

WRITTEN BY RICHARD FIELD

BALANCING TRANSPARENCY WITH PRIVACY

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In the [Guernsey Press' Q2 2018 Business Review](#), [Appleby](#) Partner Richard Field examines whether public beneficial ownership registers are incompatible with privacy rights.

While some UK MPs continue to campaign for beneficial ownership registers to become public in the Crown Dependencies, there are important issues around privacy that need to be considered. Access is currently limited to law enforcement, tax authorities and other similar regulatory bodies.

The suggestion that Parliament could compel us to publicise our register via its own legislation needed short shrift - which is what Guernsey's most senior politician, Gavin St Pier, has given it.

Aside from the fundamental constitutional issues, he also highlighted the negative impact on privacy. It's a concern that has been raised in other parts of Europe.

The French Supreme Constitutional Court found that a public register of ownership of trusts was incompatible with privacy rights. The French recognised the negative and unjustified impact on individuals and families if their ownership interests were declared when other measures could achieve the same wider policy objectives. French lawmakers took the point so seriously that they changed their legislation. The European Data Protection Supervisor has similar views.

Given that such registers do not seem compatible with new European-wide data protection legislation. I suspect there may well be a legal challenge in the future.

Don't forget either the fallout from the Facebook-Cambridge Analytica controversy. There is a move against our data being publicly available – except on our terms. In this new world, public registers of ownership of assets fall short.

Publicity, particularly when it's in the context of a self-reporting regime, won't deliver in the way that supporters believe. It might satisfy curiosity about what celebrities do with their money. However, publicity is just as likely to create more problems for law enforcement in helping those who are then targeted by criminals as a consequence.

Privacy should not be overridden by curiosity, particularly when there is no agreed approach on a global legal level and the risks involved are so high. Steps enabling closer cooperation and use of existing tools will do a better job of achieving policy objectives, with fewer risks to individuals.

The argument around public interest justification falls down because there are adequate measures available to law enforcement to get the required information with more legislation in this area on the way. Indeed, jurisdictions such as Guernsey have proactively facilitated such flows of information. No one seems to be suggesting that these tools aren't used or don't work.

The next challenge is to remind the world that offshore means privacy, not secrecy; transparency, but only to the authorities who are entitled it and have a legitimate public policy reason for reviewing it. As citizens, that is the minimum protection we should expect, a system that meets the balance between the right to privacy and the wider public interest in investigating and preventing financial crime. Once privacy has been lost, it cannot be regained – we should stand firm in instances such as this where the argument for change has not been properly formulated or evidenced.

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PO Box 655, St Peter Port,
Guernsey, GY1 3PN

+44 (0)1481 720071

INFO@WEAREGUERNSEY.COM

