

TAKEOVER APPEAL BOARD

RANGERS INTERNATIONAL FOOTBALL CLUB PLC & MR DAVID CUNNINGHAM KING

DECISION OF THE TAKEOVER APPEAL BOARD

Case summary

Main issue: acting in concert

1. The main issue on this appeal to the Takeover Appeal Board (the Board) is whether interests in shares carrying more than 30% of the voting rights of a company were acquired by persons “acting in concert”, so as to trigger an obligation under Rule 9.1 of the City Code on Takeovers and Mergers (the Code) to extend an offer to acquire the shares of other shareholders in the company on the terms stipulated by Rules 9.3 and 9.5 of the Code.
2. The company in question is Rangers International Football Club PLC (Rangers). It is the holding company for the leading Scottish football club of that name. The persons alleged to have acted in concert in the acquisition of interests in shares of Rangers are all long standing fans and committed supporters of Rangers football club. They have either invested, or been willing to invest, large sums of money in Rangers to turn round its fortunes.

Acquisitions of shares

3. The relevant acquisitions of interests in shares of Rangers were made on Friday 31 December 2014 and on Monday 2 January 2015.
4. On 31 December 2014 Mr George Letham (a Scottish businessman), Mr George Taylor (a businessman in Hong Kong where there is a Rangers Supporters Club) and Mr

Douglas Park (a Glasgow businessman) acquired interests in shares of Rangers from Laxey Partners Limited (Laxey). Mr Norman Crichton, who in some quarters was regarded as a representative of Laxey, was voted off the Rangers Board early in December 2014. Laxey then became willing to sell its Rangers shares.

5. Mr Letham admits that, in acquiring interests in the Laxey shares at 20p per share, he acted in concert with Messrs Taylor and Park.
6. Taking account of shares already held by Mr Taylor, the shares of Rangers held by Messrs Letham, Taylor and Park on 31 December 2014 amounted to 19.48% of the issued shares.
7. Mr Letham was aware of the significance of keeping a holding of shares by persons acting in concert below 30% of the issued shares of Rangers in order to avoid triggering a mandatory offer to other holders of shares of Rangers in accordance with the Code.
8. Mr Letham was also aware that the appellant, Mr Dave King, was interested in acquiring shares of Rangers. He was a businessman from Glasgow, but was then, and still is, living in South Africa. He had invested money in the old Rangers club before it went into administration in 2012. He was in touch with Mr Letham from the summer of 2014 onwards. He co-operated with him in October 2014 in two successive proposals concerning Rangers. The first was a consortium funding proposal to provide a major injection of capital in the form of funding of £16m, as to £8m from eight individuals to be co-ordinated by Mr Letham and a Mr Paul Murray, and as to £8m from Mr King, the total to be split equally between debt and equity. They were acting in concert in putting forward the funding proposal, which would have resulted in the funders acquiring 33% of the enlarged share capital. The second proposal involved acquiring a blocking stake of 25% of Rangers shares. Both proposals failed to materialise, but Mr Letham and Mr King stayed in touch.
9. In December 2014 developments in Rangers opened up an opportunity to acquire from Laxey its interests in shares of Rangers. Mr King was aware that Laxey was unwilling to sell its Rangers shares to him, but that it was willing to sell them to Messrs Letham,

Taylor and Park, who wished to acquire them and did acquire them on 31 December 2014.

10. Mr King took steps to acquire interests in Rangers shares from other shareholders. On 31 December 2014 Mr King instructed Cantor Fitzgerald, an investment bank, in connection with the purchase of Rangers shares. The share purchases were negotiated with three institutional UK fund managers - Artemis, Miton and River & Mercantile - at 20p per share.
11. As evidenced by emails of 27 and 31 December 2014 passing between Mr King and Mr Letham, Mr King was aware of Mr Letham's intention to acquire Rangers shares from Laxey and Mr Letham was aware of Mr King's intention to acquire Rangers shares from the institutional investors at the same time.
12. Mr King denies that he acted in concert with Messrs Letham, Taylor and Park in connection with the acquisition of Rangers shares. They deny that they acted in concert with him.
13. Mr King's purchase of the Rangers shares from the three institutional investors was completed on Monday 2 January 2015, all at 20p per share. The shares amounted to 14.57% of the issued shares in Rangers.
14. The above acquisitions produced an aggregate holding of 34.05% of the issued shares in Rangers.
15. In accordance with Mr King's instructions to Cantor Fitzgerald the shares referred to in paragraph 10 above were acquired by New Oasis Asset Limited (NOAL). NOAL is a company incorporated in the British Virgin Islands in October 2013. It is wholly owned by Sovereign Trust International Limited (Sovereign Trust), a company incorporated in Gibraltar in 1992. Its sole corporate director is Sovereign Management Limited, a sister company of Sovereign Trust incorporated in Gibraltar in 2011. Sovereign Trust is trustee of the Glencoe Investments Trust established under the laws of Guernsey in

September 1996 by Mr King for the benefit of himself and members of his family. The assets of the trust include the one share in NOAL. That share is held by Sovereign Trust.

16. After the purchase of the shares in Rangers the existing directors of Rangers were removed by the shareholders vote at an EGM in March 2015 and Mr King's nominees were appointed as directors of Rangers. In May 2015 Mr King was appointed chairman of Rangers.

Investigation by the Takeover Panel Executive

17. Early in 2015 the Takeover Panel Executive (the Executive) began to investigate allegations that Mr King had acted in concert with Messrs Letham, Taylor and Park within the meaning of Rule 9.1 of the Code: that, in aggregate, they had acquired interests in and control of more than 30% (34.05%) of the voting rights of Rangers; and that there was thereby triggered an obligation to extend the offer to acquire the shares of other shareholders on the terms stipulated by Rules 9.3 and 9.5 of the Code.

Preliminary view

18. On 20 July 2015 the Executive informed Mr King and Messrs Letham, Taylor and Park that it had reached the preliminary view that Mr King was acting in concert with them and that he was the principal member of the group. They were asked to respond to that view. They all denied that they had acted in concert.

Executive's ruling

19. On 7 June 2016, following completion of its interviews and other investigations, the Executive ruled that, for the purposes of Rule 9.1 of the Code, Mr King had been acting in concert with Messrs Letham, Taylor and Park in the acquisition of shares in Rangers on 31 December 2014 and 2 January 2015.
20. The Executive also determined that an obligation should be imposed on Mr King to extend a Rule 9 offer to other shareholders in Rangers. It directed him to make an offer

in accordance with Rule 9 for all of the issued shares in Rangers not owned by him and Messrs Letham, Taylor and Park. The offer was to be made at the price of 20p per share.

Review by Hearings Committee

21. On 2 August 2016 Mr King requested a review of the Executive's ruling by the Hearings Committee (the Committee).
22. At a hearing held on 28 November 2016 the Committee considered written submissions by Mr King, who did not attend the hearing and was not represented. The Committee was satisfied by emails received from Mr King that NOAL had been informed of an invitation by the chairman of the Committee to apply to be heard or to make submissions as an interested party, but had decided not to do so. Messrs Letham, Taylor and Park did not appear and were not represented at that hearing. The only legal representation at the hearing was for the Executive (Mr Kenneth MacLean QC) and for Rangers (Mr James Blair, Company Secretary, solicitor and partner in Anderson Strathern LLP). The Executive, Mr Letham and Rangers also made written submissions to the Committee. A skeleton argument was submitted by Mr MacLean QC.
23. In a letter of 16 July 2016 to the Executive and in its submissions to the Committee the Rangers Board had taken the position that there was no concert party and that a mandatory offer was not in the interests of Rangers shareholders or of Rangers.
24. In its ruling on 5 December 2016 the Committee upheld the Executive.

Appeal to the Board

25. On 12 December 2016 Mr King emailed a notice of appeal to the Board stating the grounds on which and basis on which he contested the ruling of the Committee to uphold the Executive.
26. The Board, constituted as set out in the Appendix, heard the appeal on 25 January 2017. Mr King did not appear and was not represented. Mr Blair emailed written submissions

on behalf of Rangers, but did not attend the hearing. Mr Charles Graham QC presented the case on behalf of the Executive, which also made written submissions on the appeal and in response to the grounds of appeal.

27. At the end of the hearing the Board reserved its decision.

The Code

28. The relevant provisions of the Code are crucial to an understanding of the rulings of the Executive and of the Committee, the grounds of appeal advanced by Mr King and the submissions made on behalf of Rangers and the Executive to the Board.

Mandatory offer

29. Rule 9.1 provides when a mandatory offer is required and who is primarily responsible for making it. 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...”

30. Rule 9.1 gives effect to the Code’s General Principle 1 (equivalent treatment):

“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.”

31. Rule 9.2 deals with the obligations of other persons to make an offer by providing 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.”

32. The Code contains related definitions, deeming provisions and presumptions.

Acting in concert

33. The Code defines **“acting in concert”** 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.”

Affiliated persons defined

34. Note 2 of the *NOTES ON ACTING IN CONCERT* states that:

“For the purposes of this definition an “affiliated person” means any undertaking in respect of which any person:

...

(d) has the power to exercise, or actually exercises, dominant influence or control.”

35. The definition of “acting in concert” also provides that:

“Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

...

(5) a person, the person’s close relatives, and the related trusts of any of them, all with each other.”

36. The presumption in point (5) of the definition of “acting in concert” was included in the Code in 2015 to reflect what was the usual practice of the Takeover Panel prior to its inclusion in the Code. The Executive applied the presumption to the share purchases in this case, which were made prior to codification of that practice.

Interests in securities and shares

37. In its provisions relating to “interests in securities” the Code states that:

“a person will be treated as having an interest in securities if:

(1) he owns them;

(2) he has the right (whether conditional or absolute) to exercise or direct the exercise of voting rights attaching to them or has general control of them;

...”

Control

38. The Code defines “Control” as meaning:

“an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights (as defined below) of a company, irrespective of whether such interest or interests give de facto control.”

Voting rights

39. “Voting rights” are defined in the Code as meaning:

“all the voting rights attributable to its share capital which are currently exercisable at a general meeting.”

The Ruling of the Executive

40. Between early 2015 and June 2016 the Executive, in the course of investigating the alleged acting in concert, held meetings and conducted telephone interviews and correspondence with Mr King, Mr Letham and others.

41. In its letter dated 7 June 2016 the Executive set out in detail the basis for its ruling. It identified the central issue as whether Mr King acted in concert with Messrs Letham, Taylor and Park in the acquisition of shares in Rangers on 31 December 2014 and 2 January 2015. It summarised relevant events between October 2014 and May 2015. The

summary described in detail earlier unsuccessful proposals by Mr Letham, Mr King and others in October and November 2014. The ruling referred to the relevant provisions of the Code, summarised their general effect and explained how the Executive applied them to the facts of this case.

Conclusions of Executive

42. The main conclusions were that:

- (1) In October 2014 Mr King and Mr Letham with others had acted in concert in putting forward a consortium funding proposal to gain control of Rangers in return for a major injection of capital, but the proposal was rejected by the Rangers Board;
- (2) Mr King, Mr Letham and others then proposed to acquire a shareholding in Rangers of at least 25% which would effectively operate as a blocking stake, but that proposal petered out;
- (3) In early December 2014 developments in the composition of the Rangers Board involving the removal of Mr Crighton made it possible for Mr King and Mr Letham to achieve the objective of gaining control of Rangers by acquiring the Laxey shares in Rangers and Rangers shares held by institutional investors;
- (4) The share purchases on 31 December 2014 and on 2 January 2015 were not coincidental or unconnected, but were co-ordinated by Mr King and Mr Letham, as evidenced by emails passing between them at the end of December 2014; and
- (5) In the circumstances of the case and in reliance on Rule 9.2 the Executive decided that it was just for Mr King alone to incur the obligation to extend a Rule 9 offer.

Surfacing of NOAL point

43. The only reference in the ruling of the Executive to NOAL was that Mr King had, via NOAL, submitted a requisition notice on 16 January 2015 requiring Rangers to convene a general meeting to consider resolutions proposing the removal of all four existing

directors and the appointment of Mr King and two others as directors. That was achieved and Mr King eventually joined the Rangers Board and was elected chairman of Rangers in May 2015.

44. At no time prior to the ruling had Mr King raised with the Executive any point on the role or status of NOAL or produced any evidence that, in the acquisition of Rangers shares, NOAL had exercised judgment independently of him or acted otherwise than as a corporate vehicle under his control. On the contrary, the contemporaneous emails from Mr King regarding the acquisition of Rangers shares referred to him, not to any trust established by him.
45. On 21 October 2016 Mr King raised with the Executive for the first time the status of NOAL as a matter for its consideration of the alleged concert party. By that time the Executive had given its ruling and on 2 August 2016 Mr King had requested a review of that ruling by the Committee. Mr King was informed that it was open to NOAL to apply to the Committee to be heard on the review. NOAL never made such an application.

The Ruling of the Committee

46. The historic background of Rangers and the course of events leading up to the alleged acting in concert to gain control of it are detailed by the Committee in its ruling and are not controversial. For completeness the relevant passage is copied in Annexe I to this Decision.

Committee's conclusions

47. On the “acting in concert” issue the Committee concluded that:
 - (1) 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 of Rangers as the first step towards improving the fortunes of Rangers.

- (2) It was clear from emails from Mr Letham to Mr King on 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 the Rangers Board.
 - (3) The case for their “acting in concert” in purchasing the shares was overwhelming when the emails were placed in the context of the participation of Mr King and Mr Letham in the unsuccessful consortium funding proposal made in October 2014 and the subsequent failed attempt to secure a blocking stake in Rangers.
 - (4) Mr King procured the purchase of the shares of Rangers held by NOAL and he had an “interest” in them. He had a beneficial interest in the shares as a beneficiary under the Glencoe Investments Trust. He also had general control over the voting rights attaching to those shares, as evident from the requisitioning of the general meeting of Rangers on 6 March 2015 and the deployment of votes attaching to the shares at that meeting.
 - (5) By virtue of his interest in those shares Mr King qualified as the person upon whom the obligation to extend the offer fell within the meaning of Rule 9.2. In the circumstances of this case the Committee agreed with the Executive that it should be Mr King alone who is required to make a Rule 9 offer.
48. It was not contested before the Committee that, if a Rule 9 offer were to be made, it should be at the price of 20p per share.

The Notice of Appeal

49. The grounds and basis of Mr King’s appeal to the Board can be enumerated and summarised as follows:
- (1) *Lack of co-operation and delay.* The Committee’s determination that the delay in the Executive’s ruling of 7 June 2016 was very substantially attributable to a lack of co-operation by Mr King was unfounded and patently incorrect.

- (2) Status of NOAL. The Committee failed to ask for and/or examine evidence of the position or status of NOAL and the reality of the separation between Mr King and that company. NOAL had acquired the shares. It was the client of Cantor Fitzgerald. Neither the Executive nor the Committee contacted NOAL. The Committee had not provided NOAL with an opportunity to review the Executive's decision in advance of its ruling. Neither the Executive nor the Committee determined that NOAL was a concert party. NOAL does not act on Mr King's instructions. It did not want him to represent it before the Committee.
- (3) Mr King's interest in shares and voting rights. The Committee did not specify the nature of Mr King's "interest" in the shares or consider whether that interest included voting rights. He did not acquire and does not control voting rights of the Rangers shares.
- (4) Mr King not represented by Mr Blair. The Committee incorrectly stated that Mr Blair, who appeared before it on behalf of Rangers, presented Mr King's case on his behalf and put to the Committee Mr King's interpretation of various documents.
- (5) October 2014 consortium funding proposal. That earlier funding proposal was a different business proposition from the acquisitions of the Rangers shares on 31 December 2014 and 2 January 2015. The Committee fundamentally erred in relying on the earlier proposal to infer "acting in concert" in the later acquisition of shares. They were entirely different business propositions.
- (6) Mr King's motivation. The Committee fundamentally misinterpreted what occurred at Rangers and the motivation of Mr King for his recommendation to NOAL. His wish was to work together with supporters groups to restore proper standards of corporate governance of Rangers.
- (7) No benefit to the shareholders. The Committee failed to consider the purpose of its ruling as regards benefit to Rangers' shareholders. Making an offer of 20p for shares now worth more than 20p would not benefit the shareholders. They had

already benefited. Mr King has also made the point that there have been changes in the shareholding in Rangers and that the mandatory offer would be unfair to existing shareholders.

50. In his Notice of Appeal Mr King stated that he had not been able to seek specialist legal advice on the ruling of the Committee in the short time available. He reserved the right to submit further grounds of appeal and/or amend the Notice. He did not subsequently submit any further grounds of appeal or amend the Notice or make any written submissions to the Board in support of the appeal.

51. As pointed out by the Executive in its written submission and explained by Mr Charles Graham QC at the hearing the Notice of Appeal does not contest the vast majority of the findings of fact made by the Committee in its ruling or most of its conclusions on the application of the Code to those facts. The focus of the main grounds of appeal against the ruling of acting in concert is on contentions that Mr King and NOAL are separate, that Mr King does not have voting rights over the shares held by NOAL and that the Committee made impermissible inferences of acting in concert from different business propositions in October 2014. Additional grounds relate to points on the supporters group structure of Rangers, the point whether an offer to other shareholders in Rangers would benefit them and a number of procedural points based on delay in the Executive ruling, the absence of contact by the Executive and the Committee with NOAL and the role of Mr Blair when he made oral submissions on behalf of Rangers to the Committee.

The hearing of the appeal

Non-attendance

52. Rule 2.15 of the Rules of the Board provides that:

“Failure by a party to attend a hearing or be represented at a hearing shall not prevent the Board or the chairman of the hearing proceeding in the absence of that party”.

53. The circumstances in which Mr King did not appear at the hearing of his appeal are evident from the emails passing between him and the Secretary to the Board from 12 December 2016 down to the date of the hearing on 25 January 2017.

Fixing date for hearing

54. On 12 December 2016 the Secretary asked Mr King for his representations before 5pm on 14 December on the timing of the hearing of the appeal. On the same day Mr King confirmed that he would be on summer vacation until the second week in January 2017. The hearing date was then set by the Chairman to avoid those dates and to take account of the availability of 5 members of the Board. Mr King did not inform the Secretary of any other date or dates to avoid as he would not be available.
55. By letter dated 22 December 2016 Mr King and other parties were notified of the procedure on the appeal and informed that the date of the hearing by the Board would be 25 January 2017. They were also notified that, should any party want to make representations as to the attendance and representation of any other person, such submissions should be sent by 5pm on 18 January 2017.
56. On 23 December Mr King emailed the Secretary that he had audit committee and board meetings in South Africa on the day “unilaterally” set for the hearing. He also said that he trusted that the Secretary had contacted NOAL given that the key representations must come from them. In his reply the Secretary asked Mr King to supply alternative dates on which he was available, if he was requesting the hearing date to be moved, and to do so by 5pm on 30 December 2016. As regards NOAL Mr King was informed that, if he wished to call NOAL as a witness or to make submissions that they be invited to attend, he should do so in accordance with the procedure set out in the letter of 22 December.
57. Mr King did not, within the time stipulated by the Chairman and communicated to him, inform the Secretary of any other dates for the consideration of the Chairman. In an email of 30 December he said that he was trying to organise for 25 January and he asked the Secretary if he had confirmed with NOAL what their intention was.

58. Mr King was notified of his right to make written submissions to the Board and was given until 12 noon on 20 January 2017. He did not do so either before then or subsequently.
59. In emails to the Secretary Mr King re-iterated his position that the key representations should be from NOAL as the purchaser of the shares in Rangers, that NOAL was the real party and that he had no locus to represent it. In his replies the Secretary again reminded Mr King of the procedure for NOAL to attend or to make submissions on the appeal. NOAL had made no application to be heard by the Committee and had made no written submissions to it. It has not made any application to be heard by the Board and has not made any written representations to it.
60. On 7 January 2017 Mr King informed the Secretary that he could organise to be in London on 24 or 26 January 2017. That response from Mr King was outside the time stipulated by the Chairman for proposing other hearing dates. The Chairman decided that the hearing date of 25 January should be confirmed. Mr King was reminded of his opportunity to make written submissions to the Board. He was informed that, if he did not attend, the Board would consider how it should proceed in his absence and that it might resolve to decide the appeal on the basis of the papers submitted and any further submissions and evidence.
61. On 10 January Mr King accused the Board of unilaterally setting the date on an “uncompromising and irrational” basis and stated that he assumed that the appeal had de facto already been decided and that the “date manipulation” was intended to secure his and NOAL’s absence. The Secretary then pointed out to him that he had had the opportunity to make representations as to dates and to propose alternative dates. Mr King was invited to liaise with NOAL and have it contact the Board at the earliest opportunity if he wished to pursue its attendance.
62. On 11 January Mr King disputed the correctness of the position taken by the Board about the hearing date. He stated that NOAL was a vitally interested party and that it was up to the Board to invite NOAL to be heard and to supply NOAL with information.

He stated that the whole process was absurd and meaningless “if NOAL continues to be excluded”.

63. In the run-up to the hearing Mr George Taylor provided a written submission to the Board, as did the Executive. Mr Blair, who said that he could not attend the hearing as he was otherwise committed, emailed submissions on behalf of Rangers. He did so under protest that Rangers had not been given adequate time to receive the Executive’s submissions and consider the issues raised for Rangers, discuss them, receive feedback and submit a comprehensive reply.
64. On 21 January Mr King inquired from the Secretary whether documents had been sent to NOAL. He stated that he understood that NOAL would like to attend and was waiting to hear from the Board. It was a matter of fairness of process. NOAL had a legitimate interest and there was no good reason for its continued exclusion. Mr King was reminded that he had been invited to liaise with NOAL and have it contact the Board at the earliest opportunity if he wished to pursue its attendance.

Decision of Board to proceed with hearing

65. On 25 January 2017 the Board met and considered the position of Mr King and NOAL. It decided to proceed with the hearing of the appeal in the absence of Mr King. He had been notified of a hearing date that fitted in with his availability as initially notified by him. He had then failed to comply with the Chairman’s directions regarding notification of other dates on which he would be available to attend. He had not taken the opportunity to make written submissions to the Board on the grounds and basis of his appeal.
66. As stated in his notice of appeal, in his emails to the Secretary and in the position taken by him before the Committee, his main point focused on the role and status of NOAL and the need to involve it in the appeal. He contended that he had no standing to represent NOAL and that it did not want to be represented by him.

67. As turned out to be the case on the review by the Committee, NOAL made no application to take part and Mr King did not attend and was not represented. Mr George Taylor informed the Board that he did not intend to attend or be represented at the hearing of the appeal. In a letter of 18 January he explained his attitude to the change of control of the Rangers board between 9 October 2014 and 31 December 2014 in the light of the Committee's findings on that point in paragraph 91 of its ruling.

Conduct of the hearing

68. In those circumstances Mr Charles Graham QC, Counsel for the Executive, was asked to deal fully with the relevant provisions of the Code and with facts relevant to the grounds of appeal. He was asked to make submissions both on the detailed grounds of appeal and on the points made on behalf of Rangers in written submissions prepared by Mr Blair. In the course of the hearing Mr Graham and the Director-General of the Panel were asked and answered many questions put by members of the Board.
69. The hearing lasted from 10am to 1pm and from 2pm until 4.30 pm. A transcript of the hearing was made.

The decision of the Board

Specific grounds

70. It is convenient to deal first with the specific grounds set out in Mr King's appeal notice.

Lack of co-operation and delay

71. The Takeover Panel expects any persons dealing with it to do so in an open, prompt and co-operative way and to take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel: see paragraph 9 of the Introduction to the Code. The Committee noted that Mr King had not observed those obligations and emphasised the lack of co-operation in his dealings with the Executive in the course of their investigations. The Committee also commented on his lack of co-operation with it.

72. It is the case that a considerable length of time passed between the start of the Executive's investigations in 2015 and its ruling on 7 June 2016. The Committee expressed concern about the time that had elapsed between the initial reporting of a potential triggering of Rule 9 by a director of Rangers during January 2015 and the date of the Executive's ruling.
73. We share that concern and have heard submissions on behalf of the Executive explaining the challenges facing them and the reasons for the time taken. The Committee dealt with various aspects of the investigation in its ruling. It noted that it took time for Mr King, who had other commitments, to arrange attendance at certain interviews and to produce documents. It took time for the Executive to obtain documents from other sources and to prepare a thorough and careful ruling. It had given a preliminary view in its letter of 20 July 2015 that Mr King was acting in concert with Messrs Letham, Taylor and Park. That view was rejected by Mr King and Messrs Letham, Taylor and Park following which various matters were attended to and assessed by the Executive.
74. The view taken by the Board is that the apportionment of responsibility for delay in this case would not affect the outcome of this appeal, which turns on whether Messrs King, Letham, Taylor and Park were acting in concert when the shares in Rangers were purchased at the end of December 2014 and the beginning of January 2015. If they were acting in concert, the other shareholders in Rangers are entitled to have a mandatory offer made to them by Mr King regardless of the delay and regardless of who was responsible for it. That entitlement is unaffected by such factors as the alleged lack of co-operation by Mr King in the conduct of the investigation of the Executive.
75. We note from the papers that the conduct of the investigation by the Executive was dealt with by the Committee in its ruling because it was raised by Mr King in his submissions of 21 October 2016. He criticised the Executive's handling of its investigation into the allegations against him. He described the investigations as "sloppy and protracted" and alleged that the Executive had acted in an "arbitrary and ill-mannered manner."

76. Our conclusion on this ground of appeal is that, for the reasons already stated, no useful purpose would be served by the Board expressing a final view on the length of the alleged delay or the causes of it.

Status of NOAL: interest in shares and voting rights

77. We have referred to Mr King's position on the role and status of NOAL relating both to the acquisition of the shares in Rangers and to this appeal. We have noted that NOAL has not sought to make any application to be heard and has not made any submissions either to the Committee or to the Board, despite Mr King's stated understanding that NOAL would take steps to challenge the Executive.
78. In his email to the Secretary of the Committee on 17 November 2016 Mr King explained that NOAL was the company that owned the shares; that it would have to provide the funds to meet any further acquisition of shares; that he had shared with NOAL his recent communications with the Secretary to the Hearings Committee; that he had never been a director of NOAL; that he had no legal capacity whatsoever; and that he was not in a position to advance its interests. He contended that NOAL should have been afforded the opportunity to make submissions, but had been excluded from an investigation directly affecting it.
79. When the Secretary to the Committee emailed him on 17 November asking him whether he intended to pursue the review of the Executive's ruling, Mr King replied that he did. He explained that the issue he was raising was the right of the truly affected party (NOAL) to participate in it. When the Secretary pointed out in his email of 18 November that it was open to NOAL/Sovereign Trust to apply to be heard on the review and/or make submissions as an interested party, Mr King replied that he would forward the email to NOAL for comment. No comment was ever received by the Committee from NOAL or Sovereign Trust. The position was the same on this appeal following similar points being made by Mr King to the Secretary of the Board and similar responses being made to them.

80. Our conclusion is that NOAL's holding of the shares in Rangers does not assist Mr King in his appeal against the ruling that he was acting in concert with Messrs Letham, Taylor and Park in the acquisition of them.
81. First, procedurally, there was no irregularity on the part of the Executive or the Committee in proceeding to a ruling without themselves taking steps to contact NOAL (or Sovereign Trust or the Glencoe Investments Trust). Mr King's stance was that it was not him but NOAL as the "truly affected party" who the Executive and the Committee should be engaging with and speaking to and that NOAL had been excluded from the investigation by the Executive and from the review by the Committee.
82. That is not a correct analysis of the position. NOAL was neither excluded nor ignored as Mr King contends. If NOAL or anyone else involved in the related trust wished to give evidence or make submissions about the acquisition of the Rangers shares, or if Mr King wished any of them to do so, it was either for them or for Mr King to take the necessary steps or to make appropriate applications which would enable them to do that.
83. In his submission to the Committee of 21 October 2016 Mr King stated that:

"If it becomes necessary, I understand that NOAL will formally challenge [the Executive]..."

That understanding must have been based on contact of some kind by Mr King with NOAL or Sovereign Trust. Yet NOAL made no attempt, either formal or informal, to contact either the Executive or the Committee or to challenge anything done by the Executive or to raise any matter on the Committee's review.

84. Secondly, as regards the substantive position, it is clear from the evidence set out in "Reasons for conclusions" below that it was Mr King who communicated with Mr Letham, Mr King who decided on the quantum of price of the share purchases, Mr King who contacted Cantor Fitzgerald to effect the purchases and Mr King who - within a day of the decision - caused his family trust to pay for the shares and put them into the name of NOAL. The presumption usually applied in practice by the Takeover Panel

and now codified in point (5) of the definition of “Acting in Concert” is that a person and a related trust are acting in concert with each other. The same definition deems a person to be acting in concert with an “affiliated person” which, in turn, is defined to include an undertaking over which the person exercises dominant influence or control. In this case, over and above the presumption and the deeming, the contemporaneous evidence makes it plain that neither NOAL nor the family trust had any active role in the acquisition of the shares.

85. Thirdly, Mr King has not produced any evidence, documentary or otherwise, to the Executive, the Committee or the Board to establish the contrary.
86. Further, Mr King’s repeated denial that he has any interest in those shares and any voting rights in Rangers is at odds with the evidence as to their acquisition and as to NOAL’s requisition of an EGM that led to Mr King and his nominees constituting the Rangers board, which both clearly indicate that Mr King had “general control” over the shares within the terms of the Code’s definition of “interest in securities.”
87. In any case, even if Mr King is correct in his contention that he has no interest in the Rangers shares vested in NOAL, he is subject to the provisions of Rule 9.2. Under that Rule the obligation is on Mr King to extend the offer in his capacity as a “principal member of a group of persons acting in concert with him.” He is the principal member of the group that includes Messrs Letham, Taylor and Park. The prime responsibility for making the offer is his.

Mr King not represented by Mr Blair

88. Mr Blair is the Company Secretary of Rangers. He is also a solicitor. He represented Rangers both at the hearing by the Committee, which he attended, and on this appeal in making written submissions. Like the Committee we consider that his main submissions are similar to the points made by Mr King with whom he has had discussions. It does not follow, however, that he was acting *on behalf of* Mr King either on the review or on this appeal.

89. We note, in particular, the points made by Mr Blair in his capacity as Company Secretary: that NOAL, not Mr King, had the voting rights attached to the shares in Rangers; that NOAL's role in the acquisition of the shares had not been investigated; that the Executive had not made contact with NOAL, Sovereign Trust or the Glencoe Investments Trust or heard from them about their corporate structure; that they had not had the opportunity to rebut the presumption applied by the Executive; that Mr King had no control over NOAL; that the position of the supporters groups of Rangers had not been understood; and that there had been relevant changes of circumstances in Rangers prior to the acquisition of the shares.
90. The position of Mr Blair in his submissions to the Board was similar to that before the Committee: he was presenting very much the same case as Mr King was, but he was doing so on behalf of Rangers, not on behalf of Mr King. That is all that need be said on this ground. It has no bearing on the key question of alleged "acting in concert" and does not affect the outcome of this appeal.

October 2014 funding proposal

91. It is correct to point out that the consortium funding proposal made by Mr King and Mr Letham in October 2014 differs from the acquisition of the Rangers shares on 31 December 2014 and 2 January 2015. It does not follow, however, that events in October 2014 relating to the co-operation of Mr Letham and Mr King are irrelevant when determining whether Mr King and Mr Letham were acting in concert at the end of December 2014. In deciding whether or not it is reasonable to infer "acting in concert" from all the circumstances surrounding the shares acquisitions in December 2014 it is relevant to take into account evidence of the co-operative conduct of Mr King and Mr Letham in their earlier activities relating to Rangers.
92. A relevant feature of the earlier proposals in October 2014 was that it was Mr King who would be providing funding to or investing in Rangers. There was no mention at the time of those proposals of the involvement of NOAL, Sovereign Trust or of any family trust.

Mr King's motivation

93. We understand the point made by Mr King about his motivation regarding the supporters of the Rangers football club and the control of Rangers. However, personal motives or reasons for gaining control of a company are not relevant when considering whether parties were acting in concert. The point is whether, on the evidence, the conditions for triggering an obligation to extend an offer for shares under Rule 9.1 existed. The focus in the definition of “acting in concert” is on the existence of the objective fact of persons co-operating to gain control of a company, not on their subjective personal motives or reasons for seeking control or for acquiring the shares. The facts relevant to acting in concert may be established by direct documentary or oral evidence, and by reasonable inference from all the surrounding circumstances of the case.
94. In this connection we make it clear that the application of the Code to a company owning a football club is no different from any other company. Its shareholders are entitled to the same protection and equivalent treatment.

No benefit to the shareholders or Rangers

95. Mr King's point about the position of the shareholders is understood, but it has no bearing on the issue of “acting in concert.” In requiring a mandatory offer to be made Rule 9 operates according to its own terms. They do not include considerations of whether the shareholders will benefit from an offer in a particular case. That factor is not relevant to triggering an obligation to extend an offer under Rule 9.1. Mr King cannot avoid the obligation to make an offer by reliance on an argument that a mandatory offer would not be in the best interests of the other shareholders or of Rangers.
96. The same comment applies to the point made by Rangers in its letter to the Executive and by Mr Blair on behalf of Rangers that the offer will not benefit Rangers or trading in its shares.

The key question

97. We return to the central question: was Mr King acting in concert with Messrs Letham, Taylor and Park when the shares in Rangers were acquired on 31 December 2014 and 2 January 2015 in accordance with his instructions to Cantor Fitzgerald?
98. On this point Mr Charles Graham QC went in detail through the documents that were placed before the Committee. He referred us to extracts from the transcripts of the interviews conducted by the Executive and of the hearing before the Committee. We have also taken into account the relevant points made on this issue by Mr King in his grounds of appeal and by Mr Blair in his written submission.

A complete re-hearing of contested matters

99. The course taken by the Board in the absence of Mr King has been a re-hearing of the case of alleged acting in concert, as investigated by the Executive, ruled on by it and reviewed by the Committee. A re-hearing on appeal is different, for example, from an appeal on limited grounds, such as on a point of law, but such a re-hearing in accordance with the Appeal Board Rules does not require the Board to *re-try* the case in its entirety. We reject Mr Blair's contention on this point.
100. Rule 2.8 of the Rules of the Board requires the appeal to be by way of a complete re-hearing "of those matters contested." That means those matters contested in the grounds of appeal. We refer to Rule 1.2 of the Rules of the Board which provides that the notice of appeal shall record the ruling or part of the ruling against which the appeal is made, the grounds and basis of the appeal and the remedy requested. In *Principle Capital Investment Trust plc* (TAB statement 2010/1) at paragraph 13, the Board rejected the contention that Rule 2.8 of the Rules of the Board provides for a *de novo* hearing. The duty of the Board is to reconsider all the materials available to the body that gave the ruling under appeal and to consider any new materials placed before it and then to make up its own mind on them. It conducts the re-hearing on the basis of those grounds set out in the notice of appeal required by Rule 1.2 of the Rules of the Board. Those are the matters contested on the appeal to the Board.

101. Accordingly, the Board has conducted the hearing of the appeal in accordance with that interpretation of the Appeal Board Rules.

102. We have reached the conclusion, having regard to the grounds and basis of the appeal and taking account of all the evidential materials placed before the Board, that Mr King was acting in concert with Messrs Letham, Taylor and Park in the acquisition of the shares in Rangers on 31 December 2014 and 2 January 2015. On the “acting in concert” point we uphold the findings and ruling of the Committee.

Reasons for conclusions

103. The reasons for our decision on the appeal are as follows:

- (1) There are a number of ways in which persons may act in concert. An exhaustive definition would be difficult. As explained by the Panel in its Statement in the case of *Guinness plc/The Distillers Company* (Panel Statement 1989/13 at paragraph 4) and applied by the Committee in its ruling, the nature of “acting in concert” called for a wide definition to cover, for example, tacit understandings or “nods and winks” between persons co-operating to purchase shares in a company in order to obtain control of it.
- (2) Direct evidence of what has passed between those alleged to have acted in concert is rare. The existence and nature of an understanding between persons and whether their actions were concerted or co-incidental are often matters calling for the use of common sense and relevant experience in making reasonable inferences from all the surrounding circumstances in evidence in the case. Those circumstances include the personal and working relationships between those who deny that they were acting in concert and their conduct.
- (3) In this case there are in fact in evidence contemporaneous documents, mostly emails, passing between Mr King and Mr Letham. Those documents, when read in the context of their earlier co-operation in activities concerning Rangers and of the timing of the acquisitions of shares in Rangers that took their holdings in the

aggregate to over 30%, are material to the key issue of whether those acquisitions were (a) concerted or (b) coincidental.

- (4) The relevant communications between them date from October 2014. Emails relating to a consortium funding proposal evidence an investment understanding between Mr Letham and Mr King (together with Mr Paul Murray) to co-operate in gaining control of Rangers. Their aim was to get members of the consortium appointed to the Rangers Board and to back Mr King's appointment as chairman. By 25 October 2014 that proposal unravelled on Rangers' rejection of it.
- (5) Later in October Mr Letham and Mr King again acted together in making a proposal to acquire a blocking stake of 25% plus 1 share in Rangers as a way of obtaining "negative control" of Rangers. They were aware that it would be one in which the shareholding in Rangers should be less than a 30% shareholding to avoid triggering an obligation under Rule 9 to make a mandatory offer.
- (6) The relationship between Mr King and Mr Letham from the time of those proposals and the relevant events and communications set out above evidence an agreement or understanding between them to co-operate and act in concert to obtain control of Rangers and to secure Mr King's appointment as chairman of the Rangers Board.
- (7) The documents available do not disclose any involvement of NOAL, Sovereign Trust or the Glencoe Investments Trust in the proposals to invest in Rangers.
- (8) There is no evidence that the agreement or understanding to co-operate in acquiring shares in Rangers ceased to have effect before their respective acquisitions of shares in Rangers on 31 December 2014 and 2 January 2015. On the contrary, those acquisitions were the culmination of the concerted efforts of Mr Letham and Mr King concerning Rangers.
- (9) We agree with the Committee that "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

the Rangers Board]” and that, when placed in the context of the consortium funding and blocking stake proposals in October 2014, “the case for concluding that Messrs Letham and King, at least, were acting in concert in purchasing the relevant shares becomes overwhelming”.

- (10) In the process of purchasing shares in Rangers from three selling institutions down to and including 2 January 2015 and at the same time as Messrs Letham, Taylor and Park purchased the Laxey shares Mr King acted and gave instructions as the acquirer of the shares. In emails of 31 December 2014 to Cantor Fitzgerald he informed them that funds were freely available and he first introduced NOAL in connection with the purchase with the words “we now need to get an account opened on behalf of NOAL with Cantors and provide the various KYC docs etc...”. The completed internal Cantor Fitzgerald KYC (Know Your Client) document produced to the Board at the hearing of the appeal named NOAL as the client, but described the “deemed purpose of the business as to buy shares in RANGERS INTERNATIONAL FOOTBALL CLUB PLC for Mr Dave King.” On the same day Mr King sent an email to Sovereign Trust, acting through a director of it (Mr John Hodgson, an English solicitor), about the shares being held by NOAL.
- (11) 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.
- (12) In any event, by virtue of the operation of the presumption previously applied and now included in the Code, NOAL, Sovereign Trust and Glencoe Investments Trust are either presumed or deemed to have acted in concert with Mr King and, via Mr King, with those other persons with whom he had an understanding and was acting in concert i.e. Messrs Letham, Taylor and Park.
- (13) Mr King was a principal member of the group of persons acting in concert (i.e. Messrs Letham, Taylor and Park and Mr King) within the meaning of Rule 9.2 and, for that reason, was put under an obligation to extend the offer under Rule 9.1.

(14) Over the last two years Mr King has had ample opportunity to disclose documents and to provide other evidence to rebut any deeming, presumption or inference from the evidence that he was acting in concert with Messrs Letham, Taylor and Park. He has not done so.

The outcome

104. We dismiss the appeal and affirm the ruling of the Committee, save that we vary the date and direct that within 30 days of this decision (i.e. by 12 April 2017) Mr King announce an offer pursuant to Rule 9 of the Code and, save as to the offer date, such offer to be in accordance with the Executive’s ruling of 7 June 2016, as summarised in paragraphs 19 and 20 above.

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Sir John Mummery
Chairman of the Hearing
13 March 2017

APPENDIX

TAKEOVER APPEAL BOARD MEMBERS

The members of the Takeover Appeal Board who constituted the Board for the purpose of the Hearing were:

Present:	Sir John Mummery	Chairman of the Hearing
	Karen Cook	Chairman, Investment Banking Division, Goldman Sachs Europe
	Robert Swannell	Chairman, Marks & Spencer
	Edward Walker-Arnott	Former Senior Partner, Herbert Smith
	Sir Alan Yarrow	Chairman, Chartered Institute for Securities and Investments
Secretary to the Takeover Appeal Board	Mark Curtis	Simmons & Simmons

ANNEXE I

EXTRACT FROM RULING OF THE COMMITTEE

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 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 [5 December 2016] 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 2014/5 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 purchase 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%
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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.