

A guide to Determination Panel cases

A summary of special procedure

This flowchart shows the procedure that Determinations Panel cases typically follow when it is necessary to exercise our functions immediately¹. For cases that do not require the immediate exercise of our functions, see **A summary of standard procedure**.

This flowchart only provides a summary of the special procedure in Determinations Panel cases. For a more detailed description, please see the Case Team procedure and the Determinations Panel procedure at www.tpr.gov.uk/regulate-and-enforce/procedures-for-cases.aspx and other information on our website².

- 1 In cases covered by section 10(2)(a) of the Pensions Act 2004.
- 2 In the event of a conflict between the wording in this flowchart, and the Case Team procedure and Determinations Panel procedure (together 'the procedures'), the wording in the procedures shall prevail.

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A summary of special procedure

1. Introduction

Special procedure can be used by the regulator when it is necessary to exercise a function immediately because of a risk to members interests or scheme assets³. It results in a quick decision on whether or not the regulator's function(s) should be exercised by the Determinations Panel.

3 See section 97 of the Pensions Act 2004. The regulator can only use special procedure for the functions listed in section 97(5)

2. Case team considers use of special procedure

The case team at the regulator will consider whether the use of special procedure is appropriate at the outset of an investigation, or, as a case progresses using standard procedure. In practice, special procedure is usually used at the outset of an investigation, before a Warning Notice is issued (for example, following contact from a whistleblower).

Withdrawal

The case team may withdraw a case from the Determinations Panel at any time prior to the reaching of its determination.

3. Initiating special procedure

If the case team consider that special procedure should be applied, it shall prepare and send a Special Procedure Request form (form) to the Determinations Panel support team, along with any Warning Notice, representations, response and replies served up to that point. The form explains why the case team consider that special procedure applies. In cases where a Warning Notice has not yet been issued by the case team, the form will also explain why the case team believes that the exercise of the underlying function(s) is appropriate and will include material received or obtained by the regulator that might reasonably be considered to support or undermine the case for the exercise of the function(s) (excluding legally privileged information).

4. Position of Directly Affected Parties (DAPs)

The DAPs will not be sent the form or be informed of the case team's intention to use special procedure before the Determinations Panel first considers this request.

5. Determination Notice

After reviewing the form, the Determinations Panel may make a determination and issue a Determination Notice and an Order, if appropriate.

6. Directions for Compulsory Review

Following a determination by the Determinations Panel, the Determinations Panel support team will send the Determination Notice and all papers that were before the Determinations Panel to the DAPs. It will also issue directions for the Compulsory Review of the determination, which will include a timetable for service of representations from the DAPs. The Compulsory Review must be determined as soon as reasonably practicable.

7. The Compulsory Review

The Determinations Panel will reconsider all the papers that it had at the time of making the original determination, any representations received from the DAPs in response to the Determination Notice and any new information relevant to the review provided there is confirmation that this has been sent to the DAPs and the case team.

Publication

The regulator will publish in accordance with its policy: www.tpr.gov.uk/-/media/the-pensions-regulator/files/import/pdf/essential-guide-publish-information-cases

8. The Final Notice

When the Determinations Panel has completed the Compulsory Review, it will give notice of its determination in a Final Notice and publication will take place if appropriate.

Upper Tribunal's determination

The Upper Tribunal will decide what action the regulator should take in relation to the referral.

9. The Upper Tribunal

The determination which is the subject of the Final Notice may be referred to the Upper Tribunal. The Upper Tribunal is independent of the regulator and will consider the case afresh. An Upper Tribunal hearing is normally held in public.

10. Further proceedings

The decision of the Upper Tribunal can be corrected, set aside, reviewed, or appealed in the circumstances set out in the Upper Tribunal Rules.