



THE WOLCHOVER ACTION GROUP

13 March 2018

Inspector Duncan Marriott
Directorate of Professional Standards
DPS Appeals Unit
22nd Floor
Empress State Building
Lillie Road
London, SW6 1TR

Dear Inspector Marriott,

RE: PC/00909/18

I am writing in response to your letter dated 8 March 2018 in which you have invited me to defend myself against your reasoning that my complaint is based purely on my disagreement with Commander Cundy's decision and is therefore an abuse of the complaints system. I note that you cited no examples and provided no insight into your reasoning.

You are right to suggest I don't agree with the decision taken by Commander Cundy, but you are wrong to conclude that my disagreement with his decision forms the basis for my complaint. My disagreement most certainly does, however, serve to motivate me to engage in this process. In my submission I provided the four reasons for the complaint and they stand. You'll note that disagreement with the decision itself is not one of them.

Here I will elaborate on why my complaint is not an abuse of the complaints system. Where necessary, I'll refer to the European Union (Notification of Withdrawal) Act 2017 as "The Act."

- 1) Lack of transparency: Commander Cundy claimed to have taken legal advice, but also inferred that "legal professional privilege" prevented him from disclosing that advice. I rightly challenged that because, as the client, he is fully within his rights to waive such privilege and in his position he would know that. Still, he refused to waive privilege and disclose the advice or the source of it. It may be inferred from the wording of his response that the MPS view is based on such advice, but he avoids saying so. I don't know what advice he took, whom he took it from, whether it shaped his view or, for that matter, whether he took advice at all. What I do know is that in trying to legitimise his lack of transparency he attempted a small deception over the point of professional privilege. Given the grave political implications of a decision to investigate, any decision not to do so would naturally raise suspicion of political influence unless handled with complete openness and transparency. Commander Cundy did not demonstrate sensitivity to this fully predictable outcome.
- 2) Fallacious reasoning: Circular arguments are a kind of fallacious reasoning whereby one assumes what one seeks to prove. Commander Cundy adopted a contentious and unsubstantiated view that The Act is sufficient to constitute a legally binding declaration of the UK's intention to withdraw from the EU and empower the Prime Minister to give notification. This presumption "proved" the Prime Minister's Article 50 notification was valid, thereby enabling a conclusion that there was insufficient evidence to commence an investigation. The use of circular arguments usually indicates a bias for a particular outcome.

Barristers employing these arguments in the courts rarely get away with it, and neither should Commander Cundy.

- 3) Invalid point of reference: In my complaint I criticised Commander Cundy for his reliance on The Act in his decision-making about the investigation, due to its integrity being compromised by its central role as a tool in the alleged misconduct. A professional acting responsibly would appreciate this conflict and seek a cleaner, more distanced and defensible point of reference. Prior to receiving your reply, I had sent to DPS a follow-up on this point (letter dated 9 March, by email) to elaborate on what that defensible point of reference should be in this case. I won't repeat it here, but please review that letter. The penultimate paragraph highlights the inappropriateness of Commander Cundy's interpretation of The Act.
- 4) Weak position: A proper review of the evidence I provided with my original police complaint would conclude that The Act and its function in the misconduct allegation places it necessarily at the heart of the investigation, not sitting outside it. Commander Cundy chose to treat The Act as being outside the investigation and make a presumption about its meaning to decide whether or not to investigate. I included this point to exemplify the poor judgement he exercised in doing so by highlighting that the presumption he made about The Act was not only unsubstantiated at the time (and still today) but has since been shown to be disharmonious even with the position the government is taking on the subject.

To summarise, Commander Cundy took a view but provided no transparency. That view supported a decision not to launch an investigation that would have had grave political consequences. In justifying that decision he offered only fallacious reasoning and based that reasoning on his interpretation of The Act, whose meaning is far from settled and is at the heart of the very investigation that he prevented when he presumed its meaning. Overall Commander Cundy's handling of the decision not to investigate the criminal allegations has the appearance, rightly or wrongly, of bias and outside influence.

My complaint is about the inherently unworthy means by which Commander Cundy purported to reach and defend his decision. Had he been open and transparent, and had he offered a credible rationale for his decision, there might well have been little about which to complain.

To characterise that as an "abuse" of the complaints system is at the very least absurd and at worst intimidatory.

Yours sincerely



 *for the Wolchover Action Group*