Ms Karin Seidenstein
Assistant Executive Secretary
Professional Conduct and Complaints Committee
The Bar Council
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London WC1V 7HZ

Ms Noëlle Klosterkotter-Dit-Rawé
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11 Basil Street
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(By Recorded Delivery)

Your ref: PC 2004/0188/J

25 March 2005

- 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

And the U-turns and pirouettes by the LSO and Bar Council started: its **30.03.05** reply

Dear Ms Seidenstein

Complaint against Mr Stan Gallagher, Arden Chambers

I acknowledge receipt of your letter dated 27 January 2005.

This reply is for the benefit of Mrs Zahida Manzoor CBE, Legal Services Ombudsman, to whom I am referring my complaint.

In March 2004, as I was contemplating the possibility of filing a complaint with your Office against Mr Stan Gallagher, Arden Chambers, it occurred to me that, as the Bar Council is both a trade union and a regulatory body, this might lead to a potential conflict of interest. Namely, to use a colloquial expression, that there might be the possibility of your 'not wanting to bite the hand that feeds you'.

My suspicions started to materialise upon receiving the 28 April 2004 letter from Mr Michael Scott, Complaints Commissioner, from which I concluded that the Bar Council was unjustifiably taking the blame for Arden Chambers not responding to my complaint after a period of 2 months – and, in the process, turning a blind eye to one of its members' breach of the Bar Council Code of Conduct.

In his 14 April 2004 letter to Arden Chambers, Mr Scott wrote: *"I am sorry about any confusing messages Mr Gallagher received from our offices. I fear it has been impossible to find out exactly what happened here but I do not hold Mr Gallagher or Chambers to blame. In accordance with the Bar Council's policy, Chambers should consider a complaint, in the first instance, if made directly to them…. I would therefore be grateful if Chambers would now consider this complaint and let me know the outcome in due course"*

In his 28 April 2004 letter to me, Mr Scott wrote: *"I am afraid I have not been able to verify exactly what happened between our offices and Chambers but I am quite clear that the Bar Council policy is that Chambers should deal with a complaint, if made to them, in the first instance. So, Chambers will now consider your complaint. If you are not subsequently satisfied, please return to me"*

To this I replied to Mr Scott on 3 May 2004:

> *"I do not accept your proposed course of action for the following reasons: (1) (Aside from not being my problem), Arden Chambers were perfectly clear as to the procedure for handling complaints – as indicated in Mr Gallagher's email of 23 January 2004 last two paragraphs (copy already provided to you – document # 5):*
>
> > *"I am also asked by the Bar Council to inform you that my chambers has its own internal complaints and disputes resolution procedure, presided over by my Head of Chambers (Andrew Arden QC), that you may wish to avail yourself of, either instead of, or prior to making a complaint to the Bar Council, though, of course, the existence of this internal complaints procedure does not*

in anyway resist your right to complain to the Bar Council without first relying on the internal procedure. In the event that you wish to use the internal Chambers complaints procedure, your complain should be addressed in writing to Andrew Arden QC at the address set out below"

(2) As stated in my complaint to your Office, dated 5 April 2004, I sent my letter of complaint to Mr Andrew Arden on 26 January 2004 by 'Special Delivery'. This letter was delivered to Arden Chambers on 27 January at 11h56 (document # 11 already provided to you). As I also detailed in my complaint to your Office, on 5 April, at the time of writing, I had not received a reply. Therefore, by then, ***I had given Arden Chambers a total of 10 weeks to reply to my letter****.*

By writing the letter of complaint to Arden Chambers and giving them a very generous amount of time to reply, I have more than amply complied with your professional body's complaints guidelines. I therefore now expect your Office to deal with my complaint ***now*** *which includes taking into consideration the fact that Arden Chambers did not reply to my complaint – contrary to your professional body's guidance.*

In spite of the evidence supplied, Mr Scott still continued with his 'theme' in his letter to me of 6 May 2004: *"Given what you say I am perfectly happy to investigate your complaint…However, I must say I think it is a pity, despite your reservations, that Arden Chambers had not had the opportunity to do so (possibly due to the misunderstanding between our offices) especially as I received a letter agreeing to do so from Mr Carter dated 4 May. It might well have been that they could have given you satisfaction and, if not, you could then have come to me, giving you two rungs of the ladder, so to speak"*

I saw the second evidence in support of my premise that the Bar Council considers its obligations to be first and foremost to its members when you chased me for a reply 2 weeks after my self-imposed deadline.

As I wrote in my 29 August 2004 reply: *"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… 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….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"*

The third evidence of an internal focus by the Bar Council, which I also view as 'double standards' given the aforementioned event, is that it took 3 months to receive your decision dated 27 January 2005 following my last reply of 31 October 2004. `Admittedly, you did send me a letter dated 10 December 2004 highlighting some difficulty and stating that I would hear from you within the next *"3-4 weeks"*.

Columns A to E in the rest of this document refer to paragraph numbering in:

- Column A: My complaint dated 5 April 2004
- Column B: Mr Gallagher's reply of 9 June 2004
- Column C: My 29 August 2004 reply to Mr Gallagher
- Column D: Mr Gallagher's reply of 11 October 2004
- Column E: My 31 October 2004 reply

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1.	***Your comment:*** *"The Professional Conduct and Complaints Committee of the General Council of the Bar met on 26 January 2005 and considered your complaint in the light of all evidence before it"*					
2.	What evidence was actually provided to the Committee? Judging from your letter, none of the substantive evidence.					
3.	***Your comment:*** *"I was asked to tell you that the independent Lay Representatives present at the meeting agreed with this decision"*					
4.	(Taking at face value that the lay person/s was/ere indeed independent), same question as before: what evidence was actually provided to this/ese individual/s?					
5.	***Your comment:*** *"Mr Gallagher recommended that you accept the offer…"*					
6.	Not as presented in CKFT's document.					
7.	***Your comment:*** *"A strategy was discussed at the conference for the acceptance of the offer and attempting to change the terms of the proposed compromise to prevent the landlord from making further demand from you for a contribution of the costs for major works"*					
8.	Not *"attempting"* but 'stating' that: *"payment was in full and final settlement of the current major works"*. (As captured in Ms McLean's attendance notes – and in my 7 November 2003 letter)					
9.	***Your comment:*** *"It was also agreed that once you decided to accept the offer, Mr Gallagher would be instructed by PSB to draft a Consent Order and accompanying letter addressing the concerns about further demands from the landlord"*					
10.	Correct. Indeed: *"addressing the concerns about further demands from the landlord"*.					
11.	***Your comment:*** *"You advised PSB on 7 November 2003 of the terms upon which you wished to respond to the landlord's offer"*					
12.	Correct. Giving 5 full working days to the deadline for the reply.					
13.	***Your comment:*** *"the Committee members were satisfied that you were proposing that a counter offer be made which differed in material respects from the offer, namely: a requirement that the landlord pay part of your costs…"*					
14.	Yes, given the circumstances of my case, I felt totally justified in claiming my costs. Not only did I receive confirmation of this from a solicitor I consulted after the 28 October 2003 meeting, Mr Gallagher's replies to my complaint further reinforce my position. See below for more details.					
15.	***Your comment:*** "*the Committee members…paid by you be reduced…"*					
16.	I read your statement as though I 'plucked' the amount out of thin air. What I stated in my 7 November 2003 letter is in line with the 17 June 2003 LVT determination which had the effect of reducing the global sum demanded from £736,206 to £235,946 – and consequently my 1.956%	2.2		48 50	3(4)	13

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share of it from £14,400 to £4,615.

Consequently, an offer of £6,350 (+ interest!) is £1,735.74 more than the LVT determination. (It represents 1.956% of £188,783 (inc. VAT and management fee) for which the LVT said it could not make a determination due to the lack of specification).

As I pointed out, I fully accepted the LVT determination. It is SS that kept challenging it – as evidenced among others in the 21 October 2003 offer which states: *"our client has, once again reviewed the revised apportionment dated 24 June 2003"*

17. In calculating the global sum of £235,946 I took the contingency fund into consideration given:

    1. Clause 2 (2) (e) of my lease: *"… (…the 'contingency payment') on account of any other costs expenses and outgoings (not being of an annually recurring nature) which the lessor … shall expect to incur at any time after the end of the relevant financial year in respect of the said Fourth Schedule Expenditure…by way of provision for expected future costs expenses and outgoings…"*

    2. A point firmly endorsed by the LVT under point 63 of its 17 June 2003 determination: ***"…****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"*

    For more details, see below, under the 'year-end accounts'.

			41-46		

18. ***Your comment:*** *"…the Committee members…that the landlord provide you with copies of accounts…"*

19. Yes. And I certainly would not describe my request as a 'counter-offer' – as it relates to compliance with the terms of my lease:

1.1 1.2 2.1 4.2	43 44 55	30 52 101 102 123	3(1) 3(2) 3(4)	1 7 13 14

    Clause 2 (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****…****together with any future sums indicated by the accountant****"*

    Clause 2 (2) (i): *"…after the end of each financial year the Lessor shall furnish to the Lessee an account of the Service Charge payable by the Lessee for such financial year together with a copy of the accountant's certificate…"*.

    The year-end for Jefferson House is 31 December. The offer was dated 21 October 2003. The amount HAD TO BE determined by an accountant – and I HAD TO BE provided with the accounts.

    You have opted to ignore the fact that Mr Gallagher dismissed my request for the 2002 accounts in his 12 November 2003 email on the ground that it *"can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms"*. While under point 55 of his 9 June 2004 reply he wrote: *"the more vaguely this argument is presented, the better"*.

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To this, I stated in my 29 August 2004 reply (under point 123): *"My reply to him is: For whom?"*

The only thing Mr Gallagher wrote in the draft Notice of Acceptance in relation to my lease was: *"1. The absence of due compliance with the service charge certification provisions prescribed by the lease".* (As I have previously expressed, the rest, amounting to 50% of the contents of the document, was 'unobjectionable padding' and referred to items which, it had been agreed, would **not** be raised).

Mr Gallagher's comment under 3(3) of his 11 October 2004 reply: *"…landlord's apparent breaches of the service charge accounting… are not matters that negate a contractual obligation to pay service charges…"*

In Mr Gallagher's book, landlords have carte blanche to do exactly as they please – including incorrectly referring to a demand as an interim payment and issuing action for non-payment, as well as subsequently making another demand (the offer) – also in breach of the terms of my lease. The outcome of Mr Gallagher's position is that the contract i.e. the lease - signed by the landlord *and* the lessee - works in only one direction: that of the landlord.

Bar Council Code of Conduct - 303. *"A barrister:*

(a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any professional client or other intermediary or another barrister)

(b) owes his primary duty as between the lay client and any professional client or other intermediary to the lay client and must not permit the intermediary to limit his discretion as to how the interests of the lay client can best be served"

Bar Council Code of Conduct – *"5. Conduct of work: 5.2 A barrister must assist the Court in the administration of justice and, as part of this obligation…must not deceive or knowingly or recklessly mislead the Court"*

20. I also drew your attention to the fact that, in addition to a breach of the terms of my lease, non-provision of the accounts – in spite of my requests to MRJ and CKFT – amounted to a breach of my statutory rights:

> S.21 L&T Act 1985: accounts to be supplied at the latest 6 months after the year-end.
>
> S.25 of the same act: breach of S.21 amounts to committing a criminal offence.

Your Committee has, likewise, opted to ignore this.

21. For your information, last month, (through the intermediary of the Kensington & Chelsea Council and Local Government Ombudsman), I obtained a copy of what are described as the *"Service charges for the year ended 31 December 2002".* (And also for 2003).

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	Not surprisingly, they vindicate my conclusion that SS-MRJ had something to hide in not providing me the 2002 accounts by the time of the 21 October 2003 offer.					
22.	The 2002 (and 2003) accounts are in breach of the terms of my lease as:			27		
	1. They do not provide detail of *"future costs, expenses and outgoings"* - Clause 2 (2) (e) and Clause 2 (2) (f) "…*together with any future sums indicated by the accountant pursuant to Clause 2 (2) (e) hereof in respect of the said Fourth Schedule Expenditure and specifying the amount of the service charge payable by the lessee.."*					
	(Nor did the 2001 accounts – yet (i) the original demand was made in July 2002; (ii) the intention to start the works was stated in Ms Hathaway's letter of 7 June 2001 as the *"Autumn of 2001"*).					
	(Nor do the 2003 accounts. The works were started in September 2004) (using a different contractor)					
23.	2. The accounts do not show the *"amount of service charge payable by each lessee" – taking into account current and future expenditure…."* Clause 2 (2) (d) and Clause 2 (2) (f) "…*"As soon as the accountant shall have determined the amount of the service charge payable by the lessee for the relevant financial year…"*					
	(In previous years – pre the arrival on the scene of Mr Ladsky et. al. the accounts contained a schedule detailing, among others, the amount payable for each of the 35 flats). (It also identified flats for which payment was the responsibility of the lessor – as per the terms of my lease: Clause 2 (2) (c) (iii))					
	I refer you again to Clause 2 (2) (d) – ***"amount of service payable by the lessee to be determined <u>by an accountant</u>***".					
24.	3. The contingency fund has <u>not</u> been used as contribution towards the costs.					
	As previously explained, SS 'eventually' took full account of it in the 'offer' to me of 21 October 2003: "…*our client is also prepared notionally to utilise the reserve fund to reduce the total figure and, accordingly, your client's apportioned liability"*					
25.	As also previously explained, SS-MRJ <u>cannot</u> charge residents differentially other than on the basis of their fixed percentage share - of a global sum which <u>must be the same for all</u>.		48 57	55 105 125		
	<u>Charging me</u> (as well as other residents) <u>on any other basis is a breach of the contractual terms of my lease</u>.					
	In other words, Mr Gallagher has endorsed a breach of the terms of my lease.					
26.	While Mr Gallagher opted to ignore the fact that the lease supplied with the claim against me is materially different from mine (as it amounts to saying: *"Give your cheque book to the lessor who will write himself a cheque for an amount of his choice"*), it still does not change the terms of		49	5 6 106- 117		

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		my lease. Contrary to the tone of the offer, SS was not doing me 'a favour' – and was most certainly not *"throwing me a life-line"* as Mr Gallagher wrote in his 9 June 2004 reply. Bar Council Code of Conduct – *"5. Conduct of work: 5.2 A barrister must assist the Court in the administration of justice and, as part of this obligation…must not deceive or knowingly or recklessly mislead the Court"*					
27.	4.	The 2002 (and 2003) accounts show that a second fund (in addition to the *'contingency fund'*) referred to as a *"Major works fund"* has been set-up. This is in breach of the terms of my lease: Clause 2 (2) (e)					
28.	5.	The 2002 accounts state that the *"Major works fund"* is held in two separate accounts. This makes a total of three accounts with the 'contingency fund'. (And a total of four for year 2003) Holding the funds for future expenditure in more than one account is in breach of the terms of my lease: Clause 5 (7) which states: "…*to pay the contingency payment into **a** designated account to be maintained by the lessor with a joint stock bank*"					
29.		In light of the above - in relation to my request for a copy of the 2002 accounts at the time of the 21 October 2003 offer - I again ask the question: *"Was Mr Gallagher acting for me or the other side?"*			136		
30.		***Your comment:*** *"the Committee members…that the landlord provide you with…bank statements"*					
31.		Yes. And seeing the year-end accounts, the reason for SS-MRJ non-compliance with my numerous requests is obvious.					
32.		***Your comment:*** *"Mr Gallagher was asked to consider your letter and in e-mail messages to PSB on 12 and 13 November 2003 he advised in clear and strong terms that the landlord's offer be accepted and that you were at risk of costs in the event that the landlord did better at trial than the amount he indicated that he was willing to accept in settlement of his claim"*					
33.		Your Committee has ignored my drawing attention to, as I stated: *"a very significant 'climb down' by Mr Gallagher"* in his 11 October 2004 reply, as he wrote: "*I accept that it is possible that, given the level of the sums disallowed by the LVT and the criticisms that could be made about the landlord's conduct, a Court may have been persuaded to make no order for costs"*. I contrasted this with: (i) Mr Gallagher's 17h09 email of 12 November 2003: *"…if…the matter proceeds to trial it is virtually certain that the Claimant will beat it and Ms Rawé will be ordered to pay the Claimant's costs"*	4.1		29	6	25

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(ii) Mr Gallagher's reply of 9 June 2004: Point 67: *"… probably the most important consideration, was the likely cost consequences of not accepting the offer and fighting the case… The balance of risks on costs was not finely balanced, it was all against NKDR and my advice reflected that".* Point 66: *"…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".* Point 63 (1): [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"* Leading me to state in my 29 August 2004 reply: *"Mr Gallagher wants me to believe that, with this body of evidence, the odds were against me?"* And your Committee holds the view that my complaint that Mr Gallagher, Ms Lisa McLean and Mr Richard Twyman acted in concert to coerce me into accepting the offer *"is not made out in the available evidence"*?					
34. Your Committee has opted to ignore the fact that the LVT had specifically told residents to **not** pay the service charge demanded until it had issued its decision and it had therefore been implemented. I supplied you with a copy of the relevant pages highlighting the Court of Appeal case 'Daejan Properties Limited v London Leasehold Valuation Tribunal', which very clearly state that the ruling had *"determined that LVTs only have the jurisdiction to decide the reasonableness of disputed service charges* ***that are still unpaid****."*: Hence I (and other residents) **had to await** the LVT decision – and its implementation by SS-MRJ **before making a payment**. I also pointed out to you that Mr Gallagher had written under point 23 of his 9 June 2004 reply to my complaint: *"I am currently writing a book for Sweet & Maxwell on litigation in the LVT – Leasehold Valuation Tribunals: Practice & Procedure…"*		23		6	9
35. Against the aforementioned context under which LVTs operate, your Committee has opted to ignore Mr Gallagher's statement under point 8 of his 11 October 2004 reply that the reason for his taking the position in relation to 'costs' was because *""Ms Rawé had not made a payment into Court, or any offer to settle. Hence my analysis that Ms Rawé was very vulnerable on costs".*				8 6	
36. Your Committee has opted to ignore the fact that the impact of the LVT determination was to reduce the sum demanded of me by nearly 70% from £14,400 down to £4,615 i.e. a difference of £9,785.		12 21 22	59 72- 75		

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37.	Likewise, your Committee has opted to ignore Mr Gallagher's claims / excuses. In his 9 June 2004 reply he wrote *"The outcome* (of the LVT determination) *was something of a mix bag"*. (As I noted under point 72 of my 29 August 2004 reply: *"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 made about the LVT determination?"*) Following my providing detail of the LVT findings in my 29 August 2004 reply, in his 11 October 2004 response Mr Gallagher wrote, under point 6 *"I accept that it is possible given the level of the sums disallowed by the LVT… a court may have been persuaded to make no order to costs"*, while under point 6 (4) he wrote: *"I therefore did not enter into a detailed analysis of the merits of the LVT decision."* Taking the LVT decision on board was all that was required of him. He opted to not do this.		21	72	6 4(1)	
38.	Your Committee has opted to ignore Mr Gallagher's statement in his 11 October 2004 reply: *"At the time I did not consider that the course of the proceedings before the LVT was likely to carry much, if any weight on the question of costs in the court proceedings".* *"At the time"*. I read this as an admission that Mr Gallagher had not acknowledged the evidence supplied to him. (Which is obvious). I draw your attention to the Bar Council Code of Conduct "*303 (a)* and *(b)* and *5. Conduct of work – 5.2.*				4(1)	17
39.	Your Committee has opted to ignore my highlighting the fact that Mr Gallagher dismissed, in his 9 June 2004 reply, what had been agreed at the 28 October 2003 would be included in the Notice of Acceptance in relation to the LVT determination – as he wrote *"it was said"*, but then *"this proposal fell away"*. As I wrote in my 29 August 2004 reply: *"How convenient!"*		58	126		
40.	Your Committee has opted to ignore the fact that this exorbitant service charge demand was in breach of the terms of my lease e.g. Clause 2 (2) (c) (ii) which states: Lessor's duty to "*maintain the annual service charge at the lowest reasonable figure consistent with the due performance and observance of its obligation herein"* The *"Fourth Schedule Expenditure"* in my lease makes it abundantly clear that (like other lessees) I am only liable for repair, maintenance and replacing where necessary. Confirmed by the LVT under point 54 of its determination.					
41.	Your Committee has opted to ignore the incontrovertible evidence I supplied against Mr Gallagher's claim that my surveyor, Mr Brock, had said at the 28 October 2003 meeting that the *"offer could not be*		29 59 68	82 127 137	10	29

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bettered"					
42. Your Committee has opted to ignore Mr Brock's assessment of the 21 October 2003 offer which demonstrates that it contains the sum of £1,735.74 which was not supported by evidence.					
43. Your Committee has opted to ignore the fact that SS had not implemented the LVT determination. Yet, it made claims of having done so at the 24 June and 26 August 2003 hearings. This was certainly not the case as the sum had been reduced by only 24.19% (from £14,400 to £10,917) – thereby misleading the court. And it still claimed this in its 21 October 2003 offer stating in the opening paragraph: *"Our client maintains that, as a result of the LVT decision it is entitled to payment from your client of the sum of £10,917"* Non-implementation of the LVT determination amounts to not only a fundamental breach of my lease, it also amounts to breach of S.20 (3) of the L&T 1985 Act.					
44. Your Committee has opted to ignore the fact that the only thing Mr Gallagher wrote about the LVT determination in the Notice of Acceptance was: *"…your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings…"*	2.2				
45. Your Committee has opted to ignore my drawing attention to the fact that Mr Gallagher had referred to *"costs"* a total of 10 times in his 9 June 2004 reply. Leading me to state, among others: *"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"* And your Committee holds the view that my complaint that Mr Gallagher, Ms Lisa McLean and Mr Richard Twyman acted in concert to coerce me into accepting the offer *"is not made out in the available evidence"*?		15 20 26 29 48 66 67	60 65 80 81 105 135 136		
46. Furthermore, Mr Gallagher had a body of evidence about my case which, as the barrister *'acting for me'*, he should have taken into consideration in the reply.					
▪ The fact that in October 2002 CKFT had threatened to forfeit my lease unless I paid the £14,400 immediately. Proof that I raised this during the 28 October 2003 meeting is captured in Ms McLean's attendance notes. (Ms McLean's reply to my saying this at the 28 October 2003 meeting was: *"I write this kind of letter every day!"*). (I had given Ms McLean a copy of this letter (with numerous other documents) several weeks previously).		67 66	21 136		
▪ To threaten forfeiture <u>prior</u> to issues being determined by a court or a tribunal is illegal. It is a fraudulent act as the intention was to frighten me in order to extort monies not due and payable. (It is also an abuse of position).					
▪ Section 40 of the Administration of Justice Act 1970 renders it illegal to make threats which are calculated to cause alarm, distress or					

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humiliation.					
▪ Criminal Justice Act & Public Order Act 1994 - Section 4A makes it a *"…criminal offence to cause harassment, alarm or distress with intent by using threatening words"*					
▪ Mr Gallagher knew that CKFT filed the claim against me while its client was concurrently pursuing an action in the LVT – amounting to CKFT placing me in a situation of double jeopardy. Consequently, CKFT acted against the Courts and Legal Services Act 1990, Ch. 41, s. 17 to act appropriately *"in the interests of the proper and efficient administration of justice"*		24	54 78 79		
▪ This action by CKFT also breached another part of the Courts and Legal Services Act 1990 which states that the courts expect *"…litigation to be started as a last resort after attempts have been made to settle the dispute by negotiations or other means… "*.					
▪ It also states that the overriding objective of the rules is: *"…to enable the courts to deal with cases justly. Rule 1.1(2) states that dealing justly with a case includes (a) ensuring that the parties are on an equal footing…"*. Placing me in a situation of double jeopardy cannot be regarded as my being placed "*on an equal footing"*.					
▪ Mr Gallagher knew that the reason I ended up challenging SS application in the LVT was because, despite my numerous – legitimate - requests for a priced specification this evidence had not been supplied. Not only did I say this at the 28 October 2003 meeting, Mr Gallagher had been supplied with a copy of my 19 October 2003 Witness Statement which makes this very clear. He also had a copy of the LVT report which, under point 14, states *"Ms Hathaway…maintained that Ms Dit-Rawé had seen the specification… but was unsure as to whether this had been a priced version"*. (The same damning evidence is found in Mr Gale's 4 February 2003 report, under point 2.04: *"…the un-priced or priced specification…has been… freely available for all lessees to view"*)		29 (10)	8 94 136 137		
▪ This therefore amounted to another breach of the Courts and Legal Services Act 1990 which states that *"The courts expect litigation to be started as a last resort after attempts have been made to settle the dispute by negotiations or other means….* The courts also expect parties "*to have exchanged information (a 'cards on the table' approach): for claimants to provide to defendants detailed letters of claim (letters before action) to which defendants are expected to respond also in detail"*.					
▪ Not only were my legitimate requests for details of the costs ignored, the follow-up by SS was the filing, one month after my request to CKFT, of the claim against me (and 10 other residents) in West London County Court.					
▪ Rule 1.1.(2) of the Courts and Legal Services Act 1990 states that *"dealing justly with a case includes: (a) ensuring that the parties are on an equal footing"*. Denying me access to the information I am entitled to have under the terms of my lease, and as per my statutory rights, and to then proceed to issue proceedings against me most certainly cannot be regarded as my being placed "*on an equal*				3(3)	12

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footing".					
▪ Mr Gallagher had been supplied with CKFT's application and supporting documents for the 24 June and 26 August 2003 hearings. He knew, on the basis of the LVT determination and of my surveyor's assessment, that the claims made to the court by CKFT were false. Thereby amounting to a breach of the CPR rule of *"enabling the court to deal with a case justly"* (as well as amounting to contempt of court).			23		
▪ The filing of just one claim against 11 residents, implying that we were jointly and severely liable for the claim. Under the terms of our leases we are not jointly and severally liable for the service charges, as each one of us is merely liable for the percentage of the total charges - as specified in our leases.					
Mr Gallagher knew full well (as he should) that CKFT's handling of my case broke all the rules – as evidenced by what he wrote in his 11 October 2004 reply : "*I accept that it is possible that, given …the criticisms that could be made about the landlord's conduct, a Court may have been persuaded to make no order for costs"*.					
I am not suggesting that it was Mr Gallagher's role to 'police' the conduct of CKFT, only that, as *'my'* adviser, he should have taken these points into consideration.			59 67	7	26
But then, based on my first-hand experience, Mr Gallagher tends to side with the 'fraternity', including landlords.					
Example 1 - In response to my highlighting that Ms Salim, CKFT, had supplied false information under a Statement of Truth in the application for the 26 August 2003 hearing, Mr Gallagher wrote in his 11 October 2004 reply: *"The fact that the LVT disallowed sums as unreasonable does not of itself mean that the verification of the facts contained in the landlord's Particulars of Claim was improper …"*.					
(Rule 21.21(4) of the Solicitors Code of Conduct – *"…no duty upon a solicitor to enquire…whether the client is telling the truth. However, where the solicitor's instructions or other information are such as should put him or her upon enquiry, a solicitor must, where practicable, check the truth of what the client says to the extent that such statements will be relied on before the court or in pleadings (now statements of case) or affidavits"*					
Rule 21.01 of the Solicitors Code of Conduct – *"Duty to not mislead the court - Solicitors who act in litigation, whilst under a duty to do their best for their client, must never deceive or mislead the court"*					
Practice Direction 22: A false statement of truth with dishonest intent amounts to contempt of court).			9-21	3(3)	
Example 2 – also in his 11 October 2004 letter – which I view as Mr Gallagher re-writing a statute: *"I concluded that the landlord had substantially complied with the statutory consultation procedure"*. Compliance with a statute can only be in full, or in excess of it. And certainly not, as was the case, very significantly less than the stated requirements.		17	49	4(7)	22

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Other examples can be added to these – which include Mr Gallagher's comment under point 29 (14) of his 9 June 2004 reply in relation to my reporting at the 28 October 2003 meeting that I had suffered harassment, intimidation and assault from Mr Ladsky. He wrote: *"though I was virtually certain that NKDR did not have a viable claim against the landlord"*. In my 31 October 2004 response, I noted how he underplayed my reply in his 11 October 2004 response. Bothering to ascertain the evidence prior to formulating an opinion is evidently not Mr Gallagher's forte.		29 (14)	62 95 106-117		
47. In the context of **ALL of the aforementioned in reply to your comment**, I draw your attention to: *"303. A barrister:* *(a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any professional client or other intermediary or another barrister)"* *(b) owes his primary duty as between the lay client and any professional client or other intermediary to the lay client and must not permit the intermediary to limit his discretion as to how the interests of the lay client can best be served;* *307. A barrister must not:* *(a) permit his absolute independence integrity and freedom from external pressures to be compromised;* *(c) compromise his professional standards in order to please his client the Court or a third party"* *5. Conduct of work - 5.2 A barrister must assist the Court in the administration of justice and, as part of this obligation…must not deceive or knowingly or recklessly mislead the Court"*					
48. ***Your comment:*** *"Mr Gallagher advised that you were at such a risk notwithstanding that the letter did not strictly comply with the provisions of Part 36 of the CPR"*					
49. As I stated on numerous occasions, the offer included the sum of £1,735.74 which was not supported by evidence. By ignoring the fact (which I - 'as the client' - pointed out to Mr Gallagher and Mr Twyman) that the offer was in breach of the CPR on Part 36 Offers, your Committee has endorsed Mr Gallagher's ignoring this rule set by a highly respected and authoritative figure in the legal profession: Lord Woolf.	1.4 1.5 2.2 4.6	46 47	103 104	3(4)	13
50. ***Your comment:*** *"You instructed PSB and Mr Gallagher in an e-mail message sent to them later on 13 November 2003 to accept the offer and for Mr Gallagher to draft the documents as discussed"*		73	139		
51. Yes. And he did not do this.					

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52.	In addition to the points about the terms of my lease, the LVT determination and my surveyor's assessment of it, etc. your Committee has ignored the incontrovertible evidence against Mr Gallagher's claim that *"by stipulating that it was in full and final settlement of NKDR's share of the totality of the costs of the major works"*. This is what had been agreed – and is captured in Ms McLean's attendance notes: *"In the covering letter if we were to accept the offer we would say that we were not happy that the specifications remain unchanged and the LVT had commented on the same fact, there had been no re-tendering of any sort, the matter had stayed with the same contractor etc etc..."*. However, Mr Gallagher did **not** write this. As I stated: *"…what he wrote left the door wide open to SS to come back and ask for another 'Major works contribution', and so on…"* Mr Gallagher boasted in his 9 June 2004 reply: *"… the strategy that I advised on worked: the tweaked offer was accepted…"* . There was no 'tweaking' – as he just said 'amen' to everything. Of course his reply was received with open arms. As I highlighted, when, upon taking back control of my case, I wrote in my Notice of Acceptance that my payment was *"in full and final payment of my share of the costs for carrying out all the major works"* - i.e. writing what had been agreed at the 28 October 2003 meeting - it very clearly 'threw a spanner in the works'. Indeed, it took 2-3 chasing letters to CKFT (including through a solicitor) to finally get an acknowledgment on 27 January 2004 in which it stated: *"We have now located two of your letters dated 19 December 2003"*. (The post office tracking system showed it had taken delivery of my correspondence on 22 December 2003).	8.2	29. (7) (ii) 73 74 78	89 90 91 139 140 143		
53.	And what has happened since, totally backs-up my position.			90	4(6)	21
54.	Your Committee has opted to ignore the evidence which clearly demonstrates that acceptance of the payment of interest was agreed between Mr Gallagher and Ms McLean post the 28 October 2003 meeting – and was contrary to what had been agreed at the meeting during which Mr Gallagher had said: *"not the interest as the costs have not been incurred"*. (As captured in my 7 November 2003 letter to Mr Twyman and on the draft consent order I faxed to Mr Twyman at 16h28 on 13 November 2003). (And in case you also overlooked it: SS did accept my payment without interest).	3.1	29 (7) (i) 51 52 60	86-88 120 121 128	11	30
55.	***Your comment:*** *"You have, in the event, decided not to accept the offer"*					
56.	As you perfectly well know, your statement is incorrect: what I did is *'refuse'* to endorse the Consent Order and Notice of Acceptance prepared by Mr Gallagher. As I wrote under point 92 in my 29 August 2004 reply: "*The way I see it: Mr Gallagher said 'amen' to everything; barely made a ripple in relation to the key issues; had 50%*	3.2	80	89 92 145		

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	*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)…"*					
57.	***Your comment:** "The essence of your complaint is that Mr Gallagher gave you incorrect advice in respect of your legal position in the dispute and on the landlord's offer"*					
58.	Absolutely.					
59.	***Your comment:** "You also complain that Mr Gallagher together with PSB coerced you into accepting the landlord's offer"*					
60.	Yes. I put it to you that any reasonable, fair minded person with integrity, would, when considering the evidence, arrive at the same conclusion.	4.4 4.7 5 59 61	37	97		
61.	***Your comment:** "Your further complaint is that Mr Gallagher's incorrect advice and conduct has caused you considerable stress, anguish, torment and distress and which resulted in your losing earnings, suffering financial loss and having to lose the majority of your free time since 13 November 2003"*					
62.	Started earlier than that i.e. post the 28 October 2003 meeting.	6-9				
63.	***Your comment:** "Having considered the matter carefully the Committee was not satisfied that there is any realistic prospect of a finding of professional misconduct against Mr Gallagher or that he provided you with inadequate professional service when advising you on the landlord's offer"*					
64.	Yet again, I ask: what evidence was the Committee supplied with? If it was supplied with the evidence I provided, it leads me to the view that your Committee does not have the integrity to perform the role implied in its remit.					
65.	***Your comment:** "The Committee was satisfied that Mr Gallagher's advice was realistic and Ms McLean's attendance note of the conference on 28 October 2003 shows that Mr Gallagher carefully considered the options open to you before recommending acceptance of the offer"*					
66.	As I pointed out, 'I' raised the issue of breach of the terms of my lease which, as the client, I certainly should not have had to do. The fact that no reference is made to my lease in Ms McLean's attendance note is damning evidence against Mr Gallagher (and PSB/W): they position themselves as 'experts' in landlord-tenant disputes in which the terms of leases play the most critical part – and they ignore my lease – in spite of my raising it at the meeting.	1.1				
67.	I have disproved Mr Gallagher's endorsement of SS's position that the original demand was an *"interim"* payment by highlighting, among others, the duration of the works – and have incontrovertible evidence that I was correct: nearly 8 months since the start of the works and it is abundantly clear, at the date of writing, that it will take many more weeks before they			23- 25 90	3(1)	2 3

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	are completed. (You may be interested to know that good progress is being made on the construction of the penthouse flat and changing the lift so that it can reach an extra floor. Enlargement of flats on 4 floors may also be in progress. As to my windows and adjacent area: 8 months on and they have yet to be repainted). For your information, CKFT and Mr Gallagher are alone in their interpretation of the terms of my lease. My position stems from the opinion I obtained from several lawyers at: LEASE, the Federation of Private Resident Associations, and other lawyers I consulted – and is further supported by the aforementioned.					
68.	While this issue was superseded by events, I nonetheless draw your attention again to what I previously wrote: that in case 'lawyers' want to argue that the demand was an interim demand, Clause (2) (j) of my lease states: *"… 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"*		55	49 123	3(1)	4
69.	At the time of the offer, Mr Gallagher has disregarded Clause 2 (2) (d) of my lease: "*"amount of service payable by the lessee to be determined **by an accountant***".					
70.	I again refer you to what Mr Gallagher wrote in the draft Notice of Acceptance in relation to my lease: *"1. The absence of due compliance with the service charge certification provisions prescribed by the lease".* (The rest was 'unobjectionable padding' and referred to items which had been agreed would not be raised).					
71.	***Your comment:*** *"The Committee was satisfied that your complaint that Mr Gallagher and PSB effectively acted in concert to coerce you into accepting the landlord's offer is not made out on the available evidence"*.					
72.	Yet again, I ask: what evidence was the Committee supplied with? And I also repeat my previous comment: if your Committee was supplied with the evidence I provided, it leads me to the view that it does not have the integrity to perform the role implied in its remit.					
73.	***Your comment***: *"The Committee considered in the circumstances that the stress, distress, anguish, torment and inconvenience that you have suffered following 13 November 2003 as a result of the continuing uncertainty of your ongoing dispute with the landlord was not the result of any deficiencies in the advice given by Mr Gallagher…."*					
74.	I disagree. And by the way, this started after the 28 October 2003 meeting.					
75.	***Your comment:*** *"The Committee considered…but rather your refusal to accept his advice and to compromise the dispute with your landlord on the basis discussed and agreed at the conference on 28 October 2003"*					
76.	I disagree. As you perfectly well know, the draft documents produced by Mr Gallagher did not reflect what had been discussed.					

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75.	***Your comment:*** *"The Committee considered…but rather your refusal to accept his advice and to compromise the dispute with your landlord on the basis discussed and agreed at the conference on 28 October 2003"*					
76.	I disagree. As you perfectly well know, the draft documents produced by Mr Gallagher did not reflect what had been discussed.					
77.	***Your comment:*** *"The Committee however, may be prepared to look at the matter again if you have some additional evidence in support of your complaint which was not included in the letters you have already sent"*					
78.	Your Office has already been provided with ample evidence and has opted to disregard it.		95	153		
79.	Mr Gallagher concluded his 11 October 2004 reply with: *"I am sorry that Ms Rawé feels that the outcome of the litigation is unjust. However, I hope that it will be understood that I advised on the operation of the law of residential landlord & tenant as it is, not how leaseholders may well think that it should be".* He did not. In my view, he 'fell over backwards' to assist SS i.e. Mr Ladsky et. al.				15	34
80.	***Your comment:*** *"…the Committee decided that there was no professional misconduct or inadequate professional service on the part of Mr Gallagher. The complaint was accordingly dismissed"*					
81.	Given the evidence: your Office has opted to ignore my complaint. I have highlighted numerous breaches of the Bar Council Code of Conduct – which also states: *"901. Any failure by a barrister to comply with this Code shall constitute professional misconduct"*					

In conclusion

As a result of my experience with your Office, I fully endorse Sir David Clementi's conclusions following his review of the legal profession (as reported in the FT of 16 December 2004): *"The current regulatory system is flawed…It has insufficient regard to the interests of consumers. …I am not satisfied that the main frontline bodies have always put consumer interests ahead of their own interests."*

And consequently challenge the statement made by the then Bar Chairman, Stephen Irwin QC that: *"We have the right to expect earned autonomy in our affairs, for so long as our complaints handling serves the public interest."* Your Office is not serving the public interest. I view it as having a conflict of interest which leads to lack of objectivity and integrity.

Yours sincerely,

[redacted]

Noëlle Klosterkotter-Dit-Rawé

cc. Mrs Zahida Manzoor CBE, Legal Services Ombudsman