

THE HIGH COURT

[2022] IEHC 90
[2020 NO. 35 CAB]

**PROCEEDS OF CRIME
IN THE MATTER OF SECTION 3(1) OF THE PROCEEDS OF CRIME ACTS 1996-2016
BETWEEN**

CRIMINAL ASSETS BUREAU

APPLICANT

-AND-

CATHERINE O'BRIEN (ALSO KNOWN AS KATE O'BRIEN) AND NED HAWE

RESPONDENTS

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 16th day of February 2022.

1. The issue in this application is whether the evidence demonstrates that Land Rover Discovery 151 C 2667 bought by Catherine O'Brien on 16 January 2015 represents proceeds of criminal frauds by Catherine O'Brien.
2. The first issue which I have considered is whether the materials relied on by Detective Chief Superintendent Gubbins disclose reasonable grounds for his belief that Land Rover Discovery 151 C 2667 is property "...that was acquired, in whole or in part, with..., property that, directly or indirectly, constitutes proceeds of crime" as provided by s.3(1)(a)(ii) of the Proceeds of Crime Act 1996 (the 1996 Act).
3. These materials establish that Advanced Vetmed Ireland Limited (AVMI Ltd) was incorporated in November 2013. Pdraig McNamara was the 100% shareholder and the directors were Pdraig McNamara and Nicola Beresford.
4. Catherine O'Brien introduced Pdraig McNamara to a project of opening a veterinary business and of buying property for that business. AVMI Ltd was set up with this in mind.
5. Between 4 February 2014 and 16 April 2014 Pdraig McNamara made advances totalling €290,000 in relation to AVMI Ltd. This money was sent to solicitors in Mallow, County Cork and held on client account for AVMI Ltd. The client account ledger shows that that €110,000 of the €290,000 was used to buy a property in Buttevant, County Cork in early 2014.
6. It was anticipated by Pdraig McNamara that AMVI Ltd would buy a property in Dungarvan, County Waterford. Between 11 April 2014 and 16 April 2014 three payments totalling €180,000 were made into the client account for this purpose. Equivalent amounts were immediately forwarded by the solicitors in Mallow to solicitors in Dublin who acted for the seller of the property. Catherine O'Brien transmitted two of these three payments to the solicitors in Mallow on behalf of Pdraig McNamara. Pdraig McNamara intended that the €180,000 be used to complete the purchase.
7. This purchase did not proceed because of delay in paying for the property. The vendor treated the contract as terminated. The money was returned by the solicitors for the

seller and on 2 May 2014 €180,000 was recredited to the AVMI Ltd ledger in client account of the solicitors in Mallow.

8. Pdraig McNamara made a statement to Gardaí indicating that he was unaware that this sale had not been completed and that he only found this out from the solicitors in Mallow much later.
9. Catherine O'Brien was not a director or shareholder of AMVI Ltd. She set up this company but she did not want to be a director. She arranged for Nicola Beresford to act as a director. This lady who was in her sixties had previously been involved in a business venture organised by Catherine O'Brien. This venture failed and proved to be very costly for both Nicola Beresford and her daughter. Catherine O'Brien was not a signatory on the company bank account.
10. The bank account for AVMI Ltd was opened at Mallow branch of Permanent TSB in December 2014. The bank statement for this account does not show that the company ever traded. Few transactions took place on this bank account. The only lodgement was €245,000 by bank transfer on 27 February 2015. By May 2015 this account ceased to operate. The signatories on the account opening form were Pdraig McNamara and Nicola Beresford. The sole authorised signatory on the account was Pdraig McNamara.
11. A statement of Pdraig McNamara to Gardaí indicates that the source of the lodgement of €245,000 to the AVMI Ltd bank account was a transfer from his Bank of Ireland account. He also stated that he bought 70 heifers in Holland with a neighbour and paid €73,000 from a Permanent TSB account he opened. This explains the €73,500 transfer from the AVMI Ltd account to Ernst Van Hummel on 4 March 2015.
12. Only five cheques were presented for payment to the AVMI account. The last of these was returned unpaid on 6 May 2015 as there were insufficient funds to meet it. This cheque related to a deposit to acquire a property. Pdraig McNamara told Gardaí that Catherine O'Brien was involved with him in this venture and had recommended it to him.
13. Evidence suggests that three of the five cheques did not bear a genuine signature of Pdraig McNamara. Cheque 42 was one of these cheques. It was made out to "Kate O'Brien" and was dated 22 April 2015. The amount of this cheque was €25,000. It was lodged for collection to the Permanent TSB account of Catherine O'Brien on 23 April 2015. It is identified by a collecting bank notation "advanced vetmed ir" on the account statement. It was honoured on presentation.
14. Pdraig McNamara stated to Gardaí that he did not issue the three cheques with the queried signatures. He speculated that Catherine O'Brien got hold of the cheque book. However, he did issue the final cheque which bounced. He had access to the chequebook at that time. I have disregarded this material in arriving at my conclusion relating to the reasonableness of the belief evidence of Detective Chief Superintendent Gubbins.

15. Catherine O'Brien contacted Johnson & Perrott Motors in Cork with a view to buying a Land Rover Discovery in February 2014. The documentation shows the deal was finalised on 17 April 2014. The dealer gave her a new blue Land Rover Discovery 141 C 7913. She gave the dealer a cheque for €47,000, and a trade-in motor vehicle valued at €8,500. She specified the customer as "(Kate O'Brien) AVMI limited" with an address at Market Green, Main Street, Buttevant, County Cork. The dealer submitted these details of AVMI Ltd to the registration authorities.
16. Catherine O'Brien then contacted the dealer advising that the cheque for €47,000 not be presented. She claimed that her handbag had been stolen. She made promises to pay by EFT which she did not keep. The eventual source of payment was a cheque dated 7 May 2014 drawn on the client current account of the solicitors in Mallow in favour of "JPM limited". The source of funds was the ledger balance of client funds held by the solicitors for AVMI Ltd. This cheque was presented for payment immediately and was debited to the client bank account of the solicitors the following day.
17. An examination Catherine O'Brien's Permanent TSB current account statements covering period between 17 April 2014 and 7 May 2014 shows that this account held insufficient funds to meet a cheque for €47,000. The credit balance fluctuated between €6,965 odd and €1,415 odd during that period.
18. The record of cheques presented to this account and paid shows that a sequence of consecutively numbered cheques were presented and paid in chronological order. This could not happen if a cheque book was lost and a replacement cheque book was then used to issue further cheques because the numerical sequence would then shift to the numbers of the cheques in the replacement cheque book.
19. Cheques numbered 171 and 172 for €19,000 and €14,000 were presented to the account and paid on 2 April 2014. Cheque number 174 for €1,000 was presented to the account and paid on 24 April 2014. Cheque number 175 for €100 was presented to the account and paid on 28 April 2014. The statement shows that cheque number 173 from the cheque book was never presented for payment.
20. The obvious explanation for this is that Catherine O'Brien issued cheque number 173 for €47,000 to Johnson & Perrott Motors when she had no funds in her bank account to meet it. She knew when she issued this cheque that it would be dishonoured if it was presented for payment. She then persuaded the dealer not to present the cheque for payment by pretending that her handbag had been stolen. Land Rover Discovery 141 C 7913 ended up being paid for with the cheque from the solicitors. The source of funds was money held for AVMI Ltd after the Dublin solicitors returned the €180,000. This money only became available on 2 May 2014.
21. Cheque number 500019 dated 9 January 2015 was drawn by Pdraig McNamara on his current account at Ennis branch of Allied Irish Banks PLC. The cheque stub disclosed that the cheque was for €27.00 and was drawn in favour of "CRO" meaning the Companies Registration Office. The cheque has been examined by an expert who has concluded that

the name of the payee was altered to "Cash." The amount of the cheque was altered to €21,000.

22. This cheque was lodged for collection to Catherine O'Brien's Permanent TSB current account on 14 January 2015. This current account was credited with value for the cheque which was honoured on presentation. The alteration was not noticed by the paying bank.
23. This lodgement of €21,000 funded the issue of cheque number 224 in favour of Autoboland Car Sales drawn on Catherine O'Brien's Permanent TSB current account. This cheque was presented for payment and debited to that account on 21 January 2015.
24. In late 2014 Catherine O'Brien ordered a new Land Rover Discovery from Autoboland Car Sales in Waterford. She offered Land Rover Discovery 141 C 7913 as the trade-in. She paid a €1,000 deposit using a card on 20 October 2014. She paid a further €11,000 by cheque number 224 drawn on her Permanent TSB current account on 17 January 2015. The forms relating to the sale and trade-in record her name and also "AVMI limited" at Main Street, Buttevant, County Cork.
25. She took delivery of Land Rover Discovery 151 C 2667. The dealer submitted the paperwork to the motor tax registration authorities showing "AVMI Ltd" as owner and a registration certificate issued to "AVMI Ltd" at the Buttevant address. The post to this address was redirected to Catherine O'Brien's home in Dungarvan County Waterford.
26. Later in 2015 the registration certificate relating to Land Rover Discovery 151 C 2667 was submitted to the Department of Transport in Shannon, County Clare with a change of ownership declaration dated 10 April 2015 in favour of "Edmund Hawe". The signature of the owner in manuscript is "Nicola Bearsford (sic) Advanced Vet Med; Kate O'Brien". The purported signature of Nicola Beresford was not genuine. After this, Catherine O'Brien continued to use Land Rover Discovery 151 C 2667 until it was seized by Gardaí in December 2018. It was insured in her name. Ned Hawe was not a named driver or noted as having an interest in the vehicle on the insurance policy.
27. Pdraig McNamara told Gardaí that he did not know what happened to the money he had provided to the solicitors in relation to AVMI Ltd. He said he did not authorise payment of €47,000 from the client account to Catherine O'Brien. He said that he did not authorise cheque number 500019 for €21,000 in favour of Catherine O'Brien and that he gave this cheque for €27.00 to her for the Companies Registration Office and that it had been altered.
28. There is strong expert support for the proposition that cheque number 500008 on Pdraig McNamara's current account dated 16 October 2014 has also been altered. The cheque stub shows that this cheque was for €15 and that it was drawn in favour of "Company Registration Office". The cheque was altered so that the payee became "Catherine O'Brien". The amount in words and figures was increased to €15,000.

29. There is also strong expert support for the proposition that cheque number 500007, drawn on the same current account was altered. Both the cheque and the related cheque stub show that this cheque was dated 16 October 2014. The cheque stub discloses that this cheque was drawn in favour of "Revenue" for "stamp duty on house in Mountshannon". The amount of this cheque was €10,725. Pdraig McNamara was in the course of buying a house in Mountshannon at that time. There is evidence that the payee of this cheque was altered to "Kate O'Brien". It was lodged by ATM to the credit of Catherine O'Brien's Permanent TSB current account on 20 October 2014. It was paid by Pdraig McNamara's bank on presentation.
30. Pdraig McNamara stated that he gave cheques numbered 500007 and 500008 to Catherine O'Brien at her request to pay Companies Registration Office fees and stamp duty.
31. Three credits totalling €15,000 to Catherine O'Brien's current account are shown as made on 15 September 2014 at different times using an ATM in Ennis. The total corresponds with the amount of altered cheque number 500008. An affidavit on behalf of the Criminal Assets Bureau (the Bureau) states that these credits relate to that cheque.
32. The affidavit does not explain the basis for this conclusion. Normally, an ATM lodgement would not involve splitting the value of a single source of effects such as a cheque. It is not clear when the cheque was debited to the drawer's account at Allied Irish Banks PLC in Ennis. A cheque which is post-dated at time of presentation would be normally be returned unpaid. While these matters remain unexplained, it is clear that the cheque for €15,000 was presented for payment at some stage and that it was paid.
33. Catherine O'Brien was interviewed by Gardaí under caution in relation to the alteration of cheques numbered 500007, 500008 and 500019. She admitted that she lodged cheques numbered 500008 and 500019 to her bank account but she denied that she altered any cheques. She denied any involvement with AVMI Ltd. She said the company was set up to sell animal goods and farm supplies in a shop in Buttevant. She also denied that she owned a veterinary or animal supplies business called "Abbeyside Veterinary" in Abbeyside, Dungarvan. She claimed this was operated by her on behalf of Joe O'Loughlin, a veterinary surgeon in Clare.
34. The materials which underpin the belief of Detective Chief Superintendent Gubbins include a detailed statement of complaint by Pdraig McNamara. This asserted that Catherine O'Brien perpetrated a series of frauds on him. He gave an account of giving her money to buy pipes which were never delivered. He also told Gardaí that she pretended to have bought a public house in County Clare. He claimed that she was to put an investment equal to his into AVMI Ltd but that this never happened. The investment in the public house was to be used in some way to balance up the money which he had put into AVMI Ltd. There is evidence that she placed an advertisement and conducted interviews for prospective employees of this public house which was not bought. Pdraig McNamara claimed that he provided Catherine O'Brien with money for horses which disappeared.

35. Padraig McNamara also claimed to Gardaí that he handed over €53,000 in cash to Catherine O'Brien at Corbett Court in Charleville on 5 April 2014. He said that he gave her this money as a result of a representation by her that it was needed immediately to make a payment on the property in Dungarvan. If this information is correct, cash given to buy the property in Dungarvan was misappropriated and used for some other purpose. It did not end up in Catherine O'Brien's Permanent TSB bank account and it was not handed to the solicitors in Mallow or used to buy the car.
36. Having reviewed the materials presented by the Bureau in this application, I have concluded that there are reasonable grounds for the belief of Detective Chief Superintendent Gubbins that Land Rover Discovery 151 C 2667 "... was acquired, in whole or in part, with..., property that, directly or indirectly, constitutes proceeds of crime," and is caught by s.3(1)(a)(ii) of the Proceeds of Crime Act, 1996 (the 1996 Act). I am accepting this belief as evidence of the correctness of the underlying proposition. Some of the materials relied on by Detective Chief Superintendent Gubbins fully justify this belief.
37. A number of "silent witnesses" support elements of accounts of events given by Padraig McNamara and others to Gardaí which are directly relevant to the issue of whether this motor car should be regarded as proceeds of crime.
38. The provisional conclusion which I draw from this material is that on occasions in 2014 and 2015 Catherine O'Brien altered and misused cheques which she got from Padraig McNamara for purposes such as stamp duty and Companies Registration Office fees. There was a pattern of activity and at least two of these cheques ended up in her Permanent TSB current account.
39. The material relating to Catherine O'Brien's Permanent TSB current account supports the explanation given by Donagh Barry of Johnson & Perrott Motors of how Catherine O'Brien took delivery of Land Rover Discovery 141 C 7913 in return for a valueless cheque. The story about the stolen handbag was an excuse. Payment of the €47,000 for the car had to await the return of the €180,000 to the solicitors in Mallow and was made very shortly afterwards.
40. The form of the cheque drawn on the client current account of the solicitors suggests that Catherine O'Brien represented that the payment was for AVMI Ltd. The solicitors held the money in their client ledger for AVMI Ltd. The cheque was not made payable to her personally. She liaised with the solicitors on behalf of AVMI Ltd and Padraig McNamara in relation to the Dungarvan property purchase at that time.
41. Catherine O'Brien got the registration certificate for Land Rover Discovery 141 C 7913. This was posted out to AVMI Ltd at the address in Buttevant, County Cork. This document must also have been produced by her when she sold this vehicle to Autoboland Motors in Waterford the following year as a trade-in for Land Rover Discovery 151 C 2667.

42. Land Rover Discovery 151 C 2667 was bought with the assistance of a cheque drawn by Pdraig McNamara in favour of "CRO" on which the payee had been altered to read "cash" and the amount had been increased to read €21,000.
43. The total value of Land Rover Discovery 151 C 2667 as per the order form dated 16 January 2015 was €60,518 of which €48,518 came from the trade-in of Land Rover Discovery 141 C 7913. The funds to meet the €11,000 cheque to the motor dealer in payment for Land Rover Discovery 151 C 2667 were derived from cheque number 500019 provided to Catherine O'Brien by Pdraig McNamara.
44. There is strong evidence that this cheque was fraudulently altered to €21,000 and that Catherine O'Brien used the same modus operandi in relation to another cheque drawn by Pdraig McNamara in favour of Companies Registration Office and in relation to a cheque drawn by Pdraig McNamara in favour of "Revenue" for stamp duty. When interviewed by Gardaí she denied that she altered any cheques. She admitted getting the two latter cheques but she denied that she altered them.
45. The only personal money used by Catherine O'Brien in buying Land Rover Discovery 141 C 7913 and Land Rover Discovery 151 C 2667 was €1,000 paid on her credit card in October 2014. She also gave her old vehicle valued at €8,500 as a trade-in for Land Rover Discovery 141 C 7913.
46. Land Rover Discovery 141 C 7913 was sold to Autoboland Motors on the footing that AVMI Ltd was owner of this vehicle and vehicle registration documentation was submitted to the motor taxation authorities on the basis that AVMI Ltd also owned Land Rover Discovery 151 C 2667.
47. There is no evidence that AVMI Ltd traded in veterinary products. Catherine O'Brien was not a director of that company or a signatory to the company bank account which was opened in December 2014. She was not entitled to buy or sell motor vehicles on behalf of that company or to hold herself out as having authority to engage in these transactions. She was not entitled to sign a change of ownership form for Land Rover Discovery 151 C 2667 and she was not authorised to put the signature of Nicola Beresford on that form. Ned Hawe refused to co-operate with the investigation into the ownership of this vehicle.
48. It was submitted on behalf of Catherine O'Brien and Ned Hawe that I should disregard the material which underpins the belief of Detective Chief Superintendent Gubbins as hearsay. It was also submitted that I should treat this belief as having little or no weight because statements given by Pdraig McNamara and other materials were not put on affidavit and have now been contradicted by affidavits sworn by Catherine O'Brien.
49. I do not accept these submissions. The 1996 Act allows this court to consider materials which would be deemed inadmissible hearsay in other types of legal proceedings. These materials may be used in assessing whether this court is satisfied that there are reasonable grounds for the belief of Detective Chief Superintendent Gubbins. These materials are relevant to the weight which should be given to this belief evidence. These

materials may also be used in assessing the credibility of any evidence which might be advanced in support of a defence which seeks to demonstrate that property is not proceeds of crime or derived from proceeds of crime.

50. In my view the material which underpins the belief of Detective Chief Superintendent Gubbins and which I have referred to in my provisional conclusions provides very strong support for his belief that Land Rover Discovery 151 C 2667 was acquired as a result of criminal conduct.
51. Catherine O'Brien and her uncle, (Edmund) Ned Hawe, claim that she gave him ownership of Land Rover Discovery 151 C 2667 as security for a loan of €50,000. Catherine O'Brien procured registration of Ned Hawe as owner of the vehicle with the vehicle registration authorities on foot of the change of ownership form dated 10 April 2015. Catherine O'Brien remained in possession of the vehicle and used it until it was seized by the Gardaí on 17 December 2016. On 19 December 2016 a solicitor's letter was sent on behalf of Catherine O'Brien to the Gardaí complaining about her arrest and asserting that this jeep was owned by her uncle "Ned Haugh (sic)". This letter is exhibited in two of her affidavits.
52. This type of disposition is often a badge of fraud. In the nineteenth century arrangements such as this were regularly used by debtors and those in league with them in efforts to bilk creditors and also to give a false impression of wealth. Section 8 of the Bills of Sale (Ireland) Act (1879) Amendment Act 1883 was enacted to deal with these abuses. It provides that bills of sale of this sort are void unless attested to and duly registered. Unregistered "log-book loan" bills of sale are void.
53. The affidavits sworn by Catherine O'Brien and Ned Hawe lack detail. They do not sufficiently engage with material in affidavits and exhibits relied on by the Bureau which is directly relevant to the circumstances in which money was got to buy the two motor vehicles. This material calls for detailed explanations demonstrating that Catherine O'Brien acted honestly in relation to the two motor vehicles and the cheques used to buy or fund the purchase by her of those motor vehicles.
54. The affidavits of Catherine O'Brien contain explanations which are inherently improbable. Some explanations advanced by her are improbable because they are inconsistent with content of bank accounts or materials in other exhibits which I consider reliable. Other explanations advanced by her contradict her earlier explanations.
55. It is clear from correspondence which Catherine O'Brien has exhibited in her affidavits and from the affidavit of Emer McKenna that her complaints that she has not got documents back from the Gardaí and assertions that documentation vouching her assertions on affidavit such as an agreement between herself and Pdraig McNamara lack substance. In her most recent affidavit she makes new assertions about material in possession of the Gardaí.

56. The truth of the matter is that Catherine O'Brien has not bothered to come to collect any remaining items. There is no reason to believe that Gardaí hold any material which would verify her claims relating to the motor vehicles or agreements with Padraig McNamara or which would otherwise assist her. If there was any serious issue about whether these items contain material necessary to vouch her explanations for what happened, there was no difficulty in getting this material from Gardaí and exhibiting anything relevant long ago.
57. At an early stage in these proceedings an application was made on behalf of Catherine O'Brien for discovery of documents. The request did not meet the formalities and was made at a time when she had not put forward her defence on affidavit. The matter of discovery was not further pursued but a claim was advanced in an affidavit sworn on 1st October 2021. that the Gardaí held an agreement in writing between her and Padraig McNamara. This was refuted in an affidavit of Emer McKenna sworn on 21 November 2021.
58. The latest affidavit from Catherine O'Brien was sworn on 17 January 2022 and was produced for the hearing of this application on 19 January 2022. She made fresh allegations of Garda impropriety and made claims of dishonesty by Padraig McNamara.
59. The context was a complete change in her explanation relating to the source of the funding which enabled her to issue the cheque for €11,000 to pay for Land Rover Discovery 151 C 2667. I have concluded that these allegations are a time-wasting exercise.
60. There is nothing new here. Catherine O'Brien's claimed knowledge of fraudulent activities of Padraig McNamara was raised in her e-mail of 8 August 2015 to Donal Collins, accountant for Padraig McNamara. She raised these matters in that e-mail to dissuade Padraig McNamara from reporting her activities to Gardaí. At that stage Donal Collins was seeking explanations from her relating to her involvement in the affairs of Padraig McNamara.
61. The content of this last-minute affidavit is insufficient to require any further enquiry by me or reply by the Bureau dealing with these fresh allegations. The allegations do not deal with the issue of whether Land Rover Discovery 151 C 2667 is proceeds of crime.
62. No detail or documentary evidence substantiates the claimed loan of €50,000 by Edmund (Ned) Haugh to Catherine O'Brien. The affidavits do not disclose source of funds or method of payment or receipt of money or how it was spent. Catherine O'Brien has provided no documentary evidence of trading carried on by her on behalf of AVMI Ltd or on behalf of "Abbeyside Veterinary" or personal trading which required €50,000 in working capital from her uncle. The statements relating to Catherine O'Brien's Permanent TSB bank account do not support her claim that she was running a veterinary supply business or that she received €50,000 to help her out in running any such business.

63. The solicitor's letter of 19 December 2016 on behalf of Catherine O'Brien advanced a bare claim that Land Rover Discovery 151 C 2667 was the property of Ned Hawe. This was followed up by further letters from the same solicitors who were now acting on behalf of Ned Hawe. No detail was provided of the basis on which he asserted ownership of this vehicle.
64. Catherine O'Brien asserted on affidavit that the cheque for €47,000 from the solicitors in Mallow to "JPM Limited" was issued on instructions of Pdraig McNamara to discharge invoices which she sent to Pdraig McNamara for goods and services. Catherine O'Brien's bank account does not show expenditures consistent with her claim of having incurred expenses in any business for Pdraig McNamara.
65. This claim in an early affidavit was expanded in a later affidavit into a claim that she supplied veterinary products from "Abbeyside Veterinary Services" and paid debts on behalf of Pdraig McNamara and also paid for cows he bought. She avers in her most recent affidavit that she ran this business and employed a veterinary surgeon. She has not produced any statements of account or vouchers to show indebtedness of Pdraig McNamara to her for supplies or services as of April or May 2014 or to show a contra entry in discharge of this indebtedness from the €47,000.
66. The solicitor who was involved in issue of the cheque for €47,000 in favour of Johnson & Perrott Motors declined to be interviewed in the investigation. Catherine O'Brien's assertion that the cheque was given to her on the instruction of Pdraig McNamara was not supported by confirmation from this solicitor.
67. This claim that Pdraig McNamara authorised this payment to Johnson and Perrott Motors is an unlikely scenario. It is not contradicted that Pdraig McNamara was unaware that the Dungarvan sale had fallen through until long after the €47,000 was paid out. As far as Pdraig McNamara was concerned at that time, €180,000 provided to the solicitors was for use to close a sale. It was not available to pay for a jeep. The payment was made by the Solicitor by a cheque drawn in favour of "JPM Limited" and not in favour of Catherine O'Brien directly.
68. Catherine O'Brien claimed in her affidavit of 1 October 2021 that the €11,000 which she paid for Land Rover Discovery 151 C 2667 came "from my own funds legitimately acquired from my veterinary business". She asserted she was unable to vouch this because of materials withheld from her by Gardaí in Dungarvan. This court pointed out when this application was in the list for mention that this explanation was at odds with funding of the payment from the proceeds of the cheque for €21,000 from Pdraig McNamara's cheque and that there was evidence of fraudulent alteration of that cheque.
69. In her affidavit of 17 January 2022 Catherine O'Brien provided a totally different explanation for the source of funds which enabled her to issue her cheque number 224 for €11,000. No explanation was offered for how she had come to provide a completely different account of matters in her earlier affidavit.

70. She claimed that between September 2014 and December 2014 Pdraig McNamara asked her to make payments for him because he had no income and begged her to make these payments. She also claimed that she made further payments for Pdraig McNamara in the same circumstances in 2015 and she set out these further payments in paragraph 19 of her affidavit.
71. She gave an elaborate account of what happened in relation to cheque number 500019 in which she admitted that she filled out the amount of €21,000 on the cheque. She claimed that this figure was inserted by agreement as a result of a reconciliation between herself and Pdraig McNamara of what was due by him.
72. There is no explanation of why a cheque supposedly given to Catherine O'Brien with the intention that she be paid what she was owed came to be drawn in favour of "Cash."
73. This new explanation ignores the cheque for €25,000 drawn on the AVMI Ltd bank account which passed into the bank account of Catherine O'Brien on 27 April 2015 and a transfer of €40,000 from the AVMI Ltd bank account to her bank account on 8 April 2015. She got large sums of money from Pdraig McNamara in the early part of 2015.
74. The payments which Catherine O'Brien claims in paragraph 13 of her affidavit to have paid for Pdraig McNamara in 2014 come to a total €15,563.85. She referred in her affidavit to some payments as having come from an Ulster Bank account which has not been exhibited.
75. I examined the movements on statements relating to Catherine O'Brien's Permanent TSB bank account from 1 September 2014 to 31 December 2014 to see if I could isolate any payment corresponding to the items referred to in paragraph 13 of Catherine O'Brien's affidavit.
76. The only corresponding items which I could find were a debit of €273.98 in respect of an Aer Lingus transaction on 26 November 2014 and a debit of €87.94 on 17 December 2014, indicating that a card was used on the account to make a payment at a point of sale location "POS H&M Koeln 15/12".
77. The claimed payment of €681.73 to Wilsons Car Auctions was in fact a credit to the bank account of that amount on 3 December 2014. This was a partial contra relating to a payment of €1,000 from the Permanent TSB current account to Wilsons Car Auctions on 29 November 2014. There is no evidence of payment of three monthly instalments to Bank of Ireland of €3,680 totalling €11,040.
78. At a meeting subsequent to 8 August 2015 which was attended by Donal Collins, Catherine O'Brien stated that three monthly payments of €3,680.34 were made by her on behalf of Pdraig McNamara to Bank of Ireland for the months March, April and May. This assertion related to the year 2015.
79. Minutes of this meeting record that she set out in some detail payments which she claimed that she made for Pdraig McNamara. She referred to the Aer Lingus, Denmark

and Wilsons Car Auctions amounts as payments made by her on behalf of Pádraig McNamara. She stated that she had paid Wagner de Souza a total of €2,400. She did not refer to having made three monthly payments to Bank of Ireland between September to December 2014.

80. Catherine O'Brien's evidence offers no explanation for the two other altered cheques which she got value for in October 2014 and perhaps in September 2014. She repeats her assertion to the Gardaí that she did not alter these cheques. She does not explain the circumstances in which she received them. These cheques were also received during the period when she claims that Pádraig McNamara was financially embarrassed. The value which she received on these cheques totalled €25,725. As can be seen from the analysis in the earlier part of this judgment, at least one of these cheques for €10,725 went into the Permanent TSB account. The total value which she got on the three altered cheques came to €46,725.
81. The fact that these three cheques were met on presentation does not support the claim that Pádraig McNamara needed a line of credit from Catherine O'Brien to make payments between September 2014 and December 2014. The evidence does not support the claim that there was need for him to beg her to make payments on his behalf. The evidence does not support her claim that Pádraig McNamara needed a line of credit from her in early 2015 either.
82. Pádraig McNamara was also able to transfer a substantial balance from a Bank of Ireland account into the Permanent TSB current account of AVMI Ltd in early 2015.
83. I have concluded that there is no reliable evidence that Catherine O'Brien was owed €21,000 by Pádraig McNamara in January 2015 or that most of the claimed payments totalling €15,563.85 related to the period prior to the issue of the "CRO" cheque.
84. Catherine O'Brien claimed that Ned Hawe made an informal loan to her of €6,000 in 2008 to buy the motor vehicle which was traded in for Land Rover Discovery 141 C 7319. Ned Hawe obtained a judgment against her for €5,433.00 on 11 September 2006. This must cast some doubt on the likelihood that he loaned €6,000 to her a year or two later. He is described by her as now nearly ninety years of age. The idea that he would make a loan of €50,000 to her is also inherently improbable.
85. She has claimed that Ned Hawe also gave her a loan of €1,000 towards the deposit on Land Rover Discovery 151 C 2667. This is at odds with information provided by the dealer that the deposit for the new motor vehicle was paid using a card on 20 October 2014.
86. The cheque for €10,725 which was originally specified the payee as "Revenue" was lodged to Catherine O'Brien's Permanent TSB account on 17 October 2014. This lodgement increased the credit balance in that account from €2,574.85 to €13,478.85. Even without this, the credit balance in that current account was sufficient to make a payment of

€1,000 throughout October 2014. Catherine O'Brien had no need to borrow €1,000 from Ned Hawe.

87. No documents have been provided to support the asserted loan of €1,000. The affidavit of Ned Hawe is silent on this matter. It is also silent on her claim that he lent her €6,000 in 2008 to enable her to buy a motor vehicle.
88. I have concluded that the evidence submitted on behalf of Catherine O'Brien and Ned Hawe is unreliable. This evidence is insufficient to persuade me that my provisional conclusion that Land Rover Discovery 151 C 2667 is derived from proceeds of crime and was for the most part acquired with proceeds of crime was incorrect. There is nothing to show that there would be a serious risk of injustice in the event that I were to make an order under s.3(1) of the 1996 Act in relation to Land Rover Discovery 151 C 2667.