

**Confidential**

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

**Our ref: 32563**

**30 August 2005**

Dear Ms Klosterkotter-Dit-Rawe

**Re: Mr S H Gallagher, Arden Chambers, Chancery Lane, London, WC1N 2ES**

Further to our previous correspondence, I am writing to let you know that we have now received the file on your case from the General Council of the Bar (the Bar Council) and I have considered what you say about the way that they dealt with your complaint about the above-named barrister. All the correspondence and related documents on the Bar Council's file and the documents presented with your submissions to me have been reviewed, and I am writing now to let you know my conclusions.

You complained to the Bar Council on 6 April 2004 about Mr Gallagher, the barrister instructed by your solicitors Piper Smith Watton to advise on the merits of an offer of settlement in proceedings which your landlord had brought against you (and others) regarding the demand for an interim payment in respect of service charge contributions. You complained that Mr Gallagher's advice was wrong and incomplete and that this has caused you to suffer detrimental consequences in relation to your physical and emotional health, your financial position, and additionally the loss of your spare time; that Mr Gallagher had acted against your best interests by superficially treating/crafting the wording of highly material points to make them incomprehensible and by masking the real issues and misrepresenting the facts in support of your position; that he had made critical changes to the reply to the claimant's offer without your consent; that there had been an abuse of the fiduciary relationship by taking advantage of your lack of knowledge and experience; that Mr Gallagher had played an active role in Mr Twyman's (of Piper Smith Watton) engineering of a situation in which you had no time to review the response; and that Mr Gallagher's e-mails were patronising. You enclosed a considerable number of supporting documents, including a copy of your letter of complaint dated 26 January 2004 which you had sent to Mr Andrew Arden, the complaints officer at Arden Chambers and to which you had not received a response. The documents also included a copy of your letter of complaint in respect of your solicitors, Piper Smith Watton and their response to your complaint. That complaint was the subject matter of a separate report by me and I make no further reference to it.

*Which  
were  
evidently  
not  
read!!*

The Bar Council's Complaints Commissioner made enquiries of Mr Gallagher's Chambers to ascertain whether or not your complaint was being dealt with by them. Mr Carter, a member of the Chamber's Management Committee responded on 23 April 2004. He said that initially you had written to Mr Gallagher direct by letter dated 20 January 2004, following which

Mr Gallagher had taken advice from the Bar Council as to the appropriate way forward. He said that the Bar Council had advised that it was not appropriate for Mr Gallagher to respond unless and until a complaint had been made to the Bar Council and the Bar Council had directed him to do so. Mr Carter said that Mr Gallagher had sent an e-mail to you on 23 January 2004 to this effect. Mr Carter said that he would be happy to deal with your complaint if you wished him to do so in accordance with Chambers internal complaints-handling procedure. In his letter to you dated 28 April 2004, the Complaints Commissioner said that, in the first instance, the matter would be dealt with by Mr Gallagher's Chambers. In his letter of 4 May 2004, Mr Carter confirmed that he would consider your complaint internally. However, by your letter to the Bar Council dated 3 May 2004 you said that you had already given Arden Chambers a total of 10 weeks to deal with your complaint and that you now expected the Bar Council to deal with the matter. The Complaints Commissioner wrote to you on 6 May 2004 confirming that your complaint would be investigated by the Bar Council in accordance with your request.

On 12 May 2004 the Complaints Commissioner sought the comments of Mr Gallagher and those of his instructing solicitors, Piper Smith Watton.

Mr Gallagher's response was received by the Bar Council on 22 June 2004. Mr Gallagher set out the background to the matter and his recollection of events. He refuted your allegations and gave his detailed reasons for doing so.

Piper Smith Watton responded on 1 July 25, 2005. Ms McLean, who dealt with your case, said that she did not propose to respond to the complaints made about herself or other members of the firm in your letter of complaint about Mr Gallagher because she did not consider it appropriate to do so and because you had made a complaint about the firm to the Law Society. She said that she had seen a copy of Mr Gallagher's response and did not consider that there was anything useful that she could add.

You provided a forty-page response to Mr Gallagher's comments on 1 September 2004. You made it clear that you did not accept what he had to say. You provided further copy documents.

*Evidently  
Mr  
read  
either*

Mr Gallagher provided his further comments on 14 October 2004. Mr Gallagher maintained his position. You provided a further response on 2 November 2004.

The Complaints Commissioner referred the papers to a Sponsor Member of the Professional Conduct and Complaints Committee for consideration. The Sponsor Member completed his report on 19 January 2004. He took the view that there was no evidence of professional misconduct or of inadequate professional service on the part of Mr Gallagher. He recommended that your complaint should be dismissed.

The matter was considered by the Professional Conduct and Complaints Committee on 26 January 2005. The Committee took the same view as that of the Sponsor Member, namely, that you had failed to disclose a sufficient case of professional misconduct or of inadequate professional service against Mr Gallagher. The Committee dismissed your complaint. The reasons for the Committee's decision were set out in some detail in a letter to you dated 27 January 2005 (B)

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In your response to the Bar Council dated 2 March 2005 you made it clear that you did not accept the Bar Council's decision. You said that the Bar Council were not serving the public

(B) *stating that the "decision was final", and  
I was unhappy with it to refer to LSO.*

interest and that in your view there was a conflict of interest which led to a lack of objectivity and integrity on their part.

In view of the issues raised in your letter, the Assistant Executive Secretary to the Professional Conduct and Complaints Committee sought further advice from the Sponsor Member, who reviewed the file. In his response the Sponsor Member made it clear that in his view all relevant information had been placed before the Committee when it considered your complaint against Mr Gallagher. He pointed out that Mr Gallagher's involvement in your case which had been ongoing for a considerable amount of time concerned a time frame of some 3 weeks only and related solely to whether and on what terms you should accept the landlord's offer of compromise. He said that in his view the Committee knew sufficient of the prior history of the litigation and the differences between you and Mr Gallagher on your complaint to be able to come to an informed decision on your complaint. In their letter to you dated 3 June 2005 the Bar Council refuted that decisions made by the Professional Conduct and Complaints Committee were made on the basis of 'a trade union' for the members of the Bar as you had suggested.

which means under the CAKE?

Planning to use Mr AG? An excuse?

You referred the matter to me for consideration on 29 March 2005. You said that in your view the Bar Council had either ignored or dismissed all the substantive points in your complaint. You enclosed a number of copy documents. Following your further correspondence with the Bar Council, their file was forwarded their file to me on 3 June 2005.

It might assist if I explain at the outset that my primary role is to oversee the manner in which the various professional bodies deal with complaints about lawyers, with a view to ensuring that they follow proper procedures and that they reach decisions that fall within the bounds of reasonableness. It is only in exceptional circumstances that I consider it appropriate to investigate the original complaint about the lawyer. Such circumstances are not present in your case and I have therefore confined my review of the matter to a consideration of the Bar Council's handling of the complaint.

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You and a number of other tenants in Jefferson House were in dispute with your landlord in respect of service charges at the property and in particular a demand in respect of major works to be carried out. On 7 August 2002 your landlord made an application to the Leasehold Valuation Tribunal (LVT) for a declaration as to the reasonableness of the proposed major works and the price schedule. You were represented in those proceedings by solicitors and counsel with experience of landlord and tenant matters. The LVT determination was handed down on 17 June 2003. The outcome was largely favourable for your landlord but part of the amounts included in the specification for the works was disallowed. County Court proceedings were issued against you and other tenants by the landlord in November 2002. In those proceedings your landlord was claiming the sum of £14,400 against you. That sum was subsequently reduced to £10,917.28. At a summary judgment hearing in August 2003 judgment was entered against you in the sum of £2,255.07 and detailed directions were made for the trial in respect of the balance of the claim in the sum of £8662.20 to be heard between February and March 2004. On 21 October 2003 your landlords made a without prejudice offer which provided that each party bear their own costs and that you should pay £6,350.85 plus interest, with credit to be given for the £2,255.07 judgment sum paid on 10 September 2003. It was in respect of this offer that Mr Gallagher was instructed to advise. Mr Gallagher advised that the offer should be accepted subject to 'tweaking' by stipulating that it was in full and final settlement of your share of the totality of the costs of the major works. He said that this would have the effect of protecting you from the risk of a serious cost overrun on the works by capping your liability. Mr Gallagher

Totally inaccurate

Knocking off 68% cannot be described as such.

(A) of the £736,206 global sum demanded, LVT disallowed 23% because improvements (£170,000) + £189,000 because of lack of specifications, OR 25.6% = 48.6% NOT allowed + view that £142,000 contingency fund should be used - leaving reasonable amount £236,000 = 32%

But not

subsequently prepared a draft consent order and ultimately you agreed to accept his advice. what he wrote  
However, you have since refused to instruct Piper Smith Watton to endorse the consent order on your behalf. In that respect you should consider seeking independent legal advice as to what options are open to you.

Read my complaint!!

You complained that Mr Gallagher's advice was wrong and incomplete and that this has caused you to suffer detrimental consequences in relation to your physical and emotional health, your financial position, and additionally the loss of your spare time; and that there had been an abuse of the fiduciary relationship on the part of Mr Gallagher by taking advantage of your lack of knowledge and experience. In his response to the Bar Council Mr Gallagher said that he had reconsidered the advice which he had given and did not accept that the advice given was either wrong or incomplete. Mr Gallagher set out in considerable detail his reasons for having reached that view. I do not consider it necessary to repeat those reasons here because they are a matter of record. I should point out that lawyers must advise to the best of their ability in accordance with the law and their experience. The fact that the advice is not what the client hoped to hear is not evidence of professional misconduct or of inadequate professional service on the part of the lawyer. It is a matter for the client as to whether or not they choose to accept the advice which has been given if lawyers provide wrong advice and their client suffers financial loss as a result, they leave themselves open to a claim in professional negligence. Negligence is a legal issue which should normally be determined by the court or by reference to the insurers providing professional indemnity cover for the lawyer concerned. If you consider that you were wrongly advised by Mr Gallagher you might consider seeking independent legal advice to see whether or not there is evidence of negligence on the part of Mr Gallagher. The Professional Conduct and Complaints Committee took the view that Mr Gallagher's advice was realistic and that it was evident from his instructing solicitors' attendance note of the conference that Mr Gallagher had carefully considered the options which were available to you before recommending acceptance of the offer. (I note that in particular Mr Gallagher made reference to the fact that if the matter was to proceed to a two day trial the costs could be in the region of £20,000 per party and given that in his view there was no technical defence to your landlord's claim, your opponent would almost certainly get their costs possibly on an indemnity basis). I take the view that, on the basis of the information available it was reasonable for the Bar Council to have taken that view.

Read his replies and mine to his!

Read my complaint what was agreed v. what he wrote

Did I write my complaint in invisible ink?

You also complained that Mr Gallagher had acted against your best interests by superficially treating/crafting the wording of highly material points to make them incomprehensible and by masking the real issues and misrepresenting the facts in support of your position. This complaint concerned the acceptance letter drafted by Mr Gallagher. In his response to the Bar Council Mr Gallagher made it clear that the purpose of the acceptance letter was part of the strategy agreed during the course of the conference and that it was meant to be something of a smoke screen to deflect attention from the 'tweaking' of the consent order. Mr Gallagher maintained that he had particularly taken into account the view of your Chartered Surveyor, Mr Brock (who had been involved throughout and who was present at the conference). He said that Mr Brock had stated that the offer could not be bettered. His concern was that the cost of the work could increase considerably by the time the works were completed, thus the reason for the 'tweaking' of the order so as to protect your position and the wording of the acceptance letter. I note that in your response to Mr Gallagher's comments you stated that what Mr Gallagher had said was not true and that Mr Brock had said no such thing. As a result of enquiries by a member of my staff Mr Gallagher has produced a copy of the notes he made during the conference on 28 October 2003. The note records 'Tim B accept figures. (Costs [squiggle] cannot be bettered TB)'.

what tweaking?

Read the evidence produced against this.

!!! Now!

As my surveyor backed me up means that Gallagher x LSO ARE calling my surveyor (A) well (A) myself) LIARS!!

You further complained that Mr Gallagher had played an active role in Mr Twyman's engineering of a situation in which you had no time to review the response to the offer which had been made and that Mr Gallagher had made critical changes to the reply to the claimant's offer without your consent. It appears that during the course of the conference on 28 October 2003, following agreement as to the way forward, you indicated that you intended bringing separate proceedings against your landlord for harassment and intimidation. Mr Gallagher advised of the danger in settling the current claim only to bring a fresh claim later in view of various court decisions that all claims should be brought in a single piece of litigation. You were advised to seek independent legal advice about that from a specialist in personal injury matters (Mr Gallagher had no expertise in that field) and then revert back to Piper Smith Watton as to whether or not the offer was to be accepted in the way discussed in conference. The offer was to expire on 13 November 2003. It was 10 November 2003 before Mr Gallagher heard anything further. You proposed at that stage that your landlord pay the costs of the proceedings from 25 June 2003 rather than the offer which had been made that each party bear their own costs. On 12 November 2003, Mr Gallagher advised Piper Smith Watton why it would not be prudent to make a counter offer to your landlord. Mr Gallagher requested that you provide clear and unequivocal instructions as to whether or not the proposed offer was to be accepted. You then provided instructions to proceed and Mr Gallagher drafted the consent order and a suitably worded letter to reflect and attempt to restrict your liability for the costs of future works. Those documents were sent to Piper Smith Watton, who forwarded those documents to your landlord the same day. It was not for Mr Gallagher to contact you direct to see whether or not you approved the draft order and letter, that was a matter for your solicitors. However, in view of the fact that time was pressing, Mr Gallagher, exceptionally, copied to you the e-mails which he sent to Mr Twyman. It appears that you have since refused to instruct Piper Smith Watton to endorse the consent order on your behalf. That of course is a matter for you. The Bar Council took the view and I agree that your allegations were not made out on the basis of the evidence available.

If you believe that a better offer could have been agreed and that Mr Gallagher's advice was wrong, you are, of course, at liberty to seek independent legal advice about that. However, as I have explained previously in this report, the fact that you might not agree with Mr Gallagher's advice is not evidence that it was wrong advice nor is it evidence of professional misconduct or of inadequate professional service on his part.

You further complained that Mr Gallagher's e-mails were patronising. Mr Gallagher said that he was sorry if you found his e-mails patronising. He certainly did not intend them to be so. He explained that the purpose of the e-mails was to set out in clear terms his advice and the need for clear instructions. Mr Gallagher stated, *'The difficulty with trying to give realistic advice based (upon) one's own practical experience is that, unless the numerous tactical considerations are spelt out at great length, which time often does not permit, the advice is necessarily in summary terms. I am sorry if my summarisation was so inelegant that it comes across as patronising'*.

In the circumstances, whilst I realise that this might disappoint you, I take the view that the Bar Council's response to your complaint namely that you had failed to disclose a sufficient case of professional misconduct or of inadequate professional service against Mr Gallagher, was satisfactory and that their decision to close their file was justified for the reasons given in their letter dated 27 January 2005.

I am required by Section 23(1) of the Courts and Legal Services Act 1990 to report my conclusions to the parties involved. I am therefore sending a copy of this letter to Mr Gallagher and to the General Council of the Bar.

Yours sincerely

A handwritten signature in black ink that reads "Zahida P. Manzoor." The signature is written in a cursive style with a prominent flourish under the name.

Zahida Manzoor CBE  
**Legal Services Ombudsman for England and Wales**