

Ms Klosterkotter-Dit-Rawe

Reference: HQ11X01471

By Recorded Delivery

8th June 2011

Posted on 9 June
took delivery
on 12th June

See my 19.07.11 Witness Statement in response; the 29.07.11
Order 'from' Master Eyre - and my Comments attached

Dear Ms Klosterkotter-Dit-Rawe,

RE: Noelle Klosterkotter-Dit-Rawe v The Commissioner of Police of the Metropolis and the Independent Police Complaints Commission and the Secretary of State for the Home Department, Claim No: HQ11X01471

Thank you for your letter dated 31st May 2011 enclosing the notice of an allocation hearing.

I am writing to inform you that as my colleague Ms Asad has now left the IPCC I have taken over conduct of this matter from her.

I am also writing to you in order to serve a copy of our application for strike out and/or summary judgment of your claim which has been served on the court today. You will find enclosed:

- 1) Application notice
- 2) Witness Statement of Julia Chittenden
- 3) Exhibits JC/1 to JC/7
- 4) Draft Order

I have asked the Court to list this application either in advance of the allocation hearing or at the allocation hearing in order to save time and costs. I have also indicated to the court that if they do list the application at the same time as the allocation hearing we are likely to need more than half an hour, perhaps one to one and a half hours

I would be grateful if you could please acknowledge receipt.

Yours sincerely, _____

PP.

Julia Chittenden

Lawyer

For the Director of Business Services

Independent Police Complaints Commission (IPCC)

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

APPLICATION NOTICE

Independent Police Complaints Commission
90 High Holborn
London
WC1V 6BH

Solicitor for the Second Defendant

92930

IN THE HIGH COURT OF JUSTICE

Claim No. HQ11X01471

QUEEN'S BENCH DIVISION

B E T W E E N:

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Claimant

-and-

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First Defendant

THE **INDEPENDENT** POLICE COMPLAINTS COMMISSION

Second Defendant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Third Defendant

APPLICATION NOTICE

Part A

I, Julia Chittenden, on behalf of the Second Defendant

intend to apply for an order (a draft of which is attached) that:

1. Insofar as they relate to the Second Defendant, the **Claim Form and Particulars of Claim be struck out pursuant to CPR 3.4(2);**
2. Alternatively, **that summary judgment be** given for the Second Defendant; and
3. The **Claimant do pay the costs of the application and of the claim.**

because the Particulars of Claim disclose no reasonable grounds for bringing the claim and the Claimant has no real prospects of success.

Part B

I wish to rely on evidence in Part C in support of my application.

Part C

I wish to rely on the attached witness statement.

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

DRAFT ORDER

UPON hearing [Counsel for] [the Solicitor for] the Claimant and [Counsel for] [the Solicitor for] the Second Defendant:

1. **The claim** insofar as it relates to the Second Defendant **is struck out pursuant to CPR 3.4(2)(a).**

[Or]

2. **Summary judgment** be entered in the Second Defendant's favour.

[And]

3. **The Claimant do pay** the Second Defendant's **costs of the application and the claim, summarily assessed in the sum of £**

Witness Statement

See my 19.07.11 Witness Statement - in replacement of my 27.06.11 Witness Statement (e.g. court's Notice) - by which, as I wrote in my 13.09.11 letter to Chittenden, IPCC, I NONETHELESS STAND BY

I, Julia Chittenden, will say as follows:

See its 18.05.11 DEFENCE

1. I am duly authorised to and make this statement in support of the Second Defendant's application for strike out and / or summary judgment.

The Independent Police Complaints Commission

2. The Second Defendant was established by the Police Reform Act 2002 ("the Act"). Pursuant to section 10(1) of the Act the Second Defendant's functions

include:

- a. to secure the maintenance by the Commission itself, and by police authorities and chief officers, of suitable arrangements with respect to the matters mentioned in subsection (2);
- b. to keep under review all arrangements maintained with respect to those matters;
- c. to secure that arrangements maintained with respect to those matters comply with the requirements of the following provisions of this Part, are efficient and effective and contain and manifest an appropriate degree of independence;
- d. to secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters;

- e. to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, and also of police practice in relation to other matters, as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable;
 - f. to such extent as it may be required to do so by regulations made by the Secretary of State, to carry out functions in relation to bodies of constables maintained otherwise than by police authorities which broadly correspond to those conferred on the Commission in relation to police forces by the preceding paragraphs of this subsection;
 - g. to carry out functions in relation to the Serious Organised Crime Agency which correspond to those conferred on the Commission in relation to police forces by paragraph (e) of this subsection; and
 - h. to carry out functions in relation to the National Policing Improvement Agency which correspond to those conferred on the Commission in relation to police forces by paragraph (e) of this subsection.
3. Those matters are, by section 10(2):
- a. the handling of complaints made about the conduct of persons serving with the police;
 - b. the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;

- c. the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police;
 - d. the manner in which any such complaints or any such matters as are mentioned in paragraph (b) or (c) are investigated or otherwise handled and dealt with.
4. It is the Second Defendant's duty to exercise the powers and perform the duties conferred on it by Part 2 of the Act in the manner that it considers best calculated for the purpose of securing the proper carrying out of its functions under subsections (1) and (3) and to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the Commission has functions.
 5. The handling of complaint matters, i.e. where a member of the public complains about a police force, is conducted in accordance with Schedule 3 of the Act.

Background to the claim

6. The claim relates to what appears to be a long running dispute with the First Defendant which resulted in a complaint by the Claimant to the First Defendant.
7. By a memorandum dated 22nd January 2010, Detective Chief Inspector Mark Nanji of the First Defendant wrote to the Second Defendant requesting a dispensation for a complaint received from the Claimant (exhibited hereto as 'JC/1'). Where an application is made to the Second Defendant pursuant to paragraph 7 of Schedule 3 it shall consider such a request in accordance with Regulations and determine whether to grant the permission applied for.

8. Regulation 3 (2) of the Police (Complaints and Misconduct) Regulations 2004

("the Regulations") specifies the complaints for the purposes of paragraph 7 of Schedule 3 that include, *inter alia*, complaints where the appropriate authority considers that:

- a. 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;
- b. the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; or
- c. it is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the Act.

9. Regulation 3(4) and 3(5) gives further clarification as to when it is not reasonably practicable to complete the investigation of the complaint:

- (4) For the purposes of paragraph (2) (f) it is not reasonably practicable to complete the investigation of a complaint or any other procedures under Schedule 3 to the 2002 Act if, and only if-
 - a) it is not reasonably practicable to communicate with the complainant or a person acting on his behalf; or
 - b) it is not reasonably practicable to complete a satisfactory investigation in consequence of-

- i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation ;
or
 - ii) the lapse of time since the event or events forming the subject- matter of the complaint.
- 5) In this regulation any reference to action not being reasonably practicable shall include a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case.
10. By letter dated 22 February 2010 the Second Defendant wrote to the Claimant informing her that a request for dispensation had been made, that the request was being considered and invited her to provide an explanation as to why the request should not be granted (exhibited hereto as 'JC/2').
11. No response was received from the Claimant.
12. The Second Defendant did however take into account the representations the Claimant made in her letter of 18th February 2010 in response to the First Defendant's indication to the Claimant that it was seeking a dispensation (exhibited hereto as JC/3). This can be seen from the Second Defendant's appeal minute (exhibited hereto as JC/4).
13. In light of DCI Nanji's application and of the lack of any response from the Claimant, the request was granted on the grounds of delay, the complaint being an abuse of process and not reasonably practicable to investigate. The Second

Defendant wrote to the Claimant and First Defendant informing them of its decision (exhibited hereto as 'JC/5' and 'JC/6').

14. The Claimant did not challenge the Second Defendant's decision to grant a dispensation by way of judicial review.

15. I have checked the Casework Manager's paper file and the electronic Case Management System which confirms that there was no further contact from the Claimant until her letter of claim dated 17th March 2011. The Second Defendant was first aware of the Claimant's contention that the dispensation should not have been granted through her 'Letter of Claim' dated 17th March 2011 (exhibited hereto as 'JC/7').

Heads of claim

16. Insofar as the claim relates to the Second Defendant, the Claimant appears to claim:

- a. Breach of statutory duty pursuant to the Act; and
- b. Malpractice / Misconduct in public office / Misfeasance in public office.

17. I will deal with each head of claim in turn.

Breach of the Act

18. The Claimant alleges that the Second Defendant has "wilfully and recklessly failed to perform its statutory duty under [the Act]" (paragraph 149 of her Particulars of Claim). She alleges that the Second Defendant:

- a. failed to treat her complaint as a complaint;
- b. ignored or failed to note the content of requests to the First Defendant;
- c. ignored its own Guidance and that of the Home Office;
- d. was in breach of its Guidance; and
- e. “failed to hold to account those justifiably complained about by the Claimant”.

19. As is clear from the correspondence which was sent to the Claimant, her complaint was considered within Part 2 of the Act however an application for dispensation was made. Having considered that application in accordance with its statutory and common law duties and having sought the Claimant’s representations, the request for dispensation was granted.

20. The Claim Form and Particulars stand to be struck out pursuant to CPR 3.4(2)(a) in that that the statements of case disclose no reasonable grounds for bringing the claim and / or that summary judgment should be entered for the Second Defendant pursuant to CPR 24.2 in that the Claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case or issue should be disposed of at a trial, because:

- a. The Claimant has not identified any duty which has been breached through the Second Defendant’s acts or omissions.
- b. Insofar as the Claimant is alleging or seeks to allege that the Second Defendant is in breach of any its functions pursuant to section 10 of the Act, these are not duties the breach of which gives rise to any civil liability (for guidance on when a breach of a statutory duty gives rise to a

private cause of action see, for example, *X v. Bedfordshire County Council* [1995] 2 AC 633).

- c. The Claimant has failed to identify any loss occasioned by the Second Defendant's acts or omissions.
- d. Manifestly, the Second Defendant acted in accordance with its statutory duties and powers. As such there is no merit in the claim.

Malpractice / Misconduct in public office / Misfeasance in public office

21. The Claimant asserts that the matters complained of amount to "malpractice or misconduct in public office or misfeasance in public office". This aspect of the claim is similarly without merit and stands to be struck out pursuant to CPR 3.4(2)(a) in that that the statements of case disclose no reasonable grounds for bringing the claim and / or that summary judgment should be entered for the Second Defendant pursuant to CPR 24.2 in that the Claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case or issue should be disposed of at a trial, because:

- e. The tort of 'malpractice' is not understood and not known to English law.
- f. The matters alleged do not disclose any cause of action as alleged or at all. Specifically, it is not understood that, so far as the Second Defendant is concerned, there is any allegation of bad faith which would found such a claim.
- g. As above, the Second Defendant acted in accordance with its statutory duties and powers. As such there is no merit in the claim.

Abuse of process

22. The Claim should be struck out as an abuse of process. The Claimant's challenge to the decision of the Second Defendant to grant a dispensation is a challenge to the decision of a public body and should have been made by way of judicial review. The three month time limit expired in June 2010 and the Claimant is seeking to circumvent that time limit by making this claim.

23. A successful judicial review challenge would have resulted in the Second Defendant having to retake its decision on the dispensation and would have therefore provided the Claimant with a complete remedy to that aspect of her complaint. Instead of which the Claimant is now seeking compensation for effectively the Second Defendant's decision to grant a dispensation.

Loss

24. The Claimant claims at paragraphs 152 and 175(9) of her Particulars of Claim and in her Schedule of Costs and Damages at 19th April 2011:

- h. "Costs of correspondence"; and
- i. "Aggravated and / or exemplary damages".

25. It will be clear to the Court that the costs claimed are not recoverable as damages within this action. Insofar as they are genuine litigation expenses (which they do not appear to be) they should more properly be considered at the conclusion of proceedings.

26. As for the claim for aggravated or exemplary damages there is no evidence to support this and cannot on any reasonable view of the Second Defendant's involvement with this matter be considered appropriate.

Conclusion

27. In summary, this claim is totally without merit and therefore it stands to be struck out and / or summary judgment entered in the Second Defendant's favour. In addition it is an abuse of process and therefore stands to be struck out.

Signed: _____
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Dated

07 / 06 / 11.