

# Crime complaint (1) David Davis MP - Revised 27.9.17

## Complainant:

**Full Name:** ██████████

**Nationality:** British

**Residential Address:** -

**Telephone contact:** -

## Complaint :

**Place at which the alleged crime occurred:** Palace of Westminster, London SW1A 1AA.

**Date:** 31 January 2017

**Alleged crime:** Misconduct in Public Office

**By:** David Davis MP, in his official capacity as Minister for Exiting the EU.

## **Details:**

1. David Davis MP, Minister for Exiting the EU, in presenting the EU (Notice of Withdrawal Bill) told the Commons on 31st January 2017 **that a decision to Leave the EU had been made by the referendum of 23 June 2016.**
2. Hansard: *"The Bill responds directly to the Supreme Court judgment of 24 January, and seeks to honour the commitment the Government gave to respect the outcome of the referendum held on 23 June 2016. **It is not a Bill about whether the UK should leave the European Union** or, indeed, about how it should do so; **it is simply about Parliament empowering the Government to implement a decision already made**—a point of no return already passed. We asked the people of the UK whether they wanted to leave the European Union, and they decided they did. At the core of this Bill lies a very simple question: do we trust the people or not? The **democratic mandate** is clear: the electorate voted for a Government to give them a referendum. Parliament voted to hold the referendum, the people voted in that referendum, and we are now honouring the result of that referendum, as we said we would."*
3. ([https://hansard.parliament.uk/Commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion\(NotificationOfWithdrawal\)Bill.](https://hansard.parliament.uk/Commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion(NotificationOfWithdrawal)Bill.))
4. In case the meaning of this statement was unclear to observers, Lord Bridges of Headley, Parliamentary Under Secretary for Exiting the EU, made the Government view unambiguous in an official letter of 22 February 2017 from his department to Lord Lucas in reply to a question from Mr R. Bird (attached as evidence) :
5. *" Mr Bird also questions whether the Bill covers the decision to leave the EU as well as the mechanism of notifying the EU of our intention to leave. As stated in the Explanatory Notes, **the Bill is only intended to address the mechanism of notifying the EU** under Article 50(2) TEU, the **decision as to whether the UK should leave the EU has already been made through the referendum**".*
6. **The question is: Was a decision made through the Referendum?**

7. In presenting the EU Referendum Bill in June 2015 The Minister for Europe David Lidington said: "Amendment 16 (Alex Salmond) does not make sense in the context of the Bill. The legislation is about holding a vote; **it makes no provision for what follows. The referendum is advisory**, as was the case for both the 1975 referendum on Europe and the Scottish independence vote last year. In neither of those cases was there a threshold for the interpretation of the result."
8. Further confirmation of the advisory status was given to MPs in House of Commons Briefing Paper CBP 7212 of June 2015: section 5: "*This Bill requires a referendum on the question of the UK's continued membership of the European Union. It does not contain any requirement for the UK Government to implement the results of the referendum, nor set any time limit by which a vote to leave the EU should be implemented. Instead, **this is a type of referendum known as pre-legislative or consultative which enables the electorate to voice an opinion which then influences the Government in its policy decisions.***"
9. Parliament passed the Referendum Bill on that basis and with that clear intent.
10. The contradiction is clear;
11. **Legally, the EU referendum result itself cannot at the same time be both advisory, consultative, non-binding , and a decision in accordance with the UK's constitutional requirements.**
12. The Supreme court in *Miller* (<https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>) confirmed that only Parliament may make such a decision, which involves removal of rights originally granted by Parliament.
13. Yet Mr Davis **did not ask Parliament to make a decision. He specifically and knowingly stated to the House that the Bill was simply to approve the mechanism for a decision already made.**
14. ***This is a false and misleading statement made by an Officer of State, intended to achieve a political end and as such constitutes the Common Law offence of Misconduct in Public Office.***
15. Mr Davis cannot claim in defence to be ignorant of the untruthfulness of that statement and the law regarding the validity or invalidity of the referendum as a decision. In *Miller*, it is recorded that the government's legal team knew exactly what was required, as is abundantly clear from the following passage of the **Secretary of State's written submissions** to the SC (para 14d):
16. "*The surprising consequence of the DC judgment is that, if the outcome of the referendum is to be implemented, Parliament must decide to confer a new legal power on the government **to make that decision pursuant to Article 50(1) TEU** and to give notification of that decision pursuant to Article 50(2) TEU. In other words, if the UK is to withdraw from the EU, **Parliament must be asked to answer precisely the same question which was put by Parliament to the electorate** and has been answered in the referendum, and must give the same answer in legislative form.*"
17. No such question was put to Parliament in the EU (Notification of Withdrawal) Bill. Mr David Davis misled the Commons in his statement on 31 January 2017 with knowingly false statements concerning the legal standing of the EU Referendum result. This act amounts to an abuse of the public's trust in the office holder and as such constitutes the common law offence of Misconduct in Public Office.

**Signed by Complainant(s):**

██████████

**Date:**



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The Lord Lucas  
House of Lords  
London  
SW1A 0PW

Our ref: LB008182

22 February 2017

*Dear Ralph,*

Thank you for your email of 14 February which raised a number of concerns regarding potential technical and legal deficiencies in the European Union (Notification of Withdrawal) Bill which had been sent to you by Mr Richard Bird.

Mr Bird raises concern that there is no definition of the abbreviation of 'EU' in the Bill. Section 1(2) European Communities Act 1972, provides a clear definition of the term EU, as "*the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7th February 1992 (as amended by any later Treaty)*".

Further, this term was used in the Bill as it also covers the European Atomic Energy Community by virtue of section 3(2) European Union (Amendment) Act 2008. This is explained in paragraph 18 of the explanatory notes which accompany the Bill. I have attached a copy of the explanatory notes with this letter.

Mr Bird also questions whether the Bill covers the decision to leave the EU as well as the mechanism of notifying the EU of our intention to leave. As stated in the explanatory notes, the Bill is only intended to address the mechanism of notifying the EU under Article 50(2) TEU, the decision as to whether the UK should leave the EU has already been made through the referendum.

Thank you for passing this on, and I hope this letter provides you, and Mr Bird, the necessary reassurances as to the drafting of the Bill.

*Yours,*

*Guam.*

LORD BRIDGES OF HEADLEY MBE



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LORD BRIDGES OF HEADLEY MBE