

Norwich Pharmacal Orders

What is a Norwich Pharmacal order ("NPO")?

Put simply, an NPO is an order for the disclosure of information or documents by a third party who has been mixed up in the wrongdoing of others. They can be used by victims of wrongdoing to, inter alia, identify wrongdoers, understand the wrongdoing, trace assets and obtain key information to bring claims to obtain redress.

The principle was stated by the former House of Lords in the English case of Norwich Pharmacal Co v Commissioners of Customs and Excise (hence the name):

"...if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense, the person seeking the information ought to reimburse him. But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration."

Isle of Man law on the *Norwich Pharmacal* jurisdiction has developed in accordance with English law. Isle of Man authorities refer to the leading English cases.

NPOs in aid of foreign proceedings

The Court has statutory jurisdiction to grant an NPO in the absence of substantive proceedings in the Isle of Man pursuant to section 56B High Court Act 1991:

"56B Interim relief in the absence of substantive proceedings

(1) The High Court shall have power to grant interim relief where proceedings have been or are to be commenced in a country or territory outside the Island.

(2) On an application for any interim relief under subsection (1) the High Court may refuse to grant that relief if, in the opinion of the Court, the fact that it has no jurisdiction apart from this

section in relation to the subject matter of the proceedings in question makes it inexpedient for the Court to grant it.

(3) In this section "interim relief" means interim relief of any kind which the High Court has power to grant in proceedings relating to matters within its jurisdiction, other than — (a) a warrant for the arrest of property; or (b) provision for obtaining evidence."

When will the Court grant an NPO?

The test for granting *Norwich Pharmacal* relief is often stated as follows:

- (i) Good arguable case - a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer;
- (ii) Necessity – there must be the need for an order to enable action to be brought against the ultimate wrongdoer;
- (iii) The person against whom the order is sought must:
 - a. Be mixed up in, so as to have facilitated, the wrongdoing; and
 - b. Be able or likely to provide the information necessary to enable the ultimate wrongdoer to be sued.

Even if the three conditions are met, the Court has a discretion to exercise weighing all the relevant factors.

Principles to be applied

When considering whether to grant an NPO, the Court will take into account, inter alia, the following principles:

- The relief is extraordinary and not granted lightly in the absence of powerful factors.
- The Court must balance the competing interests of the victim of the alleged wrongdoing and an innocent party caught up in the wrongdoing.
- There must be cogent and compelling evidence to demonstrate that serious tortious or wrongful activities have taken place.
- It must also be clearly demonstrated that the order will or will very likely reap substantial and worthwhile benefits for the claimant.

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- The discovery sought must not be unduly wide. It must be necessary.
- Fishing expeditions are not permitted.
- Proper caution has to be exercised when confidentiality concerns have been raised.

When used correctly, NPOs are a useful tool in the Court's armoury to assist victims of wrongdoing.

Our litigation team has significant experience in NPOs. If you would like further information or assistance, please contact [Robert Colquitt](#), [Tara Cubbon-Wood](#) or any member of our team.

Please note that this briefing does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact: [Robert Colquitt](#) or [Tara Cubbon-Wood](#).

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