

# Judicial Communications Office

Wednesday 21 December 2011

## COURT REFUSES LEAVE TO APPLY FOR JUDICIAL REVIEW OF CASH SEIZURE BY PSNI

### Summary of Judgment

The Divisional Court, sitting today in the High Court, refused Aiden Grew leave to apply for judicial review of the decision of the PSNI to seize approximately £500,000 in cash which he was planning to use to pay a confiscation order.

The Court heard that Aiden Grew (“the applicant”) pleaded guilty in November 2008 to one count of fraudulent evasion of duty relating to a cigarette smuggling operation. He was sentenced to three years imprisonment suspended for a period of two years. He was also ordered to pay compensation of £500,000. The applicant applied for an extension of 12 months to pay the confiscation amount on the basis that it would require him to sell property and this could be difficult in the current financial climate. The trial judge agreed to the application and ordered that the amount be paid by 5 September 2011.

On 6 September 2011, the applicant was arrested as a result of his failure to pay the compensation. He was held in HMP Maghaberry. On the evening of 8 September his solicitor informed the PPS that the money the applicant intended to lodge in court to discharge the confiscation order was not an asset but the proceeds of crime. The PSNI commenced a money laundering investigation into the cash which it was proposed should be used to discharge the warrant.

On 15 September 2011 the PSNI was informed that the applicant’s sister had gone to HMP Maghaberry with approximately £500,000 in cash to discharge the order. The PSNI seized the cash on the basis that the applicant had had no opportunity to sell the cigarettes recovered by the police and that he had no discernable income.

The applicant sought leave to apply for a judicial review to quash the PSNI’s decision to seize the cash. He advanced a number of grounds:

- The PSNI did not have reasonable grounds for suspecting that the money was obtained through unlawful conduct as it had been taken into account in deciding the amount of the applicant’s benefit from criminal conduct for the purpose of making the confiscation order. The Lord Chief Justice, delivering the judgment of the Divisional Court, said that this understanding was not shared by the prosecution. In any event, the explanation advanced to the trial judge for the extension of time to pay suggested that the applicant intended to satisfy the confiscation order by the sale of property. The Lord Chief Justice said that if the trial judge had been aware of the existence of this cash it was difficult to see how he could have been persuaded that there were exceptional circumstances justifying the extension of time to pay.
- The PSNI did not have reasonable grounds for suspecting that the money was intended for use in unlawful conduct given that the clear intention was to deliver it to the prison. The

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Lord Chief Justice said that the relevant test was whether the police constable considered that the course he followed in seizing the money was the practical and sensible option. The Court accepted that there had been an ongoing money laundering investigation and the seizure of the cash was necessary in order to prevent alteration of the evidence;

- The seizure of the cash was an abuse of process, unfair and irrational. The Court did not accept this submission. The Lord Chief Justice stated that in accordance with the relevant legislation, the applicant has an option to apply to the court to reduce the amount payable under the confiscation order where the amount available to him is inadequate for repayment of the sum ordered.

For these reasons, the Divisional Court concluded that leave to apply for judicial review should be refused.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

**ENDS**

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