

An Introduction to Unexplained Wealth Orders

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In 2016/2017 enforcement agencies in the UK confiscated £201million from criminals using their existing powers to locate and recover the proceeds of crime. It sounds a lot but the reality is that this is drop in the ocean and it is often difficult for the authorities to prove that assets are indeed the proceeds of criminal activity, let alone recover them.

Unexplained Wealth Orders ('UWOs') are a new investigatory tool, which in part aims to assist in the recovery of criminal assets.

From 31 January 2018, relevant enforcement authorities like HMRC or the Serious Fraud Office will be able to apply to the High Court to obtain these investigation orders.

An order will require people to explain their interest in particular property (valued at over £50,000) in circumstances where it looks like they cannot afford it and they are suspected of being involved in serious crime.

'Serious crime' includes obvious examples such as drug trafficking, prostitution and slavery. However, other more general offences relating to fraud and cheating the public revenue are also included.

Being involved in a crime doesn't just mean committing one. It can also mean facilitating the commission of a crime by someone else. This could include wilfully shutting your eyes to money laundering or tax evasion schemes.

To comply with an UWO, the Respondent must provide a statement which:

- Sets out the nature and extent of their interest in the property;
- Explains how they obtained this interest, including how any costs incurred were met;
- Sets out such other information as the Court order specifies about the property.

If the property in question is held by trustees of a settlement, then the court order may require the Respondent to disclose the identity of any settlor.

If the respondent doesn't comply with the UWO, then the property in question will be presumed to be recoverable property under any later proceedings taken under the Proceeds of Crime Act 2002 unless the respondent can show otherwise.

If the response is false or misleading, the respondent may be liable for a sentence of up to two years imprisonment or a fine or both if they recklessly or knowingly make false statements to the Court about the property or any other matter in the Order.

As with Worldwide Freezing Orders, complying with the disclosure obligations is often the stage where respondents fall down and they then face further litigation about this issue and the prospects of jail.

Unexplained Wealth Orders are certainly a powerful investigatory tool and already they have anecdotally been linked to a number of Russian Oligarchs approaching the Kremlin to discuss returning to Russia. From an enforcement point of view, the real test will be whether they allow the authorities to recover more assets as the proceeds of crime in the future.

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