

Tolley Tax Intelligence from LexisNexis **LexisNexis**

White Collar Crime (2019)
7th November 2019

Before viewing this webinar, please visit www.lexiswebinars.co.uk/test-your-system to ensure that your network and PC are configured correctly.

Tip: Press F11 on your keyboard to enlarge the webinar player.

1

White Collar Crime (2019)

The law as stated during this webinar is up to date as of **14th October 2019**

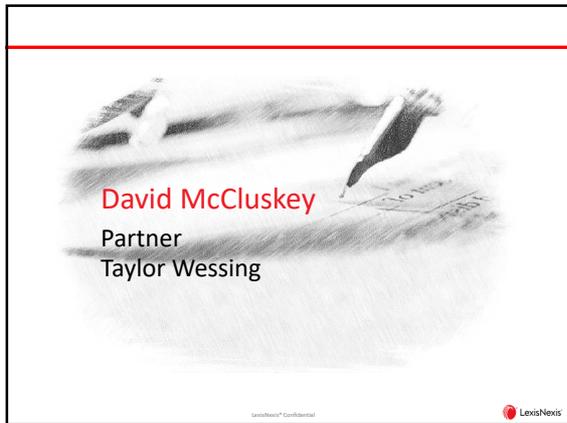
LexisNexis Confidential LexisNexis

2

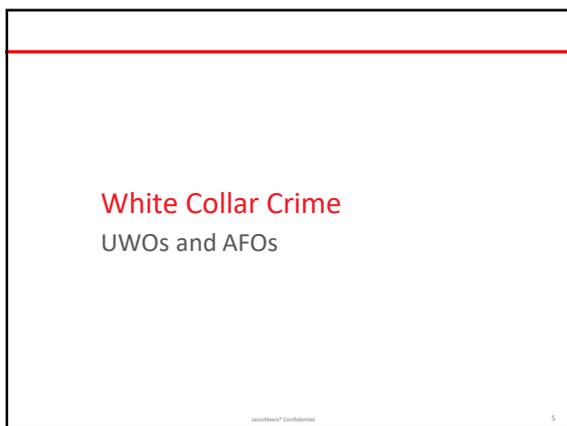
Introduction

LexisNexis Confidential LexisNexis

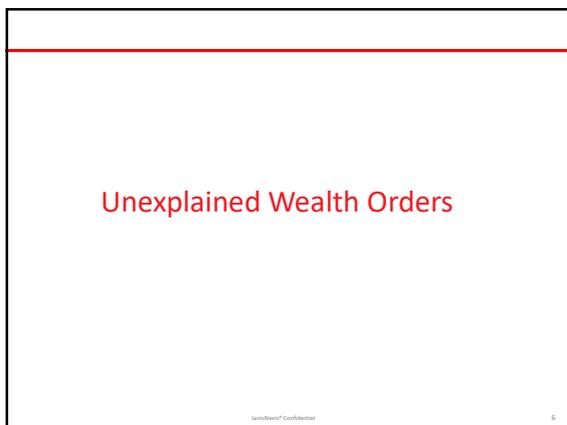
3



4



5



6

Unexplained Wealth Orders

'Will be used against everyone from the local drug trafficker to international oligarch or overseas criminal'
Ben Wallace – Government Minister for UK Security

'UWOs will significantly reduce the appeal of the UK as a destination for illicit income. We are not a soft target for money laundering and where we cannot determine a legitimate source for funds used to purchase assets we will ask probing questions.'
Donald Toon – Director of economic crime at the NCA

'UWOs? UFO's; these new orders have made bankers and city advisors anxious – they have extra terrestrial reach'
Simon Bushell for Spears

Lawrence Confidential 7

7

362B Requirements for making of UWO

- Respondent holds the property and value is more than £50k
- High Court "satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property"
- Respondent is a PEP or
- Respondent is or has been "involved in serious crime" or
- A person "connected with the respondent" is or has been so involved

Lawrence Confidential 8

8

'Involvement in serious crime': Serious Crime Act 2007 s2

- Has committed/facilitated the commission by another person of a serious offence in England & Wales
- Has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence...(whether or not such an offence was committed)
- "Serious Offence": widely construed...
- Money laundering, Fraud, False accounting, Tax, VAT and Duty offences, Breach of sanctions legislation

Lawrence Confidential 9

9

Definition of a PEP:

- An individual entrusted with prominent public functions by an international organisation or by a Non-EEA State
- A family member of the above
- Someone known to be a close associate of the individual so entrusted
- Someone "otherwise connected" to an individual so entrusted

LexisNexis® Confidential 10

10

A look at the case of Zamira Hajiyeva

'Revealed: Mystery woman who blew £16million at Harrods is wife of disgraced Azerbaijan banker jailed for stealing £125million' - Daily Mail



LexisNexis® Confidential 11

11



'Mr H's conviction is only one of a number of factors relied upon by the NCA...the income requirement is satisfied, irrespective of any reliance on the conviction'

This is not a case where the conviction resulted from a confession or torture

<http://www.bailii.org/ew/cases/EWHC/Admin/2018/2534.html>

NCA v Hajiyeva (Rev 1) [2018] ECHC 2534 (Admin)

LexisNexis® Confidential 12

12

Zamira Hajiyeva

- 'There is no exclusionary rule which prevents a court relying on the fact of a conviction even if obtained flagrantly unfairly'
- 'The UWO does not give rise to loss of value' so no breach of Article 1 (Human Rights Act)
- Privilege against self-incrimination – only as regards UK prosecution. S362 use immunity
- 'I have listened carefully to the eight grounds advanced to discharge the UWO and find that none are made out, accordingly the appeal is dismissed.'
- **NCA v Hajiyeva (Rev 1) [2018] ECHC 2534 (Admin)**

LexisNexis® Confidential 13

13

s362C What happens if you do not comply

(1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.

(3) The presumption in subsection (2) applies in relation to property—

- (a) only so far as relating to the respondent's interest in the property, and
- (b) only if the value of that interest is greater than the sum specified in section 362B(2)(b).

LexisNexis® Confidential 14

14

Commentary on currently known UWO cases:



- Hajiyeva – both PEP and 'serious crime' factors
- Procedural and due process challenges all failed
- May 2019 – further UWOs against three properties
 - "Linked to a politically exposed person believed to be involved in serious crime"
- July 2019 – UWO against properties held by businessman in North of England
 - Property empire suspected of funded by drugs and firearms trafficking
- July 2019 – 6 properties held by Northern Irish woman
 - Alleged links to organised crime, paramilitary activity and cigarette smuggling

LexisNexis® Confidential 15

15

Consequential issues:

- Non-UK allegations
- Interim freezing orders
- Subsequent orders: Restraint, freezing orders, receiving orders
- Penalties for non-compliance
- Written statements of interest: self-incrimination issues
- Use of UWOs – where prosecution 'not possible' ?
- What will be considered 'explained' ?

LexisNexis® Confidential 16

16

Other considerations

- What does a 'sufficient explanation' look like?
- Wide definition of 'holds'
- No privilege against self incrimination
- Burden of proof is shifted
- No criminal conviction required
- Action in rem, not a personal claim



LexisNexis® Confidential 17

17

Protection?



- Seek legal and reputational advice at the earliest stage
- Applications can be made with or without notice
- Broad in scope
- Pro active engagement with the NCA?....

LexisNexis® Confidential 18

18

Case study

Mr E is a Russian national; resident in Russia
 Mr E created trust in 2012 with business profits
 Business profits lent by trust to Co.1 to acquire UK property
 UK property occupied by Mr E's adult children
 Mr E becomes embroiled in a dispute with Mr T as to the true ownership of a private jet
 Mr T is also a Russian citizen
 Mr E and Mr T decide to litigate in London
 Various accusations are traded in the course of the proceedings, and Mr T alleges that Mr E holds the jet for him and that Mr E acquired his funds through corruption and/or embezzlement from the Russian state

LexisNexis® Confidential 19

19

Important concepts

- Unlawful conduct
 - UK conduct which constitutes a criminal offence
 - Non-UK conduct which is an offence where it occurs and would be an offence in the UK
 - Non-UK conduct constituting a 'gross human rights abuse or violation'
- Recoverable Property: essentially property obtained through unlawful conduct
- Seizable listed asset: if all or part of it is recoverable property or intended by any person for use in unlawful conduct, and value is over £1000

LexisNexis® Confidential 20

20

Listed Assets Orders

- Civil actions in rem
- Certain high value items: Precious metals, precious stones, watches, art, face value vouchers and postage stamps
- Ability to search for Listed assets when on premises – prior approval of Magistrate or senior officer required unless 'in the circumstances it is not practicable' s303E
- General ability to seize 'listed assets' if reasonable grounds for suspecting it is recoverable property
- Initial detention period 6h, further detention authorised by court

LexisNexis® Confidential 21

21

Listed Assets orders II

- Forfeiture – by application to Magistrates’ court
- Victims and other owners may apply for release of property
- Provisions for dealing with joint ownership of property
- Costs
- Appeal to Crown Court
- Compensation

LexisNexis® Confidential 22

22



Neil Swift
Partner
Peters & Peters

LexisNexis® Confidential LexisNexis

23

Account Freezing Orders

LexisNexis® Confidential 24

24

What are AFOs?

- Section 5 Criminal Finances Act 2017, created Account Freezing Orders which allow the NCA and SFO to apply to freeze, and subsequently forfeit, money held in bank accounts and building society accounts
- Section 5 CFA 2017 entered section 303Z1-19 into POCA 2002- Forfeiture of money held in bank and building society accounts
 - reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account)—
 - (a) is recoverable property, or
 - (b) is intended by any person for use in unlawful conduct.
 - Minimum value of the account is £1000
 - An account freezing order must provide for notice to be given to persons affected by the order
 - Must not exceed 2 years

25

25

Why were AFOs created?

- To fill lacunae of cash seizure powers
- A way of following up on Suspicious Activity Reports
- Allow low value accounts to be frozen without notice so the money cannot be withdrawn- the subject of the AFO need only be informed once the court has granted the AFO
- Low threshold to freeze the account- “reasonable grounds for suspecting” an AFO can be granted before a criminal investigation is started or as an alternative



26

26

Procedure for obtaining an AFO

```

    graph TD
      A[Enforcement officer applies to Magistrates' Court for AFO if that officer has reasonable grounds to suspect that money held in that account constitutes "recoverable property" or is intended for use in unlawful conduct.] --> B[Magistrates' Court grants AFO]
      B --> C[To release any part of the account, the account holder must apply to vary the order. Exceptions can be made for living and legal expenses, but subject to obligation not to cause undue prejudice to eventual forfeiture]
      C --> D[Enforcement Officer issues an "account forfeiture notice", which operates to forfeit all or part of the funds in a frozen account]
      D --> E[If no objection to such a notice is received, the balance of funds in the frozen account must be transferred to a nominated account at the end of the objection period.]
      D --> F[An application may be made to the Magistrates' Court for forfeiture of money in an account subject to an AFO. Court must be satisfied on the balance of probabilities that the funds are either recoverable property or are intended for use in unlawful conduct.]
    
```

27

27

Why are AFOs an attractive option for law enforcement?

- Quick- the whole process of applying for and being granted an AFO is dealt with in the Magistrates Court.
- Low standard of proof to freeze - reasonable grounds for suspecting that money held in the account is recoverable property, or is intended by any person for use in unlawful conduct. Far lower test than is required in civil proceedings for Worldwide Freezing Orders.
- Little adverse cost liability
- De facto shift of burden onto account holder to prove the money in the account is not recoverable property or being used for unlawful conduct



Lawrence's Confidential 28

28

How have AFOs been used in the fight against White Collar Crime?

Case Study 1- Vlad Luca Filat

- May 2018, NCA applied for 3 AFOs over 3 bank accounts held by Vlad Luca Filat ,the son of a former Prime Minister of Moldova, who is serving a 10-year custodial sentence for his part in a \$1bn banking fraud.
- NCA investigation found that Vlad's extravagant lifestyle was founded by large deposits from overseas companies linked to his father.
- Feb 2019, City of London Magistrates' Court agrees a forfeiture order of £466,000



Lawrence's Confidential 29

29

How have AFOs been used in the fight against White Collar Crime?

Case Study 2 - convicted fraudster

- Account frozen under an AFO
- SFO successfully applied for the funds to be forfeited, granted by Westminster Magistrates' Court on 14 March 2019
- Money, just over £1.5m, came from the sale of two properties bought with the proceeds of fraud by an individual who fled the jurisdiction in the mid 2000s
- Individual also implicated in a series of mortgage frauds for which his brother was sentenced to 13 years imprisonment



Our actions send a clear message to anyone involved in fraud, bribery or corruption – that we will work tirelessly to get back the proceeds of your crimes." *SFO 15 March 2019*

Lawrence's Confidential 30

30

How have AFOs been used in the fight against White Collar Crime?

Case Study 3-NECC freezes 95 accounts holding £3.6m

- April 2019, 95 bank accounts held by Chinese national students were frozen – National Economic Crime Centre coordinated efforts by NCA, HMRC, Met Police and City of London Police
- Accounts held by students studying in the UK targeted by organized crime groups to launder proceeds of crime
- Accounts used to receive small and frequent cash deposits from automated service devices to break up large transactions into smaller transactions below reporting threshold
- Accounts used as part of parallel banking channels established to circumvent Chinese currency controls – transfer of currency to broker in China results in deposit in account in UK
- Certainly disruptive to parallel banking channels
- Question will be whether authorities can satisfy court that the money is the proceeds of crime if represent the balancing side of a currency transaction

"This operation demonstrates the power of working collaboratively across law enforcement and the private sector. I am particularly grateful for the proactive stance taken by the bank in helping to identify this threat."
Matthew Bradford, Head of Operations for the NECC

Lawrence Confidential 31

31

Critical analysis of the use of AFOs

- Standard of proof is lower than equivalent orders in private civil proceedings
- No need for a criminal investigation to have been started or ever to start
- Summary procedure in Magistrates' Court, but no upper limit on amount that can be frozen and forfeited
- Is the Magistrates' Court the right venue to resolve complex claims?
- Incentive to seek orders as a result of Asset Recovery Incentivisation Scheme?

Lawrence Confidential 32

32

Practical concerns for clients subject to an AFO

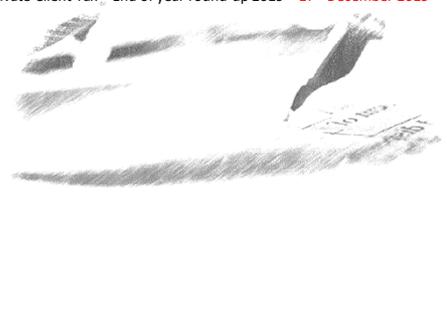
- An AFO prevents the account holder from making withdrawals or payments from the account. However, the suspicion that triggers the order need only apply to part of the credit balance of the account
- It is possible to engage with the authority who obtained the AFO by providing an explanation to address the suspicion
- BUT there is a danger to clients who provide an explanation either in correspondence or to court – it can be used to inform a criminal investigation, and nothing to stop it being used in evidence
- Risk that even if AFO discharged following hearing or by consent, it may irredeemably harm client's relationship with bank

Lawrence Confidential 33

33

Upcoming Private Client Tax webinars

- Private Client Tax – End of year round-up 2019 – **17th December 2019**



LexisNexis Confidential LexisNexis

34

On demand Private Client Tax webinars

- The latest on the PSC Register and trusts (2018) – expires **26th February 2020**
- Tax issues for high-net-worth individuals (2018) – expires **9th April 2020**
- Capital Gains Tax in 2018 – expires **8th May 2020**
- Probate and trust disputes in 2018 – expires **11th May 2020**
- Tax Avoidance in 2018 – expires **29th May 2020**
- Pensions Planning in 2018 – expires **20th July 2020**
- The operation of the Residential Nil Rate Band (2018) – expires **17th September 2020**
- Inheritance Act Claims (2018) – expires **8th October 2020**
- Pensions provisions in the Finance Act 2017 (2018) – expires **10th October 2020**
- Changes to offshore trusts in the Finance Act 2018 – expires **29th October 2020**
- Capital Gains Tax for non-residents in 2019 – expires **14th February 2021**
- DOTAS: Disclosure of tax avoidance schemes (2019) – expires **14th March 2021**
- Inheritance Tax and Trusts in 2019 – expires **11th April 2021**
- International private clients and offshore tax (2019) – expires **9th May 2021**
- Residential nil rate band (RNRB) update (2019) – expires **6th June 2021**
- Capital Gains Tax and residential property (2019) – expires **10th October 2021**
- White Collar Crime (2019) – expires **24th October 2021**



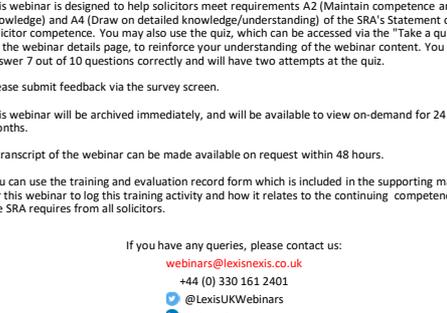
LexisNexis Confidential LexisNexis

35

Thank you and reminders

- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
- Please submit feedback via the survey screen.
- This webinar will be archived immediately, and will be available to view on-demand for 24 months.
- A transcript of the webinar can be made available on request within 48 hours.
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.

If you have any queries, please contact us:
webinars@lexisnexis.co.uk
+44 (0) 330 161 2401
[@LexisUKWebinars](https://twitter.com/LexisUKWebinars)
[lexisnexis-webinars](https://www.linkedin.com/company/lexisnexis-webinars)



LexisNexis Confidential LexisNexis

36

Thank you for attending.
We hope you've enjoyed this session.



Bespoke in-house training solutions

- Tailored for your business
- Extensive portfolio of expert presenters
- All areas of legal practice covered
- Location of your choice

Find out more - <http://www.lexiswebinars.co.uk/in-house-training>

 LexisNexis
