



Cracking down

Unexplained wealth orders are another weapon in the arsenal to target international corruption, but they raise concerns over long-standing legal principles

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Stories about £16 million shopping sprees in Harrods make for a great read but the realities of unexplained wealth orders (UWOs), as always, tell a far more nuanced story about how new powers are being implemented in order to crack down on money laundering and corruption across borders.

UWOs are a type of court order issued by a British Court which compels someone to reveal the sources of their unexplained wealth. UWOs were incorporated into UK law in January 2018 as part of the Criminal Finances Act 2017 with little fanfare, but hit the headlines following the revelation that Zamira Hajiyeva had become the subject of the UK's first UWO.

Zamira Hajiyeva is the wife of an ex-state

banker who is serving a 15-year prison sentence for embezzlement in their home country of Azerbaijan and was initially arrested by officers from the Metropolitan Police, who were acting on an extradition request from authorities in the Azerbaijan capital of Baku. Her husband, Jahangir Hajiyev, had been imprisoned following his conviction for defrauding the state-owned International Bank of Azerbaijan, of which he is the former chairman, of up to 5 billion manat (£2.2 billion).

Spending sprees

The Azerbaijani authorities allege that Ms. Hajiyeva was used, alongside other family members, to take the money outside of the country. The National Crime Agency has claimed that she funded her spending sprees at Harrods with 35 credit cards, issued by her husband's bank. As well as buying

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a £11.5 million, five-bedroom property in Knightsbridge, the NCA also believe that she cash-funded a £10.5 million purchase of Mill Ride golf and country club in Ascot via a company based in Guernsey. Jonathan Hall QC, who is representing the NCA, said: 'As a state employee between 1993 and 2015, it is very unlikely that such a position would have generated sufficient income to fund the acquisition of the property.'

The UWOs are a 'recent manifestation of government attempts to crack down on money laundering via property, and prevent the UK from becoming a safe haven for overseas corruption. These orders were created as a means of effectively compelling individuals to explain their sources of income and, where necessary force them to do so. In the past, the burden of proof for corruption of this nature lay with the prosecuting bodies but with UWO's this shifts to the owner of the asset' says the Director of Companydebt.com Mike Smith.

This reverse onus principle means that information obtained through their use cannot be employed in criminal proceedings, but subjects of the orders are liable to have their assets seized by the National Crime Agency. Her lawyers have emphasised the point that the use of a UWO does not imply guilt stating that: 'The decision of the high court upholding the grant of an unexplained wealth order (UWO) against Zamira Hajiyeva does not and should not be taken to imply any wrongdoing, whether on her part or that of her husband. The NCA's case is that the UWO is part of an investigative process, not a criminal procedure, and it does not involve the finding of any criminal offence.'

Freeze and capture

The fact that anything used in an investigation is not an indication of criminal liability is a fundamental part of the British legal system. This goes hand in hand with the idea of innocent until proven guilty and that the onus is on the prosecution to prove guilt, not on the defendant to prove their innocence. These orders reverse this and place the responsibility on the accused to prove that their wealth was gained through legal channels.

This is in some ways similar to the 2017 amendment to the Criminal Finances Bill, known informally as the Magnitsky clause or amendment, which allows the government to freeze and capture the assets of those implicated in international human rights violations. The introduction of the amendment was championed by investment

fund manager, Bill Browder, following the death of his friend and lawyer Sergei Magnitsky in a Russian prison. The clause is intended to make companies consider the full implications of where their money comes from and undertake robust due diligence, relating to human rights. However, the parties who are subject to these powers do not have to have been convicted of human rights abuses.

David Ollivere, criminal law specialist at Shakespeare Martineau, comments that: 'As enforcement agencies, including HMRC, the Crown Prosecution Service, the National Crime Agency and the Serious Fraud Office, have the power to freeze and seize a person's assets, failure to provide a satisfactory explanation can have serious implications for the individual concerned.'

'Despite being a fairly draconian sanction, UWOs are relatively easy for enforcement agencies to obtain. With this in mind,

a prosecutor's crosshairs. When it comes to investigating the provenance of an individual's wealth, and how certain items came to be purchased, prosecutors may view a corporate's role as being that of a 'professional enabler' that has wittingly or unwittingly been involved in the financial wrongdoing on behalf of wealthy clients.

'Although Harrods, and Christie's were not deemed to be 'professional enablers', the fact that both entities were caught up in the proceedings which resulted in the UK's first UWO against Zamira Hajiyeva, reflects the risk UWOs could have to a corporate's reputation. Corporates are therefore advised to review, and where appropriate, strengthen existing customer due diligence checks. These are part of existing corporate governance proceedings, and will go some way to preventing financial and reputational fall-out if a corporate is involved in a UWO.'

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high-net worth individuals should be aware that in a worst-case scenario, failure to respond to a UWO could result in measures to recover their assets under civil recovery proceedings. Additionally, any statement made in connection with a UWO which is deemed to be false or misleading constitutes a criminal offence, potentially leading to a custodial sentence.

'By adopting a meticulous approach to financial record keeping, high-net-worth individuals will be able to prove the veracity of any earnings and the legitimate ownership of any assets quickly and efficiently. This could help them to avoid potential disruption caused by the seizure of valuable property in the face of a UWO.'

Due diligence

If the implications for individuals are clearly laid out in law, the use of the so-called MacMafia law or UWOs for companies who may become implicated or involved in an investigation is less clear-cut as Iskander Fernandez, white collar crime and investigations specialist and partner at BLM law firm comments: 'Due to the nature and extraterritorial scope of UWOs, corporates could find themselves caught in

The degree to which the new powers will be used, is something that will only be revealed with time, as Julian Dixon, CEO of anti-money laundering experts Fortytwo Data, comments: 'Only one organisation, the NCA, has used this new measure – the FCA, HMRC, the CPS and the SFO have not been issuing UWOs this year – but pursuing money launderers can be a complex process and it would not be surprising to see UWOs become a key part of these authorities' arsenal.'

In recent years the public and law enforcement have become increasingly concerned that the UK will become a safe haven for corrupt overseas public officials and serious organised criminals who use the proceeds of crime to buy up lots of real estate, and other assets in the UK, seemingly with impunity. The UWOs is part of the government's response, but perhaps show a lack of forethought into the effect on corporate entities and our legal principles. Time will tell whether UWOs will become widely used and if companies will tighten their corporate governance belts accordingly. For now, as with the source of Ms. Hajiyeva's wealth, the likely impact of UWOs is unexplained. n