Neutral Citation Number: [2020] EWCA Crim 915

Case No: 2018 04007 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LIVERPOOL
His Honour Judge Warnock
T20177593

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2020

Before :

LORD JUSTICE DINGEMANS, VICE-PRESIDENT OF THE QUEEN'S BENCH DIVISION
MRS JUSTICE CHEEMA-GRUBB
and
HIS HONOUR JUDGE MAYO, RECORDER OF NORTHAMPTON

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Between :

Ludovic Black	**Appellant**
- and -	
Regina	**Respondent**

- -
- -

Simon Csoka QC (instructed by **the Registrar of Criminal Appeals**) for Mr Black
Alistair S Webster QC and Fiona Jackson (instructed by **The Serious Fraud Office**) for the **Respondent**

Hearing date : 10 July 2020

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Approved Judgment

Lord Justice Dingemans:

Introduction and issues on the appeal

1. This is the hearing of an appeal against a conviction for conspiracy to commit fraud by false representation. The appeal raises an issue about whether sufficient evidence had been adduced about the strength of the prosecution case at the time of interview, to permit an adverse inference to be drawn from the failure to mention specific facts pursuant to section 34 of the Criminal Justice and Public Order Act 1994 ("CJPOA 1994").

2. The appellant, Ludovic Black, also renews an application for permission to appeal against conviction on a ground relating to the drawing of adverse inferences in relation to what were said to be deficiencies in the defence statement.

3. Mr Black was convicted on 29 August 2018 in the Crown Court at Liverpool following a trial before HHJ Warnock and a jury. On 2 October 2018 he was sentenced to 90 months (7 years 6 months) imprisonment, and 2 months consecutive for failing to surrender to Court. He was disqualified from being a director for 10 years. Mr Black was tried with six other co-defendants, five of whom were also convicted (his brother David Diaz, Robert Ross, Stephen Wilson, Kenneth Reid and Niall Hastie) and one of whom (Gary McVey) was acquitted.

4. Mr Simon Csoka QC appeared on behalf of Mr Black, and Mr Alistair Webster QC and Ms Fiona Jackson appeared on behalf of the Serious Fraud Office. We are very grateful for their written and oral submissions. By the conclusion of the oral submissions it was apparent that the issues for us to determine are: (1) whether there was sufficient evidence of the strength of the prosecution case at the time of interview to justify the drawing of an adverse inference from Mr Black's failure to mention facts at interview; (2) whether permission to appeal ought to be granted in respect of directions given on the defence statement; (3) if so, whether the directions on the defence statement were proper directions; and (4) whether Mr Black's conviction was safe.

The circumstances giving rise to the prosecution

5. In 2011 the UK Government promoted a "feed in" tariff ("FIT") under which the Government would pay money for each unit of energy produced in an environmentally friendly manner. Photo Voltaic (solar) panels produced energy in such a manner.

6. Mr Black, together with his brother Mr Diaz and Mr McVey, had previously been involved in selling alarms to the public through SAS Fire and Security Systems Limited ("SAS"). The company ran into financial difficulties in 2009. In June 2009 the London Borough of Hillingdon Trading Standards commenced an investigation into mis-selling by SAS. On 25 March 2011 SAS was wound up on public interest grounds. On 28 June 2012 Mr Black, Mr Diaz and Mr McVey were convicted in the Crown Court at Harrow of engaging in commercial practice in contravention of the Consumer Protection from Unfair Trading Regulations 2008.

7. Mr Black, who was alleged by the prosecution to be the driving force behind the scheme, and co-defendants, set up Solar Energy Savings Limited ("SES") to market, promote and sell solar panels to the public. It started trading in March 2011, which was the same month that SAS was being wound up on public interest grounds. SES used the regional sales network already established for SAS. Mr Black, Mr Diaz and Mr McVey had been directors of SES but resigned as directors on 5 January 2011.

8. Ultra Energy Global Limited ("UEG") was incorporated in Scotland on 1 September 2011. It was dissolved on 7 July 2016. PV Solar Direct Limited ("PVSD") was incorporated on 11 November 2011. It sold solar panels until it was dissolved on 15 July 2014.

9. In 2011 and 2012 SES, PVSD and UEG promoted and sold solar panels to members of the public based on brochures and sales pitches given by salespersons who had been trained to a sales script.

10. In essence, what was represented in sales brochures and by the salespersons was that was the customer would get the benefit of the savings in electricity usage from the solar panels, but would also be repaid 100 per cent of the cost of the solar panels and their installation returned within a particular period, being five or seven years. This would be achieved by investing part of the monies paid by the customers, and arranging for insurance to guarantee the repayments in the event that there was any shortfall in the investment. This was known as the "360 degree" scheme. Later in the scheme a major benefit promised was a "tariff booster" which would be applied to the FIT. This meant that the bigger the system purchased, the more money would be paid under the "tariff booster".

11. The return of the monies under the 360 degree scheme was based on the offering made by a company called "Cashbax" which was controlled by Stewart Cameron. SES wanted Cashbax to be rebranded as "360 Degree Money" and it was used in brochures from about September 2011.

12. The sales were made after a cold call, which was followed up by a visit from a salesperson. Sales techniques were taught to the salespersons and applied. The investors were often elderly. Customers paid in the end about £13 million under the schemes.

13. By early 2012 some customers were complaining about the insurance certificates which had been provided. Repayments were not made to customers and SES went into liquidation. Mazars were appointed as liquidators. In the final event no monies were paid back to customers under the 360 degree scheme or under the tariff booster, but there were some modest repayments by the liquidators appointed to SES. Substantial sums of money were paid to Mr Black and other co-defendants from the sales receipts over this period.

14. Inquiries showed that the monies invested to provide the 100 per cent returns promised to customers (which was about £13 million) was limited to about £20,000 sent to Belize, and £250,000 paid to Mr Wharton who ran an investment scheme. Mr Wharton was himself convicted of fraud in the Crown Court at Leeds for promoting a fraudulent investment scheme. The evidence showed that no other investments for the repayment of the monies promised to the customers was ever put in place. It was also

common ground that no insurance to guarantee the repayments to the customers was taken out.

The respective cases

15. The prosecution case was that Mr Black conspired with his co-defendants to make false and dishonest representations to customers to induce them to purchase the solar panels over the period from 1 July 2011 to 31 October 2013. The prosecution relied on evidence from customers, sales and office staff, as well as documentary exhibits including the sales brochures and emails sent between the co-defendants. As appears from the routes to verdict, the case centred on four representations made in the brochures and sales pitches. These were: (1) that it was intended that the Cashbax and 360 schemes would provide a return of the customers' purchase money upon maturity of the scheme; (2) that the 360 schemes were guaranteed and/or insured by independent reputable companies; (3) that it was intended that in the event they were unable to meet their liabilities, those independent reputable companies would provide the return of the customers' purchase money; and (4) that it was intended that the tariff booster scheme would provide a monetary financial annual return to customers for a period of twelve years.

16. Mr Black's case was that he had acted honestly throughout. He had started work as an apprentice stonemason before moving to double glazing sales. He had moved into domestic security and alarm sales with SAS, which had run into regulatory issues. He had then turned his attention to solar panels. Mr Black said that he considered that the returns from the investments should have provided returns to enable payments to be made to the customers. Although he had initially had concerns that the investment returns promised by Mr Cameron of Cashbax were too good to be true, he had had a meeting with Mr Cameron and had been convinced. Thereafter the relationship had broken down and a separate scheme was initiated by SES. He had been told that there was insurance in place to cover all liabilities.

The arrest and first interview

17. On 3 December 2014 Mr Black was arrested. He was interviewed under caution. He answered no comment to all the questions.

18. Mr Black was released on bail, but he failed to answer his bail and absconded.

19. On 23 September 2017 Mr Black was arrested again. He was offered the opportunity to provide information, but declined to do so. There were admissions (admissions 3 and 5) about these matters before the jury.

The defence statement

20. The prosecution produced a case summary dated 15 August 2017 which ran to some 71 pages. It was provided to Mr Black at the Magistrates' Court after his arrest in September 2017. The summary set out in detail the false representations made to customers, the roles of Mr Black and his co-defendants, and the details of various documents relied on by the prosecution to show how the representations were made, how they were false, and why Mr Black and his co-defendants knew that they were false.

21. There were delays in serving the full particulars of the prosecution case against Mr Black. It was served in late 2017. This included some 75,000 pages of evidence. A defence statement was served on behalf of Mr Black on 25 January 2018. The statement noted that it was served before the defendant and his legal representatives had had time to consider the served prosecution evidence and "as such it cannot be more than a preliminary statement of issues". In that defence statement at paragraph 9 it was stated "Further the defendant believed that customers who signed up to the schemes would be insured if the return was not generated".

The trial

22. At trial during the opening on 13 April 2018 the judge recorded that, having read the defence statements he was not clear what the factual issues were in respect of each defendant. During the prosecution case the judge noted that some matters were being raised with witnesses which were not included in the defence statement, for example whether Mr Black was involved with training salespersons.

23. At trial Mr Black gave evidence that he believed that the schemes would make the returns promised, he believed that an investment of 15 per cent of the sale price would produce more than what was required to pay the customer after five or seven years. Mr Black said that the 360 degree scheme was underpinned by the Wharton Trade Investment. He said that insurance did not need to be taken out until the customer had paid in full. Mr Black said that he was told on 29 November 2011 by Mr Reid that insurance was in place. Mr Black had not mentioned these facts when being interviewed, and the facts had not been reported in his defence statement. Mr Black said that he later learned that there was no insurance in place but, believing what he was told by financial advisers, he thought that investments would yield results and insurance could be found.

24. Mr Black was asked at trial about making no comment in interview in the following terms:

Question: So, you've been arrested and interviewed?

Answer: Mm-hm.

…

Question: And before the interview took place, you were given disclosure, were you not?

Answer: Yes, given some papers, yeah.

Question: A bundle of the documents that they wanted to speak to you about? Answer: Yes.

Question: You, of course, had lived through all this?

Answer: Yes.

Question: And we've already accepted you are articulate and intelligent, but you chose to answer no questions?

Answer: Yes.

Question: You were warned that if you didn't answer questions and failed to mention something you later relied upon, an adverse inference could be drawn?

Answer: Yes.

Question: And you had, did you, a story to tell?

Answer: Sorry?

Question: You had a story to tell?

Answer: I am not quite following in terms of that context.

Question: You had a story showing you were not guilty, you were always acting honestly, none of it was your fault

Answer: Yes.

Question: So why was it you didn't say anything?

Answer: Well, I got the advice from the solicitor to go no comment.

25. Mr Black also said that he had not seen a lot of the material, there was a lot happening in his life, and it was a shock to be dragged out of his house in the morning.

The ruling on giving a section 34 direction

26. In submissions about the draft legal directions to be given to the jury, Mr Csoka submitted to the judge that no section 34 direction should be given "because it doesn't include any reference to questions or what was put to the defendant at interview …". The transcript of the questioning was referred to by Mr Webster, but Mr Csoka replied that there was no basis for the jury to determine how the prosecution case appeared at the time of the interview. It was also said that the bundle referred to as being handed over to Mr Black was in fact two pages. It was said that the jury could not know whether the case was sufficiently strong to require an answer.

27. The judge gave a ruling to the effect that he would give the jury a direction about section 34. The judge noted that the prosecution case was that Mr Black was a leading character in the alleged fraud, who had previously been involved in a criminal process. The judge noted that Mr Black had been arrested for conspiracy to commit fraud by false representation and a jury could reasonably conclude that he should make a comment. The judge said that he was wholly satisfied that section 34 was engaged in the case and would be in the directions.

Material parts of the summing up

28. The jury were directed to the elements of the offence and asked whether they were sure that Mr Black intended the representations to be made, intended to make a gain, and knew that no arrangements or investments had been made to underpin the scheme; and knew that no or insufficient monies had been set aside to fund the

schemes. The Judge gave other legal directions and summarised the respective cases for the jury. The jury were asked, in the routes to verdict:

> "Did the Defendant agree, with at least one other defendant, dishonestly to make one of the following false representations to customers which they both knew at the time were untrue or misleading: (a) that it was intended that the Cashbax and 360 schemes would provide a return of the customers' purchase money upon maturity of the scheme; (b) that the 360 schemes were guaranteed and/or insured by independent reputable companies; (c) that it was intended that in the event they were unable to meet their liabilities, those independent reputable companies would provide the return of the customers purchase money; (d) that it was intended that the tariff booster scheme would provide a monetary financial annual return to customers for a period of twelve years?"

29. In the summing up, the judge reminded the jury that Mr Black was cautioned that he had the right to say nothing, but it might harm his defence if he did not mention when questioned something which he later relied on in Court. The Judge told the jury: "You will have to be satisfied as a matter of fact, taking into account all the circumstances then applying that the prosecution case was made sufficiently clear to Ludovic Black at that time". It was apparent that the matters relied on by the prosecution were the facts that: (1) Mr Black did not mention that he had been told by Mr Reid that there was insurance in place at the time; and (2) that the 360 degree scheme was underpinned by what was called the Wharton trade investment.

30. The judge reminded the jury that Mr Black said he was advised by his legal representative not to answer questions and then directed the jury in conventional terms:

> "If you decide that he was or may have been so advised, this is an important matter for you to consider, but it does not automatically prevent you from drawing any conclusion against him from his silence, because a person who is given legal advice can choose whether to follow it or not, and he was made aware at the time of his interview that his defence might be harmed if he did not mention facts on which he later relied on in court."

31. The judge directed the jury:

> "You may only draw an inference against him if you are satisfied that the prosecution as it appeared at the time of the interview was such that it clearly called for an answer, and secondly, apart from his failure to mention facts later relied on in his defence, the prosecution case is so strong that it clearly calls for an answer, and thirdly, there is no sensible explanation for his failure, other than he had no answer at that time or none that would stand up to scrutiny. You must consider any explanation which he gave for his failure, and unless you are

> sure that that was not the genuine reason for his failure, you should not draw any conclusion against him, and four, you think it is fair and proper to draw such a conclusion."

32. The judge then turned to deal with Mr Black's defence statement. The judge recorded that the prosecution was under a duty to disclose in advance the evidence on which they intend to rely at trial and that in the defence statement Mr Black was under an obligation to notify the Court "a), those parts of the prosecution case with which the defendant takes issue, and b), the facts upon which the defendant is to rely in his defence". The Judge noted that "in this case it is plain that there was insufficient time for Mr Black to read the served prosecution evidence before a defence statement was due to be served" and that Mr Black had been provided with a laptop containing the prosecution documents two months later than was envisaged when timetables were set. The judge reminded the jury that Mr Black had said in evidence that he was still reading the prosecution evidence during the trial and he had not received the 75,000 pages until 23 December 2017. The judge noted the prosecution case was that the defence statement should have included two assertions: first that insurance was only necessary after payment had been made in full, and secondly that Kenneth Reid told him that insurance was in place. The judge continued:

> "Only if you find that it ought to have been included, these two matters, go on to consider the following: it is for you to decide whether the reason put forward by Ludovic Black for failing to provide such details is to be considered. If you accept his account for not including those details in his defence statement or think that it might be correct, then the criticism of the content of the defence statement must be ignored. If, however, you reject his account, you are entitled to consider whether such an admission or omission should count against him by consideration of the prosecution suggestion that he had not then thought of the defence that he is now putting before you. It is always for the prosecution to make you sure of his guilt. His alleged failure to file a properly formulated defence statement may provide, if you consider it appropriate and fair, some support for the prosecution case, but you must not convict Ludovic Black wholly or mainly on the basis of that failure".

Section 34 of the CJPOA 1994 and some relevant cases

33. Section 34 of the CJPOA 1994 provides:

> "1. Where, in any proceedings against a person for an offence, evidence is given that the accused - (a) at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings …. being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) below applies."

34. Section 34(2) provides that the jury may draw such inferences from the failure as appear proper. Section 38 of the CJPOA 1994 is headed "interpretation and savings for sections 34 …". It provides at section 38(3) that "a person shall not … have a case to answer or be convicted solely on an inference drawn from such a failure or refusal as is mentioned in section 34(2) …".

35. Section 34 CJPOA 1994 was enacted to deter late fabrication of defences and to encourage early disclosure of genuine defences by reducing no comment interview and ambush defences, see *R Brizzalari* [2004] EWCA Crim 310, Times 3 March 2004. Sections 34 and 35 of the CJPOA affect the common law privilege against self-incrimination, which developed as part of the struggles leading to the abolition of the courts of the Star Chamber. This privilege is mirrored in the rights to a fair trial guaranteed by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"). Sections 34 and 35 CJPOA 1994 are compatible with article 6 of the ECHR because there is no absolute right to prevent inferences being drawn in situation which clearly call for an explanation from the accused, see *Condron v UK* (2001) 31 EHRR 1 and *Beckles v UK* (2003) 36 EHRR 13 at paragraph 58. The safeguards contained in judicial directions to the jury are important.

36. Guidance on section 35, which concerned a defendant's silence at trial, was given in *R v Cowan* [1996] QB 373 at 381. Lord Taylor CJ noted that for section 35 "an inference from failure cannot on its own prove guilt. That is expressly stated in section 38(3) of the Act. Therefore the jury must be satisfied that the prosecution have established a case to answer before drawing an inference from silence …". In *R v Condron* [1997] 1 WLR 827 the guidance in *R v Cowan* about section 35 of the CJPOA 1994 was applied to section 34. This included the direction that "the jury must be satisfied that the prosecution have established a case to answer before drawing any inferences from silence".

37. In *R v Argent* [1997] 2 Cr App R 27 Lord Bingham CJ addressed the pre-conditions before an adverse inference could be drawn under section 34 of the CJPOA 1994. The court noted that the statute provided that the failure to mention was a "fact which in the circumstances existing at the time the accused could reasonably have been expected to mention". The circumstances were not to be construed restrictively. Relevant circumstances could include the defendant's state of health, sobriety, tiredness, knowledge and legal advice.

38. In that case criticism had been made that the police had failed to make such full disclosure of the case against the appellant as they could and should have done, see *R v Argent* [1997] 2 Cr App R 27 at 35C, and that the solicitor's advice not to answer questions in such circumstances was in accordance with Law Society guidance. The court considered that in that case the police may, for particular reasons, have made more limited disclosure than was normal, although under the Codes there was no obligation to give more extensive disclosure. However the court noted that the material provided to the solicitor made it plain that several witnesses had identified the appellant as having been present at the relevant location and was responsible for a fatal stabbing. The Court noted that it was not a complex case to which to respond, contrasting that with frauds or conspiracies with complex interlocking facts. The Court went on to note that the court was not concerned with the correctness of the

solicitor's advice, but the advice given was a very relevant circumstance to be taken into account.

39. In *R v Petkar* [2003] EWCA Crim 2668; [2004] 1 Cr App R 22 at paragraph 51(vi) Rix LJ recalled that the then Judicial Studies Board ("JSB") direction provided that the jury should be directed that "an inference should only be drawn if … the prosecution's case is `so strong that it clearly calls for an answer by him'". Rix LJ noted that this was a striking way to reflect the need identified in *R v Cowan* for there needed to be a case to answer. This requirement has continued to appear in the JSB, and now Judicial College ("JC"), standard directions since that time. The current (December 2019) version of the Crown Court Compendium containing the JC standard directions provides at Chapter 17-1 paragraph 26(1): *"The jury must be directed that they may only draw such an inference:(1) if apart from D's failure to mention facts later relied on in his/her defence, the prosecution case as it appeared at the time of the interview was such that it clearly called for an answer; …*".

40. The reason why a direction was required in *R v Cowan* about the strength of the prosecution case, was to prevent a person being convicted because of a failure to give evidence at trial pursuant to section 35 of the CJPOA 1994 in circumstances where the jury considered that, because of its assessment of the prosecution evidence, there was no case to answer. Any such conviction would infringe the common law privilege against self-incrimination and the protections provided by article 6 of the ECHR, compare *R v Birchall* [1999] Crim LR 311.

41. The position is different at a police interview where there is no question of being convicted at the police interview, there is no legal compulsion to answer questions at police interview, and no criminal penalty be imposed for failing to answer such questions. Nevertheless *R v Condron* and *R v Petkar* have confirmed that an inference should only be drawn under section 34 of the CJPOA 1994 if the prosecution case at the time of the interview is so strong as to justify calling for an answer. Although Mr Webster noted that this requirement was not set out in the wording of section 34 of the CJPOA 1994, in our judgment the decisions in *R v Condron* and *R v Petkar* contain an accurate analysis of the law. This is because if nothing has been said or shown to the defendant at the police interview to call for an answer from the defendant, it would be wrong to draw an inference against the defendant for a failure to provide such an answer. It is also established that the strength or weakness of the prosecution case at interview may be a relevant circumstance for the jury to consider under section 34 of the CJPOA 1994, see *R v Argent.*

Sufficient evidence about the strength of the prosecution case to justify a direction under section 34 CJPOA (issue one)

42. Mr Csoka on behalf of Mr Black submitted that the prosecution had failed to adduce evidence of what was asked in interview, or what disclosure had been given to Mr Black. He submitted that therefore there was no basis on which the jury could consider that the prosecution case called for an answer, and a direction under section 34 should not have been given.

43. Mr Webster on behalf of the prosecution submitted that at the trial it had been established by cross-examination, that at the time of the interview: disclosure had

been given to Mr Black; Mr Black was an intelligent and articulate person; Mr Black had understood the caution; Mr Black had lived through all the relevant events; and he had a version of events to give which would have shown that he was not guilty. This, he said, meant that the prosecution case was so strong at interview that an answer was called for, and a direction was properly given by the judge.

44. In our judgment there was, in this case, sufficient evidence about the strength of the prosecution case to justify giving the jury a direction under section 34 of the CJPOA 1994. This is because Mr Black confirmed in cross examination that he had lived through events and he had been given disclosure before the interview. Living through events meant, in the particular context of this case, producing a scheme by which solar panels were sold to customers on the basis that they would be repaid 100 per cent of the costs of purchase and installation within five or seven years. The repayment was to be funded by investments, but only £250,000, and another £20,000 sent to Belize, of £13 million had been invested. Further the scheme was that however well or badly the investments fared, repayment would be guaranteed by insurance. In the event no insurance was arranged. These were matters which were readily understood by an intelligent and articulate man. In those circumstances there was a basis for the jury to consider whether, if it were true, Mr Black would have mentioned in interview that (1) he had been told by Mr Reid that there was insurance in place at the time; and (2) the 360 degree scheme was underpinned by what was called the Wharton trade investment, and to draw an adverse inference from Mr Black's failure to mention those facts at interview. Further, the jury were told Mr Black was not to be convicted wholly or mainly on the strength of that adverse inference.

45. It might also be noted that there was no evidence adduced at trial to show that the prosecution case at the time of the interview was insufficient to call for an answer. Mr Black did not say in evidence that the prosecution disclosure was insufficient to justify a response from him. Mr Black did not say that he had been given any legal advice to the effect that the evidence was insufficient to justify a response from him (although saying that would have raised issues of legal privilege). It is common ground that there was no burden on Mr Black to give such evidence. However the absence of any such evidence meant that there was nothing to rebut the proper inferences to be drawn about the strength of the prosecution case at the time of interview, as set out in paragraph 44 above.

No permission to appeal in relation to the directions on the defence case statement (issues two and three)

46. Permission to appeal on this ground was refused by the single judge on the basis that the judge was entitled to leave to the jury the issue about whether the defence statement should have contained the information about two facts. These facts were that the scheme required insurance only to be obtained after payment had been made by the customer in full, which explained delays in obtaining insurance, and secondly that Kenneth Reid told Mr Black that insurance was in place, which explained why he had not been concerned about the issue.

47. In our judgment this ground of appeal is not arguable. It is right that a great deal of prosecution evidence was served in late 2017 and the defence statement was served in January 2018. However there had been served a very detailed case summary on Mr

Black in September 2017 which made extensive reference to the relevant documents. A central issue in this case was the disconnect between the promise to customers to arrange insurance to guarantee repayment of the purchase and installation costs of the solar panels, and the absence of any such insurance. The fact that many other pages of evidence was served did not prevent Mr Black from stating that he had been told by a co-defendant that insurance had been arranged.

48. We accept that, as Mr Csoka submitted, if these matters had been set out in the defence case statement it would have made overt at an earlier stage the cut-throat defences of Mr Black and his co-defendant Mr Reid (who denied that he had said anything about insurance being in place to Mr Black) which were later advanced before the jury. However that did not prevent the judge leaving the issue about the adequacy of the defence statement to the jury. Further the judge left this issue on a fair basis to the jury, making it clear that the jury had to assess whether, notwithstanding the late service of documents (caused in part by the fact that Mr Black had absconded) meant that it was not fair to draw the inference. Further in our judgment there was no good reason to explain the failure to serve any supplementary defence statement before trial.

Conviction safe (issue four)

49. In the light of our conclusions set out above we do not consider that the judge was wrong in law to direct the jury about inferences to be drawn from the failure of Mr Black to mention facts in interview or in the defence case statement. There is therefore nothing to show that the conviction is unsafe.

Conclusion

50. For the detailed reasons given above both the appeal against conviction and the renewed application for permission to appeal against conviction are dismissed.