

The complaints procedures of the Pension Funds Adjudicator

Can the process be improved?

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The role of the Pension Funds Adjudicator

The Office of the PFA is designed to help resolve disputes between members, stakeholders and retirement funds in a cheap, quick and effective way.

To enable the office to do so the PFA can employ both an inquisitorial as well as an adversarial approach.

The role of the Pension Funds Adjudicator

On a more aspirational note the PFA can help **harmonise and develop the relationship between retirement funds and their members.**

The Office of the PFA can help to ensure

- that members enjoy the service levels, the value and the good governance they deserve, and
- the operational efficiency and the trust and confidence that members have in these important South African institutions.

The role of the Pension Funds Adjudicator

- The office of the PFA has been in existence for 25 years. (19 April 1996)
- Kobus recalls the debate and the discussion at the legal and technical committees when the legislation was drafted and experienced the outcomes as head of governance and compliance at a large benefit consultancy and PO of a large umbrella fund.
- Muvhango Lukhaimane has served as the PFA for the past 8 years.

If we could make a fresh start and amend the legislation, what would we do differently?

2020: The volume of work is significant and constitutes a massive challenge for the PFA

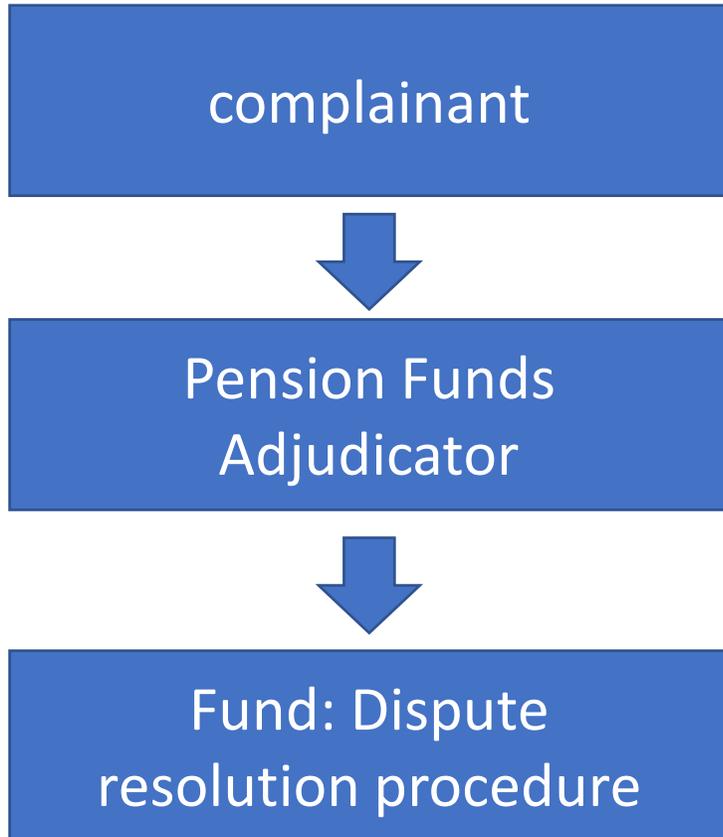
Administrative enquiries

- A significant proportion of cases the PFA office deals with are in the nature of administrative enquiries or minor admin failures or delays.

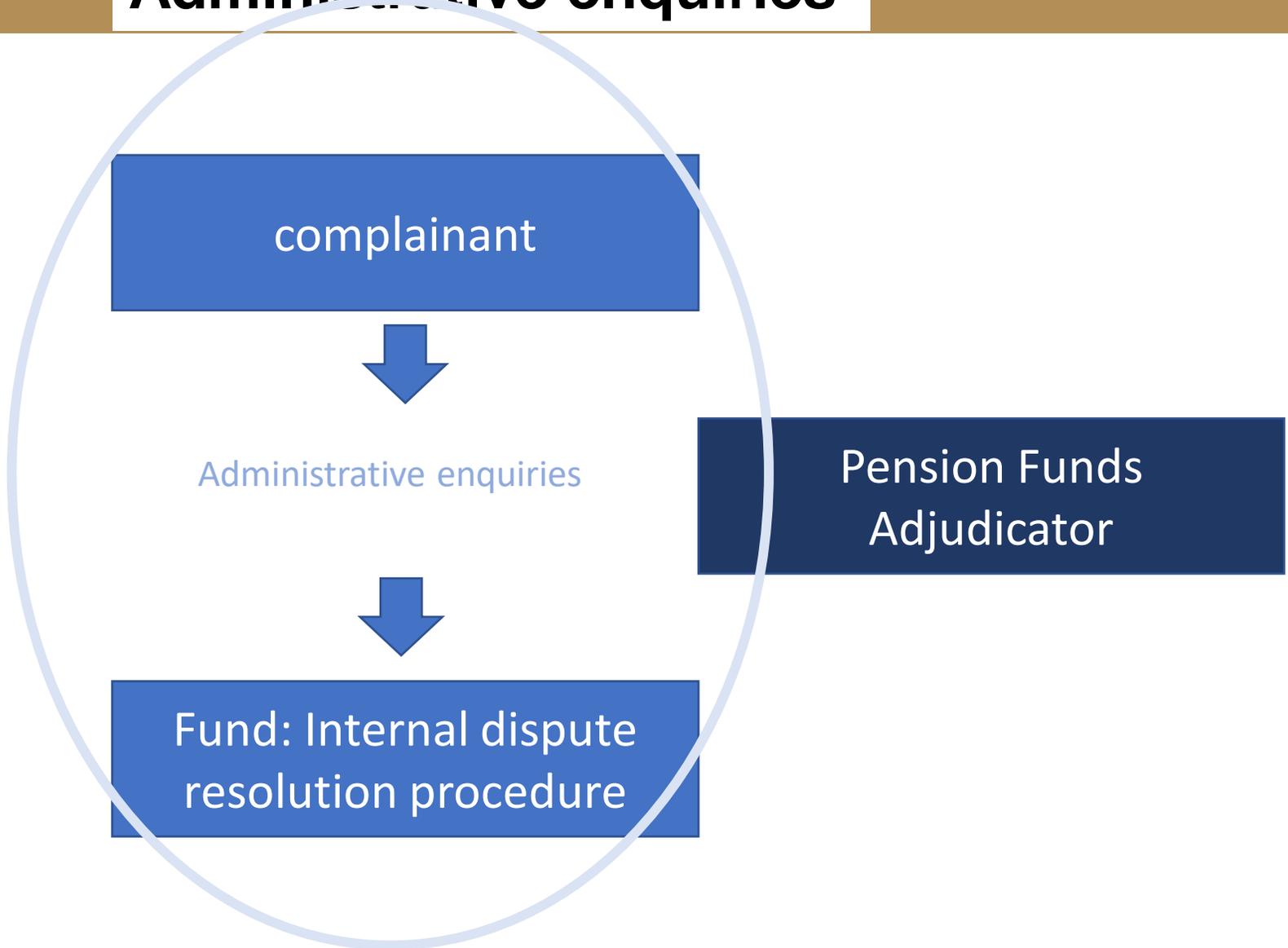
S 13A : monitoring contribution payments

- Taking action against employers who fail to make contribution payments. The demand for assistance has grown out of all proportion

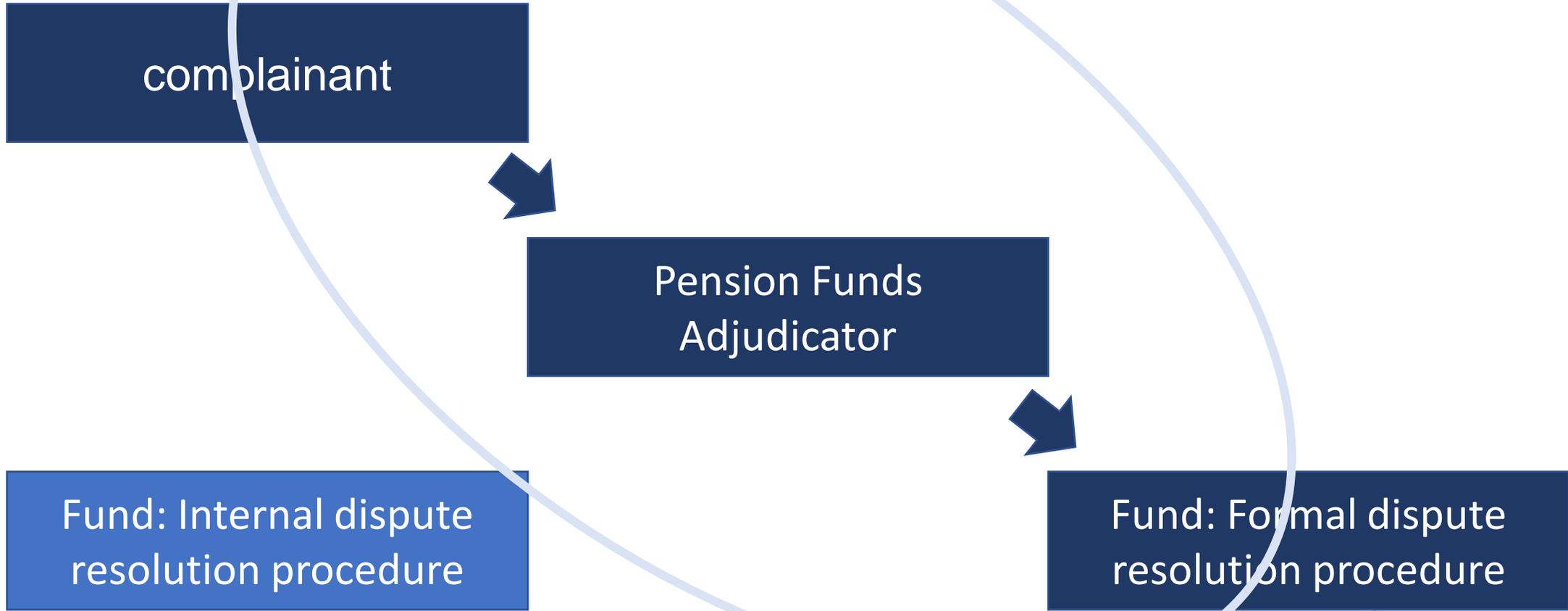
Administrative enquiries



Administrative enquiries



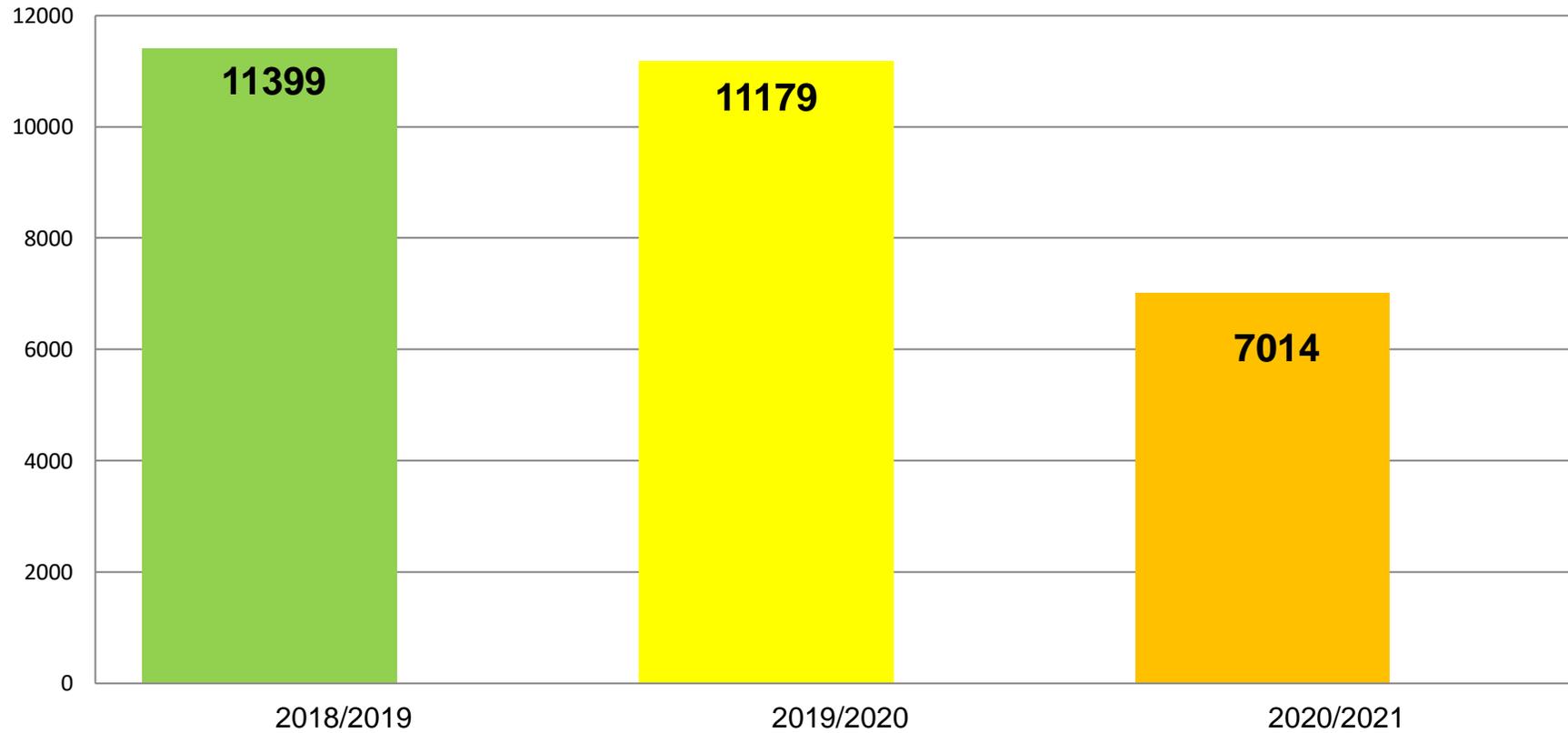
Complaints resolution



How is this new model working?

Current statistics

New Complaints



Current statistics

How complaints were received

2020/2021

Email	Letter	Fax	Web Site	Walk-in	Total
4 479	217	165	978	1 175	7 014

2019/2020

Email	Letter	Fax	Web Site	Walk-in	Total
5 386	743	707	796	3 547	11 179

2018/2019

Email	Letter	Fax	Web Site	Walk-in	Total
4 454	768	691	454	5 032	11 399

Monitoring contribution payments

Monitoring contribution payments

- We need a special solution to take action against employers ito S13A
- No other agency is better placed to provide this service to the industry costs effectively and within a short period.
- Full affidavit by the fund with all the fund information required for a finding against the employer.
- Standardised PFA procedure against the employer (directors) after 30 days - personal liability
- In most cases the criminal prosecution of directors may not be required

Measures to enhance the inquisitorial function
for better outcomes

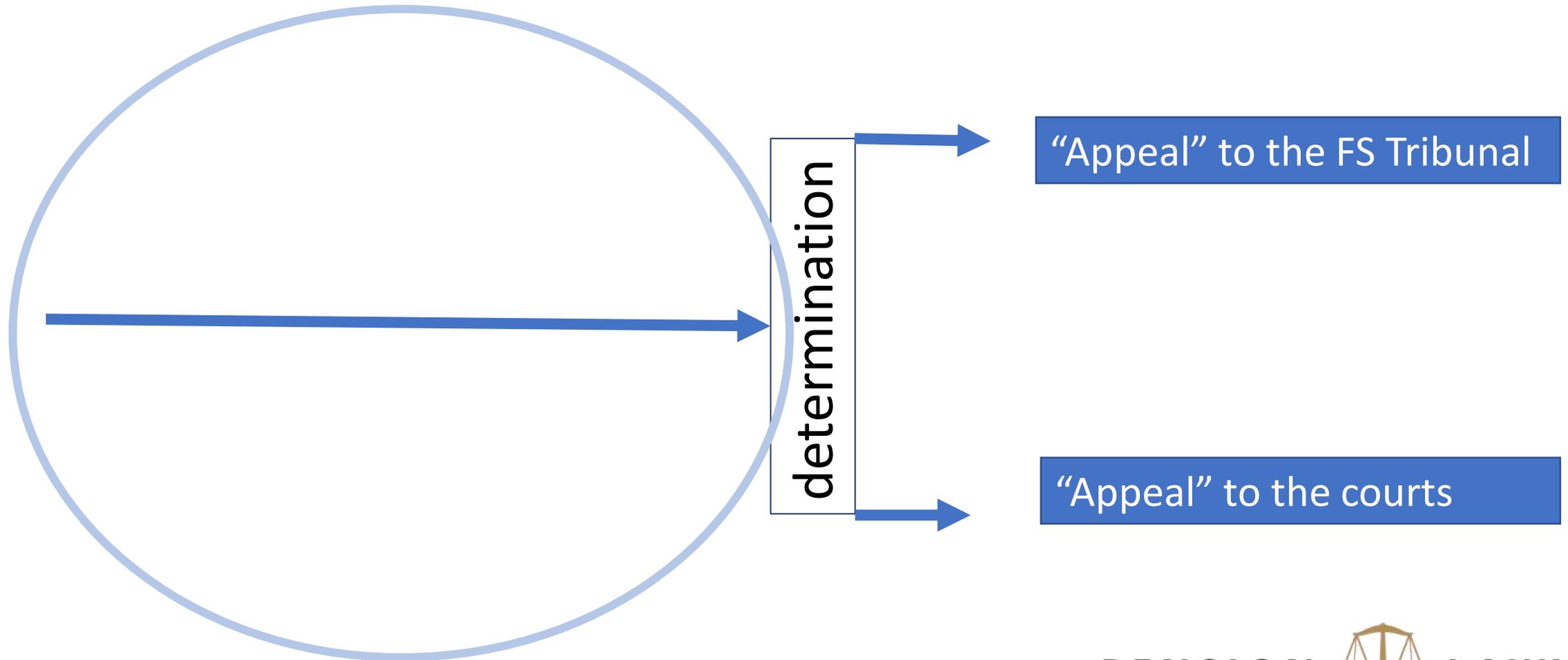
How can we avoid nasty surprises?

To avoid nasty surprises funds are typically forced to over compensate in their responses.

That makes the process

- **slower** and
- **more expensive**

Area of influence – only up to determination



How can we avoid nasty surprises?

1. Screen complaint on receipt
2. Where necessary ask a second round of questions for clarity
3. Issue draft determinations
4. Do more hearings in appropriate cases

1. Screen complaint on receipt

- This action could help identify the more serious cases
- It may also identify any shortcomings in the complaint or focus attention on the core issues for consideration

Finalise complaints where the parties have managed to resolve the issues

- September 2020 to April 2021 - 567 matters

2. Ask a second round of questions for clarity

- The complaint is often poorly formulated
- The fund is required to respond to this complaint
 - the PFA does not typically narrow down the issues
- If a determination is made based on that information - it allows for significant gaps in the understanding of the issues
- Once a determination is made – the office of the PFA can no longer contribute to the quick and easy dispute resolution procedure

3. Issue draft determinations

Issuing draft determinations align with the inquisitorial ideal

- It allows the fund one final chance to
 - remove uncertainties and put the appropriate facts in context
 - deal properly with the core issues at hand.

In practice it will often mean that if the fund does not provide any fresh information or perspective the determination will go against them (long term insurance Ombud)

4. Do more hearings in appropriate cases

- The experience has been that whenever the PFA has held a hearing, more often than not these hearings lead to an agreed solution.
- Either more relevant information is provided or the parties just find it possible to meet each other and settle their differences.
- These hearings can be held electronically based on a roster. Electronic zoom / team's sessions are effective and inexpensive and should lead to positive solutions for many problematic cases.
- It may also be possible to lump related matters for hearing for the sake of efficiency.

Example: Special approach for S 37C cases

Section 37C:

- “PFA understands that it is a complex environment and will therefore show deference to the allocation made by the board.”
- If the allocation is reasonable the PFA will not interfere.
- If there is a glaring omission ask for more information / a review.

This is one of those areas where a second round of questions, a draft determination or a hearing will be helpful.

Industry influence

Systems thinking

Industry influence

PFA to publish identified shortcomings and challenges

- Bring to the attention of authorities shortcomings in legislation
- Bring to the attention of the industry undesirable trends and practices

Note: It will only work if the PFA can rely on effective structures within the authorities and the industry to investigate and develop solutions within a reasonable time

Industry influence

PFA to publish interpretation notes

- Interpretation notes will assist all stakeholders to
 - align their practices with the PFA interpretation iro problematic issues, or
 - participate in efforts of industry bodies to help clarify and develop the law and practice
- What are the dangers?

Other integrated measures to consider

Establish the role of a complaints officer for each fund

- Responsible to monitor and manage all enquiries and complaints received by the fund and report to the trustees and the authorities.
- Identify the fund history and the measures taken to clarify / adjust (a draft TCF requirement?)

Integrated roll out plan

- Help the industry to build the appropriate capacities.
 - Monitoring and reporting and self regulation.
- These factors can be taken into account when
 - a determination is made and
 - where appropriate can be referred to the Authority for action and oversight.

PFA: The funds also need to go back to basics. From the complaints we see, members are not provided with basic information, eg benefit structure, benefit statement, information on how and when to *claim*, *employer compliance with s13A*

Should we develop these thoughts and ideas some more?

PENSION  LAWYERS
ASSOCIATION



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