

Response to Consultation:
Transparency of land ownership involving trusts

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This is a response to the consultation led by the Department for Levelling Up, Housing and Communities on the transparency of land ownership involving trusts.

About us

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We are responding to this consultation in our individual capacities, not on behalf of our organisations.

About our research

We are the authors (with Anna Powell-Smith) of "[Catch Me if You Can: Gaps in the Register of Overseas Entities](#)", published by the LSE International Inequalities Institute in September 2023.

In this paper we use publicly available data released by Companies House and HM Land Registry to assess to what extent the Register of Overseas Entities is currently delivering its objectives. We identify and quantify several major 'gaps' in the scope and operation of the register and make recommendations for how the register could be improved.

Our research finds that at least 27% of overseas entities that hold land in England & Wales (relating to 69,000 properties) are part of a trust structure, meaning that information about the beneficial owners of these properties is currently not publicly accessible. We also find that at least 3% of overseas entities (18,000 properties) are themselves acting as trustees, meaning that trust information is also not reported to Companies House.

Overall principle of transparency of trusts owning land

Question 1: Do you agree that more direct information about the ownership and control of land, including where a trust structure is involved, would help address the issues in the housing sector identified above?

Yes.

We strongly endorse the four benefits highlighted in the government's consultation document, namely: high-rise residential buildings (building remediation); community groups and business (underused or misused properties); private rented sector (rogue landlords); other local authority enforcement (tax and regulation).

As discussed further in answer to Question 2, we would also add the importance of beneficial ownership information for transparency in the planning system, and generally for identifying potential conflicts of interest in public decision-making over the use and development of land.

In order to have the positive benefits for the housing sector identified by the government, it is essential that there is transparency over both who *controls* land (in the case of trusts, the trustees) *and* who has the right to *benefit* from it (in the case of trusts, the beneficiaries). Merely knowing who controls the land is in many cases insufficient. See further p6 and p16 of our paper.

Question 2: Are you aware of, or have you experienced, any housing-related issues where a lack of ownership information has caused a problem? Please give details.

There are many instances where public decisions are taken regarding the use and development of land, where it is important for the public to be able to find out who stands to benefit. This is an essential safeguard against potential conflicts of interest.

For example, at present, a local planning officer who is deciding a planning application, could secretly be a beneficiary of the adjoining property (via a trust) and this information would not be available to anyone involved in the planning process. Likewise, individuals or organisations who are opposing a development proposal may be able to hide the fact that they have a direct economic interest in the proposal if they are the beneficiaries of adjoining land.

One real-life example is a case involving the use of trusts to conceal the purchaser of flats previously owned by Hackney Borough Council.¹

Question 3: What further benefits do you see from increasing the transparency of land ownership, especially where trusts are involved, and what are the risks? Please provide any evidence you may have to support your position.

We would frame this differently. Land ownership is already highly transparent in the absence of trusts: in simple cases where the land is owned directly by an individual, anyone can look up the owner of the property (for a small fee) via the Land Registry website. We think the question that the government should be asking is not "should we make trusts *more* transparent?" but rather: "why should trusts be any *less* transparent than other ownership structures?" (One could even call this the argument for levelling up...)

¹ <https://www.hamhigh.co.uk/news/21130389.who-rakes-cash-wall-silence-hackney-council-profits-secretive-tesco-land-deal/>

Accordingly, we propose a simple principle that we think should guide the government's policymaking in this area (which also extends to other assets besides land, e.g. UK companies). We call this the '**parity principle**': the level of transparency that applies to a particular asset should not depend at all on *how* the asset is held (i.e. what form of ownership structure is used). Instead, it should depend solely on (1) the nature of the asset (e.g. whether UK land, UK company, etc) and (2) the personal characteristics of the owner(s) disclosed (e.g. whether vulnerable).

There are two main reasons for favouring the parity principle:

The first is a principled point about fairness. Everyone who controls and/or has a right to benefit from land should face the same level of transparency, whether they use a simple ownership structure or a complex one. Otherwise, there is effectively a two-tier system in which those with access to expensive lawyers can obtain secrecy that is not available to everyone else.

The second is a pragmatic point about behavioural responses. If the government allows the level of transparency to vary according to the type of ownership structure used (as currently occurs via trusts), then all of the bad actors and others who demand secrecy will inevitably switch to using whichever ownership structure is least transparent. The analogy is with squeezing a balloon.

Questions about future transparency of trusts involving minors

Question 4: In any future proposed solution for enhancing transparency about trusts on the ROE following this consultation, do you believe that information about minors should be available to public inspection: (a) by default, with the onus on the overseas entity, the trust, or their representatives, to apply for protection under section 25 of the ECTEA 2022; or, (b) access permitted only by application with the applicant required to demonstrate a legitimate interest in the information? Please give reasons for your answer.

We would answer this question by reference to the guiding principle outlined in our answer to Question 3 above. Applying this principle:

Minors do not currently have any special exemption from appearing on the Register of Overseas Entities as a registered beneficial owner in 'simple' cases where the minor owns shares in the overseas entity directly. An exemption for minors should apply across the board (i.e. regardless of the ownership structure that is placed on top of the overseas entity) or not at all. There is no justification for an exemption that only applies to minors whose interest in the overseas entity (or underlying land) happens to be via a trust.

Consequently, we favour option (a), which achieves parity with cases under the ROE that do not involve trusts.

Question 5: If you believe that information about minors should not be made public by default, do you believe that it should remain accessible only to law enforcement, HMRC and public authorities, or would you support limited access under certain circumstances (for example, on application with a reason provided)? Please give reasons for your answer.

Our answer to this question is strictly 'not applicable' given our answer to Question 4. However, if the government favours a legitimate interest regime, we urge that this regime must include a practicable facility for 'bulk access' to register data for appropriate classes of persons, for example academic researchers, NGOs and investigative journalists. It is not sufficient for a legitimate interest regime only to allow access on a case-by-case basis, as this would mean that researchers and others are unable to use the register to identify systemic risks.

Options for enhancing transparency of trust information held on the ROE

Question 6: In your view, which of these options would it be most appropriate to take forward? Please give reasons for your answer, including your views about any risks associated with each option, and how it might help to achieve the government's aims.

Option 1: Trust information publicly available by default, except for protected information

Option 2: Partial information made publicly available by default

Option 3: No change in public availability

We strongly favour Option 1. Our research finds that at least 27% of overseas entities that hold land in England & Wales (relating to 69,000 properties) are part of a trust structure. In this context, a failure to treat trusts in the same way as other ownership structures fundamentally undermines the efficacy of the ROE.

We agree with the two 'pros' for this option identified by the government i.e. the high money-laundering risk posed by trusts, and the greater ease of access for those with legitimate interest. We would add to these: (1) fairness, following the 'parity principle' that we explained in answer to Question 3; and (2) prevention of avoidance of the transparency requirements that already apply to owners holding via other ownership structures.

We disagree with the two 'cons' suggested by the government. In particular:

- (1) Many trusts are purely commercial arrangements. But more fundamentally, even if some trusts do involve private family and financial arrangements, this is neither unique to trusts, nor something that should override the public interest in land transparency specifically.
- (2) The potential legal risks are overstated. The recent ECJ decision is not binding on the UK, and in any case the government can always use primary legislation to insulate the policy from legal challenge. Again, it is unclear why trusts should be treated as a special case when personal information is already published under the ROE where trusts are not involved.

We address the question of why all trust information should be made available by default, in our answer to Question 9.

Question 7: What is the potential impact on business of your preferred option? If you believe there will be an impact, please evidence what that impact could be, and how businesses may be supported.

We do not foresee any significant impact on business. Indeed, if it is true (although we are sceptical) that "trusts are generally private family and financial arrangements", as the government states, then it is hard to see what the impact on business could be. There will be minimal additional compliance cost for affected trusts because this information should already be collected for reporting to Companies House.

Question 8: What is the potential impact on individuals of your preferred option? If you believe that this would not be helped by the expanded protection regime, please provide reasons, and any alternative suggestions.

The current regime for protection of vulnerable individuals has already been extended to cover any trust parties who meet the criteria. We do not think that any additional 'blanket' protection for trust beneficiaries is necessary or justified. There might be a case for making the existing protection regime

somewhat easier to apply for: the current requirement of evidencing “serious risk of being subjected to violence or intimidation” seems quite a high bar. However, if so, it is essential for fairness and anti-avoidance that the regime applies equally to everyone, without any special treatment for those who happen to hold their interest via a trust.

Question 9: If your preference is Option 2, which categories of data do you consider should be publicly available? Please give reasons for your answer with reference to the government’s stated principles set out in chapter 1 of this document.

Our answer to this question is strictly ‘not applicable’ given our answer to Question 6. However, we provide here our reasons for favouring that all trusts information should be made available by default.

Under the existing ROE regime as it applies in the absence of a trust, individuals are required to be registered as beneficial owners if they meet any of the 5 conditions under Para 6 Schedule 2 of the Economic Crime (Transparency and Enforcement) Act 2022. These include, broadly that the individual has either a right to *benefit* from the overseas entity, directly or indirectly (Condition 1) or a right to exercise significant influence or *control* over it (Conditions 2-5).

Consequently, the existing legislative framework recognises that *either benefit or control* is sufficient to trigger registration as a beneficial owner and for the personal information (other than protected information) about these individuals to be made publicly available.

It follows from this that in relation to trusts, both the beneficiaries (who are entitled to benefit from the overseas entity) and the trustees and protectors (who are generally entitled to influence or control the overseas entity) should be included within the scope of publicly available information. Anything short of this would effectively retain a two-tier system of transparency where, in effect, a reduced level of transparency applies to trusts compared with other types of holding structure.

There is a special case for also including settlors within the scope of publicly available information, in relation to money-laundering. The settlor is, by definition, the source of the funds for the purchase of the overseas entity by the trust, so when investigating the proceeds of crime or corruption it is especially important to know who this is.

In relation to each of these trust parties, the same information should be made available as required for any other registered beneficial owner, under Para 3 Schedule 1 of the Economic Crime (Transparency and Enforcement) Act 2022, with the same protected information as under Section 22 with the exception, obviously, of the existing provision for trusts information.

Question 10: Do you have any other views on this issue that you wish to share with us?

For further evidence on the use of trusts under the ROE, and arguments for public access to trusts information, see p16-21 of our paper [“Catch Me if You Can: Gaps in the Register of Overseas Entities”](#), published by the LSE International Inequalities Institute in September 2023.

Increasing transparency of land-owning trusts

Question 11: Do you agree that any future transparency requirements should apply to all land, regardless of use class?

Yes. This is because all the ‘use cases’ for transparency identified by the government in Chapter 1 of the consultation, can be applied to all types of land, including all forms of both residential and commercial land.

Question 12: Are there any factors the government should consider regarding different land use classes?

No. Although the use cases for transparency could in principle apply differently, or with varying force, to different land use classes, in practice we think that all land use classes require the same level of transparency in order to avoid distortions in the market for land that could result from inconsistent treatment.

Question 13: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of greater transparency of land ownership as a matter of public interest? Please tick all that apply and give reasons for your answer.

Our answer to this question is the same as for Question 9.

Question 14: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to address issues in the housing sector? Please tick all that apply and give reasons for your answer.

Our answer to this question is the same as for Question 9.

Question 15: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to tackle illicit finance and corruption in respect of UK land ownership by overseas trusts? Please tick all that apply and give reasons for your answer, noting that overseas trusts are considered by the National Risk Assessment to pose a higher risk for money laundering.

Our answer to this question is the same as for Question 9. We would emphasise the point made in relation to settlors being the source of funds, since this is especially important in relation to tackling illicit finance and corruption.

Question 16: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to tackle illicit finance and corruption in respect of UK land ownership by UK trusts? Please tick all that apply and give reasons for your answer, noting that UK trusts are considered by the National Risk Assessment to pose a relatively lower risk for money laundering.

Our answer to this question is the same as for Question 9. There is no good reason to apply different levels of transparency to overseas trusts and UK trusts. Even though it is likely that overseas trusts currently pose more of a risk for illicit finance and corruption than UK trusts, this is likely because at present they have less stringent reporting requirements. If ownership via overseas trusts became more transparent than for UK trusts, then in future the preference for overseas trusts would likely be reversed and instead – ironically – UK trusts could become the vehicle of choice for bad actors. This follows from the general observation that we made in answer to Question 3, that any disparity in transparency requirements depending on the type of holding structure is liable to be actively exploited.

Question 17: Which of the above options do you consider reasonable and proportionate to address the issues outlined in this consultation? Please give reasons for your answer.

Option 1 – Retain existing access practices relating to trusts information

Option 2 – Increased transparency of non-UK trusts holding UK land

Option 3 – Publish the minimum information necessary to fulfil objectives and retain current privacy practices for all other information

Option 4 – Publish the minimum information necessary to fulfil objectives and increase access to further information through a new ‘legitimate interest’ test

Option 5 – Publish all information collected about trusts by default

The options provided by the government do not adequately distinguish between information that is published on an ‘asset-to-owner’ versus ‘owner-to-asset’ basis.

Currently, in the absence of a trust arrangement, information about the owners of land is typically available on an ‘asset-to-owner’ basis i.e. it is possible for anyone to look up, via HM Land Registry, the owner of a specific property (upon payment of a small fee), but it is not possible to look up all of the land owned by a specified individual.

An exception to this is for land that is owned via company. In this case, in the absence of a trust arrangement, it is in theory possible to look up information on an ‘owner-to-asset’ basis via a combination of the company ownership datasets published by HM Land Registry, and the PSC Register (incorporating the ROE) published by Companies House. However, in practice this is difficult or impossible due to a lack of any unique person identifier in Companies House data.

We think that all information about trusts should be published by default (i.e. Option 5), *but* that this information should generally only be publicly available on an asset-to-owner basis. Access on an owner-to-asset basis should additionally be available to anyone with a legitimate interest. The reason for including all information collected about trusts is the same as for our answer to Question 9.

Question 18: If you chose options 3 or 4, which of the following data would you consider necessary and proportionate for the government to publish by default in order to identify a trust holding a particular piece of land, if further data is available under certain circumstances? Please tick all that apply and give reasons for your answer.

See answer to Question 17.

Question 19: If you chose option 4, who do you think should qualify under a ‘legitimate interest test’ to allow access to further detail? Please tick all that apply and give reasons for your answer.

Resident on land owned by the trust

Owner/resident of land neighbouring the land owned by the trust

Residents associations or their representatives

Relevant local authorities

Investigative journalists (for reasons other than money laundering or terrorist financing)

Academic institutions (for research reasons)

Other (please specify)

We think that all of the above should be within the scope of a legitimate interest regime. We would additionally emphasise that for research purposes (e.g. academic institutions, and sometimes

investigative journalists), it is essential that a legitimate interest regime is able to facilitate access to bulk data from the register, and not only individual records on a case-by-case basis. Without this facility, it is impossible for non-governmental interested parties to provide evidence about systemic risks affecting the register.

Exemptions from publication

Question 20: Please detail any situations where you think trust information should be protect from publication by default, and give reasons for your answers.

In line with our answer to Question 3, we do not think that there should be any special treatment for trusts, compared with other forms of holding structure for UK land. In line with our answer to Question 8, we support the extension of the existing protection regime for vulnerable individuals to any trust parties who meet the criteria. However, there should be no additional special tests for trust parties compared with other types of owner.