PENSIONS ACT 2004, PART 2 CHAPTER 6

APPEAL TO PENSION PROTECTION FUND OMBUDSMAN

DETERMINATION BY THE DEPUTY PENSION PROTECTION FUND OMBUDSMAN

Applicant : Dr Kenneth Nicholson
Scheme : AEA Technology 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 24 July 2013. The referral concerns the PPF's Funding Determination (**the Determination**), which is a reviewable matter under paragraph 7D of Schedule 9 of the Pensions Act 2004.

Grounds for Referral

2. Dr Nicholson's grounds for referral are stated in his application as:

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"I am referring this matter to the PPF Ombudsman because the figures used by the PPF for scheme eligibility are based on wind-up (annuity) costs, and the PPF played a role in the pre-pack insolvency, but is denying liability for guaranteed benefits. These points have been raised in the PPF's review/reconsideration process, but have not been addressed properly."

Reconsideration Committee's decision dated 24 July 2013

3. The Reconsideration Committee noted that it had been asked to consider promises given at privatisation, the Trustee's alleged failure to provide information and act in the best interests of the Scheme's members, and the PPF's role in the Company's insolvency. The Committee concluded that the matters raised by Dr Nicholson were not reviewable matters as specified in Schedule 9 of the Pensions Act 2004, and therefore it could not consider them. The Committee therefore affirmed the Determination.

PPF's response

4. The PPF says that the only reviewable matter in Dr Nicholson's application is the Determination. Calculating the Scheme's assets and liabilities, including annuity costs, were part of making the Determination. The PPF's explanation of how the Determination was arrived at follows.

> "Section 143(2)(a) of the Pensions Act 2004 permits the Board to carry out a Funding Determination in the place of a section 143 valuation in appropriate circumstances. As set out in the Board's statement under section 143(5C) of the Pensions Act 2004 (**the Statement**), those circumstances are where the Board is of the opinion that a scheme is significantly overfunded or significantly underfunded. As the Scheme had reported to members in October 2012 that the Scheme's funding level was approximately 55% based on informal calculations, the Board considered it appropriate to undertake a Funding Determination as opposed to requiring the Scheme to undertake a full section 143 valuation.
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> The purpose of the Determination was to establish whether the Scheme was sufficiently funded on the day immediately prior to the PPF assessment period commencing (in the Scheme's case, the relevant time was 7 November 2012) to pay members at least PPF levels of compensation. The Board's Notice of Funding Determination dated 7 January 2013 confirmed to the Trustee (and then subsequently relayed to members) that the Scheme only had, at best, estimated assets to pay members 82% of PPF levels of compensation.
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> As noted in the Board's Notice of Funding Determination dated 7 January 2013, the process for making a funding determination is, broadly, that:
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> 1. Information in the Scheme's most recent section 179 valuation or appropriate alternative actuarial valuation is used;
> 2. This information is then updated in accordance with the Statement. The Board's most recent Statement was published in September 2012.

In the Scheme's case, the Board used the Scheme's section 179 valuation with an effective date of 31 March 2011. It was appropriate to use this particular valuation for the purposes of undertaking the Funding Determination, as this used a very similar actuarial basis to that which would be used for a section 143 valuation and as the Board was required to use for the Funding Determination itself (see further below).

An estimate of the assets and protected liabilities as at 7 November 2012 was then prepared by the Scheme Actuary. In preparing the estimate, he confirmed that the estimate of the Scheme's assets and protected liabilities had been carried out in accordance with the Statement issued by the Board for this purpose. The actuary estimated that as at 7 November 2012, the Scheme's assets were £278,000,000, while the estimated value of the Scheme's protected liabilities stood at £338,000,000. The actuary also certified that the Scheme's assets were unlikely to have exceeded 100% of the Scheme's liabilities.

The Board's actuarial team reviewed the actuary's estimate against the Statement and was satisfied that this had broadly been carried out in accordance with the Statement; the Scheme actuary had however applied more favourable funding assumptions than required by the Statement. As this adjustment meant that the Scheme's deficit would have been understated in the actuary's estimate, the Board concluded in making its Funding Determination that it could use the actuary's estimate in connection with producing the Funding Determination.

The Board's Funding Determination carried out as at 7 November 2012 showed the Scheme's protected liabilities as £338,000,000. The Funding Determination approximated the Scheme's deficit by assessing whether the Scheme had sufficient assets to secure members' benefits at PPF levels of compensation were the Scheme to transfer to the PPF. The Board noted that this was the correct actuarial basis for the purposes of undertaking the Funding Determination. As such, the Board was satisfied that the Funding Determination used the correct actuarial methodology to calculate the Scheme's assets and liabilities (including the Scheme's protected liabilities) as at 7 November 2012."

5. The PPF says that the Determination allows for the cost to the Company of securing members' benefits under the Scheme, through the purchase of annuities on the open market if the Scheme was discontinued (section 75, Pensions Act 1995).

6. The PPF says that the Determination complies with the Pensions Act 2004, the PPF (Valuation) Regulations 2005 and the PPF Board's Funding Determination Statement issued in September 2012.

Dr Nicholson's position

7. Dr Nicholson joined the Scheme in 1996, when the Company was formed from part of the UK Atomic Energy Authority (**UKAEA**). He transferred his preserved benefits from the UKAEA Superannuation Scheme to the Scheme. Dr Nicholson said in a letter to the PPF dated 24 June 2013 that "verbal and written assurances" were given by "government employees" of the UKAEA about the security of benefits transferred into the Scheme, and in particular that it would provide "guaranteed identical benefits".

8. In a letter dated 21 October 2013 Dr Nicholson described the PPF's approach to buying annuities as "financial madness". He asked that I consider the PPF's refusal to provide him with copies of documents on the grounds of commercial sensitivity. Dr Nicholson wants to know more about the discussions between the PPF, Company and Trustee concerning the Company's insolvency, and the events leading up to it. He says that the Company was profitable, with a healthy order book and taking on new employees.

Conclusions

9. My jurisdiction is governed by the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005 (SI 2005/2024). Regulation 2 says:

> "Where the Reconsideration Committee has given a reconsideration decision in relation to a reviewable matter by virtue of regulations made under section 207(1)(b) or (3)(b) of the Act, that matter may be referred to the PPF Ombudsman by any person who is sent, or required to be sent, a copy of the reconsideration decision under those regulations."

10. Reviewable matters are those listed in Schedule 9 of the Pensions Act 2004. Paragraph 7D of the Schedule says that "a determination by the Board under section 143(2)(a)" (a Funding Determination) is a reviewable matter. The Reconsideration Committee did not consider the other issues raised by Dr Nicholson, as they were not reviewable matters. It follows that I cannot consider them, despite Dr Nicholson's request that I do so. The PPF's Determination is within my jurisdiction.

11. Section 143(5)(a) of the Pensions Act 2004 provides that the calculation of assets or protected liabilities can include "a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under section 75 of the Pensions Act 1995". Regulation 5 of the Pension Protection Fund (Valuation) Regulations 2005 says that the value of a scheme's assets is "the value of the assets of the scheme stated in the relevant accounts, less the amount of the external liabilities." Regulation 6 says the value of a protected liability shall be "the estimated cost of securing scheme benefits… by means of an annuity purchased at the market rate at the relevant time".

12. Dr Nicholson objects to the methodology used by the Scheme's actuary and the PPF, but I am satisfied that the statutory provisions were adhered to. In particular, the use of annuity prices at the market rate was in accordance with Regulation 6.

13. It follows that the PPF is not required to take any further action in respect of Dr Nicholson's referral.

Jane Irvine
Deputy Pension Protection Fund Ombudsman

18 June 2014