

**PENSIONS ACT 2004, PART 2 CHAPTER 6
APPEAL TO PENSION PROTECTION FUND OMBUDSMAN
DETERMINATION BY THE PENSION PROTECTION FUND OMBUDSMAN**

Applicant : Ms F Clifton on behalf of the Scheme Trustees
Scheme : Revvo Castor Company Limited Retirement Benefits Scheme (the
Scheme)

The PPF Ombudsman has received a reference of a reviewable matter, following a decision by the Reconsideration Committee (the **Committee**) of the PPF dated 2 July 2009. The referral concerns the Scheme's risk-based levy in respect of the period 1 April 2008 – 31 March 2009, as set out in the invoice number 10245876-09-01 dated 7 November 2008, in the sum of £74,420.

Background

1. The calculation of the levy is a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.
2. On 19 February 2008, the PPF Determination (the **Determination**) under section 175(5) was published.
3. The deadline for submission of contingent asset certificates, section 179 valuation certificates and scheme maintenance data expired at midnight on 31 March 2008. This is the date at which Dun & Bradstreet take the Failure Score for levy purposes.
4. The Trustees have asked for a reconsideration of the amount of the Scheme's risk based levy on the basis that the Scheme return incorrectly showed the sole participating employer to be The Revvo Castor Company Limited.
5. The Trustees state that following the acquisition of Revvo Castor Company Limited the parent company, based in the United States, had decided that for simplicity of reporting the Group be brought together under one company, Colton Castors Limited. At that point The Revvo Castor Company became a division of Colson Castors Limited and The Revvo Castor Company Limited became a dormant company.

6. The Trustees request that the employer to which all members are assigned be changed from The Revvo Castor Company Limited (DUNS 493125520) to The Revvo Castor Company (DUNS 293472155).
7. The Scheme successfully applied for a similar correction for the 2007/2008 levy year, which was granted and reflected in a revised invoice.

Reconsideration and Review decisions

8. The Committee upheld the original calculation of the levies on 2 March 2009 and the Board reviewed and upheld that decision on 2 July 2009. Those decisions are summarised below:
 - the Committee concluded that the information provided was incorrect and considered the discretion available to it under paragraph 6 of the Determination;
 - paragraph 6 of the Schedule to the Determination makes clear that a scheme which has submitted incorrect information has no right to have its levy invoice reviewed as a result;
 - the Committee noted the Board's published policy not generally to accept corrections for the 2008/2009 year. The Committee noted that the Board adopted the policy for 2008/2009 for three main reasons:
 - if the Board allowed corrections to be accepted then there was a higher risk that the Board would under collect against the levy estimate, given that the levy scaling factor calculation could only be based on the information provided to the Board by the relevant deadline;
 - building in a margin of error to the levy scaling factor to mitigate the risk of under collection against the levy estimate would inherently lead to inappropriate schemes being disadvantaged, which was felt to be inappropriate;
 - it was reasonable to expect schemes to provide the correct data at the right time, in particular as this was the third year for which data was being submitted for pension protection levies.

- the Committee noted the information put forward on behalf of the Scheme but did not consider it appropriate in the particular circumstances to depart from the general policy of not taking account of corrections to Scheme Maintenance System data requested after 31 March 2008. The Committee was not persuaded that the circumstances of this case justified such a departure.

Summary of the position of the Trustees

- the Trustees contend that the fundamental issue is that Colston Castors Limited, the employer that sponsors the Scheme, is not the one against which the levy has been raised;
- the DUNS number for Colston Castors Limited is the same as that accepted by the PPF for the 2007/2008 invoice (in relation to the entity named on that invoice as The Revvo Castor Company);
- paragraph 2 of the Schedule to the Determination represents an overriding intention that it shall be applied in accordance with the factual position as it existed on 31 March 2008;
- the standard of service from the Scheme's third party administrators had deteriorated and the administrators failed to ensure that correct data was submitted for 2008/2009. At the time this came to light it was too late to correct the submission;
- the levy that has been raised will cause significant financial strain on the Scheme and the business and submit that the Board would not wish to help force a company out of business as a result of an administrative error.

Summary of the position of the PPF

- schemes remain responsible for ensuring that their data is correct and it is not the responsibility of the Board to rectify mistakes made by schemes or their advisors. If a mistake in a particular aspect of a scheme's data could lead to a significantly increased levy, schemes and their advisors should take particular care to ensure that those data items are correct;

- paragraph 2 of the Schedule to the Determination states “*The matters referred to in this Schedule shall be assessed, measured, qualified or estimated at such dates and in such manner as is provided for below. In the absence of such provision, it is intended that this Schedule shall be applied in accordance with the factual position as it existed at midnight on 31 March 2008.....*” It is only in the absence of any such provision that it is intended that the Schedule be applied in accordance with the factual position as it existed at midnight on 31 March 2008;
- the Committee concluded that the information on the scheme return may have been incorrect but declined in the circumstances to allow a correction;
- paragraph 8 makes it clear that the Board will take into account the validated data held on the Scheme Maintenance System as at midnight on 31 March 2008;
- although The Revvo Castor Company could not, as a business division of Colston Castors Limited have separate legal personality, the fact that The Revvo Castor Company always referred to itself as such to the outside world was irrelevant and did not present sufficient grounds for the matter to be remitted to the Committee;
- for 2007/2008, the Board was prepared in some circumstances, as in this case, to take a more lenient view of data correction requests. The Committee considered whether a departure from the general policy should be made in 2008/2009 but was not persuaded that such a departure was justified;
- paragraph 6 does not oblige the Board to review the amount of the levies because a scheme has been disadvantaged by the failure of those acting on its behalf.

Conclusions

9. My role is in very simple terms to determine if the Board has acted correctly in reaching its decision to uphold the original calculation of the levies for the Scheme.
10. I may only interfere with the exercise of a discretion where the decision-maker (in this case the Board) has failed to follow one or more of the following principles:
 - it must ask itself the correct questions;
 - it must direct itself correctly in law;
 - it must not arrive at a perverse decision, taking into account all relevant matters and no irrelevant matters.
11. In this context, perverse is taken to mean a decision which no reasonable decision-maker, properly advising itself, could arrive at. I have therefore carefully considered adequacy of reasoning.
12. The reasoning provided is simple. The Reconsideration Committee says it has followed policy not to take account of corrections provided after March 31st March 2008. They say that representations made do not justify such a departure.
13. Whilst I accept that the scheme return did not represent the factual position as at 31 March 2008, this was as a result of a repeated error stated on this occasion to be the result of a failing by the Trustees' administrators. (The Trustees say that there will be a strain on the Scheme. But if the Trustees' administrators were, as the Trustees say, at fault, then there may well be a source of redress.)
14. The application for review has been considered. Clear reasons have been given following published practice and policy. These reasons show the Reconsideration Committee have also looked at the particular circumstances of this case and decided the particular error made by the Trustees is insufficient to justify them overturning their policy and determining the case in favour of the Trustees.

15. As I have stated, I may only interfere with the exercise of a discretion where the decision-maker where that decision maker has not acted as it should do. I can see nothing that justifies my coming to this conclusion.

TONY KING

Pension Protection Fund Ombudsman

30 June 2010