



The clause that could stop money laundering in Britain

The Magnitsky clause would send a clear message that human rights abusers cannot invest and conceal their wealth in the UK

Jonathan Fisher, QC

December 8 2016, 12:01am, The Times



Sergei Magnitsky was tortured and imprisoned for a year without trial in Russia
ALEXANDER ZEMLIANICHENKO/AP



Share



Saved

politicians, public officials and human rights abusers is not welcome in this country, it will support the introduction of a Magnitsky clause into UK law.

Attracting cross-party support, a group of MPs led by Margaret Hodge, Dominic Raab and Tom Brake — with support from Dominic Grieve, Edward Garnier, Douglas Carswell, Ian Blackford and Caroline Lucas among others — proposed a Magnitsky-style framework as an amendment to the Criminal Finances Bill 2016 last month. If it is passed, the amendment would expand the scope of the existing civil asset recovery regime in Part 5 of the Proceeds of Crime Act 2002, to better capture the wealth of human rights abusers.

The clause bears the name of Sergei Magnitsky, a courageous lawyer and auditor who dared to make a complaint of a \$230 million fraud against Russian public officials in 2007. Because of trumped-up charges, he was imprisoned for a year without trial in Russia. During that time, he was denied medical attention, full access to legal representation and was tortured. He died on November 16, 2009. An independent investigation concluded he was subjected to torture by eight prison guards on the day of his death. Since then, no one has been convicted in relation to Magnitsky's torture or the underlying fraud that he uncovered.

Aimed at ending the immunity for those associated with his death, a Magnitsky asset-freezing and visa restriction framework has since been introduced in the US, and there are efforts underway to introduce similar legislation in Canada and across the European Union.

The introduction of a clause that is tailored for the UK would simultaneously send out several important messages. It would afford protection to whistleblowers and journalists who bravely expose corruption and other forms of serious wrongdoing. In addition, it would send a clear message that those responsible for gross abuses of human rights forfeit their ability to invest and conceal their wealth in the UK.



The proposed Magnitsky clause would operate in the following way: persons who commit human rights abuses against those daring to speak out against illegal activity would be the subject of a designation order made by a High Court judge. If a designation order is made, a High Court judge could make associated property prohibition orders if considered appropriate. The primary effect of the designation order would be to trigger the civil recovery proceedings.

In this way, the clause would fit snugly into Part 5 of the Proceeds of Crime Act 2002, which provides for civil recovery of unlawfully obtained property, and specifically capture UK property held by persons believed to be involved in serious abuses of human rights abroad. The public interest protected by a Magnitsky clause would be well served as it deters persons involved in wrongdoing of the utmost gravity from channelling their wealth into property in the UK or through the UK financial system.

Any resistance to the clause on the basis that there are sufficient existing powers is misplaced. The Part 5 regime contains a loophole in that it does not capture the assets of human rights abusers who claim that their conduct was lawful and officially sanctioned in their homeland. The sanctions regime, meanwhile, is dependent on the political and security considerations of the day. Further, the proposed new Unexplained Wealth Order regime, compelling a person to explain the provenance of their assets, hinges on a disparity between a person's income and their property first being

Against this background, a Magnitsky clause would remedy a legislative lacuna.

A more fitting tribute to the memory of Sergei Magnitsky could not be imagined. With an eye to its historic role as promoter of the Rule of Law and fundamental civil liberties, it is time for the government to step up to the plate and support the amendment. **Jonathan Fisher, QC, is a practising barrister at Bright Line Law and Red Lion Chambers. He is also a visiting professor in practice at the London School of Economics. The Magnitsky Campaign instructed him to draft the amendment**



Share

Saved

Comments are subject to our community guidelines, which can be viewed [here](#).

0 comments

+ Follow

Post comment

Newest | Oldest | Most Recommended



BACK TO TOP

GET IN TOUCH

Contact us

Help

The Times Editorial Complaints

The Sunday Times Editorial Complaints

Place an announcement

Classified advertising