


Ms Clare Bird
The Regional Secretary
Employment Tribunals (England & Wales)
44 The Broadway
Stratford
London E15 1HX

[Ms Noëlle Rawé](#)

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Claim: [Noëlle Rawé](#) v [KPMG LLP](#) – [Number 3200936/2008](#)

2 September 2008

In its [10.09.08](#) reply the tribunal stated that it could not transfer my case to the High Court – which left me with only one option: withdrawing it in order to then file it in the High Court: my [14.09.08](#) letter to the tribunal. Events are discussed on the [KPMG pg # 16](#).

Dear Madam

Thank you for your communication dated [19 August 2008](#).

1 [Transfer of case to the High Court](#)

(NB: In reading this section, please note the 'pre-action' event under section 2 below)

Under CPR, [I request a transfer of the case to the High Court for the following reasons:](#)

1. [The amount of compensation I seek from the Defendant is £550,000, plus six months of salary: CPR 30.3\(2\)\(a\)](#)
2. [The nature of my claim comes under the \[Protection from Harassment Act 1997\]\(#\). As your Tribunal deals with 'victimisation', I wrongly assumed that it also dealt with claims under this Act: CPR 30.3\(2\)\(c\); CPR 1.1 and 1.2](#)
3. [I anticipate the outcome of the claim to be of public interest: CPR 30.3\(2\)\(e\)](#)

1. [Amount of compensation](#)

In my [5 August 2008](#) letter to the ACAS Conciliator, I explained how I calculated the sum of £550,000. (I also took the opportunity to reply to some of [the Defendant's Defence](#) in relation to key issues).

[From talking to the ACAS Conciliator, I understood that the Tribunal does not deal with claims under the Protection from Harassment Act 1997 and that the maximum compensation that can be awarded by the Tribunal is £68,000.](#)

[In reply to my saying that I had seen larger amounts of compensation being awarded by Employment Tribunals in cases of 'victimisation' / 'harassment', the Conciliator pointed out that this was only in relation to 'racial discrimination', 'gender / age discrimination', 'religious beliefs', 'disability' or 'sexual orientation'.](#)

Wanting to take advantage of the involvement by ACAS, in the hope of achieving agreement on a settlement, I opted to not write to your Tribunal to request a transfer to the High Court.

However, the maximum £68,000 award 'appears' to have acted as a block to negotiations. 'Appears' as I have not received any other feedback.

2. [Claim under the Protection from Harassment Act 1997](#)

[I firmly believe that I have a well supported, valid claim of constructive dismissal under \[s.1\\(1\\) and s.1\\(2\\) of the Protection from Harassment Act 1997\]\(#\): that an employer has a common law duty to take](#)

care of his employees, including a duty to prevent ill treatment, victimisation and harassment, and that my claim meets s.7 of the Act.

Likewise, I firmly believe that I have the evidence to support my position that the Defendant acted without 'proper and reasonable cause'. Following the Defendant's '16 June 2008' Defence - with the aim of achieving a 'cards on the table' approach for the purpose of arriving at a settlement - on 1 July 2008, I sent a Subject Access Request to the Defendant:

- In its Defence, the Defendant states that it "could not ignore the allegations" it said to have received from Mr Andrew Ladsky, my landlord, starting in October 2006. Its 31 July 2008 reply to my request for copy of Mr Ladsky's communications was "I am satisfied that you have been provided with the correct material".

The only communication I was 'eventually' supplied with in October 2007 is a 26 March 2007 letter from Mr Ladsky in which over 50% of the content has been blacked out, and notes of a telephone conversation said to have taken place between Mr Ladsky and the Defendant's Counsel on 9 February 2007, which amount to little more than 20 words.

This (in addition to other evidence) confirms my position that punitive actions were taken against me without giving me the opportunity to defend myself against the accusations.

- In its Defence, the Defendant states that "following obtaining an IT report relating to [my] IT use", it "decided to restrict [my] access to the internet as a precautionary measure".

The Defendant's 31 July 2008 reply to my request for a copy of the I.T. report is "This report was commissioned by the firm's General Counsel and is subject to legal privilege".

I have the right to know the substance of the case alleged against me as, to date, I have not been provided with any evidence in support of my alleged "serious breach of the I.T. policy" which, the Defendant alleges in its Defence, "could potentially have led to [my] dismissal".

With the same objective of achieving a 'cards on the table' approach for the purpose of arriving at a settlement, also on 1 July 2008, I sent a request for other information.

The Defendant's 22 August 2008 reply starts with "...it is appropriate to ask for further information from the other party in an Employment Tribunal claim if one party is not aware of the details of the party's case"

As exemplified by the above: this is my position on the major issues.

The letter continues "We have stated in the detailed response to your claim that we do not accept that you were constructively dismissed or that KPMG did anything other than treat you fairly. It is our position that you have therefore been made aware in appropriate terms of KPMG's case"

All of my claim has been denied – without providing any evidence in support of the counterclaims – other than the above mentioned communication from Mr Ladsky.

Missing 'statements'

The letter then states "It is likely that an order for the exchange of witness will be made. This will provide further detail of KPMG's position. To the extent that the requests that you make are relevant, further information will be provided in the appropriate statements"

Outcome: I have been totally open and transparent on my position in my 17 January 2008 grievance, my 3 April 2008 Particulars of Claim and my 5 August and 17 August 2008 letters - but this is not being reciprocated.

3. **The outcome of the claim will be of public interest**

This is based on my position that I suffered victimisation because, in the process of detailing my case on my personal website, I expose malpractice by parties with which the Defendant has / might have a working relationship.

In the Public Interest Disclosure Act 1998 provisions, contained under Part IV of the Employment Rights Act 1996, whistle-blowers are protected from “suffering victimisation...detriment” when exposing malpractice.

I understand that while the Act refers to ‘employees’, it can also apply to my situation i.e. suffering victimisation by an employer for whistle-blowing on parties external to the employer – which is an unusual case that ought to be considered in relation to the Act.

Concurrently, it also raises the issue about my ‘right to freedom of expression’ under Article 10 of the Human Rights Act 1998.

2 **Alternative Dispute Resolution - Mediation**

Prior to having my claim transferred to the High Court I wish to extend the Defendant the opportunity to try to negotiate a settlement through the National Mediation service – as, so far, there has not been a conciliation process to speak of.

(NB: What prompted me to file the claim in the Tribunal was the perception of an intention to make me miss the three-month deadline for filing the claim: forty-eight hours after writing me a letter dated 6 February 2008 to inform me of his appointment as the Investigating Officer in relation to my 17 January 2008 grievance, the person went on annual leave for nearly three weeks. He did not inform me of this in his letter. Nor did he say this in his voicemail on the day I received his letter. I discovered this as a result of phoning his work number.

By the beginning of April I had not heard anything. As it turned out, my concern about the risk of missing the three-month deadline proved to be justified as the response to my grievance was only issued on 22 May 2008.

In spite of opting for the modified grievance procedure (as a consequence of what took place with the Investigating Officer), in my 22 February 2008 letter, I nonetheless extended the Defendant the offer of (1) “a meeting to discuss my grievance to ensure KPMG has a fair opportunity to consider my grievance and address my expectation”; (2) “supplying any of the supporting documents referred to in my 17 January 2008 grievance” and attached “a chronological list to facilitate identification”. My offers were not taken-up).

In addition to copying the Defendant on this letter, I am copying you on my letter of the same date to the Defendant ¹.

Yours faithfully

Noëlle Rawé

cc. Ms Naomi Crossman, Employment Lawyer, KPMG LLP (By ‘Special Delivery Next Day by 9 a.m.’)

¹ My 2 September 2008 letter to KPMG

Ms Naomi Crossman
Employment Lawyer
[KPMG LLP](#)
8 Salisbury Square
London EC4Y 8BB

[Ms Noëlle Rawé](#)

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Events are discussed on the [KPMG pg # 16](#)

2 September 2008

[Stratford Employment Tribunal Claim: Noëlle Rawé v KPMG LLP – Number 3200936/2008](#)

Dear Ms Crossman

Thank you for forwarding my [1 July 2008](#) Subject Access Request. I received a response in the first week of August. As to my other request for information of the same date, thank you [for supplying me](#) with a copy of the National Terms and Conditions I signed at the time of joining KPMG in 1997, the offer letter, my total reward statement for 2006-2007 and the IT Security Guidelines, dated 29 August 2007.

As you can see from my enclosed letter of 2 September 2008 to the Stratford Employment Tribunal ¹, I am requesting a transfer of the case to the High Court due to the Employment Tribunal being the inappropriate forum to deal with [my claim](#).

However, as detailed under section 2 of my request, prior to taking this action, I am extending you the opportunity to negotiate a settlement through the National Mediation service as, to date, there has not been a conciliation process to speak of.

Please, let me know whether you are interested to pursue this route.

Yours sincerely

Noëlle Rawé

cc. Stratford Employment Tribunal

¹ My 2 September 2008 request to the Stratford Employment Tribunal



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