Briefing: Data on the beneficial ownership of property and land

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1. Summary

- Access to accurate data on the beneficial owners of property and land the owners who benefit from the use and sale of these assets is important to prevent money laundering and for various social purposes.
- It is now generally possible for the public to discover the beneficial owner of any registered land in England and Wales, or to discover all the land beneficially owned via any UK or overseas company, if trusts are not part of the ownership chain.
- Wherever trusts are involved, however, beneficial ownership information is largely opaque to the public, and sometimes even to law enforcement. This creates a disparity between the transparency of owning property via trusts versus other structures, giving criminals an incentive to use trusts.
- The Government should tackle this by making data on the beneficial ownership of land owned via trusts available on the same terms as other types of owner.
- This would be straightforward to implement, would maintain the privacy and safety of individuals, would help prevent the use of UK property for money laundering, and

would support communities who need to know about the real owners of local property.

2. Why care about the beneficial ownership of land?

Unclear land and property ownership impacts people's lives. The Law Commission has written, "the ownership, as well as the user, of land, a finite resource, carries social responsibilities and is a matter of legitimate public interest".¹ For these reasons, information on the legal owner of land and property in England and Wales has been available from a public register behind a paywall since 1990.

However, the *legal* owner of land is not necessarily the same as the *beneficial* owner. The beneficial owner is the person who has ultimate ownership or control over an asset, including the rights to enjoy the proceeds of the asset's sale.² If the legal owner of land is a company or the trustee of a trust, they may not also be the beneficial owner. Recently, interest has turned to the beneficial ownership of property, partly due to concerns that UK land and property has been used to conceal the proceeds of criminal activity.

Tackling criminal activity

Obscure beneficial ownership is commonly associated with criminals, who avoid discovery by hiding their identity through complex ownership chains. Maintaining the anonymity of the beneficial owners of land makes it harder to:

- **Trace owners linked to dirty money.** The UK's 2020 National Risk Assessment noted that "the property sector faces a high risk from money laundering, due to the large amounts that can be moved through or invested in the sector, and the low levels of transparency".³ Research by Transparency International found that at least £6.7 billion of UK property has been purchased using suspicious funds.⁴
- Enforce sanctions. Without beneficial ownership information, assets held by sanctioned individuals often escape notice. After the invasion of Ukraine, researchers found £700m of UK property that was linked to sanctioned individuals but not flagged for asset freezes.⁵
- **Investigate tax evasion.** The Pandora Papers showed that the use of shell companies to evade tax is a widespread issue. A recent study found that an increase in the transparency requirements for financial assets relative to real estate

¹ Law Commission, <u>'Second Report on Land Registration: Inspection of the Register'</u> (1985), p.15.

² GOV.UK, <u>'Factsheet: beneficial ownership'</u> (2023).

³ HM Treasury and Home Office, <u>'National risk assessment of money laundering and terrorist</u> <u>financing 2020'</u> (2020), p.107.

⁴ Transparency International UK, <u>'Amendment 117: Revealing Parties to Trusts in the Register of</u> <u>Overseas Entities</u>' (2023).

⁵ See e.g. The Guardian, <u>'Campaigners query UK government's ability to identify oligarchs' assets'</u> (2022).

assets led to a significant rise in UK real estate investment from companies based in tax havens. $^{\rm 6}$

To tackle money laundering effectively, groups outside of government need access to information on beneficial ownership. The European Court has ruled that press and civil society organisations involved in the fight against financial crime have a legitimate interest in accessing such information.⁷

Other purposes

Land is not just a financial asset, it is a physical asset that exists within a community. Not knowing the beneficial owner of land and property makes it harder to:

- **Tackle anti-social owners.** If councils wish to collect unpaid business rates, they may first have to unravel deliberately convoluted ownership chains. These may include shell companies that conceal the beneficial owner and dissolve before court action can be taken Westminster City Council, for example, were investigating £7.9 million of unpaid rates from 30 shops in 2022.⁸
- **Plan housing development**. It is hard to plan housing development effectively where the ownership of land is obscure. As the UK Geospatial Commission has written, "information about land ownership and control can be opaque, causing inefficiencies in the property development and planning system".⁹

Poor-quality data on beneficial ownership also affects groups beyond government. It may:

- Limit the power of residents. Local people may be powerless to identify who is responsible for empty or abandoned properties causing social problems.
- Limit the powers of tenants. Tenants may struggle to join with others to tackle a problematic landlord because they are unable to find out which other properties that landlord owns.
- Limit public participation. The Scottish Land Commission points more generally to a lack of land ownership information being a potential barrier to public participation in decision-making, a pillar of the human rights framework.¹⁰

⁶ Bomare and Le Guern Herry, <u>'Will We Ever Be Able to Track Offshore Wealth? Evidence from the</u> <u>Offshore Real Estate Market in the UK'</u> (2022).

⁷ Judgement of the Court in Joined Cases C-37/20 and C-601/20 2022, s.74.

⁸ The Guardian, <u>'Where did all those US sweet shops in London come from? The problem is, we don't know</u>' (2022).

⁹ Geospatial Commission, <u>'Finding common ground: Integrating data, science and innovation for</u> better use of land' (2023).

¹⁰ Scottish Land Commission Coimisean Fearainn na h-Alba, <u>'Transparency of Ownership and Land</u> <u>Use Decision-Making'</u> (2023).

3. Data on beneficial ownership of land

This section explains what data on beneficial owners of land is available, and to whom. (We limit our discussion to England and Wales here.)

Available data on legal ownership of land

HM Land Registry (HMLR) maintains a title register of the legal owner of most land in England and Wales. This information has been publicly searchable by address since 1990, behind a paywall. Anyone can pay £3 to obtain a copy of the title for a given location - this includes the name of the legal owner, who may be a company or a person.¹¹ The geospatial boundaries of the registered land can be obtained for a further £3.

Since 2017, HMLR has also published two free, comprehensive datasets of titles registered to companies. These datasets contain addresses and proprietor names, but not geospatial boundaries:

- The 'UK companies' dataset contains details of titles registered to UK companies, local authorities and other corporate bodies.¹²
- The 'Overseas companies' dataset contains details of titles registered to non-UK companies or corporate bodies.¹³

It is thus now possible for the public to obtain the following information:

- for any *location*, the name of the legal owner of the land, via the title register¹⁴
- for any *company* (UK or overseas), the details of all the land registered in the name of that company, via the corporate datasets.

It is not possible for the public to obtain the set of titles registered in an individual's name. This information is available only to those with a legitimate interest, such as the police or bankruptcy receivers.¹⁵ Even then, it is likely that individuals' titles must be connected manually since HMLR does not use a unique person identifier.

Available data on beneficial ownership of land

As mentioned, HMLR registers only the legal owner of a title, who is not necessarily the same person as the beneficial owner.¹⁶ Typically, where a title is registered in the name of

¹¹ A title may be for land or property. Some titles contain many properties, while some properties are broken into multiple titles. See GOV.UK, <u>'Search for land and property information'</u>.

¹² GOV.UK, <u>'UK companies that own property in England and Wales'</u>.

¹³ GOV.UK, 'Overseas companies that own property in England and Wales'.

¹⁴ Except in the case of unregistered land - around 13% of land by area in England and Wales is not registered. For more, see Who Owns England?, <u>'The holes in the map: England's unregistered land'</u> (2019).

¹⁵ HM Land Registry, <u>'Practice guide 74: searchers of the index of proprietors' names</u>' (2022).

¹⁶ That the title register only records legal ownership is a long-standing principle known as the 'curtain' principle. Combined with other principles, it means that anyone buying a title can do so

an individual, the legal and beneficial owner are the same so their name can be obtained per address for a payment of £3. However, there are three scenarios where the legal and beneficial owner may differ: titles registered to UK companies, titles registered to overseas companies, and titles registered to the trustees of trusts.¹⁷ We discuss these below.

a. Land legally registered to UK companies

Around 4 million titles (15% of the total) are registered to UK companies. In this case, the legal owner of the land is the UK company, but the beneficial owner of the land is the beneficial owner or owners of the UK company.

Since 2016, information on most beneficial owners of UK companies has been published on the Persons with Significant Control (PSC) register.¹⁸ This register is maintained by Companies House, and records the beneficial owners of UK companies regardless of whether they own land. Exemptions from publication are available for vulnerable owners.¹⁹

Although some flaws remain in the PSC register, broadly speaking, the beneficial ownership of UK companies - and thus of land registered to UK companies - is publicly available. This also means it is possible to obtain a list of all the land owned by any individual who beneficially owns a UK company.

However, an exception to the above may arise when a trust is involved in the ownership chain of the UK company. In this case, the PSC register records the trustees of the trust, but only records other parties if they have influence or control over the company's affairs.²⁰ Parties who purely benefit from the company's assets, but do not control them, are not recorded on the PSC register.²¹

b. Land legally registered to overseas companies

Around 93,000 titles (3.5% of the total) are registered to overseas companies. As for UK companies, to establish the beneficial ownership of these titles, it is necessary to establish the beneficial ownership of the overseas company involved.

safely based only on the non-sensitive information in the register. For more, see HM Land Registry, <u>'Legal estates and beneficial interests: what's the difference?'</u> (2016); RICS, <u>'What is the issue with</u> <u>land registration?'</u> (2022).

¹⁷ The legal and beneficial owner may also differ for titles registered to a partner of an unincorporated partnership. In this scenario there are 'silent partners' who do not legally own the land, but who are entitled to rent from the property, or proceeds of sale, under the terms of the partnership agreement. Given that trusts are typically used for this partnership agreement, we do not discuss this scenario in detail since it is at least partially covered by the others.

¹⁸ Department for Business, Innovation and Skills, <u>'People with Significant Control' Companies</u> <u>House register goes live</u>' (2016); Companies House, <u>'People with significant control (PSCs)'</u> (2020).

¹⁹ <u>The Register of People with Significant Control Regulations 2016/339</u>, section 37.

²⁰ Department for Business, Energy and Industrial Strategy, <u>'Register of Persons with Significant</u> <u>Control: Guidance'</u> (2017).

²¹ This is one reason to favour a single register for the beneficial owners of land over the current system of multiple registers - information recorded by Companies House is only intended to identify the beneficial owners of companies, not of land, so may not be fit for the latter purpose.

Until recently, the beneficial owners of these companies were often impossible to discover, especially for companies based in 'offshore' jurisdictions - countries with high levels of secrecy. Reforms introduced after the invasion of Ukraine aimed to tackle this.²² Since 2022, overseas entities that own land in the UK must register with Companies House and disclose their beneficial owners.²³ Some of this information is then made public in the Register of Overseas Entities (ROE).

In theory, it should thus be possible to discover the beneficial owner of land registered to overseas companies by consulting ROE. However, it is still unclear who ultimately owns many UK properties held by overseas entities, particularly where the ultimate beneficiary is the beneficiary of a trust. Research has found that ROE does not publish the beneficial owners of 71% of the properties in its scope.²⁴ Almost two-thirds of this failure was attributed to the use of trusts in ownership chains.

An amendment from 2023 aimed to address this problem, proposing that Companies House should use ROE to publish the information it collects on the beneficial owners of these trusts.²⁵ Though passed by the House of Lords, the amendment was rejected by the government, reportedly due to concerns about potential legal challenge.²⁶ A consultation on the transparency of trust data was proposed instead, and opened at the end of 2023.²⁷

c. Land legally registered to trustees of trusts

The vast majority of titles - 22.3 million titles, 81% of the total - are registered to individuals. The legal and beneficial owner of such titles is typically the same person unless the title is registered to a trustee of a trust.²⁸

It is hard to establish how common direct trust ownership of property is, as HMLR does not record trustees as distinct from other individual owners.²⁹ In fact, we believe the government itself would struggle to quantify how much land is registered to trustees. However, it is known that 44,000 trusts have acquired a direct interest in UK land since October 2020 alone.³⁰

In this scenario, it is difficult to identify the beneficial owners of the land. Although HMRC's Trust Registration Service (TRS) records the beneficial owners of *some* trusts with interests in land, this information - and therefore the beneficial ownership of land registered to trusts

²² <u>HC Deb</u> 2 March 2022, vol 709, col 1034.

²³ As stipulated by the <u>Economic Crime (Transparency and Enforcement) Act 2022</u>, (c.10); and see GOV.UK, <u>'Factsheet: beneficial ownership'</u> (2023).

²⁴ Arun Advani, Cesar Poux, Anna Powell-Smith and Andy Summers, <u>'Catch me if you can: Gaps in</u> <u>the Register of Overseas Entities'</u> (2023).

²⁵ Transparency International UK, <u>Amendment 117: Revealing Parties to Trusts in the Register of</u> <u>Overseas Entities</u>' (2023).

²⁶ Financial Times, <u>UK government resists moves for tighter corporate transparency</u> (2023).

²⁷ HM Government, <u>'Transparency of land ownership involving trusts consultation'</u> (2023).

²⁸ For background on trusts, see Open Ownership, <u>'An introduction to trusts'</u> (2021).

 ²⁹ Land owned by a trust will usually have a 'Form A' restriction in the title, indicating trust ownership. However, these restrictions are identical for all trusts, so a viewer cannot distinguish between co-ownership trusts, when partners own a house together, and other types of trust.
³⁰ HL Deb 11 September 2023, UIN HL10014.

- is not widely accessible. In theory, anyone with a 'legitimate interest' can access information on the TRS.³¹ However, in practice, access to the register has been non-existent: a Parliamentary Question showed that as of September 2023, not a single TRS data access request had ever been accepted by HMRC.³²

Even law enforcement agencies will struggle to identify the beneficial owners of much land registered to the trustees of trusts: HMLR does not record the name of the trust, and the TRS does not record the title numbers of the land, or maintain up-to-date information after initial registration.

Trusts are therefore the most significant mechanism by which beneficial ownership information is obscured. If a trust owns land either directly, or via a UK or overseas company, there is effectively no beneficial ownership transparency.

4. Key considerations for publishing data

Previous discussions of beneficial ownership transparency have focussed on the beneficial ownership of companies rather than land, and taken an international perspective.³³ In this section, we discuss considerations specific to publishing beneficial ownership information about land in the UK.

The legal framework

The European Court of Justice (ECJ) recently ruled that indiscriminately publishing the ultimate owners of companies violates individuals' right to privacy under European law.³⁴ As mentioned above, a proposed amendment to ROE was reportedly rejected due to concern that a similar legal challenge could be raised in the UK if the beneficial owners of land owned via trusts were published.³⁵

However, we believe this is less likely in the UK, because:

- The ECJ's rulings are no longer directly applicable to the UK.
- The ECJ ruling suggests that opening up beneficial ownership information is a disproportionate measure for tackling money laundering, but a recent government consultation suggests the UK also intends to use the data to benefit its housing market and provide information of significant public interest.³⁶
- There is primary legislation in the UK allowing for the publication of such data. The Levelling-Up and Regeneration Act 2023 gives the Secretary of State powers to

³¹ HMRC, <u>'Trust Registration Service Manual: Trust Data Requests'</u>.

³² <u>HL Deb</u> 11 September 2023, UIN HL10013.

³³ See e.g. RUSI, <u>'For Whose Benefit? Reframing Beneficial Ownership Disclosure Around Users'</u> <u>Needs'</u> (2020); Open Ownership, <u>'Striking a balance: Towards a more nuanced conversation about</u> <u>access to beneficial ownership information'</u> (2023).

³⁴ [Corrected reference to ECHR 17 Jan] The Court of Justice of the European Union, <u>'Press Release</u> <u>No 188/22'</u> (2022).

³⁵ Financial Times, <u>'UK government resists moves for tighter corporate transparency'</u> (2023).

³⁶ HM Government, <u>'Transparency of land ownership involving trusts consultation</u>' (2023).

collect and share information to help with "identifying persons who are beneficial owners of land in England and Wales", including land owned via a trust.³⁷ These powers are intended to help identify attempts to evade disclosure requirements and for national security and macroeconomic purposes.³⁸

- Moreover, the UK has published beneficial ownership information on companies since 2016, under the Companies Act.³⁹ Similarly, HMLR has provided public access to its title register, and its UK and overseas companies datasets, for many years.
- Even if a UK higher court were to declare public access to beneficial ownership land data incompatible with the ECHR, Parliament alone can decide whether the legislation remains valid in light of the incompatibility.⁴⁰

Privacy, risk and legitimate interests

Aside from the legal position, it is important to consider the impact of publishing information on individuals' privacy and safety.

As Open Ownership highlights, there are premises around which the debate on publishing information is organised.⁴¹ Beneficial ownership information inescapably contains personal data because it concerns identifiable individuals. In general, it is agreed that access to personal data should be necessary to achieve a legitimate purpose, and proportional to infringements on individuals' privacy.⁴²

'Legitimate interest' regimes are sometimes proposed as a way to balance privacy concerns against the benefits of transparency, often involving a gradated access regime which ranks the strengths of users' claims to the data. However, such regimes would need to be meaningful and clearly specified to deliver benefits, and this has not always been the case in the past: as noted above, HMRC has yet to approve any requests for access to TRS data.

In addition, accountability mechanisms could safeguard against misuse, potentially including usage tracking, restricted data auditability, and independent data governance. Restricted auditability already exists for land information: in England and Wales, the public can search the land register by address, but only those with a legitimate interest can search by an individual's name; and while comprehensive data is published on land owned by companies, information on land owned by individuals is protected behind a paywall.

³⁷ Levelling-up and Regeneration Act 2023, Part 11 s.219, s.220.

³⁸ Levelling-Up and Regeneration Bill, Explanatory Notes (2022).

³⁹ <u>Companies Act 2006</u> Part 21A and Schedules 1A and 1B, and accompanying secondary legislation as per GOV.UK, <u>'Register of People with Significant Control: Guidance'</u>.

⁴⁰ See e.g. Liberty, '<u>How the Human Rights Act Works</u>'

⁴¹ Open Ownership, <u>'Striking a balance: Towards a more nuanced conversation about access to beneficial ownership information</u>' (2023).

⁴² ICO, <u>'A guide to the data protection principles'</u>; <u>'A guide to lawful basis'</u>; <u>'Principle (c): Data</u> <u>minimisation</u>'.

Parity and displacement

There are now striking disparities between the information published on trusts' ownership of UK land, and the information published for other types of ownership:

- When a UK or overseas company is the legal owner of UK land, the company's beneficial owners are published on the PSC or ROE registers respectively, *except* if a trust is involved in the ownership chain, in which case the trust's beneficial owners are not published anywhere.
- When an individual owns UK land without companies in the ownership chain, the individual's name can be discovered by searching the public land register, *except* if the land is registered via a trust, in which case the trust's beneficial owners are not published. If the land was acquired via a trust after 2020, the beneficiaries of the trust may be recorded on the TRS; if it was acquired before 2020, the beneficiaries are not recorded on any central register.

The disparity is problematic because motivated criminals who wish to own UK land anonymously may simply shift into using trusts. As RUSI has explained, "despite the widespread understanding that various legal entities and arrangements – such as companies, trusts and partnerships – can be used to similar ends, beneficial ownership information in respect of them is not always collected and disclosed consistently... This creates room for displacement".⁴³

Displacement is a well-known effect. For example, after the PSC register was established in 2016, the number of English Limited Partnerships rose by 53% as they were promoted as an 'alternative solution' to avoid transparency.⁴⁴ There is also anecdotal evidence of offshore companies moving land into trusts following the introduction of ROE, but quantifying this is hard to impossible, due to the lack of available data on trusts discussed above.

The special nature of trusts

It is difficult to understand why there is a higher privacy threshold for trusts when it comes to land ownership, and whether this disparity is justified. The traditional argument is that trusts are for private affairs, originally existing simply as promises between people. Transparency over company ownership is the 'price' of limited liability, but trusts receive no corresponding benefit. Moreover, trusts are well-suited to holding assets on behalf of vulnerable people who could not manage them themselves. It would not be suitable, or safe, for these arrangements to be subject to a high level of scrutiny - the argument goes.

This line of reasoning has a number of defects:

⁴³ RUSI, <u>'For Whose Benefit? Reframing Beneficial Ownership Disclosure Around Users' Needs'</u> (2020).

⁴⁴ BBC, <u>'Banned Russian oligarchs exploited UK secrecy loophole'</u> (2022).

- Trusts have not been used solely to manage private affairs for a long time. As data from ROE and the PSC register shows, they often retain company shares and are used in complex ownership chains. It is now generally agreed that the ownership of companies, or the corporate ownership of land, is a matter of public interest: it is unclear why this differs when trusts are involved.
- Like companies, trusts have their own state benefits. The separate tax regime and regulatory rules presumably offer something of value to trust users, otherwise they would not use them. Limited liability is not a particularly special class of state benefit, so it seems that trusts should also have to pay the 'price' of transparency.
- Exemptions for vulnerable beneficial owners can be made available on a case-by-case basis, and these are already available for vulnerable owners on both the PSC and the public land register.⁴⁵
- In practice, trusts are often involved in abuse due to the secrecy they offer to money launderers, so there is a particular interest in making information available about them.⁴⁶

If there are other arguments for maintaining the disparities between the degree of privacy afforded to trusts versus corporate or individual owners, we welcome their advancement.

5. Recommendations

The Government should end the disparity between the data published on people who use trusts to own land, and people who do not. This would reduce the incentives for criminals to displace ownership into trusts, and ensure that communities benefit from transparent beneficial ownership information.

We do not argue that owners using trusts should have *less* privacy than other owners, only that there should be parity with other owners who benefit from land but do not use trusts.

In the short term,⁴⁷ this means that:

- Where trusts are part of an ownership chain over land involving overseas companies, the beneficial owners of the trust should be public
- Where trusts are part of an ownership chain over land involving UK companies, the beneficial owners of the trust should be public
- Where trusts are involved in an ownership chain involving only individuals, details of the beneficial owners should be available on a per-address basis behind a paywall, in the same way that other individual owners can be discovered from the public land register for a £3 fee.

⁴⁵ <u>The Register of People with Significant Control Regulations 2016/339</u>, section 37; HMLR, <u>'Practice guide 57: exempting documents from the general right to inspect and copy'</u>.

⁴⁶ For discussion of abuses see e.g. Global Witness, <u>'Don't take it on trust'</u> (2017) and Open Ownership <u>'An introduction to trusts'</u> (2021).

⁴⁷ In the longer term it could be beneficial to set up a dedicated register of the beneficial owners of UK land, for the reasons discussed above. However, this would be a significant change to the current system of land registration.

In each case, this ensures that the beneficial owners of the land are treated in the same way regardless of whether or not trusts are involved. Also in each case, exemptions from publication should be available for vulnerable beneficial owners, as is already the case for the PSC and the public land register.

This would:

- End the disparity between trusts and other types of owners, and so end the incentives for criminals to 'displace' their ownership into trusts
- Be straightforward to implement and understand, with no need for new complex data governance arrangements
- Be proportionate, allowing communities to monitor corporate ownership and to understand the ownership of particular properties, but not to identify land owned by particular individuals except where there is corporate involvement
- Be possible under existing UK law, with little risk of successful legal challenge.

It would not be difficult to implement, though it would require some minor changes for titles registered to companies:

- The Government would need to allow the publication of the beneficial owners of trusts on ROE, with suitable exemptions for vulnerable owners
- The Government would need to require the recording and publication on PSC of the beneficial owners of trusts where a trustee is the current PSC and where the company owns land, with suitable exemptions for vulnerable owners

And a more substantial change for titles registered to individual trustees:

- HMLR would need to create a lookup service offering details of the beneficial owners of titles registered to trustees, on a per-address basis for a small payment; this could be done either by requiring such beneficial owners to be added to the title and kept up to date, or by improving the information recorded on the TRS
- In the long run, as noted above, it may make more sense to record all beneficial ownership of land at HMLR, and publish this information directly for titles registered to companies, and behind a per-address paywall lookup for titles registered to individuals.

About

The Centre for Public Data is a non-partisan, non-profit research and advocacy organisation that works to improve the quality of UK public data. This briefing was written by Anna Powell-Smith and Amber Dellar. We thank those who reviewed this briefing; any errors are our own. We welcome comments, please contact us at <u>contact@centreforpublicdata.org</u>.