



Department for Levelling Up, Housing and Communities: Transparency of Land Ownership involving Trusts

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Introduction

1. The Country Land and Business Association (CLA) is the membership organisation for owners and managers of land, property and businesses in rural England and Wales. Our 26,000 members own or manage around half the rural land in England and Wales. As well as agriculture and forestry, our members operate nearly 250 different types of business located in the rural area.
2. The CLA welcomes this opportunity to respond to the consultation on increasing the transparency of land ownership involving trusts. Many members of the CLA make use of trusts as an aspect of their succession planning, particularly where this will help to provide for vulnerable beneficiaries.

The Nature of Trusts

3. Throughout the consultation, the unspoken assumption seems to be that the trusts being discussed are bare trusts. These are trusts where one or more individuals share the absolute beneficial ownership of an asset, and the trustees are acting on the instructions of those beneficial owners as a nominee. While such trusts do exist, in reality many of the trusts owning land in England and Wales will be of other types, in which the trustees have a much more active role, and the level of control and benefit enjoyed by beneficiaries may be very limited. (HM Revenue & Customs figures indicate that in respect of the tax year ending 5 April 2023 self-assessment tax returns were submitted by 82,000 discretionary trusts, 44,000 interest in possession trusts, and 15,500 other trusts such as estates, heritage maintenance funds, vulnerable beneficiary trusts and charitable trusts.¹)
4. For example, many family trusts take the form of discretionary trusts. In such trusts, none of the potential beneficiaries will have any guaranteed right to receive a benefit, and in many cases they will have no power to influence the management of the trust by the trustees.
5. For greater transparency to be beneficial rather than (at best) an additional layer of bureaucracy and (at worst) an infringement of individual privacy rights with potential impacts on personal safety, the results of that additional transparency must be meaningful. Simply providing details of all the potential beneficiaries of a trust is unlikely to provide any meaningful insight into the actual ownership or control of land, and is liable to be misleading.
6. It is therefore important that the different forms of trust are taken into account in the proposed legislation. Many of the arguments made in favour of the proposals would only apply in relation to bare trusts. They do not make sense in relation to other types of

¹ *Statistics on trusts in the UK October 2023* - <https://www.gov.uk/government/statistics/trust-statistics/statistics-on-trusts-in-the-uk-october-2022>

trust. If these proposals are to be taken forward, they should only apply in relation to bare trusts.

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?

7. The government put forward three overriding principles as the motivation for these proposed changes. We believe that these require further examination.

Greater transparency of land ownership where trusts are involved is a matter of legitimate public interest

8. The examples given in paragraphs 46 and 47 of the consultation would not be properly addressed by the current proposals.
9. Where other parties are affected by air quality issues caused by the land, or by unkept and dilapidated properties on the land, or by pests and damp arising on the land, they should direct their complaints to the legal owners. It is the legal owners of the land (i.e. the trustees) who will be legally responsible for such issues, and who will have the power to resolve them. Depending on the type of trust, the beneficiaries may have little or no way to influence the trustees to rectify the problems. It would therefore be unjust for them to be blamed by the individuals making the complaint, who will see that they are listed as beneficiaries and so may assume that they have the ability to fix the issue. It is already possible to identify the legal owners of the land using HM Land Registry.
10. If an understanding of the beneficial ownership of land is needed to prevent the avoidance of business rates, then that information would need to be made available to local authorities, but that would not be an argument in favour of public transparency. According to the consultation, the issue is that businesses engage in the evasion of business rates by making false registrations at Companies House. It seems doubtful that such businesses can be relied upon to provide honest information to a trust register. Therefore, the proposals would not address the problem.
11. The consultation makes the comparison between companies and trusts, and suggests that the arguments in favour of company transparency should apply to trusts as well. However, there are important relevant differences between trusts and companies. A person will generally choose to become involved in a company, whether as shareholder or director. However, a person may have no control over whether they are the beneficiary of a trust, and indeed may not even know that they are one of the possible beneficiaries. Also, whereas companies have the benefit of limited liability provided by the state, trusts enjoy no such benefit. Therefore, the analogy is inappropriate, and it would not be appropriate for trusts to be treated in the same way as companies.
12. The consultation document mentions at paragraph 46 that the Law Commission stated that “the ownership, as well as the user, of land, a finite resource, carries social responsibilities and is a matter of legitimate public interest”. It is worth noting that this comment in the Law Commission’s paper *Second Report on Land Registration: Inspection of the Register* was not the Law Commission’s own conclusion, but rather a summary of one of the arguments that had been to the Law Commission as part of its consultation. The Law Commission also included in the same report the counterargument that: “The potential harm to individual persons is not outweighed by some theoretical public “right to know”.

Greater transparency may help address a number of issues in the housing sector

13. Again, the problems identified in paragraph 50 of the consultation would not be properly addressed by the current proposals.
14. Under the Building Safety Act 2022, it is only where the beneficiary under a trust is a partnership or body corporate that it will be treated as associated with the person holding an interest in the building on trust for them. It does not apply to beneficiaries who are individuals. Given that there are a relatively limited number of high-rise buildings compared to the number of trusts in existence, it would be possible to make this information available to leaseholders in a way that is far less of an infringement of individual privacy rights.
15. If community groups or businesses wish to purchase or take a tenancy over land held on trust, they will need to contact the trustees, who will be identifiable as the legal owners on HM Land Registry. There is no reason for them to contact beneficiaries of the trust, who would generally have no power to sell it or grant a tenancy.
16. If local authorities need to know about the beneficial ownership of properties in order to take enforcement action, then this information can be made available to them without the need for public access. This would solve this problem in a way that is far less of an infringement of individual privacy rights.

Transparent ownership can help with tackling illicit finance and corruption

17. It is generally only going to be the government and law enforcement agencies that will need access to details of trusts for the purpose of tackling money laundering and illicit finance. If investigative journalists require access to information on trusts to follow up a legitimate investigation into money laundering or terrorist financing, then they will be able to make a Trust Data Request from the Trust Registration Service.

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.

18. Increased transparency as proposed presents a risk to the physical security of trust beneficiaries. We know that many CLA members who are beneficiaries of trusts live in historic properties in isolated rural locations, which may be difficult to secure. Making their personal details available online may increase the risk of them being targeted by criminals. It will also provide information that would be useful in carrying out a crime against them.
19. In addition, there are likely to be many more remote relatives listed as potential beneficiaries of trusts, who are very unlikely in practice to ever benefit from the trust. Someone looking at the register would not be aware of this and so may assume that they have more wealth than they do in fact. This may make them targets for criminals, with risks including physical theft, physical or online harassment with the aim of extracting money, and financial scams. Similarly, simply by the fact that a person is identified as a potential beneficiary, this may make them a target for hostage-takers wishing to extract ransom from wealthier members of their family.
20. As well as the physical risks, this will also increase the risk of fraud and identity theft. Individuals are encouraged for good reason to take care with their personal details and prevent these falling into the wrong hands. If the personal details of trust beneficiaries

and their relatives (who may also be trust beneficiaries) are made available online, then these can be used by criminals to impersonate them and carry out fraud against them. The more personal information that is made available, the more vulnerable a person will be.

21. One of the major reasons for the use of trusts is to provide for beneficiaries who for whatever reason are considered to be vulnerable, where it is thought better that they do not enjoy the ownership or control of particular assets. There are many possible reasons for this. It may be because they are a minor, or a young adult. It may be because they are mentally incapacitated, or with fluctuating mental capacity, or with impaired mental capacity. It may be because they are poor at managing their finances and assets, or overly trusting of other people. It may be because they struggle with addictions of various kinds. Whatever the reason, there is a real danger in making such people's personal information available to the public, particularly in a context that implies that they will have access to or links to wealth.
22. There is also the risk that these proposals undermine the right to privacy. Everyone has a right to privacy. This is a right in itself, regardless of whether any specific physical or financial harm is suffered as a result of any invasion of privacy. It is guaranteed by Article 8 of the European Convention on Human Rights, which states that "Everyone has the right to respect for his private and family life, his home and his correspondence."
23. Public authorities are only permitted to interfere with the Article 8 right where "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." It is not clear from the consultation in what way the increased transparency would serve any of those permitted objects. Even if it would, it would need to be shown that the interference with privacy was necessary to achieve that object, and that it was proportionate to do so.
24. We therefore believe that the proposals as currently shaped could be unlawful, and so subject to legal challenge.
25. A further risk is that creating any form of register will impose a significant burden in time and money on those responsible for providing information. There are particular concerns if the process for registering a trust's interest in land requires the interest to be registered with HM Land Registry. A trust may potentially own minor rights, such as mineral rights or manorial rights, in land registered on many different titles (for example, where land was sold for development and subsequently subdivided into many different plots). The registration of these rights on potentially hundreds of different land titles would be prohibitively expensive, especially where the rights themselves may have little financial value. There is little to no public benefit in maintaining a register of the beneficial ownership of such minor interests. Therefore, we believe that any proposals taken forward should be limited to trusts' freehold or registrable leasehold interests in land excluding manorial or mineral interests, and only where such interests are already registered.

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.

26. Information about minors should only be available to the government and law enforcement authorities. It is not appropriate for it to be disclosed to other parties. We do not believe that anyone else would have a legitimate interest to access this information regarding a minor, particularly given the risk that such information could potentially then be widely disseminated (e.g. via social media) with a tremendous risk to the minor's mental health and physical security.
27. One reason for this is that minors will necessarily be more vulnerable, particularly to fraudulent influence or coercive pressure.
28. Another reason is that minors have no other way to protect their personal information. Even if a minor is aware that they are the beneficiary of a trust, they would not have the legal capacity to disclaim their interest in order to cease being a beneficiary. They are also unlikely to be aware that they need to ensure the trustees apply for protection on their behalf. Once a person's personal information has been made publicly available, it is no longer possible to recover it from those who have already accessed it. Therefore, no one's personal information should be made publicly available until they are an adult of full capacity who can decide for themselves whether they wish to exercise any rights to protection they may have. When a minor reaches adulthood, the ROE should give them sufficient notice to enable them to submit a request for protection if they wish to do so.
29. A further reason is that minors are unlikely to be exercising control over the use of the land themselves, and so any benefits that may exist in publishing details of other beneficiaries will not apply to minor beneficiaries.
30. We believe that the same treatment should apply to information about young adults (for instance, those under the age of 25). Many of the same arguments made in relation to minors will also apply to young adults. They are still going to be relatively vulnerable to influence and pressure. We believe they are relatively unlikely to be engaged in money laundering activities. They are also still unlikely in many cases to be receiving substantial benefits from a trust fund, which will often have been set up to prevent young beneficiaries from accessing too much wealth before the age of 25 or a higher age.

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.

31. We believe that information about minors and young adults should only be accessible to law enforcement, HMRC and public authorities. This is for the reasons stated in paragraphs 26 to 30.

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.

32. We believe that Option 3 is the only appropriate option. This would ensure that those with a legitimate reason for obtaining trust information would be able to access it, while

helping to prevent personal information being made available to malicious persons. This therefore achieves a balance between the government's aims, and the protection of individuals and their privacy rights.

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.

33. For the reasons stated in paragraphs 8 to 12, we do not believe that the examples provided by the government have demonstrated a public interest in greater transparency of land ownership.
34. However, if we imagine that public interest in greater transparency of land ownership is a good in itself, we believe that the information needed to meet this objective would be:
- a) The name of the trust
 - b) Details of the land owned by the trust
 - c) Names of any beneficiaries who have in fact benefited from the trust's interest in the land, to more than a de minimis extent
 - d) The nature of a beneficiary's interest under the terms of the trust
35. This would enable the public to identify who in fact benefits from land held on trust. However, we believe that the interference with privacy rights resulting from this information being publicly available would be disproportionate to the objective being achieved.

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.

36. We believe that the only information that would be needed to address issues in the housing sector would be:
- a) The name of the trust
 - b) Details of the land owned by the trust
 - c) Name of the trustees
 - d) Address for service for the trustees
37. This would be sufficient for any interested parties to contact the trustees, who are the people with the power and responsibilities to address their concerns about the use of the land, or to whom they would be able to make an offer for the purchase or letting of the land.
38. We do not believe it is helpful to provide details of beneficiaries, for the reasons set out in answer to Question 1.

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.

39. We believe that the information that would help to meet this purpose would be:
- a) The name of the trust
 - b) Details of the land owned by the trust
 - c) Name and date of birth of the trustees
 - d) Name and date of birth of the settlors
 - e) Name and date of birth of the beneficiaries
 - f) Name and date of birth of any protectors, or anyone with a power of appointment
40. This would enable the government and law enforcement to identify the involvement of particular individuals or entities in a trust, or at least it would if the trust complies with its obligations to provide that information accurately. We believe that this could be proportionate for the government to collect this information, provided it can guarantee that it will be held securely, but we do not believe that it would ever be proportionate to make this information (particularly dates of birth) available to the public for this purpose.

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.

41. Our answer to this question is the same as to Question 15.

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.

42. We consider that Option 1 would be appropriate to address the issues outlined in the consultation. This is because, for the reasons described in paragraphs 8 to 17, we do not think that public transparency of trust information would help to address these issues, even if it was proportionate.
43. Where issues do exist, they can be addressed more effectively in other ways. For example, tenants experiencing difficulties identifying their landlord already have the right to do this under section 1 of the Landlord and Tenant Act 1985. If this right is not working, then it may be that it needs to be better publicised and enforced.
44. If there are issues in protecting leaseholder rights under the Building Safety Act 2022, then a more specific and targeted solution would likely be far more helpful to the leaseholders, and far less intrusive of privacy rights generally.
45. If local authorities are struggling to recover council tax and business rates on empty premises then the appropriate redress is to bring proceedings against the registered proprietors of the premises, be they absolute owners or trustees. Where a court order has been obtained for arrears, then a Charge can be placed on the title requiring the debt (plus interest) to be cleared before the property can be transferred or mortgaged.
46. If the decision is taken to make some trust details available, recognising the greater risk identified in relation to non-UK trusts, then we believe it would be wrong for this to go beyond the details that are published for legal owners on HM Land Registry. There is no



reason why trust beneficiaries should be subject to a greater invasion of privacy than absolute legal owners of property.

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.

47. We do not agree that it would be necessary to achieve the government's goals for any data to be made public by default.

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.

48. We do not agree that it would be necessary to achieve the government's goals for any data to be made available on application to those outside of the government and law enforcement.

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

49. For the reasons stated in paragraphs 26 to 30, we think that information concerning minors should be protected from publication by default. We believe that the same arguments apply to protecting information concerning adults lacking the mental capacity to manage their own financial affairs.

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