

**PROCEEDINGS AT HEARING
OF
DECEMBER 15, 2020**

COMMISSIONER AUSTIN F. CULLEN

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December 15, 2020

(Via Videoconference)

(PROCEEDINGS COMMENCED AT 9:30 A.M.)

THE REGISTRAR: Good morning. The hearing is now resumed, Mr. Commissioner.

THE COMMISSIONER: Yes, thank you, Madam Registrar.

Ms. Patel, do you have conduct of this portion of the hearing?

MS. PATEL: Yes. Thank you, Mr. Commissioner. Today we are hearing from two witnesses who are based in the UK, Helena Wood and Anton Moiseienko of the Royal United Service Institute.

THE COMMISSIONER: Yes.

MS. PATEL: They're both prepared to affirm.

THE COMMISSIONER: Thank you.

THE REGISTRAR: Can each of you please state your full name and spell your first name and last name for the record. I will start with Ms. Wood.

MS. WOOD: Hello. I'm Helena Wood. My first name is H-e-l-e-n-a, and my surname is W-o-o-d.

THE REGISTRAR: Thank you. And Mr. Moiseienko.

MR. MOISEIENKO: Hello. I'm Anton Moiseienko. First name A-n-t-o-n, surname, M-o-i-s-e-i-e-n-k-o.

1 A (HW) That's correct.

2 Q And I'll just refer to that from now on as RUSI,
3 if that's all right with you.

4 A (HW) Absolutely.

5 Q Okay. And you have been since 2015?

6 A (HW) That's correct, yes.

7 Q You've completed in that role multiple financial
8 crime research projects both for RUSI and for
9 the National Police Chiefs Council?

10 A (HW) That's right, yes.

11 Q Prior to that, you were with the National Crime
12 Agency, previously the Serious Organized Crime
13 Agency in the UK?

14 A (HW) That's correct.

15 Q Can you tell us a little bit about the work that
16 you did there.

17 A (HW) Yes. A variety of roles during my time,
18 what was the Serious and Organized Crime Agency
19 and is now the National Crime Agency. So roles
20 ranging from intelligence, investigations and
21 strategy formation, including leading on
22 strategy around civil confiscation for what was
23 the Serious Organized Crime Agency, and also
24 roles looking at combatting counter-narcotics in
25 Afghanistan during the campaign around a decade

1 ago.

2 Q And you were a senior policy officer in the
3 Proceeds of Crime Department in which capacity
4 your résumé tells us you were the lead policy
5 contributor to the home office consultation on
6 changes to the Proceeds of Crime Act 2002 asset
7 recovery powers.

8 A (HW) Absolutely, yes, and that was focusing
9 primarily on the role of civil confiscation in
10 the UK following the closure of the Assets
11 Recovery Agency and those powers being expanded
12 to the Serious Organized Crime Agency and others
13 at that time.

14 Q You've also led a UK -- you were the UK project
15 lead on the Financial Action Task Force study
16 into barriers to recovering criminal assets
17 across international borders; is that right?

18 A (HW) That's correct, yep.

19 Q And you also worked at the treasury as a project
20 officer for the Financial Action Task Force
21 evaluation of the UK's anti-money laundering and
22 counter-terrorist controls?

23 A (HW) That's correct. That was the last
24 evaluation, not the one that's just been, but
25 the one in 2007.

1 Q And I'll just mention that amongst your
2 publications, you've authored a paper on
3 non-criminal based confiscation in the UK for
4 RUSI in 2019 titled "Reaching the Unreachable:
5 Attacking the Assets of Serious and Organized
6 Criminality in the UK in the Absence of a
7 Conviction." Is that your publication?

8 A (HW) That's correct, yes.

9 MS. PATEL: Okay. And I'll just note for the record
10 that it is, Mr. Commissioner, in appendix --
11 it's appendix C to an overview report on
12 international publications, which is
13 exhibit 374, I believe.

14 THE COMMISSIONER: Thank you.

15 MS. PATEL:

16 Q Mr. Moiseienko, you are a research -- pardon me.
17 Let me just ask Madam Registrar to pull up your
18 CV if we can. Thank you, Madam Registrar.

19 Mr. Moiseienko, you recognize this as your
20 CV?

21 A (AM) Yes.

22 MS. PATEL: And I believe, Mr. Commissioner, if we
23 could have this marked as the next exhibit that
24 we're at, 381.

25 THE COMMISSIONER: Very well, 381.

1 THE REGISTRAR: Exhibit 381.

2 EXHIBIT 381: Curriculum Vitae of Anton

3 Moiseienko

4 MS. PATEL:

5 Q Mr. Moiseienko, you're a research fellow at the
6 Centre for Financial Crime and Security Studies
7 of the Royal United Services Institute of RUSI;
8 is that right?

9 A (AM) Yes, I am.

10 Q You've been a fellow since April 2019, but prior
11 to that you were a research analyst with RUSI?

12 A (AM) Correct.

13 Q Okay. And you -- I understand that earlier in
14 your career you were a practising lawyer in
15 Ukraine?

16 A (AM) Yes, correct. I worked part-time in a
17 Ukrainian law firm.

18 Q And you then received your PhD in law from Queen
19 Mary University of London?

20 A (AM) Correct.

21 Q And you wrote a thesis relating to the
22 imposition of immigration sanctions against
23 individuals suspected of corrupt
24 [indiscernible]; is that right?

25 A (AM) Yes, that's right.

1 Q And I understand that was later published as a
2 book.

3 A (AM) Yes.

4 Q While at RUSI you, I understand, have published
5 and conducted research on a number of topics,
6 and I was wondering if you could just tell us a
7 little bit about some of those areas that you
8 focused on.

9 A (AM) Yes. There is a relatively broad variety
10 of topics that I've had the chance to research
11 while at RUSI. A substantial part of that
12 relates to the proceeds of corruption and
13 different ways of tackling that. For example,
14 with the director of our centre, Tom Keatinge, I
15 wrote a paper of the exfiltration of the
16 proceeds of corruption from Pakistan and the
17 role of the financial system in that.

18 I have also published a paper with the same
19 co-author on the use of beneficial ownership
20 transparency and different approaches to
21 beneficial ownership registers that countries
22 implement. Another significant part of my
23 research relates to new technologies and
24 financial crime, including risks related to
25 financial crime in various online sectors

1 ranging from cryptocurrency to e-commerce and
2 finally a significant portion of my work over
3 the recent years has related to free-trade zones
4 and freeports.

5 So as I say, it's a fairly wide range of
6 financial crime and occasionally illicit
7 trade-related matters.

8 Q Madam Registrar, we can take down
9 Mr. Moiseienko's CV now.

10 Mr. Moiseienko, Ms. Wood, you published --
11 you didn't publish, you wrote a paper for the
12 commission on unexplained wealth orders and,
13 Madam Registrar, I'm just wondering if you can
14 pull that up now from tab 4. Ms. Wood,
15 Mr. Moiseienko, do you recognize this as the
16 paper that you prepared for the commission?

17 A (HW) Yes.

18 (AM) Yes.

19 MS. PATEL: And that's "Unexplained Wealth Orders UK
20 Experience and Lessons For British Columbia."
21 And I would ask, Mr. Commissioner, if this could
22 be marked the next exhibit, which I believe is
23 382.

24 THE COMMISSIONER: Very well. Exhibit 382.

25 THE REGISTRAR: Exhibit 382.

1 **EXHIBIT 382: Unexplained Wealth Orders: UK**
2 **Experience and Lessons for BC - October 2020**

3 MS. PATEL: Madam Registrar, we can take that down
4 for now.

5 Q Before we launch into the topic of today's
6 evidence, which of course is unexplained wealth
7 orders, and you've written a paper that focuses
8 on the UK experience with unexplained wealth
9 orders, but you also look at the experiences in
10 other countries, notably Ireland and Australia.

11 Before we get into that, I was wondering,
12 Mr. Moiseienko, if you could tell us a little
13 bit about what RUSI is and the work that it
14 does.

15 A (AM) RUSI or, as you said, the Royal United
16 Service Institute, is an independent research
17 institute based in London. It was founded in
18 1831 by the Duke of Wellington in order to
19 conduct research on matters related to defence
20 and security. It has largely retained that
21 mandate. But over the past decade or so, the
22 scope of work that RUSI undertakes has increased
23 significantly in order to address new challenges
24 to national security and defence and indeed
25 international and global security and defence as

1 well. Helena and I work at the Centre for
2 Financial Crime and Security Studies at RUSI,
3 which is one of the research programs within the
4 institute. And we do research on financial
5 crime legislation, regulation, policy responses
6 as well as occasionally operational responses.
7 It's important to mention two things. First we
8 don't conduct investigations, so we do work at a
9 high level of generality looking at policy
10 responses predominantly, as I said. And
11 secondly we're not affiliated to any government
12 in the UK or otherwise. So we're an independent
13 research establishment.

14 Q And the Centre for Financial Crime and Security
15 Studies that you've just mentioned, does it also
16 look at issues around money laundering?

17 A (AM) Correct. That's a central part of what the
18 centre researches.

19 Q I'm going to proceed into our discussion of
20 unexplained wealth orders and to keep some
21 order, I will proceed by directing my questions
22 specifically at one or the other of you. I may
23 at times get the target of my question wrong and
24 if that's the case and if your colleague is
25 better placed to answer the question, please

1 feel free to refer it to them.

2 So with that, Ms. Wood, I was wondering if
3 you could start by giving us some basics --
4 telling us basics about unexplained wealth
5 orders. I understand from your paper that
6 there's a number of different powers arising
7 under non-criminal based asset forfeiture that
8 can be called unexplained wealth orders. So is
9 there a common thread that can be -- that
10 describes them?

11 A (HW) So speaking in the UK context, the
12 unexplained wealth order is purely an
13 investigative tool. It sits under part 8 of the
14 Proceeds of Crime Act 2002 with a range of other
15 investigative tools that you may be familiar
16 with from your domestic legislation, such as
17 production orders, disclosure orders, account
18 monitoring orders. So it should absolutely in
19 the UK context be seen as an investigative tool
20 to be used to gather information and evidence to
21 support a wider investigation. And that would
22 be in this case in the UK under part 5 of the
23 Proceeds of Crime Act 2002, which is the part of
24 our legislation that holds our non-conviction
25 based asset forfeiture legislature and regime.

1 Q And are unexplained wealth orders conceived of
2 differently in different jurisdictions?

3 A (HW) Yeah, that's absolutely right. I focus
4 primarily on the UK experience, and I know Anton
5 has looked in more detail at some of the other
6 jurisdictions so I'll pass it over to him to
7 talk about those aspects if I may.

8 Q Thank you.

9 A (AM) Yes, thank you. I would add to this that
10 there is no consistent uniform international
11 understanding of what an unexplained wealth
12 order is because different countries may be
13 using the term in various ways. So any
14 jurisdiction can create a tool that they would
15 call an unexplained wealth order and it does not
16 necessarily follow that in substance that would
17 be the same as a similarly named tool in a
18 different jurisdiction.

19 In terms of what we have seen from our
20 research, I think it's helpful to think of three
21 varieties of unexplained wealth orders. The
22 first one is the kind of order that you would
23 see in Australia, that's the federal or
24 commonwealth level. If a person has wealth that
25 exceeds that person's lawful income an order may

1 slightly more complicated still version of what
2 it calls the unexplained wealth order and it
3 combines what you see in Australia with an
4 additional element on top of that. I know that
5 we will get into more detail about how the UK
6 model operates, but in broad terms there has to
7 be a person with unexplained wealth, so a person
8 whose wealth exceeds the lawful income. Other
9 requirements have to be satisfied in order for
10 the UWO to be issued and then the reversal in
11 the burden of proof only happens if a person
12 fails to provide the information that is
13 requested by the law enforcement agency. So the
14 road from person having more wealth than they
15 seem to be able to have, the road from that to
16 the reversal of the burden of proof is more
17 complicated and convoluted in the UK. That's
18 why I think it's helpful to think of three
19 different models of unexplained wealth orders in
20 different jurisdictions.

21 Q Thank you for that comprehensive summary. Quite
22 a bit of material which we'll endeavour to
23 unpack as the evidence progresses.

24 And I just wanted to note for the record, I
25 know that I go back and forth between saying

1 unexplained wealth order or UWO. If I say UWO
2 are we all in the same understanding that we're
3 talking about unexplained wealth orders? Thank
4 you. I see you're both nodding, so I'll take
5 that as understanding.

6 In your paper at page 21 you say -- you
7 refer to a study by the US law firm Booz Allen
8 Hamilton which was conducted in 2011, a survey
9 of unexplained wealth order regimes or civil
10 asset forfeiture regimes around the world and
11 there you quote that report, saying unexplained
12 wealth order is described as:

13 "Any legislation that creates a
14 presumption that a person's property
15 constitutes the proceeds of crime."

16 And do you accept that as a fair generalized
17 description of what an unexplained wealth order
18 is, Mr. Moiseienko?

19 A (AM) Yes. But as I say, it's a matter of the
20 English language in that some people might
21 disagree with that characterization, so they
22 could say that, for example, if one were to
23 adopt a stricter definition of what an
24 unexplained wealth order is, then, for instance,
25 the Irish legislation would not fall into that

1 category because the trigger for the reversal of
2 the burden of proof is not unexplained wealth
3 per say but some other information at the
4 disposal of the law enforcement agency. But for
5 present purposes, yes, I definitely agree with
6 the definition used by Booz Allen Hamilton as a
7 good working definition.

8 (HW) If I may add to that. I would say some
9 element of reverse onus seems to be a kind of
10 common feature throughout all of this
11 legislation. You know, the UK example differs
12 slightly in that it's a staged process, but the
13 reversed onus seems to be a key feature of
14 unexplained wealth orders wherever they present
15 themselves.

16 Q Thank you. Ms. Wood, I was wondering -- I'm
17 going to address this question in the first
18 instance that you -- but if you can tell us a
19 little bit about the origins, the international
20 origins of unexplained wealth orders.

21 A (HW) Again, I'll can kind of touch if I may on
22 the UK context. That's where my research and
23 experience lies. Certainly from the UK
24 experience, this wasn't a kind of government
25 push to go for the legislation. It was borne

1 out of a coalition of civil society
2 organizations, pro bono lawyers and other
3 interested parties forming a grouping basically
4 on the basis of frustration -- from my personal
5 view, frustration at the lack of progress
6 against tackling illicit wealth in the UK,
7 particularly that which is of corruption
8 proceeds origin on the basis that London had
9 become a focal point and centre for global
10 proceeds of corruption, particularly the London
11 real estate market.

12 So the onus behind the legislation in the UK
13 came out of, again, my personal view, a
14 frustration about this lack of progress. And a
15 lot of work was done outside of government to
16 look at different models and then put forward a
17 potential model to the UK government, which they
18 then accepted, again a personal view, but partly
19 as a way of appeasing a kind of disquiet within
20 civil society about the lack of progress. And
21 they were very ready to adopt any new
22 legislation which would give them something to
23 announce in the press and something to appease
24 that civil society group. So I think it very
25 much means that the implementation in the UK,

1 which we'll go on to discuss in the way that's
2 kind of borne out in practice, needs to be seen
3 in the context of this being not a government
4 initiated legislative change but something which
5 was pushed for at frustration in civil society
6 and kind of wider media and government disquiet
7 about the state of affairs in the UK.

8 Q I understand from what you've just said that a
9 strong concern was grand corruption in the UK.
10 And maybe, Mr. Moiseienko, you could address
11 this. But the concern about grand corruption of
12 course is not seen just in the UK but it's been
13 addressed by the UN Convention Against
14 Corruption. I'm wondering if you can speak to
15 the impact of that convention on the development
16 of unexplained wealth orders before we come back
17 to the UK situation specifically?

18 A (AM) Yes. So there's been some thinking
19 happening at the international level as to how
20 unexplained wealth should be addressed in
21 particular in the context of public officials
22 because some would argue that if you're a public
23 official then there is a strong societal
24 interest in knowing where your wealth comes from
25 and there is therefore a premium on your ability

1 as a public official to explain the wealth that
2 you possess. And the UN Convention Against
3 Corruption contains two provisions that are
4 relevant to this issue. The first one is
5 article 20 of the convention that requires state
6 parties to consider criminalizing what the
7 convention calls illicit enrichment. It's
8 important to underscore that the provision is
9 not mandatory. It's one of the provisions along
10 the lines of states should consider
11 criminalizing but there is no obligation to do
12 so. Illicit enrichment in effect refers to a
13 discrepancy between the wealth of a public
14 official and the proportion of that wealth that
15 they can demonstrate has been lawfully
16 purchased. And there are countries around the
17 world that have criminalized that as a separate
18 self-standing crime. That, as you can imagine,
19 is intensely controversial because of the impact
20 on the presumption of innocence and the
21 incompatibility of that provision with
22 constitutional and human rights guarantees in a
23 number of countries.

24 I should perhaps mention that a similar
25 provision, in fact almost an identical

1 provision, is contained in the Inter-American
2 Convention Against Corruption, and to the best
3 of my knowledge, Canada has entered a
4 reservation in relation to that provision based
5 on its incompatibility with the presumption of
6 innocence.

7 The second provision of relevance in the UN
8 Convention Against Corruption is article 31
9 paragraph 8, which deals with confiscation. And
10 just a moment, if I may, so that I can cite the
11 exact wording of the provision.

12 "State parties may consider the
13 possibility of requiring that an offender
14 demonstrate the lawful origin of ...
15 alleged proceeds of crime or other
16 property liable to confiscation, to the
17 extent such a requirement is consistent
18 with the fundamental principles of their
19 domestic law and with the nature of
20 judicial and other proceedings."

21 So in other words, the person in question might
22 be required to demonstrate the lawfulness of the
23 manner in which they acquired property, and that
24 provision does not specify whether it deals with
25 criminal confiscation following a conviction or

1 with civil confiscation or civil forfeiture as
2 well, but the technical guide published by the
3 UN Office on Drugs and Crime says that this is
4 the only provision in the convention that deals
5 with civil forfeiture as well. So regardless of
6 the precise legal import of these provisions --
7 and I should emphasize again that they're not
8 mandatory anyway -- it demonstrates two strands
9 of thinking at the international level in
10 relation to tackling unexplained wealth. One is
11 taking a criminal law approach and treating
12 having unexplained wealth as a criminal offence.
13 And the other less far-reaching approach is to
14 say it might not be a criminal offence, but if
15 you have unexplained wealth countries might
16 choose to confiscate it.

17 Q And just for reference, that article 31-8 of the
18 UN convention against corruption, that part that
19 you just cited is found at page 10 of your
20 report.

21 I understand you've spoken a bit in your
22 paper about the stolen asset recovery
23 initiative, and we heard a little bit about that
24 yesterday. I'm wondering if you can tell the
25 Commissioner a little bit about what that

1 international initiative is.

2 A (AM) So Stolen Assets Recovery Initiative is a
3 joint initiative by the World Bank and UN Office
4 on Drugs and Crime. And as the name suggests,
5 they focus on facilitating the recovery of
6 stolen assets, specifically assets diverted
7 through corruption. I'm not intimately familiar
8 with the mandate of this initiative, but from my
9 general knowledge I understand them to be both
10 publishing reports on legislation and regulator
11 requirements that countries might wish to
12 implement or practices that they might wish to
13 adopt in order to facilitate the return of
14 assets and also they maintain the publicly
15 accessible database of corruption-related asset
16 recovery cases. So one can search that database
17 and find links to, for example, indictments or
18 court judgments in cases that are relevant to
19 the initiatives mandate.

20 Q And just to provide another definition to ground
21 this discussion as we move forward, we'll speak
22 occasionally about grand corruption and can you
23 just give us a quick definition of what grand
24 corruption is understood to be.

25 A (AM) There is no universally accepted

1 definition, but broadly people understand it,
2 from my experience, to refer to corruption that
3 is perpetrated at high levels of government and
4 therefore corruption that is not likely to be
5 investigated or prosecuted in the country that
6 it happens because the people involved in that
7 held so much sway over the operation of
8 government and law enforcement machinery in
9 their country.

10 Other terms that are often used to denote
11 grand corruption include kleptocracy or simply
12 large-scale or endemic corruption. Although I
13 suppose seem people would say that each of those
14 different terms has its own semantic nuances.

15 Q Ms. Wood, returning to the UK context in
16 particular, I'm wondering if you can ground us a
17 bit by describing the UK's history,
18 pre-unexplained wealth order, with non-criminal
19 based confiscation.

20 A (HW) So yes, the UK introduced its
21 non-conviction based asset forfeiture regime
22 with the POCA 2002, so that's the Proceeds of
23 Crime Act 2002, and it came into force in 2003.
24 The original agency which had sole power to use
25 the new civil powers of forfeiture was the

1 Assets Recovery Agency, which has since been
2 disbanded. But this is a kind of basic civil
3 confiscation regime which reduces the burden of
4 proof on the authorities trying to kind of go
5 against these assets. As other regimes it's an
6 in remember process, and it, you know, doesn't
7 remove -- it wasn't any sort of a reverse
8 burden. There wasn't any attempt to follow the
9 Irish model in adopting the UK's model. It very
10 much went for reducing the balance of
11 probabilities and there was initially no reverse
12 burden. And this was kind of debated at great
13 length at that time, but it was thought to be
14 contrary to the UK's traditions at that time.
15 So they preferred to go for, you know, the
16 burden remaining on the enforcement authority,
17 which at the time was the assets recovery agency
18 to prove the case, albeit to the lower standard
19 of proof in the civil courts.

20 The Assets Recovery Agency had a slightly
21 checkered history. It had been set up with a
22 slightly difficult mandate to be self-funding
23 within five years, which had perhaps failed to
24 anticipate the level of challenge to the law in
25 the courts and the level of litigation that it

1 would face, and indeed the cost burden that
2 would incur. So it very much missed its
3 self-funding targets by quite a wide margin.
4 And this led the UK system to become somewhat of
5 a political football. So the UK's
6 non-conviction based asset forfeiture regime
7 became mired in controversy, which ultimately
8 led to the disbandment of the Assets Recovery
9 Agency in around 2008 and then the kind of
10 disbursement of those powers to a wider
11 constituency of agencies in the UK, including
12 what was the Serious Organized Crime Agency, my
13 former employer, and then others including our
14 Crown Prosecution Service and what was the
15 Revenue and Customs Prosecution Office. Again,
16 now disbanded, sadly. So it's been a history
17 that we have to understand when we come to see
18 where the unexplained wealth order fits in and
19 some of the perhaps perceived challenges that's
20 faced.

21 Ultimately if we look at non-conviction
22 based asset forfeiture in the UK it's never
23 really achieved the scale that was intended. So
24 while the powers were expanded out to other
25 agencies other than now what is the National

1 Crime Agency, was the Serious Organized Crime
2 Agency, those powers were expanded out to the
3 Crown Prosecution Service, our main prosecution
4 agency in the UK. However, they've never picked
5 up those powers. They've never chosen to work
6 with them. They're also expanded to the Serious
7 Fraud Office who views them intermittently, but
8 they've never been expanded to the kind of scale
9 that was perhaps anticipated at the disbandment
10 of the Assets Recovery Agency over 10 years ago.
11 A number of reasons for that, but I think it
12 goes back to that legacy of the assets recovery
13 agency becoming somewhat of a political football
14 due to this failure to meet its self-funding
15 target and some of the challenges the Assets
16 Recovery Agency faced in its high court
17 litigation and ultimately leading to these huge
18 kind of costs it was facing and kind of running
19 way over budget.

20 So I think that kind of legacy in context
21 around non-conviction based asset forfeiture
22 kind of becomes more important, I guess, as we
23 go into the discussion to understand that this
24 is perhaps something that kind of mirrored the
25 way the system had been deployed in our near

1 neighbour, the Republic of Ireland, where the
2 powers are largely uncontroversial and in fact
3 very much in public consciousness, very much
4 politically supported on both sides of the
5 benches in Ireland. It's been a much more
6 controversial and checkered history with the use
7 of non-conviction based asset forfeiture in the
8 UK.

9 Q The use of the forfeiture powers is seen to
10 carry some political risk in the UK by those
11 entities that have the statutory power to use
12 them but might hesitate to?

13 A (HW) Absolutely. And this was compounded
14 shortly after the Serious Organized Crime Agency
15 took over those powers, and indeed the staffing
16 contingent of the Assets Recovery Agency. So it
17 almost picked up the agency and put it within
18 what was the Serious Organized Crime Agency.

19 They had a quite a high-profile case around
20 kind of the turn of the 2010, so I think it was
21 around 2011, 2012, the NCA SOCA v. Perry was a
22 very high-profile failure by the agency to win
23 that case. And to give you a bit of context on
24 this particular case which continues to cast a
25 shadow of over the UK's non-conviction based

1 asset forfeiture regime, Mr. Perry was a
2 convicted fraudster in Israel. He'd served his
3 term but had chosen to reside in London. In
4 this case, what was the Serious Organized Crime
5 Agency, sought to tackle his assets both in the
6 UK and in Israel. And it was a highly litigious
7 case in which the points of law were challenged
8 around international reach of the powers which
9 ultimately led to an extension of the Proceeds
10 of Crime Act under the Crime and Courts Act 2013
11 to look at that international jurisdiction
12 piece. However, ultimately the Serious
13 Organized Crime Agency were unsuccessful in
14 their case and then faced a potential litigation
15 around costs incurred by Mr. Perry around loss
16 of earnings to the tune of 220 million pounds.
17 Obviously not an insignificant sum. To put that
18 in context, that was half of the Serious
19 Organized Crime Agency's budget at that time.

20 Now, perhaps gratuitously for my former
21 employer, Mr. Perry died during those
22 proceedings, and this case was subsequently
23 settled by his children at a much lower level.
24 We don't actually know the level they settled
25 to, but I believe it's in the low millions

1 rather than the hundreds of millions. But I
2 think that case was very high profile and it got
3 a lot of media coverage. It certainly caused
4 huge ripples across government and across
5 prosecutorial agencies in the UK. And I think,
6 again, along with this context of ARA being
7 somewhat of a political football and the Perry
8 case, again this has cast somewhat of a risk of
9 a shadow over the use of the powers by others.

10 Q And do you think that the failure of the Assets
11 Recovery Agency was due principally to
12 exaggerated expectations at its outset, or
13 errors in implementations, implementation of the
14 powers that it had or maybe a combination?

15 A (HW) It would be difficult to -- it would be
16 very difficult to place the blame in one area.
17 These were very new powers that had only been
18 adopted by a minority of jurisdictions at that
19 time -- Ireland being one that we've
20 mentioned -- but at that time there were only a
21 handful of jurisdictions that had non-conviction
22 based asset forfeiture regimes. So this was
23 really, really untested water.

24 And one of the failures that I could point
25 to is perhaps the lack of anticipation of quite

1 how challenged these powers would be in the high
2 courts and not giving cost comfort to the agency
3 around those powers.

4 One of the failures one might point to is
5 around this slightly naive setting of a
6 self-funding target by the then heads of the
7 agency, which was ultimately doomed to failure,
8 and again, it goes back to that point of not
9 anticipating the litigious nature of those
10 powers. People were perhaps always going to
11 challenge them in the court because they could
12 and they were so new and so novel. So that
13 perhaps led to the downfall of the agency in
14 that way.

15 I think if they had have anticipated some of
16 the costs they would have faced and sought
17 comfort around that, that may have kind of saved
18 them the death knell of being disbanded as they
19 were. But ultimately -- and I think personally
20 I see some of the successes. They did establish
21 some really important case law at the time,
22 which has been an ongoing legacy for those using
23 the power today. They established new kind of
24 competencies around managing assets. They
25 managed some really challenging assets that have

1 never been managed in the UK before, from race
2 horses to very complex businesses, just some
3 quite weird and wonderful areas. They did
4 establish a lot of competence for others in the
5 UK. I think the only criticism I really have is
6 around a slight naivety around this kind of
7 self-funding. The other thing I perhaps point
8 to finally is around the model that was
9 established for the Assets Recovery Agency.
10 They were unable to initiate their own cases at
11 the time. They were entirely relying on
12 referrals from other law enforcement agencies,
13 which limited the kind of cases they could take
14 on. And often they were handed cases that
15 perhaps law enforcement didn't want to deal with
16 within their own law enforcement agencies which
17 were perhaps of a lower level than were
18 anticipated. But certainly the profile of cases
19 now that can be self-generated by the National
20 Crime Agencies are hugely different from what we
21 saw back in the start of the induction of the
22 powers where you were seeing quite low-level
23 mortgage frauds, low-level drug dealing, and not
24 the kind of powers for which the powers were
25 initially established

1 Q I want to return to that, but first I want to
2 touch on the issue of unrealistic expectation
3 and the relationship to the acceptance of risk.
4 You don't look at South Africa in this piece
5 that you've written for us, but in the other
6 piece that I mentioned, the "Reaching the
7 Unreachable" paper, which we have in one of our
8 overview reports, you suggest that one of the
9 reasons that the South African non-criminal --
10 non-conviction based forfeiture regime was
11 successful was an attitude at the outset that
12 there would be risk and specifically litigation
13 risk and an acceptance of that at an
14 institutional and a government level. Can you
15 tell us a bit about that.

16 A (HW) Yes. Absolutely. I think the South
17 African system was set up with a much greater
18 appetite for risk and a much greater
19 expectation. Actually, one of the clear
20 outcomes in the early years would be to
21 establish case law. That was not the case
22 for ARA. I don't think they'd really
23 anticipated that. It certainly wasn't one of
24 their kind of strategic objectives. It was very
25 much seen as take the risk, take the cases that

1 are more difficult because only by doing so can
2 you establish the requisite case law on which
3 the rest of the organization we founded.
4 Another thing I'd point to in the South African
5 regime is a really clear mandate for their
6 agency and that mandate was around tackling
7 serious and organized crime. And although the
8 legislative intent around the Proceeds of Crime
9 Act was again around tackling so-called Mr. Bigs
10 and tackling those people deemed untouchable by
11 the criminal law, the mandate of ARA wasn't
12 quite so defined around organized crime or those
13 higher level targets which one ultimately ended
14 up dealing with, some much lower level cases,
15 and I think that was -- perhaps, you know, with
16 hindsight, benefit of hindsight, it was
17 perhaps -- it would have been better to really
18 focus the agency around that kind of top tier of
19 criminality.

20 Q Returning to the second point that you made
21 about one of the weaknesses of the Assets
22 Recovery Agency was that it was entirely
23 dependent on referrals. Is it the case that the
24 non-conviction based forfeiture powers are now
25 available to law enforcement agencies that

1 conduct their own investigations?

2 A (HW) So yeah, I'll kind of explain two of the
3 nuances. Absolutely the main user, so the
4 primary user of the powers to date has been the
5 National Crime Agency, previously Serious
6 Organized Crime Agency, and they have adopted
7 the hybrid model named the Roskill model in the
8 UK. So this is where lawyers and investigators
9 sit together and kind of joint work those cases.
10 And the same can be said for the serious fraud
11 office. Again, they have this Roskill model
12 where they have joint prosecutorial and
13 investigators sitting together working those
14 cases together. And they can very much now --
15 very different model, they can self-generate
16 their own cases. They can start a case on a
17 criminal track and take it off on the civil
18 route. So it's a much stronger model, and they
19 can almost look at their suite of targets and
20 pick those which are suitable for civil recovery
21 investigation.

22 The nuance I should explain in the UK around
23 wider use of the powers, the Crown Prosecution
24 Service has access to the powers. However,
25 unlike the NCA and unlike the SFO, it doesn't

1 have it's own cadre of investigators.

2 So it would be, were it to adopt the powers,
3 be reliant on policing to provide that
4 investigative input. And so far that's been a
5 slight barrier to the greater adoption. Because
6 it's not quite clear how the funding model would
7 work. I know there are moves within the UK
8 system to put in place a Roskill-esque model for
9 policing and prosecutors, but ultimately I think
10 the rub will come around funding, as always, in
11 the public sector, particularly in these
12 straightened times, you know, who pays for what
13 and who carries the risk. Ultimately that risk,
14 that cost risk we carry by the Crown Prosecution
15 Service in the UK, which is, I can say,
16 chronically underfunded and has been for some
17 time. Yeah, so just a slight nuance to be aware
18 of in the UK system. The ability to kind of
19 push that out across a broader law enforcement.
20 Law enforcement don't actually have access to
21 the powers. It's actually the prosecutorial
22 authorities that sit separately to them.

23 Q Okay. And can the non-conviction based
24 forfeiture proceeding, can it proceed at the
25 same time as a criminal process, a criminal

1 investigation and criminal charges?

2 A (HW) I wouldn't be qualified to comment on
3 that. I'm a nonlawyer, unfortunately. I would
4 say it would be very unusual for it to do so.
5 It's usually the case that either tack is taken,
6 but I'm afraid I wouldn't be qualified to
7 comment on that, on a point of law.

8 Q Mr. Moiseienko, are you able to address that?

9 A (AM) No, I'm afraid not, this question.

10 Q Just returning to some fundamentals of the UK
11 system. What are the types of assets that are
12 susceptible to forfeiture and what I mean
13 specifically by that, in British Columbia we
14 have a system of civil asset forfeiture that
15 allows our civil forfeiture authority to target
16 assets that are alleged to be either proceeds of
17 crime or assets that are alleged to have been
18 instruments of crime. What types of assets are
19 susceptible to forfeiture in the UK system under
20 the Proceeds of Crime Act? Sorry, Ms. Wood, you
21 are muted.

22 A (HW) Sorry, yes, it's the theme of 2020.

23 Yes, we have -- this is wholly -- our own
24 civil forfeiture is purely proceeds of crime.
25 We have separate legislation dealing with

1 instrumentalities, which I'm no expert on that
2 particular field, but primarily under our
3 customs laws and kind of other aspects of our
4 Criminal Code. Not under the proceeds of crime.
5 It's purely for the proceeds of crime.

6 Q And moving back to the kind of the factual and
7 the political environment that preceded the
8 amending of the Proceeds of Crime Act to add to
9 the unexplained wealth order powers, can you
10 just go back to that context and explain what it
11 was that was the catalyst for amending the act
12 to add these powers.

13 A (HW) So yes, I think I'll point primarily to
14 growing voice within civil society. The UK's
15 got a very active civil society contingent.
16 Some organizations you'll be familiar with from
17 Canada, such as Transparency International. The
18 UK chapter is very, very active. And others
19 like Global Witness, Spotlight on Corruption and
20 other corruption bodies. There'd been a growing
21 disquiet generally about growing evidence of
22 grand corruption wealth landing primarily in
23 London but also in the wider UK, particularly
24 real estate market and growing kind of levels of
25 investigative journalistic material coming out

1 about London as a kind of centre for the
2 proceeds of crime or money laundering and
3 criminality more generally. And I think that
4 led to this groundswell of disquiet. I'd also
5 add in, it's not linked specifically to the
6 proceeds of crime, but the Skripal poisonings
7 and the Salisbury poisoning, which you may be
8 aware of in the UK where -- I should say alleged
9 Russian poisoning of their former colleagues
10 from the FSRB had led to a groundswell of
11 concern generally about the Russian influence in
12 the UK. So within that context, that included
13 the levels of Russian wealth landing
14 specifically in London and the southeast of
15 England. So there have been this broad context
16 and broad political pressure on the UK
17 government to be seen to be doing something
18 about this level of wealth.

19 Q You've spoken about the impetus for unexplained
20 wealth orders being grand corruption. Was the
21 impetus for the Proceeds of Crime Act 2002, was
22 it aimed at a different type of problem?

23 A I'd say very much so. So if we look back to the
24 then Blair government and his delivery unit
25 based -- he wrote up the kind of basic blueprint

1 for our Proceeds of Crime Act. It was more
2 disquiet about the kind of senior criminal
3 figures which were kind of quite high profile
4 in -- particularly again in London, and there
5 was a growing disquiet about their very visible
6 wealth which seemed to be reasonably untouchable
7 by the kind of criminal confiscation powers that
8 were in place at the time. So very different
9 drivers, I'd say.

10 Q And just to put a time frame on the unexplained
11 wealth orders amendments, when were they
12 introduced and when did they come into force?

13 A (HW) So I'll hand to my colleague about the
14 kind of passage through parliament; he is much
15 more familiar. But they were introduced with
16 the Criminal Finances Act 2017.

17 (AM) Yes, that's correct. They were introduced
18 in 2016 as part of the criminal finances bill
19 that then became the Criminal Finances Act 2017.
20 And to cycle back to the point that was being
21 discussed about the role of civil society. I
22 think the first mention in publicly available
23 documents of the idea of introducing unexplained
24 wealth orders in the UK was in the paper
25 published by Transparency International UK in

1 2015 that was based on the results of the
2 considerations of the UK's framework by a task
3 force that had been convened by Transparency
4 International to study specifically the
5 challenges of confiscating and repatriating the
6 proceeds of grand corruption. Unexplained
7 wealth orders were one of the areas that the
8 report paid attention to. It drew significantly
9 on the Booz Allen Hamilton report prepared by
10 the firm for the US Justice Department in 2012
11 that you have already referred to. But the task
12 force made certain suggestions as to how the
13 powers might be adjusted in order to better fit
14 the UK context and avoid some of the adverse
15 human rights and civil liberties implications.
16 And effectively that shape of the proposal was
17 so influential that it made its way into the
18 criminal finances bill that was announced by the
19 then security minister in parliament and then
20 those provisions made their way into the final
21 text of the act with relatively few changes
22 along the way.

23 Q And you mentioned that the first concept of the
24 unexplained wealth orders, including some
25 modifications to other international models to

1 address human rights civil liberties concerns.

2 What were those modifications?

3 A (AM) So basically the starting point for the
4 consideration by the task force of what an
5 unexplained wealth order is was the report by
6 Booz Allen Hamilton that drew significantly on
7 the Australian and Irish experience. That was
8 really the focus of the report. So that's the
9 material that the task force was working with
10 and I've touched upon some of the main features
11 of both the Australian and the Irish model.

12 But the main change that was made by the
13 task force was to convert unexplained wealth
14 orders in the Australian iteration into an
15 information gathering tool to say what we're
16 going to do when we find unexplained wealth and
17 when the respondent is either a politically
18 exposed person or suspected of involvement in
19 serious and organized crime, what they're going
20 to do then is not to ask the person to prove
21 their wealth is legitimate in origin but to
22 require them to provide information that we can
23 then use. And this idea of repurposing
24 unexplained wealth orders as an information
25 gathering investigative tool is to the best of

1 my knowledge something that has emerged from the
2 work that was done by the task force and this is
3 the model that the UK has subsequently adopted
4 in its law.

5 Q I understand that concerns were raised in both
6 houses of parliament when the amendments were
7 tabled. Can you tell us a little bit about what
8 the principal concerns expressed about the shape
9 of the unexplained wealth order tools were?

10 A (AM) So interestingly, these were not concerns
11 around civil liberties. So it seems that the
12 work of the task force has been tremendously
13 successful in that, and the form of this
14 information gathering investigative UWO did not
15 raise the fears that one might have expected it
16 to raise.

17 The concerns were mostly about some of the
18 provisions in the act in terms of its
19 application. So one of those was the question
20 of when the reverse burden of proof kicks in, so
21 what should be the trigger for a person to be
22 required to prove that they have legitimately
23 acquired property.

24 The way that the current legislation is
25 framed states that if you get an unexplained

1 wealth order served against you and you as
2 respondent fail to comply, then that's when the
3 property in question is deemed to be
4 recoverable. In other words, it's treated as
5 though it were proceeds of crime for the purpose
6 of civil recovery. And the act in its final
7 iteration states that purported compliance is
8 not to be treated a non-compliance. That might
9 seem to be a relatively nuanced technical point,
10 but some of the members of parliament both in
11 the House of Commons and in the House of Lords
12 were worried that this wording of the provision
13 means that effectively you as a respondent can
14 provide a spurious explanation that is patently
15 wrong, but because on some level you would be
16 complying with the requirements of the order, or
17 at least you would be purporting to comply, then
18 the reverse burden of proof, this sanction for
19 not complying with the order would not really
20 kick in. That was one of the considerations in
21 parliament.

22 The second area of concern is something
23 that Helena has foreshadowed in relation to the
24 costs that would be born by enforcement
25 agencies. And clearly that follows from the

1 overall UK's law enforcement experience with
2 civil forfeiture and the sense that if you
3 target sophisticated wealthy people, be they
4 overseas politicians or organized crime figures,
5 they're likely to push back, and you might be
6 embroiled in long and costly litigation.

7 A proposal was made to cap the costs
8 incurred by enforcement agencies when applying
9 for an unexplained wealth order and litigating
10 its issuance, but that was rejected by the
11 government on the grounds that the ordinary
12 principle in civil litigation is loser pays and
13 there was no reason in the view of the
14 government as expressed in parliamentary debates
15 to depart from that principle in that particular
16 instance.

17 And, finally, another point that was raised
18 but not probably discussed in the amount of
19 detail that one might have expected it to be
20 covered in was the issue of what to do with the
21 proceeds of crime that are recovered as a result
22 of any unexplained wealth orders. And
23 especially in the context of international
24 corruption, there is the longstanding debate
25 about what to do with the proceeds of corruption

1 that have come from one country but have been
2 invested and seized in another country. So you
3 have the proceeds of corruption from elsewhere
4 invested in the UK and the UK law enforcement
5 agencies confiscated those proceeds. Do you
6 share with the country of origin and to what
7 extent do you share; how much does that depend,
8 for instance, on the involvement of the country
9 of origin in the investigation? And that issue
10 was floated during parliamentary debates but not
11 discussed in any great depth, and I understand
12 that the current position in relation to
13 unexplained wealth orders is the same as in
14 relation to civil forfeiture more broadly, which
15 is that the money is basically shared between
16 the home office, 50 percent goes to them, and
17 then the remaining 50 is shared between the
18 investigating agency, the prosecuting agency and
19 the courts. And then it's up to the government
20 to decide if it wants to repatriate any of its
21 share to the country of origin, if any.

22 Q So you've explained how the last issue is dealt
23 with in practice. Returning to the first two
24 issues, the issue of what is it -- what does it
25 mean to purport to comply and at what point is a

1 person understood to have complied with an
2 unexplained wealth order and the issue of costs.
3 How have those concerns borne out in practice?
4 A (AM) So the first issue remains terra incognita,
5 I would say, at this stage. This is because to
6 date we have only seen one successful challenge
7 against an unexplained wealth order and that
8 related -- so that was a challenge against the
9 issuance of an unexplained wealth order in the
10 first place. In the case of NCA v. Baker and
11 others, the respondents who were served with the
12 UWO went to court and said look, different
13 conditions for the issuance of the order had
14 never been satisfied, therefore we should not
15 have received it. And they did not really get
16 to the point of discussing what compliance or
17 purported compliance means because they actually
18 never purported to comply with the unexplained
19 wealth order in the first case. And that really
20 is the current state of discussion surrounding
21 what purport to comply means in this context.

22 There were some discussions in parliament
23 and there are some commentary pieces written by
24 petitioners who would say that presumably there
25 is some degree of good faith engagement that you

1 have to show with the actual requirements in the
2 order, so for instance, you cannot give a blank
3 piece of paper or you cannot answer something
4 that is silly and clearly has no relevance at
5 all to the issues that you are being inquired
6 about. But beyond that, there is really little
7 to no guidance on that.

8 In relation to cost capping, once again,
9 the best case that we have as an illustration of
10 how that might play out is NCA v. Baker, and
11 that has been reported in the press that
12 currently I think as of the latest news items
13 that I had seen about this case, the issue was
14 under consideration by the courts, but the NCA
15 expected to be hit with a very significant cost
16 order in the millions of pounds and of course
17 one might expect that to lead to at least
18 reconsideration of whether the people who argued
19 for some sort of cost capping during
20 parliamentary discussions were on the right side
21 of that debate. Because one would think that if
22 you have a cost order that potentially derails
23 any appetite to undertake UWO-related
24 investigations in the future or seek the
25 issuance of those orders in the future, then

1 either the order is not really workable or you
2 have to somehow adjust the conditions in which
3 that order is supposed to be issued, namely you
4 have to address the question of costs in order
5 to make UWOs attractive. But I think all of
6 that should be somewhat qualified by the fact
7 that after NCA v. Baker as you have seen in the
8 report, there's also been a case where the
9 application of unexplained wealth orders has
10 yielded much more success for the NCA. So even
11 though the there remain challenges around costs,
12 it is clear that they do not play out in the
13 same way in all cases where the orders are
14 issued and it's still possible to rely on
15 unexplained wealth orders with some degree of
16 success.

17 Q And we'll look shortly at a couple of those
18 cases where there has been successful use of the
19 unexplained wealth order, but before we get into
20 that, I wanted to look at the unexplained wealth
21 order itself and I'm going to ask you to give a
22 bit of explanation of how it functions in
23 practice. And perhaps the best way to do this
24 is to actually bring up the Proceeds of Crime
25 Act.

1 Madam Registrar, I think we have this at
2 tab 6. We have an excerpt of the Proceeds of
3 Crime Act 2002 starting at section 362a, I
4 believe, which is in part 8, investigations.
5 This is just an excerpt from the act.

6 Mr. Moiseienko, feel free to ask Madam
7 Registrar to scroll up or down as needed, but I
8 think it's helpful to have the actual language
9 in front of us as you walk us through what
10 exactly the unexplained wealth order is, and how
11 it functions.

12 A (AM) Yes, thank you. So this is the part of the
13 Proceeds of Crime Act that was inserted by the
14 Criminal Finances Act 2017 that sets out what an
15 unexplained wealth order is, what its effect is,
16 how it can be issued and what the effects of
17 non-compliance or even lying in response to an
18 unexplained wealth order are.

19 So here if we look at subsection (3) that
20 sets out what the respondent might be required
21 to explain if an unexplained wealth order is
22 issued against them. And you can see that the
23 provisions are quite broad in their scope, so
24 the respondent might be requested to set out the
25 nature and the extent of their interest in the

1 property and importantly explain how they had
2 obtained that property in the first place.

3 So this is really the substance of what an
4 unexplained wealth order is in the UK and what
5 it requires the respondent to do.

6 Q And -- just to stop you there. I understand
7 that there's quite a bit of leeway on the part
8 of the authority applying for the order to
9 specify exactly what information is required by
10 way of a response; is that right?

11 A (AM) Yes, correct. Yes, and you can see -- you
12 can see point D here in relation to setting out
13 such other information in connection with the
14 property as may be specified, so definitely the
15 list provided in this subsection is not
16 exhaustive.

17 If we scroll down to 362B, please. Thank
18 you. This is the section that sets out the
19 requirements for an unexplained wealth order to
20 be made. And as I mentioned, this is the issue
21 that has acquired particular importance in some
22 of the litigation, in particular NCA v. Baker,
23 the case of the National Crime Agency lost.

24 If we look at subsection 2, then we see
25 some of the basic requirements in relation to

1 who the respondent is and what property may
2 become subject to an unexplained wealth order.
3 The respondent has to hold the property and the
4 raw provisions elsewhere in this part of the
5 Proceeds of Crime Act that specify that trustees
6 can be deemed to hold the property even though
7 they're not the beneficial owners of the
8 property. So the holding requirement is
9 interpreted quite broadly.

10 Then there is also a requirement that the
11 property must be valued at more than
12 50,000 pounds. I recall that during the initial
13 discussions of the Criminal Finances Act, that
14 threshold stood at 100,000 pounds, and that was
15 lowered. Presumably as a means to ensure that
16 the assets of organized crime groups of -- I
17 would not say relatively insignificant, but of
18 lower value than the kinds of assets that you
19 would associate with, for instance, the proceeds
20 of grand corruption can nonetheless be captured
21 by the operation of UWOs.

22 Q And if I could ask you just returning back to
23 something that you mentioned at the beginning
24 about different forms of unexplained wealth
25 orders. This form of unexplained wealth order

1 contemplates identifying a particular -- a
2 specific piece of property, is that right,
3 rather than one's general wealth?

4 A (AM) Yes, correct.

5 Q Thank you?

6 A (AM) Yes. And in fact in NCA v. Baker, the
7 cause for all the troubles that were encountered
8 by the NCA was that they had specific property
9 in mind, but they were not actually sure who is
10 the legal owner of that property. So the whole
11 process in that case was driven by the
12 identification of property that they thought
13 might be owned by someone with connections to
14 organized crime or someone who was a politically
15 exposed person, but they were not quite sure and
16 therefore they had to serve the unexplained
17 wealth orders against trustees and corporations
18 that held that property on behalf of the
19 ultimate beneficiary. And then it turned out
20 that the ultimate beneficiary was not exactly
21 the person whom the NCA had expected that person
22 to be. But I digress.

23 Perhaps if we move on to -- if we just look
24 at subsection 3. The High Court must be
25 satisfied that there are reasonable grounds for

1 suspecting that the lawfully obtained income of
2 the respondent would have been insufficient to
3 obtain the property. And this is a very low
4 standard indeed. It's not even suspect -- so
5 it's not even belief; it's reasonable grounds to
6 suspect. So not very difficult for a law
7 enforcement agency to satisfy, one would
8 imagine. And therefore the provisions that are
9 of particular importance are the provisions that
10 follow, which specify in subsection 4 that the
11 respondent to an unexplained wealth order has to
12 be one of the two categories of people. Either
13 the respondent has to be a politically exposed
14 person or there are reasonable grounds for
15 suspecting involvement in serious crime. And
16 there are further provisions in the act that
17 make it clear that when this provision talks
18 about -- when 4(A) talks about a politically
19 exposed person what is really meant is
20 politically exposed person from outside the
21 European economic area. That was touched upon
22 during the parliamentary debates and the
23 explanation for that limitation was that
24 cooperation with European economic area nations,
25 so the EU and several other countries in Europe,

1 is relatively well established and smooth, and
2 therefore it does not raise the same concerns as
3 politically exposed people from some other more
4 far-flung jurisdictions.

5 Then if we move on to 362C. Thank you. In
6 subsection 2, what we see is the real sanction
7 for non-compliance with the unexplained wealth
8 order. Subsection (1) details what
9 non-compliance is, and it says that if the
10 respondent fails without reasonable excuse to
11 comply with the requirements imposed by an
12 unexplained wealth order then the sanction
13 envisaged in subsection (2) kicks in, and that
14 is that the property is to be presumed to be
15 recoverable property for the purposes of part 5,
16 Proceeds of Crime Act. And that is the civil
17 forfeiture legal framework that Helena has been
18 referring to. So in other words, the property
19 that you have not explained, if you have not
20 responded to an unexplained wealth order in
21 relation to property, that property is deemed to
22 be effect of the proceeds of crime.

23 Q And just in terms of process, is it presumed to
24 be recoverable and is it then confiscated or is
25 it then subject to a further process?

1 A (AM) It is then subject to further civil
2 forfeiture process, and it is a rebuttable
3 presumptive, so it would be possible in further
4 civil forfeiture process to bring further
5 evidence that shows that the property is not in
6 fact the proceeds of crime. But the presumption
7 is triggered by non-compliance with the
8 unexplained wealth order.

9 And one issue that some commentators have
10 pointed to is that this really is the crux of
11 what makes unexplained wealth orders unusual in
12 the UK in that in effect you have the sanction
13 for non-compliance with the court order, which
14 is to say your property, the property in
15 question, is deemed to be recoverable, so normal
16 sanctions for non-compliance with a court order
17 would include things like fines or potentially
18 imprisonment or contempt of court. They would
19 not typically be of this rather esoteric nature,
20 because you have an information gathering order
21 that requires you to provide information and
22 then if you fail to provide that information the
23 sanction is that the property in relation to
24 which the order has been issued is deemed
25 recoverable. So that really goes to show the

1 application for an unexplained wealth order.
2 Although maybe then in the life of an
3 investigation you acquire more information and
4 stand the prospects of prosecuting someone for
5 this offence become more realistic. But that
6 clearly is an important safeguard in principle
7 for the integrity of the scheme, in that if you
8 provide false information and lie, you are
9 liable to criminal prosecution.

10 I would say that's it in terms of the brief
11 overview of how the system operates. One other
12 point I should make, that if we perhaps scroll
13 back to the beginning of the excerpt, so you can
14 just stay here. If we go to subsection 7 of
15 this article, then you can see the list of
16 enforcement authorities. And as Helena, I
17 think, has mentioned, so far the National Crime
18 Agency is the only agency that has actually
19 applied for an unexplained wealth order, but
20 theoretically there is a possibility for other
21 agencies to do the same.

22 Q Thank you, Madam Registrar.

23 I think -- Mr. Moiseienko, can we take this
24 down now?

25 A (AM) Yes. Thank you.

1 Q And to round it out, what is the process if a
2 respondent provides a response as required by
3 the unexplained wealth order? What then
4 happens?

5 A Then the order would no longer be in effect. So
6 the -- I believe the NCA or another enforcement
7 authority that has applied for the order
8 would deem with order to be fulfilled. I'm not
9 sure exactly what form that takes in practice,
10 but the respondent would be deemed compliant.
11 And then most importantly, the information that
12 the enforcement authority has obtained can be
13 used in further civil forfeiture proceedings
14 against the respondent.

15 There is, however, a limitation in the act
16 in that subject to several limited exceptions
17 such as perjury, this information cannot be used
18 in criminal proceedings against that person.
19 That was done in order to comply with the rules
20 surrounding the privilege against
21 self-incrimination. And a point of note, in
22 that context might be that in one of the cases
23 involving a woman called Hajiyeva, she claimed
24 that the issuance of an unexplained wealth order
25 against her was illegal because it infringed

1 against English law rules on spousal privilege
2 and that the information could be used against
3 not her but against her husband. And the judge
4 in that case deemed that that is self-evident
5 from the operation of unexplained wealth orders
6 and because there is no exception there for any
7 sort of spousal privilege rules; it is to be
8 taken that the parliament expected the law to
9 operate in that way. So basically the
10 information that you provide can be used against
11 your relatives, including your spouses in
12 criminal proceedings.

13 A (HW) It's worth very briefly touching on one
14 again slightly limiting or perhaps controversial
15 area of the law as well. Once the response to
16 the unexplained wealth order has been received,
17 the enforcement authority, if it has an interim
18 freezing order on the property in place, has
19 60 days to respond setting out what its next
20 course of action is, whether that would be to
21 embark on a full part 5 investigation or whether
22 to take forward proceedings of another nature.
23 We're going to discuss some of the limitations
24 and strengths of the power of course, but that
25 60-day limit particularly when looking at

1 gathering evidence across borders is one area
2 where authorities using the power of sorts to
3 kind of push back and perhaps seek further
4 future amendments to the law.

5 Q I think I'd like to move on, if it's convenient
6 to the practical UK experience with unexplained
7 wealth orders. In your paper you touch on four
8 particular instances where unexplained wealth
9 orders have been issued. Actually, before I do
10 that, I'm sorry, I did have one question about
11 the -- we touched on the use of the information
12 that's provided. The information that's
13 provided in response to an unexplained wealth
14 order, is that information which at the -- what
15 happens to it at the point of being offered? Is
16 it offered in a publicly filed document? Does
17 it -- is it information that becomes available
18 to anyone with access to court records? What is
19 its status?

20 A (AM) I believe it is provided to the enforcement
21 authority in question.

22 Q And does it later become public if there's
23 further litigation?

24 A (AM) It may become -- I believe it may become
25 public to the extent that it is referred to and

- 1 relied on in litigation, in that litigation
2 involving unexplained wealth orders is public.
3 So the initial application for the order to be
4 issued is made ex parte, so the respondent is
5 not there. The public is not admitted. But
6 then subsequent litigation does involve public
7 being there. There is no anonymity in relation
8 to against whom the unexplained wealth order was
9 issued, and of course anyone could sit in court
10 and listen to the pleadings of the counsel.
- 11 Q And one just further question about the process.
12 Is it -- the initial order, is that made on
13 an -- the initial application, is that made on
14 an ex parte basis?
- 15 A (AM) Correct.
- 16 Q And in your report you say that it's often
17 accompanied by an application for an interim
18 freezing order; is that --
- 19 A (AM) That's right.
- 20 Q And is that invariably the practice?
- 21 A (AM) I believe in all the cases so far that has
22 been the practice.
- 23 Q Moving back, then, to the UK's experience in
24 using the unexplained wealth order. First of
25 all, has there been the power -- the amendment

1 came into force I believe in 2018, and do you
2 have any idea of how many unexplained wealth
3 orders have been successfully sought since then?

4 A (HW) So yeah, limited. So just the -- to our
5 knowledge just the four that have been referred
6 to in Anton's paper.

7 (AM) If I may just add to this. There have been
8 different indicators of what the appetite is in
9 relation to using unexplained wealth orders. So
10 the original impact assessment produced by the
11 home office said that they expected around
12 20 unexplained wealth orders to be issued per
13 year. Interestingly, the impact assessment also
14 predicted that the costs associated with each
15 unexplained wealth order would roughly be
16 equivalent to the costs of seeking a disclosure
17 order, and as the Baker case demonstrates, that
18 has not been entirely borne out in practice.

19 But then there have been press reports
20 around more than 100 unexplained wealth orders
21 being potentially considered by the National
22 Crime Agency. There have been reports about
23 unexplained wealth orders being considered by
24 the London Metropolitan Police, although
25 approximately 20 of them, but this is all rumour

1 and speculation, and as Helena says, these are
2 not official statements by any means, so we only
3 have the definitive information about those four
4 cases and 15 orders in those cases that we cited
5 in the paper and the rest is just rumour.

6 A (HW) If I can add slightly on to that. I refer
7 back to the issue around the limited appetite in
8 our Crown Prosecution Service and lack of
9 investigative capacity and their wider risk
10 appetite around this particular power. They
11 don't currently have any expertise around civil
12 litigation in the Crown Prosecution Service. It
13 is, as the name suggests, a criminal prosecution
14 service. So at the moment they just don't have
15 the expertise to pick up these powers at scale.
16 Although there have been huge political appetite
17 for these powers to be used at speed and scale,
18 that was matched by the capacity and capability
19 available in the system to do so.

20 Q Mr. Moiseienko, can you tell us a little bit
21 about two cases where there has been success on
22 the part of National Crime Agency in seeking
23 unexplained wealth orders that -- two cases you
24 mention in your report are one that you've
25 alluded to, Ms. Hajiyeva, and another one was a

1 case of Mr. Hussain. If you could tell us about
2 those.

3 A (AM) These are both, as you indicated, cases
4 where the National Crime Agency has been
5 successful, albeit in different ways so far.

6 So in the Hajiyeva case, that was the first
7 time that an unexplained wealth order was issued
8 in the UK. The order related to properties
9 owned by an Azerbaijani citizen and the wife of
10 a former high-ranking public official from
11 Azerbaijan who headed a state-owned bank in that
12 country. Her husband had been convicted of a
13 crime in his home country, that is Azerbaijan,
14 but she had property in London that became the
15 subject of the unexplained wealth order.

16 She challenged the issuance of the
17 unexplained wealth order both in the high court
18 and then later in the court of appeal, and she
19 failed in both those instances on a variety of
20 grounds. That is to say, different grounds for
21 appeal were offered and rejected by the court of
22 appeal.

23 One of those that might be of some interest
24 is the argument that her husband was not in fact
25 a politically exposed person because although he

1 was chairing a state-owned bank that was
2 essentially commercial activity and the bank
3 happened to be owned by the state doesn't make
4 him a state official and the court of appeal
5 rejected that argument and deemed him to be a
6 politically exposed person and therefore as
7 someone who is affiliated to that politically
8 exposed person is someone who's their spouse,
9 this woman herself could be a legitimate
10 respondent to an unexplained wealth order.

11 We --

12 Q I'll just -- I had a question, you reminded me I
13 had a question that I meant to ask before which
14 is does the Proceeds of Crime Act 2002 define a
15 politically exposed person?

16 A (AM) Yes, I believe so. So the section on
17 unexplained wealth orders specifically does
18 contain a definition of who a politically
19 exposed person is. I don't have that provision
20 in front of me at the moment, but I believe that
21 it refers to the criteria from the European
22 Union's money laundering directives and
23 clarifies that the PEP definition only applies
24 to non-EEA PEPs, as I have discussed already.

25 Q Thank you.

1 settling with the National Crime Agency and in
2 August 2019, so only several months after the
3 UWO had been issued to begin with, a settlement
4 was reached whereby he surrendered almost
5 10 million pounds in property to the National
6 Crime Agency. And that is a significant success
7 partly because of the amount involved and partly
8 because it happened to arrive on the heels of
9 NCA v. Baker, the case that we have referred to
10 many times already today and the case that was a
11 high-profile loss for the NCA. So that was
12 followed by this instance of success.

13 Q You say in your paper that the -- Mr. Hussein --
14 we don't need to go there, but it's page 16,
15 just for the reference -- Mr. Hussein, according
16 to the NCA, submitted a very lengthy response to
17 the unexplained wealth order, and that had some
18 impact on the eventual settlement. Can you tell
19 us what you know about that. And I appreciate
20 it's from public reports from the NCA itself.

21 A (AM) Correct. We only know what is there in the
22 NCA press release and it's a quote that the
23 statement inadvertently gave NCA investigators
24 clues to make a bigger case against him. And
25 it's interesting to think about what that might

1 entail because as we discussed, this information
2 would not be used in criminal proceedings
3 against him. It would only be used in civil
4 forfeiture proceedings against him or
5 potentially in criminal proceedings against
6 someone else whom he implicated or provided
7 information in relation to. But for whatever
8 reasons he decided that it was worth to settle
9 on the terms that the settlement eventually took
10 place rather than risk that information that he
11 provided being used in whatever way the NCA
12 envisaged to use it, whether it's to confiscate
13 or seek confiscation of more property or perhaps
14 go after other members of the organization that
15 he was involved with. We simply don't know.

16 Q And just a clarification. Mr. Hussein was not
17 suspected of grand corruption. He was a local
18 organized crime -- suspected local organized
19 crime figure?

20 A (AM) Correct. Yes. He was suspected of being a
21 professional money launderer for a range of
22 organized criminals in the Leeds area in the, I
23 think, north of England, unless my knowledge of
24 geography fails me.

25 Q And you mentioned very briefly an unexplained

1 wealth order issued against [REDACTED]. Can you
2 tell us -- the mention in your paper is very
3 brief, so I'm assuming you know very little
4 about it, but can you tell us what is known
5 about this particular order?

6 A (AM) Yes. This is based on public reporting,
7 which as you indicate is sparse in this
8 instance. We know that an unexplained wealth
9 order has been issued in relation to properties
10 owned by a woman called [REDACTED], and some
11 reporting indicates that she has been suspected
12 of ties with Irish -- northern Irish
13 paramilitary groups involved in cigarette
14 smuggling, which arguably makes this case of
15 some public interest, but as you say, we know
16 very little about it except the fact that an
17 unexplained wealth order has been issued.

18 Q And finally returning to the NCA v. Baker, a
19 case that you've already touched on, can you --
20 my understanding is that this is an instance
21 where the NCA ran into difficulty with the
22 drafting of the Proceeds of Crime Act itself and
23 how the unexplained wealth order is formulated.
24 Can you tell us about why there was a failure in
25 this case, what exactly happened.

1 A (AM) Yes. That's right. So it might be helpful
2 to begin with a bit of context about the
3 investigation.

4 The NCA obtained several unexplained wealth
5 orders in relation to three properties in the
6 UK. The NCA suspected that these properties had
7 been purchased by a man who at one point was a
8 public official in Kazakhstan, and he was also
9 allegedly involved in serious and organized
10 crime in Kazakhstan.

11 By the time that the NCA applied for
12 unexplained wealth orders, that man was already
13 dead. He died in, I believe -- well, it doesn't
14 matter when, but he died in an Austrian prison
15 awaiting extradition to Kazakhstan to stand
16 trial for the crimes that he allegedly
17 committed. So the NCA issued or applied for
18 unexplained wealth orders to be issued in
19 relation to those properties and the respondents
20 in those cases as I've indicated were a
21 professional trustee and several companies that
22 were the formal legal owners of that -- of those
23 properties. Those respondents provided
24 information to the NCA after they received an
25 unexplained wealth order. The judgment is

1 silent as to whether the respondents purported
2 to comply with the unexplained wealth order or
3 perhaps they simply sent a letter to the NCA
4 saying, we're not even pretending to comply with
5 the order, but here is additional information
6 that you might find useful that will show why
7 the unexplained wealth order should never have
8 been issued in the first place. And that
9 information supplied to the NCA indicated that
10 the actual owners of the property were two
11 family members of that man who had died. One of
12 them is a politically exposed person from
13 Kazakhstan in her own right. She happens to be
14 the daughter of the former late president of
15 Kazakhstan. Her name is Dariga Nazarbayeva, so
16 she is the person that most people, I believe,
17 would associate with this case because she was
18 really the face of the litigation, so to speak.
19 She is the most high-profile person involved.
20 And one of the properties was owned by their
21 son, so her son and the son of the man who had
22 died in Austria who the NCA thought had
23 purchased the property in the first place. And
24 information was provided to the NCA to the
25 effect that the woman in question was

1 independently wealthy, she received very little
2 money from her husband, who was allegedly
3 involved in serious organized crime, and she and
4 her son had purchased the property out of the
5 proceeds of their legitimate business activities
6 and using their family wealth.

7 So that was the story that was offered to
8 the NCA, and the judge in the High Court
9 Ms. Justice Lang made extensive reliance and
10 referred often to this explanation that was
11 provided by the owners of the property.
12 However, there were also legal questions
13 involved that really it seems from the judgment
14 determined the outcome. And that is the fact
15 that the legislative scheme is drafted in such a
16 way that the requirements for an unexplained
17 wealth order to be issued only really makes
18 sense if you have in mind the beneficial owner
19 of the property. So, for instance, if I am a
20 criminal or a politically exposed person and I
21 held property in the UK through a series of
22 intermediaries such as professional trustees,
23 the Proceeds of Crime Act says that you can seek
24 an unexplained wealth order in relation to the
25 trustee. There is a special provision that

1 enables that because the trustee is thought to
2 hold property, and therefore is a permissible
3 respondent. However, then you bump into all the
4 other requirements for an unexplained wealth
5 order to be issued because the trustee is not
6 himself a politically exposed person. He is not
7 involved in serious and organized crime.
8 Another requirement that was particularly
9 problematic in this context is that for an
10 unexplained wealth order to be issued as we have
11 discussed there has to be a discrepancy between
12 the overall wealth of the person and their
13 lawful income. So when the NCA faced the judge,
14 the judge asked well, okay, what are we talking
15 about here; where is the discrepancy between the
16 wealth of the professional trustee and the
17 lawful source of income? And of course that's
18 when the whole scheme entirely breaks down and
19 you have to engage in a lot of gymnastics to
20 make sense of it because of the way in which the
21 provisions of the act are drafted, and there was
22 a lot of clever lawyering involved. For
23 example, the NCA made the argument that perhaps
24 the professional trustee was involved in
25 laundering the proceeds of crimes and therefore

1 he himself was to be treated as someone who's
2 engaged in serious and organized crime, and the
3 judge would have none of that. So at the end of
4 the day the decision was that unexplained wealth
5 orders should not have been issued in the first
6 place in that instance. And perhaps
7 surprisingly for some, the court of appeal
8 denied the mission to appeal and therefore that
9 is currently the latest statement in case law in
10 relation to how the provisions on unexplained
11 wealth orders should be applied to professional
12 trustees or other intermediaries.

13 Q So for jurisdictions who are looking perhaps to
14 draft their own unexplained wealth orders,
15 perhaps a caution about thinking about those
16 relationships between the holders of property
17 and the beneficial owners and what exactly the
18 legislation requires to be shown and of whom it
19 requires information?

20 A (AM) Yes, correct. It would seem that there was
21 simply a breakdown in the fabric of the
22 legislative scheme and with more foresight of
23 those issues, it should be possible to remedy it
24 in a relatively straightforward way, I would
25 imagine.

1 Q Ms. Wood, were you going to add to that?

2 A (HW) Yes, the judgment is a very long and
3 detailed judgment, which I encourage you to read
4 should you have the time. But the other facts
5 that Justice Lang picked up on were some of the
6 failures in the investigations. So as Anton
7 referred to, the respondents provided a whole
8 raft of information explaining in part the
9 wealth, and there were issues in there that
10 could have been, you know, lines of inquiry that
11 could have been followed by the investigators
12 which could have potentially have been
13 counselled, but for one reason or another, which
14 we are not aware of, those lines of inquiry were
15 not followed. Particularly around the issues of
16 who ultimately held the property, where the
17 actual wealth came from the, and the status of
18 that property. So there were some criticisms in
19 the judgment around the actual investigation.
20 And then kind of learning, I guess, for others
21 considering analogous powers would be that, you
22 know, a UWO isn't a shortcut for a comprehensive
23 and wide-reaching investigation into the
24 underlying property. It shouldn't be seen as a
25 full reverse onus power. They should have been

1 kind of armed for those facts and should have
2 been seen to respond. So whilst I wouldn't see
3 this case as a failure of the ultimate
4 legislation overall, you know, the facts need to
5 turn on this particular case, I would say.
6 However, I think it's a cautionary tale on the
7 need to not see the UWO as a shortcut as to a
8 kind of more fulsome investigation.

9 Q We're going to look at non-UK examples of
10 unexplained wealth orders, but before we do
11 that -- and of course we'll have the opportunity
12 to compare them, but before we do that, can we
13 wrap up the discussion -- I'd like to wrap up
14 the discussion of the unexplained wealth order
15 in the UK by asking for your conclusions as to
16 its strengths, its weaknesses and its
17 effectiveness in achieving what was its goal in
18 the first instance of fighting grand corruption.
19 And perhaps Ms. Wood, I'll start with you?

20 A (HW) I think it's tempting with the recent Baker
21 case to kind of see this as a failure of
22 legislation. In many ways I would disagree. I
23 mean, what we learned from the Baker case is UWO
24 is quite a useful tool to get behind some of
25 these hugely complex ownership structures that

1 have become such a feature particularly in grand
2 corruption cases increasingly and kind of more
3 mainstream organized crime. Although the case
4 in and of itself has failed and will have cost
5 implications for the NCA, we've learned a lot
6 more about the ownership structure behind those
7 properties and no doubt the NCA will be using
8 that information in the future to some end, I
9 would hope. So I wouldn't see the Baker case as
10 a failure.

11 I think they shouldn't be seen as a volume
12 tool in investigations in the UK. That's
13 absolutely not the intention parliament had when
14 adopting them. They were only ever to be seen
15 as a tool not of last report, but of limited
16 application. So if we look at the code of
17 practice that sits behind the law, there's a
18 statutory code of practice that must be adhered
19 to by those using the powers and this absolutely
20 says being cognizant of the really intrusive
21 nature of the UWO, the other powers should and
22 must be considered before reaching the UWO
23 stage. So this should be seen in that context.
24 They're not a bullying tool. They're a tool
25 that should only be used where it's absolutely

1 necessary and when no other investigative power
2 can get at the information you're looking at.
3 And arguably the Baker case, although it was
4 flawed and there have been some controversy of
5 the investigation which will cast a shadow over
6 the use of the powers in the future, arguably it
7 shows the power of the UWO to get behind complex
8 ownership structures.

9 Secondly, I turn to the point of the
10 Mansoor Hussein case, and we repeatedly as an
11 institute have referred to the serious organized
12 crime limb of the UWO as having the most
13 potential. We always would have expected that
14 the PEP limb, those targets that were being
15 sought and the UWO legislation would be those
16 that would have the most complex ownership
17 structures that would have the legal might to
18 fight against what are, you know, under resourced
19 state law enforcement agencies and that would
20 have the most stake in terms of their reputation
21 and the veneer of respectability under which
22 they operate. But the serious organized crime
23 limb, those targets are less likely to use
24 complex structures, they're less likely to need
25 a veneer of respectability as they operate and

1 are less likely to want to reveal the kind of
2 greater expense of their criminal empire, as
3 happened in the Mansoor Hussein case. When he
4 tried to recover those tracks, he wasn't able to
5 do so and in fact tripped himself up and
6 revealed the extent of his full criminal empire.
7 So I think for me the real strength of the UWO,
8 the PEP case, it always is going to run up
9 against the limitations that all of other
10 investigative tools meet when they reach these
11 PEP targets that operate across multiple
12 jurisdictions with huge legal prowess and
13 complexity behind them. I think its strength in
14 time will be in this serious organized crime
15 limb, and that we're seeing the evidence of that
16 through the Mansoor Hussein case, so I would
17 expect that bit to be a kind of pivot towards
18 using them all. Although that was not the kind
19 of genesis of the powers, I would say they're
20 pivoted towards the more organized crime side.

21 In terms of their limitation as Anton has
22 referred to repeatedly, there are various
23 hurdles put in place before you can reach this
24 reverse onus and even then while you do so
25 you're still able to rebut those presumptions

1 kind of when we revert to the part 5
2 investigation. On a personal level I'd say it's
3 quite right that those protections are afforded.
4 This is a really -- some might say this standard
5 non-conviction based asset forfeiture regime
6 kind of butts up against human rights provisions
7 enough, so this should absolutely perhaps should
8 be those protections, and that's absolutely
9 what's behind implementing a power that didn't
10 go for this full reverse onus or illicit wealth
11 provisions Anton's correctly referred to. But
12 again, it's going to end up in the case that as
13 with all the other investigative tools it will
14 be problematic in those cases where it's perhaps
15 most needed and that is in these grand
16 corruption cases or the kind of global
17 laundromat cases that operate behind these
18 complex and shady structures. So it will have
19 limitations, but I don't think the Baker case
20 should be seen as a failure. I think we should
21 perhaps say that if we want to protect human
22 rights, then obviously the powers are going to
23 have those limitations and you have to find some
24 balance between protecting property rights and
25 enabling enforcement agencies to tackle illicit

1 wealth. Whether that balance is right is
2 perhaps to be told in the longer term. This is
3 quite a new power in the UK, I would say.

4 But again, I point to that case as well.
5 There is perhaps in implementing powers, however
6 they are conceived under unexplained wealth
7 orders perhaps a conception that you -- they're
8 a shortcut to a kind of shorter, a less
9 litigious process for regaining illicit wealth,
10 and that's absolutely been proven untrue in the
11 case of the UK variant of the unexplained wealth
12 order. You know, there's still a need to have a
13 really wide reaching and stringent investigation
14 into the underlying wealth if you are to counter
15 some of the legal might that you will face if
16 you are tackling these hugely powerful and
17 well-resourced individuals. The limit would be
18 definitely this inference in the mind of the
19 investigator that there is a shortcut, they
20 absolutely are not when you look at the UK
21 example.

22 Q Mr. Moiseienko, do you have anything to add to
23 the assessment of the effectiveness of the UK
24 power?

25 A (AM) I would echo that it is definitely not a

1 shortcut. I think I would also inject slightly
2 more scepticism of the assessment. I hope
3 Helena will forgive me for that. But the way
4 that I would approach thinking about their
5 effectiveness is looking at it from three
6 different angles. One is are unexplained wealth
7 order a good way of seizing criminal property.
8 So this is where the discussion around the
9 reverse burden of proof and all of that really
10 centres. Are we thinking about unexplained
11 wealth order as a means of tackling criminal
12 wealth. And if so, then why do you have to take
13 such long and winding route to the actual
14 reversal of the burden of proof. And I don't
15 want to foreshadow too much by way of discussion
16 what other countries are doing, but if you come
17 to the conclusion that in some cases it is okay
18 to reverse the burden of proof, for example when
19 there's an overwhelming public interest in
20 making sure that public officials can account
21 for their wealth, or perhaps there are other
22 safeguards in place. For instance, you have to
23 justify your belief that someone is involved in
24 serious and organized crime and you provide
25 evidence to court of that. Then maybe that is

1 enough of a triggering event in order to have
2 the reversed burden of proof. It's not entirely
3 clear why the UK has chosen such a difficult and
4 complicated approach to that. And I think that
5 might be in the end one of the reasons why
6 unexplained wealth orders will not lead to
7 significant confiscations of criminal wealth.
8 Although we don't know. I don't think the jury
9 is still out. The second the information
10 gathering aspect of unexplained wealth orders,
11 because that's really what they say on the tin
12 they do. And as Helena has underscored, the
13 statutory guidance is very unambiguous about
14 unexplained wealth orders being an information
15 gathering tool. And there I think it's just
16 very difficult to assess the effectiveness of
17 them. How do you assess the amount and quality
18 of information that is gathered. Do you try to
19 assess them by relevance to the success of civil
20 forfeiture cases that might follow the issuance
21 of an unexplained wealth order? I think that's
22 another area where we simply don't have the
23 answer yet. And I would be -- if I were a
24 jurisdiction coming at it with a blank slate, I
25 would ask myself well, is it actually a good

1 idea to have a new information gathering tool
2 that would only be used in 20 cases per year?
3 Because if we are talking about an information
4 gathering tool would it not be good to have a
5 tool that is more broadly applicable, and if so
6 and what is the information gathering problem
7 that we're trying to solve here and maybe we
8 could better address it by tweaking our
9 disclosure regime in some other elements. I
10 think that's the information gathering aspect of
11 UWOs. And finally the most speculative aspect
12 of their effectiveness or the lack thereof is
13 the news reports in some media to the effect
14 that there are people from countries around the
15 world who are now reconsidering their
16 investments of dirty money in London and there
17 are clients from certain high-risk jurisdictions
18 coming to their lawyers in London and asking
19 well, are you sure I'm not going to be hit with
20 an unexplained wealth order? Sort of the
21 overall deterrent effect of the legislation and
22 the power that it has had in terms of conjuring
23 up this image of a country that is tackling
24 illicit wealth seriously, and it might well be
25 that that is a significant benefit of having

1 unexplained wealth order provisions. Because
2 ultimately everyone is playing a bit of a PR
3 game as well, and it's important to demonstrate
4 political resolve, and maybe unexplained wealth
5 orders do have this symbolic effect, but it's
6 virtually impossible to estimate. So this is
7 the kind of consideration that a policy maker
8 might bear in mind, but if you go back and try
9 to assess how much of an impact you've made, I
10 would imagine that's practically impossible.

11 Q Thank you. Mr. Commissioner -- oh, I'm sorry,
12 Ms. Wood, did you have something?

13 A (HW) It was just one point, if I may. Just to
14 come back on Anton's very well-made point about
15 the UWO as an information gathering tool, which
16 is absolutely what it is, and the legislation is
17 very clear on that and the code of practice
18 behind it. But when we speak to investigators,
19 they're often of the view that the disclosure
20 order also imparts aids of our Proceeds of Crime
21 Act which allows you to make a written notice of
22 the need to provide documentary evidence or
23 return to an interview or give up further
24 information to the investigation. That was
25 extended as well into the criminal finances to

1 non-conviction based asset forfeiture
2 investigations, and in their view that's a much
3 more impactful information gathering tool.

4 So I think UWO should be seen as part of
5 that suite and often the disclosure order is the
6 preferred tool. Although it has had less media
7 attention, in terms of investigatory impacts the
8 people we talk to say that's been the biggest
9 game changer.

10 The second point, again leading on Anton's
11 point about deterrent effect, we also -- again
12 it's difficult to prove in any sort of empirical
13 sense, but we hear that in the kind of more
14 standard mainstream part 5 civil investigations,
15 there's been a greater willingness to engage in
16 non-order based information giving based on the
17 fact that people do not want to be faced with a
18 UWO given the level of media scrutiny on the
19 respondents in those cases. So information is
20 being more willingly put forward now in the
21 non-UWO part 5 cases because the respondents in
22 those cases do not wish to have the media
23 spotlight shone on them. So although it's very
24 difficult to measure the real and true impact of
25 a kind of reportive level from investigators

1 that having the threat of a UWO is actually
2 extremely useful, even if it's not deployed to
3 any scale.

4 Q Thank you.

5 MS. PATEL: Mr. Commissioner, this would probably be
6 a good time for us to take a short break.

7 THE COMMISSIONER: Sorry. Thank you, Ms. Patel, we
8 will take 15 minutes then.

9 THE REGISTRAR: This hearing an adjourned for a
10 15-minute recess until 11:36 a.m.

11 **(WITNESSES STOOD DOWN)**

12 **(PROCEEDINGS ADJOURNED AT 11:22 A.M.)**

13 **(PROCEEDINGS RECONVENED AT 11:35 A.M.)**

14 **HELENA WOOD, a witness**
15 **for the commission,**
16 **recalled.**

17 **ANTON MOISEIENKO, a**
18 **witness for the**
19 **commission, recalled.**

20 THE REGISTRAR: The hearing is resumed,
21 Mr. Commissioner.

22 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
23 Ms. Patel.

24 MS. PATEL: Thank you, Mr. Commissioner.

25 **EXAMINATION BY MS. PATEL (continuing):**

1 Q Moving on from the UK context, your report
2 addresses principally the Proceeds of Crime Act
3 of Ireland and the Proceeds of Crime Act of
4 Australia as well as various state and
5 territorial pieces of legislation that have some
6 form of unexplained wealth order, and I think
7 unless there's anything -- your report does
8 mention very briefly, for example, Italy and
9 Georgia. Unless there's anything specific in
10 those nations' legislation that you would like
11 to touch on, I'd ask Mr. Moiseienko, if you
12 could take us to the Irish situation.

13 A (AM) Yes, certainly. And by way of prefacing
14 that, perhaps its worth saying that the
15 legislative schemes in countries like Italy and
16 Georgia are similar to the Irish experience in
17 that there is a reversed burden of proof and
18 there is some sort of situation or something
19 that a law enforcement agency has to prove in
20 order to trigger that reversal, and the reversal
21 is predicated on something more than simply a
22 discrepancy in the wealth of people concerned.
23 So, for instance, in Georgia the person
24 concerned has to be a public official and has to
25 have been accused of a number or one of a number

1 of crimes. But as you say, the Irish example is
2 worth focusing on in greater detail. Partly
3 because as Helena has briefly alluded to
4 earlier, the Irish experience is often held out
5 as an example of best practice internationally.
6 Partly that is probably a function of factors
7 other than legislation, but there is certainly a
8 perception that the legislation is part of that.

9 So the respective piece of legislation in
10 Ireland is the Proceeds of Crime Act 1996. And
11 what it enables the Criminal Assets Bureau to do
12 is to gain an interlocutory order if there are
13 reasonable grounds to believe that certain
14 property constitutes the proceeds of crime, and
15 once that interlocutory order is granted the
16 burden is then on the respondent to prove on
17 the -- to prove to the civil standard that the
18 property does not in fact constitute the
19 proceeds of crime.

20 What is important to mention is that, first
21 of all, I should correct something that I said
22 earlier, which is that I referred to the wrong
23 standard. I said that it was the reasonable
24 ground to suspect, and I've probably been
25 affected by the UK experience which uses this

1 term. Actually, in Ireland the proper wording
2 is reasonable grounds for belief that certain
3 property, and specific property has to be
4 identified, constitutes the proceeds of crime.

5 So you can see that this system, this
6 legislative scheme is relatively straightforward
7 in comparison to the one in use in the UK in
8 that there is a defined criterion, a defined
9 threshold that the Criminal Assets Bureau has a
10 satisfy, then the burden reverses to the
11 respondent and then the proceedings take place.
12 And probably one thing I would note in relation
13 to the Irish experience is that very often when
14 you read commentary on that -- and I should be
15 upfront about the fact that our report is based
16 on what we saw in publicly available information
17 regarding the Irish experience -- publicly
18 available sources tend to highlight the fact
19 that the Criminal Assets Bureau is highly
20 resourced, while reputed in the local
21 communities, and also importantly it brings
22 together people of varying backgrounds and areas
23 of expertise, including financial investigation.
24 And so arguably all of those contextual factors
25 are important, at least as important to

1 understanding the success of the Irish scheme as
2 the actual legislation in place.

3 And finally, a point of terminology when we
4 started, I made the point of listing different
5 kinds of provisions that people might deem to
6 constitute unexplained wealth orders. I expect
7 that some people of a kind of purist persuasion
8 would say that I'm entirely wrong to refer to
9 Ireland in this context because Ireland does not
10 have unexplained wealth provisions, because as
11 we've discussed, the trigger for the reversal of
12 the burden proof is not the discrepancy in
13 wealth per se, but as we touched upon in the
14 beginning, that really is a matter of
15 terminology rather than substance.

16 Q And, again, the Irish provision that you just
17 walked us through, it addresses specific pieces
18 of property?

19 A (AM) Sorry, could you clarify that.

20 Q The authority, I suppose it would be the
21 Criminal Assets Bureau, goes into court not
22 making allegations about somebody's wealth at
23 large like you've just said, but they've
24 identified a specific piece of property?

25 A (AM) Yes, that is absolutely correct.

1 Q And I -- Ms. Wood, I know that you have
2 written -- you mention the Criminal Assets
3 Bureau in the other paper of yours that we've
4 mentioned today, the "Reaching the Unreachable."
5 And I wonder if you have anything to add on the
6 perceived effectiveness of the Irish system and
7 whether it is due to a superior or an
8 effective -- not superior but an effective
9 legislative scheme or is it in the operations of
10 the Criminal Assets Bureau itself?

11 A (HW) I think it would be a mix of those. I
12 mean, primarily one of the strengths that really
13 backs up the Irish system is just the
14 groundswell of kind of cross party political
15 public support for their action. And that could
16 be seen in the kind of background and context in
17 which their non-conviction based forfeiture
18 system was implemented in the first place, being
19 on the back of a very high-profile murder of a
20 journalist in Ireland by serious and organized
21 criminals which led to a level of public
22 opprobrium that meant that political action
23 against the issue was perhaps inevitable, and on
24 the back of that, they were one of the first
25 jurisdictions to implement such provisions.

1 And I mention that because I think it's
2 protected the Criminal Assets Bureau. That kind
3 of level of political and public support has
4 protected them through, you know, various levels
5 of public austerity over the past 10 years that
6 we've seen globally. That budget has been
7 protected, and I think that's a really key
8 factor when we compare it perhaps to the UK
9 system more broadly. The UK system has broadly
10 been under resourced and it's left it open to
11 challenge by high-profile cases where the UK
12 system has been outgunned legally in resourced
13 terms. The same can't be said in Ireland where
14 they have a much better resource system that's
15 predicated on this kind of groundswell of public
16 support for what they do. If you walk down the
17 street in, say, Dublin and mention CAB, people
18 will know who you're talking about and they'll
19 know what civil asset forfeiture is. You walk
20 down the street in London, and you would get a
21 reasonably blank look about civil forfeiture, so
22 it's a really different cultural context.

23 Whilst the legislation is in one part
24 useful, I wouldn't say the reverse onus
25 provisions are key to the success over there.

1 Though they can be useful in certain instances,
2 I wouldn't say they're key to success. In fact
3 the modelling of the Irish system is in some way
4 limited because they have this very strict
5 provision in their reverse owner scheme, which
6 means you have to wait seven years before
7 forfeiting the asset if it's not explained,
8 which is quite a long term particularly if the
9 CAB are forced to manage the asset, if it's not
10 a kind of piece of real estate. That's quite a
11 long arm, seven years, so they have got quite a
12 rigid measure, again, to protect people's human
13 rights, which is absolutely right and proper.
14 But actually their reverse onus scheme could be
15 seen as fairly being rigid in places.

16 So if I can summarize that, I would say
17 actually the success of the CAB is primarily
18 more down to that operating model and the kind
19 of level of public support and resourcing more
20 than it is down to simply the fact that they
21 have a reverse onus provision in their
22 legislation, in my personal view. But I know
23 you're hearing more from others who are more
24 closer to that system tomorrow.

25 Q Yes, we are. It's still useful for us to hear

1 the comparison, though, from somebody sitting
2 inside another system. One thing you mentioned
3 was the protected budget and I'm wondering if
4 you can comment on the need -- the AR -- the
5 Assets Recovery Agency was supposed to be
6 self-funded, and my understanding is there's no
7 such expectation of the Criminal Assets Bureau.
8 Can you comment on what impact that has on its
9 ability to be effective?

10 A (HW) Absolutely. The whole discussion in
11 Ireland isn't around whether POCA pays for POCA,
12 which has become a bit of a term in the UK.
13 It's whether taking it where the asset has a
14 wider community benefit. So in their kind of
15 adoption model of cases, they don't simply look
16 at whether it's, say, a commercially viable
17 principle, if you look at it, say, as a normal
18 civil litigation case, which is the way the
19 commercial litigator would look at it. They
20 look at in terms of the wider community impact.
21 So, for example, if it was to cost a million
22 pounds to take away a million-pound property,
23 then within the Irish system that would be
24 absolutely fair. That's not to say those
25 principles don't apply in Britain, but I think

1 going back to the legacy that the UK system
2 operates under due to the legacy of the Assets
3 Recovery Agency, there is still this notion that
4 the impact of asset recovery should be measured
5 in financial terms rather than in the more
6 difficult to measure community impacts or
7 dismantling of criminal schemes terms. I think
8 that the UK continues to labour under that
9 position that POCA should pay for POCA when
10 absolutely that's not the legislative intention
11 of any of these provisions across the world.
12 It's to impact on criminality and not to be in
13 any way commercially viable.

14 Q And I don't mean to cut short the discussion of
15 Ireland, Mr. Moiseienko, if you had anything
16 that you thought was important to add to the
17 discussion, but if not I was going to ask you to
18 move to a description of the Australian, the
19 national and then the state and territorial
20 schemes?

21 A (AM) Yes. Nothing to add on Ireland. So happy
22 to move on to Australia.

23 Australia is an interesting example in terms
24 of how simple its regime looks. It's worth
25 noting that unexplained wealth orders were first

1 adopted in Australia in 2010. I believe New
2 South Wales was the first state to do so. And
3 then shortly thereafter unexplained wealth
4 orders were also adopted at the commonwealth
5 level. So they're now part of the Proceeds of
6 Crime Act 2002 in Australia. And currently
7 seven out of nine Australian states and
8 territories have unexplained wealth orders in
9 place. Although as we might discuss, it does
10 not seem that they're always being vigorously
11 used.

12 In terms of what the legislative scheme
13 looks like in broad terms, as I have alluded to
14 if we look at the commonwealth level as an
15 example, a law enforcement agency would apply to
16 a court for what is known as a preliminary
17 unexplained wealth order, and that would be
18 predicated on the disparity between the overall
19 wealth of the person and their lawful income.
20 Then the person in question would be required to
21 appear before the court at a hearing and provide
22 explanation as to how a property was purchased.

23 And then if the court is not satisfied that
24 all of the property comes from legitimate
25 sources, then the court is authorized to make

1 the unexplained wealth order. In Australian
2 parlance, the unexplained wealth order basically
3 stands for the confiscation order that is the
4 culmination of those proceedings. And the
5 unexplained wealth order can be made in relation
6 to the difference between the person's overall
7 property and the part of the property that has
8 been proven to come from lawful sources,
9 provided that that difference is more than
10 \$100,000.

11 So that is really the scheme of the
12 commonwealth level. It's important to note that
13 its operation is limited to offences that are
14 recognized under the law of the commonwealth.
15 So basically what you have to prove as a
16 respondent is that your property does not derive
17 from any of the offences recognized under the
18 law of the commonwealth as opposed to the laws
19 of states and territories. And given the
20 inertia that has apparently existed in some
21 states and territories -- or maybe inertia is
22 not a kind word, but really the lack of
23 resourcing and other factors that have
24 constrained the application of unexplained
25 wealth orders, given all of that in recent years

1 there has been a shift towards giving greater
2 powers to law enforcement agencies at the
3 federal or commonwealth level and empowering
4 them to also confiscate property that has been
5 obtained in breach of the laws of states and
6 territories, not only federal law. And that I
7 think is now possible since 2018, when the
8 cooperative scheme was created with a view to
9 facilitate on this application of unexplained
10 wealth order by the Australian Federal Police
11 and federal agencies.

12 So that's broadly the scheme at the
13 commonwealth level.

14 Q If I could just draw out a couple of points from
15 what you've said. One of the key points from
16 the commonwealth scheme, I understand, in
17 comparison to the Irish scheme, the Irish scheme
18 requires that the Criminal Assets Bureau come --
19 I assume it's the Criminal Assets Bureau come to
20 court and show that there are reasonable grounds
21 for belief that a particular piece of property
22 constitutes the proceeds of crime. And then
23 they get an order to freeze. In Australia
24 there's no requirement at the commonwealth level
25 with respect to this unexplained wealth order to

1 show a suspicion that -- or grounds for belief
2 that a particular piece of property is a
3 proceeds of crime or indeed that one's wealth in
4 general is the proceeds of crime. But rather
5 the preliminary test is met by showing there's
6 reasonable grounds for suspicion that a person's
7 total wealth exceeds the wealth of their --
8 exceeds the value of their wealth that was
9 lawful acquired?

10 A (AM) Yes.

11 Q Okay. And then in fact there is no requirement
12 at any point for -- I mean, I suppose that the
13 commonwealth could prove, it could endeavour to
14 show that a person's wealth was unlawfully
15 acquired, but it has no obligation to do so.
16 Rather the onus is on the respondent to show the
17 negative, to show that it was not unlawfully
18 acquired?

19 A (AM) Yes, correct. I should perhaps qualify
20 "unlawfully" by reiterating the point that I
21 just made about you as a respondent having to
22 prove that your property does not originate in a
23 list of offences under the laws of the
24 commonwealth.

25 Q Or for an indictable offence?

1 A (AM) That's right.

2 Q And you mentioned the national cooperative
3 scheme. Can you tell us a little bit more about
4 that and just in brief, appreciating we will
5 have evidence from Australia later this week.
6 So I won't put that burden on you.

7 A (AM) Yes, yes, when we've got a good
8 international cohort. But the genesis of that
9 scheme lies in, I think, three factors. The
10 first is that there has been so far limited
11 uptake of unexplained wealth orders at the
12 federal level. So if you look at annual reports
13 published by the Australian Federal Police, for
14 example, they only refer to a very small number
15 of cases. You could count them on the fingers
16 of one hand where unexplained wealth orders have
17 been sought. And I think the latest state of
18 affairs is that currently no investigations are
19 being pursued with unexplained wealth orders.
20 So you've got the relative paucity of practice
21 at the commonwealth level, and then you also
22 have two reviews that were launched into the
23 operation of unexplained wealth orders in two
24 states and territories, and one of them being
25 Western Australia and the other being Tasmania.

1 And both of those reviews have shown a mixed
2 record of implementation of unexplained wealth
3 orders, and by "mixed record" I mean that it's
4 impossible to discount their utility in
5 principle. It seems as though they might be
6 useful but equally they're not being applied
7 often in practice.

8 And so across the board in Australia, there
9 seems to be this sense that unexplained wealth
10 orders could be useful but something is
11 currently missing in how they're being applied.
12 And one solution that had been discussed for
13 some time and has culminated in its actual
14 establishment in 2018 is the national
15 cooperative scheme whereby the Australian
16 Federal Police would be empowered to apply for
17 unexplained wealth orders and they would not be
18 constrained by the limitation of the list of
19 offences to those under the laws of the
20 commonwealth. So even if property originates in
21 offences against the laws of states and
22 territories that take this part in the scheme,
23 then the powers would be there to seize that
24 property. Though to my understanding is that
25 not all states and territories are willing to

1 take part in the scheme and that will obviously
2 constrain its effectiveness overall.

3 Q We don't need to go into this in detail, given
4 the -- that we will be hearing evidence on
5 Australia and the state and territorial schemes
6 later this week, but are there any particular
7 details of a state or a territorial scheme with
8 respect to unexplained wealth orders that you
9 think should be highlighted for the commission?

10 A (AM) I think there are small differences. And
11 you can find them in the report. I mean, it's
12 really words like "reasonable suspicion,"
13 different standards that are used to kind of,
14 you know, trigger the reversal in the burden of
15 proof.

16 So, for example, in New South Wales,
17 Queensland and Victoria, you do need to show
18 reasonable suspicion that a person has been
19 engaged in serious crime, and that of course is
20 something that is closer in its mindset and in
21 its approach to the model followed in the UK
22 than the commonwealth level legislation. So
23 there are slight distinctions in how different
24 states and territorial schemes operate. But
25 from the research that we have done, I do not

- 1 feel that any of them has been tremendously
2 consequential or definitive in terms of the
3 effectiveness of the overall regime. I think
4 subject to what you hear from the much better
5 informed Australian experts, it seems as though
6 Australia is much less often presented
7 internationally as an example of best practice
8 in this area than, for instance, Ireland. And
9 going back to my earlier point, that must
10 refer -- that must be due not to weaknesses in
11 legislation but to other contextual factors
- 12 Q Indeed they look on the face of them to be
13 extraordinarily powerful legislative provisions.
- 14 A (AM) Yes, exactly. Very easy to apply. It
15 would seem extraordinarily powerful.
16 Specifically adopted it might be worth saying
17 with a view to combatting organized crime, so it
18 would seem from what I've read that corruption
19 was much less of a concern in Australia, and yet
20 it just does not seem to be used to a
21 significant extent.
- 22 Q Ms. Wood, do you have anything to add to the
23 consideration of the various Australian schemes?
- 24 A (HW) Nothing further from me.
- 25 Q I'd like to move on back to the reasons that we

1 are here, and I'd like to ask for your thoughts
2 based on your review of the legislation in the
3 UK, in Ireland and Australia, and your knowledge
4 generally of these kinds of schemes and of
5 non-conviction based forfeiture what British
6 Columbia should keep in mind if it considers
7 drafting some kind of unexplained wealth order
8 for its own civil forfeiture authorities. And
9 maybe base that -- your thoughts around what are
10 the kind of legislative considerations that will
11 have to be borne in mind and what are the
12 operational considerations that will have to be
13 borne in mind and perhaps I'll start with
14 Ms. Wood.

15 A (HW) Yes. Let's start with the operational
16 considerations. You know, based on the
17 experience not just of UWOs but the kind of
18 wider non-conviction based scheme in the UK. I
19 think the cases were operating reasonably well
20 after the initial establishment by the case law
21 that we've referred to by the Assets Recovery
22 Agency. But as I've previously referred to, the
23 kind of targets of those orders were primarily
24 kind of lower to mid-tier criminality and
25 certainly not into the grand corruption realm.

1 As, you know, there's been kind of a political
2 and media push towards using the powers as they
3 were originally intended against kind of top
4 tier organized criminal targets and the kind of
5 grand corruption targets that we have referred
6 to that led to the kind of groundswell of
7 support for the implementation of UWOs. We've
8 seen a considerable outgunning of the
9 political -- sorry, the legal might available to
10 government when faced with kind of multiple
11 benches of QCs, sort of top tier of lawyers in
12 the UK. So I think the big lesson for anyone
13 is, you know, you have to have an equality of
14 arms when you're going against these top
15 targets.

16 So at the moment the UK has a cadre of
17 civil litigation expertise within its ranks, but
18 arguably, given the kind of pay disparity
19 between public sector pay and some of the bigger
20 private legal firms to which the respondents to
21 these orders have recourse, they've been
22 considerably outgunned. And that's not to
23 undermine the expertise of former colleagues in
24 National Crime Agencies. There's certainly some
25 great talent there. However, to attract the

1 right pool of talent and expertise, you really
2 do have to at some level match the pay the kind
3 of civil litigators are being offered in the
4 private sector. I think that for me that's --
5 more the primary problem in the UK for me at the
6 moment is capacity. Yes, you know, it's been an
7 under resourced area, but it's also capability
8 and the struggle to attract significant kind of
9 commercial civil litigation expertise to come
10 into what is a kind of quasi-criminal sphere has
11 been really, really difficult and secondly
12 retaining that expertise, given, you know,
13 burgeoning property prices in London in the
14 southeast meaning the kind of public sector pay
15 isn't matching that kind of scale. So there's
16 been a sort of hemorrhaging of expertise due to
17 those pay disparities. Not an easy circle to
18 square, I admit, but I think that's something
19 that's really key to me.

20 In terms of the legislation, as Anton's
21 referred to, some of the debates in parliament
22 didn't centre so much on the human rights
23 aspects of this, but there was certainly in the
24 framing of the law consideration, a full reverse
25 onus provision wasn't something the UK had

1 appetite for, nor would it fit with the kind of
2 legal traditions in the UK. So I guess it
3 depends on that legal appetite. It's a
4 really -- as you already know, there's
5 significant controversy around the use of civil
6 confiscation powers without unexplained wealth
7 orders being brought in and it's finding that
8 correct balance between empowering investigators
9 with tools at their disposal while not running
10 roughshod over people's property rights. I
11 think building in enough kind of weight to allow
12 people to vent themselves is key, but finding
13 the balance between those two areas is really
14 difficult, and whether the UK's found the right
15 balance, I think will only come out in time as
16 the powers are tested to their full potential.
17 I don't think we've seen them yet. Certainly
18 early examples suggest that these powers are
19 going to face as much if not more litigation
20 than the underlying civil litigation scheme
21 faced when the assets recovery was set up. I
22 think finding that balance is really key. And I
23 think that goes down to political and cultural
24 appetite within the Canadian legal tradition.

25 Q Mr. Moiseienko?

1 A (AM) I think that in terms of approaching the
2 design of a legislative scheme I would start
3 with a very simple question of are we okay with
4 the idea of a reverse burden of proof in civil
5 forfeiture proceedings, because if the answer is
6 no then the rest of the discussion falls by the
7 wayside. You cannot have any sort of
8 unexplained wealth order provisions.

9 If the answer is yes, we're okay with that
10 in certain circumstances, then the issue becomes
11 well, what are those circumstances. And that
12 can be approached in a variety of ways. You
13 could think about the characteristics of the
14 respondent, so for instance, you've got the
15 Italian example where people suspected of
16 affiliation to a Mafia type group are treated
17 differently and there the reverse burden of
18 proof is possible. You've got the Georgian
19 example where the focus is on public officials.
20 You've got the UK example which combines the two
21 approaches and enables UWOs to be issued in
22 respect of either non-EA PEPs or people involved
23 in serious and organized crime. You can have
24 requirements around the standard that the law
25 enforcement agency has to satisfy, whether it is

1 something like reasonable grounds to suspect,
2 reasonable ground to believe or even anything
3 higher than that. It really depends on sort of
4 what options you've got in your country. And
5 then it's also possible to play around with
6 parameters such as what is the value of property
7 in respect of which the UWO can be sought. Does
8 the court have a discretion or should the court
9 issue an order automatically if certain
10 requirements are satisfied?

11 So there are different pieces of the
12 puzzle, and I think that if you line them up in
13 the right configuration, provided that there is
14 no overarching constitutional human rights
15 objection to the principle of the reversal of
16 the burden of proof in civil forfeiture, then
17 it's possible to come up with a scheme that is
18 relatively permissive, such as in Australia, or
19 exceedingly complicated -- or not exceedingly,
20 but definitely quite complicated like in the UK.
21 And where you fall on that spectrum will really
22 depend on, as Helena says, your appetite and the
23 legal tradition and the sense of what is
24 appropriate and what is not appropriate. So I
25 would imagine that's -- that's it in broad

1 terms.

2 One other issue I would mention is if you
3 do approach unexplained wealth orders as an
4 information gathering tool, like the UK approach
5 has been, then it strikes me as necessary to
6 consider that in the context of other
7 information gathering tools, so how do our
8 disclosure orders work, what other means do we
9 have of getting information about property that
10 we might want to confiscate and how exactly
11 would some sort of unexplained wealth order, for
12 example, like the one used in the UK, how would
13 that be helpful in that endeavour. I think I'll
14 stop here.

15 Q If I could layer on to the question by asking
16 how does your assessment -- what is useful to a
17 jurisdiction change if the principal target, the
18 principal political issue, the facts that are
19 being addressed by civil forfeiture aren't grand
20 corruption but are rather organized crime? How
21 does that change the assessment for the
22 jurisdiction, say that's the situation here.
23 Not saying that it is. But hypothetically does
24 that change the assessment of what is the best
25 approach?

1 A (HW) Should I start there or Anton? Yeah. So
2 my personal perspective, and certainly I think
3 we've touched on this today in the Mansoor
4 Hussein case, the UK system I personally think
5 will be most effective in the cases against
6 organized crime, and I think it's well designed
7 for this, although it was not the intention
8 initially behind initiating this legislation.
9 But where the reverse onus is triggered by the
10 lack of response to a request for information, I
11 would suppose that an organized crime target
12 would be more willing to be non-compliant with
13 an order and walk away, particularly looking at
14 the example of Mansoor Hussein where he actually
15 implicated himself further by the fact of
16 responding and may have simply have had a
17 smaller order had he have not responded at all
18 to the UWO, the UWO revealing a greater pool of
19 wealth that became part of the wider part 5
20 case. And I would suppose that those targets
21 will be less likely, if they're domestically
22 based targets, to use the complex trust and
23 shell company structures that we've become
24 familiar with in terms of politically exposed
25 targets. I guess it depends on the design. I

1 would think the UK system is well designed to
2 target those individuals who are less likely and
3 less willing to be able to explain away their
4 wealth. As compared to a politically exposed
5 person who has been structuring their wealth all
6 along to give a veneer of respectability in a
7 way that a serious organized crime target
8 doesn't always have in the back of their mind
9 when they are seeking to move that wealth.

10 Q Mr. Moiseienko, do you have any thoughts on
11 that?

12 A (AM) I would think that if you have a very
13 permissive approach, for example if you can
14 issue a UWO in respect of virtually anyone, then
15 it doesn't really matter whether you have in
16 mind PEPs or serious and organized crime figures
17 because the tool that you have is so powerful
18 and can be applied, well, to anyone. If on the
19 other hand you have to limit its application and
20 tailor its application in a much more focused
21 way, for instance if you have to impose certain
22 requirements on the law enforcement agency, then
23 it might make sense, for instance, to require
24 them to demonstrate reasonable belief that
25 someone is involved in list your -- wish lists

1 of different kinds of organized crime that you
2 are particularly interested in. I think that
3 would be the difference in approach. Because if
4 the application of UWOs is intended to be
5 narrowly focused on organized crime figures,
6 then the legislation can be framed with that in
7 mind and presumably some of the civil liberties
8 concerns and human rights concerns would be less
9 acute just because the legislation is quite
10 narrowly targeted to certain specific cases.

11 One practical point that might be worth
12 recalling is that in the UK in light of the
13 possible application of UWOs against organized
14 crime figures the property threshold was lowered
15 from 100,000 pounds to 50,000 pounds, so it's
16 also one of the things to bear in mind. What
17 sort of property do you intend to be seizing and
18 how often do you intend for the tool to be
19 applied? Do you want it to be applied once a
20 year against a mansion of \$10 million worth or
21 is it going to be a much more consistent
22 application against a wide array of lower valued
23 targets? That would probably really impact on
24 the way in which you frame the legislation to
25 begin with.

1 MS. PATEL: Unless either of you has anything -- any
2 final thoughts to add on advice for British
3 Columbia, I'm going to move forward and my
4 friends have some questions that they would like
5 to put to you.

6 Mr. Commissioner, those are my questions for
7 these witnesses.

8 THE COMMISSIONER: Thank you, Ms. Patel.

9 I think Ms. Hughes on behalf of the province
10 has some questions and has been allocated 10
11 minutes.

12 MS. HUGHES: Yes, thank you, Mr. Commissioner. I
13 don't intend to use the entire 10 minutes.

14 **EXAMINATION BY MS. HUGHES:**

15 Q I have but one question for the panelists, and
16 it's specific to the report that you've
17 provided. And perhaps I don't need to have the
18 report brought up. I can ask my question and if
19 necessary we can go there. In the report when
20 discussing why in the UK an unidentified wealth
21 order, we have the two criteria. There's the
22 politically exposed persons and then serious
23 organized crime. The politically exposed
24 persons is limited to those from non-EA
25 countries, and the comment in the report is that

1 basically EU member countries plus a couple of
2 other European countries that once again have
3 relatively strong and well-established
4 corporation with the UK.

5 One of the obvious questions is how that
6 might change now that the UK is no longer a
7 European union member and that has been, as you
8 might imagine, a subject of heated and active
9 discussion, and I think the broad sense on both
10 sides, both in the UK and in the EU is that
11 there will continue to be a significant extent
12 of law enforcement and security corporation
13 because no one wants to lose access to the
14 information and corporation and expertise from
15 the other party, so in practice one might expect
16 that to some extent even though the UK is out,
17 the rationale for this particular provision
18 broadly stands and survives Brexit.

19 MS. HUGHES: Thank you, Mr. Commissioner -- unless
20 Ms. Wood has anything to add, that is my
21 question for this panel. Thank you.

22 THE COMMISSIONER: Thank you, Ms. Hughes.
23 Ms. Magonet.

24 MS. MAGONET: Thank you. Sorry.

25 THE COMMISSIONER: Just to situate you for the

1 Mackenzie and Yale Hamilton Smith about the
2 effectiveness of asset focused interventions
3 against organized crime. And you refer to it I
4 think once or twice in this paper. Would you
5 agree those researches found that it's actually
6 unclear that asset forfeiture approaches reduce
7 organized crime?

8 A (HW) I'd give it a slightly different nuance.
9 I'd say there's a lack of empirical evidence and
10 my memory, appreciating that this is information
11 I read almost sort of two years ago now, but my
12 memory of what was written there was around --
13 it's very difficult to prove the impact, given
14 some of the impacts are not quantitative in
15 nature. It's very difficult to prove deterrent
16 effects, for example, in the -- proving a
17 negative is extremely difficult. So I wouldn't
18 disagree with you, but I'd say it's a slightly
19 different nuance. They kind of challenge the
20 very fact there's an ability to measure in any
21 sort of true empirical way the real impact of
22 asset-focused interventions. However, as I
23 refer to in the report, there is a -- I mean,
24 the policy basis across the globe is a more
25 morale imperative for ensuring that crime

1 doesn't pay.

2 Q Thank you. But you would agree they found at
3 least at this point there's not empirical
4 evidence that enables us to say that these --
5 despite maybe the moral imperative or their
6 popularity there isn't empirical evidence
7 establishing their effectiveness?

8 A I would definitely say there are considerable
9 research gaps in this field. It's a massively
10 underresearched field both in the UK and
11 globally, and there's only a handful of
12 researchers, some of whom are giving evidence
13 before this committee, so I would prefer to --
14 Dr. Colin King, who is giving evidence tomorrow,
15 is one of the experts. I believe you also have
16 taken evidence from Jeffrey Simser. Again it's
17 a very small pool of research, and it's a vastly
18 under researched area when compared to other
19 areas of their fight against kind of illicit
20 finance, including money laundering and
21 terrorist finance. So I would definitely agree
22 it's an under researched area that would be value
23 in a greater evidence base for the
24 interventions.

25 Q Thank you. In this paper -- and we don't have

1 to go to the page unless you would find it
2 helpful, but you also talk about the
3 incentivization scheme for civil forfeiture in
4 the UK, and would you agree that you conclude
5 that it's problematic because it can lead
6 authorities to prioritize cases based on
7 potential revenue rather than community impact
8 and harm reduction?

9 A (HW) I would absolutely agree with that. So the
10 UK is currently undergoing a review of its
11 incentivization scheme, and my public response
12 to that has said that I think we should scrap
13 all incentivization. Personally I think it
14 skews priorities, and we've see that most
15 acutely in the United States where their own
16 civil forfeiture regime has been subject to a
17 considerable level of public criticism because
18 it has been subject to skewed incentives where
19 law enforcement have even been able to keep the
20 actual assets to use themselves. So I do agree
21 that incentivization is hugely problematic.
22 And, again, it goes back to my point of the UK
23 scheme has been mired in this kind of POCA pays
24 for POCA rather than looking at the real impacts
25 of the legislation. It shouldn't be -- in my

1 view it should not be judged in financial terms;
2 it should be based on its other merits which are
3 kind of removing kind of criminal -- criminals
4 from the environments, so removing those
5 incentives for others to enter crime, disrupting
6 criminality, removing criminal capital, all
7 those other things. I am -- my personal view is
8 that incentivization can skew priorities and I'm
9 definitely a proponent of scrapping the UK's
10 incentivization scheme.

11 Q Thank you. I now just have some questions of
12 effectiveness of UWOs more generally. Madam
13 Registrar, you can take that document down.
14 Thank you.

15 Are you aware of any empirical research
16 showing that the UWO regime in the UK is
17 reducing money laundering?

18 A (HW) I would personally say -- again I refer to
19 it being a vastly under resourced area -- under
20 researched area, forgive me. And I think it's
21 too early to make any judgment on the actual
22 impact to the UK scheme. It's very young. It's
23 yet to establish it's kind of full base of case
24 law. And even if there were to be research
25 undertaken I don't think you could make that

1 specific link between a few individual cases and
2 a kind of aggregate reduction in money
3 laundering. I'll refer to other areas. My
4 colleague Anton referred to there will be
5 without a doubt a deterrent effect that the UWO
6 has. I would personally say it would be near
7 impossible and almost folly to try and measure
8 that in empirical terms, but it's undoubtedly
9 the case that it does and will have a deterrent
10 effect.

11 Q And earlier when you provided evidence about the
12 fact that individuals may be more willing to
13 voluntarily disclose information to avoid the
14 media attention that a UWO would attract, was
15 that anecdotal evidence just from speaking with
16 people working in this field?

17 A Absolutely, yeah. Purely anecdotal. There's no
18 kind of -- again, it's quite a young power.
19 There's no kind of wholesome research been
20 conducted on that. It's absolutely just
21 anecdotal evidence we received on that.

22 Q Okay. Thank you. I now have some questions
23 about the report that both of you prepared along
24 with Mr. Keatinge for the Cullen Commission. I
25 don't think we need to pull it up, though,

1 unless -- I think that they're more general
2 questions. Just as a first point, the UWO
3 regime in the UK, in order for the state to be
4 able to seek a UWO there's no need to show a
5 nexus between the property sought and the
6 alleged criminality; is that correct?

7 A (HW) That's correct. As I understand it.

8 (AM) Yes, same here.

9 Q Earlier you both explained that the politically
10 exposed person route of obtaining a UWO only
11 applies to individuals outside the European
12 economic area. Would you agree that this has a
13 potential discriminatory impact by only
14 targeting individuals from certain countries?

15 A (AM) I haven't looked into this question in
16 detail, so I would not be able to dismiss the
17 concern out of hand or confirm it. I think the
18 way to look at it, and my understanding of how,
19 for example, the European Court on Human Rights
20 would look at it is to first identify a
21 disparity in treatment, and there is clearly a
22 disparity in treatment, but then look at whether
23 it is justified, and that really is the crux of
24 the matter because arguably the UK has other
25 ways of dealing with misconduct of politically

1 exposed persons within the UK than the
2 application of unexplained wealth orders and
3 there are more investigative means at the UK's
4 disposal. And then the reason why politically
5 exposed persons from other EU countries -- well,
6 at the time the UK was obviously still a
7 member -- other EU countries are not covered is
8 something that we have discussed already. So
9 there's also a rationale for that.

10 Q Thank you. In your report you discuss that the
11 effect of a UWO may prompt a regulated entity to
12 drop business relations with the respondents
13 regardless of the merits of the order, which is
14 problematic from a human rights standpoint, you
15 write. Can you elaborate on the types of human
16 rights concerns that this may raise.

17 A (AM) So to give you a bit of context, this is
18 based on a report published by ACAMS, the
19 Association of Certified Anti-Money Laundering
20 Specialists, who look specifically at the impact
21 of unexplained wealth orders on the regulated
22 financial sector and how compliance officers
23 working there might approach doing business with
24 someone who has faced an unexplained wealth
25 order. In terms of human rights concerns, I

1 would not be prepared to couch that in any legal
2 terms or refer to any particular problem under
3 the UK Human Rights Act, but I think from a
4 broad human rights civil liberties how do we
5 treat others perspective, if you have not been
6 convicted of a crime and if you have been
7 subject to a mere investigatory measure but that
8 measure has been widely publicized and led to
9 significant impact on your life and the quality
10 of your life, even though ultimately there might
11 have been no there there, right, so there might
12 have been no reason for that and perhaps the
13 investigatory measure, the unexplained wealth
14 order simply resulted in you providing more
15 information and the investigation never having
16 happened. Even if -- notwithstanding all of
17 that you still feel negative consequences on
18 your private and professional life as a result
19 of being subject to that measure, the
20 unexplained wealth order, that is clearly
21 problematic. And I think that's a general
22 concern in relation to how financial
23 institutions might occasionally treat high-risk
24 customers in a way that would not necessarily
25 enable them to carry on normal life and, you

1 know, sometimes that is quite difficult to
2 reconcile with the idea that you should only
3 face significant negative consequences if you've
4 been convicted of wrongdoing by a court.
5 (HW) Yeah, I definitely wouldn't think this
6 confines itself to unexplained wealth orders.
7 We know that production orders and other
8 investigative tools under the Proceeds of Crime
9 Act can often act as a trigger for so called
10 de-risking by banks and that's driven by the
11 more heavy-handed approach to anti-money
12 laundering regulation generally. It's kind of a
13 problematic feature of the wider anti-money
14 laundering regime in its totality rather than
15 very specific to UWO. I think it's important to
16 recognize that it's an issue that requires wider
17 consideration, and indeed colleagues in the
18 Royal United Services Institute are researching
19 just that at the moment, looking at the impact
20 of financial crime measures on financial
21 inclusion. So do what you have with that
22 report, but I think it shouldn't be confined to
23 unexplained wealth orders. Though I would say
24 they have received disproportionate attention in
25 the UK media, perhaps given they've been couched

1 as kind of mafia laws, but yes, just to give you
2 that wider context.

3 Q Thank you. You would agree that the type of
4 information that the state can seek using a UWO
5 in the UK may be extremely personal information?

6 A (AM) I think it depends on what you mean by
7 extremely personal. But certainly, you know,
8 this is not information that you would give to
9 someone you don't know or even a friend. It is
10 information about people's financial affairs.

11 Q Thank you. And you would agree that the
12 constitutionality of the UK's UWO regime has not
13 yet been assessed by the courts?

14 A (AM) Well, the courts have upheld the issuance
15 of UWOs. There have been a human rights
16 based -- well, not human rights based arguments
17 per se. But as I mentioned in one of the cases
18 the issue of spousal privilege came into play,
19 which is quite close to a human rights issue in
20 its nature.

21 In terms of constitutionality, I think the
22 UK operates -- and I'm by no means an expert on
23 the UK's constitutional law, but given that
24 there is no written constitution, basically an
25 act of parliament is the law of the land, and

1 under the Human Rights Act, the court, the High
2 Court, could make a declaration of
3 incompatibility if anything that parliament
4 adopts is contrary to the Human Rights Act,
5 which implements the European Convention on
6 Human Rights. In that instance the act would
7 still in force, but a declaration of
8 incompatibility ideally would prompt parliament
9 to reconsider the legislation.

10 So I don't think that we can really speak in
11 the UK context about challenging the
12 constitutionality of unexplained wealth orders
13 in the same way as you would in some other
14 countries

15 Q Sorry, that was my mistake. I shouldn't have
16 used the word "constitutionality." What I meant
17 to ask about was that the compliance of the UWO
18 regime in the UK with the Human Rights Act
19 implementing the European Convention of Human
20 Rights, that hasn't been tested yet
21 specifically?

22 A (AM) I don't know. I'm not sure if human
23 rights, if arguments based on the *Human Rights*
24 *Act* have been raised. If that's correct and
25 they haven't been raised it could be because

1 they were deemed hopeless by litigants or it
2 could be that the issue will crop up in the
3 future. But I think as I hope we made clear
4 during the presentation, the compliance of the
5 overall civil forfeiture regime has been -- the
6 overall civil forfeiture regime is human rights
7 compliant in the UK as per judgments by UK
8 courts and the European court on human rights.
9 And the way that the unexplained wealth orders
10 are implemented in the UK is very heavily
11 steered towards human rights compliance, given
12 how difficult it is for you to get to a point
13 where the reverse burden of proof provisions get
14 into effect, so it's not immediately obvious to
15 me where that challenge would come from, but
16 I'll defer to Helena. I think she wanted to
17 jump in.

18 (HW) I think there's also a point in the report
19 where we point to the fact that reverse onus
20 provisions have been tested through the European
21 Court of Human Rights and have been deemed
22 compliant. So whilst this isn't a strict
23 reverse onus, in fact if anything it's much more
24 protective of human rights, we might say, and
25 that's absolutely the way it was intended to be

1 drafted. But a more strict and perhaps,
2 depending on your viewpoint, a more severe
3 reverse onus provision has been deemed compliant
4 by the European Court of Human Rights, so that
5 it's not specific to the UK. So I would opine,
6 and it's clearly opining, that lawyers acting
7 for respondents have judged a challenge on human
8 rights grounds to be unmerited and not a good
9 use of litigants' money.

10 Q Thank you. I think I'm just about out of time,
11 so I'll just ask one last question. Is it
12 correct to say that in your report you conclude
13 that there's no international consensus on the
14 desirability of UWOs from a human rights
15 perspective?

16 A (AM) I would say there is no international
17 consensus in their desirability, period. And
18 part of that is the fact that different
19 countries have a different understanding of what
20 unexplained wealth orders are, so I did not get
21 the sense that there is any fundamental basic
22 human rights objection to unexplained wealth
23 orders that all countries would subscribe to.
24 That's certainly not the case and that as we
25 discussed there are different ways in which you

1 could design your unexplained wealth order
2 legislation and the degree of intrusiveness,
3 which really depend on that. It's very
4 difficult to speak of unexplained wealth orders
5 in the abstract given the different
6 manifestation that one might come across in
7 different countries.

8 Q Do you want to add anything, Ms. Wood?

9 A (HW) It's only a more general point and
10 definitely not a point of law, but I think it's
11 that balance between the kind of human rights of
12 the kind of victims of grand corruption which
13 need to be perhaps balanced against the rights
14 of the individual, and as we've seen I'm
15 referred repeatedly to the complex corporate
16 structures behind which this illicit wealth is
17 hidden globally being such a now commonplace
18 feature that it comes to a point where the
19 criminal law is impotent and even -- we've got
20 to a point where even the civil standard of
21 proof is proven no match for these complex
22 global structures. So I think when we're
23 talking about these provisions in the context of
24 human rights, it's, you know, whose human rights
25 are we talking about. Is it the countries who

1 have been robbed of the kind of schooling roads
2 health provisions by kleptocrats, or is it the
3 human rights of a single individual? And I
4 think finding the right balance between those
5 two concepts of human rights is a really
6 important part of the discussion.

7 MS. MAGONET: Thank you both.

8 Those are my questions, Mr. Commissioner.

9 THE COMMISSIONER: Thank you, Ms. Magonet. And now
10 Mr. Rauch-Davis on behalf of Transparency
11 International, who has been allocated
12 15 minutes.

13 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner.

14 **EXAMINATION BY MR. RAUCH-DAVIS:**

15 Q Mr. Moiseienko, I take it from your evidence
16 this morning that the UWO orders are used as a
17 tool in information gathering, investigation and
18 destruction of money laundering. Is that a fair
19 characterization?

20 A (AM) Yes, correct.

21 Q And you went through the Baker case in some
22 detail in your evidence this morning about how
23 the EWOs only are really effective if you have
24 in mind or have information on the beneficial
25 ownership of the corporations or complex trusts?

1 A (AM) Yes.

2 Q So my question to you is doesn't the UK's
3 corporate beneficial ownership registry assist
4 in that type of information gathering or that
5 type of investigation?

6 A (AM) I think it would if one is interested in
7 the affairs of a UK registered company, but then
8 of course regardless of whether the UK has or
9 does not have a publicly accessible beneficial
10 ownership register, which it does happen to
11 have, that information would be available to UK
12 law enforcement agencies anyway. So the
13 challenge here is that we're talking about
14 companies or other legal entities incorporated
15 or based elsewhere in the world and the Baker
16 case in particular involved several Panamanian
17 foundations, and that poses a challenge in terms
18 of investigating who owns -- who is the ultimate
19 beneficial owner of the property, what do you
20 know about them, and then building your case
21 based on that information. That is very
22 difficult because that information might not be
23 forthcoming and you would be trying to piece
24 together what you learned from different sources
25 about an exceedingly complex corporate

1 structure.

2 Q I guess part of the problem there is the
3 voracity of the information coming from these
4 international companies to the registry itself.
5 Would you agree with that?

6 A (AM) I would. Yes. And maybe I'll give the
7 floor to Helena. She's been meaning to jump in.

8 Q Oh, yes --

9 A (HW) I'll just give you a bit of wider context
10 on beneficial ownership of the UK, if it's of
11 interest.

12 So there is currently a bill due to be
13 introduced to the UK parliament, though we don't
14 yet have a date for that, which you may be aware
15 of from your colleagues in the UK, which will
16 require corporate -- overseas corporate owners
17 of real property in the UK to name their
18 beneficial owner. And that is due to come
19 forward hopefully in the next session. There's
20 been quite a push to bring that onto the
21 legislative books.

22 Q And the expectation, I take it, Ms. Wood, you
23 would agree that the expectation is that that
24 type of regime would work in tandem with the UWO
25 regime to create an overall more effective civil

1 forfeiture regime; is that correct?

2 A (HW) I think the intention behind the
3 registration of overseas ownership is slightly
4 separate. It's kind of dealing with a problem
5 of kind of the opaqueness of who is putting
6 assets into the UK economy. That said, I think
7 it will be a really helpful investigative source
8 of all kind of forms of illicit wealth entering
9 the UK. And again, I refer back to that
10 deterrent effect. It may deter those who have
11 hidden behind overseas corporate structures in
12 purchasing high net worth properties,
13 particularly in London.

14 Q Wouldn't it assist in the investigation and the
15 discretion to implement these types of
16 proceedings, UWO proceedings or any civil
17 forfeiture proceedings?

18 A (HW) In my personal view it might negate the
19 need for a UWO in some circumstances because
20 sometimes the need for a UWO is there where
21 there's no other way to get at that information
22 and that's often the case in these complex
23 ownership structures. So where a beneficial
24 ownership register of overseas owned properties
25 is in place, that information should be there,

1 whether -- I go to your point on voracity. It
2 relies on the ability to verify that data and
3 sanction those who provide false data to
4 account. So it will be one measure, but the
5 proof will be in whether sanctions are put
6 against those who provide false information and
7 how well the registry is policed.

8 What we know from the current corporate
9 transparent and open register the UK has is
10 transparency is not the only answer and there's
11 a particular problem with lack of verification
12 of data in the UK, which is currently under
13 scrutiny and should be legislated for shortly.

14 Q And the Hussein matter that's referenced in the
15 RUSI report, Mr. Hussein, I take it, hid most of
16 his assets through complex shell corporation
17 structures and things like that. Isn't that
18 right?

19 A (HW) I'll defer to my colleague as well on this
20 one. But to my knowledge they were UK-based
21 companies through which he held his property
22 rather than overseas complex shell structures.
23 He was, one might opine, a slightly less
24 sophisticated criminal.

25 Q Mr. Moiseienko, was that your understanding as

1 well?

2 A (AM) To be honest, I don't know. I'm not sure.

3 I need to go back to the judgment to check if it
4 makes any comments on that.

5 Q Thank you. Ms. Wood, I guess the final topic of
6 questions I have are just on the economics of
7 the UWO regime, and you gave evidence this
8 morning that it was slightly naive, I think, of
9 the previous regime of setting a self-funding
10 target and that it was doomed to fail because of
11 the litigious nature of some its opponents or
12 some of its -- the people who are against such a
13 regime. Could you expand on that? Was that not
14 anticipated prior to setting the budget and this
15 type of thought?

16 A (HW) Yeah, I don't think the authorities had
17 really done their due diligence on how -- on the
18 litigation they should be expecting and perhaps
19 a naivety that people would perhaps walk away
20 from their assets. But as we've learned through
21 the course of the regime people are very, very
22 keen to hang on to their illicit wealth.
23 Perhaps prison, whilst prison can be seen as an
24 occupational hazard people really don't want to
25 let go of their property. So I think that has

1 been a slight naivety on the part of the
2 authorities, yes.

3 Q So my understanding was that evidence was for
4 the prior regime to the UWOs; right? I see your
5 nodding your head.

6 A (HW) That's correct, yes. So that was the
7 original operation. That was the ethics
8 recovery agency where we had a sole agency in
9 the UK who was able to initiate civil
10 proceedings under part 5 of the Proceeds of
11 Crime Act. Since then that agency has been
12 disbanded and the power spread across the range
13 of agencies who are able to kind of
14 self-generate kind of arguably higher quality
15 cases.

16 Q Do you share the same sentiment on the current
17 regime, or is there the same type of target on
18 the current UWO regime?

19 A (HW) No, it was absolutely a point, kind of a
20 learning from our experience that financial
21 targets and incentives in place. In POCA we
22 used to have a very kind of target-driven
23 approach to the Proceeds of Crime Acts. Whether
24 that was under part 5 under the criminal
25 confiscation regime or cash forfeiture, it was

1 very driven by targets, and that has led to
2 widespread problems both in the criminal
3 confiscations and civil. So we've ended up with
4 a huge legacy on the criminal side, for example,
5 of unenforceable orders; we have a value-based
6 rather than asset-based criminal regime in the
7 UK. So those financial targets were done away
8 with, and I refer back to that point that the
9 system should be judged on its impact against
10 criminality rather than it being a kind of cost
11 centre or income generator.

12 Q I guess so instead of purely assessing its
13 impacts on the tangible revenue it produces, the
14 focus is trying to shift or is shifting towards
15 the less discernible financial benefits
16 associated with all anti-money laundering
17 effects; is that fair?

18 A (HW) Yes. But again I refer back to one of my
19 previous answers. It's a hugely under
20 researched area. And I certainly think there'll
21 be value globally, not just parochial in the UK,
22 and better understanding in articulating the
23 benefits of asset recovery. Intuitively we know
24 that it will have an impact. Intuitively we
25 know that criminals don't want to give up that

1 wealth, and it will provide a disincentive to
2 further reengage in crime. But there's just a
3 fundamental global lack of an empirical research
4 basis for that, so I would encourage more
5 research in this area to prove their kind of
6 case or not around the utility of asset recovery
7 in general.

8 Q Thank you. Those are my questions.

9 Unless, Mr. Moiseienko, do you have anything
10 to add on that final question?

11 A (AM) Yeah. I think I would only add that it's
12 exceedingly difficult to estimate the impact of
13 any legislative regulatory or other intervention
14 on the overall scale of money laundering because
15 it's so difficult to measure money laundering in
16 the first place. So if we're talking about
17 effectiveness in those terms I think it's
18 probably a dead end, to be honest, so I would
19 imagine that any research into this subject
20 would really involve trying to understand the
21 experiences of organized criminals and how they
22 approach, you know, what keeps them up at night;
23 right? It's probably much more of a sort of
24 ethnographic research that one would have to
25 undertake. Because whenever you operate with,

1 you know, billions or trillions that are
2 allegedly laundered around the world every year,
3 it's never possible to quantify that. And even
4 in any given country on a smaller scale. And
5 then it's never possible to attribute any change
6 in the status quo to the effect of any
7 particular intervention. It might just be
8 haphazard and happenstance. So just a couple of
9 cautionary words about the difficulties of doing
10 that kind of research.

11 Q I take you point, Mr. Moiseienko, that there are
12 difficulties in the research, but there is
13 research to the effect of eliminating these
14 types of proceeds of crime in a local economy
15 will have benefits in terms of increased market
16 confidence, benefits to small businesses and
17 other legitimately run businesses. That type of
18 research is out there, isn't it?

19 A (AM) Yes. I mean, there's no doubt in the fact
20 that it's good to take away the proceeds of
21 crime, but it's just that there are different
22 strands of research that are happening in this
23 domain, and some of them have proven more
24 difficult. Others are probably more promising.
25 That was the point I was making.

1 MR. RAUCH-DAVIS: Thank you. Those are my questions.

2 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

3 Ms. Magonet, did you have anything arising?

4 MS. MAGONET: No, Mr. Commissioner. Thank you.

5 THE COMMISSIONER: Ms. Hughes?

6 MS. HUGHES: No, Mr. Commissioner. Nothing arising.

7 THE COMMISSIONER: Ms. Patel?

8 MS. PATEL: Nothing arising. Thank you, Mr.
Commissioner.

9 THE COMMISSIONER: Thank you, Ms. Wood and

10 Mr. Moiseienko. We're very appreciative of your

11 engagement with the commission and the insights

12 and understanding you've provided to us in an

13 area of considerable interest. So you're now

14 excused from further testimony. Thank you.

15 **(WITNESSES EXCUSED)**

16 THE COMMISSIONER: I think we'll adjourn now until

17 tomorrow morning at 9:30.

18 MS. PATEL: Yes, Mr. Commissioner.

19 THE COMMISSIONER: Thank you.

20 THE REGISTRAR: The hearing is now adjourned until

21 December 16th, 2020 at 9:30 a.m.

22 **(PROCEEDINGS ADJOURNED AT 12:47 P.M. TO DECEMBER 16,**

23 **2020)**

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