A ticking bomb?

The recent Pre-Budget report drew fresh attention to a problem that's been plaguing business for a number of years now, the problem of unclaimed assets. Companies need to start acting now, says ***Stephen Page.***

If there's one issue that's guaranteed to make press headlines, it's the growing level of personal debt in the UK.

According to figures from CreditAction, total personal debt in the UK broke through the £1.1 trillion barrier in June 2005, and continues to rise by a staggering £1 million every four minutes. The Bank of England projects that the increase in household borrowing has raised total debt to close to 150 per cent of annualised aggregate post-tax income, and debt looks likely to continue to rise more rapidly than income over the next few years.

It comes as something of a shock, then, to learn that, according to conservative estimates, more than £15 billion of assets in the UK are sitting waiting to be claimed by their rightful owners. This enormous mountain of 'lost' assets consists of unclaimed shares and related payments, insurance policies, national savings, building societies, pensions, company saving schemes, government benefits, banks, wills and the good old national lottery.

Three billion pounds of that, again according to conservative estimates, is owed by UK companies to their shareholders (the true figure isn't in the public domain). That figure is principally made up of dividends, acquisition entitlements, so-called 'windfall' shares and the cash proceeds from their sale, rights issue cash payments, and dissentient shareholders.

'Lost' shareholders can be said to fall into four broad categories. First, there are those who've died without leaving any effective evidence or record of their shareholding. Executors will often be unaware of these assets because certificates have been lost, for example, or because some people make investments without telling their next of kin or executors.

Then, there are those individuals who've moved home and never notified the registrar or company of their new address details; thirdly, there are those who've simply forgotten about their shareholdings or entitlements. Lastly, there are the individuals – typically, the recipients of windfall shares or their heirs – who just do not understand shares, dividends or their monetary value.

Whatever the reason for the separation of these people from their assets, the huge amount of money involved makes it a serious problem. If this situation is to be remedied it's clear that companies need to take a far more proactive stance towards reuniting shareholders with the money due to them.

In reality, a great many companies hold some unclaimed shareholder assets, but those holding significant amounts of money tend to fall into one or more distinct groups. There are the privatised or demutualised companies that've issued windfall shares; the utility companies that are in most cases the product of a complex series of mergers/acquisitions over the last 10 to 15 years; acquisitive companies that have a history of multiple acquisitions or mergers; and finally the 'mature' companies that bring with them an ageing private shareholder base.

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How did this situation arise?

In the past, there's been a general tendency to view this as only a peripheral issue. After all, if shareholders couldn't be bothered to inform companies or their registrars of something as basic as a change of address, why should those companies waste time and resources in tracking them down?

That view, though, may have been too simplistic. It failed to take account, for example, of those shareholders who'd died (hardly their fault), and whose families and loved ones had no knowledge of or possibly didn't understand the deceased's shareholdings. Nor did it give much thought to those who'd inadvertently lost track with companies through their various incarnations – not too surprising when one considers the number of corporate name changes, takeovers, mergers and amalgamations in recent years.

There are, nevertheless, many people who moved and simply forgot to notify companies of their change of circumstances (middle-aged 'movers', interestingly, are apparently the worst offenders). If you estimate that around four per cent of the population of the UK moves home each year, it's easy to understand how significant numbers of people can forget to notify companies of address changes. How many of us, after all, can honestly say that we remembered to notify absolutely everyone when we last moved?

It should also be acknowledged that even where lost shareholders are found and contacted, they may still fail to respond. They may not have appreciated, or understood, the significance of the correspondence received, or they may have simply ignored it in the belief that it was just one more item of unsolicited mail. Tracing shareholders, in other words, is only the first part of the solution: communicating with them in a way that actively engages them is equally as important, and it can present a real challenge.

It's also important to recognise the huge impact of the many building society and insurance company conversions in the 1990s. With these demutualised companies, many individuals received a substantial number of windfall shares simply by being account holders. Many recipients had never previously owned shares and had little understanding of what it meant to be a shareholder.

As a result, a significant number of the new shareholders in the demutualised companies were what you might call 'accidental' shareholders, and had little idea of the value or significance of their holdings or of what they needed to do to secure the shares and realise their value. It's hardly surprising that these individuals subsequently failed to notify the registrar of changes of address or other changes in their personal circumstances.

The legal position

In the case of unclaimed dividends, most articles of association provide that after a period of 12 years, any such dividends revert to the company.

The 12-year period used to be a listing requirement, but the listing rules no longer stipulate that listed companies' articles of association need include any such provision. For this reason, in recent times there's been a move to reduce the 12-year period, and it isn't unusual today to find listed companies and others reducing it to six years, the normal limitation period. Another recent development is that companies may now be more willing to enforce their rights to claim unclaimed dividends when the period stipulated in their articles has expired. In the past, many companies have been content to leave unclaimed dividends owing to shareholders, even though they could have claimed these balances for the companies' benefit.

The position for unclaimed shareholder assets resulting from rights issues, cash entitlements and share acquisitions is different from dividends in that, save for demutualised building societies, these assets never revert to the company. If after 12 years the shares remain unclaimed, they're sold by the company and the consideration received, together with interest, dividends and any other benefits, is paid into court

For those building societies that converted to PLCs, and in doing so issued so-called 'windfall shares' to their members, the position is different again, in that after 12 years the shares revert to the issuing companies. The demutualised building societies are able to convert unclaimed windfall shareholdings to cash after three years, this money then being held for the claimants for a further nine years, after which the windfall can be forfeited and booked as profit. Companies aren't obliged in these circumstances to pay interest on the cash.

Although unclaimed shareholder assets remain the property of shareholders, a company may, if authorised by its articles of association, stop sending dividend

cheques, warrants or other payment orders to shareholders where previous dividends haven't been cashed. Subject, as always, to its articles of association, a company may also be able to sell shares held by 'lost' shareholders, although the cash received would need to be held for the benefit of these shareholders.

Some articles of association afford further flexibility by enabling companies to use unclaimed shareholder assets within the business at the discretion of the board. It's understood that some converted building societies may, for example, have used unclaimed windfall shares from their demutualisation to fund in-house share incentive schemes.

Responsibility and risk

Listed companies in the UK have a duty, then, to make all reasonable efforts to actively seek out their lost shareholders and reunite them with the money to which they're entitled.

This, I think, is an entirely reasonable assertion when you consider the huge sums involved here, and the largely ineffective steps that companies have traditionally taken to track down their missing shareholders. Often, in fact, these efforts have amounted to little more than the registrar writing over and over to the address that appears on the share register, with little genuine care as to whether the shareholder actually still resides there or, indeed, is even still alive.

Although tracing agents have sometimes been employed by companies or their registrars to find lost shareholders, this has rarely been undertaken on anything like the scale necessary to make a real impact. If they're to be effective, tracing exercises need to be properly structured and targeted, and all too often that's simply not what happens. Unless companies draw up an unclaimed shareholder assets reunification plan that takes into account all the factors that may have come into play, these sorts of tracing exercises will continue to disappoint, and many shareholders will remain impervious to companies' best efforts to engage them.

There's something rather out of kilter about companies' supine attitude towards this problem. These days, it's positively *de rigeur* for listed companies to talk up their agendas on corporate governance or corporate social responsibility, and to be ever more accountable and transparent. So it seems odd that at the same time they should be sitting on significant amounts of shareholders' cash, and in most cases doing little or nothing to redress that situation. How can companies claim to be acting fairly when they continue to turn a blind eye to the problem of unclaimed assets that belong to their own shareholders?

The flipside to corporate governance and CSR, of course, is the threat to reputational risk, and companies could be running a significant risk if they continue to sit on significant shareholder assets and do little about it. Two household names that have got to grips with the problem are Barclays and HBOS, which are achieving impressive results in reuniting their lost shareholders with assets by means of implementing properly structured programmes.

Over the last two to three years, for example, Barclays has undertaken a programme that's returned some £66 million of unclaimed monies. That money arose from a number of factors, among them Barclays' acquisition of Woolwich in 2000, the Woolwich demutualisation in 1997, and the Barclays' rights issues in 1985 and 1988.

'This was money that belonged to our shareholders', says Barclays Company Secretary Lawrence Dickinson, 'and we decided that it was our responsibility to take a proactive approach to ensuring that our shareholders received the monies to which they are entitled.'

Cadbury Schweppes, meanwhile, has recently started a programme to reduce the unclaimed shareholder assets that it holds. 'We have a responsibility to our shareholders to make all reasonable efforts to make sure that they receive any unclaimed monies', says Director of Group Secretariat, John Mills. 'Most if not all public companies could significantly increase their efforts to re-establish contact with their gone-away shareholders or their estates.'

It's also clear from Gordon Brown's Pre-Budget Report presented to Parliament on 5 December that the Government has upped the stakes as far as the matter of unclaimed assets in the UK is concerned. In the report, the Government has taken the first legislative steps on unclaimed assets by providing that money held in bank accounts that have been inactive for 15 years or more should be 'reinvested' in the community.

The Government says that it will continue to work with stakeholders and the Commission on Unclaimed Assets, and it's unlikely this is the last we'll hear on the subject. This is particularly the case if the Government follows the path trodden by an increasing number of other countries in recent years, where systems have been put in place to enable unclaimed assets generally to be invested in society without removing the rights of owners, if they can be traced, to be reunited with their assets. This may well be a model the Government is keen to adopt for the UK.

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It will always be possible to argue that it's the responsibility of shareholders to keep companies informed of their whereabouts and circumstances. Some might even say, too, that companies should 'sit on the cash pile' until it can be taken to profit or otherwise used within the business. There may even be a temptation for finance directors to use unclaimed shareholder assets in this way.

I don't believe, though, that most boards would view unclaimed dividends, for example, as a potential source of company revenue. Indeed, I'm sure that nearly all boards would happily see their companies' unclaimed shareholder assets reduced to nil if this meant reuniting the money with its rightful owners.

Companies need to consider, then, the reputational risk of doing nothing, or not enough. Not only would they miss out on the very positive publicity that companies such as Barclays and HBOS are already enjoying, they also need to consider the risk of being embarrassed by the inevitable attention of the Treasury and/or the financial media. Doing nothing may well become very uncomfortable.

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Planning for action

What can companies do if they haven't already taken active steps to bring about a significant reduction in their unclaimed shareholders' assets?

As a first step, companies can engage (at no cost) a specialist unclaimed assets agent to work with their registrars to determine the actual balances of their unclaimed shareholders' assets and how they arose. Typically, these will be broken down by activity and year – 'the rights issue in 1997', for example – and some of these activities could well date back many years. The agent will endeavour to find out what past actions, if any, the company or its registrar has taken, and assess how successful those actions were, not only in terms of locating lost shareholders but in reuniting them with their assets as well. As noted earlier, locating shareholders without being able to engage with them achieves little if anything.

The agent will then propose a detailed programme of work, and that'll include timescales and charging arrangements – typically, agents won't charge the company, but they will recover their costs by a service charge to the claimant. Note, though, that alternative arrangements need to be in place for those claimants who claim directly from the registrar.