

Mrs Vicky Smith
Case Manager
Professional Conduct Directorate
Institute of Chartered Accountants in England & Wales
Silbury Court
412-416 Silbury Boulevard
Milton Keynes MK9 2AF

Ms N K-Dit-Rawé
3 Jefferson House
41, Basil Street
London SW3 1AX

SEND TO



(By Recorded Delivery)

Your ref: I69236/VSS/lcb

17 May 2006

Dear Mrs Smith

**Re-statement by Pridie Brewster, 29-39 London Road, Twickenham Middx TW1 3SZ,
of year-end accounts for Jefferson House**

I acknowledge receipt of your 16 March 2006 and 13 April 2006 correspondence.

In my 7 March 2006 letter to your Office, I wrote, among others:

"...Mr Nigel Wilkins, Chairman, Campaign for the Abolition of Residential Leasehold (C.A.R.L.)...has confirmed my opinion that, contrary to your statement, your Office does not conduct "investigations", never venturing beyond the content of complaints raised and that your focus is on representing the interests of your members"

In your initial reply of 16 March 2006 you stated:

"I can assure you that the opinion expressed by Mr Wilkins is incorrect. The Institute takes its obligations as a Regulatory Body very seriously and does carry out investigations into potential cases of misconduct..."

Considering the rest of your 16 March 2006 reply, as well as your 13 April 2006 response, I view your statement about Mr Wilkins, and by implication myself – as I share his view - as defamatory.

As to your comment

"This Committee is independent and is not out to represent the interests of the members..."

I challenge your statement that your "Committee is independent" as I understand that the committee is appointed by the ICAEW.

1 Your 16 March 2006 letter

Your comment:

"Complaints under the Landlord & Tenant Act are always problematic. This usually arises out of the misunderstanding of the level of comfort provided by an accountant's report. Such reports do not usually give the same level of assurance as an audit report"

You have ignored the content of my correspondence to your Office. The issue is one of breach of the covenants in the lease.

At no point have I raised a connection with Landlord & Tenant legislation - other than:

- In my letter of 1 September 2005 to your Office in which I stressed the findings of the 17 June 2003 determination by the Leasehold Valuation Tribunal – in part, based on very specific requirements - from Landlord & Tenant legislation.

A very large proportion of the findings specifically refer to the covenants in my lease. Overall, this led the LVT to write under **point 64** of its **17 June 2003 report**: “...*the Respondent and other tenants (!!!) could not be forced to contribute in the case of improvements and/or works not determined as reasonable by the Tribunal...*”

- In my letter of 7 March 2006 to your Office in which I referred to the reply from the **Association of Chartered Certified Accountants** to the consultation paper issued by the government on the “*Commonhold and Leasehold Reform Act 2002*”, from which I quoted “*The accountant's report is referred to in primary legislation as a 'certificate'....certification is only appropriate to a matter capable of determination with certainty*”

I did this in relation to **Clause 2(2)(f) of my lease** which, among others states: “...*in the accountant's certificate the accountant shall certify...*”

As well as in relation to the “**Fourth Schedule**” of my lease: “...Clause 8. “*All fees and costs incurred in respect of the accountant's certificate and of accounts kept and audits made for the purpose thereof*”

Is it your Office's policy to encourage your members to disregard:

1. legislation?
2. the determination of an independent tribunal that is part of the English legal system?
3. legally binding contracts i.e. leases?

Your comment:

“The accountant is not required to assess whether costs are reasonable”

This is the second time that your Office is making this inaccurate statement. The previous instance was in the 6 September 2005 reply:

“...I note the extracts quoted from the LVT, but the LVT is looking at the reasonableness of costs, something that Pridie Brewster has not done”.

For the second time now, I refer you to **Clause 2(2)(e)** of my lease. Indeed, I first highlighted this clause on page three of my 19 July 2005 letter to your Office in which I quoted:

“ ... the costs expenses and outgoings...of the lessor shall be deemed to include... also the sum or sums (hereinafter called the 'contingency payment) on account of any other costs expenses and outgoings (not being of an annually recurring nature) which the lessor shall have incurred at any time prior to the commencement of the relevant financial year or shall expect to incur at any time after the end of the relevant financial year... as the accountant may in his reasonable discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by way of provision for expected future costs expenses and outgoings) in the amount of the service charge for the relevant financial year”

Furthermore, in this particular instance, an independent Tribunal, part of the English legal system, has already determined that **a large proportion of the costs was unreasonable** (a summary of the LVT determination is included on page 1 of my 19 July 2005 letter to your Office).

2 Your 13 April 2006 letter

Your comment:

"I agree with the opinions of Mr Vessey [previous ICAEW caseworker] in earlier correspondence and cannot identify from the information so far supplied any cause for disciplinary action"

This amounts to blatant rejection of the evidence supplied in my previous correspondence, including, among others, the following in my 7 March 2006 letter to your Office:

▪ **The position of your Office in 1999**

"...I bring to your attention the following correspondence from Mr Tim Watson, FCA, formerly Case Manager in your Office, who stated in his 12 January 1999 letter (attached) to Mr Nigel Wilkins:

*"... in the event that a Court (or a relevant tribunal) decided that expenditure was not sufficiently supported, and an Institute member firm had reported otherwise, that **would give rise to disciplinary considerations.**"*

This is that very situation with the Jefferson House accounts.

I note that you have not made any comment in relation to this in your reply.

▪ **Your Member's admission that he (of course) has to take both - the LVT determination and my lease - into consideration in drawing-up the accounts**

"I draw your attention to the fact that Mr Clement wrote in his 15 April 2005 letter that he had

***"requested a copy of this determination and this was provided to me yesterday."** He also stated*

*"I will be unable to consider all the matters raised by you in relation to the determination and to **the provisions of your lease** in time to provide a full reply before the deadline referred to in page 3 of your letter.*

"I will, however, respond in detail when I have had the opportunity to review the issues raised"

Evidently, this 15 April 2005 letter from your Member is proving to be an 'inconvenience' to your Member and your Office.

Your comment:

"A. Please confirm whether Mr Clement has ever provided a detailed response to your letters. If a response was supplied please provide a copy"

Yet again, this demonstrates that you have ignored the content of my correspondence as, in **my 7 March 2006 letter** to your Office I wrote:

*"In **my 19 July 2005 correspondence to your Office**...I explained that I had copied Mr Roger Clement on my 30 March 2005 letter to Martin Russell Jones.*

"It had led Mr Clement to send me a letter dated 15 April 2005..."

*"I **replied** to his letter **on 17 April 2005**, taking the opportunity to supply him with a comprehensive pack of enclosures.*

*"I **also sent him another letter on 9 May 2005** (highlighting the fact that I had obtained a consent order from Steel Services exempting me from the Leasehold Valuation Tribunal related costs).*

By 19 July 2005** when I wrote the letter to your Office, **three months** had gone by and I **had not received any communication from Mr Clement since his 15 April 2005 letter"

If you are querying whether I have received a letter from your Member since my 7 March 2006 letter to your Office – **which would amount to one year later**: I have not.

Your comment:

"If no response has been received please provide copies of any further chasing letters that you have sent"

Yet again, this demonstrates that your Office has ignored the content of my correspondence – as detailed above.

As evidenced above, I did a lot more than send "*chasing letters*" to your Member. Indeed, with the aim of being as helpful as I could, I spent many hours, and consequently considerable costs, identifying and copying documents in order to supply your Member with additional information:

- **My letter of 17 April 2005**, in which I wrote:

"You say that you were not aware of the LVT determination of 17 June 2003. I assumed this was the most probable explanation – hence my approach. Given that you were not provided with this highly material information, I am opting to enclose the following (in chronological order) in case these prove useful to you. (You may wish to start with my 2 February 2005 complaint to the RICS against Martin Russell Jones as it provides comprehensive detail of events)"

I identified – and supplied – **copy of 48 documents**. Many of these documents comprised of numerous pages. Among others: my 2 February 2005 complaint against Martin Russell Jones to the RICS: c. 120 pages; my lease, which is over 30 pages long. (I sent this weighty, **250+ page pack** by 'Special delivery', thereby further adding to my already high costs)

- **My letter of 9 May 2005**, I started with:

"It has occurred to me that, in my last correspondence to you dated 17 April 2005, I omitted to bring to your attention the fact that I had exchanged a Consent Order with Steel Services-Martin Russell Jones exempting me from being charged any of the Leasehold Valuation Tribunal costs incurred by Steel Services – Martin Russell Jones following their 7 August 2002 application to the tribunal"

I supported this letter by enclosing copy of **six documents**. I sent this letter 'Recorded delivery'.

Hence, as captured in my 19 July 2005 and 7 March 2006 correspondence to your Office, not only did Mr Clement not follow-up on his 15 April 2005 - as he stated he would do - he did not even have the courtesy to acknowledge my letters of 17 April and 9 May 2005.

Was this on the advice from your Office following the 'inconvenient' letter of 15 April 2005?

Considering the actions, I took – including highlighting these – **twice** - to the attention of your Office, your comment:

"...provide copies of any further chasing letters that you have sent"

indicates that you have totally ignored the content of my correspondence.

If not, it suggests that your Office holds the view that your members need only reply after a given number of "*chasing letters*". If so, precisely how many "*chasing letters*" must a consumer such as I send to one of your members? Such policy needs to be clearly stated in your documentation to consumers / end users.

Your comment:

"B. I would be grateful if you could provide me with how, in your opinion, the 2003 accounts should be changed"

Page two of the financial statements refers to service charge expenditure for the year. I cannot see that the amount being disputed is included within the figures. If I am incorrect then please indicate to me where the sum is.

Page 3 of the financial statements include two funds. Each merely show the balance brought forward and contributions received.

I cannot see that this information is inaccurate as contributions received would be evidenced by bank receipts.

It does not appear that the expenditure for the major works was paid out during this year, rather than certain lessees had paid their contribution.

Given that:

(1) My lease states:

Clause 2(2)(e) “ ... the costs expenses and outgoings...of the lessor shall be deemed to include... also the **sum or sums** (hereinafter called the ‘**contingency payment**) on account of any other costs expenses and outgoings (not being of an annually recurring nature) which the lessor shall have incurred at any time prior to the commencement of the relevant financial year or shall expect to incur at any time after the end of the relevant financial year... as the accountant may in his reasonable discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by way of provision for expected future costs expenses and outgoings) in the amount of the service charge for the relevant financial year”

Clause 2(2)(f) (as captured in my 19 July 2005 letter to your Office) “... **the accountant shall prepare a written statement containing...together with any future sums indicated by the accountant pursuant to Clause 2 (2) (e)... specifying the amount of the service charge payable by the lessee....”**

(2) In its 17 June 2003 report the Tribunal determined that a very large proportion of the 15 July 2002 service charge demand of £736,000 sent by Martin Russell Jones was unreasonable, and stated under point 64:

“...the Respondent and other tenants (!!!) could not be forced to contribute in the case of improvements and/or works not determined as reasonable by the Tribunal...”

(3) In his **15 April 2005 (!!!)** letter your Member, Mr Roger Clement, wrote:

“May I say at the outset that we were not made aware of the Leasehold Valuation Tribunal determination of 17 June 2003 at the time that we were preparing our certificate”

Since receiving your letter [my 30 March 2005 letter to Martin Russell Jones on which I had copied Pridie Brewster] I have requested a copy of this determination and this was provided to me yesterday.”

In addition to capturing the above two sentences in my 7 March 2006 letter to your Office, I also captured the following from Mr Clement’s letter:

“I will be unable to consider all the matters raised by you in relation to the determination and to the provisions of your lease in time to provide a full reply before the deadline referred to in page 3 of your letter.

“I will, however, respond in detail when I have had the opportunity to review the issues raised”

➔ **It follows that the accounts are not inaccurate.**

➔ **It also demonstrates that Mr Clement knows (as he should) that the accounts cannot be drawn-up in isolation from the lease.**

To these I also add two points:

- my exemption from Steel Services’ Leasehold Valuation Tribunal costs;
- the fact that the 21 October 2003 ‘offer’ to me from Steel Services took the contingency fund into consideration.

(4) In my letter of 9 May 2005 to Mr Clement, I highlighted the fact – **and provided supporting evidence** - that I had obtained a **consent order** from Steel Services **exempting me from the Leasehold Valuation Tribunal related costs**. I also drew your Office attention to this in my letter of 1 September 2005 (on page 4)

➔ **Likewise, this was not taken into consideration. I certainly have no evidence that it was.**

(5) In **my 30 March 2005** letter to Ms Hathaway, Martin Russell Jones - on which I copied Mr Clement (and of which I attached a copy with my letter to your Office of 19 July 2005) - I wrote (pages one and two):

"2) "The contingency fund has not been used as contribution towards the cost of the major works"

"In calculating the global sum of £235,946 I took the contingency fund into consideration given Clause 2 (2) (e) of my lease – a point firmly endorsed by the LVT under point 63 of its 17 June 2003 determination."

"Because I had a letter from you dated 7 June 2001 specifically stating that the fund would be used as contribution, your client, Mr Andrew Ladsky, through his solicitor, Ms Ayesha Salim, Cawdery Kaye Fireman & Taylor (CKFT), London NW3 1QA, 'eventually' took full account of it in the 'offer' to me of 21 October 2003 - from which I quote:

"...our client is also prepared notionally to utilise the reserve fund to reduce the total figure and, accordingly, your client's apportioned liability"

Next to this point I referred to the relevant Clauses in my lease: *"Clause 2 (2) (e); Clause 2 (2) (f); Clause 2 (2) (i)"*

I will add that **I provided Mr Clement with a copy of Steel Services' 'offer' of 21 October 2003** – as part of the 48 enclosures I enclosed with my letter to him of 17 April 2005.

Under the next point (also on page two of my 30 March 2005 letter) I wrote:

"3) You-your client cannot charge residents differentially other than on the basis of their fixed percentage share - of a global sum which must be the same for all"

What each lessee is required to pay is clearly defined by means of a fixed percentage for each of the 35 flats - as you supplied e.g. with your 7 August 2002 application to the LVT – and the global sum on which this is calculated must be the same for all.

In addition to my lease, this point has also been made abundantly clear by the LVT when:

- *In a letter dated 17 July 2003, Mr Silverstone, CKFT, wrote to the LVT: "Our client's Council has advised us that the LVT was asked to make a determination of the specific amount of the service charge payable by the tenant of flat 3, Ms Dit-Rawé..."*
- *To which the LVT replied in its letter dated 21 July 2003: "It is not the duty of the Tribunal to assess the particular contribution payable by any specific tenant but only to determine the reasonableness, or otherwise of the service charges as a whole to go on the service charge account from which no doubt you can assess the proportion for that particular tenant". (This letter was copied to West London County Court)"*

Next to this point I referred to the relevant Clause in my lease: *"Clause (2) (c) (i)"*

➔ **It follows that the accounts are not correct and, by implication, the service charge demands - given Clause 2(2)(f) of my lease "...the accountant shall prepare a written statement specifying the amount of the service charge payable by the lessee..."**

In my 19 July 2005 letter to your Office, I wrote (page 2)

“As exemplified by the attached letters e.g. from Resident M and Resident C to the LVT, some residents paid the sum demanded out of fear of prosecution. (As it happens, some ended-up nonetheless being listed on the claim filed by Ms Hathaway in West London County Court on 29 November 2002). Others, such as myself, continued fighting the false claim”

Hence, your Office has documents as evidence.

Your comment

“C. I note you made a request under Section 21 of the LTA 1985 in respect of the 2004 financial statements. If accounts have been prepared and supplied to you under this request then I would be grateful if you could supply me with a copy”

For the record: my needing to go through Kensington & Chelsea Housing department to obtain a copy of the accounts relates to the accounts for 2002 and 2003, not the 2004 accounts (received at the beginning of 2005).

As you could have made this request to your Member, I assume that your asking me for a copy of the 2004 ‘accounts’ is for the purpose of comparison. I attach a copy ¹ Given the requirements of Clause (2)(2) of my lease, I also attach a copy of the 2001 ‘accounts’ ² – also produced by Pridie Brewster.

As you can see from the enclosed 9 January 2006 covering letter from Martin Russell Jones ³ it also included other documents with the 2004 ‘accounts’:

- A “statement of balancing charge due on shortfall of amount demanded during 2004 to actual amount expended during the same period”, headed “1 Jan 2004 – 31 Dec 2004” ⁴
- “Current demand showing total amount due to Martin Russell Jones...”, dated 9 January 2006, stating a total of £7,332.41.

This includes a “Brought forward balance” of **£5,624.70** - for which no explanation is provided.

The prior invoices to this were more than one year previously. They were:

- the 21 October 2004 ⁵ invoice which includes a **£14,452.17** “Brought forward balance” – for which no explanation was provided
- this was followed three weeks later by another invoice, dated 16 November 2004 ⁶, stating a “Brought forward balance” of **£15,447.86** – yet again, no explanation provided.

I have **not** acknowledged these two invoices and therefore **did not pay anything**.

- “Copy of estimated expenditure for the forthcoming year of 2006” ⁷

Considering the requirements stated in my lease under Clause 2 (2) (e) and 2 (2) (f), I conclude that this document was the outcome of Pridie Brewster’s work.

On this basis, I view it as providing other overwhelming evidence against Pridie Brewster. The reasons are:

¹ 2004 year-end ‘accounts’ for Jefferson House

² 2001 year-end ‘accounts’ for Jefferson House

³ 9 January 2006 covering letter from Martin Russell Jones

⁴ “Statement of balancing charge... 1 Jan 2004 – 31 Dec 2004” from Martin Russell Jones

⁵ 21 October 2004 invoice from Martin Russell Jones

⁶ 16 November 2004 invoice from Martin Russell Jones

⁷ “Copy of estimated expenditure for the forthcoming year of 2006” from Martin Russell Jones

- a) The estimated expenditure for the coming year needs to be produced concurrently with the year-end accounts. The 2005 accounts were not supplied.
- b) The “*estimated expenditure*” document includes under heading “*Schedule 1*” a total of £76,167 of expenditure. The “*Apportionments*” note at the bottom of the document states that “*Schedule 1*” refers to “*All flats*”

This is fraudulent given that Steel Services sold the last floor of the building – the penthouse flat – to Lavagna Enterprises Ltd.

Furthermore, Lavagna Enterprises is the superior headlessor and **Steel Services is a “lessee” of Lavagna Enterprises.**

- c) Under “*Schedule 2*”, two items are included amounting to £15,500. The “*Apportionments*” note at the bottom of the document states “*Flats 1 to 35 only*” for “*Schedule 2*”

As a result of the ‘major’ works, three new flats were added: 18A, 33A and 35A. The proprietor of the lease on these three new flats is Lavagna Enterprises Limited. The transaction took place between Steel Services and Lavagna Enterprises.

The document does not provide any explanation as to the meaning of the “*Apportionments*” for “*Schedule 1 and 2*”

Nor does it contain any statement on the changes and additions to the block. **Very clearly, these changes and additions have a major impact on the lessees’ share of the costs.**

- d) This “*estimated expenditure*” has obviously been used as the basis for including, in the 9 January 2006 “*current demand*” addressed to me, a “*half yearly service charge in advance – to 23 June 2006*” of **£814.62**. This suggests a total charge for 2006 of £1,629.24

Considering that:

- i) There are now four new flats in Jefferson House – one of which, the penthouse flat is **not** under the control of Steel Services i.e. **Steel Services no longer has control of the whole block.**
- ii) The block has been totally overhauled

How can it be that I end-up being demanded a “*half-yearly service charge in advance*” of £815 – when prior to the above events – the half-yearly service charge was nearly £200 less?

How was this sum arrived at?

In my 1 September 2005 letter to your Office, I wrote:

“...it suggests that Pridie & Brewster have simply taken the documentation given to them without question”

The above provides further overwhelming evidence of this. This document is not worth the piece of paper it is written on.

Yours sincerely

N K-Dit-Rawé

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