

THE TAKEOVER PANEL
HEARINGS COMMITTEE

RANGERS INTERNATIONAL FOOTBALL CLUB PLC
& MR DAVID CUNNINGHAM KING

RULING OF THE HEARINGS COMMITTEE
("THE COMMITTEE")

This Panel Statement sets out the Hearings Committee's Ruling of 5 December 2016 which was appealed to the Takeover Appeal Board ("TAB") and which is the subject of TAB Statement 2017/1 issued on 13 March 2017. It is now being published in accordance with paragraphs 6.5 and 6.8 of the Hearings Committee's Rules of Procedure.

INTRODUCTION

1. On 31 December 2014 Messrs George Letham, George Taylor and Douglas Park purchased in aggregate 16.32% of the shares of Rangers International Football Club PLC ("Rangers"). On the same day Mr David King instructed Cantor Fitzgerald to purchase 14.75% of the shares of Rangers through New Oasis Asset Management Limited ("NOAL"), a company registered in the British Virgin Islands and wholly owned by Sovereign Trustee International Limited, the trustee of trusts settled by Mr King on behalf of himself and his family. That purchase was effected on 2 January 2015. The shares thus acquired carried in aggregate more than 30% of the voting rights of Rangers. Together with shares previously acquired by Mr Taylor, the shares owned by NOAL and by Messrs Letham, Taylor and Park after 2 January 2015 amounted to 34.05% of Rangers' issued share capital.
2. The principal issue in these proceedings is whether, in effecting these purchases, Messrs Letham, Taylor, Park and King were acting in concert within the meaning of

Rule 9.1 of the Code on Takeovers and Mergers (“the Code”) so as to trigger an obligation to extend an offer to acquire the shares of other shareholders on the terms stipulated by Rules 9.3 and 9.5.

3. By its letter to Mr King of 7 June 2016 the Takeover Panel Executive (“the Executive”) ruled that, for the purposes of the Code, Mr King had been acting in concert with Messrs Letham, Taylor and Park in respect of the purchases of shares on 31 December 2014 and 2 January 2015 and directed him to make an offer in accordance with Rule 9 for all of Rangers’ issued shares not owned by Messrs King, Letham, Taylor and Park. The Executive also ruled that pursuant to Rule 9.5(c) the offer price should be 20.0p per share.
4. Under Rule 9.1 the primary obligation to make a mandatory offer falls upon the person acquiring an interest in shares which, taken together with the shares of those acting in concert with him, carry 30% or more of the voting rights of the company. In addition to that person, Rule 9.2 provides that any member of the group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer. For reasons explained below, the Executive determined that it was appropriate in the circumstances of this case to impose the obligation to extend a Rule 9 offer upon Mr King alone, and not on those with whom he is alleged to have acted in concert. The Executive’s position was that it was open to Mr King to discharge the obligation either personally or by any entity that would act upon his instructions.
5. Mr King denied that he had acted in concert with Messrs Letham, Taylor and Park and declined to make an offer to other Rangers shareholders. On 2 August 2016 Mr King indicated to the Executive that he contested the Executive’s ruling and wished the Committee to review it.

THE PARTIES

6. The Committee (consisting of those members listed in the Appendix) heard this matter on 28 November 2016. In addition to Mr King, Messrs Letham, Taylor and

Park and the current board of Rangers had been notified of the hearing before the Committee and invited as interested parties to be heard or, at their election, to make submissions or call witnesses. In the event, each of Messrs Letham, Taylor and Park served short written submissions (or was content to rely upon submissions previously made by them to the Executive) but declined to appear or to call evidence. The board of Rangers served a written submission and was represented before the Committee by its Company Secretary, Mr James Blair, a solicitor and partner of Messrs Anderson Strathern.

7. In an email to the Secretary to the Committee (“the Secretary”) sent on 17 November 2016 Mr King said that he had shared with NOAL recent communications with the Secretary relating to the upcoming hearing before the Committee and passed on NOAL’s view (with which he expressed agreement) that as purchaser of the shares in question it should have been afforded the opportunity to make submissions. Mr King also said that he had never been a director of NOAL, had no legal capacity to represent it and in the circumstances was in no position to advance its interests.
8. By an email to Mr King of 18 November the Secretary passed on the response of the Chairman of the Committee, namely that it was open to NOAL to apply forthwith to be heard or to make submissions at the hearing as an interested party and that, once received, any such application would be notified to other parties for their comments before being determined by the Chairman. Mr King, who had evidently informed NOAL of previous communications regarding the hearing, was asked to pass on to NOAL the contents of the Secretary’s email. By return email on 18 November Mr King agreed to forward the relevant email to NOAL for comment while stating that he remained “astonished that they have been excluded to date”.
9. In the event no application to be heard or to make submissions was received from NOAL. Instead, shortly after 8 a.m. on the morning of the hearing the Secretary received a further email from Mr King passing on NOAL’s view that as the true affected party the obligation was on the Takeover Panel to inform and engage with NOAL direct. Mr King went on to say that NOAL did not wish him to make

representations on its behalf “particularly when representations have not been sought by the [Takeover Panel]”.

10. It is evident, therefore, that NOAL had been informed of the Chairman’s invitation to apply to be heard or to make submissions as an interested party and, for whatever reason, had decided not to do so. Mr King’s role in directing the acquisition of the shares by NOAL, his interest in those shares and his control over the voting rights which they represent is dealt with below.
11. Both Mr King and the Executive filed written submissions in advance of the hearing and the Executive also served a Skeleton argument. Standard pre-hearing directions were issued by the Chairman, including that the parties state whether they would be calling witnesses, whether they intended to appear in person or be represented and, if the latter, by whom they would be represented. Mr King failed to respond to repeated such requests while maintaining an intention to pursue his appeal.
12. In the event Mr King did not appear at the hearing and the seat reserved for him on the day remained vacant. The Committee was thus presented with a curious situation: Mr Blair, ostensibly representing the board of Rangers, presented Mr King’s case on his behalf and put to the Committee Mr King’s interpretation of the various relevant events and documents. One consequence of Mr King’s non-attendance, however, was that neither the Committee nor the Executive (which was represented by Mr Kenneth MacClean QC instructed by Messrs Slaughter and May) was able to put questions to him or ask him to explain various critical documents.

BACKGROUND

13. Rangers football club has a long and proud history. Founded in 1872, it has for many years been one of the great institutions of Scottish football. Mr King and each of the three with whom he is alleged to have acted in concert are long standing and committed fans of the club, prepared to inject large sums of money by investments

which they would probably not have entertained on conventional investment criteria.

14. The summary of events up to October 2014 (that is to say, preceding those directly in issue) is taken largely from the Executive's Submission of 22 September 2016 and is not controversial.
15. Until 2011 the club ("old Rangers") was majority-owned by the Murray Group, under the control of Sir David Murray, a prominent Scottish businessman. Until old Rangers ran into financial difficulties the team enjoyed success on the field and frequently competed in Europe. Mr King, who had grown up in Glasgow and became a successful and wealthy businessman based in South Africa, became a non-executive director of old Rangers in March 2000. Mr King apparently invested approximately £20m into the holding company as a minority shareholder alongside the Murray Group.
16. Old Rangers' decline into insolvency and the turmoil that followed were widely publicised. In May 2011, following financial difficulties experienced by the Murray Group, its controlling interest in old Rangers was sold to Mr Craig Whyte.
17. In February 2012, old Rangers entered administration and in July 2012 it entered liquidation. Mr King appears to have lost the entirety of his investment. The administrators sold the business and assets to a new company, led by Mr Charles Green, which was later renamed The Rangers Football Club Ltd ("the Club"). Efforts to preserve the team's place in the Scottish Premier League were unsuccessful. The Club then applied to join the Scottish Football League and played the 2012/13 season in the fourth tier of Scottish football, rising to the second tier by the 2014/15 season and securing promotion to the Scottish Premier League for the 2016/17 season. At the time of writing the Club is second in the Scottish Premier League behind their traditional arch-rivals, Celtic.
18. During 2012, Sports Direct, a company controlled by Mr Michael Ashley, entered into a merchandising joint venture with the Club.

19. In December 2012, a new company, Rangers, was incorporated in Scotland as the holding company for the Club and its shares were admitted to trading on the Alternative Investment Market (“AIM”) of the London Stock Exchange. The shares of Rangers were traded on AIM at the time of the transactions giving rise to these proceedings. Rangers was, and remains, a company to which the Code applies.
20. In April 2013, Mr Green stood down as Chief Executive in the light of an investigation into the circumstances surrounding his acquisition of the club from the administrators and Mr Craig Mather was appointed to replace him. In June 2013, the Chairman, Mr Malcolm Murray, and another non-executive director resigned. In July 2013, Mr James Easdale joined the Board. Mr James Easdale’s brother, Mr Sandy Easdale, who was said to have acquired Mr Green’s interests and owned or spoke for the votes of shares representing approximately 26% of Rangers’ issued share capital, was appointed to the Board of the Club in September.
21. Through the late summer and autumn of 2013, Rangers was under pressure from supporters' groups to change the Board. Supporters' groups were concerned over a lack of corporate governance and financial transparency. Mr Paul Murray (who had been on the Board of old Rangers from 2007 to 2011 with Sir David Murray and Mr King) along with Messrs Malcolm Murray, Alex Wilson and Scott Murdoch stood for election as directors at the AGM to be held on 24 October 2013. This was resisted by the incumbent directors, and the AGM was postponed by court order to provide sufficient time for the resolutions proposing the new candidates to be circulated.
22. Mr Mather and another non-executive director resigned on 17 October 2013. The remaining directors, Mr James Easdale and Mr Brian Stockbridge, the Finance Director, appointed Mr David Somers (Chairman), Mr Graham Wallace (CEO) and Mr Norman Crighton (Investment Director) to the Board and all were put forward for reappointment at the postponed AGM. Mr Crighton was associated with Laxey

Partners Limited ("Laxey") which acquired further shares in November 2013 to become an 11.64% shareholder in Rangers. As explained below, Mr Crighton's association with Laxey proved to be important when he was ousted from the Board in December 2014, prompting a change in Laxey's attitude towards the Board and causing it to be amenable to selling its shares.

23. On 19 December 2013, the Rangers AGM, postponed from October, confirmed the re-election of a Board comprising Mr Somers, Mr Wallace, Mr Crighton, Mr Stockbridge (who resigned in January 2014) and Mr James Easdale. The competing nominations of Mr Paul Murray, Mr Malcolm Murray, Mr Wilson and Mr Murdoch were defeated by substantial margins.
24. On 25 April 2014, the Board announced a business review and strategic plan, including a need to raise £20m-£30m over two to three years and an intention to seek shareholder approval in the autumn of 2014 for the issue of additional equity.
25. In brief, during 2014 Rangers was in dire financial straits. The Board remained unpopular with many of the fans who were concerned at the lack of investment in the Club. It appears that a section of the fans was concerned by the position of Messrs James and Sandy Easdale ("the Easdales") on account of their rumoured association with Mr Green and others and a lack of clarity over the ultimate beneficial ownership of a significant proportion of the shares which Mr Sandy Easdale represented but did not own. Those fans also believed that the Easdales wished to maintain substantial influence in Rangers and the Club but did not have the money to invest themselves and would, therefore, be resistant to any new external financing which would dilute their influence.
26. Mr King, whose previous offers to invest in Rangers and to be appointed as a director had been rejected by the Board, was an attractive figure to a number of fans by virtue of his reputation as a longstanding supporter, his previous experience and the fact that he was an individual who had already invested substantially (and lost) in old Rangers. Mr King was believed to be willing to invest again and was seen as preferable by many fans to the Easdales and to Mr Ashley whose interests

were perceived by many to be aligned. During spring 2014 there were calls amongst sections of the fans to boycott sales of season tickets for the 2014/15 season until the Board was more responsive to the fans' concerns.

27. On 6 August 2014, Rangers announced that it was considering a possible "open offer" equity issue to all shareholders, which would be limited to €5m to avoid the cost of preparing a prospectus.
28. During August 2014, there were rumours amongst fans that Mr Ashley (whose shareholding at the time amounted to some 4.6%) had been approached to underwrite the open offer. Mr Ashley's involvement with Rangers was understood to be supported by the Easdales. However, the prospect of Mr Ashley becoming a more significant shareholder in Rangers caused disquiet amongst a number of the fans in part because the Sports Direct merchandising deal was suspected of favouring Sports Direct (Mr Ashley's company) at the expense of the Club. Supporters were also concerned that Mr Ashley might seek to re-name Ibrox stadium to promote the Sports Direct brand and that the requirement for the Scottish FA to give its consent to Mr Ashley holding more than 10% of Rangers (having regard to his ownership of Newcastle United) would subject the Club to scrutiny by the regulatory body that had forced the team out of the Scottish Premiership and caused it to restart at the bottom of the Scottish football divisions. They were also concerned that if in due course Rangers once again became eligible for European Football, the UEFA regulations on dual ownership could disqualify Rangers from being able to compete in European competitions if Mr Ashley were judged to have "decisive influence over decision-making".
29. Mr Chris Graham, spokesman for the "Union of Fans", a loose forum for various supporters' groups, was in email correspondence with Mr King on such issues. In an exchange of emails with Mr Graham in late August and early September 2014 Mr King confirmed that the one difficulty preventing him from injecting money into the club was getting the Board to accept him as an investor of new funds. When asked whether he would be happy for the Union of Fans to report that he had re-affirmed his desire to invest in the club to the tune of some £30 million but

Sandy Easdale was trying to block him acquiring a significant stake and influence in the club, Mr King responded that he was willing to invest in tandem with other fans but he had discouraged any reporting of himself as the sole supplier of funds. This is important for an understanding of Mr King's case, namely that his sole objective throughout was to maximise investment in Rangers by fans and this objective was the sole determinant for any cooperation with others.

30. Rangers' Nominated Adviser ("NOMAD") under the AIM rules was, initially, Daniel Stewart, represented by Mr Paul Shackleton. WH Ireland subsequently assumed the role of NOMAD following Mr Shackleton's move there. Mr Shackleton discussed potential participation in underwriting the open offer with Mr King by email on 15-18 August 2014. However, Mr King insisted on seeing cash projections, which Rangers' directors were not willing to provide. Accordingly, he did not participate in the open offer.
31. Rangers' CEO, Mr Wallace, also spoke to Mr Letham, a fan who had provided a £1.0m loan facility to Rangers in March 2014, and invited him to support the open offer. On 28 August 2014, Mr Wallace reported by email to his fellow directors and advisers that:

"He [Letham] did ask if we had approached Dave King who had told Mr Letham he was willing and able to underwrite such an issue. I confirmed we had spoken with Mr King in this regard but made no other comment and advised him to speak with him directly if he needs to know more – he did say he had not spoken with Mr King for 3/4 weeks."
32. The open offer for up to 19,864,918 new Rangers shares was launched on 29 August 2014, at a price of 20p per Rangers share, a price which involved a discount to the 25.5p per share middle market closing price on 28 August 2014.
33. On 12 September 2014, Rangers announced that the open offer had closed with a take up of approximately 79%. 15.7 million new Rangers shares were issued increasing the number of issued shares to 81,478,201 and raising £3.13 million.
34. It appears that it was at about this time that Mr Taylor, who worked as an

investment banker for Morgan Stanley in Hong Kong, decided to invest in Rangers. He acquired 75,000 shares (about 0.09% of Rangers) at 24.92p per share on 3 September 2014 and 25,000 shares at 24.75p per share on 4 September. On 4 September 2014 Mr Taylor contacted Mr Shackleton with a proposal to underwrite the open offer, but was told that he was too late. Mr Taylor acquired a further 100,000 shares at 19.0p per share on 18 September 2014, 25,000 shares at 22.0p per share on 26 September 2014 and 350,000 shares at 22.0p per share on 9 October 2014, giving him an aggregate shareholding of 0.71% of Rangers.

35. On 22 September 2014, Laxey announced the acquisition of 5,006,458 shares increasing its interest to 16.32% of Rangers' issued share capital.
36. On 22 September 2014, Mr Ashley's company, MASH Holdings Limited ("MASH"), announced that it had an interest in 3 million shares (3.68% of Rangers' issued share capital) and on 2 October 2014 announced that its shareholding had increased to 8.92%.
37. It appears that, following the open offer and share purchases referred to above, the major shareholders in Rangers by early October 2014 were as follows:

| | |
|--|----------|
| Mr Sandy Easdale (owned and proxy rights controlled) | c. 26.1% |
| Laxey | 16.32% |
| Artemis | 9.95% |
| MASH | 8.92% |
| River & Mercantile | 6.4% |
| Miton | 3.9% |

In total, these shareholders represented approximately 72% of Rangers' issued share capital. The remaining shares were widely dispersed amongst a number of nominee companies and individual shareholders including a large number of fans.

38. This was the position immediately before the events of direct relevance to the hearing before the Committee. In summary, there was a perception amongst some

fans that the Easdales and Mr Ashley formed a “camp” which was not prepared to cede control to the fans. For its part the fans’ “camp” tended to look to Mr King as a potential champion. It will be apparent that as the Easdales and Mr Ashley controlled some 35% of the voting rights and a large part of the 28% of smaller holdings was held by fans, the holdings of the four large institutional shareholders (Laxey, Artemis, Miton and River & Mercantile) were critical to the control of Rangers. It is these holdings (or part holding in the case of River & Mercantile) that the Executive found to have been purchased by Messrs Letham, Taylor, Park and King acting in concert on 31 December 2014 and 2 January 2015.

THE OCTOBER 2014 FUNDING PROPOSAL

39. Mr Letham is another successful businessman who, like Mr King, was willing to invest money to turn round the fortunes of Rangers. In September 2014 he was asked by Mr Wallace to see whether he could recruit other individuals to put money into the club. Mr Letham was put in touch with Mr Taylor through a friend, Andy Ross, and the Rangers Supporters Club in Hong Kong. Through another friend he was put in touch with Mr Paul Murray (“Mr Murray”) and, through him, with Mr King. Mr King and Mr Murray had served together on the old Rangers Board.
40. Messrs Letham and Murray thought that they might be able to raise £8 million from a group which included themselves and Messrs Taylor and Park. Mr Taylor’s proposed share of the funding was to be £1 million. Mr Park is a wealthy businessman whose coach company, Park’s of Hamilton, had provided transport for Rangers teams and fans and who had had a sponsorship deal with old Rangers during a period when Messrs King and Murray were on the Board.
41. It appears that at this time the Rangers Board was also conducting similar discussions with Mr Ashley’s company, MASH, and on 4 October Mr King emailed Mr Letham observing that it might be useful for him to have “a private chat with Mike Ashley” and asking Mr Letham for an email introduction. From a later report in the South African press it seems that the two never met to explore common ground or potential collaboration. What is clear, however, is that their

respective interests or objectives would soon become starkly opposed.

42. On 9 October, Mr King emailed Mr Wallace (copied to Messrs Murray and Letham) outlining a funding proposal. The proposal involved funding of £8 million from the Letham/Murray group matched by £8 million from Mr King, with the £16 million being split 50/50 between debt and equity. It also involved the funding group acquiring control of the Rangers board: were the proposal to be accepted, the funders would become entitled to appoint four directors of whom two would be Messrs King and Murray with Mr King as Chairman. In his email to Mr Wallace, Mr King said:

“Graham, I provide this high level proposal for 2 distinct purposes:

- 1. To confirm that with immediate effect I am working with Paul [Murray] and George [Letham] on an exclusive “consortium” basis.*
- 2. To provide a high level outline of a proposal that we would like to put to the board.*

.....

I now outline our high level proposal:

- 1. We will provide a minimum of GBP 16m as permanent capital to the club. 50% of the total will come from me and the other 50% on a combined basis from Paul, George, and other high net worth individuals. The fan groups will wish to make some contribution but I believe it will be symbolic rather than significant.*
- 2. We are happy to consider 50% debt at a market rate and 50% equity at 20p per share. The debt will be for a minimum of 5 years. The debt should be secured against Ibrox and Murray Park with some flexibility for future funding if required. We will ensure that the fan groups support the security over Ibrox and do not task the board with a breach of prior commitments.*
- 3. I am happy to commit to all the debt and ensure that, if required, it is in place prior to the AGM. For this to happen we would require irrevocable undertakings that the share issue will proceed and that the board appointments will be ratified.*
- 4. The board would be restructured to incorporate 4 of the existing board and we would make 4 nominations of which Paul and I would be 2. We*

would have the chair and I will be the nomination for that position. Due to other business interests George is not available for a board appointment.

5. *There would be an immediate call to fans to support the club in all ways possible and we undertake to get vocal public support from key Rangers legends.*
6. *We will call on all fans to oppose Ashley's call for the removal of the executive.*

I confirm that Paul and George have approved the content of this email."

43. The Executive submitted, correctly in the Committee's judgment, that Mr Letham and, on the one hand, the group of which he was part and Mr King on the other hand were acting in concert in putting forward this proposal, with the result that an obligation to extend an offer to other shareholders under Rule 9 would have been triggered had the proposal been accepted and the funders acquired in consequence 30% of more of the voting rights. At the proposed issue price of 20p per share, the proposal would have resulted in the funders acquiring 33% of the enlarged share capital. It is apparent that the implications under the Code occurred to Mr Wallace or his advisers because on 12 October he emailed a response to the proposal to Mr King (copied to Messrs Murray and Letham along with other board members, the solicitors Field Fisher and Mr Shackleton). In that email Mr Wallace said:

"It is likely that this consortium will be viewed as a concert party and would require to be approved by shareholders under the take-over code. This will require 50% of existing shareholders to approve such concert party."

44. When interviewed by the Executive, Mr King denied that the proposed funders were acting in concert, laying stress on the fact that "consortium" in paragraph 1 of his email of 9 October was placed in quotation marks. In the view of the Committee this is not to the point. The quotation marks around the word consortium may well denote that there was no formal consortium: however, a loose group comprising individuals cooperating with one another for a common purpose may amount to "acting in concert" within the meaning of Rule 9 of the Code. For his part, in his submissions at the hearing Mr Blair conceded that Messrs King and Letham had been acting in concert in putting forward the October funding proposal, but

submitted that this was just one of a number of ephemeral and constantly shifting alliances which ceased when the proposal was rejected. We return to this later.

45. It is clear that at the root of the 9 October proposal was control of the Rangers Board. This was undoubtedly how it was perceived by the Board. Thus on 16 October the Chairman, Mr Somers, updated his colleagues and advisers by email stating:

“Dave King made it clear that the Chairman position is critical to him and this seemed to be backed by the consortium”.

And on 17 October Mr Wallace emailed the board and its advisers saying:

*“All,
We need to respond to King et al to let them know we are still taking things seriously but also putting a marker down on what the Board will agree to (should there be a deal) and the possible regulatory hurdles to be addressed.
There is an expectation externally that some sort of deal may be possible so now is time to firm up what we are prepared to seriously consider.
We also may need a King deal if the Ashley proposal fails to get over the line for any reason.*

...

I think the stumbling block with King will be that he wants to exercise control through buying a significant shareholding block, obtaining new board appointments and chairmanship of the plc board. We are most probably unwilling to approve most of these for all sorts of reasons. He is also unlikely to offer any funding either debt or equity without guarantees on equity issue and board representation, the latter part of which will have to be conditional upon regulatory and SFA approval if indeed approved by the current board.

We need to determine, as a board, exactly what we will be prepared to support and any conditions attached to such approval. My sense is that unless we agree to all that King wants, he will either walk away claiming bad faith on the part of the board or possibly he may splinter from the consortium. We need to be mindful of this and consider how we need to address it should it come to this. My sense is he will not invest at all unless he has a significant influencing position at board level”.

46. Obtaining control of the Board in return for a major injection of capital was also how the proposal was viewed by Messrs Letham and King. Thus Mr Wallace subsequently reported to Mr Letham (and Mr Letham in turn by email to Mr King) that:

“... a chunk of the Easdale block will not accept our demand for control.”

When Mr Letham relayed to Mr King an alternative proposal, mooted by Mr Wallace, that he might invest and join the Board as a minority, Mr King replied:

“I received the same proposal last week and again yesterday and today. I rejected them all. We would lose credibility and leverage if we joined the board as a minority. If we go in early we will lose everything. I would rather wait until Ashley makes his move and then react. If Easdale will block us in any event why assist them?”

47. In the event, the funding proposal put forward jointly by Mr King and the Letham/Murray group was rejected, the Rangers Board opting instead to accept an alternative proposal from Mr Ashley. Shortly thereafter, Mr Wallace and the finance director Mr Nash were removed from the Board and replaced as CEO and Finance Director respectively by Messrs Llambias and Leach, who were Ashley appointees.
48. With the funding proposal from the “consortium” of which he was part having been rejected, Mr Taylor was permitted by Morgan Stanley’s compliance department to resume purchases of Rangers shares. Between 24 and 29 October Mr Taylor acquired a further two million shares split into three blocks at prices of 21.35p, 20.75p and 20.63p respectively. These purchases brought Mr Taylor’s shareholding to 3.16% of the Rangers issued share capital.

THE 25% BLOCKING STAKE

49. On 25 October 2014 Mr King emailed Messrs Murray and Letham saying:
- “Paul, can you confidentially sound out institutional shareholders and see if we could acquire 25% plus 1 share?”.*
50. The object was to find out whether it was possible for Mr King and others to acquire a shareholding which would effectively operate as a blocking stake. Following up on Mr King’s request, on 27 October Mr Murray spoke to Mr Gordon

Neilly of Cantor Fitzgerald to see if he could help find sellers for Mr King and others to acquire a stake of at least 25%. Messrs King and Neilly were then evidently put in touch with each other as on 12 November Mr King emailed Mr Neilly (copying in Messrs Murray and Letham) as follows:

“Gordon, thanks for your assistance so far. Are you able to confirm that the 2 institutions are amenable to a firm offer at 25p?... My present inclination, and the basis for current discussions with Paul [Murray] and George [Letham], is that we acquire sufficient shares in the market to form a block that amounts to 25% plus of the total shares in issue. In SA terms that would give us an effective “negative control” over key decisions going forward even if we could not convince other shareholders to vote with us in certain instances. (In my view we would not be concert parties and there would be no pre-agreement to vote collectively but the nuance of this can be explored separately if necessary)”.

51. It is evident that Mr King had given some thought to the implications under the Code of a group of persons collectively acquiring a large block of shares with a common object of acquiring positive or negative control, because he expressed the view that without a pre-agreement to vote collectively the group would not constitute a concert party (albeit suggesting that the “nuance of this” could be explored separately). In the Committee’s view, however, this is not correct: where a group of people with a broadly common object collaborates to purchase a block of shares, the group members may well constitute a concert party without there being any pre-agreement to vote collectively.
52. Apart from Laxey, the three major institutional investors in Rangers were Artemis, Miton and River & Mercantile. Mr Neilly obtained indications from Artemis and Miton that they might be willing to sell at 30p and 28p respectively. News of this prompted Mr King to email Mr Neilly on 23 November as follows:

“Thanks Gordon. I haven’t heard from Paul yet. In case you didn’t know, the investment understanding I have with Paul and George is that they, as a group, will provide funds and I will match that amount ie. they would have 50% collectively and I would have 50%. My further understanding is that Paul will provide 5 investors (including himself) and George three (including himself). I have asked them to confirm that they will transact at 30p per share for Artemis, R&M, and Miton. George has confirmed that he, Andy Ross and George Taylor are in for 1/16th each. I am in for my 8/16th and I await confirmation from Paul. I will chase him now. Do you believe that we now have a firm commitment from the 3

investors at 30p? That is enough to get us across the line”.

It is evident from this that Mr King was at this time still proceeding on the basis that, if a collective investment in Rangers or an acquisition of shares of Rangers were to be made, he would personally match the combined total committed by Mr Letham’s group of investors and Mr Murray’s group of investors.

53. In the event, the proposal to purchase a blocking stake petered out when Mr Murray reported that the price was too high for his group. Mr King was unable to fill the funding shortfall left by Mr Murray and his group, albeit he was prepared to increase his share from a half to 2/3rds and go back to the institutional shareholders with a proposal to buy at 25p. It is apparent from Mr King’s interviews by the Executive that this episode caused him to doubt that Mr Murray would be good for the money if and when the time came to invest in Rangers. From now on Mr Murray tended to drop out of the picture as a potential investor (although he continued to feature in the email exchanges) and Mr King’s dealings with other potential investors were with Mr Letham and the group which he coordinated.

THE RELEVANT SHARE PURCHASES

54. The whole situation changed dramatically when Mr Crighton was voted off the Rangers Board in early December 2014. Mr Crighton was Laxey’s representative on the Board. Hitherto Laxey had tended to be aligned with the incumbent Board and thus to an extent with the Easdales’ 26.1% and the MASH holding of 8.92%. Mr Crighton’s removal undermined Laxey’s allegiance to the Board and changed the dynamics. With Mr Crighton’s removal the Easdale/MASH block ceased to have the support of Laxey’s 16.3%. When interviewed by the Executive in June 2015, Mr King described this as the crucial development that made it possible for him to achieve his objective:

“Someone came to me and said, “Laxey’s up for sale. They’re fed up, because things have been – they’re out of here. They’ve decided they’re walking away.” And that was very significant. In fact it was the significant event of this.

If the board made one mistake, if you can use that language for a board determined to entrench themselves, the mistake they made was firing Crighton, because Laxey

was very, very important to them. The fact that Laxey didn't like me helped them a lot, because no matter where I got to they were in a position to continue to block anything that I would try to do, as long as Laxey was on board.

So, to me, the dismissal of Crighton that then I think directly caused, I think, based on the version I've given you, Laxey to just throw up their arms and say "There, there". They went from being on that side to completely out of the game. They didn't even go to neutral. They ended up sitting on the other side. And without that having happened, the board would still be there, quite frankly. I would never have been able to move on to the next stage. The significance was them getting rid of Crighton from the board, which dislodged Laxey. Whether it turned out to be to our advantage or not I guess would depend on who Laxey sold to".

55. On 18 December 2014 Messrs Letham and Taylor met Mr Colin Kingsnorth, the CEO of Laxey. Mr Kingsnorth was evidently displeased at Mr Crighton's removal but would not countenance having Mr King on the board. When interviewed by the Executive in April 2015 Mr Letham said of this meeting:

"Kingsnorth told us how he disliked Dave King intensely and he had Dave King in the same office we were in and at first they kicked him out after 30 minutes... He said he didn't trust Dave King and wouldn't do business with him".

56. Messrs Letham and Taylor also met Mr Crighton later on the same day. Mr Crighton told them that while they (Messrs Letham and Taylor) might be acceptable as investors, Mr King and Mr Murray were not acceptable to the Board.

57. In his interview by the Executive in April 2015 Mr Letham said that he telephoned Mr King on 21 December and told him that Laxey was not prepared to deal with him. For his part Mr King, when interviewed by the Executive in June 2015, said this:

"I think I got an email from Paul and George just saying that Crighton had been fired from the Board by Mike Ashley and that Laxey were furious with Mike Ashley's behaviour and they wanted out. And they were interested in selling the shares, but they wouldn't sell to me, because of the personality thing.

They wouldn't sell if I was involved in any way whatsoever, which was not a surprise to me. Well, it was a slight surprise, in the sense that, when you're dealing with other people's money I think you should set personal feelings aside. It was a trust fund, so it seems a bit odd for someone with other people's money to say 'I won't sell to King'.

The price should be the price, but, anyway having met the chap, it wasn't a

complete surprise to me".

58. On 22 December Mr Neilly emailed Mr King seeking an update following his discussion with Mr Letham. Mr King emailed back on the same day saying:

"He told me that he met CK [Colin Kingsnorth] and that Laxey will sell to them (if I am not involved) at 20p. I suggested that made no sense for a man dealing in a fiduciary capacity and I suggested they reconfirm that fact with him. I will let you know".

59. Meanwhile the Rangers AGM was due to take place on 22 December 2014. One of the special resolutions to be voted on at the AGM (Resolution 9) was a resolution to dis-apply pre-emption rights up to a maximum of 50% of Rangers' share capital. The passing of this resolution was intended to permit investment by participation in a new share issue. Mr Letham, Mr Taylor and Mr Douglas Park (later to be described by the press as the "Three Bears") agreed to submit at the AGM a letter indicating their intention to participate in the share issue. Mr Murray reported this to Mr King in an email of 21 December (copied to Messrs Letham and Park):

"Dave, Douglas has agreed in principle to provide proof of funding alongside George Taylor and George Letham to enable us to submit an indicative letter tomorrow to participate in the upcoming share issue. I think it will be good for you and Douglas to talk directly about how you see things playing out from here. Douglas' email details are attached (he is copied in) and his mobile number is Regards, Paul".

Mr Park had been introduced to Mr Letham by Mr Murray and had apparently been a member of the "consortium" that had put forward the October funding proposal. Mr Letham was evidently speaking on behalf of the group comprising himself, Mr Taylor and Mr Park. Thus before learning of the result of the AGM, Mr Letham emailed the Rangers Chairman, Mr Somers, setting out a funding proposal from the three of them involving a subscription for 40 million shares at 16p per share carrying two seats on the board.

60. In the event, Resolution 9 was not passed at the AGM on 22 December 2014 with MASH and Sandy Easdale apparently voting against it. Accordingly, the share issue went no further.

61. Mr King told the Executive that he did not take up Mr Murray's suggestion to meet Mr Park.
62. Although Mr Somers continued to seek funding proposals from various potential investors including Messrs Letham and King, the attention of the group comprising Messrs Letham, Taylor and Park now appears to have been focused on acquiring the Laxey shares.
63. On 23 December Mr Letham emailed Mr King in South Africa suggesting that a time be arranged for a call. Mr King responded that he would call Mr Letham on the morning of 24 December. On 24 December Mr Taylor emailed Mr Kingsnorth saying that he and Mr Letham "would like to further the discussion we had on acquiring your stake".
64. On 27 December 2014 Mr Letham emailed Mr King announcing that Mr Kingsnorth had agreed to sell the Laxey shares to his group at 20p per share and that, according to Mr Crighton, with firm orders, the Artemis stake would also be available at the same price and possibly also the shares of Miton. The terms of this email are important and deserve close attention. Mr Letham said:

"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 off line.

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] 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".

There is no evidence to suggest that Mr Letham's group ever contemplated buying the Artemis shares. What Mr Letham was proposing was the simultaneous acquisition before the end of the year of the Laxey shares by his group and of the Artemis shares (and possibly Miton's shares) by Mr King. This was an unequivocal proposal for the Letham group and Mr King to co-ordinate their purchases in order

to secure, simultaneously, a substantial block of Rangers shares. In the context of previous events the broad object of the transactions was also clear: it was to secure a block of shares that would enable the holders to change the balance of power on the Rangers board, something which each of the purchasers believed to be in the interest of the club.

65. We do not know whether Mr King took up Mr Letham's offer to discuss his proposal on the phone, but later on 27 December Mr King emailed Mr Neilly of Cantor Fitzgerald forwarding Mr Letham's earlier email and saying:

"Hi Gordon, I hope you had a great Xmas with your family. Please see the email below from George [Letham]. Unexpectedly, Laxey has accepted a bid of 20p per share for its full stake and George and his colleagues will execute on that. Norman Crighton (Laxey) has spoken to Artemis who have confirmed that they will sell at 20p and he believes that Miton will do likewise. I don't believe they have approached R&M. Can you confirm this, either with the shareholders directly or via Crighton if you feel that is more appropriate?"

66. Mr Neilly, who had been on holiday in Cambodia, did not reply until 31 December when he said this:

"Dave, I am so sorry but I have been in Cambodia and did not have access to emails. I have only just got your email now so apologies if I gave the wrong impression to Paul when he called me yesterday. I will call Adrian and Martin Turner today... and will give you a call later today"

"Adrian" is Adrian Patterson of Artemis and "Martin Turner" was employed by Miton.

67. During the period 27 to 31 December 2014, Mr Taylor, who was on holiday from Hong Kong, co-ordinated the acquisition of the Laxey shares on behalf of himself, Mr Letham and Mr Park. Apparently, this entailed dealing with Mr Letham's bank, Mr Park's son and wealth managers and the compliance department of Morgan Stanley. The purchase was duly completed on 31 December.

68. In the course of this process, someone in the Letham group must have considered the implications under the Code of potential simultaneous purchases of 30% or

more of the Rangers share capital by, on the one hand, the Letham group and, on the other, Mr King. This led to Mr Letham emailing Mr King during the early morning of 31 December as follows:

“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”.

Mr Letham could only have considered it relevant to alert Mr King to the risk of being required to make a mandatory offer if he appreciated that he and Messrs Taylor and Park were acting in concert with Mr King in making the relevant purchases. Only if the purchases were viewed as having been made by parties acting in concert could the number of shares acquired trigger a mandatory offer under the Code. Furthermore, the words “We really only want to buy Artemis 10%”, when it was only Mr King who was buying Artemis, suggest that the purchase was a group enterprise.

69. Mr King seems to have ignored the warning. Once Mr Neilly was back on line things moved fast. On 31 December 2014 Mr King instructed Cantor Fitzgerald to purchase the entire shareholdings of Artemis and Miton along with part of River & Mercantile’s shareholding at a price of 20p per share. The vehicle that he used for acquiring the shares was NOAL which, as mentioned previously, is a company incorporated in the British Virgin Islands. The holder of the single share issued by NOAL was at the time (and, as far as we know, still is) a Gibraltar company, Sovereign Trust International Limited (“Sovereign”). Sovereign is the trustee of The Glencoe Investments Trust. The Glencoe Investments Trust is Mr King’s family trust: he was the settlor and the named beneficiaries are himself, his wife and children.
70. As at the date of the hearing before the Committee, the Rangers website listed Mr King, his wife and children as parties interested in the NOAL shares. This description is correct. Mr King and his immediate family hold the beneficial interests in shares held by NOAL as nominee. Furthermore, events as they unfolded show that Mr King, as a matter of fact, is able to control the voting rights attached

to the shares held by NOAL.

71. The documents show that Mr King gave personal instructions for the purchase by NOAL of the shares and was under no doubt that his instructions would be carried out. Thus on the morning of 31 December 2014 Mr King emailed Mr John Hodgson, a director of Sovereign, saying:

“Hi John, I apologise for the timing of this email but the discussions around the acquisition of Rangers shares has been more protracted than I had anticipated. Gordon and Tom [Dixon] from Cantors are copied on this email and have negotiated with three institutions who combined have 11,87 m shares available at a price of 20p per share.

I don’t know who is available to deal with this email but we now need to get an account opened on behalf of NOAL with Cantors and provide the various KYC docs etc. Tom Dixon will be the “point man” for Cantors”.

72. It was because the market closed early on New Year’s Eve that the purchase could not complete on that day. During the afternoon of 31 December Mr King emailed Mr Dixon at Cantor Fitzgerald to inform him that he had spoken to Mr Hodgson and the “Know Your Client” documents would be available by close of business that day. Mr King went on to say that “The funds are freely available so we can close on Friday”. The purchases were duly completed on Friday 2 January 2015.

73. Sovereign appears to have acted on Mr King’s instruction just as much as did Cantor Fitzgerald. It was no doubt for this reason that on 2 January Mr King emailed Mr Graham of the Fans Union reporting that “I got all Artemis and Miton and 500K from River and Mercantile”. When interviewed by the Executive in December 2015, Mr King referred on several occasions to putting his own and his family’s money into the club and to not wanting to commit more of his own money than he had lost or committed already. The contention that NOAL, as distinct from Mr King and his family, is the real party at risk in this matter and that Mr King has no locus to represent NOAL’s interests, does not appear to have been made until Mr King served his Submission for this hearing on 22 October 2016. In the Committee’s view that contention is unreal and is at odds with Mr King’s behaviour at the time as revealed by the documents. Furthermore, with NOAL declining the invitation to apply to be heard or to make its own submissions to the

Committee and with Mr King deciding not to turn up to the hearing, Mr King effectively avoided any questions on the subject.

THE AFTERMATH

74. Although in purchasing the Artemis, Miton and River & Mercantile shares Mr King appears to have ignored Mr Letham's warning regarding a mandatory offer, he was careful to attempt to distance himself from the Letham group immediately afterwards. On 2 January 2015 Mr King emailed Mr Letham saying:

"I note from emails that were forwarded to me that you have purchased Laxey's shares. I remain surprised that Laxey wouldn't sell the shares to me or anyone involved with me – even at the higher price I offered. It seems that their fiduciary responsibility should be directed towards getting the best deal irrespective of who they are selling to. In any event I am delighted that you managed to get this deal done.

I am continuing to pursue my own options and have put a proposal to the trustees of my family trust as they ultimately have to make the final decision. The holidays have delayed things a bit but I hope to get final approval today. I may want to approach co-investors from time to time and it will help me to know who is involved in your "consortium" so that I avoid duplication".

The Committee is in no doubt that this was a self-serving email designed by Mr King to cover his tracks and to give the false impression that his own acquisitions and those of the Letham "consortium" had not been co-ordinated. Mr King knew full well who was in the Letham "consortium" from Mr Letham's email to him of 27 December. Similarly, the reference to putting a proposal to his trustees which he hoped would be approved on 2 January plays down the fact that the purchase could have been completed on 31 December but for Mr Neilly having previously been *incommunicado* on holiday in Cambodia and but for the need to satisfy the administrative requirements (which could not be completed before early closing of the markets on New Year's Eve) of opening an account with Cantor Fitzgerald in the name of NOAL and preparing "Know Your Client" documentation.

75. In similar vein was an email sent by Mr King to Mr Somers on 2 January 2015. This was in response to Mr Somers' earlier attempts to elicit funding proposals from various potential investors. In that email Mr King said:

“David, early in the week it became clear to George [Letham] and I that it would not be possible for us to proceed as co-investors on the basis that we have previously proposed. There are 2 broad reasons for this:

- 1. The need of the trustees of my family trust to be able to act independently and make investment decisions without reference to others.*
- 2. The strong indication from within the club, and by one major shareholder, that they were more amenable to engage and negotiate with “groups” that excluded me from being one of its members.*

I consequently reply in red below to the questions you posed and George [Letham] will no doubt do likewise for his “consortium”.”

During the Executive’s investigation of this matter Mr King produced no emails, maintaining that they had all been deleted from his system and the IT personnel at his company, Micromega, had told him they were irretrievable. The one email string that Mr King did produce, which he said had been made available to him, was attached to his Submission of 22 October: this comprised his email to Mr Somers of 2 January 2015 (cited above) along with an email of the same day by which Mr Somers forwarded Mr King’s email to fellow directors.

76. After completion of the share purchases matters developed fairly swiftly culminating in the removal of the current Board. On 16 January 2015 NOAL submitted a requisition notice to Rangers proposing the removal of the existing directors and the appointment of Mr King, Mr Murray and Mr John Gilligan to the Board. A previous email dated 11 January 2015, from Mr King to Mr Neilly, suggests that this was entirely Mr King’s decision. On 27 January 2015 Rangers announced that it had agreed a £10 million interest free loan facility with Mr Ashley’s Sports Direct, the proceeds to be used for working capital and to repay MASH. On 6 February Rangers convened a General Meeting to vote on the resolutions to remove all four existing directors and to appoint to the Board Messrs King, Murray and Gilligan. On 25 February Rangers announced the resignation from the Board of Mr James Easdale and on 2 March the resignation of Mr Somers.
77. On 4 March 2015 WH Ireland resigned as Rangers’ NOMAD and trading of Rangers’ shares on AIM was suspended.

78. On 6 March 2015, at the Rangers General Meeting, Messrs Llambias and Leach (the surviving directors and Mr Ashley’s representatives on the Board) were voted off the Board and Messrs King, Murray and Gilligan were voted on. NOAL and Messrs Letham, Taylor and Park supported these motions. Mr King’s appointment could not take effect immediately: the fact that he had been convicted in South Africa of offences under the South African Income Tax Act along with his service on the Board of Old Rangers at the time of its insolvency meant that his appointment required the approval of the Scottish Football Association. On 19 May 2015 the Scottish FA passed Mr King as fit and proper, whereupon he became a director and Chairman of Rangers.

ACTING IN CONCERT

79. General Principle 1 of the Code is identical to the first of the General Principles set out in the EU Takeovers Directive (2004/25/EC) and is as follows:

“All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.”

Rule 9.1 of the Code gives effect to this principle and provides as follows:

“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”.

80. “Acting in concert” is defined in the Code as follows:

“Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of

an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other”.

Under the Code certain persons are presumed to be acting in concert without prejudice to the general definition. These include a company and its parent. They also include a person, the person’s close relatives and the related trusts of any of them, all with each other. Applying the presumption to this latter category of persons and their related trusts involved an addition to the Code after the events giving rise to these proceedings: it was added, however, on the basis that it reflected what had been the Takeover Panel’s practice for some years.

81. In the case of Principle Capital Investment Trust Plc (TAB Statement 2010/1), the Takeover Appeal Board approved the following explanation of acting in concert set out by the Panel in its Statement in the case of Guinness/Distillers (Panel Statement 1989/13). That Statement provides that:

“The nature of acting in concert requires that the definition be drawn in deliberately wide terms. It covers an understanding as well as an agreement, and an informal as well as a formal arrangement, which leads to co-operation to purchase shares to acquire control of a company. This is necessary, as such arrangements are often informal, and the understanding may arise from a hint. The understanding may be tacit, and the definition covers situations where the parties act on the basis of a “nod or a wink”. Unless persons declare this agreement or understanding, there is rarely direct evidence of action in concert, and the Panel must draw on its experience and common sense to determine whether those involved in any dealings have some form of understanding and are acting in co-operation with each other. In a typical concert party case, both the offeror and the person alleged to be acting in concert with it are declaring that, notwithstanding the circumstances, they have no understanding or agreement. The Panel has to be prepared realistically to recognise that business men may not require much by way of formal expression to create such an understanding. It is unnecessary for the Panel to know everything that actually passed between the parties in a take-over. In addition, the judgment required in an acting in concert issue must usually be made in the context of the assertions and arguments of persons whose interests will not be served by a finding of acting in concert – this is because such a finding inevitably entails consequences under the Code, often to the benefit of offeree company shareholders, which is the object of the concept, with a cost to the offeror”.

82. It follows that an informal arrangement or even a tacit understanding between people to co-operate to purchase shares to obtain control of a company will mean

that such people act in concert in making the relevant share purchases. The Panel Statement in Guinness/Distillers also recognises that a judgment as to whether persons were acting in concert will usually have to be a matter of inference, made in the face of assertions by those involved that there was no concerted activity. Direct evidence of acting in concert will usually not be available and in consequence the Panel will have to draw upon its experience and common sense to determine whether there was co-operation between persons in question with a view to acquiring a controlling interest. It may also need to use its experience and common sense in drawing inferences where there are gaps in the evidence.

83. In the Committee's view it is not necessary or relevant to ask whether there was consensus amongst the group as to how the voting rights attaching to shares would be exercised once they were acquired: it is enough that the purpose for which the group was co-operating and applying its purchasing power was to effect a change of control in the Board without any prior agreement as to how such control would be exercised once obtained.
84. While the principal commercial purpose of the October 2014 funding proposal was to provide capital for Rangers, it was made conditional upon the funders obtaining control of the Board. This condition appears to us to have been fundamental. It seems that the intention was for each of Messrs Letham, Taylor and Park to be participants in the "consortium" to which Mr King referred in his email to Mr Wallace of 9 October 2014. Had the proposal been accepted, there would have been no doubt that Mr King and the consortium would have acquired a controlling interest in Rangers (within the meaning of the Code) by acting in concert.
85. We are inclined to agree with Mr Blair's submission at the hearing that the situation at the time was fluid in the extreme and that ad hoc alliances tended to be shifting and ephemeral in nature. The Committee accepts that fans put money into their football clubs for love of the club and that wealthy fans often invest for reasons that have nothing to do with financial gain. This was no doubt particularly true as regards Rangers at the time. The Code, however, applies to changes in the control of football clubs just as it does to other corporations subject to the jurisdiction of

the Takeover Panel; and the shareholders of football clubs are entitled to the same protection.

86. The Submission to the Committee by the Rangers Board also focused on the exceptional circumstances of Rangers at the time and included the following:

“The Executive’s submission fails to recognise the ebb and flow of discussions between the parties identified as concert parties and other shareholders and prospective investors in RIFC over the period covered by its submission. It is only with the benefit of hindsight that a clear path is being created and parties are being construed as acting in concert. In fact, matters were much more fluid than the submission suggests with each interested party exploring and acting on multiple options to respond to the manoeuvring of the then incumbent Board and the shareholders with influence upon it. For example, in March 2014 Mr King stated publicly that he:

“would wish to be a part of the required fund-raising as a component of a united fan group investment vehicle.”

We understand that this remained Mr King’s desire throughout but the situations that emerged necessitated compromises and the finding of common ground with others who shared an interest in placing the interests of Rangers Football Club at the forefront of RIFC’s thinking”.

Mr King’s Submission included a similar theme and he also submitted that:

“ ... if there was a consortium at the time of the changes in shareholding it was between NOAL and the supporters”.

87. The Committee acknowledges the chaotic circumstances of Rangers at the time and accepts that the situation involved the ebb and flow of discussions and a climate in which different options were explored and potential alliances formed or discussed. But the issue before us is whether the particular share purchases of 31 December 2014 and 2 January 2015 were effected by or on behalf of a group of people co-operating with the objective of securing a change of control of the Board as a first step towards improving the fortunes of the club. We are satisfied that this was the case.
88. In the present case it is clear from Mr Letham’s emails to Mr King of 27 and 31 December 2014 that the two of them were co-operating directly with a view to purchasing a block of shares which would effect a change of control over a board

dominated by the Easdale and Ashley blocks. When those emails are placed in the context of the October 2014 funding proposal and the subsequent failed attempt to secure a blocking stake, the case for concluding that Messrs Letham and King, at least, were acting in concert in purchasing the relevant shares becomes overwhelming. That their objective was a change in control of the Board as the first step to improving the fortunes of Rangers, cannot seriously be disputed when these purchases are placed in context.

89. There is no evidence of any direct dealings between Messrs Taylor and Park and Mr King before the relevant shares were purchased. By the end of 2014, however, Messrs Letham, Taylor and Park were operating and looking to invest as a group, hence the title of “The Three Bears” conferred on them by the press. Mr Letham also said to the Executive when interviewed:

“I wouldn’t deny myself, Douglas Park and George Taylor are a concert party. I mean we are working hand in hand”.

90. Furthermore, in its communications with Mr King, this group was represented solely by Mr Letham. He was able to, and did, co-ordinate the purchase of the Laxey shares by his group with the purchase by Mr King of the Artemis and other shares. Once Mr King acted on Mr Letham’s suggestion that he should purchase the Artemis and, possibly the Miton, shares simultaneously with the Letham group’s purchase of the Laxey shares, the two transactions proceeded in tandem and the purchasers comprised a concert party within the meaning of the Code. Messrs Park and Taylor were brought into the concert party through Mr Letham as the intermediary and by virtue of the fact that they were operating as a group in entering into a transaction with which Mr King’s parallel transaction was co-ordinated.

91. In his letter to the Executive of 11 August 2015 Mr Taylor states that effecting a change in control of the Board was not part of his motivation in purchasing the Laxey shares. Although, in the event, he voted to remove the incumbent directors and to appoint Messrs Murray, King and Gilligan to the Board at the General Meeting of 6 March 2015, he says that he would have been amenable to

collaborating with the Easdale and Ashley blocks rather than removing all their representatives from the board. It is relevant to note, however, that both Mr Taylor and Mr Park were part of the Murray/Letham consortium which, through Mr King, submitted a funding proposal on 9 October 2014. That proposal would undoubtedly have brought about a change in control of the Board had it been accepted. Mr Taylor does not explain whether or why his attitude to a change in control of the Board changed between 9 October and 31 December or why, along with Messrs Letham, Park and King, he ultimately voted to remove the remaining incumbent directors at the General Meeting if he was amenable to working with the Ashley and Easdale blocks. But in the Committee's judgment, whatever their personal motives and whatever their views on the future composition of the Board may have been, Messrs Taylor and Park were brought into concert with Mr King when Mr King acted on Mr Letham's suggestion to purchase Artemis' shares simultaneously with his own group's purchase of the Laxey shares. That Mr Letham (at least) appreciated that this could trigger a mandatory offer if the four of them were left holding 30% or more of the voting rights, is clear from his warning to Mr King on 31 December.

92. There is nothing objectionable or wrong in a person acquiring an interest in shares which, taken together with the shares of those with whom that person is acting in concert, carry 30% or more of the voting rights – it is simply that that person incurs an obligation to extend an offer to the other shareholders. Mr Letham and the two members of his group acted together in concert in purchasing the Laxey shares. Accordingly, the relevant question in the Committee's view is whether Mr King was acting in concert with the Letham group when he procured the purchases by NOAL of the Artemis, Miton and River & Mercantile shares. To that question the answer is yes.
93. The Committee concludes, therefore, that Mr King and Messrs Letham, Taylor and Park were acting in concert in acquiring, or procuring the acquisition of, a total of 30.89% of the Rangers issued share capital during the period 31 December 2014 to 2 January 2015. Along with Mr Taylor's existing shareholding of 3.16%, the shares held or controlled by these four individuals henceforth constituted 34.05% of

Rangers' issued share capital.

94. Mr King procured the purchase of the Artemis, Miton and River & Mercantile shares by NOAL. The Committee is in no doubt that he thereby acquired an "interest" in the shares held by NOAL within the meaning of that term in Rule 9.1 of the Code. The Code's definition of "Interests in securities" treats a person who has general control over the rights attaching to securities as having an interest in those securities. Mr King exercised practical control over the voting rights attaching to the NOAL shares, as is evident by the requisitioning of the General Meeting of 6 March 2015 and the deployment of the NOAL votes at that meeting. As well as enjoying a beneficial interest in the NOAL shares as a beneficiary of The Glencoe Investments Trust, he exercised general control over them. The Rangers website correctly identifies Mr King as interested in the NOAL shares.

MANDATORY OFFER BY WHOM?

95. Under Rule 9.1 the person upon whom the obligation to extend an offer falls is the person who acquires the interest in shares which, when taken together with the shares of those with whom he was acting in concert, carries 30% or more of the voting rights. In the Committee's view Mr King qualified as that person by virtue of his interest, as defined, in the NOAL shares and the fact that it was the purchase by NOAL that took the relevant aggregate shareholding above 30% of the voting rights.
96. Furthermore, Rule 9.2 provides that:

"In addition to the person specified in Rule 9.1, each of the principal members of a group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer."

The Executive relied on this Rule in holding that in the circumstances of this case it was just for Mr King alone to incur the obligation to extend a Rule 9 offer. On 31 December 2014 Mr King received advice from Mr Letham on behalf of his group that he ought to restrict his purchase to the 10% Artemis shareholding in light of

the risk of having to make a mandatory offer if the combined holdings of himself and the Letham group were to reach 30%. Mr King ignored that advice. Furthermore, he ignored the obligation on a person under paragraph 6 of the Introduction to the Code to consult the Executive in advance whenever a waiver or derogation from the provisions of the Code is sought. Rather, his choice was to go ahead and then, on 2 January 2015, send the emails to which we have referred above in an attempt to distance himself from the Letham group.

97. In the circumstances of this case, therefore, the Committee agrees that, if anyone, it should be Mr King alone who is required to make a Rule 9 offer.

SHOULD THERE BE A MANDATORY OFFER?

98. One aspect of this matter that has caused the Committee concern is the time that elapsed between the initial reporting of a potential triggering of Rule 9 by the incumbent Board during January 2015 and the Executive's ruling of 7 June 2016. Both Mr King and the Rangers Board submit that it serves no purpose now to require a Rule 9 offer to be made at a price of 20p per share (the price stipulated by the Executive pursuant to Rule 9.5 (c)) because no shareholders will accept it.
99. The background to this is that since the cancellation of admission to trading on AIM in March 2015 Rangers shares have traded on an illiquid "matched bargain" basis on JP Jenkins, an exchange platform that specialises in the securities of private companies. There have been relatively few trades, mostly in small amounts. Such trades in Rangers shares as there have been on JP Jenkins during the last three months or so appear to have been at a price of 27.5p. Mr Blair told the Committee that demand for Rangers shares currently, and for some time past, exceeds supply.
100. Rule 9.3 of the Code states in relevant part that:

“ (a) offers made under Rule 9 must be conditional only upon the offeror having received acceptances in respect of shares which ... will result in the offeror and any person acting in concert with it holding shares carrying more

than 50% of the voting rights.”.

The Committee was told that none of NOAL or Messrs King, Letham, Taylor or Park have acquired further shares since 2 January 2015. Accordingly, given that the combined shareholdings of NOAL and Messrs Letham, Taylor and Park amount to 34.05% of Rangers’ issued share capital, a mandatory offer to other shareholders at a price of 20p per share will become unconditional if 15.95% of Rangers’ shareholders accept it.

101. Rule 9.5 of the Code regulates the price at which an offer must be made. It states in relevant part as follows:

“(a) An offer made under Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the 12 months prior to the announcement of that offer.

...

(c) In certain circumstances, the Panel may determine that the highest price calculated under paragraphs (a) and (b) should be adjusted. (See Note 3.)”.

102. “That offer”, in the last line of Rule 9.5(a), is a reference back to “An offer made under Rule 9”, as mentioned in the opening words of the Rule. Accordingly, unless the discretion conferred on the Panel by Rule 9.5(c) is exercised, Rule 9.5(a) would require an offer to be made at the highest price paid by any member of the concert party for Rangers shares during the 12 months preceding the mandatory offer.

103. The Executive told the Committee that its practice has been to apply Rule 9.5(a) as referring to the date when a mandatory offer ought to have been made had the provisions of the Code been complied with, not to the date when it was actually made or fell to be made in accordance with some later ruling of the Executive following a dispute and consequent investigation as to whether any such offer was required. The Committee can see the practical sense in such an interpretation of Rule 9.5(a) but no issue arises as to the proper construction of that Rule in this case as the Executive exercised its discretion under 9.5(c) to direct that 20p per share

was the price that was fair and reasonable in the circumstances taking into account each of the factors mentioned in Note 3 on Rule 9.5.

104. It was not contested before the Committee that, if a Rule 9 offer were to be made, it should be at a price of 20p per share.
105. The citation from the Panel Statement in the Guinness/Distillers case highlights the challenges involved in investigating contested allegations regarding the existence of a concert party. In this case the obstacles faced by the Executive in investigating whether Messrs King, Letham, Taylor and Park had been acting in concert were particularly acute. Paragraph 9 of the Introduction to the Code “sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.” In material part it provides that:

“The Panel expects any person dealing with it to do so in an open and co-operative way. It expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed A person dealing with the Panel or to whom enquiries are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel”.

106. Neither Mr King nor, at least in his initial dealings with the Executive, Mr Letham observed these obligations. Mr Letham and Mr King were both interviewed by the Executive by telephone in January 2015 after receipt of the concert party allegations made by the incumbent Board of Rangers. The Committee has seen the transcripts of the telephone interviews of Mr Letham in January 2015 in which he denied having had any conversation or email exchange at all with Mr King before their respective purchases of the material blocks of shares. When in April 2015 he was shown his email to Mr King of 31 December 2014, he described it as *“the one email that really surprised me”*. The Committee has not seen a transcript of Mr King’s initial telephone interview with the Executive, but we were told that he too denied any communication with Mr Letham at the time regarding the respective share purchases. Even allowing for the potential misunderstandings that may arise during telephone calls, these statements are very difficult to square with a genuine attempt to recall what had actually happened only very recently.

107. As noted earlier, Mr King produced no documents, claiming that he had deleted his emails pertaining to the transactions in issue and that his IT people could not retrieve them. The Executive was, accordingly, obliged to try to assemble a document trail by obtaining emails from other sources including, for example, Cantor Fitzgerald. This process inevitably took time. Mr King, who lives in South Africa, was interviewed face to face by the Executive on 12 June 2015 and, as previously mentioned, Mr Letham was interviewed on 28 April 2015. On 20 July 2015 the Executive wrote to each of Messrs King, Letham, Taylor and Park stating that its provisional view was that they had acted in concert in the material respects and that Mr King was obliged, accordingly, to make a mandatory offer to other shareholders of Rangers under Rule 9 of the Code. Each of the four contested the Executive's provisional conclusion (as did the Board of Rangers) and there was also debate as to the appropriate offer price.
108. The investigation, therefore, continued. Mr King was again interviewed by the Executive on 9 December 2015 during which he maintained that the Executive's field of vision was far too narrow and that they ought to consider the wider context, including in particular the views of Rangers fans and Mr King's interaction with them. Accordingly, following this interview the Executive apparently spoke to various supporters' groups. As stated earlier, the Executive's ruling was given on 7 June 2016 and on 2 August 2016 Mr King indicated to the Executive that he wished this Committee to review its ruling.
109. It is unfortunate that this matter has taken so long to come to a head but the Committee is satisfied that the delay is very substantially attributable to the lack of co-operation afforded by Mr King to the Executive's investigation. That same lack of co-operation has continued to characterise Mr King's dealings with this Committee.
110. Self-induced delay should not afford a basis for avoiding an obligation to make a Rule 9 offer which should have been made at the beginning of 2015. The Code's mandatory offer regime is the fundamental guarantee that holders of shares in an offeree company will be afforded fair and equal treatment and offered terms of exit

at least as good as those extended to the holders of shares previously sold to the offeror or to those with whom the offeror acted in concert to obtain control.

111. The Committee was told by Mr Blair that there are some 5,500 holders of Rangers shares, many of whom are fans. It may well be unlikely, given the recent matched bargain trading prices and the fact that demand for Rangers shares currently exceeds supply, that the requisite 15.95% take up from shareholders (required under Rule 9.3 before an offer becomes unconditional) will be forthcoming. There is also nothing to stop the independent members of the Rangers Board from advising against acceptance of the offer, provided that such advice is given consistently with the directors' fiduciary duties. But, ultimately, whether an offer at 20p is accepted is a matter for the shareholders to whom the offer is directed, not for the Board of Rangers.
112. The Committee accordingly directs that within 30 days of this Ruling (i.e. by 4 January 2017) Mr King announce an offer pursuant to Rule 9 of the Code and, save as to the offer date, in accordance with the Executive's ruling of 7 June 2016.
113. This Ruling may be appealed to the Takeover Appeal Board ("the Board") by lodging a Notice of Appeal as prescribed in paragraph 1.2 of the Rules of the Board. Pursuant to Rule 7.1 of its own Rules of Procedure the Committee directs that the time for lodging such Notice of Appeal is 7 days from the date hereof (i.e. by 5pm on 12 December 2016).

Signed: Michael Crane QC

Chairman

5 December 2016

Date of this Panel Statement: 13 March 2017

**APPENDIX
HEARINGS COMMITTEE MEMBERS**

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

| | | |
|--|------------------|----------------------------|
| Present: | Michael Crane QC | Chairman |
| | David Challen | Deputy Chairman |
| | Philip Remnant | Deputy Chairman |
| | Stuart Chambers | |
| | Baroness Hogg | |
| | Sir Ian Robinson | |
| Association of Investment Companies | Peter Arthur | Aberdeen Asian Income Fund |
| Institute of Chartered Accountants in England and Wales | Simon Boadle | PricewaterhouseCoopers |
| Confederation of British Industry | Alan Porter | Prudential |
| | | |
| Secretary to the Hearings Committee | Charles Penney | Addleshaw Goddard |