

# SUPREME COURT OF QUEENSLAND

CITATION: *Lis-Con Concrete Constructions Pty Ltd v The Commissioner of State Revenue* [2012] QSC 251

PARTIES: **LIS-CON CONCRETE CONSTRUCTIONS PTY LTD**  
(applicant)  
v  
**THE COMMISSIONER OF STATE REVENUE**  
(respondent)

FILE NO/S: 5712 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Brisbane

DELIVERED ON: 17 September 2012

DELIVERED AT: Brisbane

HEARING DATE: 9 August, 10 August and 16 August 2012

JUDGE: Peter Lyons J

ORDER: **1. The Respondent make a decision on the payroll tax objections lodged by the Applicant on 9 November 2011 on or before 30 August 2012;**

**2. The respondent pay the applicant's costs of and incidental to the proceeding, including any reserved costs as agreed or as assessed on the standard basis.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – FAILURE TO MAKE A DECISION – where the applicant filed objections to assessments for payroll tax on 9 November 2011 – where the respondent carried out investigations in relation to the assessments and objections – where the respondent identified discrepancies in the number of staff days declared by the applicant in the objections and the number of staff days recorded by another company that managed the project – where the respondent requested further material from the applicant including audited financial reports – where the auditor's report was provided to the Office of State Revenue by 5 April 2012, with an omission corrected on 26 April 2012 – where the respondent requested further clarification – where the auditor provided explanations on 20 June 2012 and invited the Office of State Revenue to identify evidence in support of its position; and offered to carry out further investigations if it did so – where

on 21 June 2012 an officer of the respondent informed the applicant that an investigator had been appointed – where at 28 June 2012 (or 9 August 2012) the objections had not been determined – whether there has been unreasonable delay in making the decision

*Judicial Review Act 1991* (Qld), ss 30, 22 (1)

*Payroll Tax Act 1971*, ss 9, 12, 13B, 13E

*Taxation Administration Act 2001* (Qld), ss 63, 64, 65, 66, 67

*Jones v Dunkel* (1959) 101 CLR 298, considered

*Lighthouse Philatelics Pty Ltd v Commissioner of Taxation*

(1991) 32 FCR 148, distinguished

*Thornton v Repatriation Commission* (1981) 52 FLR 285, considered

*York v The Commissioner of State Revenue* [2010] QCAT 664, considered

COUNSEL: M Wilson for the applicant  
DW Marks for the respondent

SOLICITORS: Cleary Hoare Solicitors for the applicant  
Crown Solicitor for the respondent

- [1] On 9 November 2011, the applicant filed objections to assessments for payroll tax imposed by the *Payroll Tax Act 1971* (PTA) dated 17 October 2011, for each of the 2009, 2010 and 2011 years. Those objections have not been determined. The applicant applied for a statutory order of review, seeking an order under s 30 of the *Judicial Review Act 1991* (Qld) (JRA) directing the determination of the objections within a fixed time. It alleged that there had been unreasonable delay on the part of the respondent in determining the objections.<sup>1</sup>
- [2] Judgment was given for the applicant on 16 August 2012. The following are the reasons for that judgment.

### **Background**

- [3] The applicant is a company incorporated in New South Wales, with its principal place of business in that State. Its business includes the provision of form work, the installation of steel, and the pouring of concrete for slabs and other structures.
- [4] The applicant entered into a contract with Thiess John Holland (TJH) (a business name under which other companies traded) for construction work on the Airport Link/Northern Busway Project in Brisbane. Under the contract, TJH was to provide concrete and steel for installation; and the applicant was to provide labour, plant and equipment to perform the concreting work for the project. It carried out that work in each of the 2009, 2010 and 2011 financial years.

---

<sup>1</sup> See s 22(1) of the JRA

- [5] As a result of receipt of a letter giving notice of an audit under the *PTA*, accompanied by a request for documents under the *Taxation Administration Act 2001* (Qld) (*TAA*), the applicant applied on 17 September 2009 for payroll tax registration in Queensland. The applicant also made a voluntary declaration in relation to its payroll tax liabilities. Assessment notices issued on 16 and 17 March 2010.
- [6] The respondent carried out a further investigation in relation to the applicant's involvement on the project. It identified from TJH records that more staff days had been recorded for employees associated with the applicant than were revealed by the material lodged by the applicant. On that basis, assessments of liability for payroll tax for the 2009, 2010 and 2011 financial years issued on 17 October 2011 (*October assessments*). The amounts to be paid were in total \$5,168,221.57, including penalties and interest. On 20 October 2011, a garnishee order, issued under s 50 of the *TAA*, was served on TJH for the total amount of the October assessments.
- [7] On 24 October 2011, the applicant received an email from Mr Easton, who had been responsible for the October 2011 assessments, indicating willingness of the Office of State Revenue (*OSR*) to reconsider them. The email stated that any new evidence should include the profit and loss statements for the relevant years; internal employee payroll data for those years; and an explanation for the significant discrepancy between the TJH sign-on sheets and the information previously supplied by the applicant.
- [8] The October assessments resulted in the lodging of the objections previously mentioned. Each of the objections is in the same form, save for references to the relevant assessment and to amounts. Each commences with an allegation as to the amount to which it is said the payroll tax should be reduced; and the amount to which Queensland taxable wages should be reduced.
- [9] The grounds are set out in paragraph 3 in each objection. The commencement of paragraph 3 in each objection identifies the basis of the objection as being that amounts were paid to contractors which fall within categories which, under the *PTA*, are to be excluded from the amount of taxable wages. The subparagraphs which follow identify the specific statutory provisions, and the statutory bases for the exclusion. That of particular interest is subparagraph 3.7, which relies on s 13B(2)(c) of the *PTA*.
- [10] Paragraph 4 of each objection then states that services provided by entities identified in Schedule A to the objection fall within the exclusion described in paragraph 3.7. There are then objections to penalty tax and interest, both on the basis that the primary liability has been wrongly assessed, and upon other grounds.
- [11] Schedule A of each objection lists a number of entities who provided labour, labour and materials, labour and equipment, or equipment pursuant to a rental agreement; together with the amount paid to each entity in the relevant year.
- [12] The objections were referred to Ms Alisa Readdy, whose manager within the *OSR* was Ms Leanne Payne. On 15 November 2011 Ms Readdy advised that because of the existence of the garnishee notice, the applicant's objections would be given priority. On 22 November 2011, the applicant's solicitors sent to Ms Readdy copies

of affidavits of Mr Eoin O'Neill, the applicant's sole director, which included schedules identifying workers in each of the relevant years, together with the entity which employed those workers. The transmission included material intended to explain the difference between the TJH records, and the applicant's payroll tax returns. Since part of the material did not transmit in a legible form, it was re-sent by email the same day.

- [13] On 28 November 2011, Ms Readdy wrote to the applicant's solicitor. She identified a discrepancy between the taxable wages identified in the objections, and what appeared to be the taxable wages identified in the material sent on 22 November 2011 (the latter material suggested the taxable wages were in total about \$100,000 less than in the objection). The letter acknowledged receipt of the profit and loss statements for the three financial years, but required full copies of the financial statements for those years, including Accountants' Compilation Reports and Notes to the statements. The letter noted that the financial statements were unaudited, and requested "certified financial statements".
- [14] The letter also requested an explanation of "subcontractors and direct costs", including a breakdown of the amounts. A total for those costs had been identified in the Trading Account forming part of the Profit and Loss Statement for each year.
- [15] The letter then referred to Schedule A to each objection. It requested evidence that these payments were not taxable wages. It also requested copies of all contracts, agreements and invoices with entities identified in these schedules. It also requested statements demonstrating payments of superannuation contributions, and statements from WorkCover, for the three financial years.
- [16] The applicant's solicitors responded by letter of 13 December 2011. An explanation was given for the discrepancy between the taxable wages identified in the objections, and the summaries relating to the effect of the payment of wages in other States, and superannuation. The letter enclosed the full financial statements. It stated that the financial statements for 2009 and 2010 had been lodged with the tax returns, and that the 2011 would soon be similarly lodged; and that arrangements were being made for the certification of the statements. The letter stated that the breakdown of the item, "subcontractor and direct costs" had been provided in a reconciliation included in the material provided on 22 November 2011. The letter stated that the applicant did not have formal contracts with its subcontractors but had quotations from two of them; and enclosed copies of these quotations, together with all invoices in its possession (running to about 200 pages) (*invoices*).
- [17] In a telephone conversation with the applicant's solicitor on 11 January 2012, Ms Readdy confirmed the request for "certified financial statements" and stated that until they were provided, the OSR would regard the information supplied as incomplete. On 17 January 2012, Ms Readdy wrote to the applicant's solicitor confirming a request for the applicant's tax returns for the 2009, 2010 and 2011 financial years; as well as full copies of the "certified (audited) financial statements" for those years.
- [18] On 23 January 2012 the applicant's solicitor wrote to Ms Readdy, advising that the applicant's accountant would provide certification of those parts of the financial statements relevant to the determination of payroll tax liability. Ms Readdy replied

on 30 January 2012 stating that full certified financial statements were required, the certification to be “by an external accountant”.

- [19] On 3 February 2012, the applicant’s solicitor sent a letter to Ms Readdy including certification by Mr Meguid of Meguid Business Services Business Accountants, of the financial statements of the applicant for the 2009, 2010 and 2011 financial years. The effect of the certification was that those statements gave a true and fair view of the financial position at the end of each financial year, and the performance of the company during that year; and that the accountant was unaware of changes which would render any particular misleading or inaccurate. That was not accepted as sufficient by Ms Readdy, and the applicant then arranged for an audit of the financial statements.
- [20] On 21 February 2012, the applicant’s solicitor advised Ms Readdy of this, and requested that the review proceed, leaving only the results of the audit to be supplied prior to finalisation of the determination of the objections. Ms Readdy replied on 22 February 2012. Her letter referred to the request for further information made of the applicant, initially in Ms Readdy’s letter of 28 November 2011, and stated, “it is because the Commissioner is waiting for this additional information to be provided that the matter has not been further progressed.”
- [21] On 5 April 2012, an auditor’s report prepared by Mr John Oehlers was sent to the OSR. It concluded that the financial statements for each of the relevant years gave a true and fair view of the company’s financial position at the end of that year, and its performance during that year; and that the financial statements complied with Australian Accounting Standards to the extent described in the financial statements, and in compliance with the Corporations Regulations. Also enclosed with the email were letters of certification to similar effect from Mr RJ Heinrich, Chartered Accountant, each dated 19 March 2012.
- [22] On 4 April 2012, Ms Readdy went on leave until 23 April 2012. The applicant’s solicitor contacted Ms Payne asking whether someone would deal with the matter in her absence. He was advised that Ms Readdy would deal with the matter on her return from leave.
- [23] Shortly thereafter, the applicant’s solicitors identified an omission from the 2011 financial statement, which had not identified, as an event subsequent to the reporting date, the October 2011 payroll tax assessments. The financial statements, together with the auditor’s certification, were again submitted to Ms Readdy on 26 April 2012, with the inclusion of a note recording the liabilities. The note included a comment from the auditor, stating that he did not find any reason to question the accuracy of the figures relied upon by the applicant for the assessment of payroll tax in Queensland. Nor could he find any basis for the October assessments. The accompanying letter from the applicant’s solicitors also called for determination of the objections by 3 May 2012.
- [24] A letter of reply, from Treasury, dated 3 May 2012 denied that there had been delay in determining the objections, and stated that the reason why the objection had not been determined earlier was because independently audited financial statements had not been provided until 26 April 2012. It also stated that the letter from OSR of 28 November 2011 had “clearly set out what was required to be provided for the objection to be determined”.

- [25] On 25 May 2012, Ms Payne wrote to the applicant's solicitors stating that the documents provided were still undergoing review, and that due to the volume of material provided since November 2011, and the complexity of the issues involved, it was not possible to identify a timeframe for the completion of the consideration of the objections. The letter included a request for an explanation of the auditor's comment in the 2011 report in relation to the October assessments; with a detailed list of matters that the auditor should provide by way of explanation.
- [26] On 4 June 2012, Ms Pain wrote to the applicant's solicitor. With reference to an assertion by the applicant's solicitor that the progress of the objection would be better serviced by the Commissioner providing meaningful evidence of a deficiency in Mr Oehlers' audit, she stated the Commissioner was not required to produce evidence, and was entitled to request further information from Mr Oehlers.
- [27] By letter of 19 June 2012, Mr Oehlers responded to the request for a detailed explanation of his comments about the October assessments. He also stated that he had reconciled the applicant's general ledger with its business activity statements, its employees' PAYG summaries, and the applicant's income tax returns; and that he found no basis for the Queensland taxable wages to be those on which the October assessments had been based. He invited OSR to identify evidence in support of its position; and offered to carry out further investigations if it did so. His letter was sent to OSR by the applicant's solicitor on 20 June 2012.
- [28] On 21 June 2012, Ms Payne informed the applicant's solicitor that an investigator had been appointed by the Commissioner to undertake a further investigation.
- [29] On 12 June 2012 Ms Readdy went on "ill health (maternity related) leave", apparently for an indefinite period. On 18 June 2012, Ms Payne was assigned the task of determining the objection. The investigator has since been identified as Mr Geoff Jones. Ms Payne expressed the view that his investigation would "continue to be resourced until the end of September 2012". It was expected to provide "substantial additional information ... that will require my consideration in order to determine the objection", including, possibly, "new issues not considered during the initial investigation". There might also be a need for "further information or explanation to be provided by the taxpayer in response to the findings of the investigation".
- [30] Some other background matters should be mentioned. Mr O'Neill was, until 6 June 2010, along with a Mr Sean Hartley, a director of Glenmore Building and Industrial Services Pty Ltd. Mr O'Neill did not hold shares in this company. This company went into voluntary liquidation on 3 July 2009. Its liabilities included an amount of \$650,000 owing to the Australian Taxation Office; and unknown amounts owing to the OSR, and to State Revenue Office Victoria. They also included a liability to Mr O'Neill of \$120,000, and to Mr Hartley of \$10,000.
- [31] Mr O'Neill gave evidence to the effect that his role related to the operation of this company and not its financial management. He said the company failed because debtors did not meet their obligations.
- [32] Mr O'Neill had been a director and shareholder of Kilmeath Constructions Pty Ltd until 2007. The other shareholder and director was Mr William Dolan, a person with whom Mr O'Neill said he continued to have a close working relationship. On

1 July 2007, Mr Dolan became the sole director of Kilmeath Constructions Pty Ltd, apparently at about the time when Mr O'Neill transferred his interest in the company to Mr Dolan.

- [33] Kilmeath went into liquidation on 23 April 2010, shortly after payroll tax assessments were issued by the respondent. The unpaid amount of the assessments was \$328,356.

### **Payroll tax liability, assessment and objections**

- [34] Liability to pay payroll tax is imposed on an employer by whom taxable wages are paid or payable, under s 12 of the *PTA*. An employer is defined in the Schedule to the *PTA* as any person who pays or is liable to pay any wages. Wages are broadly defined, and include remuneration paid or payable to an employee as an employee, including any amount paid or payable under any prescribed classes of contracts, to the extent that the payment is attributable to labour.
- [35] Section 9 of the *PTA* provides that wages are liable to payroll tax if the wages are paid or payable by an employer in relation to services performed or rendered by an employee in Queensland.
- [36] Section 13E of the *PTA* provides (for present purposes) that amounts paid or payable by an employer under a relevant contract in relation to the performance of work are taken to be wages. Section 13B of the *PTA* states that a relevant contract is a contract under which a person supplies to another person services in relation to the performance of work. However, a relevant contract does not include a contract under which services of two or more persons are supplied in relation to the performance of work.<sup>2</sup> Other exceptions do not require consideration.
- [37] Section 8 of the *PTA* states that the *TAA* contains provisions about the assessment of payroll tax, objections and appeals in relation to such assessments.
- [38] Assessments of tax are dealt with in Part 3 of the *TAA*. It is unnecessary to refer to the provisions in detail. The *TAA* also makes provision for objections against an assessment, and the determination. It is convenient to set out their provisions:

#### **“63 Right to object**

- (1) A taxpayer who is dissatisfied with an original assessment, other than a compromise assessment, may object to the assessment.
- (2) Also, a taxpayer who is dissatisfied with a reassessment increasing a taxpayer's liability for tax, or a reassessment under section 18(b) decreasing a taxpayer's liability for tax, may object to the reassessment.
- (3) However, the right of objection to the reassessment is limited to the changes for the particular matters for which the reassessment is made.
- (4) A decision or conduct leading up to or forming part of the process of making an assessment is subject to objection only as part of an objection to the assessment.

---

<sup>2</sup> See s 13B(2)(c) of the *PTA*.

#### **64 Grounds of objection**

- (1) An objection against an assessment may be made on any grounds.
- (2) However, for an objection to a decision to which this part is declared to apply under a provision of a revenue law, the grounds of objection are limited to whether the particular circumstances apply for the instrument or transaction to which the decision relates.

#### **65 Making objection**

- (1) An objection must—
  - (a) be in writing; and
  - (b) state in detail the grounds on which the objection is made; and
  - (c) be accompanied by copies of all material relevant to decide the objection; and
  - (d) be lodged within 60 days after the assessment notice for the assessment to which the objection relates is given to the taxpayer.
- (2) The commissioner may extend the time for lodging an objection if the commissioner is satisfied it would be unreasonable in particular circumstances for the objection to be lodged within the 60 days.
- (3) The commissioner's decision to refuse to extend the time for lodging an objection is a non-reviewable decision.

#### **66 Onus of proof on objection**

The objector has the onus of proving the objector's case.

#### **67 Deciding objection**

- (1) The commissioner must allow the objection completely or partly or disallow it.
- (2) If the assessment to which the objection relates was made by a delegate of the commissioner, the delegate must not decide the objection."

#### **Contentions of parties**

[39] The applicant contended that the respondent had been guilty of unreasonable delay in determining the objections. There had been neglect, in the sense that insufficient resources were applied to the consideration of the objections, at least until Mr Jones' appointment in May; and his investigation appeared to be wider ranging than the consideration of the objections and might take a long time. In the meantime, his appointment has been relied upon as reason to do no further work on the objections. No outstanding issues were identified after the submission of the audited statements in April 2012; and to decide the objections, there was no requirement to look at the interrelationship between the applicant and any of the companies it engaged as its subcontractors.

[40] There had been oversight, the applicant's tax returns were provided in January 2012, but in May 2012 OSR was still requesting them.

- [41] It was submitted that OSR had conducted the objection process inappropriately. Its task was to determine the objection on the basis of material supplied, rather than to engage in a wide-ranging investigation. It had taken that course, to gather evidence for an appeal, rather than for the determination of the objections. There had been no proper oversight of Ms Readdy's work by Ms Payne, she did not know when Ms Readdy stopped working on the matter fulltime. Ms Payne's reliance on Mr Jones' investigation was misplaced. Although it was known that the October assessments assumed that all services were provided by employees of the applicant, rather than other entities who were providing the services of more than one person, and the fact that the material supplied by Lis-Con Concrete in December 2011 identified some basis for the objections, no inquiry was made about this evidence.
- [42] It was also submitted that the consideration of the objections had been conducted negligently. There was undue insistence on the supply of audited financial statements, although these would not have provided any information on the contracts related to provisions of service which were the subject of the objections. There had been a failure to analyse the certified statements provided on 3 February 2012.
- [43] Moreover, there had been a failure to provide evidence from Ms Readdy or Mr Jones, supporting an adverse inference under the ruling in *Jones v Dunkel*.<sup>3</sup>
- [44] For the respondent, it was submitted that there had not been unreasonable delay. The test was said to be that stated in *Thornton v Repatriation Commission*,<sup>4</sup> as follows:  
"In my opinion a delay is unreasonable if it can be said that no reasonable man acting in good faith would in the circumstances have approved the delay."
- [45] It was submitted that, in dealing with the objections, the respondent's duty was to determine a correct amount of tax payable. Reliance was placed on the following passage from *Lighthouse Philatelics Pty Ltd v Commissioner of Taxation*:<sup>5</sup> (*Lighthouse Philatelics Pty Ltd*)  
"The Commissioner cannot be said to be confined in the course of considering the taxpayer's 'objection' to the matters raised by the taxpayer in that 'objection'. He has an obligation to administer the Act and may determine to allow the objection for grounds totally unrelated to those raised by the taxpayer, if that be the correct course, just as he could form the view, based on a reconsideration of the matter, that the assessment should be confirmed for reasons which he had not previously considered. His task is to ensure that the correct amount of tax is paid, 'not a penny more, not a penny less'."
- [46] Reference was made to the discrepancies between the information obtained from TJH, and the applicant's voluntary declarations, relied upon by Mr Easton. It was said there was also a concern about "phoenixing". This referred to what was said to be Mr O'Neill's association with companies which have failed owing tax (Glenmore and Kilmeath).

---

<sup>3</sup> (1959) 101 CLR 298.

<sup>4</sup> (1981) 52 FLR 285, 290.

<sup>5</sup> (1991) 32 FCR 148, 155.

- [47] It was submitted that the assertions made in each of the objections were “relatively intricate”; and that the grounds of the objections were “numerous, extensive, complex and indicative of complicated business affairs.” It was submitted that significant resources were committed by the respondent to the consideration of the objections and that there was a large volume of material which required consideration. Reliance was also placed on the need to obtain evidence for any subsequent appeal, by reference to what was said in *York v Commissioner of State Revenue Office of State Revenue*.<sup>6</sup>
- [48] The applicant’s submissions as to neglect, conduct of the objection process and negligence were all controverted. It was accepted that the tax returns (provided in January 2012) had been lost or misplaced, though the consequence of that was not addressed. It was submitted that in view of unpaid tax by companies with which Mr O’Neill was associated, the Commissioner was “entitled to take a cautious approach”.

### Consideration

- [49] There is scope for debate about the applicability of a principle stated in *Lighthouse Philatelics Pty Ltd*. The case was concerned with the question whether the grounds relied upon in an appeal might go beyond those stated in the objection. The stated principle provided support for the proposition that additional grounds might be raised, with the leave of the court. It was not supportive of the proposition that an objection made necessary a full reinvestigation of the tax payer’s financial affairs, which appears to be what is happening in the present case. Moreover, there has been no basis raised to suggest that, as a result of the October assessments, the applicant may have paid “a penny less” than the total tax due. The legislation under consideration in *Lighthouse Philatelics Pty Ltd* did not include a provision like s 66 of the TAA (which places the onus on the objector of proving its case). However, any debate about the applicability of the principle stated in that case may be put to one side.
- [50] In my view, the question raised by the objections was relatively straight forward. It was whether, of the wages relied upon for the October assessments, any were paid for the performance of work for which services were supplied by an entity who provided the services of more than one person.<sup>7</sup> That was the point raised by paragraph 3.7 of each of the objections, the only ground for which supporting material was provided with the objections.
- [51] The respondent’s evidence does not indicate that anything was done to give active consideration to this issue, at least after December 2011. By that time, the invoices had been received. A relatively brief examination of them would have revealed that some disclosed on their face that the services of more than one person had been provided. Others, in invoices issued fortnightly, claimed amounts which were sometimes very large (in one case \$710,000) for labour, materials and transport. Given that the construction materials were being supplied by TJH, these invoices are unlikely to relate to the supply of the services of one person for a fortnight. Taken as a whole, the invoices raised a very real case that entities other than the applicant were supplying the services of more than one person, and that accordingly

<sup>6</sup> [2010] QCAT 664 at [7]-[9].

<sup>7</sup> See s 13E(1) and s 13B(2)(c) of the PTA.

amounts paid to these entities pursuant to these invoices should not have been included in the October assessments. But they were. No step was taken by those responsible for determining the objections to investigate the case raised by the invoices, notwithstanding that provision of them had been requested by the person responsible for the determination of the objections by letter of 28 November 2011.

- [52] The evidence did not identify any positive action by the respondent to advance the determination of the objections after December 2011. Rather, in that period, reliance was placed on the failure to provide audited financial statements (at least until April 2012). No explanation was given as to how the provision of audited statements might assist in determining the issue raised by the objections. Moreover, when the audited statements were provided, they were not considered for some weeks. Even then, they were not used to advance the determination of the objections. It might be noted that they simply confirmed the accuracy of the financial information for the three relevant financial years, which had been provided to the respondent in November 2011. Indeed, it is a notable feature of the case that when the auditor queried the respondent's basis for the October assessments, that simply provoked inquiries about the steps which had been taken by the auditor and the material on which he had relied. There was no apparent basis for that course, other than that the auditor's investigations did not support the position taken by the respondent.
- [53] Subsequent to the provision of the auditor's reports, the only step which appears to have been taken which may relate to the determination of the objections, is the appointment of Mr Jones to carry out an investigation. No explanation was given for the appointment of Mr Jones at that time. It was not suggested that any new fact came to the respondent's knowledge, which might justify his appointment. It might be observed that his investigation appears to lack any definition, and, on Ms Readdy's evidence, might result in substantial delay in determining the objections.
- [54] In my view, the history of this matter demonstrates that the respondent has been guilty of unreasonable delay in determining the objections. Indeed, I consider that a person acting in good faith would not have approved the delay which has occurred in the present case. There has been a complete failure to investigate the real issue raised by the objections; and a reliance on the request for audited accounts which, when they did not support the respondent's position, were not acted on, without explanation.

### **Conclusion**

- [55] It is for these reasons that I determined the application in favour of the applicant.