



The sword of justice cuts both ways

Unexplained Wealth Orders reverse the burden of proof

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The latest tool in the armoury of law enforcement in the UK, the Unexplained Wealth Order (UWO), has the capacity to bring the untouchables of crime to a sort of justice but has within it a far greater threat to liberty.

The case of Mansoor “Manni” Mahmood Hussain looks, on the face of it, cut and dried. Bad man, pots of cash, some properties in Knightsbridge and lots of stuff elsewhere. Enter the newly minted Unexplained Wealth Order and the National Crime Agency. Manni hands over 45 of his properties in London, Leeds and Cheshire, some land, and nearly £600,000 cash, totalling £9.8m. Most will applaud this action, and share the sheer innocent delight of Graeme Biggar, the NCA’s director general of the National Economic Crime Centre. Yippee, he almost said, “This case is a milestone, demonstrating the power of Unexplained Wealth Orders, with significant implications for how we pursue illicit finance in the UK.”

The bad guy didn’t get away with it. Manni is busted.

But something about this reeks. The way the UWO works is simple. The evidence required is less than that required of a criminal case. Better still for the authorities the process relies upon the “reverse onus” principle. That is, it is up to the accused to prove their innocence, not the state to prove their guilt. And because it is not a criminal case, according to international law, the state doesn’t have to prove guilt.

What we have here is the first example where the state has successfully imposed that new legal concept, “Guilty until proven innocent”, a novel reinterpretation of Article 11 of the 1948 Universal Declaration of Human Rights.

So, despite heartfelt and no doubt accurate police suspicions, Manni has not been convicted of any crime. But he has been closed down.

According to the legislation, somebody investigated under a UWO is required to provide evidence to show that any asset over £50,000 has been acquired legitimately. The asset does not have to be held in the UK, merely that the accused must be covered by UK law. These Orders have been designed specifically to catch super villains, especially villains involved in organised crime, and “Politically Exposed Persons”, jargon for corrupt foreign officials from countries outside the European Economic Area, and their friends and relations. We all know, or at least those of us who read high octane thrillers and to spend time in matinee cinemas, that these sections of society are fiendishly clever, and very well resourced. Their top-notch lawyers are

paid sums that would make Croesus blush. To convict these types in the traditional fashion would take huge amounts of public time and money, if they can be convicted at all.

There is real pleasure seeing this sort of man getting his comeuppance

Up until now the Order has been a rather blunt knife, three cases have been taken, one about Zamira Hajiyeva, the wife of the former boss of the International Bank of Azerbaijan, who had rather magnificently managed to spend £16m at Harrods alone in recent years amongst other things. From all accounts her make up drawer was the size of Centre Court. Two others were mother Dariga Nazarbayeva the former Deputy Prime Minister of Kazakhstan and son Nurali Aliyev, alumni of the Panama Papers, thought to be owners of 221B Baker Street. Hajiyeva currently has yet to act on her lost appeal, whilst the Kazakhs have managed to wriggle out of the Order. One out of three isn't good.

In this new case, though Manni himself has never been convicted of any crime, he mixes with very dubious types. He was very close with "Meggy" Khan, a Bradford gangster sent down for murder last year, and Manni's brother has been convicted of money laundering. He also used to give rent free properties to the delightful Dennis Slade, another Bradford crime boss, head of a gang of armed robbers, someone with nine convictions covering 64 offences, the first being when he was 14 years old. So far, so box set. And yes, there is real pleasure seeing this sort of man getting his comeuppance. It is interesting to note that he has handed over this wealth but has not been given immunity from future prosecution (evidence discovered under a UWO cannot be used in a criminal case however).

Today for the Serious Fraud Office, HM Revenue & Customs, Financial Conduct Authority and Crown Prosecution Service it is a fine tool in the fight against money laundering, organised crime and as part of our attempts not to be seen as the domicile of corrupt oligarchs. For our protection, a High Court Order signed by a judge is all that the authorities require to use it.

The presumption of innocence is one of the most venerable of all concepts in jurisprudence

But what happens when an establishment is challenged, when our courts become tools of an elite, when the various wings of government are used to protect the powerful, rather than to apply simple justice? What happens then? Is it possible that, with a lower limit of only £50,000 worth of assets, this tool against the shadowy powerful could be used against the lowly and awkward? Let's say somebody decides to stand for the Stop HS2 party, in a marginal seat. They are in their 60s, a retired local GP. They have lived in Midsomer Parva, for that is where they are standing, for 45 years. The sitting MP has friends, allegations are made about the cottage where our hero lives.

Plod arrives, "Excuse me sir, but we have an order here, it tells us that you must provide evidence that Rose Cottage was acquired legitimately." Now our crusty old Doctor is entirely legit, but, you know, admin was never his strong suit. Dusty files in the attic, beset with mould and mildew fail to reveal the proof. He is in a legal nightmare. The burden of proof is upon him.

In this little cautionary tale, he eventually finds his proof, the charges are dropped, and he is free to continue his quixotic campaign for freedom of speech. "No harm done Doc, sorry about the inconvenience". But the chilling effect of the intimidation may well silence others. The deadening effect of liberty and freedom needs hardly to be mentioned.

“But Gawain, you’ve always said you are a cock-up, not a conspiracy chap. Stop worrying about this sort of thing. This is England, it couldn’t happen here.”

Yes and no. Of course, one would like to believe that as a nation we are inoculated against such authoritarian tendencies. The golden ribbon that threads through us as a freedom-loving bunch protects us. Dimly held memories of the Magna Carta, the Bill of Rights, Wilkes, Beef and Liberty, still course through our veins, don’t they?

Remember when the Electoral Commission raided the Brexit Party headquarters on the penultimate day of last year’s European election? It acted the day after a well-publicised speech by Gordon Brown, in which he made false allegations of dodgy finances in the Party. The raid closed the party in the last campaigning day of the election. Why was that? It was intimidatory and resulted in nothing, not so much as a slight finger wag.

This was an act of a Government Agency, acting on hearsay. Those who ran the Agency wanted to believe that those they disagreed with were in some way guilty of something, well at least something more than colossal *lèse-majesté*. This was a clear example of political intimidation against a party that was threatening the status quo. So, what about the little man?

If justice is to be just then the state must be able to prove its allegations

The presumption of innocence is one of the most venerable of all concepts in jurisprudence. It appears in slightly different forms. Introduced into Roman law in the 2nd century AD by the Emperor Antonius Pius, it also appears in early Talmudic and Islamic legal texts. For us it is one of the mainstays of the Common Law. Most memorably set out by Sir William Garrow in 1791 when he stated that a defendant must be “presumed innocent until proven guilty”, it is today one of the most understood aspects of our law.

But the complexity of modern law, and the tricksiness of modern defence lawyers have left law enforcement, the police and the Crown Prosecution Service, fuming at their inability to get convictions. One can sympathise with them, as they see genuinely bad people using their power and wealth to dodge accountability for their crimes.

But there is a reason why we have the presumption of innocence and it bears repeating. The state has unlimited resources, ordinary citizens do not. If justice is to be just then the state must be able to prove its allegations. Blackstone’s eighteenth-century ratio must still apply if we are to remain a free nation: “It is better that ten guilty persons escape than that one innocent suffer”.

Just think for a moment of the implications of this. As the American scholar, Walter Olson, put it, “For the moment, use of the orders is limited to a few elite law enforcement agencies. One of those agencies, however, is Her Majesty’s Revenue and Customs — the tax collectors. It’s not wrong to worry about where this idea is headed.”