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25 August 2004

Our Ref: LM/R360/1  
Your Ref:

Ms Rajdeep Tutt  
The Law Society

**DX 292320 Leamington Spa 4**

Dear Ms Tutt

### **Complaint by Ms Klosterkotter Dit Rawe**

I refer to the above and your letter of 3 August and reply specifically to the sections referred to in the third paragraph of your letter as follows: -

#### **1(b) The Lease**

It is accepted that the lease in this matter was not looked at by one of the property partners who may be considered more, "expert" in this field. In the letter of 21 September from the client under the heading terms of my lease the client refers to the matter being passed to an expert but there is no reference that we can see to the issue in relation to the certification by an accountant to be raised with the Claimant.

#### **1(d) Draft Reply**

In respect of this particular complaint we enclose further correspondence that may not have previously been before you commencing with the letter from Richard Twyman to Mr Gallagher dated 10 November 2003 confirming the instructions to draft a formal response to the offer received from CKFT. That was replied to by Mr Gallagher by email dated 12 November at 17:09 (because it is difficult to ascertain the order in which the emails arrived they are numbered in the top right hand corner). On 13 November at 8:40am Richard Twyman sent a copy of Mr Gallagher's email to the client asking for her unequivocal reply. Mr Gallagher then replied by email on the same day at 10:12am which email was also copied into the client. The client then responded on the same day at 12:26 to both Mr Gallagher and Richard Twyman in which the client says that she is accepting the advice to accept the offer and it is clear from that email that the client is aware, having already seen the draft, of the "tweaking" that would be engrossed in the reply. Mr Gallagher's reply received at 15:32 on 13th when he confirmed that he could not put off a telephone conference on another matter and that was why there was a slight delay. Some three minutes later instructions were given by Richard Twyman to his secretary to deal with the email received from Mr Gallagher. At 15:53 the email was forwarded to the client confirming that it would be forwarded to the other side in the next ten minutes or so. The important point is that the client accepts the advice as set out in her 12:26 email of 13 November and is perfectly aware of the "tweaking."

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

Consultants  
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Geoff Hutchinson  
Diana H Cornforth  
Ian J Boyd

Solicitors  
Robert Doyie  
David Wadsworth  
Stojan Essex  
Euan Mitchell  
Matthew Bell

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

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#### **4. Failure to Respond**

The response to this complaint is in the third paragraph of page six of the letter dated 1 July 2004. Whilst it is correct that no specific advice was given in relation to the Witness Statement, the usual way in which statements are prepared is that whilst the client may prepare a statement in draft, when the appropriate time arrived for the statements to be dealt with the client and the representative and/or Counsel would sit down, go through the statement and then the solicitors would prepare the statement in a form that is acceptable by the Court. At this stage given that there was an extension of time requested in letter from CKFT dated 21 October and their without prejudice letter was also dated 21 October there was no urgency in respect of the exchange of Witness Statements and whilst regrettable no detriment was caused to the client by not dealing with the specific points raised in relation to the Witness Statement at that time.

#### **6(a) Errors Form N265**

As has previously been accepted, there was an error on the face of the Form N265 that was not corrected. It was not a serious error nor one which could have prejudiced the client's position.

6(b) It is accepted that faxes were sent to the old fax number in error and it is accepted that it occurred more than once.

In respect of both matters raised at 6(a) and 6(b) these were clerical errors and should be seen in the context of the other work taking place on the client's file and the fact that the client's position was not prejudiced.

#### **8 Rule 15 Failure**

It is not entirely clear which letters the client alleges have not been responded to fully, taking letters in turn: the client wrote to Ms McLean on 20 November 2003 and Ms McLean replied in fact by email on 20 November and again more comprehensively on 24 November 2003. The letter of 26 November was replied to by Ms McLean under cover of her letter of 1 December (copy enclosed). The writer as complaints partner had to conduct an investigation and reviewed the client's files. It was also necessary to interview the relevant fee earners of this firm. Accordingly the delay between 1<sup>st</sup> and 18<sup>th</sup> December was not excessive.

On the 12<sup>th</sup> December 2004, the client sent a further letter by courier to Miss McLean, Mr Berns and Mr Skuse of this firm. This led to the reply on 18<sup>th</sup> December and the client's seven page, thirty seven paragraph response on 24<sup>th</sup> January 2004 and our response on 30<sup>th</sup> January 2004. The client had by then copied my firm with email correspondence between herself and Counsel, Mr Gallagher and a specially couriered letter containing a forty eight paragraph detailed complaint about his services. Quite properly

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counsel required access to this firm's files to be able to respond. At this stage it was clear that the client was refusing to authorise the payment of counsel's fees and fully intended to bring the detailed complaint she now makes to the Law Society and Bar Council. Accordingly our letter of 30<sup>th</sup> January 2004 recognised that it was not possible to resolve the client's complaints under our internal procedures. We do not feel that any valid complaint remained unanswered. Your letter recognises that at this stage, of the twenty six detailed complaints made, twenty of these were unjustified, and the balance yet to be determined. In these circumstances, I do not feel that there was a Rule 15 failure.

In these circumstances, we do not consider it appropriate to make any offer of compensation.

Yours sincerely

**IAN G SKUSE**

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Encs

cc: Richard Twyman