IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2014-004-2293
[2019] NZHC 592

THE QUEEN

v

PAUL BUBLITZ
BRUCE MCKAY
RICHARD BLACKWOOD

Hearing:	27 March 2019
Appearances:	DG Johnstone for Crown SJ Lance, SNB Wimsett for Defendant, P Bublitz GNE Bradford and SD Withers for Defendant, B McKay SM Kilian and R McCausland for Defendant, R Blackwood
Sentence:	27 March 2019

SENTENCING NOTES OF TOOGOOD J

Introduction

[1] Paul Bublitz, Richard Blackwood and Bruce McKay: you appear for sentence after having been found guilty, on 5 February 2019, after a Judge-alone trial, of the following charges:

(a) Mr Bublitz – you were found guilty of four charges of theft by a person in a special relationship[1] and two charges of making a false statement as a promoter of securities.[2] You were acquitted on six other charges of theft by a person in a special relationship.

(b) Mr McKay – you were found guilty of three charges of theft by a person in a special relationship. You were acquitted on one charge of making a false statement as a promoter and on one charge of making a false statement to a trustee for debenture holders.[3]

(c) Mr Blackwood – you were found guilty of four charges of theft by a person in a special relationship and you, also, were acquitted on one charge of making a false statement as a promoter and on one charge of making a false statement to a trustee.

[2] When I delivered my verdicts, I accepted a request by Mr Kilian that no convictions be entered. None of you, however, has applied to be discharged without conviction, which is a realistic approach.

[3] I therefore enter convictions on each of the charges on which you have been found guilty, that is:

(a) Mr Bublitz – Charges 10, 11, 12, 13, 14 and 15.

(b) Mr McKay – Charges 10, 11 and 12.

---

1 Crimes Act 1961, ss 220 and 223(a); the maximum penalty is seven years' imprisonment.
2 Section 242; the maximum penalty is 10 years' imprisonment.
3 Companies Act 1993, s 377.

(c) Mr Blackwood – Charges 10, 11, 12 and 13.

I discharge you on the charges on which you were acquitted.

Factual background

[4] I discussed the factual background to your offending in my judgment dated 21 February 2019,[4] in which I set out the reasons for the verdicts I had delivered orally on 5 February. Although I appreciate that you are fully aware of the background to the verdicts, and to the findings of fact on which I have relied, I am obliged to summarise them again, in the public interest, to give context to the sentences I am about to impose. I shall do so as briefly as possible.

[5] On 13 May 2010, finance company Viaduct Capital Limited (Viaduct or VCL) was placed into receivership by the trustee for the finance company's debenture holders. On 14 July 2010, receivers were appointed to another finance company, Mutual Finance Limited (Mutual or MFL). Your trial on criminal charges followed subsequent investigations by the Treasury, the Serious Fraud Office and the Financial Markets Authority into the affairs of the two companies and the actions of their shareholders, directors and managers.

[6] The essence of the facts I found to be proved beyond reasonable doubt is that you, Mr Bublitz, were the ultimate owner of a group of investment companies known as the Hunter Capital Group. You arranged the acquisition of the two finance companies, Viaduct and Mutual, primarily to use them as vehicles for obtaining funding from members of the public to support property development ventures being undertaken by companies in the Hunter Group. I accept that the finance companies engaged in other lending activities unrelated to Hunter entities.

[7] An important element of the plan, devised between Mr Bublitz, Mr McKay and two other associates, Mr Peter Chevin and Mr Nicholaas Wevers, was the Crown retail deposit guarantee scheme established by the government in the wake of the 2007 – 2008 global financial crisis and the ensuing recession. That scheme was

---

4 *R v Bublitz* [2019] NZHC 222.

designed to support the New Zealand banking system and give some degree of assurance to New Zealand depositors at a time of financial market uncertainty. It guaranteed the New Zealand government would repay depositors affected by the failure of New Zealand financial institutions who participated in the scheme.

[8] A potential difficulty with the proposal to acquire a finance company – limitations on related party transactions – was identified at an early stage by Mr McKay who was at that time the manager responsible for the financial management and reporting of the group.

[9] I accepted in my reasons for verdicts that related party transactions are neither uncommon nor inherently improper; but because a transaction between related parties could have an effect on the profit or loss and financial position of an entity, knowledge that such transactions have occurred or are contemplated can affect the assessment of risk by a potential investor. As a consequence, debt security trust deeds related to the creation and issuing of secured debentures, unsecured deposits and unsecured subordinated capital notes commonly contain covenants restricting dealings between related parties and/or requiring certain forms of disclosure. The Crown's guarantee scheme similarly imposed limitations on, and obligations concerning the disclosure of, transactions between related parties. I found that elaborate steps were taken by you – Mr Bublitz and Mr McKay – and others to circumvent the restrictions on related party lending in the Priority Finance trust deed. Those steps were taken both before and after the acquisition of Priority. They included Mr Wevers being the sole shareholder in the company that had effective ownership of what became Viaduct Capital Limited despite Mr Wevers having put no money into the company that was funded entirely by Mr Bublitz or entities under his control.

[10] The Crown's case against you concerned allegations of breaches of the Viaduct Capital trust deed, including by the failure to make disclosure of the true nature of the transactions both to the trustee for the debenture holders and to investors considering the March 2009 prospectus issued by Viaduct.

[11] Because of concern about the way in which Viaduct was being operated, particularly with regard to its transactions with entities within the Hunter Group, the

Treasury withdrew the Crown guarantee from Viaduct in April 2009. That led to a renewed tightening of Viaduct's cashflow to the extent that, by September 2009, Mr Wevers advised Mr Bublitz and Mr McKay that "drastic actions" were required and that serious consideration should be given to winding up Viaduct. When no such steps were taken, Mr Wevers resigned as a director of Viaduct and its holding company. Fifty-one per cent of the shares in the holding company, Phoenix, were transferred to Mr McKay and, Mr Blackwood, you were appointed a director of Viaduct in Mr Wevers' place.

[12] With serious liquidity problems then facing the Hunter Group and Viaduct towards the end of 2009, Mr Bublitz saw a solution in the acquisition of another finance company that had the benefit of the Crown guarantee, Mutual Finance Limited. Mutual was acquired by Mr Bublitz through one of the entities he controlled, and he became managing director. Remaining conscious of the limitation on related party transactions in the Crown guarantee, assurances were given to the Treasury by you, Mr Bublitz, that Mutual did not intend to purchase any Viaduct assets. You said that if such transactions were contemplated in the future an independent expert would be employed to assess the merits of any such transactions to ensure they were on arm's length terms. Over the ensuing months, however, Mutual purchased nearly $4 million worth of Viaduct loans and advanced over $470,000 to Hunter entities.

Approach to sentencing

[13] There are a number of purposes and principles which Parliament has said I must take into account in determining the appropriate sentences for the offending which I have found to be proved.[5] I regard the purposes of holding you accountable for the harm done to the community by your offending;[6] promoting in you a sense of responsibility for, and an acknowledgment of that harm;[7] and denouncing your conduct[8] as being particularly relevant. I recognise that it is unlikely that any of you would be in a position to offend like this in future and I accept that you represent low

5 Sentencing Act 2002, ss 7–8.
6 Section 7(1)(a).
7 Section 7(1)(b).
8 Section 7(1)(e).

risks of re-offending. But in cases such as this, deterrence must be a prominent factor among the sentencing considerations.[9]

[14] I acknowledge that relevant principles are the gravity of your offending, including the degree of culpability of each of you,[10] the general desirability of consistency,[11] and the need to impose the least restrictive outcome that is appropriate in the circumstances.[12]

[15] Adopting the standard approach to sentencing,[13] therefore, I must first set an initial starting point based on the characteristics of the offending, including its gravity, which is informed by sentences given in similar cases. Following that, I consider whether any of your personal circumstances justify an adjustment to the starting point, either through aggravating factors such as the number of offences committed, taking into account totality principles, and mitigating factors which include in this case the unusual circumstances of the two trials you have undergone leading up to this point.

Starting point

[16] The culpability of offenders convicted of dishonesty, particularly of the kind inherent in the theft charges on which you have been convicted, is to be assessed by reference to the circumstances and such factors as:[14]

(a) the nature of the offending, its magnitude and sophistication;

(b) the type, circumstances and number of victims;

(c) the motivation for the offending;

(d) the amounts involved;

(e) the losses;

---

9 Section 7(1)(f).
10 Section 8(a).
11 Section 8(e).
12 Section 8(g).
13 *R v Taueki* [2005] 3 NZLR 327 (CA); *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.
14 *R v Varjan* CA 97/03, 26 June 2003 at [22].

(f) the period over which the offending occurred;

(g) the seriousness of breaches of trust involved; and

(h) the impact on victims.

[17] In their submissions addressing the starting points by reference to the factors I have just mentioned, there are significant differences in approach by the Crown on the one hand and by your counsel. Whatever starting point is determined to be appropriate will be highly material to the outcome overall.

[18] Because of the differences between you in terms of involvement in the offending and in the overall operation of the Hunter, Viaduct and Mutual businesses, and the different charges on which you were convicted, the appropriate starting points for you will necessarily be different one from the other.

Nature of the offending, magnitude and sophistication

[19] The charges the three of you faced fell into two groups:

(a) those relying on alleged breaches of the Viaduct Capital trust deed; and

(b) those relying on alleged breaches of the Mutual Finance Crown guarantee.

An essential element of all of the charges was proof that Mr Bublitz was in control of the transacting entities so as to make the relevant transactions related party transactions.

[20] For the purposes of the charges relying on the Viaduct trust deed (particularly Charges 1 to 9), the definition of "control" in the trust deed was that found in the New Zealand accounting standard NZ IAS 24. I accepted, among other things, that the Crown was required to prove that Mr Bublitz was in control of Viaduct by reason of what was described by the Crown as "an abiding, secret arrangement ceding control" to him. For the reasons I explained at some length, I held that that element had not

been proved beyond reasonable doubt and that you were entitled to be acquitted on those charges.

[21] For charges 10 to 15, however, the relevant definitions of "control" were those in the Mutual Crown guarantee. Although I held that I could not be sure that control of Viaduct was ceded to Mr Bublitz by Mr Wevers and/or Mr McKay at any stage, under an agreement that gave him control in terms of the accounting standards, I was satisfied that Mr Bublitz had real or effective control of Viaduct at all relevant times when the terms of the Mutual Crown guarantee applied. I was satisfied that all of the elements of charges 10 to 15 were proved against each of the defendants who faced them, including findings that the transactions underlying charges 10 to 13 inclusive were undertaken in the knowledge that they were in breach of the Crown guarantee. On charges 14 and 15, against Mr Bublitz alone, I held that you deliberately withheld from potential investors disclosure of the related party transactions in the Mutual prospectus dated 3 March 2010 and the amended prospectus dated 28 April 2010.

[22] Theft by a person in a special relationship under s 220 of the Crimes Act 1961 is a serious charge carrying a maximum penalty of seven years' imprisonment. Your conviction on the theft charges follows my finding that the Crown had proved beyond reasonable doubt:

(a) that Mr Bublitz had control over Mutual's investors' funds;

(b) that he was under an obligation to deal with the funds in accordance with the restrictions on related party lending or other dealing in the Crown guarantee;

(c) that he knew of that obligation; and

(d) that he dealt with the funds in a manner that he knew and intended was in breach of it.

[23] The convictions entered against Mr McKay and Mr Blackwood on those charges involves findings that each of you:

(a) aided, abetted or assisted Mr Bublitz to steal the Mutual investors' funds by advising him which transactions should be made and assisting him to prepare the necessary documentation and carry them out; and

(b) that you did that intentionally knowing that the actions amounted to a breach of the related party restrictions.

[24] Charge 10 related to the purchase in two tranches by Mutual from Viaduct of the loan to a Hunter entity, Homebush Trustees Limited, which was undertaking a property development in Khandallah, Wellington. Mutual paid Viaduct a total of $495,000 for the loan and subsequently advanced Homebush a further $35,000.

[25] Charge 11 was based on the purchase of one of three $235,000 portions of a loan by Viaduct to an entity controlled by Mr Bublitz (Northgate) that was engaged in the development of land in Silverdale, Auckland. The circumstances of the other two purchases were the same in all material respects.

[26] Charge 12 was founded on the $200,000 purchase by Mutual from Viaduct of a loan to Hilltop Ridge Farms Limited, a Hunter entity engaged in a goat-farming project.

[27] Charge 13 was against Mr Bublitz and Mr Blackwood only and involved the making of a total of $204,444.61 in advances by Mutual to Hilltop.

[28] The Crown submits that the sums I have just identified do not reflect adequately the true scale of the deception and the breaches of the Mutual Crown guarantee. It submits that in all, across 16 transactions, Mutual purchased $3,923,365 in Viaduct Loans,[15] and advanced a combined sum of $243,444.61 to Homebush and Hilltop on the basis of six separate credit submissions. It also advanced $230,000 to NKE,[16] another Hunter entity, on 26 March 2010, a loan which Viaduct purchased from Mutual on 28 April 2010.

---

15 Verdicts and Reasons at [299].

16 NKE Trust Limited, the owner of a bare section of 120 ha in Helensville which Mr Bublitz planned to convert into a number of lifestyle blocks.

[29] Although Mr Lance, Mr Bradford and Mr Kilian have sought to minimise the scale of the offending by limiting it to the amounts directly involved, I accept Mr Johnstone's submission that while not all of the amounts just mentioned were essential to the verdicts on charges 10 to 13, it is appropriate that they be taken into account on sentencing as being relevant facts disclosed by the evidence at trial.[17]

[30] Charges 14 and 15, on which you alone have been convicted, Mr Bublitz, are the charges under the Crimes Act of making false statements as a promoter. They represent the means by which you dishonestly procured investment funds from members of the public by the issuing of a prospectus by Mutual on 3 March 2010 and an amendment dated 28 April 2010. In essence, the criminality found to be proved was the withholding from potential investors of the information that the investor funds subscribed on the basis of the offer were to be used, at least in part, to support Viaduct's business and the interests of the Hunter Group owned and controlled by you.

[31] I found that the prospectus was materially false in that it failed to disclose the breaches of the Crown guarantee that had occurred, particularly the prohibited related party transactions that were inherent in the purchase of the Homebush, Northgate and Hilltop loans and the subsequent advances to Hunter interests. I do not doubt that you were aware that if those transactions had been disclosed in the prospectus, the Treasury would have investigated with the result that the existence of the Crown guarantee was at great risk of withdrawal. That would have had an immediate detrimental effect for Mutual in the same way in which the loss of the guarantee had adversely affected Viaduct. The assertion in the prospectus that the Crown guarantee provided "a great deal of comfort" to investors was entirely misleading in those circumstances.

The scale of the offending overall

[32] The offending as a whole is said by Mr Johnstone to have been premeditated and sophisticated. It started in late 2008 and progressed from there. Although verdicts of not guilty were returned in respect of Charges 1-9, the defendants' conduct at these times show that they were operating "at the margins of legality". What may have started with a scheme in which the three of you were sailing close to the wind

---

17 Sentencing Act 2002, s 24(1)(a).

inevitably crossed the line into criminal behaviour. Once this began to happen, increasingly desperate and dishonest attempts were made to conceal the true nature of your activities. These ranged from the issuing of misleading prospectuses to misleading the Treasury. Overall, Mr Johnstone says that you targeted the Crown guarantee scheme, the purpose of which was to maintain the public's confidence in the financial system in order to "dig Mr Bublitz out of the manure"; he says that you intentionally and cynically flouted the related party restrictions imposed by that scheme for your own selfish purposes.

[33] On the nature of the offending, the core of Mr Lance's submissions for you, Mr Bublitz, is that I should determine the starting point by assessing only the transactions in respect of which you were found guilty. All other transactions and collateral findings should be put to one side, he submits.

[34] Mr Bradford adopts a similar position on your behalf, Mr McKay, in submitting that in assessing the seriousness of the offending, I should not rely on the evidence that I found had failed to prove that there was an "abiding, secret arrangement ceding control" of the finance companies to Mr Bublitz. He submits also that the verdicts I returned showed that the offending was not overly sophisticated and that your role within it was limited. Rather, Mr Bradford prefers to conceptualise the offending using an analogy I applied in the course of my reasons judgment: that of a taxpayer legitimately reordering his or her affairs to minimise the incidence of tax. The actual offending as proved by the verdicts were, Mr Bradford submits, "bare breaches" of the Crown guarantee which themselves were "desperate responses to exigent circumstances" and at the direction of Mr Bublitz. Moreover, he says that none of the transactions was hidden from the trustee. In this vein, Mr Bradford says that the definition of "control" for the purposes of a related party transaction in the latter group of charges defined your criminality. Your counsel argues that, given the lengths I went to in making the assessment, you could not have known for sure that your conduct fell on the wrong side of the law. This is particularly so, he submits, given that you were not privy to all relevant information. I observe that that submission comes close to a suggestion that you were not properly convicted which is not something I can take into account on sentencing.

[35] Appearing for you, Mr Blackwood, Mr Kilian points to what he says was your more limited role in the offending. He confines your involvement to:

(a) receiving emails from Mr McKay directing which transactions needed to occur in order to keep Viaduct afloat;

(b) attending various cash-flow meetings in which Viaduct's loan sales were discussed;

(c) signing or authorising false credit submissions that were intended to provide a façade of risk-analysis; and

(d) keeping Mr Lindsay Kincaid, a director of Mutual, onside and encouraging him to approve of transactions as required.

[36] Mr Kilian argues there was no evidence you were experienced in related party transactions or trust deeds, and notes that you were not appointed a director of Viaduct until September 2009; you also never had control over Mutual and did not owe its deposit-holders any fiduciary obligations through directorship. Although the overall scheme between the two finance companies was complex, your counsel submits that your role in that structure was not.

The motivation for the offending

[37] Mr Johnstone submits that collectively your offending was motivated by the "need to save Mr Bublitz's investment in the Hunter Group entities". He says that Viaduct, and later Mutual, were purchased in essence to operate as Mr Bublitz's private bank. In this way, the offending was for his personal gain. Mr Johnstone points to your being paid directors' fees and being made beneficiaries of the trust on behalf of which Mutual's shares were owned. He says that if Mr Bublitz's investments were saved, each of you, Mr McKay and Mr Blackwood, stood to gain personally.

[38] Mr Bradford submits, however, that you stood to gain nothing, or at most very little, from the offending, Mr McKay. While you may have been appointed a discretionary beneficiary of the Mutual trust by Mr Bublitz, this was nothing more

than a "carrot" with little prospect of actual benefit. Mr Bradford has also provided the Court with evidence representing Viaduct's financial details, which is said to show that the proceeds from the loan sales to Mutual were applied to pay creditors, depositors, staff and to repay the overdraft. He says there was therefore no personal benefit derived by any of the defendants from the actual offending. Mr Bradford says that you were not seeking to line your pockets, Mr McKay, and he reminds me that, in fact, you took a pay-cut in May 2009.

[39] Mr Kilian argues, Mr Blackwood, that there is nothing in the evidence to suggest that you received any financial benefit from your offending other than a commission for the loans you introduced as stipulated in your contract.

[40] While I acknowledge that the Crown failed to prove that Mr Bublitz had control of Viaduct in terms of the related party definition that applied to charges 1 to 9, and that those charges were dismissed accordingly, it is unrealistic to ignore the significance of the plan devised at the Pauanui meeting in January 2009, and the extent of the concealment of Mr Bublitz's close involvement with Viaduct from the earliest stages. The major difficulty with the proposal to acquire a finance company that was subject to limitations on related party transactions was identified at an early stage by Mr McKay.[18] The company structure for the acquisition of Priority Finance was intended to conceal Mr Bublitz's real ownership of and investment in what became Viaduct Capital from inception.[19] The investors in Priority could never have known that on the first working day after Priority was acquired, their funds would be used to relieve Mr Bublitz's Hunter Group of the liabilities involved in the Viaduct Harbour Avenue premises and plant and equipment, without objection from the new directors of the finance company, notwithstanding that the Hunter Group continued to use those resources. That relatively minor arrangement demonstrated the mindset of you, Mr Bublitz and Mr McKay, along with Mr Chevin and Mr Wevers, which was to take decisions about the operation of Viaduct which, whenever it was relevant, usually if not always put the Hunter Group's interests ahead of those of Viaduct and its investors.

---

18 *R v Bublitz* [2019] NZHC 222 at [17].
19 At [21] and [22].

[41] Notwithstanding that Mr Bublitz did not have control of Viaduct in terms of the accounting standards, as the Crown had to prove to succeed on charges 1 to 9, the setup and implementation of the Pauanui plan was founded on the concealment of the extent of Mr Bublitz's interests and those of the Hunter Group from the trustee for the Viaduct debenture holders, the Treasury officials and Viaduct's investors throughout. Numerous examples of Mr Bublitz's intention to deceive can be found in the arrangements he made for associates to "front" the true ownership of Hunter entities.

[42] I held that it was open to infer from the evidence that the arrangements were analogous to steps taken by a taxpayer to re-order his or her affairs to minimise the incidence of tax.[20] The observations I have just made do not indicate any departure from that view. The point made in my reasons was that the arrangements were a response to the identified need to structure the finance company's affairs and its relationship with the Hunter entities so that the related party restrictions would not be breached. I found that, at that time, Mr Bublitz did not have control of Viaduct in terms of the accounting standards. Nevertheless, I have found[21] that the concealment of Mr Bublitz's true involvement from investors who read the March 2009 prospectus for Viaduct was deceptive and misleading, and that Mr Bublitz and Mr McKay misled Treasury officials when they were notified of the intention to withdraw the Crown guarantee from Viaduct.

[43] Defence counsel have understandably referred to my observation[22] that I was prepared to accept that Mr McKay may not have set out to act dishonestly in February 2009. I need to explain that view. As the context makes clear, I was referring to my conclusion that the Crown had not established beyond reasonable doubt that Mr McKay knew, over the period covered by the first nine charges in the charge sheet, that the activities of Viaduct were being conducted in breach of the related party restrictions in the Viaduct trust deed. But that does not mean that his involvement in the operation of Viaduct's business did not amount to a gross dereliction of his duties as a director, favouring Hunter Group interests over those of Viaduct and the investors to whom it owed duties of care. It was in the narrow sense of knowledge that the

---

20 At [195].
21 At [235].
22 At [303].

related party restrictions were to be, and were actually being, breached that I found it possible that Mr McKay may not have set out to act dishonestly when the finance company was first acquired, and made the observation quoted.

[44] The point of my comments about Mr McKay's credibility was to explain that from the date of the acquisition of Mutual Finance in December 2009, however, Mr McKay knew and intended that the related party restrictions under the Mutual Crown guarantee would be breached in order to further the Hunter Group's interests, and at the expense of both Viaduct's and Mutual's investors if need be. It was in that context that I referred to Mr McKay's own observations about the way in which the affairs of the companies were being conducted, using the expression "digging Mr Bublitz out of the manure" as a euphemistic reference to Mr McKay's scatological expression.

[45] It follows that I accept the Crown's proposition that, although the offending under s 220 of the Crimes Act of the theft of Mutual investors' funds occurred in the relatively short period between 25 January 2010 and 4 June 2010, it was the almost inevitable consequence of a pre-determined and sophisticated plan to mislead and deceive the trustee, the Treasury and the finance companies' investors. That was an approach which, as I have said, was adopted in January and February 2009 and applied throughout. It follows, therefore, that I accept Mr Johnstone's proposition that between January and December 2009 your conduct involved operating "at the margins of legality" and that sailing so close to the wind meant that it was almost inevitable that, as the Hunter Group's prospects deteriorated, you would inevitably cross the line into criminality.

Culpability

[46] As to the culpability of each of you, relative to other cases and particularly to each other, it is clear to me that Mr Bublitz, as the person who stood to lose from the failure of the entities engaged in the projects being carried out by the Hunter Group, was the prime mover and instigator of the plan to use one or more finance companies to fund Hunter Group activities. I have found that you had real or effective control over Viaduct throughout, Mr Bublitz, even though it was not sufficient to make you

and the other defendants guilty of the charges founded on the Viaduct trust deed. Although you did not give evidence, it is clear to me from the tone and content of the numerous memoranda and email exchanges I have read, that you have a strong and forceful personality. As I found, nothing was done that was contrary to your wishes or that was not, in most cases, approved by you. You stood to gain most from the successful use of the investor funds in both finance companies and, conversely, you were the most at risk if the scheme failed. I rate your culpability as significantly higher than that of the other defendants.

[47] Mr McKay, you were the principal architect of the scheme, being a knowledgeable and capable manager. You were the person, above all others, who was intimately acquainted with the often-precarious positions in which the Hunter entities, Viaduct and Mutual were placed from time to time during the relevant period. I accept that your engagement did not provide lucrative benefits for you, although you would have gained something if Mutual had operated successfully after it was acquired by Mr Bublitz. I accept also that you were subject to Mr Bublitz's dominant personality and to his effective control. I place your culpability, therefore, as being somewhat lower on the scale than that of Mr Bublitz.

[48] I regard your culpability, Mr Blackwood, as being somewhat less than that of Mr McKay. But you worked closely with Mr McKay, Mr Bublitz and the others engaged in the enterprise and I have held that you were deeply involved in the acquisition process for Mutual. You were also closely involved in the conduct of the affairs of Viaduct and Mutual after the December 2010 acquisition. I have held that, along with Mr McKay, your incitement and assistance in the transactions by which Mutual purchased nearly $4 million in Viaduct loans was manifest.[23] You may not have prepared all of the credit submissions intended to provide a façade of analysis about the risks involved but I have found you must have known about and authorised the others; that you undertook the task of keeping Mr Kincaid on side and encouraging him, to the extent that his approval was sought for any Mutual transaction, to agree.

---

[23] Reasons Judgment at [299] and [300].

The victims, the amounts involved and the losses

[49] Mr Kilian submits that the losses attributable to your offending, Mr Blackwood, amount to no more than $1.1 million. Mr Bradford calculates that the losses flowing from the three offences you committed, Mr McKay, amounted to $930,000, although the net losses were somewhat lower, just over $500,000.

[50] Mr Lance resists the suggestion that you should all be held accountable for the wider failings of Mutual. The theft charges on which Mr Bublitz was found guilty alleged only that particular loans were unlawful due to the participation of related parties or the exceeding of certain limits. Mr Lance says that Mutual's purchase of these loans did not put it into receivership or otherwise cause its collapse; nor did it expose the Crown to any further risk of loss, simply because all that had happened was the transfer of funds from one government-guaranteed depositor to another. The underlying loans were made in 2009 by Viaduct and were considered legitimate at the time. The repayment risk was dependent on the economic circumstances that prevailed at the time when the loan fell due to be repaid. Moreover, Mr Lance says that over $900,000 of the loans were repaid by the borrowers, leaving only just over $300,000 unpaid.

[51] As for the loan made directly to Hilltop by Mutual, the subject of Charge 13, Mr Lance says the funds advanced were used primarily to pay the wages of Hilltop's employees, and no personal benefit accrued to any of the defendants. The funds to which the charges relate were not used to "dig Mr Bublitz out of trouble" as suggested by the Crown. Further, he says there is no evidence of any impact on the victim – that is, the Crown and that the losses it has suffered are minimal.

[52] I do not accept the narrow approach to the extent of loss adopted by defence counsel. Upon Mutual's collapse, the New Zealand taxpayer bore the loss. The Crown initially paid out over $9 million to Mutual's secured debenture holders, and Mr Johnstone says that approximately $3.38 million of that amount remains unrecovered.

[53] As to the scale of the offending, the Crown makes the following calculations:

(a) The offending in respect of Charges 10 – 12 saw Mutual purchase $3.9 million in loans from Viaduct in breach of the Crown guarantee.

(b) The offending in respect of Charge 13 saw Mutual lend $208,444.61 to Hilltop.

(c) The prospectuses that were the subject of Charges 14 and 15 saw investors subscribe to approximately $4.88 million of Mutual's secured debenture stock.

[54] The scale of the offending, therefore, was significant. Although the offences for which you have been convicted occurred only in the space of just over three months, the deceptive and misleading activity which led to your convictions covered more than a year.

Breaches of trust

[55] Mr Lance argues that there is no breach of trust beyond that which is inherent in the charge; none of you is a solicitor, and none of you holds any other such position of special responsibility. That is true, but the plan that was implemented involved the exploitation of investors who were entitled to expect that assurances given in the context of public offerings to hold funds according to carefully constructed rules would be met. I accept the propositions by Mr Johnstone that you promoted yourself to investors, Mutual's trustee and the Treasury as an honourable and effective businessman, Mr Bublitz, including the claims you made in prospectuses about the performance of Mutual. I have accepted, Mr McKay and Mr Blackwood, that you acted in gross dereliction of your duties as directors of Viaduct through your involvement in Mutual.

Setting the staring points

[56] Mr Johnstone says that against the background I have just canvassed the appropriate sentencing starting points are as follows:

(a) for Mr Bublitz, five to six years' imprisonment for the offending under s 220 – that is the theft charges, uplifted by a further 12 to 18 months for the offending in respect of the prospectuses;

(b) for Mr McKay, four to five years' imprisonment; and

(c) for Mr Blackwood, three to four years' imprisonment.

[57] The Crown submits that, in sentencing you, I should have particular regard to the need to hold you accountable for the harm you have done to the community and to promote in you a sense of responsibility for what you have done.[24]

[58] Mr Johnstone points to a number of aggravating factors:[25]

(a) Planning and premeditation – although you may not have set out to act unlawfully, the blueprint for a plan that would push the margins of legality was formed at Pauanui in January 2009. Mr Bublitz and McKay established fronts, warehousing and off-balance sheeting as part of a general scheme to purchase a finance company that enjoyed the benefit of the Crown guarantee scheme in order to rescue Mr Bublitz's failing investments. The plan was sophisticated, as were the attempts to conceal it. It is submitted that in April 2009, Mr McKay lied to PwC and the Treasury about the extent of the relationship between Viaduct and the Hunter Group. From that point, the dishonesty progressed to include the backdating of capital notes redemption notices and the preparation of artificial credit submissions and false invoices.

(b) He points to the abuse of positions of trust.

(c) As to quantum, he says that while the amount of direct and indirect losses is not necessarily a true measure of criminality, it is nevertheless

---

24 Sentencing Act 2002, s 7(1)(a) and (b).

25 Taken from *R v Varjan* CA97/03, 26 June 2003 at [22]; endorsed by the Court of Appeal in *Tallentire v R* [2012] NZCA 610, [2013] 1 NZLR 548 at [179].

relevant.[26] Mr Johnstone points to the amounts to which I have referred. He says that in April 2010, 37 percent of Mutual's total assets were applied to related party dealings and that that is an indicator of the true purpose of Mutual's acquisition.

(d) Referring to decreased confidence in financial markets, Mr Johnstone argues that although individual investors did not bear the cost of your offending, it nevertheless "calls into question the wisdom of investing in the finance industry generally" and "brings the… industry as a whole into disrepute".[27] He says the fact that you targeted a company with the Crown guarantee and set out to defraud the scheme should be seen as a significant aggravating factor.

(e) Mr Johnstone submits that the offending was motivated by personal gain and that it was a cynical, uncommercial and driven attempt motivated by the desire to rescue Mr Bublitz and the Hunter Group to save them from a perilous financial position. Messrs Blackwood and McKay also sought, the Crown says, to benefit personally as beneficiaries of the Mutual trust.

[59] As for mitigating factors, Mr Johnstone points to the fact that none of you has offered any reparation. He says the fact that you obtained professional advice along the way cannot assist you.[28] The scope of the advice you received was limited and was undermined by your failure to disclose all material information. Further, despite recoveries being made by the Crown after distributions made by Mutual's receivers, its losses are likely to be approximately $3.38 million. The extent to which recovery should be seen to be a mitigating factor is therefore limited.

---

26 *R v Sullivan* [2014] NZHC 3201 at [27].
27 *R v Douglas* [2012] NZHC 2271 at [93(j)].
28 *Tallentire v R* at [182].

Other cases

[60] Mr Johnstone substantiates his suggested starting point by reference to a number of cases.[29]

[61] *Tallentire v R* – the defendants were directors of Capital + Merchant Finance. Messrs Douglas and Nicholls were each 50 percent shareholders in Capital + Merchant and Mr Tallentire was a 100 percent shareholder in a related company. Capital + Merchant's investors had invested $167 million in secured debenture stock. As a result of the defendants' management of the company, at the time of sentencing investors were at risk of losing all of their investments. Mr Douglas and Mr Nicholls lent $7.6 million to Capital + Merchant's parent company which was controlled by them to enable it purchase a finance company and, in effect, Mr Nicholls to purchase a house in Omaha. Two subsequent transactions, for which all defendants were convicted, involved loans to enable Mr Tallentire to purchase Capital + Merchant from Messrs Douglas and Nicholls. The first was a $7.7 million loan and the second was a $5 million loan. The Court of Appeal upheld "stern sentences" imposed by Wylie J, with starting points of six years for Mr Tallentire and eight-and-a-half years for Mr Douglas and Mr Nicholls.

[62] *Ludlow v R* – Mr Ludlow was a shareholder and director of National Finance. At its receivership, investors had subscribed to debenture stock totalling over $21 million. After recoveries, the losses were estimated at $14 million. Mr Ludlow's offending involved the theft of $3.7 million in investor funds over the course of 19 months, deliberate concealment and the defendant's direct benefit of approximately $1.7 million. He issued one prospectus which contained 10 untrue statements, including the failure to disclose related party transactions. The Court of Appeal upheld the starting point of six years and six months imposed by the District Court and a further 18 months added for the breaches over the prospectus by the High Court.

[63] *R v Hamilton* – Mr Hamilton's offending arose from his involvement in Belgrave Finance Ltd, the collapse of which cost investors $12.5 million. Belgrave

---

[29] *Tallentire v R*; *Ludlow v R* [2013] NZCA 196; *R v Hamilton* [2015] NZCA 28; *R v Cropp* [2013] NZHC 1193; *R v Sullivan*.

sought to distinguish itself by representing that it undertook no related party lending. Mr Hamilton was a lawyer who helped set up trust structures which he knew would be used to conceal related party transactions. He later drafted loan documents that breached the applicable trust deed. He was not involved in the loan approval process, had no control over Belgrave's funds and had no knowledge of the company's financial position or offer documents. He received no financial benefit besides legal fees. The Court of Appeal described the starting point of five years, arrived at by Faire J, as "unassailable".[30]

[64] *R v Cropp* – Mr Cropp was the CEO of the Dominion Finance group of companies. His offending related to four related party transactions entered into over the course of around a month. These transactions resulted in net losses of around $700,000 and $8.4 million to Dominion and one of its subsidiary companies respectively. The offending involved a degree of concealment on Mr Cropp's part but involved limited premeditation and derived for him no direct financial benefit. Lang J adopted a starting point of three years and four months' imprisonment.

[65] *R v Sullivan* – Mr Sullivan was one of the South Canterbury Finance directors convicted in *R v Sullivan*. While he was sentenced on the basis that his statements were dishonest and deliberate, in that he failed to disclose related party transactions, Heath J found that he had no motive of personal gain, and did he achieve any. The Judge held also that there was no quantifiable loss attributed to Mr Sullivan's actions and a starting point of three years and six months' imprisonment was adopted.

[66] The amounts involved in your offending are generally less than the cases I have just referred to. But as a proportion of Mutual's total assets, your offending is considerably worse, according to Mr Johnstone. He also points to the fact that you targeted a finance company with the express intention of treating it like a bank and that you therefore engineered the opportunity to offend in furtherance of personal gain, at least for Mr Bublitz. Much of the offending I have described above did not lead to any benefit or involved the exploitation of existing opportunities rather than the deliberate creation of them.

---

30 At [23].

Parity with Mr Chevin

[67] Mr Johnstone further refers to the sentence handed down to Peter Chevin, one of your co-offenders. Following a sentence indication given on the basis of a comprehensive summary of agreed facts, Woolford J adopted a starting point of two years and nine months' imprisonment.[31] But Mr Johnstone says the principle of parity should be given limited weight because it is now clear that the sentence handed to Mr Chevin does not reflect his true criminality. His sentence, therefore, should not have much bearing on my assessment. That is because:

(a) Mr Chevin was sentenced on the basis that he was wilfully blind as opposed to knowing that Mutual's acquisition was undertaken in full contemplation that doing so would breach the Crown guarantee.

(b) Mr Chevin was sentenced on the basis of nine discrete thefts totalling $2,280,000 as opposed to the full scope of your offending, which I have detailed.

(c) Woolford J was not made aware of the fact that Mr Chevin was a beneficiary of the Mutual trust and therefore stood to gain personally from his offending.

[68] As for Mr Bublitz's offending in relation to Charges 14 and 15, Mr Johnstone says that ordinarily this would attract a starting point in the vicinity of four years. He therefore seeks an uplift of 12 to 18 months. The representations repeated in the prospectuses were significant, he submits, contributing to public investment of significant funds in Mutual that later required Crown investment.

Mr Bublitz's submissions

[69] Mr Lance presses for a significantly lower starting point for you, Mr Bublitz. He says two to three years is appropriate. In Mr Lance's submission, there is no need to uplift this starting point for the prospectus offending.

---

31 *R v Chevin* [2017] NZHC 285

[70] Specifically, Mr Lance takes issue with the Crown's submission that you sought to purchase the two finance companies with the aim of operating them as your private bank. He says this was not a necessary inference from my judgment. He points to my comments that there is nothing inherently improper about acquiring a finance company to provide access to its investors' funds.[32] In this vein, Mr Lance argues that only 28 percent of Viaduct's loan book related to Hunter Group entities; and it would wrong, therefore, to characterise its operation as your private bank.

[71] Overall, Mr Lance says that the starting point sought by the Crown lacks objectivity. More, it offends the principle of parity, being over twice as high as that adopted in respect of Mr Chevin. In respect of Mr Chevin's sentence, Mr Lance points out:

(a) Mr Chevin was sentenced on nine charges under s 220; and that, Mr Bublitz, you were found guilty only of four.

(b) The total value of the transactions in Mr Chevin's case was $2,280,000; and for you, Mr Bublitz, it is $1,221,000.

(c) Mr Chevin never invested any of his own money in the venture; the evidence shows that you, Mr Bublitz, lost well over $2 million of your own money trying to rescue the situation.

(d) Although Mr Chevin was sentenced on the basis of being wilfully blind, Woolford J considered that he was substantially involved in the operations and referred to him as a de-facto director. Mr Lance says there is little difference between this assessment and your knowledge, Mr Bublitz. Mr Chevin was also involved in the scheme from the outset, attending the meeting at Pauanui.

[72] Mr Lance submits that Mr Chevin had previous convictions; but, in my view, that must be relevant only to an aggravating factor and not the starting point.

---

[32] *R v Bublitz* at [213].

[73] Mr Lance says that the starting point I should take for you, Mr Bublitz, should be similar or somewhat less than the starting point of two years and nine months' imprisonment adopted by Woolford J for Mr Chevin, given the lesser number of charges and the lower value of the transactions. He says the Crown's efforts to distance itself from Mr Chevin's sentence should not be allowed. The sentence must have been accepted as adequate, Mr Lance submits, otherwise it would have been appealed. Further, the other cases referred to by the Crown[33] are not of great assistance due to the varying quanta of funds and the scale of offending involved.

[74] As for the prospectus charges, Mr Lance says these were the "weaker" charges at trial and should not be seen as aggravating your offending in any way. The prospectus noted that the Crown guarantee was set to expire on 12 October 2010 and there is no evidence to substantiate the Crown's claim that the public investment of $4.88 million in Mutual was brought about as a result of your misleading statements in the prospectus.

Mr McKay

[75] Mr McKay: Mr Bradford presses for a starting point in the vicinity of two years' imprisonment for you. Like Mr Lance, Mr Bradford places emphasis on the principle of parity and the sentence handed down to Mr Chevin, whose culpability, he says, is significantly higher than yours. Mr Bradford says that your starting point should be informed by that adopted for Mr Chevin, and any suggestion by the Crown that Mr Chevin's starting point was unjustifiably low should be disregarded out of hand.

Mr Blackwood

[76] Like Mr Bradford, Mr Kilian says that you were much less culpable than Mr Chevin, Mr Blackwood, and that you should be sentenced accordingly. He suggests a starting point of less than two years' imprisonment for you.

---

[33] See [61]-[65].

Discussion and determination of starting points

[77] In setting the starting points, I have had regard to the starting point adopted by Woolford J for Mr Chevin, but I do not consider it to be particularly helpful. Mr Chevin pleaded guilty and was sentenced on a different basis including, importantly, the view that he was guilty of wilful blindness rather than deliberate dishonesty. That places his offending in a different category from yours. Moreover, I am inclined to think Woolford J might have taken a different view of Mr Chevin's involvement if he had heard the evidence given at the trial before me. But, bearing in mind the provisions of s 8(e) of the Sentencing Act about consistency, and recognising that it is more appropriate to take into account Mr Chevin's sentence than those imposed in entirely different cases, I have adopted starting points that are somewhat lower than might otherwise have been the case.

[78] Mr Bublitz, I regard your culpability as having some similarity to those of Mr Tallentire and Mr Ludlow in their respective cases; but given the nature of the theft charges on which you were convicted, and the amounts involved, the starting point for your offending should be pitched at a slightly lower level. For the reasons Mr Johnstone has given, and taking account of the Chevin factor, I consider a starting point of four years and six months' imprisonment on the theft charges to be appropriate. I also accept there should be an uplift for your convictions on the prospectus charges because they involved offending of a different nature, namely seeking further funds from the investing public. I add an uplift of nine months' imprisonment for that offending, making the overall starting point one of five years and three months' imprisonment.

[79] Mr McKay, you were a secondary party to Mr Bublitz's offending and acting under his influence and direction; but you were the architect of the plan devised at Pauanui and closely involved on a daily basis. I accept that there was no real personal gain for you and that you were convicted on only three charges. Your case has some similarity to that of Mr Hamilton, but he was a lawyer and the losses in that case were greater. Accordingly, I fix a starting point for you of three years and three months' imprisonment.

[80] Mr Blackwood, you had no involvement in setting up the scheme and like Mr McKay you did not stand to gain much, if anything, personally. You were also under Mr Bublitz's influence, but you embraced the activities I have found unlawful and played an instrumental part in them, knowing that you were acting unlawfully. I take a starting point of two years and nine months' imprisonment for you.

Delay

[81] I regard the delay in reaching this point, which is more than ten years since the acquisition of Priority Finance, and the fact that you were convicted after a second trial, as being significant mitigating factors.

[82] After investigations by the Serious Fraud Office and Financial Markets Authority, you were charged on 11 March 2014 and you first appeared in the District Court at Auckland on 7 May 2014 around four years after the collapse. A 12-week trial in the High Court was set down for 9 February 2016.

[83] An application by Mr Bublitz to have the trial adjourned was granted on 11 November 2015[34] and the trial was re-scheduled to 8 August 2016. After nine months of hearing, however, it was aborted by Woolford J on 10 May 2017 due to breaches of the Criminal Disclosure Act 2008.[35]

[84] An application to stay the proceeding was made but declined by Lang J on 18 September 2017.[36] A new trial was set down for 16 July 2018, to occupy 19 weeks. That was delayed until 13 August 2018. After the trial verdicts were delivered on 5 February 2019, with reasons following on 21 February 2019.

[85] The Crown recognises that undue pre-trial delay should be met with a reasonable and proportionate reduction in sentence.[37] The right to trial without undue delay is directed to the time that elapses between arrest and final disposition.[38]

---

34 *R v Bublitz* [2015] NZHC 2799.
35 *R v Bublitz* [2017] NZHC 1059.
36 *R v Bublitz* [2017] NZHC 2251.
37 *Williams v R* [2009] NZSC 41, [2009] 2 NZLR 750 at [18].
38 New Zealand Bill of Rights Act 1990, s 25(b); *Williams v R* at [10].

Whether delay is undue is determined by reference to time, cause and circumstance.[39] The Crown says that in this case, and having regard to caselaw,[40] that discount should be no more than 15 percent. The delay caused by the disclosure-related breaches delayed the trial's conclusion by one year and 11 months at the very most. In addition, your liberties were not restricted during this time as each of you was remanded at large.

[86] The Crown also concedes that you should receive an additional, modest discount on account of the steps you took to shorten the proceeding after the first trial was aborted. Specifically, you agreed that the evidence of one witness could be read and that evidence of nine witnesses from the first trial could be admitted by consent. The Crown estimates that this saved eight to nine sitting-days. In these circumstances, it is prepared to accept that you should receive a further modest discount.[41]

[87] Defence counsel take a different view. Mr Lance seeks a discount of 12 months, Mr Bublitz, (amounting to 50-66 percent of his suggested starting point). Mr McKay, an aggregate discount of 40 percent in combination with other factors is sought on your behalf. Mr Blackwood, Mr Kilian seeks a discrete discount of 40 percent for you.

[88] The general position adopted by defence counsel is that delay caused by the aborting of the first trial caused all of you financial strife and emotional hardship. In addition, it is said for you that the unnecessarily detailed approach the Crown took to prosecuting the first trial contributed to this delay. Specifically, counsel point to:

(a) the Crown calling 36 witnesses;

(b) the principal witness, Mr Jason Weir, filing a 500-page brief and giving evidence-in-chief over approximately six weeks;[42] and

---

39 At [12].
40 *Williams v R*; *R v Smail* [2011] NZCA 403; *R v McKinley* [2018] NZHC 601.
41 *Bidois v Police* [2017] NZHC 589.
42 Rather than read his evidence, Mr Weir was told by Crown counsel to put his main and supplementary briefs to one side. There was no notice to or discussion with defence counsel about this approach.

(c) the Court having to dismiss charges for administrative purposes and upon successful applications under s 147 of the Criminal Procedure Act 2011.

[89] The more streamlined approach taken by counsel in the trial before me is said to show that the original prosecution was not carried out efficiently. The Crown's witness list in the trial I conducted was reduced to 16 (only five of whom gave oral evidence) and Mr Weir's brief was pared back from over 500 pages to 32 pages. None of the delays or inefficiencies that characterised the first trial was brought about by the defence, nor was its eventual abandonment. Rather, the defence say that the fault lies with the Crown. Woolford J described the disclosure failure as "an extreme example of a procedural failure".[43] You say you should receive discounts accordingly. As to quantum, it is pointed out that the Supreme Court in *Williams* described a discount of approximately 25 percent as "generous";[44] but your counsel say that this is an egregious case due to the delay being brought about directly by the Crown's error. They say that this mandates a higher discount.

[90] Mr Bradford submitted that, since being charged, you have spent 1,825 days with the prospect of imprisonment hanging over your heads. That must have been, I accept, a constant and draining burden. Long delays to trial are inherent in complex fraud cases involving vast quantities of documents. I accept that some of the evidence given orally at the first trial or submitted by written statement was material to and used for the purposes of the second trial. That means that the time occupied by the giving of that evidence at the first trial was not wasted. Nevertheless, it is clear that the inordinate length of the first trial, culminating in its abandonment because of substantial failures on the part of the Crown or its agents, had a devastating effect on each of you. You have each suffered serious financial harm as a result of the cost of defending yourselves, to the extent that that was not supported by the legal aid scheme. In your case, Mr Bublitz, I understand the loss to be something of the order of $1 million. You each recovered only a very small amount of your actual cost in the award of costs by Woolford J.

---

43 At [72].
44 At [22]; a similar discount was allowed in *Burton v Police* [2017] NZHC 664.

[91] The real cost that I consider should be factored in, however, is the debilitating effect of being on trial, in the public eye, and on matters going directly to your occupations and business opportunities, over what must have seemed an interminable nine months. I do not think the harmful psychological effect of such a long and intense criminal fraud trial should be underestimated. I do not need to explain publicly what information has been provided to me about the medical and emotional effects of the first trial and the continuing criminal prosecution on each of you. But I have given careful consideration to the material you have put before me and I intend to take it into account to the fullest extent I consider reasonable.

[92] I take into account as well that the Crown started out with a great number of charges against you, the result of which has been that you have been convicted of only a handful. The circumstances of this proceeding overall are highly unusual, if not unique, and the approach I take does not indicate any precedent for other cases; every such consideration turns very much on its own facts.

[93] I am satisfied that there has been a significant punitive element in the way in which this criminal prosecution has been undertaken, without ascribing blame or responsibility to anyone. I regard that as being appropriately recognised as a mitigating factor on sentence by reducing the appropriate sentences by 30 per cent from the starting points I have identified.

Personal circumstances

[94] Each of you has filed a number of references from friends and people in the business community that testify to your good character. I have read them all and taken them into account. The Crown acknowledges that none of you has any previous convictions and that each of you is entitled to a discount for previous good character.[45] But I accept that that this should be limited, as the offending in this case was not the result of momentary lapses of judgement in otherwise unblemished careers.[46] Rather, the offending was calculated.

---

45 Sentencing Act 2002, s 9(2)(g).
46 *Hamilton v R* [2015] NZCA 28 at [28].

[95] Mr Bublitz: you say that you are genuinely remorseful, as evidenced in the pre-sentence report as well as by your affidavit. The investigations and trials have generated substantial publicity which has effectively destroyed your career. This is a career you have been building since you were 18 years old. It has now been nine years since you offended. Your good behaviour since that time is said to be evidence of your rehabilitation.

[96] Mr McKay: you say that your offending, which took place over a three-month period in early 2010, was an aberration. Other than that conduct, you have been a model citizen.

[97] Mr Blackwood, you say much the same. You have also filed evidence as to the impact these criminal proceedings have had on family members and I have taken that into account.

[98] It is not always easy in cases such as this to distinguish between genuine remorse and a sense of regret and self-concern about the consequences of having been convicted on serious charges and facing the prospect of imprisonment. None of you displayed any real appreciation of the extent to which the way you conducted yourselves, particularly after the acquisition of Mutual, involved deliberate dishonesty motivated only by a determination to rescue the Hunter Group if that was possible. None of you showed any consideration for the interests of the investors at the time of your offending. I accept, however, that it is not always easy to demonstrate remorse while running defences that were properly open to you.

[99] I do accept, however, that until this investigation and prosecution, you were each a man who had conducted yourself in business for many years without running foul of the criminal law. While the consequences for members of your family must rest heavily on your shoulders alone, I accept that those consequences, the distress of family members and the damage done to relationships, is directly personal to each of you. You are ruined financially; you have little or no prospect of successfully reinstating your careers, despite the support of loyal friends and family members, and the consequences of conviction alone are significant for each of you.

[100] I also acknowledge the co-operation your counsel and you made to the efficient running of the trial I conducted.

[101] In those circumstances, I consider it appropriate to apply a further discount of 10 per cent from the starting point to recognise your previous good character, some remorse and your co-operation.

[102] That means that I will apply a discount of 40 per cent to the starting points.

[103] The consequences of those discounts for you, Mr Bublitz, is that from a starting point of five years and three months, or 63 months, the application of a discount of 40 per cent reduces your sentence to one of three years and two months' imprisonment.

[104] For you, Mr McKay, a starting point of 39 months with a reduction of 40 per cent, or 16 months, reduces the sentence to one of 23 months' imprisonment.

[105] For you, Mr Blackwood, a sentence of 33 months' imprisonment reduced by 40 per cent, or 13 months, produces a sentence of 20 months' imprisonment.

[106] Mr McKay and Mr Blackwood, you are both eligible for sentences of home detention. I have considered very carefully whether, given the circumstances of your offending overall, I should decline to impose such sentences and imprison you for the periods which result after the considerations I have just mentioned. I have decided, in the end, that I must give weight to the important injunction in the Sentencing Act that I should impose the least restrictive sentences that are appropriate in the circumstances, and I have regard to the acknowledgement by the appellate courts that home detention is not an easy option.[47]

[107] Mr McKay, Mr Blackwood and Mr Bublitz, would you please stand.

[108] For the reasons I have given, I sentence you, Mr McKay, to home detention for a period of 12 months on each charge, to be served concurrently. That sentence shall be served at the address set out in the probation officer's provision of advice to the

---

[47] *Fairbrother v R* [2013] NZCA 340 at [30].

Court. You shall travel directly from Court to the home detention address once the process of release has been completed here, and there you will wait for the electronic monitoring connection to be completed. You must not leave that address without the written approval of a probation officer. You must not engage in any paid, unpaid or voluntary employment or work, without the prior written approval of a probation officer. If directed, you shall attend and complete any programme or treatment to the satisfaction of a probation officer.

[109] Mr Blackwood, I sentence you to a period of nine months' home detention on each charge, to be served concurrently. The sentence shall commence on Friday, 29 March 2019 and be served at the Christchurch address set out in the probation officer's provision of advice to the Court. Because that address is out of Auckland, it will take longer for the appropriate detention arrangements to be put in place than it will for Mr McKay, but you should go to the address by the most direct means possible by arrangement with the Probation Service. Once you arrive at the address, you shall wait for the electronic monitoring connection to be completed. You must not leave the address without the written approval of a probation officer nor undertake any paid, unpaid or voluntary employment or work without the prior written approval of a probation officer. If directed, you shall attend and complete any programme or treatment to the satisfaction of a probation officer. I encourage the Probation Service to have regard to the humanitarian issues surrounding your detention in Christchurch and I invite full consideration being given to appropriate measures to enable you to continue to contribute to your son's upbringing.

[110] Mr Bublitz, you are not eligible for home detention. In the circumstances, I sentence you on each charge to a period of three years and two months' imprisonment, the terms to be served concurrently. For humanitarian reasons related to your father's illness, that sentence shall start on 27 May 2019.[48]

[48] Sentencing Act, s 100(1)(a).

[111] You may all stand down.

.....

Toogood J