

Department of Levelling Up, Housing and Communities (DLUHC)

HM Treasury (HMT)

HM Revenue and Customs (HMRC)

The Department for Business and Trade (DBT)

By email: trusttransparency@levellingup.gov.uk

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Transparency of land ownership involving trusts

We, the Association of Real Estate Funds¹ (AREF), have read with interest the consultation on the transparency of land ownership involving trusts. We support the Government aims in ensuring there is transparency of ownership to help in tackling illicit finance and corruption and to support the housing market and ensuring land is used properly and for the benefit of society.

However, the obligations and impact of any new disclosure requirements on investors must be proportionate. Especially for those property investors, including investment funds, making large scale professional and institutional investments, that are critical to supporting a number of the Government's priorities, such as decarbonising our homes and buildings, and regenerating our high streets. We note that the Government have recognised that members of large pension fund trusts do not direct or control the investments in the fund. Therefore, the Government do not consider it would be in the public interest for these types of trusts to disclose their beneficiaries publicly. We believe this carve out should be extended to other types of investment funds – such as unit trusts and other regulated vehicles that meet a Genuine Diversity of Ownership (GDO) style test. These funds may have a large number of beneficial owners all with a right to a very small proportion of the property held by the fund. In addition, these funds have to abide by anti-money laundering (AML) rules. We assume these are not the type of trusts the Government had in mind when ensuring there is more transparency of who owns land and property.

When considering additional transparency and disclosure requirements there are some key factors we believe the Government should take into considerations:

- The administrative burden should not be too onerous; this could discourage entirely legitimate investment in property and its development, particularly where UK filing requirements for foreign trusts or beneficiaries are more complex and burdensome than those applicable in alternative global FDI destinations. As acknowledged in the consultation paper, there are already a number of Government registers that contain information about who owns land and those behind companies and trusts. We believe the number of reporting obligations should be streamlined, to minimise duplicative reporting requirements, particularly as regards trust arrangements. By way of example, where a trust that owns UK property (e.g. for institutional investor beneficiaries) has a foreign corporate trustee, that corporate trustee will already be reporting in respect of itself on the Register of Overseas Entities and in respect of the trust via the HMRC's Trust Registration Service. If the reporting requirements in relation to trusts are to be further expanded, an exercise to compare and reconcile the current and proposed enhanced reporting arrangements and, ideally, merge their requirements into a single trust-related register, would help safeguard that legitimate investment.

¹ The Association of Real Estate Funds (AREF) represents the UK real estate funds industry and has over 50 member funds with a collective net asset value of more than £50 billion under management on behalf of their investors. The Association is committed to promoting transparency in performance measurement and fund reporting through the AREF Code of Practice, the MSCI/AREF UK Quarterly Property Funds Index and the AREF Property Fund Vision Handbook.

- The relevant agencies administering any new regime should be appropriately resourced to avoid backlogs in registrations and undue delays in property transactions. We understand that there are significant backlogs of up to two years in dealing with applications to existing registers. These delays are commercially meaningful and increase the cost and risk of property transactions, ultimately making the UK a less attractive destination for overseas investment. The bodies that currently manage disclosure and administer these registers should be better resourced before any new registration process is introduced.
- There should be appropriate sanctions and enforcement powers to ensure disclosure and compliance of any new rules across the board.
- The Government must be mindful of the approaches taken in similar countries to ensure that we do not inadvertently make the UK relatively unattractive to investors.
- The risk of 'misleading reporting' must be managed. It is not uncommon for the use of overseas ownership structures to be inaccurately conflated with tax avoidance or even evasion, even though trust structures making transparency or exemption elections to HMRC have legitimate, reported purposes. Given over a third of UK investment property is owned directly by overseas investors (with additional investment held via indirect holdings, like funds), the use of overseas entities is not unusual in UK real estate investment structures. However, misleading reporting could easily result in reputational risk for entities that comply with the rules simply because they are using a trust structure.
- The implementation of other measures, alongside additional transparency and disclosure requirements, would assist the Government's in its objective to support a housing market that better delivers for the public and supports local jobs in the high street and other commercial properties. These would include:
 - Ensuring local planning departments are sufficiently resourced;
 - Ensuring business rates are affordable;
 - A register of vacant units;
 - Reform of the 1954 Landlord and Tenant Act to ensure that commercial property can be more easily let and vacant properties are let to tenants looking for shorter and more flexible leases;
 - A Landlord registration scheme.

We recommend that Government plans for a phased approach to greater transparency – starting with full disclosure to Government and its various law enforcement and record-keeping agencies. There are genuine reasons for using trusts such as where anonymity is important (minors, vulnerable people, politically exposed individuals etc). Once the Government has better oversight of the ownership of UK land and property through trusts, it should have better understanding of the potential risks associated with greater public disclosure of this data and will therefore be better able to assess and mitigate those risks.

In Annex 1 below we have provided answers to the questions in the consultation and in Annex 2 you will find a summary of trust structures.

If you would like to follow up on our response, please contact either myself (prichards@aref.org.uk) or Jacqui Bungay (jbungay@aref.org.uk), Head of Policy at AREF. Also, as our members invest in real estate and other real assets in the UK and in other jurisdictions, we are always willing to assist Government by sharing their wealth of knowledge and expertise.

Yours sincerely



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Annex: 1 Responses to 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?*

We agree that more transparency on the ownership and control of land would help to address the issues in the housing sector identified in the consultation. However, we believe that initially, this information should only be made available to Government and enforcement agencies. Once the Government better understands the risks associated with full public disclosure, particularly of the names and addresses of relevant individuals, no matter where they might be resident, and the appropriate options to mitigate those risks, then public disclosure should be considered.

In the meantime, there are other policy initiatives which would support a number of Government's objectives in relation to land and property. We set out some suggestions below:

- a. **Vacant units on high streets** – other policies which could support a reduction in vacancy on our high streets include:
 - i. **Resource local planning departments** – to allow them to better respond to the changing uses on our high streets.
 - ii. **Business rate bills should be affordable and responsive** – to avoid imposing unmanageable fixed costs on units which have since reduced in value. Furthermore, a 'fresh start' style relief similar to Scotland could be introduced, which would provide a business rates relief to new occupiers that take on a vacant units for a period of time.
 - iii. **A register of vacant units** – to make landlord or agent contact details available for vacant properties. Where a local community groups or business cannot find the information they need, it should be possible to apply for this information from the local authority or relevant agency.
 - iv. **Reform of the 1954 Landlord and Tenant Act** – to ensure that commercial property can be more easily let and also ensure that landlords with vacant properties are not disincentivised from seeking tenants looking for shorter and more flexible leases.
- b. **Countering rogue landlords:**
 - i. the first step in addressing this challenge must be to make sure that local enforcement agencies have sufficient resource, information, and powers, to crack down on this illegal activity.
 - ii. A Landlord registration scheme as introduced in the rental reform bill will be a helpful first step in addressing transparency and accountability. If the Government is contemplating a register, we would recommend referring to the Rugg Review 2008, which sets out an effective register, and would be a helpful starting point.

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.*

No comment.

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.*

The primary benefit of greater disclosure of beneficial ownership information to Government and enforcement agencies will be to allow sufficient information to tackle illicit finance, money laundering and other illegal activities.

We would recommend deferring full public disclosure of information until the Government is better able to assess the risks and consider appropriate options to mitigate those risks. We consider that possible adverse consequences of greater disclosure and transparency would include:

- a. **Less appetite to invest in property as a result of higher administration costs, expenses or delays** – albeit this risk could be managed through streamlined compliance and administration processes, for trust structures, and adequately resourcing the relevant government departments.
- b. **Liquidity** – if it's hard to deal in property e.g. because of Land Registry backlogs – this will reduce liquidity – which will have a significantly detrimental impact on appetite to invest in the UK.
- c. **Risks to vulnerable, politically exposed, or otherwise at-risk individuals** if their personal data or home address is made available. This may be a significant concern in the context of foreign institutional investors such as sovereign wealth funds and public pension funds and the individuals managing and operating them.
- d. **Misleading reporting** – the potential reputational damage that could be brought on an individual or businesses on misconstruing or misinterpreting the facts. In this regard it is notable that, although in just a couple of areas the consultation document acknowledges that trusts can be used for wholly legitimate reasons, the only example given is where a person may be unable to hold property themselves, either because they are underage or have a disability that affects their capacity. In bringing forward legislative proposals it would be helpful if more commentary could be added about the legitimate use of trusts in the context of investment fund and institutional investment, so the use of trust structures in these scenarios is better understood and not immediately associated with an illegitimate purpose. See Annex 2 below.
- e. **Lower appetite to invest in UK property from overseas investors** – some overseas investors, who are not undertaking any illegal activities but experience a higher level of privacy when investing domestically or in other foreign jurisdictions, may be deterred from investing in the UK. Cultural norms vary greatly in this respect globally and an international comparative analysis may inform an assessment of this risk. This links to the risk highlighted at c. above – many foreign jurisdictions do not offer the same levels of security protection as the UK such that public availability of individual names and addresses may put them at personal risk.

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.

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.*

We recommend that land and property ownership information is only fully disclosed to the Government in the first instance. Once the Government have better oversight of the ownership information, including the level of possible minors that might be impacted, and any other more vulnerable individuals, they will be better able to assess the risks of a public disclosure regime as well as possible strategies to mitigate the risks identified.

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.*

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.*

In the first instance, we believe that Option 3 - No change in public availability - should be the preferred option. This option, alongside greater disclosure of information to Government and enforcement agencies only, and assuming enforcement agencies are given sufficient powers and resource, would enable improvements in tackling money laundering and other criminal activity.

Making the trust information more publicly available, as suggested under Options 1 and 2, should be considered at a later stage, once the Government are better sighted on the risks of public disclosure and possible solutions to manage those risks.

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.*

No comment.

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.*

No comment.

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

No comment.

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

We would expect the same rules to apply to all types of land and property.

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

No comment

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.*

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.*

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.

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.

- 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)

We consider that Government should have the ability to collect all of the above data for the objectives stated in Questions 13 to 16. Although, we would point out in the case of unit trusts and other types of investment funds, obtaining the data on the investors in the funds could be onerous task for the fund manager. The funds may have a very large number of investors who may change on a regular basis; some funds, in the form of unit trusts, allow daily subscriptions and redemptions. In addition, there is a high level of intermediation in the fund market so the ultimate investor may have come through other products in the chain, such as fund-of-funds.

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

In the short term, we believe the Government should retain existing access practices relating to trusts information (Option 1) with disclosures being only made to Government and enforcement agencies. Once Government is comfortable with the risks associated with public disclosure of personal information, and how these should be mitigated, policies involving greater public disclosure could be considered.

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)

No comment.

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)

No comment.

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

As well as UK pension fund trusts, there are other types of investment funds, that invest in property, where the holders of those funds, like the members of pension funds, do not direct or control the investments in the funds. These funds may have a large number of beneficial owners all with a right to a very small proportion of the property held by the fund.

We see a number of practical difficulties in applying both the reporting and transparency rules to such funds:

- There may be a very large number of investors;
- The investors may change on a regular basis. There are funds in the form of unit trusts that allow daily subscriptions and redemptions;
- There is a high level of intermediation in the market so the ultimate investor may have come through other products in the chain, such as fund-of-funds;
- The identity of a fund manager's clients is commercially sensitive. They do not want to share this with their competitors.

The fund managers of such funds are regulated and comprehensive rules are already in place in respect of anti-money laundering (AML). In terms of the other transparency benefits of disclosures, for such funds it is much more relevant who the fund manager is than the ultimate investors. Like for pension fund trusts, we do not believe there is any public interest in these funds disclosing publicly their beneficial owners.

We assume these are not the type of trusts the Government had in mind when ensuring there is more transparency of who owns land and property. We would ask the Government for a carve out from any new transparency rules for land ownership involving trusts such funds. We believe that this is best achieved through applying existing legislative definitions. We would propose excluding the following types of funds:

- Authorised and unauthorised unit trusts, as defined under s237 of the Financial Services and Markets Act 2000.
- Funds that meet a Genuine Diversity of Ownership (GDO) test. This definition of funds applies for various pieces of tax legislation and a common set of conditions applies. It is set out in the HMRC Investment Funds Manual

under IFM17000. This section of the manual has been updated very recently following an extensive consultation exercise with industry bodies by HMRC.

- Institutional investors such as pension schemes; there are existing definitions that can be used.

In addition, we believe that trust information should be protected from publication for protected or vulnerable individuals.

Annex 2: Summary of different trust structures

Trusts generally arise where the legal and beneficial owners are different, and this can happen or be structured in a number of different ways. Tailored rules may be appropriate to reflect these differences. We set out some common examples below.

A company has separate legal personality so it can own legally and beneficially. Given its legal status it can also be a beneficiary under a trust or be a trustee.

A **bare trust**-for example, this will be where a person(s)/ nominee(s) holds an asset on trust for one or more persons and acts at their direction. In this case the person/ nominee holds the legal title to the asset and the beneficiary has the beneficial interest. A company acting as a nominee may be owned by a completely different person to the beneficiary.

This may also be seen in property nominee arrangements including co-ownership arrangements where two or more people have interests as tenant in common in the land (e.g. half share each) but the land is held legally by two nominees or a trust corporation.

Partnerships can be a bit blurred as assets are usually held as partnership assets under partnership law but sometimes, they may be described as held on trust according to the partnership arrangements.

A **constructive trust**-this is where for example a third party has purchased land but it has not been legally transferred to it.

A **unit trust** -this is where a trust corporation or trustees hold assets as a collective investment scheme and sometimes have power to manage (or the manager does under the terms of the trust deed). In this case the Unit Trust issues units to unitholders, who do not have power to manage as such, but collectively own the trust assets according to the units they hold subject to the terms of the trust deed. In the UK these can be regulated products, such as authorised unit trusts for retail investors, and usually with the likes of big insurers and similar. In some cases, they may be exempt unauthorised unit trusts for capital gains exempt investors (UK pension funds and charities). There are also Charities funds and other investment schemes (LTAFs etc) which may include trust arrangements.

Offshore unit trusts (e.g. Jersey Property Unit Trusts and Guernsey Property Unit Trusts). Many UK assets (generally non-residential, but for some large-scale PRS, student accommodation or assisted living developments) are also held in these structures. In simple terms they are typically private offshore versions of the unit trust type arrangements above , almost exclusively for institutional investment in non-private residential assets given their attendant running costs, but the trust's Trustees/Manager and/or administrator are regulated locally , including in relation to AML/CFT compliance.

Pension funds are constituted as trusts by their trust documents and basically empower the trustees to act and invest for the pension beneficiaries (actual or future).

Private trusts (Settlements, wills and trusts)-many people also set up trusts or act as trustees where assets are held for their family members or discretionary (the trustees can choose from selected potential beneficiaries). Wills often include a trust where executors may end up holding assets for a spouse (perhaps for life) and in part or subsequently for children etc.

Charities will also hold assets on trust for the charitable purposes of the trust.