The Pathway to Nationwide Nonfeasance and Why the Dytham Case is Now So Important

Author: Ian Clayton

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A police service can fail the public through what it does. It can also fail through what it deliberately leaves undone.

When a common instruction shapes that omission across forces, the question becomes larger than the handling of one report:

Has national coordination assisted the performance of police duties, or organised their non-performance?

That is why *R v Dytham [1979] QB 722* deserves renewed attention.

Dytham concerned a police officer who witnessed a violent assault which ended in a man's death, took no steps to intervene and left the scene.

The Court of Appeal upheld his conviction for wilful neglect of duty and the case establishes a fundamental point:

A deliberate failure to act can constitute criminal misconduct in public office. The absence of a positive act does not place an officer beyond accountability.

The qualification is equally important. The judgment concerned culpable neglect, not every mistake, delay or refusal. The neglect had to be wilful and unjustified, with sufficient seriousness to warrant criminal condemnation.

The later Court of Appeal decision in *Attorney General's Reference (No 3 of 2003)* explains the demanding threshold:

A public officer acting as such, wilful neglect or misconduct, an abuse of the public's trust, and no reasonable excuse or justification.

Dytham is therefore neither a slogan nor a shortcut to conviction. It does not establish that every reported allegation requires a full investigation, or that disagreement with a police decision proves an offence. Its force lies in the distinction between a lawful decision about how to discharge a duty and a culpable decision not to discharge it.

That distinction matters acutely where an instruction may have prevented individual consideration.

A refusal can look orderly, consistent and administratively successful whilst leaving the public duty itself unperformed.

A national instruction does not become lawful because it has been widely circulated. Its authority, content and actual application remain open to examination.

The Operation Talla investigation raises precisely that need for examination.

It does not reproduce the facts of Dytham. It raises the wider question which the case makes impossible to dismiss:

When does an apparently administrative decision to do nothing cross into a deliberate abandonment of public responsibility?

Refs:

- R v Dytham [1979] QB 722; discussed in Brooks v Commissioner of Police of the Metropolis [2005] UKHL 24, para 19

- Attorney General's Reference (No 3 of 2003) [2004] EWCA Crim 868, paras 38 - 46 and 61

How a national omission could develop

The phrase ***'guidance to not record'***, used in internal policing correspondence of 14 February 2022, requires an explanation which identifies the guidance itself.

- *What was its origin?*
- *Who approved it?*
- *What did 'record' mean?*
- *Which reports did it cover, what exceptions existed and what assessment was required before it could be applied?*

These are questions about the exercise of public power, not about terminology.

Receipt of information, incident recording, intelligence recording, crime recording and criminal investigation are distinct activities.

A decision that an allegation does not meet crime-recording requirements may be entirely proper. Recording information as intelligence may also be proper. Neither proposition answers whether a particular report was understood and assessed, or whether its subject matter supplied a predetermined refusal.

The pathway to nationwide nonfeasance is a risk which can be described plainly.

- A national position is formulated;

- it is distributed through command structures;
- local officers apply it to a category of reports;
- individual evidence receives less consideration or none;
- later complaints examine the local correspondence while excluding the instruction which shaped it.

If established, that sequence could allow a common failure to recur whilst responsibility is divided between institutions.

The word ‘nationwide’ describes the possible reach of that mechanism. It is not a finding that every force received the same instruction, applied it identically or breached an applicable duty. Nor does the word ‘nonfeasance’ by itself establish criminal misconduct. It identifies the concern that public functions may have gone unperformed.

The evidence must establish where, how and why that happened.

The Police Scotland directive of January 2022 and the associated Gold Command explanation provide an important part of the provenance question. They require examination alongside national communications, rather than an assumption that a signatory originated every instruction.

Scotland has its own legal system: Dytham is an English criminal authority, not necessarily a basis for asserting identical criminal liability throughout the United Kingdom.

The same discipline applies to reported *'success'*.

A reduction in additional reports might reflect a sound explanation which resolved genuine misunderstandings. It might instead reflect the exclusion of reports which deserved consideration.

The number alone cannot tell us which.

Measuring fewer reports without examining what was excluded risks confusing administrative quiet with lawful policing.

The public should not have to accept either explanation on institutional authority and assertion alone.

The original instruction, its evidential foundation, its distribution and its measured effects should be capable of scrutiny.

Coordination can improve policing. Its legitimacy depends upon what it coordinates.

Documentary context:

- Policing correspondence of 14 February 2022;

- Police Scotland directive of 25 January 2022 and subsequent disclosure correspondence attributing the issuing decision to Gold Command.

Why the records now matter

Dytham directs attention to duties and decisions, not collective accusation.

A proper assessment would identify the applicable duty, the information available, the decision made, the person responsible, the reasons and the consequences.

It would then ask whether any omission was justified, mistaken, negligent or sufficiently wilful and serious to engage criminal law.

Those are different findings, with different evidential requirements.

A national instruction would not automatically excuse every local omission. Equally, its existence would not automatically establish an offence by its author or recipient.

Responsibility requires evidence of each person's role, knowledge and conduct.

Rank, circulation lists and institutional association are starting points for enquiries, not substitutes for proof.

This makes provenance central. The necessary chronology begins with drafts, source material, commissioning instructions and approval records. It continues through Gold Command decisions, force distribution, local implementation, exceptions and subsequent revision or withdrawal.

Preservation should extend to relevant emails, attachments, decision logs and audit histories. The records must be allowed to support proper explanations as well as expose improper ones.

The 2023 complaint to Durham Constabulary illustrates why that examination must reach the influences upon an individual decision.

The outstanding question asks whether Operation Talla or NPCC guidance was received, known to the relevant handlers and influential in the handling of the December 2023 report.

Asking that question does not require a complaint handler to conduct a separate criminal investigation into Operation Talla. It

asks the complaints process to establish what informed the conduct complained of.

Handling a complaint otherwise than by investigation does not make relevant enquiries impossible.

The IOPC's Statutory Guidance expressly recognises that proportionate investigative steps may be appropriate within that route.

A process seeking meaningful answers should be capable of examining whether an instruction influenced a decision, rather than treating the instruction's national origin as a reason to leave it untouched.

Public disclosure should go as far as lawful protection of personal information, privilege and legitimate proceedings permits.

Where material cannot be released, institutions should properly and fully explain the restriction and provide the factual account which can properly be given.

A demand for candour is strongest when it seeks a verifiable history rather than a predetermined verdict.

The importance of Dytham is ultimately this:

The law recognises that doing nothing can be a grave abuse of public office. The possibility of a coordinated omission therefore deserves serious examination. The task now is to establish whether national guidance supported lawful assessment or displaced it. That question calls for preserved records, candid explanations and independent scrutiny. It cannot be settled by another instruction not to engage.

Refs:

- Durham complaint CO/918/26: Correspondence of 13 October 2026 and subsequent follow-up seeking an express scope decision

- IOPC, Statutory Guidance on the Police Complaints System (2020), paras 12.2 - 12.4.