

Relations between Lonrho and House of Fraser

5.1. In Chapter 4 we have explained that after 1981 relations between Lonrho and House of Fraser continued to be acrimonious and we have summarised some of the principal events that have taken place during the course of the conflict between the two parties. Much of the conflict arose out of the controversy over the demerger of Harrods described in paragraphs 4.8 to 4.10. We deal with this in paragraphs 5.12 to 5.17. First, however, we summarise the accusations made to us by House of Fraser regarding the conduct of Lonrho and the minority directors generally and Lonrho's response to those accusations.

5.2. House of Fraser claimed that Lonrho had embarked on a series of campaigns against the Board and management of House of Fraser with a view to achieving control over House of Fraser or its policy. It was alleged that Lonrho's persistent attempts to this end included:

- (a) requisitioning general meetings and resolutions, demanding unnecessary polls and conducting a series of 'proxy battles', engaging in litigation or threats of litigation designed to compel the Board of House of Fraser to adopt or implement Lonrho's policies or to prevent the Board from carrying out its own policies;
- (b) opposing Board actions and resolutions of House of Fraser as a matter of principle and without rational explanation and seeking to undermine the authority of the Board by referring or threatening to refer managerial decisions to general meetings;
- (c) harassing the Board, the Chairman and the Secretary of House of Fraser by the means indicated in this paragraph and by incessant, burdensome and unnecessary demands for detailed information, sometimes concerned with past history, often coinciding with the busiest times of the year for the executive directors and management and accompanied by complaints about lack of information, whereas in the event the minority directors were given access to many more documents than the other non-executive directors;
- (d) as a regular practice by the minority directors' alternates, raising a mass of detailed objections to the draft minutes, objections which were usually contrary to what had in fact been said and the cause of much difficulty to House of Fraser's Secretary and others, involving protracted correspondence and time spent at Board meetings; and
- (e) continually making strong attacks on the Board and management of House of Fraser and on their competence, many of them in circulars publicised by Lonrho, others in the form of letters, telexes, telephone conversations and at Board meetings and sometimes at a level of common abuse.

House of Fraser provided detailed accounts of the incidents comprising the conduct in question and several volumes of evidence containing copies of the day-to-day communications exchanged between the two sides, together with other documents illustrating the course of events.

5.3. Lonrho also provided detailed accounts and evidence of the events and firmly denied House of Fraser's interpretation of its conduct. It claimed that all its actions had been motivated by the desire to protect and improve its substantial investment. At all times the actions of the minority directors had been directed to performing their statutory duties as directors of House of Fraser, irrespective of the difficulties put in their way by the majority of the House of Fraser Board. It asserted that outside commentators and major House of Fraser shareholders had recognised that Lonrho and the minority directors had been responsible for 'gingering up' the performance of House of Fraser.

5.4. The minority directors alleged that they were treated as if they were solely agents of Lonrho and not duly elected representatives of the whole body of shareholders. They were excluded from membership of the Executive Committee which effectively ran the company without referring decisions to the Board for its prior approval. The Executive Committee included, in addition to Professor Smith and Mr Sharp, all the executive directors and its purpose was solely to exclude the minority directors from the effective decision-making process. Since August 1980 the minority directors had been consistently refused access to the minutes of the monthly Management Committee which was responsible for the day-to-day running of the company.

5.5. In response to these allegations House of Fraser explained that the minority directors were non-executive directors and they were not treated differently from other non-executive directors on the Board. House of Fraser had an organisational structure which enabled discussion to take place at regional, Management Committee and Executive Committee levels before matters were reported to the Board. The Chairman of House of Fraser said that much executive time was applied to decision-making and for non-executive directors to query issues already considered within the company was in his view a misuse of the Board's time. He thought it more appropriate for the Board to concentrate its energies and application on strategic issues including major investment proposals. Minutes of Executive Committee meetings were, however, copied to all Board members, although there were certain matters where great care was taken about the wording of the minutes because of the risks perceived by House of Fraser that some issues could be used against it or revealed prematurely. The minority directors obtained in the Executive Committee minutes and the Board papers all the information they needed to discharge their proper duty. As regards the Management Committee, House of Fraser said that there were no major decisions from that committee which would not be covered in the Executive Committee minutes or the full Board papers.

5.6. As regards the requisitioning of general meetings and resolutions, Lonrho argued that the issues which it had sought to have put before shareholders had all been important matters of principle properly concerning the shareholders, upon which the shareholders as a whole would not otherwise have had the opportunity of indicating their views. In each case, Lonrho argued, it had been clear from the history of the matter concerned that Lonrho's actions were attributable not to some continuing underlying 'campaign' to obtain control, but to concern about the direction of House of Fraser. The

support that Lonrho had received from other shareholders showed the merit of Lonrho's actions. With regard to the demanding of polls, Lonrho said that it did not understand how it could be criticised for exercising the ordinary rights of a shareholder to demand a poll. Lonrho also argued that in so far as it had made attacks on the competence of the Board and management of House of Fraser, this was because it held strong and sincere views.

5.7. As regards threatened or actual litigation, Lonrho pointed out that the first of the four actions was commenced by House of Fraser to prevent the minority directors from expressing their views to House of Fraser shareholders and was found by the Court to be misconceived. Lonrho contended that the three other actions were brought as a reaction to the improper and unlawful conduct of the majority of the Board in excluding the minority directors from performing their statutory functions as directors. Threats of litigation had emanated from both sides at various stages. Lonrho and the minority directors denied that any threats of litigation were made on their part from any motive other than a desire to ensure that the majority of the House of Fraser Board behaved in a proper and lawful manner.

5.8. As regards the opposing of Board resolutions, Lonrho told us that it had analysed the minutes of meetings held between January 1982 and May 1984, and that during that period there had been approximately 200 Board resolutions, on nine of which the minority directors had abstained and on four of which they had voted against. The normal approach adopted by the minority directors when they had reservations was to have this fact noted but not formally to abstain or vote against a proposal in order not to obstruct the executive management. In every case the notes of the discussions recorded in the minutes made clear the basis of the minority directors' reservations. The minority directors contended that in each case there had been a proper and rational basis for objection.

5.9. House of Fraser said that its own analysis of Board minutes showed that the number of occasions on which the minority directors had abstained on or voted against resolutions was slightly greater than indicated by Lonrho (see paragraph 5.8). Moreover, the majority of resolutions on which the minority directors had voted with other members of the Board concerned matters of a largely formal or routine nature. In numerous instances they had raised objection or criticism of many matters under consideration by the Board without actually casting a vote against the issue under discussion, abstentions on or votes against resolutions having been confined to a limited, but significant, number of instances.

5.10. On the allegations by House of Fraser of harassment of the Board, the Chairman and the Secretary of House of Fraser it was Lonrho's case that the Board as a whole was not provided with essential information to enable it to comprehend the performance of the company and identify its commercial direction and necessary action. The position had deteriorated rather than improved since 1981. Reasonable requests from minority directors for information already provided or made available to other directors on the Board had been consistently refused on the unfounded basis that it would be used for some ulterior or improper purpose. When information had been provided it

had often been provided either after very considerable and unexplained delay or so shortly in advance of the meeting at which relevant matters were to be discussed as to ensure that the minority directors had insufficient time to assimilate it. The minority directors denied categorically that they had had any policy of 'harassing' House of Fraser. Indeed, the reverse was true. It was burdensome and harassing for the minority directors to be consistently provided late in the day with wholly insufficient information necessitating their having to make repeated requests for more information.

5.11. As regards Board minutes, Lonrho said that it had been the experience of the minority directors that the Board minutes had not always accurately recorded their contribution to the Board discussions. Board meetings were the only opportunities given to the minority directors to make any contribution to the direction of House of Fraser and, indeed, to find out what was going on. Since the other directors did not make such an extensive contribution to the Board discussions (because the majority were members of the Executive Committee or Management Committee) and their contributions tended to be less controversial, it was hardly surprising that over the period the majority of amendments suggested to the draft minutes had been suggested by an alternate director.

5.12. As regards the demerger controversy referred to in paragraph 5.1, we do not think it necessary to go into the arguments between the two sides on the merits of demerger but it is relevant to refer to the arguments about their conduct in the matter.

5.13. House of Fraser argued that the issue was raised 'out of the blue' by Mr Rowland on 16 September 1982 when he issued to the media a statement of his intention to requisition an EGM on the subject (see paragraph 4.8) before any discussion had taken place within the Board.¹ At no previous time had Lonrho raised the matter with the Board and during 1981 and 1982 steps had been taken linking Harrods more closely with House of Fraser (such as merging pension plans) with the knowledge and approval of the minority directors. In fact it appeared to House of Fraser that there had been no proper consideration by Lonrho of the detailed 'pros and cons of demerger either before 16 September 1982 or, indeed, after. Lonrho made no constructive contribution to the debate and failed to make available information and advice it claimed to have obtained (such as advice from leading Counsel that demerger could be effected by an ordinary rather than a special resolution); there were only some comments in Mr Robinson's letters in early 1983 on the draft² of the House of Fraser Working Party's report (see paragraph 4.9). The time limit of 90 days in Lonrho's resolution (see paragraph 4.8) was inadequate for full consideration of the complex legal and factual questions involved, particularly since the December and January peak trading period fell within it, but a revised

¹ Lonrho said that it regretted that the public announcement was made before a letter from Mr Rowland had been handed to the Board. Lonrho had intended to give at least half an hour's advance notice but the start of the Board meeting was delayed by an argument about the appropriateness of Mr Robinson's attendance.

² Lonrho, for its part, complained that the minority directors did not receive copies of the voluminous draft report until noon on 24 December 1982 and were requested to submit written comments by noon on 4 January 1983. Mr Robinson produced detailed comments by letter of 7 January supplemented by a later letter dated 10 February.

report going into the matter in very considerable detail was submitted to a special House of Fraser Board meeting on 31 March 1983.

5.14. House of Fraser contended that the true reason why the subject of demerger had been raised in this way was that by September 1982 Mr Rowland knew that he had failed to persuade the OFT and the Secretary of State that circumstances had changed since the Commission's 1981 report so as to justify release from Lonrho's undertakings of December 1981. Accordingly he had suddenly embarked on the demerger path with the primary aim of achieving by demerger a change of circumstances sufficient to justify a further approach to the Secretary of State. This step had been taken without any proper regard to the interests of the business and staff of House of Fraser (including Harrods) and the other shareholders. It was noteworthy, according to the House of Fraser, that neither Mr Rowland nor Lord Duncan-Sandys had troubled to attend the Board meeting of 31 March 1983 (being represented by their alternates, Mr Robinson and Mr Spicer) at which there was a detailed discussion of the Working Party's report culminating in a decision, the alternates dissenting, not to recommend the demerger of Harrods. The majority of the Board were convinced that demerger would be harmful to the interests of shareholders and employees and, indeed, would fundamentally damage the future of the group.

5.15. Lonrho argued that demerger was not a novel idea. A circular dated 26 February 1981, produced by House of Fraser in response to Lonrho's bid, had referred to suggestions that Harrods should in some way be separated but had said that such a move would at that time be wrong. However, by mid-1982 Lonrho said it was concerned about its 30 per cent investment in a company of poor performance in which it had little influence and where the most valuable asset appeared to be in danger. It advanced a number of arguments in support of the view that demerger was desirable and pointed out that a number of informed observers shared its view that demerger would benefit all shareholders. Lonrho said that until September 1982 it had been actively pursuing an intention to bid for the whole of the House of Fraser and demerger was irrelevant in this context. However, in circumstances in which Lonrho would not be bidding for House of Fraser, demerger had been seen as an alternative to a full bid. It was an incidental benefit that, if demerger was implemented, it might be of assistance to Lonrho in discussions with the Department of Trade and Industry.

5.16. Lonrho explained that the methods it had adopted in pursuing its case for demerger were based on its conviction that the Board of House of Fraser would not be prepared to deal with the matter in a fair and considered manner unless forced to do so by the proposals being put to shareholders. Much subsequent difficulty might have been avoided if House of Fraser had agreed to Lonrho's request to include at least one of the minority directors in the Working Party on demerger and Lonrho had seen the refusal as indicative that the majority of the Board was not prepared to allow the matter to be fairly and properly debated. Subsequently, the Board of House of Fraser had sought to confuse the issue by combining a resolution accepting its recommendation against demerger with a vote of confidence in the Board at the EGM held on 6 May 1983. House of Fraser said that since the Board believed that the

retention of Harrods was crucial to the development of the group, demerger was tantamount to a vote of no confidence.

5.17. Lonrho stated that, if it were permitted to proceed with a full bid for House of Fraser, the demerger proposals would become irrelevant. This did not, however, preclude the possibility that Lonrho might in due course come to the conclusion that it would be better to float off part of House of Fraser as a separate public company from the rest of the Lonrho group.