

Police ordered to declare they are not hiding evidence in rape cases

<https://www.thetimes.co.uk/article/police-ordered-to-declare-they-are-not-hiding-evidence-in-rape-cases-w78sllwpr>

David Brown, Chief News Correspondent

January 12 2018, 12:01am, The Times



Liam Allan and his mother Lorraine after the charges against him were dropped

BEN GURR FOR THE TIMES

Police investigating rape allegations are being ordered to declare that they have disclosed all evidence that could undermine the prosecution.

In response to growing fears that vital evidence which could clear innocent defendants may have been covered up, detectives have been told to provide details of all mobile phones seized and all material downloaded from them.

Procedures were reviewed after the trial of Liam Allan collapsed last month. Police had failed to highlight messages from the phone of his accuser that showed she was lying.

Mr Allan, 22, said after the case against him at Croydon crown court was dropped that he felt betrayed by police and the Crown Prosecution Service (CPS).

Prosecution and defence lawyers have become increasingly dismayed in recent months by the failure of police to disclose evidence, an omission that some have said could be attributable in part to a desire among police to reduce legal costs.

A spokeswoman for the CPS said that after the collapse of Mr Allan's trial, and other similar cases, police in London had been issued with a new "communication material assurance" form.

“The reinforced guidance relates to communications material on communication devices including mobile phones,” she said. “This is intended to be an aid to ensure that prosecution disclosure obligations have been complied with fully in relation to communication devices.

“The form offers reinforced guidance to ensure that disclosure obligations in relation to communications devices are being complied with. It was introduced after issues raised concerning disclosure in Rasso [rape and serious sexual offence] cases in mid-December.”

Some lawyers said that although the new forms were a move in the right direction, material collected by police should be reviewed by a prosecution lawyer to ensure that useful evidence had not been missed or covered up.

Scotland Yard announced before Christmas that it was reviewing the disclosure of evidence in all rape cases, including 30 in which trials were imminent.

The CPS and police both refused to reveal whether any other cases had collapsed, saying that they would not give a “running commentary” about the review.

A judge at the Old Bailey in London criticised police heavily last week for failing to disclose crucial closed-circuit television footage that led to the collapse of a trial against a man who spent a year in custody accused of attempted rape. The prosecution dropped its case against Mackele Tekleliamanot, 29, after CCTV and police camera footage contradicted the evidence of the alleged victim.

Recorder Bruce Houlder, QC, said: “What has happened in this case shows that something continues to be seriously wrong with the process of proper disclosure.”

The CPS was warned last summer about “widespread failures” to hand over important evidence. Six cases highlighted by inspectors included a child sex abuse prosecution in which police failed to give the defence a letter that contradicted the alleged victim’s evidence until the day before the trial.

Senior figures including a former lord chief justice and a former attorney-general have piled pressure on ministers to act over the failings exposed in the case of Mr Allan, a criminology student at the University of Greenwich.

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PB Joyce Jan 13, 2018

The problem with sexual accusations is there is a vicious circle of belief and policy. Start by believing the accuser and place the onus of proof, in effect, on the defendant. Remove the label "accuser" and replace it with "victim". Stress that you have policies which will lead to prosecution of false accusers, but identify them as vulnerable and prosecute them only in a tiny minority of egregious cases. Base the total number of false accusations on the resulting tiny number of convictions. Use that number to call false accusations "vanishingly rare", and here we are back home again, with the dogma that the accuser must be believed.

Flag

1RecommendReply

MJHH Jan 12, 2018

Men or women who make false accusations against another, should be held accountable for their actions. They should be cautioned before their statement is taken, and have to swear that it is accurate, and if it is proved to be false they themselves will be charged with perjury. This might save the police wasting their time on unfounded accusations.

Flag

12RecommendReply

lanasmarsbar Jan 12, 2018

@MJHH I always thought such a declaration was already a standard part of a formal Statement.

Flag

2RecommendReply

Graeme Harrison Jan 12, 2018

@lanasmarsbar @MJHH

Like this, lanasmarsbar?

<https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-pr-form-Part27-witness-statement.pdf>

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2RecommendReply

CeeDee Jan 12, 2018

@MJHH This furore seems to stem from one person; Ms Saunders, DPP. In trying to correct what she saw as a failure of the system to produce enough convictions in rape allegations she made various statements which surely must have impacted on both police and CPS staff procedures. During her interview with John Humphrys on Radio 4, last October, she claimed "*Just because there has been an acquittal doesn't mean there has been a false allegation. What it means is the defendant has been found innocent, but it doesn't necessarily mean there is a false allegation.*"

That statement might stand in Scotland where a case has resulted in a 'not proven' verdict, but if a defendant has been found "innocent" (her word not mine) then that surely must mean that the original allegation was factually incorrect, in other words false. Seeking on-line the difference between the two adjectives, I find "*As adjectives the difference between incorrect and false is that incorrect is not correct; erroneous or wrong while false is untrue, not factual, factually incorrect.*"

This further blossomed to police referring to "victims" rather than "claimants" which definitions were criticised by Sir Richard Henriques, the retired High court judge, whose report resulted in police being told to consider dropping the term 'victim' and the 'automatic belief' policy amid concern it was clouding their impartiality during the investigation process. From where did this 'automatic belief' policy originate? I think we can guess the answer to that.

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5RecommendReply

Michael Dawlish Jan 12, 2018

@MJHH Part of the problem is that people are found guilty on the basis of beyond reasonable doubt. Being found not guilty doesn't mean the person bringing the case lied.

Flag

RecommendReply

lancsmarsbar Jan 12, 2018

@Michael Dawlish @MJHH The person does not 'bring the case'. The person makes a 'complaint' with statements taken which form the basis of the allegation. If the CPS decide to prosecute on the basis of this and other evidence it is their decision alone. If the basis of the prosecution case is so fundamentally weak that a jury acquits in thirty minutes then the truthfulness or otherwise of the complainant's evidence should be put before a jury in a trial for perjury. The consequences for both complainant and accused are far too serious to be left to the mercy of loose thinking, abandonment of proper legal principles and process, and iniquitous conviction targets.

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4RecommendReply

Michael Dawlish Jan 12, 2018

@lancsmarsbar @Michael Dawlish @MJHH I accept you are correct in all respects. There seems to be a general feeling that if a defendant is acquitted the complainant must have lied: as you say that would be subject to a separate case.

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1RecommendReply

Wanderer Jan 12, 2018

@MJHH Claimants should make accusations in video in the same way the accused are treated. Currently 'support' is provided to write a statement in unknown circumstances over a period of time. Accusers should be advised independently that making any accusation or statement is a very serious matter. It is too late to wait until a statement is prepared and the declaration is a legalistic sentence on the document. Given the seriousness of the process most other walks of life would nowadays require all sorts of controls; a 'cooling off' period, independent support, right of cancellation. Some may do so in the heat of the moment or for other reasons, many are probably not aware of the risks and consequences for them let alone the effect on the accused. The ratcheting 'automatic belief' policy may suit those seeking targets to aid their promotion but is dangerous for the citizen.

Many 'accusations' should be handled outside of the legal system and support provided to all parties.

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3RecommendReply

Germann Arlington Jan 12, 2018

"Police ordered to declare they are not hiding evidence in rape cases"

What does that mean?

It is their job to disclose all evidence, do they have to declare that they are doing their job properly?

Maybe we should require politician to declare that they will be doing their job to the best of their abilities and will fulfil their pre-election promises too?

Come to think of it maybe we should require journalists to declare that they presented all truth in their articles too?

Flag

3RecommendReply

Lalla Jan 12, 2018

@Germann

Off-topic.

Flag

1RecommendReply

Germann Arlington Jan 12, 2018

@Lalla

Yes, I agree the dig at the politicians was off-topic - we should never discuss the conduct of our political masters.

Flag

1RecommendReply

Lalla Jan 12, 2018

@Germann

Don't try and be clever. You are so transparent.

The subject of this article is about the legal system not "our political masters".

Flag

2RecommendReply

Germann Arlington Jan 12, 2018

@Lalla

Should I try to be stupid? It is so much easier to rule the sheep.

The subject of this article is our legal system.

I was just wondering why our legal system may require the police to declare that they are doing their job properly?

Do you sign a declaration that you have done your job to the best of your abilities at the end of every working day?

The police must disclose all evidence simply because even something that they may think is irrelevant may turn out to be crucial for the defence.

I would argue that those policemen who **don't disclose all evidence** should be charged with attempting to pervert the course of justice.

Yes, politicians were off-topic here but still true. Not many politicians know how to keep their promises and do their job properly.

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2RecommendReply

Bernadette Bowles Jan 12, 2018

@Swiss Tony The point is that they have not been doing their job properly in all cases, as we now know.

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Dr Nick Cornish Jan 12, 2018

Why not just make it a rule that all evidence and material the police collect must be disclosed and provided to the defence?

Flag

12RecommendReply

fghi Jan 12, 2018

@Dr Nick Cornish

Because there are cost issues. The police take enormous numbers of statements from people who were near the scenes of crimes but saw nothing relevant. There are hundreds of hours of CCTV footage that doesn't show anything significant. If that evidence is disclosed, then lawyers have to be paid to read it and view it.

Flag

1RecommendReply

Matt Jan 12, 2018

@fghi @Dr Nick Cornish

A £5 hard drive could hold many thousands of hours of CCTV footage.

In the context of a police investigation and prosecution, £50 plus 10 minutes labour would be a rounding error.

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5RecommendReply

Matt Jan 12, 2018

@fghi @Dr Nick Cornish

* obviously that should say £50 hard drive.

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RecommendReply

fghi Jan 12, 2018

@Matt @Dr Nick Cornish

And what is the cost of 1000 hours of defence lawyers' time at legal aid rates?

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1RecommendReply

Brian Burnell Jan 12, 2018

@fghi @Matt @Dr Nick Cornish

And what is the cost to the acquitted defendant of a ruined life and reputation?

Flag

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Lucy's dad Jan 12, 2018

@fghi @Matt @Dr Nick Cornish

And if you are the defendant??

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1RecommendReply

Bernadette Bowles Jan 12, 2018

@fghi @Matt @Dr Nick Cornish What of the cost of prosecuting the wrong person, then having to compensate them and starting the investigation over again?

Flag

2RecommendReply

Germann Arlington Jan 12, 2018

@fghi @Dr Nick Cornish

"The police take enormous numbers of statements from people who were near the scenes of crimes but saw nothing relevant."

The police may take a statement from a witness who did not see what was happening at the crime scene but they could have seen the accused walking in the opposite direction few minutes before the crime was committed. It would be very relevant to the defence but absolutely irrelevant to the prosecution.

Flag

2RecommendReply
fghi Jan 12, 2018
@Germann Arlington

In that case the witness saw something relevant.

If you are disclosing everything, that means you are disclosing the witness statements from the 20 neighbours who were asleep or in Benidorm or were watching television or were at work and saw and heard nothing. You are then paying a prosecution lawyer and a defence lawyer to read them.

Flag

1RecommendReply
Bernadette Bowles Jan 12, 2018
@Swiss Tony @fghi @Dr Nick Cornish No, it would be relevant to both. If they had proof that their suspect was not at the scene they need to stop wasting time and money on him and look for someone else. The sooner they can rule a suspect out the more money they save.

Flag

1RecommendReply
VH-EAH Jan 12, 2018
@fghi @Dr Nick Cornish

Mr. VH here....

So cost is more important than justice? Is it more cost effective to imprison an innocent person than to spend the time reviewing the evidence?

It would be truly shocking if people were to be sacrificed at the altar of conviction stats and cost savings.

Flag

5RecommendReply
fghi Jan 13, 2018
@VH-EAH @fghi @Dr Nick Cornish
Cost is always relevant to justice. If a crime is too expensive to prosecute, then the reality is no-one is prosecuted for that crime

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RecommendReply
Bernadette Bowles Jan 12, 2018
@Dr Nick Cornish It was; some years ago they were allowed not to pass on some evidence if they had read it and found it was of no relevance. We need to change it back.

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3RecommendReply
Robert Holmes Jan 12, 2018
isn't failure to declare evidence a criminal offence. remedy: prosecute the chief constable and crime commissioner pour encourager les autres with no option to retire out of the situation.

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NR Jan 12, 2018

Applying the law and providing for a fair trial. Well that's driven a cart and horses through Alison Saunders targets for convictions.

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16RecommendReply

JohnB Jan 12, 2018

What would Robert Peel say if he could see what has happened to his wonderfully conceived police force in the 21st century? Disgraceful.

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John Austin Jan 12, 2018

I'd suggest making failure to ensure proper disclosure a tort, with a right of action given to those wrongfully remanded in custody.

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6RecommendReply

Michael Doughty Jan 12, 2018

So it's only in rape cases that the police have to be truthful?

Flag

13RecommendReply

Andrew Lee Jan 12, 2018

The root of the problem is the system that says the prosecution get to decide whether material is something the defence might find useful. Given they want a conviction, the defendant will not trust them to be independent when making this assessment (despite the sterling efforts of advocates like Jerry Hayes). The answer is surely that all documents must be disclosed, and any sensitive documents are to be reviewed by a judge?

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20RecommendReply

Martin R Jan 12, 2018

Thats OK though it is only men that are suffering and in the eyes of the law we are second class citizens.

Flag

7RecommendReply

putneytony Jan 12, 2018

Is there any evidence that the police only withhold evidence in rape cases? So surely what is required is a more general order.

Flag

8RecommendReply

MG Jan 12, 2018

@putneytony IIRC in the original article in this paper about the Liam Allen case, an assault case was mentioned as well.

Flag

2RecommendReply

peter openshaw Jan 12, 2018

Rape, and the law pertaining to it, is a mine field. It is now codified, but let us return for a moment to the common law. Guilt requires 2 elements, actus reus and mens rea, the act itself and the criminal intention. In the case of rape, this comes down to the notion of consent.

I am very far from a lothario, almost embarrassingly so, but at the age of 66 I have never had consent, who has? It is implicate. The law needs to get to grips with this fundamental fact.

Were one to snatch my wallet from my hand (it has happened), I would hotfoot to the police station to say when, where, why and how. Codification apart, the notion of innocence until proven guilty requires evidence of the absence of consent. I do not pretend to know how such a concept could be written down, but a start would be that consent would be presumed unless the contrary be reported within 24 hrs - ample time to sober up.

I am the very last to condone rape, from the most violent to the most insinuating, but if we are to see a halt in the collapse of rape cases then the law needs to recognise the flaws in the code as it exists. This means evidence of non-consent - harsh but true.

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20RecommendReply

Freebooter Jan 12, 2018

Poseur? Moi? In your respect mens rae definitely applies.

Flag

RecommendReply

peter openshaw Jan 13, 2018

@Freebooter I am pleased to have your respect. My intention is not to justify bad behaviour, quite the opposite.

Flag

RecommendReply

Gerryco Jan 12, 2018

@peter openshaw That is a different issue from that of disclosure of unused material, which is what this article is all about.

Flag

4RecommendReply

peter openshaw Jan 13, 2018

@Gerryco @peter openshaw True, but the issue is evidence.

Flag

RecommendReply

Robert Highfield Jan 12, 2018

@peter openshaw There used to be a requirement to show early complaint, in the absence of any other corroborating evidence. However, pressure groups, including the press, have been pushing for years to improve the conviction rate in sexual assault cases. That has been historically low because when the couple are acquainted, it is one word against the other. I strongly suspect police and the CPS have been bowing to this pressure and justice has been lost sight of. It matters not whether it is rape or robbery, the standards of evidence and the requirement for 'beyond reasonable doubt' should be the same.

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22RecommendReply

Joe in Suffolk Jan 12, 2018

@peter openshaw so are you saying that a rapist who assaults a woman at night, say on her way home from work, can claim that she consented by default?

Flag

RecommendReply

Mrs Ruth Bruce Jan 12, 2018

@Joe in Suffolk @peter openshaw

@peter openshaw

a rapist who assaults a woman at night, say on her way home from work, can claim that she consented by default?

Of course he can. They sometimes do. Whether he would be believed is another matter.

A woman in that situation would resist and call for help. She would report the assault as soon as possible. There would be the corroborating evidence of her distress, probably damaged clothing, possibly bruising and of course medical evidence of intercourse. A claim of consent would be implausible, and the rapist would be lucky indeed to get away with it.

That is a very different situation from the one where a couple are together, even perhaps naked together in bed, and afterwards (sometimes after several days) a complaint is made that the woman did not consent (perhaps to a specific act) or that she at some point withdrew consent. Those are the cases where one person's word against another is all the court has to go on.

It is hard to see how one can be sure of doing justice if presented with that situation. I am glad that I have never had to try.

Flag

10RecommendReply

Donald Stickland Jan 12, 2018

@peter openshaw ... my goodness:

Is your personal life that complicated for you in Dinan, Brittany, France ?

Flag

RecommendReply

peter openshaw Jan 13, 2018

@Donald Stickland @peter openshaw No more than elsewhere, probably less, thanks.

Flag

RecommendReply

Robert Hughes Jan 12, 2018

See no reason why materials are not immediately available to the defence. Evidence should be logged, recorded on an open access system - open to prosecution and defence. Nothing not recorded may be used by the prosecution side and anything logged is available on demand by the defence.

-

Furthermore evidence likely to undermine the prosecution case or assist the defence that is not logged and thus hidden from the defence must result in a criminal charge for perverting the course of justice.

-

That should concentrate minds.

Flag

12RecommendReply

Gerryco Jan 12, 2018

@Robert Hughes So if you were a victim in a genuine case, be it of rape, gbh, threats to kill or whatever, you would be happy for the defendant to read all the text messages and contacts recorded on your phone even if they were nothing to do with the case? And those people whose details are there simply because they know you would not object to that criminal having their details too?

No, of course the police and CPS need to vet such material, to select any material which might help the defence case and disclose only that. The problem is that those organisations have had to make so many budgetary and staff cuts that they do not have the person-hours available to sift through all electronically recorded material, which these days can be copious.

Flag

5RecommendReply

Robert Hughes Jan 12, 2018

1) You don't record as evidence material that has "nothing to do with the case".

-

2) There is a conflict between your assertion that "of course the police and CPS need to vet...material, to select any material which might help the defence..."

And:

"they do not have the person-hours available to sift through all electronically recorded material..."

-

How do you propose resolving this conflict?

Flag

4RecommendReply

Graeme Harrison Jan 12, 2018

"1) You don't record as evidence material that has "nothing to do with the case"."

And who decides that a piece of information does or does not have anything to do with the case?

Flag

6RecommendReply

mick Jan 12, 2018

@Gerryco @Robert Hughes I have just printed 2 years of What App messages which runs to 350 close typed pages of A4.

However each individual message is prefaced with the date and time so it is relatively easy to identify any messages within, say, a 2 or 3 week time frame that could be relevant to any investigation.

Flag

7RecommendReply

Martin R Jan 12, 2018

@mick @Gerryco @Robert Hughes I find it interesting that the police / CPS would be OK for a man to go to jail for 10, 20, 30 years because they dont have enough time to check WhatsApp messages, texts or Facebook spanning as Mick points out a few weeks before or after.

Especially if the defence said that such activity took place between the two people involved.

It seems value of police time for say a weeks work is higher than a man being in jail for decades.

Flag

13RecommendReply

Bernadette Bowles Jan 12, 2018

@Gerryco @Robert Hughes Wrong. The law always used to demand that the defence was given everything, relevant or not. The change was made some years ago when CCTV started to become so common, so that the prosecution was supposed to review everything but could make a legal statement that certain documents or other evidence had been reviewed and found to be irrelevant to the charges laid, and they need not be given to the defence. It seems that the prosecution is either not bothering to review much of the evidence, or is deliberately hiding proof of innocence, so the law should be reinstated in its original form.

Your objection could only apply to a defendant in person, which is uncommon, and specific guidelines could be agreed in such cases, such as an independent lawyer being employed to check the evidence.

Flag

1RecommendReply

Gerryco Jan 12, 2018

@Bernadette Bowles @Gerryco @Robert Hughes I'm afraid you simply don't know the history of the law on disclosure of unused material. It has long insisted that all of it (except for so-called sensitive material, e.g. informant identification) is disclosed to the defence, but only summarised in a schedule prepared by the police. If material tends to undermine the prosecution case or assist the defence

case, it is given/copied to the defence. The law has never given the defence better access to unused material than this. CCTV had nothing to do with it.

On your final point, whether a defendant is or is not represented is irrelevant to what may be disclosed under the statutory regime, because a defence solicitor cannot refuse to shown information received to his/her own client.

Flag

RecommendReply

peter openshaw Jan 12, 2018

Any police officer shown to have concealed such evidence should be convicted of perversion of the course of justice.

Flag

22RecommendReply

peter openshaw Jan 12, 2018

That such an instruction is necessary is, of itself, a massive indictment of the system. It is quite unbelievable that we have reached this point.

Flag

23RecommendReply

Avicenna Jan 12, 2018

The dead line for hand over should be one month, not days. Any officer found to have retained evidence should be sacked with loss of pension rights.

Flag

22RecommendReply

Freebooter Jan 12, 2018

" are being ordered to declare that they have disclosed all evidence that could undermine the prosecution."

A definite cop-out - no mention of being forced to hand over material that could help the defence which is definitely not the same thing. Nobody apart from the defence team is entitled to make a decision on what evidence that the police have could be beneficial to the defence.

All evidence must be passed to the defence in all cases as a matter of course.

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36RecommendReply

Brian Davies Jan 12, 2018

@Freebooter My feeling too.

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8RecommendReply

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