

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

**Applicant** : Mr K Crisell, on behalf of the Scheme Trustees  
**Scheme** : The Hallco 1812 Pension Scheme

The Deputy Pension Protection Fund (**PPF**) Ombudsman has received a reference of a reviewable matter, following a decision by the Reconsideration Committee of the PPF dated 19 June 2009. The referral concerns the Scheme's risk-based levy for the year 2008/09.

**Background**

1. In August 2008, the Board of the PPF (the **Board**) was notified that there was a typographical error in the scheme return submitted on behalf of the Scheme on 14 March 2008. The value of the Scheme's assets was quoted as £10,862,147 instead of £11,862,147.
2. The Board has been asked to exercise its discretion to recalculate the Scheme's risk-based levy on the grounds that:
  - it was notified of the error before the issue of an invoice;
  - it has the option to take such steps as it sees fit to obtain further or amended information for the purposes of calculating the levy;
  - on the grounds of fairness, such power should not only be exercised to the advantage of the PPF;
  - the notification was not an update of data, rather it was the correction of incorrect data already submitted;
  - if uncorrected, the Scheme will end up paying a levy which is £8,000 too high;
  - this amount is not material to the PPF, but is for the Scheme;
  - the PPF is able to recoup any under-collection in future years, whereas the Scheme will not be able to recoup the £8,000;

- it set up a data cleansing team and must, therefore, have been anticipating some errors.

### Reconsideration Committee's decision

3. The Committee upheld the original calculation of the levies. Its decision is summarised below:
- the Board was required to calculate the levy on the basis of the latest validated data held on the Scheme Maintenance System as at 31 March 2008;
  - it accepts that the data contained in the scheme return was incorrect as at the date it was provided;
  - the levy was calculated in accordance with the PPF Determination for the year in question;
  - it considered the Board's discretion to review the levy;
  - the Board has a published policy not to accept corrections for the 2008/09 levy year;
  - this policy was adopted for the following reasons:
    - if the Board allowed corrections, there was a higher risk that it would under-collect against the levy estimate because the levy scaling factor **LSF**<sup>1</sup> could only be based on the information provided to the Board by the relevant deadline;
    - building a margin of error into the LSF to mitigate against this would disadvantage all schemes, which was felt to be inappropriate;
    - it was reasonable to expect schemes to provide the correct data at the right time; particularly because this was the third year for which data was being submitted;

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<sup>1</sup> In setting the scaling factor, the PPF first calculates each scheme's individual levy, save for the scaling factor. It then compares the total of all individual scheme's levies with what it needs to collect, i.e. £675 million for 2008-2009, and scales the total figure accordingly.

- it did not consider it appropriate to depart from this policy in the particular circumstances, which were not considered sufficiently unusual to justify such a departure.

## Conclusions

4. My role, in very simple terms, is to determine if the Board has acted correctly here.
5. Established case law indicates that I may only interfere with the exercise of a discretion where the decision-maker (in the 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.
6. 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.
7. I take into account that the amount of claimed overpayment is £8,000 and the Scheme Trustees say this is a significant sum. 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.
8. 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 March 2008. They say there is nothing sufficiently unusual in the circumstances of this case to justify such a departure.
9. As I say, I recognise this appears harsh to the Trustees. I see they say they requested correction prior to invoices going out and during the PPF's data cleansing phase.

However, I see nothing inherently unfair, as they claim, in the way the Reconsideration Committee has operated.

10. 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 acknowledged by the Trustees is insufficient to justify them overturning their policy and determining the case in favour of the Trustees.
11. Therefore the reasoning is clear and there is nothing to suggest it is incorrect or unfair. I cannot attack a published policy of the PPF, only check it is applied fairly and that the individual circumstances of the case have been considered both in terms of the stated policy and whether there are any reasons to depart from the policy. 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.
12. It follows that I can see nothing that justifies my coming to a conclusion that I should remit this matter back to the PPF for reconsideration.

**JANE IRVINE**

Deputy Pension Protection Fund Ombudsman

27 July 2010