

**ipcc**

independent  
police complaints  
commission

PROTECT

Ms Klosterkotter-dit-Rawe,

(Took delivery  
on 22 MAY)

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See my COMMENTS attached to the  
29.07.11 IPCC Order 'from' Master Eyre

18 May 2011

Our reference:

Your reference:

Dear Ms Klosterkotter-dit-Rawe

**Ref: Klosterkotter-Dit-Rawe, N –Claim No. HQ11X01471**

Please find enclosed Defence lodged on behalf of the 2<sup>nd</sup> Defendant, the IPCC.

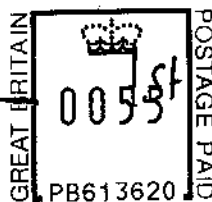
Yours sincerely

**Sadeena Asad**  
Senior Lawyer

For the Director of Business Services  
**Independent Police Complaints Commission (IPCC)**

Return Address  
PO Box 49781  
London  
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Amanda Kelly  
Director of Business Services

(Took delivery)  
on 22 May)

Claim No. HQ11X01471

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N:

NOELLE KLOSTERKOTTER-DIT-RAWE

Claimant

-and-

THE COMMISSIONER OF POLICE OF THE  
METROPOLIS

First Defendant

THE **INDEPENDENT** POLICE COMPLAINTS  
COMMISSION

Second Defendant

SECRETARY OF STATE FOR THE HOME  
DEPARTMENT

Third Defendant

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DEFENCE ON BEHALF OF  
THE SECOND DEFENDANT

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**Independent** Police Complaints Commission

90 High Holborn

London

WC1V 6BH

Solicitor for the Second Defendant

92930

**London**

**WC1V 6BH**

**Solicitor for the Second Defendant**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ11X01471**

**QUEEN'S BENCH DIVISION**

**B E T W E E N:**

**NOELLE KLOSTERKOTTER-DIT-RAWE**

**Claimant**

**-and-**

**THE COMMISSIONER OF POLICE OF THE METROPOLIS**

**First Defendant**

**THE INDEPENDENT POLICE COMPLAINTS COMMISSION**

**Second Defendant**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Third Defendant**

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**DEFENCE ON BEHALF OF THE SECOND DEFENDANT**

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1. Save that the Second Defendant admits that the Claimant has made a complaint to the First Defendant of which the Second Defendant is aware, the Second Defendant is unable to admit or deny paragraphs 1 - 139 of the Particulars of Claim. The matters alleged are outside the Second Defendant's knowledge and in the circumstances it would be unreasonable and oppressive for the Second Defendant to attempt to respond to each and every allegation made. Insofar as the matters alleged pertain or appear to pertain to the Second Defendant and therefore require a response, the same has been attempted. The Second Defendant reserves the right to add to or amend this Defence should it subsequently transpire that any such matters do pertain to the Second Defendant.

See my 19.07.11 Witness Statement in response to its 07.06.11 Application to have my 19.04.11 Claim struck out. It was a replacement to my 27.06.11 Witness Statement (e.g. court Notice) but, as I wrote to Chittenden, IPCC, in my 13.09.11 letter I NONETHELESS STAND BY IT.  
See MY COMMENTS to the IPCC 29.07.11 Order 'from' Master Eyre

2. The Defendant pleads to the Particulars of Claim without prejudice to the fact that:
  - a. the same disclose no reasonable grounds for bringing the claim and fall to be struck out under CPR 3.4(2); and / or
  - b. the claim has no real prospects of success and falls to be dismissed pursuant to CPR 24.2.
3. As to paragraph 140 of the Particulars of Claim, and by it paragraph 1 of the same, the Second Defendant is unable to admit or deny the matters pleaded.
4. Paragraphs 141 – 144 are admitted. It is further admitted and averred that:
  - a. Pursuant to Schedule 3, paragraph 7(1) of the Police Reform Act 2002 (“the Act”), the appropriate authority may apply to the Second Defendant for, *inter alia*, dispensation from the requirements of the said Schedule.
  - b. Pursuant to paragraph 7(3) of the said Schedule, where such an application is made to the Second Defendant, it shall, in accordance with the Police (Complaints and Misconduct) Regulations 2004 (“the Regulations”):
    - i. consider the application and determine whether to grant the permission applied for; and
    - ii. notify its decision to the appropriate authority and the complainant.

c. Pursuant to regulation 3 of the Regulations, complaints to which paragraph 2 of Schedule 3 to the Act apply include, *inter alia*, complaints where the appropriate authority considers that:

i. more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay;

ii. the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; or

iii. it is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the Act.

5. Save as admitted in paragraph 1 of this Defence, the Second Defendant is unable to admit or deny paragraph 145 of the Particulars of Claim.

6. Paragraph 146 – 148 of the Particulars of Claim are admitted save that the Second Defendant has no knowledge of and is therefore unable to admit or deny:

a. The existence of the Claimant's alleged letter of 18<sup>th</sup> February 2010;

b. The reason(s) why the Claimant did not reply to the Second Defendant's letter of 22<sup>nd</sup> February 2010; and

c. Any of the matters alleged in paragraph 159(b) of the Particulars of Claim.

7. Paragraphs 149 and 150 are denied.

## PARTICULARS OF LAWFULNESS

- a. The Second Defendant properly considered the First Defendant's request for dispensation in accordance with its statutory and common law duties.
  - b. The Second Defendant properly considered and followed its own Guidance.
  - c. The Second Defendant sought the Claimant's representations.
  - d. The Claimant failed to provide any representations to the Second Defendant as to why dispensation should not be granted.
  - e. The Second Defendant properly and lawfully concluded that the First Defendant's request for dispensation should be permitted on the grounds of delay, the complaint being an abuse of process and not reasonably practicable to investigate.
8. The Second Defendant's decision was communicated to the Claimant and the First Defendant by letter dated 2<sup>nd</sup> March 2010. The Claimant failed to make any complaint as to this decision until threatening this action over 1 year after the decision to agree the dispensation.
9. Paragraphs 151 and 152 of the Particulars of Claim are denied. It is denied that:
- a. The Second Defendant has breached any statutory duty or, if contrary to this Defence such a breach is found, that the Claimant is entitled to damages as alleged or at all as a result of any such breach.

b. The Second Defendant's acts or omissions amount to malpractice, misconduct in public office or misfeasance in public office as alleged or at all. The Claim discloses no grounds for making such an assertion.

10. It is denied that the Claimant is entitled to claim aggravated or exemplary damages or costs as alleged or at all.

11. Causation is denied.

12. Insofar as the matters alleged in paragraphs 153 – 175 of the Particulars of Claim relate to the Second Defendant, the same are denied.

13. In the premises, it is denied that the Claimant is entitled to the relief claimed or any relief for the reasons alleged or at all.

**JONATHAN DIXEY**

**Statement of Truth**

The Second Defendant believes that the facts stated in this Defence are true.

I am duly authorised by the Second Defendant to sign this statement.

Full name ..Sabeena Asad.....

Name of Defendant's solicitor

\_\_\_\_\_

Signed ..... position or office held .....Senior Lawyer.....

Second Defendant's solicitor

**Dated this 18<sup>th</sup> day of May 2011**

**Independent Police Complaints Commission**

**90 High Holborn**