Ms Karin Seidenstein
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- **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**

(By Special Delivery)

Your Ref: PC 2004/0188/J

(My complaint against Mr Stan Gallagher, Arden Chambers)

29 August 2004

In its **02.09.04** letter, the Bar Council informed me that it had sent this document to Gallagher; in its **16.09.04** letter, that he would respond by 11 Oct; he did: **11.10.04**

Dear Ms Seidenstein

My response to Mr Gallagher's reply, dated 9 June 2004, received 3 July 2004

This document contains my response to Mr Gallagher's reply to the complaint I sent your Office, dated 4 April 2004.

You have been chasing me for my response. In your letter of 17 August 2004 you stated that: *"…it is in everybody's best interest for this matter to be resolved quickly"*. Evidently, this view is not shared by Mr Gallagher as it took 5 months for me to get his reply. I would like to remind you that I wrote to Mr Arden on 26 January 2004 as suggested by Mr Gallagher in his 23 January 2004 email: *"my chambers has its own internal complaints and disputes resolution procedure, presided over by my Head of Chambers (Andrew Arden QC)".* In writing to Mr Arden I asked him to consider the letter of complaint I had sent to Mr Gallagher as having been addressed to him.

As 2 months went by and I did not receive a reply, I opted to send my complaint to your Office, which you received on 6 April 2004.

During this 5 month period from the end of January 2004 to the beginning of July 2004 it would have been considerably more convenient for me to deal with Mr Gallagher's reply.

In terms of the layout of my reply: the first column represents my own numbering; the second one refers to Mr Gallagher's.

In my reply I refer to a number of supporting documents. I have already provided some to your Office in the context of my complaint. Others are enclosed with this reply – in chronological order. The list at the front of the supporting documents, also in chronological order, details those supplied now, as well as those previously sent with my complaint.

In my reply I have referred to a number of residents at Jefferson House. To respect their privacy, I have referred to them by using a letter of the alphabet (not connected with their surname). For the same reason, in the supporting documents – which are various letters from them - I have crossed out their name.

1.	1.	I shall set out below to further prove that I have a legitimate complaint against Mr Stan Gallagher.
2.	2	Mr Gallagher has headed the points comprised from 2 to 20 as *"Background and Procedural history".* Because of the latter part of his section heading i.e *"procedural history"*, as appropriate, I am going to address these points individually as Mr Gallagher has omitted to make any reference to the failures, including breach of Landlord & Tenant legislation and of the terms of my lease by Steel Services and Martin Russell Jones (MRJ), managing agents for the block, as well as their advisors, Cawdery Kaye Fireman & Taylor (CKFT), solicitors for Steel Services, and Brian Gale & Associates (BGA), surveyors.

3. 2. Mr Gallagher states: *"…the lease provides for the landlord 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"*.

Indeed, Steel Services has this responsibility – and is currently in very significant breach of its repairing covenant as the last redecoration took place over 12 years ago. (As evidenced by the TSB Bank plc v. Arthur Ladsky, 1996 Court of Appeal case, it is not the first time that Mr Ladsky has been in breach of a repairing covenant. Arthur Ladsky and Andrew David Ladsky were both directors of Combined Mercantile Securities, the company against which TSB successfully claimed repayment of advances made under a facility letter, together with expenses and interest – a total of £3 million). (CKFT acted for Mr Ladsky).

More than 3 years ago, MRJ had highlighted in its 7 June 2001 letter to *"All Lessees"* that the works were overdue relative to the landlord's repairing covenant "…*there is now an obligation to carry out works to the property… It is planned to commence the internal refurbishment in the Autumn with the external refurbishment to follow on next Spring"* [1]

Under point 5.09 of his 24 February 2003 *"Expert Report / Evidence of Proof"* report which Mr Brian Gale, BGA, surveyor for Steel Services, produced in the context of the LVT proceedings, he wrote: *"Jefferson House, whilst properly managed, has had very little, or significant, upgrading or refurbishment for very many years. It is clear, upon its face, that the building is in dire need of significant works to bring it up to a more modern standard and a proper, fit and substantial state of repair"* [2]

4. 2. Obviously, I do not have Mr Gallagher's experience in terms of leases. The feedback I have had on mine from various sources (e.g. lawyers at the Federation of Private Residents Association, other lawyers, LEASE), and by comparing my lease with that of others, it seems to me that the sections dealing with the service charge are, on the contrary - for a lease – relatively clear.

5. 3. I wish to point out that, in my 17 December 2002 defence to the claim, I stated that *"part of my lease is different from that provided to the County Court"*. The lease supplied with the claim is, apparently, for flat 23 and the main difference is under Clause (2) (c) (i) :

Lease for (apparently) flat 23:

"The amount of Service Charge payable by the Lessee for each financial year of the Lessor shall be a fair proportion (to be determined by and at the sole discretion of the Lessor) of the aggregate amount of the costs expenses and outgoings incurred by the Lessor during such financial year in respect of the heads of expenditure particulars whereof are set out in the Fourth Schedule"

My lease:

"The amount of the Service Charge payable by the Lessee for each financial year of the Lessor shall be calculated by dividing the aggregate amount of the costs expenses and outgoings incurred by the Lessor during such financial year in respect of the heads of expenditure particulars whereof are set out in the Fourth Schedule hereto by the aggregate of the rateable value (in force at the end of such year) of all the flats in the Building (excluding the Porter's flat) the repair maintenance renewal insurance or servicing whereof is charged in such calculation as aforesaid and then multiplying the resultant amount by the rateable value (in

[1] Letter from MRJ, to "All Lessees", dated 7 June 2001

[2] Mr Brian Gale's *"Expert Report / Evidence of Proof"* report, dated 24 February 2003

force at the same date) of the Flat"

Whereas the Clause in the lease for (apparently) flat 23 is equivalent to saying: *"Give your cheque book to the lessor who will write himself a cheque for an amount of his choice"*, mine is very different - (even though both leases were issued by Acrepost) [3] .

However, the Particulars of Claim lodged in West London County Court – and signed under a 'Statement of Truth' by Ms Joan Doreen Hathaway, MRJ, managing agents for the block states: *"The Claimant attaches to these Particulars of Claim (i) a copy of the Lease of flat 23 which contains covenants in the same terms as all of the leases.."*

Subsequent to writing my defence to the County Court claim, I discovered that the lease provided to the Leasehold Valuation Tribunal (LVT) by MRJ – which is apparently for flat 22 - also contains, under Clause (2)(c)(i) the same terms as detailed above for flat 23.

The LVT application form requires *"… a specimen lease together with a statement specifying any relevant differences between respective flats, or confirming that they are all the same"*. No statement was entered on the form.

6. 3. Although the abuses that are allowed to take place under the appalling and globally unique leasehold system in this country no longer surprise me, I find it difficult to believe that anybody would agree to such terms. But, maybe they do… because they leave it up to solicitors to advise them.

However, whether or not the residents concerned signed these terms, in practice, the allocation of service charge is based on a fixed percentage for each flat – and these percentages were provided by Steel Services-MRJ: (1) indirectly to the Court at the 24 June and 26 August 2003 hearings [4] ; (2) as an attachment to the 7 August 2002 application to the LVT [5].

7. 4. Under Point 45 of its 17 June 2003 determination, (see attached [6]) the LVT defined its role as:

"The question for the Tribunal is not solely whether costs are reasonable, but whether they would be reasonably incurred, that is to say whether the action to be taken in incurring the costs and the amount of those costs would both be reasonable".

8. 4. As comprehensively detailed under points 8 to 14 of my Witness Statement, dated 19 October 2003, (previously supplied with my complaint) it was not until 36 hours before the LVT hearing on 5 February 2003 – and therefore **7 months after** I received the original demand for payment of £14,400.19 (dated 17 July 2002) – that I was provided with a priced specification.

9. 4. **The *"procedure"* adopted by Steel Services and MRJ is in breach of Section 20 of the Landlord and Tenant Act 1985**

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[3] Acrepost became Langhaven Holdings. A director of Langhaven Holdings was Mr Patrick May O'Connor who, until some further recent reshuffle in the 'visible' parties holding the headlease and freehold was referred to, on the Land Registry, in a *"Note on title for Leasehold: '1 June 2001 - RESTRICTION: …pursuant to clause 6.7 of an Agreement dated 26 July 2001 made between (1) Steel Services Ltd (2) Canso Properties Ltd and (3) Patrick May O'Connor*"

[4] Martin Russell Jones' 'Major works apportionment 24th June 2002 – 2 versions: one listing 6 flats, the second, 35 flats

[5] List of service charge percentage share for all 35 flats at Jefferson House, included with Steel Services 7 August 2002 application to the LVT

[6] Determination by the Leasehold Valuation Tribunal, dated 17 June 2003

10. 4 **Landlord and Tenant Act 1985 - Section 20** – **(4) (b) – *"A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants"***

11. 4 As I pointed out – among others - in my defence to the claim dated 17 December 2002: *"I deny the claim because no justification has been provided for the sum demanded"*

12. 4 Aside from other residents also stating that they had not been supplied with a copy of the priced specifications (see, for example, letter to MRJ from Resident G dated 3 August 2002 [7] and from Resident D dated 24 September 2002 [8]), the LVT captured the following in its 17 June 2003 report, under Point 14 –

> *"Ms Hathaway (of Martin Russell Jones), on behalf of the Applicant, resisted the application for an adjournment… She maintained that Ms Dit-Rawé had seen the specification in the porter's room, but was unsure as to whether this had been a priced version".*

Point 16 of the LVT report states – *"In the interest of justice, the Tribunal agreed to an adjournment…"*

13. 4. Hence, the residents were asked to part with sums of money as high as £64,500 (in the case of one resident) with no evidence whatsoever as to the composition of the costs.

14. 4 **Landlord and Tenant Act 1985 - Section 20 – (4) (a) – *"At least two estimates shall be obtained…"***

15. 4 Initially 6 contractors were sent a tender. Of these, only 3 provided a costed submission: Killby & Gayford, Gleesons and CLC.

The **only** costings that I (and quite evidently other residents) saw were those attached to Joan Hathaway, MRJ's letter dated 15 July 2002 (and enclosed with this document) [9] :

(a) a letter from Killby & Gayford, dated 2 July 2002, stating only a global sum of £564,467.00 exc. VAT

(b) A page, numbered 3, from M.J. Gleeson Group plc, dated 26 April 2002, stating only the global sum of £680,346.79 exc. VAT

(c) Page 2 and 3 from a document signed by CLC Contractors, dated 19 April 2002 stating a total sum of £719,894.60 and giving a brief summary breakdown (on which, for the 'services' section, the sum of £160,307.00 had been crossed out and replaced with £406,537.00)

To this 15 July 2002 letter, MRJ had attached their demand from me of £14,400.19, dated 17 July 2002 [10]

16. 4. As stated by my surveyor, Mr Brock, LSM Partners, in his Expert Witness report, dated February 2003 [11], under points 6.14 and 6.15:

> *"In my opinion, the reason that only 3No contractors out of a possible 8No were able to provide prices for this document is that this specification is not clear on the extent of the work required*

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[7] Letter from Resident G to Martin Russell Jones, dated 3 August 2002
[8] Letter from Resident D to Martin Russell Jones, dated 24 September 2002
[9] Letter from Joan Hathaway, Martin Russell Jones, dated 15 July 2002
[10] Demand for £14,400.19 from Martin Russell Jones, dated 17 July 2002
[11] Expert Witness report by Mr Brock, LSM Partners, dated February 2003

and therefore submitting a tender would be considered a risk

I do not consider any judgment can be made on the priced submission by Gleesons (the second lowest tender) as a single total sum was provided with no breakdown provided. This should have been requested by Brian Gale Associates. A basic arithmetical error in their calculation (more easily identifiable with a tender breakdown) it is possible that their tender would be more competitive than Killby & Gayford's. As an example a single error on CLC's tender (services section) amounted to a difference of over £250,000.00"

17. 4. While under Points 6.30 and 6.31, my surveyor wrote:

"Brian Gale Associates tender report does not comment on any of the cost comparisons received by the tenderers, which is typical practice when reporting tender results. It is not possible without a more comprehensive cost breakdown to compare the costs of the lowest two tenders. BGA did not ask for further breakdown prices to be submitted. Without being able to compare similar work elements on a cost basis, it is not possible to confirm the contractor has understood the scope of works involved

None of the discussions with the contractors during the tender analysis stage have been recorded, particularly the clear reasons why Killby & Gayford increased their original submission by £112,501.33".

18. 4. In addition to which, as pointed out by my surveyor under point 6.2 of his Expert Report, the contract form used for the invitation to tender was inappropriate for works of this size and nature [12] (This was admitted by Mr Brian Gale during the LVT hearing - as captured under Point 32 of the LVT report: *"I accept a JCT works contract was not acceptable here. It was an oversight on our behalf"*).

19. 4. **Hence, contrary to Joan Hathaway's claim in her 15 July 2002 letter that the selection of Killby & Gayford was: *"In accordance with the requirements of the Landlord & Tenant Act 1985…"* in actual fact, it was not**

20. 4 **Landlord and Tenant Act 1985 - Section 20 – (4) (e) *"The landlord shall have regard to any observations received in pursuance of the notice"***

21. 4 Steel Services and MRJ's interpretation of this section of the Landlord & Tenant Act was to respond with the threat of prosecution – as evidenced by:

(a) The letter from Ms Hathaway to me, dated 20 September 2002 in which she states: *"…we have to require payment by return. We must inform you that if payment is not made now our client, Steel Services will have no alternative other than to instruct solicitors to commence legal proceedings to obtain payment"* [13]

(b) Letter from CKFT, dated 7 October 2002 (posted 8 October which I received on 10 October) in which they wrote: *"… our client requires payment of the… sum within seven days of the date of this letter. In the event that*

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[12] Point 6.2 of Mr Brock's Expert Report, dated February 2003: *"Under the RICS guidance notes for the selection of building contracts a project of this complexity, quantity and cost the JCT MW 1998 contract is considered (in most normal circumstances) to be unsuitable. Based on 1998 figures the JCT 98 contract for Minor Works should only be used for projects up to £90,000.00 and where works are of a simple nature. With the specialist works to the lift together with extensive electrical and mechanical works a IFC 84 contract is recommended to enable specialist nominated sub-contractor involvement.*

[13] Letter from Ms Hathaway, Martin Russell Jones, to me, dated 20 September 2002

payment is not received by Martin Russell Jones by 10 am on Monday 14 October, we have instructions immediately to commence proceedings for recovery of the debt".

For good measure, they also added: *"Our client reserves the right to take action to forfeit your lease for breach of covenant and to communicate with your mortgagee (if any), if such action becomes necessary"* [14]

Other residents received both these letters (see e.g. letter from Resident D dated 24 September 2002)

Hence, Steel Services / CKFT and MRJ were using coercion and bullying tactics to attempt to make me (and other residents) pay an amount of money not due and payable – having, at the time, just filed an application to the LVT *"to determine the reasonableness of the global sum demanded"*.

22. 5. The 11 residents listed on the claim represented 14 flats (equivalent to a large proportion of the flats not owned / connected with the ownership of the block).

As Steel Services filed just one claim against the 11 residents, it seems that this makes us, jointly and severely liable for the £304,293.27 claim - which is wrong – but, was allowed by the court!

23. 5. **In the Particulars of Claim MRJ / Steel Services refer to the claim as an *"interim payment"*. The sum demanded <u>cannot be described as such because</u>:**

(1) it was a demand for full payment, not an interim payment (which, for one resident amounted to £64,500); (Although, it is my absolute belief that there is an intention to ask residents for more money at a later stage in connection with 'these works' – see my reply to Mr Gallagher's point 29.(7)(ii))

(2) the works would have been taking place beyond June 2003, time by which, under the terms of my lease and of Section 21 (4) of the Landlord & Tenant Act 1985, Steel Services had to issue the year-end accounts given that the year-end for Jefferson House is December. These accounts had to reflect the demand.

24. 5. ***(1) The sum demanded was for the full amount of the works:***

(a) The sum quoted by Killby and Gayford referred to **<u>all</u>** the works. This contractor responded to the specification produced by Mr Brian Gale.

(b) The works / nature of the works detailed in Mr Brian Gale's specification are so comprehensive that they amount to a total overhaul of the block: new roof; new lift; new boiler plant; new carpet throughout; new doors; new entrance; new lighting; new area for the porter; total repainting internal and external; installation of mechanical ventilation; replacement of some windows; re-pointing, etc. (Some of the works required stem from lack of proper maintenance and upkeep of the block – as detailed previously in reply to Mr Gallagher's point # 2)

(c) Steel Services 7 August 2002 application to the LVT is for **<u>all</u>** the works. Point 2 of the 17 June 2003 LVT determination states: *"The application concerns major works set out in a specification prepared by Brian Gale Associates and priced by Killby & Gayford"*

(d) In her 20 August 2002 letter Ms Hathaway asks that: "[I] *make payment… by 16 September so that the funds are in hand to cover the cost of the*

[14] Letter from CKFT to me, dated 7 October 2002

work." [15]**.** This *"payment"* is the sum of £14,400.19 – which is 1.956% of £736,206.00

25. 5. ***(2) At the earliest, works would have only been completed well into the following year – beyond June***

(a) In her 15 July 2002 letter Ms Hathaway wrote: *"the work will commence at the beginning October, but we will confirm this nearer the time"*

(b) She again repeated a start date of October in its 20 August 2002 letter to *"All Lessees"*: *"Instructions need to be passed to the contractors as soon as possible so that works can start in early October"* [16]

(c) And Ms Hathaway did again in her letter to me dated 30 August 2002 [17]

(d) In her 7 June 2001 letter to *"All Lessees"* Ms Hathaway had written: *"It is planned to commence the internal refurbishment in the Autumn* (i.e of 2001) *with the external refurbishment to follow on next Spring"*. (Due to winter weather, leading to external works starting late March / beginning of April) [18]

(e) Both, Gleeson and CLC quoted a time of 22 weeks to complete the works (see MRJ's letter of 15 July 2002).

(Killby and Gayford had quoted a time that was less than that estimated by Gleeson, CLC, as well as MRJ – about which my surveyor made the following comment under Point 33 of his February 2003 report: *"Killby & Gayford have not been queried over their contract period, which in my opinion is not sufficient for the works to be completed. There is a risk that Killby & Gayford apply for an extension if this timescale is not achievable which is likely to add further additional costs")*

(f) Hence, even if the application to the LVT is not factored in, by June 2003 – the works would still be taking place.

(g) However, Steel Services-MRJ **did** file an application to the LVT. In fact, this application was filed on 7 August 2002, and therefore, **within less than 2 weeks** of Ms Hathaway sending the demand for payment to residents (many of whom reside overseas and would not therefore have received it until well into w/c 22 July). **Why was this done – if the demand was 'fair and reasonable'** (which is how Steel Services positioned its application to the LVT)?

(h) It also means that, when Ms Hathaway sent her 20 August letter to the residents stating a start date of *"early October"* – the application had by then been filed 7 working days previously.

(i) I understand that, in spite of having filed an application to the LVT, Steel Services could nonetheless have started the works. It did not. In filing the application, Steel Services was, in my opinion, evidently relying on being able to 'steamroll' the application through the LVT with little opposition (in part because many residents live overseas) - and thereby get the 'official' seal of approval. As can be seen from the attached directions set by the LVT [19], the earliest date at which Steel Services could have obtained its 'official' seal of approval would have been January 2003 (maybe even later). (Of course, as it happened, the LVT issued its determination on 17 June 2003).

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[15] Letter from Ms Hathaway, Martin Russell Jones, dated 20 August 2002
[16] Letter from Ms Hathaway, Martin Russell Jones to All Lessees, dated 20 August 2002
[17] Letter from Ms Hathaway, Martin Russell Jones, dated 30 August 2002
[18] Letter from Hathaway, Martin Russell Jones, dated 7 June 2001
[19] Directions set by the LVT at the pre-trial hearing, dated 29 October 2002

(j) Even if Steel Services had been able to 'steam-roll' its application - taking into account 'getting the seal of approval', implementation, availability of contractors, etc, it would at least be April - if not later - before the works could be started.

26. 5. My lease states (see enclosed pages 1 to 7 [20])

Clause 2

(d) *"As soon as practicable after the end of each financial year… the lessor shall cause the amount of the service charge payable by the lessee for such financial year to be determined by an accountant…"*

(e) *"… the costs expenses and outgoings incurred by the lessor during the relevant financial year of the lessor shall be deemed to include not only the costs expenses and outgoings which have been actually disbursed incurred or made by the lessor during the relevant year… but also the sum or sums (hereinafter called the 'contingency payment) on account of any other costs expenses and outgoings (not being of an annually recurring nature) which the lessor shall have incurred at any time prior to the commencement of the relevant financial year or shall expect to incur at any time after the end of the relevant financial year… as the accountant may in his reasonable discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by way of provision for expected future costs expenses and outgoings) in the amount of the service charge for the relevant financial year"*

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

"that in his opinion the said summary represents a fair summary of the said costs and outgoings set out in a way which shows how they are or will be reflected in the service charge"

"that in his opinion the said summary is sufficiently supported by accounts receipts and other documents which have been produced to him"

"that the sum specified as aforesaid represents the amount of the service charge payable by the lessee.."

27. 5. The demand of £14,400.19 was dated 17 July 2002. As can be seen from the 2001 year-end accounts for Jefferson House [21], they **do not include** costs the lessor *"shall expect to incur at any time after the end of the relevant financial year… by way of provision for expected future costs expenses and outgoings…"*

28. 5. Steel Services / CKFT and MRJ have repeatedly ignored my numerous requests for a copy of the 2002 year-end accounts leading me to, recently, contact the Tenancy Relations Officer at the Kensington & Chelsea Town Hall to obtain a copy (including the 2003 accounts, also overdue). This led him to send a letter to both MRJ and CKFT [22].

Not only are Steel Services-MRJ in breach of the terms of my lease, they are also in breach of Section 21 (1) of the L&T Act 1985 – and are thus committing a criminal offence (Section 25 of the Act).

To date I have not received the year-end accounts for 2002 – which are now **one year overdue** - nor for 2003 – which are 2 months overdue. **Why not?** I can only conclude that

[20] Pages 1 to 7 of my lease, dated 10 March 1986
[21] Copy of the year-end 2001 accounts for Jefferson House (sent to me by Martin Russell Jones)
[22] Letter from John Hutchings, Tenancy Relations Officer, RBK&C, to MRJ dated 25 June 2004

the reason is because it will provide evidence in support of my position. Steel Services and MRJ are in breach of the terms of my lease – in addition to having committed a criminal offence.

29. 5. **Thus, I maintain my position that:**

(1) The demand I received, dated 15 July 2002, cannot be considered as an interim payment – as it was for the full amount of the works

(2) I should have been issued with the 2002 year-end accounts certified by an accountant in evidence of this demand – given the duration of the works that was anticipated at the time

30. 5. Mr Gallagher knew that the 2001 accounts did not include "*provision for expected future costs expenses and outgoings"* – and also knew that – **10 months after the year-end** - I had not received the accounts for 2002 – as, in his email of 13 November 2003, he described my request (in my 7 October 2003 fax) as *"…similarly adding conditions for the disclosure of accounts and details of trust fund arrangements can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms…"*

(As to the trust fund, on 7 or 8 occasions in the last 18 months I have made a request to MRJ to send me a copy, stating: *"As per my rights under the Landlord and Tenant Act, and as a contributor and beneficiary to the trust fund in which contributions to service charges - including for major works - are held, can you please send me copy of the statements issued by the bank(s)/building society(ies) in which the trust fund is held for the period starting December 2002"*.

After numerous requests, I eventually received the reply that: *"This is in the form of a Bradford and Bingley savings account and as such we do not receive statements except tax ones in due course"*. I requested a copy of the pages of the passbook for this account offering to pay reasonable photocopying costs. Several months on and I still have not received this. The questions I ask myself are: **Why not? What do Steel Services and MRJ have to hide?)**

31. 5. As can be seen in the enclosed, my lease also states – under Clause (2) (b) – *"The lessor will use its best endeavours to maintain the annual service charge at the lowest reasonable figure consistent with due performance and observations herein"*. I will demonstrate in the following that this has most definitely not been the case.

32. 5. **The sum demanded was full of estimates. These were due to the very badly drawn-up specifications by Mr Gale.** (His surveying skills have been put into question in the past, as evidenced by the High Court case David Ross Campbell Wallace, Carole Louise Wallace vs. Brian Gale & Associates, 1994 – 1997 in which Mr & Mrs Wallace claimed damages from Brian Gale Associates for negligence in surveying. Among others, events surrounding the case do not forebode well for the works at Jefferson House)

I will demonstrate this by quoting from my surveyor, Mr Brock's Expert Witness report, dated February 2003 and the LVT determination, dated 17 June 2003

My surveyor's overall assessment :

6.3 - "*The total value of provisional sums inserted by the contractor represents some **74%** of the cost of those items where the contractor has inserted firm prices. This suggests there is a lack of clarity with the specification leaving the contractor to form his own opinion of the likely cost and subsequently leaving the final cost to be decided at a later date under a non-competitive situation"*

"Typical cost variation between tenders (providing the contractors are competent) should not exceed 30% if they understand the nature of the works and have sufficient time to price the document. Martin Hall Construction Ltd's submission, albeit verbal, was over 100% greater than Killby & Gayford's original tender submission. This discrepancy is further exacerbated when one bears in mind the high level of "fixed" contingency and provisional

sum figures which is similar for all contractors".

6.4 – *"The term "replace where necessary" has been used extensively in the document and is virtually unpriceable as the term is arbitrary*"

6.28 – *"There is nothing in the specification to control the expenditure of provisional sums, both those inserted in the main document (£110,000.00) and also additional items included by the contractor. In my experience, without suitable control procedures in place, these figures are in most cases fully expended by the contractor"*.

33. 5. ***LVT's overall assessment:***

44 – *"The reports prepared on behalf of the Applicant and provided to the Tribunal were, in the words of Mr Jones, "a wish list" for refurbishment of the subject property to a high standard. They do not seem to have been prepared on behalf of the Applicant having regard to its rights and responsibilities under the lease…The Tribunal would normally expect alternative proposals to be costed and produced, in order to make a proper and considered judgement of the best way forward to meet the obligations of both the landlord and the tenants"*

46 – *"In this case the Tribunal was frustrated by the lack of detail in the specification and in Mr Gale's evidence. Works were not clearly identified, were not measured where they clearly could have been, and there was some element of duplication. Some items were not specified at all, e.g. the types and capacity of the boilers"*

34. 5. There are numerous instances where the lack of proper specification led to an estimate of costs, one of the most notable is the **'services' section** – for which, with the addition of VAT and management fee the total sum demanded was over **£200,000.**

My surveyor

6.13 – *"The services section of the works under the specification (Section 16.0) does not represent a "quantitative" breakdown of items of works that contractors are able to cost on a like for like basis"*.

6.16 - *"Budget prices for the specified works (Mechanical/electrical and lift works) were submitted to all contractors in the form of engineer's reports. This is not normal procedure and should not have included costs. Each contractor should have sufficient information and detail in the specification and schedule of works to price the works – i.e. a full specification for repairs and replacement should have been prepared"*.

6.17- *"It must be noted that all the service works which have been based on the service engineer's report have been done so on a purely "visual" basis. It is not possible to determine disrepair unless all these elements are tested and subsequent replacement fully scheduled"*.

35. 5. ***LVT***

16.07 – *"It would appear to the Tribunal from the above, and the evidence given by Mr Jones, that **his instructions were obviously client led rather than an independent opinion**… There was no evidence, save for the complaints from the owner of the top floor flats, flat 34 and 35, that the boilers were failing regularly. Indeed, in evidence, Mr Jones confirmed that they were working, were being maintained and were not defective at present… **The specification is considered inadequate in that it is vague and lacked specific detail** e.g. the provision to "remove and replace with new the boiler plant and all associated pipework". It is noted that initially, **there was no breakdown of the specification until 7 March 2003** when Mr Gale responded to Mr Brock's report of 24 February 2003. Mr Gale accepted during the hearing that there had been no boiler specification in the tender document"*

(The sum demanded for the boiler was £89,824.00. Therefore, with the addition of VAT

and management fees the intention was to charge residents the sum of **£117,153**)

38 – "***Mr Gale also accepted that there were no boiler specification in the tender document*** *which merely stated "to remove and replace with new the boiler plant and all associated pipework"*

16.07 - *"In the circumstances, the* ***Tribunal does not consider that it has sufficient information to make a proper judgement and therefore makes no determination*** *in respect of the* ***boilers****… This is an area which, in the Tribunal's view, alternatives and costings should have been explored"*

19 & 20 – "*Mr Jones, C Eng MCI Bsc of Michael Jones & Associates, Engineering consultants…. said that his instructions had been to prepare a report on the work which needed to be carried out. He said that a lift survey had been carried by a specialist, John Bashford. He said that* ***the report on the condition at the time had been 'a wish list"***

16.07 – "***The Tribunal does not consider that Mr Jones' report is sufficient****, having regard to the reason why it was commissioned. In evidence, Mr Gale said "Michael Jones will be asked to provide specifics on design where unclear now and ensure that they are fit for the purpose", which indicates that Mr Gale accepts that there is some lack of clarity on this issue"*

16.07 – *"The recommendation of J Bashford and Associates… to prepare a specification and drawings appeared to have been ignored by Mr Gale in his own specification since it refers in 16.26 to "the contractor is to (with full regard to J Bashford & Associates recommendation in the service engineer's report) allow to carry out a major refurbishment and replacement of the lift shaft and associated equipment****,*** *supplies and decorations". The s****pecification prepared by Mr Gale is therefore insufficiently detailed*** *to allow for a quotation for this work, and he conceded during the hearing that there may have been an element of duplication. Further, no proper explanation has been given for the increase from £27,300 to £60,000 over a matter of months…… **the Tribunal is unable to make a determination on the specification, since it is considered inadequate**.* (My Counsel agreed on the sum of £27,300 for the lift)

36 – *"The original tender dated 2002 showed a fixed sum of £27,300 in respect of the lift installation.* ***Mr Gale conceded that there may have been an element of duplication in the specifications for the lift***"

36. 5. Other examples from my surveyor's report and LVT determination of lack of specifications / excessive estimates / duplication of costs:

My surveyor

6.6 – "*Item 12.01 refers to the refurbishing of* ***windows*** *which has a lump sum price of £17,634.30 inserted. Later in the same item a provisional sum of £10,000.00 is allowed for repairs. The first should be broken down to show there is no duplication within the figure for this provisional sum and* ***both figures seem excessive"***

6.11 – *"The tender documents refer to a* ***drainage*** *report, although a copy of this document has not been seen. Notwithstanding this a provisional sum figure of* ***£15,000.00*** *has been included in the document., which is* ***considered excessive***"

37. 5. ***LVT***

42 – "***Mr Gale*** *was questioned on the* ***provision of £20,000*** *in the specification in respect of the* ***porter's desk****… He also accepted that there could have been a fixed, rather than a provisional sum for this within the specification and said "it was a time factor really".* ***He acknowledged "there is no specification yet"***

37 – *"In respect of the provision for* ***downlighters Mr Gale said:*** *I agree that there is* ***latitude*** *for contractors* ***to fit 25 or 50 units****. We may have to tighten it up"*

41 – *"**Mr Gale accepted** that he had been **"upping the specification" for the fire doors**".*

38. 5. **In addition to the lack specification, numerous items were also viewed by the LVT as 'improvements'. It therefore determined that they could <u>not</u> be charged to the residents**

39. 5. In total items considered by the LVT as improvements amounted to **£169,498** (£129,958 exc. VAT and fees). These included for example the porter's area.

As the LVT stated in its report, under point 64: *"…the Respondent and other tenants could not be forced to contribute in the case of improvements and / or works not determined as reasonable by the Tribunal"*

40. 5. Thus, the LVT endorsed my surveyor's recommendation – stated in his conclusions: *"I would recommend that the document is amended and re-tendered to an agreed schedule of works"*

Thereby rejecting Mr Gale's assertion in his *"Expert Report / Evidence of Proof"* report, dated 24 February 2003**:**

5.03 – *"Even is there were any justification (which is robustly denied) in the Expert Report of Mr Brock on behalf of this Respondent, to the amendment, or re-tendering, to revise agreed Schedule of Works, it should be noted that this will have significant and unacceptable consequences, not only on the other tenants, but to all parties concerned"*

41. 5. **The contingency fund**

42. 5. During the LVT hearing, my Counsel raised the contingency fund as an issue as Steel Services / MRJ had not used it as contribution towards the costs – and were refusing to do so. This is captured under point 34 of the LVT determination: *"The contingency fund was also a point in issue. The Tribunal was advised that it contained £140,977, and the Respondent submitted that this should be utilised, certainly in part, for the proposed works…"*

In the process of formulating an opinion, the LVT considered Clause 2 (2) (e) of the lease (captured under point 59 of the LVT report)

Under point 62 the LVT states: *"The Tribunal draws the parties' attention to the RICS Code to which property managers should subscribe and abide by, as a matter of good practice. Section 10 of the Code covers reserve funds. A reserve fund is referred to as "a pool of money created to build-up sums which can be used to pay for large items of infrequent expenditure (such as the replacement of a lift or the recovering of a roof) and for major items which arise regularly (such as redecoration)"*.

While under point 63 it states – "*The wording of the clause relating to the contingency fund or reserve fund in the lease is unambiguous. It refers to costs expenses and outgoings "not being of an annually recurring nature", and as such surely envisages the type of works proposed at the subject property. Although the Tribunal has no power to order the Applicant to make payments from the contingency fund, the Tribunal considers it inequitable that this fund should not be used in part to fund the works, and cannot accept Mr Warwick's (Steel Services) contention that to divest or reduce the contingency fund would be "wrong".*

43. 5. For 3 months after the publication of the LVT determination, I battled with CKFT to get the contingency fund to be used as contribution towards the cost. It refused. In its enclosed letter of 7 August 2003 (to Healys, a firm of solicitors temporarily registered as acting for me), it states:

"We recognise that there is a dispute with your client as to the extent to which, if at all, our client is obliged to utilise the reserve fund for the proposed works. The LVT of course made it quite clear that it could not order Steel Services to utilise those

funds" [23]

44. 5. I then remembered that Ms Hathaway had, in her 7 June 2001 letter to *"All Lessees"* stated the following:

> *"At present, there is approximately £125,000.00 in the Reserve Fund, but in view of the scope of works required to be carried out it is anticipated that the sum will be inadequate to meet the costs. This means that once the Specifications have been prepared and estimates obtained, a Landlord & Tenant Act 1985 Notice will be served on you giving details of the* ***additional payment required from you****…"*

45. 5. As can be seen from Ms Hathaway's letter dated 15 July 2002, she had changed her position as she stated: *"It is intended to maintain the existing reserve fund, in part, to cover any additional costs"*

46. 5. Evidently, the fact that I had found Ms Hathaway's letter of 7 June 2001 was communicated by Piper Smith & Basham to CKFT as Steel Services' 'offer' of 21 October 2003 states the full amount quoted at the LVT as contribution. (Given events, in all likelihood, residents who did not have this letter will not have been able to argue the use of the fund as contribution towards the costs).

47. 5. Considering events, it is particularly interesting to note that, **before** I became a client of Piper Smith & Basham, and at the time when it said to still be representing 1 of 2 residents, Ms McLean, having looked at the LVT determination, had communicated the following opinion to Mr Conway, my then solicitor, in her letter dated 23 June 2003:

> *"There would seem to be a fairly substantial reduction in the sums claimed by the applicant as well as the clear indication by the Tribunal that they think the reserve fund should be used at least in part to fund some of the works making a further reduction in the sums due from the lessees"* [24]

And - before the determination had been issued - on 9 April 2003, Ms McLean had written to Mr Conway:

> *"…we have spoken to a surveyor whom we had instructed to attend the premises. His preliminary view is that the service charges seem high and also that it would appear that the top floor flats are being enlarged. Clearly, if this is the case that is improvement rather than repair"* [25]

The surveyor had formulated this view – even though he/she did not have access to the information that had eventually been supplied to my surveyor.

48. 5. **Hence, in conclusion on the 17 June 2003 LVT determination:**

The total sum demanded by Steel Services was £736,206.08 (£564,467.00 exc. VAT and fees)

(1) Amount disallowed by the LVT because improvements = £169,497.72 (£129,958.00 exc. VAT and fees) - or **23% of the global sum demanded**

(2) Amount for which the LVT could not make a determination due to lack of specification = £188,783.67 (£144,745.00 exc. VAT and fees) - or **25.6% of the global**

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[23] Letter from CKFT to Healys, dated 7 August 2003
[24] Letter from Ms McLean to Mr Conway, dated 23 June 2003
[25] Letter from Ms McLean to Mr Conway, dated 9 April 2003

sum demanded

(3) A view supported by the LVT, considering the terms of the lease, as well as RICS best practice, that the reserve fund should be used as contribution = £141,977.00 – or 19.3% of the global sum demanded

Leaving an amount that can be charged of £235,946.56 – or 32% of the original sum demanded. In other words, <u>£500,000.00 of the sum demanded was not considered as 'reasonable' by the LVT</u>

<u>My share: 1.956% of £235,946.56 = £4,615.11</u> (see attached my calculations of the impact of the LVT determination on my share of the costs [26]**)**

vs. the £14,400.19 that Steel Services was demanding of me –

and for which it filed a claim against me in West London County Court stating that:

> **[I]** ***have failed to pay the service charges… that they are now due and owing from*** **[me]** ***to the Claimant"***

And includes a 'Statement of Truth' signed by Joan Doreen Hathaway of Martin Russell Jones stating:

> ***"The Claimant believes that the facts stated in this Claim Form are true"***

And to think that these people are allowed to control 'my home' and act as trustee of the service charge fund.

49. 5. 'Even if' lawyers want to argue that the sum demanded is an *"interim payment"* (although I simply cannot see how this could be demonstrated in view of the facts), I would like to draw the attention to Clause (2) (j) of my lease (attached):

"… nothing shall disable the Lessor from maintaining an action against the Lessee in respect of non-payment of any such interim payment as aforesaid notwithstanding that the Accountant's Certificate had not been furnished to the Tenant at the time such action was commenced subject nevertheless to ***the Lessor establishing in such action that the interim payment demanded and unpaid was of a fair and reasonable amount having regard to the amount of the Service Charge ultimately payable by the Lessee***

Consider this in the context of the fact that the original demand I received was £14,400.19 while the impact of the LVT determination meant that it should be reduced by nearly 70% to £4,615.

50. 5. As pointed out by the LVT in its determination – under point 54:

"Assuming that, ***on a proper construction of the lease, the services in issue are covered by the charging clause, this does not mean that the landlord enjoys carte blanche to incur costs.*** *In the Court of Appeal case of Finchbourne Ltd v Rodrigues (1976) 3 All ER 581, it was held that a term should be implied that the recoverable costs were to be "fair and reasonable". In rejecting the submission, Cairns LJ stated "it cannot be supposed that the (landlords) were entitled to be as extravagant as they chose in the standards of repair… in my opinion, the parties cannot have intended that the landlord should have an unfettered discretion to adopt the highest conceivable standard and to charge the tenant with it"*

51. 5. To this I will add another case I have come across – In the Court of Appeal case of Holding & Management Ltd v. Property Holding & Investment Trust, the court was prepared to imply requirement of reasonableness in interpreting a covenant to do such work as the maintenance trustee 'shall consider necessary to maintain the building as a block of first

[26] My calculations of the impact of the LVT determination on my share of the costs, June 2003

class residential flats' and held that it did not give the landlord the right to effect unlimited improvements at the tenant's expense [27]

52. 5. **In light of all the points stated above from the beginning of this document, it is not only inaccurate, but, in my opinion, an act of serious malpractice by a legal advisor who, cognisant of these facts, endorses Steel Services' position that:**

(1) its demand is *'fair and reasonable'*;
(2) the demand is an "*interim payment*";
(3) and, concurrently, endorses Steel Services' position that its demand is not in breach of the terms of my lease

53. 7. & 8. Yes, and this was the first of 3 occasions when I was very seriously misinformed by the Court. In addition to the Charging Order hearing of 4 April 2003 having nothing to do with me, I have also been – wrongly - told by the Court that: (1) a judgment had been entered against me; (b) I was the defendant in a trial.

Having allowed Steel Services to file just one claim against 11 residents, West London County Court has proved to be totally incapable of managing the claim (as evidenced in my previous paragraph).

54. 9. I was far from being the only resident saying that there had been an abuse of process by Steel Services. For example, as can be seen in the enclosed – before I became a client - Ms McLean who said to be representing Resident J had written to my then solicitor, Mr Conway, on 9 April 2003 stating:

"We shall be contending that the county court proceedings should be stayed pending the outcome of the LVT which we understand is brought pursuant to Section 19 2(a)(b)(c) of the Landlord and Tenant Act 1985. It could be said in our view that having issued an application in the LVT seeking the reasonableness of service charges to therefore commence proceedings in the county court seeking the recovery of those same charges could be an abuse of the process of court"

55. 9. While I do not know the details of the judgments and settlements that Steel Services had obtained by 23 May 2003 when it made its application for a Case Management Conference, it must be noted that Steel Services had obtained – with the assistance of West London County Court – sums of money from 7 residents **before** the LVT had issued its determination (on 17 June 2003).

As detailed previously in reply to Mr Gallagher's point # 3, in spite of clause 2 (c) (i) of the lease – apparently for flat 23 - which was supplied to the Court with the claim, the percentage share of the service charge for each flat is a fixed amount. These percentages were supplied indirectly by Steel Services-MRJ to the Court at the 24 June and 26 August 2003 hearings [28], and the list of percentages was attached to Steel Services-MRJ's 7 August 2002 application to the LVT.

As to the global sum for the works, it has to be the same for all lessees. Hence, **Steel Services cannot charge differentially, other than on the basis of individual lessee's fixed percentage share of the service charge.**

56. 9. While West London County Court has not, in my case, challenged Steel Services as to whether it had implemented the LVT decision (neither at the 24 June 2003 hearing, nor the 26 August 2003 hearing – leading me to, unsuccessfully write to the Court explaining why, in spite of its claim (under a 'Statement of Truth') – Steel Services had not done so) – has

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[27] Landlord and Tenant Law, Margaret Wilkie & Godfrey Cole, 4th edition, Palgrave Law Masters
[28] Martin Russell Jones's Major works apportionment 24th June 2002'. One handed by CKFT at 24 June 2003 hearing listing 6 flats, and the other handed at 26 August hearing, listing 35 flats

the Court asked Steel Services this question in relation to the other residents?

Has the Court ensured that – as appropriate – residents who ended-up paying as a result of orders / judgments issued by the Court – before the publication of the LVT determination - that they were reimbursed of sums not due and payable?

The answer to this question is most likely to be a 'no' as, 4 months after the LVT had issued its report, on 21 October 2003, when Steel Services made me an 'offer', it still had not properly implemented the LVT determination.

57. 11. Mr Gallagher quotes what is captured on the 'General Form of Judgment or Order dated 25 June 2003 [29] What actually happened is that, in my letter to the Court, dated 22 June 2003, I pointed out that the Court *"[could] not currently proceed with the action because the LVT determination… remains open to appeal to the Lands Tribunal... until 8 July"* [30]

Although the hearing nonetheless took place, Judge Wright endorsed my view and reprimanded CKFT for *"wasting* [her] *time and the Court's time",* saying that the LVT report had only just been issued and that I needed time to consider it.

This is the reason why, myself and the other residents present at the hearing were awarded costs. (CKFT was claiming costs for the hearing against me (as well as the other residents)). [31]

58. 11. It was clear to me that the Killby & Gayfords' Revised price - Part III' document which CKFT had enclosed in its letter to me dated 17 July 2003 had not been adjusted to take full account of the LVT's determination. To prove this 'officially', I needed to ask my surveyor to review and assess the document.

Because, yet again, I had been placed in a situation of having to incur costs through no fault of my own – other than wanting to pay only what I am truly liable for - I felt that I was justified in claiming the costs against Steel Services as, yet again I was proven to be right.

59. 12. I believe that Mr Gallagher is referring to the Case Management Conference and Application hearing document issued by CKFT and dated 6 August 2003 [32]. In this document, CKFT states:

> *"The Claimant believes that the Second (and Fifth) Defendants have no real prospects of successfully defending the Claim and the Claimant knows of no other compelling reason why the case should be disposed of at Trial… Following the* [LVT] *decision, on 24 June 2003, Martin Russell Jones issued a revised Major Work Apportionment setting out the revised estimate for the works and calculation of the percentages due from each of the Tenants in the property"*.
>
> On this document, CKFT has signed a 'Statement of Truth' stating: *"The Applicant believes that the facts stated in Part C are true"* . (Clearly, not much regard is paid by either CKFT or MRJ to the meaning of 'Statement of Truth')

Yet again, Mr Gallagher is 'happily' quoting verbatim from a document produced by Steel Services-MRJ, *"Chartered Surveyors"* – and, in the process, quite clearly endorses their statement that the schedule had *"given credit for the sums disallowed*

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[29] General Form of Judgment or Order, West London County Court, dated 25 June 2003
[30] My letter to West London County Court, dated 22 June 2003
[31] General Form of Judgment or Order, West London County Court, dated 25 June 2003
[32] CKFT's Case Management Conference and Application hearing, dated 6 August 2003

by the LVT's determination". How can he still be taking this position – given that:

(a) He is referring to a document where the percentage reduction for each of the flat listed amounts to 24.18% which, in my case, means a reduction from £14,400.19 to £10,917.27.

(b) He had been provided with a copy of the LVT determination, as well as a copy of my surveyor's assessment dated 31 July 2003

(c) He had been provided with my letters to the Court of 15 July 2003 [33] and 9 August 2003 [34] in which I explained in detail that the 'revised costs' produced by Steel Services did not reflect the LVT determination

(d) At the 28 October 2003 meeting – when discussing the offer which amounted to £6,350 - he was told by my surveyor that it **still** did not reflect the LVT determination. (As I have demonstrated previously in this document i.e. based on the LVT determination, my share is £4,615).

60. 15. Mr Gallagher refers to my letter to the Court dated 9 August 2003 stating that I *"expressly rejected CKFT's offers of a round table…"*.

In doing this, he has failed to properly capture what I wrote which is: *"There is nothing to discuss. There are no side deals to be made with the Claimant. Works that are truly required – and can be charged to the Lessees under the terms of the lease must be:* ***totally clear and transparent to all,*** *and the* ***costs equally clear and transparent – also to all"*** [35]

Refer also to the point I discussed previously in reply to Mr Gallagher's point # 9: Steel Services cannot charge differentially.

My reply to Mr Gallagher's comment: *"to avoid what CKFT, rightly in my opinion, described as the disproportionately expensive litigation represented by the County Court proceedings"* is: **Mr Ladsky et al. i.e. Steel Services should have thought of *'the costs'* before they attempted to defraud me of £10,000 – with a clearly evident intent to come back and ask for even more.**

I note with interest Mr Gallagher turning the table on me and his tendency to side with Steel Services, MRJ, CKFT and Piper Smith & Basham.

The sine qua non of the 'Business Model of the Unscrupulous Landlord in 21st century GB': *'invoke the costs'*, the arm 'par excellence' wielded about at every opportunity to make lessees pay an amount of money not due and payable. And everybody jumps on the bandwagon, repeatedly brandishing '*the costs'* in the lessees' face, in the process, putting the blame on the lessees for creating the situation and therefore the onus on them for ending it… by paying!

Indeed, once everybody has become quite fat one way or another at the expense of the lessee, and/or the situation is beginning to look uncomfortable for the landlord, and/or perhaps the professional adviser cannot be bothered / is scared to challenge the other side / [????], this is the time at which the strategic arm, the invocation of *'the costs,*' kicks in – along the following lines: *"Come on Dear, it doesn't make any sense. Look at all the money you've spent so far fighting this. Compare that to the size of the claim. Best you settle Dear. Make a commercial decision. Settle the claim / accept the Landlord's offer"*.

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[33] My letter to West London County Court, dated 15 July 2003
[34] My letter to District Judge Wright, West London County Court, dated 9 August 2003
[35] My letter to District Judge Wright, West London County Court, dated 9 August 2003

Examples in support of this:

(1) When, at the 24 June 2003 court hearing I told Mr Silverstone of CKFT that I found it absolutely outrageous that the Court had been instrumental in making some residents pay an amount of money not due and payable, his reply was: *"They made a commercial decision"*

(2) This message was 'hammered' to me by Ms McLean on a number of occasions

(3) I will demonstrate that, in his reply to my complaint, Mr Gallagher has used *'the costs'* a total of **10 times** as justification.

It is abundantly clear that the strategy of *'invoking the costs'* worked e.g. Resident C who wrote to the LVT on 20 October 2002:

"I paid a portion, approximately 17,000 pounds, not of my own free will, but because I felt intimidated and threatened. It may appear that the persons who paid all or portion of the assessment are accepting of the assessment and proposal from Steel Services and MRJ as fair. Not so in my case, it is out of fear. Steel Services and MRJ will take legal action if I do not comply. Living outside the UK makes it virtually impossible to allow oneself to become involved in lawsuit…. Further, the legal fees may exceed the amount of the assessment" [36] (NB: This Resident nonetheless ended-up being listed on the West London County Court claim).

(Based on my own first-hand experience in West London County Court) (and a first ever experience of courts in my life) - Once the false claim has been filed against them in court, lessees soon realise that the odds are against them: not even their defence is read by the court and they are left to fight it out with the claimant. Applications by the claimant for hearings are automatically granted regardless of their merit. And of course, the more hearings take place, the greater the amount spent by the lessees on professional fees and therefore the greater the likelihood that the lessees will 'give up and pay'. I view this *'working the system'* as another key step in the 'Business Model of the Unscrupulous Landlord in 21st GB'.

61. 16. I do not know Mr Gallagher's motive in highlighting my hand written comment on the notice of hearing that *"the Court continues dancing to the tune of CKFT"* and *"that no notice has been taken of my letter of 9 August 2003"* but, I will take this opportunity to state that I more than ever stand by it.

62. 17. Mr Gallagher admits that he *"does not know the details"* but, nonetheless takes the opportunity to side with his peer. To be expected.

63. 17. See above my reply to Mr Gallagher's point # 11 for my rationale in demanding my solicitor's costs. This, of course, is in addition to the LVT determination.

64. 19. **Why did Steel Services make me an 'offer'?** Why did not it instead issue me (and other residents) with specifications that were properly drawn-up and priced, and compliant with both, Landlord & Tenant legislation and the terms of my lease?

As stated in my Witness Statement (under point # 6): *"I have consistently agreed that repair and redecoration works are required at Jefferson House".* But, as I said to Mr Gallagher at the 28 October 2003 meeting: *"I have an impeccable credit record. What I owe, I pay. What I do not owe, I will not pay".* (Although I have ended-up doing this as it became very clear to me that the system is against me instead of being there to help me).

65. 20. 2nd mention of *'the costs'*. Mr Gallagher's comment: *"the major costs… could be avoided if the offer was accepted"*

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[36] Email from Resident C to the LVT, dated 20 October 2002

66. 21. Regarding Mr Gallagher's comment that I *"was the sole Respondent"*. When Mr Ladsky (who was a member of Steel Services party throughout the 4 day LVT hearing, holding frequent conversations with Steel Services' Counsel, Mr Warwick, as well as with Mr Brian Gale and Ms Joan Hathaway) said to the Panel: *"Will Ms Rawé pay the £250,000 of additional costs that will be incurred as a result of the delay in the start of the works due to hearing?"*, the Chair, Mrs Goulden, replied that I was perfectly within my rights to challenge the application made by Steel Services. This was captured in the LVT report under point 64: *"Although she is in the minority, the Respondent's legal right to challenge the Applicant's proposal, as she had done, cannot be fettered"*

(In any case, as I understand it, Steel Services could, if it wanted to, start the works as the LVT procedure was taking place. Why didn't it?)

67. 21. There was a concerted effort in particular between Mr Ladsky and Mr Brian Gale to try to influence the Tribunal by claiming that I was the only resident challenging the costs.

In the case of Mr Brian Gale (as referred to in my Witness Statement under point 9) in Section 2.09 of his *"Expert Report / Proof of Evidence"* report, dated 24 February 2003, to the LVT (enclosed) he had described the outcome of the 14 November 2002 meeting (set-up by MRJ for the residents - with a 3 day notice) as: *"…4 of the 5 objecting Respondents who attended the Pre-Trial Review on the 29th of October 2002 were now not objecting any further and had agreed to pay, or had paid…".* [37]

In this same report, Mr Gale states:

2.03 – *"At this stage* [at the 29 October 2002 pre-trial LVT hearing]*, of the 35 flats within the block, 11 Lessees had already paid the relevant service charge, a further 10 had partly paid and had promised to pay the balance and were not in disagreement. Of the remaining tenants, only the 5 attending as Respondents had indicated any objection to payment of the service charge, reasonableness of the works or their cost"*

5.01 – "*I would like to draw to the attention of the Tribunal that I am advised by the managing agents that now some 31 of 35 tenants have paid, either in full or substantial contributions toward the cost of the proposed works"*

5.02 – *"It would therefore appear… that only one lone tenant continues to make any representation or objection of the 35 tenants"*

5.04 – *"The vast majority of the tenants in this block have been fully and completely consulted throughout all stages of the procedure, are in full and complete agreement and have paid substantially, or entirely, for the works and improvements* **(NB: !!!)** *to take place*".

(I wrote a reply to Mr Gale which was handed to the LVT Panel by my Counsel [38])

68. 21. In the case of Mr Ladsky, this is captured under point 50 of the LVT report:

"It is noted that, apparently, the majority of the tenants wish all the works to be carried out. A ***letter from Mr Ladsky****, the lessee of flats 34 and 35 dated 28 April 2003 stated:*

> *"31 or 32 of the 35 tenants have paid their contribution towards the major works. They are, therefore, in agreement with both the scope and cost of the proposed refurbishment. Whilst I accept that the Tribunal is to rule on the reasonableness of the proposed works, it must surely follow that if the overwhelming majority of lessees in the building*

[37] 'Expert Report/Proof of Evidence' report, by Brian Gale, 24 February 2003
[38] My 13 March 2003 reply to Brian Gale's Section 2 of his 'Expert Report / Proof of Evidence' report, dated 24 February 2003

are ad idem, some considerable weight must be given to their collective view. It seems to me that it would be wholly inequitable for one lone tenant acting entirely unilaterally to be able to frustrate and delay the building works desired by the many".

69. 21. These were lies - as evidenced by the glaringly obvious:

(1) in the case of Mr Gale's claim on the position after the 14 November 2002 meeting: barely 2 weeks later, Steel Services filed the claim in Court against 11 residents representing 14 flats.

(2) events which took place **after** Mr Gale's *"Expert Report / Proof of Evidence"* dated 24 February 2003 - and Mr Ladsky's letter:

(a) CKFT's 23 May 2003 application to the Court for a Case Management Conference – highlights ongoing action against 4 residents [39]

(b) Indications are that another resident is not mentioned: Defendant number 9 as, when I went to West London County Court on 31 March 2004, initially I was told that a judgement had been entered against me on 18 March 2004. Eventually I was told by Ms Debbie Wotten (?) who appeared to be the manager, that, *"No, the judgement is not against you, it is against Defendant number 9"*

70. 21. The last part of point 50 of the LVT report states:

"On the last day of the hearing a legal representative for another lessee in the subject property attended to say that her client was also unhappy about the service charges demanded of the proposed works"

This *"legal representative"* was Ms McLean who, in a letter dated 23 June 2003 (enclosed) to my then solicitor, Mr Conway had written:

"…the landlord has intimated to the LVT that no other lessee is disputing the service charges demanded. That is clearly not the case…"

71. 21. In the earlier part of the letter, Ms McLean stated that PSB was acting for a resident – and that it had also acted for another resident *"…[who] for personal reasons opted to pay the charge against her which was in the region of £18,000 odd"*

The resident referred to by Ms McLean as having paid *"for personal reasons"* had written to me on 1st November 2002 saying:

"I have received numerous written demands for payment and had also been told, on the phone, that all the other leaseholders had paid their service charge demands which was obviously not the case… I am now sending all correspondence relating to this matter to my solicitor with a view to adding my own opposition to Steel Services' demands" [40]

72. 21. Mr Gallagher's comment: *"The outcome was something of a mix bag"*. Really? In what way?

Given that the LVT determination is the crucial element in the resolution of the dispute, isn't it rather telling that, out of his 29 page reply, it is **the only comment** that Mr Gallagher has

[39] CKFT letter to West London County Court, dated 23 May 2003
[40] Letter to me from Resident F, dated 1 November 2002

made about the LVT determination?

And what did he say in the draft reply to the offer? This: *"…your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings, vulnerable to a number of technical defences of merit arising out of the terms of the lease* (at which point Mr Gallagher launches into the rateable value and arbitration clause) and *"You will note that, for the avoidance of doubt, the draft order makes specific reference to the major works the costs of which are the subject of this claim"*

I put it to Mr Gallagher that the outcome was a very sharp reduction in the service charges payable by me (and **all** the other leaseholders).

73. 22. Having written such a damning report – and thereby reflecting my surveyor's assessment and opinion – the LVT report could have benefited from a summary.

However, the contents make it abundantly clear that there is massive overcharging e.g. just looking at the issue of the boiler which was costed in the specification at £117,000 (inc. VAT and fees) for which the LVT said to be unable to make a determination. (Applying my 1.956% share = £2,288)

In addition to which, of course, Mr Gallagher's was provided with my surveyor's assessment of the LVT determination – and met with him on 28 October 2003 during which it was discussed at length.

(I will also add that the way in which the determination is presented must not detract from the fact that it is for the global sum. Hence, the consequences are that individual leaseholders are entitled to the same percentage reduction in the service charge following this determination).

74. 22. How come that Mr Gallagher could not see that?

As detailed above, in the last part of my reply to Mr Gallagher's point # 5, it is also quite extraordinary to note that – **before** I became a client of Piper Smith & Basham – Ms McLean, having looked at the LVT determination, had come to the conclusion that : *"There would seem to be a fairly substantial reduction in the sums claimed by the applicant as well as the clear indication by the Tribunal that they think the reserve fund should be used at least in part to fund some of the works making a further reduction in the sums due from the lessees"*

And - before the determination had been issued - on 9 April 2003, Ms McLean had written to Mr Conway: *"…we have spoken to a surveyor whom we had instructed to attend the premises. His preliminary view is that the service charges seem high and also that it would appear that the top floor flats are being enlarged. Clearly, if this is the case that is improvement rather than repair"*

The surveyor had formulated this view – even though he/she did not have access to the information that had eventually been supplied to my surveyor.

75. 22. **What key event took place that led both, Mr Gallagher and Ms McLean to, in effect, ignore the LVT findings, as well as other key considerations when 'I' became their client?**

76. 23. I am unclear as to what Mr Gallagher's point is.

What I do know from acquaintances' first-hand experience is that, if a service charge dispute case such as mine is brought to the courts in the first instance, the courts will refer it to a Leasehold Valuation Tribunal for its determination as, unlike the courts, the tribunals have surveyors and therefore the expertise to determine the validity of the claim.

77. 24. If the Court was *"critical"* of Steel Services pursuing the same claim under two separate jurisdictions, I have had no communication to this effect.

78. 24. I am unclear as to what Mr Gallagher's points are.

The Court did not stay the action pending the LVT determination. Hence, it 'seems' to me that Mr Gallagher's comments are irrelevant to this case.

79. 25. I am not aware of the Court holding the view that there was an abuse of process.

Yet, this view was expressed by Ms McLean in her letter to Mr Conway, dated 9 April 2003:

> *"We shall be contending that the county court proceedings should be stayed pending the outcome of the Leasehold Valuation Tribunal proceedings… It could be said in our view that having issued an application in the LVT seeking the reasonableness of service charges to thereafter commence proceedings in the county court seeking the recovery of those same charges could be an* ***abuse of the process of court****."*

Also, in the letter from solicitors acting for Resident D, to CKFT, dated 12 December 2002:

> *"We are surprised that proceedings have been issued at West London County Court whilst consideration of your client's claim is currently before the Leasehold Valuation Tribunal… We will refer to this correspondence to the court on the question of the costs of proceedings… As you will be aware section 31C of the Landlord & Tenant Act 1985 concerns resolution of service charge disputes (amongst other disputes) in the LVT. Please confirm that you will arrange for the proceedings issued at West London County Court to be suspended pending resolution of the issues before the LVT. Alternatively, confirm that the County Court proceedings will be transferred to the LVT for resolution at the same time. Should you not take either of the above steps we will advise our clients of their right to make the necessary application to West London County Court, including an application that* ***your client's proceedings be struck out as an abuse of process.*** *Our clients will recover the cost of any such application"* [41]

How many more such letters are there?

80. 26. This is the 3rd time that Mr Gallagher puts the blame on me and invokes *'the costs'*.

I have previously replied to Mr Gallagher's comment: *"refusal to meet with landlord"* – under his point # 15

Mr Gallagher states that he *"could see no realistic basis upon which* [I] *would be awarded costs against the Claimant"*. How about its attempting to defraud me of £10,000 – while doing this under a 'Statement of Truth'? How about my claiming costs because the landlord had not revised its original statement of claim down to that determined by the LVT?

81. 29 29. (1) This is the 4th time that Mr Gallagher invokes *'the costs'*

29. (2) How kind and generous of Steel Services! Actually, was it that generous? Steel Services tried – and failed - to get c. £700 from me at the 24 June 2003 hearing, and c. the same amount at the 26 August 2003 hearing.

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[41] Letter from Resident D's solicitor to CKFT, dated 12 December 2003

29. (3) Barely a few words later, and again Mr Gallagher invokes *'the costs'* making this the 5th time so far – and yet again, turns the table on me: it's my responsibility! (This reinforces the validity of my assessment of the business model in operation in landlord-tenant disputes)

82. 29. 29. (4) Mr Gallagher has added a new point which was not made during the 28 October 2003 meeting: *"unless there was a good technical defence"*..

In any case, even this could not have been said by Mr Brock for the simple reason that, as he said during the LVT hearing, he is not a qualified engineer. See point 26 of the LVT determination: *"Mr Brock accepted that certain matters e.g. lift were outside his areas of expertise"*.

I therefore maintain what I have stated in my complaint under points: 2.3, 50 and 51: *"Mr Brock did **not** say that the offer could not be bettered"*.

In his footnote number 29, Mr Gallagher states *"by which was meant that the Claimant would do better at trial"*. Really? When faced with the evidence from the LVT determination?

83. 29. (4) (iv) Mr Gallagher claims that he asked Mr Brock *"…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"*. This is not true. (Evidently, Mr Gallagher's notes are not even readable to himself).

84. 29. (5) I have already replied to this above

85. 29. (6) This concern was indeed expressed

86. 29. (7) (i) This is not true. Mr Gallagher very specifically said that in the reply we would say that I was *"not paying for the interest because the works had not started"*. I repeated what he had said in:

(a) My fax of 7 November 2003, under point 5: *"I refuse to pay the interest charge. The costs have not been incurred and therefore the sum demanded is not due and payable".* And, in the right-hand column wrote: *"(As discussed on 28 October)"*

(b) On the draft 'reply to the offer' which I faxed to Mr Gallagher and Mr Twyman on 13 November at 16h29 I wrote, next to 'interest'*: "On 28 October – Mr Gallagher said "no because works had not started"* (Document previously supplied)

I would not have written this if it had not been said.

87. 29. (7) (i) Furthermore, I will refer to points 76 to 82 of my complaint which clearly demonstrate that the position adopted by Mr Gallagher and Ms McLean took place – **after** the 28 October meeting:

(a) Ms McLean's letter of **18 November** 2003: *"… **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. 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"*

(b) To which I replied on 20 November 2003: *"This is incorrect: it was crystal clear from what Mr Gallagher said that he would deal with the issue of the interest in the reply to the offer. He said*

"the works have not started, hence interest cannot be charged". Hence, it was not the advice given".

(c) And received the following from Ms McLean on 21 November 2003: *"As I say in my letter of 18th November* ***I spoke to Mr Gallagher on my return from holiday and the information he gave me is that as set out in my letter of the 18th November"*** [42]

(d) To this I responded on 23 November 2003: *"In relation to the conversation you said to have had with Mr Gallagher post 28 October regarding the interest, I note that this led to a change of position relative to what was agreed with him at the 28 October meeting. Evidently, a similar 'off-line' conversation has taken place post the 28 October meeting in relation to Mr Brock's highly significant key conclusion - namely that Steel Services has not addressed any of the lack/insufficient specifications identified by the LVT in their June report (items amounting to £144,745.87) – as the reply totally omits any reference to this. Yet again, I am asking the question: why was this left out?"*

88. 29. (7) (i) In her letter to me of 18 November 2003, Ms McLean tried to diminish the importance of accepting to pay the interest charge demand on the grounds that it was a small amount (£143) – (which Mr Gallagher also emphasises in his reply to my complaint under his point # 52): *"…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"*

This masks the fact that, in agreeing to pay this amount, there would be an admission that I had owed this sum – **which I did not**. (As can be seen in the attached, the Consent Order I have agreed with Steel Services, following taking back control of my case, does not include interest [43]).

89. 29. (7) (ii) Mr Gallagher writes: *"by stipulating that it was in full and final settlement of NKDR's share of the totality of the costs of the major works"*.

Actually, what Mr Gallagher wrote on the draft Consent Order of 13 November 2003 is:

> *"the Defendant pay the Claimant the sum of £6,513.24, inclusive of interest, to be paid in 28 days in full and final settlement of the Defendant=s liabilities under this claim and in respect of the major works at Jefferson House to which this claim relates"*

This is very different from what he states and, in particular the fact that he wrote: *"under this claim"* and *"to which this claim relates"*

In the Particulars of Claim, the sum for the works is described as *"Major works contribution"*

As drafted, the Consent Order left the door wide open to Steel Services to come back and ask for another 'Major works contribution', and so on – which, I conclude from the evidence - is precisely the intention.

90. 29. (7) (ii) It is my absolute belief that Steel Services' intention in using this wording is to make further demands for sums of money at a later stage in relation to 'these works'.

I started to suffer harassment and intimidation within days of replying to MRJ (on 2

[42] Letter from Ms McLean to me, dated 21 November 2003
[43] Consent Order, dated 24 May 2004, with endorsement from West London County Court, dated 1st and 2nd July 2004

February 2002) that the proposed condition survey had more to do with works that would be required in the context of building an extra floor, than with redecoration and repair to the block.

A planning application, (Ref TP/98/1773), for the *'Erection of an additional storey at roof level to provide one, three bedroom flat"* was made on 27 September 1998 and a conditional decision made on 20 September 1999

Under a different number (Ref PP/01/2523) the same application was made on 13 November 2001.

In her letter to me, dated 26 March 2002, Joan Hathaway states: *"… we can assure you that the survey is not in connection with any planning application…"* (She also says*: "You were, incidentally, the only objector out of the 35 lessees to the appointments"* [44]. Whereas, in a letter of the same date to *"All Lessees"* she states: *"…there were no comments from any tenants..."* [45])

In reply to my letter of 11 August 2002 to Ms Hathaway requesting *"an explanation as to why works are being carried out to the roof given that a planning application to build an extra floor for a penthouse flat was granted on 6 February 2002"*, Ms Hathaway replied, on 30 August 2002: *"We are informed that there is no intention to build the penthouse at the current time"* [46]

In his Expert Witness report, dated 13 December 2002, as can be seen in the enclosed, Mr Brian Gale, wrote under Section 4 -1.4 - *"I am able to categorically state that the Specification makes NO provisions for any construction of an additional floor nor any future requirement in the building to create a penthouse flat"* [47]

In fact, a Planning Application Notice, dated 12 December 2003, states: *"Design modifications to existing approved planning scheme for a new penthouse apartment to be constructed at roof level for PP/01/2523"*. If there is no intention to build an extra floor then, why have 2 applications for *"design modifications"* been made (and obtained) – with the second one having been made at a time coinciding with the start of the works?

At the time that Mr Gale was writing his 13 December 2002 Expert Report, a second Planning Application, (Ref PP/02/2692), had just been made days earlier (on 25 November 2002) for *"Infill of ligthwell on 4 No floors to create additional bedroom and bathroom space to each flat"*

Applications for amendments to this second Planning Application (for which the reference changed to PP/03/00429, and the description to: *"Amendments to existing planning consent for proposed infill of third, fourth and fifth floor lightwell"*) have likewise, also been made: (i) Notification dated 7 January 2004; (ii) Notification dated 19 April 2004.

Why are these planning applications timed with the works?

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[44] Letter from Joan Hathaway to me, dated 26 March 2002
[45] Letter from Joan Hathaway to 'All Lessees', dated 26 March 2002
[46] Letter from Joan Hathaway to me, dated 11 August 2002
[47] 'Proof of Evidence of Landlord's Expert Witness (Surveyor) Brian Gale', dated 13 December 2002
[48] Letter from Joan Hathaway, Martin Russell Jones, to 'All Lessees', dated 26 March 2002
[49] Letter from Joan Hathaway, Martin Russell Jones, dated 15 July 2002
[50] Letter from Barry Martin, Martin Russell Jones, dated 2 August 2004
[51] Letter form Ms Hathaway, dated 26 March 2004

In addition:

- There is a major contradiction in Mr Gale's opinion as, in a letter dated 26 March 2002 i.e. written **after** Mr Gale had completed his 'Condition survey' (in February 2002), MRJ wrote: *"The surveyors have indicated that the cost of works is likely to be in excess of £1 million + VAT and fees…"* [48] whereas, in his Expert Witness report of 13 December 2002, Mr Gale states that he considers *"the cost of works…detailed by Killby & Gayford on 8 July 2002 and totalling £564,467.00 represents a reasonable assessment of the cost of carrying out all necessary works"*

- At the time of sending me the original demand, dated 17 July 2002, MRJ had written in the covering letter dated 15 July 2002: *"the sum quoted may be exceeded due either to subsequent changes in the specification…"* [49]

Not only had I expressed the view that the planning applications to build the penthouse flat and extend the size of some flats were at the root of the excessive demand, Ms McLean herself knew of the plans – before I became a client - as she had flagged this up in her letter to Mr Conway, dated 9 April 2003: *".. It would appear that the top floor flats are being enlarged. Clearly, if this it the case that is improvement rather than repair"*

Recent developments support the view I have held all along. Although they occurred after my dealings with Mr Gallagher (and Piper Smith & Basham), I think it is nonetheless helpful to capture them in this document:

- In his letter, dated 2 August 2004, Barry Martin of MRJ states: *"At this stage we will not require further monies from you as the contract sum of £513,656.70 plus VAT will not at the present time exceed the original lowest estimate"* [50]

  The letter states that the contract has been awarded to Mansells plc. The addition of VAT and management fees brings the total to **£669,936.75** – making this just £66,269.33, or 9% cheaper than the Killby & Gayford quote. Compare this with the LVT determination (detailed under my reply to Mr Gallagher's point # 5)

Mansells was not one of the contractors who tendered against Killby & Gayford. Therefore the 'so called' Section 20 Notice of 2002 has been invalidated and a new one should have been issued. This has not happened. The letter from Ms Hathaway dated 26 March 2004 states that they were *"commencing renegotiations with the original contractor and other contractors…"* [51]. I have not received any communication between this letter and that of 2 August 2004.

The evidence is clear: Steel Services is so intent on making residents pay for works for which they are not liable that it has opted to ignore the LVT determination. (Which means that, under the L&T Act 1985, of the £6,350 it has had from me for nearly a year it can only spend £250 on Mansells). (I do not even know what works Mansells has tendered for).

It is also quite clear from Barry Martin's letter of 2 August 2004 that Steel Services intends to come back and ask for more money for 'these works' at a later stage.

91. 29. (7) (ii) For reasons I have stated previously in this document I disagree with Mr Gallagher's statement *"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..."*

92. 29. (8) As evidenced in my complaint and in this reply, I totally disagree with Mr Gallagher that the reply he had written *"…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"*.

The way I see it: Mr Gallagher said 'amen' to everything; barely made a ripple in relation to the key issues; had 50% of the reply comprising of what I still view as 'unobjectionable padding' – especially when considering the facts and evidence. (It was agreed at the 28 October 2003 meeting that the rateable value and arbitration clause would **not** be included in the reply. Please refer to points 28 and 64 of my complaint).

"Tweaking of the Consent Order"? See my comment above in reply to Mr Gallagher's point #29.(7) (ii).

93. 29. (9) Mr Gallagher stating that *"This proposed course of action had the full support of Ms McLean and Mr Brock and was agreed by NKDR"* is, in part, not true for the reasons stated above.

94. 29. (10) This is a partial representation of what I said. I had started by saying that I found it incredible that, in 2003, I could end-up in the situation in which I was because I dared to ask: *"You want £14,400 from me. What are you going to spend it on?"* (And that, *"as a result of asking this question, I have also suffered harassment, intimidation and assault")*

95. 29. (14) On what grounds can Mr Gallagher justify making this statement: *"Though I was virtually certain that NKDR did not have a viable claim against the landlord"*? See below my reply to Mr Gallagher's point # 49 for further comments.

96. 32 I have already replied to this

97. 37. My email concluded in that way, but this was preceded by: *"I find some of the comments difficult to reconcile with events/facts… although my views and wishes as to what 'should be said' and 'should happen' remain as expressed in my communication of 7 and 13 November…"*

As I explained in my complaint under point 61: *"Bearing in mind that I do not have the time to reply as comprehensively as I would like because I am at work".* And, as I also stated under point 60: *"Although I have all these reservations, I am reassured by the fact that in his 10h12 email, Mr Gallagher wrote: "accept the offer, subject only to the possibility of tweaking it as discussed in conference"* .

See also point 59 of my complaint: the conditions under which I wrote this email.

98. 38. 39. Mr Gallagher stresses that he acts for *"both, landlords and tenants"*. I have tried to cast my mind back as to how I ended-up with the perception that Mr Gallagher tended to represent lessees more than landlords. This led me to revisit some of my notes, as well as do some research.

The outcome is that, indeed, my perception was wrong: not only does Mr Gallagher also act for landlords, in one instance he appears to have been doing this within days of then acting for a lessee of the same landlord. This refers to the case of Maryland vs. Peploe (not mentioned in Mr Gallagher's CV) in which, it seems that Mr Gallagher acted for Maryland. (It concerned a forfeiture application which was rejected by the Judge). This case was heard on 4 February 1998 in West London County Court.

On 16 February 1998 (ie. 9 working days later) Mr Gallagher was in court acting for Martin in the Martin vs. Maryland Estates Limited (1) (listed on his CV). This was an appeal case that had been dealt with in the lower court, and for which Mr Gallagher had acted for Martin.

In his CV, Mr Gallagher describes the case as: *"Landlord & Tenant: forfeiture and the reinstatement of a lease"*. In actual fact, it seems that the case was about the validity of an enfranchisement notice when the lease was forfeit. It seems that the Court of Appeal rejected Mr Gallagher's argument that the notice was valid.

99. 42. See my reply to Mr Gallagher's point # 29. (7) (ii)

100. 42. I have already replied to this.

101. 43. Perhaps in normal circumstances. But this is not the case. Steel Services was outside the terms of the lease as it had not issued me with the 2002 accounts. (And, still has not to this date)

Mr Gallagher made no mileage out of the fact that the landlord had not supplied certification in breach of the lease. Mr Gallagher was agreeing to payment on the basis of an 'interim demand' when, in fact, I should have been provided with the certified accounts – which, by then, were at least 5 months overdue. In his 17h09 email of 12 November 2003, Mr Gallagher actually dismisses my request to be provided with the 2002 accounts. He states: *"Similarly, adding conditions for the disclosure of the accounts… can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms".* (His dismissal of my request is also captured in my complaint).

I therefore maintain that there was breach of the requirements for an offer (Lord Woolf's decision in the Ford vs. GKR Construction case – which I have detailed above in reply to Mr Gallagher's point # 47, as well as in my complaint) as I was not provided with sufficient information to be able to evaluate the offer. See also my reply to Mr Gallagher's point #46.

I have no recollection of Mr Gallagher saying this during the 28 October 2003 meeting. And it is not captured in Ms McLean's notes.

102. 44. I must say, it very much looks to me as though I attended the wrong meeting: my lease was not discussed in the terms stated by Mr Gallagher.

As detailed under points 1.1.and 53 of my complaint, the conversation focused on the clauses which Ms McLean captured in her attendance notes as *"not worth mentioning"*

If this had been said – and considering that it was an issue that I had raised on so many occasions – then, how come that this was not captured in Ms McLean's attendance notes?

103. 46. I disagree. **The offer qualifies as 'a pre-action offer'.** As explained in the early part of this document, in my complaint, as well as in many of the supporting documents: the LVT could not make a determination due to lack of specification on 25.6% of the sum demanded.

As I explained in my 7 November 2003 fax, the fact that the LVT had **not** been able to make a determination in relation to some of the works means that the offer contains the **sum of £1,735.74 which is not justified.**

As I also stated in this fax – *"Hence, without proper specification and re-tendering, I do not know what, if any of this amount, I am actually liable for"*. Indeed, a substantial part of this sum is made up by the boiler for which the LVT recorded the following under Page 9 – 16.07

> *"There was no evidence, save for the complaints from the owner of the top floor flats, flats 34 and 35 that the boilers were failing regularly. Indeed, in evidence, Mr Jones confirmed that they were working, were being maintained, and were not defective at present"*

As to Mr Gallagher's footnote # 42, I do not understand his point.

104. 47. As stated by Lord Woolf's in the Ford v. GKR Construction Ltd [2000] 1 All ER 802 case:

> *"…the parties must be provided with the information which they require in order to assess whether….to accept that offer…If a party has not enabled another party to properly*

> *assess whether or not… to accept an offer which is made because of non-disclosure to the other party of material matters , or if a party comes to a decision which is different from that which would have been reached if there had been proper disclosure, this is a material matter for a court to take into account in considering what orders it should make"*

In addition, as captured under point 45 of my complaint, neither Mr Gallagher nor Mr Twyman made a single comment following my including this in my 13 November 2003 fax. Given that I was the client, surely, a response was required. As Mr Gallagher states under his point # 45 *"It is an important case"*.

105. 48. This is the 6th time that Mr Gallagher invokes *'the costs'* and turns the table on me, as well as the nth time that he endorses Steel Services charging residents differentially.

106. 49. Mr Gallagher states that he *"and Ms McLean saw the Offer, with its terms that each party pays its own costs as offering something of a life-line that NKDR would be ill-advised not to accept"*

Steel Services was *"throwing me a life-line"*? Oh dear! How ungrateful of me, I did not send a 'thank you' note. Whilst I was at it, should I have perhaps fallen on my knees and asked for forgiveness, saying something along those lines:

"O' Great One, member of the sacrosanct landlord sect so revered in this country

Thank you for trying to defraud me of £10,000, while clearly having the intention of coming back and asking me for even more money not due and payable

- *Forgive me for challenging you and thereby making you incur costs*

- *Forgive me for reporting you to the police* (see attached crime report [52]) *for*:

  - *making anonymous phone calls to my home in succession from 21h50 on 17 February 2002. (BT told me that 13 calls had been made that evening. BT also registered another 7 calls 2 days later) (Not to mention the anonymous phone calls you made to me at work)*

  - *Pressing my door bell at 22h45 on 1 February 2002 – which you continued doing in the weeks that followed leading me to disconnect my door bell. To this day, it is still disconnected.*

  - *Throwing a hard object at my windows on 15 February 2002 at 23h45 (and again on 3 April 2002 at 22h30). Being in a basement flat makes me feel particularly vulnerable. Thank you O' Great One for terrorising me in my home*

O' Great One, perhaps I should have also thanked you for:

  - *Forcing me into the building as I was coming back from work at 23h00 on 30 January 2002, and for pushing me aside in the corridor at 18h25 on 26 February 2002. When I commented on your behaviour you told me to "get lost"*

107. 49. *As well as for all the other instances of harassment and intimidation:*

  - *Trying to intimidate me at my usual bus stop in mid-March 2002 at 21h55 when I was coming back from work*

  - *On 3 January 2003 at 11h30 when, sensing that somebody was by the door to my flat, I opened it suddenly and, there you were. You told me, with a lot of venom in your*

[52] Crime report BS 560 4102/02C, dated 18 February 2002

voice: "I am going to get you this year". One thing you had against me was that I had established from the British Virgin Islands Authorities that Steel Services had been "struck-off the register for non-payment of the licence fee" – and therefore did not exist. (I had communicated this information to the LVT saying that I could not see how a company that does not exist could file an application. Obviously this led to the outstanding payment of the c.US$300 fee being made to the BVI authorities as, by October 2002, CKFT was able to produce a 'Certificate of Good Standing' for Steel Services).

In addition, at the time, you had never received communication on my behalf from a lawyer so, you and MRJ thought that I would be a 'push over' at the 5 February 2003 LVT hearing. I am so sorry O' Great One that I gave you a nasty shock by turning-up with a surveyor, solicitor and barrister. You were livid, frantically making phone calls in the reception area.

- *Clearly very confident that you were "going to get me" , on 20 January 2003, as I was leaving the building, on seeing me, you said to me: "Better luck next time!" followed by a sarcastic laugh*

- *Keen to keep the pressure on, on 30 January 2003 I received a letter from Kensington & Chelsea Police stating that you had reported me for "verbally abusing [you]"* [53] *.*

- *And this was followed by a letter from CKFT dated 4 February 2003 stating:*

"It has come to our attention from Mr Ladsky, the tenant (this time you were just a 'tenant') of flat 35… that you shouted abusive and foul-mouthed remarks at him… We understand that this is not the first time… These incidents have now been reported to the police and formal complaint made against you…This behaviour constitutes a clear and unequivocal breach of covenant under the terms of your underlease… our client company wishes to make it clear that they will take injunctive steps prior to other proceedings being formalised to restrain you from causing a nuisance at the property… The due process of law is under way to claim the perfectly proper service charges that are due from you…" [54]

The list goes on and on and includes all these instances when you had me followed, including at times by men who demonstrated threatening behaviour making me fear for my safety.

And there is also the time when you phoned the Tenancy Relations Officer at the Kensington & Chelsea Town Hall, I had approached for assistance, when you demanded that he gives you all the information I had supplied him with – as stated in his email to me of 5 November 2002:

"I have also received a telephone call from Mr Ladsky. He has asked for copies of all correspondence that you have sent me". He refused to do it" [55]

108. 49. Maybe I should have also added: *"O' Great One, whilst I am at it, let me ask for your forgiveness on behalf of the other residents who have complained about you:*

(1) *Residents A and B who reported you to Kensington & Chelsea Police for entering their flat. They did report you as CKFT sent them both a letter dated 11 October 2001 in which it stated, among others: "We are solicitors instructed by Mr*

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[53] Letter from Chelsea Police to me, dated 27 January 2003
[54] Letter from CKFT, dated 4 February 2003
[55] Email to me from Tenancy Relations Officer, RBK&C, dated 5 November 2002

Andrew Ladsky… Our client was visited by Mr D Malam from the Chelsea Police Station… The allegation was slanderous… our client's credit and reputation have been damaged. He has suffered embarrassment and distress… Our client requires you to compensate him in respect of the loss and damage that he has suffered… He requires your formal written apology" [56] *(This time CKFT clearly identifies you as its "client" – which, of course, you have been for many years e.g. TSB Bank vs. Ladsky, 1996)*

109. 49. (2) *The person who was running the Residents Association who also complained about you to Chelsea Police. Not only did she tell me, but she had also told Resident E as evidenced in Resident's E email to me of 18 April 2002:*

"Chelsea Police advised her off the record to fold her tent and go – which she did; cant blame any one for that. Her experience was horrendous. I was there on two occasions on Jan & Feb last year with this harassment going on" [57]

*Mercifully, O' Great One, Chelsea Police did not believe the complaints made against you by at least **five** (perfectly sane and respectable) residents (I understand there are others) e.g. as stated by CKFT in its letter dated 11 October 2001 to Residents A and B:*

"The police have investigated the allegation and have determined that it was completely unfounded".

*However, it **did** believe you when you made the most ridiculous of complaints: that I "swore at you". This was taken very seriously by Chelsea Police, as evidenced in its letter to me of 27 January 2003:*

"Of perhaps greater importance is the fact that any further such outburst may result in charges of harassment being made against you, as this initial complaint has been fully recorded by the police" [58]

PC Neil Watson (PC206BS) chased me for not calling him after his letter of 27 January [59]*. Oddly enough, there was no follow-up whatsoever by Chelsea Police to my reply dated 11 February 2003, in which I asked for precise details of the allegation - in writing* [60].

110. 49. (3) *Resident F (i.e. who was a client of Ms McLean) for telling me, in her letter dated 1 November 2002 (enclosed):*

"Both I and my tenant, who is an extremely courteous and polite young woman experienced unprovoked direct verbal and other abuse by Mr Ladsky late last year, to the point where I had contacted my solicitor with request to take legal action for threatening behaviour against Mr Ladsky, which I did not pursue. My tenant was terrified and intimidated by his behaviour, and I, on confronting him directly on the phone, would have been terrified too, if I had not been so enraged by his actions. He acted like a petty tyrant, and I am not afraid to put on record that I believe that he is capable of any unscrupulous actions in order to achieve his aims" [61]

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[56] Letter from CKFT to Resident A and B, dated 11 October 2001
[57] Email to me from Resident E, dated 18 April 2002
[58] Letter from Neil Watson, PC206BS, Chelsea Police, to me, dated 27 January 2003
[59] Letter from Neil Watson, PC206BS, Chelsea Police, to me, dated 6 February 2003
[60] My letter to Neil Watson PC206BS, Chelsea Police Station, dated 11 February 2003
[61] Letter from Resident F to me, dated 1 November 2002

111. 49. *And the list goes on as well for other residents, in particular, the person who was running the Residents Association. She was a nuisance to you, wasn't she?*

How dare she interfere with your plan to buy the headlease? You had come-up with this frequently used tactic of making-up a liability as a means of dissuading residents from buying a headlease. In her letter to me dated 18 December 2000, Resident H who was running the Resident Association had written: "Mr Ladsky has at present prevented the current landlord from building an additional floor on the block but, should he buy the headlease himself, he clearly intends to proceed with the development, in spite of the fact that there is a restrictive covenant on the building preventing it exceeding its current height" [62]

This is what you had written to me (and to the other residents) in your letter of 25 January 2001:

> *That I would be "… taking on a series of complex and costly obligations…the tenants must purchase the property with the burden of ongoing litigation which has serious implications both in terms of the costs and damages that could flow… This litigation could impose upon those participating … a serious financial burden which is yet to be determined"* [63]

This led the person running the Residents Association to write to residents on 31 January 2001:

> *"Some residents have received a letter from Mr Ladsky… 3. The minimum sum of £350,000 for repairs to the block came from Mr Ladsky himself. He quoted this figure twice – on 27 November and 30 December 2000. The amount is based on Mr Ladsky's surveyor's report. Naturally, residents cannot be charged for the building of a new floor on the roof…"* [64]

112. 49. *As I was a member of the Residents Association Committee, the person who was leading it was keeping me informed of developments. She was not giving in to you. So, you cranked-up the harassment and intimidation:*

On 14 January 2001 she wrote you a letter in which she stated that:

> *"On 30 December 2000 you rang me at home to tell me that you were buying the headlease of Jefferson House …You made it clear that the residents could not take up first refusal to buy the headlease… I have informed the committee of your demand (made on 27 November 2000) that I hand over to you immediately … the office of Chairman of the Association together will all its books and records… your conversations with me and calls to me list a catalogue of statements that can only be described as threats. These include threats to sue residents of Jefferson House if they do not allow you to act as you wish, suing them for punitive damages of £500,000 and/or bankruptcy if they take up the option to buy the headlease, taking me to court for contradicting your opinions… I also know that you have made a very large number of telephone calls to my home… There is no reason for you to persist in ringing, including after midnight…People visiting me have witnessed this"* [65]

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[62] Letter from Resident H to me, dated 18 December 2000
[63] Letter from Mr Andrew David Ladsky to me, dated 21 January 2001
[64] Letter from Resident H to Residents, dated 31 January 2001
[65] Letter from Resident H to Mr Ladsky, dated 14 January 2001

In copying me on this letter, in her covering note she wrote:

> *"Given the extreme nature of the behaviour, and the fact I am getting no peace, I have written….The conversation with Mr Ladsky was one sided, consisting simply of him ranting and becoming increasingly offensive and threatening… Mr Ladsky was immensely aggressive…His last call to me was at 12.40 am, which can hardly be described as reasonable.."* [66]

In her letter to me of 16 January 2001, she stated:

> *"I have sent out the enclosed because I have heard from several residents that they have been spoken to by Mr Ladsky and either threatened or harassed, or told that they need not consider casting a vote to buy the lease… Situation is pretty awful – phone calls to me all the time – and some residents terribly upset…"* [67]

In her letter to me dated 29 January 2001, she wrote:

> *"Ladsky does not want to buy this block, redecorate it and be a landlord; he proposes to force residents out by making the financial situation intolerable, intervening to block sales (already done once) and cutting off rental income. He then forces residents to sell to him at a loss… To fight is one thing, but to be the focus or harassment in your own home by a resident landlord is not something I would wish on anyone…"* [68]

Her letter to me of 30 January 2001:

> *"Mr Ladsky… told me that he would own the block by the end of February…given that the prospective landlord… is already acting improperly by trying to eliminate the Residents Association, threatening residents, trying to buy their flats cheaply…"* [69]

Earlier on, in her letter to me of 18 December 2000, she had stated: *"Since arriving in the block, Mr Ladsky has persisted in demanding that the block is refurbished inside and out…but he wishes this to be done at a cost that is extremely high – possibly as much as £1 million. He feels that the reserve fund should be emptied and residents should be forced to pay him for the extra costs… he has approached me demanding that I handover the Chairmanship and all the files of the Residents Association to him. He became rude and when threatening when I refused"* [70]

Her letter to me dated 31 January 2001:

> *"I have no need to an alarm - I am getting 30 nuisance calls a day again only now he keeps the line open if I reply"* [71]

You certainly went all out for the person who was running the Residents Association. And, eventually succeeded in making her leave once you pulled the opportunity to buy the headlease from under our nose. Letter from Resident H to me, dated 23 May 2001: "I have been told that the ownership of the landlord's company Steel Services Ltd has been transferred to 'an unknown buyer'. The

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[66] Letter from Resident H to me, dated 14 January 2001
[67] Letter from Resident H to me, dated 16 January 2001
[68] Letter from Resident H to me, dated 29 January 2001
[69] Letter from Resident H to me, dated 30 January 2001
[70] Letter from Resident H to me, dated 18 December 2000
[71] Letter from Resident H to me, dated 31 January 2001
[72] Letter from Resident H to me, dated 23 May 2001

headlease has been 'sold' along with the company" [72] *And, who bought her flat? But you of course!*

So, you had achieved another key step in the 'Business Model of the Unscrupulous Landlord in 21st century GB': you had eliminated the opposition and the possibility of residents acting as a group. From then on, you could tell different stories to each e.g. Resident F being told in November 2002 that "everybody else had paid their share of the major works"

113. 49. *Having got rid of Resident H, you continued to attack Resident A (who is an elderly gentleman) – especially as he had approached Nucleus, our local Citizen Advice Bureau for assistance. Nucleus had suggested we appoint an arbitrator (as per the clause in the lease). Resident A paid the fees and ended-up with his name on the application document.*

On 2 January 2002 you sent him a letter:

> *"The arbitration you have undertaken and which you have now suspended, or cancelled, has caused this company financial loss. Your appointment of an arbitrator where no dispute existed was inappropriate, frivolous and vexatious… This company has incurred legal fees amounting to £705… and surveyor fees of £881.. We require payment of the above amounts within fourteen days, failing which we shall take such appropriate steps as may be available to us, including issuing proceedings against you without further notice"* [73]

As he was not paying the sum you demanded, in a letter dated 28 January 2002, Portner and Jaskel, solicitors, demanded payment of £1,337.50, stating: "We are instructed to inform you that unless we are in receipt of the aforementioned sum by 4.00 p.m. on 31 January next proceedings shall be issued against you to recover further notice" [74]

Within less than a month, he received a claim from Central London County Court for £1,532.50, dated 26 February 2002 [75]*. This claim was not justified, but his solicitor told him that it would cost as much as the sum demanded, if not more, to defend it so, he might as well pay. He did. (The sena qua non of the 'Business Model of the Unscrupulous Landlord in 21st century GB', 'the costs', had worked! Landlord: £1,532.50 better off!)*

Like me, and Resident H, Resident A received anonymous phone calls and ended up asking BT to block calls from the number.

114. 49. *The residents getting 'free advice' from the Citizen Advice Bureau was totally contrary to another critical element of the 'Business Model of the Unscrupulous Landlord in 21st century GB' which is to ensure that the residents pay for professional advice. The more they pay, the greater the likelihood that, to use Mr Silverstone (CKFT)'s expression: they will "make a commercial decision" i.e. pay you what you ask for.*

115. 49. *Therefore, on 14 November 2001 you wrote a letter to Nucleus, stating:*

> *"We write in relation to an application made to RICS by you on behalf of [Resident A] and other tenants… We will of course be holding the tenants liable for any costs to which we are put as a result of their failure to properly consult with us on any matters that they wish to raise… We are seeking legal advice as to whether you may be liable, personally or as an organisation*

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[73] Letter from Steel Services to Resident A, dated 2 January 2002
[74] Letter from Porter and Jaskel to Resident A, dated 28 January 2002
[75] Central London County Court claim from Steel Services, Freeholder, to Resident A, dated 26 February 2002

for this conduct and we will of course be writing to RICS appropriately… if you could give us an explanation as to why you are in fact dealing with this matter at all. It is our understanding that [Resident] and [Resident] are persons with substantial means…We cannot believe that your organisation was established for the purpose of assisting wealthy individuals … Should we not receive an explanation within seven days it is our intention to take this matter to the leader of the Kensington and Chelsea borough council, RICS and Mr Michael Portillo…" [76]

It is most interesting to compare the 25 January 2001 letter sent to me by 'Mr Ladsky' with those sent by 'Steel Services' to Resident A and Nucleus – as there is the most amazing similarity in layout, typeface and style between these letters.

In addition to the 14 November 2001 letter, you also made sure O' Great One, that Nucleus received threatening phone calls – as detailed in the 'Chronology of Events' section, on page 6 of the draft Arbitration document they helped us prepare:

31. ***13/11/01****: A Mr … phones to talk to manager of Nucleus / HASKC. Says that he is a freelance reporter. Refuses to state who has instructed him. Quotes Jefferson House 11 Basil Street. States HASKC is representing people with money. He is interested in running a story on this. Manager points out that HASKC represents people in Kensington and Chelsea who are vulnerable. Irrespective of race, sexuality, gender, religion, financial means, age. We provide impartial advice and are interested in rights not privileges*

32. ***28/11/01****: a Mr Davies called Nucleus. He said he worked for Steel Services but refused to say in what capacity. Was very abusive to Ms Barlay, manager. He wanted to know why she was dealing with the case and said he would be referring her to the Law society. He was equally abusive to Ms Barlay's manager"* [77]

116. 49. *I must say O' Great One, you certainly appear to have a penchant for harassing and intimidating women, or men if they are elderly and frail.*

117. 49. *So, what do you have in store for me O' Great One? At the beginning of the year, a non-resident lessee with, evidently inside knowledge, phoned me at work and asked me whether I had: received anonymous phone calls; had my door bell pressed in the middle of the night; suffered flooding in my flat; had my mail intercepted leading me to have a PO Box; been followed; had my apartment bugged / phone tapped. I replied 'yes' to all. She then went on to say: "Don't worry, they won't kill you". Oh well, that's very reassuring O' Great One. On the other hand, considering events with Kensington & Chelsea police…*

118. 49. NB: I supplied Ms McLean with a copy of the majority of the letters referred to above - in the context of the disclosure of the Standard List of Documents

119. 50. I do not understand what Mr Gallagher is referring to.

120. 51. Steel Services was not entitled to interest. See my reply in the earlier part of this document.

And Steel Services has accepted this as can be seen from the Consent Order I wrote, dated 24 May 2004, signed by CKFT and endorsed by the Court on 1st July 2004.

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[76] Letter from Steel Services to Nucleus, dated 14 November 2001
[77] Front cover and Page 6 of Draft Arbitration document, compiled by Nucleus, December 2001

121. 52. As I have already stated, I am absolutely adamant that Mr Gallagher did not say that about the interest at the 28 October 2003 meeting. Mr Gallagher seems to be mixing up what he said at the meeting with the subsequent offline conversation he had with Ms McLean.

I have already replied under Mr Gallagher's point 29. (7) (i)

The amount of interest might be *"modest"*. However, (aside from refusing to pay what I do not owe), the implication of paying would have been an admission that I had owed this sum.

The approach used by Steel Services (and evidently endorsed by Mr Gallagher) is beyond belief:

1. Tries its luck at getting £14,400.19 - declaring, under a 'Statement of Truth', that the sum is due and payable. It fails because I knew it to not be true.
2. Tries again by lowering the sum to £10,917.27 (24 June 2003 hearing). It fails, for the same reasons.
3. Tries again by lowering the sum (in July 2003) to £10,235.63 (1.956% of £34,849.00) – (and thus, continues to challenge the LVT's determination). It fails – for the same reasons. (And a month later, having made no changes to the July 2003 'Revised costs', signs an application for a CMC under a 'Statement of Truth' saying that it has implemented the LVT determination and I therefore owe this money)
4. Eventually it makes an offer of £6,350 – which **still** does not reflect the LVT determination - and says: *"and you owe me interest!"*

As to Mr Gallagher's comment that the interest *"should be paid so as not to lose the offer"*: see my reply above to his point # 51.

122. 54. I disagree with Mr Gallagher. See my reply to his point 29. (7)(ii)

123. 55. I disagree, in particular with the statement *"…given that there was almost certainly no good certification point to be taken"*

See my reply above to Mr Gallagher's point # 43.

As I stated in reply to Mr Gallagher's point # 5, I would also refer to Clause (2) (j) of my lease: *"… the lessor establishing in such action that the interim payment demanded and unpaid was of a fair and reasonable amount having regard to the amount of the service charge ultimately payable by the Lessee"*.

While there are strong indications that Steel Services intends to make further demands from residents – and the Consent Order drafted by Mr Gallagher would, in my view, have helped Steel Services do this in my case - Mr Brian Gale did write in his 13 December 2002 Expert Witness report that *"the cost of works… detailed by Killby & Gayford on 8 July 2002 and totalling £564,467.00 represents a reasonable assessment of the cost of carrying out all necessary works"*

Last part of Mr Gallagher's point: *"…the more vaguely this argument is presented, the better"*. My reply to him is: For whom?

124. 56. Answered previously

125. 57. Each flat has a fixed percentage share for the service charge – as already explained in reply to Mr Gallagher's point # 9

126. 58. How convenient: *'it was said'*, but then *"...this proposal fell away…"* during

the meeting. (On the other hand, the alleged discussion on my lease was not recorded).

It was my definite understanding that this would be raised. One of the things I most strongly objected to was the opening paragraph of the offer: *"Our client maintains that, as a result of the LVT decision dated 17 June 2003, it is entitled to payment from your client of the sum of £10,917.27…"* . As demonstrated in the early part of this document this is not true. Among others, I emphasised this in my 7 November 2003 fax to Mr Gallagher and Mr Twyman and equally in my fax to them of 13 November 2003.

Regarding Mr Gallagher's comment on the subject of the consent order he had written: see above, my reply to Mr Gallagher's point # 29. (7)(ii)

As stated in my complaint: discussion(s) evidently took place at which I was not present.

127. 59. As stated above in my reply to Mr Gallagher's point # 29 (4): this could not have been said by Mr Brock for the simple reason that, as he said during the LVT hearing, he is not a qualified engineer. See point 26 of the LVT determination: *"Mr Brock accepted that certain matters e.g. lift were outside his areas of expertise"*.

I therefore maintain what I have stated – and explained - in my complaint under points: 2.3, 50 and 51: *"Mr Brock did **not** say that the offer could not be bettered"*. The simple reason for this is that: ***he could not have said it.***

Mr Gallagher describes what he alleges Mr Brock to have said as *"a central point arising out of the conference"* yet, this has not been captured.

He refers to Ms McLean's note as follows: *"It is also consistent with McLean's note of Mr Brock saying that the Offer was a good one.."*

While 'good' certainly does not mean that it *"cannot be bettered"*, Mr Gallagher has in fact omitted to capture a verb in Ms McLean's note which weakens his claim even further. She wrote: *"Tim Brock said that whilst the offer **seemed to be** a good one".*

As I stated in my fax to Ms McLean of 20 November 2003:

"I would also point out that contrary to Mr Gallagher's comment in his 12 November email to Mr Twyman, Mr Brock did not say that "I could not better the sum offered". Rather, he said that my insisting on having the outstanding specification redrawn, or tightened up i.e. in relation to items amounting to £144,745.87, would add to my advisory costs and I had to balance this against my share of the costs of these works"

128. 60. There is only way I can reply to Mr Gallagher's statement: no, this is definitely not what was said – and there is no record of this being said.

See my reply to Mr Gallagher's point 29. (7) (i) in which I have already answered this point.

If events had taken place as related by Mr Gallagher, Ms McLean's correspondence would not have read as it does.

In her reply of 21 November 2003, Ms McLean stated: *"As I say in my letter of 18 November I spoke to Mr Gallagher on my return from holiday and the information he gave me is that as set out in my letter of 18 November"* [78]

[78] Letter from Ms McLean to me, dated 21 November 2003

129. 61. I have already replied to this under Mr Gallagher's points # 43 and 55, and in my complaint under point 28.

130. 62. I have already replied to this by means of both, my replies in this document and my complaint

131. 63. (1) Mr Gallagher statement that: : [I] *"was virtually certain to lose if the claim went to trial and costs would be awarded against her and certainly would not be awarded in her favour"*

I have already replied to this. See my reply to Mr Gallagher's points 5, 11, 12, 22, 46, 47, etc.

132. 63. (2) Mr Gallagher comment: *"PSB were intent, for whatever reason, in forcing NKDR to accept the settlement rather than continue to trial"*

While I had no particular desire to go to trial unless forced to, I put it to Mr Gallagher that Steel Services desperately wanted to prevent the case from reaching this stage because, among others: no trial = no record.

133. 64. Mr Gallagher's comment: *"PSB were similarly pessimistic before instructing me…"*. Ms McLean certainly focused on the negatives and invoked '*the costs'*.

I have already replied to this on numerous occasions in this document, including in reply to Mr Gallagher's point # 29.(7) (ii)

134. 65. I have already replied to this in this document and in my complaint – including the reasons and the conditions under which I accepted to proceed.

135. 66. Mr Gallagher: *"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"*

Here we go again, now for the 8th time in Mr Gallagher's reply: the invocation of *'the costs'* – and this time, Mr Gallagher 'really goes to town' with this.

This is just a continuation of the only thing I have heard throughout: the threat of *'the costs'*. It further supports my claim that the advice has been totally biased and unbalanced. The LVT determination has been totally ignored.

136. 67 And barely a few words later, at the beginning of the paragraph: *'the costs'* are again invoked, as well as in the last part of the paragraph – making these the 9th and 10th times that Mr Gallagher has brought up *'the costs'* as the main premise of his argument. Indeed, he says: *"… probably the most important consideration, was the likely cost consequences of not accepting the offer and fighting the case…"* He also states: *"The balance of risks on costs was not finely balanced, it was all against NKDR and my advice reflected that".*

At no point in time has there been any acknowledgment whatsoever by Mr Gallagher (nor PSB) that:

1. I had been sent a demand for £14,400.00 which was in breach of Landlord & Tenant legislation

2. I had received a threat of forfeiture of my lease if I did not pay this amount – which was not due and payable

3. I had been subjected to having a claim filed against me in court to make me pay this amount which was filed with a 'Statement of Truth' *"The Claimant*

believes that the facts stated in this Claim Form are true"

4. Through the LVT, I had determined that the sum demanded of me was, for a very large part, not due and payable

5. I fully accepted the LVT determination (unlike Steel Services who kept on contesting it)

(Bar the reference to the Statement of Truth, I stated all of the above 5 points at the 28 October 2003 meeting – in addition to bringing up the issue of non-compliance with my lease)

Mr Gallagher wants me to believe that, with this body of evidence, the odds were against me?

Was Mr Gallagher acting for me or the other side?

137. 68. Reply dealt with in previous point, as well as in the reply to Mr Gallagher's: (1) point 9 which is that Steel Services cannot charge differentially; (2) points 29 and 59 – which is that Mr Brock did not say that the offer could not be bettered

As to a summary judgement having been entered: I have always agreed that works are required at Jefferson House; I therefore expect to have to contribute to the costs. But, what I do want to know before I pay is: what do I actually owe? I do not view adopting this stance as being unreasonable.

138. 69. I most definitely wanted to change both, solicitor and barrister.

However, by then, I did not see it as an option – see point # 59 of my complaint.

Even a few days earlier when I started to get seriously worried, it was too late. Aside from my work commitments, there was very little chance of another solicitor taking on my case from where I was at – as I determined. As I have stated in my complaint, I view this as having been heavily relied upon.

139. 73. Same reply as before to Mr Gallagher's statements that he *"settled the documents on the terms agreed in the conference"*: this is not so.

140. 74. Ditto re. Mr Gallagher's comment that he did not act *"in breach of instructions"*

141. 75. I reject this explanation.

142. 76. I have already provided an explanation for the importance of the points.

I have already replied comprehensively to the 2 main points: importance of the points I noted on my reply; documents not reflecting 28 October meeting

143. 78. Mr Gallagher's statement: *"… the strategy that I advised on worked: the tweaked offer was accepted…"*

Mr Ladsky was certainly delighted with it: bearing in mind the on-going history of harassment, intimidation and assault I have suffered from him, one Saturday morning towards the end of November, he greeted me (in front of the porter) in the corridor. This served to confirm my view that I was right: the reply as drafted by Mr Gallagher was to the benefit of Steel Services, not mine.

144. 79. I have already replied to this under Mr Gallagher's point 29. (7) (ii)

145. 80. Needless to say that I most strongly object to Mr Gallagher's statement that I *"changed my mind"*.

As to the rest of the paragraph, it has already been stated several times previously by Mr Gallagher. I have therefore already provided an answer.

146. 81. I have already answered this

147. 83. Mr Gallagher would say that.

148. 84. I have already replied to this under Mr Gallagher's point # 69

149. 85. I have already replied to this

150. 86. I have claimed this in my complaint against PSB

151. 88. I have already replied to this

152. 92. I have already replied to this

153. 95. Mr Gallagher states: "*I declare the contents of this document to be true*". In light of what I have detailed in my reply, and in my complaint, I disagree that this is applicable to all of what Mr Gallagher has captured in his reply

Thank you in anticipation of your taking the time to consider my response to Mr Gallagher's reply.

Yours sincerely

[redacted]

N Klosterkotter-Dit-Rawe

29 August 2004.

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