



Our Reference: PC 2004/0188/J  
(Attn Karin Seidenstein)  
E-mail:[Kseidenstein@Barcouncil.org.uk]

**PRIVATE & CONFIDENTIAL**

Ms Noelle Klosterkotter-Dit-Rawe  
3 Jefferson House  
11 Basil Street  
London SW3 1AX

27 January 2005

Dear Ms Klosterkotter-Dit-Rawe

**Re: Complaint by you against Mr Stanley Harold Gallagher**

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.

After a very full discussion, the Committee decided that there was no professional misconduct or inadequate professional service on the part of Mr Gallagher. The complaint was accordingly dismissed. I was asked to tell you that the independent Lay Representatives present at the meeting agreed with this decision.

Having been involved in the service charge dispute with your landlord, Steel Services Limited, since 2002 you retained solicitors, Messrs Piper Smith & Basham ("PSB") during August 2003 to act for you in the continuing dispute. You carried out your own research about suitable counsel and you instructed PSB to instruct Mr Gallagher to advise you on the merits of a compromise offer that the landlord made to you in a letter dated 21 October 2003. Mr Gallagher received such instructions from PSB on 24 October 2003 and advised you in conference on 28 October 2003. That conference was attended by you, Ms Lisa McLean of PSB and the expert surveyor who had advised you throughout the dispute, Mr Tim Brock.

Mr Gallagher recommended that you accept the offer from the landlord, which involved in your paying a smaller sum than that previously demanded by the landlord and on the basis that each side pay its own costs. The landlord's offer was only open for acceptance until 13 November 2003 and was expressed to be made pursuant to Part 36 of the Civil Procedure Rules ("CPR").

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 which were yet to be carried out to the apartment building. As you indicated at the conference that you wished to obtain further legal advice, outside Mr Gallagher's field

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of practice, on your prospects of successfully bringing a claim for damages against the landlord for harassment, it was agreed that you would advise PSB in due course whether or not you were minded to accept the offer from the landlord. 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 in respect of the major works which it proposed to carry out.

You advised PSB on 7 November 2003 of the terms upon which you wished to respond to the landlord's offer. Having considered the terms of what you had proposed as compared with the landlord's offer letter of 21 October 2003, 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, that the sum to be paid by you be reduced and that the landlord provide you with copies of accounts and bank statements.

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. 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. 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.

You have, in the event, decided not to accept the offer and have not instructed PSB to endorse the Consent Order on your behalf. 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. You also complain that Mr Gallagher together with PSB coerced you into accepting the landlord's offer. 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.

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. 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. 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.

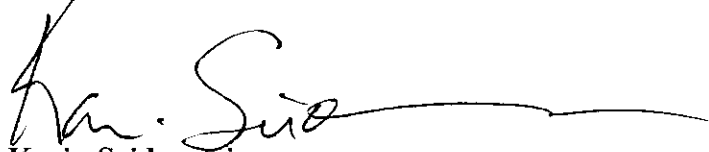
The Committee considered in the circumstances that the stress, distress, anguish, torment and inconvenience that you have suffered following 13 November 2003 as a result of the continuing uncertainty of your ongoing dispute with the landlord was not the result of any deficiencies in the advice given by Mr Gallagher, 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.

Under the Rules, there is no mechanism for you to appeal this decision. 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. If you wish the Committee to look at this matter again, you should include the fresh evidence, together with the reasons why it was not included with your original complaint.

If you are dissatisfied with the way in which your complaint has been considered by the Bar Council, you may approach the Legal Services Ombudsman (LSO) to investigate the way in which we have dealt with it. I enclose a leaflet which gives a guide to the LSO's powers in dealing with complaints about barristers. If you decide to contact the Ombudsman, however, you must do so within 3 months of the date of this letter, ie. by 26 April 2005. The Ombudsman applies this limit strictly. While the Ombudsman is able to relax this time limit, we understand that she will only do so when there are very good reasons (for example serious illness of yourself or a close family member) why you were not able to contact her within three months. Even if you are sending us additional material, therefore, it would be sensible to write to the Ombudsman straightaway. The Ombudsman will send you a form for completion and return to her. Her address is:

The Legal Services Ombudsman  
3<sup>rd</sup> Floor, Sunlight House  
Quay Street  
Manchester M3 3JZ  
Telephone No. 0161 839 7262  
Lo-Call No. 0845 6010794

Yours sincerely



**Karin Seidenstein**  
**Assistant Executive Secretary**  
**Professional Conduct and Complaints Committee**

cc Mr Stanley Harold Gallagher

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