

Increased scope and versatility of Norwich Pharmacal Orders in Ireland

22 November 2023

This article, relating to Irish law, was written by the team in our Dublin office for Browne Jacobson Ireland LLP.

A Norwich Pharmacal Order (“NPO”) is a potent legal remedy that can assist in identifying and pursuing a claim(s) against a wrongdoer(s) hiding behind the mask of anonymity or pseudonymity. They are particularly useful for dealing with wrongdoing in a digital environment or arising from the use of emerging technologies.

NPOs can be used as a means of compelling a respondent(s) who has (either knowingly or innocently) become mixed up in the wrongdoing of a third party(ies), to disclose information and / or documentation that would assist the applicant(s) in identifying and pursuing a claim(s) against a third-party wrongdoer(s). As the remedy is equitable in nature, it will only be granted where the court deems it necessary, proportionate and in the interests of justice to do so.

The relief was first established in the UK decision **Norwich Pharmacal Co v Customs and Excise Commissioners** and its availability in this jurisdiction was confirmed in the **Megaleasing v Barrett** decision.

Recent Developments

Two important decisions were recently delivered, one by the High Court and the other by the Court of Appeal, which have enhanced the scope and versatility of NPOs in Ireland.

ESB v Richmond Homes

This case concerned a claim that certain staff members in the ESB networks were seeking cash payments from developers and/or construction companies in exchange for preferential treatment in the form of immediate and/or expedited completion of works. When it became apparent that relevant information was unlikely to be provided on a voluntary basis, an NPO was sought to compel its provision.

The High Court acknowledged that there was a strong public interest in allowing applicants to vindicate their legal rights and deter similar (grave) wrongdoing in future. With that in mind, Mr Justice Dignam held that he was:

“... satisfied that in the specific instance of fraud, where there is such a specific obligation in relation to pleading, the Norwich Pharmacal/Megaleasing jurisdiction may, on the facts of a specific case, be extended to compel disclosure of the minimum information which is necessary to comply with that obligation.”

The ambit of the NPO that was granted in this instance, extended beyond the names of the alleged wrongdoers (four in total), to include other information such as the date and amount of each relevant payment. In circumstances where this additional information was deemed crucial for the preparation of a claim against the wrongdoers, the High Court was satisfied that there was both jurisdiction and cause to grant a broader form of NPO than those which have previously been awarded by the courts.

Blythe v Commissioner of An Garda Síochána

This case concerned the alleged publication of “grossly defamatory and scandalous comments and photographs” regarding a member of An Garda Síochána (AGS). While the applicant wished to pursue defamation proceedings against the individuals responsible for the

publication of this material, he first needed to identify them. To facilitate this, he applied for an NPO to compel the Commissioner to disclose the identity of the relevant individuals.

In the High Court, Mr Justice Humphreys granted an NPO compelling the Commissioner to furnish “*the names and addresses of any persons in relation to whom [the Commissioner] considers that there is prima facie evidence of involvement in publications of allegations against the [applicant] of the general nature described in the Affidavit of the [applicant]...*”.

The Commissioner appealed the High Court decision on several grounds, including that the scope of the NPO that was granted went beyond the allegedly defamatory material identified by the applicant. While Mr Justice Allen (on behalf of the Court of Appeal) acknowledged that the wording of the NPO could have been more precise, he was not convinced that this resulted in any real injustice in this instance. In refusing to set aside the NPO as originally granted, Mr Justice Allen acknowledged that where there is “*a real prospect*” of obtaining additional relevant material, it is not unreasonable for the scope of the NPO “*to go beyond the already identified material*”.

This Court of Appeal judgment provides useful and timely guidance regarding the scope of NPOs, the principles applicable to the granting of them and the associated cost implications.

Key takeaway

These recent decisions appear to be indicative of a willingness to enhance the scope and versatility of NPOs in Ireland, where the specific circumstances of a case call for it. While any such developments will naturally require very careful consideration and balancing of various parties’ rights and obligations, it will be interesting to see how these developments are dealt with in future cases.

If you have any queries in relation the matters outlined above, please feel free to contact us.

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