

- 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