

AND

(1) PRICEWATERHOUSECOOPERS LLP ("PwC")

(2) DAVID DONNELLY FCCA

DISSENTING OPINION IN RESPECT OF

THE GOING CONCERN COMPLAINT AGAINST PwC

Introduction

1. It is with regret that I am unable to agree with the analysis and findings of my colleagues on the Tribunal in respect of the going concern complaint against PwC. This dissenting view is provided pursuant to clause 35(a) of The Regulations of the Accountancy Investigation and Discipline Board dated 13 May 2004.

The complaint against PwC in respect of going concern

2. My Tribunal colleagues and I differ in the interpretation of the terms of the complaint.
3. I do not agree that the conclusion on going concern reached by the Mayflower directors and PwC at the time that the audit report was signed off leads to the automatic dismissal of the entire complaint.
4. It seems to me that the complaint against PwC comprises two parts. The first element is the allegation that PwC failed to identify the significant level of concern. The second part, and I am satisfied that it is a separate and distinct part because the two parts are joined by the word "and", alleges that PwC:

"failed to address that concern in accordance with Statement of Auditing Standards 130 ("SAS 130")."

5. The two parts of the complaint are closely linked and are inseparable. In the light of Mayflower's then financial position I find that an audit opinion on going concern could not be given without compliance with SAS 130.
6. The second part of the complaint alleges that PwC did not undertake the audit of the going concern issue in compliance with SAS 130. The implication is that had PwC undertaken the audit in the manner required by SAS 130 they may have arrived at a different opinion. This cannot now be known, but there is no need to speculate on what that opinion might have been. The issue in the second part of the complaint is whether the audit was undertaken in compliance with SAS 130.
7. Mr Pooles QC stated that had the complaint been about audit process, he would have introduced additional witnesses and material for the consideration of the Tribunal. Nevertheless, a substantial amount of attention was given during the hearing to the audit work on going concern undertaken on the Mayflower group accounts. Mr Pooles QC noted that the Case Summary of the complaint stated that PwC *"failed to address that concern in accordance with the Auditing Standards"*. [Transcript, Day 16, page 93, line 6]. He said that *"what the auditors are doing here, as throughout the rest of their work, is that they are auditing the decisions which have been taken by the directors."* [Transcript, Day 16, page 89, line 9]. He also said that *"The reality of the matter is that the directors set out in full the matters which they had to create a true and fair view set of accounts and the auditors probably (sic) audited them (as) such."* [Transcript, Day 16, page 110, line 13].
8. I am satisfied that the wording of the complaint, together with evidence and documentation about the group audit adduced at the hearing made it plain that compliance with SAS 130 was a central feature of the complaint. The evidence and documentation included, in addition to the complaint itself and the AIDB Case Summary, the closing address of Mr Lawrence QC, the expert report of Mr Woolf, the responses under cross-examination of Mr Ashley and the PwC auditors to questions about the audit work and some key PwC audit documents in respect of going concern. I also note that at the beginning of his expert report Mr Ashley provided a comprehensive summary of audit principles which extended over six and a half pages and included references to Auditing Standards. As Mr Lawrence QC pointed out, in cross-examination Mr Ashley acknowledged that there were several matters to which regard had to be given in the consideration of going concern, such as high debt insufficient cash, turnover in 2002 being lower than 2000, the reliability of earlier forecasts, the possibility of covenant breach and the intention of the funding banks.
9. However, the issue of whether or not PwC complied with the requirements of SAS 130 was not addressed by Mr Ashley in his investigation because he filtered out a consideration of PwC's audit procedures. As a result the Tribunal was deprived of

the benefit of the expertise and opinions (other than in cross-examination) of a senior auditor of the highest standing whose long experience was relevant to the issues in the complaint.

10. Compliance with SAS 130 was essential in order to ensure that the conclusions reached by PwC in respect of going concern were based on independently verified data, on an assessment of whether the Mayflower directors had before them sufficient and correct information and on an independent assessment of all relevant matters.

The audit of the going concern issue

11. In paragraph 46 of his Witness Statement Mr Harvey explained that he was working to the level of there being significant uncertainty as to the ability of Mayflower to continue as a going concern. He stated:

"The judgement I was making was whether there was significant uncertainty as to the ability for the company to continue as a going concern."

Mr Harvey concluded that the uncertainty as to going concern was at a low level [Witness Statement, paragraph 38], but it is evident from his paragraph 46 that he approached the audit from the perspective that there might be a significant uncertainty. Hence there could be no shortcuts through the requirements of SAS 130. The going concern issue needed a full audit appraisal as it was an important area of risk in view of Mayflower's financial position.

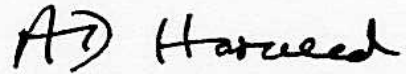
12. Although the information available to the Tribunal about the audit of going concern was probably not complete, evidence adduced at the hearing was, I find, sufficient to enable conclusions to be drawn about major areas of the audit in respect of compliance with SAS 130. This is because those areas were examined in depth at the hearing. I find that there were several instances where PwC did not comply with SAS 130.
13. Despite bank financing being the main critical area in relation to going concern, PwC did not inspect Mayflower's correspondence file with the banks regarding the status of refinancing, but accepted what they were told by Mayflower personnel. PwC did not assess independently the status of those negotiations even though paragraph 26 of SAS 130 suggests that the intentions of bankers should be assessed where, inter alia, the entity is dependent on borrowing facilities shortly due for renewal. I am not here concerned with whether or not the banks felt able to provide letters of comfort in relation to future funding, but simply a review of the then current state of play with the funding institutions in order to understand what was going on and to confirm that negotiations were proceeding. I accept that the banks were unlikely to provide meaningful letters of comfort 10 months before new finance

is required. That is not the issue. Had the bank files been inspected PwC would have recognised that there were no undertakings from the banks in respect of refinancing. The need for such inspection is demonstrated by the fact that the failure to do so led to the serious error in the hot review where wrong information was recorded by PwC about alleged undertakings from the banks, as noted below.

14. An important matter in the assessment of going concern was the audit of the group cashflow forecast. Banks interested in refinancing will examine cashflow estimates. They needed to be audited carefully. The PwC audit work on the group cashflow forecast comprised checking the arithmetic correctness of the figures and discussing with Mr Bryan the assumptions on which the forecasts were based. Detailed notes on those assumptions were not made by PwC.
15. PwC did not notice that the group cashflow forecast omitted the payment of over £10m due in December under the USPP. This is surprising because the payment was a defined contractual requirement and not merely an estimate, which so many figures in a forecast are. It was suggested that the omission was not material in relation to the going concern issue. I am unable to accept that contention as the failure to include that payment undermines the reliability that can be placed on the testing of the underlying assumptions and figures in the group cashflow forecast.
16. The fundamental basis upon which the group cashflow forecast was prepared is also open to question. PwC initially asserted that it was prepared on a cautious, conservative basis, even though the figures contained therein were optimistic, but under questioning PwC changed the basis to a realistic one. PwC was unable to reconcile that view and the growth depicted in the forecast with the observation in the annual financial statements that the year ahead would be flat, or with the fact that previous cash forecasts were prepared on too optimistic a basis and that subsequent actual results proved to be materially below forecast levels.
17. The third area of difficulty with the audit of the going concern issue was the hot review. The manager who carried out the hot review identified bank refinancing in relation to the going concern assessment. The matter was not taken further because an incorrect response was given to the point. It was incorrectly stated on the hot review form that there were bank undertakings on refinancing. Hence the hot review was completed on the wrong basis as the correct position regarding bank refinancing was not addressed in the hot review.
18. I find that the above matters show that, in respect of the critical areas explored in depth during the hearing, the audit of going concern was not undertaken with sufficient attention to SAS 130. The need for such attention is demonstrated by Mr Ashley's observation that he believed that the question of whether or not there was material uncertainty as to going concern was a more finely balanced judgment than either Mr Harvey or Mr Woolf portrayed.

Conclusion in respect of the complaint against PwC on going concern

19. In light of the above analysis I conclude that the audit of the going concern issue was not undertaken in accordance with SAS 130. As part of the complaint deals with PwC's failure to address the going concern issue in accordance with SAS 130, and as compliance with Auditing Standards was a requirement with which auditors must comply, I find that this part of the complaint has been proved. It follows from this finding that there must be doubt as to the reliability of PwC's audit opinion on going concern.

Handwritten signature of Arthur Harverd in black ink, consisting of a stylized 'A' followed by the name 'Harverd'.

Arthur Harverd
8 December 2006