

Department for Levelling Up, Housing and Communities, Department for Business and Trade, HM

Revenue and Customs and HM Treasury

Transparency of land ownership involving trusts consultation – Response from Propertymark

February 2024

Background

1. Propertymark is the UK's leading professional body of property agents, with nearly 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – overview

2. In recent years, the UK Government has taken steps to make it easier to identify the ownership and beneficiaries of businesses and property in the UK. While recent legislation, such as the Economic Crime (Transparency and Enforcement) Act 2022¹ and the Economic Crime and Corporate Transparency Act 2023², established a register of beneficial owners and overseas entities, and His Majesty's Land Registry maintains a record of the legal owners of land, information on who may be in control of land beyond the owner is not currently easily available. The cross-department consultation on transparency of land ownership involving trusts seeks views on how the transparency of land can be further increased, especially where trusts own land and where there may be additional beneficiaries or individuals who have control over the land. This is part of a wider UK Government initiative to tackle economic crime within the property sector and uses powers granted through the Levelling Up and Regeneration Act 2023³.

Propertymark response – summary

3. Propertymark welcomes the opportunity to respond to the consultation on the transparency of land ownership involving trusts. Property agents play a key role in facilitating the sale of land and to enable freeholders and landlords to rent out their lease for both residential and commercial

¹ <https://www.legislation.gov.uk/en/ukpga/2022/10/contents>

² <https://www.legislation.gov.uk/ukpga/2023/56/contents/enacted>

³ <https://www.legislation.gov.uk/ukpga/2023/55/enacted>

purposes. During these transactions, being able to verify the owner of the land is essential for a smooth and quick transaction, however, there are cases where the full ownership of land is unknown. This makes it difficult to arrange for amendments to be made to a lease or to sell property connected to the land as there may be key information required to potential buyers that only the freeholder would have access to. Additionally, having easier access to the known owners and beneficiaries of land helps property agents to conduct the legally required anti-money laundering due diligence checks and ensure they do not fall foul of the Proceeds of Crime Act 2002⁴, helping to prevent further money laundering taking place through UK property.

4. Ultimately, Propertymark supports the efforts made by the UK Government to improve the transparency of the ownership of land involving trusts. Improving transparency prevents potential barriers to the sales process and helps property agents more effectively carry out due diligence when trusts are looking to purchase land or property. While we recognise concerns over privacy, one effective way that the UK Government can help to prevent a misuse of increased transparency is to introduce mandatory Regulation of property agents and establish a statutory Code of Practice for property agents working in the sector.

Questions

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?

5. Yes, we agree that more direct information about the ownership and control of land would help address the issues in the housing sector that have been highlighted by the UK Government, including identifying liable landlords from remediation works in high-risk buildings, ensuring that property agents can identify the owners of derelict or underused shops and premises, improving the enforcement of rogue landlords in the private rented sector, allowing local authorities to curb tax avoidance and to curb money laundering. However, Propertymark would like to raise two issues that may limit the effectiveness of the proposals:
 - Firstly, regarding high-rise buildings, residents should be protected from being charged remediation costs considering they were not involved in any decision made or directly

⁴ <https://www.legislation.gov.uk/ukpga/2002/29/contents>

benefitted from the installation of unsafe cladding. The UK Government has correctly identified that individual residents and resident groups may struggle to find the contact details for their specific landlord, which would be considerably easier with a full ownership structure. While this is a positive first step, landlords looking to escape liability for remediation costs may be able to hide their full net worth which may not be easily ascertained, even if a full structure of the landlord group is provided. Furthermore, some landlords linked to the landlord group may be able to escape being identified, especially if their net worth would make the rest of the landlord group liable for funding all remediation costs. This must be addressed in order to prevent liable landlords from charging residents for remediation costs.

- Secondly, while greater transparency will make it easier for local authorities to identify rogue landlords, local authorities remain fundamentally under-resourced and under-funded to effectively take action against rogue operators. Additionally, while some rogue landlords may find it more difficult to disguise their ownership from local authorities, we are concerned that rogue landlords will simply not record that they own certain property. Without effective resourcing, it will be difficult for local authorities to verify the information provided by rogue landlords is correct.

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.

6. Yes, we are aware of housing related issues where a lack of ownership information has caused a problem. We include four examples:

- **Firstly, where a prospective tenant lost £13,000 in a fake agent scam.**⁵ - in September 2023, fraudsters operated under a name of a legitimate agency and held two days of viewings. However, it later turned out that the flat shown had been booked through online travel agency Booking.com, which is how the fraudsters got the keys. After looking around the property, the prospective tenants were sent what they say was a legitimate-looking contract and an invoice. They later discovered the scammers had used the property owner's real name in the documents. The scammers also used a legitimate real estate agency's company registration number on their invoice. Because the prospective tenants

⁵ <https://www.bbc.co.uk/news/uk-england-london-66846416>

did not have guarantors, they had to pay six months of rent in advance, along with a deposit worth five weeks' rent. Shortly after transferring the money to a bank account, they received an email from OpenRent saying they had removed the advert due to suspicions of fraud. The prospective tenants reached out to the agent, who was still responsive and agreed to meet up to give them the keys. But no-one showed up.

- **Secondly, in September 2023, a former company director was found guilty of a property scheme in which he sought fraudulently to sell a community centre without the knowledge of the owners.** The individual used false details and identification documents to deceive solicitors into believing he had the authority of the owners to transfer the property into the name of a company. It was reported that the fraud which was designed to take ownership of the property without the knowledge of the true owners and with the intention of selling the property on for substantial financial gain.⁶
- **Thirdly, property agents being unable to identify the freehold or being able to contact them during disputes with lease** - this has made it difficult for property agents to arrange meetings between freeholders and leaseholders, leading to expensive unchanged ground rent increases, a lack of service for service charges, difficulties selling the property and difficulties in gaining permission for alterations to be made to the property. Improving ownership information would help to ensure disputes from a lease can be resolved and to increase the speed of the sale of leasehold properties.
- **Fourthly, a lack of ownership information on owners of high-rise buildings can cause significant delays in establishing the new fire and building safety systems that have been introduced through the Building Safety Act 2022⁷** - under the Act, building owners will have to appoint a Principal Accountable Person to carry out the duties and establish an effective system for monitoring and assessing fire safety risks (among various other duties) to ensure that the building is safe from potential fire risks. However, if the ownership information is not known, there are two key issues that arise. Firstly, if the owner is not known, it would be difficult to establish a Principal Accountable Person. This difficulty is amplified if the owner is an overseas entity and may not be aware of the legislative changes or the building is owned by a complicated Trust where responsibility for appointing a

⁶ <https://westbridgfordwire.com/former-nottingham-director-guilty-of-multi-million-pound-property-fraud/>

⁷ <https://www.legislation.gov.uk/ukpga/2022/30/contents/enacted>

Principal Accountable Person cannot be decided. Secondly, it makes enforcing building standards will be much more difficult as the owner ultimately responsible will be difficult to hold to account. Increasing ownership information would help ensure Principal Accountable Persons can always be effectively appointed and building owners can be held to account if they breach building safety regulations.

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.

7. We think there are two further benefits from increasing transparency of land ownership: We do not envision that any risks should arise from greater transparency of land ownership. Firstly, help resolve disputes and increase the speed in which land can be bought and sold. When selling land, knowing who has ultimate control over decision-making is essential to ensure a fast and successful sales process. Secondly, reducing fall through of sales due to delays in obtaining required information, which can cost estate agents and consumers thousands of pounds. This also applies to sales of properties on land where approval or original documents are required by the owner to ensure the sale goes through.

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?
8. We agree that information about minors' ownership should be publicly available in order to improve the sales process and enable property agents to be able to work effectively with landowners. We do however understand the importance of protecting the identity of minors. Therefore, a solution that enables transactions to take place but helps to protect the identity of minors would be to ensure that minors can be represented by legal adults on the Register of Overseas Entities (ROE) until the minor comes of age. While the ROE would keep a record of the minor, the minor's representative would be publicly available, with details explaining that they are

acting on behalf of a minor. We would expect that the ROE would establish requirements for adult working on the behalf of minors to go through a verification process.

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.

9. Yes, we believe that law enforcement, HMRC and public authorities should have access to the information of minors on the ROE. This would enable them to carry out their duties within the public interest.

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.

10. Out of the three options provided by the UK Government, Option 1: Trust information publicly available by default except for protected information, Option 2: Partial information made publicly available by default, and Option 3: No change in public availability, we support Option 1. This decision would improve the speed of property sales where it cannot be easily ascertained who the owner or individual with the ultimate decision is over affected land or the property in the case of a leasehold property. Measures to provide some but not all of the information required to contact the owner would fail to make any substantial change. While there are legitimate concerns over private information, there is a public interest in who owns land and a professional interest in contacting owners for property agent purposes.

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.

11. We think the potential impact will be positive and there are multiple benefits for property agents:

- Firstly, there are positive benefits for residential estate and letting agents when advertising a property for sale or let. Under the Consumer Protection from Unfair Trading Regulations

2008⁸, property agents are legally required to provide material information when working with consumers and advertising property for sale and let. This includes requirements to specify if there are additional rights of access to land or restrictions on the property. Having greater access to the identity of the owner of the property, especially if the property is a leasehold, and the owner of the surrounding land will make this information easier to obtain and enable property agents to more quickly advertise properties and resolve potential issues. Additionally, it is best industry practice for estate agents to identify potential disputes with the surrounding land and the property before the sales process starts or early on during the process as to ensure that any potential buyer is aware of the disputes or to make sure they are resolved before the property is bought. The impact of increasing transparency of land ownership ensures that these checks can be made quicker, preventing lengthy delays to bringing in new tenants and potential fall throughs if issues are identified later in the sales process. Making Trust information publicly available by default would result in property agents having the greatest ability to proceed in the sales and renting process above all other options as they would have access to the greatest amount of information readily available.

- Secondly, there are clear benefits for property agents who are Principal Accountable Persons in high-rise buildings and are attempting to carry out their duties as part of the Building Safety Act 2022. When registering a building that is owned by a Trust, they will need to know who the individual with overall responsibility or control for the building is, who may not be the same as the individual or hired the agent to manage the building. This will enable the agent to provide the name of the owner to the Regulator, as well as establish a full history of the building components and materials, which is required when assessing building risks. Property agents may also need access to previous documents relating to works conducted on the building or the contact details of the principal contractor in charge of the works. This will ensure that the Principal Accountable Person has access to the full golden thread of information, enabling them to plan remediation works or better manage potential risks within the building. As with previously, Option 1 presents the greatest access to information of ownership, allowing property agents to identify the ultimate owner of a building or land in the least amount of time with the fewest barriers to access.

⁸ <https://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

12. Thirdly, greater transparency enables property agents to more effectively carry out anti-money laundering due diligence on their customers and prevent fraud. Under Money Laundering Regulations property agents who are supervised by HMRC for anti-money laundering must ensure that the due diligence they carry out is appropriate for the level of risk in order to minimise the threat of their business being used to launder money⁹. Like other sectors property agents have to consider the level of identification, verification and monitoring needed to check for anti-money laundering. The rules also require estate agents to identify the existence of a beneficial owner and understand how they operate. Allowing Trust information to be publicly available by default except for protected information would be particularly beneficial when identifying the beneficial owners of property if the property agent is working with an individual who is purchasing property on behalf of the Trust.

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.

13. There are at least four broad positive impacts for individuals as a result of the benefits stated for property agents:

- Firstly, individuals looking to purchase property or land will benefit from a clear understanding of who owns the property or land, leading to faster property transactions and lower chances of costly fall throughs.
- Secondly, residents living in the high-risk building with an unclear owner will benefit from more effective fire safety measures being put in place as a result of the Principal Accountable Person being able to identify the building owner and having access to all the information, they need to assess building safety risks and implement fire risk prevention procedures.
- Thirdly, there will be instances where residential management companies or similar arrangements will be in charge of building safety within a high-risk building rather than an agent. In these cases, residents will benefit from the same benefits mentioned for property agents who have been assigned as the Principal Accountable Person, with residents being

⁹ <https://www.gov.uk/government/publications/money-laundering-regulations-2007-supervision-of-estate-agency-businesses>

able to access more information on a high-risk building, allowing them to put appropriate building safety measures in place and remediate unsafe building materials.

- Fourthly, it ensures that landowners do not sell or lease their land either knowingly or unknowingly for illicit purposes where individuals or businesses are hiding behind complicated trusts.

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.

14. Our preferred option is Option 1.

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

15. No, we have no further comments to make.

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

16. Yes, we agree with the UK Government's perspective that excluding one class of land would potentially drive bad practices to the other and increase unnecessary complexity, particularly for mixed-use land.

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

17. No, generally we do not believe that the government should issue different transparency requirements for residential and commercial land.

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.

- Name of trust (or other identifier)
- Details of land owned by the trust
- Name of trustees

- **Beneficiaries' rights over the land**
- **Name of beneficiaries**
- **Address(s) of parties to trust**
- **Name of settlors**
- **Dates of birth of parties to trust**
- **Name of protectors (if applicable)**
- **Any other details (please specify)**

18. We agree that all of the above details should be collected in order for the UK Government to achieve greater transparency. Ensuring that this information is readily available will help to reduce existing barriers that property agents have when they are unable to identify the owner of land or a property, which will increase the benefits identified in questions 7 and 8.

Question 14: Which of the above 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.

19. We agree that all of the above details should be collected in order for the UK Government to address issues in the housing sector. Providing this level of information enables property agents to proceed with contacting any owner where consent or further information is required to continue the sale, negotiate a change in a lease or any other duty an agent is looking to carry out.

Question 15: Which of the above 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.

20. We agree that all of the above details should be collected in order for the UK Government to address issues in the housing sector. Providing this level of information enables property agents to proceed with contacting any owner where consent or further information is required to continue the sale, negotiate a change in a lease or any other duty an agent is looking to carry out.

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.

21. We agree that all of the above details are necessary to ensure that property agents can effectively carry out customer due diligence and tackle illicit finance. Having access to all the above data will allow property agents to identify the beneficial owners of Trusts, ensuring that land is not bought by individuals or groups who present a money laundering risk.

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**

22. Option 4 is Propertymark’s preferred option. While ideally Option 5 would be the most beneficial to property agents in order to carry out customer due diligence and complete property transactions in the most time efficient way, we understand that there may be reasons why information is not publicly available to everyone. As a compromise, we hope that the regulation of property agents can be introduced in order to allow for quick and easy access to information when requested.

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.

- **Name of trust (or other identifier)**
- **Details of land owned by the trust**
- **Name of trustees**
- **Beneficiaries’ rights over the land**
- **Name of beneficiaries**

- **Address(s) of parties to trust**
- **Name of settlors**
- **Dates of birth of parties to trust**
- **Name of protectors (if applicable)**
- **Any other details (please specify)**

23. We would consider that the first five (up to but not including address(s) of parties to trust) would be sufficient for an agent to satisfy that a potential buyer is a money laundering risk while maintaining sufficient privacy. However, we would urge that the full information be available to property agents upon a legitimate interest request to have access to the full data set in case they require more information on a specific case to make an informed money laundering risk assessment. Any potential privacy concerns can be further reduced by introducing the regulation of property agents.

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)**

24. We would consider that all of the above should qualify under a ‘legitimate interest test’ as long as there is a specific provable reason why these individuals or groups require access to this information. In addition, we would also urge that the UK Government includes ‘where a qualified professional requires access to this information in order to carry out any business transaction or legal duties’. This would allow for property agents to have access to the information if they are carrying out money-laundering risk assessments or if the information is required in order to contact anyone associated with the Trust.

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

25. We are unaware of any situation where trust information should be protected from publication by default.