



**Response to Department for Business Innovations & Skills 'Beneficial Ownership Transparency discussion paper' from National Association of Estate Agents (NAEA)
April 2016**

Background

1. National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, being part of a group representing 14,600 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).
2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

Questions

Principle

Q1. UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?

3. Yes. NAEA agrees that foreign companies who want to buy land or property in England and Wales should have to provide beneficial ownership information or declare that there are no people with significant control. This is important for estate agents because we know that members often report difficulties in determining the (ultimate) beneficial owner when a property is owned by a trust or corporate entity, particularly when it is a non-UK trust or company.

Q2. Do you have any views on the options for holding information set out above?



4. Under Money Laundering Regulations there is no legal requirement for the ultimate owners of property to be publically available in the Land Registry. The Land Registry only lists legal owners, such as UK companies and entities registered in tax havens. NAEA believes that the Land Registry must also include overseas companies and be able to distinguish between residential and commercial properties in order to make it easier for estate agents to verify and ascertain information on the seller as well as the buyer.
5. Furthermore, in a property transaction estate agents are usually the first to be contacted by sellers. However, estate agents can't always rely on a third party, such as a solicitor or financial institution, to carry out customer due diligence. This is because a solicitor or financial institution aren't involved in the process until the business relationship has started. Additionally because estate agents do not handle the transfer of money we think there needs to be a more integrated approach with financial institutions, solicitors and estate agents working together to gather information. Through greater co-ordination we think the different actors involved in the transaction are more likely to flag pinch points or review critical events to prevent illicit purchases from taking place.

Q3. Are there any additional considerations for where and how the information is stored that we should consider at this stage?

6. The information must be accurate and easily accessible to law enforcement agencies and investigatory organisations. NAEA does not agree with Point 19 on Page 6 of the discussion paper and believes that foreign companies should provide their beneficial ownership information to a public register in the UK regardless of whether the information is already available on a register in the beneficial owners' state of incorporation.
7. There are currently 27 anti-money laundering supervisors in the UK who oversee a range of firms including financial institutions, credit institutions, laws firms, accountancy firms. Estate agents are overseen by HM Revenue and Customs. NAEA believes that the number of anti-money laundering supervisors must be consolidated to prevent the fragmentation of monitoring and enforcement, improve transparency across sectors and ensure standards are consistent.
8. Here we would like to mention that NAEA members are regulated by a body called NFFPP (National Federation of Property Professionals) Regulation. The body regulates individual members of NAEA and companies which fall within the jurisdiction of NAEA.



NFoPP Regulation regulates a company (legal entity) when it has a principal (sole trader), partner (partnership or LLP) or director (limited company) who is a member of NAEA and is active in a business area relevant to the member's work – such as residential property sales, residential property management, Block Management or land and new homes. We call this a PPD (Principal, Partner or Director) firm.

9. NFoPP Regulation has co-authored guidance for NAEA members with the Royal Institution of Chartered Surveyors, Association of Relocation Professionals and the Association of Residential Managing Agents. The guidance, which covers the Money Laundering Regulations (2007), the Proceeds of Crime Act (2002) and the Terrorism Act (2000), has been formally approved by HM Treasury. If members fall foul of the rules they could face an NFoPP Regulation disciplinary process which could involve expulsion from NAEA and a fine of up to 5 million euros.

Q4. What information about their beneficial ownership should foreign companies be asked to provide?

10. NAEA believes that foreign companies should be asked to provide full disclosure about their beneficial ownership. This should include information about who their beneficial owner is, the ownership structure and what their relationship is with their client. This is particularly important for estate agents because property can be purchased through off-shore holding companies which make it unclear as to the ownership and residency of those using the property. Foreign companies should also be asked where the money is coming from to complete the transaction, why they are doing the transaction in this way and what the wider plan is for investing.

Extent

Q5. Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?

11. Yes. NAEA believes that foreign companies that already own property or land in England and Wales should be required to provide beneficial ownership information. This would improve transparency and for example remove the element of secrecy which disguises the beneficial ownership of existing property held in tax havens.
12. This would also create parity between UK companies and foreign companies, prevent offshore structures from being abolished and allow the focus to remain on transparency rather than whether companies should purchase properties or not.



13. NAEA also believes that the Government should work to increase the standards of compliance with existing regulations. Such as improving the low number of Suspicious Activity Reports (SARs) that are filed by estate agents. According to figures from the latest annual report from the National Crime Agency (NCA) 355 SARs were submitted by the estate agent sector in 2015.
14. In addition, under the Money Laundering Regulations it's an offence to trade as an estate agent unless you're registered with HMRC for anti-money laundering supervision. NAEA has 2,717 PPD firms registered with HMRC. However, whilst estate agents are required to register with HMRC there is no 'fit and proper' test. By introducing a test this would allow for the checking of internal and external information sources.

Q6. Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?

15. Yes. NAEA believes that the Government should work with Devolved Administrations to ensure a single approach across the whole of the UK and create a level playing field.

Costs and benefits

Q7. What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into public contracts?

16. The estate agent sector has been brought under the spotlight following Channel 4's documentary *From Russia with Cash* and the Prime Minister's tour of South East Asia last year where he said foreigners mustn't be able to buy UK homes with laundered cash to help the global effort against corruption. NAEA believes that the British public don't want to live in a society built on corruption and the more awareness that can be raised, the more progress will be made.
17. Estate agents are a prime target for money laundering and financial crime, but NAEA believes that the reputation of the property sector and the professionals that work in it can be vastly enhanced by improving the transparency of the beneficial ownership of foreign companies that own land/property in the UK. For instance, in *From Russia with Cash* greater transparency of beneficial ownership in the property transactions would have made the main characters activities useless as well as alerting the law enforcement authorities to investigate the fake agency.



18. From a business point of view there is a cost to estate agents for registering with the HMRC. This amounts to a £100 non-refundable application charge for registering for anti-money laundering supervision (new customers) and an additional £110 premises fee on top of the application charge for each premises listed on the application. For existing customers the renewal fee is £110 for each premises listed on the application at the time of renewal. From 1st April 2016 the application charge will remain at £100 but the fees for premises and renewals will both rise to £115.
19. Staff training is essential for estate agents, particularly when taking on new staff. In order to comply with the Money Laundering Regulations estate agents must ensure all staff are aware of the risks of money laundering, the relevant legislation and their obligations. This could take a few days or up to a week each month to ensure they fully understand the rules. The Money Laundering Regulations also advise staff training at least every two years.
20. However, submitting a SAR is an easy process and should not have an onerous effect on an estate agents' business. To help estate agents we think the guidance from HMRC (Money Laundering Regulations 2007: supervision of Estate Agency Businesses) should include working examples of estate agents who have given reports to the NCA and the outcome to better explain to staff and MLROs about how long the process can take and what happens if the report is acted upon or not. Additionally, if the process could include priority and non-priority reporting to the NCA this may lead to greater detail being provided as well as more initial reports filed.

Q8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

21. Foreign companies purchasing property in the UK should provide beneficial ownership information to a public register and keep their details in the register up to date. If a foreign company hasn't reviewed the information in a timely manner there should be a scale of fines implemented for non-compliance.
22. NAEA would like to see a strong approach to enforcement and prosecution for non-compliance. Currently, estate agents need to keep records of suspicious activity reports and any other internal or external reports and decisions as well as customer due diligence checks and business transactions for at least five years. Those agents found to have broken the law can face unlimited fines from the NCA and HMRC and imprisonment depending on the crime. However, it is unheard of that agents have been put out of business as a result.

23. Fines are an effective deterrent and we know of a number of agents who have been fined by HMRC. Enforcement is essential and NAEA believes that the NCA and HMRC should be able to retain fines and ring fence the money, putting it back into further enforcement.

Q9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:

a) in the case of new foreign companies acquiring land or property in England and Wales; and

b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

24. NAEA recognises that in relation to foreign companies it is more difficult to enforce criminal penalties for failure to file information with UK authorities as outlined on page 11, Point 36 of the discussion paper. As a result we think it should be appropriate for foreign companies to register with the British Embassy in the country they are from in order to make it easier for government agencies and the NCA to work across borders.

25. Other than points 21, 22 and 23 that we made in response to the previous question, NAEA would like to see education and training as well as fines included in the sanctions for both new and existing foreign companies acquiring or owning land or property in England and Wales.

Q10 to Q18

26. It is not relevant for the NAEA to answer these questions.

Q19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

27. NAEA believes that developing countries must also have public registers that are easily accessible and their governments cooperate with UK investigatory organisations.

Q20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

28. NAEA believes that foreign governments must provide information that mirrors what the UK Government is asking for.