

**BENEFICIAL SHAREHOLDERS IN THE UK**  
**by Paul Killick, November 2004**

If you are a private, or retail, investor in UK securities, there is a growing likelihood that you are a beneficial rather than a legal shareholder. What is the difference? A legal shareholder is someone whose name appears on the register, and they have a certificate. A beneficial shareholder holds their securities in the nominee name of their custodian, usually their stockbroker.

The problem is that UK companies are not required to recognise their beneficial shareholders, only their legal shareholders. This has become a serious issue as retail investors are pressed into nominees by a securities industry which is trying to get paper out of the system.

As UK issuers do not recognise their beneficial shareholders, they, the shareholders, receive no information from the companies in which they are invested, nor are they able to vote their shares. Disenfranchised UK retail investors are currently estimated to own about 20% of UK plc. This goes to the heart of Corporate Governance. The Government are doing their utmost to encourage institutional investors to exercise their votes, whilst ignoring the plight of disenfranchised retail investors who own a fifth of our Corporations, many of whom want to vote, and others should be encouraged to do so.

It is often said that retail investors have chosen to hold their securities in a nominee name and that it is therefore up to the custodian, who is the legal shareholder, to keep the beneficial investor informed and facilitate voting.

However, a custodian is only an agent for the beneficial shareholder, and any costs that are incurred will be passed through to the investor. As a consequence retail investors would be required to pay to receive the information from companies in which they are invested and pay to vote their shares. This cannot be right or just.

Cost is usually cited as the reason for not recognising beneficial shareholders, but this does not bear close analysis as every shareholder used to be legal, and it was therefore a cost that companies were required to meet. As a result of the introduction of pooled nominees, the cost to companies of maintaining their register has fallen dramatically, as most custodians employ a pooled nominee. Under a pooled nominee, a custodian would have only a single holding on the register, and they, in turn, hold details of the underlying shareholders, who are their clients.

In the US issuers are required to send all documents to all shareholders whether they be legal or beneficial. In Canada they have a rather more pragmatic approach, inviting beneficial shareholders to opt-in, thereby avoiding the criticism that a lot of these mailings are thrown away unread by retail investors.

However, Canada does require every beneficial investor to be reminded annually if they have opted-out, inviting them to opt-in. Furthermore, they have a very valuable protection in that if a mailing concerns an EGM, then all shareholders, whether legal or beneficial, must be sent the documentation. This prevents a company from changing its Articles of Association, or fundamentally changing the business, without all its shareholders being aware, and able to vote on the resolution.

Recent events at Psion are an example of the dangers of the present system. In the spring of this year the company announced the disposal of their very significant minority interest in a business that they had founded called Symbian. At the time Psion was widely held by private shareholders, and it is quite possible, although difficult to determine, that around 40% of the shares were held in Crest for the benefit of retail investors. Indeed it could have been more, but I would estimate that it was at least twice the 20% average referred to above. The vast majority of those shareholders held Psion as a proxy for Symbian which was and is unquoted, and it is fair to say that the vast majority were surprised and disappointed by the Board's decision to sell this investment.

The decision had to be ratified at EGM, but most retail beneficial shareholders were not able to vote. The company won the resolution by about 29% to 21%, with nearly half the votes in favour cast by a single director. It cannot be proven, but it is quite likely, that the Board would have been defeated if all shareholders had been able to vote. I am not criticising Psion for this, but I am criticising the system.

So what is the solution? I would propose something along the lines of the North American system, based on the Canadian model, which is tried and tested. Custodians invite their clients to opt-into the system. A third party fulfilment house, whose fees and service levels are regulated, remotely downloads the names, addresses and number of shares held by those that have opted-in. The fulfilment house then undertakes the mailing and collects the votes, which they cast under a limited Power of Attorney.

Each custodian will have installed the fulfilment house's software to facilitate the remote download. This is all achieved at a cost significantly lower than the cost to the company for each legal shareholder, and what is more, the accounts are only sent to investors that want to see them.

The custodian for our clients installed the software at our request, and the same US fulfilment house undertook both the mailing and the proxy voting, and it worked very successfully on the small number of companies that we persuaded to participate. I should add that Psion was one of that small group.

However, having written to the Chairmen of constituents of the FTSE 100 index, no more than two showed the slightest interest in communicating with their beneficial shareholders

I have approached numerous organisations and Government departments, including the FSA and the DTI, unfortunately none is prepared to stand up for the legitimate rights of retail investors.