



# **“Abuse of Process – a practical approach case law update”**

**Colin Wells**

**25 Bedford Row**

**11<sup>th</sup> May 2016**

1. Introduction

(a) Common law residual discretion :

*Connelly v DPP*:<sup>1</sup>

*'an inescapable duty to secure fair treatment for those who come or are brought before them'*.

*R v Beckford*<sup>2</sup>

*'that the courts have the power and the duty to protect the law by protecting its own purposes and functions'*.

(b) The ECHR and the Human Rights Act

- *R v Stratford Justices ex p Imbert*.<sup>3</sup>

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1 [1964] AC 1254.

2 [1996] 1 Cr App R 94 at 100F.

3 [1999] 2 Cr App R 276.

(c) Definition of Abuse of Process

- *R v Derby Crown Court ex p Brooks* 4 :

*“ It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable”*

*“The ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness both to the defendant and the prosecution ....”*

- *R v Martin (Alan)*<sup>5</sup> :

*‘No single formulation will readily cover all cases, but there must be something so gravely wrong as to make it unconscionable that a trial should go forward, such as some fundamental disregard for basic human rights or some gross neglect of the elementary principles of fairness.’*

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4 [1985] 80 Cr App R 164.

5 [1998] AC 917.

- *DPP v Humphrys*<sup>6</sup> and *R v Haringey Justices ex p DPP*<sup>7</sup> exceptional circumstances
- Basic issues of fairness, prejudice and the overall integrity of the criminal law process need to be considered.

(d) Permanent stay ?

- The impression that a stay is “permanent” or “final” is perhaps bolstered by the existence of Part 9 of the Criminal Justice Act 2003 under which the prosecution has power to appeal a ‘terminating’ or a ‘*de facto* terminating’ ruling<sup>8</sup> made by a trial judge in relation to one or more offences included in the indictment (see section 58 CJA 2003).<sup>9</sup>

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<sup>6</sup> [1977] AC 1.

<sup>7</sup> [1996] QB 351.

<sup>8</sup> “Ruling” is defined by s.74(1) of the Criminal Justice Act 2003 to include “...a decision, determination, direction, finding, notice, order, refusal, rejection or requirement”. The Act does not in fact use the expressions “terminating ruling” or “*de facto* terminating ruling” – but those expressions are convenient.

<sup>9</sup> The power is described by the Government’s Explanatory Notes [para.276] as applying to rulings that are “formally terminating and those that are *de facto*

- In *OB10* no jurisdictional point was taken in that case that section 58 did not apply in respect of the appeal against the decision of the trial judge to stay criminal proceedings,<sup>11</sup> and no point appears to have been taken that the trial judge's ruling to stay the proceedings was anything other than 'final' or 'permanent'.
- If a stay of proceedings is truly "final" or "permanent", then (short of the stay being quashed on appeal) one might have thought that a court is debarred from 'lifting' a stay, and yet, in *Gadd*,<sup>12</sup> the Court of Appeal did 'lift' a stay in respect of two counts that had formed part of a draft indictment<sup>13</sup> containing eight further counts alleging historic sex abuse in respect of three young girls.
- Objection was taken to the inclusion of the two counts on the ground that they had been stayed, many years earlier, for abuse of process<sup>14</sup> by a Stipendiary Magistrate at an 'old style committal hearing'. However, in

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terminating in the sense that they are so fatal to the prosecution case that, in the absence of a right of appeal, the prosecution would offer no, or no further evidence."

10 [2008] EWCA Crim 238, Court of Appeal, at [3].

11 The appeal failed on its merits.

12 [2014] EWHC 3307 (QB). The author takes this opportunity to thank Professor David Ormerod QC for drawing this decision to his attention.

13 The prosecution had applied for leave to prefer a voluntary bill of indictment pursuant to section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933.

14 On the grounds of delay.

*Gadd* 15 there was no discussion concerning whether or in what circumstances it is open to a court to lift a stay.

- references to a “permanent stay” would be best avoided as being misleading

(e) the Abuse of Process test – 2 categories

- *R v Beckford* 16

*“The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities:*

- a) cases where the court concludes that the defendant cannot receive a fair trial (category 1 cases);*
- b) cases where the court concludes that it would be unfair for the defendant to be tried. (category 2 cases) ”*

The Supreme Court stated in *Maxwell* that it was “well-established” that the court has the power to stay proceedings in two categories of cases namely

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15 [2014] EWCA Crim 1790.

16 [1996] 1 Cr App R 94. Confirmed in *R v Maxwell* [2010] UKSC 48

- (i) where it will be impossible to give the accused a fair trial and
- (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.<sup>17</sup>

(f) Balancing exercise in category 2: the case of Wilson

- In *Wilson v the Queen*,<sup>18</sup> the New Zealand Supreme Court, having examined and considered English case law such as *Warren* and *Maxwell*, explained that in relation to criminal proceedings, a stay may be granted where there is state misconduct that will:
  - (i) Prejudice the fairness of a defendant's trial ("the first category"); or
  - (ii) Undermine public confidence in the integrity of the judicial process if a trial is permitted to proceed ("the second category").
- The NZSC analysis was not to be "backward-looking, in the sense of focusing on the misconduct, but rather forward-looking, in that it relates to the impact of the misconduct on either the fairness of the proposed criminal trial or the integrity of the justice process if the trial proceeds."<sup>19</sup>

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<sup>17</sup> [2010] UKSC 48; [2011] 1 WLR 1837, at [13], per Lord Dyson JSC.

<sup>18</sup> [2015] NZSC 189.

<sup>19</sup> Per Arnold J (for the majority) at [40].

- As in English law, the NZ Supreme Court has adopted a 'balancing approach' in relation to the second category of case.<sup>20</sup>
  
- For the purposes of that exercise, relevant considerations include:
  - (i) confidence in the rule of law; confidence in the independence of the judiciary and the genuineness of the court processes;
  
  - (ii) the seriousness of the offending,
  
  - (iii) the impact of the misconduct,
  
  - (iv) attitude of police,
  
  - (v) urgency, and
  
  - (vi) any alternative remedies which will be sufficient to dissociate the justice system from the impugned conduct.<sup>21</sup>

- *Wilson: the facts*

The case concerned the alleged drug trafficking activities of a motorcycle gang. Drug offences were charged in respect of 21

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20 [2015] NZSC 189 at [55].

21 [2015] NZSC 189 at [92]

defendants, including W. Part of the undercover police operation involved the infiltration of the gang by two officers of whom MW was one. Officers, who supervised MW, implemented a strategy to bolster his 'credibility' among gang members by executing a search warrant in respect of certain premises. For this purpose they used a false search warrant (correct in format but signed by a police officer and not by a Deputy Registrar).

Following the search, and as part of the ruse, MW was arrested and charged with certain drug offences, An Information that had been laid in respect of one charge, was false, and it involved the officer swearing an oath that he had just cause to suspect, and did suspect, that MW had committed the offence in question.<sup>22</sup> The judges, before whom MW appeared, believed that they were dealing with a genuine case. The police planned for MW to be represented by a duty solicitor, to enter a guilty plea, and to be sentenced. But the gang referred MW to a defence lawyer whom they had previously engaged. Believing MW to be a real defendant, the lawyer advised him to defend the charges, which were withdrawn shortly after the police operation terminated.

The appellant, Wilson, pleaded guilty to all charges against him, but a few months later, Mr. Justice Simon France ruled that the police conduct constituted an abuse of process, and he stayed the prosecution in respect of the remaining defendants. Wilson sought to vacate his guilty pleas, but before his appeal was heard, the decision of Mr. Justice Simon France was reversed by the Court of Appeal (*Antonievic*<sup>23</sup>) and the Court set the stay aside. In respect of those remaining defendants, Mr. Justice Collins stayed certain

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<sup>22</sup> [2015] NZSC 189, at [22].

<sup>23</sup> [2013] NZCA 483, [2013] 3 NZLR 806.

charges that were categorised as “serious”. The Crown did not appeal that ruling. Meanwhile, Wilson was granted leave to appeal to the New Zealand Supreme Court.

- *Wilson: decision on the merits*

The Supreme Court concluded that although the misconduct was serious, it was not “one of those rare cases where a stay should be granted”. However, given the decision reached by Mr. Justice Collins (from whose ruling the Crown did not appeal) W's convictions were quashed.<sup>24</sup>

For Mr. Chief Justice Elias,<sup>25</sup> where a stay is necessary to protect the integrity of the criminal justice system, “...no further balancing of different objectives of the criminal justice system is appropriate. Nor is there any discretion in the matter. There is a 'duty' to stay, as Lord Diplock made clear in *Hunter v Chief Constable of the West Midlands Police*”.<sup>26</sup>

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<sup>24</sup> [2015] NZSC 189 at [96-109]

<sup>25</sup> [2015] NZSC 189, at [154]

<sup>26</sup> *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL), at 536.

(g) Factors to be considered

- delay
- disclosure and preservation of evidence,
- the rule of law,
- the methods used by state officials to investigate and prosecute the offence,
- any surrounding publicity and
- the ability of a defendant to participate in the proceedings.

- *R v Martin (Alan)*<sup>27</sup> :

‘the categories of abuse of process like the categories of negligence are never closed’.

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<sup>27</sup> [1998] 2 WLR 1 at 6.

## 2. Abuse of process at the police station

### 1) Overriding of client privilege

- *Grant* 28
- *R v Curtis Warren* 29
- LPP, section 58 PACE and RIPA : *Re McE v Prison Service of Northern Ireland* 30
- Patrick O'Connor QC has counselled courts not to reduce intervention to "finger wagging".<sup>31</sup> He opines that the decisions in *Maxwell* and *Warren* "have lowered the standard of vigilance against abuses of our criminal justice system".
- That said, it has to be recognised that not every instance of police misconduct is equally serious, and not every instance will render the trial unfair or cause confidence in the administration of justice to be damaged, or even attract the attention of the media. Accordingly, not every instance

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28 [2006] QB 60.

29 [2011] UKPC 10

30 [2009] UKHL 15; [2009] 1 AC 908 . See the Regulation of Investigatory Powers (Extension of Authorisation Provisions : Legal Consultation) Order 2010 SI No.461.

31 Patrick O'Connor QC, "Abuse of process" after Warren and Maxwell [2012] Crim. L.R. 672.

of misconduct by the police, or by the executive, justifies proceedings been stayed. In *Tague*, the Divisional Court put the matter thus:<sup>32</sup>

*“On the one hand, there is gross misconduct which the criminal justice system cannot approbate (as in cases such as Bennett and Mullen). On the other hand, however, it is important that conduct or results that may merely be the result of state incompetence or negligence should not necessarily justify what might be colloquially described as a “Get Out of Jail Free” card: in those cases, the public might conclude that the justice system was little more than a game.”*

2) Breach of promise

a) A witness who is not a suspect

- *R v Croydon Justices ex p Dean* <sup>33</sup>

‘the prosecution of a person who has received a promise, undertaking or representation from police that he will not be prosecuted is capable of being an abuse of process.’

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<sup>32</sup> Sir Brian Leveson P in *Tague v the Governor of HMP Full Sutton and the National Crime Agency* [2015] EWHC 3576 (Admin) at [49].

<sup>33</sup> [1993] QB 769, [1994] 98 Cr App R 76.

b) Charge following legitimate expectation of caution

- *Jones v Whalley* 34

3. Disclosure

(a) Statutory provisions and case law

- CPIA 1996 (as amended by CJA 2003) and Code of Practice 2015, with s.3 CPIA requiring the prosecution to:

*“ ....disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused”*

- Attorney-General’s Guidelines on Disclosure 2013
- Judicial Protocol on the Disclosure of Unused Material 2013
- Review of Disclosure 2011

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34 [2006] UKHL 41; [2007] 1 AC 63;[2007] Crim LR 74

- Criminal Procedure Rules overriding objective and case management powers
- *R v H and C* 35 House of Lords :

*“Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made”*

(b) Disclosure and abuse of process

- whether the failure to disclose was due to inadvertence, inefficiency or deliberate conduct;
- whether the prosecutor had acted in good faith;
- whether the non-disclosure could damage the prosecution case or advance that of the defence;
- the extent of any prejudice to the accused in the conduct of his or her defence as a result of the non-disclosure;
- whether the accused could nevertheless receive a fair trial without undue delay;
- whether remedies short of a stay could achieve a fair trial (such as an adjournment to allow disclosure and instructions to be taken on the new disclosure, and the exclusion of evidence);

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35 [2004] 2 AC 134, [2004] 2 Cr App R 10, [2004] .

- at appeal level whether taking all the circumstances of the trial into account, there was a real possibility that the jury would have arrived at a different verdict.<sup>36</sup>

(c) Court of Appeal guidance in *R v R and others* <sup>37</sup>

#### Introduction

- Sir Brian Leveson gave the lead judgement and specifically gave guidance on the proper approach to disclosure and abuse of process

#### Background

- A fraud prosecution which had been live for 5 years, but in which the indictment had yet to be preferred, was stayed as an abuse of

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<sup>36</sup> *McInnes v HM Advocate* [2010] UKSC 7 applying *Spiers v Ruddy*, [2008] 1 AC 873;

<sup>37</sup> [2015] EWCA Crim 1941 judgment December 21<sup>st</sup> 2015, reported at Archbold Review issue 1, February 22 2016

process as a result of disclosure problems under the CPIA 1996. Computers seized contained 7 terabytes of information.

- Allowing the Prosecution appeal the Court of Appeal reviewed the disclosure regime as provided for under the section 23 CPIA 1996 Code of Practice, the Attorney-General's Guidelines on Disclosure published in 2000, 2005, 2011 and 2013 and the Protocol following the Gross Review.

### Key principles

- **The prosecution is and must be in the driving seat at the stage of initial disclosure**

*“ In order to lead (or drive disclosure, it is essential that the prosecution takes a grip on the case and its disclosure requirements from the outset. To fulfil its duty under section 3, the prosecution must adopt a considered and appropriately resourced approach to giving initial disclosure...and include the overall disclosure strategy, selection of software tools, identifying and isolating material that is subject to legal professional privilege and proposing search terms to be applied. The prosecution must explain what it is doing and what it will not be doing at this stage, ideally in the form of a Disclosure Management Document” (para.34)*

- **The prosecution must encourage dialogue and prompt engagement with the defence**, with the duty of the defence to engage with the prosecution

NOTE: Court of Appeal's decision in *DS and TS*<sup>38</sup> allowing a Prosecution appeal against a first instance stay. The COACD stated that the stay should not have been imposed because (a) the disclosures failures were of limited materiality (b) a fair trial could be had and (c) there had been a lack of proper compliance with the Criminal Procedure

- **The prosecution is not required to do the impossible**

*“nor should the duty of giving initial disclosure be rendered incapable of fulfillment through the physical impossibility of reading (and scheduling) each and every item of material seized...the prosecution is entitled to use appropriate sampling and search items and its record keeping and scheduling obligations are modified accordingly”*  
(para.36)

- **The process of disclosure should be subject to robust case management by the judge, utilizing the full range of case management powers**

- **Flexibility is critical, disclosure is not a box-ticking exercise**

Judges can adopt and devise a tailored or bespoke approach to disclosure (para.49)

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<sup>38</sup> [2015] EWCA Crim 662

- Prosecution failures, such as *R v Boardman*<sup>39</sup>, can bring a prosecution summarily to an end but these can only be decided on a case by case basis and it is difficult to generalise as to the circumstances in which they arise (para. 74)

#### 4. Delay:

##### (a) right to a speedy trial

- Magna Carta
- *R v Robins*<sup>40</sup> and *Connelly v DPP*.<sup>41</sup>
- Articles 5(3) and 6(1) of the ECHR: The burden is on the prosecution to explain and justify any excessive lapse of time.<sup>42</sup>

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<sup>39</sup> [2015] EWCA Crim 175

<sup>40</sup> (1884) 1 Cox CC 114.

<sup>41</sup> [1964] AC 1254.

<sup>42</sup> *Dyer v Watson* [2002] UKPC D1, [2004] 1 AC 379.

In the event of a breach of the article 6(1) reasonable time provision, a court is not compelled to stay proceedings.<sup>43</sup>

(b) Common Law and Prejudice : *Attorney-General's Reference (No 1 of 1990)*,<sup>44</sup>

- (1) prosecution right ;
- (2) complexity of the proceedings;
- (3) fault ;
- (4) defendant delay;
- (5) the defendant needs to show on a balance of probabilities that owing to the delay he will suffer serious prejudice to the extent that no fair trial can be held;

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<sup>43</sup> See *Attorney-General's Reference (No 2 of 2001)*, [2004] 1 Cr App R 25, *HM Advocate v R* [2004] 1 AC 462 and *Spiers v Ruddy* [2007] UKPC D2; [2008] 1 A.C.873.

<sup>44</sup> [1992] QB 630, [1992] 95 Cr App R 296.

(c) Delay factors

- *Bell v DPP of Jamaica*<sup>45</sup>
- *Barker v Wingo*,<sup>46</sup>
  - a) the length of delay;
  - b) the justification put forward by the prosecution;
  - c) the responsibility of the accused for asserting her/his rights; and,
  - d) the prejudice to the accused.
- Trial process : *Maybery*<sup>47</sup>
- No time period determinative : *R v Derek Hooper*.<sup>48</sup>

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<sup>45</sup> [1985] AC 937 at 951–952D–F.

<sup>46</sup> (1972) 407 US 514.

<sup>47</sup> [2003] EWCA Crim 783

<sup>48</sup> [2003] EWCA Crim 2427, CA.

## 5. Non-availability of evidence

- *R v Feltham Magistrates' Court ex p Ebrahim, Mouat v DPP*<sup>49</sup>
- Destruction of documents and material : *Sunderland Magistrates' Court ex p Z*<sup>50</sup>
- Loss of video recording : *R v Birmingham*<sup>51</sup>
- Investigative failures : *R v Gajree*<sup>52</sup> and *R v Northard*<sup>53</sup>
- secondary evidence : *R v Uxbridge Justices ex p Sofaer*<sup>54</sup>

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<sup>49</sup> [2001] 1 All ER 831, [2001] 2 Cr App R 23.

<sup>50</sup> [1989] Crim LR 56.

<sup>51</sup> [1992] Crim LR 117.

<sup>52</sup> 20 September 1994, No 94/3269/Y2.

<sup>53</sup> 19 February 1996, CA, 95/1475/Z3 – see *Archbold Criminal Appeal Office Index* 1997, no 3, para T-4. See para 8.183 to 8.184 below.

<sup>54</sup> (1987) 85 Cr App R 367.

## 6. Unfair Conduct, abuse of executive power

- Protecting the integrity of the court : *R v Horseferry Road Magistrates' Court, ex p Bennett* 55

*... the judiciary accept the responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law.*

## 7. Entrapment

- Section 78 PACE : *Smurthwaite & Gill* 56
- Article 6 ECHR : *Teixeira de Castro v Portugal* 57

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55 [1994] AC 42, [1994] 98 Cr App R 114.

56 [1994] 98 Cr App R 437.

57 (1999) 28 EHRR 101.

- Executive : *R v Looseley and Attorney General's Reference No 3 of 2000*: 58

- “1) *...It is simply not acceptable that the state through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of state power, and an abuse of the process of the courts.....*
  
- 2) *... The difficulty lies in identifying conduct, which is caught by such imprecise words as lure or incite or entice or instigate. If police officers acted only as detectives and passive observers, there would be little problem in identifying the boundary between permissible and impermissible police conduct. But that would not be a satisfactory place for the boundary line... in some instances a degree of active involvement by the police in the commission of a crime is generally regarded as acceptable... Test purchases fall easily into this category*  
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- 3) *...*
  
- 4) *Thus, there are occasions when it is necessary for the police to resort to investigatory techniques ... Sometimes the particular technique adopted is acceptable. Sometimes it is not. For even when the use of*

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58 [2001] UKHL 53, [2001] 4 All ER 897.

59 For example unlicensed liquor sales, video sales to person under age, unauthorised mini-cabs, sale of lottery tickets and cigarettes to child under age .

*these investigatory techniques is justified, there are limits to what is acceptable. Take a case where an undercover policeman repeatedly badgers a vulnerable drug addict for a supply of drugs in return for excessive and ever increasing amounts of money. Eventually the addict yields to the importunity and pressure, and supplies drugs. He is then prosecuted for doing so. Plainly, this result would be objectionable. The crime committed by the addict could readily be characterised as artificial or state-created crime. In the absence of the police operation, the addict might well never have supplied drugs to anyone.”*

## 8. Adverse publicity

- Judicial direction : *R v Central Criminal Court ex p The Telegraph PLC* 60
- *R v Abu Hamza* 61
- Judicial remedies

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60 (1994) 98 Cr App R 91 at 98.

61 [2007] Cr App R 27

## 9. Ability to participate

- Mental disorder and vulnerability
  - *T and V v United Kingdom*<sup>62</sup>
  - *SC v UK*<sup>63</sup>
  - *R (TP) v West London Youth Court*<sup>64</sup>
  
- Legal Representation
  - *R v P*<sup>65</sup>
  - *R v Crawley*

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<sup>62</sup> (2000) 31 EHRR 861, [2000] Crim L R 187

<sup>63</sup> (2005) 40 EHRR 10, [2005] Crim LR 130

<sup>64</sup> [2005] EWHC 2583 (Admin)

<sup>65</sup> 18.3.2008 cited in *Re M (Restraint Order)* [2010] 1 WLR 650

## 10. Other matters

- Confiscation
  - prior to the decision of the Supreme Court in *R v Waya*,<sup>66</sup> applications to stay confiscation proceedings regularly failed,<sup>67</sup> and in three cases, a prosecutor's appeal was allowed against the decision of the trial judge to stay the proceedings.<sup>68</sup> A notable exception was *Shabir*.<sup>69</sup> However, following the decision in *Waya*, the issue is now one of proportionality in terms of the 'amount to be recovered' under a confiscation order,<sup>70</sup> albeit that the jurisdiction

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<sup>66</sup> [2012] UKSC 51. The Supreme Court held that the "better analysis" is to refuse to make confiscation orders where to do so would be wholly disproportionate and a breach of A1P1: "[t]here is no need to invoke the concept of abuse of process" (at [18]).

<sup>67</sup> *Nield* [2007] EWCA Crim 993; *Farquhar* [2008] EWCA Crim 806; [2008] 2 Cr. App. R. (S.) 104; *Bhanji* [2011] EWCA Crim 1198; and *Ali* [2014] EWCA Crim 1658.

<sup>68</sup> *Hockey* [2007] EWCA Crim 1577, *CPS v Nelson*, and *Pathak* [2009] EWCA Crim 1573.

<sup>69</sup> [2008] EWCA Crim 1809

<sup>70</sup> Pursuant to s.6(5) and s.7 of the Proceeds of Crime Act 2002. Note that since *R v Waya* was decided by the Supreme Court, Parliament gave statutory effect to its decision by amending s.6, POCA such that the duty to make a confiscation order requiring the defendant to pay the "recoverable amount" applies "only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.": amendment made by the Serious Crime Act 2015, s. 85(1), Sch 4, para 19; in force from the 1<sup>st</sup> June 2015 (see SI 2015 No.820).

to stay confiscation proceedings remains available if the need arises: see *Mahmood*.<sup>71</sup>

- Applications to stay case for abuse of process in the Crown Court must comply with the Criminal Procedure Rules October 2015 edition Part 3 Case Management Rule 3.20 which provides:

“3.20. –(1) This rule applies where a defendant wants the Crown Court to stay the case on the grounds that the proceedings are an abuse of the court, or otherwise unfair.

(2) Such a defendant must –

(a) apply in writing

(i) as soon as practicable after becoming aware of the grounds for doing so,

(ii) at a pre-trial hearing, unless the grounds for the application do not arise until trial, and

(iii) in any event, before the defendant pleads guilty or the jury (if there is one) retires to consider its verdict at trial;

(b) Serve the application on –

(i) The court officer, and

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71 [2006] Cr App R (S) 96

- (ii) Each other party; and
- (c) In the application –
  - (i) Explain the grounds on which it is made,
  - (ii) include, attach or identify all supporting material,
  - (iii) specify relevant events, dates and propositions of law, and
  - (iv) identify any witness the applicant wants to call to give evidence in person.

(3) A party who wants to make representations in response to the application must serve the representations on –

(a) the court officer; and

(b) each other party,

not more than 14 days after service of the application.

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25 Bedford Row

May 2016

Source : 2<sup>nd</sup> Edition Abuse of Process (2010)

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