

Our ref: CDT/39114-2004/Sanghera CAI

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Private and Confidential

Ms N Klosterkotter-Dit-Rawé
3 Jefferson House
11 Basil Street
LONDON
SW3 1AX

See:
(1) my 19 Feb 05 reply;

(2) its 17 Mar 05 'response'

(3) my 20 Feb 05 referral of my complaint to the LSO

(4) the 11 Jul 05 LSO's endorsement of the Law Society's decision



The Law Society

8 February 2005

Dear Ms Klosterkotter-Dit-Rawé

Complaint against CKFT Solicitors

I write further to my colleague's letter of 27 January 2005. I am a consultant caseworker to whom your matter has been allocated for consideration. I have had an opportunity to consider your complaint plus supporting documentation. Before I set out my assessment I would like to point out this office's powers.

WHAT A JOKE!

This office has the power to consider complaints concerning the professional misconduct of solicitors. However, legal issues are outside this office's remit. **This office is a disciplinary body.** I have noted that you are not a client of the solicitor you are complaining of. Solicitors are under a duty to act in the best interests of their own client and to rely upon information and instructions given by their client. Because of this, this office can take up complaints from people who are not clients of the firm concerned only where there is evidence of professional misconduct.

Please note that as you are making a complaint against the solicitors representing another party, this office is only able to consider the issue of professional conduct. Therefore, as you are not a client of CKFT this office is not able to award you compensation. Further, for the same reason, we do not have the power to direct CKFT to refund the costs which you are claiming.

For the sake of clarity I will adopt the numbering as per your 5 page summary of complaint. I will now deal with the same below.

Complaints

1.1.1.1 Acting fraudulently, with deceit, taking unfair advantage

You are concerned that the tactics employed by CKFT prior to issuing proceedings against you and your fellow tenants were fraudulent, deceitful and amounted to taking unfair advantage. I note that whilst an application at the Leasehold Valuation Tribunal was still to be determined action was taken in the

Court to recover the service charge which you disputed. As you will be aware, a solicitor is required to act upon his/her client's proper instructions and in his/her client's best interests. A solicitor is not required to go behind a client's instructions to check their veracity.

I note that during your dispute you were, at times, represented by solicitors and your interests were appropriately protected. In addition to which the information which you have provided does not demonstrate that CKFT acted as alleged above as they were at liberty to issue a claim at court for the Court to consider. Your contention that such a claim should not have been lodged as the Leasehold Valuation Tribunal was yet to determine matters should have been raised with the Court as this is a legal point which this office can not comment upon. Therefore, for the reasons mentioned above I am not in a position to take this concern any further.

1.1.1.2 Ignored evidence supplied

It would be for CKFT to decide what information they were to utilise and rely upon as they owed a duty of care to their own client. As they did not represent you they did not owe you such duty. Further, solicitors are not required to reply to correspondence received from a third party especially if they have been so instructed by their client. Additionally, it would have been for you and/or your solicitors to bring your defence and supporting documents to the attention of the Court at the relevant time via the correct channels. Unfortunately, I will therefore not be able to take your concerns on this point any further.

1.1.2.1 Committed offences

If, in this instance, you are referring to the criminal offences pursuant to the legislation cited at points 1.2, 1.22 and 1.3 those will be dealt with below.

1.1.2.2 Demanded money that was not due

You claim that CKFT improperly demanded money from you that was not due. This, in itself, is a legal issue which, as explained above, this office can not consider. CKFT on a client's instructions were at liberty to issue proceedings and in doing so it was a matter for the Court to determine whether the sums claimed were due or not. The Court, by virtue of its inherent jurisdiction has the relevant power to impose the necessary sanction on a party where there has been abuse of process. For this reason I am not able to take this concern any further.

1.1.3.1 Failure to comply with legislation

Failure to comply with the requirements of the Landlord and Tenant legislation is a legal point which this office can not consider. If you consider that you have suffered loss as a result of the failure by the landlord to comply with such legislation I would urge you to seek independent legal advice in order to protect your position. For this reason I am not able to take this matter further.

1.1.3.2 Refuted your defence

CKFT owed a duty to their client to act in their clients best interests and put forward their arguments. Therefore, the rebuttal of your defence would be the normal course of the litigation process. This aspect can not be taken any further as in refuting your defence CKFT would have been relying upon their client's instructions and utilising their professional judgement on the evidence before them and their interpretation of the law.

1.1.3.3 Non-compliance with Civil Procedure Rules

The alleged failure in this respect again is not a matter for this office in these circumstances. Such concerns need to have been raised with the Court which, by virtue of its inherent jurisdiction can impose the relevant sanction, if deemed appropriate, upon the defaulting party. For that reason I am not able to take this point any further.

1.1.3.4 Implied joint and several liability

You say the issuing of one claim against 11 residents implied you were all jointly and severally liable and therefore failed to take account of your percentage share of the service charge. The manner in which the claim was pleaded is a matter of professional judgement which is not something this office can comment upon. This office cannot comment upon the legal advice given to a client nor upon how that advice was acted upon. The office does not have such jurisdiction to do so.

1.1.3.5 Obtained Orders before Leasehold Valuation Tribunal issued report

In this respect, you are saying that Court Orders were obtained against other residents before the Leasehold Valuation Tribunal issued its report. Firstly, it would be incumbent upon those individuals to raise such concerns directly with this office. Additionally, it would be for those individuals to have taken appropriate legal advice in order to protect their position at the relevant time. This is not a matter for this office and should have been raised before the Court for it to determine the jurisdiction of the Leasehold Valuation Tribunal over the Court's jurisdiction in respect of CKFT's client's claim.

1.1.3.6 Entered negotiations and at the same time claimed different amounts from others

CKFT were at liberty to enter into negotiations with the parties to the litigation in spite of the pending action in the County Court. No doubt such negotiations would have been taken into account in respect of your liability under the claim. In respect of which the parties to the litigation (residents) should have raised any of their concerns with the Court at the appropriate time. Therefore, for the reasons mentioned above I am not in a position to take this aspect any further.

1.1.3.7 Failure to amend claim in light of Leasehold Valuation Tribunal report

This is a legal point and a matter of professional judgement for CKFT as to whether their claim was amended or not. The Leasehold Valuation Tribunal report would have been brought to the attention of the Court or alternatively the Court would have known that the Leasehold Valuation Tribunal was considering

issues. Therefore, the alleged failure to amend the claim is not a matter that we can consider as it falls within the jurisdiction of the Court at the relevant time.

1.1.3.8 Observe proper standards of work

The issue which you have raised under (a) to (d) are all procedural/legal matters which were for the Court to address. For instance, if a party has failed to comply with court rules/procedures then it is for the Court by virtue of its inherent jurisdiction to determine those breaches and if appropriate, sanction the defaulting party. For this reason I am not able to consider this aspect further.

1.1.4.1 Breach of duty to Court

As cited above CKFT were entitled to issue a claim as they did and you had an opportunity in your defence to raise any objection as cited at point (a), namely that you were told not to pay. It would then be for the Court to determine whether the claim could be entertained or not. This point equally applies to your point at 1.1.4.2.

1.1.4.3 Improperly recovering money

Your submission that the service charges were not due is a matter this office can not determine. Such issues can only be resolved between the parties subject to the terms of the lease and/or any service charge agreement. Therefore, such disputes are not within the jurisdiction of this office as they are legal matters.

1.1.4.4 False statement of truth

This is a serious allegation about the probity of a solicitor. The document dated 6 August 2003 and signed by Ms A Salim was an application notice. Such application was for summary judgment under Part 24.2 of the Civil Procedure Rules. The language used in that application was in accordance with Part 24.2 (a) (i) and 24.2 (3). Therefore the statement of truth as signed does not demonstrate that Ms Salim has acted in breach of the rules/principles of professional conduct governing solicitors.

I note that you make allegations that CKFT have committed criminal offences under the Theft Act 1968 (1.2), Criminal Justice Act and Public Order Act 1994 (1.3), and Money Laundering Regulations/Proceeds of Crime Act 2002 (1.4). These are serious allegations and as they relate to alleged criminal offences should be reported to the police. If upon investigation the police have any concerns about the conduct of CKFT they can refer matters to this office for consideration. At this juncture these are not matters within the office's jurisdiction to consider.

However, I would like to thank you for the time you have spent in bringing your concerns in respect of Section 1.4 to our attention. You may know that from time to time this office undertakes its own independent and confidential investigations and information of the type which you have provided in connection with this matter is helpful to us in assessing whether an investigation of this type is appropriate. However, owing to the confidential nature of such investigations we are unable to confirm to you whether or not any such investigation will take place and if so, the result. I can, however, assure you that the information you have provided will receive proper consideration in this regard.

In respect of your allegation pursuant to the Defamation Act 1996 (1.5), that is a legal issue which you must seek advice upon. Such matters are not within the office's power to consider.

For the reasons mentioned above I am not in a position to take any of your concerns any further. I note that my assessment of your concerns will come as a disappointment but I hope that I have explained as to why I am unable to help.

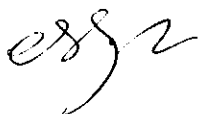
You may request the Legal Services Ombudsman (LSO) to complete an independent review of our file. The LSO can review both the way we have dealt with your complaint, as well as the final outcome. Please remember that there is a three month time limit, which starts from the date of this letter, in which to make your referral. The Ombudsman's address is:-

The Legal Services Ombudsman
3rd Floor
Sunlight House
Quay Street
Manchester
M3 3JZ

Telephone: 0161 839 7262
Telephone: 0845 601 0794 (lo-call number)
Fax: 0161 832 5446
Email: iso@olso.gsi.gov.uk
Website: www.olso.org

Please note that we are unable to store files indefinitely. It is our policy to destroy files after two years unless there is a particular reason not to do so. If you would like me to return any of your personal papers please let me know.

Yours sincerely



Gurjinder Sanghera
Consultant Caseworker
Conduct Assessment and Investigation Unit

Enc LSO Leaflet

**** Please quote our above reference whenever contacting us ****
If corresponding by e-mail please quote our reference in the subject heading