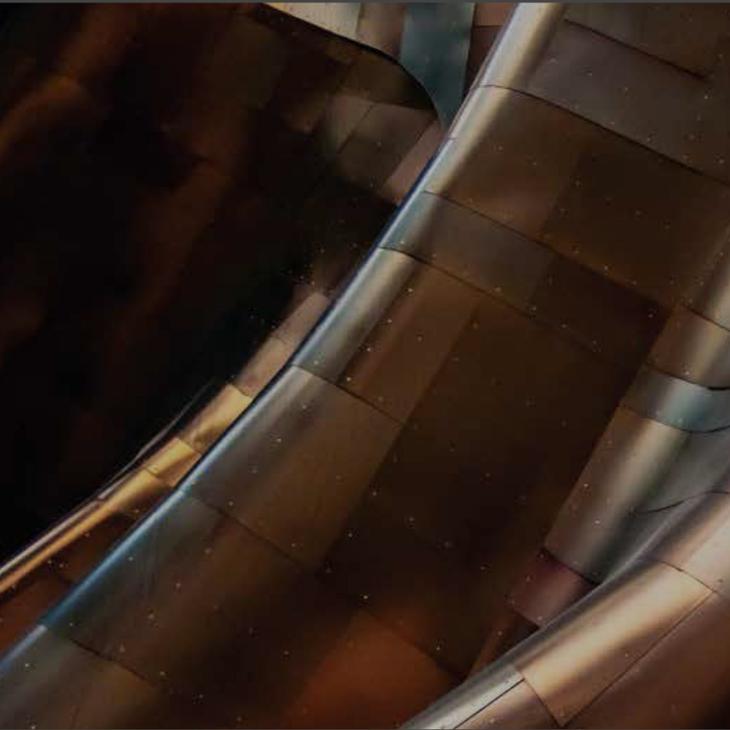


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A Briefing Guide to

Unexplained Wealth Orders (UWOs)

RAHMAN RAVELLI

Unexplained Wealth Orders (UWOs)

Unexplained wealth orders (UWOs) are a relatively new concept in UK law but they place significant demands on any high net worth individual (HNWI), company or trust that becomes the subject of one. Any subject of a UWO has to make sure they respond to it carefully and appropriately. This will require seeking legal advice from lawyers who have specific and proven expertise in this developing area of law.

Rahman Ravelli is one of the few legal firms to have the necessary skills and experience. As a firm that is consistently highly-ranked in national and legal guides for our work in this specialised area we have become the choice of many high net worth individuals who find themselves having to justify their wealth.

UWOs are just the latest civil recovery legal development that has led to many seeking our advice.

What Is An Unexplained Wealth Order?

Unexplained wealth orders (UWOs) were introduced to the UK legal system in January 2018, with the passing of the Criminal Finances Act 2017. Section 1 of this Act heavily amended the Proceeds of Crime Act 2002 (POCA) to introduce them.

A UWO requires the respondent to explain how an asset was acquired. If they do not provide an adequate explanation, or provide unsatisfactory evidence, the asset will be considered “recoverable property” for the purposes of a civil recovery order under POCA.

A UWO can be sought without any civil or criminal proceedings having begun. There is no need for the subject of a UWO to have been convicted of an offence or to have had a civil law judgement against them.

In January 2018, the Home Office issued a code of practice applicable to POCA 2002 investigations which stated that a UWO is intended to “access evidence that otherwise would not be available”. This was explained in greater detail almost a year earlier in a Home Office impact assessment on UWOs that said their introduction “reflects the concern about those involved in grand corruption overseas laundering the

proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy any evidential standard at the outset of such an investigation given that all relevant information may be outside of the jurisdiction.”

UWOs are available to the Serious Fraud Office (SFO), the National Crime Agency (NCA), HM Revenue and Customs (HMRC), the Crown Prosecution Service (CPS) and Financial Conduct Authority (FCA). The NCA is the principal agency for UWO applications. But any one of these investigating authorities can make an application for a UWO in the High Court in respect of any assets valued at more than £50,000 - if there are reasonable grounds to suspect that the individual who owns them does not have a legitimate income large enough to have obtained them.

The civil standard of proof applies to evidence that an agency relies on in support of such an application. A UWO could, therefore, be granted with much weaker evidence than would be needed to begin a criminal prosecution. In a criminal case, the authorities must decide whether there is a realistic prospect of conviction based on the evidence they have: whether the evidence is strong enough that a jury would find beyond reasonable doubt (the criminal standard of proof) that there has been a criminal act. But as the civil standard of proof applies to UWOs, the authorities only have to be satisfied that their evidence is strong enough to argue that on the balance of probabilities (the civil standard of proof) there has been a criminal act.

The Respondent To A UWO

In considering whether to grant a UWO, a High Court judge must decide whether the person against whom a UWO is sought is either:

- a politically exposed person (PEP) who is not a citizen of the European Economic Area
- a person suspected of serious crime here or abroad
- someone who is connected to a person suspected of serious crime here or abroad.

For the purposes of a UWO, if a person is suspected of serious crime or connected to such an individual, there is no need for a criminal investigation to have commenced.

PEPs, Criminal Suspects And Corporates

A PEP is someone who holds a prominent political function in a country other than the UK or the countries in the European Economic Area. Such a person's relatives, close associates or anyone with a connection to them can also be classed as a PEP. Prominent political functions include heads of state, judicial figures, members of parliament, managers of state-owned businesses, senior armed forces members and deputy directors or board members of international organisations.

For a UWO to be granted against a person suspected of serious crime here or abroad – or someone connected to such a person – the court must be satisfied to the civil standard that there are reasonable grounds to suspect

that the person is involved in serious crime. Serious crime includes the likes of drug trafficking, modern slavery, firearms offences, armed robbery, prostitution, child exploitation, money laundering, bribery, fraud and tax evasion.

Companies can be the subject of a UWO if they have a connection to a PEP or someone suspected of serious crime. A UWO can apply to a company registered either in the UK or abroad.

The UWO Process

The judge must also be satisfied that there is reasonable cause to believe that person holds the property that is the subject of the UWO and that it is reasonable to assume that the person's lawful income is insufficient for them to possess that property. If the judge then makes the order, that person - the respondent - must provide a statement explaining the nature and extent of their interest in the property that is the subject of the order. This should include how the property was obtained, the costs involved in obtaining it and any other information "as may be so specified", under section 362A POCA 2002.

The order will specify the time by which the person has to provide this information and section 362 (5) POCA 2002 allows for the respondent to be compelled to provide particular details and produce documents.

Freezing Orders

The order may be accompanied by an interim freezing order (IFO). This is because a UWO on its own will not lead to the assets in question being frozen or seized. It is likely that an IFO will be imposed if the court believes it is necessary. This can be done to prevent an asset being disposed of before the UWO process is complete. An IFO can also be imposed if the court believes there is a risk that any recovery order that may be imposed later will be impossible to enforce. An IFO prevents the respondent or anyone else dealing with the property in question. But an IFO can be varied to allow the frozen property to be dealt with or to allow the respondent access to legal and / or living expenses; subject to various criteria.

Any property either inside or outside of the UK can be the subject of a UWO. The respondent can also be anywhere in the world. The definition of property includes money and all forms of tangible and intangible property. The respondent must have effective control of the property; meaning he is able to deal with it and make decisions regarding its sale or use. Property held in a corporate structure or in a trust can still be subject to a UWO.

Without Notice Applications

An investigating authority can apply for a UWO on a without notice basis. This means that an application for the UWO is made to the court without the person affected by it being notified. This places a responsibility on the applicant to make a full and frank disclosure to the court. A failure to do so could provide grounds for a legal challenge to the UWO, if it is granted.

As a UWO is an order made in respect of property rather than a person, the respondent faces the challenge of providing information to the authorities about their assets immediately – and of showing that the source of their wealth is legitimate.

Failure to do so can see their assets forfeited under Part 5 POCA. As soon as an individual or corporate realises they are the respondent in a UWO, therefore, they need to seek immediate representation by solicitors with the relevant expertise in this particular area of law. Rahman Ravelli has the relevant expertise, as well as extensive experience of dealing with all the authorities that can obtain a UWO.

Challenges To UWOs

No investigating authority has a flawless track record when it comes to applying to courts for orders. There is no reason to believe that this will be any different for UWOs. Rahman Ravelli has a lengthy track record of challenging the authorities over the way they have applied for or obtained court orders.

As an agency applies to court for a UWO on a without notice basis, the intended target of the UWO is not present and, therefore, is unable to put forward reasons why they should not be made the subject of an order. Unusually, the provisions do not include a direct right for a respondent to an UWO to vary or discharge it, if it is made in England or Wales. Most provisions giving state agencies the opportunity to secure orders

against individuals without them being notified give the target the ability to challenge the order. But this lack of such provision when it comes to UWOs could, in theory, mean the whole scheme could be vulnerable to challenge.

This is why a corporate or high net worth individual who is the subject of a UWO must appoint solicitors who can identify and challenge any flaws in the approach taken by the agency that has sought to obtain the order.

Have the authorities successfully demonstrated that the target meets all the necessary criteria for a UWO? Has the agency that is applying for the UWO been completely open with the judge? If it is a without notice hearing, has the agency given the full and frank disclosure required? Or has it failed to put forward any point that the defence might have made if it was present? There is always scope to challenge the UWO.

UWOs are certainly new. But they are not particularly revolutionary when the rest of the UK's civil recovery regime is considered. March 2018 saw the SFO recover £4.4M from corrupt Chad diplomats using a civil recovery order. As the case had commenced before the introduction of UWOs, they were not an option. Yet the SFO still had the means at its disposal to obtain the assets it believed had been acquired from illegal activity. It is just one case that illustrates that UWOs are not a massive development that has drastically changed the civil recovery options available to the authorities. If anything, UWOs are simply an extension of the civil recovery proceedings that already existed.

Responding To A UWO

The enforcement of a UWO appears weighted against the individual. As UWOs are a civil law device rather than a criminal law one, the authorities only require their evidence to be good enough to argue on the balance of probabilities. This is why your initial response to a UWO has to be carefully considered and carried out.

Any subject of a UWO must be quick to act. A subject of a UWO must provide a statement explaining how they legitimately acquired the assets. No response or an unsatisfactory explanation may give rise to a presumption that the property is recoverable under any subsequent civil recovery action. Civil recovery proceedings can then be commenced under Part 5 of POCA. Failure to comply with a UWO without reasonable excuse can lead to contempt of court proceedings. Providing false or misleading statements can lead to up to two years' imprisonment.

If you are faced with a UWO, you have to take the right steps at the right time. This means making the right response: robust, intelligent and strategic defence of your right to those assets and, where necessary, a careful and timely coordination of all available evidence; wherever in the world it may be. Every aspect of the case that the agency has made needs to be assessed, questioned and challenged whenever possible.

As an example, if a UWO has been made against a respondent because of their relationship to a prominent function holder or suspected criminal, the nature

of the connection that is being alleged can be challenged. It can also be possible to challenge the alleged connection between the respondent and the property: the UWO will have had to establish that the respondent was in control of the property but this can be disputed. There may also be grounds to challenge the applicant's argument that there is a discrepancy between the respondent's lawful income and their possession of the property that is the subject of the UWO.

A loss of or a lack of records, data protection rules or the lack of cooperation from a third party could prevent a respondent producing genuine evidence that would show that they were able to legitimately possess the property that is subject to the UWO. But all such arguments need to be made in the most appropriate way and at the right time. That is why we, as the legal experts, work closely with our network of other professional and technical experts to coordinate and utilise all the available evidence – and explain the reasons why some evidence is unavailable – in order to bolster a client's case.

Information Sharing Between Agencies

What must also be remembered is that when a respondent is providing information and documentation in response to a UWO, this material could then assist the authorities in conducting a criminal investigation into someone other than the respondent.

Such information could be shared between law enforcement agencies around the world: opening up the possibility that a UWO could be a means by which the authorities compel someone to provide information about

another individual into whom they wish to commence a criminal investigation. This makes it imperative that anyone with a connection to a respondent to a UWO is aware of the potential for information about them being obtained by the authorities.

The Need For Expertise In Challenging A UWO

Rahman Ravelli is recognised as a market leader when it comes to responding to and challenging all orders brought under the civil law against individuals and corporates.

We have a long and impressive track record of success and a justified reputation for taking cases to the highest courts possible in defence of our clients' interests.

Our success is built on using innovative ways to challenge the authorities and our ability to identify and tackle weaknesses in the allegations that they make against our clients. We make no apology for fighting hard and smart for those we represent.

That is why many high net worth individuals have come to recognise that seeking the help of Rahman Ravelli is the best way to tackle any attempt to take away their assets.

Our background in challenging restraint orders and freezing orders issued under POCA - to freeze a person's assets before a legal attempt is made to confiscate them - leads us to believe that UWO's could well

see many innocent people fighting to retain their assets. Contesting any aspect of a UWO will make all the difference to an individual's ability to retain what is rightfully theirs.

The civil recovery regime that UWOs are part of is a highly specialised area of law involving complex High Court litigation. It is only practised effectively by a small number of lawyers and requires experience and specialist expertise. As a firm that has been handling such cases on a major scale since POCA introduced the civil recovery regime, we were the first to challenge a civil recovery order all the way to the Supreme Court. We excel in the legal field that UWOs are part of and we believe that they will become increasingly common. And this will mean that many more people will need to know precisely how to respond to them.

UWOs In Practice

In October 2018, the High Court upheld the UK's first UWO, which had been obtained by the NCA in relation to two properties valued at £22M.

The court dismissed a legal challenge to the order, which had been granted against Mrs Zamira Hajiyeva, the wife of a former banker imprisoned for fraud and embezzlement in Azerbaijan. The court found that a former chair of a state-owned bank could be classed as a PEP – as could his wife – and that the fairness of his trial was irrelevant because evidence existed to corroborate the allegations against him.

Many more challenges are likely to be made by the targets of UWOs - and ruled on by the

courts - as UWOs become more common. The strength of such challenges and the manner in which they are presented will be crucial factors in determining whether they are successful.

The Real Battleground

The first UWO was a notable event. Other UWOs have since followed. The second one was also brought against a PEP while the third one obtained was the first time one had been used against an individual suspected of being involved in serious organised crime in the UK. Many others suspected of such activity may need to know how to respond to a UWO in the future.

But any high net worth individual (HNWI) facing one in the future has to remember that an unsuccessful challenge to a UWO is far from being “the end of the line”. As we mentioned earlier, the reclaiming of the assets under a UWO will involve Part 5 Proceeds of Crime Act (POCA) proceedings once the UWO has been granted.

Such proceedings are another opportunity to challenge the authority's belief that it is entitled to take your assets. Part 5 proceedings could very likely become the true battleground when it comes to an authority's right to seize a person's assets via a UWO. And at Rahman Ravelli we are recognised as being among the very, very best in that battleground.

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