Neutral Citation Number:

Case No: CR-2012-007914

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF COMET GROUP LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

[IN PRIVATE]

Royal Courts of Justice
Rolls Building
Fetter Lane
London, EC4A 1NL

Date: XX/06/2018

Before :

SIR NICHOLAS WARREN

- -

Between :

(1) NEVILLE BARRY KAHN **(2) NICHOLAS EDWARDS** **(in their capacity as the joint liquidators of Comet Group Limited)**	**Applicants**
- and -	
THE INSITUTE OF CHARTED ACCOUNTANTS IN ENGLAND AND WALES	**Respondent**

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Mr Gabriel Moss QC and Mr Ryan Perkins (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Applicants**
Mr Terence Mowschenson QC and Ms Lexa Hilliard QC (instructed by **the Institute of Chartered Accountants**) for the **Respondent**

Hearing date: 7th June 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR NICHOLAS WARREN

Sir Nicholas Warren :

Introduction

1. Following my judgment (formally handed down on 13 June 2018 after the hearing to which this judgment relates) ("**the Judgment**"), I now need to deal with (i) the extent to which the Judgment may be disclosed and (ii) costs. I shall use the same definitions as I adopted in the Judgment.

Disclosure of the Judgment

2. There are three aspects to consider: the first is the extent, if at all, that the Judgment should be made publically available; secondly, if it is not to be made publically available in unredacted form, the extent, if at all, that it should be made available to unsecured or secured creditors; and thirdly, the extent, if at all, that use can be made of it in any proceedings before the Disciplinary Tribunal. The ICAEW's preferred position is that the Judgment should be made available publically (including to creditors) in a redacted form and that it should be made available to the Disciplinary Tribunal in unredacted form. The Liquidators' position is that the Judgment should not be made publically available at all, that it should be made available to creditors in unredacted form but subject to confidentiality undertakings and that it should not be made available to the Disciplinary Tribunal.

3. Entirely different considerations apply to public disclosure, on the one hand, and to disclosure to creditors, on the other hand. I first consider public disclosure.

Public disclosure

4. The normal rule is that hearings are held in public: see CPR 39.2. There are a number of authorities both before and after the introduction of the CPR which demonstrate this principle of open justice, including *A-G v Leveller Magazine Ltd* [1979] AC 440 and *Ambrosiadou v Coward* [2011] EMLR 419 to which I have been referred.

5. In the former case, Lord Diplock after stating the general rule (citing *Scot v Scott* [1913] AC 417), said this:

> "However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule. Apart from statutory exceptions, however, where a court in the exercise of its inherent power to control the conduct of proceedings before it departs in any way from the general rule, the departure is justified to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice…."

6. The latter case concerned an interim non-disclosure order. In the context of such cases, the principles are dealt with in the Practice Guidance issued by Lord Neuberger MR concerning

Interim Non-Disclosure Orders at [9]-[14]. As explained there, those principles include the following:

a. Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders, are public.

b. Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.

c. The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test.

d. There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done.

e. The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence.

7. CPR 39.2.3 sets out some circumstances in which a hearing may be in private. Paragraph (f) provides for this to be done where the hearing involves uncontentious matters arising in the administration of trusts or in the administration of the estate of a deceased person and paragraph (g) does so where the court considers this to be necessary in the interests of justice.

8. In *Registrar of Companies v Swarbrick* [2014] Bus LR 625, Mr Richard Spearman QC (sitting as a deputy High Court judge) considered the principle of open justice, setting out, at [15], paragraphs 9 to 14 of the Practice Guidance to which I have just referred. At [16], he says this:

> "I think that there may be tendency on the part of some applicants to adopt the stance that to justify holding a hearing in private it is sufficient to establish that the case falls within one of the classes in CPR r 39.2(3). I have seen this, for example, in a case falling within CPR r 39.2(3)(f)….. In that case, I was told by counsel that it is usual practice for the applications involving such matters to be listed in private. This notwithstanding the fact that this class of case is not listed as one of those which is to be listed by the court in private in the first instance in accordance with Practice Direction 39A." [The relevant part of the PD at para 1.5(1) refers only to an application by a trustee or personal representative for directions as to bringing or defending legal proceedings.]

9. There is a line of authority, predating the CPR, which deals with the holding of certain trust and company applications in private. The first of these to which I refer is the well-known decision in *Re Moritz* [1960] Ch 251. This was a case where trustees sought directions whether

they should take certain proceedings against two beneficiaries. It was held that, whilst it was not only proper but also necessary to join the two beneficiaries against whom the proposed relief was sought, it was not the practice of the Chancery Division that those parties should be present in chambers when the matter was debated and that they should not be furnished with the evidence upon which the court was asked to act. The scope of practice was further explained by Oliver J at first instance (his judgment on this aspect not being challenged in the Court of Appeal) in *Midland Bank v Green* [1980] 1 Ch 590.

10. It might be thought that the scope of that practice was limited to circumstances where, for obvious reasons, the proposed defendants should not be able to discover how the intending claimants saw their own case. The judgment of Morritt LJ in *Craig v Humberclyde Industrial Finance Ltd* [1999] 1 WLR 129 at [19] shows that this is not so. Referring to Counsel's description of the purpose of the practice described in *Re Moritz* (that is to say that the purpose was to resolve the dilemma of a trustee how to make sure he got his costs out of the proposed action out of the trusts fund without making advance disclosure to the proposed defendant) he considered that description to be altogether too narrow although it may express the practical result. He said this:

> "The purpose of the procedure is in an essentially administrative jurisdiction, as described by Wilberforce J. in *In re Eaton, decd.* [1964] 1 W.L.R. 1269, 1270, to ensure so far as practicable the proper exercise of fiduciary powers or obligations. It is true that the directions sought in this case are essentially how and to whom the asset of the company should be sold rather than whether the company should itself sue. But that distinction lacks substance. In each case the problem is how best to realise an asset of the fund, be it a trust fund or the property of a company in liquidation divisible amongst its creditors, which consists of a chose in action. Such an asset may be realised by suing on it or selling it. The *In re Moritz* procedure plainly applies to the former alternative and I can see no reason why it should not similarly apply to the latter. In my view it is appropriate to apply the practice and procedure applicable to applications by trustees under R.S.C., Ord. 85, r. 2(3) to comparable applications by a liquidator under section 168(3) save in so far as the Act of 1986 or Rules of 1986 make other provision....."

11. Two conclusions can be derived from that. The first is that the purpose of the *Re Moritz* procedure is to determine the best course of action for a trustee to take to protect or realise the assets of the trust fund; the court is exercising an essentially administrative jurisdiction. The second is that the same principles are to be applied to comparable applications by a liquidator seeking directions in the course of the liquidation.

12. In the context of proposed trust litigation against a beneficiary, it will nearly always be the case that the beneficiary is to be excluded from at least part of the hearing. He may nonetheless be entitled to receive some of the evidence and even to attend part of the hearing, as the approach of Wilberforce J in *Re Eaton decd* [1964] 1 WLR 1269, demonstrates. Wilberforce J did not see *Re Moritz* as being anything other than a procedure to achieve justice: the court will adapt the practice so far as is practicable in order to do justice in the particular circumstances of the case. I do not detect any real tension between that approach and the principle of open justice. The exceptions to that principle have justified by the courts by

reference to the requirements of justice. The principles set out in the Practice Guidance in relation to interim non-disclosure orders apply, in my judgment, to trust applications even in cases where the *Moritz* procedure is appropriate and, following *Craig v Humberclyde Industrial Finance Ltd*, to applications by Liquidators for directions.

13. Mr Moss submits that the *Moritz* procedure is a well-established exception to the principle of open justice. It is certainly the case that where that procedure is properly applicable, it will constitute an exception to the open justice principle. It does not follow, however, that every application by trustees for directions *ipso facto* constitutes an exception to the open justice principle; and the same goes for applications by liquidators for directions. In practice, however, it is likely that many such applications of either sort will constitute such an exception, although whether the entirety of a hearing should be in private will be heavily fact-dependent. There may be ways of preserving confidentiality and of preventing intended defendants from learning the perceived merits of the case against them falling short of total exclusion from the hearing and a direction that they should not see any of the evidence.

14. In the present case, I directed the hearing to be in private. Having, now, a much fuller picture than when I made the direction, I remain of the view that it was the correct direction to make. There was clearly a significant amount of material which it would have been inappropriate to bring into the public domain, principally concerning the sort of enquiries which the conflict liquidator whom I have appointed will make: it seemed to me at the time that the very claims which he is to investigate might well be prejudiced by disclosure of all of the evidence which was presented to the court. It would have been a difficult task to manage the hearing in such a way that the public could be present for some of the hearing but excluded for other parts.

15. Disclosure of the Judgment, however, is a different matter. It does not follow from the fact that the hearing was in private that the Judgment should not be disclosed, even in redacted form. The principle of open justice applies as much to the Judgment as to the hearing, and if the Judgment is to remain private, that has to be because non-disclosure is strictly necessary as a measure to secure the proper administration of justice. It cannot, in my judgment, be said, just because the court is dealing with an administrative application (whether in a trust context or a company insolvency context), that the open justice principle is inapplicable to the release of a judgment.

16. Mr Moss submits that the Judgment should not be released publically in either redacted or unredacted form. He says that it is not appropriate to release it in unredacted form for a number of reasons, including the following:

    a. Risk of prejudice to the Protective Claims, which the conflict liquidator is to investigate.

    b. Risk of prejudice to the position of a number of third parties.

    c. Risk of prejudice to the Liquidators and Mr Farrington in their capacities as the former Joint Administrators.

17. In reality, Mr Moss submits, the only purpose to be served by release of the Judgment publically is to embarrass the persons whom I might be thought to have criticised in the Judgment.

18. As to the three risks just mentioned, Mr Mowschenson has this to say:

    a. As to prejudice to the Protective Claims, the risk through publication is not obvious. To the extent that there is any risk, it can be dealt with by redaction of any reference to the Protective Claims. There is no risk that the potential targets will be tipped-off since they must already know that there is some vulnerability as a result of the questions already asked by Freshfields on behalf of the Liquidators.

       In response, Mr Moss contends that one problem with that is that it will be apparent from even a redacted version of the Judgment (of its provision is to be of any point at all) that the potential target of action is the HAL Debenture and the Comet directors. Since it will be obvious to an informed reader that the limitation period has now expired, the conclusion which the informed reader would draw is that a protective claim was already on foot, otherwise there would be no point in the appointment of a conflict liquidator. Further, the questions asked by Freshfields were carefully formulated in a way least likely to give to concerns on the part of the directors that they might be open to criticism or that a challenge might be launched to the HAL Debenture.

    b. As to the risk of prejudice to third parties, it is not clear what risk there is but such risk as exists is outweighed by the interests of creditors and the public in the Judgment being published. At this stage, I am considering only publication to the public and not the separate question of what the creditors should see. As to the public interest, it is pointed out that there is a degree of controversy over the continuing regulatory role of a professional organisation such the ICAEW; the Judgment is an example (which should be made public) of how a professional organisation can and does act in the pubic interest by making representations in appropriate cases in order to protect the interests of creditors and the wider public. That may well be so, but it cannot be right, I consider, that this is a factor to be brought into account in deciding whether the case falls within the exceptional sort of case where the principle of open justice is qualified. Either it is strictly necessary to refuse (or to limit) publication in order to secure the proper administration of justice or it is not: if it is strictly necessary, then it cannot be right to publish nonetheless just because the Judgment will have some bearing on the answer to that controversy. Further, as Mr Moss points out, third parties (in particular the directors of Comet) of whom criticism has been made have played no part in the hearing and have had no chance to put their side of the story, which is something which the conflict liquidator will need to find out; it cannot be right, he says, that at this stage the Judgment, which they cannot challenge, should be made public. Notwithstanding that the Judgment, when read carefully with a lawyer's eye, contains no findings against them, but only suggests that answers need to be given

to a number of questions, passages can be focused on which appear to be highly critical of them.

c. As to the risk to the Liquidators and Mr Farrington, Mr Mowschenson points out that reference to the substance of the disciplinary proceedings is to be redacted and, although those proceedings are mentioned in the redacted version, the fact of those proceedings is already in the public domain. In that context, I do not think anything of Mr Moss' point that, although already in the public domain, they have (to use my words) disappeared from the public view and the interest of journalists so that disclosure of the Judgment would revive such interest and lead to further adverse publicity. There is, however, more in the point that passages from the Judgment can be taken in isolation as critical of the Administrators, although I do say that I hope that I have been careful in the Judgment to avoid any findings which could be used against them in the disciplinary proceedings. Further, so far as Mr Farrington is concerned, he (like the Comet directors) has had no chance to put his case.

19. Mr Mowschenson conclusion is that the Judgment should be released publically in redacted form. The ICAEW with some help from some of its legal team has made an attempt at redaction, but their efforts also include adding words to make sense of passages which, redacted, make little sense. I am bound to say that I agree with Mr Moss when he says that the result of that exercise is, in some instances, to give an incorrect impression of the substance of what I was saying. In particular, in excising reference to privileged material, the impression is given that the Liquidators have taken no steps at all in relation to the possible claims whereas they have taken advice from their solicitors and independent counsel. In any case, Mr Mowschenson says that he (and by implication the ICAEW) is not wedded to the redacted version so far produced and acknowledges that further work needs to be done to produce a suitable version.

20. I consider, in all these circumstances, that it would be wrong to release publicly an unredacted version of the Judgment. Further, at this stage at least, I consider that it would be wrong to consider further the release of a redacted version. As Mr Mowschenson accepts, it is not for the parties to add words to the Judgment, if redaction does take place, in order to make better sense of passages which, with redaction, make little or no sense. I am not myself prepared to consider what might be significant rewrites of passages myself in order to bring about such sense. And whilst readers of a redacted document will know that the apparent sense of what they can see may not represent the actual sense and will see that some unredacted passages make no sense at all, the result of redaction (without addition of further words) in the present case runs the risk of giving an altogether misleading impression of the conduct of the Comet directors and the Administrators. I consider that it is not appropriate at this stage, to release the Judgment, in either unredacted or redacted form, into the publish domain. It is in the interests of justice that the Judgment remains private. In this way, any risk of tipping-off, however, slight, is avoided, privilege is maintained and third parties are not subject to what will inevitably be read as public criticism without having had any opportunity to defend themselves.

21. I say "at this stage" because it may be appropriate to release the Judgment at some time in the future. For instance, following completion of his investigations, the conflict liquidator may decide not to continue with the Protective Claim: the risk of tipping-off becomes irrelevant. Or it may be that in the course of carrying out his duties, the conflict liquidator informs the creditors (in a way which may result in the information becoming public) about what he considers that the directors did and did not discuss at their board meetings or about the enquiries which he has ascertained the Administrators did and did not make relevant to the validity of the HAL Debenture. It may then be unnecessary, in the interests of justice, for the Judgment to remain private. All of that is, of course, for another day.

Disclosure to creditors

22. It has not been suggested that, if there is to be no public disclosure, there should be any disclosure to the Comet directors or to the parties to the HAL Debenture. It would, in my judgment, clearly be inappropriate.

23. So far as the unsecured creditors are concerned, it is in my judgment appropriate that they are informed about the potential claims (preserved by the issue of the Protective Claim) which the conflict liquidator is to investigate. Further, the principle of open justice demands that the creditors be provided with the Judgment unless privacy is strictly necessary as a measure to secure the proper administration of justice; and even if that is so, the derogation from the principle should be no more than strictly necessary to achieve that purpose. The Liquidators' position is that the Judgment should be provided in unredacted form to creditors with debts of over a threshold amount, in relation to which the figure of £5 million is suggested, subject to an appropriate confidentiality undertaking. The thinking behind a threshold of this sort is that it is only creditors who might consider funding any litigation who need to be provided with the Judgment. It is not suggested that other creditors should not be entitled to have the Judgment, subject to similar undertakings but the draft order submitted on behalf of the Liquidators required them to apply to the Court. The ICAEW's position is that the Judgment should be provided without undertakings, but only in redacted form. It is said that whatever undertakings are given (at least in the case of all but the largest creditors) there will in practice be leakage.

24. I consider that the Liquidators' approach is preferable and best reflects the principle of open justice. But this is subject to one adjustment, which is that any creditor should be entitled to have the Judgment on application to the conflict liquidator or the Court in the case of refusal. If there is no conflict liquidator in office at any time, application can be made to the Liquidators or the Court in the case of refusal. The order need draw no distinction between creditors with different levels of debt, although the conflict liquidator is to be free to approach any particular creditor with an offer of the Judgment (subject to the undertaking) and may think it sensible to approach those with significant debts.

25. I do not consider that I should attach much, if any, weight to Mr Mowschenson's submission that there is bound to be leakage. I am entitled to think that a person giving confidentiality undertakings will observe them. In speaking of confidentiality undertakings, I envisage such undertakings being given to both the conflict liquidator and to the court. It is important that those giving such undertakings understand that they will be in contempt of court if they breach

the undertaking. In the circumstances of the present case, a breach would be particularly serious; this should be drawn to the attention of anyone giving the undertakings.

Disclosure in the disciplinary proceedings

26. Notwithstanding Mr Moss' submissions that the issues in the hearing before me and the issues in the disciplinary proceedings are different, there is overlap; and there is certainly overlap in the evidence before me and the evidence which will be before the Tribunal, although of course there will be significant differences. To put it slightly differently, the issues and evidence in each set of proceedings are closely related. Mr Mowschenson, correctly in my view, says that my order on the Liquidators' application will inevitably be produced – I can see no reason why the order should be withheld from the Tribunal even if that were, in theory, possible. There is bound to be reference to the application since the Tribunal will obviously be told that a conflict liquidator has now been appointed and will be interested to know why.

27. Mr Mowschenson says it would be unfair to the Tribunal not to have the Judgment available. He also refers to a letter from Deloitte to Mr Wiggetts dated 23 February 2018. In paragraph 4 of that letter, Deloitte say that the evidence being obtained in connection with the applications "is highly relevant to the disciplinary process". Deloitte and the Administrators "will reference that evidence" in their representations to the Investigation Committee. Importantly, it is stated that "the resolution of the issues raised in the Joint Liquidators' application, either by way or an order and any judgment of the court, or by agreement will inevitably also be relevant to both parties. We certainly anticipate the need to reference the outcome in the Representations and again it may be that the PCD will need to reflect the outcome in the Complaint". In my view, these are helpful and correct observations. No doubt the Liquidators hoped (perhaps even expected) that I would accede to their application and for that reason considered any Judgment would be available in the disciplinary process because it could only help them: see [14] and [17] of the Judgment. The issue of disclosure or otherwise cannot, however, depend on the actual outcome of the application.

28. Notwithstanding that letter, Mr Moss now contends that the Judgment should not be made available at all to the Tribunal. He says that the ICAEW wishes to include the Judgment only because it is prejudicial to the Liquidators and Mr Farrington. It would be fundamentally unfair to admit it. The Tribunal does not, in any case, need the Judgment because it is for the Tribunal to make its own findings of fact on the basis of the evidence before it. For my part, I do not consider that it would be unfair to disclose the Judgment to the Tribunal. The Judgment makes clear that I do not form any view as to the merits of the disciplinary investigation. The Tribunal will have to reach its conclusions of fact on the basis of the evidence before it, which will be different from the evidence before me and in relation to which I have made few actual findings rather than expressing views about what needs investigating.

29. My conclusion is that the Judgment should be made available to the Tribunal. The Tribunal will need to adopt a procedure to ensure that the privacy of the Judgment is respected unless there has, by the time the matter comes before the Tribunal, been a variation of my order so as to allow a wider disclosure than to unsecured creditors.

30. For the avoidance of doubt, I should add that the conflict liquidator is at liberty to provide the Judgment to his own lawyers and experts as well as to potential litigation funders, subject to the appropriate confidentiality undertakings.

Disposition on disclosure of the Judgment

31. My conclusions on disclosure of the Judgment are as follows:

    a. At this stage of the proceedings, there is to be no public disclosure.

    b. The Judgment, unredacted, is to be disclosed to unsecured creditors in accordance with the terms of this judgment, including terms as to confidentiality undertakings.

    c. The Judgment may be used at any hearing before the Tribunal subject to the Tribunal adopting suitable safeguards to ensure the continued privacy of the Judgment.

32. I should add two matters. First, the order appointing the conflict liquidator which I made on 14 June 2018 should not be made public at this stage. However, once the conflict liquidator has completed his enquiries, it seems to me at present that there would be no reason for the order to remain unpublished. It should be released once the conflict liquidators has made his decision whether or not to continue with the relevant claims subject to any application that the order should continue to be private. If none of the ICAEW, the Liquidators or the conflict liquidator object to its disclosure at this stage, it should be placed on the part of the court file open to public inspection. And secondly, this judgment and the order may be disclosed to the same extent, but no further, as the Judgment (subject in the case of the order to the immediately preceding sentence).

Costs

33. The Liquidators accept that the ICAEW should have its costs of the application. Mr Moss submits that the costs should be paid on the standard basis as an expense of the liquidation. Mr Mowschenson submits that they should be paid by the Liquidators personally on the indemnity basis. Whether the Liquidators should then have a right of indemnity out of the assets of the estate is not a matter on which the ICAEW takes a view. Mr Moss also submits that the Liquidators should have their own costs as an expense of the liquidation, a matter on which the ICAEW again takes no view.

34. It is not clear whether the application should be categorised as hostile litigation or simply as an application for directions in the administration of the liquidation estate. It has characteristics of both. I do not consider that it is necessary to determine which side of the line the case falls in deciding the appropriate costs order to make. The ordinary rule is that costs follow the event, which means, if strictly applied, that the ICAEW should have an order for costs against the Liquidators. But as Briggs J concluded at [13] of his judgment in *Pearson v Lehman Brothers Special Financing Inc* [2010] EWHC 3044:

> "It follows in my judgment that although there are features of insolvency litigation which, by analogy with litigation about deceased's estates, may justify a departure from the general rule, the court should nonetheless approach any particular case for a departure with real caution, and litigants ought to expect to have to justify such a departure by reference to the facts about their alleged predicament, rather than merely by recourse to some supposed general principle."

35. In the absence of the person, namely HAL, which will bear the burden of costs if they are paid out of the estate, I do not consider that I should make an order which would deprive it of the right to challenge any costs being so paid. But if a challenge were made, and were successful, there are features of the litigation which would make it unfair for the ICAEW to bear, as between itself and the Liquidators personally, its costs of the application. I do not propose to list all of those features. But as Mr Moss acknowledges, the argument had an adversarial tone; and, in my view, reference to the evidence and the correspondence shows that the whole proceedings had an adversarial tone with the Liquidators taking the view throughout (and continuing to do so) that Mr Wiggetts has a vendetta against them. It is not only the tone which was adversarial. The whole thrust of the Liquidators' case was not simply to put matters before the court to enable a decision to be made as to the best course but was a hard fought positive case that I should allow them to proceed as they wished and that, even if I considered that further enquiries should be made, it was unnecessary to appoint a conflict liquidator.

36. In all the circumstances, I propose firstly to order that the Liquidators pay the ICAEW's costs. These will be costs on the standard basis. I do not propose to say anything about whether the Liquidators are entitled to an indemnity out of the estate. The *prima facie* position is that they are so entitled, but I do not wish to shut HAL out from arguing that they should not have that indemnity. Insofar as the ICAEW's costs on the indemnity basis exceed their standard costs, it is to be entitled to those costs as an expense of the liquidation and I will order accordingly. I make no order in relation to the Liquidators' own costs of the application. I am not satisfied that it is clear that they should not be entitled to their *prima facie* right to an indemnity and decline to make an order preventing them from meeting their own costs out of the estate. They do not need an order if they have a right to an indemnity. However, I do not consider that it is right to make an order which would deprive HAL of the right to challenge those costs as an expense of the liquidation and I decline to make an order which would do so.

Disposition on costs

37. Accordingly, I will make an order in relation to the ICAEW's costs as indicated in the immediately preceding paragraph of this judgment but make no order in relation to the Liquidators' costs.