Takeovers Panel

Reasons for Decision
Isis Communications Ltd

In the matter of Isis Communications Ltd
[2002] ATP 10

Catchwords:

Share sale agreement – association – voting arrangements – breach of Corporations Act section 606 forgiven

Corporations Act 2001 (Cth), sections 606 and 657A

These are our reasons for declining to make a declaration of unacceptable circumstances in response to the application by directors of Radly on 27 June 2002 concerning the affairs of Isis, resulting from a contract for the sale, by Radly (acting through its receivers), of 19.9% of Isis to MGB and Investec. The Panel considered that despite its concerns over a possible technical breach of section 606 of the Corporations Act, there did not appear to be a basis for a declaration of unacceptable circumstances. The directors asserted that they were making the application on behalf of Radly.

INTRODUCTION

1. The sitting Panel comprised Alison Lansley (sitting President), Jeremy Schultz (sitting Deputy President) and Marian Micalizzi.

2. This was an application made by Adam and Nayer Radly (**Radly Directors**), the directors of Radly Corporation Pty Ltd (Receivers and Managers Appointed) (**Radly**). The Radly Directors asserted that they were applying on behalf of Radly. The receivers of Radly were Mr Nick Seaton and Mr Adrian Duncan of Knights Insolvency Administration (**Receivers**).

3. The application was for a declaration of unacceptable circumstances pursuant to section 657A of the Corporations Act 2001 (**Act**) in respect of an agreement entered into between Radly (acting through its receivers), MGB Equity Growth Pty Ltd (as trustee of the MGB Equity Growth Unit Trust) (**MGB**) and Investec Australia Ltd (**Investec)** (together **MGB-Investec**) on 14 June 2002. The agreement was for the sale by Radly of certain shares in Isis Communications Ltd (**Isis**) to MGB and Investec (**sale of shares** and **MGB-Investec Agreement**).

4. The Panel decided, under Regulation 20 of the ASIC Regulations, to conduct proceedings in relation to the application.

SUMMARY

5. The Radly Directors complained about 3 aspects of the MGB-Investec Agreement:

   – The first was that clause 6.6 of the agreement effectively bestowed upon MGB-Investec a voting power in all of the 43% of Isis shares then held by Radly, in that it required that Radly use the votes of the 43% to control certain activities of Isis until Completion.

   – The second was that clause 6.3 created an association between MGB-Investec on one hand and Radly or the Receivers on the other. This would entitle MGB-Investec to the voting power of the remaining 23% of Isis held by Radly. The clause required Radly, if requested by MGB-Investec "...to use all reasonable endeavours to ensure that a properly convened meeting of the members of the company is held for the purposes of considering such business as the Purchaser may reasonably require."

   – The third was that the MGB-Investec Agreement was evidence of a voting agreement between MGB-Investec and the directors of Isis to achieve the success of a proposed merger between Isis and AAV Australia Pty. Ltd. (**AAV** and **AAV merger proposal**) in breach of section 606 of the Act.

6. MGB-Investec and the Receivers asserted that the MGB-Investec Agreement was solely a sale and purchase contract in relation to 19.9% of the shares in Isis and bore no relation to, and imposed no obligations in relation to, the remaining 23% of Isis held by Radly, and created no association.

7. MGB-Investec acknowledged that parts of the agreement would likely have been omitted if the contract had been drafted by a lawyer more experienced in share sale transactions in relation to the shares of public and especially listed companies.

8. The Panel considered that, on the face of the clauses in the MGB-Investec Agreement, it was possible that it had contravened section 606 of the Act. However it decided to make no finding or declaration of unacceptable circumstances due to: the inoperability of certain of those clauses; the parties' willingness to delete any offensive clauses; and the evidence that MGB-Investec submitted that it had never intended the agreement to affect the Receivers' ability to deal freely with the remaining 23% and had not had any such effect.

THE APPLICATION

9. On 27 June 2002, the Radly Directors applied for a declaration of unacceptable circumstances in relation to the affairs of Isis as a result of the MGB-Investec Agreement.

10. The Radly Directors also applied for:

    a. interim orders under section 657E of the Act that completion of the sale of shares (**Completion**) not take place on 28 June 2002 as provided for in the

MGB-Investec Agreement but be deferred until after the Takeovers Panel had determined the application; and

b. an order under section 657D of the Act that the sale of shares not be permitted to proceed.

BACKGROUND

Radly

11. Radly had been a vehicle for the business enterprises of Adam and Nayer Radly. In July 1999, Radly borrowed monies from Vilacon Corporation Pty. Ltd. (**Vilacon**) secured by a debenture charge over all of Radly's assets. The terms and structure of the loan were changed a number of times leading up to December 2001.

12. At the time of the application, Radly held 72,400,000 shares in Isis. This represented approximately 43% of the total issued shares of Isis.

13. In mid-2001, Suncorp-Metway Ltd had served a statutory demand on Radly in relation to outstanding loan agreements.

14. Before December 2001, Vilacon declared the loan in default and sought the appointment of receivers. On 11 December 2001, Nicholas Seaton and Adrian Duncan of Knights Insolvency Administration were appointed receivers and managers of Radly. Adam Radly stepped down as CEO of Isis from 19 December 2001 but continued as a Director of Isis for some time.

15. The Receivers advised that their appointment as receivers of Radly had created significant media interest and had generated a number of enquiries concerning Radly's assets, specifically, the Isis shares held by Radly. However, the Receivers did not conduct a formal tender or auction process for the sale of the Isis shares held by Radly.

16. On 14 June 2002, the Receivers, on behalf of Radly, entered into the MGB-Investec Agreement for the sale of approximately 19.9% of Isis shares held by Radly.

17. The MGB-Investec Agreement sale price was 7 cents a share. The market price of Isis shares had ranged between 3 cents and 12 cents a share over the previous 12 months. It was suggested by the Radly Directors that the asset backing of Isis shares was closer to 12 cents. The Receivers said that MGB-Investec had been selected on the basis that they had offered the highest, reasonably firm, cash price for the Isis shares.

Negotiations between Mr Radly and the Receivers

18. Mr Adam Radly asserted in his submissions that between December 2001 and 14 June 2002, he had commenced a number of negotiations with the Receivers seeking to reach an agreement for settlement of the Vilacon debt. The details and timeframes of those discussions and offers were not agreed by the parties.

In part, the MGB-Investec Agreement terminated any negotiations and set the stage for this application.

Standing of the Radly Directors

19. One of the issues which faced the Sitting Panel early in this application was the identity of the applicant and what basis they had for applying to the Panel. Initially, the application was expressed to be by Radly and also by one of the directors of Radly.

20. On 1 July 2002, the Panel wrote to the relevant parties seeking submissions on the status of the application, who had made it (the Radly Directors or Radly) and the standing of the applicant, in whatever capacity, to make the application. The Receivers initially objected, asserting that the Radly Directors did not have the power. The Radly Directors asserted that they had residual powers as Directors to make the application, especially as the application related to an action by the Receivers which the Radly Directors sought to impugn.

21. The application proceeded on the basis that the Radly Directors had made the application on behalf of Radly under their residual powers. Although not conceding the issue, the Receivers acceded to the application proceeding in the interests of resolving the issues.

AAV

22. On 19 June 2002, 5 days after the date of the MGB-Investec Agreement, Isis announced that it had agreed in principle to the AAV merger proposal by a scheme of arrangement. It was to be subject to a number of conditions, including an independent expert's report setting out the expert's opinion on the fairness and reasonableness of the proposed merger, and a shareholders' resolution.

23. AAV is a media services company. Its majority owners are MGB and Investec. Its business has three key elements - Post Production, VHS Duplication & Logistics and DVD Replication & Logistics. Isis said it believed both companies' businesses had considerable overlap and synergy.

24. In addition, Isis and AAV each held 25% of DubSat Pty Limited, a satellite based transmission service for television commercials, which Isis saw as an important element in its future.

25. The AAV merger proposal was intended to be achieved by Isis offering Isis shares for 100% of the issued share capital of AAV. Existing Isis shareholders would own 32% of the enlarged share base.

Completion Date

26. At the time of the application, 27 June 2002, Completion of the MGB-Investec Agreement was scheduled for 12.00 p.m. AEST on 28 June 2002.

27. On 28 June 2002, the Panel accepted undertakings by MGB, Investec and Radly that each would ensure that Completion did not take place until the earlier of the application being determined by the Takeovers Panel and MGB, Investec and Radly giving not less than 2 business days notice of their intention to effect Completion. Given those undertakings, the Panel did not make any interim orders.

THE AGREEMENT

28. On its face, the MGB-Investec Agreement is simply a contract for MGB and Investec to buy (in equal parts each), and Radly to sell, 19.9% of the shares in Isis. However, a number of items in clause 6 which related to Completion but which were largely peripheral to the actual sale, caused concerns.

29. The Receivers advised that they entered into the MGB-Investec Agreement after a month of discussion with MGB-Investec, and following many enquiries from other persons interested in buying Radly's Isis shares. The Receivers advised that they considered the sale to be in the best interests of Radly.

30. The Receivers advised that they had had communications with Mr Adam Radly and had provided Mr Radly with an opportunity to make a better counter offer. Mr Radly disagreed with the Receivers' description of the process. He disagreed that he had been given a reasonable opportunity to make a better counter offer. However, he asserted that despite this he had made a better counter offer to the Receivers which they had not accepted.

31. The clauses with which the Panel had concerns are set out below.

Clause 6.3

"6.3 The Vendor agrees that in consideration of the Purchaser's agreement to purchase the Sale Shares, the Vendor must, if requested to do so by the Purchaser within 3 months after Completion, use all reasonable endeavours to ensure that a properly convened general meeting of the members of the Company is held for the purposes of considering such business as the Purchaser may reasonably require."

Clause 6.6

"6.6 the Vendor covenants that from the date of this agreement until Completion it will not vote in favour of any resolution:

a. that the Company cease carrying on its business in the ordinary and normal course;

b. to allot or issue or agree to allot or issue any shares, or options or securities convertible into shares in the Company;

c. to alter or agree to alter the Constitution of the Company, or any material contract of the Company;

d. that the Company enter into or terminate a contract otherwise than in the ordinary course of business;

e. except in the ordinary course of business, to dispose of, or agree to dispose of or grant an option to purchase, any of the Company's property or assets; and

that the Company borrow money without first obtaining consent in writing from the Purchaser or incur indebtedness other than in the ordinary course of business."

Clause 6.7

"6.7 Until Completion, the Vendor will use all reasonable endeavours to cause the Company to make available to the Purchaser and its financial advisers, accountants and lawyers, all relevant books, books of account, records, contracts, registers, and other documents relating to the Company and its business. The Purchaser, its financial advisers, accountants or lawyers may take copies of those materials."

Amending Deed

32. Following the application, and on the basis that clauses 6.3, 6.6 and 6.7 were largely inoperative, MGB-Investec and the Receivers, voluntarily and at their own instigation, entered into an Amending Deed on 4 July 2002. The Amending Deed deleted clauses 6.3, 6.6 and 6.7 of the MGB-Investec Agreement.

33. MGB-Investec said that it had entered into the Amending Deed, not out of any concession that the clauses were offensive, but rather as evidence of its good faith and evidence that the clauses were inoperative and totally peripheral to the stand-alone purchase of the Isis shares.

SUBMISSIONS

Radly Directors

AAV merger proposal

34. The Radly Directors suggested that the announcement of the merger between Isis and AAV 5 days after the MGB-Investec Agreement was evidence from which the Panel should infer that the MGB-Investec Agreement, although expressed to be in relation to 19.9% of Isis, in fact related to the whole 43% of Isis owned by Radly. The Radly Directors further suggested that in agreeing to sell the 19.9% to MGB-Investec, the Receivers were also agreeing to vote the remaining 23% in support of the AAV merger proposal.

35. The Radly Directors submitted that the MGB-Investec Agreement was related to the AAV merger proposal. Under both transactions, MGB-Investec would acquire a very substantial shareholding in Isis, and the announcements of transactions were separated by only 5 days. They submitted that it would seem unlikely that MGB-Investec would have been interested in a 19.9% shareholding in Isis but for the AAV merger proposal.

36. The Radly Directors said that discussions concerning a possible merger of Isis and AAV had commenced approximately 18 months ago. However, the terms of a merger were not able to be agreed by the Isis board and were not

supported by the majority Isis shareholders[1]. The Radly Directors submitted that it was apparent that the board of Isis and the owners of AAV now supported a AAV merger proposal and believed that the transaction would be supported by a majority of shareholders in Isis. They said that this change had occurred following the Receivers assuming control of the shares in Isis held by Radly, and entering into the MGB-Investec Agreement.

Clause 6.3

37. The Radly Directors submitted that Investec and MGB had become associates of Radly as a result of clause 6.3 of the MGB-Investec Agreement. This was because MGB-Investec and Radly had reached an agreement that had the effect of:

    – influencing the conduct of Isis' affairs within the meaning of section 12(2)(b) of the Act; or

    – those parties acting in concert in relation to Isis' affairs within the meaning of section 12(2)(c) of the Act or section 15(1)(a) of the Act.

38. The Radly Directors further submitted that clause 6.3 impliedly required Radly to retain a 5% shareholding in Isis, because otherwise Radly would have been unable to comply with the obligations imposed on it by clause 6.3. to call a meeting of Isis. This gave MGB-Investec a relevant interest in at least a further 5% of Isis shares because it gave control over the exercise of Radly's power to dispose of those shares.

Clause 6.6

39. The Radly Directors submitted that clause 6.6 gave MGB-Investec some power to control the voting of the remaining 23% of shares in Isis held by Radly, and that this was a clear breach of section 606 of the Act.

Clause 6.7

40. The Radly Directors submitted that clause 6.7, and the requirement for Radly to facilitate disclosure of Isis' books, even after the shares had been sold, supported the inference that MGB-Investec and the Receivers were acting in concert in relation to the affairs of Isis, within the meaning of section 12(2)(c) of the Act, and that they had become associates in relation to Isis, and contravened section 606 as a result of entering into the agreement.

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[1] Submissions differed on the nature of these discussions. The exact nature was not relevant to the Panel's decision so it did not make any attempt to determine the actual nature of the discussions.

Murphy email

41. The Radly Directors also asserted that an agreement may have been reached between MGB-Investec and the Receivers in relation to the exercise of voting rights attached to the Isis shares retained by Radly. They cited a copy of an email dated 15 April 2002 from John Murphy, the then current director and secretary of MGB and director of AAV, to Alan Humphris and Bryan Waters, then current directors of Isis, and a memorandum containing proposed commercial terms for a merger of Isis and AAV. The Radly Directors said that they believed that the memorandum was prepared by John Murphy at about the time that the email was sent in April 2002.

42. Clause 2(iv) of the memorandum stated: "It would be a requirement of taking this proposal forward that we meet in the short term with the Receiver to ensure we had his commitment to vote to support the proposal." The Radly Directors asserted that that clause evidenced a clear intent by MGB to reach an agreement with the Receivers in relation to the exercise of the voting rights attached to the Isis shares held by Radly. Similarly, it evidenced a proposed agreement with the Receivers to act in concert in relation to the affairs of Isis.

The Receivers

43. The Receivers submitted that the MGB-Investec Agreement was simply a normal commercial agreement, which was never intended to achieve anything other than the sale of 19.9% of shares in Isis by Radly to Investec and MGB. The Receivers submitted that if the agreement had any effects beyond that, those effects were inadvertent and unintended.

44. The Receivers submitted that the MGB-Investec Agreement (together with the Amending Deed, from 4 July, and a letter from MGB and Investec of 28 June, agreeing to the deletion of clauses 6.3, 6.6 and 6.7) constituted the sole agreement (formal or informal) between Radly and MGB-Investec.

45. The Receivers advised that the relevant clauses were inserted at the request of MGB-Investec.

46. The Receivers noted that the terms of the MGB-Investec Agreement had been changed by the Amending Deed, which the Receivers suggested dealt with the Panel's concerns.

Clause 6.3

47. The Receivers submitted that clause 6.3 did not bring the parties within any of the categories of associates set out in sections 10-17 of the Act. The Receivers emphasised that clause 6.3 only required Radly to use "all reasonable endeavours" it did not expressly or impliedly require Radly to vote any Isis shares in any way, or to retain any shareholding in Isis.

Clause 6.6

48. The Receivers submitted that clause 6.6 was inoperable because there were only 14 days between the signing of the MGB-Investec Agreement and Completion

(which was the period for which the clause was to operate). The Act requires a listed company to give at least 28 days notice of any general meeting. No such notice had been given, so the clause would have no effect.

Clause 6.7

49. The Receivers submitted that clause 6.7 did not bring the parties within any of the categories of associates set out in sections 10-17 of the Act.

AAV merger

50. The Receivers said that they were aware that discussions had taken place previously, and were ongoing, in relation to a possible merger between Isis and AAV. However, they were not privy to the details of those discussions.

51. The Receivers denied that there was any agreement (formal or informal) between them and any other person in relation to the remaining 23% of Isis shares held by Radly, or the exercise of any voting rights in relation to those shares.

MGB-Investec

52. MGB-Investec asserted that the MGB-Investec Agreement was a simple sale and purchase contract of 19.9% of the shares in Isis only, and that the offending clauses (6.3, 6.6, 6.7) were either inoperative, did not control the Receivers' disposal or voting of any Isis shares, or were inoffensive. In any event, MGB-Investec asserted that any aspects that the Panel found offensive were unintended and inadvertent. Further, MGB-Investec voluntarily entered into the Amending Deed.

53. MGB-Investec asserted that it and its executives believed, and were aware that, the Receivers would have complete freedom to vote and dispose of the remaining 23% of shares in Isis prior to and after the completion of the MGB-Investec Agreement, and that MGB-Investec had no ability or right to fetter the Receivers' discretions. MGB-Investec produced several affidavits from its employees and directors to this effect. It asserted that this was evidence that the MGB-Investec Agreement was only an agreement in relation to 19.9% of the shares in Isis.

54. As further evidence that the MGB-Investec Agreement related only to 19.9%, MGB-Investec asserted that when it entered into the MGB-Investec Agreement, it was aware that there were a number of commercial risks in entering into the agreement. MGB-Investec asserted that it entered into the agreement having no control over whether:

: Isis would agree to consider the AAV merger proposal;

: Isis shareholders would vote for the AAV merger proposal; or

: the Receivers would sell the remaining 23% of Isis shares to parties who would not support the AAV merger proposal.

Clause 6.3

55. MGB-Investec suggested that clause 6.3 had been drafted by AAV's commercial lawyer who was more experienced in media and high-technology contracts than takeovers law. MGB-Investec suggested that if its corporate lawyers had drafted the contract, clause 6.3 would not have been included.

56. However, MGB-Investec went on to say that clause 6.3 did not result in any acquisition by Investec or MGB of a relevant interest in the remaining 23% of Isis shares held by Radly. MGB-Investec said that the clause merely required the Receivers to use reasonable endeavours to ensure that a properly convened general meeting of Isis was held. Given that on Completion both MGB and Investec would hold more than the 5% of shares in Isis which would enable them to convene a general meeting of Isis, the clause would give them no more advantage than they would have on Completion.

57. MGB-Investec denied that clause 6.3 created any association between the Receivers and MGB-Investec.

Clause 6.6

58. MGB-Investec asserted, similarly to the Receivers, that because the period between execution and Completion was less than the statutory period for a notice of meeting of Isis, and no such notice had been given, clause 6.6 was inoperative and should therefore be disregarded.

59. MGB-Investec also asserted that many of the elements of clause 6.6 were inoperative and ought to be disregarded, because they were not items which shareholders of a public company such as Isis were entitled to vote on; rather they were items for a company's board to determine.

60. MGB-Investec advised that the possible unintended operation of clause 6.6 was identified at a very late stage (approximately 2 hours before the agreed time to exchange the signed copies of the MGB-Investec Agreement). MGB-Investec said that the persons who noticed that possible unintended operation then considered whether, given the time to the Completion date, clause 6.6 had any operation at all. They concluded that it did not, and due to the potential unavailability of one of the signatories of the Receivers if the exchange was postponed, they decided to execute the MGB-Investec Agreement on the basis that clause 6.6 was inoperative.

Clause 6.7

61. MGB-Investec asserted that as the Receivers, not being directors of Isis, had no ability to do anything meaningful to give effect to the obligations set out in clause 6.7, the clause should not be regarded as significant. MGB-Investec made similar submissions in relation to aspects of clause 6.3 and 6.6.

62. MGB-Investec asserted that clause 6.7 did not create any association between MGB-Investec and the Receivers.

The Murphy email

63. Mr Murphy provided an affidavit stating that he had prepared the email and the memorandum dated 15 April 2002. He stated that he had prepared the documents without any legal advice. He confirmed statements by other MGB-Investec employees and directors that when MGB-Investec formally came to consider the acquisition of shares in Isis, it was accepted and agreed by all that MGB-Investec did not and could not have any control over the voting or disposal, by the Receivers, of the remaining 23% of Isis held by Radly.

ASIC

64. ASIC did not make any formal submissions but reserved its right to follow the proceedings and submissions and address any regulatory issues that it considered ought to be raised before the Panel.

DISCUSSION AND DECISION

65. The Panel accepted the general proposition that the MGB-Investec Agreement was intended by the principals to be solely a sale and purchase contract relating to 19.9% of the shares in Isis. It accepted the propositions that the principals did not intend any association to be created between the Receivers and MGB-Investec, and that the principals did not intend MGB-Investec to gain any control, positive or negative, over the voting or disposal of the remaining 23% of Isis shares held by Radly.

66. The Panel had some real concerns that the effect of clauses 6.3, 6.6 and 6.7 had been to give MGB-Investec voting power in the 23% of Isis shares that were not expressly part of the MGB-Investec Agreement, resulting in a possible contravention of the Act. However, despite those concerns, the Panel did not consider that the evidence supported a conclusion that the MGB-Investec Agreement had caused unacceptable circumstances.

67. The Panel took into account MGB-Investec's assertions that any offensive parts of the MGB-Investec Agreement were inadvertent and unintended; the fact of MGB-Investec quickly and voluntarily deleting the relevant clauses when the issues were formally brought to its attention; and the evidence presented that MGB-Investec had been operating on the basis that the Receivers had been free to deal with the remaining 23%.

Clause 6.3

68. The Panel did not consider that clause 6.3 had any particular practical effect given that MGB-Investec would be able to convene a meeting immediately after Completion. In addition, the Panel did not consider that clause 6.3 imposed any obligation on Radly (via the Receivers) to vote or dispose of the remaining 23% of shares in Isis in any particular way. Likewise, the Panel did not consider that the clause caused MGB-Investec and Radly or the Receivers to become associates.

Clause 6.6

69. On its face, clause 6.6 appeared to give MGB-Investec control over the voting of the remaining 23% of Isis shares owned by Radly, thus causing a contravention of section 606 of the Act.

70. However, as well as the factors noted above, the Panel took into account the fact that it was highly unlikely that clause 6.6 would ever have had any operation.

71. The Panel notes the submission from MGB-Investec that executives of MGB-Investec became aware before signing of the possible contravention that clause 6.6 would cause, but they proceeded to allow MGB-Investec to execute the agreement anyway. The Panel notes the arguments presented rationalising that decision. Nonetheless, it seems inappropriate to the Panel for the contract to have been signed in the face of a concern of this nature. Although delaying execution of the agreement was not a commercially attractive proposition for MGB-Investec, they could have addressed the issue in a number of other ways, including immediately waiving the operation of the clause or having sought to immediately amend the document before signing by striking out the clause.

Clause 6.7

72. The Panel concluded that, given the other evidence discussed above, it was inappropriate to infer or determine that clause 6.7 was evidence of an association between MGB-Investec and Radly or the Receivers. However, under other circumstances another Panel may well take a similar clause to support a positive inference of an association and unacceptable circumstances.

Contravention and unacceptable circumstances

73. The Panel considers that this matter is an example of the Panel's policy position (which it has regularly expressed in its Guidance Notes) that evidence of a contravention of the Act will not automatically mean that unacceptable circumstances have occurred and the Panel should make such a declaration.

74. The Panel's position has consistently been that the existence of unacceptable circumstances is an issue to be determined in light of, in addition to the particular facts of the case before it, policy, public interest, and market and shareholder interests, rather than by black letter law interpretation. The Panel intends to continue this policy of when it should make a declaration of unacceptable circumstances. The flip side to this position, as made clear by section 657A(2) of the Act, is that evidence of a contravention of the Act is not a prerequisite to a declaration of unacceptable circumstances. Circumstances involving technically legal transactions or conduct may still cause the Panel to make a declaration of unacceptable circumstances where the policy, public, market and shareholder interests indicate that is the proper course.

75. The Panel made no finding of unacceptable circumstances in this case. It released its decision on 9 July 2002.

76. The Panel consented to the parties being represented by their commercial solicitors.

Alison Lansley
President of the Sitting Panel
Decision dated 9 July 2002
Reasons published 20 September 2002