

# Playing games in the Criminal Courts: the obligatory firm hand?

Robert Jago, Civil and criminal procedure

Good afternoon, my name is Robert Jago and I am the module convenor for Civil and criminal procedure. In this blog I am focussing on an issue in criminal procedure and discussing playing games in the criminal courts and whether an obligatory firm hand is required.

When the Criminal Procedure Rules came into force in 2005 there was much fanfare for their focus on dealing with cases justly and the particular importance of case management. At the time Plowden commented that *'it is true that the criminal trial is not a game under which a guilty defendant should be provided with a sporting chance'*.<sup>1</sup> Twelve years on and the courts have had an opportunity to consider game playing once more.

In *R (on the application of Hassani) v West London Magistrates Court* [2017] EWHC 1270 (Admin) the defendant was convicted of driving a motor car with excess alcohol. At trial the defendant gave no evidence, never claimed he wasn't driving or hadn't been drinking. The defendant then chose to appeal, by way of judicial review, in spite of being outside the time limit, rather than to the Crown Court, as was his right, where a rehearing could have considered the merits of the case. In spite of the application being withdrawn by the appellant Lord Justice Irwin took the unusual step to rule on the case.

In the ruling much is made of the conduct of defence counsel. Reviewing counsel's conduct there were complaints at trial about disclosure, attempts to lengthen the trial without notice and an attempt to exclude evidence under s78 Police and Criminal Evidence Act 1984. These tactics might appear vigorous and energetic to some but to Lord Justice Irwin they sniffed of buccaneering and chicanery the type of which the Criminal Procedure Rules have attempted to eradicate. As he confirmed, the Rules are there *'to be employed actively so as to preclude game playing and ensure that the courts only have to address real issues with some substance'*.<sup>2</sup>

The judgment focuses, in part, on CrimPR 1.2(1)(e) and the need, when dealing with the case fairly, to be efficient and expeditious. The judgment leaves us in no doubt that incidences of time wasting, cunning attempts to extend hearings and taking hopeless points with the aim of wearing down the opponent are not the appropriate way to conduct a case. Trial judges and lay magistrates are reminded to engage in *'active case management where increased rigour and firmness is needed'*.<sup>3</sup>

The obligation is reinforced when we are reminded that:

*'The criminal law is not a game to be played in the hope of a lucky outcome, a game to be played as long and in as involved a fashion as the paying client is able or prepared to afford'*.<sup>4</sup>

Professor Hungerford-Welch in his commentary on the case reminds us that importantly *'Courage is a quality required by the effective advocate'*.<sup>5</sup> On this showing it would appear that the effective

---

<sup>1</sup> P Plowden, 'Case management and the Criminal Procedure Rules' (2005) 155 NLJ 416

<sup>2</sup> *R (on the application of Hassani) v West London Magistrates Court* [2017] EWHC 1270 (Admin) at point 10

<sup>3</sup> *R (on the application of Hassani) v West London Magistrates Court* [2017] EWHC 1270 (Admin) at point 18

<sup>4</sup> *R (on the application of Hassani) v West London Magistrates Court* [2017] EWHC 1270 (Admin) at point 9

<sup>5</sup> P Hungerford-Welch, 'Case Comment Magistrates' court procedure: *R (on the application of Hassani) v West London Magistrates Court* [2017] EWHC 1270 (Admin)' (2017) CrimLR 720

Playing games in the Criminal Courts: the obligatory firm hand?

advocate will need to be concise, obliging and amenable if the ambitious expectations of the latest iteration of the Criminal Procedure Rules are to be appropriately met.

Thank you!