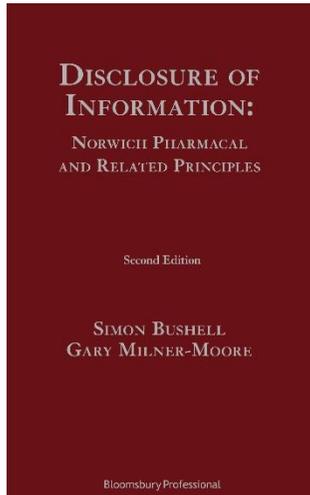


# Disclosure of Information: Norwich Pharmacal and Related Principles

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### INTRODUCTION

The ability to obtain access to information and evidence in support of a litigant's case is one of the most fundamental aspects of dispute resolution. Documents and information which derive from a third party can carry a special status because they are from an independent source and so may carry potentially greater probative value. The third party may be the only practicable source.

There are, of course, established methods by which a litigant can obtain evidence from a third party. A third party may be called as a witness and, within limits, may be required to produce documents. However, this all assumes that there are proceedings on foot and therefore that the claimant

had the means to commence such proceedings. But suppose these elements are missing. A claimant may have no way of identifying the perpetrator of the wrong or, even if he knows the identity of the suspect, a vital piece of information may be missing, such that he cannot properly plead his case. What can such a party do to protect himself? Alternatively, suppose that a company believes that it is the victim of a fraud and has strong suspicions that its agent has been receiving bribes over a consistent period. The agent may recently have resigned and set up home in the Caribbean displaying signs of wealth which are well beyond his known means. Again, what can such a company do to investigate and to seek redress?

The *Norwich Pharmacal* jurisdiction, derived from the landmark decision of the House of Lords in *Norwich Pharmacal v Customs & Excise Commissioners*,<sup>1</sup> offers considerable hope for anyone facing these dilemmas. At its simplest, the jurisdiction obliges a third party who is mixed up in the wrongdoing of others to disclose to a potential claimant the identity of the person against whom the claimant may wish to bring his claim. Relief is available to provide information beyond identities, enabling a claimant to require a third party to disclose the vital 'missing piece of the jigsaw' that will complete the cause of action. Further, the same principles can be used by the victim of a fraud to oblige, for example, a bank to disclose beneficial ownership, signatory details and account movements to assist in both identifying the perpetrator of a suspected fraud (ie the controller of the bank account), the source of funds (ie the potential payer of bribes), the destination of any funds paid out of the account (ie to assist in any tracing exercise and to enable steps to be taken to freeze assets) and potentially any further participants in any fraudulent scheme. Nowadays, *Norwich Pharmacal* relief can even assist a defendant in criminal proceedings. It can be invoked, it seems, by anyone who is genuinely seeking legal redress or seeking to fulfil a legitimate objective.

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1 [1974] AC 133, including both House of Lords and Court of Appeal judgments. For the first instance decision of Graham J see [1972] 1 Ch 566.

On any view, the *Norwich Pharmacal* jurisdiction is controversial. A discussion with any civil law practitioner hearing about the concept for the first time and appreciating its ramifications is guaranteed to lead to a certain level of astonishment. On the one hand the degree of intrusion and potential inconvenience might appear unjustified. On the other hand, to require an innocent third party to provide assistance to the victim of a fraud seems entirely reasonable. It is notable that one of the most creative judicial minds of the twentieth century, Lord Denning MR, resisted the development of the *Norwich Pharmacal* jurisdiction when that case came before him in the Court of Appeal, before it was fully embraced by all five members of the House of Lords.

The first edition of this book, in early 2013, was the first in-depth examination of the *Norwich Pharmacal* jurisdiction and related principles in a stand-alone text. Since that time, there have been a number of developments in the field, including as regards the level of involvement required and matters concerning cross-border situations. In addition, in recent years the courts have become increasingly willing to make pre-action disclosure orders against prospective defendants, meaning that an enhanced chapter on related principles including Civil Procedure Rule (CPR) 31.16, Subject Access Requests and unexplained wealth orders now appears. This second edition records the law as at 1 November 2018.

For further information or to buy the book:

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