

## UK AUTHORITIES SECURE UNEXPLAINED WEALTH ORDERS FOR THE FIRST TIME

On 28 February 2018, the UK National Crime Agency (NCA) announced that it had secured two unexplained wealth orders (UWOs) to investigate assets totalling £22 million believed to be ultimately owned by a politically exposed person (PEP). The orders relate to two properties in London and South East England. The NCA and other selected UK authorities have been able to seek such orders, made under new provisions of the Proceeds of Crime Act introduced by the Criminal Finances Act 2017 (the Act), since 31 January 2018.

### WHAT HAS HAPPENED SO FAR?

Proceedings are still at an early stage. All that has happened to date is that orders have been made requiring explanations as to the provenance of particular funds used to purchase two properties.

It is up to the Court in every case to decide how long should be allowed for the person(s) to which orders are addressed to provide explanations. Details of how long has been allowed under these orders have not been publicised.

It is also possible (and indeed quite likely given that responses may be used as the foundation for further investigatory or enforcement action) that the basis for or scope of UWOs will be challenged by those to whom they are addressed.

### WHAT WILL HAPPEN NEXT?

UWOs are not intended to be an end in themselves, but instead to equip authorities with information to enable them to decide whether or what to investigate further, or which other action to take in respect of assets which they suspect may be derived from criminal activities. In some cases, explanations provided may answer authorities' suspicions and no further action may be taken, although the Act is clear that the fact that no investigatory or enforcement action is taken immediately does not preclude authorities from doing so at a later date. In reality, it is quite unlikely that they will be the end of the matter for those who receive them.

In cases such as these, where IFOs have been imposed, authorities must decide within 60 days of the subject complying with an order whether to take further investigatory or enforcement action. Failures to respond adequately or at all may give rise to presumptions that particular property is "criminal property" for the purposes of subsequent civil recovery proceedings.

### Unexplained Wealth Orders

The NCA, Serious Fraud Office (SFO), HM Revenue and Customs, Financial Conduct Authority and Crown Prosecution Service can apply to the High Court for UWOs, which require individuals to provide a statement explaining the origins of assets worth more than £50,000 that appear to be disproportionate to their known lawfully obtained income (which for these purposes means lawfully obtained under the laws of the country in which it arises).

UWOs may be made against individuals who are PEPs in countries other than EEA states (or their family members and known close associates) or where the relevant authority, having made enquiries and considered other available information and investigative tools, has reasonable grounds to suspect that the person concerned (or a person connected with him or her) has been "involved in serious crime". The Court may make orders where it is satisfied in relation to these factors to the civil standard (i.e. on a balance of probabilities).

UWOs may apply to jointly held property and it does not matter for these purposes whether the property in question was obtained before or after the Act came into force or whether the "serious crime" is suspected to have occurred in the UK or elsewhere.

As is the case in this instance, UWOs may be accompanied by interim freezing orders (IFOs) aimed at preserving property in respect of which authorities' suspicions prove to be well founded.

For further details about UWOs, how they evolved during the passage of the Act and the other important changes to anti-money laundering frameworks introduced by the Act, see our previous [Clifford Chance briefing](#).

## **HOW OFTEN WILL UWOs BE USED?**

At the time when the Act was progressing through Parliament, the UK Government predicted that UWOs would not be used during the first year in which they are available, but that there will be approximately 20 applications per year in due course. Questions were also raised about whether a number of the authorities able to use them have the necessary resources to do so frequently.

Public statements from the NCA accompanying the first use of the powers suggest that it is ready and willing to use the tool again as and when appropriate cases present themselves. The outgoing Director of the SFO has stated that a review of all existing case work and intelligence is ongoing with a view to identifying cases which may be suitable for the use of UWOs. As such, whilst the High Court is unlikely to be deluged by applications for UWOs, it seems that authorities will use them earlier and perhaps more frequently than was anticipated.

## **PRACTICAL POINTS FOR INSTITUTIONS**

The most likely way in which financial institutions will be affected by the imposition of UWOs is through IFOs limiting the extent to which customers served with UWOs may deal with particular property.

Institutions served with IFOs in respect of their customers (or which learn that their customers have been served with UWOs) will have to consider whether the fact that authorities have pursued such orders engages other AML obligations. This may include considering whether it is appropriate to file SARs in some cases, but as a minimum is likely to involve assessments of whether, applying a risk based approach, levels of due diligence and monitoring applied to transactions and relationships with those customers are set at the correct level.

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