



THE WOLCHOVER ACTION GROUP



9 March 2018

Directorate of Professional Standards
Metropolitan Police Services
Complaint Support Team
22nd Floor
Empress State Building
Lillie Road
London, SW6 1TR

To Whom It May Concern:

RE: Police Incident Reference 6545962/17 / IOPC Reference 2018/100093

The IOPC forwarded the above referenced complaint to you on 23 February 2018. I am writing to elaborate on the third point (of the four numbered points) made in that complaint.

In that point I challenged the use of the [European Union \(Notification of Withdrawal\) Act 2017](#) (The Act) as the point of reference for determining whether a criminal investigation is called for, and proposed that a defensible point of reference for assessing these criminal allegations would be an understanding of what objective the act was designed to achieve and how well it measures up constitutionally. This requires an understanding of the substantive elements of the judgement in [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\) \(Miller\)](#), read together with [Article 50 of the Treaty on European Union](#) (Article 50).

Following is a brief roadmap to support that understanding, in case it is helpful:

- 1) Article 50(1) requires a constitutionally valid withdrawal decision.
- 2) Article 50(2) requires that such a decision, once made, be notified to the European Council.
- 3) In *Miller*, the Supreme Court was asked whether the government could use Royal Prerogative powers to notify, per Article 50(2).
- 4) The Supreme Court judgement in *Miller* is fairly lengthy, but makes three substantive points that are relevant here. They are:
 - a. That political statements to the effect that the EU Referendum result would be implemented had no legal significance (i.e. the Referendum does not provide a constitutionally valid withdrawal decision) (para. 119).
 - b. That whatever course Parliament resolved to take, it had to make its objective crystal clear on the face of the statute because fundamental rights of citizens are at stake (para. 87).
 - c. That, in answer to the specific question asked in the *Miller* case, the prerogative cannot be invoked and ministers require the authority of primary legislation before they can notify (para. 101).

The Act was written very narrowly, in response to point 4.c only, with explicit mention of Article 50(2) and no mention of the withdrawal decision required by Article 50(1). Point 4.a is clear that the Referendum cannot serve as the decision, and point 4.b is clear that the withdrawal decision must be explicit in statute. The Act is completely silent on the requirement named in point 4.b.

Yet on the strength of The Act and in the absence of a constitutionally valid withdrawal decision, the Prime Minister gave notice under Article 50(2). To date, ministers continue with exit negotiations without a constitutionally valid withdrawal decision.

We allege that ministers were well aware of the shortcomings of The Act, and we further allege that those shortcomings were intentional, per the evidence presented in the [Wolchover articles](#) upon which others and I have based our police complaints.

Because The Act is essentially a tool at the heart of the wrongdoing, and because the view taken by the MPS relies on an interpretation of The Act that defies the Supreme Court ruling described in point 4.b, The Act cannot provide a valid point of reference for a decision not to investigate our police complaints. To be clear, the requirement described in point 4.b for an explicit decision in statute necessarily rules out any reliance on inference to find in The Act the legally binding declaration of the UK's intention to withdraw, yet this is precisely what Commander Cundy has done.

I hope this summary and clarification is useful in considering my recent complaint lodged via the IOPC.

Yours sincerely



 *for the Wolchover Action Group*