

# **The Legal Effect of Miller and Dytham and Their Relevance to CRN 6029679/21, Operation Talla and the 2023 Judicial Review Decision**

**Edition 2 - Updated**

**Author: Ian Clayton**

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## **1. Introduction**

Two authorities of the courts of England and Wales are directly relevant to the legal duties engaged when police receive and formally record allegations of criminal conduct:

- R (Miller) v College of Policing [2020] EWHC 225 (Admin)
- R v Dytham [1979] QB 722

These cases did not create new principles. They clarified and reaffirmed the legal duties already incumbent upon police officers once criminal allegations fall within the scope of their public duties.

The relevance of these authorities lies not in interpretation but in application. They describe what the law requires when certain factual conditions exist.

## **2. The Legal Position Established in Miller**

The High Court in Miller examined whether national policing guidance could treat the recording of a crime or incident as merely administrative or neutral in character.

The Court rejected that premise.

The judgment makes clear that recording an allegation is not legally inert. Recording is an act with legal consequences. Among those consequences may be the engagement of duties on the part of the police, depending upon the nature of what is recorded and the statutory or common law obligations arising from it.

The important legal principle arising from Miller is therefore this:

The legal character of police conduct is determined by its substance, not by the label applied to it.

Thus, describing police activity as an “assessment,” “review,” or “evaluation” does not determine whether it is investigative.

If the substance of the activity involves examining information to determine whether criminal conduct occurred, it is investigative in nature as a matter of law.

### **3. The Significance of Dytham**

Where Miller addresses when legal duties may arise, Dytham addresses the consequences of failing to perform a duty which exists.

In R v Dytham, the Court of Appeal upheld the conviction of a police officer for misconduct in public office where:

- a duty existed,
- the officer knew of that duty,
- and the officer wilfully failed to perform it.

The decision establishes a core constitutional principle:

A public officer who deliberately fails to perform a duty imposed upon him by virtue of his office may commit a criminal offence.

The duty need not be complex or burdensome. The offence lies in deliberate inaction where action is required.

### **4. The Combined Legal Effect of Miller and Dytham**

When read together, the authorities establish a coherent legal framework:

- Where facts arise which engage a policing duty, that duty exists in law regardless of how the activity is described.
- Once such a duty exists, officers are not legally free to decline to perform it.
- Terminology cannot lawfully be used to avoid the existence of a duty.
- Substance governs legal character.

Accordingly, where police examine information to determine whether criminal conduct has occurred, the activity is capable of constituting investigative activity in law even if it is described administratively.

## **5. Application to CRN 6029679/21 and Operation Talla**

According to the documented account:

- A crime reference number was issued.
- Officers were tasked with reviewing material submitted.
- Decisions were taken within a command structure.
- The matter was later characterised as involving “no investigation.”

These elements raise a legal question rather than a rhetorical one:

- Whether activity that substantively involved examination of material could lawfully be characterised as non-investigative.

Under the principles clarified in Miller, the legal nature of conduct depends on what was done, not what it was called.

Under the principles affirmed in Dytham, failure to perform an existing duty may carry legal consequences.

## **6. Relevance to the 2023 Judicial Review Decision**

It is recorded that the High Court refused permission for judicial review in 2023 on the basis that no criminal investigation had taken place.

Courts necessarily decide cases based on:

- the evidence before them, and
- the legal arguments advanced.

Where a court proceeds on a premise that no investigation occurred, yet the legal definition of investigation depends on substance rather than label, a legal question may arise as to whether the premise relied upon reflects the full legal position.

That observation concerns legal completeness, not judicial fault.

## **7. Wider Constitutional Implications**

The principles established in Miller and Dytham are systemic rather than case-specific.

They exist to ensure that:

- police duties are determined by law rather than administrative preference, and
- legal obligations cannot be avoided through terminology.

If police were able to treat substantively investigative conduct as non-investigative purely by description, statutory and common-law safeguards designed to protect the public could be undermined.

The authorities therefore function as structural safeguards within the constitutional order.

## **8. Conclusion**

The combined effect of Miller and Dytham may be summarised as follows:

- Legal duties arise from facts, not labels.
- Public officers cannot lawfully disregard duties which exist.
- The character of police activity is determined by substance.
- Terminology cannot negate legal obligation.

These propositions are not commentary. They are consequences of binding authority.

Their relevance lies in whether factual circumstances fall within their scope.