

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

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Private and Confidential
Ms Klosterkotter-Dit-Rowe
3 Jefferson House
11 Basil Street
London
SW3 1AX



The Law Society

3 August 2004

Dear Ms Klosterkotter-Dit-Rowe

Your complaint against Piper Smith & Watton

I write further to my letter dated 12 July 2004, and confirm that I have now had chance to review my file, and the information I received from you and from the solicitors. I enclose a copy of the solicitor's response for your information.

I will begin by responding to your letter dated 17 June 2004, and will then discuss the solicitor's response to each of your complaints.

1. Intimidation & Bullying

In my letter dated 2 June 2004, I explained that I did not feel that you were being pressurised or bullied by the solicitors, but that they were simply advising you of your legal position. I also explained that if you still considered that you were bullied, you would need to provide strong evidence in support, before I could investigate the complaint, as it raised serious issues of professional misconduct.

In your letter dated 17 June 2004, you state that you disagree with my comments. You list a number of occasions which you consider amount to bullying, and state that the solicitors here, were not simply advising you of the law, but that they played a 'psychological game to gain control / dominate / silence by causing panic, fear, stress, anxiety, confusion and insecurity'.

I have considered each of the instances you referred to, again. I have also read the definitions of 'bullying' and 'intimidation' that you provided. Even though I can understand that you feel disappointed with some aspects of your case, because you were unable to take certain actions you wished to, I do not feel that you were bullied or pressurised, and I will not therefore, be able to investigate this complaint further.

2. Section 20(C) Order Application

Further in your letter, you state that you can make a 20C Order application alone, on behalf of all the tenants of the block, and you provide legal arguments in support of this. As I explained to you, I am not able to give legal advice and cannot say whether this is correct.

Though I said in my last letter, that I believed that the other tenants would need to consent to the application being bought on their behalf, if you wished to pursue this complaint, you would need to seek advice from a solicitor. I am not able to consider whether you should have succeeded in getting the Order implemented for the whole block.

3. Failure to ensure that Steel Services complied with deadlines

In your letters of complaint, you explained that your solicitors took no action to ensure that Steel Services submitted their witness statements to the Court, within the time limits set. I explained in my letter dated 2 June 2004 that I did not consider that Piper Smith & Basham were obliged to do this, and that it was a matter for CKFT solicitors, who acted for Steel Services, to ensure that their client met the set deadlines.

In response to this, you state that this should be part of a solicitor's role, and you compare it to the situation where a solicitor chases the other party for exchange of contracts, in a property purchase. This situation is different to that of purchasing a property, where both seller and purchaser share a common objective. In this case, you and Steel Services acted against each other. Your solicitors only had obligations towards you, and I am therefore unable to investigate this aspect of your complaint further.

4. Your Witness Statement

You explained that Ms McLean gave you no information in relation to the preparation of your witness statement, and that it took her seven weeks to look through it, and suggest amendments. I raised this complaint in my letter to the solicitors, and discuss their response further in this letter.

In your letter dated 17 June 2004, you state that you would like to know what is wrong with the statement you provided. I am not able to consider the statement you drafted and advise whether it was correct and whether amendments were necessary, as by doing so, I would be giving you legal advice. As mentioned earlier in my letter, you will need to instruct a solicitor if you require legal advice. In my last letter to you, I provided details of the Law Society Records Department, and advised that you may contact them for details of a solicitor in your local area, who may be able to assist you.

I now turn to the complaints that I was able to investigate. I have considered the solicitors response to each of these complaints separately, and set out my conclusions below:

1. Failure to follow instructions

(a) The Part 36 Offer

You explained in your letters of complaint, that the Part 36 offer made by the claimants was not compliant with the CPR Guidelines. You explained that neither Ms McLean nor Mr Twyman addressed this issue, and that they ignored your requests to do so.

I discuss this complaint in section 2 below under the heading of Failure to Advise.

(b) The Lease

You explained that under the terms of your lease, requests for advance payment had to be certified by an accountant. The landlord had not done this, and so you asked Ms McLean to raise this issue with the claimants. You say that Ms McLean failed to follow your instructions, as she failed to deal with this matter.

The solicitors state that this issue was not raised by you at the Conference with Counsel on 28 October 2003, as you suggest, and they provide a copy of their attendance note of the meeting, as evidence.

From my perusal of the file, I can see that your letter dated 21 September 2003, addressed to Ms McLean, specifically raised this issue. I am therefore writing to the solicitors again, in relation to this aspect of your complaint.

(c) Interest Payment

You considered that the Landlord was not able to recover interest on the money he was claiming as the works had not started. Again, you said that you requested the solicitor to deal with this but that she failed to do so.

Mr Skuse explains that Counsel advised that the interest should be paid by you. The interest formed part of the Part 36 Offer, which you accepted. The solicitor states that when they received your comments about the interest, it was too late as the offer had been accepted.

It would appear that the matter of the interest payment was discussed at the Conference with Counsel, and Counsel advised that it should be paid. It does not therefore appear that the solicitors failed to follow your instructions. As you are aware, I can not give legal advice, and I am therefore unable to say whether in my opinion, interest should have been charged. Mr Skuse does say, in his letter dated 1 July 2004, that the interest was minimal, and in order to reach a settlement with the claimants it was better to agree to pay the interest. This is a matter for the solicitor's professional judgement, and I am not able to comment on this.

For the reasons mentioned, I do not consider that I will be able to investigate this complaint further.

(d) The Draft Reply

I can see that you requested that the draft reply to the Claimant's Part 36 Offer be sent to you for your approval, before being sent to CKFT. The Draft reply was sent to you for approval but only 10 minutes before it was sent to CKFT. As it was sent to you by e-mail, you may quite easily have not received it or read it, before it was sent to CKFT.

In his response, Mr Skuse states that you had been aware of the deadlines, and because they had previously corresponded with you by e-mail during office hours, they believed you would receive the e-mail in time.

Mr Skuse also states that the fact that you replied to the e-mail within an hour, shows that you did receive it quickly. He states that if you had not wished for the letter to be sent, you could have telephoned or e-mailed the solicitor, but you chose not to, even though you had

been advised that the letter was to be sent within 10 minutes. I would agree with the solicitor's comments.

It would have been preferable for the letter to be sent to you earlier, if possible. Alternatively, the solicitors could have called you to advise you to check your e-mail immediately, to ensure that you could check the reply, before it was sent. I feel that this may amount to poor service, and will be investigating the complaint further.

(e) Contents of the Reply

You were unhappy with the contents of the reply sent to CKFT on 13 November 2003. In his response to this complaint, Mr Skuse states that the reply did comply with your instructions. The reply was drafted in accordance with Counsel's advice, which you accepted. Mr Skuse also states that the amendment you suggested, would have had little impact, and that you lost nothing as a result of the letter being sent as it was.

I agree with Mr Skuse's comments that had the solicitors prevented sending the reply as it was, they would have missed the deadline imposed, and acted in breach of their duties towards you. He states that you achieved a great deal as a result of the letter being sent as it was.

Whether or not it was appropriate for the solicitors to have sent you the reply only 10 minutes before it was to be sent to the claimants, is a separate issue, discussed earlier in this letter.

I do not consider that I am able to investigate this aspect of your complaint further.

(f) Requests for another reply to be sent

You explained in your letters of complaint, that as you were unhappy with the reply sent to CKFT on 13 November 2003, you requested Ms McLean to send a further reply. You said that the solicitor failed to deal with this. As I explained to you, it is a matter for a solicitor's professional judgement to determine how best to deal with a case, and I can not say whether a further reply should have been sent to CKFT. However, it is important that the solicitor advised you of the reasons why she did not consider it appropriate to send a further reply, and this is a matter I raised with the solicitors.

As you will see from Mr Skuse's response, he first refers to the mix-up about whether the response had been sent on 13 November. He states that by that time, you had raised a complaint against Ms McLean, and it was therefore difficult for her to follow your instructions as well as dealing with the complaints you raised. However, a further reply was in fact drafted on 1 December 2003.

As I understand it, the position seems to be that you accepted the offer. You then wished to change the terms of the offer and Ms McLean did try to assist you with this. At the time she was dealing with this, she was also dealing with your complaints, and the matter seems to have got confused. As Mr Skuse states, there is no evidence on file that you wished to withdraw acceptance of the offer, and as you were advised, you did not have the option to change the terms of the offer to suit you. It either had to be rejected or accepted as it was. You accepted the offer, and therefore, unless you instructed the solicitors to withdraw your acceptance, they would not have been in a position to change the terms of the offer.

I do not therefore consider that I am able to assist you further with this complaint.

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

You felt that Ms McLean ignored your instructions by making the section 20 (c) application for only your benefit, rather than for the benefit of all the residents of Jefferson House. You explained that you were concerned about the possibility of legal threats against you, from all of the residents, as you had been the only lessee acting against Steel Services. You said that you therefore made several requests to Ms McLean, for the application to be prepared on behalf of all the residents, but that your requests were not followed through.

As I explained to you, I was not able to consider whether the advice you were given was correct, and whether the solicitors could have made the application on behalf of all the residents. I am only able to consider whether the solicitors adequately explained the reasons why they didn't consider it appropriate to make the application as per your instructions.

Mr Skuse states that the application was not made by his firm, but that you made the application yourself. A copy of the application was enclosed with the solicitor's response, and I can see that, as Mr Skuse points out, where you are asked to provide details of other parties to the proceedings, you marked the section as 'not applicable'.

Mr Skuse further states that you exchanged much correspondence with Ms McLean in relation to this matter, in which she did advise you of the reasons why the application was only to be made in your name. He refers to a number of letters and an attendance note for the meeting on 22 September 2003 as evidence.

I consider that in her letters dated 19 September 2003, and 22 September 2003, Ms McLean advised you appropriately. She explained the reasons why the application was to be made in your name alone and also advised you in relation to the application. She addressed your concerns appropriately and explained the legal position to you.

I will not be able to investigate this aspect of your complaint further.

(h) Costs paid to CKFT

A further complaint I raised with the solicitors related to the costs you paid to CKFT on 3 September 2003. You said that you asked Ms McLean to explain how she and Counsel arrived at the figure of £2,255.07, but that she failed to provide this information to you.

Mr Skuse explains that you were present at the Court hearing on 26 August 2003, and states that the calculation of the sums was based on the information that you had provided to CKFT.

The attendance note dated 26 August 2003 suggests that you were clearly advised of the money to be paid to the claimants, and you were in agreement with the solicitors, about this. A copy of this attendance note was sent to you under cover of the solicitor's letter dated 1 September 2003. In this letter, Ms McLean confirmed details of what had been agreed at the hearing, and she went on to discuss how she would proceed with your case.

A letter was then sent to you on 8 September 2003. This letter was sent in response to a fax received from you, and outlined details of the method of calculation.

Having looked through the file of papers provided to me, I can not see that you asked for any further information in relation to the calculation. Unless you are able to provide copies of letters or faxes in which you asked for more details about the sum paid to CKFT, I will be unable to investigate this complaint further.

(i) Experienced Solicitor

You wished for your case to be handled by a more experienced solicitor, and you made such requests to the firm. You say that despite your requests, Ms McLean continued to deal with your case, under the supervision of Mr Twyman.

Mr Skuse states that your letter dated 3 September 2003, in which you requested a more experienced solicitor was received at the firm. He said that the request only related to an isolated matter and not to the entire case. Therefore, at the meeting on 22 September 2003, Mr Twyman was also present.

Mr Skuse explains that you were happy following the meeting, and that you made no further requests for the file to be transferred. If this is the case, then I will be unable to investigate this complaint further. If you do not agree with the solicitor's comments, please let me know, and explain the reasons why.

2. Failure to Advise

You explained that Ms McLean failed to advise you that the claimant's Part 36 Offer was not compliant with the CPR Guidelines.

In response to this complaint, Mr Skuse states that though you were not advised immediately upon receipt of the offer, that it was not compliant with the Civil procedure Rules, you were advised subsequently.

I have considered the correspondence provided by the solicitors, and it would appear that at first, the solicitors were not aware that the offer was not strictly a Part 36 Offer. They were only advised of this by Counsel, in an e-mail dated 12 November 2003, received at 17.09pm.

Mr Twyman forwarded a copy of the e-mail to you the following day, on 13 November 2003. It would therefore appear that as soon as the solicitors became aware that the offer was not strictly a Part 36 offer, they advised you of this.

It is also important to note that you accepted the Claimant's offer on 13 November 2003, after you had been made aware that it was not compliant with the CPR. I do not therefore consider that you suffered any detriment as a result of the solicitor's failure to advise you of this earlier. If you had first accepted the offer, but then discovered that it was not strictly a part 36 offer, this may have amounted to inadequate professional service. As it is, I am not able to investigate this complaint further.

3. Delay

You identified a number of periods of delay in your case being dealt with. I have received the solicitor's comments in relation to each of these periods, and discuss each one separately.

(a) Extension of Time Limits

You explained that by Direction of the Court, standard disclosure of documents had to take place by 4pm on 19 September 2003, and that exchange of Witness Statements had to take place by 21 October 2003. You explained that these time limits had to be extended because the solicitor was unable to comply, but that still, your Witness Statement was submitted almost two hours late.

Mr Skuse accepts that the documents were submitted late but states that no prejudice was suffered as a result, and no penalty was incurred. He then goes on to explain why an extension of time had been necessary.

Ms McLean was dealing with the Section 20C application at the same time, and therefore reached agreement with CKFT for the time limit to be extended, for disclosure. Following this there was correspondence between yourself and Ms McLean in relation to the list of documents, whereby you requested certain amendments, and Ms McLean prepared a revised version. Once you were happy with the list, it was sent to CKFT, on 3 October 2003.

I do not consider that there was any unreasonable delay here, and will therefore be unable to investigate this aspect of your complaint further.

(b) Feedback on your Witness Statement

You explained that seven weeks passed before Ms McLean gave you feedback in relation to the Witness Statement you had prepared. Even then, you state that she was prompted by a letter from you dated 12 December 2003.

Mr Skuse accepts that you were not advised in relation to the Witness Statement, and states that by the time they received your letter of 12 December 2003, you had already made a complaint to the firm. Ms McLean and Mr Skuse then responded to your queries.

You were in correspondence with Ms McLean over the period of those seven weeks, but I can not see that you raised this matter with her at the time. If you had asked Ms McLean for feedback at that time, she may have responded to your request.

I understand that you may be disappointed with the time taken by the solicitor, and it would have been preferable for her to have given feedback to you sooner. However, I do not consider that this complaint warrants a finding of inadequate professional service.

(c) Draft Reply to the Claimant's Offer

You explained that you sent your draft reply to the Claimant's offer to Ms McLean on 7 November 2003 so that it could be checked by Counsel. You say that Mr Twyman did not

send the document to Counsel until 11 November 2003, only 2 days before the final document had to be sent. You say that as a result, Counsel did not have sufficient time to consider the reply.

In response to this complaint, Mr Skuse states that your draft reply was received by him on Friday 7 November 2003. He states that it was sent to Counsel by DX and fax on Monday 10 November 2003, the next working day. He further states that Counsel was able to deal with it, and duly returned it on 12 November 2003.

I do not consider that the solicitors delayed in sending the reply to Counsel and will therefore be unable to investigate this complaint further.

4. Failure to Respond

The solicitors have not addressed this complaint in their response, and I am therefore writing to them again, requesting a specific response. Having reviewed the file of papers provided to me by the solicitors, I can not see that you did receive a response to the letter dated 12 November 2003. Though you did receive a response to the letter dated 12 October 2003, on 14 October 2003, I can not see that the solicitor specifically advised you in relation to the Witness Statement as you had requested. This may constitute inadequate professional service, but I will first need to give the solicitor the opportunity to comment on this complaint.

5. Failure to Provide Adequate Costs Information

(a) Costs Estimate

You explained that despite specific requests, the solicitors failed to provide you with an estimate of the likely costs of your case.

The Client Care Letter sent to you on 22 August 2003, provided details of how you would be charged. The letter gave details of the solicitors' hourly rates, and the firm's billing arrangements.

The solicitors state that on 26 August 2003, you were advised that the likely costs of your case would be in the region of £3,000 - £3,500. You then received a bill on 1 September 2003 for £987.00. On 29 September 2003 you received a further bill in the sum of £2,533.35. This was within the estimate provided.

Having considered the file of papers provided to me by the solicitors, I can see that on 1 October 2003, Ms McLean wrote to you. In her letter, she states: *'When I write separately I will try, as previously discussed, to let you have a schedule of my estimate for stage payments'*. I believe this was written in response to your written requests for a costs estimate, dated 28 August and 3 September 2003.

On 3 October 2003, Ms McLean wrote to you again. In this letter, under the heading of 'Costs', She provides a further costs estimate. She states that completion of the disclosure stage, will take 3 to 4 hours, at a cost of £125.00 per hour. She further states that the exchange of witness statements is an important and time consuming stage, which she expected to take up to 5+ hours. She explained that it would take a similar amount of time on the expert evidence. As this letter outlined the work to be done, how much time would be spent on each of those tasks, and the hourly rate you would be charged for completion of the

tasks. I consider that this was a reasonable estimate. At that time, Ms McLean could not have provided an estimate of costs beyond those, as it may not have been possible to predict at that time, how the case would proceed.

In her letter of 3 October 2003, Ms McLean also requested £1,500.00 on account of costs. On 9 October 2003, Ms McLean provided details of Counsel's fees, and requested payment for them. On 12 October 2003, you sent a cheque to the solicitors for £1,500.00. Ms McLean acknowledged receipt of your cheque on 14 October 2003.

On 23 October 2003, Ms McLean wrote to you again. In the final paragraph of this letter, she gave an estimate of the likely costs for Counsel. She confirmed the hourly rate you were to be charged by Counsel, and estimated that he would spend a further 4 to 5 hours on your case. She confirmed the costs of the conference, and the amount outstanding. On 24 October 2003, you provided the solicitor with a cheque for £528.75 for Counsel's fees. Ms McLean acknowledged receipt of your cheque and confirmed that she had sent it to Counsel. In the same letter, Ms McLean reminded you that the previous bill, in the sum of £881.25 was still outstanding. On 31 October 2003, the solicitors paid the outstanding fees to Counsel and they received a cheque from you, to cover those fees, on 3 November 2003.

I can not see that you were requested to pay any further fees until 19 December 2003. On this date, you received a bill for Counsel's fees, amounting to £1,439.38. These costs had been estimated by the solicitor as mentioned above, and in her letter dated 19 December 2003, she asked whether she could pay the fees from the £1,722.65 she was holding. As she received no response from you, in relation to Counsel's fees, Ms McLean wrote again on 24 January 2004, asking you to confirm whether the fees could be paid from the money held on account.

Having considered the file of papers provided to me by the solicitors, I can not see that you received any further bills from the firm. I consider that adequate costs estimates were given to you before you were billed for work done, and I will therefore be unable to investigate this complaint further.

(b) Counsel's Fees

In your letters of complaint, you explained that on 24 September 2003, you were advised that Counsel's fees would be £50.00 + Vat, but that you were subsequently charged £528.00 for this.

In his response to this complaint, Mr Skuse explains that this was a typographical error, which was subsequently corrected on 29 September 2003. In the letter dated 29 September 2003, Ms McLean states: *'I note that in my letter to you of the 24th September the reference to Counsel's fees for advising on this point was £50 plus VAT. That was an error and his fees are in fact £450 plus VAT'*.

The solicitors made an error, but they acknowledged the error and corrected it very quickly. As we expect solicitors to provide a reasonable service, and not a perfect service, I will not be able to investigate this complaint further.

6. Errors

(a) Form N265

You explained that Ms McLean entered your name as the claimant, on the Form N265. You said that you pointed this out to the solicitors on numerous occasions but that they failed to correct the error, and you therefore had to make the amendment yourself.

The solicitors accept this complaint, but explain that you suffered no detriment as a result of the mistake. They also state that it was a clerical error, rather than a substantive one. I would agree that the error was clerical and would not have amounted to inadequate professional service. However, because you brought this to the attention of Ms McLean in three separate letters, I feel that she should have corrected the error, or at least advised you that it was not a serious error and that it would not have prejudiced your case in any way. As it was, you were left to worry about the error, and you were probably feeling annoyed at the solicitor's failure to address your concerns. I therefore consider that this may amount to inadequate professional service.

(b) Incorrect Fax Number

You explained that you instructed the solicitors to stop sending faxes to you on the work number they were using, and that you gave them an alternative fax number. This number still went to your work address, but as this machine was closer to you, you would be able to obtain faxes more quickly, and they would be seen by less of your colleagues.

The solicitors accept that they were given an alternative number to fax, but because letters are copied over whenever a new letter is being sent, the old fax number was used in error.

Again, this was a clerical error, but if it occurred more than once, and if you were required to remind the solicitors again and again, this may amount to inadequate professional service.

(c) Letter dated 18 November 2003

On 18 November 2003, Ms McLean wrote to advise you that the reply to Steel Services had not been sent. In fact, the reply had been sent some days earlier. I have already discussed this complaint above. I feel that because Ms McLean had been away on holiday at the time the reply was sent, and because she advised you, as soon as she realised that the reply had in fact been sent, this would not amount to inadequate professional service. It is unfortunate that the mistake occurred, but we expect solicitors to provide a reasonable service, not a perfect one, and I am therefore unable to investigate this complaint further.

7. Allegation of bringing the Profession in to Disrepute

(a) Bullying and Intimidation

I explained earlier in my letter, the reasons why I am unable to investigate this complaint. However, I did raise this matter in my letter to the solicitors, and Mr Skuse has responded.

Mr Skuse, Mr Twyman and Ms McLean all refute any suggestions that their manner was in any way bullying or intimidatory. As I explained, I would require strong evidence in support

of these allegations, before I could investigate them. I do not consider that the information and evidence you have provided is sufficient to investigate this complaint further.

(b) Fax dated 13 November 2003

You considered that the solicitors lied by saying that they received your fax dated 13 November 2003 at 5.37pm, as their fax machine showed the incorrect time, and the fax had in fact been sent one hour earlier.

The solicitors state that they are unable to comment on the timing of the fax machine. It is not relevant whether the fax was sent at 4.37pm or 5.37pm, as Mr Twyman left the office between 4pm and 4.30pm, and would not therefore have received it until the following day in any event.

Even if the fax had been received at 4.37pm, this was after the reply had been sent to the claimants, because as you are aware, this needed to be sent by 4pm.

This complaint is difficult to prove, because even if the fax machine had shown the incorrect time, this would still not confirm that the solicitor lied, as he may not have realised that the machine was showing the incorrect time. It would be assumed that this was a genuine mistake, because again, this is a serious allegation of professional misconduct, which must be supported with strong evidence, before a finding can be made.

8. Rule 15 Failure

You felt that the solicitors failed to reply substantively to your letter of complaint dated 2 December 2003. You explained that the specific points raised by you were not addressed.

The solicitors confirm that they responded to your letter dated 2 December 2003, by letter dated 18 December 2003. They explain that as they had already responded to your separate complaints, in previous correspondence, there was no point repeating what they had already said.

You faxed a letter of complaint to Ms McLean on 20 November 2003, to which she replied on 24 November 2003. You wrote a further letter on 26 November 2003, and on 2 December 2003 you wrote directly to Mr Skuse, as the Complaints Handling Partner at the firm. On 12 December 2003, you received a response from Ms McLean, and you received a response from Mr Skuse on 18 December 2003.

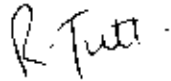
I cannot see that the solicitors' letters addressed all of the issues you raised, and I am therefore asking the solicitors to specifically date the letters in which they consider they responded to your complaints, and to provide copies of such letters as evidence.

This is a very detailed complaint, and so if I have misunderstood any of your concerns, please let me know. If you do not agree with the conclusions I have reached, please let me know, and explain the reasons why. It would be helpful if you could provide any comments you wish to make within 14 days of the date of this letter. Given the volume of this file, and the number of complaints raised, I will of course be happy to agree an extension of time with you, if you are unable to respond by 17 August 2004.

I attach a copy of the letter I am sending to the solicitors today, in relation to the complaints I will be investigating further. As soon as I receive the solicitor's response, I will be in touch with you again.

If you have any queries in the meantime, please contact me on the number provided below. I am in the office from 8am until 4pm, Monday to Friday, and will be pleased to assist you.

Yours sincerely



Rajdeep Tutt (Ms)
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Enc: Solicitor's response dated 1 July 2004, with enclosures.
Copy letter dated 2 August 2004.

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

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