

Neutral Citation No: [2024] NIKB 36	Ref: ROO12512
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: -
	Delivered: 17/05/2024

POCA No. 5 of 2020

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

KING'S BENCH DIVISION

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

Between:

NATIONAL CRIME AGENCY (No.3)

Applicant

and

AIDAN (AIDEN) GREW

and

NUALA GREW

Respondents/Defendants

Dr Tony McGleenan KC with Mr David McNeill BL (instructed by the National Crime Agency) for the Applicant

Joseph O'Keefe KC (instructed by Phoenix Law Solicitors) for the Respondents

ROONEY J

Introduction

[1] This is an application by the National Crime Agency ("the NCA") under section 362A of the Proceeds of Crime Act 2002 ("POCA") for an Unexplained Wealth Order ("UWO") against the respondents.

[2] The NCA's investigation relates to land and buildings at 36A Grange Blundel Road, Loughgall, Co Armagh, BT61 8LT, which was originally registered under title Folio Number 6499 and now registered under Folio AR139363. 36A Grange Blundel Road was owned by Oliver John Grew (the brother of Aidan Grew). Oliver Grew died in 2016. The beneficiary under his will was his sister, Sheelagh McParland, who is now the registered legal owner of 36A Grange Blundel Road.

[3] The NCA is investigating whether 36A Grange Blundel Road was at least in part constructed using proceeds of criminal activity by Aidan Grew and whether it continues to be beneficially owned by Aidan Grew and his wife, Nuala Grew.

[4] On 22 May 2020, when this investigation was still in its covert stage, McAlinden J made an ex parte Disclosure Order under section 357 of POCA. The Disclosure Order gave the NCA certain investigatory powers including the power to issue Disclosure Notices, which oblige persons to whom they are directed to answer questions or produce documents. However, Disclosure Notices cannot be served outside the jurisdiction. The respondents reside in the Republic of Ireland and to date have not responded to correspondence concerning 36A Grange Blundel Road forwarded to them by the NCA.

[5] The purpose of the proposed UWO is to obtain information in the form of a witness statement and also documentation from the respondents concerning their interests in 36A Grange Blundel Road.

[6] As will be considered in more detail below, a UWO is an order made by the High Court that requires a person (“the respondent”) who is suspected of involvement in or association with serious crime to explain the origin of assets that appear disproportionate to the respondent’s known income (section 362A(1) and (2) POCA). The respondent must provide a statement setting out the nature and extent of the respondent’s interests in the property identified in the UWO and explaining how the respondent obtained the property (section 362A(3)). An order may also require the respondent to produce documents of a kind which must be described or specified in the order. A UWO is not a cause of action in itself. It does not affect the substantive rights or interests in property. Instead, it is an investigatory tool which would authorise the enforcement authority (in this case the NCA) to seek information in relation to the said property from the respondents.

[7] On 30 June 2022, the NCA brought an application before this court to serve the originating summons for the UWO out of the jurisdiction. On 6 September 2022, the respondents entered an unconditional appearance to the originating summons. The respondents then made an application to set aside their respective appearances and for leave to enter conditional appearances for the purpose of applying to set aside the service of the originating summons outside the jurisdiction. In *National Crime Agency (No.1) Aidan Grew and Nuala Grew* [2023] NIKB 77, this court determined that service of the originating summons outside the jurisdiction was valid and refused the respondent’s application to set aside service of the originating summons.

[8] In *National Crime Agency (No.2) v Aidan Grew and Nuala Grew* [2023] NIKB 74, the respondents brought an application that the NCA did not have the capacity to bring an application for a UWO on the grounds that, as a matter of statutory interpretation, the NCA lacked the necessary vires to operate in Northern Ireland. It

was argued that, under Schedule 24 to the Crime and Courts Act 2013, certain provisions of Part 1 of the 2013 Act relating to the National Crime Agency did not extend to Northern Ireland. The respondents argued that the necessary legislative process leading to the enactment of the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (hereinafter “the 2015 Order”) was flawed, in that the necessary consent of the Northern Ireland Assembly was not obtained as required by para 6(1) of Schedule 24 and paras 6(1) and 13(1) of Schedule 25 to the Crime and Courts Act 2013. For the reasons stated in the judgment, the respondents’ application was rejected.

[9] I am most grateful to Mr McNeill BL, counsel for the applicant and Mr O’Keeffe KC, counsel for the respondents for their comprehensive skeleton arguments and thought-provoking oral submissions.

Statutory Framework: Unexplained wealth orders

[10] Unexplained Wealth Orders (“UWOs”) encompass a range of investigatory powers available to law enforcement authorities under Part 8 of the Proceeds of Crime Act 2002 (“POCA”). They were introduced following an amendment of POCA by the Criminal Finances Act 2017 (“CFA”) and have been in force in England and Wales since 31 January 2018. UWOs came into force in Northern Ireland on 28 June 2021 pursuant to the Criminal Finances Act 2017 (Commencement No.5) Regulations 2021(reg 2(1)(a)).

[11] Section 362A to 362T of POCA sets out the relevant powers. In summary, a UWO is an order issued by the High Court which requires a person who is suspected of involvement in or association with serious criminality to explain the origin of assets or identified property they have acquired which appear to be disproportionate to their known income. The response can be used in confiscation proceedings under Part 2 of POCA. A failure to provide a full response creates a presumption that the property is “recoverable,” in order to assist any subsequent civil recovery action. This presumption is rebuttable. A person can also be convicted of a criminal offence if they make false or misleading statements in response to a UWO.

[12] The revised Code of Practice for investigations under Part 8 of POCA and, in particular, paras 169 and 170 of the Code, explain that UWOs are intended to operate as investigatory tools which are ancillary to substantive claims for civil recovery:

“169. A UWO is an investigation tool under Part 8 of POCA intended to assist in building evidence. It is specifically designed to support the building of a case for civil recovery under Part 5 of POCA, but can also be used for other reasons both criminal and civil (provided there is a legal basis for using such information) ...’

170. A UWO provides an enforcement authority with the ability to require an individual or company to provide specific documents or information in order to establish whether the asset(s) in question have been legitimately obtained. As such, it provides an alternative means of obtaining information and allowing for the consideration of action against persons and their property about whom little information is available.”

[13] Para 175 of the revised Codes of Practice, which came into operation on 31 January 2018, states as follows:

“175. The enforcement authority should carefully consider the value of evidence that may be obtained through a UWO. A UWO provides law enforcement with a tool to obtain information and documentation in relation to property that appears to be disproportionate to the known income of an individual or company. A fundamental aim of the power, therefore, is to access evidence that would otherwise not be available. Although not an absolute requirement, the applicant should consider whether alternative tools of investigation could be used in obtaining any relevant documents and information.”

The Statutory Provisions: the nature and effect of a UWO

[14] Section 362A(1) of POCA, under the heading “Unexplained wealth orders,” provides that:

“(1) The High Court may, on an application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that *each of the requirements* for the making of the order is fulfilled.” (Emphasis added)

[15] In *NCA v Hussain and ors* [2020] EWHC 432 (Admin), Murray J stated as follows:

“25. Before turning to consider in more detail each of the relevant requirements for making a UWO, I summarise the effect of a UWO:

- (i) A UWO requires the respondent to provide a “statement” setting out the information required

by section 362A(3) of POCA, which I have set out above.

- (ii) A UWO may require the respondent to produce “documents” of a kind specified or described in the order (section 362A(5)).
- (iii) If the respondent fails “without reasonable excuse” to comply or purport to comply with the requirements imposed by the UWO within the period specified in the UWO, the property is presumed under section 362C(2) to be recoverable property unless the contrary is shown. In other words, the property is presumed to have been obtained through unlawful conduct for the purpose of civil recovery proceedings under Part 5 of POCA, but the presumption is rebuttable.
- (iv) If the respondent complies or purports to comply with the UWO, the presumption in section 362C(2) will not apply, but instead the provisions of section 362D will apply, meaning that the enforcement authority will need to determine what, if any, enforcement or investigative proceedings are to be taken in relation to the property under Parts 2, 4, 5 or 8 of POCA. If an IFO is in place, then section 362D(3) provides that the enforcement authority needs to make that determination within 60 days of the date of compliance.

26. It is not a criminal offence to fail to comply with a UWO, however under section 362E(1) of POCA it is an offence for a person, in purported compliance with a requirement imposed by a UWO, to make a statement that the person knows to be false or misleading in a material particular or recklessly to make a statement that is false or misleading in a material particular.”

[16] Section 362A(2)(b) explicitly provides that the person against whom a UWO is sought may be outside the UK.

Specific Requirements for making a UWO

[17] Section 362B(2)-(4) of POCA sets out the four requirements for making a UWO. The requirements relate to the characteristics of the “respondent”, namely the

person who is intended to be the subject of the UWO and who is required to make the statement. The four requirements are as follows:

- (a) The court must be satisfied that there is reasonable cause to believe that the respondent holds the property, (the “holding requirement”) (section 362B(2)(a).
- (b) The court must be satisfied that there is reasonable cause to believe that the value of the property is greater than £50,000, (the “value requirement”) (section 362B(2)(b)).
- (c) The court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient to enable the respondent to obtain the property, (the “income requirement”) (section 362B(3).
- (d) The respondent is a politically exposed person (“PEP”) or there are reasonable grounds for suspecting that the respondent has been involved in serious crime or has been connected with another person involved in serious crime (whether in the United Kingdom or elsewhere), (the “serious crime requirement”) (section 362B(2)-(4).

[18] Where the respondent is a PEP (ie a foreign politician or a family member or close associate of a foreign politician) there is no requirement for the enforcement authority to satisfy the court that there are reasonable grounds for suspecting the respondent to be involved in serious criminality. It would be sufficient for the enforcement authority to prove (a)-(c) above. The circumstances of this case do not involve a PEP.

[19] The above four requirements must independently be satisfied to the standard specified.

[20] Before I analyse the evidence put forward by the NCA in support of the application for a UWO, it is necessary to give some consideration to judicial dicta relating to the relevant thresholds, namely the meaning of reasonable cause to believe and reasonable grounds to suspect.

Reasonable cause to believe and reasonable grounds to suspect

[21] In summary, pursuant to the statutory requirements as stated above, the applicant must satisfy the court (a) that there are reasonable grounds to believe the respondent ‘holds’ the property and that the value of the property is greater than £50,000 and (b) there are reasonable grounds for suspecting that there is a disparity between the respondent’s lawful income and his acquisition of the property and also that he has been involved in serious crime or has been connected with another person involved in serious crime.

[22] In *NCA v Hussain and Ors* [2020] EWHC 432 (Admin) the court considered the relevant tests, namely “reasonable cause to believe” at paras [31]-[34] and “reasonable grounds to suspect” at paras [38]-[40]. The apposite passages are as follows:

“31. Under section 362B(2) of POCA, there must be "reasonable grounds to believe" that the person holds the property. It is for the enforcement authority to satisfy the court that this threshold is met. In relation to this aspect of the Holding Requirement, Ms Jeavons in her skeleton argument for the UWO Application referred me to the judgment of Lord Hughes in *Re Asset Recovery Agency (Jamaica)* [2015] UKPC 1 at [19]:

‘Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extent conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. It only asks for the Applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief. Nor is it helpful to attempt to expand on what is meant by reasonable grounds for belief, by substituting for 'reasonable grounds' some different expression such as 'strong grounds' or 'good arguable case'. There is no need to improve upon the clear words of the statute, which employs a concept which is very frequently encountered in the law and imposes a well-understood objective standard, of which the judge is the arbiter. Reasonable belief in the presence of stolen goods in premises was the historic test for the grant of a search warrant at common law ... The same test is made the condition of exercise of several police powers ...

Nor is its use confined to matters of criminal procedure: see for example section 2(1) of the Misrepresentation Act 1967, establishing a right to damages in civil claims arising out of contracts.' [emphasis supplied]

32. Ms Jeavons submitted that the test for whether the applicant, in this case the NCA, believes something is subjective. As the passage above indicates, Lord Hughes considered that "believing" something is analogous to "thinking" it. Ms Jeavons further submitted that this is consistent with section 362A(2)(a) of POCA, which requires the NCA to specify in the application who it "thinks" holds the property. Ms Jeavons submitted that "belief" does not require a firm conviction, however it is "a more positive frame of mind than suspicion", as observed by Collins J in *R (Errington) v Metropolitan Police Authority* [2006] EWHC 1155 (Admin) at [27]. Ms Jeavons also referred me to the following passage in the judgment of Laws LJ in *A v Secretary of State for the Home Department* [2005] 1 WLR 414 (CA) at [229]:

'Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which the person thinks that X is the case. Suspicion is a statement of mind by which the person in question thinks that X may be the case.' [emphasis in original]

33. Finally, in relation to the interpretation of the phrase "reasonable grounds to believe", Ms Jeavons submitted that whilst the question of whether the NCA holds a belief is subjective, the question of whether there is "reasonable cause" for that belief is objective. She submitted that, following the reasoning of Lord Hughes in the case of *Re Asset Recovery Agency (Jamaica)* in the passage quoted above, it is not necessary for the NCA to prove to the civil standard that the respondent holds the property. Indeed, any such belief may subsequently prove to be incorrect. The court is concerned with whether the opinion is one which a reasonable person could, in the relevant circumstances, hold: *A v SSHD* (Neuberger LJ) at [364]. Further, a belief may be held on the basis of information which has not been proved in the ordinary sense of the word: *A v SSHD* (Pill LJ) at [30].

34. I accept and agree with these submissions of Ms Jeavons on the proper interpretation of "reasonable grounds to believe" for the purposes of the Holding Requirement."

[23] The second test, namely "reasonable grounds to suspect" is dealt with at paras [38]-[40] as follows:

"38. The terms "reasonable suspicion" and "obtaining property", in relation to the Income Requirement, require a bit more explanation. Ms Jeavons submitted in the NCA's skeleton argument for the UWO Application that "reasonable suspicion" is a "state of conjecture or surmise where proof is lacking", relying on the following passages from the judgment of the Privy Council, delivered by Lord Devlin, in the Privy Council case of *Hussein v Chong Fook Kam* [1970] AC 942 (PC) at 948B, 948H and 949B-C:

'Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting-point of an investigation of which the obtaining the prima facie proof is the end. When such proof has been obtained, the police case is complete ... Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof. ... There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. ... Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstance.'

39. Ms Jeavons submitted that the fact of the NCA's suspicion is a subjective question. The court's assessment

of whether there is "reasonable cause" for this suspicion is, again, objective. It is not necessary to prove that the suspected fact is, in fact, true. Indeed, it may ultimately prove to be incorrect. The proper question, Ms Jeavons submitted, is whether the NCA's suspicion, viewed objectively and in the round, is one which a reasonable person could hold.

40. I accept and agree with these submissions of Ms Jeavons as to the proper interpretation of the words "reasonable suspicion" in relation to the Income Requirement ..."

[24] At para [45], Murray J also confirmed that this interpretation also applied to the "reasonable suspicion" test in relation to the serious crime requirement.

Application of the relevant criteria to the facts of this case

(a) The 'holding requirement': Is there reasonable cause to believe that the respondents hold the property?

[25] "Property" is widely defined within POCA. Property includes money, real and personal property, things in action and all other intangible or incorporeal property (see section 414(2)). The reference to things in action includes debts and would also include a credit balance in a bank account.

[26] "Holding" property has the specific meaning as detailed in section 362H and section 414. Property is held by a person if he holds an interest in it (section 414(3)(za)). Property is obtained by a person if he obtains an interest in it (section 414(3)(a)). In respect of land, this means holding any legal estate or equitable interest or power (section 414(3)(b)). As stated in *Mitchell, Taylor and Talbot on Confiscation and the Proceeds of Crime* at para 13.127:

"This plainly catches property held in the name of the respondent and that held on a resulting or implied trust for a respondent. It therefore covers what is colloquially known as "nominee cases." Consequently, where ownership of property is hidden behind a nominee, the real beneficial owner, as well as the legal owner, can be a respondent to a UWO and required to give an account. In relation to property other than land, interest includes a right to possession. Consistent with the concept that a person holds property, even if he holds a limited interest in it, section 362B(5)(a) specifically provides that it is immaterial that a person other than the respondent also "holds" the property."

[27] Section 362H(2) of POCA sets out the cases in which a person (P) may be taken to “hold” property, namely:

- (a) P has effective control over the property;
- (b) P is the trustee of a settlement in which the property is comprised;
- (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

[28] The term “effective control” is further defined in section 362H(3) which provides:

“A person is to be taken to have ‘effective control’ over property if, from all the circumstances, it is reasonable to conclude that the person:

- (a) exercises,
- (b) is able to exercise, or
- (c) is entitled to acquire ,

direct or indirect control over the property.”

[29] The term “settlement” is defined in section 416 of POCA as having the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005 which provides that: “settlement” includes “any disposition, trust, covenant, agreement, or transfer of assets (other than a charitable loan arrangement).”

[30] The applicant submits that, based on the affidavit of Anne Bennett, there is reasonable cause to believe that both respondents hold an interest in 36A Grange Blundel Road.

[31] In its detailed skeleton argument, the NCA sets out the grounds upon which the assertion is made that there is reasonable cause to believe that the respondents are the true beneficial owners of 36A Grange Blundel Road. The relevant chronology is set out below.

[32] The NCA asserts that the land on which 36 Grange Blundel Road is sited (original Folio Number 6499 and current Folio Number AR139363) originally belonged to Patrick Grew, the father of both Aidan and Oliver, and was transferred to Patrick’s daughter Mary Teresa (Marese) O’Neill, née Grew, in 1996. Marese transferred it to her brothers Aidan and Oliver in 1999. The consideration for both transfers was “natural love and affection.”

[33] The NCA maintain that Aidan Grew actively directed the planning and construction of the house at 36 Grange Blundel Road from 2004-2011, at such times when he and Oliver Grew were joint owners of the land. In particular, the following is alleged:

- (a) Aidan Grew engaged McCallan Building Designs to submit an application for outline planning permission in 2004.
- (b) In June 2004, Aidan Grew requested a firm of solicitors instructed by his father, Patrick Grew, to send the title documents to the land (including Folio 6499) to his solicitor.
- (c) A planning meeting at the offices of Armagh City and District Council took place on 2 August 2005. Although Mr McCallan's recollection is that he attended alone, the council notes record a "Mr Grew (applicant)" in attendance. The "applicant" is recorded as Aidan Grew. On the basis that Aidan Grew had also given the instructions to McCallan Building Designs, there is a reasonable inference that Aidan Grew was in attendance.
- (d) A supporting letter from the Mayor of Armagh City and District Council, also refers to the planning application in the name of Aidan Grew.
- (e) In October 2006 outline planning permission was granted to Aidan Grew.
- (f) Patrick Mallon was the builder who constructed the house in 2010-2011. He issued an invoice for labour and materials to Aidan Grew, whose name appears on the invoice.

[34] The NCA do not deny Oliver Grew's personal involvement in the construction of the house. It is noted that Oliver Grew engaged an architect for the construction and the intention appears to have been that Oliver Grew was to live in the house during his lifetime. The contact landline number on Patrick Mallon's invoice matches the contact number for Oliver Grew held by the NIE in 2010-2011. The NCA maintain that this provides an insight into the relationship between the two brothers, because during that period the address held by the NIE for Oliver Grew was 5 Benburb Street, Blackwatertown, a property owned by Aidan Grew.

[35] In May 2015, Aidan Grew was facing renewed criminal confiscation proceedings following his conviction for the fraudulent evasion of duty on cigarettes. This matter will be considered further below. The NCA submit that, in confiscation proceedings, the court is required to find (a) a figure representing the offender's benefit from criminal conduct, and (b) a figure representing his available assets. The confiscation order is then made in the sum of the lower figure. In Aidan Grew's criminal confiscation proceedings, the prosecution contended for a benefit figure of up to £1,094,660 which was well in excess of his identified assets.

The effect would have been that all of the assets available to him would have been liable to have been included in the confiscation order.

[36] The NCA referred to an affidavit filed by Aidan Grew with the Crown Court which had been sworn by him on 8 May 2015. In the affidavit, Aidan Grew purports to set out all assets in which he has an interest. According to the NICA, this affidavit makes no mention of Aidan Grew's joint ownership of the land in Folio 6499. At para 3.5.4 of the affidavit the following is stated:

“My father passed away recently. Upon his death, his estate contained 9 acres of agricultural land. I do not hold any interest in this land and understands [sic] that this land passed to my brother, who is a farmer.”

[37] The NCA submit that, if the lands relate to 36A Grange Blundel Road, then the assertion made in the affidavit was not true, since at that time Aidan Grew was still a joint owner of the land.

[38] The confiscation proceedings in respect of Aidan Grew came to a conclusion on 30 November 2015 when Weatherup J made a confiscation order in the sum of £601,355 (later varied to £598,635). The NCA emphasised that, on 22 September 2015, shortly before the confiscation order, Aidan Grew transferred his share in 36A Grange Blundel Road to Oliver Grew.

[39] In respect of the said confiscation proceedings, Aidan Grew's solicitor (hereinafter “AB”) provided the NCA with an affidavit sworn by Oliver Grew on 20 August 2015. In her affidavit, Anne Bennett highlights several inconsistencies contained in Oliver Grew's said affidavit and the evidence gathered to date in this investigation. The alleged inconsistencies are as follows.

[40] Firstly, Oliver Grew claimed at para 2 of his affidavit dated 20 August 2015, that it was only when Aidan Grew's solicitor (AB) received the title deeds in October 2004, did they discover that the lands, including 36A Grange Blundel Road, had been transferred into the joint names of Aidan and Oliver Grew. Up until then it was believed that the lands were in Oliver Grew's sole name. However, the following contrary observations and submissions are made by the NCA:

- (a) When AB requested the deeds on 2 June 2004, he did so on behalf of Aidan Grew and described the deeds as “belonging to” his client, Aidan Grew;
- (b) AB sent a further signed authority to the solicitors for Patrick Grew by letter dated 9 July 2004, chasing the deeds and again referring to them as belonging to Aidan and Oliver Grew;

- (c) In May 2004, Aidan Grew authorised the application for outline planning permission. The planning application document stated that he owned and was in possession of the land for which permission was sought;
- (d) Correspondence from Patrick Grew's solicitors in April 2006 stated that Marese O'Neill's transfer of the land to Aidan and Oliver Grew in 1999 was because of a family dispute that Patrick Grew had unfairly preferred Marese over her siblings by giving her this land;
- (e) A fax dated 25 November 2005 from the then Mayor of Armagh City and District Council in support of the planning application stated that the site was given to Aidan Grew by his father and that he intended to live in the house when it was complete.

[41] According to Anne Bennett, the evidence strongly suggests that the averments made in Oliver Grew's affidavit dated 20 August 2015 were untrue. At all times after 1999, Oliver Grew and Aidan Grew knew that they jointly owned the lands.

[42] Secondly, the NCA allege that the chronology in paras 3 and 4 of Oliver Grew's said affidavit is misleading. The implication from the affidavit was that the construction of the house only commenced when the family discovered that Aidan Grew was a joint owner. In fact, the NCA claim that the building work was carried out in 2010-2011, at least six years after the discovery of Aidan Grew's interest in the lands.

[43] Thirdly, in para 4 of Oliver Grew's affidavit, it is stated that:

"Aidan having been made aware of the situation indicated that he had no interest in the lands and had not wanted the lands left to him ..."

[44] The NCA allege that this averment is difficult to reconcile with Aidan Grew's continued involvement in the planning application and the construction of the property after 2004, evidenced by the fact that his name appears on the builder's invoice issued at the time of the construction of the house.

[45] The NCA argue that the evidence of Aidan Grew's interest in the land up to 2015 must be considered together with the evidence of his continuing interest in the property since Oliver Grew's death in August 2016. From 7 January 2017, 36A Grange Blundel Road has been rented. However, the rental income has not been paid either to Gabrielle Jennings, the executrix of Oliver Grew's will, or to Sheelagh McParland, the beneficiary under the will. Instead, according to a tenancy agreement produced by D/Sergeant Joseph Kenny, the landlady is Nuala Grew, the second respondent and Aidan Grew's wife. The monthly rental payments of £650 have been paid into a Bank of Ireland account which is in the joint names of Aidan

and Nuala Grew. This income has not been declared to the tax authorities in either the UK or Republic of Ireland, and this rental agreement has continued despite the registration of the property in Sheelagh McParland's name.

[46] In summary, the NCA submit that there is compelling inference from the evidence above that Aidan Grew and his family knew from the outset that the land on which 36A Grange Blundel Road was built was in the joint ownership of both Aidan and Oliver Grew. Furthermore, Aidan Grew took an active part in organising the planning and construction of the house, and that Aidan Grew's legal interest in the land was initially concealed and then transferred to Oliver Grew in 2015 to avoid it being subject to the confiscation order. The continuing rental payments to Aidan and Nuala Grew since 2017 give reasonable cause to believe that the respondents retain a beneficial interest in the property.

The first respondent's submissions

[47] In essence, the first respondent submits that he has neither a legal nor an equitable interest in the property and does not exercise effective control over the property by any means whatsoever.

[48] The first respondent accepts that the lands in question were transferred to Oliver Grew and Aidan Grew by their sister, Marese, in October 1999. The first respondent also makes the assertion that he and his brother Oliver were under the impression that Marese Grew's intention was to transfer the land to Oliver Grew only.

[49] The respondent claims that he did not assert any interest in the land whatsoever. Nonetheless, it is accepted that when the house was constructed, the lands were owned by Oliver Grew and Aidan Grew. It is submitted that whilst the first respondent "appears" to have helped his brother with the practicalities of building a house on the land, he never lived in the property nor asserted any interest in the house or the land. It was claimed that the house was constructed for Oliver's benefit and occupied by Oliver Grew until he died.

[50] In September 2015, the first respondent transferred his share in the land to Oliver Grew. The respondent submits that in the absence of cogent evidence of a current holding of an interest in the land and the house, there is no basis in law or fact to satisfy the requirement of a reasonable cause to believe that the first respondent has a holding in the property or has effective control over the property as defined by sections 362H(2) and (3) POCA. In support of this argument, both respondents rely on the reasoning of Lang J in *NCA v Baker and others* [2020] EWHC 822 (Admin) in relation to the factual circumstances of that case and the learned judge's decision that the respondents did not have effective control over the properties. It is argued that the same reasoning should be applied to the factual matrix in this case.

The second respondent's submissions

[51] The second respondent denies that she currently has any holding whatsoever in the land and house. She alleges that she was asked by Ms Sheelagh McParland, the legal owner, to manage the land and the house with regard to arranging for tenants to occupy same and to pay the rent for such tenancy to her, until such time as an inter-familial dispute is resolved between her sisters-in-law. It is claimed that the second respondent has neither a legal nor an equitable interest in the property and cannot exercise "effective control" over the property by any means at all. Mrs Grew is essentially helping her sister-in-law, Ms Sheelagh McParland, who is the owner of the property, due to the unfortunate family circumstances that have arisen since the property was left to Ms McParland by her brother, Oliver Grew.

[52] The second respondent makes reference to an affidavit lodged by Sheelagh McParland, the sister of the first respondent. The house at issue is currently in the sole ownership of Ms McParland and was left to Ms McParland by her brother, Oliver Grew, who died on 29 August 2016. The entire contents of Oliver Grew's estate were left to Ms McParland and her sister, Donna Grew.

[53] The second respondent submits that the bequests made by Oliver Grew in his will appear to have caused a dispute amongst Ms McParland's siblings, with her other two sisters, Gabrielle Jennings and Martina Coogan, being highly distressed not to have been provided for in the will. The property was only one part of the will and Ms McParland is not aware whether it was this or something else which caused the adverse reaction of her siblings to the provision made by the will. The consequence of that dispute has been that Ms Jennings and Ms Coogan ceased all contact with Ms McParland.

[54] The second respondent states that by reason of this inter-familial dispute, Ms McParland asked the second respondent, Mrs Grew, if she would take responsibility for the management of the property until relations between the sisters improved. Ms McParland remains responsible for the discharge of the rates and insurance for the property with Mrs Grew arranging for a tenant to occupy the property.

[55] The second respondent accepts that she has received the rental payments from the tenant for the property. However, the second respondent claims that Ms McParland is the beneficiary of those monies and will receive same, subject to a deduction in recognition of the second respondent's help, once the dispute amongst the siblings has been resolved.

[56] The second respondent submits that she is unable to sell the property or undertake any step which an owner may take. It is claimed that her role is limited to renting out the property and collecting the rent on behalf of her sister-in-law, Sheelagh McParland. It is emphasised again that the second respondent does not

have effective control of the property and as such has no legal or equitable interest in the property.

[57] The second respondent further submits that she cannot lawfully object to the sale of the property or claim to be entitled to a proportion of the proceeds of the sale. Furthermore, it is claimed that the second respondent cannot lawfully retain the rent paid in respect of the property.

Decision in relation to the 'holding requirement'

[58] In Anne Bennett's affidavit at para 10.10, the following is stated:

"It is accepted by the NCA that the property known as 36A Grange Blundel Road, is built on land which, itself, is non-recoverable (the title folio having been registered to Patrick Grew and subsequently his daughter, Marese O'Neill, who transferred it to Oliver Grew and Aidan Grew for natural love and affection)."

[59] The import of this, according to the NCA, is that the recoverable interest represented by the actual property may have to be split from the associated interest represented by the land it sits on. Part 5 of POCA contains provisions which permit a court to make a civil recovery order which protects the rights of those who may also hold untainted interests in the same property. Section 245 defines "associated property", which in essence comprises interests in property which are not recoverable. The provisions of sections 270 to 272 of POCA provide for scenarios where recoverable and non-recoverable interests co-exist. So, if a court makes a civil recovery order under section 246 which comprises associated property (or where there is a joint tenant who is not liable under Part 5), sections 270 to 272 provide for mechanisms for the associated property owner to purchase the recoverable property share or reach a mutually convenient agreement. In default of an agreement, a court appointed trustee can take possession of the whole property, sell it and compensate the owner of the associated property. Accordingly, as submitted by the NCA, the statutory scheme under POCA is specifically designed to deal with scenarios where (a) recoverable property (ie proceeds of crime) is used to construct a dwelling on land which itself is not recoverable and (b) recoverable property is mixed with legitimately acquired property which are used to fund the construction of a dwelling house.

[60] It is clear from the above that the NCA's application for a UWO is focused on the house constructed on the land. The estimated costs of constructing the property are as considered in Anne Bennett's affidavit at paras 4.25 et seq. Patrick Mallon ("the builder") of Mallon Bros Building Contractors provided an invoice for estimated costs, detailed initially at £93,000 (excluding fixtures and fittings). The invoice names Aidan Grew as the customer. The contact number matches the contact number held by Northern Ireland Electricity for Oliver Grew in 2010-2011 when a

request was made to install electricity on completion of the property.

[61] During the construction of the property, the builder received “stage payments” purportedly from Oliver Grew and Sheelagh McParland. The stage payments are summarised at para 4.26 of Anne Bennett’s affidavit. Furthermore, at para 4.27 the following is stated:

“The total of these payments is £97,000 (or £96,500 if the lower figure is adopted) which is significant considering that Oliver Grew’s [sic] only declared income was [sic] from state benefits (para 5.9). If these payments exclude the fixtures and fittings then significant additional funds would have been required to complete the property, which they believed was finished to a fairly high specification.”

[62] In essence, the NCA wishes to establish the source of the entire funding for the property, which is estimated to be in excess of £100,000. As considered below, the NCA accept that the first stage payment on 30 April 2010 for £27,000 has been traced either to the estate of Patrick Grew’s grandfather or to a property near Dundalk which was sold in 2004. In either case, it is unlikely to be recoverable because of the 20-year limitation period for civil recovery claims.

[63] According to the respondent, the property that the NCA is actually seeking to investigate by a UWO is the outstanding sources of the build costs of approximately £70,000.

[64] The respondent submits that in this attempt to use a UWO to investigate the derivation of the said £70,000, it is not lawful to label “the property” at issue as being the house at 36A Grange Blundel Road, Loughgall, Co Armagh. It is stated that that property is clearly not in the ownership of the respondents; the outstanding £70,000 in build costs is not currently held by the respondents and, accordingly, the holding requirement is not met.

[65] It is my decision that, based on the evidence presented by Anne Bennett in her affidavit and the written and oral submissions of the NCA as considered above, that there is reasonable cause to believe that the respondents hold the property. Property is not to be narrowly defined as claimed by the respondents. “Holding” property has a specific meaning as set out in section 362H and section 414. Holding any interest in property, means holding any legal or equitable interest or power. Ms Sheelagh McParland has been identified as the legal owner of the property. However, a person holds property even if he holds a limited interest in it. Section 362B(5)(a) specifically provides that it is immaterial that a person other than the respondent also “holds” the property.

[66] The respondents, in their written submission, argue that the requirement for

the holding of the property must be at the time the UWO is made, rather than in respect of property that was previously held by the respondent. In this regard, the respondent refers to *Mitchell, Taylor and Talbot on Confiscation and the Proceeds of Crime (Vol 1)*, Chapter 13 at para 13.129 which states as follows:

“The requirement to hold property is expressed in the present tense and so appears to require the respondent to hold it at the time the UWO is made. UWOs therefore, cannot be used directly to require a statement about how property previously, but no longer held by the respondent, was obtained”.

[67] The above passage cited in *Mitchell, Taylor and Talbot* is not disputed. The argument advanced by the NCA in this case is that the property, which falls within the broad definition, is reasonably believed to be currently held by the respondents. The court notes that, in continuation of the passage cited above, *Mitchell, Taylor and Talbot* further state at para 13.129:

“However, a UWO is an order which requires an explanation of “how the respondent obtained the [currently held] property” (section 362A(3)(b)) and can require “other information in connection with the property.” (section 362A(3)(d)). It is not free from doubt, but since the property is (ultimately) liable to recovery if it is traceable through another property back to criminal proceeds, it is thought that a UWO may properly require a full historical explanation to be given of the original source of funds justifying the currently held property’s acquisition.”

[68] The property at 36A Grange Blundel Road was constructed pursuant to a planning application by the first respondent. At the time of the application, the lands on which the property was to be constructed were owned by the first respondent and his brother, Oliver Grew. In 2015, criminal confiscation proceedings took place following the first respondent’s conviction for fraudulent evasion of duty on cigarettes. Prior to the conclusion of the said confiscation proceedings on 30 November 2015, the first respondent transferred his share in 36A Grange Blundel Road, to Oliver Grew. Previously, ownership of his share in 36A Grange Blundel Road had not been revealed.

[69] Since Oliver Grew’s death in August 2016, the property at 36A Grange Blundel Road has been rented and the rental payments paid into a Bank of Ireland account in the joint names of Aidan and Nuala Grew. The tenancy agreement specifies the landlady to be the second respondent. The respondents have not filed any affidavit evidence to support the contention that the respondents are merely rent collectors for Sheelagh McParland. Even in the absence of any such affidavit

evidence from the respondents, the question necessarily arises as to why the rental monies were not paid into a joint bank account held with Sheelagh McParland and why some or all of the rental monies had not been transferred directly to Ms McParland. Rather, in the respondents' skeleton argument, it is stated that no monies have in fact been returned to Ms McParland. Furthermore, according to the NCA, rates were only paid in 2019 in respect of the property when the LPS became aware of its existence. The fact that Ms McParland has only recently discharged the rates bill, in light of the evidence considered above, cannot be the determining factor in ascertaining the legal and the real beneficial owners.

[70] Applying the relevant threshold test under section 362B(2) of POCA and taking into consideration the interpretation of the said criteria by Murray J in *NCA v Hussain and others*, I am satisfied that there are reasonable grounds to believe that the respondents hold and retain a beneficial interest in the property. Reasonable grounds for believing a primary fact, namely that the respondents hold and have effective control over the property, does not require proof to the criminal or civil standard. The applicant is only required to show that the fact is believed to exist, and that there are objectively reasonable grounds for that belief. In my judgement, for the reasons advanced by the NCA and considered above, the 'holding requirement' is satisfied and that there are reasonable grounds for the court to conclude from all the circumstances that the respondents exercise, or are able to exercise, or they are they are entitled to acquire, direct or indirect control over the property. In reaching my decision, I have considered the reasoning of Lang J in *NCA v Baker and others* [2020] EWHC 822 (Admin). Whereas I entirely agree with the learned judge's interpretation of the relevant statutory provisions relating to an application for a UWO, in my judgement the factual matrices in that case substantially differ in many respects to the circumstances in this case. An assessment of the test whether there is reasonable cause to believe that the respondents have effective control over the property is entirely fact sensitive in each case. For this reason, I do not accept the submission made by the respondents that the decision on the facts in *NCA v Baker* is pertinent to or assists my interpretation of the said test to the circumstances in this case.

(b) *The 'value requirement': Is there reasonable cause to believe that the value of the property held by the respondent is worth more than £50,000?*

[71] In the affidavit of Anne Bennett at para 5.6, she states as follows:

"I believe that the value of the property is in excess of £50,000 on the basis that in June 2020, LPS assessed the 'rateable capital value' as £185,000. LPS states that the 'rateable capital value is in general the assessment of a property on the open market on 1 January 2005.' A recent independent valuation calculates the property valuation on the open market to be £275,000."

[72] The NCA submit that, as detailed above, the construction costs for the property were at least £96,500 and including fixtures and fittings, the property would be valued in excess of £100,000. Furthermore, even if the value of the house is severed from the land, the value requirement in section 36B(2)(b) of POCA is satisfied in that there is reasonable cause to believe the value in the property would still exceed the threshold of £50,000.

[73] The respondents submit that since the NCA acknowledge that the land on which the property is built is not recoverable, then the assessment of the value of the property on the open market is simply meaningless. Logically, the building could not be sold without the land upon which it is built. Therefore, it is argued, the value of the property must be nil.

[74] In essence, the respondents argue that the valuation of the land and the property on the land must be taken together and based on the value the legal owner would receive if the property was placed on the open market. Since the respondents are not the legal owners of the property, the value of the property on the open market is not the appropriate basis for calculation of the value requirement. The respondents submit that there is no other evidence of valuation adduced by the NCA.

[75] The NCA's response to the respondents' submissions is that the NCA's investigation focuses upon the unaccounted for construction costs of approximately £70,000 and the respondents' holding in the property. It is argued that the recoverable interest represented by the actual property may have to be split from the associated interest represented by the land it sits on. It is argued that the provisions of sections 270-272 of POCA provide for scenarios where recoverable and non-recoverable interests co-exist (see para [58] above).

[76] The issues raised by the respondent are addressed by *Mitchell Taylor and Talbot on Confiscation and the Proceeds of Crime (Vol 1)*, chapter 13 at paras 13.129-13.130:

“Since property can be divided into different interests, only one of which may be held by the respondent, the question which arises is whether the value of the respondent's interest must exceed £50,000 or whether it is merely the property taken as a whole which must be worth more than £50,000.

The answer could have been specified more particularly to avoid doubt, but the better view is that it is the property taken as a whole. This is consistent with the notion that the respondent holds the whole of the property if he holds any interest in it (see section 414(3)(za)) and that he obtains the whole of the property if he obtains any interest in it (section 414(3)(a)). It also

chimes with section 362B(10) which provides that, where a UWO is sought in respect of more than one item of property, it is the aggregate value which must exceed £50,000. It can also be observed that Parliament uses different language when seeking to isolate the value of an interest in property, as opposed to the value of the property as a whole (see section 362C(3)). Further, since the provisions are directed towards circumstances which include discretionary beneficial owners under a trust being required to account for acquisition of property held by the trustee (see section 362H) and such an interest is likely to be valueless, the provisions would largely fail in their purpose if they required the respondent's interest to be worth more than £50,000."

[77] I agree with *Mitchell Taylor and Talbot's* interpretation of the relevant sections, particularly section 414 of POCA. The property, taken as a whole, is plainly worth more than £50,000. Although the court was not provided with the relevant assessment, the independent valuation of the property on the open market was averred in Anne Bennet's affidavit to be £275,000. No valuation was provided by the respondents.

[78] Even if this interpretation is wrong, and the focus is to be directed at the interest held by the respondents, in my view, there is a reasonable cause to believe that the value of the interest held by the respondents is worth more than £50,000. The provisions of sections 270-272 POCA plainly allow for situations where recoverable and non-recoverable interests co-exist (see para [58] above). I accept the affidavit evidence of Anne Bennett, which has not been challenged on this issue, that the costs of the property construction were estimated to be in the region of £90,000-£100,000 (excluding fixtures and fittings) and that it is believed that the property was finished to a fairly high standard. Consequently, for the reasons given, I am satisfied the value requirement is satisfied.

(c) *The 'income requirement': Are there reasonable grounds to suspect that the known source of the respondent's lawful income would have been insufficient to enable the respondent to obtain the property?*

[79] The respondent submits that since there is insufficient evidence to prove the "holding requirement" and the "value requirement" to the requisite standard, then it is not necessary for the court to give further consideration to the "income requirement." I disagree. For the reasons given above, in my judgement, there is reasonable cause to believe that the respondents hold and have effective control over the property (see section 362B(2)(a)) and that the value of the property held by the respondents is worth more than £50,000 (see section 362B(2)(b)).

[80] As required by section 362B(3) of POCA, the burden is on the applicant to

satisfy the court that there are reasonable grounds to suspect that the respondents' lawfully obtained income would have been insufficient for the purposes of enabling them to obtain the property.

[81] In essence, the applicant for a UWO must satisfy the court that there is a disparity between the respondent's lawful income and his acquisition of the property. Section 362B(6) sets out the relevant criteria which must be taken into account when considering this requirement. This provides:

- “(6) For the purposes of subsection (3) –
- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
 - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
 - (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
 - (d) “known” sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;
 - (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.”

[82] The disparity which the applicant must show is only between the respondent's “lawful income” and the obtaining of the property. Provided the applicant shows the respondent's income is insufficient to explain the acquisition of the property, the disparity requirement is satisfied. However, it is likely that a court will take into consideration all lawful sources and financial benefits available to the respondent in its assessment of the respondent's full financial circumstances.

[83] Returning to the NCA's application, reference is made again to para 4.26 of Anne Bennett's affidavit which has already been considered at para [60] above. In essence, the payments amounting to £97,000 (or £96,500 if the lower figure is adopted) to the builder of the property at 36A Grange Blundel Road. It is stated that if these payments exclude fixtures and fittings, then significant additional funds would have been required to complete the property. The NCA accept that the first stage payment of £27,000 has been traced and, therefore, does not fall within the calculation. Accordingly, the question is whether the lawfully obtained income of the respondents would have been sufficient to fund the remainder of the bill cost of at least £70,000.

[84] The approach taken by the NCA is to consider not only whether the income of the respondents would have been sufficient to fund the building costs, but also the income of Oliver Grew.

[85] Oliver Grew's income details are considered at paras 5.9 to 5.13 of Anne Bennett's affidavit. In summary, Oliver Grew declared no income from employment or self-employment in the UK from 1999 until his death in 2016. Nor, it is believed, did he declare any income in the Republic of Ireland. He received employment support allowance between 2014 and 2017. Anne Bennett concludes at para 5.13 that:

"I suspect that Oliver Grew's known sources of lawfully obtained income would have been insufficient to enable him to obtain the property and that the funds required for the build, in fact, came from his brother Aidan Grew and that these monies were the proceeds of crime."

[86] In Anne Bennett's affidavit at paras 5.14 to 5.15, Aidan Grew's income details are considered. HMRC confirmed that Aidan Grew declared no employment or self-employment income between 2006 and 2018. In his affidavit dated 8 May 2015, Aidan Grew stated that he worked in the mining industry from on or about 2002 until on or about 2007 when he became unemployed. Aidan Grew stated that he had been in receipt of sickness benefit since 22 May 2008. Since Aidan Grew's only source of declared income was sickness benefit, this would have been insufficient to finance the building of the property.

[87] Nuala Grew's income details are considered by Anne Bennett in her affidavit at paras 5.16 to 5.17. The HMRC has confirmed that they hold no employment or self-employment records for Nuala Grew between 2009 to 2021. She is believed to have had a lawful income in the Republic of Ireland, but that this would have been insufficient to enable her to pay for the construction of the property.

[88] The respondents have not sought to challenge the above assertions made by Anne Bennett in her affidavit. Having taken into consideration this evidence, in my

judgement, there are reasonable grounds to suspect that the lawfully obtained income of Aidan and Nuala Grew (and, indeed, Oliver Grew) would have been insufficient for the purposes of enabling them to fund the construction of the property.

(d) The “serious crime” requirement: Are there reasonable grounds for suspecting that the respondents or any persons connected with them had been involved in serious crime anywhere in the world?

[89] The serious crime requirement will be satisfied if there are reasonable grounds to suspect that each respondent, or someone connected with them, has been involved in serious crime or the respondent is a politically exposed person (PEP). This case does not involve PEPs.

[90] Section 362B(9)(a) states that a person is involved in serious crime in a part of the UK or elsewhere “if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act).”

[91] Section 3 of the Serious Crime Act 2007 provides for a wide definition of serious crime as follows:

“(1) For the purposes of this Part, a person has been involved in serious crime in Northern Ireland if he –

- (a) has committed a serious offence in Northern Ireland;
- (b) has facilitated the commission by another person of a serious offence in Northern Ireland; or
- (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Northern Ireland (whether or not such an offence was committed).

(2) In this Part “a serious offence in Northern Ireland” means an offence under the law of Northern Ireland which, at the time when the court is considering the application or matter in question –

- (a) is specified, or falls within a description specified, in Part 2 of Schedule 1; or
- (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious

to be treated for the purposes of the application or matter as if it were so specified.

(3) For the purposes of this Part, involvement in serious crime in Northern Ireland is any one or more of the following—

- (a) the commission of a serious offence in Northern Ireland;
- (b) conduct which facilitates the commission by another person of a serious offence in Northern Ireland;
- (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Northern Ireland (whether or not such an offence is committed).

(4) For the purposes of section 1(2)(a), a person has been involved in serious crime elsewhere than in Northern Ireland if he—

- (a) has committed a serious offence in a country outside Northern Ireland;
- (b) has facilitated the commission by another person of a serious offence in a country outside Northern Ireland; or
- (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Northern Ireland (whether or not such an offence was committed).

(5) In subsection (4) “a serious offence in a country outside Northern Ireland” means an offence under the law of a country outside Northern Ireland which, at the time when the court is considering the application or matter in question—

- (a) would be an offence under the law of Northern Ireland if committed in or as regards Northern Ireland; and

- (b) either –
 - (i) would be an offence which is specified, or falls within a description specified, in Part 2 of Schedule 1 if committed in or as regards Northern Ireland; or
 - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-para (i).”

[92] Offences specified in Part 2 of Schedule 1 to the Serious Crime Act 2007, include:

- “(a) Terrorism offences (para 18A);
- (b) Armed robbery (para 21); and
- (c) Offences related to cheating the public revenue and duty evasion (para 24).”

[93] The requirement for involvement in serious crime is satisfied if “a person connected with the respondent” is or has been involved in such crime (see section 362B(4)(b)(ii)). A person is so connected if the test in section 1122 of the Corporation Tax Act 2010 is satisfied (see section 362B(9)(b)). Section 1122 of the Corporation Tax Act 2010 provides the details in which persons may be connected to one another either:

- (i) As connected companies;
- (ii) As a company connected to a natural person;
- (iii) As individuals;
- (iv) As a trustee of a settlement; and
- (v) As a partner in a partnership.

[94] Section 1122(5) provides as follows:

“(5) An individual (“A”) is connected with another individual (“B”) if –

- (a) A is B's spouse or civil partner,
- (b) A is a relative of B,
- (c) A is the spouse or civil partner of a relative of B,
- (d) A is a relative of B's spouse or civil partner, or
- (e) A is the spouse or civil partner of a relative of B's spouse or civil partner."

[95] For the reasons provided below, in my judgement, the serious crime requirement is satisfied on the facts of this case.

[96] Firstly, it is submitted by the NCA that Aidan, Oliver and Nuala Grew are all connected persons as defined for the purposes of the serious crime requirement by virtue of their family relationship.

[97] It is submitted that Oliver Grew was historically involved in serious criminality in the Republic of Ireland, namely the robbery of a hotel in Dundalk in 1989.

[98] The NCA submit that Aidan Grew has been involved in serious criminal activity over many years. It is argued that his criminal convictions, in particular, his 2008 conviction for fraudulent evasion of duty, mean that the "serious crime" requirement is plainly met.

[99] The affidavit from Anne Bennett refers to Aidan Grew's criminal record from 1973 to 2012, which includes terrorist-related offences of attempted murder and causing an explosion likely to endanger life.

[100] The NCA submit that Aidan Grew's most recent conviction in 2008 for fraudulent evasion of duty arose from the seizure of 15 million cigarettes discovered in Co Armagh in 2005. This case, and the subsequent confiscation proceedings, have a complicated procedural history, but, according to the NCA, the following key points are relevant to this application:

- (a) Aidan Grew was sentenced on the basis that he was neither an importer nor an organiser, but present as a facilitator when the cigarettes were discovered by the authorities. (see paras 3.29 to 3.31 of Anne Bennett's affidavit.)
- (b) Aidan Grew received a significant sentence of three years' suspended imprisonment, which merited a Serious Crime Prevention Order (see paras 3.33 to 3.35 of Anne Bennett's affidavit). The first confiscation order following

sentence required him to pay £500,000 representing his benefit from the offending. (see paras 3.36 to 3.37 of Anne Bennett's affidavit).

- (c) After Aidan Grew was committed to prison on 6 September 2011, his sister was able to produce on his behalf £500,000 in cash within five days in an attempt to settle the outstanding order (see paras 3.38 to 3.47 of Anne Bennett's affidavit).
- (d) On 6 February 2015, the first confiscation order was quashed by the Court of Appeal and the confiscation proceedings were remitted to the Crown Court for reconsideration. On 30 November 2015 a second confiscation order was made in the sum of £601,355 (see paras 3.43 to 3.44 of Anne Bennett's affidavit). The NCA emphasised that this order was made after Aidan Grew had transferred his interest in the lands to Oliver Grew on 22 September 2015.

[101] The NCA also referred to the fact that the Criminal Assets Bureau in the Republic of Ireland commenced a civil investigation under the Proceeds of Crime Act 1996 into Aidan Grew which was settled by a consent order in the High Court of Ireland in autumn 2021. The respondent has not sought to challenge the evidence put forward by the NCA in respect of the serious crime requirement, except to make the same argument that there is no need to consider this requirement, since the "holding requirement" and the "value requirement" have not been satisfied.

[102] I have carefully considered the evidence put forward by the NCA and I am satisfied that, based on the said evidence contained in the affidavits and supported by the written and oral submissions, there are reasonable grounds for suspecting that both respondents, or persons connected with them, have been involved in serious crime as defined.

Decision

[103] For the reasons given above, in my judgement, the statutory requirements as set out in section 362A and section 362B POCO are satisfied.

[104] I am conscious that under section 362A(1) the court's power to make a UWO is discretionary. In the exercise of this discretion to make an order, the court should have regard to the statutory purpose behind the legislation, the utility of an order (if made) and the extent to which it infringes the respondents' rights. An order plainly amounts to an infringement of a person's right to privacy under article 8 of the ECHR and potentially article 1 Protocol 1 of the ECHR (insofar as the order may require production of documents). Clearly, the court should only make an order if the terms are proportionate to the legitimate aim of the legislation to identify and recover the proceeds of crime.

[105] The aim of the measure, namely the application for a UWO, is intended to improve the State's capability to combat, investigate and, where appropriate, to

recover the proceeds of crime. This is clearly a legitimate aim. The proposed terms of the order are restricted to ascertaining relevant information in connection with a specific property. In my view, the terms of the order are limited and proportionate and would enable the NCA to determine whether to commence civil recovery or other proceedings.

[106] A UWO does not confer the right to require a person to answer any privileged questions or produce privileged or excluded material (see section 362G(2)). A statement made in response to a UWO may not generally be used in evidence against the respondent in criminal proceedings (see section 362F). The statutory presumption may be avoided if there is “a reasonable excuse” for non-compliance (section 362C(1)) and the presumption may subsequently be resisted if “the contrary is shown” (see section 362C(2)). Therefore, safeguards do exist.

[107] The NCA has considered other measures. It attempted to obtain answers to questions in correspondence, but to no avail. Disclosure orders have been obtained, but powers under the said disclosure orders cannot be exercised where the defendants reside outside the jurisdiction.

[108] In my view, any interference with the respondents’ ECHR rights is justified and proportionate in all the circumstances. Essentially, the UWO is an investigatory order, it pursues a legitimate aim and is in accordance with the law.

[109] I will make an order for a UWO in the terms of the draft order.

[110] I will hear the parties on the issue of costs.