

# Introducing illicit enrichment in the UK: a proposal by Transparency International UK

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Too often, for a variety of reasons, law enforcement agencies are unable to take meaningful action against assets suspected to be corrupt. That might be, for example, because the state that has suffered corruption is unable or unwilling to provide supporting information to UK law enforcement in time for action to be taken, or because the evidence required to apply to restrain funds cannot realistically be put together in the time available. International corruption is complex and difficult to investigate and establish.

[The United Nations Convention against Corruption](#) was the first global anti-corruption instrument. Amongst other steps, it requires states to enact a range of criminal offences and asset recovery mechanisms as part of measures to address corruption or, in some cases, the convention recommends that consideration is given to doing so.

UNCAC recommends signatory states consider introducing an offence of “*illicit enrichment*”, which would be committed by public officials who cannot provide a reasonable explanation for large increases in their wealth by comparison to their lawful income.

That offence has not been introduced into English law because of concerns that its reversal of the burden of proof, and lack of a need to demonstrate a link between assets and criminal activity, was inconsistent with due process.

[Transparency International UK](#) has today proposed adding “*Unexplained Wealth Orders*” (**UWO**) to the civil recovery tools available to UK law enforcement agencies to support recovery of the proceeds of corruption.

The proposal is made in a discussion report called “[Empowering the UK to recover corrupt assets. Unexplained Wealth Orders and other new approaches to illicit enrichment and asset recovery](#)”.

The report follows a review of the appropriateness of UK legislation to deter grand corruption and recover stolen assets by a taskforce convened by Transparency International. It comprised academics, civil society and lawyers, assisted by observers from UK Government and law enforcement (our [James Maton](#) was a member of the taskforce).

The proposal aims to make better use of Suspicious Activity Reports (**SARs**), an important tool relied on by UK law enforcement to identify corrupt assets. Anyone assisting with a transaction that they know or suspect may amount to money laundering is obliged to file a SAR, but they are usually filed by banks or other regulated entities.

The taskforce made five key findings:

The level of assets recovered by the UK is very small compared to the likely amounts of corrupt wealth being laundered.

1. Only a small minority of SARs relating to grand corruption are acted on by law enforcement agencies.
2. The maximum “moratorium period” of 31 days for law enforcement to take action following a SAR is generally inadequate to investigate and achieve asset restraint for grand corruption cases.
3. Civil recovery (non-conviction based asset forfeiture) powers are under-used in cases of grand corruption.
4. The current framework for asset recovery is overly reliant on a conviction in the country that has suffered the underlying corruption.

Suspects served with an UWO would be required to explain legitimate and legal sources of wealth for identified UK assets. A failure to comply, or inadequate compliance, could permit funds to be frozen for a much longer period pending further investigation into their source and consideration of whether a civil recovery case should be brought to recover the asset as the proceeds of crime.

UWOs would most often be served following receipt of a SAR filed by a bank, or another entity in the regulated sector. It is also proposed that the 31 day moratorium period in which law enforcement has to restrain an asset, or consent to its transfer, would be suspended pending a response to the UWO.

A Judge would make the UWO on the application of law enforcement, and would also decide whether it was appropriate to restrain an asset pending further investigations in light of the information and supporting documents provided by the suspect.

TI's analysis is that the power to serve a UWO would have significant impact where there was existing "*moderate*" evidence that the asset had been acquired using the proceeds of corruption, and meaningful impact where the evidence was stronger.

Our view is that the introduction of UWOs could have a significant impact on the recovery of the proceeds of corruption. As the discussion paper recognises, further work needs to be done to assess precisely how the UWO scheme would work in a manner compliant with civil liberties, privacy and human rights considerations.

However, the proposal is a proportionate and fair response to assist in addressing the enormous scale and impact of corruption, particularly given judicial involvement and the opportunity for suspects to explain the source of their wealth.

After all, honest public officials should – really – have no difficulty demonstrating the source of a particular asset or bank balance. And the information required to comply with a UWO should not be substantially more onerous than that required by the regulated sector when commencing and reviewing a business relationship with a public official.

Key questions are the test law enforcement would need to meet to persuade a Judge to issue a UWO, the test for assessing whether the information and supporting documents provided in response are adequate, and the consequences of failing to respond to a UWO.

Our view is also that there is a case to be made that a failure to comply with a UWO, or a failure adequately to comply, should give rise to a presumption that the asset is corrupt.

This is a proposal that should be considered in detail, as Transparency International UK suggest, by the Law Commission or an appropriate Parliamentary Committee.

## Contributors

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