## UWOs: How will they help in the fight against corruption?

As the UK [Criminal Finances Bill](https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0124/17124.pdf) continues its progress through the House of Lords and with the report stage scheduled for [25th April 2017](http://services.parliament.uk/bills/2016-17/criminalfinances.html), it’s worth taking a moment to think about what the Bill entails and the impact it will have in the fight against grand corruption and organised crime, not just in the UK but globally.

The size and complexity of the UK’s financial sector, the open economy and the very attractive real estate market all make the UK particularly vulnerable to international money laundering. The National Crime Agency (NCA) estimates that between £36 billion and £90 billion are laundered through the UK annually, much of it originating overseas[[1]](#footnote-1). But as things stand, less than 1 per cent of this is ever recovered.

Improving the UK’s capability to investigate, seize and recover the proceeds of crime is one of four key priorities addressed by the Criminal Finances Bill and Unexplained Wealth Orders (UWOs) are one of several new tools that will be introduced under the Bill to assist the recovery process.

### What are UWOs?

The Home Office has issued a [factsheet](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564467/CF_Bill_-_Factsheet_2_-_UWOs.pdf) providing a very good overview of UWOs and how they will work, but we have explained the general principle below.

UWOs will plug an important gap in the existing UK legal framework. The problem, as the law stands currently, is that it is virtually impossible for agencies to freeze or restrain suspicious funds without a pre-existing conviction against the owner of the property in question. In effect this means that individuals involved in grand corruption or serious crime elsewhere in the world can invest the proceeds in the UK and, even if the law enforcement agencies have grounds to believe that the assets were acquired using unlawful funds, there is very little they can do about it.

The introduction of UWOs will change all this, because they put the onus of proof on the owner of the asset. If an individual or entity has assets whose value appears disproportionate to their known income then a UWO can require them to explain the origin of those assets, providing evidence of their legitimacy.

If they are unable or unwilling to provide satisfactory proof then the law enforcement agencies can use powers under the existing POCA civil recovery scheme to seize and recover the assets. There is no need for a criminal prosecution or proof beyond reasonable doubt that the assets derive from unlawful conduct. The authorities only have to prove, on the *balance of probabilities* that the assets in question are derived from unlawful conduct. This is a significant change which could, potentially, increase the ability of the authorities to recover unlawfully acquired assets.

### Whom do they target?

A key driver behind the introduction of UWOs into UK law is the ability to use them in recovering assets that have been corruptly acquired by politically exposed persons (PEPs) from other countries. The eye-watering sums that some PEPs have succeeded in appropriating for their own personal gain are extraordinary, and it is often the poorest countries and the communities in most need who suffer as a result.

Powers provided under the new Criminal Finances legislation will mean that agencies in the UK will be able to apply for and act on Unexplained Wealth Orders for proceeds being laundered in the UK by or on behalf of such individuals, irrespective of where those proceeds were obtained and irrespective of whether or not the proceeds have been the subject of a criminal conviction in any country. In short it doesn’t matter where you got the assets, if you move them to the UK you may be required to explain how you obtained them and you may have those assets seized. This is a significant step which could enable the UK to make a real difference in the global fight against corruption. Nigeria’s President Buhari may have been ‘shocked and embarrassed’ last May when David Cameron was overheard describing Nigeria as ‘fantastically corrupt’ but when asked if he would like Mr Cameron to apologise President Buhari said, “What would I do with an apology? I need something tangible. I am not going to demand any apology from anyone. What I am demanding is a return of assets”. If substantial corrupt assets *are* being held in the UK by overseas nationals then the new UWOs could play an important role in repatriating those assets to the countries such as Nigeria from which they were taken.

### Can they make a difference?

The answer is that they can work and *have* worked successfully, for example in Ireland. But for UWOs to make a difference there clearly needs to be the political will and commitment to make that happen.

Australia and Ireland both operate UWOs, but with contrasting results. Australia first introduced UWO legislation in 2000 but up to the end of 2015 just AUD$61 had been recovered using UWOs. Push-back from the Australian courts has created difficulties and there is no co-ordinated federal or cross-agency effort in place to manage UWO activity across Australia. Contrast this with Ireland which has had far greater success with UWOs. This success is attributed in large part to the establishment of the Criminal Assets Bureau (CAB), an independent and specialist agency that was set up under the Irish Proceeds of Crime Act 1996 to investigate and pursue the civil recovery of the proceeds of criminal activity[[2]](#footnote-2). It is the independence and the specialist focus of CAB combined with very high levels of cross-agency buy-in which are seen as key contributors to its success. Under proposals for the use of UWOs in the UK bodies such as the Serious Fraud Office, National Crime Agency, Crown Prosecution Service, Financial Conduct Authority and HMRC would all have powers to apply to the courts for a UWO, but there do not appear currently to be plans for a separately established and independent body dedicated to the recovery of unexplained wealth. Whether this will make a difference to the effectiveness of UWOs as a recovery tool in the UK remains to be seen.

Another point to consider is the extent to which UWOs will be actively promoted and used as recovery tools in the UK. Transparency International has identified £4.2 billion worth of property in the UK owned by ‘…politicians and public officials with suspicious wealth’. Yet in a recent [Impact Assessment](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583350/Unexplained_Wealth_Orders_Impact_Assessment_100117.pdf) for the use of Unexplained Wealth Orders the UK Government estimated that there would be just 20 cases per year that will use UWOs and that the expected value of the benefit would be between just £3 million and £9.1 million. This would seem to indicate a fairly substantial gap between the level of potential and proposed use of Unexplained Wealth Order in the pursuit and recovery of corrupt and criminal funds.

Is there sufficient political will in the UK for UWOs to make a difference? There are still several stages that the Criminal Finances Bill will need to pass before any of this is passed into UK law. Whether the political commitment is there to create tools that have real teeth and can make a difference remains to be seen.

1. Source: [GOV.UK Criminal Finances Bill, factsheets, 8 February 2017](https://www.gov.uk/government/publications/criminal-finances-bill-factsheets) [↑](#footnote-ref-1)
2. Source: [Transparency International Anti-Corruption Helpdesk: Unexplained Wealth Order as an Anti-Corruption Tool, 27 November 2015](https://www.transparency.org/files/content/corruptionqas/Unexplained_wealth_order_as_an_anti-corruption_tool_2015.pdf) [↑](#footnote-ref-2)