



Information
for journalists

A quick guide to...

determinations

The Pensions
Regulator

Key points

- The Pensions Regulator has a range of powers that can be used to intervene in situations where members' benefits are put at risk.
- There are some powers we can exercise directly, for example granting clearance or requiring schemes to supply information.
- Other powers can only be exercised by the **Determinations Panel (DP)** and are known as **reserved powers**. This includes suspending or prohibiting trustees, appointing an independent trustee, and issuing a **Contribution Notice (CN)** or **Financial Support Direction (FSD)**.
- The Determinations Panel (DP) makes decisions on the use of The Pensions Regulator's reserved powers. Although the DP is a committee of The Pensions Regulator (the 'regulator'), it operates separately from other parts of the organisation, including the regulator's case teams. The constitution of the Panel ensures that its decision-making is independent from the regulator.
- Members of the DP are people with legal, financial and/or pensions knowledge who are separate from our everyday business. This enables the DP to make impartial decisions based on the evidence we present to directly affected parties (DAPs). All DAPs involved are given the opportunity to express their views.
- The DP does not initiate work of its own accord. The regulator's case teams will carry out an investigation and then, if appropriate, submit a case to the DP for consideration. A DP decision on the use of such powers is called a '**determination**'.

Taking action

There are 2 procedures through which a case can be brought to the DP, standard and special.

Standard procedure

In a standard procedure, the regulator's case will be set out in a 'Warning Notice' by the case team. This is issued to all directly affected parties. All parties then have the opportunity to respond with their comments. They will usually be given 28 days to respond. If, following receipt of these responses, the case team decides to continue the action, a full set of papers are created for consideration by the DP. The case team may withdraw a Warning Notice at any time before the DP hears the case, for example if the situation changes or a resolution is reached.

The DP may hear a case with submissions made either verbally or in writing, depending on the circumstances. In reaching its decision, the DP must consider what is in the best interests of members of the pension scheme. It must also consider whether it is reasonable to enforce the requested power against the target of the case.

As soon as possible after the hearing, the 'orders' and a Determination Notice (DN) are issued to all DAPs and to the regulator's case team.

The 'orders' are a legal document stating the action to be taken, such as the appointment of an independent trustee. The DN gives the reasons for the decision.

Special procedure

In certain circumstances – such as where there is a need to act very urgently to protect members' interests – legislation allows us to avoid giving parties prior notice or the opportunity to make representations before making a decision. This is a 'special procedure'. For this to happen, the DP must accept that there is a need to act quickly or quietly in order to protect members' interests.

Where the DP makes a determination under special procedure, the decision is subject to a compulsory review afterwards. At this stage, the DAPs are given the opportunity to respond. The DP will then issue a final determination. This might result in the initial decision being confirmed, varied, revoked or a new determination substituted in its place.

Public information

Our policy is to publish all determination notices issued by the DP, unless we consider there is good reason not to do so.

Exceptions to publishing a determination, or publishing it in full, will be considered where publication would give rise to one or more of the following:

- an adverse impact on market behaviours – including commercial and/or price sensitivity issues;
- prejudice investigations by other bodies;
- disclosure of information protected under the Official Secrets Act or restricted information;
- risk to individual safety or mental health (in relation to reputational and civil liability); and
- disclosure of sensitive personal data.

Appealing a decision

Any determination can be appealed to the Upper Tribunal (Tax and Chancery Chamber – ‘the Tribunal’). This is called a ‘reference’.

The Tribunal rules state that references made by the DAPs must be received by the Tribunal within 28 days of the issuance of the DN.

During the 28 days, the regulator is not normally allowed to use the power granted at the determination, except where it is a power that can have immediate effect.

The Tribunal is an independent body set up to hear references on determinations. It may consider any evidence available to it in relation to the subject of the reference. This includes evidence that was not available at the time of the original determination.

The Tribunal will decide whether to confirm, vary or revoke the determination or substitute a different decision in its place. It may also make recommendations as to the procedure to be followed by us or the DP. We must act in accordance with the direction of the Tribunal. Upon obtaining permission, a party to the reference may appeal to the Court of Appeal on a point of law.

This guide complements our existing regulatory guidance and should not be considered as a statement of the law.

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