

PENSIONS ACT 2004, PART 2 CHAPTER 6

APPEAL TO PENSION PROTECTION FUND OMBUDSMAN

DETERMINATION BY THE PENSION PROTECTION FUND OMBUDSMAN

Applicant : Mr J W Benson representing the trustees of the Scheme
Scheme : Benson Sedgwick & Associated Companies Pension Scheme (the Scheme)

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

Grounds for Referral

2. The Trustees say:
 - they are being asked to pay £6,409 for a scheme with five active members – nearly £1300 each;
 - they are taking active steps to keep the scheme funded, paying in a lump sum of £10,000 in 2008;
 - the calculation of the risk based levy is flawed in that it uses historic data which may not accurately reflect the true position of a scheme; the PPF Board refused to use the section 179 valuation which would have resulted in a lower levy;
 - they acknowledge that the scheme return had not used section 179 figures which were unavailable at the time – the Board’s refusal to use the figures is unjust and detrimental to the funding of the Scheme.

Background

3. The Scheme levies in respect of the period 1 April 2007 to 31 March 2008 were set out in invoice dated 14 December 2007 for £6,409.00 and were based on data provided in the latest scheme return dated 16 January 2007, including MFR valuation data as at 6 April 2003. The Scheme did not provide a section 179 valuation to the

PPF until 31 January 2008. On 3 April 2008 the Applicant requested a review of the calculation of the levies in respect of the Scheme.

4. The Board of the PPF reviewed the decision but upheld the Board's calculation of the levy and issued its Review Decision to the applicant on 14 July 2008.
5. On 15 October 2008 the Committee reached its Reconsideration Decision to uphold the review Decision and the original calculation of the levies.

Summary of the Reconsideration Committee's decision

6. The calculation of the Scheme's levy was a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.
7. The Board published its determination of these matters for the year in question (the Determination) on 1 March 2007.
8. Reconsideration of the amount of the Scheme's levies was a reconsideration of the amount of levies in a particular case and not a reconsideration of the Determination.
9. 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.
10. Neither the Committee nor the Board had any discretion to depart from the Determination.
11. 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

12. The matter of underfunding does not specifically fall to be considered in the factors which the Board may take into account under regulation 2 of the Pension Protection Fund (Risk based Pension Protection Levy) Regulations 2006.
13. The Board has set out in the Determination how it will take the difference between the value of a scheme's assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount

of its protected liabilities and the measurement and crystallisation dates for the information it will use in calculating levy invoices.

14. The Board has specified the factors it will take into account for the purpose of measuring under funding; these include a section 179 valuation submitted to the Board by 5 pm on 30 March 2007; the valuation data set out on the relevant scheme return where no such valuation was submitted; deficit reduction certificate submitted by 5 pm on 5 April 2007; and contingent asset certificate submitted by 5 pm on 30 March 2007.
15. The Committee has no discretion to depart from the factors the Board has prescribed in the Determination to be used to measure under funding risk in calculating the pension protection levies.
16. Where no section 179 valuation has been submitted to the Board on or before 5 pm on 30 March 2007, paragraph 10 of the Schedule to the Determination provides that the MFR valuation set out on the relevant scheme return is to be used, but adjusted via the roll forward methodology.

Discretions

17. Paragraph 6 of the Determination. The failure score used in calculating the Scheme's levy was the score prescribed by the Determination. It was not incorrect in a material respect and paragraph 6 did, therefore, apply.
18. Paragraph 12 of the Determination. There was a 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 had not been provided on or before the applicable deadline and paragraph 12 did not apply.
19. Paragraph 13 of the Determination. 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 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 and paragraph 13 was not relevant.
20. The Committee upheld the original calculation of the levies.

CONCLUSIONS

21. This is a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.
22. The reviewable matter in question is the amount of the risk-based levy required of the Scheme for the financial year 2007/08.
23. 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 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.
24. The Applicant contends that although the section 179 valuation was submitted after the deadline, it should have been used in the calculation of the levies because it more accurately reflected the position of the Scheme at the relevant date.
25. Paragraph 9 of the Schedule to the Determination provides that the results of an actuarial valuation carried out in a manner in accordance with section 179 of Pension Act 2004, and the regulations and guidance made and issued under that section, will be taken into account if they are provided to the Board or to the Pensions Regulator at or before 5.00 pm on 30 March 2007.
26. The fact is that the section 179 valuation was not submitted until after the due date and the information the Board had to hand, therefore, was sufficient for them to calculate the levy payable in this case. Paragraph 6 only enables the Board to review a levy calculation where it appears that the information upon which the calculation was based, was “incorrect” in a material respect. As I accept the Board’s position that the information used was not “incorrect”, it follows that I accept that a review under Paragraph 6 is inappropriate.
27. Paragraph 12 applies only where the Board has requested additional information in order to calculate the levy. Self evidently, the levy had already been calculated in this case and Paragraph 12 is, therefore, of no assistance to the Scheme. In any event, it specifically provided that there should be no obligation on the Board to seek further

information, simply because certain information had not been supplied by a deadline. Paragraph 12 simply did not apply in this case.

28. I find 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