

Unexplained wealth orders

February 2018

Do you have property worth more than £50,000, either personally or on behalf of a client? If so, you could be on the receiving end of a Court Order....

Adding to their armoury of powers in the crackdown against financial crime and money laundering, UK authorities can now seek 'Unexplained Wealth Orders' (**UWOs**), requiring an individual or corporate body to provide information as to certain property they hold.

Guernsey and Jersey service providers could, therefore, be recipients of UWOs. As such, it is important to understand their effect on property and clients and what it will mean for your business on a practical level.

Below we address some of the key questions surrounding UWOs and their significance.

What are UWOs?

A UWO is an order of the High Court of England and Wales, ordering a respondent to confirm the nature and extent of their ownership of property, and how they obtained it. If they purchased the property they must also explain how the purchase was funded.

How are UWOs obtained and what property might be caught by one?

A UWO may only be ordered if three conditions are met:

1. There must be reasonable cause to believe that the respondent holds the property in question, and that the property's value exceeds £50,000.
2. There must be reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would be insufficient for the purposes of enabling them to obtain the property.
3. The respondent is (a) a politically exposed person; or (b) there are grounds for suspecting that the respondent – or a person connected with them - has been involved in serious crime.

Crucially, a UWO is retroactive – it does not just apply to newly acquired property but also to property acquired before 31 January 2018.

Can anyone apply for a UWO?

No – the power to apply for a UWO is restricted to UK-based authorities (HMRC, the Financial Conduct Authority and the Director of Public Prosecutions amongst others).

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

So UWOs apply only to UK-based property?

No. Although only UK authorities can apply for UWOs, they can be ordered in respect of property *worldwide* – there is no requirement that the property (or the respondent) is based in the UK.

What happens if a respondent doesn't reply to a UWO, or replies unsatisfactorily?

Failing to respond satisfactorily to a UWO without a reasonable excuse does not affect the property or the ownership of it *per se*, but it does give rise to a presumption that the property in question is recoverable for the purposes of a 'civil recovery order' (an order applied for by UK authorities to recover criminal property).

Usually when applying for a civil recovery order the burden is on a UK authority to show that the property was obtained unlawfully. However, that burden is reversed in the case of non-compliance with a UWO, with the respondent needing to prove that it was lawfully obtained.

There could therefore be very significant consequences if there was a delay in responding to a UWO, and it is a criminal offence to make false or misleading statements in a response.

As a local fiduciary/corporate services provider why should I take note?

Because the [legislation](#) specifically confirms that trustees who hold property which is subject to a UWO may be required to provide information relating to the trust – not just the property held in it.

In addition, UWOs are not restricted to individuals – they can also be ordered against companies or other corporate bodies, anywhere in the world. This means that offshore providers offering registered office and company administration services could see UWOs in respect of companies they administer.

Local service providers might also come into contact with UWOs in the course of assisting a respondent's response to one – they might, for example, be asked for documents or confirmation evidencing a distribution to a beneficiary. Service providers will therefore need to be wise to their confidentiality obligations and the interplay and conflict between those and the terms of a UWO.

Importantly, UWOs can be applied for without notification to the respondent. In practice that may mean that the first a trustee or corporate services provider may know of a UWO will be when it lands on their desk, already granted.

Further, a client might be affected even if they are not themselves the subject of a UWO. That is because UWOs apply to property regardless of whether it is held by one individual or jointly (e.g. with a partner).

Whilst only the respondent to the UWO would be required to provide the statement and details regarding the property, the joint owner would be affected by any further measure the Court might order on the back of it – an interim freezing order, for example (an order that prohibits anyone with an interest in the property from dealing with it).

What does this mean in practice?

As noted above, UWOs have an extra-territorial reach but in order to enforce one - or an ancillary interim freezing order - in a foreign jurisdiction (e.g. Guernsey or Jersey) it seems the UWO would need to be registered or recognised in that jurisdiction. Owing to this additional step, UK authorities may consider that UK-based property and respondents are more appropriate targets initially.

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

In circumstances where UWOs are ordered, it is not known what timeframe the High Court would typically stipulate for a response, but prudent trustees and corporate service providers will ensure they can provide, within a relatively short timeframe, the necessary information on property with a value of more than £50,000. Given the UWO criteria, that is particularly the case when a PEP is involved as a client or in a structure.

It is also possible that a service provider's AML reporting procedures would be activated on receipt of a client-related UWO, and consideration should be given to whether a Suspicious Activity Report would be warranted. In any event, a UWO could certainly serve as the trigger to consider the client relationship, the property held and the transactions carried out to determine what, if any, AML reporting is required, or if an amendment to ongoing client due diligence is merited.

If you would like to discuss this and the effects UWOs might have on you and your business, please get in touch.

For more information please contact:



Thomas Cutts-Watson

Senior Associate // Guernsey

t: +44 (0) 1481 734821 // e: Thomas.Cutts-Watson@collascrill.com



Christian Hay

Partner // Guernsey

t: +44 (0) 1481 734290 // e: christian.hay@collascrill.com



Angela Calnan

Partner // Guernsey

t: +44 (0) 1481 734233 // e: angela.calnan@collascrill.com



Damian James

Partner // Jersey

t: +44 (0) 1534 601733 // e: damian.james@collascrill.com