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Unexplained Wealth Orders: will the refusal of Zamira Hajiyeva's appeal open the floodgates?

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John Binns and Michael Drury of the Financial Crime team at BCL Solicitors considers the implications of Court of Appeal judgment in the UK on 5 February 2020.

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The travails of Mrs Zamira Hajiyeva, since she became the target of the first Unexplained Wealth Order (UWO) in the UK nearly two years ago, have prompted a number of interesting questions. While the tabloid press have understandably focused on how anyone could possibly spend UK£16m at Harrods, they have also found some column inches to ask why the UWO – since joined by just a handful of others – has remained such a rare beast so far.



Destination of funds

At least part of the answer to that is the authorities have been stacking up potential UWO applications while awaiting Mrs Hajiyeva's appeal, which was granted permission precisely because it was felt useful to have a steer from the Court of Appeal on some of the knottier questions posed by the legislation. With respect to Politically Exposed Persons (PEPs), for instance, we now know that the question of whether an enterprise is state-owned is to be decided without reference to local, in this case Azeri law, the inference from a stake of over 50% being that the state had ultimate control over it. We also know that where an individual such as Mr Hajiyev is shown to have had prominent public functions, there is no need to prove specifically that he was entrusted with them by a state. We also have clear confirmation that the UWO provisions are intended to abrogate spousal privilege, though a real risk to a spouse could be taken into account by a court exercising its discretion. Though it might be said that these answers were obvious anyway, the fact that the Court has ruled upon them will embolden the authorities to make other applications.

The judgment was rather less clear in answering the third question raised by Mrs Hajiyeva's predicament – namely, whether the process of Azeri justice can be trusted. In the extradition context the answer (pending a separate appeal) was no, as she would suffer a 'flagrant denial of justice' if sent there to stand trial. In the UWO context, her attempt to have her husband's conviction discounted for the purposes of assessing his 'lawfully obtained income' ran aground, not because the court decided there were no problems with Azeri justice, though, frustratingly, it seems they had no independent expert evidence on this subject, but because there were other signs that the income was not legitimate. These included 'the process by which [the] acquisition [was] made', in this case, the purchase of an UK£11.5m Knightsbridge home via a BVI company with only a UK£7.5m mortgage, repaid five years later, and a due diligence report aimed at showing that Mr Hajiyev was a high net worth individual, but which the Court said 'posed more questions than it answered'.

The result will perhaps make the authorities pause before reaching a suspicion that income is not 'lawfully obtained', where that arises solely because of a conviction overseas that may be unsafe. But in all other respects, the judgment has turned a lot of amber lights green for a number of potential UWO applications, and helped clear their way to the High Court.

John Binns (+44 (0)20 7430 2277, jbinns@bcl.com) and Michael Drury (+44 (0)20 7430 2277, mrdury@bcl.com) are partners in the business crime and corporate regulatory department of BCL Solicitors LLP (www.bcl.com).

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