THE TAKEOVER PANEL

HEARINGS COMMITTEE

MR DAVID CUNNINGHAM KING ("MR KING")

RULING OF THE HEARINGS COMMITTEE ("THE COMMITTEE")

INTRODUCTION

1. On 16 September 2019 the Committee met to consider disciplinary proceedings initiated by the Executive of the Takeover Panel ("the Executive") against Mr King, the Chairman of Rangers International Football Club PLC ("Rangers"). At the hearing the Executive was represented by Mr David Johnston QC while Mr King represented himself and made a statement to the Committee. Although Mr King served no written submission for the purpose of the hearing, he had earlier set out his position in an email of 23 April 2019 by way of reply to a letter of the Executive outlining its grounds for considering disciplinary action. Rangers participated as an interested party and was represented by Mr James Blair, its company secretary and solicitor. Mr Blair served a written submission on behalf of Rangers and also addressed the Committee orally.

2. This ruling sets out the decision and reasoning of the Committee following the hearing. The members of the Committee who heard these proceedings are set out in the Appendix to this ruling.

3. The Executive contended that in various respects Mr King contravened four different Rules of The City Code on Takeovers and Mergers ("the Code").

4. The principal contravention alleged is that between 31 December 2014 and 2 January 2015 Mr King acted in concert with others to acquire shares carrying more than 30% of the voting rights of Rangers. In contravention of Rule 9.1 of the Code he then failed to make an offer to purchase the shares of Rangers not owned or controlled by himself

or by those with whom he had acted in concert. He persisted in this failure notwithstanding a ruling of the Executive that he make a mandatory Rule 9 offer at the price of 20 pence per share and notwithstanding later rulings of the Committee and the Takeover Appeal Board ("the Board") upholding the Executive's ruling.

5. In the event, as explained more fully below, the Executive was forced to commence proceedings in the Court of Session in Edinburgh under section 955 of the Companies Act 2006 for an order compelling the making of a Rule 9 offer and to initiate proceedings for contempt of court when an order (or interlocutor) of the Inner House of the Court of Session directing the making of such an offer was not carried out within the time stipulated.

6. The contempt proceedings came on for hearing before the Outer House of the Court of Session on 29/30 November 2018 and were adjourned against various undertakings to the court by Mr King including an undertaking to ensure that an offer in full compliance with the Code be made by 17:30 GMT on 25 January 2019.

7. On 25 January 2019 Mr King finally procured the publication of a Code-compliant offer document by Laird Investments (Pty) Limited ("Laird"), a private, South-African based company ultimately owned by a trust of which Mr King and his family are beneficiaries.

8. By the time the Laird offer was posted just over four years had elapsed since Mr King had procured the purchase of shares giving the concert party of which he was a member a controlling interest, thereby triggering the obligation to make a Rule 9 offer for the remaining shares of Rangers.

9. On 15 February 2019 it was announced that shares held or controlled by the concert party plus acceptances received amounted to 47.12% of Rangers' issued share capital. Accordingly, the acceptances received (when combined with shares already held) fell short of the 50% acceptance condition set out in Rule 9.3 of the Code and the offer lapsed.

10. Mr King does not dispute that he contravened Rule 9 of the Code in the respects broadly summarised above, but he advances various points in mitigation which he invites the

Committee to take into account in deciding upon the appropriate disciplinary action. We deal with this more fully below.

11. The other Code contraventions alleged by the Executive all stem from or relate to Mr King's obligation to procure the making of a Rule 9 offer following the acquisition of Rangers shares by the concert party during the period 31 December 2014 to 2 January 2015.

12. The Executive alleges that in breach of section 9(a) of the Introduction to the Code Mr King provided incorrect and misleading answers to the Executive during the course of its investigation of the circumstances in which he and the persons with whom he was later found to have acted in concert procured the purchase of shares in Rangers during the period in question. It is alleged in particular that when first questioned by Mr Christopher Jillings of the Executive during January 2015, Mr King attempted to mislead him by denying that he and Mr George Letham (one of the group of three with whom Mr King was later found to have acted in concert) had communicated with a view to co-ordinating their respective share purchases at the end of 2014. This was later shown to be untrue by emails passing between Messrs King and Letham at the end of 2014. These emails (to which the Committee refers below) were not produced by Mr King, who claimed in response to a request for production from the Executive that he had deleted his emails and could not recover them: they were obtained from Cantor Fitzgerald, the brokers instructed by Mr King in connection with the purchase of the relevant shares.

13. The Executive also alleges that despite being reminded in an email from Mr Letham on 31 December 2014 that they would have to make a mandatory offer unless their aggregate holdings remained under 30% of Rangers' equity share capital, Mr King went ahead and procured the purchase of shares that took the concert party's overall holdings to 34.05%. Despite this and in breach of section 6(b) of the Introduction to the Code, Mr King failed to consult the Executive on the implications of these acquisitions.

14. Finally, the Executive alleges that in contravention of Rule 24.8 of the Code Mr King failed to provide for cash confirmation in the Laird offer document prepared in purported compliance with the interlocutor of the Inner House made on 28 February

2018. The implications of this are covered in detail below. The Executive also maintains that in breach of section 6(b) of the Introduction to the Code Mr King failed to consult the Executive regarding the requirement and implications of cash confirmation. The Executive contends finally that during April 2018, as the time stipulated under the Code for posting an offer document approached, Mr King led them to believe, incorrectly, that he had instructed Investec to provide cash confirmation and to assist in dealing with South African exchange control regulations. This is alleged to amount to a further breach of section 9(a) of the Introduction to the Code.

15. The Executive's case is that it is to be inferred from Mr King's overall conduct that he is a person who is not likely to comply with the Code and accordingly that the Committee should so declare. Such a declaration would trigger the sanction known colloquially as "cold-shouldering", a sanction which the Executive submits should remain in place for not less than 5 years.

16. For his part, Mr King disputes that he is to blame for failure to provide cash confirmation under Rule 24.8 within the time stipulated for posting an offer document by the interlocutor of the Inner House. He also disputes the related allegations of failure to consult and misleading the Executive in connection with cash confirmation arrangements. He does not, however, contest the other Code contraventions alleged by the Executive but seeks to explain and mitigate them in the respects referred to below.

17. With support from Mr Blair on behalf of Rangers, Mr King disputes that he is a person who is unlikely to comply with the Code and assures the Committee that he has learned a painful lesson and will be careful to comply in future. Before these proceedings were commenced he offered an undertaking to the Executive to comply in future. He also offered to undertake to the Executive that he would not in future engage within the UK in transactions subject to the Code. Mr King accepts that some sanction is inevitable but maintains that it should not amount to cold-shouldering. By implication, his case and that of Rangers is that a statement of public censure would be sufficient punishment.

18. We will now address each of the Code contraventions in turn.

BREACH OF RULE 9 – DEALINGS WITH THE EXECUTIVE DURING THE CONCERT PARTY INVESTIGATION

19. Rule 9 of the Code implements the first of the six General Principles on which the Code is based. It is intended to secure equivalent treatment for shareholders and to ensure that shareholders of a company are protected when a person or group of persons acquires control. Rule 9.1 stipulates when a mandatory offer is required and who is primarily responsible for making it. In relevant part it states:

"Except with the consent of the Panel, when:

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company;

….

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights."

The mandatory offer regime in Rule 9 is of fundamental importance to the Code because it is intended to ensure that persons acquiring control of a company treat all its shareholders equally and afford them an opportunity to exit by realising their shares for a consideration regulated by Rule 9.5.

20. The circumstances in which Mr King and a group comprising George Letham, Douglas Park and George Taylor acted in concert to acquire a controlling interest in Rangers were set out in detail in the decision of the Board dated 13 March 2017 and in the earlier ruling of the Committee of 5 December 2016. The decision of the Board and the ruling of the Committee were published as Takeover Appeal Board and Takeover Panel Statements. As Mr King no longer disputes these decisions we will refer to them only in so far as necessary to assess the seriousness and implications of the Code contraventions alleged by the Executive.

21. It appears from the decision of the Board and the ruling of the Committee that in October 2014 a funding proposal was put to the board of Rangers by a consortium including Mr King and a group including Mr Letham and Mr Paul Murray. The proposal involved funding of £16 million split 50/50 between debt and equity of which Mr King was to provide 50% and the group including Mr Letham £8 million. A condition of the proposal was that the funding consortium would provide four directors of whom Mr King was to be chairman. The proposal was in due course rejected by the Rangers board which apparently accepted an alternative funding proposal from Mr Mike Ashley's company, MASH Holdings Limited. In the course of considering Mr King's proposal, however, the then chairman of Rangers pointed out in an email to Mr King that it was likely that the funding consortium would be viewed as a concert party and would require to be approved by shareholders under the Code.

22. Soon after the rejection of his funding proposal Mr King emailed Messrs Letham and Murray asking them to sound out the institutional investors in Rangers as to their willingness to sell a blocking stake of 25% plus one share. This too came to nothing.

23. The situation changed suddenly, however, in December 2014 when Mr Norman Crighton, the representative of Laxey Partners Limited ("Laxey"), was voted off the Rangers board. Laxey was one of Rangers' major institutional investors with a holding of over 16%. The removal of Mr Crighton appears to have made Laxey willing to dispose of its shares, albeit it became apparent when Messrs Letham and Taylor met Laxey's CEO, Mr Colin Kingsnorth on 18 December 2014 and Mr Crighton at a separate meeting on the same day, that while Laxey might be willing to sell to Messrs Letham and Taylor it would not sell to Mr King.

24. This then set in train a series of events which led to a group comprising Messrs Letham, Park and Taylor acquiring the shares of Laxey while Mr King more or less simultaneously procured the acquisition of the entire holdings of Artemis and Miton (two other institutional investors) along with some of the shares of another institutional fund manager, River & Mercantile.

25. As the decision of the Board confirmed, these acquisitions were not coincidental or unconnected: as emails sent by Mr Letham to Mr King on 27 and 31 December 2014

revealed, they involved co-ordinating on the one hand the purchase of the Laxey shares by the group comprising Messrs Letham, Taylor and Park and on the other the purchase of the shares of other institutional investors through a corporate vehicle acting on the instructions of Mr King. On 27 December 2014 Mr Letham sent the following email to Mr King:

"Kingsnorth has confirmed today to George Taylor that he will sell his 16.3% to us at 20p per share. This will be split into 3 trades between myself, George T and Douglas Park. We will sort out a slice for Andy Ross, Paul Murray and Scott Murdoch offline.
Norman Crighton says if he gets firm orders he can acquire Artemis at 20p and possibly Miton.
I think we should try and do this simultaneously with the Laxey deal before the end of the year.
If you are willing to do these trades it will probably be best for Gordon [Neilly of Cantor Fitzgerald] to speak to Norman. Let me know if you want his contact details. If you want to discuss on the phone, give me a call on my cell phone."

26. Mr Letham's group purchased the Laxey shares on 31 December 2014. On the same day Mr Letham emailed Mr King saying:

"Dave, just a reminder that after we buy Laxey today we will hold 19.7%. We really only want to buy Artemis 10% if it is the intention to stay under 30% otherwise we will have to make a mandatory offer.
I was not sure whether Gordon was intending approaching others."

27. It is clear, therefore, that Mr King was warned expressly that an obligation to make a mandatory offer for the remaining shares of Rangers would arise if the shares he was about to acquire were to push the aggregate holding of himself and the Letham group to 30%. That could only be because Mr King and the Letham group were acting in concert, at least in so far as Mr Letham saw it.

28. Later that day, however, Mr King instructed Cantor Fitzgerald to acquire the shares of Artemis and Miton along with whatever was available from River & Mercantile. The vehicle used by Mr King to effect these purchases was New Oasis Asset Limited

("NOAL"), a company incorporated in the British Virgin Islands and wholly owned by Sovereign Trust International Limited ("Sovereign Trust"), a Gibraltar company. Sovereign Trust is trustee of the Glencoe Investments Trust, a trust established under the laws of Guernsey by Mr King for the benefit of himself and his family. NOAL is, therefore, an asset of a trust established by Mr King for the benefit of himself and his family.

29. As the Board observed at paragraphs 84 to 86 of its decision, there is no evidence that NOAL or Sovereign Trust exercised independent judgement in the purchase of Rangers shares or in requisitioning the subsequent Rangers General Meeting at which Mr King was elected chairman. On the contrary, the evidence strongly suggests that NOAL was acting entirely under Mr King's instruction.

30. It is convenient at this point to deal with the Executive's investigation of a possible concert party and its complaints regarding Mr King's conduct during that investigation.

31. There can be no doubt that in disregarding Mr Letham's warning and instructing Cantor Fitzgerald to acquire Miton's and some of River & Mercantile's shares in addition to those of Artemis, Mr King was proceeding with his eyes open and in the knowledge that he at least risked triggering an obligation to procure the making of a Rule 9 offer. In the circumstances, his failure to consult the Executive as to the implications of his proposed course of conduct is a clear breach of section 6(b) of the Introduction to the Code. Section 6(b) has the status of a Rule and imposes an obligation to consult the Executive whenever a person or his advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the Rules. That section also states that to take legal or other professional advice on the interpretation, application or effect of the Code is not an appropriate alternative to obtaining a ruling of the Executive.

32. The Executive also alleges that at an early stage of its investigation Mr King denied that he had had prior communication with Mr Letham regarding the acquisition of Laxey's shares by the Letham group (and by implication the co-ordination of that purchase with his own). The Executive claims that in denying that such communications had occurred Mr King was in breach of his obligation under section

9(a) of the Introduction to the Code. That section, which also has the status of a Rule, includes the following:

"A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel."

The material conversation took place on 9 January 2015 when Mr Jillings telephoned Mr King in South Africa. The Committee has read a transcript of that conversation from which it is apparent that Mr King denied discussing with Mr Letham in advance the Letham group's purchase of the Laxey shares and Mr King's own proposed purchase of the shares of other institutional investors. The Committee notes that the conversation with the Executive took place very shortly after the events in question and that the emails of 27 and 31 December 2014 which exposed the denial as false were not produced by Mr King to the Executive but by Cantor Fitzgerald.

33. Even allowing for the vagaries of conversations over the phone, we find it difficult to reconcile this conversation with Mr King doing his best to answer the Executive's questions truthfully. Accordingly, we conclude that Mr King was in breach of section 9(a) of the Introduction to the Code. The breach is serious: investigating a potential concert party presents particular challenges for the Executive, challenges which can only be addressed effectively if those to whom enquiries are directed (including in particular potential members of a concert party) co-operate and answer questions fully and truthfully. Had the Executive not succeeded in obtaining the relevant emails from Cantor Fitzgerald, it may well have proved impossible to demonstrate what was clearly the case, namely that Mr King and the Letham group had acted in concert at the end of 2014 in acquiring a controlling interest in Rangers.

34. The Executive does not invite the Committee to find that Mr King could have produced the relevant emails had he chosen to do so and that his explanation that they could not be recovered was, therefore, untrue. The Committee agrees that there is no evidence that could justify such a conclusion. The Executive does maintain, however, that Mr King's failure to respond to a request from the Executive that he explain how it was that deleted emails could not be recovered was itself a failure to co-operate in dealings

with the Executive which also contravened section 9(a) of the Introduction to the Code. We agree that this complaint is made out. It is common knowledge that deleted emails can often be recovered and it was incumbent on Mr King to explain, when asked to do so, why it was not possible in this case.

FAILURE TO COMPLY WITH THE RULING OF THE BOARD AND ENFORCEMENT ACTION IN THE COURTS

35. On 7 June 2016, after a lengthy investigation in which it had talked to fan groups as well as to the principal protagonists, the Executive ruled that Mr King had acted in concert with the Letham group in acquiring a controlling interest in Rangers and directed him to make a mandatory offer under Rule 9 of the Code for the shares not owned or controlled by himself or the Letham group. It is worth noting, as the Board pointed out in paragraph 44 of its decision, that at this stage Mr King had not taken the point that subsequently figured prominently in his submissions namely, that NOAL had acquired title in the shares not Mr King personally and that he had no authority to represent NOAL or to direct its affairs, that being a matter for independent trustees.

36. As he was entitled to do, Mr King requested a review of the Executive's ruling by the Committee. The Committee heard the matter on 28 November 2016 and issued a ruling on 5 December 2016 in which it upheld the ruling of the Executive and directed Mr King to announce a Rule 9 offer. Mr King did not attend the hearing and was not represented but made written submissions. Mr Blair attended and made submissions on behalf of Rangers. The position of NOAL is covered at paragraphs 7 to 10 of the Committee's ruling of 5 December 2016. In brief, NOAL had been made aware by Mr King of an invitation from the chairman of the Committee to apply to be heard at the hearing or to make submissions as an interested party, but NOAL did neither. The Executive's position before the Committee was that it was open to Mr King to discharge the obligation to make a Rule 9 offer either personally or by any entity that would act upon his instruction.

37. As he was entitled to do, Mr King appealed the Committee's ruling to the Board. The Board heard the matter on 25 January 2017 and issued its decision on 13 March 2017

dismissing the appeal and directing Mr King to announce an offer pursuant to Rule 9 of the Code by 12 April 2017.

38. Mr King did not attend the hearing before the Board, nor did NOAL apply to be heard as an interested party or to make submissions. Mr King's position again was that NOAL was the truly affected party and it was incumbent upon the Board to communicate with NOAL direct, not to issue an invitation through Mr King to participate. It is clear, however, from the Board's decision that NOAL was again made aware of the hearing but took no steps to participate or to communicate with the secretary to the Board. Among its reasons for dismissing Mr King's appeal was a finding later cited by the Inner House of the Court of Session:

"In negotiating for the shares and instructing that the shares be put into the name of NOAL Mr King communicated with others and acted as if NOAL, Sovereign Trust and the Glencoe Investments Trust were under his control in relation to the Rangers shares and so he was acting in concert with them and they with him." [paragraph 103 (11)]

39. Mr King failed to announce a Rule 9 offer in accordance with the decision of the Board. Accordingly, for the first time since the Takeover Panel had been put on a statutory footing by Chapter 1 of Part 28 of the Companies Act 2006, the Executive found itself obliged to commence proceedings under section 955 of the Act to seek a court order compelling compliance with one of its rulings.

40. The opinion of the Outer House of the Court of Session was issued on 22 December 2017 ordering Mr King to announce a Rule 9 offer in accordance with the Code within 30 days. It is important to note in view of Mr King's statement to the Committee, that the Lord Ordinary rejected Mr King's defence of impecuniosity, a defence based upon the contention that he was unable to access funds held by the Glencoe Investments Trust or by NOAL and that, consequently, he would be unable to find the funds required to satisfy a Rule 9 offer if it were to be accepted. In an affidavit before the court Mr King had explained (as he explained in his statement to the Committee) that he and his family were beneficiaries of offshore and onshore discretionary trusts which had been sanctioned by the South African Revenue Service and which managed the family's investments. The background to this was protracted and hard-fought litigation between

Mr King and the South African Revenue authorities. Mr King's affidavit was directed to demonstrating that he did not have practical control over or ready access to trust assets.

41. Mr King appealed to the Inner House of the Court of Session, again maintaining that his inability to access the assets of family trust funds meant that he would be unable to comply with an interlocutor directing him to make a Rule 9 offer. In dismissing Mr King's appeal the Inner House rejected this contention holding that the Board's findings of fact:

"…demonstrate clearly in our opinion that it was the reclaimer [Mr King] who had true control over the funds used to acquire the Rangers shares that were placed in the name of NOAL. On that basis, it is probable that the reclaimer will continue to have control over the funds of NOAL, and indeed other assets of the Glencoe Investments Trust. We accordingly reject the contentions that the reclaimer is unable to access funds held by NOAL or Glencoe and that he is accordingly unable to pay the requisite price if the offer ordered by the Panel should be accepted by shareholders." [para 34 of the Opinion of the Inner House]

Elsewhere in its Opinion the Inner House referred to a clear holding by the Board that "NOAL was not truly independent of the reclaimer [Mr King] but was rather under his control, at least at a practical level." [paragraph 24 of the Opinion of the Inner House]. The Inner House accordingly rejected the contention that it was practically impossible for Mr King to find the funds necessary to announce a Rule 9 offer.

42. On 28 February 2018 the Inner House issued an interlocutor ordaining Mr King to announce within 30 days and thereafter to make in accordance with the Code an offer for those shares of Rangers not already held by NOAL or by the concert party comprising himself and Messrs Letham, Park and Taylor.

43. The interlocutor of the Inner House meant that, realistically, Mr King had reached the end of the line and had no choice other than to comply if he were to avoid proceedings for contempt of court. As it transpired and as set below, once confronted with this

position Mr King was quite quickly able to access the funds necessary to satisfy a Rule 9 offer.

44. In summary, events to this stage reveal that Mr King was determined to flout the ruling of the Board and to ignore his obligations under the Code unless compelled by court order to comply.

CASH CONFIRMATION

45. On 29 March 2018 an announcement was published stating the intention of Laird to make an offer at 20 pence per share in cash for all the ordinary issued share capital of Rangers not already controlled by Mr King or NOAL or by Messrs Letham, Park and Taylor. Correspondence at about this time shows that Mr King had arranged for MICROmega Holdings Limited ("Micromega") to declare a dividend in favour of Laird the proceeds from which would be sufficient to enable Laird to satisfy the Rule 9 offer if it were to be accepted. Micromega's Annual Integrated Report for 2017 shows it to be a substantial, South African public company founded by Mr King and of which he was Executive Chairman until his resignation on 31 March 2017. Mr King told the Committee that members of his family remained on its board and it is clear that he remains able to influence its policy.

46. Mr King told the Committee that it was a particular disposal by Micromega that allowed it to declare the dividend in favour of Laird. Nevertheless, the speed with which funds were found once Mr King came under the compulsion of court order to make a Rule 9 offer suggests that he could have found the funds to back an offer announcement much earlier had he been minded to do so.

47. Laird's announcement of an intention to make an offer of 29 March 2018 did not contain the cash confirmation statement required by Rule 2.7(d) of the Code. In emails to the Executive on 29 March 2018 from Mr Blair (who at the time was assisting Mr King and copying him in on correspondence with the Executive) the Executive was told that the cash confirmation requirement would be addressed in the offer document itself which under Rule 24.1 of the Code had to be published within 28 days of the announcement of an intention to make a firm offer unless the Executive agreed

otherwise. This meant that time for publishing the offer document would expire on 26 April 2018.

48. Rule 24.8 of the Code states:

"When the offer is for cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (eg the offeror's bank or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)"

49. Cash confirmation by an appropriate party is important for obvious reasons; it is designed to avoid the situation where an offer becomes unconditional and title in the shares passes only for it be found that the cash consideration is not available. The Executive told the Committee that provided the cash confirmer is an appropriate party, its practice is not to specify what the cash confirmer must demand of the offeror – as the cash confirmer will be on risk if the money is not forthcoming and if it is unable to show that it acted responsibly and reasonably, any responsible party will refuse to give cash confirmation unless its own position vis à vis the offeror is secure.

50. In an email of 6 April 2018 and again in a letter of 10 April Mr King was told by the Executive that the fact that he was resident abroad and had no assets within the UK meant in practice that in order to obtain cash confirmation from an appropriate party he would have to bring the offer monies into the UK. This was repeated in a telephone conversation between Mr Jeremy Evans of the Executive and Mr King on 11 April during which it was suggested that Mr King use Investec (with whom Laird and Micromega banked in South Africa) as the cash confirmer.

51. Mr King appears to have taken up this suggestion. On 12 April he emailed Cornelia Kemp of Miromega telling her that the Executive would not accept the ring fencing of the funds in South Africa and that they would like the funds to be held in sterling in the

UK and had a strong preference for Investec. Ms Kemp was asked to contact Investec and find out what would be entailed in achieving this.

52. Matters then seem to have drifted. On 16 April 2018 the Executive asked for an update on the Investec position. On 18 April Mr King came back and asked whether the opening of a sterling account with Investec in South Africa would be acceptable. The Executive replied on the same day stating that it would not, repeating the requirement for there to be a sterling account in the UK. In a telephone call on 20 April Mr King is recorded as saying that Investec would be coming back to him in the course of the day regarding the opening of a UK sterling account.

53. Then on 23 April, some three days before the expiry of time for posting a Code-compliant offer document, Mr King mentioned for the first time the problem of South African exchange control. In an email of that date he informed the Executive that Investec had said that placing the money on a contingent basis in a sterling account in the UK would require a specific application for exchange control approval, and while Investec expected such an application to be successful it would likely take about six weeks. Investec is itself an "authorised dealer" to whom the Financial Surveillance Department ("FSD") of the South African Reserve Bank have delegated authority to approve certain applications to move money abroad, but the sort of application referred to in this email would involve a specific application to the FSD.

54. There was no application for exchange control approval at this time. Instead, on 24 April 2018 Mr King asked Mr Evans whether the Executive would accept Saxo Bank as cash confirmer. Saxo Bank was not known to Mr Evans and had no track record of acting or advising in relation to the Code. Accordingly, Mr Evans repeated his suggestion that Mr King instruct Investec and told him that the Executive would not consider accepting Saxo Bank as a cash confirmer unless it were to receive from a senior employee at the bank an account of its relevant experience and an explanation as to why it should be considered qualified to provide cash confirmation under Rule 24.8 of the Code. This provoked the response from Mr King that if the Executive refused to accept Saxo Bank or any other alternative for what he regarded as no good reason, he would ask Rangers to agree to a postponement of the offer until exchange control approval could be obtained.

55. This is how matters stood on 24 April 2018 when the Executive obtained an interdict in the Court of Session restraining Mr King from publishing an offer document which:

"does not include a statement from a third party considered by the Takeover Panel to be appropriate for the purposes of compliance with Rule 24.8 of the Takeover Code…"

The interdict did not suspend or even qualify the prior interlocutor of the Inner House which required the publication of an offer in accordance with the Code; it merely prevented the publication of an offer which, in omitting the cash confirmation required by Rule 24.8, would not be in accordance with the Code.

56. On 26 April 2018 Mr King emailed the Executive explaining that it was the contingent nature of the transaction for which money was to be transferred out of South Africa that made the case unusual and meant that specific approval would be necessary. He said that upon the Executive's agreement to an extension of time for posting an offer document he would instruct Investec to apply for exchange control approval, a process which Investec believed could take up to six weeks.

57. The Executive refused Mr King's request for an extension of time. In its response to the request the Executive stated that Mr King had had since 28 February 2018, when the Inner House issued its interlocutor, to sort out the necessary consents. It referred to an email of the previous day in which it had threatened to initiate contempt proceedings if a Code-compliant offer document was not issued within the time stipulated under the Code and informed Mr King that contempt proceedings would be issued on 27 April unless by midnight of 26 April such an offer had been published. The Executive went on, however, to state that if Mr King could satisfy it that he had irrevocably instructed Investec or other appropriate third party to seek all necessary consents for transferring the monies into a UK bank account and to provide cash confirmation, then provided Investec or the third party confirmed such instructions to the Executive, it would not seek a date for the substantive hearing in the contempt proceedings before 8 June 2018 (that being six weeks after 27 April).

58. This is how matters stood when the Executive commenced contempt proceedings in the Court of Session on 27 April 2018.

59. It is convenient to deal at this point with the Executive's claim, developed in paragraphs 7.12 and 7.13 of its Written Submissions, that between 11 and 23 April and in breach of section 9(a) of the Introduction to the Code, Mr King incorrectly led the Executive to believe that he had engaged Investec to provide the cash confirmation statement and assist in providing South African exchange control authorisation.

60. The Committee does not accept that the evidence (including the passages relied upon in witness statements served by the Executive in the contempt proceedings) establishes that Mr King misled the Executive in this respect.

61. It is clear that by the time for posting an offer document expired, Mr King had not in fact instructed Investec to assist with exchange control authorisation and had not in fact instructed them to provide cash confirmation against sterling held in the UK. But the evidence does not establish that he had previously given the Executive to believe that he had. We agree that after Mr King's encouraging instruction to Ms Kemp on 12 April 2018, the Executive reasonably believed that Investec would be instructed to give the necessary cash confirmation on the basis of a sterling account opened in the UK, but it was clear from Mr King's emails to the Executive of 18 and 20 April that whether or not a sterling account with Investec in the UK, as distinct from in South Africa, would be opened was still undecided and very much in the air. Accordingly, as the Executive had consistently maintained that holding funds in the UK would inevitably be required for an appropriate party to agree to give cash confirmation, it was apparent that this aspect of the matter was still in doubt.

62. Accordingly, while Mr King should have facilitated direct contact between Investec and the Executive and should have raised and addressed the problem of exchange control long before he belatedly raised it on 23 April 2018, the Committee does not conclude that he misled the Executive in the particular respects alleged.

63. Failure to obtain cash confirmation from an appropriate party before 26 April 2018, or at least to have procured by then an application for exchange control authorisation to

enable funds to be transferred to the UK, is, however, a different matter. Had Mr King instructed experienced advisers immediately after the interlocutor of the Inner House on 28 February 2018 all this would have been satisfactorily completed (or at the very least, well advanced) by 26 April 2018. Instead, the Committee is left with the impression that Mr King clung to the hope that he could find some means of publishing an offer document without actually transferring funds to the UK. He also persistently resisted appointing advisers with the requisite experience until forced to do so by the terms of his undertaking to the Court of Session on 30 November 2018. The result was that it was not until 23 April 2018 that he raised with the Executive the need for an exchange control application and the time that this would require.

64. The Committee concludes, therefore, that Mr King was at fault in failing to provide cash confirmation by 26 April 2018, albeit in the circumstances this contravention is by no means as serious as the prolonged failure to announce a Rule 9 offer or to deal with the Executive during its investigation of that matter in the manner required by the Code. Mr King's failure to consult the Executive at an early stage regarding the implications of cash confirmation seems to the Committee to be a complaint that is made out, but it adds very little to the overall picture.

THE CONTEMPT PROCEEDINGS

65. As mentioned above, on 26 April 2018 the Executive had offered to hold off from fixing a substantive hearing of the contempt proceedings for six weeks if proof of irrevocable instructions to Investec or an appropriate third party to apply for exchange control authorisation and to provide cash confirmation were produced. In light of this, one would have expected Mr King immediately to set this process in motion. However, he did not do this.

66. The date for the substantive hearing of the contempt proceedings was initially fixed for 16 and 17 August 2018. Although the evidence is obscure, it was said by the Executive at the hearing that an application for exchange control to the FSD appears to have been made about a week before the proceedings were due to come on. Although filed, that application does not appear to have been progressed thereafter. Instead, Mr King applied to have the contempt proceedings struck out on the ground that a hearing of the Proof would not be competent without the concurrence of the Lord Advocate. The

attempt failed. On 14 November 2018 Lady Wolffe issued an opinion rejecting the argument that the concurrence of the Lord Advocate was necessary.

67. The hearing of the Proof of contempt was heard before Lady Wolffe on 29 and 30 November 2018. The Executive's witnesses completed their evidence and Mr King was in the course of giving his evidence in chief when the proceedings were adjourned upon a series of undertakings by him to the court. In summary, by a series of undertakings Mr King undertook to fix a timetable for instructing a cash confirmer considered appropriate by the Panel, to take as a matter of urgency the steps necessary to obtain exchange control authorisation and to appoint a legal adviser to ensure that the documentation would be in order. These were intended to facilitate the core undertaking given by Mr King to the court which was to ensure that Laird made an offer for Rangers in full compliance with the Code by 17:30 GMT on 25 January 2019. As mentioned in the Introduction to this ruling, Laird duly published the offer on 25 January 2019 exchange control authorisation having been duly obtained within six weeks and cash confirmation from a party acceptable to the Executive having been provided upon funds being made available in the UK.

68. Once proceedings for contempt of court had been commenced, Mr King's conduct in continuing to resist or delay complying with the interlocutor of the Inner House was a matter for the Court of Session rather than the Panel. In the event, the Court of Session was content to allow the matter to proceed no further upon Mr King's due performance of the undertakings given by him to the court on 30 November 2018.

69. For present purposes, however, events after commencement of contempt proceedings on 27 April 2018 are relevant in so far as they shed light on whether Mr King is someone who is not likely to comply with the Code. They are also relevant in a related sense namely, in so far as they shed light on whether, had he chosen to do so, Mr King could have procured the publication of an offer document in accordance with the Code much earlier.

70. The Committee considered carefully the statement made by Mr King at the hearing, including his view that exchange control authorisation for a contingent transaction of this nature was not by any means a foregone conclusion, even when sought in

performance of undertakings to the court. The fact is, however, as Mr Johnston pointed out, that when the appropriate application was made it was duly granted within the period of six weeks estimated earlier by Investec. The Committee believes it probable that the outcome would have been similar had the same application been made at any time within the previous four years – there is no evidence to suggest otherwise. Indeed, in his statement to us Mr King said that the South African authorities somewhat resented the intervention of a foreign court, a complication that would not have been a factor had Mr King taken the necessary steps to obtain exchange control approval and procure a Rule 9 offer when he ought to have done so.

71. Nor did the Committee accept Mr King's claim (supported by Mr Blair) that once the Executive refused to extend time under Rule 24.1 for publishing an offer, it was no longer possible to comply with the interlocutor or interdict of the Court of Session because it was no longer possible to make an offer in accordance with the Code. This seemed to us a specious argument. The interdict restrained publication of an offer which omitted cash confirmation and did not limit or qualify the earlier interlocutor of the Inner House. For its part, the Executive had made it clear that their object both before and after 26 April 2018 was to secure publication of an offer that included cash confirmation. They made it clear that they would accept such an offer. We do not believe that this presented a genuine difficulty for Mr King or was perceived by him as such.

72. It seems to the Committee, therefore, that Mr King's conduct after commencement of the contempt proceedings does strengthen the impression of someone determined to avoid performing his obligations under the Code unless compelled to do so.

SANCTIONS

73. The Committee has carefully considered all the oral and written submissions made to it along with Mr King's statement at the hearing. We have also had regard to a letter from the directors of Rangers emphasising all that Mr King has done for the club and praising his service as chairman, a period of service which began at a time of acute financial crisis. We have also borne in mind the Disciplinary Proceedings Note which the Executive takes into account in deciding whether to take disciplinary action and in

proposing sanctions, including in particular the criteria set out in the Disciplinary Proceedings Note as relevant to choice of sanctions.

74. In light of the respective positions of the parties, we have asked ourselves the following questions:

(i) In our opinion is Mr King an offender who is not likely to comply with the Code and whose conduct merits cold-shouldering by professional bodies regulated by the Financial Conduct Authority?

(ii) If so, for what period should that sanction apply?

75. Whether someone is unlikely to comply with the Code must involve drawing an inference from proven past behaviour. What the Committee has to do in a case such as the present is determine whether the respondent's proven or admitted misconduct demonstrates a propensity to disregard the Code and if so to weigh that propensity against any undertaking from the respondent to comply in the future. The seriousness and persistence of proven contraventions must, realistically, also be an important factor in forming an opinion as to the likelihood of future compliance.

76. From its earlier analysis in this ruling of the contraventions that it has found established, the Committee concludes that Mr King's behaviour shows a clear propensity to disregard the Code and to comply with its Rules only when forced to do so by enforcement proceedings in the courts.

77. In summary, Mr King knew that in causing NOAL to acquire the holdings of Artemis and Miton on 2 January 2015 (along with some of River & Mercantile's shares) he was, at least in the opinion of the party with whom he was acting in concert, incurring an obligation to make a Rule 9 offer. Yet he went ahead without consulting the Executive as to the implications of what he intended doing. When the Executive started to investigate, Mr King falsely denied any prior co-ordination between himself and the Letham group while at the same time failing to produce recent emails which he must have known would point strongly to concerted action of the sort he was denying. Mr King then ignored the ruling of the Board that he make a Rule 9 offer, thereby compelling the Executive, for the first time in the Takeover Panel's history, to have

recourse to the courts to enforce compliance with a ruling. Mr King then resisted enforcement on a ground rejected by the Court of Session namely, that he was unable to access the funds necessary to satisfy a Rule 9 offer, his assets being managed by trustees who acted independently and did not do his bidding. Yet when finally ordered by the Inner House to announce a Rule 9 offer he was able fairly promptly to arrange for Laird to be put in funds.

78. The Committee's conclusion from this pattern of conduct is that Mr King complies with the Code only when enforcement by the courts leaves him with no other choice, an impression which, in respects explained above, was strengthened by his conduct during the contempt proceedings.

79. The Committee does not dismiss Mr King's offer of an undertaking to comply with the Code in future, but it has to weigh that undertaking against the propensity revealed by his previous conduct and the practical difficulty in enforcing any such undertaking.

80. The Committee is, therefore, of the opinion that the pattern of conduct summarised above shows in its opinion that Mr King is someone who is unlikely to comply with the Code. While, as the Committee has found, there was also a contravention of Rule 24.8 of the Code (cash confirmation) our opinion as to the likelihood of future non-compliance takes no account of that.

81. We would also add that Mr King's prolonged refusal to procure a Rule 9 offer, along with his conduct in dealing with the Executive during its initial investigation into a possible concert party, were offences of the utmost seriousness for which a statement of public censure would not be a sufficient sanction.

82. It remains to determine the duration of the sanction. In doing so we have tested our conclusions against the two previous cases in its history in which the Takeover Panel has fixed the duration of a cold-shouldering sanction.

83. In Mr King's favour it should be said that before the events under consideration at this hearing he had committed no contraventions of the Code. He had no previous disciplinary record. It must also be said that his investment in Rangers was at no stage

motivated by the prospect of financial gain or commercial advantage. Quite the opposite, Mr King has invested substantial amounts of money in Rangers solely for love of the club, having already invested and lost large amounts before the events in question at this hearing.

84. It is also not clearly established that Mr King's failure to procure a Rule 9 offer prevented shareholders who would otherwise have taken the opportunity to exit and sell their shares from doing so. It is true that after Rangers' de-listing from AIM in March 2015 its shares have only been saleable on a matched bargain basis; so a Rule 9 offer would have provided a means of realising shares which were otherwise relatively illiquid. Against this, however, is the fact that the Rule 9 offer price was 20 pence per share, a price which appears to have been significantly below the prices at which Rangers shares were trading throughout the period in question, at least until pre-existing holdings were diluted by the placement that occurred in September 2018. Although when it was finally made the offer achieved 47.12% acceptances (when aggregated with the shares already owned or controlled by the concert party) and was, therefore, close to becoming unconditional, against this, Mr Blair contended that the relatively high take-up was due to dilution of the share price following the share issue of September 2018.

85. In summary, there is no clear evidence of significant detriment to Rangers shareholders.

86. Against this the Committee has to set all the factors summarised above as indicating Mr King's propensity to disregard the Code. In short, the contravention of Rule 9 was an offence of the utmost gravity in which Mr King persisted until he was constrained by court order to comply. In the meantime, Mr King ignored a ruling of the Board. In the event, just over four years elapsed between the acquisition of a controlling stake by Mr King's concert party and the publication of a Rule 9 offer.

87. In the circumstances the Committee concludes that Mr King should be cold-shouldered for a period of four years. Accordingly, the Committee declares in accordance with section 11(b)(v) of the Introduction to the Code that in its opinion Mr King is someone who is not likely to comply with the Code. This sanction and the cold-shouldering which it triggers will remain effective for four years from the date of this ruling. For

the avoidance of doubt it should be said that other than in the unlikely event that the holding in Rangers which Mr King owns or controls reaches a size that enables him to control Rangers personally, the sanction will apply to Mr King as an individual and not to Rangers.

88. The ruling was delivered to the parties on 2 October 2019. Pursuant to Rule 7.1 of its own Rules of Procedure the Committee set the time for lodging a Notice of Appeal to the Board as 17:00 on Friday 4 October 2019. No appeal was lodged within that time.

11 October 2019

APPENDIX

HEARINGS COMMITTEE MEMBERS

The members of the Hearings Committee who constituted the Committee for the purpose of the hearing were:

Present:	Michael Crane	Chairman
	Justin Dowley	Deputy Chairman
	Philip Remnant	Deputy Chairman
	Liv Garfield	Independent Member
	Kay Carberry	Independent Member (Alternate)
Association for Financial Markets in Europe	Mark Sorrell	Goldman Sachs
Association for Financial Markets in Europe – Corporate Finance Committee	Charles Wilkinson	Deutsche Bank
Confederation of British Industry	Alan Porter	M&G
Quoted Companies Alliance	Tim Ward	Quoted Companies Alliance
Secretary to the Hearings Committee	Charles Penney	Addleshaw Goddard