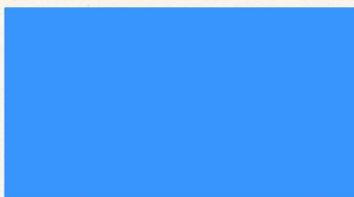
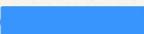




PRIVATE



9 January 2018

Dear 

RE: Allegations of Misconduct in Public Office in relation to "Brexit"

Thank you for your letter of the 6th December 2017 addressed to the Director of Public Prosecutions.

In your letter you invite the institution of criminal proceedings against the Rt Hon Theresa May, Prime Minister and the Rt Hon David Davis, Secretary of State for Exiting the European Union, together with other unnamed senior members of the Government, for an offence of misconduct in public office. As you acknowledge, your letter adopts and updates the content of a previous letter to the Director from David Wolchover, dated 2nd October 2017. These letters have been passed to me as Head of Special Crime, as this is the team that would handle allegations of this nature. I propose to respond here to both letters and send a copy to Mr Wolchover.

Firstly, as you will be aware, the decision whether or not to launch a criminal investigation is one which is entirely a matter for the police and not for the Crown Prosecution Service (CPS). I can confirm that the CPS has not been contacted by the police in relation to this matter. It is clear however that before deciding whether to investigate, the police would need to clarify, as a starting point the status of the European Union (Notice of Withdrawal) Act 2017 in so far as it relates to Article 50 of the "Lisbon" Treaty, which it is apparent they have sought to do. I note your views on this aspect and also note the summary of the legal advice received by the Metropolitan Police that the Act does amount to a legally binding declaration of the UK's intention to withdraw from the European Union.

Any consideration of an offence of misconduct in public office could only take place if firstly the lack of compliance of the legislation with Article 50 of the "Lisbon" Treaty could be established to the criminal standard, secondly if the evidence gathered was capable of establishing misconduct on the part of those

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accused (including those you refer to as unidentified) and thirdly if any such misconduct could be shown to have been wilful.

In order to prosecute, the CPS must be in a position to apply the Full Code Test as set out in the Code for Crown Prosecutors. We are not in possession of evidence that would enable such a consideration in this matter. I can therefore confirm that we will not be taking this any further.

Yours sincerely

A handwritten signature in black ink, appearing to be 'F. Ferguson', with a long horizontal stroke extending to the right.

Frank Ferguson
Head of Special Crime
Deputy Head, Special Crime and Counter Terrorism Division