Case Team procedure
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Introduction

The Pensions Regulator (the regulator) is the regulatory body for work-based pension schemes. The regulator has a specific set of objectives, which include:

- to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes
- to reduce the risk of situations arising that may lead to compensation being payable from the Pension Protection Fund (PPF)
- to promote, and to improve understanding of, the good administration of work-based pension schemes.

The regulator has a number of statutory functions to help meet these objectives. This consultation relates to a procedure that the regulator proposes to determine under section 93 of the Pensions Act 2004 (the Act). Specifically, it relates to a proposed ‘case team procedure’, intended to describe the actions of its case teams in cases that are ultimately decided by the regulator’s Determinations Panel.

Background

Pursuant to section 93 of the Act, the regulator is required to determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions. Pursuant to section 93(4), that procedure must provide for both standard procedure and special procedure. It may also include such other procedural requirements as the regulator or Determinations Panel considers appropriate. Under section 94 of the Act the regulator must then publish that procedure.

In July 2006, the regulator published a procedure in relation to those functions that are exercised by the Determinations Panel and this was subsequently revised in June 2008.

An important feature of the regulator’s cases (that relate to functions that are ultimately exercisable by the Determinations Panel) is that the day-to-day management and investigation of these is undertaken by various case teams at the regulator. These case teams sit in the operational directorates of the regulator and are separate from the Determinations Panel. If and when appropriate, these cases are then referred by the case teams to the Determinations Panel for them to reach a determination.

The Determinations Panel procedure relates to aspects of cases that are dealt with by both the case team and the Determinations Panel. However, operational experience to date has led us to conclude that there is a need for greater clarity and transparency on the steps that a case team will usually take in these cases and how and when a case team and the Determinations Panel will interact.

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Consultation

As a matter of good practice, we regularly review the manner in which we undertake our functions. During the six years (since our inception) in which we have investigated and brought cases to the Determinations Panel, it is apparent that our procedures and the manner in which case teams and the Determinations Panel interact are not always clear to members of the regulated community. We therefore wish to set out what the regulator’s case teams do in cases in which the final determination is to be made by the Determinations Panel and also how those case teams interact with the Determinations Panel.

The regulator does not intend this procedure to set out any material change in the way in which we currently work. We wish to provide more detail on these aspects than currently exists in the Determinations Panel procedure in order to promote greater clarity and transparency. We hope that this greater clarity will assist case progress and allow more effective and efficient activity with all parties being fully aware of what to expect. As a result, we hope that cost and burden on business will be reduced.

We are undertaking this consultation in recognition of the fact that our proposed published procedure is likely to be of importance and interest to those who are, or become, involved in our cases. In addition, we wish to provide the regulated community with the opportunity to provide feedback on how the procedures adopted by our case teams currently work and how they might be improved, prior to any publication.

There is clearly a close relationship between the case team procedure proposed in this consultation document and the existing Determinations Panel procedure and a need for the two to dovetail. The regulator has liaised with the Determinations Panel in relation to the published procedure. The Determinations Panel are also proposing certain changes to its procedure and are undertaking a consultation in parallel on these changes: www.tpr.gov.uk/docs/determination-panel-consultation.pdf

Attached at appendix A is our proposed case team procedure.

The proposed procedure relates to matters in which the ultimate decision as to whether or not to exercise a function rests with the Determinations Panel.

After the introductory and background paragraphs (1-6), it is split into two main parts. The first part (paragraphs 7-20) sets out the proposed procedure in those cases in which our case teams have discretion as to whether or not to refer the matter to the Determinations Panel. The second part (paragraphs 21-30) sets out the proposed procedure for the limited number of cases where our case teams do not have discretion as to whether or not the matter is referred to the Determinations Panel.

Both parts contain details of the standard procedure (which we typically follow), and special procedure (which we will follow in cases in which there is a need to exercise the function immediately).

The proposed procedure sets out in a chronological, step by step way, what the regulator’s case team will typically do in each sort of case - from the initial stages of an investigation, through to the instigation of a formal regulatory process, referral to the Determinations Panel and our role after any such referral. The proposed procedure is intended to make it clear what the case team will do at each step and also what the case team are likely to expect from those parties it has involved in the case.
As stated above, we do not believe that this sets out any material change to the way in which we currently operate. Nevertheless, we wish to highlight one element of the procedure which whilst not proposing a substantive change, uses terminology that may not be familiar to stakeholders. This is:

- **Paragraph 13(ii)** This contains a provision allowing us to provide a formal response to any representations served by the Directly Affected Parties and also allowing the Directly Affected Parties the opportunity to reply to this. We are proposing this process in recognition of the fact that further issues do frequently arise following the service of representations that our case teams investigate and/or comment upon. At present, if further comments are provided by our case teams and the Directly Affected Parties, this tends to happen by way of exchanges of correspondence. The regulator believes that it would be sensible to put this on to a more formal footing, providing the opportunity for any post-representations comments to be collated in a response document. The Directly Affected Parties would then have the opportunity to reply to this. We anticipate that this would result in the Determinations Panel being able to more quickly assess each party’s position (if the case is subsequently referred to them).

### Consultation questions

We invite responses to the following consultation questions:

1. For parties that are involved in these cases – does the proposed case team procedure provide sufficient and clear information about how our case team runs a case, and what it expects from these parties? If not, how could it be improved?

2. Does the proposed case team procedure provide a sufficient and clear description of the interaction between the case team and the Determinations Panel (or Determinations Panel Support)? If not, how could it be improved?

3. Are there other matters in connection with the proposed case team procedure which we have not covered in this document but which you would like to raise with us?

### Timetable

The consultation will run for 12 weeks and close on the date set out in the relevant section below. Please ensure that your response is received no later than the closing date.

Once the consultation period has closed, we will consider the responses received and prepare a response to this consultation. The regulator then intends to issue a statement of the final case team procedure and publish this in autumn 2012, alongside its consultation response.

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Responding to the consultation

Responses may be made in either of the following ways:

By email to: procedureconsultation@thepensionsregulator.gov.uk

By post to:  Stephen Soper
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

We may need to share the feedback you send us within our own organisation or with other Government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your comments to remain anonymous, please state this explicitly in your response.

If you wish your response to be kept confidential, please make this known and we will take the necessary steps to meet your request. However, please be aware that, should we receive a formal request under Freedom of Information legislation, we may be required to make your response available.

When responding, please advise whether you are responding as an individual or on behalf of an organisation (and if the latter, which organisation).

Closing date

This consultation document was published on Tuesday 3 April 2012. The consultation period will be twelve weeks. The closing date for responses to this consultation is Friday 29 June 2012.

The Government code of practice on consultation

This consultation is being conducted in line with the seven criteria of the Government code of practice on consultation:

1. Formal consultation should take place at a stage when there is scope to influence the outcome.

2. Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.

3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.

4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.

5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.

6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.
Feedback on this consultation exercise

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the policy issues raised) please contact our consultation co-ordinator:

By email to: laura.butler@thepensionsregulator.gov.uk

By post to: Laura Butler
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. If you have any requirements that we need to meet to enable you to respond, please let us know.

Impact assessment statement

This consultation paper seeks views on an already existing process. We are not intending to introduce any new regulatory requirements.

Given that an increase in the transparency of our case processes will provide clarity in relation to the steps an investigation will take, we are of the view that this should result in cost savings (due to less need to incur adviser costs) and should not impose any additional cost burden upon the regulated community. We are therefore of the view that an impact assessment is unnecessary.
Appendix A – Proposed Case Team procedure

Case Team procedure – Reserved regulatory functions and applications made under Section 10(2)(b) of the Pensions Act 2004 (the Act)

Introduction

1. This is the Case Team procedure of the regulator in relation to the reserved regulatory functions set out in Schedule 2 to the Act and applications made under section 10(2)(b) of the Act, determined in accordance with section 93(1) of the Act. It outlines the procedure that the Case Team will typically follow in relation to these functions. It should be considered to include the standard and special procedures provided for in sections 96-98 of the Act. Where there are relevant matters which are covered by the Act, statutory provisions have not been repeated in this document unless this seems appropriate. This document should be read in conjunction with the procedure of the Determinations Panel determined under s93(3) of the Act.

Definitions and interpretation

2. Unless the context otherwise requires, the following expressions used in this document shall have the following meanings:

a. The Act – the Pensions Act 2004. Any reference to a section unless otherwise stated is to the relevant section of the Act.

b. The regulator – the Pensions Regulator as established under section 1 of the Act.


d. Determinations Support – the team of the regulator which provides advice and administrative support to the Determinations Panel.

e. Case Team – the team at the regulator (including, where appropriate, the relevant Executive Director) which handles the case, including preparation of the Warning Notice and presentation of the case to the Determinations Panel at any oral or public hearing.

f. Directly Affected Party – A person appearing to the Case team, to be directly affected by the regulatory action under consideration.

g. Determinations Panel Procedure – the procedure determined by the Determinations Panel under section 93(3) of the Act.

3. Any term used in this document which is defined for the purposes of any provision of Part 1 of the Act shall, unless the context otherwise requires, have the meaning used in the Act.
The statutory framework

4. The regulator is established under section 1 of the Act.

5. The regulator must determine, under section 93 of the Act, the procedures it will follow in relation to the exercise of the regulator’s regulatory functions. Under section 93(1) of the Act, the regulator has determined the procedure to be followed, as set out in this document.

6. Under section 94 of the Act, the regulator must publish a statement of any procedure determined under section 93. This procedure will therefore be published on the regulator’s website.

Reserved regulatory functions – standard procedure

7. Where the Case Team considers it appropriate to do so, it will carry out an investigation into the facts of the case. This investigation may include, for example, requests for information and inspection of premises. In circumstances in which the regulator is then considering issuing a Warning Notice, the Case Team may, where it considers it appropriate to do so, discuss its concerns with the potential Directly Affected Party (Parties) of the regulatory action. This may be by way of an exchange of correspondence or any other method of communication that the Case Team deems appropriate. The Case Team will take the content of these discussions into account when deciding how it wishes to proceed.

8. If the Case Team reaches the conclusion that the use of powers may be appropriate (whether or not it has undertaken the step set out at paragraph 7 above), it will, in accordance with sections 10 and 95 of the Act, prepare and issue a Warning Notice. The Case Team will decide which persons appear to be directly affected by the regulatory action under consideration and will serve the Warning Notice upon those persons.

Warning Notice

9. Contents of the Warning Notice will ordinarily include:

   i. the circumstances of the case, the action or decision under consideration and the grounds and evidence on which the Warning Notice is based, including where appropriate the details of any alleged breach of law

   ii. material received or obtained by the regulator that might reasonably be considered to support or undermine the case for the use of the power(s). The Case Team may disclose additional information if it considers that it is necessary to do so to ensure fairness. On occasion, material may not be disclosed where there is good reason not to do so and the Case Team is satisfied that there will be no unfairness

   iii. details of the specific powers that are under consideration. In cases where a Contribution Notice is sought under section 38 of the Act, the Case Team will ensure, if appropriate, that the requirements of section 96(1B)(a) of the Act are met

   iv. the length of time for service of representations to the Case Team (at the Case Team’s discretion). The Case Team shall insert a timeframe that it considers gives the Directly Affected Parties a reasonable time to properly respond to the matters raised in the Warning Notice and any accompanying documents. This will not normally be less than 14 days, although in appropriate cases, the timeframe may be shorter. The Case Team may grant extensions to this period, if it considers it appropriate to do so and will expect any requests for extensions to be made within 14 days of receipt of the Warning Notice

   v. details of the regulator’s ability to publish pursuant to section 89 of the Act (see further paragraphs 33 and 34 below).
Appendix A: Proposed Case Team procedure

Representations

10. If any Directly Affected Party wishes to make representations in response to the Warning Notice at this stage, these should be sent to the Case Team (and to any other Directly Affected Parties, if that Directly Affected Party so wishes) within the timeframe specified in the Warning Notice, or as varied by agreement with the Case Team. The purpose of providing representations to the Case Team at this stage is twofold. First, it allows the Case Team to assess whether or not it is still of the view that the use of the power may be appropriate (as is set out at paragraph 13(iii) below, if the Case Team conclude that this test is no longer met, it will not refer the matter to the Determinations Panel). Second, if the matter is so referred, any representations provided can be sent to the Determinations Panel.

11. Representations should state whether or not the Directly Affected Party accepts the contents of the Warning Notice and whether the Directly Affected Party intends to oppose the use of the power(s) in question. In cases where a Contribution Notice is sought under section 38 of the Act, the Directly Affected Parties may also wish to show the matters mentioned in section 38B(2) of the Act. It would be helpful if representations could also attach all evidence that the Directly Affected Party wishes to rely upon (eg documentary, witness and expert). This will assist the Case Team in considering the representations and deciding whether or not to refer the matter to the Determinations Panel. It may also assist the Directly Affected Party because it may mean that there is no need for the Directly Affected Party to submit any further representations to the Determinations Panel, if the matter is referred to it.

Request for a hearing

12. Any request for the determination to be reached after an oral or public hearing before the Determinations Panel should also be made by the Directly Affected Parties by letter to the Case Team within the timeframe for serving representations (see also paragraphs 32 to 38 of the Determinations Panel Procedure for further information about oral and public hearings).

Steps following representations

13. The Case Team will review and consider any representations served in order to consider whether or not it is still of the view that the use of the power may be appropriate. As part of this consideration, the Case Team may undertake further investigations if it considers it appropriate to do so. The Case Team may also send copies of the representations received to any of the other Directly Affected Parties where it considers this to be appropriate. After completion of this review, the Case Team will communicate its conclusion to each Directly Affected Party which may be, for example:

i. That the regulator will be referring the matter to the Determinations Panel in order for it to make a determination, in which event the Case Team will send the Warning Notice and all representations received to Determinations Support, together with any letters received pursuant to paragraph 12 above, details of the Case Team’s own view on whether or not an oral or public hearing is appropriate and a Request for the Determinations Panel to make the Determination (Request). The Case Team will also at this stage ensure that all representations received are made available to any Directly Affected Parties who have not already received these.

ii. That, in the light of issues raised in the representations, or the outcome of any further investigations, or further evidence received, the Case Team shall be providing further comments on the representations in the form of a Response to Representations (Response), in which event, the Case Team shall give the Directly Affected Parties a reasonable opportunity to reply to the Response (Reply).

iii. That the ‘may be appropriate’ threshold test contained in sections 10 and 95 of the Act is no longer met and the regulator will not be referring the matter to the Determinations Panel, either at all, or with respect to a particular Directly Affected Party who is one of a number of Directly Affected Parties.
14. If representations are not received from a Directly Affected Party within the timeframe set out in the Warning Notice (or a timeframe otherwise agreed upon) the Case Team will take such action as it deems appropriate. This could include referring the matter to the Determinations Panel to make some or all of the determination(s) requested in the Warning Notice (although, if representations have been received from any of the other Directly Affected Parties in the same matter, the Case Team may choose not to refer the matter to the Determinations Panel until it has reached a conclusion in accordance with paragraph 13 above).

15. The Case Team shall keep its disclosure obligations, as set out in paragraph 9(ii) above, under review and, should it receive any additional material which falls within the description set out in paragraph 9(ii) above, or if there is any existing material in the categories in 9(ii) which becomes relevant in this regard (eg after receipt of representations), the Case Team shall disclose these as soon as possible to the Directly Affected Parties (and Determinations Support, if appropriate).

16. If a Directly Affected Party wishes to raise a procedural issue in the period before any referral by the Case Team to the Determinations Panel, it should be raised with the Case Team who will consider it and make a decision. The Case Team may share details of the issues among any of the other Directly Affected Parties, if it considers it appropriate to do so.

**Role of the Case Team following referral to the Determinations Panel**

17. Following the submission of a Request, the Case Team shall comply with any directions issued by the Determinations Panel (including, for example, preparing submissions for any oral or public hearing). See also paragraph 20 (withdrawal) below.

**Reserved regulatory functions – special procedure**

18. The special procedure will be used where section 97 of the Act applies. In the event that the Case Team consider that section 97 of the Act is engaged, it shall prepare and send a ‘Request for the Determinations Panel to make a determination using special procedure’ (a Special Procedure Request) form to Determinations Support. This form will explain why it is considered that the case falls within section 97(1) of the Act and will also attach a draft of any Order requested. In cases falling within section 97(2) of the Act, the Special Procedure Request form will also include material which falls within paragraph 9 above, so far as is appropriate.

19. Following the submission of a Special Procedure Request, the Case Team shall comply with any directions issued by the Determinations Panel (including, for example, preparing submissions for the compulsory review hearing).

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1 This ordinarily arises in requests for the appointment of an independent trustee.
Appendix A: Proposed Case Team procedure

Withdrawal of Request or Special Procedure Request

20. Save for cases referred to the Determinations Panel under paragraphs 21 to 30 below, a Request or Special Procedure Request may be withdrawn by the Case Team from the Determinations Panel at any time prior to a determination or order (whichever is the earlier) being served on (any of) the Directly Affected Parties (eg where the Case Team no longer considers the use of the power may be appropriate as a result of representations served or new evidence received, or due to an appropriate resolution being reached between the parties or otherwise). If this happens, the Case Team will send a letter of withdrawal to all Directly Affected Parties and to Determinations Support save that, if a Determinations Panel hearing is in progress, withdrawal of the Request or Special Procedure Request may be made orally (in which event, the Case Team shall subsequently confirm this in writing).

Applications under section 10(2)(b) of the Act

Standard procedure

21. If the regulator receives an application that properly falls within the ambit of section 10(2)(b) of the Act, it shall prepare a Warning Notice which will contain all the information set out in paragraph 9 above, so far as appropriate, together with a statement from the Case Team on the merits of the case.

22. The Case Team will serve the Warning Notice upon those persons that appear to it to be directly affected by the regulatory action under consideration. The Directly Affected Parties will be invited to make representations to the Case Team on the Warning Notice if they wish.

23. The Case Team shall set a timeframe that it considers gives the Directly Affected Parties a reasonable time to properly respond to the matters raised in the Warning Notice. This timeframe will not normally be less than 14 days, although in appropriate cases, the timeframe may be shorter. The Case Team may grant extensions to this period, if it considers it appropriate to do so and will expect any requests for extensions to be made within 14 days of receipt of the Warning Notice.

24. The purpose of the representations at this stage is to enable the Case Team to consider its statement on the merits of the case in the light of such representations, and, if appropriate, prepare a Response on the representations in order to assist the Determinations Panel in reaching its decision. In addition, all representations provided to the Case Team will be sent to the Determinations Panel when the application is sent on to it.

25. Once the deadline for service of representations to the Case Team has been reached, the Case Team will consider whether to prepare a Response. It may also send copies of representations received to any of the other Directly Affected Parties where it considers this appropriate.

26. If the Case Team decides not to prepare a Response, it will send to Determinations Support the Warning Notice and any representations received, so that the matter is formally referred to the Determinations Panel.

27. If the Case Team decides to prepare a Response, it will send the Response to Directly Affected Parties and allow a reasonable time for the Directly Affected Parties to prepare a Reply to that Response. At the end of this time, the case team will send to Determinations Support the Warning Notice, any representations received, the Case Team’s Response, and any Reply received from the Directly Affected Parties, so that the matter is formally referred to the Determinations Panel.

28. In the case of an application under section 10(2)(b), the applicant is permitted to withdraw the application before any determination or order (whichever is the earlier) is served on (any of) the Directly Affected Parties.
Appendix A: Proposed Case Team procedure

**Special procedure**

29. If the regulator receives an application that properly falls within the ambit of section 10(2)(b) of the Act and the Case Team consider that section 97 of the Act is engaged, it shall prepare and send a ‘Section 10(2)(b) Request for the Determinations Panel to make a determination using special procedure’ (a Section 10(2)(b) Special Procedure Request) form to Determinations Support. This form will explain why it is considered that the case falls within section 97(1) of the Act and will also include a statement from the Case Team on the merits of the case together with a draft of any Order requested. In cases falling within section 97(2) of the Act, the Section 10(2)(b) Special Procedure Request form will also attach material which falls within paragraph 9 above, so far as appropriate.

30. Following the submission of a Section 10(2)(b) Special Procedure Request, the Case Team shall comply with any directions issued by the Determinations Panel (including, for example, preparing submissions for the compulsory review hearing).

**General**

31. This document sets out the procedure that the regulator expects to follow in the circumstances described. Consistent with its public law obligations, the Case Team shall take into account all relevant circumstances in reaching any decision pursuant to this procedure, including, where relevant, the regulator’s statutory objectives. There may be occasions on which the regulator considers it appropriate to depart from this procedure. In that event, the regulator will provide as much notice of the procedure it is to apply as possible.

32. The regulator will review this procedure from time to time as needed and reasonable notice (by way of publication on the regulator’s website) shall be given of any revisions made.

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2 This ordinarily arises in requests for the appointment of an independent trustee.

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**Publication**

33. Under section 89 of the Act, the regulator may, if it considers it appropriate to do so, publish a report of the consideration given by it to the exercise of its functions and the results of that consideration.

34. The regulator’s policy relating to the publication of Determinations Panel determination notices may be found at:
