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Letter to the Editor (edited for context)

I write as a director of the UK Shareholders' Association to draw your attention to a serious error in a recent issue, concerning shares held in nominee accounts. The author twice used the term *'legal ownership'* as though there were no difference between certificated shares and those held by a nominee, but this is incorrect. The legal ownership of shares held in a nominee account belongs to the nominee account provider. The investor is reduced to the status of beneficial owner, which means he or she has lost all ownership rights and is entitled only to the monetary benefits of the investment.

So, any investor who does care about retaining his or her *'basic shareholding rights'* will have to avoid using a nominee account – unless, of course, the law requires it, as with ISAs and SIPPS, which itself is a wrong that needs to be righted.

The rights that are lost by using nominee accounts are the right to information issued by the company to its shareholders (including the annual and interim reports), the right to vote by proxy and the right to attend company general meetings, speak and vote there. While these facts are generally known, you have suggested the opposite, which is seriously misleading.

Worst of all, which is not generally known, when a company is being acquired by a scheme of arrangement under Part 26 of the CA2006, as an increasing number are, the beneficial owner of the shares will probably not even know about it in advance, let alone be given a vote on the matter, because the law at this point is concerned only with the legal owners of shares (ie the nominee account providers in this instance), who are under no obligation to inform their clients, the beneficial owners (ie those whose money it is), let alone even ask them how they feel about the matter.

In addition to the consequence to the individual investor, this situation assists takeovers of companies negotiated behind closed doors and therefore (potentially at least) without the realisation of full value, because whereas with a conventional takeover (under Part 28 of the Act) an acquirer needs to obtain 90% of the shares by persuasion before it can 'squeeze out' the rest, **under Part 26 there is no minimum participation requirement**.

Schemes of arrangement are given effective legal force on all 100% of shareholders by an approving vote of just 50% **of those *actually* participating** and 75% **of the equity held by those *actually* participating**, so those who don't participate cannot affect the outcome and the fewer who are aware of the vote the easier it is for the acquiring party, in conjunction with the directors recommending the acquisition (a necessity), to achieve the required majorities. Thus is shareholder value lost by those – who may even be the

majority of the beneficial shareholders – who find that their interests and what MoneyWeek will presumably acknowledge are their rights are ignored.

The only way to hold shares electronically and *'retain... basic shareholder rights'* is to do so through a personal CREST account, but this has to be done through a stockbroker and too few of them offer this facility at a reasonable price or at all.

Yours sincerely, ***Eric Chalker*** Director