

JAMES KEELEY

[HTTPS://WWW.THETIMES.CO.UK/ARTICLE/WE-MUST-OVERHAUL-THE-OUTDATED-DISCLOSURE-SYSTEM-887V9JWQS](https://www.thetimes.co.uk/article/we-must-overhaul-the-outdated-disclosure-system-887v9jwqs)

## *We must overhaul the outdated disclosure system*

James Keeley

January 18 2018, 12:01am, The Times



Liam Allan with his family and friends after the rape case against him collapsed  
TIMES PHOTOGRAPHER BEN GURR

The rule of law is hanging by a thread in the criminal courts in this country. The main problem, as highlighted through the publicity of cases such as [Liam Allan](#), the student falsely accused of rape, is the difficulty of how the disclosure of unused material is approached and handled. It is time for the system to be overhauled and fixed.

It is clear how the disclosure regime has become a concern for all those who want to maintain and uphold justice. The way we communicate with each other has undergone a revolution over the past quarter of a century. The birth of the internet, the mobile phone and social media have given us myriad ways of interacting with each other. Society has adapted and embraced change leading to us being more in contact with each other than at any time in history.

Therefore, especially in sexual allegations, investigating officers are faced with a mountain of data that may support or undermine any case. Such is the underfunding of the police it is impossible for them to cope with such a vast amount of material. Similarly, spending cuts have placed the Crown Prosecution Service (CPS) in a similar situation, despite the best efforts of dedicated and hardworking lawyers and case workers.

The courts, understandably, trying to limit delay especially for complainants who have made allegations of sexual assault are target- and deadline-driven. The criminal courts have become a no-adjudgment zone. The conditions for vital information to be overlooked and missed are near perfect.

However, the problems are not just limited to volume and lack of resources. It is a bitter irony that in an age where we can share information easier than ever before there is a lack of inter-agency communication between those who give support to complainants in sexual cases. This leads to situations important material may go unnoticed.

Despite the enormity of the problems the answers are straightforward. The most obvious immediate remedy is for billions of pounds of public money to be spent ensuring that the police and the CPS have adequate funding and human resources. In reality, this will not happen. A much more cost effective way of ensuring that justice is done is for members of the independent Bar who prosecute any criminal case to be paid in respect of advising on, reading and the making of disclosure. This would send out a clear message to the public that the government want to keep this country as the leader in the world in respect of the provision of justice.

The courts need to be aware of the problems faced by those who are responsible for and conduct prosecutions. They should be receptive, in exceptional cases, to grant applications for adjournments to ensure that full disclosure has been done.

The message needs to be sent out to all agencies that provide support to complainants that they need to communicate with each other. This would be beneficial for them, for the person that they assisting and any investigation. Enhanced training for police officers and case builders as to how to compile comprehensive non-sensitive and non-sensitive unused material would also be welcomed.

The advent of artificial intelligence may well ease up the process of going through voluminous data. The prosecution and defence counsel could agree the perimeters of any search to be conducted by way of artificial intelligence. Material could be identified within seconds, saving time and money.

If change does not come soon in respect of the way disclosure is dealt with we will face years of endless appeals in the Court of Appeal. This would be a disaster for an innocent defendant and genuine victim alike.

**James Keeley is at 36 Bedford Row and specialises in the conduct of trials involving sexual allegations. He is a member of the Criminal Bar Executive and an elected member of the Bar Council**

---

### Related links

---

LIAM ALLAN CASE

[Innocent student's two years of torment](#)

**David Brown**

Liam Allan had planned initially to take a law degree but later decided to study criminology because he was...

December 15 2017

Comments are subject to our community guidelines, which can be viewed [here](#).

11 comments

+ Follow

Post Comment

Newest | Oldest | Most Recommended

BigJim Jan 25, 2018

An alternate way would be to simply focus the minds of the 'professionals' involved.

A few prosecutions for perverting the course of justice and some Misfeasance in public office cases pursued through the civil courts of CPS staff and Police officers, and of course the sacking of the current DPP...and the problem of disclosure could be sorted in a jiff, without recourse to an expensive and unproven AI ('can't pass a Turing Test') solution.

Sometimes the best route is the quickest and cheapest one.

Flag

1RecommendReply

Gerryco Jan 18, 2018

The article points out the real resource problem facing both police and CPS. But to suggest that the issues could be resolved by a couple of barristers sorting things out in a trice is arrogant and unrealistic.

Flag

RecommendReply

Dennis Clarke Jan 18, 2018

the author may wish to heap praise on the police and CPS lawyers and give excuses on their behalf but the truth is that if the CPS and the police were open in their certificates claiming they had dealt with their obligations in accordance with the law then the defence would be forewarned and the material that is untested by the prosecution should then be given to the defence. The rules exist. The rules should avoid these issues.

Unfortunately for the system to operate (administratively) the courts will too often assume the prosecutors have done their job perfectly and the defence is fishing. Personal responsibility and professionalism have been (almost) taken out of the system.

This will continue to be the case all the time people with a voice claim, contrary to the assertion given by the DPP to Parliament, that the CPS is underfunded.

Flag

2RecommendReply

Mr Peter Cuthbertson Jan 18, 2018

Sadly, this disgraceful situation putting innocent people in danger of a loss of liberty is the result of justice on the cheap.

Flag

6RecommendReply

Saint John Jan 18, 2018

What is unclear to the lay person is how the police or cps can refuse a request for -say- phone records on the grounds that they don't think they contain anything relevant .

Why doesn't the defence have access to the same data as the prosecution as a matter of right ? That way both sides use the same material .

Flag

4RecommendReply

Graeme Harrison Jan 18, 2018

Could it be because the prosecution has access to vast quantities of data belonging to third parties that has nothing to do with the matters under investigation and which those third parties might reasonably object to being passed on to possible criminals who might then use for their own nefarious purposes?

Flag

1RecommendReply

Saint John Jan 18, 2018

Possibly but it seems bizarre that the prosecution can effectively say what they think is relevant . And thus deny the defence vital material . Surely both sides must have the same evidence . A defence lawyer may see something crucial that the prosecution have missed . And recent cases suggest this is not uncommon .

In a number of cases this was phone records which were said to contain nothing but did . And worse the prosecution side said they had reviewed it and actually hadn't .

Flag

4RecommendReply

Graeme Harrison Jan 18, 2018

In that case, wouldn't the more sensible solution be for the police and CPS to do their jobs properly while ensuring that confidential data which has no possible bearing on the case remains confidential?

Flag

RecommendReply

Saint John Jan 18, 2018

@Graeme Harrison

No because they are not impartial- they are for the prosecution .

Flag

2RecommendReply

Aly Fitch Jan 21, 2018

Totally and every Defendant is entitled to see what may or may not convict him. It's a terrible state of affairs in criminal justice right now and if it doesn't change we could all fall foul of the system. I hope those in a position to change the "cat and mouse" game Criminal Justice has become do so otherwise our law will erode.

Flag

RecommendReply

Wilbers Jan 18, 2018

The bar can be relied upon to disclose appropriately when they are aware of the information, as happened in Mr Allen's case. The problem lies with the police who do not show everything to the prosecutor. The suggested route would not prevent judgements being made by the investigators about what is relevant and what is not and what is provided to the barrister and what is not. It is not practical for the bar to trawl through all the material collected in an enquiry especially for example in a complex fraud. The answer must lie in better training of investigators and an impartial approach by them to the material they gather. Only they know the whole picture. The direction to act on a sexual complainants version as if it were true, militates against this. It is perfectly possible to treat such a person with kindness and respect whilst keeping an open mind. A failure to do so does not recognise that he/she may not be the victim but the purportator of crime and fails to balance the interests of the parties.

However anyone working in the criminal justice system knows that social media records are a rich source of evidence for both sides. The failure to disclose them in a case which played out against an existing relationship between the parties was unforgivable and hard to explain in terms of a "mistake". The attitude that led to the refusal to disclose the records is what needs to be changed.

