

THE TAKEOVER PANEL

C.S.T. INVESTMENTS LIMITED ("CST")/ GRENDON TRUST LIMITED ("GRENDON")

The Panel on Take-overs and Mergers invited some of the parties concerned in the recent take-over of Grendon by CST to a meeting on 3rd December, 1973 to enable the Panel to examine certain aspects of the transaction. The meeting was continued on 4th and 6th December. The facts as we find them are as follows.

Grendon is engaged in the investment and development of property, in the provision of services for the North Sea oil and gas industry and, through its subsidiary Monotype Corporation Ltd., in the manufacture and sale of equipment for the printing industry. It has an issued capital of 6,721,479 shares of 25p each, and 602,200 further shares could be issued on the exercise of warrants which might be exercised during an offer period and a period of three months thereafter if control had, under the offer, passed to the bidder. The directors' holdings and holdings in what they regarded as safe hands came to approximately 40% of the shares of the company.

From July to September, 1973 Mr. Christopher Selmes and his associates, Mr. G. H. Camamile and Mr. D.A. Taglight, together with companies controlled by them, bought and "warehoused" substantial numbers of shares in Grendon, the holding in each case being less than 10% of the issued capital. A proportion of these shares were later put into the name of a company called Eastminster Ltd ("Eastminster"). On 27th September the Selmes group announced publicly that it had acquired 40.6% of the equity of Grendon and would make an unconditional offer for the remainder of the shares at the highest price it had paid, namely 295p. The offer was made by a new company, CST, controlled by Mr. Selmes and his associates. The offer document was issued on 9th October and showed that the Selmes group held 2,734,940 shares (40.69%) and 108,000 warrants.

The Grendon board, at a meeting on 28th September, agreed to issue a statement that the offer of 295p was "significantly below their estimate of the underlying net assets of the Group". Shareholders were strongly advised to take no action "at present" and told that they would be advised in due course by their board and its financial advisers. The directors present, including the Chairman (The Duke

of St. Albans) and Mr. W.H. Bishop, affirmed that their holdings (listed in a document appended to the Minutes) would remain in support of the board and this support would not be withdrawn without prior notification to the board.

The Grendon board then had talks with other possible bidders. The negotiation with one company broke down on 8th October and discussions were then continued with MEPC Ltd. At a Grendon board meeting on 10th October it was reported that MEPC was likely to decide on the morning of the following day whether to make a bid. The board agreed to postpone further action till the afternoon of the 11th, and to decide then whether to arrange a meeting with Mr. Selmes. The Duke at the board meeting on the 10th October said that he considered himself free to talk to Mr. Selmes if an MEPC bid did not materialise on the morning of 11th October. At a Grendon board meeting on the afternoon of 11th October, the Duke reported that representatives of MEPC had indicated that, if the board felt able to recommend an MEPC proposal to their shareholders, the board of MEPC would meet on 12th October to agree upon a formal offer (which they in fact did). The offer was to be in shares and convertible loan stock having a value of about 328p, underwritten as to the shares to give a cash plus loan stock value of about 315p. Later it was decided to underwrite the whole of the offer. As MEPC did not want to be involved in a contested bid, it was a pre-condition of the offer that either the Selmes group should have previously agreed to sell their shares to MEPC or the Grendon directors should have obtained prior commitments for more than 50% of the equity. The Grendon board formally resolved at their meeting on 11th October that this offer was one which the directors would feel able to recommend to the shareholders: the Duke did not dissent.

An informal meeting of Grendon directors, under the chairmanship of the Duke, was held in the late afternoon of Friday, 12th October. No Minutes were kept and the Secretary was not present. It seems, however, that it was reported that Mr. Selmes had refused to sell his shares to MEPC. There was then a discussion of the alternatives of trying to obtain a commitment of 50% of the shareholders to the MEPC terms or of negotiating with Mr. Selmes about the terms of his offer. The representative of Morgan Grenfell (Mr. G. Weston), the financial advisers of the company, advised the board that there was no need to deal urgently with Mr. Selmes, since his offer had nearly three weeks to run. The Duke said that he considered that he could get a better price than 295p from Mr. Selmes and that time was running against Grendon. Schedules of shareholders were produced on the issue whether it was feasible to get a 50% commitment to the MEPC terms, although the Duke has stated that he did not see them. Three directors (the Duke, Mr. W.H. Bishop and Mr. R.A. Sutton) were, in varying degrees doubtful whether firm commitments of over 50% for the MEPC offer could be obtained. A majority of the directors present, including Mr. J.H Seymour (who later succeeded the Duke

as chairman of the company) considered that an effort should be made over the weekend to obtain the necessary commitments. The view was expressed that, if negotiations with Mr. Selmes became necessary, they should be conducted by Mr. Bishop. At some stage the Duke left saying, though not in the hearing of all the directors present, that he considered himself free to deal in his shares. Neither the Duke nor Mr. Bishop made it clear at this informal meeting that their respective holdings should not be included in the total of any 50% commitment which might be secured; in the latter part of that day, however, the Duke had decided to sell his shares to Mr. Selmes and so informed Mr. E.D. Kohn, managing director of EIC Eurosecurities Ltd., licensed dealers in securities, who told us that he had acted as a "go-between" for Mr. Selmes and the Duke. The directors who remained then agreed on the wording of a commitment letter in respect of the MEPC terms and arranged that a board meeting should be held on Monday, 15th October to review the position.

On the morning of Saturday, 13th October, the Duke met Mr. Selmes, Mr. Kohn and Mr. Bishop at the Duke's house. Mr. Bishop advised the Duke to delay selling until the following Monday. The Duke said he had made up his mind and signed a document prepared by Mr. Kohn transferring 264,400 shares (some 3.9% of the equity) to the Selmes group at 300p. The Duke telephoned Mr. Weston late that evening and informed him that he had made this sale. Mr. Weston has told us that he was flabbergasted by this news.

The board of Grendon met on Monday, 15th October. Notwithstanding the Duke's defection, the board and Morgan Grenfell were still hopeful of obtaining 50% commitment to the MEPC terms and continued in their efforts till Wednesday, 17th October.

Earlier on the 15th October Mr. W.H. Bishop had agreed to complete the transfer (arranged much earlier) of 200,000 Grendon shares (3% of the equity) to Erskine House Investment Trust Ltd. ("Erskine House") in exchange for Erskine House shares and Erskine House on 16th October agreed to sell these shares to the Selmes group.

Later, on 17th October, a revised offer of 300p per share was posted on behalf of CST and the fact that the Selmes group now had 200,000 shares which had belonged to Mr. Bishop was announced. This gave 48.82% of the shares to the Selmes group, a figure which was subsequently raised to 51.87% by further purchases.

On 23rd October, the CST offer was raised to 315p and at this level was recommended to shareholders by the Grendon board under the chairmanship of Mr. J.H. Seymour.

The Panel directed its attention to four aspects of these events.

1. The circumstances of the sale of 264, 400 Grendon shares by the Duke to the Selmes group on 13th October, 1973.
2. The circumstances under which 200,000 Grendon shares owned by Mr. W.H. Bishop were ultimately transferred to the Selmes group on 16th October, 1973.
3. Market purchases of Grendon shares at amounts in excess of 300p which shares came into the possession of the Selmes group during the offer period.
4. Apparent inaccuracies in documents issued by Keyser Ullmann on behalf of the Selmes group.

The Panel are not, of course, able to require the production of private papers, bank accounts and other documents; they did, however, closely question the parties concerned and examine the Minute book of the Grendon board.

The Duke of St.Albans

The Duke was invited to explain to the Panel the reasons for the sale of his Grendon shares to Eastminster on 13th October, 1973 at a time when, on the advice of Morgan Grenfell, talks were taking place between the Grendon board and another potential bidder at a higher price than CST's offer and to account for apparent inaccuracies in press statements he issued on 14th and 23rd October.

The Duke informed us that he had, throughout the relevant period, been concerned about the adverse effect on Grendon, and particularly on the management of the group's industrial activities, of prolonged indecision about the future of the company, although he had not invited the opinion of the Managing Director of Monotype, the most important of the company's industrial interests. He thought that, if MEPC was in earnest, it should have publicly shown its hand, and he was unhappy about a report that subordinates in MEPC had contemporaneously been making enquiries about Grendon properties which MEPC might be interested in buying if the CST bid succeeded. He was sceptical whether, against opposition by the Selmes group, 50% of the voting strength could be mustered by the Grendon board in support of the MEPC terms. He considered that his colleagues who favoured an offer by MEPC were prejudiced against the CST bid, partly because the offer document had been worded in a way that might be thought to reflect adversely on the entrepreneurial skill of the existing Grendon management.

All these arguments can be met by counter-arguments. For example, it became reasonably clear over the weekend of the 13th/14th October that Morgan Grenfell's advice was correct and that support of more than 50% could have been obtained for the MEPC terms. We do not, however, think it necessary to enter into a discussion of the rival merits of the two propositions that faced the Grendon directors.

Whatever conclusions might be reached as to these, in our view the Duke committed a serious error of judgment in deciding to sell his shares to the Selmes group on Saturday, 13th October and so make it the less likely that an MEPC offer could be put before the shareholders. He was a party to the board's resolution of 11th October that the MEPC offer was one which the board would feel able to recommend to shareholders. The company's financial advisers had counselled against any precipitate action and the Duke took no independent expert advice before disposing of his shares. There was in fact no reason for hurry. The Duke had undertaken, as a director, to give advance notice to the board of any intention to dispose of shares; and he seemed - properly in our view - to have attached importance to the point since he claimed in a public statement of 23rd October that he had given such notice and had had the notice recorded in the board Minutes. In fact, he seems to have done no more than say, in the hearing of one or two individuals at the informal meeting of directors on 12th October, that he regarded himself as free to deal. The Duke's statement at the meeting on 10th October that he considered himself free to talk to Mr. Selmes if an MEPC bid did not materialise was at least equivocal and was certainly understood by some of those present to refer to discussions on behalf of the general body of shareholders. We have no reason to believe that the Duke acted from improper motives but cannot avoid the conclusion that the Duke's sale of his shares was prejudicial to the interests of the Grendon shareholders and is open to serious criticism. It is understandable that Mr. Weston was flabbergasted when he was informed of the sale.

We examined two press statements issued by the Duke. That of 14th October said that he had "no outstanding prior commitment" in respect of his shares, a view which, as indicated above, we do not share. It also described Eastminster and associates as having "slightly less than 50% of the outstanding capital" when the figure (with the Duke's holding) was 44%. We have already referred to an inaccuracy in the press statement of 23rd October. It also did not accurately describe the MEPC terms, since it implied that they fell to the ground if Mr. Selmes did not part with his shares. We wish to emphasise the importance of complete accuracy in all statements issued in connection with take-over bids. It is unfortunate that greater care was not taken in this case to secure compliance with this requirement.

Mr. W.H. Bishop

Mr. Bishop held approximately 340,000 shares in Grendon. He was in negotiation with Erskine House from the beginning of July, 1973 about the conditions under which he might transfer his services from Grendon to Erskine House. On 1st August, 1973 he signed an undated contract under which he would transfer

200,000 Grendon shares at 200p per share in exchange for Erskine House shares. He regarded himself as having "dealt" on that date and as being bound by that contract. He endeavoured in September to re-negotiate the price, as the price of Grendon shares had advanced; Erskine House ultimately agreed a share exchange which in the event put a price of about 284p on the Grendon shares. The document concerned was signed early on 15th October. Mr. Bishop explained that he was reluctant to inform his colleagues while he was still negotiating and did not consider that the 200,000 shares were disposed of till he parted with the share certificates. He also said that he hoped (though he took no steps to secure this) that, when the shares came into the possession of Erskine House, they would remain in support of the Grendon board.

Mr. Bishop was in breach of the agreement reached by the board on 28th September since he did not inform the board of his action till a board meeting on 15th October held after the disposal. Nor are we satisfied with Mr. Bishop's explanations why he at no time told the directors of his negotiations with Erskine House or of the existence of a commitment, which he regarded as binding, of 1st August to dispose of 200,000 shares. It was misleading to his colleagues to describe his total holding on 28th September as remaining in support of the board.

In the event Erskine House agreed to sell the shares to Eastminster as an ordinary commercial transaction on 16th October and this effectively frustrated any MEPC offer.

We cannot stress too strongly the need for complete frankness by directors about dealings in their company's shares, particularly in bid situations, and Mr. Bishop's conduct is open to serious objection.

Position of dissenting directors

We would add that whilst it is the right and, if their conscience so dictates, the duty of directors to dissent from a majority view of the board to which they belong, it is equally their duty to inform their colleagues fully and in advance of the reasons for their action, to do nothing injurious to the interests of shareholders and if their colleagues are acting in accordance with professional advice, to secure independent advice themselves. It is unfortunate that these principles were not followed.

Stock Exchange Dealings

At the request of the Panel, The Stock Exchange carried out an investigation into dealings in Grendon shares during the bid period.

Following this investigation the Panel studied two cases in which individuals personally acquainted or formerly associated in business with Mr. Selmes bought shares in the bid period at above the bid price and sold them later through the market to the Selmes group at the bid price of 300p. Had these purchases been made in concert with the Selmes group then the general offer would have had to be increased accordingly.

Mr. "X" is an individual who knows Mr. Selmes socially but, until he paid a recent visit to Mr. Selmes in the London Clinic, had not seen him since a date in July, 1973, when they met in the South of France. He instructed his brokers, Messrs. Chapman & Rowe, to buy Grendon shares on 24th and 25th September and subsequently gave them discretion to buy within limits. In the period following the announcement of the offer on the 27th September he bought 42,500 shares and approximately the same number of warrants. The prices for shares within the offer period ranged between 305p and 321p, but he sold the shares for 299½p on 19th October and warrants on dates between 5th and 19th October. Mr. "X" explained to us that he had believed that a contested bid situation would develop and that the price of the shares would rise further. When it was clear that CST was about to secure control he cut his losses and sold his shares, his brokers arranging for them to be bought by the Selmes group.

Mr. "Y" runs a dealing company. He had done business for Mr. Selmes when previously employed in a stockbroking firm. Mr. "Y" had dealings in Grendon shares from April, 1973 onwards and paid prices up to 326p. He disposed of 25,000 shares on 19th October, arranging for their acquisition by the Selmes group. Mr. "Y" explained that he had had no contact with Mr. Selmes in the bid period. Like Mr. "X", he had thought that the share price would go up further and when it became clear that CST was about to secure control he sold.

Although the circumstances of these dealings called for close examination we had no evidence before us which established any collusive action between the Selmes group and these two gentlemen; we therefore think it inappropriate to name them.

Circulars regarding Eastminster shareholdings in Grendon

Mr. Bishop's sale of 200,000 shares to Erskine House on 15th October was conditional on the issue to him of 505, 000 shares in Erskine House. The Stock Exchange informed Erskine House on 17th October that they required that the issue of these shares should be approved by the shareholders. Erskine House issued a circular to shareholders on 19th October convening an EGM on 5th November.

Keyser Ullmann issued a press statement on 17th October that Eastminster had purchased 200,000 shares on 17th October and then held 48.82% of the ordinary capital in issue; and further statements were issued on 18th October and 19th October in which the 200,000 shares were treated as unconditionally owned by Eastminster. The revised offer document issued on the afternoon of 17th October contained a similar statement.

Representatives of Keyser Ullmann explained that they were not aware of the qualified nature of the transfer till late on 17th October and did not know of the need for an EGM until they received a copy of the Erskine House circular of 19th October.

We accept that there was no intention to conceal information, but we wish to stress again the importance of complete accuracy in documents relating to take-overs and the need for those concerned to take every step to ensure that the information published in offer documents and press statements is correct and up-to-date.