

Failing to comply with a notice served on you under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 to provide the passcode to unlock a mobile telephone.

[2022]GRC059

**ROYAL COURT
FULL COURT**

15th August 2022

**Before: Richard James McMahon, Esq., Bailiff and Jurats:
Stephen Murray Jones OBE, Terry John Ferbrache, Jonathan Grenfell Hooley,
David James Mortimer, Joanne Marie Wyatt, David John Robilliard, Stuart Michael Crisp,
Marilyn Jasmine King, Felicity Jane Quevâtre-Malcic.**

THE LAW OFFICERS OF THE CROWN

- v -

**Alan Robert CHAPMAN
(D.O.B. 16.09.93)**

**Crown Advocate C G Dunford appeared for the Crown
Advocate L C Roffey appeared for the Defendant**

BAILIFF:

Background

Alan Chapman, you appear this morning to be sentenced for a single count of failing to comply with a notice served on you in January 2021 under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 to provide the passcode to unlock a mobile telephone found in your trouser pocket when you were arrested on 13 January. The maximum penalty for this Count, to which we will refer as “the RIPL offence”, is two years’ imprisonment and/or an unlimited fine.

The notice was served on you as part of an investigation into a suspected importation using the postal system of a Class A drug, being cannabinol derivatives, seemingly used in vaping. No substantive offences of drug trafficking have been pursued against you or anyone else, but you chose not to comply with the notice within the period of seven days permitted, resulting in your plea of guilty to this Count on 16 December 2021.

You are a local man, now aged 28, although this offence was committed when you were 27, educated to university level and you are employed as a building surveyor. You have no previous convictions and you have been on conditional bail throughout.

Sentencing Considerations

There are no sentencing guidelines for RIPL offences. However, in *Barras, Watt and Orchard* last year, whilst recognising that these cases are likely to turn on their own facts, at paragraph 79, the Court of Appeal has noted that:

“First, failing to make the disclosure required by a notice issued under section 46 of RIPL is a serious matter; it will invariably call for an immediate custodial sentence. Second, the sentencing court is entitled to proceed on the basis that the failure to provide access is motivated by a desire to hide something either to protect others involved in criminal activity or

to conceal the accused's own more extensive criminality. ... Third, deterrence is an important aspect of sentencing in this context. Fourth, the appropriate sentence will, of course, depend on the particular circumstances of the case. ... One material factor is likely to be the seriousness of the alleged offence which is subject to the underlying investigation. When considering the length of any custodial sentence it will of course be necessary to consider with care the offender's background and personal mitigation."

We have had proper regard to these comments. We agree that non-compliance with a notice is indicative of you having something to hide. The seriousness of the offence being investigated is at the higher end of the offences involving drug trafficking because this was a Class A drug, where the starting point for a substantive offence runs from seven years' imprisonment, although we accept that this was not a commercial level importation. Accordingly, we are satisfied that the custody threshold has been passed and, in terms of identifying an appropriate starting point for a single RIPL offence, this Court takes the view that, before considering mitigation, a sentence in the region of 15 months is appropriate because of the underlying offence being investigated.

Mitigation

We have listened carefully to everything that has been said about you by your Advocate and have had the benefit of reading the social enquiry report. We have also considered the character references provided on your behalf. In particular, we have noted the assessment that you present a very low risk of general re-offending and there is no evidence of you being a risk of serious harm to the public.

In relation to your guilty plea, the Court accepts that the short delay following your first appearance before this Court arose from the discussions taking place between your Advocate and the prosecution and so we will give you the full credit for that plea as if tendered at the earliest opportunity.

We further take note that you are a man of previous good character, which is always relevant mitigation, and that your employer writes about a good work ethic and the position to which you might aspire if you apply yourself effectively.

Sentence

Alan Chapman, as an educated man seeking to qualify professionally, and coming from a supportive family, it is a mystery as to why someone like you, knowing the serious consequences that follow for those engaging in drug trafficking, would run the risk of becoming involved in the type of investigation that was ongoing in January 2021. If there was nothing to hide on your mobile telephone, it would have been simple enough to provide the passcode required. We regard your overall non-cooperation as seriously undermining the way this jurisdiction wishes to deal with drug trafficking offending. Frankly, you should know better. You now have to face the consequences of your conscious decision not to comply with the notice that was served on you, which we find arises from your wish either to protect yourself or one or more other persons from more serious offending being discovered.

As the Court of Appeal has noted, invariably an immediate custodial sentence will follow and, despite the personal mitigation to which we have referred, that is our decision today. We are not satisfied that any other alternative is appropriate in your particular case.

In respect of this Count for a single RIPL offence, the sentence will be one of 9 months' imprisonment.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the forfeiture of the mobile telephone will also be granted. The Court notes that this application was not resisted and, in any event, the Court is satisfied first that this device was lawfully seized and, given the nature of the Count for which you are being sentenced, that it has been used for the purpose of committing or facilitating the commission of an offence. Further, as

required by subsection (5), the Court has had regard to its value and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Richard J McMahon
Bailiff
15th August 2022