- **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**

TO THE PROFESSIONAL CONDUCT AND COMPLAINTS COMMITTEE OF THE BAR COUNCIL

After page 29, look at the documents Gallagher was supplied with...and contrast that with his conduct, and his assertions

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COMMENTS ON COMPLAINT MADE BY MS NOELLE KLOSTERKOTTER-DIT-RAWE

Introduction

1. I have considered carefully the complaint made against me by Ms Noelle Klosterkotter-Dit-Rawe (NKDR") and I am very sorry that she is dissatisfied with the service that I have provided. However, for the reasons that I have sought to set out below, I do not accept the criticisms made against me.

Background & Procedural History

2. The underlying proceedings about which I was asked to advise on a settlement offer were a service charge dispute relating to the costs of the then proposed major works. NKDR is the tenant of her flat, 3 Jefferson House, 11 Basil Street, London SW3 1AX, under a long residential lease. In the usual way NKDR's lease ("the Lease") provides for the landlord, currently Steel Services Limited, to repair and maintain the structure and common parts of the building and to recover the costs of doing so from the tenants as service charge. The service charge recoupment machinery contained in the Lease is complicated and poorly drafted, though it is by no means atypical of the form of long residential lease that was granted during the 1980's and earlier.

3. A copy of the Lease is attached and in my comments below I draw attention to its material provisions. However, I have not sought to provide a detailed analysis of the scheme of the Lease. Should further explanation as to the proper construction of the Lease, or of any of the points of law and practise referred to in these comments, be required I would be pleased to provide the same upon request.

4. On 7th Aug 2002 the landlord made an application to the Leasehold Valuation Tribunal ("the LVT") under section 19(2B) of the Landlord & Tenant Act 1985 ("the 1985 Act") for a declaration as to the reasonableness of the then proposed major works. Section 19(2B) of the 1985 Act enables declarations to be sought as to the reasonableness of proposed service chargeable expenditure in advance of the landlord actually incurring the costs in question. In essence, a section 19(2B) application enables a landlord to obtain prior approval from the LVT of a priced specification of works prior to the landlord committing itself by entering into the building contract.

5. On 29th November 2002 the landlord issued County Court proceedings against NKDR and 10 other leaseholders claiming a total of £304,293.27 plus interest by way of interim (on account) service charge contributions. The sum claimed from Ms Rawe was £14,400[1] and was comprised, in the main, of the estimated costs of the then proposed major works. By a Defence and Admission dated 17th Dec 2002 NKDR admitted (pending information) the sum of £356.22[2].

6. I consider below the LVT's then limited jurisdiction and the difficulties that this tended to give rise to . I also consider below the LVT proceedings themselves.

7. Though I was not instructed at the time[3], it appears from the papers included with my instructions that the County Court may, in error, have entered a default judgement against NKDR, or at least confused the claim against her with the claim against one of the other Defendants against whom a default judgement had been entered. In any event, for whatever reason, by notice dated 21st March 2003 NKDR was notified by the Court that a charging order hearing had been listed 4th April 2003.

8. By a detailed letter dated 25th March 2003 NKDR applied to the Court for a stay pending the outcome of the LVT proceedings. By letter dated 27th March 2003, the Court advised NKDR to attend the hearing on 4th April 2004 and that her application for a stay of the

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[1] A copy of the Particulars of Claim is attached

[2] This document is contained in NKDR's bundle

[3] I was first instructed on 24 October 2003 to advise in conference on 28th October 2003 on whether the landlord's offer dated 20th October 2003 should be accepted.

County Court proceedings pending the outcome of the LVT proceedings would be considered at that the time[4].

9. It is not clear to me whether the hearing on 4th April 2003 was effective and, if it was, whether a stay of the County Court proceedings was ordered. However, given that the Claimant's solicitors, CKFT, applied to the County Court on 23rd May 2003 for the Court to convene a Case Management Conference, I infer that a stay was not formally ordered. In applying for a CMC, CKFT stated that they had obtained judgement or settled proceedings against all 11 Defendants[5], accept NKDR and 3 other named Defendants[6].

10. However, as the LVT's written determination (dated 17th June 2003) became available before the CMC, that was listed for 24th June 2004 the need for a stay of the County Court proceedings pending the outcome of the LVT proceedings was overtaken by events.

11. The hearing on 24th June 2003 was adjourned to enable the Claimant landlord to issue applications for summary judgement against the 3 remaining Defendants. NKDR was awarded her costs for this hearing. They were summarily assessed by the District Judge at the hearing on 26th August 2003 in the agreed sum of £265 (cf the sum of £3,646.12 claimed by NKDR as a litigant in person[7])

12. The applications for summary judgement were made by the Claimant on 5th August 2003 against the three remaining Defendants (NKDR and another leaseholder[8]). The claim was

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4 see NKDR's letters to the DJ, West London CC dated 25th March 2003 & 1st April 2003 and the Notice of Adjourned Hearing dated 21st March 2003.

5 Proceedings were commenced against 11 tenants, hence, by May 2003 the claims against 7 of the 11 Defendant had either been compromised or else judgement had been entered

6 see CKFR's letter dated 23rd May 2003.

7 the major element of NKDR's costs claimed costs were her surveyor's fees, incurred in reviewing the LVT determination and the Claimant's schedule of adjustments: the revised Major Works Apportionment prepared by the managing agents

8 though it is not clear from my papers, it appears that a further two of the original 11 Defendants had by this stage either compromised their claims, or submitted to judgement.

based on a schedule of adjustments prepared by the Claimant landlord's managing agent, Martin Russell Jones, Chartered Surveyors that, they contended, set out the Defendants' individual proportionate shares having given credit for the sums disallowed by the LVT's determination. This document was referred to as the managing agent's "revised Major Work Apportionment"[9]. It was handed to NKDR at the hearing on 24th June 2003 and it stated that NKDR's 1.956% share of the total had been revised to £10,917.27 (cf the original amount claimed in the proceedings of £14,400.19).

13. By a letter to the District Judge dated 15th July 2003 NKDR made it clear that she did not accept that the revised Major Works Apportionment properly gave effect to the LVT's determination. This resulted in the Claimant's solicitors writing to the Court, by letter dated 17th July 2003, to dispute the terms of NKDR's letter and to indicate the need for directions, disclosure and witness statements, as well as the need to invite the LVT to determine the specific amount that it was reasonable for NKDR to pay.

14. CKTR, by letter dated 17th July 2003, invited the LVT to determine the specific sum that it would be reasonable for NKDR to pay. However, by letter dated 21st July 2003 the LVT, rightly in my opinion having regard to its then limited jurisdiction[10], declined jurisdiction to do so.

15. By letter to the Court dated 9th August 2003 NKDR contended that the percentage deduction to reflect the LVT's determination should be 73.8% (the sum properly payable: 26.2% of £14,400.19 = £3,772.84). This letter also expressly rejected CKRT's offers of a round table meeting to avoid what CKRT, rightly in my opinion, described as the disproportionately expensive litigation represented by the County Court proceedings[11].

16. On 18th August 2003 the adjourned CMC and the hearing of the applications for summary

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[9] As considered below, the LVT's determination related to the global service charges payable across the whole block and therefore needed to be apportioned out in order to quantify the liabilities of individual tenants. However, because of the way aspects of the LVT's determination were presented, this was not purely a straight-forward arithmetic exercise and led to further disputation.

[10] considered below

[11] page 3 of NKRT's letter dated 9th August 2003

judgement were listed for hearing on 26th August 2003. NKDR interpreted this development as evidence that "*the Court continues dancing to the tune of CKRT*": *no notice has been taken of [her] letter of 9 August 2003*"[12].

17. NKDR was acting as a litigant in person in the County Court proceedings until shortly before 26th August 2004, when she instructed Piper Smith & Basham ("PSB"), who retained Counsel for the 26th August hearing and at the County Court hearing on 26th August 2003 before the District Judge, NKDR was represented by Counsel (David Pliener)[13]. It will be noted that NKDR did not like the fact that David Pliener had "*taken advice from CKFT*"[14] - I do not know the details. However, presumably, David Pliener was discussing matters with the other side as is expected prior to a CMC. In any event it seems plainly right that the surveyor's fees would not be costs of and occasioned by the adjourned CMC on 24th June 2003 and could not therefore be included in the award of costs for that hearing.

18. At the 26th August 2003 hearing summary judgement in the sum of £2255.07 was entered against NKDR[15] and detailed directions were made for the trial (as a multi-track claim) of the balance of the claim against NKDR in the sum of £8662.20[16]. It will be noted that the directions made provision for expert evidence and for a trial with a 2 day time estimate, to be heard within a trial window commencing on 16th February 2004 and expiring on 5th March 2004[17].

19. On 21st October 2003 CKFT made a without prejudice offer, labelled "Claimant's Part 36 Offer" ("the Offer"). As considered below, as the Offer provided that each party bear its own costs, it did not carry the automatic cost consequences that are an integral part of

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12 see hand-written note on Notice of Listing

13 NKDR's Complaint, para 15 (page 7)

14 NKDR's Complaint, para 15 (page 7)

15 and in the sum of £8839 against the 5th Defendant

16 and in th sum of £3,015.59 against the 5th Defendant

17 As noted above, NKDR's costs for the adjourned CMC on 24th June 2004 were summarily assessed in the agreed sum of £265

a Part 36 Offer. Consequently, the Offer was not a Part 36 Offer and would therefore be regarded by the Court as an offer made without prejudice save as to costs. The details of the Offer are considered below.

20 By the time the Offer was made, disclosure had taken place, but inspection and the preparation of witness statements[18] and of the expert reports had yet to be undertaken i.e. the major costs involved in preparing for trial were yet to be incurred and hence could be avoided if the Offer were accepted.

The LVT Proceedings & Determination

21. It can be seen from the determination that the LVT was spread over 4 days with an inspection of the Property- an adjourned first day (5th Feb 2003) and then 3 days, 13th& 14th March and 28th April 2003. Though the determination concerned the service charge of all tenants in the block, NKDR was the sole Respondent. She was represented by Counsel (Mr P Staddon) and solicitors (Messrs Oliver Fisher). The determination was a global determination under section 19(2B) of the 1985 Act and the other come was something of a mixed bag.

22. As is evident, in part because of the way in which the determination is presented, adjusting from the global determination to the consequences for individual leaseholders is not a straight-forward matter by any means and has been the source of further disputation.

The Difficulties caused by the LVT's Limited Jurisdiction

23. When the County Court proceedings were issued (Nov 2002), parallel proceedings in the Civil Court and the LVT were an unsatisfactory feature of the LVT's, then, limited jurisdiction to deal with service charge disputes[19]. I am currently writing a book for Sweet

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[18] though NKDR had already prepared a draft witness statement that was included with my instructions

[19] Until the enlargement of the LVT's jurisdiction by the provisions contained in the Commonhold & Leasehold Reform Act 2002 (brought into force in Sept & Oct 2003) the LVT's relevant jurisdiction was limited to making declarations under section 19 of the 1985 Act as to the reasonableness of disputed residential service charges

& Maxwell on litigating in the LVT - Leasehold Valuation Tribunals: Practice & Procedure - and would be pleased to expand on the practical difficulties that the LVT's limited and overlapping jurisdiction formerly lead to and, to a lesser extent, continues to do.

24. It is possible that the County Court may have been critical of the landlord for commencing County Court proceedings in parallel to its related application to the LVT and this could have sounded in costs: possibly resulting in the Court disallowing some, and conceivably, all of the landlord's costs down to the date of the LVT determination. However, it has been my general experience of these matters that, for the reasons that follow, County Courts tended to give all parties the benefit of the doubt and simply stayed the County Court proceedings pending the outcome of any related LVT claim. County Courts tended to do so principally out of a recognition of:

(1) the (then) limited and overlapping jurisdiction of the LVT; and

(2) the fact that the Landlord's LVT application was for a different, and more limited purpose, to that of the County Court proceedings[20], namely, to obtain pre-contract approval of the estimated costs of then proposed major works building contract. cf the County Court proceedings which were seeking a money judgement on the interim (on account) service demand which in turn was only required to be based on a fair and reasonable pre-estimate of the expenditure for the forthcoming year: the pre-estimate having been arrived at on the assumption that major works of the scale contemplated by the specification of works that was before the LVT would be undertaken during the year and would be subject to a balancing charge/credit to adjust for any difference between the actual expenditure on the major works and the pre-estimate[21]: and.

(3) generally, the confused and unsatisfactory position arising out of having two

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[20] the LVT could not then actually order that a service charge was due and payable.

[21] As considered below, the Lease, as is usually the case, does not require an accountant's certificate as a condition precedent to the payment of an interim payment (clause 2(h) of the Lease): cf the final (balancing)charge which is required to be supported by an Accountant's Certificate (clause 2(i) of the Lease.

forums for the resolution of service charge disputes.

25. In any event, though NKDR wrote a number of detailed letters to the Court, at least some of which are recorded as having been referred to the District Judge, drawing attention to the parallel LVT proceedings and requesting a stay, there is no indication from the directions made by the Court that the Court was likely to regard the proceedings as an abuse of process or otherwise improper[22].

26 Moreover, NKDR's refusal to meet with the landlord after the LVT determination to discuss terms of settlement was likely to count against her on the question of costs. Consequently, I could see no realistic basis upon which NKDR would be awarded her costs against the Claimant.

My Instructions, the Offer & my Advice

27. It was against that background that I was first instructed: I was instructed to advise in conference on 28th October 2003 on the merits of the Offer. The papers arrived in chambers on 24th October 2003 and were arranged in two lever arch files and a supplemental bundle. The papers included helpful written instructions briefly summarising the position[23].

28. The conference was held in Chambers on 28th October 2004, commencing at 2pm and ending at approximately 5.00pm. It was attended by:

(1) Ms Lisa Maclean, the solicitor at PSB with day to day conduct (under the supervision of the client partner, Mr Richard Twyman);

(2) Mr Tim Brock MRICS of LSM Partners, Chartered Surveyors. Mr Brock had acted as NKDR's surveyor through out the LVT proceedings, had reviewed the revised Major Works Apportionment and had prepared a detailed analysis for NKDR on the effect of the LVT's determination[24]; and

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[22] copies of the directions and the correspondence is attached

[23] a copy is attached

[24] see letter from Mr Brock to NKDR dated 31 July 2003

(3) NKDR

29. The matters discussed in conference are summarised in Ms Maclean's attendance note dated 28th October 2003[25]. From this note, my own abbreviated handwritten notes (which I am pleased to supply if requested, though I am concerned about whether the notes are readable) and my Emails to Richard Twyman dated 12th & 13th November 2003[26] I draw attention to the following:

(1) given that the likely costs of a 2 day trial with expert witnesses called by each side was likely to be multiples of the sum in issue (the balance claimed was £8,660 and the likely costs were in the region of £20,000 per party) the costs outcome was the most important element of the court proceedings;

(2) that the Offer proposed no order for costs i.e. that each party pay their own costs;

(3) that, as noted above, the bulk of the preparatory costs were yet to be incurred and could therefore be avoided if the Offer were accepted;

(4) that Mr Brock, who had undertaken a careful analysis of the effect of the LVT's determination[27] was of the clear view that the Offer sum to be paid by NKDR (£6,350.85 plus interest, with credit for the £2,255.07 judgement sum paid on 10th September 2003) could not be bettered[28][29], unless there was a good technical defence. Because I was aware that Mr Brock:

i. was a Chartered Surveyor who plainly knew his way around service charge accounts;

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[25] Copy attached: I did not see a copy of the attendance note until after NKDR had written to me stating that she proposed to make a complaint about me to the Bar Council and I requested that PSM supply we with relevant papers.

[26] which summarises my advice given in conference on 28th October 2003

[27] see his letter to NKDR dated 31st July 2003

[28] as considered below. I am in no doubt that Mr Brock confirmed this in conference

[29] by which was meant that the Claimant would do better at trial

ii. had been involved in this lengthy service charge dispute from the start;

iii. had considered the LVT determination and the Claimant's revised Major Works Apportionment at length,

iv. plainly had a grasp of the detail of the case

I was careful to make sure that I obtained his opinion on the effect of the LVT's determination on NKDR's proportionate liability. I therefore confirmed that Mr Brock had done the calculations and then asked him whether the Offer figure could be beaten on a straight apportionment out of the sums that had been allowed by the LVT. Mr Brock's unqualified answer, which I took a careful note of, was that the Offer figure "could not be bettered".

(5) Mr Brock's view accorded with my own rough calculations and I had no reason to doubt that it was correct: I still do not. In the light of this, unless there was a technical defence of merit to the claim (and in my view there was no such defence) it was a virtual certainty that the Claimant would beat the offer at trial, in which event, it was virtually certain that the Claimant would get its costs, possibly on an indemnity basis. I have re-considered this conclusion in the light of this complaint and standby it. I consider, below in response to the specific criticisms made of my by NKDR, why there were no technical defences to the claim.

(6) Mr Brock, and NKDR also expressed their concern that the major works (which at that stage remained outstanding) could ultimately cost NKDR far more than the sum claimed. This was because of the inadequate way in which the works had been specified.. Mr Brock went as far as saying that his is only concern was how matters were dealt with afterwards i.e. whether further sums could be demanded from NKDR in relation to the major works.

(7) I could readily see the force of this point. It was with that in mind that I formed the clear understanding that the critical point was to find a way to cap NKDR's exposure to any cost overrun with the major works. I therefore advised that the way forward was for NKDR to:

i. accept the offer as far as it proposed the payment of £6350.85 plus interest (less credit for the judgement debt already paid) and no order for costs:

ii. but to tweak the offer by stipulating that it was in full and final settlement of NKDR's share of the totality of the costs of the major works: this would have had the effect of converting a compromise in respect of NKDR's liability to make an interim (on account) contribution to the costs of the then proposed major works into a capping of NKDR's liability for the whole of the costs of the major works - thereby protecting NKDR from the risk of, as feared by Mr Brock and NKDR, a serious cost overrun on the major works. The advantages to NKDR of this outcome were obvious;

(8) However, while the advantages to this outcome were obvious, the question was how to bring about the Claimant's acceptance of a compromise on terms that were significantly better than those actually proposed by the Claimant in its Offer. Ms Maclean suggested that I could settle a draft consent order in appropriately tweaked terms. This seemed to be an excellent idea. I built on this by sugguesting that the draft order could be sent under the cover of an argumentative acceptance letter that I could draft. The purpose of the covering letter being to distract attention from the tweaking of the draft consent order by raising a series of technical defences to the claim, which, while arguable, were ultimately unmeritorious e.g that the lease provides for a rateable value method of apportionment of service charge liabilities yet domestic ratings have been abolished. The strategy is summarised in my Email to Richard Twyman of PSB dated 12th November 2003.

(9) This proposed course of action had the full support of Ms Maclean and Mr Brock and was agreed by NKDR. This position was reached about 1 ½ hours into the conference i.e about half way through the conference

(10) However, once we had agreed that the offer should be accepted on the tweaked

terms set out above, NKDR stated that she proposed to bring separate proceedings against the Claimant for harassment in relation to the Claimant having:

i. demanded service charges in the sum of £14,400 when the LVT had only subsequently allowed a lesser sum;

ii. threatened forfeiture proceedings;

because the person behind the landlord company, a Mr Ladsky, had intimidated her.

(11) The second half of the conference (about 1 ½ hours) was devoted solely to this issue.

(12) This was the first I had heard of such a proposed claim/counter-claim. I expressed my grave doubts as to whether any of the matters complained of would make out a good claim against the landlord company. A which point NKDR indicated that any such claim could for the moment be put to one side and pursued at a later date. However, I advised that, in view of the policy behind the rule in ***Henderson v Henderson***, namely, that, generally, a litigant should bring the whole of his/her claim in a single piece of litigation, it would be very unwise to compromise the current claim bought by the Claimant and, then, at a later date, bring a fresh claim against the landlord for harassment etc i.e the question of whether there was a viable counter-claim in harassment etc would need to be resolved before a decision was made as to whether or not to accept the Offer.

(13) I also advised that similar considerations may also apply in respect of any claim against Mr Ladsky.

(14) In the light of this advice, as set out in Ms Maclean's file note, it was agreed that NKDR would take separate legal advice on whether she may have a good claim for harassment etc. The file note correctly records that I stated that I was not an expert in personal injury claims, which I am not. Though I was virtually certain that NKDR did not have a viable claim against the landlord, I was careful not to

say anything more than that I could not see how such a claim could arise, but that it was not within my area of specialisation: given that the conference had strayed outside my area of expertise, I did not feel I could properly say anything further .

(15) In any event, because of:

i. the rule in ***Henderson v Henderson*** meant that the issue of whether there was a via counter-claim for harassment etc properly needed to be determined before a final decision was made as to whether to accept (and tweak) the Offer; and

ii. the fact that I could not advise definitively, at least without prior notice, on the merits of any harassment based claim

it was left that NKDR would obtain separate specialist advice and, in the light of that advice, revert to PSB with instructions as to whether the Offer was to be accepted on the tweaked terms that we had discussed.

30. NKDR does not say in terms in her complaint whether she did in fact obtain specialist advice concerning bringing a harassment based claim, or other general advice, or , if so, what that advice was: the implication is that she did and that this advice was contrary to my advice[30]. However no details are given.

31. The next I heard of matters was when, on Monday, 10th November 2003, an urgent fax was sent to chambers by PSB enclosing:

(1) a letter from NKDR dated 7th November 2003 addressed to Mr Twyman who, in Ms Maclean's absence, had day to day conduct of the matter; and

(2) a letter from CKFT dated 31st October 2003 declining to extend time for the acceptance of the offer from 13th November 2003.

As I had a one day trial in Luton on 10th November 2003 I was out of chambers all day

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[30] NKDR's Complaint, para 34 (page 10)

and was not able to look at it until 11th November 2003..

32. When, on Tuesday, 11th November 2003, I was able to look at it[31] it was clear that NKDR's letter dated 7th November 2003, headed "*my reply to [the Claimant's] Part 36 Offer...*" raised a number of detailed points, some that had been considered in conference, but also some new points. Importantly, the letter, was fundamentally different to where matters had been left at the end of the conference on 28th October 2003: NKDR was no longer giving instructions to accept a tweaked version of the Offer, but seemed to be giving instructions to make a counter-offer that dealt with a number of matters that were not in issue in the proceedings (e.g the supply of copies of the landlord's client account banking details), as well as requiring, as a term of settlement, that the Claimant pay her costs of the County Court proceedings . As I made clear in my Emails, I was firmly of the view that the terms of the proposed counter-offer were unrealistic.

33. I was concerned about the situation as I needed clear instructions. As well as preparing for my 3 day trial (listed to start the next day[32]), and dealing with other booked paper work, I left a message to Richard Twyman on 11th November 2003[33]. Unfortunately, Mr Twyman had an equally busy schedule and I was not able to speak to him on 11th November 2003. I was also informed on 12th November 2003 that Mr Twyman was out of the office on 12th November 2003, as was Ms Maclean.

34. Because of the urgency of the situation, and because I was concerned that Mr Twyman may be at a disadvantage as he had not attended the conference on 28th October 2003, I thought it wise to set my concerns out in a detailed Email so that it would be awaiting Mr Twyman on his return to the office on 13th November 2003. The Email was sent at 17.09 pm on 12th November 2003.

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[31] I stress that at this time I was extremely business - I had a 3 day trial listed for 12, 13 & 14 together with telephone conferences and paper work booked for that week.

[32] though at about 1 pm on 11th November 2003 I was advised that the settlement had been reached and that the 3 day trial was not going ahead

[33] I do not have a note of doing this. However, I have an actual recollection of doing so.

35. It can be seen that Mr Twyman responded very promptly to this Email by forwarding it to NKDR at 8.40am on 13th November 2003 asking for her instructions as to whether or not to accept the Offer[34][35]. This message was read by NKDR at 11.10 on 13th November 2003 .

36. In the meantime, NKDR had sent a fax directly to me. In response to this fax, at 10.12 am on 13th November 2003, I sent an Email to Mr Twyman and copied it to NKDR. This Email noted that the fax had crossed with the previous day's Email and stressed the need for clear instructions as to whether to accept the Offer, subject only to tweaking or whether to put forward a counter-offer. Though the email stressed my advice that the Offer, subject only to tweaking, should be accepted, it also advised that, if the Offer was not to be accepted, it could be allowed to lapse and a counter-offer prepared in less hurried circumstances - at all times, though I sought to give clear advice as to what should be done, it was made clear that any future steps were dependant on NKDR's instructions.

37. At 12.36 pm on 13th November 2003, NKDR replied by an Email that concluded:

"I am accepting your advice: to accept the offer - as you have extensive experience of handling this type of cases on behalf of lessees rather than landlords.

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

38. At the time I did not place any particular emphasis on NKDR's reference to me having extensive experience in handling this type of case on behalf of lessees rather than landlords: I consider that I have very extensive experience in handling these types of

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[34] I understand that NKDR has also made a complaint to the OSS about Mr Twyman and PSB. Though I am aware of nothing that would properly ground a complaint against Mr Twyman or PSB, I understand that I should not formally comment on it unless asked to do so.

[35] a copy of the forwarding was sent to me

cases on behalf of both landlords and tenants"[36]. I hope that this is accurately reflected in my Resume, which is published on the Chambers' website[37].

39. However, para 11 to NKDR's Complaint (page 5) states that she had selected me *"because [my] profile indicated that [I] tend to act for lessees rather than landlords"*. I do not know what profile NKDR is referring to: it is not the resume published on the chambers website or any other version I can think of and it cannot be from PSB's summary of me - this was the first time that I had been instructed by PSB. I was certainly unaware at the time that NKDR wrongly thought that I tended to act for lessees rather than landlords. Like most members of the Landlord & Tenant Bar I am happy to, and do, act for both landlords and tenants. Consequently I feel that I am always able to give balanced, independent and realistic advice and I always seek to do so.

The Specific Criticisms Made By NKDR

That my advice was wrong and incomplete and that this caused NKDR to suffer a detrimental outcome

40. I do not understand this allegation to be one that, if made out, would be a matter of professional misconduct. I respectfully contend that, if my advice was wrong or incomplete and that loss was sustained in consequence NKDR would have a negligence claim against me.

41. That said, I have carefully re-considered the advice that I gave and I do not consider it to be wrong or incomplete. I set out below, in summary form, why I do not accept that the advice I gave was wrong or incomplete. Should further details be required I would be pleased to provide them.

42. NKDR alleges that my advice was wrong/incomplete in that, firstly[38], I did not advise that

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[36] I am presently writing a book for Sweet & Maxwell on Leasehold Valuation Tribunal Practice and Procedure in which the emphasis will be on residential long lease service charge disputes.

[37] if anything my website Resume stresses my landlord work. I attach a copy

[38] NKDR's Complaint, para 1.1 (page 1)

NKDR's lease required, as a matter of contractual condition precedent, that demands for advanced (interim or on account payments) of service charge be supported by an accountant's certificate and year end accounts. I did not advise in these terms as the Lease does not do so. As is the case under many long residential leases, the obligation to pay the final service charge payment is subject to an accountant's certification. However, in common with many leases[39], NKDR's lease does not require an accountant's certificate in order for an interim charge to be payable[40]: the obligation to pay an interim charge is imposed by clause 2(2)(h) of the lease (which is the provision pleaded in the Particulars of Claim), which simply provides that:

> *"The lessee shall if required by the Lessor with every half-yearly payment of the rent.... pay to the Lessor such sum in advance and on account of the Service Charge as the Lessor or its agents shall from time to time specify at its or their discretion to be a fair and reasonable interim payment"*

Cf clause 2(2)(i) of the lease which requires an accountant's certification of the final charge, against which credit is given for any interim payments. The claim in this case was based on any interim demand referable to the costs of the then proposed major works - the demand was dated 17th Jul 2002.

43. There is a technical argument that an unpaid interim demand is extinguished upon the certification of the final (certified) accounts and thereby mergers into the final demand. However, particularly at County Court level, it has been my experience that this type of technical defence, increasingly, does not find favour. As I advised in conference, it was an argument that is speculative and likely to fail and hence should not be relied on, save as a possible means of muddying the waters in the acceptance letter.

44. In short, as I advised in conference, I could not see a good contractual defence (a defence arising out of the Claimant's non-compliance with the service charge recoupment machinery of the NKDR's lease), or any other technical defence.

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[39] the rationale being that certification of the final charge, in respect of which credit is given for interim payments, affords tenants sufficient protection.

[40] A copy of NKDR's lease is attached.

45. The second basis upon which it is alleged that my advice was wrong/incomplete is that I did not advise that the Offer was not compliant with the CPR requirements as to Part 36 Offers[41]. The case relied on by *NKDR is* ***Ford v GKR Construction Ltd*** [2000] 1 All ER. This is an important case concerning Part 36 Offers that are made before the commencement of proceedings - unsurprisingly, Lord Woolf's judgement is careful to stress that, if the pre-action Part 36 Offer process is to work, the parties must be supplied with sufficient information for the recipient to assess whether to accept an offer and for a proposed offeree to consider whether to make an offer.

46. The Offer in this case was not, of course, a pre-action offer, it was made after the LVT had made a determination after a 3 day hearing, and after comprehensive directions had been made by the Court for the parties to prepare for a two day County Court trial on the balance of the claim. There was no question of the Offer being impugned on the basis that it failed to supply NKDR with sufficient information to enable NKDR to assess whether or not to accept it[42].

47. My point about the Offer was that it was not a Part 36 Offer because it provided for each party to pay its own costs: this is contrary to the automatic cost consequences arising on the acceptance of a Claimant's Part 36 Offer - see CPR 36.14 which provides that, on the acceptance by the Defendant of a Claimant's Part 36 Offer, the Claimant will be entitled to its costs to the date of the acceptance. An offer which imposes its own terms as to costs, and does not rely on the automatic cost consequences imposed by CPR Part 36, is not an offer within the scope of Part 36: see generally the commentary in the White Book at 36.5.2[43]. Such offers will, however, be taken into account when the Court exercises its discretion on costs.

48. Strictly, as, absent a complete technical defence (and in my firm opinion there was not

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41 NKDR's Complaint, para 1.4 (page 2)

42 In any event, the Offer is a reasonably detailed document that supplies a summary details of how the settlement sum has been calculated. Consequently, if it had been issued prior to the commencement of proceedings, it probably would have been effective as a pre-action Part 36 Offer anyway..

43 copy attached

such a defence), the Claimant was going to be awarded something, and as NKDR had not made a payment into Court, the chances were that the Claimant would get its costs in any event, whether or not it had made the Offer. Particularly as NKDR had rejected previous invitations to meet to discuss terms of settlement in the light of the LVT's determination.

49. Accordingly, I and Ms Maclean, saw the Offer, with its term that each party pay its own costs, as offering something of a life-line that NKDR would be ill-advised not to accepted. Having reconsidered this conclusion for the purposes of preparing this response, I do not resile from in any way.

50. As I considered above, I do not agree with NKDR's point that the parallel proceedings would have assisted her on the question of costs - the best that could have happened at trial was no order for costs to the date of the LVT determination. However, even this outcome was by no means certain.

51. The third basis upon which NKDR alleges that my advice was wrong or incomplete is in respect of my advice as to the Claimant's entitlement under section 69 of the County Court Act[44] : the Particulars of Claim claimed statutory rather an contractual interest. My point was not that the Court would not award interest on undisbursed service charge payments: it is my invariable experience (having argued the point many times at trial on behalf of both landlord's and tenants) that Courts will award interest. My point was that, because undisbursed service charges (such as service charges paid in advance of being disbursed to defray the cost of major works) are impressed with a statutory trust pursuant to section 42 of the Landlord & Tenant Act 1987 ("the 1987 Act"), in accordance with which the landlord holds the undisbursed service charges as trustee for the benefit of the tenants, interest (whether contractual or statutory) on arrears is similarly impressed with the statutory trust. Consequently, though the Claimant landlord was entitled to interest, it was only entitled in a trustee capacity.

52. The point is not free from doubt, as I indicated in conference. At a practical level, my advice was that the modest amount of interest payable under the terms of the Offer

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[44] NKDR's Complaint, para 1.6 (page 2)

(£143) should be paid so as not to lose the Offer.

53. I therefore do not accept that my advice was wrong in law or incomplete. To the contrary, having re-considered it carefully for the purposes of preparing this document, I consider that my advice was correct in law.

54. Perhaps more importantly in the context of advising on terms of settlement, I consider the my advice carried with it the prudence, judgement and realism that comes with having considerable experience (on both sides) of these types of disputes. I note in particular, in this connection that, if a consent order in the terms that I drafted had been entered into, NKDR's fears of becoming liable for further contributions in the event of an escalation in the costs of the major works would have been fully addressed.

That [I] acted against NKDR's best interests by superficially treating crafting the wording of highly material points to make them incomprehensible mask the real issues and misrepresenting the facts in support of [my] position

55. I am sorry if the language used in the "argumentative" acceptance letter that I settled was incomprehensible/ or masked the real issues. However, the purpose of the acceptance letter, as part of the agreed strategy, was for it to be something of a smoke screen[45]. Moreover, vague wording seemed to be called for given that there was almost certainly no good certification point to be taken: the general reference in the covering letter to *"the absence of due compliance with the service charge certification provisions prescribed by the lease"* was intended to serve as a vague reference to the obscure, and probably specious argument, that unpaid interim demands merge into and are extinguished by a final demand which gives credit for interim payments[46]. In my experience, though the point is arguable, the more vaguely this argument is presented the better.

56. If NKDR was right in her analysis that an accountant's certification was a condition precedent to liability to pay an interim demand, obviously, I would have stressed this

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[45] as considered above, the strategy was to deflect attention from the tweaking of the consent order

[46] this argument is outline above.

point, however, as considered above, this is not what the Lease provides for.

57. It will be noted that the acceptance letter led with the rateable value apportionment point. The reason for this is that my experience has shown that, at least initially, this is an argument that tends to unnerve landlords and their advisors when they are claiming under a lease in the terms of NKDR's lease (even if it is an argument that tends not to impress lay people): however, though it is an arguable point, it is probably not a good point as it seems that it is open to the Court to imply an alternative apportionment mechanism in order to give the lease business efficacy. Similarly, my reference to the fact of an unused arbitration clause in the lease was calculated to cause concern amongst the Claimant's advisors, if not the Claimant landlord.: again it is a point that tends to concern lawyers more than lay people.

58. The acceptance letter did not include a reference to the inadequate specification of the major works: there is only a general reference (at page 2) to the major works. The reason for this, which was agreed in conference, was that, provided that the offer were tweaked so as to be in full and final settlement of the costs of the major works, there was no need to get into a criticism of the inadequate way in which the works had been specified or tendered - the full and final settlement provision would have operated as a cap on NKDR's liability, and hence, of her exposure to consequences of the feared project mismanagement. Ms Maclean's file note of the 28th September conference does not set this point out clearly. The note is correct in that it states that it was proposed to include in the acceptance letter reference to the inadequate specification etc. However, this proposal fell away when the strategy of tweaking the Offer (so as to provide for the full and final settlement of all major work costs) was developed and agreed on as the conference progressed. The file note does make reference to this refinement by way of stating that the draft consent order would deal with these points, which it does. This refinement of approach is reflected in the strategy as set out in my Emails dated 12th & 13th of November 2003.

59. I am certain that Mr Brock did say that the offer sum "could not be bettered" - I have a clear note of it and, as considered above, confirmation of this was a central point arising during the conference on 28th October 2004, the importance of which I had identified

during my preparation. It is also consistent with Ms Maclean's note of Mr Brook saying that the Offer was a good one, subject to his concerns as to the specification of works remaining unchanged.

Making Critical Changes to the Reply to the Claimant's Offer without [NKDR's] consent

60. It was not agreed at the 28th October 2003 conference that interest would not be paid. As stated above, my advice, which was accepted, was that, if the matter got to trial, we would argue that the Claimant landlord was not entitled to interest on undisbursed service charges. However, for the purposes of accepting the Offer, interest, in the sum of approximately £143 should be included. Ms Maclean's letter, extracted at para 3.1 (page 3 of NKDR's complaint correctly summarises the advice given on point.

61. I am not sure what points that it is said that I included in the acceptance letter that were agreed should not be included - as noted in Ms Maclean's attendance note, the acceptance letter would include (as a diversionary tactic) various arguable points, such as the rateable value point and the failure to rely on the arbitration clause. It did include these points. The letter also referred in general terms to no compliance with the recoupment provisions in the Lease.

62. I therefore do not accept that there were any critical changes to the terms of the acceptance letter that were made without consent.

Abuse of the fiduciary relationship by taking advantage of [NKDR's] lack of knowledge and experience[47]

63. As I understand it, this allegation is based on the twin premises:

(1) that I am wrong in my opinion that NKDR was virtually certain to lose if the claim went to trial and that costs would be awarded against her and certainly would not be awarded in her favour: and

(2) that PSB were intent, for want ever reason, in forcing NKDR to accept the settlement rather than continue to trial

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[47] NKDR's Complaint, para 4.1 (page 3)

64. As considered above, I remain firmly of the opinion that my very pessimistic assessment of NKDR's prospects was correct. PSB were similarly pessimistic before instructing me to advise and my advice reinforced their opinion. In the light of that assessment of NKDR's prospects, we were firmly of the opinion that the Offer, tweaked to provide for full and final settlement of all contributions to the costs of the major works, should be accepted.

65. I therefore gave advice to that effect in clear terms both in conference and in my Emails of 12th & 13th November 2003. I consider that advice to be correct and that it was my duty to give it. However, both my advice in conference and in my Emails made it clear that ultimately, it was for NKDR to give instructions as to whether or not to accept the Offer. As NKDR notes, by her 13th November 2003 Email she accepted my advice and instructed that the Offer should be accepted[48].

66. I do not understand the reference to PSB having an agenda to prevent NKDR from defending the claim: surely, having advised a client to settle, any firm can comfortably accept instructions to continue to defend the claim and, then, in the likely event that the defence fails, render a final bill for the costs of the litigation and remind the client that the disastrous outcome was in accordance with the original advice given.

67. I also do not accept that I had a palpable lack of support for NKDR's case[49]. My instructions were to advise on whether the Offer should be accepted. It was my duty to advise on this point to the best of my ability and professional judgement. An important consideration, probably the most important consideration, was the likely cost consequences of not accepting the offer and fighting the case. I am sorry if my advice seemed unbalanced. However, it was clear to me, and to Ms Maclean, that the Offer should be accepted and that it would have been remiss of me to have failed to stress the likely adverse cost consequences of continuing with the litigation. The balance of risks on costs was not finely balanced, it was all against NKDR and my advice reflected that assessment.

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[48] NKDR's Complaint, para 4.5 (page 3)

[49] NKDR's Complaint, para 30 (page 9)

68. As stated in my Emails, it was unrealistic for NKDR to seek an order for costs in her favour: each party paying their own costs (to the date of the Offer) was as good an order on costs as NKDR could possibly get: consider the fact that NKDR had not accepted previous invitations to attend discussions on settlement in the light of the LVT determination: that the offer sum could not be bettered and that summary judgement had already been entered on part of the claim.

69. The suggestion is that NKDR consulted another, unnamed lawyer, who thought that NKDR should seek her costs from the Claimant[50]. If that was the advice given, I disagree with it. However, it was of course open to NKDR to cease to instruct PSB and myself and transfer conduct to the other lawyer. NKDR did not do so. Instead, by her 13th November 2003 Email NKDR instructed that the Offer should be accepted as discussed in conference.

Playing active Role in Mr Twyman's engineering of a situation in which NKDR had no time to review the response[51]

70. As set out above, NKDR's letter of 7th November 2003 was not received in chambers until Monday, 10th November 2003. As I had a one day trial that day in the Luton County Court I could not look at it until 11th November 2003. I was very busy at the time preparing for a 3 day trial and completing pre-booked paperwork . However, I was still able, just, to complete this work having regard to my other professional commitments.

71. In order to deal with it, I needed clear instructions. I unsuccessfully attempted to contact Mr Twyman that day (11th November 2003). On 12th November 2003 I was informed that Mr Twyman was out of the office, as was Ms Maclean. I therefore sent the detailed email dated 12th November 2003 for Mr Twyman to deal with ASAP.

72. I had estimated that settling the acceptance letter and the consent order would take approximately 1 hour, once I had instructions to proceed. Consequently, I was not too worried about having failed to contact Mr Twyman on the 11th or 12th of November

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[50] NKDR's Complaint, para 36 (page 10)

[51] NKDR's Complaint, para 5 (page 4)

2003.

73. Having received the instructions to settle the documents I did so. I had not anticipated that the documents would not be completed until 3.32 pm - I had a series of telephone calls from solicitors, all with urgent enquiries on other matters during the afternoon and over lunch. However, though the delay was unfortunate I was not too concerned by it as I was confident that I had settled the documents on the terms agreed in the conference, the details of which had been summarised in my Emails to Mr Twyman. Accordingly, I expected that the documents would be reviewed by Mr Twyman before they were served to ensure that they were in accordance with NKDR's instructions. If Mr Twyman were in any doubt, I am sure that he would have clarified the point with NKDR before serving it. However, given NKDR's email earlier in the day accepting my advice and instructing that the offer was to be accepted on the tweaked terms discussed in conference, I do not see how Mr Twyman could have been in any doubt that he was proceeding in accordance with instructions..

74. I hope it will be understood that I was not able to contact NKDR directly and that, if it were necessary to do so, Mr Twyman would. As time was pressing, and as a courtesy, I thought that I could properly copy NKDR in on the Emails sent to Mr Twyman, including the draft acceptance letter and the draft consent order[52]. I therefore did so. However, ultimately, it was for Mr Twyman to satisfy himself that he was acting in accordance with his instructions in serving the acceptance letter and draft consent order in the form that I had drafted. I therefore do not accept that I have acted in breach of instructions.

75. At the time I was not sure whether, strictly, the acceptance needed to be served by 4.00pm, though, plainly, it was good practice to do so in order to avoid arguments that the acceptance was out of time. I therefore thought it prudent to draw Mr Twyman's attention to the point, which I did by stating in my Email *"presumably this ought to be served by 4.00pm today"*.

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[52] In this connection I note that there appear to be formatting problems in NKDR's printout of these documents. I attach versions of these documents that do not have these formatting problems

76. There was no agenda to prevent NKDR from reviewing the documents and in any event in the circumstances NKDR's review did not seem critical, though ultimately, this would be a matter from Mr Twyman to judge: time was obviously pressing and clear instructions to accept the Offer on the tweaked terms had been given and were complied with by me in the drafting of these documents.

The stress caused[55]

77. I have read with concern the details of the stress that NKDR says that she has suffered and I am very sorry that NKDR holds me responsible. However, I do not understand why this has occurred.

78. The central point being that the strategy that I advised on worked: the tweaked offer was accepted and, by lettered dated 19th November 2004, CKFT wrote to PSB asking PSB to endorse the draft consent order (in the form that I had settled) and to return it for filing with the Court.

79. Consequently, if NKDR had given instructions to PSB for the draft consent order to be endorsed, not only would the proceedings have been concluded on what I remain convinced were very favourable terms, but that NKDR would not be liable for any further contributions towards the costs of the major works in, as Mr Brock explained in conference, the likely event of a costs overrun occurring because of the inadequate specification of the major works. As stated above, both Mr Brock and NKDR stressed in conference that this was their primary concern and, as stated, the strategy that I recommended completely met this concern.

80. I simply to not understand why NKDR changed her mind and was not prepared to endorse the draft consent order. In short, it met the concerns discussed in conference and would have brought this stressful litigation to an end on favourable terms.

81. In any event, on 19th December 2003, NKDR wrote to CKFT stating that she agreed

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[55] NKDR's Complaint, para 6 (page 4)

everything expect interest in the sum of £143 and included full payment with the letter[54], yet the consent order has not been entered into.

The loss of earnings

82. For the reasons considered above, I do not accept that my legal advice was wrong or incomplete, or that anything other than endorsing the draft consent order was required to be done by NKDR after 13th November 2003.

83. Similarly, NKDR states that she consulted another lawyer. However, we are not told who the other lawyer was, nor are we given a copy of any written advice given by the other lawyer. If the other lawyer's advice is accurately reflected in NKDR's letter dated 7th November 2003 and in the assertions contained in her complaint against me, then, I am bound to say that the advice is seriously defective.

84. If, by the end of the conference on 28th October 2003 NKDR had concluded that my advice was inaccurate and/or unbalanced[55], then I question why I was instructed on her behalf to settle the acceptance .

Other financial loss

85. I am sorry that NKDR considers the conference on 28th October 2003 to have been a complete and utter waste of time. I do not accept that it was. It lead to the agreement of a strategy that, not only involved accepting a settlement offer that should have been accepted, but also the tweaking of the Offer in a way that the Claimant in turn accepted so as to address what were said to be NKDR's major concerns, namely, the risk of additional service charges in the event of a cost overrun on the major works.

86. I note that the loss are stated as including Mr Brock's fees of £646.25 for attending the conference and £50 for having retained solicitors (Sherratte Caleb & Co) for the limited purpose of serving documents on PSB - there is no reference to any fees for the further legal advice (that contradicted my opinion) that NKDR alleges that she obtained.

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[54] NKDR's Complaint, para 91 (page 22)

[55] NKDR's Complaint, para 34 (page 10)

87. For completeness I note that, on NKDR's instructions, my fees have not been paid.

The loss of NKDR's spare time since 13 November 2003 and the uncertainty as to how the case will develop

88. I am sorry that NKDR has devoted the majority of her spare time to this case since 13th November 2003. However, I can only repeat that, had the draft consent order been endorsed, the proceedings would have been compromised on favourable terms that addressed NKDR's concerns. Similarly, there would not now be any uncertainty as to how the case will develop, or as to whether the Offer has been accepted.

89. Obviously, it would be inappropriate for me to now advise NKDR as to her present legal position, and I do not do so, beyond stating that NKDR should take legal advice

General Criticisms Made of Me - that my Emails were patronising

90. I am sorry that NKDR has found my Emails patronising[56]. I did not intend them to be so. I hope that it will be appreciated that they were written under considerable time pressure - not only was I required at very short notice to settle the draft consent order and the acceptance letter, I also had a great deal of other urgent work booked.

91. The purpose behind the Emails was to set out in clear terms my advice and the need for clear instructions. It has been my experience that solicitors and lay clients appreciate firm advice, particularly advice that: (1) relies on a barrister's judgement, provided that the judgement is based on actual experience of the matters in issue; and (2) recommends a clear course of action, rather than qualified advice that, ultimately, does not advise on what should be done.

92. The difficulty with trying to give realistic advice based one's own practical experience is that, unless the numerous tactical considerations are spelt out at great length, which time often does not permit, the advice is necessarily in summary terms. I am sorry if my summarisation was so inelegant that it comes across as patronising.

Conclusion

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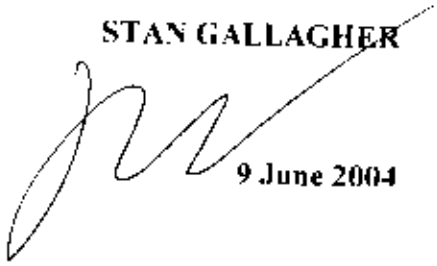
[56] my Emails of 12th & 13th November 2003

93. I am sorry that NKDR is dissatisfied with my performance. However, having carefully re-considered the position, I do not accept that I am guilty of any professional misconduct.

94. I am conscious that I have not dealt with NKDR's Complaint, on a point by point basis. I have, however, sought to respond to all of the allegations made against me. However, the complaint does run to 105 numbered paragraphs and, if I have missed something that should have been addressed, I am very sorry and I will, of course, be pleased to prepare a supplemental response dealing with any further matters that it is thought that I should deal with.

95. I declare the contents of this document to be true.

STAN GALLAGHER



9 June 2004

Arden Chambers
2 John Street
London WC1N 2ES

TO THE PROFESSIONAL CONDUCT AND COMPLAINTS COMMITTEE OF THE BAR COUNCIL

COMMENTS ON COMPLAINT MADE BY MS NOELLE KLOSTERKOTTER-DIT-RAWE

Date	Event	Ref
7 Aug 02	Landlord makes and application to the LVT for a declaration under section 19(2B) as to the reasonableness of the then proposed major works	
29 Nov 02	Landlord issues County Court claim against NKDR claiming £14,987.93 plus interest by way of an interim (on account) service charge contribution	
17 Dec 02	Defence and Admission of NKDR admits (pending information) the sum of £356.22	
28th Jan 03	A default judgement was wrongly entered against NKDR in the County Court Proceeding	
25 March 03	NKDR's detailed letter to the District Judge seeking a stay of the County Court proceedings	
27 March 03	Letter from County Court confirming that the request would be considered at the hearing on 4th April 2003	
4 April 03	County Court hearing at which stay was to be considered	
23rd May 03	C applies to the Court for a CMC on the 4 remaining claims, including the claim against NKDR	
17th Jun 03	LVT's written determination	
24th Jun 03	CMC listed	

NO; it relates to "the 7th Defendant" and was not 'a mistake' =outrageous

Note the date v. this

This hearing did NOT concern me; in addition to my above 25 Mar 03 letter:

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(1)- my **30.03.03** letter to the then London Leasehold Valuation Tribunal (LVT), cc'd District judge West London County Court;

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(2)- my **01.04.03** letter to District judge, WLCC

24th Jun 03	the landlord prepares a schedule of adjustments that purports to take account of the LVT's determination: the revised Major Works Apportionment	
24th Jun 03	directions hearing adjourned to enable the Landlord to apply for summary judgment	
25th June 03	CKFT make a without prejudice offer for NKDR to meet with the Claimant	
15th July 03	NKDR's letter to the District Judge disputing the revised Major Works Apportionment	
17th July 03	CKFT' letter to the Court response to NKDR's letter	
17th July 03	CKRT's letter to the LVT inviting the LVT to determine the specific amount that it would be reasonable for NKDR to pay	
24 July 03	CKFT's letter to NKDR recording invitations to a round table meeting. NKDR's rejection of the same and that this would be relied on the question of costs.	
6 Aug 2003	Claimant's application for summary judgement	
9 Aug 2003	NKDR's letter to the Court contending that the percentage deduction to reflect the LVT's determination should be 73.8% (sum properly payable 26.2% of £14,400.19 = £3,772.84)	
18 Aug 2003	NKDR instructs PSB	
26 Aug 2003	Judgement entered on part of the claim and directions made for a 2 day multi-track trial of the balance of the claim.	
20 Oct 2003	Without prejudice offer made by the landlord - wrongly labelled a "Part 36 Offer"	
24 Oct 2003	Papers received (2 level arch files) to advise in conference on whether the landlord's offer should be accepted	
28 Oct 2003	Conference in Chambers with IS, NKDR's expert and NKDR (2.00 pm to 5.00pm	
10 Nov 2003	Letter of instruction form NKDR received in chambers	
11 Nov 2003	Considered letter of instruction and sought to contract instructing solicitor	

21

7

???

- My **13.11.03** letter to Gallagher and Twyman identifying this fact.
- And it certainly did not stop them from pretending that it was "*CPR compliant*":
(1)-McLean's **23.10.03** letter to me;
(2)- Summary of events- Gallagher

[1] the Claimant's solicitors

12 Nov 03	Email to instructing solicitor re need for clear instructions	
13 Nov 03	Further Email to instructing solicitor, crossed with fax from NKDR	
13 Nov 03	Instructed to settle acceptance letter and draft consent order	
13 Nov 03	Settled acceptance letter and draft consent order	

On the terms that had been agreed!

Sent without my consent, through conspiring - because it did NOT reflect what had been agreed:

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(1)- Twyman's **14.11.03** email to me;

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(2)- McLean's **24.11.03** letter "***asking for my consent to endorse the consent order***";

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(3)- Paras 75-83 of my **16.03.04** complaint to the Law Society against Piper Smith Basham

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(4)- Page my 19 Oct Witness Statement # 1

Cover: My Resume

1 The Lease — Stan Gallagher's Bundle

2 The Particulars of Claim

3 ~~My Instructions~~ Directions Made In County Ct Claim

4 NKDR's + CKTR's: Correspondence with County Court.

5 LUT Determination and Post Determination Correspondence with CUTand CKTR.

6 Claimant's Sch: Receipts Major Works Apportionment and Related Correspondence

7 Claimant's "Part 36 Offer"

8 My Instructions

9 Solicitors' Attendance Note re Conference on 27/11/03

10 NKDR's Faxes dated 19/11/03 and 13/11/03 (x2)

11 My Emails + Draft Consent Order + Acceptance Letter

12 Subsequent Correspondence relating to Counsel — Nil

SUMMARY RESUME

BARRISTER	Stan Gallagher
ADDRESS	Arden Chambers, 2 John Street, London WC1N 2ES
EMAIL	stan.gallagher@ardenchambers.com
YEAR OF CALL	1994 (former solicitor)
AREAS OF PRACTICE	Landlord & Tenant, Real Property, Housing, Compulsory Purchase
SYNOPSIS	Stan Gallagher is a barrister at Arden Chambers and a former solicitor. Stan is instructed on behalf of a wide range of private and social landlords, though he frequently acts for tenants. Stan regularly works directly with surveyors under the Bar's direct professional access scheme. As a property lawyer, and a specialist in landlord & tenant law, Stan has a particular interest in leasehold enfranchisement, estate management issues and, generally, disputes concerning long residential leases. In addition to his advisory and advocacy work, Stan frequently speaks on these issues at conferences for solicitors and other professional advisers and is currently co-writing a book for Sweet & Maxwell on Leasehold Valuation Tribunal Practice and Procedure.

NOTEWORTHY CASES

He forgot to mention **Richmond Housing Partnership v. some tenants - LRX/10/2005**
- Extracts from Bailiii datababase
- Printscreen

Barrington Court Developments Ltd v Barrington Court Residents' Association [2001] 29 EG 128 (LT) (Landlord & Tenant: Costs and Lands Tribunal procedure)

Castlegroom Ltd v Enoch and others (1)[2003] 31 EG 69 (Landlord & Tenant: Leasehold enfranchisement: the operation of the vesting order provisions of the Leasehold Reform, Housing & Urban Development Act 1993 in the context of an unresolved service charge dispute)

Castlegroom Ltd v Enoch and others (2))[2003] 48 EG 128 (Landlord & Tenant: Leasehold enfranchisement: whether a substantial delay in completing amounts to a relevant change of circumstances within the meaning of section 24(1)(b) of the Leasehold

Reform, Housing & Urban Development Act 1993 and hence permits the LVT to re-assess a previously agreed or determined purchase price.

Eaton Square Properties Limited v Ogilivie [2000] 1 E.G.L.R 73 (R.A.C.). ((Landlord & Tenant: Rent Act: determination of fair rent)

Forcelux Ltd v Sweetman and another [2001] 2 EGLR 173 (LT) ((Landlord & Tenant: Services charges: the application of section 19 of the L & T Act 1985 and the distinction between reasonable costs and costs reasonably incurred.)

Ghani v London Rent Assessment Panel [2002] EWHC 1167 Admin Court, E.G. ((Landlord & Tenant: Statutory appeal challenging the lawfulness of a RAC decision on the grounds that the decision had been reached without having regard to the issues of the location and state of repair on the subject property)

Hordern v Viscount Chelsea and another [1997] EG 144 (LVT) ((Landlord & Tenant: Leasehold enfranchisement: appropriate discount for the right to holdover under Part I of the 1954 Act)

Maryland Estates Limited v Abbathure Flat Management Limited [1999] 1 E.G.L.R. 100 (LT) ((Landlord & Tenant: Leasehold enfranchisement: the statutory definition of marriage value)

Martin v Maryland Estates Limited (1): 31 H.L.R. 218; [1998] 2 E.G.L.R.8 (C.A) (Landlord & Tenant: forfeiture and the reinstatement of a lease)

Martin v. Maryland Estates Ltd (2) 31 H.L.R. 218; [1999] 2 E.G.L.R. 53 (C.A); (1999) L & TR. 30 ((Landlord & Tenant: Service charges: dispensation of section 20 of the L & T Act 1985)

Micrografix v Woking 8 Ltd [1996] 71 P. & C.R. 43; [1995] 37 EG 179; [1995] 2 EGLR 32 Ch.D. (Landlord & Tenant: formal validity of a contractual break notice).

Personal Representatives of W R Rees- Davies (deceased) v Westminster City Council (CA) [1998] 2 R.V.R. 53; [1998] EGCS 81 (Landlord & Tenant: Lands Tribunal procedure)

Skinns v Greenwood (CA) [2002] EWCA 417; [2002] 22 EG 137 (C.A) ((Landlord & Tenant: Leasehold enfranchisement: Leasehold Reform Act 1967, claim to enfranchisement: whether lease a long

tenancy under 1967 Act; whether lease within proviso to section 3(1) of 1967 Act; whether notice of determination required to be more than three months; whether tenant entitled to enfranchise; whether lease determinable by notice on tenant's death exempted from right of enfranchisement)

Styli v Hamberton Properties [2002] EWHC 394 (Ch), [2002] E.G.C.S 57 ((Landlord & Tenant: Appointment of statutory manager: whether the High Court retains jurisdiction under section 37 of the Supreme Court Act 1981 to appoint a receiver over a property to which Part II of the L & T Act 1985 applies)

LEGAL PUBLICATIONS Former editor of the Encylcopedia of Housing Law & the Housing Law Reports, contributor to Arden & Partington's Housing Law, and co-author of Leasehold Valuation Tribunal Practice and Procedure (forth- coming) for Sweet & Maxwell

PROFESSIONAL ASSOC. Member of the Property Bar Association

OTHER INTERESTS family sporting events