

NORWICH PHARMACAL ORDERS AND DIGITAL ASSETS IN IRELAND

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With the increase of fraud in the crypto world, information on the identity of a wrongdoer can be critical in tracing missing assets. Norwich Pharmacal Orders are a useful tool in obtaining information from an innocent party caught up in a fraudulent act or wrongdoing. The jurisdiction has recently been exercised in Ireland in cases involving digital assets.

Origins and Test for Norwich Pharmacal Relief

Norwich Pharmacal relief originates from *Norwich Pharmacal v Customs and Excise Commissioners*.⁽¹⁾ The plaintiffs in this case initiated proceedings against the Customs and Excise Commissioners for the purposes of revealing illicit importers who they alleged were infringing their patent. The United Kingdom House of Lords held that a party which has been innocently mixed up in wrongdoing is obliged to disclose relevant documents or information, if they have facilitated the wrongdoer, even in circumstances where their conduct or connection to the third party's alleged wrongdoing is entirely innocent.

The House of Lords in *Norwich Pharmacal* held that the applicant must satisfy the below test for the court to grant the relief:

- 1.The applicant must demonstrate a reasonable basis to allege that a wrong has been committed;
- 2.The disclosure of information or documents from the third party is required to take action against the wrongdoer;
- 3.The respondent is involved in the wrongdoing so as to have facilitated it, even if innocently, and is also in a position to provide the requested information; and
- 4.The order is necessary in the interests of justice.

In *Doyle v The Commissioner of An Garda Síochána*, the Irish Supreme Court held that the applicant must be able to show that they have suffered a legal wrong and bring evidence and agreed facts to the attention of the court.⁽²⁾



The leading Irish authority for Norwich Pharmacal relief, is the Supreme Court decision in *Megaleasing UK Ltd v Barrett*.⁽³⁾ In that case, the Supreme Court took a restrictive view as to the type of information which could be made available to the applicant, confining it to the identity of the wrongdoer only. Other common law jurisdictions, including the UK, adopt a less restrictive approach and the information which can be obtained from a defendant can be more extensive.

The recent Irish High Court decision in *ESB v Richmond Homes and Arkmount Construction Limited* is the first Irish decision in which the scope of a Norwich Pharmacal Order has been widened.⁽⁴⁾ Dignam J. ordered the disclosure of the names of the alleged wrongdoers, the amount of money alleged to be paid and the date of payment.

The High Court held that it was satisfied there was "clear proof of wrongdoing" by persons other than those names already provided by the Defendants and the case involved "very grave" allegations about improper payments for the provision of what is a public utility. The High Court held that in a case which is based on the making and receipt of improper payments, the date and amount of each payment is the "bare minimum" required to be able to enable the plaintiffs to initiate proceedings.



(1) (1974) A.C. 133
(2) (1999) 1 IR 249
(3) (1993) ILRM 497
(4) (2023) IEHC 571

Cases in which the Irish Courts have granted Norwich Pharmacal Orders in Digital Assets Cases

In both *Williams v Coinbase Europe Ltd*⁽⁵⁾ and *Stanbury v Coinbase Europe Ltd*⁽⁶⁾, the High Court granted Norwich Pharmacal orders against Coinbase in order to assist the respective plaintiffs recover Bitcoin that had been stolen from their digital wallets. In both cases, the plaintiffs used cryptographic tracing firms to trace some of their stolen bitcoin to accounts held with Coinbase Europe Ltd by unknown people.

In *Williams*, the Plaintiff was an American businessperson who purchased a large amount of cryptocurrency in late February 2021 and transferred it to his blockchain account, only for it to disappear later that day. Using a cryptographic tracing firm, he ultimately established that a portion of his bitcoin had found its way to an account hosted with the Irish-based Defendant. This account was held by an unknown person.

Allen.J in *Williams* granted an order requiring Coinbase to disclose to the Plaintiff within five days all information in its possession that would identify or assist in identifying the unknown parties who owned or had access to the relevant accounts. The information included IP addresses, email addresses, login details and other contact information.

In *Stanbury*, a similar application was made to the Irish court by the Plaintiff. Mr. Stanbury claimed that 41.96 Bitcoin (at the time worth around €1.5 million) was stolen from his digital wallet in August 2013, arising from a hack of his user account on the now defunct Japanese Bitcoin exchange, MtGox.

Senan J. in *Stanbury* granted a similar Order to that in *Williams* requiring Coinbase to disclose to the Plaintiff within five days all information in its possession that would identify or assist in identifying the unknown parties who owned or had access to the relevant accounts.

It is evident from the Orders of the High Court in *Williams* and *Stanbury* that the Irish courts have indicated their willingness to apply existing common law and equitable reliefs to cases involving crypto currency fraud.

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Conclusion

We expect that the number of cases before the Irish courts involving misappropriated crypto currency will increase as digital assets become more widely utilised. In certain circumstances, Norwich Pharmacal relief may be a useful remedy to assist applicants to identify wrongdoers and trace assets.



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(5) *Williams v Coinbase Europe Ltd*; High Court Record No. 2021/3478P
(6) *Stanbury v Coinbase Europe Ltd*; High Court Record No. 2022/714P