THE TAKEOVER PANEL

MOUNT CHARLOTTE INVESTMENTS LTD. ("MOUNT CHARLOTTE")/ GALE LISTER & CO. LTD. ("GALE LISTER")

The Panel, at a meeting on 20th December, 1973, examined the circumstances in which P.R. Grimshawe & Co. Ltd. of Bank House, Park Place, Leeds, on 16th, 19th and 20th November, sold 200,000 ordinary shares in Gale Lister.

On 2nd November the directors of Mount Charlotte and the directors of Gale Lister announced that they had agreed terms for a merger of the two companies. Mount Charlotte would offer five Mount Charlotte ordinary shares for each issued share in Gale Lister. At that date this placed a value of 102½p on each Gale Lister share. The directors of Gale Lister and their financial advisers, P.R. Grimshawe & Co., indicated their intention to accept the offer in respect of their holdings, totalling 780,000 Gale Lister shares (61.9% of the issued capital) and to recommend acceptance of the offer by the other shareholders.

P.R. Grimshawe & Co. have been financial advisers to Gale Lister throughout their negotiations with Mount Charlotte and a director of P.R. Grimshawe & Co. is on the board of Gale Lister. They held 316,000 ordinary shares of Gale Lister when the offer was announced.

On 16th November, P.R. Grimshawe & Co. sold 150,000 Gale Lister shares through the market at an average price of 106p, on 19th November they sold 25,000 shares at 106p and on 20th November they sold 25,000 shares at 105p. These shares amounted to 15.9% of the Gale Lister issued capital. By these dates the value of the Mount Charlotte offer had fallen to 97½p.

At the request of the Panel executive, the directors of Gale Lister and P.R. Grimshawe & Co. issued a joint statement on 26th November, explaining that the sales of shares by P.R. Grimshawe & Co. had been made without the prior knowledge or approval of the board of Gale Lister. The statement went on to say that the board of Gale Lister and its advisers still recommended shareholders to accept the Mount Charlotte offer and that P.R. Grimshawe & Co. had given the board of Gale Lister an enforceable undertaking to pledge their remaining 116,000 shares to the board of Gale Lister so that the board would be able to accept the Mount Charlotte offer in respect of their and the P.R. Grimshawe & Co. shareholdings, totalling 46% of the issued ordinary capital. The statement also said that the board and its advisers had received no bona fide offer other than that made by Mount Charlotte.

The question to which the Panel directed its attention was whether P.R. Grimshawe & Co., and in particular its chairman and managing director,

Mr. Peter R. Grimshawe, A.C.A., had failed in their duty as financial advisers to Gale Lister in selling shares in the market on 16th, 19th and 20th November. General Principle 1 of the Code states that persons engaged in take-over or merger transactions should observe the spirit as well as the precise wording of the General Principles and ensuing Rules. General Principle 3 insists that, in the course of a take-over or merger, no relevant information should be withheld from shareholders.

A director of P.R. Grimshawe & Co. informed Mr. James of Henry Ansbacher & Co. Ltd. (the financial advisers to Mount Charlotte) on the afternoon of 16th November of the sale of shares on that day. Mr. James informed Mr. P.D. Silverstone, the chairman of Gale Lister, who wrote on the same day to P.R. Grimshawe & Co. saying that he was at a loss to understand the sale and asking for an explanation. Mr. Grimshawe replied, on 20th November, that the joint statement of 2nd November was no more than an expression of intention at that time, that other shareholders could equally have sold in the market and that there was a distinction between merchant banking advice in a situation and any action taken by the merchant bank in respect of its own shareholding. He said that he still regarded the Mount Charlotte offer as attractive and it had the backing and recommendation of his company.

The matter was reported to the Panel executive. At a meeting with the Director General on 29th November, Mr. Grimshawe said that his company's action helped the shareholders of Gale Lister, since the shares he sold might have come into the possession of someone who would make a better offer than Mount Charlotte were making. On the subject of giving information about the sale, he said that he assumed that his stockbroker would make any necessary reports and that a non-executive director of Gale Lister, with whom he was in touch, might have guessed that he was selling some of the shares. Mr. Grimshawe said that he was unable to understand in what way he might be regarded as having broken any provision of the Code.

Mr. Grimshawe was informed by letter dated 5th December that in the opinion of the Panel executive the sales by his company constituted a breach of General Principles 1 and 3 of the Code and he was invited to meet the full Panel on 13th December. He replied that he was unable to come on that date and again said he was unable to understand how he had breached the Code. The Panel executive then invited him to suggest two alternative dates before Christmas when he could attend a meeting of the full Panel and informed him that if no other date was so suggested by him the Panel would meet to consider the matter on 20th December. Mr. Grimshawe did not suggest any date and did not attend the Panel meeting on 20th December.

The Panel proceeded to consider the whole matter in the light of Mr. Grimshawe's oral explanation to the Panel executive and the comprehensive letter from Mr. Grimshawe to Mr. Silverstone dated 20th November which was handed to the Panel at the hearing. The Panel decided, however, that before formulating any conclusions it would give Mr. Grimshawe one further opportunity of making in writing or orally any additional observations which he might wish the Panel to consider and that it would re-convene at 2.30 p.m. on 4th January.

Mr. Grimshawe was informed in a letter dated 21st December of the Panel's provisional findings of fact as set out above and invited him to attend the meeting on 4th January. Mr. Grimshawe did not choose to accept this final invitation to appear before the Panel. Instead he replied on the 28th December informing the Panel that he had that day received the letter of the 21st December and saying -

> "...In view of the present difficulties in travelling to and from London, and because of the Christmas and New Year holidays, I am writing to you with these observations rather than attending the meeting (I have several visitors in my office from London on 4th January, and it would be very difficult to cancel these appointments at this late date), but will be happy to attend any future meeting should you so wish ... "

In all the circumstances the Panel did not feel called upon to make any further adjournment to meet his convenience. Nor did his letter enable the Panel to take a more favourable view of Mr. Grimshawe's conduct. His attitude was explained in the following paragraphs -

> "General Principle 1 requires the spirit of the Code as well as the Rules to be observed. The spirit can only be inferred from the specific rules and it is, therefore, necessary to consider whether any rule has been broken. The only relevant rule is Rule 31, which specifically states that parties to a take-over negotiation are free to deal provided that they notify. Rule 31 says that we can sell and, therefore, the general spirit must allow us to sell freely. We have not, therefore, broken the Letter of the Code and cannot be said to have broken the Spirit in that respect.
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> At the meeting with Mount Charlotte and Mr. D. Silverstone on 2nd November, as mentioned in my letter to Silverstone of 20th November, I requested a cash alternative. When Mount Charlotte declined to make a cash alternative available, I stated that I would feel free to deal in Gale Lister shares at any time. At the meeting I also offered Mount Charlotte 14.9 per cent of the Gale Lister share capital from our shareholding at the offer price of 97½p net, but this offer was also declined.
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> It was, therefore, obvious to all concerned that the statement in the press announcement of 2nd November, that it was our present intention to accept in respect of our shareholding, was one that could change in the future.
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> General Principle 3 concerns the requirement to provide shareholders with sufficient information and that the parties to a bid must not withhold anything. I cannot see any good reason why we should be expected to make any announcement of our intention to sell prior to the actual

sales. First, if we did so it would almost certainly affect the price. Secondly, we used no information which was not freely available to others; we merely availed ourselves of the vagaries of the Market which was equally open to others. Thirdly, we did this, as we have already stated, in the hope that it may "flush out" a possible alternative bidder since our action would cause such a bidder in the Market to have to pay at that price. Fourthly, our action has not prejudiced the bid in any way; it can still go ahead with a large majority in favour despite our sales. Fifthly, where is the mischief to prejudice shareholders when none have been adversely affected? Finally, I repeat that our intention on 2nd November was a present intention which later altered. We have consistently refused to permit a "shut-out" offer and the Panel later refused to allow us to do so anyway."

We have set out Mr.Grimshawe's views as expressed to Mr. Silverstone and to the Director General and in the above-mentioned letter in some detail since he did not choose to appear in person before us. This we regret but we are bound to say that we are satisfied that the facts as set out in the preceding paragraphs of this report as based on the evidence of Mr. Silverstone and the Director General and confirmed by the documents are correct and that we are quite unable to accept the, in some respects, rather different version given by Mr. Grimshawe.

The account which he gives of the meeting on 2nd November is quite inconsistent with the joint statement issued on that day by Gale Lister and P.R. Grimshawe & Co. in which he concurred, or with the letter which Mr. Silverstone wrote on 16th November. It was quite clearly not obvious to all concerned that the joint statement issued on 2nd November was merely an expression of present intention which could be varied in the future.

The statement did not, it is true, represent an irrevocable commitment. It was taken as an expression of intention in the absence of a better offer. No better offer was in fact made. The statement was expressed in terms of the whole of the holdings of the directors of Gale Lister and of P.R. Grimshawe & Co. As long as the statement remained unqualified Mount Charlotte, the directors of Gale Lister, and indeed the shareholders of Gale Lister, were entitled to expect that it would be honoured. The Panel rejects emphatically the contention made by Mr. Grimshawe that there is a distinction between merchant banking advice in a situation and any action taken by the merchant bank in respect of its own shareholding so that Mr. Grimshawe could divorce the advice given to shareholders to accept the Mount Charlotte offer from the handling of shares hold by his company which he had pledged to the offer in the statement issued to shareholders. This contention is entirely contrary to the accepted principles on which merchant bank advisory services are conducted.

In 1970 the Panel issued guidance on the subject of share transactions by a merchant bank on behalf of clients where the bank is advising the company concerned in a take-over or merger situation. We indicated that if the investment branch of the bank was completely separate from the corporate advisory branch share transactions could continue, subject to various safeguards. The present case involves the entirely different situation of a financial adviser's own shareholding in an offeree company being dealt with in a manner inconsistent with the advice they had given to other shareholders and after they had informed the shareholders that they intended to accept an agreed offer.

We are unable to take seriously Mr. Grimshawe's references to Rule 31. That Rule has no application to dealings in shares which a merchant bank adviser has informed shareholders are pledged to acceptance of an offer. Nor is his observation that other shareholders could equally have sold a serious one. Other shareholders were not pledged to the acceptance of the offer; the sales by P.R. Grimshawe & Co. after they had advised other shareholders to accept could obviously have affected the price when other shareholders became aware after the event that their company's financial advisers were not accepting for themselves the advice which they had given to shareholders.

P.R. Grimshawe & Co. 's action was in breach of General Principle 3; and we consider that more generally they wholly failed to observe the standards of conduct which the Code assumes that financial advisers will maintain in their dealings with the directors and shareholders of the company by which they are employed. We are not surprised that Mr. James on being told of the first sale thought that the transaction was "extraordinary" or that Mr. Silverstone was "completely at a loss" to understand why it had taken place. The extent to which P.R. Grimshawe & Co. had departed from accepted standards is illustrated by the fact that Mount Charlotte suspected Gale Lister of being somehow involved in the sales and considered at one stage seeking the Panel's permission to withdraw the offer.

It appears to us perfectly clear that P.R. Grimshawe & Co. were not free to deal in these shares without a clear and public prior intimation to directors and shareholders. Even with such intimation, but without further considered advice to Gale Lister, a sale would have presented serious problems.

We have therefore reached the conclusion that Mr. P.R. Grimshawe, as chairman and managing director of P.R. Grimshawe & Co., is deserving of grave censure for the sales of 200,000 shares in Gale Lister on 16th, 19th and 20th November, 1973.

16th January, 1974.