



ShareSoc

UK Individual Shareholders Society

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How to Form and Run a Shareholder Action Group

A shareholder action group is simply a group of shareholders in a public company who have decided to combine together to promote a specific agenda. They can include both institutional and private shareholders, although the latter tend to be more active in forming such groups because only by co-ordinating action can they hope to have much influence on future events. As individuals they are likely to be a lone voice, and with little perceived voting power they can often be ignored.

There are many reasons why shareholder action groups form. Often it is because a company is in some difficulty and shareholders feel that specific action is required to resolve the problems it faces. Specifically they may lack confidence in the current directors to tackle the problems vigorously, or do not agree with the policies being pursued by the existing directors. In some cases they may feel the directors are untrustworthy or being excessively influenced by their own interests or those of third parties. In others it is simply enlightened self-interest in improving the financial outcome.

But there is a very broad range of motives and a very wide spectrum of objectives. In some cases, the shareholder action group might even support the existing directors and their policies against perceived threats from elsewhere. So it would be wrong to assume that such groups solely form with the objective of attacking the company or its board of directors. Sometimes shareholders simply want answers to questions which they cannot obtain easily, and groups may change their stance after they discover more.

Unfortunately many directors see shareholder action groups as being unhelpful because they tend to use the press and other media to highlight some of the issues, thus bringing the spotlight onto the company and its activities. Such enhanced scrutiny, and the time required to respond to the issues raised, often leads to debate about the merit of the action group whereas a more diplomatic and consultative approach could more easily resolve the matter in a more timely and less costly fashion.

The following pages explain how to form such groups and how to run them, based on the experience of the directors of ShareSoc. We have been involved in quite a number of such actions in the past. This guide just gives you the basic facts, and if you require more specific advice or assistance you are welcome to contact ShareSoc. We strongly support shareholder activism where the causes are meritorious.

Roger W. Lawson
Deputy Chairman

How to Form a Shareholder Action Group

1. Defining the Complaint

Before you form a group, it's worthwhile to first clearly specify the basis of your complaint or concern. In other words to document the sequence of past events or the evidence that embody the issues you are raising. You don't at this point need to have a specific plan of action in mind.

The above may sound self-evident, if you are to get support from other shareholders, but it is surprising how many complaints that you see bandied about on bulletin boards are not as clear cut as they appear at first sight once they have been looked at carefully.

2. Avoid Libellous Public Comments

Defining the complaint will also help you to get the facts straight. One thing you need to be careful about is making allegations that are either not supported by the facts or are simply incapable of being proved. You may feel that the directors are dishonest crooks who are only lining their own pockets at your expense, but putting that into writing, on a bulletin board or elsewhere is a recipe for large legal costs. If nothing else, you will preempt any compromise agreement to resolve the issues you are raising because the directors will be so annoyed with you that the only expectation you can have is of a long and difficult fight. If the facts are accurate, and have been verified, let them speak for themselves. One particular aspect to avoid is to avoid imputing motivations to individuals based on a sequence of past events. There is usually no concrete evidence of motivations. Likewise you may feel the directors are fools or incompetents but that is best evidenced by facts rather than declared opinion.

3. Defining the Objective

Many shareholder action groups form with a specific objective in mind – for example, removing certain directors, changing a company's policies, or whatever. It's worth looking at a few issues first before deciding on the objective (and the means to get there):

A – Is the ownership structure of the company such that you can obtain enough votes to have some influence? If the majority of shares are held by a small group of insiders, this could make it very difficult to win any contested votes.

B – Is what you are attempting to do legally and otherwise practical? If you do not have some understanding of Company Law, you will need to take advice on this.

C – Is there time for action to be effective? If the company is about to go bust, you may not have time to do anything as shareholder action groups can take months to develop an effective campaign. Any legal actions or the requisitioning of general meeting also take time.

D – Are your financial losses or interest in the company sufficiently large to justify the effort (and possible expense) of a shareholder action group?

E – Is the size of the company such that it is going to be practical to pursue an issue? FTSE-100 companies can have large numbers of shareholders and can otherwise present enormous difficulties to shareholder action groups (unless you obtain powerful institutional support).

In some cases it might be best to formulate the objective after you have formed a group, got a consensus for future action, and after taking some advice on the practicality of what you want to achieve.

You would perhaps be surprised to hear that there are often different views among members of an action group as to what to do and how to go about it. Not all “enthusiasts” for action are necessarily in a mood to stand back and calmly look at the options.

4. Forming a Group

It is possible to start a shareholder action group as a single individual. But others might be wary of your motives and you are likely to have little success if you continue in that mode for long. There is “strength in numbers” and the “wisdom of crowds” means that forming a small committee is usually a good thing to do. After all, if you can’t even get a few people to join you and contribute a little effort, then what is the chance of wider success?

So what you should do is try to get in touch with like minded individuals, either via bulletin boards, writing to known shareholders (for example on the share register of the company which you can obtain), or by getting some press coverage. Ideally you should try and recruit a few people who have professional experience that is relevant – lawyers, accountants, very experienced stock market investors or those with experience of other shareholder action groups (or indeed of any public campaigns).

The best way to do this is to hold a meeting for those interested and after talking to them for a while, there should be some consensus achieved of who might best serve on such a committee, and of course be willing to serve, and what the main issues and objectives are.

Note that trying to do this solely electronically via a bulletin board or other means is not easy. There is really no good alternative to getting to know people on a personal basis when forming a group that is going to work together.

Obviously someone has to take the initiative and call such a meeting. But that could be you!

5. The Constitution of the Group

When a Shareholder Action Group is first formed, it needs no formal constitution – in effect it can be simply like any other “unincorporated body” such as a tennis club. Such organisations can of course adopt a “constitution” if they think it necessary and the organisation is likely to be in existence for long enough. Simple constitutions can easily be produced and usually cover the main objectives of the organisation, how people join as members, how the “officers” are appointed, and how decisions are made. The minimal “officers” are usually Chairman, Treasurer and Secretary. But many groups start on a quite informal basis and remain in that form.

If litigation is likely to be considered, or funds are required to be raised for that or other purposes, then having a constitution with a clear contractual relationship between the organisation and its members is fairly essential.

If the shareholder action group is likely to become a large organisation, with more than a few hundred members, then it might be worth incorporating as a “company limited by guarantee”.

Obviously in that case it will need to file accounts annually and make returns to Companies House. But it is now very easy to form such a company – ShareSoc can give advice on this if required.

6. Raising Funds

Running a shareholder action group costs money. For example, you may want to obtain a copy of the share register and write to all shareholders. That may work out at about £1 per member so unless it is a very small company, the cost can be quite substantial. Legal costs can also be large – any good solicitor operating in the commercial law field may charge several hundreds of pounds per hour.

Obviously anyone forming a shareholder action group might care to fund some initial costs themselves, but it is important to establish the principle that you are going to raise funds to cover the costs sooner or later. People generally do not appreciate anything they get given free of charge, so you are likely to get more commitment to the group if you can get them to contribute even a small sum (but don't make it so small that it costs more to process than it is worth).

Shareholders vary in the size of their stake, their financial interest in the matter and their general wealth. One solution is to vary the financial contribution requested based on the size of their shareholding, with some exceptions perhaps for those who plead poverty or old age.

Note that it is a well known fact that it is easier to raise more money from past contributors than from new contributors. So it's best to make the initial demands low and only sufficient to meet the immediate objectives – and when asking for funds you need to make clear what they are to be used for, and say what will happen to the funds if they are not used.

Try to keep any initial letters to supporters, or subscribers, simple and to the point. You will improve response levels by using a pre-paid envelope but that takes time to set up.

One of the biggest problems with raising funds is actually opening a bank account into which you can pay cheques. This is often a tortuous and time consuming process now that banks have such tight security and "know your customer" rules.

Another difficulty is that if you want to set up an on-line payment system then this will also take time, so you need to plan ahead and get these things in place as soon as possible.

ShareSoc can provide advice on a lot of these practical aspects of running such groups.

Running a Shareholder Action Group

7. Recording Supporters

It is important from day one to keep a record of supporters who have contacted the group, and of course to record their "membership" or financial contributions in due course. What you use to do so tends to depend on how big the group is likely to get, but the sooner you get started with some system or other, the better.

Try to encourage people to provide an email address as well as a postal address as communicating via post is now very expensive. You will need to be able to send out newsletters to your supporters to keep them informed, to invite them to action group meetings and to advise them how to vote on resolutions at company meetings. It is important to collect postal addresses as well as email addresses so as to ensure you can stay in touch (people frequently change email addresses) and to provide some assurance that they are real people. ShareSoc can provide advice on what technology to use from past experience of these kinds of campaigns, but if your group is going to become large you will need a "membership secretary" in due course.

It is important to communicate regularly with all the group supporters, both by informal and formal channels. Only by doing so can you maintain their motivation and interest.

You obviously should be aware of the need to protect personal information under the Data Protection Act, and restrict it from being passed on. It is therefore important to have strict rules about how information is stored and who is responsible for it. Please do not keep spreadsheets of supporters on your laptops (at least not in unencrypted form).

8. Press and other Media

It is important to use the media to the best advantage. Some shareholders might feel that it may be best not to talk in public about a company in case the reputation of the company is damaged (and the share price impacted as a result). But it's not possible to run an action group in secret. Even if you tried to, the news will get out anyway.

Likewise it is not possible for key members of an action group to conceal their identities. It will undermine your credibility if you try to do so, and there should be clear contact information (postal address, phone number, email address) on any literature you send out and on any web site you create.

You should therefore actively use the press and communicate with them, so as to put forward your case in the best light. But you need to be very careful about what you say. Indeed if you are involving lawyers and considering legal action, they may not want you to say anything at all! But this is in general not recommended. It is better to speak out as the company and its PR agency are likely to be doing so to try and undermine your own messages.

A shareholder action group should decide early on who is going to be dealing with the media and responding to inquiries. Likewise any "press releases" should be reviewed by more than one person, and by lawyers also if necessary.

9. Using the Internet

Setting up a web site or blog for your shareholder action group is one of the first things you should do if you are at all serious about pursuing the issues of concern. It will provide instant credibility if such a site is available and if it can be readily found using Google or other search engines. This can now be done very quickly and cheaply, but if you have any supporters with expertise in this area so much the better.

You should of course use the common bulletin boards frequented by stock market investors to spread the word about your group, but be wary about what is said on them by your supporters or others. Don't forget that company directors read bulletin boards also!

Disclosing what you are going to do in advance, either on bulletin boards or your own web site is not a good idea because you may simply find the company and its directors then pre-empt your actions by their own initiatives.

10. Involving and Controlling Lawyers

Many shareholder action groups will need to take legal advice at some point, and some groups may actually be formed for the specific purpose of pursuing litigation. Some initial advice may be available free of charge (after all, lawyers are always keen to drum up new business and attract potential new clients). But you need to be aware that their interests may not be the same as yours.

You want to resolve the problem you face, whereas they may have more interest in establishing a financially productive relationship for themselves – not that their advice to you may be anything other than technically correct.

It is important that you run the action group, and not your appointed lawyers.

You should shop around for the most appropriate and cost-effective legal team, and there should be clear appointment letters (as required by the Law Society) and clearly agreed budgets for each stage of any legal action.

Past experience shows that lawyers are notorious for not tracking costs, not billing clients promptly (and with clear itemisation of costs), going over-budget without warning, and other poor practices.

Remember, a lawyer-client relationship should not be like a doctor-patient relationship where you have absolute trust in them, don't care what their bills are so long as they fix your complaint, and you don't expect to understand what they are doing. You need to be in control!

Legal costs are so much higher than any medical bills are ever likely to be that this is only prudence. You should also look to control costs by "no-win, no-fee" arrangements and minimising the risks by taking out insurance. A good lawyer will advise on the possibilities there.

It is worth stating that legal actions in respect to shareholder complaints can be very difficult and expensive to pursue. English law generally restricts such actions to a very few specific grounds so unless your complaint falls within those grounds, it may be impractical to pursue. This is why paragraphs 1 and 3 of this note are important to deal with before you get very far.

11. Share registers

In theory, under the provisions of the Companies Act you can obtain from the company a list of all “members” (i.e. shareholders) of the company for a small charge. In other words, those on the share register. However, there are a number of problems with doing so. To start with you will only get postal names/addresses (no email addresses because the company does not hold them). So you will have to post letters to all of those you wish to contact at considerable expense. You will also find that most shareholders, both institutions and private shareholders are in nominee accounts – so all the clients of a retail stockbroker will show up as one line in the nominee name of the stockbroker (and they won’t normally tell you who their clients are and normally won’t forward communications). Only shareholders with a paper share certificate or in a personal crest account will appear on the register.

This situation creates enormous difficulties in many companies and can totally defeat shareholder democracy (which is why ShareSoc would like to see such arrangements banned by law). But that does not mean you should not use this channel to communicate with known shareholders.

Share registers as supplied (even in electronic form), may be difficult to process because the registrars often send it to you in the most inconvenient format and with some delay. ShareSoc expertise can get around the format problem if you contact us. But having said that, a share register may provide a good starting point for building a shareholder contact list but there will be some cost, time and effort to process it.

Major institutional shareholders can also be obtained from RNS announcements, the company’s Annual Report or from commercial services.

12. Involving Institutional Shareholders

If possible you should try and involve institutional shareholders although they may be wary of getting involved for a number of reasons, so do not assume they will assist. For example, they may worry about forming a “concert party” if they collude with other shareholders. Likewise they may be wary of the publicity that might result, particularly if they feel they cannot control what your shareholder action group does or says, and they may have little financial interest in pursuing the matter. They may also take time to make a decision on supporting you so it unusual for them to take the lead. But even token support from major institutions will help to promote your case.

Note that a “concert party” is usually not formed as a result of shareholder activism – see the letter on Shareholder Engagement from the FSA and Practice Statement 26 from the Takeover Panel on the FRC’s web site.

13. Communicating with the Company and its Board

One thing that is always worth doing, once you have established what the key issues are and what your objectives are is to request a meeting with the Chairman of the company, or the senior non-executive director. It may be that the directors will listen and take action. At least you might find it a good opportunity to get some questions answered. Make sure you take someone along to act as a witness of what both sides said and make notes of the key points of the conversation.

Bear in mind that if possible you want to have a “constructive” conversation with the directors. It is always going to be easier if you can get them to agree to take action on your complaints (even begrudgingly and slowly) than if you have to escalate the matter.

You might be offered information or explanation on a “confidential” basis. Make sure you refuse that. You do not want to be made an “insider” which might stop you or those in your organisation privy to this information from trading in a company’s shares. The principle should be: don’t tell me anything that you do not want to be in the public domain (having information you cannot tell anyone else about is also useless information). However, it would be somewhat impolite to publish a verbatim record of any meeting.

If the board requests to have lawyers present, to record or take minutes of the meeting, you should agree to this only if a copy of any minutes are given to you afterwards. But try to keep the meeting informal if possible. Remember, you are trying to resolve a problem, not make it worse.

It is also good practice to send any letters you plan to send out to shareholders to the company for review in case there are factual inaccuracies in it. The company may not choose to comment but it does no harm to invite them to correct any errors of fact. Don’t get into a long dialogue about the general tone of the letter though, and ask them to respond within 48 hours if they care to do so – at worst you might get a call from their financial PR firm pointing out the damage it might do, etc, etc.

Refuse to cancel sending out any such letter unless they are going to do something for you in return (unless of course it contains errors of fact when you should agree to revise it accordingly). The key to any successful negotiation is to establish “reciprocity” in the negotiation. You should never give them something for nothing, and particularly not if there are simply vague promises to do something, sometime in the future.

14. Requisitioning General Meetings or Resolutions

In principle, a group of shareholders can place resolutions on the agenda for a General Meeting of a company, or can indeed “requisition” such meetings. There are rules established in the Companies Act and the Articles of the Company as to how to do this, and it is not as difficult as you might imagine. But even if you get the resolutions put before shareholders, you have to win the vote (by 50% for most resolutions, of those voting, or 75% for “special” resolutions). Make sure you become familiar with the Articles of the Company which you can obtain from the Companies House web site for a nominal fee.

To win such votes you may need to undertake a “proxy fight” where you garner votes from supporters, while the company does all it can to thwart you. This is where the fighting can get “dirty” with all kinds of allegations about your motives, background, or other spurious claims as to the merits of your resolutions being brought into play.

Sometimes though, even if you lose the vote, the board may recant and change their policies. Or directors may choose to step down (if you look like winning anyway, they will probably do that before the vote takes place). For example look what happened when Laxey Partners attacked Alliance Trust for the wide share price discount to NAV. A buy-back policy was introduced and the Chairman resigned even though the Laxey resolutions were lost.

You may want to take some legal advice to prepare resolutions or general meeting requisitions so as to ensure they comply with Company Law, but these are not particularly complex matters.

15. Speaking at General Meetings

Any shareholder on the share register can attend a General Meeting of a company, ask questions and speak (if you are in a nominee account, read this note on our web site: www.sharesoc.org/nominee_accounts.html). Obviously this is a good forum to raise any issues and the responses (and general attitude of the directors) will be indicative of whether you are going to be able to have an impact. But don't expect to ask multiple questions or make long speeches. Indeed if there are many shareholders present, you may not even get to speak at all, so don't rely on this forum. Similarly asking technical or detailed questions at such meetings is inappropriate - the answer is likely to be "we will look into that and let you know the answer". Such questions are best put in writing to the Chairman before the meeting with a request that he gives the answer at the meeting.

Make sure you say who you are and the organisation you represent when speaking at company meetings. Practice your "short" speech or the questions (no more than three) before the meeting, to ensure they are as brief as possible. Do not read a prepared speech out – it's the emotion that counts and one or two key points that you should be able to memorise, not the detailed content. Do not bore the audience – shareholders are impatient people in general. Evasive Chairman and Directors can generally be pinned down by getting their agreement to good principles such as being open with their answers to shareholders before unleashing the complaint question now that they have been already hooked by the first answer.

Most shareholders, and hardly any institutions, attend general meetings so you are unlikely to sway any votes – the voting is usually decided by the proxy counts before the meeting even takes place, so consider it more as a "PR" exercise than anything else. It helps to demonstrate to existing supporters that you are doing something and it may help to recruit more supporters. In addition a good speech may have an impact on the directors and other shareholders. For example, a speech by one lady shareholder at a Marks & Spencer AGM a few years ago where she complained about the unattractiveness of their knickers seemed to crystallise shareholders' feelings about the recent performance of the company and why shoppers were not buying their goods.

You should of course try to get as many supporters as possible to attend such meetings, and speak on the same points as you. You may want to nominate specific "speakers" who are capable of speaking well in public in an impromptu manner.

If the company's affairs are of interest to the media, you may wish to line up the press for interviews before or after the meeting takes place (they may not be allowed into the meeting itself).

16. Voting at General Meetings

Make sure you become familiar with voting practice at General Meetings, and when and how you can call for a poll, if necessary. Don't assume that the company chairman knows how to run meetings properly, particularly in smaller companies. Sometimes they need reminding of the correct legal procedures. Don't be afraid to interrupt the procedure of the meeting if you think it is not being run properly.

17. Getting Assistance

ShareSoc can help you in the following ways:

A – We can provide you with general advice on the viability of what you are proposing and the merit of your complaint. That includes advice on how to practically proceed and the general legal framework of Company Law and other relevant legislation or common law, including stock market regulations and the listing rules (see foot of this document*).

B – We can help you to prepare letters to shareholders or the boards of directors of companies and participate in meetings with either groups if you wish us to do so.

C – We can advise how to organise and run a shareholder action group and that includes the setting up of administrative support. If you wished us to provide administrative support, rather than organise this yourself, we may be willing to do this, but there would be a reasonable charge to cover the labour and other incidental costs involved.

D – We can provide publicity via our web site, our newsletters and via our large media contact list.

E – We would ensure that there is a contact person readily available to deal with any questions that might arise as your campaign progresses.

F – We will generally provide advice free of charge but we do ask that in return you promote membership of ShareSoc to your supporters and that anyone we are providing direct advice to does become a subscribing (i.e. Full) member of ShareSoc.

G – Our focus is on providing support to shareholder action groups but the best people to actually run them are those who have a direct financial interest in the matter, i.e. the shareholders of a company. Only you can decide what you would like to see happen in the future or how your complaint can be best rectified.

H – Call ShareSoc on 0333-200-1595 for some informal advice if you are unsure how to get started.

18. Conclusion

The sooner you get started with a shareholder action group the better if you have a genuine complaint. Unnecessary delay is likely to result in the failure of any campaign.

Start now with some positive actions to protect your investment!

**Note that we cannot provide specific legal advice as we do not employ legally qualified staff and some issues with respect to shareholder action groups might require very specialist advice so if legal advice is required then we would need to direct you to someone who could do so. Any advice we do provide is governed by the same terms and conditions as published on our web site at www.sharesoc.org/legal.html and we accept no responsibility for any errors or omissions therein.*