

Richard Stott
Procurator Fiscal
Procurator Fiscal's Office
Sheriff Court House
Carnegie Drive
Dunfermline
KY12 7HW

Alan Stalker
SC/ADS/JD/KING
RGS/99/VR
15th October 2001

Dear Sir,

**FORMAL COMPLAINT
OUR CLIENT: THOMAS JOHN MINOGUE**

We act on behalf of Thomas John Minogue and his company Kingdom Engineering (Fife) Limited, and we write to (i) formally complain about the Procurator Fiscal Service's ("PFS") handling of an incident that took place in December 1999 and (ii) seek your written assurance that a full investigation of our client's complaint will be carried out with the outcome being reported to us. This formal complaint follows upon the letters from our court correspondents Macbeth Currie of the 9th and 10th December 1999 to the police and of the 21st and 24th December 1999 to your office, the intervening trial of Mr. Minogue and his acquittal by Sheriff Isobel McColl at Dunfermline Sheriff Court on 16th April 2001, and our letter of the [...] to the Chief Constable of Fife.

The following numbered paragraphs indicate the heads of complaint that, on behalf of Mr. Minogue, we would make against the PFS:

1. Supervision of the Police

The Procurator Fiscal is obliged [under statute] to [supervise] the operation of police activities within its jurisdiction. The attached letter to the Chief Constable highlights the very specific failures of the police to conduct themselves properly. We would also therefore address our complaints made therein to the Chief Constable to the PFS. Why did this occur? Was this a systems failure or a human error failure? What has been done or is being done to remedy it?

2. Consideration of Competing Accounts

Two very different explanations of the facts relating to the removal of the bridge parts were put forward – one by Sandy Brown / Railtrack / Dew Construction; the other by Mr Minogue.

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There would appear to have been no time at which our client's account of events was considered by the PFS. His explanation presented in law both a clear defence and an allegation of criminality against another. That is to say, his reasonable belief that the goods were his is a full defence to the removal of the goods, and the fact that these goods were his is a clear indication that the attempt by another to incorporate them into a greater structure is at least attempted theft.

The foregoing does not appear to have been addressed properly in the decision making process of the PFS, and the outcome of this is serious financial and personal hardship for Mr Minogue. Why did this occur? Was this a systems failure or a human error failure? What has been done or is being done to remedy it?

3. Analysis of Evidence

The evidence presented to the PFS by the complainer to substantiate its ownership of the bridge parts (or rather those parts being replaced) could not and did not substantiate that claim. This was conclusively proved in court. What steps did the PFS take to ensure that the wool was not being pulled over its eyes? Why did this occur? Was this a systems failure or a human error failure? What has been done or is being done to remedy it?

4. Agreement Regarding Seized Materials

An agreement was reached with junior police officers on tape, and senior police officer afterwards, that the materials removed by Mr Minogue would not be returned to the complainer. This agreement is covered in the said letter of the 21st December. The materials were returned to the complainer, the explanation being covered by your letter of the 22nd December. Many questions are raised by this – the following are merely a sample:

- (a) Why were the materials returned notwithstanding an agreement to the contrary?
- (b) How did the PFS decide who the rightful owner was?
- (c) How was that decision possible before the police report was delivered?
- (d) When did the PFS hear of the agreement between Mr Minogue's lawyers and the police?
- (e) What was then done to secure Mr Minogue's expectations?
- (f) Was such a deal within the power of the police?
- (g) If it was what was done to secure Mr Minogue's rights under the agreement?
- (h) If it was not what was done in the PFS's [supervisory] capacity in regard the officers making such a deal?
- (i) Notwithstanding the materials were not now available, why was it in the public interest to pursue Mr Minogue through the courts?

Taken collectively, these are serious defaults. Why did they occur? Was this a systems failure or a human error failure? What has been done or is being done to remedy it?

Summary

This letter is a brief summary of what can only be categorised as a serious indictment of the PFS in Fife. The failings of the PFS have seriously prejudiced our client's right to a fair trial, and have caused him significant financial and personal distress. Worse, they paint the PFS as an organisation that is unable to exercise sufficient control over the police or its own officers.

The PFS's role has led directly to our client's business - a business which focused latterly on railway work - being closed and nothing can properly undo the damage caused to our client and his former employees. However, we hereby, on behalf of our client, complain in the strongest possible terms about our client's treatment by the Police and the PFS and ask you to respond within 14 days with your proposals as to how our client's complaints will be dealt with. Something went very seriously wrong in your procedures and, at the very least, our client wishes to have a proper – albeit very belated – inquiry conducted, an unreserved apology issued and, most important of all, some public assurances about the steps which you are taking to ensure no other citizen in Fife will go through what Mr. Minogue has had to endure.

For the avoidance of doubt, we are treating this as an open and public letter and we would expect your reply to be similarly open and public.

Yours faithfully,

cc. Lord Advocate
Justice Minister
Regional Procurator Fiscal
[xxx Press Bureau]



BUSINESS LAW

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CONTACT ALAN STALKER
OUR REF SC/ADS/JD/060067
YOUR REF CAP52/2001
DATE 12 July 2002

Dear Sir

Thomas John Minogue
Complaint against the Police

We refer to our previous correspondence in this matter, and in particular to your letter of 30th January 2002. Our client does not accept the conclusions reached by Deputy Chief Constable Mellor in relation to his complaint, but the specifics of his opposition have now perhaps become moot.

It has come to our client's attention that Mr. Mellor is or has been investigated by the Chief Constable of another police force for alleged wrongdoing. Before we request formally, on behalf of our client, that Mr. Mellor's investigation be re-visited, we would be obliged if you would provide us, within 7 days of the date of this letter, full details of the complaint made against Mr. Mellor, the status and/or outcome of any investigation into such a complaint, and the relationship (if any) between the complaint and our client's complaint against the police.

Yours faithfully,

PART OF THE PAGAN OSBORNE GROUP

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