Cases in Corporate Governance

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NOTES

1 See, for instance, Stittle, 2003: 135–60.
2 *Financial Times*, 27 April 2002: 14.
3 *New York Times*, 2 August 2002: 1.
4 *Financial Times*, 14 June 2004: 26.
5 *Financial Times*, 14 June 2004: 26.
6 *Financial Times*, 11 October 2004: 3.
7 *Financial Times*, 19 October 2004: 6
8 See *Accountancy*, June 2004: 29–33.
9 *Financial Times*, 30 July 2004: 19.

Maxwell

FOUR

In November 1991 the UK business scene was stunned to learn that Robert Maxwell, an apparently successful business leader with important newspaper and publishing interests, had disappeared at sea from his yacht *Lady Ghislaine*. In the following weeks it became clear that his business empire was in serious financial difficulties, and had been for some time. A report published by the Department of Trade and Industry (DTI) in March 2001 was referred to in one newspaper[1] as describing 'a tale of greed, cliquiness, naivety and amateurism at the heart of Europe's leading financial centre'. The DTI inspectors concluded that 'the chief culprits in the deception that allowed the publisher to raid £400m from the pension fund of Mirror Group Newspapers were Maxwell and his son, Kevin'.[2]

Robert Maxwell was originally born Jan Ludvik Hoch in 1923. His father was a labourer and the family apparently lived in poverty in a small village in what was then Czechoslovakia. Maxwell found it easy to learn languages and he claimed to be able to speak nine, including Czech, French, German and Russian, as well as English. Given that he had been born into a Jewish family, he was lucky to escape from mainland Europe in 1940. Many members of his immediate family were to die later in the Holocaust. There are differing accounts of how he managed to reach Britain; what is known is that in May 1940 he arrived in Liverpool, having travelled by ship from Marseille in France.

Whilst in the UK Maxwell perfected his English, and acquired English customs and mannerisms. Maxwell had an eventful war, being promoted eventually to captain in 1945. After fighting in France, he was awarded the Military Cross for exceptional bravery by Field Marshal Montgomery. The name Jan Ludvik Hoch was dropped in favour of the name Robert Maxwell and he married Elisabeth Meynard. At the end of the war, Maxwell was stationed in Berlin where the army made good use of his linguistic abilities.

MAXWELL'S EARLY BUSINESS AND POLITICAL AFFAIRS

Maxwell was ambitious to succeed in the publishing industry and became involved in a number of business ventures. In May 1951 he raised the finance to purchase from Butterworths their share of a publishing company which he renamed Pergamon Press, and with which he was to be associated for the rest of his life. During the 1950s and 1960s Maxwell built up Pergamon Press into a successful publisher of books and journals, particularly scientific journals.

Maxwell was keen to succeed in political life as well as in business. He was adopted as the Labour Party candidate for North Buckinghamshire and in the 1964 general election was elected to Parliament. While there, Maxwell attempted to pursue both a political career and a business career but he appeared to find it difficult to reconcile his business interests with his publicly stated socialist principles. By 1964 he was already a millionaire and was distrusted by some Labour Party members. When speaking to a Labour Party conference in 1967 he tried to justify sending some of his children to public schools (Bower, 1992: 125), a point of view which did not endear him to Labour Party activists. In July 1964, Pergamon Press was floated on the London Stock Exchange. Maxwell's stake in Pergamon was estimated at approximately £10m, although his actual wealth was probably greater since at that time some of his wealth was also held in trusts in Liechtenstein.

In 1968 Maxwell became involved in a bid for the *News of the World*, a UK Sunday newspaper. A bitterly contested takeover battle ensued when Rupert Murdoch, an Australian publisher, decided to bid for the newspaper. By early 1969 Maxwell had to concede defeat and Murdoch acquired control. Also in 1969, Maxwell wanted to gain control of *The Sun*, a UK daily newspaper, but once again he lost out to his rival Rupert Murdoch. Maxwell believed that he was an innocent victim of the City establishment and his failed takeover bids only served to strengthen that belief. Maxwell and Murdoch were to remain rivals for the next two decades.

THE LEASCO PERGAMON TAKEOVER

The year 1969 was critical in Maxwell's career. He and an American, Saul Steinberg (head of Leasco), agreed to merge their businesses, with Leasco purchasing Pergamon Press and Maxwell accepting a subordinate role in the combined enterprise. Steinberg had been very successful in the United States in the business of leasing computers. The intention was to pool the expertise and resources of Steinberg and Maxwell by storing the data contained in Maxwell's scientific journals and books on computers. In 1969 this was a radical and visionary proposal.

Maxwell had been trying to grow his business empire, with Pergamon as the basis. His strategy was to attempt to take over companies such as the *News of the World* and increase their profitability and hence market value, so his defeat in the battle for the *News of the World* was a considerable blow to his business ambitions. According to Bower (1992), Leasco's profits in 1968 were $27m and assets amounted to $1bn. Steinberg had been successful in a number of takeovers and mergers and was still only 29 years old. For Maxwell it was important that the accounts of Pergamon for 1968 should show a substantial profit since this would support the share price and assist his negotiations with Leasco. The auditors of Pergamon were Chalmers Impey, but the *Sunday Times* had questioned the audit procedures used by Chalmers Impey on Pergamon's accounts, for instance, alleging that stocks were overvalued.

In June 1969 Leasco and Pergamon had reached agreement in principle that Leasco would bid for Pergamon after having successfully completed investigations into the financial affairs of Pergamon. However, Leasco's financial advisers were finding it difficult to extract the necessary information from Pergamon and were finding it difficult to receive answers to their questions from Maxwell. By August 1969 Steinberg and his advisers had doubts about the future profitability of Pergamon; they were becoming increasingly nervous about the takeover and wanted to withdraw from the bid. However, since Leasco had agreed to the takeover in principle, a valid reason to withdraw would be required. So Steinberg wanted to withdraw from the bid, but Maxwell wanted the bid to proceed.

The Takeover Panel had to decide whether Leasco could be allowed to withdraw their bid for Pergamon. It was finally agreed that the bid would go ahead. Maxwell would remain as chairman of Pergamon but would not be managing director. The Takeover Panel also called for a full Board of Trade inquiry into the circumstances surrounding the Leasco bid for Pergamon.

The two inspectors appointed by the Board of Trade were a lawyer, Owen Stable QC, and an accountant, Ronald Leach, who was a senior partner in Peat Marwick Mitchell. At the same time the accountants Price Waterhouse carried out an independent audit of Pergamon's 1968 financial statements. The Price Waterhouse audit was carried out by a senior partner, Martin Harris, and among its conclusions was the finding that the reported profits of Pergamon for 1968 had been overstated. Instead of a profit of £2.1m the corrected figure would have been £140,000. This represented a huge reduction and it caused some consternation among the public that two different firms of accountants could arrive at such different conclusions about Pergamon's profits.

Chalmers Impey subsequently resigned as auditors and Cooper Brothers took over the audit. No doubt there was some understandable confusion amongst non-accountants over the distinction between 'cash' and 'profit' and the subjectivity involved in calculating a firm's 'profit', especially when different firms of accountants used different assumptions. Nevertheless, episodes such as the Price Waterhouse report were instrumental in the accounting profession deciding to confront the issue of uniform accounting standards. This resulted in the setting up of the Accounting Standards Committee (subsequently renamed the Accounting Standards Board).

The accounting profession was concerned that it would lose credibility, and even worse, invite government intervention, if it did not try to impose some minimum standards for consistent financial reporting treatments. There is little doubt that the accounting profession in the UK (and in the USA) wanted to retain as far as possible its independence from state intervention in terms of accounting and auditing.

Following publication of the Price Waterhouse report, Leasco were understandably reluctant to pursue the takeover of Pergamon, given the restatement of Pergamon's reported profits and assets and the reduced valuation placed on its stocks. In fact Maxwell was eventually able in 1974 to regain control of Pergamon. But one of the greatest blows to Maxwell came from the inspectors who had been appointed in 1969 by the Board of Trade (subsequently renamed the Department of Trade and Industry, or DTI).

The DTI report was published in July 1971 and among the conclusions of the inspectors, Stable and Leach, was the following critical statement:

> We are also convinced that Mr Maxwell regarded his stewardship duties fulfilled by showing the maximum profits which any transaction could be devised to show. Furthermore, in reporting to shareholders and investors he had a reckless and unjustified optimism which enabled him on some occasions to disregard unpalatable facts and on others to state what he must have known to be untrue . . . We regret having to conclude that, notwithstanding Mr Maxwell's acknowledged abilities and energy, he is not in our opinion a person who can be relied on to exercise proper stewardship of a publicly quoted company. (Bower, 1992: 286–7)

The phrase 'not in our opinion a person who can be relied on to exercise proper stewardship of a publicly quoted company' was to haunt Maxwell for the rest of his life.

Maxwell did attempt to argue through the courts that the inspectors had not given him a fair hearing and had not properly consulted him about the report's conclusions. But his appeal was not successful. Where many people would have simply accepted a reduced role in business life from that point, Maxwell instead was determined that he would not be beaten by the 'Establishment', even though the DTI inspectors produced two further reports in April 1972 and November 1973, which were also damning of Maxwell's business methods.

AFTER THE LEASCO PERGAMON TAKEOVER

Maxwell was legendary for his attempts to settle disputes through the courts and he began many legal actions against his business rivals as well as against journalists who attempted to report on his business activities. For instance, Davies (1993: 304) refers to Maxwell's 'litigious reputation'. It is quite possible that the fear of being sued in the courts made journalists (especially financial journalists) and financial analysts reluctant to write critically in public about Maxwell and his business affairs. When Maxwell learned in 1987 that Tom Bower was about to publish a biography, *Maxwell: The Outsider*, he issued twelve writs against Bower and his publishers and also instructed a Mirror journalist, Joe Haines, to write an 'authorized' biography (Bower, 1992: 1–2).

Meanwile, in a bid to gain acceptance at a business and political level, Maxwell took great care to cultivate relationships with world leaders and was particularly keen to be seen with political leaders on the world stage. Haines (1988) reproduces a wealth of evidence showing Maxwell meeting political leaders such as Mikhail Gorbachev of the Soviet Union, President Mitterrand of France, President Reagan of the USA and Prime Minister Margaret Thatcher of the UK.

In 1974, when Maxwell eventually regained control of Pergamon, he put his energies into building up the business. This he managed to do successfully. By 1977 Pergamon had substantially increased its assets and reported profits. Maxwell was keen to expand his business interests and in 1980 turned his attention to the British Printing Corporation (BPC), later renamed the British Printing and Communications Corporation (BPCC). BPC had been earning relatively low profits and Maxwell believed he could transform the company into an efficient organization. He began to buy up shares in BPC but was faced with opposition from the board of BPC and its chairman and managing director, Peter Robinson. In February 1981 Maxwell gained control and became deputy chairman and chief executive. Maxwell then struggled to turn the company around.

In the early 1980s it was generally recognized that printing companies in the UK were overstaffed and that restrictive practices were hindering efficient production. At one printing press, the Park Royal plant in West London:

> Six men instead of one were 'minding' machines and if one of those six was absent through illness, the management were compelled to hire a temporary replacement with enormous penalty costs. Even seventy-year-olds were still on the payroll, although they were not working. Maxwell seized on these symbols to undermine the unions and humiliate Robinson's record. (Bower, 1992: 343)

Maxwell clearly believed that he was the person to change these practices. He had possibly been impressed by Rupert Murdoch's own bold decision some years earlier to bypass the trade unions and move his printing presses to Wapping in East London. Whereas Peter Robinson had been attempting to make efficiency gains at BPC at a more sedate pace that would not upset the unions, Maxwell instead used a combination of aggression and charm:

> In the first five years of Maxwell's reign, very few of the company's directors, even those whom he appointed, survived for more than one year. Few could satisfy his demands or cope with the stress. 'It was annoying and mentally tiring', recalls David Perry, . . . 'that he acted without consulting anyone'. (Bower, 1992: 346)

Nicholas Davies, who worked for Maxwell for a number of years, wrote of Maxwell's relationship with the trade unions:

> After months of wrangling and hard-fought battles, union leader Bill Keys commented: 'Maxwell is the greatest wheeler-dealer we've ever met . . . a man who can charm the birds off the trees and then shoot them'. (Davies, 1993: 33)

Maxwell improved the finances of BPC and carried out a major programme of investment in up-to-date machinery. During the early 1980s, with both Pergamon and BPC making healthy profits, Maxwell could validly claim to be a successful entrepreneur, with the DTI reports a decade or more behind him. Despite the fact that Rupert Murdoch had prevented him from taking over the *News of the World*, and subsequently *The Sun*, Maxwell was still ambitious to gain a reputation as a newspaper proprietor.

During the first half of the 1980s, Maxwell continued to take over some companies and take minority stakes in others. However, it was not always clear where the ultimate ownership of these companies lay. Maxwell had devised an extremely complicated corporate structure for the companies under his control, with shareholdings spread among the Maxwell Foundation, his own and family shareholdings, the Maxwell Charitable Trust and trusts based in Liechtenstein. Attempting to unravel this complex ownership structure was a massive task. Figure 1 attempts to illustrate the intricate pattern of private companies, trusts and quoted companies which made up the 'Maxwell empire' in 1991. But even this cannot fully capture the labyrinthine structure of the organization, which was reputed to include 400 private companies.

In 1984 Maxwell finally achieved his ambition of controlling a major UK newspaper, Mirror Group Newspapers, which published the *Daily Mirror* and *Sunday Mirror*. Unlike much of the British press, the *Daily Mirror* could normally be counted on as a friend of the Labour Party, especially during general elections. There was therefore some concern in the Labour Party when it was learned that Maxwell, even though he had

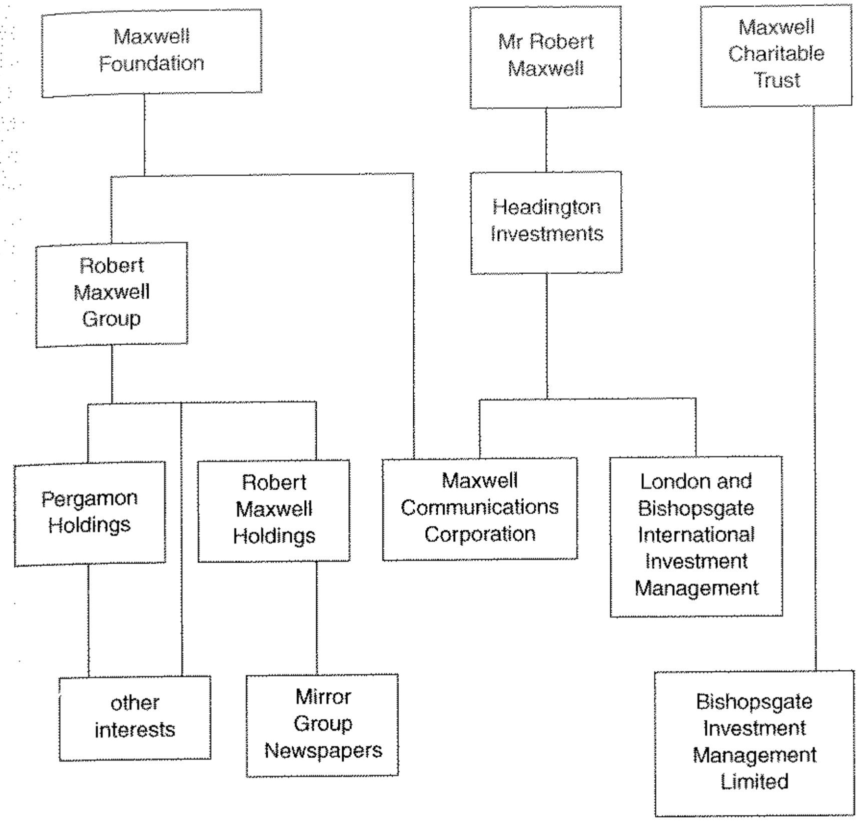

Figure 1 Maxwell Organization in 1991

Source: Adapted from *Financial Times*, 31 March 2001: 7

himself been a Labour member of parliament, was interested in acquiring the newspaper. Nevertheless, Reed International was keen to sell the newspaper and Mirror Group Newspapers was acquired for £90m. Three journalists on the *Mirror* who had left-wing leanings and expected to be fired were Paul Foot, Joe Haines and Geoffrey Goodman. However they apparently secured assurances that Maxwell would not interfere in their journalism, and they wrote for the *Mirror* for a number of years.

During the second half of the 1980s, Maxwell made numerous attempts to control or buy stakes in companies engaged mainly in publishing, television and information services, but also in other areas such as stores and banking. These purchases and sales of shareholdings involved dozens of companies. In 1987 Maxwell bid unsuccessfully for the US publisher Harcourt Brace Jovanovich, but in the following year he bought the US publishers Macmillan for $2.6bn. In 1987 BPCC was renamed Maxwell Communications Corporation (MCC).

THE FINAL MONTHS

Then, in 1991, Maxwell bid for the New York newspaper the *Daily News*. A dispute with the unions had adversely affected profitability at the newspaper and the owners, the Chicago Tribune Group, were keen to sell the newspaper. Maxwell was himself keen to add the *Daily News* to his publishing interests and he seems to have assumed that he could turn round the newspaper's fortunes in the same way that he had done with BPCC and Pergamon. However, he had had mixed results with the Mirror Group newspapers and circulation had fallen, while circulation figures for its main rival (*The Sun*, owned by Rupert Murdoch) had increased. The *Daily News*, due to continuing disputes with the trade unions, proved to be a considerable problem for Maxwell and a drain on his group's resources.

In March 1991, Pergamon was sold to the Dutch group Elsevier for £440m. It appeared that Maxwell's group of companies was beginning to run short of cash. The sale of Pergamon, supposedly a fundamental part of the Maxwell business empire, led to speculation about Maxwell's financial difficulties. During this period Maxwell was also pledging shares in MCC as collateral for loans. What was later to become apparent was that Maxwell's cash requirements were leading to a steady increase in indebtedness. But what only became clear later on was that Maxwell was also pledging shares in company pension funds as collateral for further loans. Why had the pension fund trustees not objected to this? In the case of MGN, Maxwell had removed the trade unionists from the pension fund and replaced them with his sons, Kevin and Ian Maxwell. Management of most of the pension fund was given over to the Maxwell-controlled company Bishopsgate Investment Management Limited, which had taken the decision to invest in Maxwell-owned companies such as MCC.

One of the basic principles of pension trusteeship is that the pension fund should be treated as an entity separate and distinct from the company that employs the workers who contribute to the pension fund. It is of paramount importance that the trustees should be sufficiently independent to be able to object to the improper use of pension fund assets. Otherwise there is a real danger that the managers of the company will attempt to use the pension fund as a source of cheap finance. In addition, it is important that there is a separation of the risks of the company and the pension fund. For instance, it is unwise for a pension fund to invest a large proportion of its assets in the related company. For, if the company goes into liquidation, the pension fund assets are likely to be worthless. What the members of the pension fund need is some assurance that, even if their employer goes into liquidation, their retirement pensions are still protected.

However, Maxwell had managed in a fairly crude way to get round the pension fund rules, which had been designed to ensure independence. When Maxwell purchased Mirror Group Newspapers (MGN) in 1984, the pension fund had a substantial surplus. Maxwell took advantage of the regulations that allowed the employer effectively to take a holiday from making employer's contributions. This was effectively the same as MGN receiving a cash windfall. Consequently the surplus diminished. Maxwell was also able to raid the assets of the pension fund by pledging their shares as collateral against loans he was raising with the banks. Although Maxwell had been successful with BPCC and Pergamon, he had been less successful in other areas. In 1991 the share price of MCC and MGN began to fall. MGN had been floated in May 1991, although the flotation had not been particularly successful.

MGN and MCC shares were pledged as collateral for further loans and Maxwell's companies became increasingly indebted during 1991. Towards the end of 1991 the share price of MCC began to decline. Goldman Sachs began pressing Maxwell for repayment of overdue loans which amounted to £80m. Goldman Sachs also began selling their holdings of MCC shares, which had the effect of decreasing the share price even further. There was a danger that shares held as collateral would also be sold, leading to a vicious downward spiral of share sales leading to a falling share price, in turn provoking further share sales. In New York, Citibank were also beginning to sell shares held as collateral, on the grounds that loans were not being repaid.

Towards the end of October 1991, Maxwell must have been aware of the effect that impending sales of shares would have on the share price. On 31 October 1991, Maxwell left the Mirror building and flew by helicopter to Luton; from there he was flown in his company jet to Gibraltar, where the captain and crew of his yacht, the *Lady Ghislaine*, were waiting. Maxwell sailed first to Madeira and then on to Tenerife. The yacht arrived at Los Cristianos in Gran Canaria on the morning of Tuesday 5 November. It was discovered shortly after arriving at Los Cristianos that Maxwell was not on board and must have disappeared overboard on the last leg of the trip.

When Kevin Maxwell and Ian Maxwell were informed of their father's disappearance at sea, they requested the Stock Exchange in London to suspend dealing in MCC and MGN shares. The Stock Exchange at first seemed reluctant to suspend trading in the shares simply because the chairman was missing. But as news of the disappearance leaked to the market, the share price of MCC and MGN began to fall. The Stock Exchange then decided on the afternoon of 5 November to suspend trading in MCC and MGN shares. Ian Maxwell was appointed acting chairman of MGN and Kevin Maxwell was appointed as acting chairman of MCC.

Following a search at sea, Robert Maxwell's body was shortly afterwards recovered. The Spanish authorities seemed to conclude that Maxwell's death was simply an accident, although there has subsequently been speculation about the possibility of suicide. Maxwell was buried in Israel and speculation began to surface about the possibility that he had been murdered by Mossad, the Israeli Secret Service. This story was supported by two *Mirror* journalists, Gordon Thomas and Martin Dillon, whose book *The Assassination of Robert Maxwell: Israel's Superspy* was published in 2002. And in November 2003, Geoffrey Goodman, a former *Mirror* journalist, was reported[3] as supporting the theory that Maxwell had been murdered. It is certainly true that during his lifetime Robert Maxwell was an enigmatic figure, and no doubt speculation will continue about the true cause of his death.

When news of his death was announced, the *Daily Mirror* referred to him as the 'man who saved the *Mirror*' (Davies, 1993: 341), although other newspapers were less charitable. But towards the end of November 1991, the truth about Maxwell's business practices and methods, and the indebtedness of the companies with which he was involved, began to emerge. Debts of the Maxwell private companies were estimated at approximately £1bn. In addition, it was found that a substantial proportion of the Mirror pension fund investments had disappeared, for two reasons. Firstly, pension fund shares had been pledged as collateral for additional loans taken out by Maxwell. Secondly, some of the pension fund assets of MGN had been invested in MGN and MCC, whose share prices had fallen drastically.

It also emerged that some analysts, who had tried to warn of Maxwell's activities, had been subjected to threats of legal action. Derek Terrington, an analyst with Phillips and Drew wrote a sell notice on MCC shares in 1989. As a result Maxwell withdrew £80 million of the MCC pension fund from Phillips and Drew Fund Management and made a point of saying that it was due to Terrington's criticisms. Other analysts decided against publishing critical comments and instead informed their clients by word of mouth. According to Brian Sturgess, an analyst at BZW, 'since the criticism was done discreetly by phone and lunches, it was only the big institutions who got this information. All the other shareholders were left out'.[4]

In December 1991, Ian Maxwell and Kevin Maxwell were investigated by the Serious Fraud Office and both resigned from MGN and MCC. The *Daily Mirror* by now had completely reversed its original opinion of Maxwell as saviour of MGN, describing instead the fraud perpetrated by Robert Maxwell on MGN. With the revelation that something like 30,000 pensioners (Davies, 1993: 41) had badly lost out as a result of the Maxwell fraud, public sentiment turned against Maxwell.

> In those last few days before he died Maxwell was still furiously borrowing money from banks, 'borrowing' money from the *Daily Mirror*, acting, as always, as if he owned everything and he had the absolute right to do as he wished with any of the companies, public or private, of which he held the stewardship. He had never changed; he had never learned. To the last, Maxwell was as guilty as the DTI reports of the 1970s had reported. (Davies, 1993: 332)

DISCUSSION

Smith (1992: 10–12) outlines four methods by which Maxwell was able to misappropriate funds from the companies under his control. Firstly, he pledged assets as security for additional loans. However, instead of delivering the assets to the lender, Maxwell would in some cases simply sell the assets for cash. For example, Berlitz language school was supposedly sold to a Japanese publishing company, but the shares had previously been pledged as security for loans from Swiss Volksbank and Lehman Brothers.

Secondly, he diverted shares and cash from Mirror Group Newspapers to Bishopsgate Investment Management Limited (controlled by Maxwell). The shares were then pledged as security for further loans to Maxwell's private companies.

Thirdly, Maxwell used cash gained from pledging shares to support the share price of MCC and MGN. These purchases were not disclosed, as they should have been under Stock Exchange regulations. Maxwell needed a relatively high share price to maintain his financial credibility with the banks who were lending to him. Maxwell also supported the share price of MCC by selling put options to Goldman Sachs with a strike price higher than that ruling in the market when the option was written. In other words, Goldman Sachs could immediately buy shares at the (lower) current market price, knowing that they would be guaranteed a profit when they later sold the shares to Maxwell at the higher price specified in the option.

Fourthly and most simply, Maxwell took cash from MGN. After the flotation of MGN, £43m was passed to Maxwell's private companies. Given the scale of what happened in the Maxwell organization, it was natural that the public would want to know who should be held accountable. The Department of Trade and Industry Report on events at Mirror Group Newspapers plc was published in March 2001 (DTI, 2001).

The DTI Report stated that it was clear to many people who dealt with Robert Maxwell that 'he was a bully and a domineering personality, but could be charming on occasions' (DTI, 2001: 319). Primary responsibility rested with Maxwell himself, but 'Kevin Maxwell gave very substantial assistance to Robert Maxwell and bears a heavy responsibility'.[5] Also, 'Ian Maxwell signed many documents without considering their implications and failed to carry out all the duties he had undertaken as a director of Bishopsgate Investment Management Limited'.[6]

The 2001 DTI report also cast considerable blame on the City of London institutions that had helped support Maxwell.[7] The accountants Coopers and Lybrand Deloitte bore a major responsibility for failing to report pension fund abuses to trustees.[8] The report also concluded that Maxwell bore 'the primary responsibility for manipulating the market in MCC shares and he did this because he was obsessed with the share price which to his mind reflected on his personal standing'.[9] However, Goldman Sachs also bore substantial responsibility for manipulation of the MCC share price.[10]

Other criticisms of the way MGN was run included the fact that Robert Maxwell was executive chairman and the independent directors had not been effective in exercising control over the chairman. The 2001 DTI Report included a telling section on Robert Maxwell's attitude to non-executive directors:

> Robert Maxwell had not reacted favourably in 1988 when he had been told that non-executive directors had to be appointed, but had eventually agreed that it was essential. However, Kevin Maxwell told us that Robert Maxwell was quite happy to have non-executives on the board; he had had a policy of having 'luminaries' on boards for some years. He had given jobs to former ministers, politicians and officials, as he had seen this as a way of exercising power in the Labour Party and helping friends who had lost office. Robert Maxwell also saw them as lending their name to the company just as distinguished scientists lent their name to his scientific journals by becoming members of the editorial boards of the journals. However, beyond that, non-executive directors had no function in Robert Maxwell's world. (DTI, 2001: 185–6)

Kevin Maxwell and Ian Maxwell were arrested on 18 June 1992 by London police working with the Serious Fraud Office (SFO).[11] They were charged with conspiracy to defraud, but were cleared in 1996. In the meantime, Kevin Maxwell was reputed to be Britain's biggest bankrupt in 1992, at the age of 33, after admitting debts of £400m.[12] Coopers and Lybrand Deloitte and some of their partners were disciplined by the Joint Disciplinary Scheme. Goldman Sachs was disciplined by their regulatory organization, the Securities and Futures Authority (SFA) and also contributed to a substantial settlement with the pension schemes without admission of liability.[13]

PricewaterhouseCoopers (PwC, the successor firm to Coopers and Lybrand) was reported in 2001 as saying that it had accepted the criticisms made in the DTI report and that it had made significant internal changes since the scandal had been revealed. Apart from potential damage to its reputation, PwC paid a Joint Disciplinary Scheme fine of £3.5m, contributed an undisclosed sum to the defrauded pension funds and paid liquidators £68m in an out-of-court settlement.[14] It was also reported that other city institutions (for instance the banks and financial advisers who acted for Maxwell) claimed that 'it was impossible to legislate further for, or provide more corporate governance against, crooked executive chairmen if directors don't stop them'.[15]

The Cadbury Committee, which reported in 1992, acknowledged that recent financial scandals (the Maxwell case was specifically referred to) were one of the reasons for the committee being asked to report on corporate governance matters. The Cadbury Committee made a number of recommendations (Cadbury Report, 1992: 58), some of which seem directly relevant to the Maxwell case:

> There should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognised senior member. (Code of Best Practice, item 1.2)
>
> The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. (Code of Best Practice, item 1.3)
>
> Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (Code of Best Practice, item 2.1).
>
> The majority [of non-executive directors] should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. (Code of Best Practice, item 2.2)

However, the Cadbury Committee also appeared to accept that regulation on its own would never be sufficient to ensure 'good' corporate governance:

> Had a Code such as ours been in existence in the past, we believe that a number of the recent examples of unexpected company failures and cases of fraud would have received attention earlier. It must, however, be recognised that no system of control can eliminate the risk of fraud without so shackling companies as to impede their ability to compete in the market place. (Cadbury Report, 1992: 12)

Effectively, the Cadbury Report is saying that in the final analysis a balance has to be struck to ensure an adequate level of corporate governance without stifling the play of competitive forces and entrepreneurship which are fundamental to a market-based economy.

Could the circumstances of the Maxwell collapse reasonably have been foreseen by those either in the City or ordinary investors? There is some evidence that some city analysts were aware of what was going on and some institutional investors were fortunate to receive and act on their discreet warnings. Individual investors were less lucky. Apart from the blunt warnings contained in the DTI reports of the early 1970s, there were some courageous journalists who were prepared to confront Maxwell's famous reputation for litigation. Roger Cowe[16] – writing in *The Guardian* in 1990 – argued that Robert Maxwell was striving to avoid joining the list of debt-bound businesses whose extraordinary growth during the 1980s was in danger of being followed by dramatic collapse in the 1990s. Cowe also referred to the dangers inherent in companies with chairmen who were in a position to dominate their boards of directors. His article was particularly timely given that the Maxwell empire was destined to collapse just over one year later. So it seems that there were some warnings around for those who cared to look for them.

Table 4.1 *Robert Maxwell: key events*

1923	Maxwell is born as Jan Ludvik Hoch in Czechoslovakia
1940	Arrives in Liverpool from Marseille, France
1945	Changes name to Robert Maxwell and marries Elisabeth Meynard
1951	Pergamon Press is established, publishing scientific journals and books
1964	Elected as a Labour MP for North Buckinghamshire; Pergamon Press is floated on London Stock Exchange
1969	Maxwell is unsuccessful in his bid for *News of The World* (Sunday newspaper); Maxwell attempts sale of Pergamon to Leasco
1970	Loses parliamentary seat in 1970 general election
1971	DTI Inspectors' critical report
1974	Regains control of Pergamon
1981	Gains control of British Printing Corporation (BPC), later renamed British Printing and Communications Corporation (BPCC)
1984	Purchases Mirror Group Newspapers
1987	Bids unsuccessfully for US publishers Harcourt Brace Jovanovich; BPCC is renamed Maxwell Communications Corporation (MCC)
1988	Purchases US publishers Macmillan at cost of $2.6bn
1991	Purchases *New York Daily News* newspaper (March); Mirror Group Newspapers (MGN) floated on London Stock Exchange (May); Maxwell disappears at sea from his yacht *Lady Ghislaine* (November); Maxwell's business empire collapses (December)
2001	DTI report into Mirror Group Newspapers

Discussion questions

1 Do you believe that, following the DTI reports of the early 1970s, the City should have been more sceptical of Maxwell's business activities?
2 Contrast Robert Maxwell's view of the role of the board of directors and the role of the non-executive director with recent guidance on corporate governance.
3 What do you believe are the main lessons that can be drawn from the failure of Maxwell's business empire?
4 Who were the main losers when the Maxwell empire crashed?
5 Is it likely that problems of the type and scale of Maxwell's financial dealings could be repeated in a quoted company in future?

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NOTES

1 *Financial Times*, 31 March 2001: 6.
2 *Financial Times*, 31 March 2001: 6.
3 *Guardian*, 24 November 2003.
4 *Independent on Sunday*, 22 December 1991: 5.
5 DTI, 2001: 321.
6 DTI, 2001: 324.
7 See *Financial Times*, 31 March 2001: 6-7.
8 DTI, 2001: 324.
9 DTI, 2001: 357.
10 DTI, 2001: 358.
11 *Economist*, 20 June 1992: 93.
12 *Financial Times*, 27 August 2004.
13 See DTI, 2001: 318.
14 *Accountancy*, May 2001: 9.
15 *Accountancy*, May 2001: 9.
16 *Guardian*, 2 October 1990.