

Our Ref: CRO/45399-2004/RT4/AA1 R TUTT CRO

Your Ref:

Private and Confidential

Mr I G Skuse

Piper Smith & Basham Solicitors

DX 110 Chancery Lane

2 June 2004

Dear Mr Skuse

Complaint about your firm by Ms N Klosterkotter-Dit-Rawe

As you may be aware, we have received a complaint from Ms Klosterkotter-Dit-Rawe. The case has now been passed to me for investigation and I would be happy to discuss it with you in more detail at any stage.

I understand that Ms Klosterkotter-Dit-Rawe instructed your firm in August 2003 to assist with a service charge dispute with her Landlord. Ms Klosterkotter-Dit-Rawe has been a lessee and permanent resident of her flat at Jefferson House for 18 years. In July 2002, she and the other residents of Jefferson House, received a service charge demand in the sum of £14,400.19 each, for major repair works which were to be carried out. X

As many residents objected to the service charge demand, the Landlord, Steel Services, made an application to the Leasehold Valuation Tribunal (LVT) to determine whether the total sum demanded (£736,206.00) was reasonable. At first, a number of the residents were involved, but by the time of the first hearing in February 2003, Ms Klosterkotter-Dit-Rawe was the only resident challenging Steel Services.

Ms Klosterkotter-Dit-Rawe represented herself through these proceedings and was successful in achieving a reduction in the sum demanded. In August 2003, the Landlord then requested a case management and summary hearing, and Ms Klosterkotter-Dit-Rawe instructed your firm to represent her at the hearing set for 26 August 2003. X

Ms Klosterkotter-Dit-Rawe raises a number of complaints about the way that Ms Lisa McLean and Mr Richard Twyman of your firm, handled her case.

I have considered the information we have received from Ms Klosterkotter-Dit-Rawe. We are unable to deal with a number of the complaints she has raised, and I have advised her of the reasons for this.

I have not reached any conclusions at this stage and now need your formal response to the issues set out below.

In the meantime if you come to some other agreement direct with the complainant please send me details.

The Complaint(s)

1. Failure to Follow Instructions

Ms Klosterkötter-Dit-Rawe feels that there were a number of occasions throughout her retainer with your firm, when her instructions were ignored or not followed through.

(a) The Part 36 Offer

Having done her own research, Ms Klosterkötter-Dit-Rawe felt that the Part 36 offer made by the claimants was not compliant with the CPR Guidelines. She raised this issue in her fax dated 13 November 2003 and asked her solicitor to deal with this. She states that her instructions were completely ignored, and that neither Mr Twyman or Ms Mclean addressed this issue.

It is a matter for the solicitor's professional judgement to decide how best to deal with a case, and if Mr Twyman and Ms Mclean considered that this was irrelevant to Ms Klosterkötter-Dit-Rawe's case, I consider that it would be reasonable to expect them to have advised her of this and to have explained the reasons why.

- Please confirm whether the solicitors responded to Ms Klosterkötter-Dit-Rawe's fax dated 13 November 2003, and please provide a copy of your fax / letter / e-mail as evidence of this.
- Please confirm whether any steps were taken in relation to the issues raised in this fax. Again, I would ask you to provide documentary evidence in support of your comments.
- In the event that the solicitors considered that the issues raised were irrelevant, please provide evidence that they advised Ms Klosterkötter-Dit-Rawe of this and that they explained the reasons for it.

(b) The Lease

Ms Klosterkötter-Dit-Rawe states that under the terms of her lease, requests for advance payment had to be certified by an accountant. She states that this had not been done, and she therefore raised this with your firm on a number of occasions, in particular at the meeting on 28 October 2003 and in her letter dated 3 September 2003. She states that the solicitors failed to deal with this issue.

- Please provide your comments in relation to this complaint, with supporting evidence where possible.

(c) Interest Payment

Ms Klosterkotter-Dit-Rawe considered that the Landlord was not able to charge interest on the sum due, as the works had not yet started. Again, she states that she raised this issue with the solicitor, but that she failed to address it. X

Ms Klosterkotter-Dit-Rawe states that at a meeting with Counsel on 28 October 2003, it was agreed that interest would not be paid, but states that Ms McLean then agreed to a condition that interest would be paid, on 13 November 2003.

Ms Klosterkotter-Dit-Rawe raised this issue with Ms McLean, and states that in her response dated 18 November 2003, Ms McLean said that this was an argument they could raise if the matter proceeded to trial, but that for the purpose of settling the case, the interest should be paid.

- Please provide your comments in relation to this complaint, with supporting evidence.

(d) The Draft Reply

Ms Klosterkotter-Dit-Rawe states that on three separate occasions she requested that the draft reply to CKFT, be sent to her first for her approval. I refer to her letter dated 7 November 2003, her fax dated 13 November 2003, and her e-mail, also dated 13 November 2003.

Despite her instructions, Ms Klosterkotter-Dit-Rawe states that the draft reply was sent to her 10 minutes before it was to be sent to CKFT. Also, it was sent by e-mail, and she may therefore not have read it on that day.

Ms Klosterkotter-Dit-Rawe was unhappy with the contents of the draft defence, as issues she had asked to be included had not been, and issues which she agreed did not need to be included, had been included. She therefore sent a fax back to Mr Twyman at 4.29pm, within one hour of receiving his e-mail, raising her concerns. She states that she received an e-mail from Mr Twyman at 3.57pm, the following day, 14 November 2003. He explained that he had not received Ms Klosterkotter-Dit-Rawe's fax until 5.37pm, by which time the draft had been sent.

- Please comment on the above allegations. Please also provide documentary evidence in support of your comments, where possible.

(e) Contents of the Reply

Ms Klosterkotter-Dit-Rawe was unhappy with the contents of the reply sent to CKFT on 13 November 2003. She states that at the meeting on 28 October 2003 they had agreed which issues would and would not be included, but the contents of the draft documents did not reflect what had been agreed.

- Please provide your comments in relation to this complaint, with supporting evidence.

(f) Requests for another reply to be sent

As Ms Klosterkotter-Dit-Rawe was unhappy with the reply sent to CKFT on 13 November 2003, she states that she wrote numerous letters to Ms McLean requesting that a further reply be sent. She states that she exchanged correspondence with Ms McLean for a period of four weeks in relation to this issue, but that Ms McLean refused to deal with it.

- Please confirm whether you did receive such requests from Ms Klosterkotter-Dit-Rawe.
- Please confirm whether any action was taken by your firm to deal with these requests.
- Again, it may be that in her professional judgement, Ms McLean considered that a further reply to CKFT would not be in Ms Klosterkotter-Dit-Rawe's interests. In such cases, it would be reasonable to expect her to have written to her client explaining the reasons for this. Please confirm whether this was done. Again, I would ask you to provide documentary evidence in support of your comments.

(g) Application under section 20 (c) of the Landlord & Tenant Act 1985

Ms Klosterkotter-Dit-Rawe states that on 28 April 2003, the last day of the LVT hearing, she was advised that the landlord, Steel Services, would not charge her for their legal costs but that they would charge other residents of Jefferson House.

Ms Klosterkotter-Dit-Rawe therefore made an application to the Tribunal, and asked Ms Mclean to assist her with the hearing. She states that Ms McLean ignored her instructions and made the application only for Ms Klosterkotter-Dit-Rawe's benefit rather than for the benefit of all the residents of Jefferson House. X

Ms Klosterkotter-Dit-Rawe states that she raised her concerns by fax dated 18 September 2003, to which Ms McLean responded the following day. Correspondence continued and Ms McLean encouraged Ms Klosterkotter-Dit-Rawe to withdraw her application. I am unable to consider whether this advice was the correct advice, as it is not within the jurisdiction of this office to do so. However, I am able to consider whether Ms Klosterkotter-Dit-Rawe was advised appropriately.

Ms Klosterkotter-Dit-Rawe was deeply concerned at the prospect that the other residents of Jefferson House may be liable to pay Steel Services' legal costs, and that is understandable. As she had been the only lessee who acted against Steel Services, she faced the prospect of legal threats from all of the other residents. She therefore made several further requests to Ms McLean for the application to be followed through on behalf of all the residents. She states that her requests were not followed through. X

Ms Klosterkotter-Dit-Rawe states that after weeks of distress and hours of work, she felt that she had no choice but to withdraw her application.

- Please provide your comments in relation to this complaint. In particular, I would ask you to provide evidence that Ms Klosterkotter-Dit-Rawe was

advised of the reasons why Ms McLean felt that the application should be withdrawn.

(h) Costs paid to CKFT

Ms Klosterkotter-Dit-Rawe states that on 3 September 2003, £2,255.07 was paid to CKFT, and she states that she asked Ms McLean how she and Counsel had arrived at that figure.

Ms Klosterkotter-Dit-Rawe states that further correspondence was exchanged between Ms McLean and herself in relation to this issue, and that Ms McLean finally admitted that she could not remember how the sum was arrived at.

Ms Klosterkotter-Dit-Rawe states that Ms McLean agreed to check with Counsel, and get back to her, but states that she has still not received this information.

- Please provide your comments in relation to this complaint. In particular, I would ask you to confirm whether the calculation was provided to Ms Klosterkotter-Dit-Rawe. In the event that this has not yet been provided, please confirm whether you are able to provide it now.

(i) Experienced Solicitor

I can see from the information provided by Ms Klosterkotter-Dit-Rawe that she made several requests to your firm, for her case to be handled by a more experienced solicitor. I refer in particular to her letter dated 3 September 2003. I can not see that this was done. It appears that the case continued to be dealt with by Ms McLean, who was supervised by Mr Twyman. As Ms Klosterkotter-Dit-Rawe, was clearly not happy with this arrangement, I feel that your firm may have been able to do more to arrange for the file to be transferred to another fee-earner.

- Please confirm whether any arrangements were made for the file to be transferred to an alternative fee-earner, or whether different arrangements were made for the supervision of Ms McLean's work.
- If it was not possible for another solicitor at your firm to deal with the case, please confirm whether Ms Klosterkotter-Dit-Rawe was advised of this. Ms Klosterkotter-Dit-Rawe felt that her instructions were being ignored, and it would be reasonable to expect you to have written to her explaining why it was not possible for a more experienced solicitor to deal with her case.


2. Failure to Advise

Ms Klosterkotter-Dit-Rawe states that Ms McLean failed to advise her that the claimant's Part 36 Offer was not compliant with CPR guidelines, as the offer was not supported with enough information.

- Please confirm whether Ms Klosterkotter-Dit-Rawe was advised of this.

3. Delay

Ms Klosterkotter-Dit-Rowe feels that there were a number of periods of delay in her case being dealt with, and I list each of these below. I would ask you to provide your comments in relation to each of these, and to provide documentary evidence in support of your comments.

- Ms Klosterkotter-Dit-Rowe states that by direction of the Court, standard disclosure of documents had to take place by 4pm, on 19 September 2003 and exchange of Witness Statements had to take place by 21 October 2003. She states that these time limits had to be extended, as the solicitor was unable to comply. She states that even then, her Witness Statement was submitted almost 2 hours late. 
- Ms Klosterkotter-Dit-Rowe states that Ms McLean waited 7 weeks before giving her feedback on her witness statement. Even then, she states that she chased Ms McLean for this, by letter dated 12 December 2003, as this was the date that they had agreed to exchange statements.
- Ms Klosterkotter-Dit-Rowe states that on 7 November 2003, she sent her draft reply to the Claimant's offer to Ms McLean, so that it could be checked by Counsel. Mr Twyman then informed Ms Klosterkotter-Dit-Rowe on 11 November 2003, that he was sending the reply to Counsel, and he *hoped that Counsel would have the time to look at it* as the final document had to be sent on 13 November 2003. As the deadline was so fast approaching, Ms Klosterkotter-Dit-Rowe asks why the document was not sent immediately, but 4 days later, resulting in Counsel not having sufficient time to consider it.

4. Failure to Respond

(a) 12 November 2003

Ms Klosterkotter-Dit-Rowe states that on 12 November 2003, she was very nervous and distressed as the deadline for replying to the Part 36 offer was the following day, and she urgently needed to speak to Mr Twyman in relation to this. She states that she called your offices, and was advised that Mr Twyman would be out of the office all day. Ms Klosterkotter-Dit-Rowe states that she therefore asked to speak with Mr Twyman's secretary but she was unavailable. She states that she left a message for her to call her back, but her call was not returned.

- Please confirm whether Ms Klosterkotter-Dit-Rowe did leave a message on 12 November 2003.
- Please confirm whether Ms Klosterkotter-Dit-Rowe's telephone call was returned, and provide a copy of your attendance note as evidence.

(b) The Witness Statement

Ms Klosterkötter-Dit-Rawe states that on 12 October 2003, she wrote to Ms McLean asking for advice about how her Witness Statement should be drafted, and whether there were any particular rules she should follow. She states that she received no response to her letter.

Once Ms Klosterkötter-Dit-Rawe provided her complete Witness Statement, Ms McLean advised her that it could not be sent to the claimants as it was not in the correct form. X

- Please confirm whether you did receive Ms Klosterkötter-Dit-Rawe's letter dated 12 October 2003.
- Please confirm whether your firm responded to the letter dated 12 October 2003, and provide a copy of your letter as evidence.
- In the event that you failed to respond to the letter, I would ask you to explain the reasons why.

5. Failure to Provide Adequate Costs Information

(a) Costs Estimate

Ms Klosterkötter-Dit-Rawe states that over a 5 week period, she made several requests for an estimate of the likely costs for dealing with her case.

She had paid £3,000 on account of costs and was anxious to see how her money would be spent, and whether she would be required to pay more.

By letter dated 28 August 2003, Ms Klosterkötter-Dit-Rawe requested an estimate of costs. She states that Ms McLean responded by letter dated 1 September 2003. She explained the costs incurred so far, and the sum held on account, but did not give an estimate of the future costs.

Ms Klosterkötter-Dit-Rawe therefore wrote again on 3 September 2003. Ms McLean responded on 3 October 2003, almost five weeks later. Again, she did not provide an estimate of the costs.

I would refer you to Principle 13.02 of the Guide to the Professional Conduct of Solicitors, 1999, 8th Edition:

'4. Advance Costs Information

The Overall Costs

- (a) The solicitor should give the client the best information possible about the likely overall costs, including a breakdown between fees, VAT and disbursements.*
- (b) The solicitor should explain clearly to the client the time likely to be spent in dealing with a matter, if time spent is a factor in the calculation of the fees.*

(c) *Giving the best information possible includes:*

- (i) *agreeing a fixed fee; or*
- (ii) *giving a realistic estimate; or*
- (iii) *giving a forecast within a possible range of costs; or*
- (iv) *explaining to the client the reasons why it is not possible to fix, or give a realistic estimate or forecast of, the overall costs, and giving instead the best information possible about the cost of the next stage of a matter.*

(d) *The solicitor should, in an appropriate case, explain to a privately paying client that the client may set an upper limit on the firm's costs for which the client may be liable without further authority. Solicitors should not exceed an agreed limit without first obtaining the client's consent.*

(e) *The solicitor should make it clear at the outset if an estimate, quotation or other indication of cost is not intended to be fixed.*

- Please provide a copy of the Client Care Letter sent to Ms Klosterkotter-Dit-Rawe.
- Please provide copies of all bills sent to Ms Klosterkotter-Dit-Rawe.
- Please provide copies of any costs information such as estimates of costs, given to Ms Klosterkotter-Dit-Rawe.
- Please respond to this complaint specifically, providing documentary evidence in support of your comments, where possible.

(b) Counsel's Fees

Ms Klosterkotter-Dit-Rawe states that by letter dated 24 September 2003, she was advised that Counsel's fees would be £50 + Vat, but that she was then charged £528.00 for this.

- Please provide a copy of your letter dated 24 September 2003
- Please confirm the total fees paid to Counsel.
- Please provide your comments in relation to this complaint, with supporting evidence.

6. Errors

Ms Klosterkotter-Dit-Rawe has identified a number of errors in the handling of her case, which I refer to below.

(a) Form N265

Ms Klosterkotter-Dit-Rawe states that on Form N265, Ms McLean had entered Ms Klosterkotter-Dit-Rawe as the Claimant.

Ms Klosterkotter-Dit-Rawe states that she pointed this out to Ms McLean by letters dated 23 September 2003, 29 September 2003 and 2 October 2003.

Ms Klosterkotter-Dit-Rawe states that as Ms McLean failed to correct the error, she made the amendment herself.

- Please confirm whether you received Ms Klosterkotter-Dit-Rawe's letters dated 23 September, 29 September and 2 October 2003.
- Please confirm whether any action was taken by Ms McLean to correct the error on the form. Please provide documentary evidence in support of your comments.

(b) Incorrect Fax Number

Ms Klosterkotter-Dit-Rawe states that she wrote to Ms McLean on three separate occasions asking her to stop sending faxes to her at work. Ms Klosterkotter-Dit-Rawe explains that thousands of people work in her office, and she did not wish for her personal documents to be circulated, causing her embarrassment.

Ms Klosterkotter-Dit-Rawe states that Ms McLean ignored her requests and continued to send correspondence to the work fax number.

I would refer you to Principle 16.01 of the Guide to the Professional Conduct of Solicitors 1999, 8th Edition:

'A solicitor is under a duty to keep confidential to his or her firm the affairs of clients and to ensure that the staff do the same'.

- Please confirm whether your firm received Ms Klosterkotter-Dit-Rawe's requests for faxes to be sent to an alternative number.
- Please confirm whether faxes were still sent to Ms Klosterkotter-Dit-Rawe at work.

(c) Letter dated 18 November 2003

Ms Klosterkotter-Dit-Rawe states that by letter dated 18 November 2003, Ms McLean advised her that the reply to Steel Services had not been sent. The reply had in fact been sent some days earlier.

- Please provide your comments in relation to this complaint.

7. Allegation of bringing the Profession in to Disrepute

(a) Bullying and Intimidation

Ms Klosterkötter-Dit-Rawe considers that she was bullied and intimidated by Mr Twyman and Ms McLean throughout the case, to make decisions against her will. She feels that the solicitors took advantage of her lack of knowledge and experience.

I would refer you to Principle 12.09 of the Guide to the Professional Conduct of Solicitors, 1999, 8th Edition:

'A solicitor must not abuse the solicitor / client fiduciary relationship by taking advantage of the client.

1. A solicitor must not abuse his or her position to exploit a client by taking advantage of a client's age, inexperience, ill health, want of education or business experience, or emotional or other vulnerability.'

- This is a serious allegation of professional misconduct which will need to be supported with strong evidence, if I am to consider it further, but it would be helpful at this stage, if you could provide your comments in relation to the complaint.

(b) Fax dated 13 November 2003

I refer to the draft reply discussed in 1 (d) above. Ms Klosterkötter-Dit-Rawe considers that *'Mr Twyman lied by saying that (she) faxed him the draft documents with (her) comments at 5.37pm'*. She states that the fax was in fact sent one hour earlier, and that the fax machine showed the incorrect time.

Ms Klosterkötter-Dit-Rawe states that she sent a fax to Mr Gallagher earlier that day at 9.11am, and the fax recorded a time of 10.11am. However, she received a response at 10.12am. As the response was very detailed, and quite a lengthy e-mail, it would have taken longer than one minute for it to be drafted and sent. She states that this proves that the fax machine was recording the wrong time.

I would refer you to Rule 1 of the Solicitors' Practice Rules 1990:

'A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:

- (a) the solicitor's independence or integrity;*
- (c) the solicitor's duty to act in the best interests of the client;*
- (d) the good repute of the solicitor or the solicitor's profession;*
- (e) the solicitor's proper standard of work'.*

- Please provide your comments in relation to this complaint, with supporting evidence.

8. Rule 15 failure

Ms Klosterkotter-Dit-Rawe states that she sent a letter of complaint to your firm, dated 2 December 2003, to which you responded on 18 December 2003. Ms Klosterkotter-Dit-Rawe considers that you failed to address the specific points she raised in her letter, but you insisted that she had entered a binding agreement with CKFT and that she could not change it.

- Please provide your comments in relation to this complaint, with supporting evidence.

What we need

Our aim is to encourage both parties to resolve complaints by agreement. If you would like to put forward a proposal to conciliate this complaint I would be happy to help at any time during the investigation.

I will need your detailed response to each of the issues I have listed within 14 days of the date of this letter. We do require you to comply with this time limit, so that we can make progress on the investigation without further delay. If you have a particular difficulty in complying with the time limit please let me know the reason and I will consider whether to grant an extension of time.

It is important that you send supporting documentation, as set out in the attached Checklist. You should note that your response may be incorporated into an office report leading to a formal decision. Please also note that your reply may be disclosed to the complainant, and it may also be seen by the Legal Services Ombudsman.

If I do not receive a response from you I will have to work with the information on file. If points raised by the complainant have not been addressed, explained or contradicted by you, we may consider that the balance of evidence means that those issues are proved or have been conceded by you.

Your obligations

Please ensure that you read the enclosed Information Sheet, which sets out your obligations and provides important information about our powers and procedures.

Failure to deal with complaints, or to respond promptly to our correspondence, may lead to disciplinary action (or increased compensation if it is found that the professional service you have provided to a client is inadequate.)

Once my investigation is completed, the matter may be referred for adjudication and your explanation will be taken into account in the decision reached. If a decision is taken to institute disciplinary proceedings, your reply may be used in those proceedings.

Please confirm when replying that your response may be treated as that of all the partners.

If, at anytime during our investigation, you have concerns about our service, please let us know. We have an internal complaints procedure to deal with such concerns, and we will do all we can to resolve your complaints and respond positively to your comments.

If you have any queries or need any assistance in responding to this complaint then please telephone me on the direct line number shown below.

I look forward to hearing from you by 16 June 2004.

Yours sincerely

Rajdeep Tutt
Caseworker
Client Relations Office

Direct Line: 01926 823112
Extension: 2513
Direct Fax: 01926 336584
Rajdeep.tutt@lawsociety.org.uk

Encs:- Checklist.
Information Sheet for solicitors (IS01).

If I am unavailable when you call, please speak to Amundip Atwal, on direct dial telephone number 01926 822059 who will be glad to assist in my absence.

****Please quote our above reference whenever contacting us****

CHECKLIST

Please complete and return this checklist with your response.

This will help to ensure that all the information that we require is provided at this stage, and to reduce the time involved in investigating this complaint.

If you have any queries about what information to submit with your response, please telephone me.

- Your full explanation in respect of the complaint(s) and your proposals for a resolution. If there is more than one complaint, please follow the numbering in the attached letter, to help ensure there is no misunderstanding.
- Copies of all documents necessary to support your explanation (e.g. letters, attendance notes, costs leaflets etc). It is essential that you provide us with copies of all documents you refer to in your response. Please do not send me your file at this stage, I will request it if needed.
- Details of all steps taken in accordance with Practice Rule 15 to resolve the complaint, including copies of all relevant attendance notes and letters. Please specifically enclose a copy of your client care letter to the complainant. If you have made any proposals for resolving this complaint, such as reducing your bill or paying compensation, please let us know. (There is no need to provide further copies of documents you have already supplied).
- The name(s) and status of the fee earner(s) involved; if the fee earner is, or was not a partner, please identify the supervising partner and in your reply you should address the issue of proper supervision.
- Copies of the ledger sheet and of all bills rendered. Please indicate if they have been paid and whether there has been any other action such as assessment (taxation), a Remuneration Certificate, or Court action to recover costs and please confirm the outcome.

Signed:- *Rule 15 Partner/Senior Partner*

PRINT NAME: