

Neutral Citation No: [2025] NICC 1

Ref: [2025] NICC 1

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 09/01/2025

IN THE CROWN COURT IN NORTHERN IRELAND

The King

V

Yingle Jiang

Her Honour Judge Smyth

Recorder of Belfast

Introduction

[1] This is an application by the Director of Public Prosecutions for a Serious Crime Prevention Order (SCPO) pursuant to the Serious Crime Act 2007 (the Act). The proposed terms for are set out in an annex to the application.

The background

[2] The defendant pleaded guilty to offences on two indictments:

22/025739 guilty to counts 2, 6 and 7 which relate to possession of class B drugs with intent to supply, attempting to remove criminal property and removing criminal property respectively.

23/029166 guilty to counts 1 and 5 which relate to being concerned in the supply of class B drugs and encouraging or assisting possession of class B drugs with intent to supply respectively.

[3] The defendant was sentenced to 3 years and 9 months, comprising 1 year in custody with the remainder on licence. In arriving at that sentence, and dividing the custody and licence periods in that way, the court attached significant weight to the impact of custody on her three children, the youngest child in particular. The defendant is a single parent although she has a partner who resides in the Republic of Ireland and does not have permission to reside in the UK. The court also had regard to the defendant's psychological ill-health since the birth of that child and the

four year period that had elapsed since the offences were committed during which all bail conditions had been honoured. For that reason, the court imposed more than the normal 50% of the overall sentence on licence.

[4] The offences represent a continuous period of offending from September 2019-August 2020 and it is clear from the large volume of text messages that the defendant was part of a criminal network involved in the supply of substantial amounts of cannabis throughout NI.

[5] There is no dispute that the defendant played an organisational role, arranging rental addresses to receive consignments of drugs, transferring large amounts of cash back to the UK mainland concealed in rice cookers, was in direct contact with a "London boss" and evidently had knowledge of other drugs transactions being conducted by him, including shipments being arranged via a US supplier which were likely to involve the supply of illegal drugs.

[6] The defendant had a clear criminal record, lives in rented accommodation with no obvious trappings of wealth and there are no confiscation proceedings although clearly there was financial gain. The prosecution submits that money may well have been transferred to others, enabling her access, although no evidence is available to support that submission.

The legal test

[7] Section 19 of the Serious Crime Act 2007 provides-

"(3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.

(4) The Crown Court may, in addition to dealing with the person in relation to the offence, make an order *if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.*

...

(6) The powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards)."

The safeguards in sections 6 to 15 (Defendant must be over 18 years old, etc) have been considered and do not apply in this case.

[8] It is not in dispute that the Defendant has pleaded guilty to "serious offences" for the purposes of section 19(3) (counts 2, 6 and 7 on the first indictment and count 5 on the second indictment). In respect of count 1 on the second indictment, namely being concerned in the supply of class B drugs, this is not specified as a "serious offence".

However, section 3(2)(b) of the Act states that the court may, in the particular circumstances of the case, where the court considers the offence as sufficiently serious, treat it for the purposes of the application or matter as if it were so specified.

[9] In my view, taking account of the nature and extent of the criminal offending, in particular the organisational role played, count 1 is sufficiently serious to justify treating it as a “ serious offence “ for the purposes of this application. The offence has the same maximum penalty as possession of class B drugs with intent to supply, namely 14 years and the facts of the offence in count 1 relate to the large scale seizure of cannabis at Heathrow Airport on 9th June 2020 when 71.8 kg of cannabis was seized. No contrary submission is made by the defence.

The application of the test

[10] The issue in dispute is whether there are reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the defendant in serious crime.

[11] In *R v Hancox and Duffy* [2010] EWCA Crim 102 the English Court of Appeal gave general guidance on Serious Crime Prevention Order applications at paragraphs [2] to [12]. More recently, in *R v Glenn Rainey, Mark Rainey and William Hunter* [2023] NICA 69 the NI Court of Appeal approved and added to that guidance. The principles that can be distilled are:

- a. Proceedings relating to Serious Crime Prevention Orders are civil proceedings and the court is not limited to evidence which would have been admissible in the criminal prosecution. Although in practice applications may require the application of the criminal standard, “*In the context of Crown Court applications this question is not likely to be crucial, since the conviction for a serious crime offence will be a fact incapable of dispute and the remaining issue, whether there are reasonable grounds for believing that an order would protect the public by preventing, restricting or disrupting involvement in serious crime, is a matter not of disputed fact but of judgment and assessment of future risk*”: paragraph [4]. See also paragraph [25] of *R v Hall* [2014] EWCA Crim 2046.
- b. “*There must be a real, or significant, risk (not a bare possibility) that the defendant will commit further serious offences*”: paragraph [9]. The Court is therefore concerned with future risk.
- c. Although the statute does not expressly require that Serious Crime Prevention Order provisions must be “*necessary*” (as for example, with

SOPOs), in practice this is unlikely to make a significant difference. Orders must still be made for the purpose for which the power was given by statute, they must be commensurate to the risk, which means that only those terms which are absolutely necessary should be included. The defendant's Article 8 rights are likely to be engaged and the interference which the order will create with the defendant's freedom of action must be justified by the benefit.

- d. The terms of the Order must be practicable, enforceable and satisfy the test of precision and certainty: paragraph [11].
- e. A Serious Crime Prevention Order should not be made to punish a Defendant or because he deserves it. The statutory test (which in Northern Ireland is contained in section 19(4)) must be met.
- f. The assessment of risk is for the judge to determine, informed by the evidence.
- g. It is not enough that the Order may have some public benefit in preventing, restricting or disrupting involvement by the defendant in serious crime.

[12] The question of proportionality in cases where the legislature has struck a balance between the objectives underpinning the impugned measure and the interference with private rights has to be considered in light of the margin of appreciation afforded to the state. In *Animal Defenders v United Kingdom* [2013] 57 ECHR 21 at para [109], the ECtHR stated:

"... the more convincing the general justifications for the general measure are, the less importance the court will attach to its impact in the particular case."

There is no doubt that the importance of protecting the public from serious crime involving the distribution of illegal drugs means that the interference with private rights may be of less importance than it might otherwise be.

[13] The question of the extent of risk necessary for an order was considered in *R v Carey* [2012] EWCA Crim 1592. The judge had found that the first defendant did not pose a "*particularly high risk*" of reoffending, because of his conviction and the length of his sentence. The Court of Appeal nevertheless upheld the Order at paragraph 10, saying:

“[10] That does mean that the risk was not real. A risk that is “*not particularly high*” is still a real risk. Carey is a mature man who has twice within the last 10 years engaged in commercial drug dealing. He was the organiser of the dealing in 2008. The factors mentioned by the trial judge (the long sentence he had imposed and the sentence imposed previously) should reduce the risk of further offending. At least, one would hope so. Equally, experience shows that those who engage in commercial dealing in Class A drugs often return to that trade despite the risk of heavier and heavier sentences. It follows that the condition referred to by the Vice President in Hancox is made out in Carey's case.”

Are the suggested terms necessary and proportionate?

[14] In order to determine this application I have considered the types of prohibitions, restrictions or requirements that may be imposed under the Act and the proposed terms in this case. The relevant subsections of section 5 provides examples of the sorts of terms that may form part of this Serious Crime Prevention Order :

“(3) Examples of prohibitions, restrictions or requirements that may be imposed on individuals (including partners in a partnership) by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to- (a) an individual's financial, property or business dealings or holdings (b) an individual's working arrangements; (c) the means by which an individual communicates or associates with others, or the persons with whom he communicates or associates; (d) the premises to which an individual has access; (e) the use of any premises or item by an individual; (f) an individual's travel (whether within the UK, between the UK and other places or otherwise).

...

(5) Examples of requirements that may be imposed on any persons by serious crime prevention orders include (a) a requirement on a person to answer questions, or provide information, specified or described in an order- (i) at a time, within a period or at a frequency; (ii) at a place; (iii) in a form and manner; and (iv) to a law enforcement officer or description of law enforcement officer; notified to the person by a law enforcement officer specified or described in the order; (b) a requirement on a person to produce documents specified or described in an order- (i) at a time, within a period or at a frequency; (ii) at a place; (iii) in a manner; and (iv) to a law enforcement officer or description of law enforcement officer; notified to the person by a law enforcement officer specified or described in the order.

(6) The prohibitions, restrictions or requirements that may be imposed on individuals by serious crime prevention orders include prohibitions, restrictions or requirements in relation to an individual's private dwelling (including, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside)."

[15] The prosecution submits that the degree of the defendant's involvement and the very high amount of drugs involved places this case in a higher than normal category and her role in a criminal network is relevant to future risk. In those circumstances, it is submitted that a permanent residency notification, telephone number notification, both landline and mobile, notification of bank details and restrictions on the amount of cash she is permitted to carry, restriction on dealings with rental properties, associating with those with drug convictions without permission and a requirement to carry a copy of the order at all times are both necessary and proportionate.

[16] In evaluating future risk, it is necessary to consider not only the facts and circumstances of the offending, but also all of the available information about the offender. The information depicts the defendant as an excellent mother, whose three children have thrived in her care. I have read and considered psychological reports on the two older children and there is no doubt that they have suffered a very great deal in the four years that the spectre of their mother's imprisonment has lived with them. These are high achieving young people who consider that their education has suffered as a consequence of the inevitable stress.

[17] The youngest, who is a very young child has been separated from her mother during the custodial part of the sentence. It is unclear who is caring for her, arrangements having been made with a family friend and her father living outside the jurisdiction. There is no doubt that the offending has cost the defendant and her children dearly. The psychological ill-health that she has suffered since her apprehension has no doubt been brought about by the realisation of the consequences. In my view, these are factors which are likely to reduce the future risk of re-offending which would inevitably result in a further custodial term of considerable length, with no reduction for personal or family circumstances.

[18] I am mindful of the lengthy period of licence during which the defendant can be closely monitored and the fact that a free-standing application can be made for an order, should further relevant evidence become available. Four years has already elapsed during which the defendant has not come to the attention of the police.

[19] I have concluded, weighing up the various factors, that there are no reasonable grounds to believe that there is a real risk that the defendant will be involved in further offending falling within the Act from which the public will require protection. It is of course possible that further offending will occur, but a bare possibility is insufficient to meet the statutory test for an order.

[20] The application is refused.