

UK Unexplained Wealth Orders: English High Court Puts National Crime Agency to the Test

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In *National Crime Agency v Baker*,¹ the High Court has highlighted some practical features of the UK's relatively new unexplained wealth order (“UWO”) regime. The first decided case in relation to UWOs focused on whether the wife of the chairman of a state-owned bank could be considered a ‘Politically Exposed Person’, thereby enabling her to be the target of a UWO.² Baker considered the strength and quality of the evidence relied upon by the National Crime Agency (the “NCA”) when seeking UWOs. The properties in question were ultimately beneficially owned by the ex-wife and son of Rakhat Aliyev, a Kazakh politician who died in exile in 2015.

After the UWOs were initially made at an *ex parte* hearing, the UWO targets (four offshore companies that owned the properties) voluntarily gave the NCA a written statement and supporting documentation regarding the purchase and transfer of the properties, their registered owners, and their ultimate beneficial owners. The NCA still considered that the UWOs were needed (requiring the production of further documents and information regarding the properties), and the UWO targets applied to the Court to discharge them.

The following key points can be drawn from the judgment:

- Although UWOs are a powerful means for the NCA to compel the disclosure of detailed information about the ownership of a property, the Court emphasised the relatively limited purpose of UWOs as an investigative tool. Once the target has explained who owns a property and how it was acquired, the purpose of a UWO effectively falls away. Any evidential disputes and whether the property should be forfeited as the proceeds of crime must be resolved in subsequent civil recovery proceedings, should the NCA decide to bring them.
- Targets of UWOs will benefit from adopting a proactive approach when dealing with the NCA. On the basis of the voluntarily-provided information, the UWO targets

¹ [2020] EWHC 822 (Admin)

² See *Hajieva v National Crime Agency* [2020] EWCA Civ 108

satisfied the Court that Aliyev's ex-wife (a successful businesswoman in her own right) and son purchased the properties using funds unconnected to Aliyev's alleged criminal activities, and therefore obtained the discharge of the UWOs. This approach effectively undermined the evidential basis on which the NCA initially obtained the UWOs and obviated the need to answer directly each information requirement imposed by the UWOs. Had the UWOs stood, any failure to comply with all of the information requirements would have led to a presumption that the properties had been obtained unlawfully for the purpose of future civil recovery proceedings.

- The Court emphasised that the use of complex offshore corporate structures or trusts to hold property cannot in itself lead the NCA to suspect that they are being used for wrongful purposes. There must be some additional evidence creating an "irresistible inference" that a structure is being used to disguise money laundering.

The Court pointed to several obvious flaws in the NCA's investigation, notably the failure to consider the possibility that Aliyev's ex-wife and son had the resources to purchase the properties independently of Aliyev, that his relationship with them ended before the properties were purchased, and that his illegally-acquired assets had already been confiscated in Kazakhstan - all of which the NCA could easily have discovered before applying for the UWOs. In seeking to defend the UWOs, the NCA also failed fairly to evaluate the new information that the UWO targets had voluntarily provided.

The judgment clearly indicates that the NCA will need actively to review the appropriateness of maintaining a UWO in light of information provided by its target as to the source of funds used to acquire the property in question, independently of the information requirements in the UWO. The judgment also makes clear that the NCA cannot rely on inferences of impropriety solely based on the use of complex offshore structures and family relationships with PEPs.

The NCA has stated that it will appeal.³ The basis for the appeal has not been made clear, but the public statement expressly references the utility of "case law on which further judgments will be based".



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³ <https://www.nationalcrimeagency.gov.uk/news/nca-to-appeal-discharge-of-unexplained-wealth-orders>



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