

ANNEXE 12

INTERNAL DISPUTE RESOLUTION PROCEDURES

This Annexe explains the rights of appeal available to firefighters and their beneficiaries under Internal Dispute Resolution Procedures ("IDRP").

It also gives information about the role of –

- the Pensions Advisory Service
- the Pensions Ombudsman, and
- the Pensions Regulator.

Background

It used to be the case that some private sector pension schemes did not offer members much by the way of right of appeal if they had a grievance. To remedy this, the Pensions Act 1995 introduced, and extended, the role of pension watchdogs and the means by which a person having difficulty with pension rights could receive assistance and the right to a regulated form of grievance procedure.

Whilst it was accepted that the public service occupational pension schemes already contained quite extensive appeal procedures in their Rules, the appeal and regulatory requirements of the Pensions Act 1995 were, nevertheless, still compulsorily applied (with a few minor exceptions) to the public service schemes.

The requirements stated that a pension scheme should allow "Internal Dispute Resolution Procedures" ("IDRP") under which a grievance could be raised with the managers/trustees of the scheme. IDRP had two stages. If, by the end of the second stage, the scheme member remained dissatisfied, he/she could refer the case to the Pensions Ombudsman for a determination.

When IDRP were first introduced, the Firefighters' Pension Scheme ("FPS") was in force, but not the New Firefighters' Pension Scheme ("NFPS"). The FPS already contained its own appeal routes by which a firefighter (or his/her beneficiaries) could appeal. Nevertheless, to comply with the Pensions Act 1995, the managers of the FPS, i.e. fire authorities, had to put IDRP arrangements into place by 6 April 1997. To this end, in October 1996 a CFBAC Joint Pension Committee Working Party was set up to consider and recommend how fire authorities should comply with IDRP requirements. Recommendations agreed between the employers' side and trade union representatives were set out in Fire Service Circular 2/1997. The terms of the requirements were not written into the Rules of the FPS but they had to operate alongside.

Subsequently, the Pensions Act 2004 amended and added to the provisions of the 1995 Act. The amendments required that the two-stage IDRP process should be replaced by a single-stage process. These amendments did not, however, take immediate effect and by the time they did come into force (on 6 April 2008) the amendments had themselves been amended by the Pensions Act 2007. The 2007 Act allowed pension managers/trustees to have IDRP based on a two-stage process, as before.

It was agreed at a Firefighters' Pension Committee Meeting in November 2008 that the two-stage process should be kept for firefighters and guidance was issued to fire and rescue authorities via Firefighters' Pension Scheme Circular 1/2009.

IDRP and inter-relationship with the Firefighters' Pension Scheme

For FPS members and beneficiaries, IDRP are still not mentioned in the Scheme rules but run alongside the other appeal provisions. The FPS itself offers various appeal routes according to the nature of the grievance. It is important that you should select the most appropriate route from those offered by the Scheme and by IDRP.

IDRP and inter-relationship with the Firefighters' Pension Scheme (continued)

For example –

- if you wish to appeal against the content of a Certificate of Pensionable Service, Rule F1 gives you a right to raise your grievance with the Secretary of State who will either vary or confirm the certificate;
- if you (or your beneficiary) wish to appeal against a medical opinion, Rule H2 gives a right to have a grievance about an opinion on a medical issue considered by a Board of Medical Referees appointed by the Secretary of State;
- if you (or your beneficiary) claim entitlement to an award under the FPS but the fire and rescue authority to not admit the claim at all, or do not admit it to its full extent, there is a right of appeal to Crown Court under Rule H3.

IDRP can be used as a means of resolving any area of grievance under the FPS but not if –

- a notice of appeal has been issued under Rule H2, or
- proceedings have begun in any court or tribunal, or
- the Pensions Ombudsman has commenced an investigation into a complaint made or dispute referred to him.

IDRP and inter-relationship with the Firefighters' Compensation Scheme

The IDRP rules apply to "an occupational pension scheme" as defined in the Pension Schemes Act 1993. That Act's definition is "any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category."

Consequently the definition of the 1993 Act would allow an IDRP application in matters relating to injury awards provided under the FCS; such an application could be made by members of the NFPS or FPS or by those who would be members, had they not opted out or chosen not to join (e.g. retained firefighters appointed before 6 April 2006). A beneficiary, or potential beneficiary, of a firefighter may make an application, too – see "Who can use IDRP?" below.

Because the Firefighters' Compensation Scheme ("FCS") is based on rules originally set out in the FPS, it contains similar appeal rights to those contained in the FPS. The FCS would allow you or your (potential) beneficiary –

- to have a grievance about an opinion on a medical issue considered under Part 6 Rule 2 by a Board of Medical Referees appointed by the Secretary of State;
- to appeal to Crown Court under Part 6 Rule 3 in respect of a claim of entitlement to an award under the FCS where your fire and rescue authority to not admit the claim at all, or do not admit it to its full extent.

IDRP are not mentioned in the FCS rules but, as in the case of the FPS, run alongside the other appeal provisions. It is important that you should select the most appropriate route from those offered by the Scheme and by IDRP.

IDRP and inter-relationship with the Firefighters' Compensation Scheme (continued)

Again, as in the case of the FPS, there are circumstances where IDRP cannot be used. These are where –

- a notice of appeal against a medical opinion has been issued under Part 6 Rule 2, or
- proceedings have begun in any court or tribunal, or
- the Pensions Ombudsman has commenced an investigation into a complaint made or dispute referred to him.

IDRP and inter-relationship with the New Firefighters' Pension Scheme

Unlike the FPS and FCS, the NFPS does refer to IDRP as an appeal route. For example –

- if you are dissatisfied with a certificate of pensionable service issued under Part 12 Rule 12, Rule 12(5) refers to IDRP as the means of appeal, and
- if you or your beneficiary are dissatisfied with a determination as to award made under Part 8 Rule 2 by the fire and rescue authority, Part 8 Rule 5 refers to IDRP as the means of appeal provided that the disagreement does not involve a medical issue (which may be appealed under Part 8 Rule 4 following a request for reconsideration).

The reference, however, is simply to section 50 of the Pensions Act 1995 and to the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996; it does not go into detail about the process of appeal. This is looked at below.

And, once again there are circumstances where IDRP cannot be used. These are where –

- (as indicated above) a notice of appeal against a decision based on medical advice has been issued under Part 8 Rule 4, or
- proceedings have begun in any court or tribunal, or
- the Pensions Ombudsman has commenced an investigation into a complaint made or dispute referred to him.

(Note that the NFPS, unlike the FPS and FCS, does not offer a right of appeal to Crown Court if there is a disagreement as to award.)

Before using IDRP

Before using IDRP be certain that to do so is the appropriate route for appeal.

You may find it helpful first to discuss the problem with the relevant person in the authority (e.g. the pensions administrator or HR officer). The problem may be a simple error which can be corrected immediately, or may be the result of a misunderstanding which can be clarified by explanation.

This would not prevent you from taking one of the formal appeal routes if you remain dissatisfied (but remember to keep within any time limits).

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Internal Dispute Resolution Procedures

Who can use IDR?

The following persons can use IDR –

- (a) a member of the FPS or NFPS (or an employee covered by the FCS),
- (b) a widow, widower or surviving dependant of a deceased member of the FPS or NFPS (or of an employee covered by the FCS),
- (c) a surviving non-dependent beneficiary of a deceased member of the FPS or NFPS (or of an employee covered by the FCS),
- (d) a prospective member of the NFPS, i.e. a person who under his/her contract of employment can or will become a member,
- (e) a person who ceased to be within any of the categories (a) to (d) within six months before the date of any application under IDR, and
- (f) a person whose claim to be in one of the categories (a) to (e) above are the subject of the dispute.

In (a) above, "member" means an active, deferred or pensioner member, or a pension credit member, i.e. a former spouse or civil partner of a firefighter who has pension rights under the FPS or NFPS granted by a pension sharing order made on divorce, dissolution of civil partnership or annulment. In (b) and (c) "surviving dependant" and "surviving non-dependent beneficiary" would include civil partners, nominated cohabiting partners (NFPS) and children.

The application for a decision in respect of a dispute can be made by –

- the applicant in person or by a nominated representative
- personal representatives where the person has died
- a member of the person's family or some other suitable representative in the case of a minor or a person incapable of acting for him or herself.

Time limits for applying for a decision under IDR

In the case of an appeal under Part 8 Rule 5 of the NFPS the appeal must be made within 28 days of the determination of award under Part 8 Rule 2 which gives rise to the disagreement. (This time limit mirrors the 28 days allowed for an appeal to Crown Court under the FPS and FCS.)

In any other case, an application must be made by, or in respect of, any person referred to in (a) to (d) as listed above, within the six month period beginning immediately after the date on which the person could reasonably have known about the matter in dispute. For persons covered by (e) and (f) as listed above, the application must be made within the six month period beginning immediately after the date on which the person ceased to be (or claims he/she ceased to be) a person with an interest in the Scheme.

The Chief Fire Officer, or the person specified by him/her to decide a Stage One appeal, has discretion to accept an application made outside this period.

IDR stages

The IDR process allows a person to make an application to have a decision regarding pension rights reconsidered. As mentioned above, it has been agreed that a two-stage process should apply in respect of the FPS, NFPS and FCS. A person dissatisfied with a decision made at Stage One can move on to Stage Two for a further reconsideration.

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Internal Dispute Resolution Procedures

IDRP stages (continued)

At Stage One: the application should be considered by the Chief Fire Officer or a senior manager specified by him/her, who will give a decision on the matters raised.

At Stage Two: the application should be confirmed or replaced by the decision of elected members of the fire and rescue authority. The authority may provide for decisions to be taken by, or on their behalf by, one or more of their number.

In this Annexe, in line with the above, to keep the explanation of the IDRP process as simple as possible, it will refer to the Chief Fire Officer making the Stage One decision and the Fire and Rescue Authority making the Stage Two decision.

Although it might sometimes be desirable for the decision-maker(s) to suggest a meeting with the complainant as part of the IDRP process, it is essentially a written procedure and a complainant cannot be required to attend an oral hearing or interview in respect of Stage One or Stage Two.

IDRP Stage One

A Stage One application for a decision in respect of a disagreement must be given in writing and must contain various items of information.

To help you with this, your fire and rescue authority may provide a form to complete (see "Model forms and letters" below). When you (or your representative if you prefer) have completed the form – or your written application in the absence of a form – it should be signed and sent, with any relevant attachments (i.e. any documents which you believe relevant and which may support your case) to the Chief Fire Officer (as the Stage One decision maker).

The Chief Fire Officer will, in writing -

- acknowledge receipt of your Stage One application for a decision,
- state that he/she intends to make a decision on the matters raised by your application within 2 months from the date the application was received,
- explain that in the event that he/she cannot give a decision within 2 months he/she will send you (and/or your representative) an interim reply setting out the reasons for the delay and the expected date for the issue of a decision, and
- inform you that TPAS (The Pensions Advisory Service) is available to assist members and beneficiaries of pension schemes in connection with any difficulties with the scheme, and will give you TPAS contact details.

If any of the details you provide are unclear, or the Chief Fire Officer needs more information, you will be asked for clarification and/or to supply further details.

The Chief Fire Officer will then gather such facts and evidence as felt appropriate to give a fair decision in respect of the grievance.

**IDRP Stage One
(continued)**

A decision on the application must be notified to you (or your representative) within 28 days of receipt of it being received by the Chief Fire Officer. If the Chief Fire Officer has not reached a decision within that period, he/she must send you a letter explaining the reason for the delay and the expected date of the decision.

When the decision has been made, it should be notified to you in writing. The Chief Fire Officer should–

- give the decision,
- mention any Scheme rules or other legislation relied upon for the decision,
- if the decision is based on a discretionary power, give a reference to the provisions of the Scheme under which the discretion is conferred.

The letter notifying the decision should also explain that if you are not content with the decision, you have a right to apply for reconsideration (i.e. proceed to State Two of the IDRP process). It should give details of the person to contact for more information and a form on which to make the application. It should be explained that an application for a Stage Two reconsideration should be made no later than six months from the date of the written notice of the Stage One decision.

There should also be a mention of the fact that TPAS, the Pensions Advisory Service, is available to assist members and beneficiaries of pension schemes in connection with any difficulty with a scheme which remains unresolved and TPAS contact details should be given.

If the Stage One application was made by your representative, the CFO should copy the letter to the representative.

IDRP Stage Two

If you proceed to Stage Two, your application should be submitted to the Fire and Rescue Authority as directed in the Stage One written notice. The application should enclose a copy of the Stage One decision and give the reason why you are dissatisfied with that decision. It must be submitted within the six month time limit

The Fire and Rescue Authority must give written acknowledgement of receipt of the application and tell you that they will consider the matters raised and will confirm or replace the Stage One decision within two months from the date the application was received. They must also make another reference to the fact that TPAS is available to assist, with contact details, and mention that if they are unable to meet the two-month deadline they will send another letter to you giving reasons for the delay and the date at which they expect to be able to issue a decision. (It will probably be the Secretary or Clerk to the Fire and Rescue Authority, or some other person authorised to act, who will send the written acknowledgement and other correspondence on behalf of the Authority.)

**IDRP Stage Two
(continued)**

When the Stage Two decision has been made, it must be given to you in writing (and to your representative if relevant). With the decision, there should be an explanation as to whether, and if so to what extent, the decision either confirms or replaces the decision made by the Chief Fire Officer.

The letter should mention any Scheme rules or other legislation relied on for the decision and if the decision is based on a discretionary power, there should be a reference to the provisions of the Scheme under which the discretion is conferred. There should also be a reference to TPAS and to the Pensions Ombudsman, with contact details, explaining the assistance they can offer.

This concludes the IDRP process but a complainant may continue to pursue his/her grievance via the Pensions Ombudsman, possibly with the help of TPAS.

**The Pensions
Advisory Service**

The Pensions Advisory Service ("TPAS", formerly known as the Occupational Pensions Advisory Service or "OPAS") was set up initially as a charitable organisation in 1985 but now works as a voluntary independent organisation grant-aided by the Department for Work and Pensions. The Pensions Advisory Service does not have statutory powers and can only effect a resolution through persuasion and conciliation. Advisers are all experienced pensions professionals who provide their service for free in their own time. They are backed up by salaried staff at the TPAS office and by a central panel of specialist volunteers with particular knowledge of certain pension schemes or pension scheme legislation.

TPAS cannot assist if –

- the problem is about a person's job, rather than the pension;
- the person wants to change the rules of a pension scheme or lobby for improvements;
- the Pensions Ombudsman has already investigated the complaint;
- the person has started legal proceedings.

The adviser's first task is to gather as much information as possible from the complainant and all other parties involved. If the adviser, in the light of the information available, does not believe the person has a sustainable case, the complainant will be told this (with the reasons).

Sometime an adviser may believe that a referral to the Pensions Ombudsman could be beneficial. The case papers would be submitted to the TPAS office who decide if a referral should be made and, if they do, they will assist the complainant in presenting the case to the Ombudsman.

The Pensions Advisory Service can be contacted at:
11 Belgrave Road, London SW1V 1RB
Telephone helpline: 0845 6012923 (local call rate)
Email: enquiries@pensionsadvisoryservice.org.uk
Website: www.pensionsadvisoryservice.org.uk

**The Pensions
Ombudsman**

The Pensions Ombudsman investigates and decides complaints and disputes about the way that pension schemes are run. His role and powers have been decided by Parliament. He is completely independent and acts as an impartial adjudicator. His decision is final and binding on all parties to the complaint or dispute. It can be enforced in the courts. A decision can only be changed by appealing to the appropriate court on a point of law.

He will normally expect the complainant to have had their case considered by TPAS and to have exhausted the IDRPs process (both stages in the case of the Firefighters' Pension and Compensation Schemes) before he will get involved.

Complaints to the Ombudsman must be that the party complained against has behaved in such a way which constitutes maladministration and that the maladministration has caused injustice. (Injustice does not only mean financial loss – it may include such things as distress, delay or inconvenience.)

Disputes can be disagreements concerning fact or law. They often arise incidentally to complaints of maladministration and do not usually need a separate investigation.

Maladministration has been said to involve "bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on". It is not enough merely to disagree with a decision; the complainant must have reason to believe that the decision was not properly made or implemented.

Complaints and disputes must usually be made in writing to the Ombudsman within three years of the act or omission complained about or disputed. If the person did not know about the matter at the time, the three years would run from the time that the person knew or should have known. The Ombudsman has the discretion to extend the three years – for example if the IDRPs process takes a long time to complete.

If the Ombudsman decides that the case can be investigated, his office will write to the fire and rescue authority, asking for specific documents. Consequently all IDRPs papers should be in good order and retained in case they should be required for this purpose. The average time taken by the Ombudsman to consider a case is seven months.

The Ombudsman can instruct that compensation should be made for financial loss. He can also award compensation for distress and inconvenience – this is usually in the range of £50 to £500.

The Pensions Ombudsman can be contacted at:
11 Belgrave Road, London SW1V 1RB
Telephone: 020 7834 9144
Website: www.pensions-ombudsman.org.uk

The Pensions Regulator

The Pensions Regulator is a regulatory body which came into existence on 6 April 2005 having been set up under the Pensions Act 2004. (It replaced the earlier Occupational Pensions Regulatory Authority.) It ensures that pension scheme members' interests are protected and that schemes comply with the law (see "Pension Regulator's Code of Practice" below). It deals with issues about pension schemes as a whole. Normally it would expect a scheme member with a personal grievance to seek resolution through Internal Resolution Procedures, TPAS and the Pensions Ombudsman.

The Pensions Regulator can be contacted at:
Napier House, Trafalgar Place, Brighton BN1 4DW
Telephone: 0870 6063636
Website: www.thepensionsregulator.gov.uk

Model forms and letters

At: <http://www.communities.gov.uk/fire/working/firefighterpensions>

you will find copies of model forms and letters prepared by the Department for personalisation by fire and rescue authorities. These are –

Stage One Application: for completion by complainant (or representative)

Stage One Letter 1: to be sent to the complainant (or representative) by the Chief Fire Officer (or the person specified as decision-maker by the Chief Fire Officer) to acknowledge receipt of the application and to give relevant information.

Stage One Letter 2: to be sent to the complainant (or representative) by the Chief Fire Officer (or the person specified as decision-maker by the Chief Fire Officer) if a decision will not be made within 2 months of the date of receipt of the application.

Stage One Letter 3: to be sent to the complainant (or representative) by the Chief Fire Officer (or the person specified as decision-maker by the Chief Fire Officer) to give a decision and relevant information.

Stage Two Application: for completion by the complainant (or representative)

Stage Two Letter 1: to be sent to the complainant (or representative) by the Secretary to the Fire and Rescue Authority (or other appropriate person) on behalf of elected members of the Authority to acknowledge receipt of the application and to give relevant information.

Stage Two Letter 2: to be sent to the complainant (or representative) by the Secretary to the Fire and Rescue Authority (or other appropriate person) on behalf of elected members of the Authority if a decision will not be made within 2 months of the date of receipt of the application.

Stage Two Letter 3: to be sent to the complainant (or representative) by the Secretary to the Fire and Rescue Authority (or other appropriate person) on behalf of elected members of the Authority to give a decision and relevant information.

**Background
legislation**

Section 50 of the Pensions Act 1995 and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 made under section 50 of the Act

These introduced IDR and set out requirements. Trustees or managers of occupational pension schemes were required to set up a two-stage appeal system for the resolution of disagreements about matters relating to the scheme. The Regulations came into force, and procedures had to be in place, by 6 April 1997.

Section 273 of the Pensions Act 2004

This substituted a new section 50 in the Pensions Act 1995 and added sections 50A and 50B. The changes were intended to come into force on 6 April 2006 – but didn't.

Under the changes, IDR would have become a one-stage process with trustees/managers being required to make all decisions. However it was always intended that schemes could retain the two-stage procedure if they wished.

The Department for Work and Pensions ("DWP") consulted on associated draft regulations and a draft Code of Practice, following which it was decided that the proposals would not have the desired effect of simplifying procedures or introducing greater flexibility. It was determined that the new legislation would not be introduced. In a letter dated 17 January 2006, DWP said that the existing section 50 "would remain in force but would be amended at the first suitable opportunity in order to give schemes more flexibility".

Section 16 of the Pensions Act 2007

This made amendments to sections 50 and 50B as substituted / introduced by the Pensions Act 2004. Section 30 of the Pensions Act 2007 sets out commencement dates. Section 16 is not covered by any special date and so comes into effect two months beginning with the day on which the Pensions Act 2004 was passed. The Pensions Act 2004 received Royal Assent on 26 July 2007. The commencement date would therefore be 26 September 2007. However, at that time, the amendments to the Pensions Act 1995 made by the Pensions Act 2004 had still not commenced; the old section 50 of the Pensions Act 1995 and the IDR Regulations 1996 had not been revoked.

The Pensions Act 2004 (Commencement No.11) Order 2008

This was made on 4 March 2008. It says –

"The day appointed for the coming into force of section 273 (resolution of disputes) of the Pensions Act 2004 –

(a) for the purpose only of conferring power to make regulations, is 5th March 2008; and

(b) for all other purposes, is 6th April 2008."

**Background
legislation
(continued)**

The Occupational Pension Schemes (Internal Dispute Resolution Procedures
Consequential and Miscellaneous Amendments) Regulations 2008

These came into force on 6 April 2008.

They require that the trustees or managers of an occupational pension scheme (or the specified person if there is a two-stage process), as soon as they receive an application under section 50(4) of the Pensions Act 1995 (as amended), must inform the applicant that TPAS is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme, and give the applicant the contact details for TPAS. When the decision is made, the applicant must be given a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law, in relation to a scheme, together with the Pension Ombudsman's contact details.

Regulation 4 of the Regulations contains a full list of exempted disputes. The exempted disputes for the Firefighters' Pension and Compensation Schemes as apply in England are –

- Rule H2 of Schedule 2 to the Firemen's Pension Scheme Order 1992 (appeal against medical opinion);
- Rule 2 of part 6 of Schedule 1 to the Firefighters' Compensation Scheme (England) Order 2006 (appeal to medical referee)
- Rule 4 of Part 8 of Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (appeals against decisions based on medical advice).

Similar exemptions apply to the Welsh and Scottish Schemes.

In "Transitional Provisions" it is explained that any disagreement which was ongoing before 6 April 2008 under previous arrangements will continue until the procedure comes to an end.

in "Revocation", the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 are revoked.

Position from 6 April 2008

From 6 April 2008 sections 50, 50A and 50B of the Pensions Act 1995 as inserted by the Pensions Act 2004 and amended by the Pensions Act 2007 are in force for any new application. The amendments made by the Pensions Act 2007 allow the two-stage procedures previously used for the FPS, NFPS and FCS to be continued if felt appropriate. (But there must now be a reference to TPAS at the commencement of Stage One, i.e. when the Chief Fire Officer as the Stage One decision maker acknowledges receipt of the application.) It was agreed at the Firefighters' Pension Committee Meeting in November 2008 that the two-stage procedures would be retained for the Firefighters' Schemes.

**Pensions
Regulator's
Code of Practice**

The Pensions Regulator periodically issues Codes of Practice. The IDR legislation as it stands at 28 July 2008 is covered by Code of Practice No. 11 "Dispute resolution – reasonable periods". It sets out the Regulator's determination of "reasonable periods" (i.e. the time-scale for certain actions) as mentioned in sections 50, 50A and 50B of the Pensions Act 1995. The determination has been taken into account in the agreed arrangements for IDR in relation to the FPS, NFPS and FCS.

The Pensions Regulator accepts that the circumstances of a particular dispute may mean that it is not possible to complete the procedures within the prescribed timeframes, e.g. if the dispute involves unusually complex calculations or research, but the Code of Practice says that –

"trustees or managers must be happy that the time taken to provide a decision is appropriate to the situation and that the necessary action has been taken to try and meet the reasonable time periods. The Pensions Regulator may call upon trustees or managers to demonstrate the propriety of the time taken."