

Ms Klosterkotter-Dit-Rawe

**ipcc**

**independent**  
police complaints  
commission

Reference: HQ11X01471

(Took delivery  
on 23rd)

By Recorded Delivery

20<sup>th</sup> July 2011

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

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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**

Please find enclosed a copy of my witness statement in reply to the your response to  
the Second Defendant's application for strike out and/or summary judgment.

Yours sincerely,

PP. *R. Khanani*

Julia Chittenden  
Lawyer  
For the Director of Business Services

- This 19 July witness  
statement posted on  
20 July, claims to be  
in reply to my 27 Jun.  
WS of which it took  
delivery on 28 June  
- On 20 July it took  
delivery of my 2nd  
witness statement.

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**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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**SECOND WITNESS STATEMENT OF JULIA CHITTENDEN**

**PREVIOUS**

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I, Julia Chittenden, will say as follows:

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.

2. I make this statement in reply to the Claimant's witness statement in response to the Second Defendant's application for strike out/summary judgment of the claim and in addition to my First Statement. References to exhibits are references to exhibits to my first statement and are not reproduced herein. References to the Claimant's witness statement are to her statement of 27<sup>th</sup> June 2011.

### **Response to pre-action letter**

3. The Second Defendant accepts that it did not respond to the Claimant's pre-action letter. This appears to have been caused by an oversight. I have not found any documentation that would suggest it was intentional.

4. However the matters raised in the Second Defendant's application for strike out and/or summary judgment were raised, in a summarised form, in the Second Defendant's Defence. These matters were expanded upon in the Second Defendant's application. Following the filing of the Defence those instructed by the Second Defendant were able to locate the case file. This accounts, in some part, for the Second Defendant's application containing more detail than the Defence.

### **Consideration of documents**

5. The Claimant indicates, at paragraph 6 of her witness statement (page 10), that the Second Defendant would have needed to consider a number of documents when

determining the dispensation application as defined in its Statutory Guidance. The Second Defendant did in fact consider a number of documents.

6. The Second Defendant considered the Claimant's letter dated 18<sup>th</sup> February 2010 as is evidenced from the appeal minute (exhibit JC/4). It also considered a number of documents that were annexed to the dispensation application (exhibit JC/1.) These documents are listed at page 3 of the dispensation application.

7. At paragraph 8 (page 16) of the Claimant's witness statement she raises a number of issues regarding the documents which were enclosed with the dispensation application.

8. The Claimant questions at point 1) whether a bundle of 49 documents in support of her correspondence dated 13<sup>th</sup> August 2009 were included. I have looked in the casework file and the bundle of documents enclosed does contain a detailed 38 page letter dated 13<sup>th</sup> August 2009. It does not contain the accompanying documents. The bundle accompanying the dispensation application does however contain numerous detailed documents which would have been sufficient to gain a good understanding of what the Claimant's complaint was about.

9. At point 2) the Claimant questions whether another letter was included with her letter dated 11<sup>th</sup> November 2009. I have looked in the casework file and can confirm that the enclosed letter dated 8<sup>th</sup> October 2009 is also included in the bundle.

10. At point 3) the Claimant questions whether the enclosed letters were included with her letter dated 8<sup>th</sup> October 2009. There are two letters in the bundle dated 8<sup>th</sup> October 2009, one to Chief Superintendent Mark Heath and one to Acting Chief Inspector Steve McSorley. The letter addressed to Chief Superintendent Heath encloses two other letters, one dated 20<sup>th</sup> September 2009 addressed to Chief Superintendent Heath and another dated 22<sup>nd</sup> September 2009 from Acting Chief Inspector Steve McSorley, both are included in the bundle.

11. At point 4) she indicates that the letter dated 28<sup>th</sup> November 2009 is wrongly identified as being addressed to DPS. There is one letter in the bundle dated 28<sup>th</sup> November 2009 from the Claimant and it is addressed to Alan Johnson MP and Sir Paul Stephenson, Metropolitan Police Commissioner.

**Assertion that use of Police Complaints and Misconduct Regulations is misguided**

Defendant

12. The Claimant asserts at paragraph 5.1 (page 56) of her response that the Claimant has used Regulation 3 (2) of the Police Complaints and Misconduct Regulations 2004 to dismiss the complaint on the grounds that more than 12 months have elapsed.

13. The Second Defendant granted the application on a number of alternative grounds, in addition to the “12 month elapsed” ground, namely that it would be an abuse of the complaints procedure and that it would not be practical to investigate the complaint, as is evidenced by the letter of 2<sup>nd</sup> March 2010 (exhibit JC/5).

14. In addition the “12 month elapsed” ground also requires the Second Defendant to conclude either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay. The Second Defendant concluded that both of those applied in this case as is evidenced by the letter of 2<sup>nd</sup> March 2010 (exhibit JC/5).

15. The Claimant also asserts at paragraph 5.1 (page 56) that the Second Defendant’s use of the “12 month elapsed ground” is misguided as the Data Protection Act entitles the Claimant to require a data controller to stop processing data about her at any time.

16. The Second Defendant’s role concerns complaints or conduct matters about the police or death and serious injury matters involving the police. The Second Defendant’s role and powers are set out in the Police Reform Act 2002.

17. The investigation of a complaint or a conduct matter, by either the police force or the Second Defendant, may involve consideration of the Data Protection Act. However the Second Defendant does not have the power to make a police force alter the information that it retains.

18. The Police Reform Act 2002 specifically allows a police force to make an application to the Commission for dispensation from investigation of a complaint. The Police Complaints and Misconduct Regulations 2004 specify the grounds under which a dispensation application can be granted. The “12 month elapsed” ground is one of those grounds. The Second Defendant is not therefore misguided in its

application of that ground but has simply applied the Regulations as it is entitled to do and in fact did in this case.

### **Allegation of collusion**

19. The Claimant now asserts at paragraph 5.2 (page 57) of her response “*that there clearly was collusion going on between the Second and First Defendants.*” Part 2 of the Particulars of Claim deals with the claim against the Second Defendant and collusion between the Second and First Defendant is not pleaded. Given the severity of this allegation it should have been. The fact that it is not pleaded undermines the credibility of that assertion.

It is "pleaded" - See para.149 of my Particulars:  
"...it has wilfully and recklessly... in that:..."

20. In any event there is no evidential basis for concluding that there was any such collusion and the Claimant is invited to withdraw this very serious allegation.

### **Correspondence from Second Defendant to Claimant**

21. At paragraph 83, (page 58) the Claimant criticises the tone of the Second Defendant’s letter of 22<sup>nd</sup> February 2010 and the fact that in the letter the Second Defendant indicated that it would also be considering other grounds for dispensation. This letter gave the Claimant a warning that other grounds were being considered and a chance to give her representations in respect of those specific grounds.

**Date dispensation application was made**

22. At paragraph 86 the Claimant indicates that she doubts that the dispensation application was made on 21<sup>st</sup> January 2010. The dispensation application is date stamped "Received 26<sup>th</sup> January 2010." The date can be as seen on the application, exhibit JC/4. This would suggest that the application was received by the Second Defendant on that date and sent by the First Defendant sometime prior to that date. In my first witness statement at paragraph 7 I have indicated that the dispensation application exhibited at JC/1 is dated 22<sup>nd</sup> January 2010.

Signed: \_\_\_\_\_

Dated 19<sup>th</sup> July 2011