

# Liam Allen: So Close to a Miscarriage of Justice

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It would be very easy for this article to descend into a rant; a piece bashing the police for their failure to investigate and review evidence properly and the Crown Prosecution Service for their failure to disclose evidence properly. However, this is not the purpose of this piece. It must be recognised that both organisations are over-stretched and over-worked, whilst being under-funded and under-manned. In those circumstances, it is remarkable that cases such as this don't happen more often. Instead, this article will review, in general terms, where the statutory requirement for the police to review all lines of inquiry comes from and the requirements for evidence unearthed by such enquiries to be disclosed to the defence.

## Background: Liam Allen's Case

For those that don't know, what happened was this: Liam Allen was accused of rape by a woman with whom he maintained he had enjoyed a consensual sexual relationship. He alleged that the woman was making false accusations due to his refusal to continue the relationship once he went to university. On the other side of things, she told the police that she did not enjoy sex. The end result was Mr Allen being charged with six counts of rape and six sexual assaults. He has been standing trial for those alleged offences at Croydon Crown Court this week (w/c 11 December).

Yesterday (14 December), that trial collapsed when text messages sent by the complainant emerged. These numbered 40,000 and were on a disk held by police. These texts included those sent by the complainant to Mr Allen requesting sex, as well as those she sent to friends informing them how much she enjoyed it with Mr Allen. The messages also detailed her fantasies of rape and violent sex.

On these messages emerging, Mr Jerry Hayes, prosecuting, quite properly offered no evidence. He also apologised to Mr Allen for "a terrible failure in disclosure which was inexcusable". All charges against Mr Allen were dismissed.

### All Reasonable Lines of Enquiry

The duty to pursue all reasonable lines of enquiry originates from the Criminal Procedure and Investigations Act 1996 ('CPIA'). Section 23 stipulates that:

- (1) The Secretary of State shall prepare a code of practice containing provisions designed to secure –*
- (a) That where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued.*

This is expanded on in the CPIA Code of Practice, paragraph 3.5, which indicates that these lines of inquiry should be followed “whether these point towards or away from the suspect”.

The same paragraph expands on what lines of inquiry will be considered “reasonable” and notes that “what is reasonable in each case will depend on the particular circumstances”. Furthermore, and of particular relevance to Mr Allen’s case, “it is a matter for the investigator to decide which material on [a] computer it is reasonable to inquire in to, and in what manner”.

In Mr Allen’s case, Mr Hayes has indicated that no review of the text messages on the computer disk had been conducted. Was it “reasonable” for the police to be expected to look into the disk? Certainly. One wonders how text messages sent by the complainant could not be relevant to the case of *both* sides, not just Mr Allen. Giving them at least a cursory glance would be reasonable.

### Disclosure

Had the text messages been uncovered earlier in the lengthy investigation process, they would have fallen to be considered under the test for prosecution disclosure. This is outlined by section 3(1)(a) CPIA, and requires that a prosecutor must

*“disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused”*

Subsection 3(2) CPIA expands on what is meant by “prosecution material”:

(2) *For the purposes of this section prosecution material is material –*

*(a) Which is in the prosecutor’s possession and came into his possession in connection with the case for the prosecution against the accused, or*

*(b) Which, in pursuance of a code operative under Part II, he has inspected in connection with the prosecution against the accused*

Again, then, in Mr Allen’s case we return to the position that the failure by the police to review the material has frustrated the disclosure process.

However, in an attempt to be entirely fair, it must be conceded that Mr Allen may not have stated that the sexual activity between him and the complainant was consensual, or that she continued to request that the two continue to engage in it, at an early stage of the investigation. He may, for example, have provided a no comment interview. As such, the police and prosecution would not have known his defence at the first point that the messages could have been disclosed.

But Mr Allen will have been required to provide a Defence Case Statement to the court and the prosecution well in advance of his trial. By section 6A CPIA, this must:

1. Set out the nature of his defence;
2. Indicate the matters with the prosecution case with which he took issue and why.

It is inconceivable, therefore, that Mr Allen had not alerted the Crown of his defence prior to the trial. Indeed, certain newspaper reports suggest that his representatives had asked for the messages on several occasions, only to be rebuffed. On receiving his Statement, the prosecution should have fully reviewed all the material it held, including the messages, in the light of the it (section 7A(2)(a) CPIA). The messages should have been disclosed then. But again, it should be noted that the police had not reviewed the disk, therefore the CPS could not be expected to know that the messages existed and could not consider them for disclosure. It is a relief for all that Mr Hayes was notified of their existence in time to insist on their disclosure to Mr Allen.

### Conclusion

As stated at the start of this article, I do not wish to bash the police and CPS for perceived failings in Mr Allen’s case. I appreciate that I may have strayed close to doing so at points, but I hope to have been justified if I have and not gone overboard in doing so. However, this episode does serve to underline the importance of the provisions outlined above – those on

both sides would do well to be fully aware of them to ensure cases such as Mr Allen's remain a rarity.

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