

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

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1. Introduction

Two decisions of the English courts are of direct relevance to the policing approach adopted in relation to CRN 6029679/21 and to the wider Operation Talla framework:

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

These authorities were binding at all material times. They did not create new legal principles, but clarified and reaffirmed the duties already incumbent upon the police once alleged criminal conduct is formally recorded.

2. The legal position established in Miller

In Miller, the High Court considered whether national policing guidance lawfully treated the recording of a crime

as a neutral or purely administrative step, distinct from the commencement of an investigation.

The Court held that such an approach was incorrect in law.

The Court made clear that:

- The recording of a crime is not a neutral act.
- Recording carries legal consequences.
- One such consequence is the engagement of a duty to investigate.

The Court stated:

“The recording of a crime is not a neutral act. It carries consequences, including the obligation on the police to investigate.”

And further:

“It is not open to the police to record a crime and yet treat the matter as if no investigation has begun.”

The effect of Miller is that, once a crime is recorded, the police are no longer at liberty to characterise their subsequent actions as falling outside an investigative framework. The language used to describe those actions does not alter their legal character.

3. The significance of Dytham

Miller establishes when a duty to investigate arises.

Dytham addresses the consequences of failing to perform such a duty.

In R v Dytham, the Court of Appeal held that a police officer commits misconduct in public office where:

- a duty exists,
- the officer is aware of that duty, and
- the officer wilfully neglects to perform it.

The duty need not be onerous or complex. The offence lies in the deliberate failure to act where action is required.

Once a duty to investigate has arisen, conscious non-performance of that duty is legally significant.

4. The combined legal effect

Read together, Miller and Dytham establish a closed legal position:

- Upon the recording of a crime, a duty to investigate arises as a matter of law.
- The police cannot lawfully elect not to perform that duty once it has arisen.
- There is no lawful distinction between “recording” and “investigating” capable of avoiding that obligation.

Accordingly, a recorded crime cannot lawfully be treated as existing outside an investigative process.

5. Application to CRN 6029679/21 and Operation Talla

In relation to CRN 6029679/21:

- A crime reference number was issued.
- Officers were tasked with reviewing material submitted in support of allegations.
- Decisions were taken at senior command level.
- The matter was subsequently characterised as having involved no investigation.

Applying Miller, the duty to investigate arose at the point the crime was recorded.

Applying Dytham, the continued treatment of the matter as non-investigative is legally problematic.

To the extent that Operation Talla relied upon, or normalised, the distinction between recording and investigation, that framework is inconsistent with binding authority.

6. Relevance to the 2023 Judicial Review decision

In November 2023, the High Court refused permission for judicial review, proceeding on the basis that no criminal investigation had been commenced.

It is now apparent that:

- That conclusion aligned with the Metropolitan Police's characterisation of events.
- The legal consequences of Miller were not substantively addressed.
- The Court was not asked to consider whether, as a matter of law, investigative duties had already arisen upon recording.

This observation does not attribute fault to the Court. Judicial decisions are necessarily confined to the material and legal arguments advanced.

However, where a judicial conclusion rests on the premise that no investigation existed and binding authority establishes that investigative duties arise automatically upon recording, there is a real question as to whether the decision proceeded on an incomplete legal foundation.

In such circumstances, the issue is not disagreement with the outcome, but the risk of a miscarriage of justice arising from an omission of material law.

7. Wider implications

The principles articulated in Miller and Dytham are not confined to this case.

If policing bodies are able to record crimes while asserting that no investigation exists, the protections afforded by the criminal justice system are materially weakened and,

perhaps, sidelined altogether, it seems fair to say. These authorities exist to prevent precisely such outcomes.

8. Conclusion

The combined effect of Miller and Dytham is clear:

- The legal basis for the position adopted in relation to CRN 6029679/21 is unsustainable.
- The NPCC's supportive stance under Operation Talla is legally vulnerable.
- The 2023 refusal of judicial scrutiny must now be viewed in light of binding authority that was not substantively engaged.

This assessment concerns the operation of law and not either hindsight or opinion.

It addresses what the law required at the relevant time.