COSTS REGARDING PwC AND Mr DONNELLY.

REPORT BY THE DISCIPLINARY TRIBUNAL TO THE BOARD OF THE ACCOUNTANCY INVESTIGATION AND DISCIPLINE BOARD.

1. The Tribunal sat on 8th and 9th January 2007 to hear applications for costs on behalf of the successful respondents, PwC and Mr Donnelly. Executive Counsel of the AIDB resisted those applications.

The Tribunal's power to award costs

2. Rule 8(6) of the Accountancy Investigation & Discipline Board Scheme of 13th May 2004 ("the Scheme") provides, as appropriate:

> "If the Disciplinary Tribunal dismisses the formal complaint, it may on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint being served on the Member or Member Firm[1]."

3. This is to be contrasted with the position under paragraph 8 (5) (ii) of the Scheme, which empowers the Tribunal, upon making an adverse finding in

[1] Emphasis added

relation to a Member or Member Firm, to order in addition to other sanctions that the Member or Member Firm pay the whole or part of the costs of, and incidental to, the investigation and the hearing of the formal complaint before the Tribunal[2].

4. At one stage Mr Hubble, on behalf of Mr Donnelly, suggested that notwithstanding the plain terms of that sub-paragraph, Mr Donnelly was entitled to apply for payment of his investigation costs as well as those after the making of the complaints against him. Mr Pooles QC on behalf of PwC disagreed with that submission, and in oral argument Mr Donnelly abandoned the point.

5. It is clear from the differences between the two paragraphs set out above that the AIDB has absolute protection against the risk of an award for costs against it in respect of its investigations. It is only after a complaint has been served that it is at risk. That distinction is of great importance in light of the general argument submitted by Mr Lawrence QC on behalf of Executive Counsel, set out below.

The amounts claimed

6. PwC claimed costs of £680,621.94 while Mr Donnelly claimed a total of £771,947.97, being £656,977 plus Value Added Tax ("VAT") as he is not registered for VAT. PwC, being registered for VAT, did not claim VAT on

[2] Emphasis added

its costs. By comparison, the AIDB's costs after serving the complaints were (depending on the notional rate allocated to Executive Counsel's time) between about £700,000 and about £750,000. That figure, of course, is in respect of the complaints against both Respondents.

The law

7. All parties were agreed that the Tribunal has an absolute discretion. The area of disagreement lay in how that discretion was to be exercised.

8. The following authorities were cited to the Tribunal:

8.1 City of Bradford MDC v Booth (2000) COD 3388

8.2 Gorlov v ICAEW [2001] EWHC Admin 220

8.3 Baxendale Walker v The Law Society [2006] EWHC 643

8.4 The Law Society v Adcock and Mocroft [2006] EWHC 3212 (Admin)

9. The Tribunal needs not consider the facts of the above authorities in this Report. The three relevant principles set out by Lord Bingham CJ in the City of Bradford case are to be found at paragraphs 24-26 of his judgment. Because of their fundamental importance the Tribunal sets them out here:

"24. 1. [The relevant subsection being considered] confers a discretion upon a magistrates' court to make such order as to costs as it thinks just and reasonable. That provision applies both to the quantum of the costs (if any) to be paid, but also as to the party (if any which should pay them).

"25. 2. What the court thinks just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection.

"26. 3. Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged."

10. Jackson J applied the principles set out in City of Bradford in Gorlov, where at paragraph 37 he pointed out that the ICAEW was a professional body which, acting in the public interest, brings disciplinary proceedings against accountants, and that that was a factor pointing against any automatic award of costs in disciplinary proceedings which failed. But he held that the case he was considering had special features inasmuch as the disciplinary proceedings brought by the Institute "were a shambles from beginning to end", and,

although the Institute's conduct was honest and well intentioned, it was misguided, mistake was piled upon mistake, and its conduct was unreasonable. He awarded the applicant his costs.

11. In Baxendale Walker, Moses LJ, purporting to apply the principles laid down in City of Bradford and summarised in Gorlov, said, at paragraph 43:

"...A regulator brings proceedings in the public interest in the exercise of a public function which it is required to perform. In those circumstances the principles applicable to an award of costs differ from those in relation to private civil litigation. Absent dishonesty or a lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so. That reason must be more than that the other party has succeeded. In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged."

12. The dictum about "good reason" attracted concern within the legal profession, and in Adcock, Waller LJ held (at paragraph 39) that Moses LJ had put the matter too highly in favour of a regulator. Waller LJ went on to say:

"Lord Bingham [in City of Bradford] does not, as I understand him, suggest that there should be a presumption, one way or another; he simply makes clear

that there are particular circumstances to bear in mind where a public body or regulator is concerned."

13. In Adcock, the Administrative Court awarded the claimant solicitors their full costs at the disciplinary tribunal they had successfully faced, as opposed to the half costs awarded by the tribunal, despite the tribunal's having found that their conduct "was not beyond criticism".

The submissions:

14. Mr Pooles QC's submissions can be briefly summarised: There is no presumption one way or the other, the Tribunal must take all the circumstances into consideration. Financial rigour and stringency may be a circumstance. It is unnecessary to find inappropriate or grossly unreasonable conduct by the regulator, but the Tribunal must have regard to obligations of regulators or public bodies to conduct investigations in appropriate cases. He pointed out that the effect of paragraph 8(5) was not to discourage thorough and complete investigation to the regulator's satisfaction before bringing the complaint. Also relevant was whether the respondent had brought the matter upon himself.

15. Mr Pooles QC submitted in essence that the Tribunal should award PwC their costs because they had done nothing to bring proceedings on themselves, they had cooperated fully with the investigation, and there was no material

distinction between the account they gave in the investigation and their evidence to the Tribunal. He also reminded the Tribunal of its criticisms of Mr Woolf in its findings of facts.

16. Mr Lawrence QC for Executive Counsel submitted that there was no presumption that a successful respondent would recover costs simply because a complaint has been dismissed. A jurisdiction to award costs in favour of a successful respondent did exist, but that jurisdiction confers a discretion which should be exercised judicially. Dishonesty or bad faith on the prosecutor's part (neither of which was alleged in the instant case) would justify a costs order in favour of a respondent. Financial prejudice to a respondent would be a relevant factor. The court must at all times have regard to the need to encourage public bodies to exercise their proper function. He called this "the protective function" or "protective costs jurisdiction", and relied heavily on this submission.

17. Mr Lawrence QC also submitted that the "protective costs jurisdiction" was relevant to quantum.

18. Mr Lawrence QC submitted that it would be inappropriate for costs to be awarded to PwC in respect of the "going concern" complaint because there were substantial defects and errors in PwC's audit working papers, which did not accurately reflect the reasoning underlying PwC's "going concern"

conclusion, and he reminded the Tribunal of its criticism of some of the evidence given by PwC witnesses. Mr Lawrence QC submitted in summary that it was reasonable to bring and maintain the "going concern" complaint on the grounds of the Mayflower Group's financial fundamentals and the defects of the audit working papers.

19. As regards the MIDFES complaint, which Executive Counsel abandoned on the second day of the hearing, Mr Lawrence QC relied on the "protective" element, but conceded that if AIDB should have withdrawn that charge earlier, that would be capable of displacing the protective costs jurisdiction.

20. Mr Lawrence QC also warned against the inhibiting effect of a substantial costs order against the AIDB, with its limited resources.

21. In reply, Mr Pooles QC submitted that the "protective costs jurisdiction" did not apply after the investigation. He submitted that it was a costs jurisdiction with no presumption in favour of award or rejection. Hence it was unnecessary to show unreasonable conduct. The question was: Is an award just in all the circumstances? He submitted that the Tribunal should not consider the AIDB's want of resources because any complaint of the type that the AIDB brought was bound to be expensive. He went on to specify some of his criticisms of Mr Woolf which the Tribunal had accepted, and pointed out that the directors of Mayflower had not been cross-examined on their

judgment relating to "going concern". He pointed out that the major criticism of a PwC witness (relating to Mr Gill's failure to refer in his witness statement to a trading statement that had had an effect on Mayflower's share price) was a minor point overall. PwC had made it clear in June 2005 in response to the preliminary findings what was lacking in the "going concern" complaint, and *a fortiori* in the MIDFES complaint.

22. Mr Hubble, on behalf of Mr Donnelly, primarily attacked Executive Counsel's allegation of deliberate concealment as regards the Falkirk work in progress complaint. He analysed the evidence and the timing of particulars in respect of the three subheadings of the complaint. He complained of Executive Counsel's failure to test Mr Bryan's notebook or to obtain from Messrs Daly and Duffin details of the events between November 2003 and January 2004. He also criticised Mr Woolf, and called the case against his client "a shambles", echoing Jackson J in Gorlov. As for the "going concern" complaint, he relied on the relevant submissions made by Mr Pooles QC and pointed out that the complaint had been abandoned in July 2006. Mr Hubble also drew the Tribunal's attention to "drop hands" offers made on behalf of his client from June 2006 onwards, which had been rejected by Executive Counsel.

23. In response, Mr Lawrence QC strenuously disputed the characterisation of the case against Mr Donnelly as a shambles, maintained that Executive Counsel's

conduct had been reasonable, and drew the Tribunal's attention to what he submitted was the substantial evidence there had been that the Falkirk work in progress issue had not been properly disclosed to the board on 8th December 2003. In effect, Mr Lawrence QC summarised what he had submitted to the Tribunal in his closing argument at the substantive hearing of the complaint against Mr Donnelly. Although he conceded that Mr Donnelly had not been asked in interview about not having put the matter to the auditors at the relevant time, Mr Lawrence QC maintained that, even had that been asked, Executive Counsel would have brought the case anyway. He submitted that Mr Bryan's evidence had to be tested before the Tribunal, and that the AIDB owed duties to the profession and in the public interest. "Drop hands" costs offers were, in his submission, inappropriate in the litigation with which the Tribunal was concerned, and he further submitted that if it was in the public interest for the AIDB to continue with a complaint, it should not accept a "drop hands" offer just because of worry about the costs consequences should it lose the case. Mr Lawrence QC also stressed that judgments should not be construed as if they were statutes, that the "protective costs jurisdiction" did not disappear if there were unreasonable conduct in respect of one area in a large case, although if it were of substance, it would be a material circumstance to be taken into account. He emphasised that prosecutors should be encouraged to discharge their duties in the public interest.

24. Mr Lawrence QC conceded that the AIDB had made no request of the directors that they attend for interview.

25. Mr Lawrence QC reminded the Tribunal that Executive Counsel had dropped the "going concern" complaint against Mr Donnelly because in her witness statement Ms Dowling of PwC said that she had declined Mr Donnelly's offer to obtain a letter of comfort from Mayflower's banks.

26. In reply, as to the Falkirk work in progress complaint, Mr Hubble made many of the points that he had submitted in his closing submissions during the main hearing. He also submitted that the "going concern" complaint should never have been brought in the first place.

27. Mr Hubble also submitted that the matter of expense raised by Mr Lawrence QC was a double-edged sword, and that regulators should be careful to investigate properly and to keep proceedings under review.

28. At Mr Hubble's request, the Tribunal heard his submissions regarding financial prejudice in camera, but made it clear that that was a provisional ruling. In light of the Tribunal's decision on his other submissions, the matter of financial prejudice as it affects Mr Donnelly does not arise, and the Tribunal directs that what was provisionally heard in camera is to be confirmed as being in camera except for the following passages:

28.1 The first section of transcript from page 17 line 12 ("Mr Hubble: Very well sir...") to page 30 line 10 ("in due course.")

28.2 The second section of transcript from page 1 ("Mr Lawrence: Thank you very much...) to page 3 line 18 ("on which I rely.")

The principles applied by the Tribunal

29. The Tribunal's jurisdiction to order costs is contained in Rule 8(6) of the AIDB Scheme. The Tribunal has an absolute discretion but must have regard to the conduct of the Member or Member Firm and Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation). This jurisdiction is similar to that set out in the authorities as adumbrated by Lord Bingham CJ in City of Bradford as explained in Adcock. Thus there is no presumption one way or the other: it is a question of the Tribunal balancing all the circumstances of the case including those set out in Rule 8(6), and exercising the discretion in light of them.

30. When considering the conduct of Executive Counsel, it is important to have in mind that Executive Counsel has a duty to bring complaints where there is a real prospect of the complaint being established. That reflects a genuine (rather than a remote or fanciful) possibility. That test applies both to the factual allegations and as to whether the complaint can be established on the facts as alleged by Executive Counsel. When deciding to bring the complaint,

Executive Counsel must assess the weight of the evidence, but he should not seek to resolve substantial conflicts in evidence.

31. In bringing and in pursuing a complaint, Executive Counsel must have in mind the duty to act in the public interest, which includes the protection of the public and maintaining public confidence in the profession.

32. When considering the conduct of the Member or Member Firm and the conduct of Executive Counsel including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation, the Tribunal should consider (i) the financial prejudice to the particular respondent in the particular circumstances if an order for costs is not made in his favour, and (ii) the need to encourage public authorities to make and to stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.

33. This is particularly because on the one hand there is a public interest in the ventilation in public of complaints which do have a real prospect of establishing acts of misconduct which fall short of the standards reasonably to be expected of a Member or Member Firm, and on the other hand there is a public interest in professionals not being harassed by unfounded complaints.

34. The Tribunal notes here that financial prejudice to the Member or Member Firm does not arise in the present cases (as regards Mr Donnelly see paragraph 28 at page 11 above), but it does need to consider whether the bringing or the prosecution of any of the complaints was unfounded and, if so, whether this gave rise to harassment of the Member or Member Firm. In this connection, the Tribunal considers that "harassment" includes having to incur legal costs unnecessarily where Executive Counsel brings or pursues a complaint unreasonably.

The Tribunal's Orders:

35. The Tribunal has carefully considered the submissions, both oral and written, made by all the parties.

PwC

36. As regards PwC, the Tribunal has had to consider a number of balancing factors, in particular:

36.1 As regards "going concern", Executive Counsel did not seek the directors' evidence at the investigation stage. Mr Woolf, the expert relied upon by Executive Counsel, failed to consider all the documents he had been given after the investigation and before the hearing[3]. Executive Counsel's criticisms of PwC's approach to "going concern" were held by

[3] For the reservations expressed by the majority of the Tribunal about Mr Woolf's evidence see eg pp.224-226 paragraph 1.5 of the 8th December 2006 Report ("the December Report").

the majority of the Tribunal to have been unfounded: see eg pp.233-236 paragraphs 7-9 of the December Report.

36.2 The Tribunal also notes that Executive Counsel failed to consider the details of the December 2003 credit agreement, which were explained by Mr Hubble at the substantive hearing (see p.221 paragraph 17 of the December Report)[4]. Because that matter was not pointed out before the substantive hearing, the Tribunal disregards it for the purpose of its decision as to costs.

36.3 As against the point set out in paragraph 36.1 above, there were justifiable criticisms of some of the phraseology in PwC audit working papers (eg "assurances" and "undertakings": see the December Report *passim*). It is also fair to point out that there was justifiable criticism of the way in which certain PwC witnesses gave evidence although the Tribunal found them to be honest witnesses (see eg pp.232-233 paragraphs 5-6 of the December Report).

36.4 The MIDFES complaint against PwC was supported only by Mr Woolf's opinion. Since the circumstances which justified the abandoning of that complaint had existed for some months and did not arise because of any change in circumstances on the second day of the hearing when it was abandoned, the Tribunal's view is that that complaint should have been abandoned long before it was. Had it been so abandoned, a considerable saving of legal costs would have been achieved.

[4] In essence, £20m was put into an account set off against the bridging facility, to be provided to Mayflower if a certificate of compliance in relation to the USPP covenant were provided by 28th February 2004.

36.5 There is considerable force in Mr Lawrence QC's submission that, in the absence of bad faith, regulators should not be deterred by the fear of punitive costs penalties from bringing proceedings which they reasonably consider to be in the public interest but which ultimately fail.

36.6 As against that, the Tribunal considers that regulators have a continuing duty to review a complaint once it has been brought, against the available evidence, and to consider whether it is reasonable to maintain the complaint at a hearing. In respect of the MIDFES complaint, the Tribunal finds that Executive Counsel should not have maintained it against PwC after the latter had served its substantial evidence in May 2006. A majority of the Tribunal makes a similar finding in respect of the "going concern" complaint. Had Executive Counsel then abandoned those complaints, there would have been a considerable saving in legal costs.

37. There were various minor points that were argued on both sides including, for example, the matter of additional costs caused by Executive Counsel's unsuccessful application during the substantive hearing to amend the "going concern" complaint against PwC, but the Tribunal, in adopting the broad brush approach urged by all parties, has regarded them as effectively cancelling each other out.

The Order as regards PwC

38. The Tribunal considers, notwithstanding that there is no presumption as to costs in respect of disciplinary proceedings, that it is appropriate in the exercise of its absolute discretion having regard to the overall circumstances of the present case which it has summarised above, to make a costs order against the AIDB in favour of PwC.

39. The Tribunal now turns to the amount of costs which it considers should be awarded. Having regard to the AIDB's figure, and making a comparison with PwC's figures, it considers that PwC's claim should be discounted by 20% in the first stage. It also considers that in arriving at the amount of costs to be awarded it should have regard to the principle relating to regulators not being unduly deterred from bringing disciplinary cases which it would be reasonable to bring, and the Tribunal's conclusion that the MIDFES complaint should have been withdrawn at a time which would have avoided the costs of the hearing and much of the costs of the preparation for the hearing. A majority of the Tribunal draws the same conclusion in respect of the "going concern" complaint. Adopting the broad brush approach urged on it by all parties, the Tribunal considers that the appropriate figure to award against the AIDB in respect of PwC's costs is £400,000.

Mr Donnelly

40. The particular balancing factors that the Tribunal considered in Mr Donnelly's case concerning the Falkirk work in progress complaint are:

40.1 The alleged failure to inform the Board of Mayflower:

40.1.1 Executive Counsel brought the complaint without first seeking to interview the directors to ascertain whether or not they were in fact informed, and proceeded on the assumption that they had not been informed.

40.1.2 The witness statements taken from Messrs Daly and Duffin had the significant gaps which Mr Hubble identified (see page 9 paragraph 22 above).

40.1.3 The complaint, which had not been part of the provisional findings sent to Mr Donnelly for comment in 2005, was maintained even after Executive Counsel received significant evidence served on behalf of Mr Donnelly relating to his having informed the Mayflower Board in December 2003. That evidence included the note made by a director, Mr Fleming (who was called as a witness), at the Mayflower Board Meeting of 8th December 2003 (mistakenly typed as 9th December): Core Bundle 6 volume 1 pages 300-301. In that note, Mr Fleming wrote:

"[Mr Duffin] later told [Mr Fleming] that [Mr Simpson[5]] had told his colleagues of an accounting problem with the TransBus stocks/balance sheet which had been uncovered and impacted over several years. Ranging between £3-5m there was a proposal to account for this as a prior year adjustment of published accounts."

40.1.4 As against that, the evidence of Mr Bryan, if accepted, was apparently very damaging to Mr Donnelly, and the evidence of Ms Nettleship, Mayflower's Company Secretary, was also apparently damaging to Mr Donnelly.

40.1.5 As yet another counter point, however, further enquiries that Executive Counsel might helpfully have made of both Mr Duffin and Mr Daly were not made.

40.1.6 The Tribunal does accept that, once the decision to maintain the complaint was made, it was reasonable to adduce Mr Bryan's notes for the Tribunal to decide on their reliability. In the absence of Executive Counsel seeking evidence from the directors, and in light of the above-mentioned significant gaps in the witness statements of Messrs Duffin and Daly, however, the Tribunal does not accept that it was reasonable for the complaint to have been made in the first place.

[5] Chief Executive Officer and Deputy Chairman of Mayflower at all material times

40.2 The failure to inform the auditors:

40.2.1 The arguments set out by both sides are dealt with extensively in the December Report.

40.2.2 For the purposes of this Report, it is sufficient to say that the evidence at the substantive hearing was that there was no duty on a Finance Director to have raised this matter with the auditors prior to their starting their audit, and the Tribunal is troubled that such an allegation ever found its way into a complaint of misconduct.

40.3 The failure to notify the banks or to take legal advice:

40.3.1 The Tribunal can do no better in this regard than to repeat its comment at pp.240-241 paragraph 13 of the December Report: "The Tribunal also accepts that, given that the issue was known to all the members of the Mayflower Board, some of whom had extensive banking and financial experience, before the start of the 8th December Board Meeting, no criticism of Mr Donnelly can properly be made in the context of this complaint for his not having disclosed the matter to the banks at or prior to the re-financing on 16th December 2003."

40.3.2 In the circumstances, the Tribunal found[6] that there was no need for Mr Donnelly to have taken legal advice regarding disclosure to the banks in December 2003.

[6] Page 243 paragraph 16 of the December Report

40.4 As against the above, when interviewed by Executive Counsel in November 2004 and February 2005, Mr Donnelly had been mistaken in his recollection of when he informed the Board: see eg pages 78-79 paragraph 48 of the December Report.

40.5 The Tribunal bears in mind the importance, stressed by Mr Lawrence QC, of encouraging public bodies to exercise their proper function, and the Tribunal does not accept Mr Hubble's characterisation of this complaint as "a shambles". The considerations set out in paragraphs 36.4 and 36.5 at pages 15-16 above regarding PwC also apply in Mr Donnelly's case, *mutatis mutandis*.

41. The "going concern" complaint:

41.1 Executive Counsel abandoned this complaint against Mr Donnelly in July 2006.

41.2 The evidence was that the directors had properly considered all the matters that they should have considered, including those set out in a Going Concern Memorandum produced for them by Ms Nettleship.

41.3 Mr Lawrence QC explained[7] that the "going concern" complaint had been abandoned against Mr Donnelly when Executive Counsel received Ms Dowling's witness statement served on behalf of PwC in June 2006, in which she stated that in February 2004 she had declined Mr Donnelly's offer to obtain a letter of comfort for the banks.

[7] 9th January 2007 transcript pp.87-88

41.4 The Tribunal considers that, rather than waiting for any evidence from the auditors relating to this matter that might be served by the defence, Executive Counsel should himself have asked PwC if they had expected or requested any such letter from the banks, before bringing the complaint against Mr Donnelly. It is, after all, for Executive Counsel to prove his case, not for a respondent to prove his innocence.

41.5 The Tribunal accepts the general thrust of Mr Lawrence QC's submissions regarding the inappropriateness of a Tribunal considering "drop hands" offers by respondents in disciplinary hearings, subject to the overarching point that the regulator must have acted reasonably. The Tribunal also appreciates the importance of protecting regulators who take important decisions in the public interest and who act in good faith. Nevertheless, the Tribunal does not consider that the AIDB acted reasonably in bringing either complaint against Mr Donnelly in the first place.

The Order as regards Mr Donnelly

42. The Tribunal considers that in the exercise of its absolute discretion, the overall circumstances as summarised above are such that it should make a costs order against the AIDB in favour of Mr Donnelly in relation to both complaints.

43. The Tribunal now turns to the amount of such a costs order. Having regard to the AIDB's figure, and making a comparison with those in respect of Mr Donnelly, the Tribunal considers that Mr Donnelly's claim should be discounted by 20% in the first stage, and then taking into account the Tribunal's conclusion that the complaints should not have been brought (see paragraph 41.5 above), allowing for the fact that there is no presumption as to costs in respect of disciplinary proceedings, and adopting the broad brush approach urged on it by all parties, the Tribunal considers that the appropriate figure to award against the AIDB in respect of Mr Donnelly's costs is £500,000 plus Value Added Tax of £87,500.

Robert Rhodes QC (chairman)

Arthur Harverd

Marion Simmons QC

Bruce Warman

Christopher Whittington

1st February 2007