

**PENSIONS ACT 2004, PART 2 CHAPTER 6**

**DETERMINATION  
BY THE PENSION PROTECTION FUND OMBUDSMAN**

Applicant: Mr David Harrison representing the  
trustees of the Scheme

Date: 21 October 2009



**PENSIONS ACT 2004, PART 2 CHAPTER 6**

**APPEAL TO PENSION PROTECTION FUND OMBUDSMAN**

**DETERMINATION BY THE PENSION PROTECTION FUND OMBUDSMAN**

**Applicant** : Mr David Harrison representing the trustees of the Scheme  
**Scheme** : Harrison Gardner & Co Ltd Pension Fund (the **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 3 November 2008.

**Grounds for Referral**

2. The trustees say:
  - the levy increase from £154.52 in year 2006/2007 to £18,603 in year 2007/2008 was excessive and based on estimated figures;
  - the company had transferred ownership in March 2006 and the new company was finding it difficult to finance the levy;
  - advice had been sought regarding what sum would be required to minimise/remove the involvement with the PPF.

**Background**

3. The Scheme is a single employer scheme and the principal employer is Harrison Gardner and Company Limited.
4. The Scheme did not submit a section 179 valuation or any data supplementary to the latest scheme return dated 7 March 2007.
5. Under Regulation 3(1) (c) of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (SI 2005/669) (the **Review Regulations**) an Application for a review decision on any reviewable matter must be made before the end of a period of 28 days beginning with the date on which the Board issues the Determination, direction or other decision. The date of the decision



that is the subject of the Application is the date of the invoice requesting payment of the scheme levies.

6. The Application is dated 5 April 2008 and was received by post on 7 April. The date of the levy invoice is 11 January 2008. The 28 day period for bringing an appeal expired on 8 February 2008, and the Application was received 59 days late.
7. Under regulation 3(2) of the Review Regulations where, in the Board's opinion, the circumstances of a case are such that it is reasonable for an Application to be made after the end of the 28 day period specified in Regulation 3(1) (c) the Board must give a review decision if the Application is made within such further period as the Board considers was reasonable.
8. The Applicant contacted the Board's Stakeholder Support Team (the SST) to raise a query on 28 January 2008. The query was concluded on 4 March and an initial application for review was made on 19 March; this was followed by an authorised application on 5 April.
9. Since an informal query had been made within 28 days of the date of the invoice, the Board took the view that it was reasonable for the Application to have been made after the expiry of the 28 day period for bringing a review and that the Application was made within a further reasonable period.

#### **Summary of the Reconsideration Committee's decision**

10. This calculation of the Scheme's levy was a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.
11. The Board published its determination of these matters for the year in question (the **Determination**) on 1 March 2007.
12. The relevant scheme return in relation to the Scheme is the scheme return dated 28 March 2007.
13. Reconsideration of the amount of the Scheme's levies was a reconsideration of the amount of the levies in a particular case and not a reconsideration of the Determination.
14. Neither the Committee nor the Board had any discretion to depart from the Determination.



15. 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.
16. The Determination had been correctly applied to the Scheme to calculate the amount of the pension protection levies.
17. The Committee upheld the original calculation of the levies.

### *Specific Issues*

18. The Board consulted on the 2007/2008 Determination prior to it coming into effect and the Board took measures to raise awareness about the pension protection levies.
19. The Board also consulted via the "2007/2008 Pension Protection Levy Estimate Consultation Document" on its proposed changes to the risk based levy scaling factor. The consultation document also included an indicative scaling factor for the 2007/2008 levy year of 2.02 which showed a clear order of magnitude for the scaling factor. With this information it would have been open to the Scheme and its advisers to ensure that the amount of the levy that would be due from the Scheme was provided for appropriately.
20. When making the Determination the Board had expressly considered the issue of affordability and set a cap on the maximum amount of levies that a scheme would be charged.
21. Then issue of funding was not a ground for reconsideration of the pension protection levies.
22. The Board expects the trustees of pension schemes to seek their own professional advice although the SST had previously informed the Scheme about the steps that could be taken to reduce their levies including advice about arranging for a section 179 valuation to be submitted by the due date.
23. The Scheme had not submitted a deficit reduction contribution certificate or a contingent asset certificate within the relevant timescales as required under paragraphs 28 and 29 of the Schedule to the Determination.
24. The Determination provides that valuations prepared on a section 179 or MFR basis are to be used. A section 179 valuation may only be used where submitted to the Board before 5.00 pm on 30 March 2007. Where no section 179 valuation has been





submitted under Paragraph 10 the latest MFR valuation may be used but adjusted via the roll-forward methodology, which is prescribed by the Determination at Appendix 2.

25. Paragraph 2 of the Schedule to the Determination provides that all matters referred to in the Schedule shall be assessed, measured or quantified in accordance with the factual position as at 30 March 2007.
26. Paragraph 8 of the Schedule to the Determination provides that the Board will take account of the latest submitted scheme return provided to the Pensions Regulator at or before 5.00 pm on 30 March 2007. Paragraph 8 also provides that any information which supplements, corrects or updates information contained in a scheme return should be received on or before 5.00 pm on 30 March 2007.
27. The Board's position regarding requests for advice is that whilst it is able to provide information and guidance to stakeholders, which it does both via its website and the Board's stakeholder support team, trustees are expected to take their own professional advice.

## CONCLUSIONS

28. This is a reviewable matter by virtue of paragraph 19 of Schedule 9 to the Pensions Act 2004.
29. The reviewable matter in question is the amount of the risk-based levy required of the Scheme for the financial year 2007/08.
30. 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.
31. Paragraph 2 of the Schedule to the Determination provides that all matters referred to in the Schedule shall be assessed, measured or quantified in accordance with the factual position as at 30 March 2007.
32. Paragraph 8 provides that the Board will take account of the latest submitted scheme return provided to the Pensions Regulator at or before the due date and time.



Although paragraph 8 also provides that any information which supplements corrects or updates information contained in a scheme return could also be taken into account, no such supplementary information was provided by the due date.

33. No section 179 valuation was submitted either by the due date and the latest MFR valuation was used but adjusted via the roll forward methodology as prescribed by Appendix 2 of the Determination.
34. The Schedule to the Determination provides the Board with various opportunities to review a levy under certain circumstances. Those circumstances do not arise in this case. The information upon which the levy was based was not incorrect in a material respect.
35. I find, therefore, that the Board has calculated the risk-based levy in accordance with the provisions of the Determination and is not required to take any action.



**TONY KING**  
Pension Protection Fund Ombudsman

21 October 2009

