



## Ombudsman's Determination

<b>Applicant</b>	Mr S
<b>Scheme</b>	John Hogg & Co Limited Retirement Benefits Scheme ( <b>the Scheme</b> )
<b>Respondent</b>	Pension Protection Fund ( <b>PPF</b> )

### Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Board.
2. My reasons for reaching this decision are explained in more detail below.

### Referral summary

3. The reviewable matter referred by Mr S is that the Scheme's PPF levy for the year 1 April 2015 to 31 March 2016 has been overstated due to the erroneous inclusion of a Pension Scheme Mortgage in the calculation of the Employer's Insolvency Risk Score (**the Score**).

### Background information, including submissions from the parties

4. Mr S is a Director of John Hogg & Co Limited (**the Company**).
5. In July 2011 the Company entered into a Security Agreement over a mortgaged property with the Trustee of the John Hogg Retirement Benefits Plan (**the previous scheme**).
6. As a result of the previous scheme being wound up a Deed of Amendment to the Security Agreement, dated 30 October 2013, transferred the benefit of the Security Agreement over the mortgaged property to the Scheme.
7. The Scheme's levy for year 2014/15 was £14,570.
8. From levy year 2015/2016 the PPF changed their insolvency risk provider from Dun & Bradstreet to Experian.

9. PPF eligible schemes are required to annually submit a return to the Pensions Regulator (the Regulator) via Exchange. This data is used by the PPF to generate levy invoices.

10. A mortgage created by an employer in favour of the trustees of a PPF eligible scheme may be disregarded by Experian when calculating the Score.

11. As relevant section 2.3 'Pension Scheme Mortgages' of the PPF's December 2014 'Guidance relating to Mortgage Exclusions for Levy purposes' says:

"ii If you wish Experian to disregard such a mortgage or charge in favour of a PPF eligible pension scheme, you should submit an Officer's Certificate to this effect.

**Please note, you should not rely on Experian having identified and excluded any Pension Scheme Mortgage. If you are in any doubt, you should submit the relevant Officer's Certificate and documentation as required in this Guidance and the Levy Rules.**

iii You must complete the Pension Scheme Mortgage Officer's Certificate.

You can certify any mortgage or charge in favour of the trustees of a PPF eligible pension scheme whether or not it complies with our requirements to qualify as a Type B Contingent Asset. However, it must be a current charge in favour of the trustees of a pension scheme which has been registered at Companies House in the UK...and has not yet been released.

...

viii When completing the Officer's Certificate, you should include a copy of the executed security agreement and of any relevant supporting documents.

ix You must submit the Certificate and attachments to Experian on or before 5pm on 31 March 2015."

12. The information available to Experian at 31 March 2015, amongst other things, noted the mortgage amount, when it was issued and the lender's name: John Hogg Pension Trustee Limited. Experian did not identify the mortgage as a Pension Scheme Mortgage.

13. The mortgage was repaid on 2 July 2015.

14. The Scheme's levy charged for year 2015/16 was £42,847. The PPF issued the invoice in September 2015.

15. Mr S unsuccessfully appealed the levy charged, firstly with Experian and then the PPF.

16. The PPF's Reconsideration Committee, which considered Mr S' final appeal, upheld the Board's calculation:-

- There was no basis for the recalculation of the levy.
- The Levy Rules had been applied correctly.
- Mr S' assertion that the strength of the Scheme's employer covenant had increased during the relevant period was not relevant in the absence of evidence that the Scheme's levy had not been calculated in line with the Levy Rules.
- To exclude the mortgage from the insolvency risk calculation:
  - It had to be apparent to Experian, from the data collected by 31 March 2015, that the persons entitled to the security interest were the Scheme Trustees; or
  - Experian must have received an Officer's Certificate confirming the position by 31 March 2015.
- Experian concluded (including on appeal) that it was not apparent that the mortgage was in favour of the Scheme Trustees.
- The Board noted that the information available to Experian through its normal collection procedures showed that the mortgage was in favour of "John Hogg Pension Trustee Limited". While this was an indicator of the mortgage being in favour of the trustees of a scheme, the information available to Experian was not sufficiently clear or unambiguous for it to reach that conclusion, and it had been open to the Scheme to provide an Officer's Certificate to put the matter beyond doubt.
- The Scheme failed to submit an Officer's Certificate before 31 March 2015, and it was this failure that led to the inclusion of the mortgage in the insolvency risk calculations.
- The mortgage exclusion guidance on the PPF website and the Experian/PPF portal was clear. If a company wished Experian to disregard such a mortgage an Officer's Certificate should be submitted. The company should not rely on Experian identifying and excluding any Pension Scheme Mortgage and if in doubt the company should submit the relevant Officer's Certificate.
- While the Board had several discretions and powers to direct the recalculation of an invoice or to obtain the necessary information for such calculation these did not arise in the circumstances of this case.

17. Mr S says:-

- The mortgage registered by John Hogg & Co Limited, which existed prior to 31 March 2015, was clearly in favour of John Hogg Pension Trustee Limited - a company owned by John Hogg & Co Limited – whose sole purpose is to act as trustee for the Scheme.

- This was obviously a Pension Scheme Mortgage as defined in the 'Guide to the Pension Protection Levy' booklet and therefore should have been excluded from the calculation of the levy.
- After receiving the PPF levy invoice they provided Experian with full details of the mortgage and an Officer's Certificate. Despite this and the repayment of the mortgage on 30 June 2016, Experian and the Board have chosen to ignore the facts.
- An Officer's Certificate was not provided before 31 March 2015 as it was not deemed to be necessary, as the purpose and content of the mortgage was so obvious.

18. The PPF say:-

"Experian have confirmed that they would be looking for a mention of "trustees", or something similar, in the mortgage data taken from Companies House, which may indicate that the mortgage is a pension scheme mortgage. However, we understand from Experian that this information is entered on Exchange via a free text box, which is not always clear or reliable. In order to clarify the status around any mortgage where a reference is unclear, Experian would require more detailed information about the mortgage from the trustees. It is therefore the provision of an Officer's Certificate in the first instance which provides the clarity required to confirm the status of a mortgage."

## **Adjudicator's Opinion**

19. Mr S' referral was considered by one of our Adjudicators who concluded that no further action was required by the PPF. The Adjudicator's findings are summarised briefly below:-

- Mr S says the mortgage was obviously a Pension Scheme Mortgage. That means the Company deemed the risk of its inclusion in the Score to be too small to warrant the submission of an Officer's Certificate. Nevertheless the Company took the risk by not completing the Officer's Certificate that the mortgage would be included in the Score.
- The exclusion of a Pension Scheme Mortgage is by agreement of the PPF.
- PPF guidance sets out what needs to be done to benefit from this concession. This includes the provision of an Officer's Certificate.
- The Scheme did not provide an Officer's Certificate until after the submission deadline of 31 March 2015.
- By failing to comply with the requirements set out in the guidance there are no grounds on which the Ombudsman can direct the PPF to recalculate the Scheme's levy for 2015/16.

20. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

## **Ombudsman's decision**

21. Mr S refers to the PPF levy determination for the financial year 2015/16. As relevant this says:-

"Pension Scheme Mortgage" – means a security interest registered at Companies House in the UK...in relation to which, by the Measurement Time, either:

- (a) It is apparent to Experian from the data collected pursuant to Rule E2.2 that the persons entitled to the security interest are the trustees of a Scheme; or
- (b) Experian has received an Officer's Certificate..."

22. Mr S says:-

- As the Security Agreement clearly states that the charge is between John Hogg & Co Limited and John Hogg Pension Trustees Limited, as sole trustee of the Scheme, it must have been obvious to Experian that it was a mortgage in favour of the pension fund.
- If it was not apparent to Experian it did not request any information in order to clarify the status of the mortgage.
- The provision of an Officer's Certificate is not mandatory.
- Experian has made a major mistake and the computation of the levy for 2015/16 is incorrect.

23. The exclusion of a Pension Scheme Mortgage is by agreement of the PPF.

24. While the provision of an Officer's Certificate is not mandatory if it is apparent to Experian that a mortgage is a Pension Schemes Mortgage, the guidance is clear that the employer should not rely on Experian identifying and excluding the Pension Scheme Mortgage and that an Officer's Certificate should be submitted.

25. Clearly the Company considered the submission of an Officer's Certificate was not necessary, but that was a risk it decided to take.

26. I am satisfied that the Reconsideration Committee's decision was properly made.

27. Therefore, I do not uphold Mr S' complaint.

**Anthony Arter**

Pension Protection Fund Ombudsman

28 March 2017