

1 July 2004

Our Ref: IGS/R360/1  
Your Ref: CRO/45399-2004;  
RT4/AA1 R Tutt Cro  
Ext. 230 *R. Tutt*

Ms Rajdeep Tutt  
The Law Society  
DX 292320  
Leamington Spa 4



Dear Miss Tutt

**Miss N Kloster Kotter - Dit - Rawe**

I write further to your letter of 1 June 2004 and my comments on the issues raised by Miss Rawe are set out below. I apologise for the delay in this response but the length and detail of the letter of complaint has involved an analysis of this extensive file by myself and the two fee earners involved (Ms McLean and Mr Twyman). There is attached to this letter two Lever-Arches of relevant paperwork. Other documents on our working file may become relevant and I therefore reserve the right to refer to further documentation in due course.

1 a. The Part 36 offer

There is a lot of correspondence on the 13 November passing between us the client and counsel. The correspondence began on that day with Richard Twyman (RCT) forwarding to the client early in the morning, a copy of counsel's advice and draft letter. In that advice he comments on the offer made by the other side not strictly meeting Part 36 criteria but still having effect as a without prejudice offer with the deadline. In an email from her at 12:26 on that day she instructs us to accept the offer and to draft a reply for her review. The letter was received by counsel by email at 15:32 and sent on to the client once corrected, at 15:53. The offer closing deadline was 4 o'clock and having had comments from the client already and having acted in accordance with her instructions RCT indicated that as we were instructed to accept the offer, the letter would be sent in the following 10 minutes unless he heard from her to the contrary. The next he heard was a fax at 17:37 that day being copies of the draft consent opinion and the draft letter with comments on it which on the face of it did not require immediate action. There was a voicemail left for Ms McLean (LM) at 05:08 pm that day which was transcribed, with difficulty, basically saying that she trusted that her (something – presumably amendments or comments) would be incorporated which was the whole agreement was that the draft would be sent for her review and that she would give her comments so she trusted her comments had been incorporated. This does however ignore her previous instructions and of course the deadline for acceptance of the offer. The comments she made had no bearing on the effect of the Letter of Acceptance which served to compromise the entire dispute.

Partners  
Richard M Bems  
Mark D Spash  
Stephen M Solomons  
Ian G Skuse  
Richard C Twyman  
Nancy J Battell  
Ian D Munro  
Helen E Bunker

Consultants  
John B Watton  
Genff Hutchinson  
Diana H Cornforth  
Ian J Boyd

Solicitors  
Robert Doyle  
David Wadsworth  
Stoan Essex  
Euan Mitchell  
Matthew Bell

Andrew Lawrie (F Inst.L.Ex)  
Lisa McLean (F Inst.L.Ex)

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b. The lease

There is a manuscript and typed up note on file of the conference with counsel on the 28 October 2003 from which there does not appear to be any mention of the need for certifying advance payments by an accountant. The meeting was on quite different matters principally the Part 36 offer that had been made and the client's wish to take personal injury proceedings against the landlord. There is certainly no evidence on our file to suggest that this was a regularly raised topic, that it was discussed at the conference on the 28 October 2003 or that this was a topic that NR considered to be outstanding and un dealt with through the correspondence and attendance notes on file.



It is necessary to go back to Miss Rawe's (NR) letter of the 28 August in which NR refers to the landlord issuing a Section 20 Notice. In the reply of LM of the 1 September 2003 LM asked the client whether she is stating that she has not previously received a Section 20 Notice and to confirm the same. There then followed NR letter of 3 September and LM reply of 4 September.

c. Interest payment

The 13 November letter covers this by confirming what had earlier been advised (an explanation given by counsel as to the calculation, that the figure to be paid would be inclusive of interest). The interest claimed formed a part of the Part 36 offer which was discussed with the client with counsel. After the conference with counsel it is factored into his draft acceptance and, in the client's email of 13 November 2003 at 12:26, she instructs acceptance of the offer without any comment on the interest provisions. Comments only come in after the deadline and after the acceptance letter has been sent – please see documentation attached regarding Complaint 1A i.e., documentation on the 13 November. She does refute the interest claim on Page 2 of her letter of the 7 November 2003 but events superseded that and many of the other comments, by counsel's opinion subsequently.

It is in fact correct that interest was discussed briefly although it does not appear in the manuscript or typed up attendance note. It is not correct that LM agreed to a condition that interest would be paid on the 13 November 2003 as LM was not in the office on that day. LM did write to NR on the 18 November 2003 and confirmed that having spoken to counsel about it we did say that we could raise the argument of the interest but given the amount which was minimal to the purposes of settling the interest should be paid.

d. The draft reply

I take it this relates to the reply to the Part 36 offer. As can be seen from the attached documentation relating to Complaint 1A the draft was sent to NR and NR commented upon it. NR was aware of the deadlines and in fact had

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been aware for some considerable time and had instructed us to go ahead and accept the offer which is what we did. The allegations made by the client here are somewhat confused. The answer to point 1 indicates the timeframes here the draft letter was turned around to the client as quickly as possible. NR had been aware of the deadlines confirmed for some considerable time, had routinely contacted us by email which was the chosen way of corresponding with her during working hours the fact NR responded an hour or so later demonstrates that NR had received it quickly and, knowing the deadline NR chose to respond some substantial time after it had passed albeit knowing, as stated in our original email, by the time NR responded the letter would have been sent. Had NR really wanted to prevent the letter being sent NR would have telephoned RCT as soon as NR got the email and told us not to send it or NR could have similarly emailed. NR did neither.



e. Contents of the reply

The reply as sent did comply with the instructions of NR. NR had been advised that the acceptance of the offer must be unequivocal and must be received within the deadline and NR was advised by counsel, whose advice NR accepted, that extraneous matters should be left out of the letter. As it is NR's comments on the consent order were limited to the interest point which counsel's advice had already covered and which NR had already accepted and on the covering letter contained only one alteration to the narrative and one that did not add any impact or affect to the letter itself. The alteration suggested was to the first paragraph which as drafted commented that the LVT's determination was vulnerable due to a number of technical defences. NR wanted to add "non compliance" for Section 20/or more items, as a consequence of which the LVT was unable to take a decision. Accordingly NR lost nothing by the letter being sent but gained a great deal as advised. Had we waited, as NR now contends would have been appropriate, the deadline would have been missed, we would be in breach of our instructions at that time and, had CKFT chosen to accept the acceptance late, with that addition, nothing would have been gained for NR.

f. Request for another reply to be sent

The situation was that LM wrote to NR on the 18 November 2003 incorrectly stating that the without prejudice correspondence and the draft order had not been sent to the other side. NR responded with great indignance that it had not been sent which LM clarified in her email to NR of the 20 November confirming that it had in fact been sent and explained the situation again in the letter to NR of the 1 December 2003. As LM confirmed to NR in the letter of 12 December 2003 it was by this stage clear that they had been a breakdown in the relationship between LM and NR and it was difficult to try and deal with her requests whilst at the same time dealing with quite a considerable complaint. LM letter of 1 December 2003 shows that a further reply was in fact drafted to be sent to CKFT.

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After a series of letters passing between the client and this firm a fax is received on the 26 November 2003 from the client saying that she is not endorsing a reply (the acceptance letter referred to above) that does not challenge the offer letter that it seeks to accept. The true position appears to be, as she carries on in the letter to argue the figures, that she has changed her mind regarding accepting the offer and now wishes to retract it. She received extremely strong advice from counsel on accepting the offer, she accepted that advice and we accepted the offer in accordance with her instructions. She cannot accept an offer and in the same letter argue against it. It is simply a case of accepting it or not. She was given the wording of the letter and on her instructions we sent it. I have not seen any requests on file for the letter/acceptance to be withdrawn and an alternative sent.



g. Application under Section C

The application under Section 20(c) of the Landlord & Tenant Act 1985 was not made by this firm but was made by the client herself and the application is enclosed. From that application it can be seen on the second page where it says, "Schedule of the names and addresses of every other party to the proceedings including every person liable for the service charge the client has put N/A (not applicable)." The client's letter of the 18 September 2003 was in response to LM's letter to her of the same day enclosing a copy of a draft letter to be sent to MRJ dealing with that point. NR dealt with the points in LM's letter and LM discussed it with her on the 18 September and a copy of that attendance note is enclosed as well as my attendance notes on her of the 19 September and my letter to her on the same day. The correspondence continued for some time and LM did a detailed letter to her dated 22 September which is enclosed and also saw her in the office on that day. Counsel, Mr Paul Staddon advised in writing on the Section 20(c) application which dealt not only with the Section 20(c) application but also the subsequent correspondence passing between LM and Martin Russell Jones as to whether or not we had an agreement to withdraw the client's application. There was considerable correspondence passing between LM and the client in particular LM's letter of the 22 September 2003. The correspondence passing between LM and Martin Russell Jones was sent under the instruction of the client and only in discussion with her.

h. NR was of course at the hearing at the West London County Court on the 26 August 2003 and the calculation of the sums due were based on the admissions made by NR in her correspondence to the Claimants Solicitors. A copy of the 26 August 2003 attendance note is attached as is the letter sent to NR dated 8 September 2003. No further correspondence was received from NR on this point.

i. Experienced Solicitor

We were initially instructed by the client in mid-to-late August in relation to a hearing that was listed on the 26 August at the West London County Court which was for both a Case Management Conference and an application for

Summary Judgement against the client. In her letter of the 28 August the client thanked LM for her assistance and that of counsel, "Especially at short notice." The first indication that she wanted someone more experienced than LM to deal with the matter was in her letter of 3 September and that was in relation to an isolated matter only not to the entirety of the claim. On the 22 September 2003 LM attended the client at these offices as can be seen from that attendance note dealing with the County Court proceedings on the Section 20(c) application and Richard Twyman also attended her with LM through the latter part of the meeting and the client seemed content at that point. She did however leave a voicemail on my machine the following day and there was subsequent correspondence dealing with the "Agreement between this firm and MR Jones in relation to the Section 20(c) application" which I have previously referred to.



No arrangements were made to transfer this file to an alternative fee earner. The client continued to correspond with LM by letter and telephone and email and at no point did NR say to LM that she did not want LM personally to act on this matter on her behalf.

2. Failure to advise re Part 36 offer

Full advice was given on this subject as it is demonstrated by documentation already provided above. It was not confirmed to NR immediately upon receipt of the Part 36 offer that it did not strictly comply with the Civil Procedure Rules but NR was advised subsequently.

3. Delay

In the running of any litigation case availability of an individual fee earner to work on any particular case can fluctuate from time to time. No prejudice was suffered to either party by the "late" service of the documents which attracted no penalty in any event.

It can be seen from the file the sheer volume of correspondence and points raised by the client. In relation to disclosure the client herself prepared the list of documents which was engrossed by us. Also at the same time LM was dealing with the issue of the Section 20(c) application. Agreement had been reached with the CKFT that time for disclosure of the list be extended until 22 September as can be seen from LM's letter of that date to the client in which LM returned the revised list of documents to her which she had to sign and return. LM responded by fax of the 23 September. The matters were dealt with and a further revised list was sent to NR on the 29 September and on the same day LM wrote to the solicitors explaining the slight delay in that it had been engrossed on our system and it can be seen from the list that it is quite lengthy. In the meeting with LM on the 29 September NR made no complaint about the list of documents but wrote to LM on the 30 September again dealing with the list of documents in which the client had made comments. LM replied to that letter by letter of the 1 October 2003, sent a further revised version to her on the 2 October 2003.

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On the same day 2 October 2003 the client sent a further fax in which she had noted further amendments which were incorporated and the list of documents sent to CKFT under cover of our letter of the 3 October 2003.

In relation to the Witness Statements the draft statement was produced by the client and is dated and signed 19 October 2003 (copy attached).



I can confirm that the client's letter of 12 October 2003 was received and a copy of LM's letter of the 14 October and replies enclosed. It is correct that there was no specific advice on how to complete a Witness Statement. The client was simply asked for a draft statement and the niceties of how it would be engrossed would have been dealt with at a later stage. In LM's letter of the 14 October she confirmed that it would be necessary to extend the time table partly because LM was going to be out of the office from the 3 to 14 November inclusive in any event. By the 12 December 2003 NR had already submitted a complaint. LM responded in relation to the witness statements on 12 December as I did on 18 December.

Regarding the client's draft reply to the Claimants offer this arrived on Friday November 7 and was forwarded to counsel the following working day, Monday 10 November. Counsel was able to deal with it. The document was dealt with as soon as it came to LM's attention. In essence the document was not sent 4 days later our file demonstrates that the letter was sent to him on Monday 10 November 2003 by DX and by fax the fax was received by counsel who responded to it on the 12 November as soon as he was able.

5. Failure to provide adequate costs information
  - a. Costs estimate

LM wrote to the client on the 22 August 2003 in relation to the hearing that we had been instructed to attend on the 26 August 2003 in which she estimated that her costs would be in the region of £3000 to £3500. On the 24 September LM wrote to the client confirming the work in progress as against the sum of money held on account having just rendered a bill on the 1 September 2003. The Client Care Letter was sent to the client on 22 August 2003.

The easiest way to meet this complaint is to provide copies of the documents referring to costs throughout the file. These are numerous. The complaint is not well founded. See the attached documentation.

- b. Counsel's fees

This complaint refers to the typographical error. The letters of 24 September containing the error and the correcting letter of 29 September correcting it are attached.

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6. Errors

(a) Form N265

Certainly the front page of the draft on file at that time cited her as the Claimant. From her letter of the 29 September 2003 it is clear that the clerical error remained so she altered it. This is obviously is an unfortunate oversight. Had the document been filed with the wrong party on it no prejudice would have fallen to the client in any event. The mistake is obviously a clerical one rather than a substantive one. It is worth pointing out that the list was altered fairly substantively regarding what was going to be in it i.e., as far as listed documents were concerned and clearly the attention to the covering document was not as great as it should have been. No prejudice accrued to the Defendant from this lapse.



(b) Incorrect fax number

It is not correct that the client stated that she longer wished us to send her faxes at work. The client stated that she did not wish us to send faxes to a particular work number and in fact what she did was gave us an alternative work number to which faxes could be sent to her and she explained that the alternate number was a work fax number which the fax was closer to her and there would then be would then less people who would be able to see it and it was likely to be obtained by her sooner. At no time did she say that we were not to send faxes to her at work. Her letter of the 9 September is enclosed where it is clear that the number she is asking us to send the faxes to were a work number albeit an alternate number. It is correct that the reason she wrote that letter was because we had sent a letter to the previous fax number and she had asked us not to do that and in error as the letters are copied over when a new letter is being sent to the client and the old fax number was being used.

(c) Letter dated 18 November 2003

LM advises that the reply to CKFT part 36 letter had not been sent. This was a message given to the client immediately upon LM's return from holiday and was immediately corrected in subsequent correspondence. Copies of the relevant papers are attached.

7. Allegation of bringing the profession into disrepute

a. Bullying and intimidation

This is utterly denied. The strongest proof on this is a simple reading of the file. Both RCT and LM absolutely refute that any suggestion that their manner was in any way bullying or intimidatory.

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b. Fax dated 13 November 2003

I am not sure what this complaint is intending to prove. RCT confirms that he is unable to comment on the time setting on the fax machine which he had assumed was correct. He does recall that the fax arrived on his desk after the office had officially closed i.e after 5:15. He does not recall when he left the office but it would have been between 6:00 or 6:30 so the timing on the fax would seem to make perfect sense. The nub here is that the fax was sent well after the client knew that LM had already sent the letter to CKFT.



I also do not see how the complaint, other than by use of the client's unnecessarily strong language, is conceivably sustainable. The date NR refers to seems to relate to her own sending machine and assumes that the information she had provided as to the sending time of the fax is correct but we have no evidence of this. RCT did not send any faxes to counsel at that time. There were emails passing between the parties that morning. Counsel's advice had come through after close of business the previous evening and sent on to the client at 8:40 am. Counsel's email back to LM is timed 10:12 and the client's confirmation of acceptance of the offer instruction received at 12:26.

8 Alleged Rule 15 failure

By the time the client had sent her letter of 2 December 2003 as you will note there had been a detailed response to her various complaints already, there was no purpose in our response of 18 December repeating what we had already said and the explanations given. Please see the documents in the enclosed files.

I would ask that this letter and the enclosed documents be reviewed carefully. I would also invite you to liaise with your counterpart at the Bar Council, where the client has also made a substantial and detailed complaint regarding that advice.

I look forward to hearing from you.

Yours sincerely

**Ian G Skuse**  
**Complaints Partner**

Email: [ian.skuse@pswlaw.co.uk](mailto:ian.skuse@pswlaw.co.uk)

## CHECKLIST

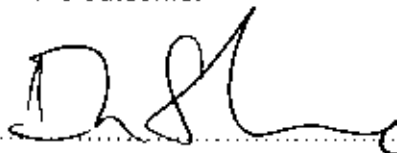
Please complete and return this checklist with your response.

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:-  
Partner



..... Rule 15 Partner/Senior

PRINT NAME.....

IAN SKUSE

**CHECKLIST**

**Miss N Kloster Kotter – Dit – Rawe**



- Full explanation – see attached letter, we have no proposals to resolve the complaint.
  
- Please see documents attached to our letter of 1 July 2004.
  
- Please see the correspondence, enclosing our client care letter.
  
- Fee earners are:
  - Richard Twyman (partner);
  
  - Lisa McLean (legal executive).
  
- Ledgers and bills enclosed.