Fighting Phantom Firms in the UK: From Opening Up Datasets to Reshaping Data Infrastructures?¹

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Open data advocates and initiatives often focus on the “release”, “publication”, “disclosure” and “opening up” of pre-existing public sector datasets, and the character of this release – for example, through the use of open data licenses or legal waivers, and publication in machine readable formats.

In this paper we seek to highlight and explore other forms of intervention into the information infrastructures that underpin the production of public information, beyond the disclosure of datasets. We explore these issues with reference to a case study on recent advocacy around information about the ownership of companies in the UK, drawing on a mixture of primary data from interviews with practitioners, and secondary data from the literature, mailing list archives, policy and advocacy briefings, consultation responses, press releases, media articles, video recordings, parliamentary transcripts and official announcements.

We will conclude with a discussion of how open data advocates and initiatives might learn from this example, including thoughts on broadening the politics of public information from a focus on the disclosure of datasets to democratic interventions to reshaping information infrastructures as socio-technical systems (Gray & Venturini, 2015).

Reshaping the data infrastructure for company ownership in the UK

In October 2013 the UK hosted a major global summit of the Open Government Partnership (OGP), a multilateral initiative for “domestic reformers committed to making their governments more open, accountable, and responsive to citizens” (Open Government Partnership, n.d.). At the event, UK Prime Minister David Cameron was expected to give a speech mentioning the future of the collection and publication of information about who owns, controls and benefits from companies in the UK, beyond what was listed in official company registers. At that time there were said to be disputes between different government departments about whether and how this information should be collected and disclosed. Days before the summit, civil society campaigners said that neither they nor senior government officials knew which way the announcement would go. In the end, Cameron announced that the UK would

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move towards creating a register of beneficial owners, and making it public. Afterwards, many suspected that a final decision was not in fact reached until the last days in the run up to the PM’s speech (Interview with campaigner, 27th April 2015), although it was shaped by a long-running and organised campaign.

The current system for public information about companies in the UK was established in the nineteenth century. The public registration of companies in the UK was first enabled by the Joint Stock Companies Act 1844 and the revised Act of 1856 which created the category of a Limited Liability company. Prior to these acts, firms without a Royal Charter or Private Act of Parliament could only organised as unincorporated associations, in which legal action against by or against a firm was an action collectively of or against all its members. With these laws, which still provide the framework for UK company registration today, firms could be entered into the records of the Registrar of Companies by simple administrative procedure.

By 1988, the responsibility for maintaining the register was passed to Companies House, and in 1991 Companies House became a “trading fund”, meaning that it became legally obligated to cover a majority of its operating costs from revenue derived from the provision of goods or services. This income was predominantly derived through company registration, as well as through the sale of information products and services – such as CD ROMs and bulk access to data and images (Newbery, Bently, & Pollock, 2008). The trading fund regime was widely critised by open data advocates in the UK from the late-2000s onwards, as leading to the undersupply of data, as trading funds were incentivised to charge far above the marginal cost of data supply. They argued that company data, as part of the public record, was in effect not accessible for public scrutiny.

The modern Companies House register included information about the “nominal ownership” of companies – i.e. the person or legal entity officially named as the owner. However, as of autumn 2013 there was no obligation for Companies House to collect or disclose information about the “beneficial ownership” of companies: an issue which had become of growing concern of various civil society, governmental and intergovernmental actors. Broadly speaking, beneficial ownership refers to actors who stand to benefit from the ownership or control of a given legal entity. These parties may be different from the “nominal” owners named in official registration documents. The gap between nominal ownership and “true” beneficial ownership could be exploited through the creation of elaborate networks of “shell companies” or “phantom firms”, which can be used to facilitate crime, corruption, terrorism, tax evasion, or tax avoidance whilst obscuring the true identity of the individuals who owned, controlled and benefitted from them.

The legal concept of beneficial ownership is thought to date back to UK law in the nineteenth century, with origins in trust law in the eleventh and twelfth centuries (Verdoner, Offermanns, & Huibregtse, 2010a, 2010b; de Willebois, Halter, Harrison, & Park, 2011; Kryzhanovskaya, 2012; Reinhard-DeRoo, 2013). In addition to its use in national legal systems, the concept has been invoked in a variety of transnational and international contexts, such as in relation to
international tax rules, conventions and treatises (including the OECD, commencing in the 1970s), and in relation to coordination around money laundering, terrorist financing and other illicit financial flows (most prominently by FATF, the “Financial Action Task Force”).

This variety of contexts means that there are a plethora of different definitions, meanings and understandings associated with the term by different actors for different purposes. In a major two-part study, one team of researchers contend that “no common definition of the term has been developed to date” (Verdoner, Offermanns, & Huibregtse, 2010b). Another report argues that the concept is “relatively straightforward in theory but difficult to apply in practice” – with some actors focusing on more formal definitions with often quantitative “sufficient conditions” relating to percentage of ownership or voting rights, and some taking a broader “substantive approach” focusing on de facto control rather than pre-defined legal or economic measures (de Willebois, Halter, Harrison, & Park, 2011). There is a growing body of comparative literature addressing these different interpretations – in both national and international contexts (see, for example, Baker, 2007; Verdoner, Offermanns, & Huibregtse, 2010a, 2010b; Li, 2012; Transcrime, 2013; Vermeulen, 2013; Yoshimura, 2013).

Commencing in around 2012, a number of civil society organisations began to coordinate their efforts to make a concerted push to reshape the data infrastructure for companies in the UK, drawing on different aspects of this concept of beneficial ownership. One campaigner from Global Witness, who was heavily involved in advocacy around beneficial ownership, said that he believed that awareness of the issue in the UK’s civil society sector initially arose through existing work by intergovernmental organisations, governmental agencies and tax justice organisations (Interview with campaigner, 27th April 2015). As an example, he cited an influential 2001 report from the OECD, which argued that “the misuse of corporate entities may threaten financial stability from a market integrity perspective” and proposed “mechanisms to reduce the vulnerability of corporate vehicles to misuse for illicit purposes” (OECD, 2001: 3). This report included explicit discussion of an “up front disclosure system” which would “make the beneficial ownership and control information collected available to the public at large” (OECD, 2001: 78), anticipating one of the central campaigning objectives of the coalition of civil society organisations in the UK.

Different actors cite different arguments for why it was important to collect and disclose information about the beneficial ownership of UK companies. Transparency and anti-corruption advocacy group like Global Witness, Publish What You Pay and Transparency International often emphasise its role in cracking down on illicit financial flows, whether related to facilitating bribery, corruption, fraud, money laundering, organised crime, terrorism, or the smuggling of drugs, arms and people (see, e.g. Global Witness, 2009, 2012, 2013; Transparency International UK, 2013). Others emphasise the importance of the issue for international development and tackling poverty – including CAFOD, Christian Aid, Global Witness, ONE, Oxfam, Save the Children and the IF campaign (Barrington et al., 2012; Christian Aid & IF, 2013; ONE, 2013a; Oxfam, 2013a, 2013b; Wintour, 2013). In its biannual “Financial Secrecy Index”, the Tax
Justice Network focuses on the importance of the public availability of beneficial ownership information in evaluating the “global infrastructure” that enables “offshore secrecy”, illegal tax evasion and aggressive tax avoidance to thrive (Tax Justice Network, 2009, 2011, 2013). Numerous other UK civil society organisations have cited tax justice as a reason for collecting and publishing beneficial ownership (ActionAid, 2010; Open Knowledge, 2013a; War on Want, Change to Win, & Unite the Union, 2013). A group of 18 organisations involved in discussions around the Open Government Partnership argued that beneficial ownership should form a central part of the UK’s OGP National Action Plan to improve transparency, accountability and democratic participation (Open Government Partnership UK, 2013).

While several intergovernmental and governmental agencies had stated the importance of collecting information about beneficial ownership of companies, government parties have tended to focus on better sharing of this information between relevant government authorities, preferring a regime in which data is collected, but not necessarily widely disclosed. By contrast, all of the civil society organisations responding to a UK government consultation on the topic in July 2013 were in favour of making registries of beneficial ownership publicly accessible (Department for Business, Innovation and Skills, 2014a), often with explicit reference to publication as open data. International groups such as the OECD and FATF had mentioned the possibility of public access to information about beneficial ownership, but remained ambivalent as to whether this was the best way to share this information (OECD, 2001; FATF, 2012; cf. FATF, 2014: 21, 22, 41). The World Economic Forum suggested that suggested that the information should be “accessible to the public against payment online” (World Economic Forum, 2012), pointing to a disclosure regime that would fall short of accepted standards and definitions for making open data freely available for reuse.

At the 39th G8 hosted by the UK in June 2013, member countries reached agreement that “beneficial ownership information on companies should be accessible onshore to law enforcement, tax administrations and other relevant authorities” (Prime Minister’s Office, 2013). The G8 “Lough Erne Declaration” emphasised “tax collectors and law enforcers” as the target for information about beneficial ownership – with no explicit commitment to public access. Yet, in a statement shortly before the G8, UK Prime Minister David Cameron said he had a “huge amount of sympathy” for making beneficial ownership information public (Wintour & Watt, 2013a, 2013b). This was the same G8 meeting at which Cameron launched the G8 Open Data Charter, and the UK placed substantial emphasis on its credentials as an open data leader (Cabinet Office, 2013). Many civil society organisations saw the window between the G8 in June and the OGP in October as the perfect opportunity therefore to campaign to secure a commitment for a public register of beneficial ownership in the UK, as well as commitments concerning the specific information that should be contained in such a register (Interview with campaigner, 27th April 2015).

Around a month after the G8 in July 2013 the UK government launched a discussion paper and consultation around “Transparency and Trust” which
discussed the potential release of beneficial ownership information as a means to contribute to a “a transparent and trustworthy business environment where companies and individuals can operate and invest with confidence” in the context of what was described as “responsible capitalism” (Department for Business, Innovation and Skills, 2013; Cable, 2013). Beneficial ownership information was seen as a way to enable businesses and investors to undertake “Know Your Customer” and due diligence checks, and to promote “fair competition and a level playing field”. The consultation included questions on the definition of beneficial ownership, what information should be collected and how, whether a register should be publicly accessible and evidence about the potential costs and administrative burden of a public register on businesses and its impact on crime reduction.

Building on their previous advocacy in this area (including a concerted period of campaigning in the months in the lead up to the G8), a group of civil society organisations began to ramp up their efforts to shape public information about companies in the UK. In addition to more familiar campaign elements such as consultation responses, joint open letters, petitions, public events and media engagement, the group of CSOs undertook a number of additional measures to strengthen the case for the information infrastructure they hoped for. They undertook an extensive series of meetings with politicians and government officials, partly under the auspices of developing the UK’s National Action Plan for the Open Government Partnership. Earlier in the year Global Witness had commissioned an economic cost-benefit analysis looking at the administrative and technical changes, the estimated number of businesses for whom obtaining beneficial ownership information could be a non-trivial exercise, and the overall costs incurred in establishing a public register, both to the public and private sector (Howell, 2013). In doing so they explicitly built on previous studies by the UK and the EU, and contracted the same researcher who had worked on the UK study to undertake their updated analysis (HM Treasury & DTI, 2002; Transcrime, 2007).

Global Witness and others undertook further detailed analysis of the various data fields that would be required, as well as update mechanisms, data verification, sanctions and exemptions – implemented through changes to primary and secondary legislation. This included data analyses of the implications of not publishing various fields, based on details in the UK company register. Christian Aid commissioned an opinion poll to gain a sense of the level of support for public registries amongst broader publics (ComRes, 2013). Concerns about privacy, data protection, costs and administrative burden were addressed in a series of briefing documents (Ohlbaum, 2013). Drawing on a petition from Avaaz which included over 22,000 signatures from business owners in support of public beneficial ownership registries, many NGOs consulted with businesses and business associations to garner their support and address any concerns (Avaaz, 2013). Upon hearing concerns in the business community that the UK should not be the only country to publish beneficial ownership information, CSOs consulted with colleagues and contacts to gauge which other countries might be willing to follow the UK’s lead. Open Knowledge helped to build the base of evidence of how open data led to improvements in
data quality and to document cases of personal information being made available as part of the public record, to address privacy concerns (Open Knowledge, 2013b, 2013c).

![Figure 1: Open source proof-of-concept beneficial ownership register. Developed by OpenCorporates in 2014. Available at: http://alpha.whocontrolsit.com/](image)

Several organisations engaged in software development, design and research exercises to experiment with what a public register might look like, how it might function, and how the data might be used (e.g. West, 2013; Taggart, 2014, 2015). Days before the OGP Summit, the ONE campaign group launched a spoof website called Stash-the-Cash.com as part of their broader campaign on Phantom Firms to demonstrate the ease with which criminals can launder money using anonymous shell companies (ONE, 2013b).

After several months of campaigning and organising by civil society organisations, David Cameron announced at his speech at the Open Government Partnership Summit in London that a central register of beneficial ownership in the UK would be created and that it would be “open to the public”, which was welcomed with a round of applause from the audience (Cameron, 2013). The announcement was made in the context of a speech which emphasised the relationship between “political freedoms and economic prosperity”, opposing the “open, vibrant market economy” of South Korea “underpinned by an open, vibrant successful democracy” with the “closed, corrupt, secretive dictatorship” of North Korea, as well as arguing for stronger property rights and tackling illegal tax evasion, suggesting that “if you don't have a tax base you will never have a low tax case”. After the announcement, the UK government continued to consult about the scope, contents and governance of the register, which thereafter became referred to as the “the register of people with significant control” or “PSC register” (Department for Business, Innovation & Skills, 2014b).
Implications for open data initiatives and data activism

We think the case of campaigning for a public registry of beneficial ownership in the UK is an interesting example of where calling for the disclosure of existing datasets was not enough – as the information needed was not routinely collected by the public sector. Civil society organisations had to undertake a more creative, sustained and holistic engagement with shaping and influencing the development of data infrastructures as socio-technical systems. As described above, this included thinking about the costs, functionalities and user interfaces of software systems that would run the register, changes to primary and secondary legislation and the additional administrative requirements and their impacts on different actors inside and outside the public sector. In order to influence public information infrastructure, they engaged through a wide variety of different channels, and mobilised, enlisted and forged alliances between diverse groups of actors to build support for their cause.

While it is arguable that many of these different approaches and strategies are not new to transparency campaigners, they pose a challenge to discourse, policy and theory around public sector information which focuses more exclusively on “opening up” datasets and on their manner of disclosure, which has become a key focus of open data advocates and initiatives. Campaigners had to look beyond the question of what information is released, towards the question of what information is collected and generated by the public sector in the first place, how this information is generated through socio-technical systems and how it is attuned to its various contexts of usage (Gray & Venturini, 2015) – including through the examination of administrative procedures, fines, update mechanisms, data standards, legal definitions, economic thresholds and software systems. The campaign for public registries of beneficial ownership was an example of a deeper intervention into the composition of public information systems, which may help to complicate our rhetorical conceptions of transparency and openness focusing on disclosure, sunlight and liberalisation, and to provoke us to broaden and rethink conceptions of the politics of public information in a digital age.

What might we learn from this to inform policy, advocacy and best practices for open data initiatives and advocacy? The case of beneficial ownership campaigning in the UK helps to highlight the substantive social and political work that goes into the creation of information infrastructures, as is discussed in a growing body of literature on this topic in Science and Technology Studies (Bowker & Star, 1998; Star, 2002). A huge investment of time and energy was required to forge consensus and align interests around what will likely be less than a dozen different data fields. There were numerous factors involved in the UK case which may reduce the probability that it will be a reproducible model. Civil society organisations in the UK are comparatively well resourced, well organised and influential. There were numerous contingencies about the case which helped the campaigners in obtaining the results that they wanted – from the UK hosting both the G8 and the OGP, to the Prime Minister’s personal interest in the topic, to the recent controversies around tax avoidance by large
multinational companies and illicit capital flight in the wake of the Arab Spring, to the alignment of interests around a number of different topics from anti-corruption advocacy around resource extraction, tax justice, international development and increasing public trust and confidence in UK businesses.

The beneficial ownership case drew attention to the affordances and methods by which public information systems, as socio-technical systems, capture, highlight and foreground certain features of the world and relegate others in the production of datasets. The point of departure of campaigners was the inadequacy of an existing system of public information in capturing features of the world which were necessary for them to conduct public interest campaigns and investigations. Specifically the nominal ownership system upon which the existing company register was based gave only a very partial and imperfect impression of the increasingly complex networks of companies that constitute the corporate landscape in the UK. Civil society actors were drawn into the data production process, the “back rooms of open data” as one recent study puts it, and had to re-imagine a process which was more optimal for their purposes (Denis & Goëta, 2014). To use a photographic metaphor: the political question became one of the functioning of the camera and the way in which it was set up to take photographs (the framing, selection, brightness, colour and sharpness of the shots), rather than just a question of access to these pictures. But instead of a camera, they had to deal with the elaborate sprawl of a public information system in all its glory, extending both within and beyond the core public institutions that were the targets of their campaigning, with its extensive dependencies on a wide range of different human and non-human actors.

While the path from a politics of the disclosure of datasets to a politics of the recomposition of information infrastructures may not be a straightforward one, we will conclude with some questions and reflections to inform further research, advocacy and practical interventions in this direction. The question of what and how data is generated must go hand in hand with two other considerations: (i) who uses it, and (ii) how it acts to shape behaviour and ways of looking at the world (Gray & Venturini, 2015). In the case of beneficial ownership information, both of these questions lie ahead for the next phases of advocacy and intervention as beneficial ownership information is collected and disseminated more widely in society. While in the past public sector information seems to have been predominantly used by actors within the public sector for the purposes of planning, evaluating and advancing policies, the growing availability of information in digital form means that the contexts of usage can now easily multiply. Tracing the uptake, footprints and trajectories of public sector datasets may help to inform a sharper conception of the interests and concerns of their users, and the contexts in which they wish to put information to work.

This in turn should help to inform a better empirical understanding of how this information acts – including in shaping institutional, corporate and societal behaviour. In the case of beneficial ownership it will be critical to observe how the legal practices of company owners might evolve in tandem to new ways of measuring and publishing information, and to understand the “accountability paths” through which information leads to changes in behaviour – whether
through addressing tax base erosion or tackling illicit financial flows. While some researchers have contended that open data initiatives often aim to produce new kinds of “data subjects” or “armchair auditors” which fulfil a distributed watchdog function in relation to public institutions (Ruppert, 2013, 2015; Worthy, 2013; Birchall, 2015), this could lead to different expectations with respect to the political economics and resourcing of institutional accountability mechanisms. For example, while the Tax Justice Network strongly advocates public registers of beneficial ownership to enable scrutiny by civil society actors, they also argue that public sector bodies like Companies House and the HMRC are currently too badly under-resourced to be able to effectively fulfil their basic regulatory obligations (Murphy, 2011, 2014). Monitoring the actual usage and impact of public information and taking a holistic view of its life both inside and outside the public sector will be an essential precondition for its effective deployment in society.

On a practical level, what might more “participatory data infrastructures” look like? As a pre-requisite institutions and advocates alike might develop greater literacy around not only the contents of datasets, but also the methods and contexts of their generation. The next question is the extent to which the assumptions and rationales in relation the generation of data are attuned with and appropriate for the contexts in which data can be used. Is it addressing the right questions and speaking to the right concerns? To give a concrete example, researchers surveyed CSOs in several African countries to understand their policy interests around public spending, and used this to derive a list of indicators around topics such as health and education. They found that information which was needed for these indicators was not published – and may not have been created in the first place, or fit for purpose for the kinds of analysis that the civil society groups were interested in (De Renzio & Simson, 2013). On the civil society side, developing a better sense of the context in which information is produced – including institutional and methodological literacies – is surely an important pre-requisite to more effective interventions to reshape data infrastructures to speak to their interests and concerns. On the public sector side, advocates might take steps to better understand the users of data infrastructures outside the public sector, as well as to provide routes through which to obtain feedback on gaps and limitations of existing datasets, as well as input on demand for datasets which are not currently measured. The analysis of Freedom of Information requests could provide a proxy for understanding unmet demand, and existing engagement mechanisms around open data initiatives could be broadened to solicit for input on reshaping data generating operations. Multilateral indicatives such as the OGP could provide a venue for targeted engagement around what future data infrastructures should look like to serve the needs of civil society actors. While public data bodies can often be vast, slow and resource intensive operations (which may pose obstacles to their recalibration and responsiveness to civil society), the rise of different methodological and technological approaches to data collection could potentially afford novel opportunities for experimentation.

“Participatory data infrastructures” may be less likely to catch on as a high profile political slogan than “open data” (as unlikely as the latter might have
seemed a decade ago). But nevertheless we contend that a politics of public information fit for the digital age should go beyond the question of what datasets are disclosed when and to whom, and should additionally ask what information should be collected and generated in the first place, and the role of public information systems in shaping and organising collective life. The “data revolution” should look beyond “unleashing” and “unlocking” the potential of “information as a resource” towards a more thorough exploration of “information as an agent” (Braman, 2009) – and the dynamics of data infrastructures as socio-technical systems, including both their potential to assist in tackling urgent complex global issues such as poverty, inequality, and climate change, as well as their unintended and unwanted consequences. While data infrastructures may often be the purview of legal, technical and administrative specialists (including external consultants, software companies, international standards bodies, accountancy firms, etc), in this paper we hope to have raised the question of how to broaden the publics that shape them as well as the publics that use them, and how to gradually introduce them more conspicuously into the imperfect orbits of democratic political life.

References


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4 Although there is indeed currently talk of “National Information Infrastructures” in the UK, echoing calls for the same in US in the 1990s under the Clinton-Gore administration. We will reserve further study of the political economic implications of both of these projects for another paper.


