JUDICIARY OF
ENGLAND AND WALES

District Judge Ashworth

In the Brighton Magistrates' Court

The Pensions Regulator

V

Dominic Chappell

THE LAW

1. The Defendant is summonsed in relation to 3 offences which are only capable of trial in the Magistrates' Court. The maximum penalty is a fine. The offences alleged are that he refused or neglected to provide information or documents to the Pensions Regulator.

2. The charges are:

Offence (1)
Between 5th May 2016 and 10th August 2017 Dominic Joseph Andrew Chappell neglected or refused, without reasonable excuse, to provide information or documents, namely answers to questions about, or documents relating to, the purchase of British Home Stores Group Ltd by Retail Acquisitions Ltd, when required to do so in a notice issued on 26th April 2016 under section 72 of the Pensions Act 2004.

Offence (2)
Between 28th May 2016 and 10th August 2017 Dominic Joseph Andrew Chappell neglected or refused, without reasonable excuse, to provide information or documents, namely answers to questions about, or documents relating to, the purchase of British Home Stores Group Ltd by Retail Acquisitions Ltd, when required to do so in a notice issued on 13th May 2016 under section 72 of the Pensions Act 2004.

Offence (3)
Between 7th March 2017 and 10th August 2017 Dominic Joseph Andrew Chappell neglected or refused, without reasonable excuse, to provide information or documents, namely answers to questions about, or documents relating to, the unauthorised disclosure of restricted information concerning proposed regulatory action in respect of the British Home Stores pension schemes, when required to do so in a notice issued on 20th February 2017 under section 72 of the Pensions Act 2004.

3. S.72 of the Pensions Act 2004 permits the Pensions Regulator ("TPR") to require the production of any document or any other information or explanation of any document or information relevant to its functions. I am satisfied both that TPR was properly exercising its functions in making the requests it did to the Defendant, and that the requests made were relevant, necessary and proportionate.

4. I am grateful to Mr. Stein who appeared for the Regulator and produced a short written submission at my request, and to Mr. Levy for the Defendant for their agreement on the law in this case.

5. To prove its case in relation to any charge, the Regulator must make me sure that the Defendant neglected or refused to provide the information.

6. If the Regulator is able to prove its case so that I am sure on any particular charge, the defendant has a defence if he can prove on the balance of probabilities that he had a reasonable excuse for the failure. The reasonableness or otherwise of an excuse is to be judged by an objective standard.

7. The evidence for and against each charge is to be considered separately. As a result the decisions on the charges may differ.

8. In this case, the majority of the facts are agreed, where that is the case I will not necessarily cite the evidence. Where there is a dispute I will record my findings.

9. I have not had to make findings in relation to much of the evidence that was ventilated, and restrict myself to those necessary for this judgement and the evidence that bears on those findings, therefore some of the material that was given in evidence will not be rehearsed further here.

10. The evidence I have considered is discussed below. I have not considered any material other than that provided by the prosecution or defence during the course of the trial proceedings which I heard from Monday the 8th January until the 11th January.

BACKGROUND

11. The background to this case is well known. I am not required to make any findings as to the reasons why BHS went into administration or attribute fault to any person for the catastrophic loss to the pension funds.

12. A number of companies and people were involved in one way or another in the sale and collapse of BHS. In this case I have received a very small amount of evidence and information on a narrow set of issues, much of it partial and uncorroborated. However, from it, I am satisfied that the companies and people about whom the Regulator was making requests for information were in some manner connected to the Defendant or the sale of BHS. Only one company, 'Sears' is an exception, I had no evidence of any connection it may have with the events during this trial.

THE EVIDENCE

13. I heard evidence from Claire Boorman, Olivia Kenny and Erica Caroll who I all found to be credible and reliable witnesses.

14. I was provided with a bundle of documents exhibited by the above three witnesses.

15. I heard from the Defendant. He was not a credible witness and the relevant detail of his account is considered below.

FACTS FOUND

16. On the 26th April 2016, one day after the BHS group went into administration, TPR served on the Defendant's then solicitors Olswang Solicitors ("Olswangs") a Section 72 notice ("the first notice" which forms the subject of count 1).

17. The notice warned the Defendant that it may be a criminal offence if the documents/information were not supplied, or if false or misleading information were supplied..

18. The Defendant received the notice as the majority shareholder in Retail Acquisitions Ltd (RAL) who had purchased BHS from Taveta investments on 11.3.15.

19. In summary, the notice requested information or documents in relation to a full and detailed explanation of:

    a. the Defendants business connections to; Paul Sutton, Joseph Chappell and Swiss Rock.
    b. the formation of Clarberry investments
    c. Swiss Rock and its connection to RAL, BHS or Taveta

20. The notice also made detailed requests for any and all documentation in relation to the entities and transactions between them.

21. The notice requested a response by 4th May 2016. It stated *"If you anticipate any problems with meeting this deadline we ask that you contact us immediately … to discuss this".*

22. The following day, Olswangs responded to the TPR stating they no longer represented the Defendant and that he had requested that correspondence for him and RAL should be sent direct. Olswangs stated that they had forwarded the notice to the Defendant.

23. In evidence the Defendant stated that he had been abroad at this time in the US seeking funding to salvage BHS and that he returned on 5.5.16. He stated that he had no knowledge of the notice until a few days after his return as Olswangs had forwarded it to his BHS email address which he did not have. His evidence was not credible on this and conflicted with the instructions Olswangs recorded him as having given. I am satisfied that he knew of the notice on the 27th April.

24. On 13.5.16 TPR served a further S.72 notice ("the second notice" which forms the subject of count 2). It was sent by special delivery to his home address and emailed to his email address at Swiss Rock.

25. The Defendant stated that he did not receive it for a few days as it was delivered to a post box at the end of his drive and was not picked up by him. He also stated that either he or his wife signed for it. This explanation made no sense.

26. There is a confirmation email from the Defendant's email account at Swiss Rock stating the email was collected from his email account at 4.08 pm on the 13th May. I am satisfied that he received the notice by the 13th May 2016.

27. The notice was in the same format with the same warnings as the first notice.

28. It requested information/documents into his knowledge of:

    a. A company called 'Sears'
    b. It's involvement with Arcadia (a company in the same group as Taveta) or Taveta or the sale of BHS.
    c. Any connection between a male called Paul Sutton and RAL/Taveta/Arcadia or Sir Phillip Green or his wife.
    d. Any transactions between JDM Island Properties Ltd and RAL/BHS
    e. BHS Sweden and any dealings between it and BHS/RAL.

    And an explanation of his connection to and knowledge of:

    f. JDM Island properties Ltd

19. The information was requested by Friday the 27th May.

20. On the 27th May at 05.00, the Defendant emailed Claire Boorman, a senior case manager investigating into BHS, who had issued both the first and second notices. The email was sent from his Swiss Rock email address. It requested all further correspondence be sent to his lawyers – Adrian Ring, Partner, Lawrence Stephens.

21. Miss Boorman emailed back at 12.22 to both the Defendant and Mr. Ring pointing out the response to the first notice was out of time and that the response to the second notice was due by 5pm that day.

22. At 3pm, in response to a voicemail left by the Defendant, Miss Boorman called the Defendant, and I was provided with an attendance note of the call which states it lasted 5 minutes. Miss Boorman gave evidence of the contents of the call and was cross-examined about it. The Defendant also gave evidence about the call. I am satisfied the attendance note, made contemporaneously is an accurate summary of what was said.

23. The Defendant stated that he and his lawyers were looking into the notices, but that it would not be possible to provide all the information requested as the administrators Duff and Phelps had cut off all access to BHS data, files or emails.

24. Miss Boorman asked the Defendant to detail in writing what could be provided and by when, and what could not be provided and why, and that his lawyer could help him with this.

25. In response to questions in cross-examination, the Defendant claimed that he had told Miss Boorman that he was worried about supplying information that was false. He did not say this in his evidence in chief, and it was not put to Miss Boorman in cross-examination and was not mentioned in the note of the call.

26. On the 16th June 2016 a reminder was sent to the Defendant and his lawyer that the responses to the first and second notice were overdue and that the regulator regarded this (together with a failure to respond fully to a separate S.72 notice served on 27 March 2015) as a serious matter.

27. The reminder acknowledged that the Defendant had instructed Adrian Ring but reiterated that the notices, "*were served on you in a personal capacity and, whether or not you have instructed solicitors to act on your behalf, you are still responsible for ensuring a response is provided to the regulator's notices."* It also reiterated the warnings concerning non-compliance.

28. This reminder is logged as having been collected from the Defendant's Swiss Rock email account at 4.40pm that day.

29. On the 1st July Mr. Ring wrote to TPR on behalf of 4 clients including the Defendant. He informed TPR that access to the BHS offices and email accounts had been terminated by the administrators Duff and Phelps. *"It has therefore been impossible to provide you with a response to certain of your enquiries (by way of example your letter to Mr. Chappell dated 26.4.16").* The letter went on to apologise that the deadlines had not been met and that a formal request for an extension of time had not been made by that date. It requested an extension of time to respond to 5.8.16.

30. On the 27th July Claire Boorman, wrote to the Defendant at his home address to invite him to an interview. It stated, "*The reason for the interview is because it is understood that you are able to provide information relevant to the exercise of the Regulators functions… Unlike the Regulators powers pursuant to S.72 of the act, attendance at the proposed interview is voluntary. However, attendance at the interview would provide you with an opportunity to assist the regulator in its understanding of the above events."*

31. Mr. Ring sent an email on 3.8.16 simply agreeing on the Defendant's behalf to attend and arranging a time. The time was later amended to 11.00 on the 10th August in an email from Adrian Ring to the Defendant copied in to the TPR. It can be seen that the Defendant had access to the emails thread between the TPR and Adrian Ring and was still at this time using his Swiss Rock email address.

32. In evidence Miss Boorman stated the interview was not a replacement for the S.72 notice, it was an invitation to parties to attend and give data in a slightly less formal environment as it was not a written response. She stated that she had had no discussion with either the Defendant or Adrian Ring prior to the interview as to its remit. Due to the scale of the operation investigating BHS, she delegated the interview to Olivia Kenny.

33. It was not put to her in cross-examination that there was any prior agreement with the Defendant's solicitors that this would be part of the S.72 process.

34. Olivia Kenny also stated that the interview was not supposed to supplant the S.72 process. In cross-examination it was put to her that the Defendant had attended voluntarily and had cooperatively answered all questions put to him, to which she agreed. It was not put to her that there was any agreement prior to the interview that this would stand as part of the answers to the S.72 notices.

35. The interview took place on the 10th August 2016 lasting some 3 or so hours. Extracts of it were read during the Defence case. For the purposes of this judgment I do not need to do more than summarise some of the topics that were discussed:

a. Paul Sutton as being the initiator of the project to buy BHS
b. That Swiss Rock was payrolling the transaction
c. That the Defendant had met Sir Phillip Green face to face, but had no association with the Green family before the purchase negotiations.
d. That he was not allowed access to the pension information prior to the purchase by an agreement with Sir Phillip Green as Sir Phillip was in mid-negotiation with the scheme.
e. That the original basis for the purchase was a debt free and pension debt free acquisition of BHS, but that had changed to debt free but *"we'll sort the pension out down the road*."
f. That there were a number of drafts of the contract that had been released to the select committee.
g. That, having met with Chris Martin of the pension scheme and Deloittes on behalf of Arcadia, his understanding was that the purchase would go ahead and that BHS/Arcadia would do a deal with the Pensions Regulator to do a "right-sizing".
h. The details of the repayments to the pension scheme post purchase and the share that Sir Phillip Green would put in over the following 3 years.
i. That the purchase went ahead on the basis that the Defendant expected Chris Martin and Deloitte to subsequently agree a deal with the TPR under a project called Thor.
j. The funding of the purchase.
k. That he bought before being able to complete due diligence as Sir Phillip Green wanted to complete quickly within a 21 day period.
l. That he relied on an assurance from Sir Phillip Green, but that when this fell through he had to source expensive funding from Dellals.

m. Details of the various property transactions in relation to the property BHS owned.
n. That he had moved 1.5mn to BHS Sweden to preserve it to be able to pay lawyers and specialists during the administration process.
o. That a loan was paid from RAL to the company that owns his father's house and that this had nothing to do with BHS.
p. That some of the money from the sale of BHS property went to RAL under a multi-service agreement.
q. The strategy for BHS international.
r. That the Defendant had not seen any documentation in relation to an issue of £200 mn write off of inter-company debts.

36. There is no mention at the start of the interview to suggest the process is formal or part of the S.72 process. At the end of the interview, the discussion between the Defendant, Adrian Ring and the 2 TPR interviewers makes it abundantly clear that it was not part of that process.

37. Adrian Ring refers to the *"outstanding S.72 requests"* which he describes as "*long outstanding."*

38. He points out the difficulties they are facing in answering the notices due to the *"volume of material and demands"* of that and the investigation by the select committee and two insolvency service investigations. The response from Mr Frankland of the TPR is: "*we take on board what you are saying – and its not appropriate here to get into detail about what is in those notices….Have a look at the notices that have been served, the more personal ones on you Dominic… and if there are any elements of those that you can actually respond to because the material is not held by BHS …"*

39. Mr Ring states that they don't have access to the material from RAL as it was in the BHS offices. *"There may be some minor parts of things that could get done…we will look at what we can do to make a master list."* He goes on to acknowledge that there has been no formal response. He states that they need to deal with the select committee requests, to which they are responding with a document that can be published.

40. He also refers to the fact that Olswang had just agreed to provide him with a data bolt.

41. Miss Kenny tells Mr Ring that they do not need to wait to compile all the information before responding, they should send what they have in batches.

42. Mr Chappell offers that they should be able to get information back to the TPR by the first week in September, to which Mr. Ring adds that they could include an update on what material they could not supply as it was with other parties. Mr Chappell pointed out that he was responding to 5 different sets of requests and that he was up to "bandwidth capacity", he had to put food on the table and that the process had been all-consuming for the last 3 months.

43. They were asked to submit their request for more time in writing. Adrian Ring did so on the 24th August stating that an agreement had been reached with Olswang for them to obtain the data bolt. Due to the volume of material and his holiday he asked for an extension to the 3rd week in September.

44. In response Miss Kenny went on to lay out in detail the areas of the S.72 notices that had not been answered. It reiterates that there is no need to wait for the documents from BHS to respond as much of the material would not require reference to it. She did not accept the timeframe suggested and requested a response the following day explaining what material they needed, where it was and what they were doing to get it, together with a revised date for the written response to the notice.

45. In evidence the Defendant repeatedly stated that he was aware that the interview answers he gave could not amount to formal responses to the S.72 notices.

46. This was at odds with his signed defence statement in which he had said that, *"it was agreed that all outstanding matters would be dealt with at the interview….the interview replaced the requirements of the S.72 notice by agreement. Following the interview further supplementary questions were asked by the TPR. Those questions were in large part, new questions or were merely clarification sought in respect of answers already given by DC"*

47. This discrepancy was put to the Defendant in cross-examination. He responded by saying that he believed there was such an agreement that had been arranged by his lawyers that were present at the meeting, Eddie Johns and Adrian Ring.

48. In closing Mr. Levy characterised the interview as a useful exercise, but no more.

49. Having considered in detail the letter before the interview, the email responses of the Defendant and Adrian Ring (which the Defendant saw) the lack of any suggestion in cross-examination of the prosecution witnesses to suggest this was a S.72 process, the contents of the interview and the email exchange after the interview with Claire Boorman it is beyond any question that the interview and its contents had no bearing on the S.72 requests and that the situation was clear to both the Defendant and his lawyer Mr. Ring.

50. On the 27th September, Olivia Kenny sent a chasing email to Adrian Ring. When there was no response she sent another on the 30th September.

51. On the 6th October, Adrian Ring responded saying the Defendant had been unwell (no medical evidence of this was put in evidence) and that he had spent the entirety of the 5th October with him and would provide a *"full update by tomorrow"*.

52. He wrote the next day stating that he had two weeks ago received a data stick from the BHS administrators containing emails the Defendant had sent and received which ran to the 1000's but that he still did not have the material from Olswang despite the August agreement. He requested a further extension to the 11th November on the basis that the Olswang material would be with him within a week. He again pointed out that they were having to manage priorities between the TPR requests and the other inquiries.

53. On the 2nd November 2016 it is accepted that Mr. Chappell was sent a formal warning notice of intended action by the TPR. The document is restricted and neither the prosecutor nor the court have seen its contents. In evidence Mr. Chappell said that on the same day his house and nearby office were searched by HMRC and documents he had been assembling to answer the S.72 requests that he had for instance obtained from companies house, were taken.

54. It is also accepted that other warning notices were sent out to other entities including Arcadia on the same day.

55. Mr. Chappell gave evidence that on the following day he was driving to London, aware that a warning notice had been served, but not of its contents. He stated that he was called at 11.00 from a withheld number by a journalist claiming to be from the Daily Telegraph. The journalist mentioned his name but he did not catch it. The journalist said he had or had seen the warning notice, started to read a sentence from it and asked for answers about it. The Defendant stated he had not seen the notice and could not deal with it, *"call me back tomorrow"* and put the phone down.

56. He said that he immediately called Adrian Ring and gave him a full and detailed account and instructed him to make a complaint to the regulator about the breach. He was subsequently told by his lawyer that he had called the regulator and relayed in detail exactly what the defendant had said.

57. On the 22nd November, an email was sent by ITN news to Neil Bennett of Maitland which was a PR firm for Arcadia. It detailed a number of allegations the TPR were said to be making against Sir Phillip Green and asked for a response on his behalf. Those allegations have not been submitted in evidence, however it is accepted that they do not affect the defendant.

58. Arcadia responded copying in TPR.

59. I heard from Erica Carroll the head of regulatory assurance at TPR. She said that she was told in November 2016 by a chief executive officer that there was a potential leak of restricted information to the press.

60. She did a without notice check of email and printing of the TPR staff. She did not find any evidence within the TPR of a disclosure. She wrote to every single person internally and externally who had had access to the notice, the letters to the Defendant, Adrian Ring and RAL went by email on 15.12.16.

61. She informed the recipients they were getting the letter as they were a recipient of a warning notice and that they were an affected party or adviser to an affected party. It warned them about the illegality of disclosure and requested a response detailing what they were aware of any such disclosure and whether they had any other relevant information.

62. On the 22nd December Mr. Ring responded on behalf of RAL to the 15.12.16 letter. In it he said *"you will be aware that it was this firm that brought to your attention that information contained in the Warning notice dated 2.11.16 had apparently been disclosed to individuals outside those involved in the case."*

63. He then says: *"Mr. Chappell is aware of disclosure by another as he has been approached by members of the press who are in possession of information that could only have come from the WN. Mr. Chappell is also aware of comments circulating (both in the press and elsewhere) that indicate disclosure of elements of the WN. We have requested that Mr. Chappell provides further details with relevant information setting out his concern so that you are able to take appropriate steps to investigate this."*

64. On the 6th January 2017 Erica Carroll wrote back asking when they could have the further information from Mr. Chappell. She further stated that she could find no record of Lawrence Stephens, the firm for whom Adrian Ring worked having notified the TPR of any leak. *"If you are willing to provide the details of your disclosure to the regulator, I will look into this matter further."* This email was collected by Mr. Ring on the 6th January 2017.

65. No reply was sent. On an unknown date before 1st February, Mr. Ring left Lawrence Stephens. The Defendant gave a vague account that Mr. Ring remained his solicitor but was consulting with some other satellite firms. He later moved to his current firm.

66. On the 20th February, Erica Carroll sent a S.72 notice to the Defendant, ("the third notice" which forms the subject of count 3) requesting information to be provided by 6.3.17 on:

    a. The details of the discloser
    b. The details of the disclosure
    c. A full account of the details of information the letter asserted could only have come from the Warning Notice.

67. No response to the S.72 request was ever sent.

68. In response to cross-examination about this the Defendant stated that he had left the matter in the hands of his solicitors that this would be dealt with and information provided to the TPR. He stated that if this has not been done, that that is an issue.

69. Mr. Levy suggested that the only possible source of the leak was from within the TPR as information concerning both Arcadia and the Defendant had been leaked.

70. However, there is no evidence to suggest that the Defendant's warning notice was leaked to the press, or benefit to them from doing so. The account the Defendant gave in evidence was that an unnamed journalist from the Telegraph called him about a warning notice and the Defendant cut him off before more details were given.

71. In fact I did not believe the Defendant's account of this call at all. He stated that he had immediately relayed the information to Mr. Ring. I have received no attendance note of that call, or attendance note of the call Mr. Ring supposedly told the Defendant he made to the TPR. The TPR have no record of any such call and wrote two letters and a S.72 notice to try and get some more information to find out about it with no response.

72. It is not credible that Mr. Ring who had previously dealt with all communication by email would suddenly revert to a phone call over a matter as serious as this and not follow it up with an email and written confirmation to his client as to what he was doing.

73. The letter of the 22nd December by Mr. Ring is puzzling. It refers to the fact that the disclosure was made by Lawrence Stephens, but not how or when. It refers to information being disclosed, which is not what Mr. Chappell states happens. It appears to refer to Chappell's experience as a separate matter, "*he has been approached by members of the press who are in possession of information that could only have come from the WN."* It goes on to say that he has requested *"further"* information from the Defendant with relevant details.

74. I cannot fathom whether there were one or more disclosures. I do not believe the Defendant's account at all. The fact that Mr. Ring did not give evidence on this issue is very difficult to understand. That several requests for this issue to be clarified have been made to Mr. Ring and the Defendant and without response is inexplicable.

75. Mr. Levy placed great emphasis on the assertion that the Defendant had no relevant information to give in response to the third notice. On the contrary, if the Defendant's account were correct he could have told TPR the date and time of the call, the newspaper involved and the detail of what was said to try and ascertain which warning notice had been breached. Mr. Ring could have identified the time of his call to the TPR and to whom he spoke and what he said.

76. Certainly from the letter of Mr. Ring of 22nd December, it can be concluded that the Defendant did have some relevant information about disclosure and Mr. Ring thought he could provide more. The reason why no further information was provided in response to the S.72 notice lies somewhere in the confidence between the Defendant and Mr. Ring, but it has not been given in evidence before the Court.

CONCLUSIONS

77. In order to prove the charges, the regulator must prove beyond a reasonable doubt that S.72 requests were made and that the Defendant neglected or refused to provide the information requested.

78. I am quite satisfied so that I am sure, that all of the requests made were valid and reasonable, and that the timescales set for response were also reasonable as the Defendant could have provided answers to some issues directly from his own knowledge and asked for reasonable time to support it with materials that I accept he had to wait some time to obtain.

79. I am satisfied so that I am sure that the Defendant refused to provide the information. He repeatedly said as much in relation to the first and second request in evidence by stressing again and again that he did not want to respond to the notices in the absence of having the documents to hand in case he committed an offence of offering misleading or false information. This to me was the central plank in the Defendant's account although Mr. Levy did not put it forward in closing.

80. His account that he had no relevant documents to provide or from which to confirm detail, I do not accept. In interview he told the regulator that he was putting together a document to answer the questions posed by the select committee. In evidence when asked when a company was incorporated he said that he did not know but given a moment and his phone he could find out. He stated that when HMRC raided his house they took away documents he had been gathering to answer the S.72 requests. He had his own office and the contention that the entirety of all his emails and documentation were locked up in the BHS offices when the administrators took over is simply not believable, he was, for instance, still receiving and sending emails on his Swiss Rock account into August 2016.

81. In relation to some of the requests made, he stated that he had already provided the material in response to a S.72 request made on 27.3.15. The TPR accepted that the Defendant had provided a very large amount of documentation in response to those requests. Mr. Chappell has not provided any information about what was sent and at no point before these proceedings were started has he made that claim, or informed TPR of that. It is quite possible that some relevant material was provided before in relation to Arcadia, Taveta, BHS, Sir Phillip and Lady Green. However the first and second notices in 2016 requested information on persons and companies outside of the 2015 request, to which answers were not given.

82. His account that he could not provide any details without checking them against documents was also not credible. From his interview account it was clear that he could provide a great deal of reliable information about many of the entities involved and their relative connections, principally because it was information about things he personally had done or conversations he had had. He was able on his own account to give an interview to the PPF which lasted 2-3 days. He was able to explain in evidence the link between JDM Island Properties was that he had arranged a loan of 1.4 million pounds (he later said he could not remember the exact figure although it was over 1.3 mn) from RAL to the company which bought a house for his father to live in.

83. Further, from the email of Mr. Ring dated the 7th October it appeared that the material from Olswang had been disclosed in mid-September and was available for sending on. In evidence which I did not accept, the Defendant claimed the USB stick it came on was corrupted and it took weeks to access. This is not what the letter from Adrian Ring says to TPR at all. He also said that the emails were undated, which seems incredible. Whatever the truth is, the Defendant had the information in releasable form at some point in September or October, but did not, and still has not handed it over.

84. The Defendant also said that he was following advice that he could not respond to the notices in the absence of the information.

85. He relied at times on the fact that he had either supplied information to his solicitor Adrian Ring, or instructed him to respond on his behalf and organise the interview to stand as his answering of the S.72 notices. Mr. Ring, according to the Defendant was a witness to some significant events and could corroborate the Defendant's account about the corrupted USB stick, the phone calls on the 3rd November 2016 and the lack of correspondence following the letters from Erica Carroll and the third notice. He could confirm the Defendant's instructions to organise the interview and the Defendant's account overall that he did all he could to comply in difficult circumstances, but that he did not have the resources to respond.

86. When I asked the Defendant whether for instance he had a letter from Mr. Ring confirming the actions taken after the 3rd November, he told me that Mr. Ring very rarely wrote to him.

87. I raised this issue at the first hearing when Mr. Chappell represented himself and put Mr. Ring on the case management form as a witness for him, and told Mr. Chappell that he needed to consider that issue due to the problem of having your instructed solicitor in the criminal proceedings also as a witness of fact in your defence. I further raised it as an issue at the case management hearing and on 3 if not 4 occasions with Mr. Levy during the trial.

88. In fact, not only has Mr. Ring been the Defendants instructed solicitor in these proceedings, he has attended as the solicitor in the case for all 4 days of the trial hearing and remained in Court. Mr. Levy reassured me each time that Mr. Ring was not to be called as a witness. Bearing in mind the defendant bears the burden of proving his defence, and that he had an apparent source of corroboration to hand as a witness in the form of Mr Ring, the absence of Mr. Ring from the witness box, if the defendants account is correct, is incomprehensible.

89. Mr Ring's presence in court as defence solicitor is hard to understand in the light of Mr Chappell's evidence that he had instructed Mr Ring to provide certain information to TPR when there is no evidence that this was done.

90. In conclusion, I am satisfied so that I am sure that the Defendant refused to reply to the first, second and third notices. He was in possession of relevant information that he knew was reliable and decided not to give it.

91. In relation to the first and second notices, he stalled for time, whilst giving information in interview and to the PPF which he believed could not be used against him as it was not formally admissible under the S.72 procedure.

92. In relation to the third notice, he simply refused to answer it, for reasons which have not been explained to the court.

93. He has not provided any reliable evidence to substantiate any of the reasons he say provide an excuse, i.e that he could not logistically give the information, that the only data he had was liable to be misleading or false, that he instructed his solicitor to deal with the matters or that the information on all aspects of the first and second requests had been given in 2015.

94. I therefore find the defendant guilty of all three charges.