it is virtually certain that the Claimant will beat it and Ms Rawe will be ordered to pay the Claimant’s costs”*.

Like Ms McLean, Mr Gallagher ‘appeared’ to be opting to totally ignore the fact that the demand includes an amount for items for which the LVT said to be unable to make a decision due to lack/insufficient specification. At the time, I concluded ‘appeared’ to be opting to totally ignore the fact’ because we had spent so much time discussing the issue of the lack of specification at

²⁶ * Email from Mr Twyman to me, dated 13 November 2003, 8h40

²⁷ * Email from Mr Gallagher to Mr Twyman, dated 12 November 2003, 17h09

²⁸ My fax to Ms McLean, dated 20 November 2003

the 28 October 2003 meeting – and I had repeated this in my 7 November 2003 letter - I of course assumed that this would be included in the reply.

53. **Ignoring the terms of my lease:** His above comment also totally ignores the terms of my lease which are very clear: a demand for advanced payment must be certified by an accountant.

Mr Gallagher knew I had not been provided with the year-end accounts for 2002. In my 7 November 2003 letter I had noted that on 9 October 2003 I had sent a recorded delivery to Martin Russell Jones requesting a copy of the year-end 2002 accounts within 14 days. (The 2001 accounts make no reference to the major works – they should have been done given that the original demand for payment of the £14,400.19 was dated 17 July 2002).

How can Mr Gallagher say that a Court would not only force me to pay an amount of money not owed given the terms of my lease - but would also penalise me for refusing to pay? Is he suggesting that the courts pay lip service to leases?

54. **Ignoring the requirements for the working of Part 36 Offers,** as Mr Gallagher only makes the following comment about the Part 36 Offer in the 'notice of acceptance': *"...Most importantly, the offer (which strictly is not a Part 36 offer as it does not rely on the automatic cost consequences provided by Part 36 of the CPR) proposes that there be no order for costs".*

55. **Concurrently with ignoring the requirements for the working of Part 36 Offers, unbelievably, Mr Gallagher dismisses my request in my 7 November 2003 letter to him, and to Mr Twyman, that CKFT provides me with a copy of the 2002 accounts:**

"...Similarly, adding conditions for the disclosure of accounts and details of trust fund arrangements can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms..."

I find his assessment to be very biased and unsound, and this worries me greatly.

However, given that I had brought his attention to the terms of my lease at the 28 October 2003 meeting, **I assume that the reply will – at least - not only state that the demand is in breach of the terms of my lease, but also emphasise the reasons** (given that there is such great variations in the terms of leases).

56. Interestingly, in his 8h40 email of 13 November Mr Twyman *does not make any comment about Mr Gallagher's advice*, (opting instead to give me an ultimatum in the context of the fact that, during the preceding 4 working days during which he has had my letter of 7 November 2003, he has point blank refused to discuss my reply).

57. On 13 November 2003, at **10h12**, Mr Gallagher sends an email to Mr Twyman on which he copies me. He states:

*"I have received a fax dated 13 Nov 2003 from Ms Rawe (also copied to you). This fax has crossed with my earlier Emailed advice seeking further instructions. 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.*

For the reasons set out in my earlier Email, I strongly advise that the offer be accepted.

*Moreover, **the terms of response that Ms Rawe sets out in her faxes 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.

It follows that if, contrary to my advice, C's offer is not acceptable, we should simply let it lapse by not responding substantively to it today. In which event there would be nothing to stop us subsequently making a counter-offer in less hurried circumstances.

But again, I strongly advise Ms Rawe to accept the offer

Please contact me if you have any questions. I will not settle anything until instructed to do so. I need those instructions by midday today if I am to do anything today as I have other commitment this afternoon".^{29}*

58. I spoke to Mr Twyman mid-morning. When I drew his attention to the fact that my reply had been hand-delivered to him by 9:00 am on Friday 7 November - and that I had left him a voicemail message at lunchtime the previous day to forewarn him of this - this last minute rush could have been avoided as it gave a total of five working days, he angrily replied "*when was it that you met with Counsel?*" and asked whether I thought he had nothing else to do other than deal with my case.

59. **I am now in a state of extreme stress and anguish:**

- (1) I have a solicitor who is refusing to talk to me – (and has done so throughout)
- (2) I have a barrister who, in his email of the previous day, misrepresented events, as well as overlooked facts which I believe are highly material
- (3) In his 10h12 email, Mr Gallagher talks of a "*counter-offer*" but: **(i)** I do not understand what this means in practice; **(ii)** Mr Twyman's does not want to discuss this with me; **(iii)** the impression he and Mr Gallagher are giving me is that it could have very serious consequences for me if I were to opt for this option
- (4) I must get on with my work rather than spend my time on personal matters (It happens to be a particularly demanding day for me as I am making a presentation in the afternoon)

60. **Although I have all these reservations, I am reassured by the fact that in his 10h12 email, Mr Gallagher wrote:** "*...accept the offer, subject only to the possibility of tweaking it as discussed in conference..*" (although this still leaves out my view that Steel Services should be paying for my costs – as detailed in my 7 November 2003 letter)

61. (Bearing in mind that I do not have the time to reply as comprehensively as I would like because I am at work), at 12h26 (on 13 November), I send the following email to Mr Gallagher and Mr Twyman:

"...I find some of the comments difficult to reconcile with events/facts, and I am perplexed by the view on Steel Services' offer: "it's not strictly a Part 36 Offer" (because of the clause on costs) yet, later on you state that "it is virtually certain that the claimant will beat it" i.e. treat as a Part 36 Offer.

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 -

²⁹ * Email from Mr Gallagher, 13 November 2003, 10h12

with the 'tweaking' you detailed.^{30*}

62. I hear nothing until sometime after 15h30 when I see that Mr Gallagher has sent an email at 15h32 to which he has attached the draft reply and draft consent order. He wrote:

"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...Presumably this ought to be served by 4.00pm today" ^{31*}

63. **(NB: This was the first time that a 16h00 deadline was mentioned to me – and this was in the form of a question by Mr Gallagher. Why he asked this question is beyond my understanding: as a barrister he ought to know that a 16h00 deadline only applies to courts. I did not receive confirmation from Mr Twyman as to whether or not this was the deadline. In fact, the only communication I had from Mr Twyman was an email he sent **21 minutes** later at 15h53:**

"I confirm safe receipt of Counsel draft and will be sending it to the other side as drafted save with removal of brackets at the end of the letter as he has advised in the next 10mins or so." ^{32*}

64. **The contents of the draft documents sent by Mr Gallagher at 15h32 are not what I expected given the 28 October 2003 meeting** (see point after next for reference to documents):

- (i) There is no reference to the fact that the lack/insufficient specification for items amounting to £144,745.87 has not been addressed (and hence, applying my 1.956% percentage share of the service charge, that £1,735.74 (inc. VAT and management fee) of the demand is not supported by evidence)**

A reference is made to the LVT on the 'notice of acceptance' which reads: "...you client=s claim, as adjusted to take account of the LVT=s determination remains proceedings...". As I wrote in my letter of complaint to Mr Gallagher of 20 January 2004 "while I do not understand what it means, one thing for sure, it does not capture what we agreed"

Also, in the penultimate paragraph of the 'notice of acceptance', there is a sentence in square brackets which 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". In his email of 13 November, 15h32, addressed to Mr Twyman, and on which he had copied me, Mr Gallagher wrote: "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..."

While I find this very confusing, my main take on this is that it does not reflect what had been agreed.

- (ii) The demand for interest has been accepted** – as it is included on the draft consent order
- (iii) The only reference made to the terms of my lease reads** "The absence of due compliance with the service charge certification provisions prescribed by the lease". This is totally inappropriate as it does not reflect the issue. The real issue is that Steel Services cannot ask me to pay a single penny as it has not provided me with a demand certified by an accountant.
- (iv) Two points which, it was agreed at the 28 October 2003 meeting were not worth**

³⁰ * My email of 13 November 2003, 12h26 to Mr Gallagher and Mr Twyman

³¹ * Email from Mr Gallagher, dated 13 November 2003, 15h32

³² * Email from Mr Twyman, dated 13 November, 15h53

mentioning, make-up 50% of the contents of the letter

65. And the only comment made about the 'Offer' reads:

"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. We have therefore treated your offer as a without prejudice save as to costs offer..."

No reference whatsoever to Lord Woolf's ruling in the Ford v GKR case!

66. Given the unbelievable pressure under which I am being placed, the best I can do is to hand write the first two points above on the documents which I faxed to Mr Gallagher and Mr Twyman at 16h29 – in other words, within **less than one hour of receiving them**. The points were:

On the draft consent order, next to 'interest': *"On 28 October – Mr Gallagher said "no because works had not started" ^{33*}*

On the 'without prejudice notice of acceptance' document: *"+ Non-compliance with Section 20 for some items, as a consequence of which the LVT was unable to take a decision") ^{34*}*

i.e. the two points that had been agreed at the 28 October meeting with Mr Gallagher and Ms McLean, would be included in the reply.

67. I used the same fax machine as I had done in the morning when I sent the fax at 9h11 to Mr Gallagher and at 9h26 to Mr Twyman. Hence, the time was recorded as 17h29 (instead of 16h29).

68. **I was at my desk until 16h55. Neither Mr Gallagher nor Mr Twyman contacted me.**

69. The following day, Friday 14 November 2003, at 15h57 Mr Twyman sends me the following email:

*"I sent you an email yesterday regarding transmission of Counsel's draft indicating that the same would be sent by approximately 4pm. In accordance with that direction **understanding this to be your instructions** (NB: !!!) the same was sent at that time. Over an hour later I received a telephone message on my voicemail system when I was in another meeting indicating that you wanted your "comments" incorporated. **At 5.37pm a fax was received here with comments on it which on the face of them are inconsistent with a request for inclusion in any event.** If you wish to take this matter further please let me know. **Had we waited beyond 4.30** (NB: change of deadline now to 16h30 vs. 16h00 the day before), usual close of business time it would have been open to the other side to indicate that the offer had not been accepted. Please liaise with Lisa McLean on her return on Monday" ³⁵*

70. This email is absolutely appalling and was a continuation of the treatment I had received from Mr Twyman throughout.

71. How can he say that what was done were my instructions, and that my comments on the draft

³³ * Draft 'Consent Order' with my annotations, faxed to Mr Gallagher and Mr Twyman on 13 November 2003, 16h29

³⁴ * Draft 'Without prejudice notice of acceptance' with my annotations, faxed to Mr Gallagher and Mr Twyman on 13 November 2003, 16h29

³⁵ Letter from Mr Twyman, dated 14 November 2003

documents I faxed back "on the face of them are inconsistent with a request for inclusion in any event"?

- **The reply that was sent did not include points it had been agreed would be included, while including points which, likewise, had been agreed would not be included**
- **It made no reference whatsoever to the fact that the offer was not supported with the information necessary for me to assess it i.e. requirements for the working of Part 36 Offers - a point which I – as the client - had brought up as none of my 'advisers' did. And still, they opted to ignore it**

72. (NB: In spite of specifically stating on *three occasions* that I wanted to review the drafts before they were sent to CKFT, Mr Twyman, in effect, ignored my request and lied in order to cover up for not following my instructions. He said that I had faxed him the draft documents with my comments at 17h37. Evidence in support of my claim that he lied:

- To send the '16h29' fax I used the same fax machine I had used in the morning to send my '9h11' fax to Mr Gallagher. While this fax recorded a time of 10h11, at 10h12 Mr Gallagher replied to my fax.
- Hence, in the space of *precisely one minute*, Mr Gallagher would have had to: collect my fax from his fax machine; read it; compose a relatively lengthy email (293 words to be precise); send it)

73. **During the following 4 weeks I wrote numerous letters to Ms McLean demanding that another reply be sent to CKFT, and eventually wrote to Piper Smith & Basham's Managing Partner, Mr Richard Berns and Complaints Partner, Mr Ian Skuse. They refused to redress the situation**

74. For the following *four weeks* I have an exchange of correspondence with Ms McLean with the aim of getting Piper Smith & Basham to send another reply to CKFT which incorporates the points that had been agreed.

75. **Yet again, Ms McLean tried to push me into a decision by giving me false information and continuing with her unbelievable obstinacy in refusing to accept the facts**

76. In her letter of 18 November 2003, Ms McLean writes:

"...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 them interest on sums, any interest should go into the trust fund. (NB:What??) However, for the purposes of settling this case and giving (sic) the amount of interest, the advice would be to settle on the terms as set out in that order"
36 *

77. To which I replied on 20 November 2003:

"This is incorrect: it was crystal clear from what Mr Gallagher said that he would deal with the issue of the interest in the reply to the offer. He said "the works have not started, hence interest cannot be charged". Hence, it was not the advice given.

Secondly, no, there is not "just one point to clarify". The reply has totally ignored Mr Brock's conclusions and key concerns which he made very clear - and gave you and Mr Gallagher a copy, namely that

³⁶ * Letter from Ms McLean, dated 18 November 2003

in spite of five months having elapsed since the 17 June report by the LVT, Steel Services has not done anything to address the lack/insufficient specifications on items amounting to £144,745.87. This highly material point was meant to be recorded in the reply. Why was not it?" ^{37*}

78. And received the following from Ms McLean on 21 November 2003:

"As I say in my letter of 18th November I spoke to Mr Gallagher on my return from holiday and the information he gave me is that as set out in my letter of the 18th November".

79. I responded to this with the following on 23 November 2003:

"In relation to the conversation you said to have had with Mr Gallagher post 28 October regarding the interest, I note that this led to a change of position relative to what was agreed with him at the 28 October meeting.

Evidently, a similar 'off-line' conversation has taken place post the 28 October meeting in relation to Mr Brock's highly significant key conclusion - namely that Steel Services has not addressed any of the lack/insufficient specifications identified by the LVT in their June report (items amounting to £144,745.87) - as the reply totally omits any reference to this. Yet again, I am asking the question: why was this left out?" ^{38*}

80. In her reply of 24 November 2003, Ms McLean wrote:

"I apologise for the confusion in relation to the reply having been sent to CKFT. In relation to the conversation that I had with Mr Gallagher regarding the interest as I had just returned from holiday and looked through the file I noted that there was your hand written note on the draft order in respect of the interest point (NB: !!!) and it was on that basis that I telephoned Mr Gallagher and he gave me the information as set out in my letter of 18th November.

You will appreciate that I was not here between the 3rd and 14th November inclusive and have had no conversation with Mr Gallagher in relation to Mr Brock's key conclusion referred to in the third paragraph of that letter" ^{39*}

(NB: Ms McLean's obstinacy in refusing to acknowledge the evidence is absolutely beyond belief!)

81. Ms McLean's letter of 24 November 2003 provides further evidence that the reply was sent to CKFT without my consent as she also asks me to confirm my endorsement of the reply:

"Perhaps you can now confirm that the consent order may be signed, if that is your instructions, and you can arrange to let me have the appropriate cheque in due course"

82. I replied to Ms McLean on 26 November 2003:

"You state that you contacted Mr Gallagher on your return from

³⁷ * My fax to Ms McLean, dated 20 November 2003

³⁸ * My letter to Ms McLean, dated 23 November 2003

³⁹ * Letter from Ms McLean, dated 24 November 2003

holiday because you saw my handwritten note on the draft order above the word 'interest' ("On 28 October: Mr Gallagher said 'no' because works had not started"). It is interesting that you are not referring to my other handwritten comment which was on the 'without prejudice notice of acceptance' document: "+ Non-compliance with Section 20 for some items, as a consequence of which the LVT was unable to take a decision".

What happened in your firm subsequent to Mr Brock and I leaving Mr Gallagher's office at 17h00 on 28 October and which resulted in a reply that does not reflect what was agreed is for you to determine.

From my point of view - as the client - the outcome is a letter that does not make any reference to two points that had been agreed would be included in the reply. Instead, two of the four points covered in the letter refer to matters which, at the meeting, Mr Gallagher described as "not worth pursuing" - yet, they account for 50% of the contents of the letter.

I am not endorsing a reply that does not in any way challenge the offer letter which starts with the claim that Steel Services considers that "it is entitled to payment from me of the sum of £10,917.27". This is simply not true. Steel Services is not entitled to ask this amount from me - and it knows this perfectly well.

My position is based entirely on the decision of the LVT with, in addition, the fact that Martin Russell Jones had written to residents on 7 June 2001 that the full amount of the contingency fund would be used as contribution towards the costs. It is not me challenging the decision of the LVT, but Steel Services, as it has revised the amount it considers due on a number of occasions.

As it stands, even its offer of £6,350.85 represents an overcharge of £1,735.74 (my reply to the offer of 7 November) given that it has not addressed the lack/insufficient specifications identified by the Tribunal. The high significance of this was made perfectly clear by Mr Brock at the 28 October meeting during which it was discussed at length - and you reflected this in your attendance note...

I therefore demand that - as was agreed at the meeting - the point be made in the reply.

This point is of great significance. It was your firm's responsibility to ensure it was captured in the letter and it is now your firm's responsibility to ensure that it is"^{40*}

83. Ms McLean responded with the following on 1 December 2003:

"I am not sure what you are trying to imply by saying "what was agreed is for you to determine". If there is a particular problem with the way in which this firm has acted for you in this matter or my handling of the matter then you should take this up with Mr Ian Skuse who is a partner of this firm and the firm's complaints officer.

The fact is that we had sent a letter to CKFT on the 13th November and in your fax to me of the 20th November you were, "puzzled by my letter

⁴⁰ * My letter to Ms McLean, dated 26 November 2003

of the 18th November and you say, "have not been sent?? What on earth is going on?" (A). Clearly at that stage had the letter not been sent out you would have been extremely unhappy and you were under the impression on the 20th November (rightly so) that the letter of the 13th November with the accompanying consent order had been sent out.

I enclose a draft of a reply to their letter of 19th November and would ask that you let me have your comments thereon. If it is easier to discuss the matter please let me know when would be a convenient time to do so".

(A): In a letter dated 18 November 2003, Ms McLean wrote that she "notice(s) the without prejudice and draft consent order have not been sent to the other side")

(NB: Given the modi operandi of Piper Smith & Basham, from October, I refused to correspond with Ms McLean other than by letter)

84. In her proposed draft letter to CKFT, dated 1st December 2003, Ms McLean wrote:

"Whilst we enclose the endorsed draft consent order we wish to add to our letter of 13th November that our client does not accept that your client is entitled to payment from her of the sum of £10,917.27 as set out in your letter of 21 October. She also remains extremely unhappy that the specifications remain unchanged notwithstanding the fact that this is a matter that the LVT had commented upon specifically. In particular in respect of the vagueness of parts of the specifications and the resulting inability to assess adequately or at all whether some items were properly priced. Also, there has been no re-tendering of any sort and the contract has remained with the same contractor. These are all matters which our client finds disturbing given the judgement of the Leasehold Valuation Tribunal. No doubt these sentiments will be passed on to your clients" ^{41*}.

(NB: Although she is clearly disassociating herself from this letter, Ms McLean finally captures the importance of this issue)

85. On 2 December 2003 I wrote a letter to Messrs Berns and Skuse, Piper Smith & Basham, requesting "your kind assistance in ensuring that the necessary steps are taken to redress the situation" ^{42*}

86. I replied to Ms McLean's letter of 2 December 2003 on 12 December 2003 (and copied my letter to Messrs Berns and Skuse). I wrote:

Your draft letter dated 1st December to CKFT does not address my request

While the contents of your draft letter to CKFT, dated 1st December (received 5th December), reflect the discussion that took place on 28 October with Mr Gallagher, Mr Brock and yourself, it does not reflect what was agreed at this meeting: these points were to be included in the reply i.e in the 'notice of acceptance' - not in a separate letter.

This is now the fifth time that I am pointing out to you/your firm that the reply does not reflect what we agreed. (Previously on 13

⁴¹ * Ms McLean's proposed draft letter to CKFT, dated 1 December 2003

⁴² * My letter to Messrs Berns and Skuse, Piper Smith & Basham, dated 2 December 2003

November, 20 November, 26 November and 2 December)

Under point 3 I wrote:

"I want you to write another 'notice of acceptance' as well as 'draft order'- cancelling those sent - which contain the points agreed at the 28 October meeting - and send these documents to me for review prior to sending them to CKFT - as well as your draft covering letter

While I am prepared to accept the offer of £6,350.85 - even though it includes the sum of £1,735.74 which is not supported by specifications and cannot therefore be demanded under Section 20 - I want my reply to contain the points - we agreed - at the 28 October meeting, would be included."^{43*}

87. In her letter of 12 December 2003, Ms McLean wrote:

"You go on in your letter to say that you are prepared to accept the offer of £6,350.85, but continue to make comments that suggest you are not entirely happy with it. The offer is either accepted as it stands or rejected. You have accepted it in accordance with our and Counsel's advice. (NB: !!!) The problem here is that the consent order has been sent to CKFT and they have asked for an endorsed copy (i.e. one signed by us on your behalf) and I am surprised that they have not chased for it before now. They will argue, correctly in my opinion, that we have an agreement" (NB: !!!).

This is an appalling attempt to bully and intimidate me into endorsing the consent order and notice of acceptance.

88. It is my view that, to use a colloquial expression, Piper Smith & Basham thought that they had me 'cornered' as, having stated the above, Ms McLean wrote as *the last point* in her letter:

"One final point to make is that whilst there is a current complaint against me personally and the firm it would not be appropriate for me to continue acting for you, our relationship having broken down"

89. **The level of anguish and distress I was experiencing since the 28 October 2003 meeting was horrendous. I was making myself sick:**

- I lost nearly a stone in weight (5 kg) during that period (weight I did not need to lose given that I weighed under 10 stones (63kg) and my height is 5 foot 9 inches (1.75m))
- I could barely sleep. On 18 November I had to see my doctor to get sleeping pills. I was told that I "look like death". I certainly felt absolutely awful: weak, very tired and close to a nervous breakdown.
- Added to this was the worry that I did not want my work to suffer.

90. **I was getting nowhere with Piper Smith & Basham and they were very evidently relying on the fact that no solicitor would pick-up my case from where I was at. Yet, I had to have a reply that included the highly material points that had been left out.**

91. **I therefore opted to write directly to CKFT on 19 December 2003.**

⁴³ * My letter to Ms McLean, dated 12 December 2003

I agreed to everything – except payment of interest (£143) – and included full payment with my correspondence.

92. Mr Skuse replied to my letter of 2 December 2003 on 18 December ^{44*}.

The letter does not address any of the specific points I had made in my letter. Instead, Mr Skuse adopts the line that there is an agreement, that I have endorsed it and that I am now trying to change it.

(NB: Indicating that the treatment I have received is endorsed at the highest level within Piper Smith & Basham – given that I had also addressed my letter to Mr Berns, the managing partner)

For good measure, Mr Skuse uses the by now very familiar scare tactic: *"...as far as CKFT are concerned there is a concluded agreement resolving their client's claim... would only lead to further litigation at your cost...".* To this I replied on 24 January 2004: *"I have not explored this but, should litigation ensue from Steel Services, it seems to me that I would then have to issue proceedings against your firm"*

He also views my case as having been *"properly managed"* and said to be *"satisfied that the quality of service that we provided was perfectly acceptable..."*

93. As by 16 January 2004 I had not received a reply from CKFT, nor had my cheque been cashed, I asked a firm of solicitors, Sheratte Caleb & Co, to send a copy of the correspondence I had sent on 19 December 2003 on my behalf.

94. CKFT replied to my letter of 19 December 2003 more than **5 weeks later**, on 27 January 2004.

(Interestingly, Piper Smith & Basham received my reply to their letter of 18 December 2003 on 27 January 2004).

95. While Steel Services was quite clearly happy with the reply produced by Mr Gallagher, as suggested by the long delay in the response, it evidently did not like the contents of mine – as I pointed out in my letter of 24 January 2004 to Piper Smith & Basham (point 37) ^{45*}.

(NB: If Steel Services is purely after the payment of the service charge then, the only amount I have – rightly - said I cannot pay is £143 of interest. But, quite clearly, it is not its sole objective). (Of course, more to the point – given the terms of my lease – *Steel Services is not entitled to any payment from me as its demand has not been certified by an accountant*).

96. As the scare tactic of 18 December 2003 did not have the desired effect – in addition to the strategy of 12 December 2003 having backfired (letters from Mr Skuse and Ms McLean respectively) – in her letter to me, dated 21 January 2004 ^{46*}, Ms McLean writes:

"There is also of course the outstanding issue of the concluded agreement. Once again if you wish to discuss the matter with me at (sic) the telephone I am happy to do so"

On 12 December she had written: *"...whilst there is a current complaint against me personally... it would not be appropriate for me to continue acting for you, our relationship having broken down"*

97. **At the time of writing, the matter is still not concluded – and could therefore proceed to a hearing:**

⁴⁴ * Letter from Mr Skuse, Piper Smith & Basham, dated 18 December 2003

⁴⁵ * My letter to Piper Smith & Basham, dated 24 January 2004

⁴⁶ * Letter from Ms McLean, dated 21 January 2004

98. On 27 January CKFT sent me a letter stating that their client was considering its position. (They also wrote that they "...have now located my letters and cheques of 19 December")^{47*} (**NB:** A letter I had sent them by special delivery!)
99. As by 16 February I had not heard anything from CKFT, I wrote that nearly three weeks had elapsed since their 27 January letter and requested they reply within 7 days. I also stated that I reserved the right to produce my correspondence to the court in the event of protracted delay.
100. This generated a reply dated 17 February 2004 in which CKFT wrote "*Notwithstanding the fact that proper agreement as to settlement terms was reached with your previous solicitors, Piper Smith & Basham, our client is prepared to accept the sums provided by you ...*".

They also stated that they would be filing correspondence in court.

101. I replied to their letter of 17 February on 27 February, requesting that they send me the consent order for my signature. As to the correspondence to be filed in court, I detailed which I considered to be relevant (mine of 19 December; theirs of 27 January and 17 February)
102. Three weeks later, I had not received a reply. Hence, on 22 March I asked them to reply by return of post.
103. At the time of writing, I still have not received a reply.
104. On 31 March 2004 I went to West London County Court to determine what developments had taken place in relation to my case. Initially, I was told that a judgement had been entered against me on 8 March. When I said that I had not been informed that a hearing had been scheduled and requested copy of documents, I was told that "*No, the judgement was not against you. It was against defendant #9*)

I was then told that no development had taken place on my file since August 2003 and that a 'Listing Questionnaire' had been sent to Piper Smith & Basham in January. (The Court then realised that they were no longer representing me).

(NB: The directives set by the court at the 26 August 2003 hearing required exchange of Witness Statements by 21 October 2003. Ms McLean suggested to me that an extension was required and, in her letter to me, dated 3 November 2003, stated that CKFT had agreed to the exchange of Witness Statements by 12 December and expert reports by 9 January which "*would give a month before the trial commences*". Quite clearly, these changes were not communicated to the court)

105. It is now **more than three months** since CKFT have received full payment from me of the £6,350.00 that they were demanding. Payment I have made even though the demand has not been certified by an accountant and includes £1,736 not supported by evidence.

Why is Steel Services 'dragging its feet' – given that I have had weeks of battling with Piper Smith & Basham who have been saying that it considers that there is an agreement?

Evidently it did not like my correspondence of 19 December 2003. But, very clearly, it liked the reply produced by Mr Gallagher which:

- (i) excludes critical points it had been agreed would be included;**
- (ii) barely touches upon highly material points which are crafted in such a way as to be incomprehensible / mask the real issues;**
- (iii) includes points it had been agreed would not be included;**
- (iv) lets Steel Services get away with describing its offer as a 'Part 36' by not referring to Lord Woolf's ruling on the requirements for the working of Part 36 offers.**

- END -

⁴⁷ * Letter from CKFT, dated 27 January 2004