

Our reference: IPCC/PCA/3457

31 January 2005

Mr John Layte
Goonhillend
Goongumpus
REDRUTH
TR16 5JL

ipcc

independent
police complaints
commission

comisiwn cwynion
annibynnol
yr heddlu

90 High Holborn
London WC1V 6BH

Tel/Ffôn: 020 7166 3000
Fax/Ffacs: 020 7404 0430
Email/E-bost: enquiries@ipcc.gov.uk
Web/Gwefan: www.ipcc.gov.uk

Dear Mr Layte

I refer to previous correspondence in relation to your complaint.

As previously stated, the role of the IPCC, which is totally independent of the police, is to satisfy itself that your complaint against Devon and Cornwall Police has been properly investigated and to decide if, on the balance of probabilities, there is sufficient evidence to justify misconduct proceedings against any officer. The investigation file into your complaint was reviewed by the IPCC and you were informed of our provisional decision in our letter of 12 November 2004. You were given the opportunity to comment on this decision and/or to provide further evidence that had not been previously considered.

I am the Commissioner responsible for Devon and Cornwall Constabulary. I have reviewed the information supplied by you in conjunction with the file and have also taken into consideration the points you have raised with Ms Semple during your many telephone conversations with her. Any previous or current civil proceedings between you and Mr Arthur are a separate matter and the investigation into your complaint related only to your complaint against DC Exelby and as you set out in your statements to Police of 27 February 2004 and 27 April 2004 (attached), together with document JH11.

Attendance at the police station on 25 January 2004

You say that the purpose of your attendance at the station was to make a counter allegation against Mr Arthur and that, as a voluntary attendee, you were entitled to leave at any time. You say that you should not have been arrested and you deny stating that you would leave the interview/police station.

Both Dc Exelby and PC Carveth state that you said you would not remain at the station and DC Exelby then told PC Carveth to arrest you on suspicion of theft and both officers state that you were cautioned. Police have the power to arrest a person who is suspected of an offence to secure evidence by questioning, irrespective of whether that person attends a police station voluntarily or whether that person wishes to make counter allegations.

Mr Lanyon, in his statement does not recall whether or not you said you would leave the interview/station as he had left the room and only partly heard DC Exelby direct PC Carveth to arrest you as he was leaving.

Without any further independent evidence I am sure you will appreciate that it would be difficult, on the balance or probabilities to prove this aspect of your complaint at a misconduct hearing. The circumstances and information in DC Exelby's possession at that time did, in my view, provide him with reasonable grounds to arrest you.

Mr Lanyon

You state that you wished Mr Lanyon to remain during interview and that DC Exelby would not allow this.

DC Exelby states that he explained why Mr Lanyon could not remain and Mr Lanyon, in his statement, says that DC Exelby asked him who he was and why he was there. Mr Lanyon states that he told DC Exelby he was a witness to some of the background events to the case and DC Exelby told him that he could not remain as he was a witness.

DC Exelby states that he explained fully the reasons that Mr Lanyon could not remain and PC Carveth concurs with this.

If a police officer determines that another person could be a potential witness to criminal proceedings then he/she can refuse for that person to remain because of the possibility of evidence being tainted and its reliability therefore being reduced. It is a cardinal practice of criminal investigation to treat witnesses and suspects in this way.

In these circumstances there is no independent evidence to suggest that DC Exelby did not clearly explain the reasons that Mr Lanyon could not remain. It would have been improper for him to do so.

PACE Notice

You say in your letter of 7 December 2004 that the "PACE notice is the main reason you made a complaint against DC Exelby" and that "a pointless arrest followed by a pointless interview the PACE notice would not have been issued".

I should point out that you do not specifically mention the PACE notice in either of your statements to police or in the document JHL1 as being your main complaint. However, it is the view of the investigating officer that DC Exelby did not neglect his duty by arresting and questioning you. The PACE notice was issued as a result and, from what I have learned, is a routine police procedure where doubts about property ownership mean that the police cannot release an item to one person rather than to another until those doubts have been resolved by either a Court adjudication or an agreement between the parties.

This aspect of your complaint cannot be directly attributed to the actions of DC Exelby as it forms part of standard police procedure. The dispute or withdrawal of such a document is at the direction of the police and cannot be influenced by the IPCC in any way.

You were informed by the legal adviser to Devon and Cornwall Constabulary in his letter to you of 9 March 2003 (presumably 2004) that "your suggestion that the PACE notice served on yourself be withdrawn is, with respect, misconceived. The PACE notice remains entirely valid and proper because it is necessary to preserve the position of property which was the subject of a police investigation, is no longer the subject of a police investigation, although there is still a dispute, as a matter of civil law, as to who owns the machine. **When there is no longer a dispute as to who owns the machine, the PACE notice will be cancelled.**"

Withdrawal of the notice was always a matter, in this case, for decision by the police and could not be influenced by the IPCC. **I understand that the notice no longer has effect.**

The information you have provided to the IPCC does not constitute new evidence and, as such, we remain of the same view as that in our letter of 12 November 2004 that misconduct proceedings cannot be justified.

Yours sincerely



IAN BYNOE
Commissioner
Independent Police Complaints Commission (IPCC)

Enc. statements