

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

Applicant : Mr G P Errington, on behalf of the Trustees of the Widney plc (1988) Pension Scheme
Scheme : The Widney plc (1988) Pension Scheme

1. The Pension Protection Fund (**PPF**) Ombudsman has received a reference of a reviewable matter, following a decision by the Reconsideration Committee of the PPF dated 15 October 2008.

Grounds for Referral

- The failure score provided by Dun & Bradstreet (**D&B**) did not take into account steps taken by Widney plc to address problems with its subsidiaries during 2006/07;
- Widney plc took appropriate corrective action, but it is, nevertheless, being penalised.

Background

2. In 2006/07 the Scheme's risk-based levy was £1,108.22. In 2007/08 it had increased to £29,005.00. The Applicant has confirmed that the Scheme Actuary checked the calculations and confirmed that they were correct. He appealed to D&B and was told that the failure score was correct and that they could not take into account events after 30 March 2007.
3. In submissions made on 12 November 2008, the Applicant explained that in 2006 one of Widney plc's subsidiaries suffered losses as a result of a major customer moving production to France. He has explained that this subsidiary was placed in administration and the debt reduced from £10 million to £2 million between 30 September 2006 and 30 September 2007. The Applicant has also explained that another subsidiary was closed in August 2007 when the demand for automotive press tools declined to an unsustainable level. He said that the remaining two subsidiaries

are “substantially profitable and growing strongly”. The Applicant has confirmed that the effects of the actions taken in respect of the subsidiaries were not reflected in the accounts available as at March 2007, but were reflected in the September 2007 accounts.

4. Subsequent to referring the matter to my office, Widney plc went into administration on 12 March 2009.

Reconsideration Committee’s decision

5. The Reconsideration Committee’s decision is summarised as follows:
 - The Applicant had requested a reconsideration in respect of the Scheme levies for the period 1 April 2007 to 31 March 2008, as set out in an invoice dated 11 January 2008;
 - This was a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004;
 - Certain factual matters were not thought to be in dispute. These were:
 - the Scheme was a single employer scheme, as set out in the scheme return dated 30 January 2007, and
 - a deficit reduction certificate was submitted before 5 p.m. on 5 April 2007;
 - The Board had consulted on the risk-based levy over the period from September 2006 to March 2007;
 - Under Section 175(5) (of the Pensions Act 2004), the Board was required to determine the factors by reference to which the levies would be calculated, the time at which the factors were to be assessed, the rate of the levies and the time at which they became payable;
 - The Board published its determination of these matters (the **PPF Determination**) on 1 March 2007;
 - Reconsideration of the amount of the Scheme’s levies was a reconsideration of the amount of the levies in a particular case and not a reconsideration of the PPF Determination;

- Neither the Committee nor the Board had any discretion to depart from the PPF Determination;
- The risk-based levy was calculated by reference to the formula $U \times P \times R \times c$ and subject to a cap (K) equal to 0.0125 multiplied by the Scheme's protected liabilities;

Specific Issues

- Failure to request further information in respect of the review decision
 - The Review Decision had referred to letters from the Applicant dated 23 and 28 January 2008;
 - The Applicant considered this to be a “travesty” because there had been no correspondence, dialogue or request for additional information;
 - The Board had considered any records of contact with the Applicant, which, in this case, comprised a telephone call in which the Applicant had been advised to apply for a review, together with any information provided with the review application.
- D&B failure score for Widney Plc
 - The Applicant had stated that, because the appeal to D&B had not been concluded, it was not possible for the Board to reach a decision on the review application;
 - Unless and until D&B informed the Board that the failure score previously provided was incorrect, the Board is obliged to calculate the levy on the basis of the score provided by D&B;
 - In accordance with paragraph 32 of the PPF Determination, the failure scores to be provided were those which were or would have been assigned to the relevant employer by D&B in the ordinary course of its business on and as at 30 March 2007 (except for certain exceptions, which did not apply);
 - The grounds on which D&B could revise a failure score were that the failure score “was based upon information which, on and as at 30 March 2007, was

incorrect or incomplete by comparison with the information which should normally have been taken into account by [D&B]”;

- Following four stages of the appeal, D&B had confirmed that the failure score was correct and the Board did not have the discretion to adjust the score by reference to matters falling outside the scope of the PPF Determination.

- Discretions

Paragraph 5

Where the Schedule to the PPF Determination had failed to make the provision necessary for a calculation to be performed, there was provision for the Board to take appropriate steps to enable the calculation to be performed. In this case, the PPF Determination had made the necessary provision allowing a calculation to be performed.

Paragraph 6

The Applicant had asked the Board to adjust the failure score to take account of various items of accounting information which were not used by D&B in its standard procedure. The Applicant would like the score to be based on the non-consolidated accounts for the holding company alone rather than the consolidated accounts filed at Companies House.

The failure score used in calculating the Scheme’s levy was the score prescribed by the PPF Determination. It was not incorrect in a material respect and paragraph 6 did not apply.

Paragraph 12

There was the discretion for the Board to take steps to obtain further or amended information for the purposes of calculating the levies. However, it was under no obligation to do so where information has not been provided on or before the applicable deadline.

Paragraph 13

Where information necessary for the calculation of the levies had not been provided in the manner or format or by the time anticipated by the PPF Determination, the

Board could use equivalent information provided in another manner or at another time. However, it was not under any obligation to do so. In this case, the Board had the necessary information in order to be able to calculate the levies.

- The Committee upheld the original calculation of the levies.

Written representations

From the Applicant

6. The Applicant submits:
 - The lack of independent review of D&B's decisions is a major problem;
 - D&B review their own decisions and there is a lack of transparency concerning their scoring criteria, which makes it impossible to make a logical challenge to the failure score;
 - On 17 January 2008, he obtained a report compiled by D&B on the Company and noted a number of errors, including having the Company down as a vending machine, lift and escalator, and optical instrument manufacturer, which it was not;
 - He did not pursue the appeal to the fifth and final stage because he had no confidence that they would anything other than confirm that they were correct

From the PPF

7. The PPF has confirmed that its position remains as set out in the decisions reached at the review and reconsideration stages.
8. In response to an enquiry from my office, the PPF has explained that, where it has been made aware during the review/reconsideration process that something might have gone wrong in the D&B failure score, it raises this informally with D&B. If D&B agree that something has gone awry, it will suggest that the scheme seeks permission to appeal to D&B out of time. If a query is raised outside the review process, it directs schemes to D&B.

CONCLUSIONS

9. This is a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.

10. The reviewable matter in question is the amount of the risk-based levy required of the Scheme for the financial year 2007/08.
11. Under Section 175(5) of the Pensions Act 2004, the Board was required to determine the factors by reference to which the 2007/08 levies were assessed; those factors were set out in the PPF Determination. The PPF has correctly submitted that the Determination, itself, is not a reviewable matter, nor is the Board able to amend the Determination on an individual application for review or reconsideration.
12. The PPF Determination requires D&B to provide the failure score it would assign to the relevant employer in the normal course of its business. D&B have confirmed that this is the case here and the failure score has been reviewed under stages one to three of the its appeal process. I can understand the reservations the Applicant has as to D&B's appeal process and the fact that it is reviewing its own processes. However, that issue goes further than the reviewable matter before me. The actions taken by Widney plc in respect of its subsidiaries were not reflected in the accounts available in March 2007 and could not, therefore, be taken into account by D&B for the 2007/08 failure score.
13. I find, however, that the Board has calculated the risk-based levy in accordance with the provisions of the PPF Determination and is not required to take any action.

TONY KING
Pension Protection Fund Ombudsman

25 September 2009