

Alison Saunders CB
Director of Public Prosecutions



Mr & Mrs de Freitas
68 Burnfoot Avenue
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3 December 2014

Dear Mr de Freitas,

Thank you for coming to meet with me on 20 November 2014. I would like to repeat my condolences to you and your family for the loss of your daughter, Eleanor, in such tragic circumstances. I sincerely hope that I was able to answer your questions and explain the actions of the CPS. Of course I appreciate it may be of little comfort to you in the context of all that has taken place but I understand it is important for you to have the answers to such questions.

Parliament chose to reaffirm the right of an individual to commence a private prosecution in the Prosecution of Offences Act 1985 after much debate and consideration of the issue. However, the right was qualified by giving the Director of Public Prosecutions a power to take over such a prosecution. As you know the CPS has issued guidance on when this power should be used and, if it is used, whether the case should be continued or stopped. It is not possible for us to change the statute but it is, of course, crucially important to ensure that our guidance is clear and properly informs prosecutors on the decisions they have to make. Such decisions often have to be made in cases with very sensitive issues indeed, none more so, perhaps, than this one.



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I have conducted a review of the decisions made in this case and, as you know, have concluded that it was correct to take over the private prosecution and continue with it and that the decisions were made in accordance with CPS policies and guidance. As I indicated in the meeting I intend to answer your questions in turn and have set them out below.

Question 1

Why was the decision taken to continue with the prosecution despite the fact that the police had initially made the decision not to proceed and refused to reopen the case when requested to do so at a later date and were the police consulted?

Our guidance includes the following:

"The CPS should take over and **continue** with the prosecution if the papers clearly show that:

- the evidential sufficiency stage of the Full Code Test is met; and
- the public interest stage of the Full Code Test is met; and
- there is a particular need for the CPS to take over the prosecution."

AND

"A private prosecution should be taken over and **stopped** if, upon review of the case papers, either the evidential sufficiency stage or the public interest stage of the Full Code Test is not met."

The guidance continues:

"Furthermore, there may be factors which would be damaging to the interests of justice if the private prosecution was not discontinued." Examples are then given one of which is "cases where it can be said that the prosecution is vexatious (within the meaning of section 42 Supreme Court Act 1981, as amended by section 24

Prosecution of Offences Act 1985), or malicious (where the public prosecutor is satisfied that the prosecution is being undertaken on malicious grounds)".

The first stage is, therefore, to consider whether there was sufficient evidence to provide a realistic prospect of conviction. This involves an objective assessment of the evidence, taking account of any case which the suspect has advanced or may advance, and deciding whether an objective, impartial and reasonable jury, properly directed and acting in accordance with the law, would be more likely than not to convict of the crime alleged. This is, of course, completely different to the test which a jury would have to apply in order to convict. A jury can only convict if it is sure a defendant is guilty.

Eleanor always maintained that her complaint of rape was true. Alexander Economou has always maintained to the contrary. It was therefore necessary for any other available evidence to be scrutinised in order to ascertain if it is capable of supporting one version or the other. As you know there was other evidence consisting of text and email exchanges and CCTV footage. There was also evidence from other witnesses although it is right to say this was of less significance. A lot of this evidence quite simply contradicted what Eleanor had said in her ABE interview. Some of it laid the ground for a motive as to why she may have wanted to make up a false complaint, namely that Mr Economou had had sex with her and then later told her he never wanted to see her again, about which she felt bitter. Other evidence amounted to her effectively apologising for making allegations to friend and seeking reconciliation. There were in the region of 10 such pieces of evidence. As most of it derived from message exchange and CCTV footage it was incontrovertible evidence, not depending on the frailties of human memory or susceptible to the influence of loyalty or pressure. These strands of evidence had to be considered together. Any one taken alone might, in theory, be explained away. However, when taken together they formed a consistent picture supportive of the falsity of the original complaint involving a number of different events and circumstances over a reasonably prolonged period.

Evidence
against
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I would like to reassure you that the reasoning did not involve resort to myths and stereotypes about the way victims or perpetrators of rape are supposed to behave. By way of example, part of the other evidence, as you know, consisted of CCTV footage from Ann Summers. The fact a person remains in the company of the person who they say has just raped them in order to go shopping does not mean their allegation is untrue. However, where that person provides an account, as Eleanor did, that she did certain things and behaved in a particular way because she had been raped and that is unassailably contradicted by CCTV footage, then that plainly tends to disprove their allegation.

I do not intend to go through each piece of evidence in this letter. However, I am completely satisfied, having looked at it all, that the decision that the evidential sufficiency stage of the Full Code test was met was plainly correct.

I appreciate that you may query why that decision contrasts with the view taken by the police. In reality, the police never undertook a full investigation into the alleged perverting the course of justice nor did they consider all the material provided to us by the private prosecution. They were therefore not in a position to make an informed judgment on whether there was sufficient evidence to prosecute. That was a decision which was initially made the head of RASSO, the CPS unit which deals exclusively with prosecutions for rape, serious sexual offences and related offences. It was then approved by her line manager, the then Deputy Chief Crown Prosecutor for the London area. They discussed the matter and, appreciating the sensitivity and importance of the case, decided to seek the view of the then Director's Principal Legal Advisor, Alison Levitt QC although there was, in fact, no requirement under the guidance for such a course to be taken. She fully reviewed the case and came to the same conclusion. They all considered the issues much later than the police on all the evidence had been placed before them. As you know I have also now undertaken the same task and agree. I hope you can understand that this exceptionally difficult case has always been considered carefully by extremely experienced lawyers within the CPS. These experienced lawyers were in the best position to make the decisions under the Code.

The next stage was to consider whether the public interest stage was met. I deal with this in answer to question 4.

Question 2

In the light of the background to case and the threats made against Eleanor and other family members, why was this case not classified as vexatious or malicious?

Under the guidance "vexatious" is to be given the meaning in section 42 of the Senior Courts Act 1981 which refers to situations "when any person has *habitually and persistently* and without any reasonable ground ... instituted vexatious ... proceedings". That is not the case here. "Malicious" refers to the "prosecution being undertaken on malicious grounds". I appreciate that you are concerned whether the conduct of Mr Economou or his methods of obtaining evidence may have tainted the probity of the investigation so as to make it malicious. I cannot speak for the actions of Mr Economou. You may feel that he has said and done things out of malice which caused Eleanor, you and your family distress. However, the prosecution was commenced by a firm of solicitors with some considerable experience of private prosecutions. I have examined the papers and it is apparent that they carefully considered the merits of the prosecution in precisely the same way as would a CPS lawyer by applying the Code for Crown Prosecutors. Therefore, even if you feel that Mr Economou acted maliciously at times, the prosecution was not being undertaken on malicious grounds. It was being undertaken because the solicitors concluded that the two stages of the Full Code test was met as, indeed, did the experienced lawyers at the CPS when they came to consider the same issues. It is also right to say that much of the other evidence, being text message and email exchange and CCTV footage, was incontrovertible and therefore beyond any possible taint of malice.

Question 3

Many of the methods used by the private prosecutor to obtain evidence were unsound and unethical and therefore the evidence was highly questionable, some of it having been obtained by the alleged rapist himself. Was any consideration given to the probity of the investigation undertaken by the firm

Edmonds Marshall McMahon and whether the case summary they prepared formed a reliable basis on which to prosecute?

The case summary was not the basis on which a decision was made to prosecute. The solicitors had prepared bundles of statements and exhibits as in any case. The statements were all in the correct form required by law and signed by the witness in question. That meant that each witness had signed a declaration to confirm that the content of their statement was true to the best of their knowledge and belief and that they understood that they would be liable to prosecution if they had wilfully stated something in their statement which they knew to be false or did not believe to be true. All the exhibits had been properly produced and exhibited. The case summary was simply that, a document to assist the parties by summarising the evidence.

It is, of course, necessary to consider whether the evidence is admissible and reliable when applying the evidential sufficiency test of the Full Code. There was, however, nothing to suggest that the evidence had been obtained unlawfully as to make it inadmissible. A court does have a power to exclude evidence if its admission would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted. As the case progressed there was no such application to exclude any particular piece of evidence. Furthermore, as most of the evidence consisted of CCTV footage and electronic message exchange, it could not be suggested that it was tainted by impropriety. The footage and the records of message exchange, both of which had been properly produced, spoke for themselves. There was, therefore, no suggestion it was unreliable.

Question 4

What consideration, if any, was given to the two medical reports detailing Eleanor's mental state with reference to her bi-polar disorder by Dr Christopher Bench and Dr Tim Rogers and in particular the one from Dr Christopher Bench, a Consultant Psychiatrist, which, with apparent prescience, highlighted the risk of completed suicide were Eleanor to face trial?

The second issue under the Full Code test is whether a prosecution was required in the public interest. The Code for Crown Prosecutors requires the level of culpability of the suspect to be considered at this stage and this includes consideration of their mental health. Guidance has also been issued specifically for cases of perverting the course of justice arising from false allegations of rape in which various public interest factors are listed. One of those [paragraph 27] suggests a prosecution is less likely if: "The person who made the original allegation appears not to have fully understood the seriousness of making the false allegation bearing in mind any learning disability or mental health issues." There is also more general guidance to be applied in cases featuring those with illnesses such as bipolar [entitled "Mentally Disordered Offenders"].

I am satisfied that prosecutors took the necessary steps to assure themselves that Eleanor's mental health was properly considered. This was in the form of a very detailed report by Dr Rogers, a consultant forensic psychiatrist instructed by her legal team who also took into account the views of Eleanor's own consultant psychiatrist, Dr Bench, and who met Eleanor. His medical assessment was clear. He recommended that she was well enough to understand the implications of making a false allegation was capable of forming the necessary intent for the offence and was fit to stand trial.

I should say the prosecution had a short letter from Dr Bench [dated 9 September 2013] the purpose of which was to excuse Eleanor's attendance at Westminster Magistrates' Court on 11 September 2013. We were never sent a full report from Dr Bench and, it follows, certainly not one highlighting the risk you mention.

Of course, factors relevant to the public interest may point in each direction, both for and against a prosecution. There were factors in this case which would make a prosecution more likely. It is not simply a question of adding up factors on one side and the other and seeing which side is the greater. Consideration is required of the importance of each factor in the context of the case and then a judgment has to be made in making an overall assessment. I am satisfied that the correct judgment was reached in this case having taken into account the detailed report of Dr Rogers.

Question 5

What consideration, if any, was given to background material concerning the conduct of Alexander Economou, in particular Facebook messages sent in advance of the alleged rape, including one which read "the best way to seduce a woman is to ply her with booze all night, accidentally distract her from the time so she misses her last train" and another which read "I like ... someone I can tie up and torment"?

The prosecution had in its possession Facebook message exchanges between Eleanor and Mr Economou in the weeks leading up to the night in question and text message exchanges between them on the evening of 22 December 2012. As you can imagine the true context and significance of such messages can only be assessed when both sides of the conversation are known. Considered in totality, these messages in fact supported the falsity of Eleanor's allegation of rape. Eleanor's complaint involved various things being done to her as part of a sexual attack. These things were, however, foreshadowed in the text message exchanges on the 22 December in which they were discussed and agreed to by her.

Question 6

What consideration, if any, was given to the disparity of age between Mr Economou and Eleanor and the fact that Mr Economou was dishonest about his age?

The disparity of age was not a consideration. There can be such a disparity in many relationships. Usually it is only significant if the complainant is very young. There was evidence to rebut the suggestion that Mr Economou had "groomed" Eleanor.

Question 7

What consideration, if any, was given to the evidence from the GUM clinic which Eleanor attended following the alleged rape? That evidence was consistent with her allegation.

The prosecution knew that Eleanor had been to the GUM clinic but did not know what had taken place there. Any notes taken there would be confidential. They had not been disclosed to us by the defence.

Question 8

Why did the CPS fail to disclose vital evidence to the defence within the time limits set by the court?

As you know, I take the view that the CPS should have arranged for police assistance earlier than was in fact the case. Had been done then the ABE interview would have been served on Eleanor's solicitors earlier than it was. May I repeat my apologies to you for this.


Questions Concerning Wider Issues

At the end of your letter you raise what you describe as "wider public policy issues". I hope you will forgive me for not setting them out in full in this letter.

As I said at the outset, Parliament chose to reaffirm the right of an individual to commence a private prosecution in the Prosecution of Offences Act 1985. This right extends to any person who wishes to commence proceedings for any offence. It is not possible for the CPS to change the statute. However, the statute does also provide that I can take over a case and, having done so, can either continue it or stop it. Had either the evidential sufficiency stage or the public interest stage of the Full Code Test not been met then this case would have been stopped. However, experienced lawyers in the CPS all came to the contrary conclusion with which I agree. Therefore it was right for this prosecution to continue and be prosecuted by someone. These are serious cases involving sensitive issues which would normally be prosecuted by the CPS. It was better handled by the experience of the public prosecuting authority rather than left in the hands of the private prosecutor. Due to the sensitive nature of such cases, I am going to amend our legal guidance so as to make plain that it would be exceptional for a private prosecutor to retain the conduct of such prosecutions if both stages of the Full Code test are met.

I would like to thank you once again for coming to see me. I consider it extremely important that decisions taken by the CPS are fully explained and to do so, if necessary, by myself. This was certainly a case where your questions should have been answered by me and I hope that I have provided the necessary answers, although I appreciate these answers will be disappointing for you.

Yours sincerely,

A handwritten signature in cursive script that reads "Alison Saunders".

ALISON SAUNDERS
DIRECTOR OF PUBLIC PROSECUTIONS