

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

**Applicant** : Quantum Advisory on behalf of the Scheme Trustees  
**Scheme** : Vector Pension Plan (the **Scheme**)

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 July 2009. The referral concerns the Scheme's risk-based levy for the year 1 April 2008 – 31 March 2009, as set out in the invoice number 10241534-09-01 dated 10 October 2008, in the sum of £48,358.

**Background**

1. On 19 February 2008 the PPF published its Determination under section 175(5) (the **Determination**).
2. The deadline for submission of contingent asset certificates; section 179 valuation certificates and scheme maintenance data expired on 31 March 2008. This is also the date that Dun and Bradstreet take the Failure Score for levy purposes.
3. The Scheme maintains that in preparing the scheme return, incorrect employer details were given. The entry of 59 employees was wrongly attributed to Vector Holdings Limited as they were actually employed by Vector Management Limited.
4. The Scheme's levy invoice was based entirely on the failure score of the employer to which all the members were assigned, Vector Holdings Limited.
5. The Scheme sought to correct the information shortly after 31 March 2008 and was assured in the course of a telephone call with a representative from the Pensions Regulator that as the information had not at that point been passed to the PPF, the relevant correcting information would be used in the levy calculation of the Scheme.

6. The Board has been asked to exercise its discretion to recalculate the Scheme's risk-based levy on the grounds that:

- the appeal has arisen from a fairly minor clerical error which resulted in an increase in the levy from £17,000 in the previous year;
- the section 179 valuation and all relevant paperwork were submitted in time;
- the scheme return for the previous year, 2006/2007 accurately listed the 59 members of the scheme to be employed by Vector Management Limited;
- members were employed by Vector Management Limited rather than Vector Holdings Limited was an easily verifiable fact, it was expected to be accepted without the need for evidence to be provided and no evidence was requested by the PPF;
- a note of the call to the representative of the Pensions Regulator was not provided because factual matters were not expected to be under review;
- annual report and accounts for both Vector Management Limited and Vector Holdings Limited for years ending 30 April 2007 and 30 April 2008 support the view that employees had been wrongly attributed to Vector Holdings Limited;
- the degree of accuracy expected by the PPF cannot exist, for some allowance must be made for some variation in the amount of monies received if for no other reason than standard scheme mortality;
- the PPF does question data received but only make adjustments where these are in favour of the PPF.

### **Reconsideration Committee's decision**

7. The Committee upheld the original calculation of the levies. Its decision is summarised below:

- the Committee accepted that the information put forward may have been incorrect as at the date it was provided and that in circumstances in which

incorrect information has been used in calculating levies, paragraph 6 of the Schedule to the Determination applies and the Committee had considered whether it would be appropriate to exercise its discretion;

- no contemporaneous evidence was put forward to substantiate the claim that members were employed by Vector Management Limited rather than Vector Holdings Limited;
- the PPF had not investigated the allegation that misinformation had been given by the Pensions Regulator but noted that this anyway:
  - post dated the deadline date;
  - had not materially affected the position; and
  - the Scheme had not sought to confirm in writing the assurance that had apparently been given.
- the Committee noted the Board's published policy was not generally to accept corrections for the 2008/2009 levy year and that it had adopted the policy 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 such a policy must not be applied inflexibly so as to fetter the Board's discretion. Nonetheless, the Committee did not consider

it appropriate in the particular circumstances of this case to depart from the general policy of not taking account of corrections to scheme maintenance system data requested after 31 March 2008. The Committee's view was reinforced by the fact that, in its view, no sufficient reason was put forward for the failure to provide the information submitted in the correction request at the appropriate time. The application for review stated only that the members had been incorrectly allocated "due to a transcription error", but no further explanation of the nature of that alleged error or how it came about has been provided;

- the Committee noted that the invoice was correctly calculated in accordance with the terms of the Determination.

8. Quantum Advisory comment that it would be perverse for the Ombudsman to reach a decision that was not in the best interests of the Scheme or its members or the PPF and comment that it is perverse for the PPF to adopt a policy which:

- maintains what is effectively an insurance premium at approximately three times the rate needed simply because of a transposition error;
- imposes a higher levy on the Scheme, weakens its solvency and acts against the spirit of the legislation;
- has encouraged an appeal at a further cost the Scheme, further weakening its solvency, the need for increased employer contributions and only increasing the likelihood of the Scheme entering the PPF.

## **Conclusions**

9. My role is in very simple terms to determine if the Board has acted correctly in its decision to uphold the original calculation of the levies for the Scheme.

10. Established case law indicates that 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. I take into account the claimed overpayment. I also take into account that the Board state they have a need for certainty in the levies they collect and they set a clear timetable for submission of data to give them that certainty. I bear in mind as a result that the Decision taken by the Reconsideration Committee has significant implications.
13. I see the reasoning provided is at base simple. The Reconsideration Committee says it has followed policy not to take account of corrections to Scheme Maintenance System data requested after 31<sup>st</sup> March 2008. They say there is nothing sufficiently unusual in the circumstances of this case to justify such a departure.
14. I recognise this appears harsh to the Trustees. I see that the scheme return upon which this levy was based contrasts sharply with that submitted the previous year and that their claim that a representative of the Pension Regulator assured them that the correct information would be used was not investigated by the PPF. However I see nothing inherently unfair as they claim in the way the Reconsideration Committee has operated.
15. 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, i.e. error by the Trustees in inputting data, and simply 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.

16. Therefore reasoning is clear and there is nothing to suggest reasoning is incorrect or unfair. As I have stated established case law indicates that I may only interfere with the exercise of a discretion where the decision-maker has not acted as it should do. I can see nothing that justifies my coming to this conclusion.

**JANE IRVINE**

Deputy Pension Protection Fund Ombudsman

27 July 2010