Contents

Introduction 3
The consultation process 4
Main points raised in responses 5
The way forward 6
Appendix A – Responses to the consultation 7
Appendix B – Summary of key consultation responses on the procedure 8
Appendix C – Case Team procedure 13
How to contact us back page
**Introduction**

Pursuant to section 93 of the Pensions Act 2004 (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. Equivalent provisions appear in Northern Ireland legislation.

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 it to reach a determination.

Operational experience to date 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. We therefore wished to set out the procedures followed by the regulator’s case teams 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 intention is 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. We hope that cost and burden on business will be reduced as a result.

In light of the above, we undertook a formal public consultation in order to seek the views of the regulated community on our proposed published procedure for the regulator’s case teams in recognition of the fact that this is likely to be of importance and interest to those who are, or become, involved in our cases. In addition, we wished 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 a close relationship between the Case Team procedure proposed in the consultation document and the existing Determinations Panel procedure, and a need for the two to dovetail. The regulator therefore liaised with the Determinations Panel in relation to the proposed published procedure for its case teams. The Determinations Panel also proposed certain changes to its procedure and undertook a consultation in parallel on these changes. The Determinations Panel’s response to that consultation will be published alongside this response and can be found at [www.tpr.gov.uk/doc-library/determinations-panel-procedure](http://www.tpr.gov.uk/doc-library/determinations-panel-procedure).
The consultation process

The formal consultation process commenced on 3 April 2012, following publication of our consultation document. Consultation ran for 12½ weeks, closing on 29 June 2012. We received six written responses from stakeholders, including legal firms, professional advisory firms and professional and trade bodies. In addition, a stakeholder event was held in London on 18 June 2012 to which number of key stakeholders were invited. This event was chaired by John Scampion (chair of the Determinations Panel) and Stephen Soper (executive director for defined benefit regulation) and a number of comments and representations were made by the stakeholders who attended. A full list of the respondents, including those who attended the stakeholder meeting, is attached at Appendix A.

We are very grateful for all the responses received and comments made. These have helped us considerably in finalising our Case Team procedure.

In our consultation documents, we sought comments on the following questions:

1. For parties that are involved in these cases (cases in which the final determination is made by the Determinations Panel) – 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?
Main points raised in responses

Many of the responses were supportive of our aim to provide greater clarity and transparency in relation to the steps taken by our case teams and consider that our proposed procedure does provide sufficient and clear information about how our case teams run cases, what they expect from the parties involved and how our case teams interact with the Determinations Panel.

We have considered all the comments and responses received carefully and have taken these into account in finalising the Case Team procedure.

A number of respondents raised specific points in relation to particular paragraphs of the procedure and we have set out the most significant of these, together with our responses, in Appendix B. Many of the comments made suggested providing a greater level of detail or guidance in the procedure. Consequently, we have provided more detail in several paragraphs in order to make the process clearer. We have not accepted all suggestions because we need to ensure that there is sufficient flexibility to provide for the particular circumstances of each case.

Three respondents raised a broad point suggesting that the Determinations Panel should be the decision maker in relation to the setting of time limits for service of representations. One respondent suggested that the Determinations Panel should take responsibility for deciding all procedural matters following service of the Warning Notice. These respondents felt that the regulator’s case teams are not operating in a neutral role in these cases, rather they have a more partisan role in the process as one of the parties who presents the case for regulatory action to the Determinations Panel.

We have considered these points carefully. We remain of the view that it is appropriate for the case team to be the decision maker in relation to the setting of time limits for representations (and all other procedural matters) prior to the handing over of a case to the Determinations Panel. Case teams at the regulator are bound by public law obligations to act fairly and reasonably when making decisions (including in relation to time limits).

In order to assure the regulated community in relation to the approach by its case teams, case teams will insert a time frame that they are of the view is fair and reasonable for the provision of representations, having regard to the nature of the issues raised in the Warning Notice. Case teams will then consider any reasonable requests to extend this time. It is only in cases where a case team is not provided with any, or an adequate or reasonable, reason for the extension, that it will consider proceeding without those representations. Consistent with our statutory objectives, the case teams need to be able to progress cases if they are of the view that there is an unreasonable or inadequate reason for an extension being requested and that matters are being delayed unnecessarily.

We have amended the procedure following our consideration of the consultation comments made and responses received, plus our own further review. The final Case Team procedure has accordingly been determined and is hereby issued at Appendix C. A version of this showing all changes made from the version that appeared in the consultation document is available on request.
The way forward

The final Case Team procedure will be published on our website alongside this consultation response. Simultaneously, the Determinations Panel’s revised procedure and consultation response will also be published on our website. We will also be publishing summary flowcharts for standard and special procedure in anticipation that some members of the regulated community may find these helpful.

Finally, we have also made some changes to our website text in relation to determinations made by the Determinations Panel, to reflect the content of the Case Team procedure and revised Determinations Panel procedure.
Appendix A – Responses to the consultation

The following organisations provided responses to the consultation and/or provided representatives who attended the stakeholder meeting on 18 June 2012.

- Aon Hewitt
- Association of Chartered Certified Accountants
- Association of Consulting Actuaries
- Association of Pension Lawyers
- Institute and Faculty of Actuaries
- The Upper Tribunal
- Pensions Management Institute
- PricewaterhouseCoopers LLP
- Society of Pension Consultants
- Wragge & Co LLP.
## Appendix B – Summary of key consultation responses on the procedure

References to paragraph numbers are to numbers in the procedure attached to the original consultation document which can be found at: [www.thepensionsregulator.gov.uk/docs/case-team-consultation.pdf](http://www.thepensionsregulator.gov.uk/docs/case-team-consultation.pdf)

<table>
<thead>
<tr>
<th>Consultation comment</th>
<th>Regulator’s response</th>
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<tbody>
<tr>
<td><strong>Definition</strong></td>
<td><strong>We agree that some additional information would be useful and so have inserted some wording in paragraph 7.</strong></td>
</tr>
<tr>
<td>A definition of Warning Notice should be included.</td>
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<tr>
<td>Clarification should be inserted of whether a Directly Affected Party could include trustees.</td>
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<tr>
<td>Details should be inserted of how the regulator maintains confidentiality of sensitive information.</td>
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| **Paragraph 5**      | **The regulator has issued some procedures that relate to its non-reserved regulatory functions (for example, the clearance guidance), however the regulator does intend to produce a procedure for these functions shortly.** |
| The regulator has not produced a procedure for its non-reserved regulatory functions and should do so. |

<p>| <strong>Paragraph 7</strong>      | <strong>Section 96 of the Pensions Act 2004 indicates that it is the regulator’s role to decide who is directly affected and we do not consider that the procedure needs to contain any further detail in this respect. However, in order to assist respondents, the regulator's case teams would be happy to consider any submissions that a party wished to make on the question of whether or not it was directly affected.</strong> |
| It would be helpful if the procedure indicated how a potential Directly Affected Party could apply to be included. |
| As presently drafted, the procedure gives the impression that a Warning Notice could be issued without the case team having undertaken an investigation. Wording should be introduced to compel the case team, acting reasonably, to do so. | <strong>It appears that the first sentence of paragraph 7 and the text in parentheses in paragraph 8 may have caused this concern. The first sentence of paragraph 7 was intended to reflect the fact that not all cases will be investigated by the regulator. We have made some changes to the wording of paragraphs 7 and 8 which we hope clarify the regulator’s practice. We do not believe that it is necessary to introduce further language referring to the need for the case team to act reasonably, as it is required to do so by virtue of its public law obligations in any event.</strong> |</p>
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<th>Consultation comment</th>
<th>Regulator’s response</th>
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<tr>
<td><strong>Paragraph 8</strong></td>
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<tr>
<td>It would be helpful to provide an indication of the length of time it will take to reach a conclusion.</td>
<td>As the facts of each case vary, it is not possible to provide a universally applicable figure in the procedure.</td>
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<tr>
<td>The wording gives the case team a wide degree of subjectivity in deciding whether or not a person is directly affected. Language should be introduced to require the case team to serve the Warning Notice on those who are, or appear to be, directly affected.</td>
<td>The wording reflects the obligation set out in the statute (section 96 PA04) and so we do not consider it appropriate to change it.</td>
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<td><strong>Paragraph 9</strong></td>
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<td>Given the importance of the matters set out in paragraph 9, the reference to the Warning Notice ‘ordinarily’ including should be tightened so as to require this, unless there are compelling reasons to the contrary.</td>
<td>We consider that the wording does not need to change – the case team is obliged to act fairly and reasonably in line with its public law obligations and would expect the contents of a Warning Notice to reflect the specific requirements of paragraph 9 in the vast majority of cases. However, we consider that it is necessary to allow enough flexibility in the procedure to depart from this in appropriate circumstances.</td>
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<td><strong>Paragraph 9(ii)</strong></td>
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<td>The wording should not allow the case team ‘on occasion’ not to disclose material which might reasonably be considered to support or undermine the case for the use of the power and the wording should make clear that the case team should place no reliance on any material not disclosed.</td>
<td>We consider that the procedure as drafted is fair and that these amendments are therefore not appropriate. As paragraph 9(ii) makes clear, 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) may not be disclosed where the case team is satisfied that there will be no unfairness. Examples would include where redacting or withholding information is thought necessary to comply with data protection principles, or where there are public interest reasons not to disclose specific information. It is not possible to set out all the circumstances that might arise, or to confirm that the case team would never seek to rely on any material that it has not disclosed, but in all cases the overriding consideration will be whether the case team is satisfied that there is no unfairness. Following our review of this paragraph, we have made some amendments to clarify the position in relation to legally privileged material and also to provide that Directly Affected Parties would be informed in most cases where information is withheld.</td>
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continued...
### Consultation comment

**Paragraph 9(ii) continued...**

The wording should oblige the case team to disclose any additional information used unless this is confidential.

The wording should confirm that any material not disclosed will be identified and reasons given for its non-disclosure.

In order to avoid the conflicts faced by the case team in deciding what may fairly be disclosed, all material in the regulator’s possession should be disclosed to all Directly Affected Parties (subject to some safeguards to ensure personal confidentiality for individuals).

The words ‘in some way’ should be inserted after the words ‘support or undermine’.

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### Regulator’s response

We consider that the current wording results in a fair process and that this change does not need to be made.

Noted. We have inserted some wording in the procedure that addresses this point.

We do not consider that the case team is in a position of conflict (see our comments on the public law obligations of the case team above). In addition and in any event, we are of the view that this is not an appropriate option, not least because of the risk of potential breaches of the restricted information and other relevant statutory provisions.

We believe that the existing wording results in a fair and workable process and consider that these additions would result in potential uncertainty.

**Paragraph 9(iii)**

The wording should be changed to ensure that the statutory requirements for Contribution Notice cases are met, unless there are compelling reasons to the contrary.

The reference to the case team ensuring ‘if appropriate’ that the requirements of section 96(1B)(a) are met is to reflect the fact that not all Contribution Notice Warning Notices will rely on the material detriment power. We therefore believe that there is no need to change the wording.

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**Paragraph 9(iv)**

The 14 day period referred to for representations appears too short, especially if representations are to attach all evidence relied on.

The current wording gives the case team considerable discretion. It should be changed to introduce an objective requirement of reasonableness.

The procedure indicates that the case team shall insert a time frame for representations that it considers gives the Directly Affected Parties a reasonable time to properly respond to the matters raised in the Warning Notice. The 14 day reference is simply there to indicate that the time allowed will not normally be less than this.

As the case team is obliged to act reasonably by virtue of its public law obligations, we do not propose to change the wording.
<table>
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<tr>
<th>Consultation comment</th>
<th>Regulator’s response</th>
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<tr>
<td><strong>Paragraph 13</strong></td>
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<td>The procedure should include example facts relevant to possible considerations under this paragraph.</td>
<td>We do not consider that it is appropriate to provide this information in the procedure, or that it would be useful, since the facts of each case will be different.</td>
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<tr>
<td>The procedure indicates that the case team may decide to send copies of any representations received to other Directly Affected Parties where appropriate. It is unclear when it would not be appropriate to do this, particularly given paragraph 11 of the proposed Determinations Panel procedure and some clarity of the inter-relationship between the case team and Determinations Panel would be useful.</td>
<td>Paragraph 13(i) makes it clear that, if the case team decide that the case will be handed over to the Determinations Panel, it will circulate all representations received to any Directly Affected Parties who have not already received these. The earlier reference in paragraph 13 to the case team circulating representations if it considers it appropriate to do so reflects an earlier stage of the process when the case team is still considering whether or not to hand over the matter to the Determinations Panel. At this stage, the case team may feel that it is not appropriate to circulate representations received to all parties if the sending party has chosen not to do so (for example, the case team may decide that it does not need other parties to see (and perhaps comment on) these in order to decide whether or not to hand the matter over to the Determinations Panel).</td>
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<tr>
<td><strong>Paragraph 15</strong></td>
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<td>There is no reference to a further opportunity for the Directly Affected Parties to comment in relation to any further material received.</td>
<td>Noted. We have added some wording to paragraph 15 to make it clear that, if further disclosure takes place before any referral of the matter to the Determinations Panel, the case team shall give the Directly Affected Parties the opportunity to comment. If the disclosure takes place after the case has been referred by the case team to the Determinations Panel, then the extent to which the Directly Affected Parties should be given the opportunity to comment on this would be a matter for the Determinations Panel to decide.</td>
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<tr>
<td><strong>Paragraph 18</strong></td>
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<tr>
<td>Some explanation of when special procedure will be used should be inserted.</td>
<td>We agree that some additional information would be useful and so have inserted some wording into paragraph 18.</td>
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<td><strong>Paragraph 27</strong></td>
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<tr>
<td>It would be helpful if an indication of the time typically allowed for a Reply would be, as a minimum.</td>
<td>As the procedure refers to a reasonable amount of time being given for any Reply, we do not consider that any further detail is needed.</td>
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Appendix C – 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 provides for the standard and special procedures 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

c. Determinations Panel – the Determinations Panel established under section 9 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 a case. This investigation may include, for example, requests for information and inspection of premises. In circumstances in which the regulator is then considering commencing regulatory action by 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 discussed its concerns with the potential Directly Affected Party (Parties)), 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) (excluding material which is legally privileged). On occasion, such material may not be disclosed where there is good reason not to do so and the regulator is satisfied that there will be no unfairness. In that event the Case Team would, in most circumstances, inform the Directly Affected Parties of this, although circumstances may arise in which it would not be appropriate to do so. The Case Team may disclose additional information if it considers that it is necessary to do so to ensure fairness;

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 time frame 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 time frame 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 in cases where the time frame for representations set out in the Warning Notice is 21 days or longer. In cases where the time frame for representations set out in the Warning Notice is less than 21 days, the Case Team will expect any requests for extensions to be made no later than two working days before the expiry of the time frame;

v. details of the regulator’s ability to publish pursuant to section 89 of the Act (see further paragraphs 34 and 35 below).

Representations

10. If any Directly Affected Party wishes to make representations in response to the Warning Notice at this stage, these should be sent (by email or letter) to the Case Team (and to any other Directly Affected Parties, if that Directly Affected Party so wishes) within the time frame 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 concludes 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 Party 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 (e.g., 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 or email to the Case Team within the time frame for serving representations (see also paragraphs 31 to 37 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 communications 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 time frame set out in the Warning Notice (or a time frame otherwise agreed upon with that Directly Affected Party) 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 disclosure 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 (for example, after receipt of representations), the Case Team shall disclose this as soon as possible to the Directly Affected Parties (and Determinations Support, if appropriate). If additional material is disclosed by the Case Team prior to the referral of the matter to the Determinations Panel, the Case Team shall give the Directly Affected Parties the opportunity to comment on this.
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 the Case Team consider that section 97 of the Act applies (eg where the Case Team considers that there may be a need to use the regulator’s powers immediately to protect members’ interests or scheme assets). In that event that the Case Team 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. In cases falling with section 97(3) and (4) of the Act, any Warning Notice, representations, Response and Replies served up to that point will also be sent to Determinations Support. The Special Procedure Request 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. The Directly Affected Parties will not be sent the Special Procedure Request form, or be told about the Case Team’s intention to use special procedure before the Determinations Panel first considers this request.

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). See the Determinations Panel procedure for more detail on how it approaches special procedure cases.

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 the reaching of its determination (for example 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).

1 This ordinarily arises in requests for the appointment of an independent trustee.
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, the Case Team shall prepare a Warning Notice which will contain details of the application made together with all the information set out in paragraph 9 above, so far as appropriate, and 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 time frame that it considers gives the Directly Affected Parties a reasonable time to properly respond to the matters raised in the Warning Notice, such as the statement on the merits of the case, and any accompanying documents. This time frame will not normally be less than 14 days, although in appropriate cases, the time frame 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, in cases where the time frame for representations set out in the Warning Notice is 21 days or longer. In cases where the time frame for representations set out in the Warning Notice is less than 21 days, the Case Team will expect any requests for extensions to be made no later than two working days before the expiry of that time frame.

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 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. 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.

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. 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 is reached.
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 applies, 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. In cases falling within section 97(3) and (4) of the Act, any Warning Notice, representations, Responses and Replies served up to that point will also be sent to Determinations Support. The Section 10(2)(b) Special Procedure Request 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. The Directly Affected Parties will not be sent the Section 10(2)(b) Special Procedure Request form, or be told about the Case Team’s intention to use the special procedure before the Determinations Panel first considers this request.

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). See the Determinations Panel procedure for more detail on how it approaches special procedure cases.

General

31. This document sets out the procedure that the regulator expects to follow in the circumstances described. In reaching any decision pursuant to this procedure, the Case Team shall comply with its public law obligations and shall also have regard to, 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.

33. References in this document to the law that applies to Great Britain should be taken to include corresponding legislation in Northern Ireland.

Publication

34. 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.

35. The regulator’s policy relating to the publication of Determinations Panel determination notices may be found at www.thepensionsregulator.gov.uk/regulate-and-enforce/determinations.aspx.

Determined by the regulator on 24 January 2013

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