Mr Ian Skuse, Complaints Officer
Piper Smith & Basham
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See Skuse's 'reply' of **30.01.04** = continuing with the outrageous conduct

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(By special delivery)

- For an overview of what took place with Piper Smith Basham/Watton - and 'my' barrister Stan Gallagher - see: my Comments to 'his' **13.11.03** reply to Rachman Andrew David Ladsky's **21.10.03 Part 36 offer; -Summary of events-Gallagher**
- For surrounding events, see **Extortion** and **Kangaroo courts # 1 & # 2**
- See my **16.03.04** complaint to the Law Society against Piper Smith Basham/Watton
- And **Doc library # 2.2** for the typical 'Get lost!' reply

Ref: LM.R360/1

24 January 2004

Dear Mr Skuse

1. Your letter of 18 December 2003

Further to my letter of 20 January 2004, I now reply to your letter of 18 December 2003 in response to mine of 2 December 2003.

1. I note that you view *"my file"* as having been *"properly managed".*

2. I also note that you do not specifically address any of the points in my letter.

   I will reply to yours point by point.

3. Your sentence: *"Ms McLean kept an attendance note of the conference and what was discussed was also detailed in an email from Stan Gallagher of 12 November 2003"*

   The second part of your statement is incorrect.

4. It is incorrect because Mr Gallagher's email of 12 November 2003, 17h09 to Mr Twyman, misrepresented what Mr Brock had presented at the 28 October meeting, by stating that *"his calculations showed that this sum could not be bettered".* This is not true. Mr Brock has neither stated, nor demonstrated this.

5. The evidence for this is that he cannot do this for three reasons. Firstly, in the revised costs sent by CKFT with the offer, the lack of specification identified by the Tribunal, for items amounting to £144,745.87, has not been addressed (point 3.2 of my 2 December 2003 letter to you)

6. Secondly, the boilers account for a large part of the £144,745.87, for which the LVT said to be unable to make a decision.

   As Mr Brock stated during the Tribunal hearing, he is not qualified to comment about the boilers – other than say that the specifications are so vague that it is impossible to determine the type of boiler required – and hence the costs. (A point endorsed by the Tribunal in its 17 June 2003 report: *"…the Tribunal was frustrated by the lack of detail in the specification and in Mr Gale's evidence. Works were not clearly identified, were not measured where they clearly could have been, and there was some element of duplication. Some items were not specified at all e.g. the types and capacity of the boilers"*).

7. The third reason is that Mr Brock did not: (1) draw-up the specifications for the remaining items (for which the Tribunal said to have no/insufficient specification); (2) put them out to tender to three contractors – and nor did I ask him to do it.

8. In my fax of 20 November 2003 to Ms McLean I highlighted Mr Gallagher's misrepresentation of what Mr Brock had presented at the 28 October meeting:

> "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".

9. Aside from what Ms McLean captured in her Attendance Memo of the 28 October 2003 meeting (penultimate sentence of the first paragraph):

> *"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…"*

Ms McLean has consistently opted to ignore the findings from the Tribunal (points 3.5, 3.6, 3.7 and 3.8 of my 2 December 2003 letter to you)

10. Evidently, like Ms McLean, Mr Gallagher opted to also block out / ignore Mr Brock's assessment of Steel Services' (third!) revised costs sent in support of its offer.

11. The outcome is that the reply did not include what had been agreed.

12. Amazingly, given (among others) what Ms McLean captured in the penultimate sentence of the first paragraph of her Attendance Memo, in the third paragraph she wrote: "*…the Claimant had… originally sent her a demand for £14,000 which it now seemed was an incorrect figure…"*

In my reply of 30 October to Ms McLean I wrote:

> "In your attendance memo, 1st page, last paragraph you wrote *"…they had sent her a demand for £14,400 which it now seemed was an incorrect figure…"*. I find the use of the word 'seemed' rather interesting – considering (i) the report by the LVT; (ii) the fact that Steel Services has admitted that the sum demanded was unreasonable by revising their demand downwards twice".

13. In relation to your sentence: *"His firm advice was that the part 36 offer should be accepted and if you declined you would certainly end-up paying significantly more by virtue of being ordered to pay the claimant's costs"*

This was a view certainly expressed by Ms McLean at the 28 October meeting (as she had done on previous occasions). I do not recall Mr Gallagher endorsing it at the time.

I disagree with this view and will – re-state – the reasons.

14. I disagreed with Ms McLean's view at the 28 October meeting stating – (as I had done on previous occasions):

> "Because of the lack of specification identified by the Tribunal, it cannot be determined what, if any of this amount (i.e. £144,745.87) is actually due by residents. Consequently, if the Tribunal cannot determine the reasonableness of the sum demanded for these items, how can the Court rule that I should pay even £1.00 of it?"

15. Secondly, at the 28 October meeting, I also drew the attention to the terms of my lease (using

a letter I had sent to Ms McLean on 24 September 2003 in which I had comprehensively reproduced the relevant parts from my lease) emphasising the fact that Steel Services' demand for advanced payment for the major works was in breach of the terms, as my lease states:

> *Include in the relevant year… the sum or sums.. which the lessor 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:*
>
> *(i) "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"*
> *(ii) "that in his opinion the said summary is sufficiently supported by accounts receipts and other documents which have been produced to him"*
> *(iii) "that the sum specified as aforesaid represents the amount of the service charge payable by the lessee.."*

The original demand of £14,400.19 for advanced payment of the major works was dated 17 July 2002. The 2001 accounts do not refer to any major works. Therefore, Steel Services was at the time, in breach of the terms of my lease by demanding payment (a fact I pointed out at the time to Steel Services, as well as in my defence to the Court claim in December 2002).

On 9 October 2003 I sent a (recorded delivery) letter to the managing agents for the block, Martin Russell Jones, requesting a copy of the year-end 2002 accounts within fourteen days. (This was noted in my fax to Mr Twyman of 7 November 2003). I should therefore have received the accounts at the latest by 23 October i.e. two days after CKFT sent the offer. (I am still awaiting a copy at the date of writing).

16. The only reference made to the terms of my lease in the reply was, point #1 on the 'notice of acceptance': *"The absence of due compliance with the service charge certification provisions prescribed by the lease"*

Given the enormous variations in leases, it cannot be inferred from this that Steel Services is demanding payment from me under conditions that are in breach of the terms of my lease.

17. Thirdly, as I subsequently established from my own research on the working of Part 36 offers, the offer does not comply with the CPR, in particular, Lord Woolf's view/ decision in the ***Ford v GKR Construction Ltd*** [2000] 1 All ER 802:

> *"If the process of making Pt 36 offers before the commencement of litigation is to work in the way in which the CPR intend, the parties must be provided with the information which they require in order to assess whether….to accept that offer…If a party has not enabled another party to properly assess whether or not… to accept an offer which is made because of non-disclosure to the other party of material matters , or if a party comes to a decision which is different from that which would have been reached if there had been proper disclosure, this is a material matter for a court to take into account in considering what orders it should make"*

18. Given points 14, 15, 16 and 17 above, I cannot see how a Court would rule that I have to pay

the Claimant's costs.

19. For the record:

> Neither Ms McLean nor Mr Gallagher mentioned the requirement in relation to the working of part 36 offers at the 28 October meeting – nor indeed, at any other time.
>
> I highlighted my findings on part 36 offers in the fax I sent to Mr Gallagher and Mr Twyman on 13 November. I had no feedback from either.
>
> Ms McLean has also consistently opted to ignore the terms of my lease:
>
> > On 3rd September 2003 I asked her to *"please, have one of your experts look at my lease".* I repeated my request on 9 September.
> >
> > Due to the lack of response, on 21 September I again repeated my request, this time including comprehensive extracts from my lease.
> >
> > My request to get an assessment of the terms of my lease has never been addressed by Ms McLean
>
> I would also point out that her Attendance Memo of the 28 October 2003 meeting does not make any reference to the fact that I drew the attention to the terms of my lease during the meeting – which was discussed – as evidenced, among others, by her notes.

20. In relation to your sentence *"On that basis, on 13 November 2003 you sent an email to Mr Gallagher and Lisa McLean's supervising partner Richard Twyman indicating that you had accepted the advice of counsel and that you wanted to accept the offer"*

Not on *"That basis"* as, on 13 November 2003 at 12h26, I replied: *"I find some of the comments difficult to reconcile with events/facts…".* Being at work, I did not have the time to expand on this. (As I explained in my letter of complaint to you of 2 December 2003, I view Mr Twyman as having engineered the situation to take maximum advantage of the fact that I was at work).

21. In the same email of 13 November 2003 at 12h26, I wrote: *"Although my views and wishes as to what 'should be said' and 'should happen' remain as expressed in my communication of 7 and 13 November - I am accepting your advice: to accept the offer - as you have extensive experience of handling this type of cases on behalf of lessees rather than landlords.*

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

22. In his 13 November 2003, 10h12 email Mr Gallagher stated: *"tweaking as discussed in conference"*

23. What was *"discussed in conference"* is certainly not reflected in what went into the reply.

24. Your sentence: *"setting out a number of matters which he advised were not significant and would have no impact"*

Firstly, when was this agreed? I certainly was not a party to it. (NB: I remarked on the inclusion of these points to Ms McLean in my letter of 26 November 2003, emphasising the fact that Mr Gallagher had described them as *"not worth pursuing… yet they account for 50% of the contents of the letter"*).

Secondly, the 50% of the contents of the letter taken up by this 'unobjectionable padding' would have been better utilised by focusing on pertinent points, namely that:

I was agreeing to the offer of £6,350.85 even though:

it includes costs for which the specifications have not been re-drawn and, consequently, not re-tendered

I have not been provided with the 2002 accounts – and therefore do not have certification from an accountant

Steel Services is not entitled to ask me for interest because its demand for advance payment does not comply with the terms of my lease

25. Your sentence: *"It was on that basis that counsel was instructed to draft both the letter and draft consent order"*.

"That basis" is not as was agreed at the meeting to which I was a party i.e. on 28 October 2003.

26. In relation to your sentence: *"These were forwarded to CKFT on the basis that the time for acceptance of the part 36 offer would otherwise have expired"*

In reply to this, see, in particular, in my 2 December 2003 letter to you, points 3.10, 3.11, 3.12, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.24, 3.26 and 3.27.

In relation to points 3.22 and 3.26, I would also add that a 16h00 deadline is only in relation to the Courts.

27. The first half of your sentence: *"Accordingly, whilst you have now have a reluctance to sign the documents that were settled on your behalf…"*

In addition to the reasons I have stated above for not agreeing to endorse the reply you sent to CKFT, I will re-emphasise the fact that in my letter of 7 November and my fax of 13 November 2003, as well as my email of 13 November at 12h26 I requested that the draft reply be sent for my review.

As I noted under points 3.21 and 3.23 of my 2 December 2003 letter, Mr Gallagher sent the drafts as an attachment to an email sent at 15h32. I do not know when they arrived in my inbox. At 15h53 i.e. twenty one minutes later, Mr Twyman sent me an email stating that he had received the drafts and would be sending them to CKFT *"in the next 10 minutes"*.

He did not even contact me to ascertain that I had received the drafts sent by Mr Gallagher.

And, as I also noted under point 3.26 of my 2 December 2003, in his next email, on 14 November, Mr Twyman lied about the time at which he said I had sent back my comments – and I was able to prove that he lied. I had faxed my comments back within less than one hour.

In addition to this, he also dismissed the comments I had annoted on the drafts I faxed back: *"At 17h37 a fax was received here with your comments on it which on the face of them are inconsistent with the request for inclusion in any event"*

This is what I wrote on the notice of acceptance: *"+Non-compliance with Section 20 for some items, as a consequence of which the LVT was unable to take a decision"* – as a reminder that the lack of specification identified by the LVT had to be included.

On the draft consent order I wrote: *"On 28 October – Mr Gallagher said "no because works had not started"*

How can Mr Twyman describe these as *"inconsistent"* – given that these were the points it had been agreed would go in the reply?

And of course, a key question: why is it that Mr Gallagher did not include these key points?

28. The second half of your sentence: *"…as far as CKFT are concerned there is a concluded agreement resolving their client's claim".*

This may be CKFT's view, but what you sent them is not what was agreed – as detailed in this letter, and in my letter of 2 December 2003.

29. Your sentence: *"Your letter appears to suggest that there will be a hearing and witness statements are due to be exchanged. This will not occur as the action is resolved*"

Wrong. This action was certainly not resolved at the time of your letter as you did not have my consent to the reply you sent to CKFT - and you refused to redress the situation. Hence, the possibility of a hearing could not be excluded.

30. I will take this opportunity to remark that, in my view, Ms McLean has throughout handled my case under the assumption that it would not lead to a hearing.

One of the most notable events in support of this view is that I had my witness statement hand-delivered to her on the morning of 20 October – as the deadline set by the Court was 21 October.

She opted to push the deadline, which she said to have agreed with CKFT, to 12 December. In my hand-delivered letter to her of 12th December I asked for the Claimant's witness statement. She replied: *"Your statement has not (and would not have in any event in its current form) been sent to CKFT".*

Why did she wait ***six weeks*** to give me this feedback? And I only got it because I requested the Claimant's witness statement!

31. Your sentence: *"…therefore you should be able to somehow revise your acceptance"*. As explained at length in this letter and in my letter of 2 December 2003 – what has been sent in reply to CKFT does **not** represent *"my acceptance"*.

32. Your sentence: *"There can not be a qualified acceptance, such as you had originally proposed that the other side pay your costs"*

I stated this in my fax of 7 November. I view a 55% reduction in the original sum demanded, (equivalent to £8,050.00), as vindicating my position – which, I will stress again has, all along, been based entirely on the findings from the Tribunal. In addition to which, of course, there is the fact that the demand does not comply with the terms of my lease. Consequently, I felt that the Claimant should be paying for my costs.

Mr Twyman refused to discuss my letter of 7 November (point 3.11 of my 2 December 2003 letter).

33. Due to the use of what I can only describe as 'bullying and intimidation tactics' by Mr Twyman – whom I viewed as taking advantage of both, my lack of experience and knowledge of this type of situation, and of the fact that I was at work - on 13 November I did not raise this point again.

34. I note your point that *"you are satisfied that the quality of service that we provided was perfectly acceptable…"*

I have given you several opportunities to redress the situation.

Given your response to my letter, I will shortly be lodging a complaint against your firm with the Office for the Supervision of Solicitors.

35. Regarding your penultimate paragraph, I have already addressed this comprehensively.

As regards to the last part of the last sentence *"… would only lead to further litigation at your cost…":* I have not explored this but, should litigation ensue from Steel Services, it seems to me that I would then have to issue proceedings against your firm.

36. In reply to your last sentence: Ms McLean's letter of 12 December 2003 indicated that your firm no longer wished to act for me.

I therefore communicated this to CKFT on 19 December.

37. Most interestingly, in the same correspondence of 19 December – which CKFT took delivery of on 22 December:

> I agreed to: (1) Steel Services' offer of £6,350.85; (2) Steel Services' condition that each party pays its own costs; (3) included a cheque for £4,095.78 (as I had already paid £2,255.07).
>
> The only part of the offer I said I could not agree to was pay the interest (£143.49).

Unlike the reply Mr Twyman had sent - I stated that I was agreeing to the offer in spite of: (1) the lack of specification identified by the Tribunal not having been addressed; (2) non-compliance of the demand with the terms of my lease – on which I expanded; (3) Lord Woolf's view about the requirement for the working of part 36 offers.

To date I have not received a reply, nor has my cheque been cashed.

This suggests that, unlike the reply you sent, the points made in mine evidently do not meet Steel Services' objectives. [(i)You have stated in your letter that *"…as far as CKFT are concerned there is a concluded agreement resolving their client's claim";* (ii) the only part of the offer I have said I cannot agree to is the payment of £143.49 of interest)

2. Ms McLean's letter of 21 January 2004

Regarding Mr Gallagher's fees, you will have by now received my recorded delivery letter of 20 January.

Yes, please remove the name of your firm from the Court record – given that you are no longer acting for me.

How bizarre:

> in her 12 December letter Ms McLean wrote: *"One final point to make is that whilst there is a current complaint against me personally and the firm it would not be appropriate for me to continue acting for you, our relationship having broken down"*
>
> in her 21 January 2004 letter she wrote: *"There is also of course the outstanding issue of the concluded agreement. Once again if you wish to discuss the matter with me at the telephone I am happy to do so"*

Yours sincerely

Noëlle K-Dit-Rawé

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to

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