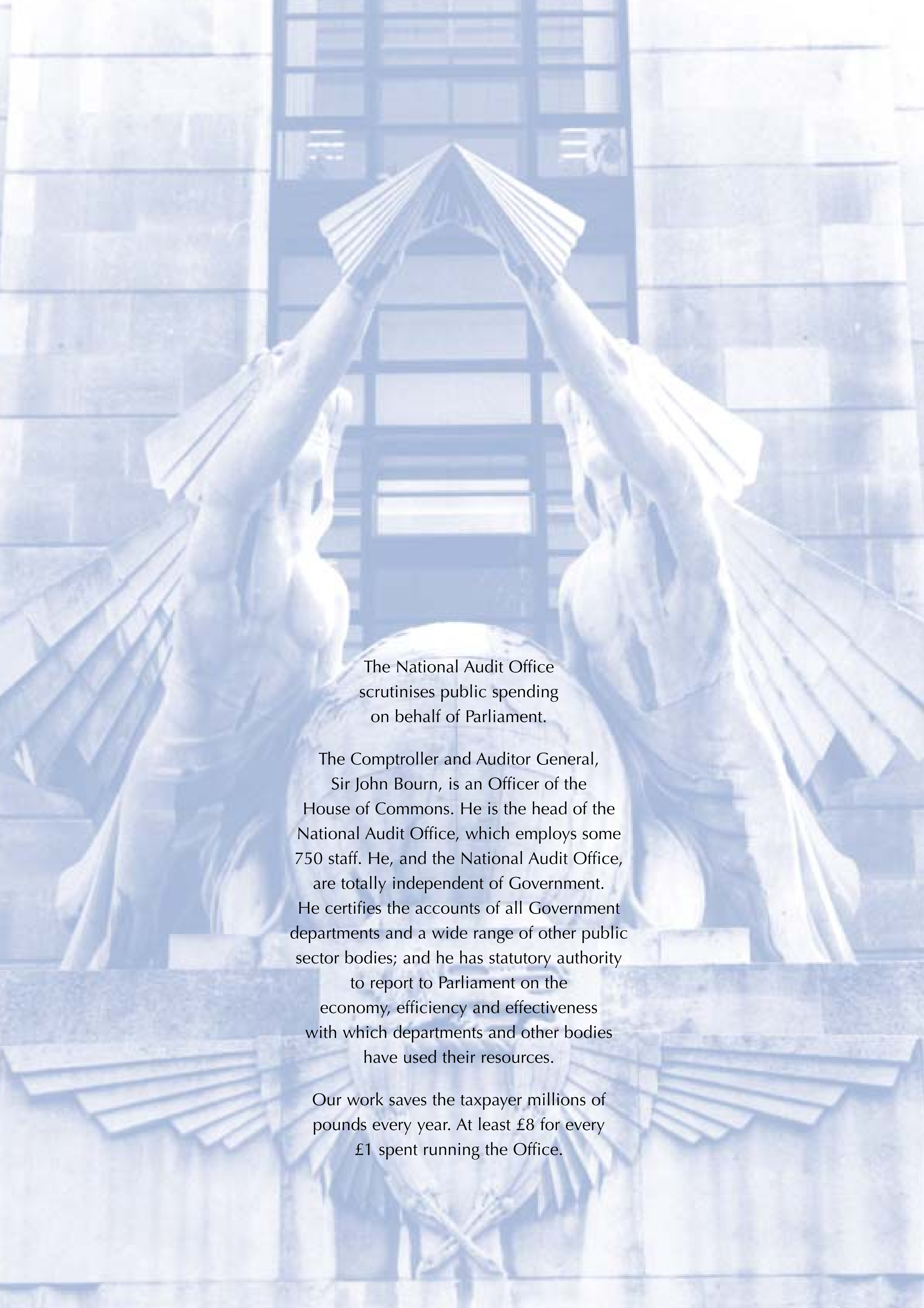
NATIONAL AUDIT OFFICE

Opra: Tackling the risks to pension scheme members

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 1262 Session 2001-2002: 6 November 2002



The National Audit Office scrutinises public spending on behalf of Parliament.

The Comptroller and Auditor General, Sir John Bourn, is an Officer of the House of Commons. He is the head of the National Audit Office, which employs some 750 staff. He, and the National Audit Office, are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

Our work saves the taxpayer millions of pounds every year. At least £8 for every £1 spent running the Office.

Opra:
Tackling the risks to pension scheme members

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 1262 Session 2001-2002: 6 November 2002

Ordered by the
House of Commons
to be printed on 4 November 2002

LONDON: The Stationery Office
£11.25

This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn
Comptroller and Auditor General

National Audit Office
22 October 2002

The National Audit Office study team consisted of:

John Ashcroft (Director), Julia Towns (Manager until May 2002), Edward Humpherson (Manager from May 2002), Simon Lacey, Philip Jones, Ivan Goh and Nadeem Haq.

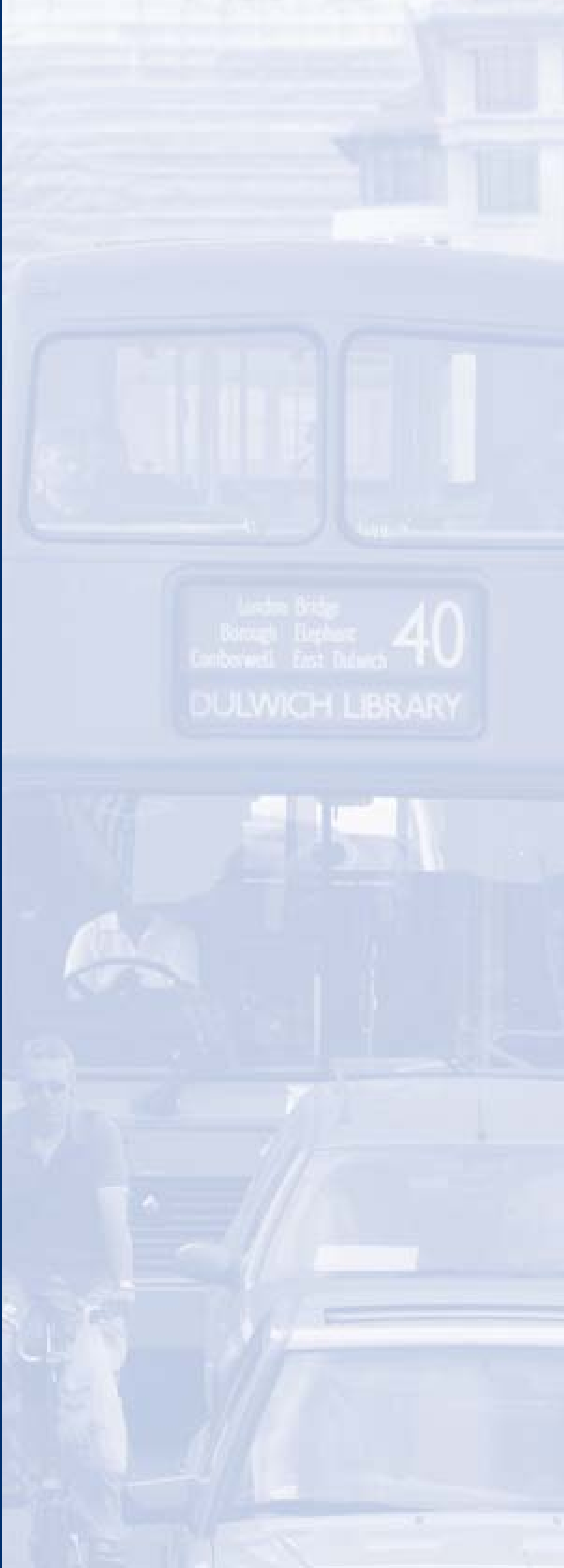
This report can be found on the National Audit Office web site at www.nao.gov.uk

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157-197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Email: enquiries@nao.gsi.gov.uk

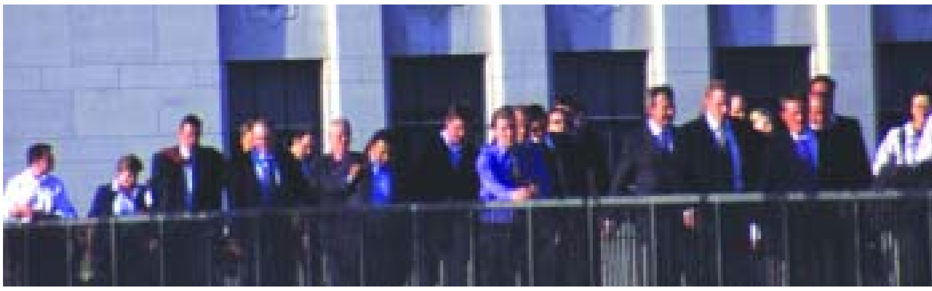


Contents

executive summary

1 This report examines how the Occupational Pensions Regulatory Authority (Opra) seek to protect the interests of people who belong to an occupational pension scheme or other work-based pension[1]. Opra were established in 1996 under the Pensions Act 1995 (the Act). They are a non-departmental public body sponsored by the Department for Work and Pensions (the Department). Opra are an important element in the regulation of work-based pension schemes that enable people to supplement the State pension arrangements[2]. The general principle is that these pension schemes are discretionary, funded from contributions by an employee, or their employer, or both, to a dedicated fund.

2 Work-based pensions are a major source of income of people after retirement. It is Government policy that such pensions should provide an increasing proportion of post-retirement income. They comprise occupational pensions, personal pensions and stakeholder pensions. Occupational pension schemes hold assets in total of around £770 billion and have 25 million members[3], and are typically the responsibility in statute of trustees nominated by the employer and by members.



3 For people to be prepared to invest in work-based pensions they need to be confident that the assets are secure. Serious irregularities in the Mirror Group Pension Scheme from 1991 led to a review of pensions law in general (the Goode Committee), and the Pensions Act 1995 implemented many of the recommendations of this Committee[4]. The Act clarified the duties placed on pension scheme trustees and placed a duty on their professional advisers to report some breaches of the Act. It established Opra to receive these reports and enforce the new regulatory regime. The Act also established a Pensions Compensation Board to compensate members of schemes for losses incurred due to dishonesty where the employer is insolvent.

1 *Work-based pensions are those pensions whose arrangements are to some extent facilitated by the employer. See Figure 4 on page 11 for details.*

2 *The State pension is calculated on the basis of National Insurance contributions made while in employment.*

3 *There is considerable double counting in these figures as many people belong to more than one scheme. Figures are taken from the Opra web site, www.opra.gov.uk and the Association of British Insurers web site, www.abi.org.uk, as at the time of writing.*

4 *Pensions Law Reform, the Report of the Pension Law Review Committee - Chairman: Roy Goode, CM 2342, HMSO, September 1993.*

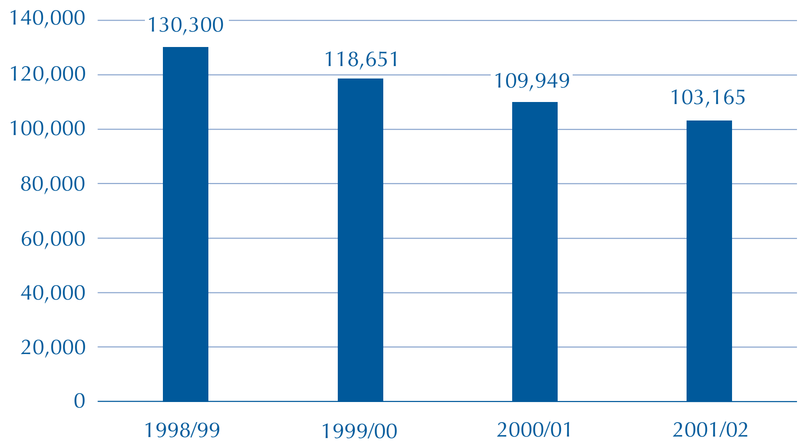
4 The Act gives Opra a wide range of powers. In particular, they can in defined circumstances remove, suspend or appoint trustees to schemes, initiate court action for breaches of the Act which are subject to criminal penalties and fine trustees, employers or providers who have breached legal requirements. Opra also took over the pre-existing Pension Scheme Registry, which holds some details of schemes to help members trace their schemes. Subsequent legislation has:

- changed from criminal to civil the sanctions for the most frequently reported breaches of the Pensions Act;
- extended Opra's powers to cover some aspects of personal and stakeholder pensions, including registration of stakeholder pension providers and regulation of employer access to stakeholder pensions; and
- given Opra greater input into the process of winding-up pension schemes.

Opra's running costs are met by a levy on pension schemes (£15 million in 2001-02)[5].

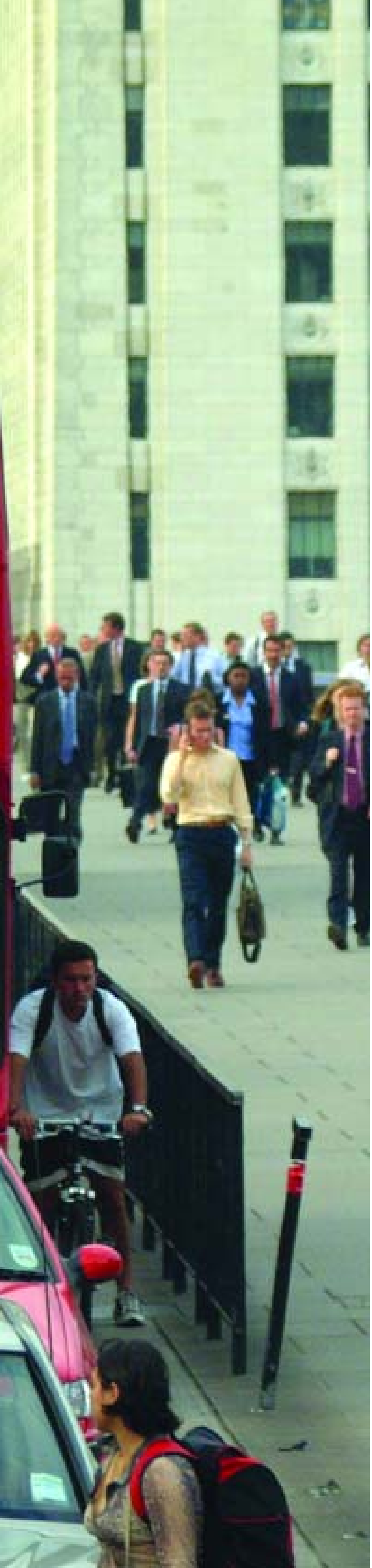
5 Our examination took place at a time of substantial change. There are falling numbers of occupational pension schemes (**Figure 1** shows the trend from 1998-99, which is in line with a longer-term decline in the number of schemes). Sponsoring employers are switching many schemes from providing members with a defined benefit after retirement to receiving defined contributions where the employees' benefits depend on the performance of the fund assets. This switch to defined contribution applies mostly to new members rather than to existing members of schemes. There is also a perception that many people are making insufficient provision for their pensions and that pensions law is too complicated. Opra have no remit or powers to address these issues directly, although their work should encourage public confidence in pension schemes.

1 **The number of live occupational pension schemes 1998-99 to 2001-02**



Source: Opra Annual Reports

5 *The levy also broadly meets the costs of the Pensions Compensation Board (paragraph 3 above) and the Pensions Ombudsman, whose remit is to investigate and decide complaints and disputes about the way pension schemes are run, often at the request of individual members.*



6 The Department are responsible for the policy and regulatory framework for pensions. To address concerns about the apparent decline in work-based pensions, the Government commissioned two reviews which reported in July 2002, which have implications for the work and role of Opra[6]. The Department have also established a Quinquennial Review of Opra. The Government intend to publish a Green Paper on occupational and personal pension policy in autumn 2002, alongside the conclusions of the Quinquennial Review.

Main findings

The current regulatory arrangements address only some of the risks to pensions provision

7 Opra have statutory powers to act in specified ways in cases where the governance of pension schemes has breached the law. Poor governance can result in members receiving reduced benefits **(Figure 2)**, especially where a scheme is closed, and very occasionally can involve misappropriation of scheme assets. Opra's regulatory processes should help protect members against some of the key risks we have identified, but there are gaps. For instance, Opra have no process for identifying cases where the trustees have not appointed professional advisers unless someone (for example, trustees, other advisers, or scheme members) reports the deficiency to them.

2 Summary of governance-related risks to pension scheme members

- Misappropriation of pension scheme assets
- Funds are insufficient to provide pension scheme members with the benefits that they could reasonably expect due to
  - Insufficient contributions to the scheme
  - Inadequate or inappropriate investment
  - Risks arising from the wind up process
- Incorrect benefits accrue to scheme members in due course
- Scheme members lose track of pension schemes or vice versa

Source: National Audit Office

8 Some other risks to pension scheme members are addressed by the Financial Services Authority, the Pensions Ombudsman and other bodies. There is currently no body that has an overarching view of all aspects of work-based pensions, and the Pensions Simplification Review has recommended the creation of a new kind of regulator which would give guidance to pensions professionals and to Government as well as regulating individual pension schemes[7]. The pensions regulators in the Republic of Ireland and the Netherlands have such a role.

9 Occupational pension schemes vary substantially in size and in the types of benefit they confer on their members. Most are small. Of the 103,000 live schemes at March 2002 (Figure 1), only 21,000 had 12 or more members. On the other hand, 89 per cent of members belonged to the 1,761 schemes with over 1,000 members. The large number of schemes, coupled with the view that all scheme members should be equally protected, leads to a heavy workload on Opra, while the diversity of schemes gives rise to different types of risks.

6 *Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002. HM Treasury, The Review of Medium and Long-Term Savings in the UK, 9 July 2002 or the Sandler Review. Their findings are summarised in Appendix 4.*

7 *Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002. The findings are summarised in Appendix 4.*

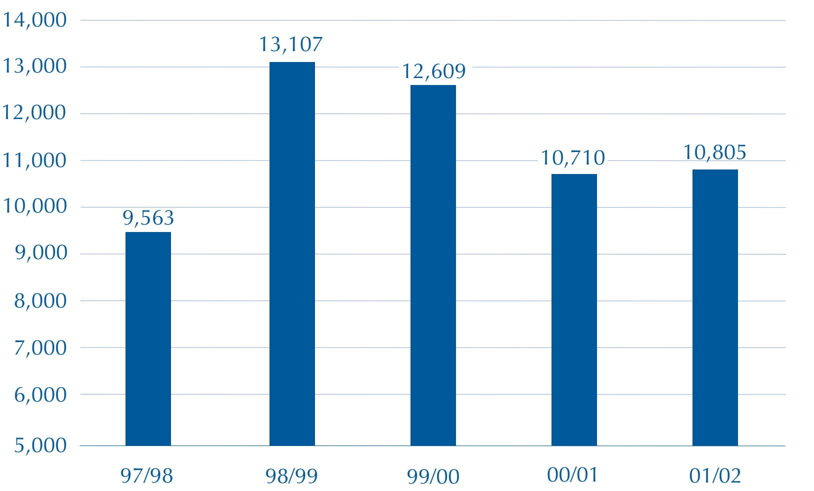
10 There is little, however, that any regulator could do directly about one of the biggest risks to pension scheme members receiving the pension they expect, that of the employer going out of business or closing the scheme[8]. Employers are not obliged to provide an occupational pension scheme and incur significant cost in supporting one. Scheme trustees are volunteers, mostly unpaid, whose dedication and goodwill is essential to good governance. The burdens of regulation, including Opra's actions, could increase the risk of employers closing their schemes to the detriment of the members concerned.

Opra have encouraged better governance of pension schemes

11 In their first five years Opra received 56,000 reports about breaches of occupational pensions law. They have responded in a variety of ways including sending warning letters, undertaking investigations, initiating criminal sanctions, imposing fines and reporting auditors and actuaries to their professional bodies. Research undertaken in 2002 indicates that in most cases of trustee breaches the trustees had complied by the time Opra closed the case. Opra have also provided educational material to trustees and others which is well regarded. These actions have raised awareness of the behaviour expected of trustees and their advisers.

12 The number of breaches being reported to Opra has fallen **(Figure 3)**, suggesting that Opra's work may have improved some aspects of the governance of pension schemes. And since 1997 the Pensions Compensation Board has had to make compensation payments in only three cases. It also seems likely that Opra's work to heighten awareness of trustees' duties will have improved the ways schemes are run in other ways, for instance because trustees take greater interest in investment performance.

3 Reports to OPRA about occupational scheme breaches



13 Opra have acted effectively in cases where schemes were left without trustees. In 2001-02, for instance, Opra appointed trustees to 509 schemes releasing assets of £45 million for the benefit of nearly 4,000 members[9]. They have helped accelerate the winding up of schemes and also intervened in several cases where the actions of the trustees gave cause for concern.

8 *If the employer closes the scheme, it is still liable to fund for pension rights already accrued. If an employer becomes insolvent, then insufficient funds may mean that all members may suffer - pensioners and, more probably, employees (future pensioners). The risks to members once a scheme is closed relate to pension rights that an employee would have expected to gain in the future.*

9 *Opra Annual Report 2001-2, page 18, July 2002.*

Opra have limited information on the outcome of their work

14 Opra's performance measurement systems concentrate on the time taken to undertake key processes, and to a large extent their targets have been met. Until 2002 they did not seek to determine what effect their interventions had had on improving scheme governance. Nor do they have any measure of how many schemes have suffered serious problems. Their understanding of the extent to which the interests of pension scheme members are better protected as a result of their work is largely anecdotal. An internal audit review has questioned whether Opra's intervention made a direct difference in the cases reported to members' interests for a substantial proportion of trustee breaches examined; and whether fining trustees for breaches after they have rectified the problem, as often happens, sends out the right messages.

15 Apart from limited details of schemes held by the Pension Schemes Registry, Opra have had to rely on surveys, which until late 2001 have been too small to permit statistical conclusions to be drawn, to determine how well schemes more generally are complying with legal requirements. This means that their information on schemes is largely limited to the quarter of the schemes that have given rise to reports. The surveys that Opra have undertaken provide evidence that for schemes otherwise unknown to Opra compliance with legal duties and trustees' understanding of their role is often poor. The limited information also reduces Opra's ability to advise the Department more generally on pension schemes.

Opra's work has focused on reports that pose a low risk to scheme members

16 Auditors and actuaries are required to report to Opra any breaches of employers' or trustees' legal duties where these are material to Opra's functions, and trustees are required to report some types of breach. Opra started from the generally held assumption that their role was to act on breaches of the Pensions Act and the Department's informed forecast of 3,000 breaches a year. They provided some guidance on materiality but in practice the number of breaches was four times that forecast and most of the 56,000 breaches reported to Opra in their first five years have not represented any significant risk to member's interests:

- some 60 per cent of reports have been of late payments to schemes, where the impact is negligible to an ongoing scheme so long as the payment is eventually made. In 2000-01, almost half of the late payment cases (over 3,100) were less than 10 days late. Furthermore, most reports have been of isolated incidents.
- of the reports of trustee breaches, a quarter had either been rectified at the time of the report or within two months of the statutory deadlines. In some other cases the scheme was already actively seeking to comply.
- most breaches are not serious enough to merit consideration of a punitive sanction by Opra's Board, and many of those that have gone to the Board have been fairly insignificant. As 65 per cent of fines for late payments breaches did not exceed £50, the deterrent effect may have been insufficient to justify the significant processing costs involved.
- the high number of breaches reported by auditors and actuaries may reflect a justified fear that failure to report even trivial breaches of duties would result in a penalty from their professional body.

17 Opra have felt obliged to give some attention to every reported breach, and told us that their response was in line with their understanding of the original intention behind the legislation. That is, that breaches subject only to criminal law sanctions until 2000 (the majority of reported breaches) should be treated with equal seriousness thereafter, and that they had to gain practical experience of the effectiveness of the new civil penalties before considering whether other approaches should be used. They decided in early 2002 that the use of civil penalties for punishing schemes was not working well and therefore even more emphasis should be placed on education as opposed to punishment. In our view, the focus on handling and considering for punishment a large number of reports has been at the expense of targeting effort on improving pension scheme governance, for instance in some self-administered schemes where controls might be weak.

It has taken Opra a long time to develop their approach to identifying high risk schemes

18 The intention from 1997 was that Opra should identify trends and lessons learned as they processed reports of non-compliance. They would then have been able to use this information to develop a more risk-based approach. However, the volume of reports was greater than either the Department or Opra expected, tying up more of Opra's resources and leading to a larger data analysis task. Matters worsened in 2001 when pension providers were required to report late payments by employers of personal pension contributions to Opra. They received over 250,000 reports compared with the 10,000-30,000 which the Department and Opra had forecast on the basis of research.

19 In 2000, a high profile case involving the removal of some £2.9 million from a scheme, resulting in criminal proceedings, suggested that Opra had been slow to identify potential risks to members' funds. The independent review that the Department commissioned into this case resulted in 2001 in a series of recommendations to strengthen Opra's approach to handling cases. In particular, Opra in Autumn 2001 introduced a risk-based approach to identifying high risk cases. The new procedures are largely working as intended although there have been problems with the timeliness of some risk assessments and in obtaining the information needed to make an assessment.

Opra's objectives do not clearly articulate how their work should protect pension scheme members

20 Unlike many other regulators Opra's functions or objectives are not specified in their governing legislation. Opra therefore drafted their own objectives, agreed with the Department in 1997. These objectives largely did not specify what Opra should seek to achieve in using their powers, for instance reducing risks, compliance with the law or punishing offenders. Nor did Opra analyse what risks they intended to address through using their powers. Opra's objectives focused on reacting to reports of breaches of the Pensions Act. It would have been difficult for Opra initially to take a more strategic view as they, and the Department, lacked information on the extent of pension scheme compliance with the principles of good governance. Opra consider that the further responsibilities, such as for personal pensions (paragraph 18 above), given to them had to be treated as a high priority and therefore developing a more risk-focused approach received a lower priority.

21 As Opra's knowledge of pensions governance increased so did their perception that the powers in the Pensions Act, as they interpreted them, constrained their work. For instance, a restrictive interpretation of their powers to ask for information limited their work towards their objective of surveying pension schemes in general. There are undoubtedly some significant constraints. For instance, the Pension Schemes Registry appear to be unable to collect and record information not needed for its original purpose of tracing schemes but which might then assist Opra's regulatory functions. While some legislation was eventually changed, Opra made only limited attempts to test what different approaches they could adopt, in part because they lacked the strategic objectives and risk models needed to justify changes. The uncertainty about statutory powers may have contributed to the difficulty that Opra experienced in dealing speedily with some schemes involved in a relatively new development threatening scheme members' interests, pension liberation.

22 The Department's own objectives for private pensions relate only to encouraging greater personal provision for retirement. It has not, however, been clear how Opra should work towards this objective, for instance whether through minimising regulatory burdens on schemes or through providing public information on the relative security of scheme members' funds. In the absence of definitions within the Pensions Act, the Department left it to Opra, as an independent non-departmental public body operating at arm's length from Ministers, to use their knowledge and experience to define and refine their detailed functions and objectives. When Opra referred to the Department questions about what they could do or asked for legislative constraints to be lifted, the Department generally responded cautiously.

23 Opra have proposed new outcome-based objectives in Summer 2002. This change complements a number of long-standing initiatives to underpin their work with a more risk-based approach, including:

- using survey evidence to improve the identification of high risk cases; and
- a systemic approach to reports about late payments to personal pension schemes that is being extended to occupational pensions.

Principal recommendations

24 In the five years since their establishment Opra have helped improve the governance of pension schemes. They have had to learn much about the nature of the problems and risks that they are regulating and have found themselves constrained by their interpretation of legislation, a heavier than expected workload and taking on new powers. They recognise that a new approach is needed that builds on their experience and expertise that is unique in the work-based pensions field. Furthermore, they are very likely in due course to face the challenge of implementing the new legislation arising from the Pensions Simplification Review and Government Green Paper, and the detailed recommendations for change made by the Quinquennial Review. In going forward we recommend that Opra should in particular:

(i) **Become better informed about the risks facing pension scheme members**. No regulator can regulate without information. But the limited information on the quality of scheme governance or wider risks to scheme members available to Opra constrains their ability to identify risks to pension scheme members. The Pension Schemes Registry could provide Opra with much of the relevant information, although Opra will need to clarify the Registry's role as an information gatherer for regulatory purposes. They should also conduct more substantial surveys of schemes, building on the survey work they already undertake to estimate compliance of pensions schemes. They should use the information gathered to develop the risk analysis at Appendix 5 so as to identify future priorities for pensions regulation.

(ii) **Specify clearly Opra's regulatory functions and objectives**. Unlike other regulators Opra do not have a document that articulates what they are seeking to achieve and how their work contributes to the intended outcomes, nor one that specifies what are their regulatory functions. To assist in taking regulatory actions in a consistent and transparent manner, Opra should ensure that their staff and the pensions community are clear about their role. Opra's draft objectives and the risk analysis recommended above would provide a good starting point. In the process Opra may identify appropriate regulatory functions for which their powers are unclear or defective and should seek clarification or legislative change accordingly.

(iii) **Develop different communication approaches for different types of scheme**. Opra recognise that they could do more to help improve scheme governance and raise their public profile. They should provide guidance (possibly by codes of good practice) on the features of a well-run scheme, which may differ for different types of scheme, with examples drawn from their experience and that of relevant professional bodies. They should consider how to target pertinent information at different types of scheme, for instance by newsletters and bulletins. In doing so they could learn from the example of the Pensions Board, the Irish pensions regulator, and like them also take a prominent role in promoting training for trustees and administrators.

(iv) **Develop distinct regulatory approaches for different types of scheme**. The risks involved in different types and sizes of schemes vary. To be proportionate, so should Opra's regulatory response. For instance, many of the risks associated with fully-insured schemes rest in practice with the scheme providers. As they commonly provide services to many schemes, targeting them might have more impact than targeting individual small schemes. Similarly, the good governance of large schemes may necessitate controls that would be inappropriately burdensome for small schemes. The approach being adopted for personal pensions provides an example of how action to improve compliance can be targeted at the primary causes, in this case insurance companies.

(v) **Shift their resources to target the schemes and common weaknesses posing the greatest risks**. Opra should continue and expand their present efforts to identify the risks which should receive priority and focus resources accordingly. This could involve more effort applied to educating or intervening in schemes where significant risks are apparent. They should revise their performance measures to focus on the improvements in scheme governance they have secured, so as to inform future priorities and resource allocation.

(vi) **Focus more regulatory effort on providers and third-party administrators**. Opra have found that the root cause of many Pensions Act breaches reported to them is not the trustees or employers, but the administrators of pension schemes, and independent financial advisers. While Opra have very limited powers in relation to such bodies, they should seek to work with them to improve scheme administration and involvement and consider seeking statutory powers if there is resistance to this approach, perhaps on the model of the new powers of direction for wind-up.

(vii) **Raise the threshold for the reporting by whistleblowers of breaches of the Pensions Act**. Handling a large number of reports restricts Opra's ability to target more important risks to pension scheme members. The Pensions Act requires whistleblowers to report breaches of statutory duties only where they are likely to be of material significance to Opra's functions. To reduce the volume of reports they receive, Opra should give more specific guidance, drawing on their risk analysis, on the circumstances that are material. They should work with the professional bodies to prevent trivial reports, making it clear to advisers and trustees that they will not be penalised for non-reporting if they take a reasonable judgement on materiality.

For the Department for Work and Pensions

25 The Department are considering the recommendation of the Pensions Simplification Review that there should be a "new kind of regulator". In doing so they should be clear about what they expect Opra, or any new regulator, to achieve and how Opra should report performance against this expectation. They should consider giving "the regulator" the role of being the Government centre of expertise on work-based pensions and an overarching role to lead on all aspects of regulation. They should agree with Opra what changes to legislation would be needed to give "the regulator" sufficient powers and discretion to act at arm's length; for example, the powers to collect the information necessary to fulfil the role the Department establish for them and other gaps identified in Part 2 of this report.


ridge
ephant
st Dulwich
40
H LIBRARY

Part 1

Opra's role in safeguarding the provision of pensions

Pensions in the United Kingdom

Pension provision is an increasingly important area for government and society

1.1 In addition to making National Insurance contributions to secure entitlement to a State retirement pension, most working adults in the UK make additional pension provision (described in **Figure 4**) to which they and/or their employers make regular contributions. These are referred to in this report as work-based pensions. For many retired people, work-based pensions are a major source of income after retirement. According to the Family Resources Survey for 2000-01, 60 per cent of pensioner units (pensioner couples and single pensioners) received occupational pensions of £114 out of total average net income of £215 per week[10].

1.2 The rights to a pension can be a person's most significant asset after their home, and in the UK around 100,000 occupational pension schemes between them hold assets of around £770 billion and have 25 million members as at 31 March 2002. Individual schemes hold substantial assets. The average value of assets per scheme was over £2.25 billion for schemes with over 10,000 members, and even schemes with 11 or fewer members had average assets of £500,000[11]. At 31 March 2002 there were some 437 live personal pension schemes covering some 15 million members[12] with total assets of £320 billion. As at September 2002 there are 51 stakeholder pension schemes with nearly 1 million members[13]. Many people belong to more than one scheme, although where they have changed employer they will have ceased to contribute to the former employer's scheme.

4 Main types of pension schemes

- **Occupational pension schemes** may be provided by a private or public sector employer for their employees. Typically, employers and/or employees make contributions to their scheme which is managed by trustees appointed by them both. There is flexibility in the form of the occupational scheme that employers may choose to set up subject to legislative and Inland Revenue requirements. In the UK, many private sector employers have established occupational schemes for their own employees. Group schemes exist for employers that are connected by industry or trade.
- A **fully-insured scheme** is an occupational pension scheme where the sole long-term investment is a form of life insurance policy arranged by the trustees of the scheme, and where the scheme is administered by the provider or a third party on the provider's behalf.
- Prior to 1988 individual personal pension provision had been possible for the self employed and those not in pensionable employment. In that year the Government extended **personal pensions** to employees to help people to make provision for their retirement independently of an employer. They are usually a contract between the employee and a provider, typically an insurer. Employees of the provider manage the scheme. Employer contributions are voluntary.
- The Government introduced **stakeholder pensions** in 2001. They are similar to an occupational pension scheme or Group Personal Pension and have to meet a number of criteria laid down by the Government, most notably a one per cent cap on administration charges. A few of the 51 schemes are managed by trustees and if the employer makes voluntary contributions could be seen as a special type of occupational scheme.

Stakeholder and personal pensions and some occupational pensions are **"defined contribution"** schemes where the amount of pension depends on the value of the investments made by the scheme. Many occupational pensions, however, are **"defined benefit"** schemes where pensioners receive a pre-determined pension commonly related to earnings and the employer is ultimately responsible for providing sufficient contributions to enable the pensions to be paid.

10 *Department for Work and Pensions, The Pensioner's Incomes Series 2000-1, 29 May 2002.*
11 *Government Actuary's Department Press Release, Eleventh survey of occupational pension schemes, 23 August 2002. www.gad.gov.uk.*
12 *Opra, Annual Report 2001-2, pages 43 to 47 and 49, July 2002.*
13 *Opra web site, www.opra.gov.uk. Association of British Insurers web site, www.abi.org.uk.*

The government is seeking to increase participation in work-based pensions

1.3 With an ageing population, there is a potentially increased burden on the state of providing post-retirement income (although the impact is likely to be less than in most other EU countries, which have much less funded pension provision). The Government's 1998 Pensions Green Paper forecasted that the number of people over state pension age in the UK would increase by over a third over the first half of the current century[14]. The Government set out a new framework for reforming both state and private pensions, and included the aim of encouraging future pensioners to save for their retirement through the private sector where appropriate. The Government have, in particular, an objective of increasing the proportion of people's post-retirement income from non-State pensions. Stakeholder pensions have been introduced to help achieve this objective by making a good value pension arrangement - occupational pension, personal pension or stakeholder pension - available to everyone.

The regulatory framework for work-based pensions

Pension regulation in the UK was changed following the Maxwell case

1.4 The Maxwell case raised serious concerns about the security of pension assets. Robert Maxwell re-arranged the affairs of the pension schemes in his groups of companies. One of his companies managed the assets of the pension schemes, lending the assets back to the parent and other companies. This only became apparent after his death in 1991. Some £440 million was lost due to misappropriation, affecting 32,000 pensioners of Maxwell Communications Corporation and Mirror Group Newspapers **(Figure 5)**.

5 The Maxwell case

Key irregularities found included:

- Investment in related companies
- Loans of cash to Maxwell's private companies
- Related party dealings to the benefit of Robert Maxwell's other companies
- Use of pension schemes funds for the benefit of Maxwell Communications Corporation and his private companies
- Use of shares owned by the pension schemes as collateral for loans to his private companies

Source: Department of Trade and Industry, Mirror Group Newspapers plc - Investigations under Sections 432(2) and 442 of the Companies Act 1985, 30 March 2001.

1.5 In response to this case the Pension Law Review Committee ("the Goode Committee") was set up to review the legislation governing occupational pensions. It reported in September 1993 and concluded that pension law had a number of shortcomings:

- it was too complex and lacked structure and organisation;
- the interests of scheme members were at risk from the wide powers and discretions placed in the hands of employers and trustees;
- there was no form of compensation to cover loss through misappropriation of assets, which could leave members at risk of hardship; and
- there was no regulatory body with overall jurisdiction and powers to monitor and enforce proper standards in the administration of pension schemes.

1.6 The Committee made over 200 recommendations to secure improvements in the security of assets and members' rights, to be overseen by a newly created regulatory structure[15]. Many of these recommendations were implemented through the Pensions Act 1995, which was intended to create a regulatory environment that would contribute to increased public confidence that pensions are secure.

Opra were established with powers to address some types of breaches of pensions legislation

1.7 The Pensions Act 1995 (the Act) provided for the establishment of Opra on 1 April 1996. They started to handle cases on 6 April 1997. The Act gives Opra a wide range of powers **(Figure 6)**. Some powers, such as inspection, are tied to breaches in the Act or the Pension Schemes Act 1993. Others - for instance the power to suspend or appoint trustees, wind up schemes or apply for a restraining injunction against trustees relate to the misappropriation or misuse of funds (which are not offences under the Act). Several powers relate to regulations made by the Department or to 'prescribed circumstances' such as removing trustees. Powers in the Act to disqualify auditors or actuaries in certain circumstances have not been activated and instead Opra report advisers to the relevant professional body which can then take disciplinary action.

14 *Department of Social Security Pensions Green Paper, A new contract for welfare: Partnership in Pensions, Cm 4179, December 1998, page 13 paragraphs 10 and 11.*

15 *Pensions Law Reform, the Report of the Pension Law Review Committee - Chairman: Roy Goode, CM 2342, HMSO, September 1993. Also known as the Goode report.*

6 Opra's main powers under the Pensions Act 1995

- Removing, disqualifying, suspending and appointing trustees in specified circumstances.
- Applying civil penalties on persons who contravene the Act or regulations made under the Act.
- Winding up schemes in specified circumstances.
- Applying to a court to grant a restraining injunction against anyone associated with a pension scheme misusing or misappropriating its assets or to seek restitution where scheme assets have been illegally transferred to the employer.
- Making directions to trustees to make payments of benefits to scheme members in specified circumstances or to include a statement made by Opra in the scheme's annual report or in communications with scheme members.
- Bringing proceedings against a trustee who acts while disqualified.
- Referring any matter that Opra has determined or reviewed under the Pensions Act to a court on a question of law.
- Requiring the production of any document relevant to the discharge of Opra's functions.
- Undertaking an inspection of any scheme to investigate whether 'regulatory provisions' of the Pensions Act and Pension Schemes Act are being complied with.
- Publicly reporting details of any investigations Opra has undertaken.
- Doing anything (except borrowing money) which is calculated to facilitate the discharge of its functions, or is incidental or conducive to its discharge.

1.8 The Goode report had recommended that "it is important that the Regulator be given both the power and resources to carry out spot checks and detailed investigations independently of any complaint". As stated in the relevant White Paper and in Parliament during the passage of the Act, the Government intended that Opra should be an actively responsive regulator. The Department for Work and Pensions (the Department) and Opra consider that this made it clear that Opra should be less proactive than the Goode report had intended.

1.9 Opra have since been given other statutory functions, including:

- the supervision of stakeholder and personal pensions in accordance with the Welfare Reform and Pensions Act 1999 and related secondary legislation; and
- the supervision of the winding up of pension schemes under the Child Support, Pensions and Social Security Act 2000 and related secondary legislation.

1.10 In 1997 Opra also assumed responsibility for the Pension Schemes Registry, set up in 1990[16]. The Registry helps members trace their pension schemes and collects an annual levy which is broadly equivalent to the amount the Government grants for the supervision of pension schemes (Opra, the Pensions Ombudsman and OPAS, the Pensions Advisory Service). When necessary, it also collects a levy to pay for the compensation fund operated by the Pensions Compensation Board. The Registry's information gathering powers are designed to provide a tracing service and help collect the levy, not to help supervise pension schemes[17].

1.11 The Opra Board includes the Chairman, currently a part-time appointment, and nine other part-time members appointed by the Secretary of State after consultation with various representative bodies. Their meetings can have either strategic or judicial functions, as:

- the whole Board meet to provide the strategic direction for Opra's work;
- groups of Board members meet to adjudicate on breaches with a view to determining whether a penalty should be applied to the trustees or employer; and
- groups of Board members meet to hear appeals against the Board's determinations in such cases. Different members hear the appeal from those who made the original determination.

1.12 The Chief Executive and five other managers constitute the Core Management Team, who can all attend full Board meetings. Opra employ some 250 other staff, including the 62 staff of the Pension Schemes Registry. Their running costs in 2001-02 were £11 million. In addition they provided grant funding of £1.5 million to OPAS, the Pensions Advisory Service. These costs are broadly met by a levy on pension schemes which is collected by the Registry, which totalled £15 million in 2001-02, including £3.4 million from public sector schemes paid direct to the Department[18]. Opra's regulatory staff are based in Brighton with the Registry staff based in Newcastle.

16 *SI 1990 No. 2278 The Register of Occupational and Personal Pension Schemes Regulations 1990.*
17 *SI 1997 No. 371 The Register of Occupational and Personal Pension Schemes Regulations 1997.*
18 *Opra Annual Report 2001-2, July 2002.*

Trustees have the primary responsibility for safeguarding the interests of pension scheme members

1.13 Trustees manage occupational pension schemes. They are usually appointed by the employer providing the scheme and the members. The principle underlying pensions legislation is that the trustees are primarily responsible for the good governance of occupational pension schemes[19]. Trustees' duties and powers are principally set out in legislation, in trust law developed by the courts and in the scheme documents (the trust deed and the scheme rules). Their duties are summarised in **Figure 7**.

7 The main duties of pension scheme trustees

- To act prudently in preserving the trust assets and to deal with them in the best interests of the beneficiaries
- To ensure that there are sufficient assets to cover the scheme liabilities and to take remedial action if they do not
- To ensure that the employer fulfils its obligations to the scheme
- To appoint the scheme's professional advisers
- To report to Opra as appropriate

1.14 Trustees of pension schemes are often volunteers and many are also members of the pension scheme itself. Many employer-appointed trustees become trustees because of their management position in the sponsoring employer, typically managing director or finance director. The existing trustees or the sponsoring employer often recommend other employer-appointed trustees. Member trustees either volunteer for the role through having a strong interest in the running of the pension scheme or they are encouraged to do so at the initial suggestion of the sponsoring employer or the existing trustees.

1.15 Trustees are the initial defence in the sound operation of occupational pension schemes. As such the trustees have a duty to report to Opra specified types of breaches of the pensions legislation where that breach is likely to be material to Opra's functions. The breaches can arise from the actions or inaction of trustees, employers and professional advisers to Opra. Some breaches of the Act require mandatory reporting while others are discretionary. Opra rely on the judgement of the trustees in deciding whether the breach is material in nature. The trustees of many smaller pension schemes contract with life assurance companies to administer the schemes on their behalf. Using a third party as an administrative agent does not, however, absolve the trustees from responsibility for the stewardship of the funds.

1.16 The trustees of occupational pension schemes are legally responsible for appointing the scheme's professional advisers, a requirement which varies according to the type of scheme concerned **(Figure 8)**. The trustees of most schemes must appoint a scheme auditor, an actuary if it is a salary-related scheme (defined benefit) and a fund manager.

8 Advisers required by occupational pension schemes

Type of scheme	Actuary	Auditor	Fund Manager
Defined Contribution (Not Insured)	✗	✔	✔
Defined Benefit (Not Insured)	✔	✔	✔
Defined Contribution (Insured Scheme)	✗	✔	✗
Defined Benefit (Insured Scheme)	✔	✔	✗

Source: Opra, A Guide to appointing professional advisers - a guide for occupational pension scheme trustees, October 2000.

1.17 Professional advisers have the role of ensuring that the trustees receive independent advice for the scheme. The Act gave auditors and actuaries an important new duty of making reports to Opra if scheme trustees or employers breached pensions law. The Act also empowered fund managers, and other interested parties, to make reports in such circumstances, but without any requirement so to do. This whistleblowing role can therefore be seen as a second line of defence if trustees do not discharge their duties fully or properly.

The Department for Work and Pensions have overall responsibility for pension provision and regulation

1.18 The Department for Work and Pensions were established in June 2001, bringing together the Department of Social Security and the employment responsibilities of the Department for Education and Employment. The Department for Work and Pensions set up a new pensions organisation (The Pension Service), to offer a unified service for existing pensioners, and a better service for future pensioners by providing accurate information to help them make decisions about future pension provision[20]. The Department have overall policy responsibility for the law governing pension schemes and are the sponsoring department for Opra, with a general policy responsibility for determining how Opra exercise their powers. While Opra can suggest changes to the legislation, it is for the Department to bring forward those changes if they are agreed.

19 *Department of Social Security Research Report No.81, "The role of pension scheme trustees", Karen Bunt, Mark Winterbotham and Robert Williams, June 1998 and Research Report No.82 "Pension Scheme Investment Policies", Cliff Pratten and Steve Satchell, June 1998.*

20 *Department for Work and Pensions, Service Delivery Agreement for the Department for Work and Pensions, 24 May 2002. www.dwp.gov.uk.*

1.19 A separate branch within the Department is responsible for the sponsorship of Opra as a non-departmental public body, with the role of agreeing budgets and targets and monitoring progress against targets.

Other bodies are involved in the regulation of work-based pensions

1.20 While Opra have an important role to play in managing and minimising risks on behalf of pension scheme members, other bodies have a role to play **(Figure 9)**.

The number of occupational pension schemes is declining

1.21 While the policy responsibility for encouraging the development of private sector pensions belongs to the Department, Opra recognise that their work could, by applying burdens to pension schemes, work against the Department's objective of encouraging greater saving for retirement.

1.22 The number of occupational pensions schemes has declined from 130,000 in 1999 to 103,000 in 2002 (Figure 1 on page 2)[21]. Although the total membership of schemes has actually increased by 14 per cent during this period, this change reflects employees changing employer - and hence joining a new pension scheme while retaining deferred membership of their previous scheme. There is some evidence that firms starting up in non-traditional industries do not make occupational pension provision for employees. A survey by the Association of Consulting Actuaries has indicated that fewer than four out of 10 of the schemes were now open to new members and that nearly half those left were contemplating closure[22]. Furthermore, many employers are replacing defined benefit schemes with defined contribution schemes, mostly in respect of new members rather than existing members of schemes (definitions in Figure 4 on page 11). The reasons given for the falling number of schemes, and the move away from defined benefit schemes, include:

9 Other bodies have a role in the overall framework within which pensions operate

Body	Role in pensions regulation
OPAS - the Pensions Advisory Service	An independent organisation which provides free information and guidance to members of the public on pension matters generally. It also helps to resolve disputes and complaints concerning private pension arrangements (company pensions, personal pensions and stakeholder pensions). It does not give investment advice nor does it get involved in disputes concerning state pensions, although it does provide general advice about state pension schemes. OPAS was formerly known as the Occupational Pensions Advisory Service when its remit was restricted to occupational pensions.
The Pensions Ombudsman	The Pensions Ombudsman investigates and decides complaints and disputes about the way that pension schemes are run, often at the request of individual members. The Ombudsman also investigates some disputes between trustees of the same scheme and questions from sole trustees. The Ombudsman's role also includes investigating complaints or disputes between trustees or managers of occupational pension schemes and employers, and between trustees of different occupational pension schemes.
The Pensions Compensation Board	The Pensions Compensation Scheme, administered by the Pensions Compensation Board, was introduced in 1997 to help occupational schemes which have suffered a reduction in value of their assets as a result of dishonesty and where the sponsoring employer is insolvent. The Scheme is funded by a £2 million levy on occupational schemes made in 1997-98. The Board has not to date needed to raise a further levy.
The Financial Services Authority (FSA)	The FSA is a statutory authority established by the Financial Services and Markets Act 2000 to regulate the UK financial services industry (including personal pensions but excluding occupational pensions). The regulatory regime set up under the Financial Services and Markets Act provides, among other things, for the investigation of complaints from individuals who believe they have been given wrong or bad advice by the firm that sold them their personal pension. Initially the complaint will be dealt with by the firm. If it is not resolved, then the individual may ask the Financial Ombudsman Service to consider it.
The Financial Ombudsman Service	The Financial Ombudsman Service handles complaints about the sales and marketing of pension products.
The Inland Revenue	The Inland Revenue seek to ensure that pension schemes satisfy certain conditions in order to be eligible for tax relief.

21 *Opra Annual Report 1996-97, June 1997 and Opra Annual Report 2001-2, July 2002.*

22 *The Association of Consulting Actuaries surveyed members advising just under 3,000 final salary schemes with 6.8 million members and reported the results in June 2002. (Association of Consulting Actuaries Press Notice, ACA Survey of Final Salary Schemes, 17 June 2002. www.aca.org.uk).*

- people are living longer so pension schemes are supporting a greater number of people for longer periods and hence pension costs are increased;
- the perception by companies that the costs of funding a scheme exceed the benefits in terms of staff recruitment and retention;
- falls in the price of shares in which pension schemes are usually heavily invested has put pressure on employers to increase their contributions to pension schemes to meet their commitment to pay defined benefits;
- the Minimum Funding Requirement (MFR) introduced by the Pensions Act 1995[23] has been criticised for requiring some schemes to invest contrary to their long-term interests, imposing costs which provide very real incentives to close defined benefit schemes. The Government are committed to replacing the MFR; and
- a new accounting standard, FRS 17, that requires pension fund deficits and surpluses to be calculated in a prescribed manner and disclosed in the employers' balance sheets. When stock market prices are falling, the schemes, and hence company accounts, can show big losses. The Accounting Standards Board announced in July 2002 that complete implementation would be delayed to 2005 to give time to agree a multinational approach to funding pension shortfalls. Meanwhile, companies will have to disclose any pension shortfalls in the notes to their accounts[24].

1.23 Opra have no remit or powers to address directly the decline in the numbers of occupational pension and defined benefit schemes, the shift away from defined benefit schemes or the funding difficulties of some pension schemes as their role is largely limited to securing good governance. Opra's influence on these important issues of pension provision is largely limited to sustaining public confidence in pension schemes, which is a necessary precondition for a thriving occupational pensions sector. The cost of administration and regulation may, however, have had an influence in a small minority of cases, but is considered to have been of little significance compared to these other developments that are outside Opra's remit.

There have been a number of reviews which affect the regulatory environment for pensions

1.24 The increasing importance of pension provision for both Government and the economy in general, and concerns about under-investment in pensions and recent changes to pension schemes, has been reflected in a series of reviews that have recently taken place. Each review covers different aspects of the complex issue of pension provision (Appendix 4). In summary, the reviews have been:

- **The Review of Institutional Investment in the UK:** In March 2000 the Government commissioned a review under Paul Myners to consider whether there were factors distorting the investment decision-making of institutions, including institutional investment in private equity. Recommendations included a higher standard of care for pension scheme trustees thereby necessitating the provision of extra training for trustees and replacement of the Minimum Funding Requirement[25]. Some of the changes recommended would increase Opra's workload.
- **The Review of Medium and Long-Term retail savings in the UK**: In June 2001 the Government commissioned a follow-up review to Myners, headed by Ron Sandler. This was to identify the competitive forces and incentives that drive the industries concerned, in particular their approaches to investment, and, where necessary, to suggest policy responses to ensure that consumers are well served. Most of its recommendations, made in July 2002, concern financial products regulated (for sales and marketing) by the Financial Services Authority, but those for a simpler pension product, and making available guidance to some pension scheme trustees, would affect Opra[26].
- **The Pensions Simplification Review**: In 2001 the Government commissioned Alan Pickering to identify ways to make it easier for employers to provide good quality pensions for their employees, easier for commercial providers to sell appropriate products to appropriate people, and easier for individuals to accumulate pension benefits. Its report in July 2002 made recommendations that would affect the way employers provide pensions, including reducing the differences between types of pension[27]. It also recommended a proportionate regulatory environment. Statutory requirements should focus on the objective to be achieved rather

23 The MFR is a requirement under section 56 of the Pensions Act 1995 that, under a prescribed set of actuarial assumptions, the actuarial value of assets of a defined benefit scheme should not be less than its actuarial liabilities.

24 Accounting Standard Board, ASB Press Notice 204, ASB proposes an Extended Transitional Regime for UK Pensions Standard, 2 July 2002. www.asb.org.uk.

25 HM Treasury, Institutional Investment in the United Kingdom: A Review (Myners' Review), March 2001.

26 HM Treasury, Medium and Long-Term Savings in the UK -- A Review, paragraphs 10.12, 10.21 and 10.200, 9 July 2002. www.hm-treasury.gov.uk.

27 Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002.

than the process needed to achieve it. The review proposed a "new kind of regulator", which would be more proactive than Opra's current role, to act as an adviser as well as a regulator, and issue codes of practice or guidance notes, leaving the detail of this new kind of regulator to the Quinquennial Review.

- **The Quinquennial Review of Opra**: In April 2002, having been in operation for five years, Opra were due for the standard Cabinet Office quinquennial review by their sponsoring department. In accordance with Cabinet Office guidelines, the Secretary of State appointed Dr Brian Davis Independent Reviewer, in order to provide external challenge to the deliberations and conclusions of the Department's review team. The Review has looked back at why Opra was established, whether there is a continuing need for a pensions regulator, and Opra's first five years of operation. In conjunction with the Pickering Review, the Quinquennial Review has also drawn up detailed proposals for change within Opra. It is expected to report in November 2002.
- The **Inland Revenue** are also carrying out a review of pension fund taxation.

1.25 Decisions taken by the European Union, as part of their plan to create a single market in financial services by 2005, may also be relevant to Opra's role. The European Commission presented on 11 October 2000 a proposal for a directive on institutions for occupational retirement provision - that is, pension funds, superannuation schemes, etc. The aim is to create a prudential framework so as to ensure a high level of protection for the rights of future pensioners. The proposal seeks to ensure that institutions enjoy sufficient freedom to develop an effective investment policy. It also seeks to enable an institution in one Member State to manage company pension schemes in other Member States. The Commission have stated that the proposal would not impose a new set of requirements on long-standing pension scheme arrangements such as those in the UK and Netherlands.

Scope of the NAO study

1.26 In undertaking our examination we sought to determine whether Opra are delivering the protection for pension scheme members that is expected of them, and in particular:

- To what extent can Opra work within their framework of legislation and objectives to protect the interests of pension scheme members?
- How well have Opra helped protect the interests of pension scheme members?

1.27 There were three main strands to our work. We considered:

- the risks faced by individual pension scheme members - those that are directly relevant to Opra's remit and more general risks. We then analysed the types of control regime applied to these risks, and Opra's response to these risks (Part 2).
- the evidence available for the impact of Opra's work, and in particular the impact on the governance of pensions schemes. This work involved considering the patterns in the types and volumes of cases reported to Opra, as well as their educational work and performance measures. Because the Pensions Act does not allow Opra to show details of individual cases to the National Audit Office we have relied on the work of their internal auditor for this part of the analysis (Part 3).
- Opra's objectives, and the extent to which they were focussed on addressing the risks we have identified to pension scheme members (Part 4).

1.28 Details of our methodology for this report are set out in Appendix 1. We are grateful for the co-operation provided to us during the course of this examination by Opra, the Department and a wide range of interested parties in the pensions field.

Part 2

The risks to pension scheme members

The risks to pension scheme members from deficient scheme administration and governance

2.1 Pensions represent an income stream that is deferred in some cases for many years into the future. Individual members of pension schemes are in an inherently weak position as regards information on their pension, since the scheme's administrators generate and hold the information, and the individual member may not be an expert on pension matters. These two factors - the long-term nature of pensions and the information disadvantage of pension scheme members - mean that members face a series of risks. Figure 2 on page 3 sets out the main categories of risk we have identified. This builds on Opra's initial work on the risks faced by pension scheme members[28].

2.2 Misappropriation of scheme assets is one of the highest profile risks to pension scheme members. Dishonest trustees, administrators, fund managers or employers could misappropriate scheme funds and have done so in the past. 'Pension liberation' by ignorant/dishonest members and fraudulent pension liberation companies may also cause a pension scheme's assets to be diverted from pensions use. But while misappropriation could have severe consequences for pension scheme members, such incidents have fortunately been relatively rare.

2.3 The other risks arise from the way schemes are funded and administered, are lower profile and do not involve dishonesty - but they could impact just as significantly on individual members and are much more likely to occur in practice. These include the risk that incorrect pensions are paid to scheme members as a result of poor record-keeping by trustees, scheme administrators or pension providers. There is a risk that, should an employer become insolvent, there are insufficient funds to pay scheme members' pensions to which they are entitled or could reasonably expect. When schemes are wound up there is a risk that expenses eat into the fund. It is very likely that active and deferred members will share an insufficient sum after pensioners have been paid out, even though the fund complies with minimum funding requirements.

Opra's controls should address many of the risks

2.4 We have developed Opra's initial consideration of the risks to scheme members so as to appraise the risks that relate to matters that are or could reasonably be within Opra's control. We also identify the controls available and the possible regulatory response. In doing so, we have also identified the constraints placed on Opra that may prevent them from tackling some risks. The types of control available to address the main risks, and the regulatory response, are analysed in Appendix 5. In doing so we have categorised controls within three headings:

- **preventive controls** deter undesirable events from occurring;
- **detective controls** identify undesirable acts once they have occurred; and
- **remedial controls** secure restitution of any loss or at least limit its extent.

2.5 Perhaps the most important **preventive control** is the knowledge of trustees, and others involved in pension scheme administration, both of how to monitor and influence the performance of their investment advisers so as to secure reasonable returns, and to ensure that the scheme is well administered and controlled. For this control to work effectively, it is important that trustees understand their own roles and responsibilities thoroughly. Opra can seek to raise the knowledge of trustees and administrators through education and training and acknowledge that they could do more in this area. The compliance survey they undertook in 2001 showed that trustees' knowledge had been slow to improve and as many trustees failed to inform the Pension Schemes Registry of important changes, Opra could not in practice communicate with them[29].

28 Opra's Annual Report on Risk Management, May 2002.
29 Opra Annual Report 2000-01, June 2001.

2.6 Trustees, employers and others may also be deterred from poor governance by penalties applied by Opra (or the courts) or the example of seeing others receiving such penalties. Given Opra's emphasis on applying penalties where they believe behaviour merits it, a deterrent effect should be expected. Another preventive control that Opra might apply would be to stop unsuitable people being appointed as trustees. Finally, Opra may appoint new trustees or, in certain circumstances, suspend existing trustees or disqualify them for acting as trustees of any scheme in future.

2.7 The key **detective controls** that Opra have put in place are:

- trustees checking that contributions are paid over on time and reporting to Opra cases where employers do not do so, and Opra fining employers in such cases to encourage compliance;
- professional advisers reporting to Opra breaches in pensions law that they find. Because the auditor or actuary might find material problems with a scheme it is important that they discharge their responsibilities in a timely fashion. If they do not do so, disciplinary action taken by their professional bodies should help to reinforce these controls. More importantly, Opra can seek, through education and the threat of penalties to encourage trustees to appoint auditors and actuaries, without whom this key control cannot operate (**Figure 10** gives an example); and
- Opra using the information they receive from reports of breaches and other sources to identify and investigate cases where serious problems may have occurred or are in prospect, so as to take preventive or remedial action.

10 An example where Opra secured the appointment of a scheme actuary

Opra pursued the trustees of one scheme for failing to appoint a scheme actuary. Once in place the actuary reported breaches of the requirements to appoint an auditor and member-nominated trustees, to have an internal dispute resolution procedure and a minimum funding requirement, and to produce audited accounts. Opra pursued all breaches and the auditor was appointed in early 2001. The remaining breaches were all remedied by late 2001.

2.8 Opra's primary **remedial control** is their ability to apply to a court to grant an injunction against anyone associated with a pension scheme misusing or misappropriating its assets. Opra can also apply to court to seek restitution where scheme assets have been illegally transferred to the employer, including through illegal investment in the employer. They can also appoint trustees in specified circumstances which include schemes which are being badly run or schemes which cannot otherwise be wound up without expensive delays.

The risk analysis shows that there are gaps in the regulatory approach that Opra apply

2.9 Our analysis identified the following gaps in Opra's functions, two are general points and the remaining six refer to preventive, detective and remedial controls:

General

- There are doubts within Opra as to their ability to act on breaches of legal duties outside the Pensions Act, which does not for instance specify trustees' fiduciary duties.
- Unlike the regulator in the Netherlands, Opra have no role in monitoring and acting upon the way trustees decide upon the investment of pension funds and monitor investment performance, except where a scheme has invested inappropriately in the employer.

Preventive controls

- Opra undertake few checks of the suitability of newly appointed trustees beyond checking that they have not been disqualified as pension trustees. They do not, for instance, check whether trustees are disqualified directors, have criminal records or are undischarged bankrupts. However, scheme trustees must sign a declaration on the Registration form that they are not unfit to act as a trustee of a pension scheme.

Detective controls

- The resignation of scheme auditors could be an indicator of a scheme at risk but Opra have no unambiguous power to check whether new scheme auditors have been appointed (though in many cases their staff maintain contact with schemes to help them improve compliance with legislation).

Remedial controls

- Opra have no process to monitor whether the appointments of statutory advisers (auditor, actuary and independent fund manager) have been made. This is because trustees do not have to provide this information to the Pension Schemes Registry when registering a scheme, and Opra's reliance on trustees and professional advisers to report non-appointment provides only a limited response.
- Opra can fine trustees for not preparing accounts on time or appointing auditors, but the case cannot be re-submitted for further fines if the trustees still do not take remedial action. Opra are unable to force the

trustees to obtain audited accounts and must wait until a further report is made of unaudited accounts before they can take action. In May 2001 the Opra Board decided therefore not to fine trustees, in cases of serious delay, until the accounts were complete and to take the length of delay into account. Opra can however either set up special monitoring (which is staff intensive) or appoint trustees themselves to ensure accounts are completed.

- While Opra impose sanctions when employee contributions due have not been paid, they are unable to force employers to pay them over. The Pensions Ombudsman can direct remedies where breaches of this kind of have caused loss, but Opra do not have the power to request that the Ombudsman examines specific cases.
- While Opra have the power to appoint independent trustees, they cannot pay them from their own resources, which may limit Opra's use of this power where a scheme does not have the resources to pay the trustee.

Many risks to the governance of pension schemes are the responsibility of other bodies

2.10 Some regulators referred to in Figure 9 on page 15 have a key role in tackling the risks arising from the administration and governance of pension schemes. In particular:

- The Pensions Ombudsman can investigate complaints from members about the running of a pension scheme. The Ombudsman can also intervene when there are disputes between trustees that could affect the governance of a scheme;
- The Financial Services Authority (FSA) regulates the financial services firms and their senior management. Some occupational pension schemes rely on these firms, such as insurance companies and fund managers, to run either their schemes or their assets. For example, the FSA sets standards for insurance companies and to ensure that "fit and proper" people are approved for key positions. However, the FSA has no power to regulate activities related to the administration of occupational pension schemes; and
- The Inland Revenue seek to ensure that schemes satisfy certain conditions in order to be eligible for tax purposes. The Inland Revenue require good record-keeping and this addresses the risk of poor scheme records.

2.11 There is currently no body that has an overarching view of all aspects of work-based pensions, and the Pensions Simplification Review has recommended that Opra's role be developed to fill this gap[30]. By contrast, the pensions regulators in the Republic of Ireland and the Netherlands have a statutory role of advising the Government on pensions regulation in general.

The diversity of pension schemes makes them harder to regulate cost-effectively

There are a large number of schemes

2.12 While the number of live occupational pension schemes has been falling (Figure 1, on page 2), the number of schemes is still very large for a regulator to cope with - few regulators have such a large population of entities to regulate. In the Netherlands, where arrangements are fairly comparable to the UK, but schemes are generally much larger, there are just under 1,000 occupational pension schemes, equivalent to just four per cent of the number of schemes in the UK per head of population. This is because Dutch legislation encouraged the setting up of industry-wide rather than company pension schemes and there is compulsion on both employees and employers to join an industry-wide scheme.

Although most occupational pension schemes are small, most scheme members belong to large schemes

2.13 The size of schemes can range from just two members to many thousands. Scheme size is heavily skewed towards small schemes with less than 11 members. In 2001-02 occupational schemes with less than 11 members represented 80 per cent of the total number of schemes, and there are 50,000 schemes with only 2 members. Larger schemes with over 1,000 members made up only 1.4 per cent of the total number of schemes, but in contrast had over 89 per cent of the total membership of schemes **(Figure 11)**.

2.14 The size and membership distribution of personal pension schemes contrast markedly with that of occupational schemes. At 31 March 2002 there were only 437 "live" personal pension schemes on the Pension Scheme Register. There were 15 million members of personal pension schemes although not all of them are currently contributing to the schemes. The 235 schemes with over 1,000 members represent 53.8 per cent of the total number of schemes and

30 *Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002. The findings are summarised in Appendix 4.*

11 Total membership by scheme size 2001-02

Number of members in the scheme	Number of schemes by size banding	Percentage of schemes by size banding	Number of members by size banding	Percentage of members by size banding
2-11	82,196	80%	248,969	1%
12-99	13,112	13%	484,270	2%
100-999	6,096	6%	1,900,403	8%
1,000-4,999	1,221	1%	2,587,047	10%
5,000-9,999	223	<1%	1,565,275	6%
>10,000	317	<1%	18,216,048	73%
	103,165	**100%**	**25,002,012**	**100%**

99.8 per cent of total membership[31]. Similarly, the 51 stakeholder pension schemes on Opra's register cover nearly 1 million members as at September 2002[32].

2.15 The large number of small occupational pension schemes gives rise to particular risks. Their trustees are much less likely than those of large schemes to be aware of their responsibilities or to exercise effective oversight of scheme administrators or investment managers. **Figure 12** gives an extreme case. Administrative costs have a much greater proportionate burden on them so that corners are more likely to be cut. On the other hand, these schemes are more likely to be fully-insured so the risk of misappropriation of scheme assets should be much reduced, and fewer controls should be needed.

12 An example where Opra secured the appointment of a trustee

The scheme had one member who had not reached pension age and four pensioner members. The principal employer had been dissolved and the sole trustee had been living abroad for 10 years.

The trustee had given a power of attorney to a non-qualified company accountant. The power of attorney appeared to be legally invalid. All the scheme assets were in a savings account with a bank because the "accountant" did not trust insurance companies.

A member wrote to Opra complaining that it had taken eight years to get a transfer payment of £15,000 to his new employer's pension scheme. All requests had been ignored until OPAS (the Pensions Advisory Service) intervened. The member was told "he might get a further payment in the future depending on mortality experience". When Opra asked how the £15,000 was calculated, the "accountant" stated that "I made it up in my head".

Following an emergency meeting, conducted by a telephone conference, a committee of the Opra Board appointed a new trustee with exclusive powers from Opra's panel of trustees.

Source: Opra Bulletin 19 case summary 14, January 2001.

2.16 Large schemes are more likely to have professional advisers in place and expert staff to administer their schemes. Furthermore, larger schemes are more likely to have greater segregation of duties and effective internal controls to either prevent or to detect fraud at an early stage. Medium sized self-administered schemes where the trustees may be the employer can, in Opra's experience, sometimes be vulnerable to asset stripping. Pensions legislation applies equally to schemes regardless of their size (except for the very smallest schemes[33]) as all scheme members deserve equal protection, but this does not necessarily mean that the legislation has to be implemented uniformly. The regulatory response should be proportionate to the risks arising in different categories of pension schemes.

Some risks to the provision of adequate incomes in retirement are beyond Opra's remit

2.17 Individual pension scheme members are also exposed to generic risks that have little to do with good scheme governance. The most significant of these risks is that people may not invest enough to provide an adequate income for their retirement. The reasons for this inadequacy of investment are largely outside the scope of this report, but may include poor understanding of the necessary levels of saving, poor advice, and low levels of disposable income. Related to the problem of poor understanding is one of public expectation: people may be expecting to receive more than they are entitled to because they do not properly understand their entitlement. Members may also not appreciate the risks to their final pension, including the impact of changing from a defined benefit scheme or from poor performance of a scheme's investments.

31 *Opra, Annual Report 2001-2, pages 43 to 47 and 49, July 2002.*
32 *Association of British Insurers web site www.abi.org.uk.*
33 *That is, single member schemes and schemes classified by the Inland Revenue as Small Self-Administered Schemes.*

2.18 But even where investment is sufficient, and expectations reasonable, no pension is risk-free. Members of occupational pension schemes are exposed to the risks if the employer, who contributes to the scheme, becomes insolvent. In a few cases, where dishonesty has occurred, the Pensions Compensation Board may provide financial help where the employer is also insolvent and so is unable to make up any shortfall.

2.19 More generally, the actuarial calculations on which contributions to a defined benefit scheme are based assume that the employer will continue to be able to make contributions at the actuarially determined level, and to collect and pay over employee contributions. If this income flow ceases unexpectedly it may be that the scheme will have insufficient funds to meet pension entitlements in full, especially if there is a subsequent decline in the value of the investments held. The Pensions Act provides for pensioners already receiving a pension and former employees with a right to a deferred pension to receive their full entitlement so far as possible. Consequently, any deficiency is shared among current employees, so that even a relatively small shortfall may have a large effect on their pensions.

2.20 There is nothing that any regulator can do to prevent an employer going out of business, reductions in the value of investments or under-investment in pensions. But, as the pension schemes regulator, they are probably as well placed as anyone, in principle at least, to know what the risks are and to help inform individuals of the risks that they need to address. The wide range of risks outside Opra's control means that their work has to be seen as just one way of reducing risk from a position which cannot be made risk-free. Opra need to ensure that the costs to schemes that their work adds is proportionate to the overall risk to pension scheme members.

2.21 In addition to having to pay the levy, totalling £15 million in 2001-02 (paragraph 1.12), the cost to schemes of complying with legislation may be considerable. Trustees and employers are expected to be aware of the complexities of pensions law. To do so requires a commitment of time in reading and training. The Pensions Act and related legislation requires organisations to maintain a variety of up to date documents, often in a specific form, for their pension scheme. Responding to Opra's queries following reports of breaches can be time consuming. For less serious breaches, it is often not cost-effective to appeal against a fine imposed by the Opra Board, as taking advice would normally cost more in legal and administrative costs than to pay the fine, although the number of appeals has been increasing, often without legal advice.

2.22 The potential for Opra to add to the burdens on schemes provides another reason why, in determining how to respond to the risks to scheme members, they have to be proportionate. Opra therefore need to balance what they do against the risk that employers or trustees may be discouraged by the compliance costs from keeping open existing schemes or creating new ones. However, as noted in paragraph 1.23, it appears unlikely that the cost of administration and regulation have to date had a significant influence on the closure of pension schemes, compared to other factors beyond Opra's control.

Part 3

Opra's work in improving the governance of pension schemes

Opra have encouraged better governance of pension schemes

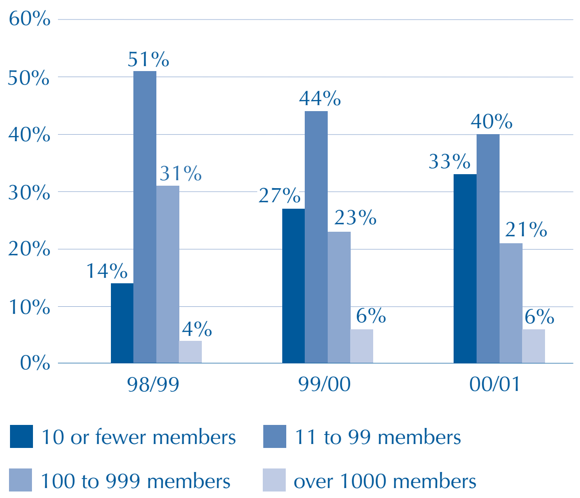
3.1 In considering how well Opra have carried out their duties, we examined evidence on whether they have encouraged better governance of pension schemes. Most of Opra's activity has been focused on responding to breaches of pensions law reported to them and on seeking to educate trustees and professional advisers about what is expected of them. They process cases and issue educational guidance, for example, on the role of trustees and the appointment of advisers.

The number of reported breaches involving occupational schemes has fallen

3.2 One measure of Opra's achievements in promoting better governance through enforcement and education is provided by the fall in the number of reported breaches of the Pensions Act in recent years **(Figure 13)**. Figure 3 on page 4 shows that the total number of occupational scheme breaches has generally been in decline from a high of 13,107 in 1998-99 to 10,805 in 2001-02, although in the context of declining numbers of schemes.

3.3 Most reported breaches concern pension schemes with less than 100 members and the proportion of reports from such schemes has increased from 65 per cent in 1998-99 to 73 per cent in 2000-01 **(Figure 14)**. This appears to confirm that smaller schemes are inherently more susceptible to weaknesses in governance, as suggested in paragraphs 2.15 and 2.16 above.

14 Reports to OPRA analysed by scheme size

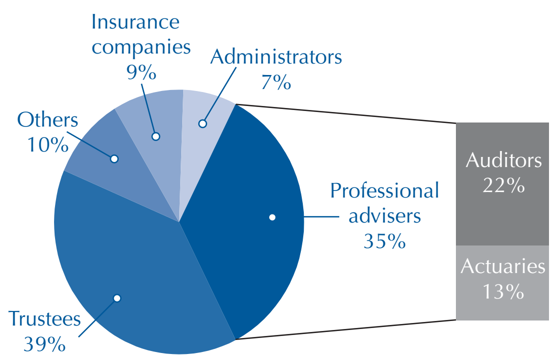


13 New cases notified to Opra since 1997-98

	97-98	98-99	99-00	00-01	01-02
Pension contributions paid late	4,447	7,734	7,372	6,609	6,697
Breaches of audit requirements	223	2,903	3,152	1,707	1,571
Breaches relating to the minimum funding requirement	32	302	614	741	451
Requests for Opra to appoint trustees	375	559	525	792	868
Failure to appoint statutory advisers	1,272	370	275	217	408
Other reports (statement of investment principles, internal dispute resolution, trusteeship etc)	3,214	1,239	671	644	810
Total	**9,563**	**13,107**	**12,609**	**10,710**	**10,805**

3.4 Statutory advisers such as auditors and actuaries provide a major defence against poor governance of pension schemes, and the failure to appoint them represents the absence of a key control (paragraph 2.7). **Figure 15** supports this view, in that statutory advisers made some 35 per cent of reports to Opra (averaged over the last three years). Figure 13 shows that reports of failure to appoint statutory advisers have fallen by 68 per cent from the 1997-98 peak, from 1,272 in 1997-98 to 408 in 2001-02[34]. This was much faster than the decline in the number of schemes. It suggests that Opra, through their work in pressing for the appointment of scheme advisers, have made an important contribution to protecting members' interests.

15 Main sources of reports to Opra by percentage averaged between 1999-00 to 2001-02



3.5 The number of reported breaches about the late audit of accounts and auditors' statements has fallen from 3,152 in 1999-00 to 1,571 in 2001-02, a rate of decline far greater than the decline in the number of schemes. The halving of these breaches from the high point in 1999-00 suggests that Opra have had a positive influence on the timeliness of accounts preparation and audit, and hence reduced the risk that serious problems will pass undetected, identified as a key risk in Part 2 of this report.

There have been relatively few cases of schemes with serious problems

3.6 Occupational pension schemes are generally well governed but some schemes do have serious problems. More serious cases are rare and since 1997 there have been only three instances of alleged misappropriation combined with insolvency that have resulted in payments by the Compensation Board totalling £382,000. Opra can appoint trustees with exclusive powers to override other trustees where they have serious concerns about the interests of members. In the financial year 2001-02 they appointed 24 such trustees (Figure 17). **Figure 16** provides examples of serious cases where Opra have removed or appointed trustees.

16 Examples of where Opra have intervened successfully where there has been a serious risk to members' funds

Opra appointed an independent trustee in October 2000 to run the pension scheme of a limited company, following the suspected theft of assets from the scheme. The independent trustees have now recovered total assets worth £500,000. Assets recovered so far include the repayment of money transferred by the former trustees to a London bookmaker, the sale of plant machinery and the factory building. Source: Pensions Week, 8 July 2002.

In a further case a trustee had forged the signature of another to remove a windfall payment from the scheme into his own account. The other trustee did not know what action she could take as she was employed by him and did not wish to jeopardise her job. Opra liaised with her and the police and the first trustee was convicted of deception and thereby removed as trustee. Opra have subsequently successfully assisted the trustee in obtaining recompense for the fraud and in progressing the wind up of the scheme. Source: Opra.

In another case the actuary to a company acted as a trustee to some 900 schemes and was a director of this company. The company was found to be failing their clients by allowing non-compliance to occur. Opra ensured that the problems were rectified and the Opra Board fined the company £50,000 over eight different schemes. The individual concerned has subsequently left the company and will not act in a trustee capacity again. Source: Opra.

34 *Opra Annual Report 2001-2, page 18, July 2002. The number of reports rose from 217 in 2000-01 to 408, principally due to one insurer finding a block of clients who had failed to take appropriate action.*

Opra have successfully intervened where schemes have fallen into difficulty

3.7 Opra can also appoint trustees in other less serious circumstances. For instance, where trustees of schemes in difficulty cannot be found[35] Opra make appointments in order to protect members' interests. Most commonly this is where there are no trustees left to administer a scheme that is being wound up (paragraph 3.9). Typically, this occurs where a company that has sponsored a defined contribution scheme becomes insolvent. Opra have used their appointment power extensively and this has resulted in members gaining access to scheme assets; in one example two members gained access to some £480,000. As **Figure 17** shows, Opra's appointment of trustees has resulted in members gaining access to £159 million of assets between 1998-99 and 2001-02.

3.8 In 2002 Opra were given more extensive powers to monitor the progress of scheme wind-ups and to take direct actions to speed up the process where necessary. Some schemes are taking over 15 years to wind up and there is a risk that excessive amounts will be paid to advisers at the expense of the members. In some cases Opra may appoint trustees to wind up an occupational pension scheme where the existing trustees' performance has been unsatisfactory or where there are none, or issue directions to trustees to expedite wind-up. Opra have found that their initial cases - made up of the slowest schemes in wind up - have started to wind up more quickly since Opra gained these powers which they have not had to use in full.

3.9 Currently, 189 individuals or firms are members of the trustee panel from which Opra make appointments. In many cases it is inappropriate to appoint a professional trustee in view of the financial position of the scheme, but Opra have too few lay trustees on the panel to appoint one to every scheme that needs one and no power to pay trustees themselves (paragraph 2.9). Few cases have arisen where the scheme lacks funds to reimburse trustees, but in Opra's view there are many poorly funded schemes for which it would be difficult to appoint a trustee.

Opra have sought to improve understanding of pension scheme governance

3.10 Opra have sought to improve the governance of pension schemes not only through the use of their enforcement powers, but also through their educational activities, which seek to improve the understanding of:

- ordinary pension scheme members about what Opra does and what Opra could do for them;
- trustees concerning the legal and technical issues involved in complying with pensions law, for example their role and responsibilities;
- administrators and advisers, concerning technical matters, for example reporting to Opra; and
- employers concerning their responsibilities.

17 Appointment of trustees by Opra and funds made available to members

	98-99	99-00	00-01	01-02
Number of requests to appoint trustees	559	525	792	868
Number of schemes to which trustees were appointed	-	494	613	509
Value of funds accessed	£26m	£58m	£30m	£45m
Trustees appointed with exclusive powers to override other board members	N/K	11	18	24
Number of trustees disqualified	N/K	15	13	11
Prosecutions of disqualified trustees	N/K	1	1	-

35 *Owing to death or disappearance in the case of individual trustees or being wound up in the case of corporate trustees.*

3.11 Many interested parties we met regarded Opra's information and education activities as their strong point. Research by the Department published in 1998 also indicated some improvement in trustee knowledge of scheme governance, although this may have been influenced by the changes to pensions legislation as well as the work of Opra[36]. Opra undertake these educational activities through issuing a wide range of guidance, and they sought and attained the Plain English Campaign's Crystal Mark for a handful of publications aimed at the general public. The Crystal Mark is a seal of approval to encourage organisations to communicate clearly with the public[37]. Opra have also given presentations to conferences and training courses, and contributed to the development of syllabuses for training courses offered by professional bodies.

3.12 While Opra have produced guidance for trustees, including a trustee handbook, this had to be sent to the registered address of all live schemes, because the Pension Schemes Registry does not collect trustees' addresses. By contrast, Companies House hold the addresses of company directors which enables them to send new appointees a welcome pack reminding them of their obligations and giving them guidance.

3.13 Opra's web site, www.opra.gov.uk, provides a good starting point for both professional and lay users to find out about pensions regulation and the work of Opra, and they have continued to develop a web-based education strategy. For example, Opra set up a separate stakeholder pension web site, www.stakeholder.opra.gov.uk. which received nearly 7 million hits in 2001-02.

3.14 Opra do not have a specific statutory duty to educate and inform. Nonetheless, they have provided this service to increase compliance with pensions legislation and deal with misapprehension among businesses concerning stakeholder pensions. Their approach has focused on compliance with the Pensions Act rather than more general good practice in scheme governance. By contrast the Pensions Board, the Irish pensions regulator, have a wider ranging education and training role than Opra. For trustees, for example, in addition to guidance the Pensions Board have also prepared a trustee handbook, incorporating codes of practice for trustees. They register suitable trustee training courses and course providers. Registration is dependent on satisfying the Board on course content and continued registration is dependent on the outcome of evaluations (Board staff attend courses as observers)[38].

Opra have limited information on the impact of their work

3.15 There are qualitative indicators that scheme governance may be improving, as shown above through evidence on reductions in breaches being reported, in schemes without the appropriate statutory advisers, in the low occurrence of serious problems and in the availability of educational material for trustees and others. But it is not easy for Opra to move beyond these indicators and measure more rigorously how effective their work has been.

Opra's measurement system concentrates on internal measures, rather than outcomes achieved

3.16 Opra's key performance measures are:

- time taken to deal with reported breaches; and
- time taken to process applications to Opra to exercise their statutory powers and undertake certain actions e.g. to install a trustee or release surplus funds.

3.17 Opra achieved these performance targets during the financial year 2001-02. They were particularly successful in beating their targets for dealing with payment-related breaches and they matched demanding targets for tracing pensions at the Pension Schemes Registry[39]. They are struggling to match their new targets for dealing with reviews of Board determinations but in general they have only undershot their targets by small margins. Opra's performance measures focus, however, on processing the reported breaches and not on the impacts achieved, such as increased quality of governance or reduction of risk to scheme members.

36 *Department of Social Security Research Report No.81, "The role of pension scheme trustees", Karen Bunt, Mark Winterbotham and Robert Williams, June 1998.*

37 *Opra's guidance is available in hard copy or on the Opra web site. They have produced: Opra Factsheets - for consumers and members of pension schemes; Opra Guides - to give occupational pension scheme trustees a better understanding of the legal and technical issues involved in complying with pensions law; Opra Notes - technical publications for pensions professionals; and guides for employers.*

38 *More details of international comparisons are at Appendix 2.*

39 *The Pension Schemes Registry's key performance measures are the time taken to deal with payment related failures, the time taken to trace pensions, and the percentage of the due amount of levy collected by 31 March.*

Opra's limited information on those pension schemes without reported breaches suggests that non-compliance may be extensive

3.18 No regulator can be effective without information, for example on such matters as the extent of compliance with legislation. Opra do not have statistically reliable data on the level of non-compliance with pensions law because they rely on schemes being reported to them before they take action. They therefore have no comprehensive information on around 75 per cent of all schemes, many of which may be non-compliant, or to what extent non-compliance by the schemes puts members' interests at risk. Opra have, however, conducted 21 small surveys since 1997, asking pension scheme trustees to complete questionnaires. Although the surveys were mostly too small to enable statistically valid conclusions to be drawn, the results suggest poor levels of compliance among pension schemes. For instance, a survey conducted in 2000-01 found that many schemes had still not appointed a scheme auditor[40]. Opra should extend their survey efforts to improve their information on pension schemes.

Opra do not necessarily know to what extent their casework has improved governance

3.19 Opra are unclear about the improvements in levels of compliance or the impact on members which have come about as a direct result of their intervention. They have done no work to follow up the impact of their intervention and instead rely on a scheme not being reported as a proxy measure of compliance. It is therefore difficult to make an informed judgement on Opra's effectiveness in improving governance. The Pension Schemes Registry routinely record their success in identifying pension schemes which meet the tracing criteria although it does not regularly monitor the success rate of individuals in locating their pension scheme or the value of funds accessed as a result of a successful trace. The Registry has conducted small surveys which show a high degree of satisfaction and success in obtaining financial benefits as a consequence.

3.20 In view of the absence of measures of Opra's effectiveness in improving governance, we asked Opra's internal auditor to collect specific information for this review to assist us in assessing the efficiency and effectiveness of case processing. We were ourselves precluded from looking at cases directly by the Pensions Act (paragraph 1.27). Opra's internal auditor therefore developed some work he was already planning to perform detailed case analysis on 70 closed employer cases involving late payments and 69 closed trustee cases, a statistically valid sample. Each case in the sample was tested against a series of questions covering aspects of case handling and the outcome. In summary, this work showed that:

For late payment cases

- Opra staff dealt with the cases in accordance with Opra procedures and in a timely manner, although there were some inefficiencies in the process.
- Most reports of late payment were isolated incidents involving trivial periods of lateness.
- Opra had not sought to quantify the effectiveness of the action they have taken to reduce the future incidence of late payments such as by sending warning letters and fines.
- Recent decisions to change and simplify Opra's processes for handling cases and for triggering a reference to the Board were welcome and in line with a more risk-focused approach.

For cases involving breaches by trustees

- There was a need to set measurable objectives for this work so that Opra are clear what they are trying to achieve.
- Opra's procedures for handling the breaches were too cumbersome, insufficiently focused and expensive, and Opra needed to refine their approach to take greater account of the attitude of the scheme to achieving compliance.
- Most cases reported to Opra became compliant within four months of the report. It was often evident that the scheme was already actively seeking to comply at the time of the report and Opra's subsequent activity appeared to have had a negligible direct impact on the particular breach (although it may have had a deterrent effect as far as potential future breaches are concerned). In at least 10 per cent of cases, however, Opra's activity evidently made a significant difference.
- There are questions to be addressed about the efficacy of fining schemes. Fining trustees after they have complied sends mixed messages. Fining trustees before compliance does not appear to protect scheme members' interests, particularly when Opra relies on whistleblowers (advisers) reporting if further breaches occur.

40 *Opra Annual Report 2000-1, June 2001, page 25.*

The effort applied by Opra to their various activities is not always commensurate with the risks

Opra have processed large numbers of low risk breaches

3.21 Most of Opra's resources have been applied to dealing with the large number of breaches that are reported to it, nearly 56,000 during the five financial years since 1997-98. There are two factors explaining why Opra have had to place so much effort in casework:

- Regulations made under the Pensions Act originally allowed Opra to bring only criminal prosecutions for late payments of employee contributions and late accounts. This limited the number of cases that Opra could bring, as interviews had to be conducted under the labour intensive Police and Criminal Evidence Act rules and the employers had to be brought before a court within a strict timeframe. The shift from criminal to civil breaches made it far easier to bring cases as it lowered the standard of evidence required and enabled the Opra Board to impose fines and hear appeals. But the Department asked Opra to ensure that they treat these cases as seriously as before and this has resulted in more cases being submitted to the Opra Board.

- There is some evidence that auditors and actuaries are over-reporting breaches. For instance, the Society of Pensions Consultants told us of a case in which the auditor had reported an employer for making excessive, rather than insufficient, contributions. Auditors and actuaries may justifiably be influenced by Opra's tough line on reporting breaches to avoid any risk of Opra or another party referring them to their professional body for disciplinary action. This is a serious risk as by the end of 2001-02 the professional bodies for auditors had applied and publicised penalties in over 80 cases, one firm being fined £18,000[41]. By contrast in Ireland a wider range of advisers are legally required to report to their pensions regulator, the Pensions Board, but only where they suspect fraud or material misappropriation. Voluntary reports can also be made on any matter concerning the state and conduct of a scheme. Between June 1996 to September 2002 they received 48 reports (10 compulsory and 38 voluntary), 33 of which have been closed without recourse to legal action and 15 are ongoing (Appendix 2).

3.22 The review of Opra's handling of late payment cases (paragraph 3.20) has shown that most reports of late contributions were not serious. Late payment of contribution cases account for 64 per cent of occupational pension scheme cases reported to Opra, and about 20 per cent of the regulatory staff. Opra have therefore developed specific procedures to handle these high volume reports which have been progressively streamlined since the switch to civil penalties in 2000. The sample of cases reviewed indicated that over 50 per cent of breaches were only up to 10 days late (this represents some 19,000 cases if the results of the sample are extrapolated to all cases received in Opra's first five years) and 80 per cent under 30 days late. The eventual impact on scheme members of payments being a few weeks late is minimal - bigger problems arise where payments are not paid over for a substantial period, and the employer goes into liquidation before the payments can be made. Opra follow the same initial scrutiny process for a breach whether it is one or forty days late, although less significant cases are closed earlier without extensive enquiries being made.

3.23 The review found that the overwhelming majority of late payment cases were isolated in nature and arose in connection with employers who had previously not been reported on, suggesting that they had previously paid the contributions on time and understood the requirement to do so. The cause of late payment was often administrative failing or an isolated mistake such as a cheque lost in the post. The review concluded that the process adopted for handling these cases was complex and expensive, having been designed for significant breaches. In July 2002 the Board approved a less elaborate process.

3.24 Only a small proportion of total late payment breaches (2½ per cent) have met the criteria for referral to the Board to consider applying some form of penalty. But the cases that have gone to the Board have applied a heavy load on the part-time Board members and Opra staff. And the volume has increased significantly, from 35 cases in 1999-00 to 568 in 2001-02. In 2002 Opra persuaded the Department to increase the number of Board members so that cases could be handled more expeditiously and work processes were revised in 2000 to streamline handling by regulatory staff, the Board secretariat, and the Board determination committees themselves.

3.25 Nevertheless, some of the cases passed to the Board for a determination do not appear to be very serious and this may give some indication of the insubstantial nature of many of the cases that are not submitted. Sixty per cent of the 650 cases that the Board considered in 2000-01 related to late payment of pension contributions. The Board have imposed a fine as low as £10 for a breach

41 *Opra, Annual Report 2000-1, page 27, June 2001.*

and for over 65 per cent of breaches fines have been of £50 or less, which the review of case handling procedures concluded were unlikely to produce sufficient deterrence to warrant Opra's costs. The low fines may suggest that some of these cases related to matters that were not in themselves material to pension scheme members' interests.

3.26 Trustee-related breaches are more likely to reveal significant risks to members' funds, for instance due to the absence of a scheme auditor or actuary. The review of cases processed by Opra not surprisingly indicated that higher proportions of the breaches reported, and of those referred to the Board, represented potentially serious problems. Nonetheless, 25 per cent of cases involved breaches rectified by the time of the report or within two months of the relevant statutory deadlines. On the other hand of the 5-10 per cent of cases that went to the Board for consideration of a penalty for the breaches identified, over 70 per cent of breaches resulted in a fine greater than £100 and that is likely to have a deterrent effect proportionate to the Opra costs involved.

3.27 **Figure 18** gives an example of an apparently low risk case investigated by Opra and put to the Board for determination, along with a case where Opra's intervention was clearly beneficial.

18 Late payment cases considered by the Opra Board

An apparently minor breach

The scheme was an industry-wide arrangement with 65,000 members. The case involved a charity's failure to pay over contributions deducted from their employees' earnings within the statutory timescale in three months during 2000. This is a civil breach for which Opra can fine a corporate employer up to £50,000 for each breach. The Opra Board found the allegation proved and imposed a fine on the employer totalling £150. The employer applied for a review of the level of penalty imposed. The office manager of the charity wrote to Opra's review committee to explain that she was responsible for paying pension contributions on time and that the contributions related solely to her pension. The review committee, while indicating to the trustees that they were correct to report this breach to Opra, decided not to impose any penalty in this case, but warned the employer that it would not treat any repetition so leniently.

A serious breach

In one defined benefit scheme the trustees delayed by 17 months putting in place a compliant schedule of contributions, until May 2002, and this was only following Opra intervention. The employer had made no contributions to the scheme since September 2000, but then made the full contribution of £54,500 to bring the contributions up to date. Without Opra's intervention it is likely that contributions would never have been paid. The Opra Board found that the trustees had been badly advised by third parties.

The focus on large numbers of breaches may increase the risk that serious problems will be missed

3.28 Opra's strategy has been to examine every breach reported to them and therefore many cases are for breaches that have been rectified at the time of report. This means that they have risked being overwhelmed by the volume of cases they have to process, and therefore of giving insufficient attention to potentially serious cases. The Association of Consulting Actuaries expressed concern that because of the large number of automatic reports produced, the few reports which probably are material may not receive the attention they merit. The National Association of Pension Funds and the Society of Pension Consultants thought that Opra should focus their resources and concentrate on bigger issues.

3.29 In at least one case Opra's active involvement came too late to prevent action that is now subject to criminal proceedings and for which compensation of £326,000 has been paid to date. An Opra-appointed trustee to the scheme claimed that sums in excess of £2.9 million had been removed from the scheme in circumstances which it believed were improper, reducing the scheme assets to just £70,000[42]. A report on this incident commissioned by the Department in March 2001 and Opra's own internal review (February 2001), have resulted in a number of recommendations that Opra are actioning. As a consequence of the recommendations made in these reports Opra have taken steps to address the weaknesses identified in their systems. **Figure 19** provides a summary of the changes that Opra introduced:

19 Opra have introduced the following changes to their casework handling procedures

- introduced specialist teams;
- improved risk assessment procedures;
- developed improvements to the computer database, including computer-based recording of all casework activity;
- introduced regular routine searches of the database on key individuals involved in a case;
- commissioned a major IT project to automate data matching.

Source: Hansard, Written Answer to Richard Burden MP, 26 October 2001

42 *Details taken from the Pensions Compensation Board annual report for 2001-02. (HC 1051 of Session 2001-02).*

3.30 The potential overload of Opra has been even worse for reports about late payment of personal pensions. Pension providers made over 250,000 reports to Opra in the first year (2001-02). This was far in excess of the 10,000-30,000 the Department had estimated on the basis of limited research to inform the regulatory impact assessment, and Opra's more detailed subsequent enquiries. Most turned out to be false due to errors by the pension providers. Of the first batch of 408 apparent non-payments examined in detail only one case was found sufficiently serious to warrant a penalty. This raises questions about an approach based on examining individual cases, and points to the need for an approach that sorts out the, probably few, cases where there is a serious underlying problem from the remainder. Opra has further developed approaches along these lines for occupational pension breaches as described in paragraphs 4.23-4.24.

Opra's regulation has added to the burdens on pension schemes and their advisers

3.31 Over 26,000 pension schemes have been examined by Opra in their first five years. This is approximately one quarter of existing occupational pension schemes. Responding to an Opra investigation can place significant burdens on trustees and employers, especially small businesses and schemes. A survey carried out by the Association of Consulting Actuaries found that over the last five years 63 per cent of firms with final salary schemes said that their pension scheme costs (administration and contributions) had grown at a faster rate than other business overheads[43].

3.32 In our report on Better Regulation, we noted the particular burdens that regulation places on small businesses. In such organisations, the proprietor usually has to give up valuable time not only to read and understand the regulations but also work out what it means for the business in complying with the requirements[44]. The Federation of Small Businesses told us that Opra could in some circumstances bear down too heavily on small businesses. And our discussions with pensions professionals have brought to light concerns where apparently well-run pension schemes have been penalised for isolated breaches.

3.33 The Small Business Service (SBS) are an executive agency of the Department of Trade and Industry which advises on small business consultation and analysis during the assessment process for new regulations. The SBS told us that their main concerns with pension regulation were with the introduction of the stakeholder pension scheme that required most small businesses to provide access for their employees to a stakeholder scheme by October 2001. Opra have successfully sought to persuade employers reported to them for non-compliance to provide access to a stakeholder pension and have not yet imposed any fines. The SBS agreed to include our questions on pensions regulation in its summer 2002 survey of Small and Medium Enterprises in England. The survey included micro businesses (with one to nine employees), small businesses (with 10 to 49 employees) and medium businesses (with 50 to 249 employees). Responses to the SBS survey, showing the concern of small business, are at **Figure 20**.

3.34 Other countries exempt small schemes from regulation. Consequently the proposed EU Pensions Directive (paragraph 1.25) gives governments the option of not regulating schemes with less than 150 members if they so wish. The Pensions Simplification Review and the Department consider that members are entitled to equal protection, but also recognise that regulation needs to be proportionate to the risks. A possible approach in this country would be encouraging the creation of group and industry-wide schemes, such as are prevalent in the Netherlands, and measures to encourage small schemes to join in larger combinations.

43 *Association of Consulting Actuaries Press Notice, Survey Results Spell Pensions Misery for Millions, 23 November 2001. www.aca.org.uk.*

44 *Report by the Comptroller and Auditor General, Better Regulation: Making Good Use of Regulatory Impact Assessments, HC 329 2001-2, page 15 paragraph 1.5, 15 November 2001.*

20 Responses to Small Business Service survey

Pension arrangements

Of those responding, 51 per cent had not made pensions arrangements for their staff, 28 per cent had stakeholder pensions, 8 per cent personal pensions (contributed to by the employer) and 7 per cent personal pensions not contributed to by the employer and 4 per cent had occupational pension schemes. Micro businesses (those with under nine employees) were by far the most likely to have no pension arrangements (61 per cent) as those with under five employees were under no legal obligation to provide access to a stakeholder.

The majority of people (52 per cent) interviewed (excluding those with no pensions) felt the legal obligations placed on the employer were about right. Only 2 per cent thought they were too low. There is no evidence of a difference between business sizes.

When excluding those with no pensions, 56 per cent found the legal obligations in respect of pensions to be very easy or fairly easy to understand. Only 22 per cent found it difficult.

Contact with Opra

The larger the business, the more likely that it had been contacted by Opra about its pension schemes. Given the introduction of stakeholder pensions, it is not surprising that there were more contacts about this type of pension.

Many of the contacts concerned the Pension Schemes Registry. Breaches of the Pensions Act regarding late payments were a concern of medium businesses whereas the Minimum Funding Requirement was more a concern of micro businesses.

Major concerns

- Too complex
  "It's all too highly regulated for companies of our size and it's all too much hassle"
- Having to rely on advisers to deal with the law
  "It is difficult to understand and most people have to get a financial advisor for it"
- Small businesses are having to do work for Government
  "It is the gradual shedding off to employers of responsibility - they do not care if you are IBM or some bloke from Knaresborough"

Source: Responses to NAO questions in Small Business Service Summer 2002 survey of Small and Medium Enterprises in England

Part 4

Opra's changing focus

Opra have not set out objectives that clearly align to the risks facing pension scheme members

Unlike some other regulators, Opra do not have statutory objectives

4.1 Opra's objectives are not specified in statute - the Pensions Act 1995 specifies only their powers. The governing legislation[45] of some other regulators, such as OFWAT for the water industry, OFGEM for the gas and electricity industry, and Postcomm for the postal services industry, provides a clear hierarchy of objectives. For example, the Postal Services Act 2000 gives Postcomm a primary statutory objective to ensure the continued provision of a universal postal service at a geographically uniform tariff, along with a series of other objectives. The Financial Services Authority, which regulates the financial services industry, also has clear statutory objectives[46].

4.2 While there are other UK regulatory bodies that do not have their objectives specified in statute[47], some of them have formulated their own objectives. For example, the Office of Fair Trading produced a statement of purpose in July 2001 **(Figure 21)**. This sets out its overriding goal and what its activities are intended to achieve.

4.3 From 1996 Opra have stated their goal as being "a responsive regulator which helps to ensure that occupational pension scheme members are protected and that schemes comply with the law". Their objectives **(Figure 22)**, agreed with the Department in 1997, relate to the actions Opra could take in support of their mission, for instance investigating alleged and suspected breaches of the law and regulations to take appropriate action against employers or trustees where breaches are found. Many objectives do not indicate the outcomes that Opra were seeking to achieve through their actions, and no distinction was made in the objectives between different types of breach. Important activities such as appointing trustees to schemes that need them were not mentioned at all.

Opra have found it hard to develop objectives that specify what they are trying to achieve

4.4 It would have been difficult in 1996 for Opra to formulate their objectives in a less functional way without knowing the extent of non-compliance with the Pensions Act. The extent of non-compliance became apparent only once they had been operating for some time, and only then could Opra have undertaken the risk analysis needed to determine what their activities should and could reasonably be expected to achieve. Opra's Core Management Team and Board in practice had views on the priorities that should be accorded to different activities and what they were intended to achieve. For instance they decided to take a pragmatic approach to breaches early on so as to give schemes time to become informed of their requirements and comply, before taking stronger action against trustees and employers. But the strategy within which actions were taken was not clearly articulated.

45 *Although other regulators in the United Kingdom deal with industries with different characteristics and therefore different risks, the legislation establishing them provides a useful point of comparison with Opra.*

46 *The Financial Services Authority has four statutory regulatory objectives:*
· market confidence: maintaining confidence in the financial system;
· public awareness: promoting public understanding of the financial system;
· consumer protection: securing the appropriate degree of protection for consumers; and
· reduction of financial crime: reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime. The Financial Services and Markets Act 2000, Chapter 8, sections 3 to 6.

47 *For instance, the Charity Commission and the Environment Agency.*

21 Office of Fair Trading (OFT) Statement of Purpose

1. The OFT's goal is to make markets work well for consumers. Markets work well when there is vigorous competition between fair-dealing businesses. When markets work well, good businesses flourish.

2. The OFT's activities in pursuit of this goal involve:

    1. enforcement - of competition and consumer protection rules
    2. investigation - into how markets are working
    3. communication - to explain and improve awareness and understanding

Enforcement

3. The OFT will uproot and deter all forms of anti-competitive behaviour, including cartels and the abuse of market power. The OFT will advise referral to the Competition Commission (CC) of all mergers that might substantially lessen competition and, where appropriate, will refer to the CC markets where competition may not be working well.

4. The OFT will lead other enforcers in robust application of the rules that protect consumers against unfair trading, taking court action where necessary. The OFT will also take practical steps to encourage self-regulation such as codes of practice.

5. The OFT will work with its international partners to ensure effective enforcement.

Investigation

6. The OFT will investigate markets proactively to see whether they are working well for consumers. As well as business behaviour, investigations will cover government laws and regulations to ensure a competitive environment for business and consumers. Where appropriate, investigations will lead to enforcement action or to recommendations to government, which will be published.

Communication

7. The OFT will communicate clearly in order to:

    1. show how competitive markets that work well are important for consumers, fair dealing businesses and economic performance;
    2. explain its decisions transparently;
    3. promote compliance by explaining to business what the law is and how the OFT will apply it;
    4. promote consumer awareness and confidence;
    5. co-ordinate effectively with enforcement partners locally, nationally and internationally; and
    6. advise government on how to achieve the most effective regime for competition and consumers.

8. The OFT has a leading role in promoting competition and consumer interests in the UK. The OFT is an independent and professional organisation but has no monopoly of wisdom. The OFT and its staff will be open and receptive to the ideas and concerns of business, consumer groups and others. The OFT will evaluate its own performance and will be accountable to Parliament and the public.

Source: OFT Statement of Purpose 17 July 2001. www.oft.gov.uk

22 Opra's objectives

Objectives agreed in 1997

- To investigate alleged and suspected breaches of the law or regulations and to take appropriate legal, disciplinary or regulatory action against employers or trustees where breaches are found.
- To take steps to safeguard scheme members' assets where, as a result of possible or actual breaches of the law or regulations, there is a serious threat to them.
- To monitor scheme compliance with the appropriate legislation, regulations and guidance, primarily by investigating reports of non-compliance, but also by conducting spot checks and surveys, where no such reports have been made.
- To provide scheme members and others with simple easily identified means of informing Opra about relevant incidents and allegations.
- To maintain a record of pension schemes that can be used to trace information important to people with a legitimate interest in pension scheme rights, and to collect the levies.
- To keep all those with responsibilities for the management and control of occupational pension schemes informed about Opra's standards, intentions and actions by the publication of guidance notes and findings.
- To develop effective contacts with other relevant regulators, professional bodies, trade associations and scheme member groups.
- To keep the relevant ministers and officials informed about current events, activities and plans.

Draft objectives developed in 2002 (see paragraph 4.6)

- Maintaining confidence in the system of private pensions - by helping to ensure that correct contributions are paid on time to pension schemes, that funds are properly invested, that funds are protected and that they are available to pay pensions when needed.
- Ensuring proper standards - by helping in the education of trustees and in making them aware of their duties, issuing guidance and bulletins. Where we find breaches of pensions law we can impose fines and disqualify trustees. Through our web-site we publicise decisions we make on breaches of pensions law.
- Protecting pensions assets for the benefit of members - by looking for funds that are at risk, following-up reports of schemes that do not comply with the law, carrying out investigations, appointing independent trustees and winding up schemes. Where there are serious problems we recommend prosecution.
- Assisting members to obtain their pension benefits - by maintaining a register of all pension schemes and providing a free service to help people trace their pensions, with a help-line for queries. Where there are old schemes without trustees we can appoint new trustees so that benefits can be paid.

4.5 The major challenge for Opra from 1997 was to process and respond to the greater than expected number of breaches reported to them. Most of their effort was focused on handling cases rather than being targeted on developing a strategic response to the problems being identified based on the risks to scheme members. OPRA's response has varied according to the gravity of the offence, but has not differentiated between different types or sizes of schemes. Furthermore Opra have not clearly specified their understanding of materiality in the context of the Pensions Act requirement that only material breaches need be reported.

4.6 Until mid 2002 Opra's objectives have been revised only to reflect their additional powers. Opra's Board, in response to a questionnaire from the Quinquennial Review of Opra, put forward some possible future objectives as a starting point for discussion (Figure 22). These objectives were influenced in part by the discussions they had previously had with us.

Opra's view of their powers has been restrictive

4.7 Opra consider that their freedom to operate is constrained by their governing legislation, and they therefore focused much effort onto areas where their powers were clear, which when they were established were widely considered to be addressing the most important problems. They have largely decided what they should do by inferring functions from their reading of their statutory powers, rather than considering what they ought to be achieving from first principles and then determining how they could use their powers so to do. This has given rise to a perception that Opra's first reaction to a new situation is to examine the legislation to see whether it falls within their remit rather than looking at the matter reported to see if remedial action is necessary.

4.8 Opra's powers, however, are subject to various interpretations, especially as some powers to obtain documents and incur expenditure relate to Opra's "functions" which are not defined in the legislation. For instance, it is not clear to what extent Opra have a role going beyond failures of governance involving a breach of the Pensions Act or related legislation to cover theft or other departures from the trustees' fiduciary duties. In discussion with members of Opra's Core Management Team we noted differing views on what Opra could do and the extent to which the interpretation should be stretched. A cautious approach to the interpretation of powers was perhaps inevitable, given that the Pensions Act did not provide a clear vision of what Opra were established to achieve nor a definition of their regulatory functions, in the absence of a contrary steer from the Department.

4.9 While a cautious interpretation of statute may have influenced how Opra have chosen to operate, there are some aspects of the legislation that have clearly been restrictive. For instance, Opra have been advised that they cannot use the Pension Schemes Registry to collect or record information that would assist them in undertaking regulatory functions, although they can use information collected for the Registry's statutory scheme tracing purposes for regulatory functions. The information on the Register is collected only to facilitate the tracing of schemes and does not include the names and addresses of individual trustees, the scheme auditors or actuaries or the value of assets. While it is probable that Opra could collect this information themselves they would need to establish a separate database to hold it, and would wish to avoid the imposition of additional regulatory burdens wherever possible. And Opra's ability to appoint independent trustees may be constrained by their inability to pay them, in those cases where it is not clear that the scheme itself could do so. Paragraph 2.9 above sets out other gaps, resulting either from inadequate powers, or Opra's interpretation of their powers.

Until recently the Department have not sought to influence directly Opra's development of their role

4.10 Opra have kept the Department fully informed of their objectives and how they have sought to discharge them. Although the Department are responsible for agreeing Opra's objectives, they have not questioned Opra's objectives or sought a more active consideration of the outcomes to be achieved or the priorities in achieving them, principally because they wished to develop an arm's length relationship with Opra.

4.11 Opra consider that the Department have been strongly guided by the principle that they should be a reactive regulator. Although this may have been an appropriate approach at the outset, it would have been possible to develop and test the boundaries of this principle as Opra grew more knowledgeable and experienced. The Department supported the reactive approach in Opra's early days and helped them to refine their role by, for example, introducing legislative changes, from 2000, so that civil sanctions replaced criminal sanctions for the higher volume cases received by Opra. Over the last two years or so there has been a growing recognition of the need for risk-based regulation of pensions schemes. This has been reflected to some extent in the new responsibilities given to Opra for stakeholder pensions and for overseeing the winding up of occupational pension schemes. The Department and Opra had planned to use the current Quinquennial Review of Opra as the mechanism to review whether there was a need for a more risk-based regulatory approach to occupational pensions.

4.12 Whenever Opra have approached the Department to clarify or amend their powers the Department's response has been cautious. For instance, in 1999 Opra obtained legal advice that they were not empowered to use questionnaires to ask for information, only for documents. Whilst pragmatic solutions were found to the problem, it constrained Opra's approach and added to the climate that Opra's role should be predominantly reactive. Although the Department sought to widen these powers (by preparing the necessary draft legislation referring to information rather than documents), it was eventually decided not to pursue the changes. The Department have also in any case been cautious about changing Opra's powers where Opra consider them problematic. For instance they resisted changes to the powers of the Pensions Schemes Registry (paragraph 4.9 above). They did, however, put forward legislative changes that from 2000 re-categorised late payments of contributions as a civil offence but in doing so insisted that this should not change the seriousness with which Opra treated the breaches despite the heavy workload this involved.

4.13 Where there is uncertainty about an organisation's functions and powers, it may experience difficulties handling new developments. In Opra's case the recent appearance of 'pension liberation' schemes has tested their ability to act decisively. Pension liberators persuade people of working age to transfer their pension money to their scheme which, after taking a fee of up to 30 per cent, then pays people their pension money. As the money is no longer for a pension, it is taxable and the Inland Revenue will recover tax at the individual's marginal rate (up to 40 per cent) from the people. The risks to scheme members are that they will lose up to 70 per cent of their pension money and no longer have a pension when they retire. Pension liberation provides an example of how Opra need to deal with novel types of risk.

4.14 There have been a number of such cases in the past. The most recent group of cases came to Opra's attention from Summer 2001 and they are currently aware of about 10 possible cases, involving at least £50 million of pension assets. Pensions law relating to these cases is not clear cut, although Opra have powers to intervene where scheme members' interests are at risk. Opra were able to act quickly to appoint independent trustees to three pension liberation schemes, and imposed a maximum fine in the first case that came before them. Their response to some of the schemes concerned has been delayed by uncertainty about which of their powers they could use. Opra also re-assured ordinary schemes that delaying transfers while they carried out checks to see whether the transfer is to a genuine scheme would not be sanctioned as a breach of pensions law[48]. Inland Revenue and Opra have since then provided further guidance to trustees which appears to have limited further abuse in this area. Pension liberation has led to improved liaison between the Opra, the Department for Work and Pensions and the Inland Revenue.

Opra are seeking to focus more on risks and systems

Opra are improving their understanding of key risks and their regulatory role

4.15 Comparing Opra's approach with that adopted by their counterparts in the Republic of Ireland and the Netherlands shows that there are several possible approaches to maintaining the security of pension schemes. In Ireland, the Pensions Board have put much of their emphasis on education, guidance, and pension development more generally, and have limited reports of breaches to the most serious cases. The regulator in the Netherlands has focused on investment performance and the risk analysis undertaken by schemes themselves. Both approaches appear to be based on the assumption that the people running pension schemes are mostly seeking to do their best for scheme members and need education targeted at where they are least skilled. Sanctions are left to be applied to the small minority who do not have scheme members' interests at heart. While neither approach may be the best for the UK's circumstances, it is important that Opra take an informed view of the risks to determine which regulatory instruments would be most effective to deal with each of them.

4.16 Opra's management team have always been aware of risks to pension scheme members and have sought, within their statutory constraints, to enhance their understanding of how they can continue to reduce the risks faced by pensions scheme members. Their consideration of risks has informed our risk analysis in Part 2. The Board have also considered, in 2002, how their work fits into the principles of better regulation laid down by the Better Regulation Task Force **(Figure 23)**. The main conclusion was that, in the absence of statutory objectives underpinning Opra's work, the two policy objectives derived from the Task Force's principles should be:

- to protect consumers, employees and vulnerable groups from abuse; and
- to promote the efficient working of markets.

48 *Opra Press Release, Regulator advises trustees on pension liberation, Wednesday 29 May 2002.*

23 The Better Regulation Task Force's principles of good regulation

The Government established the Better Regulation Task Force in September 1997 as an independent body that advises Government on action which improves the effectiveness of Government regulation, taking particular account of the needs of small businesses and ordinary people. Its principles of good regulation are:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

Source: Better Regulation Task Force, Principles of Good Regulation re-issued 2000

Opra are working to reduce the burden of the large numbers of minor breaches

4.17 As Part 3 indicates, Opra have received far higher volumes of reported breaches than was originally estimated, but most breaches have been relatively minor. Our research suggests an effective regulator must be able to identify those areas where risk is greatest to enable them to make best use of limited resources. We benchmarked organisations facing similar problems and identified several cases where a risk-based approach has been successful. The Charity Commission, the Financial Services Authority, Customs and Excise and the Inland Revenue use risk analysis to allocate resources and prioritise work (Appendix 3). For instance, Customs and Excise use a process of central risk analysis overlaid with local risk assessment to identify higher risk traders deemed to be non-compliant. The output of the central risk assessment is fed into an assurance model that is the basis for resource allocation, with higher risk traders having more resources directed towards them.

4.18 Any risk-based approach to handling large numbers of reports requires a process for separating out cases where reports may point to serious underlying problems. This is one of the key controls identified in paragraph 2.7. Since 1997 Opra have used a system of "red-flagging" reported breaches where staff members consider that there is a higher level of risk, for instance where members' funds might be misappropriated. This resulted in more senior members of the team being involved at an earlier stage in the investigation and also a quicker resolution of the case.

4.19 Opra have been developing a process for estimating the seriousness of the risk in cases being examined by Opra, so as to reduce the likelihood of high risk cases going unnoticed (paragraph 3.29 above). Opra have identified potential risk criteria so that cases displaying certain characteristics associated with serious risks would be flagged up as "high risk". Formal scoring of new cases commenced in October 2001 and current cases were also re-evaluated. Most cases are risk-rated against a set of criteria, for example whether the scheme has professional advisers, whether there has been a high turnover in trustees and the types of breaches associated with the scheme. Applying these criteria to each case produces a score of between one and five. Higher scores should be immediately brought to the attention of senior management to allow resources to be allocated appropriately and the correct regulatory response to be taken, such as visits to schemes, contacting professional advisers or the suspension or appointment of trustees.

4.20 In January 2002 over 94 per cent of cases had been scored as having no risk and only 2.2 per cent are scored sufficiently highly to warrant alerting a manager or director **(Figure 24)**. The review of trustee-related breaches undertaken by Opra's internal auditor concluded that this approach was a good step towards protecting scheme members interests, but raised issues about the timeliness of assessment in a few cases and the availability of the information needed to make a robust assessment. The very limited information about individual schemes held by the Pension Schemes Registry restricts Opra's ability to cross reference schemes reported with others that may have the same trustees or professional advisers and this could reduce the effectiveness of reactive risk assessment. Opra have therefore continued to press the Department to allow the Registry to become a regulatory tool by collecting and recording information for regulatory and policy evaluation use (paragraph 4.12 above).

4.21 Opra seek to review cases throughout their life as new information is reported or uncovered. As the formal risk assessment model beds in these review procedures will need to be developed to ensure that schemes are re-scored in the light of new information so that all potentially high-risk cases are brought to management attention.

4.22 Opra have conducted small surveys since 1997 to analyse the factors affecting the risk of non-compliance with pensions law. In 2001 they conducted a survey of a random sample of 1,000 occupational pension schemes to analyse the risks of non-compliance using data mining software. In mid 2002 Opra tested a further 250 schemes selected using the risk model developed from the previous survey, so as to validate the model. They intend to apply the model to both new and closed cases, to identify poorly run schemes.

24 Risk scores as at 22 January 2002

Score	Action taken	Number of schemes	Percentage of cases
1	Case not yet scored	0	0%
2	No perceived risk with case	1,776	94.1%
3	Case reported to team leader	70	3.7%
4	Case reported to the manager	34	1.8%
5	Case reported to the director	8	0.4%

Opra are developing different ways of tackling the causes of relatively minor breaches

4.23 Providers of personal pensions have reported a very large number of apparently late payments to Opra. This has obliged Opra to take a more risk-based approach to such cases. This is because the workload involved in handling 250,000 reports would be disproportionate to the risks involved, especially as many of these reports are the result of problems with the providers' information systems. Opra have therefore started to work directly with the providers on a one-to-one basis to help them sort genuine and material cases of late payments from recording errors, thereby reducing the amount of casework.

4.24 Opra are applying the lessons learned from dealing with personal pensions to their work on occupational pensions. They have identified opportunities for streamlining their administrative functions and selection criteria to allow them to concentrate their investigation work on persistent reports of late/non-payment of contributions. They are also liaising closely with the pensions industry to develop electronic reporting of breaches where appropriate. The action by the Pensions Board, the Irish pensions regulator, to target education and enforcement action on the 16 companies providing administrative services to a large proportion of schemes in Ireland shows how a segmented approach could develop further. This is especially relevant as about 10 centralised schemes or insurance providers make over half the reports of late payment breaches in the UK.

4.25 The review of case handling undertaken for us and the Opra Board (paragraph 3.20 above) resulted in the following main recommendations to Opra's Board, which have agreed to take appropriate action on them:

- Develop quantifiable objectives as to what they are seeking to achieve in relation to late payments, along with measures of effectiveness and a supporting management information system.
- Build on Opra's current approach to late payments by piloting different approaches to reports, such as taking no action, using other means of informing trustees and others of their duties and applying different fining policies.
- Discuss with the Department possible changes to the law to increase the length of time before late payments have to be reported.

Opra and the Department are working together to develop a new kind of regulator

4.26 Recommendations in the report of the Pensions Simplification Review (paragraph 1.24) should help Opra to be more effective in focusing on the risks to pension scheme members[49]. Of particular relevance are the recommendations relating to the development of a more proactive and broader-based approach to regulation and a shift in emphasis within pensions legislation towards the objective to be achieved rather than the process needed to achieve it. There are also a variety of other changes designed to make pension legislation and administration simpler.

4.27 In their submissions to the other concurrent reviews taking place with this review (the Pickering Pensions Simplification exercise and the Quinquennial Review), Opra have advocated changes in the regulatory legislative framework and in their role as a pensions regulator. For example they advocated greater proactivity and more proportionate regulatory responses to the different types of pension schemes.

49 *Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002.*

Bibliography

Accounting Standard Board, ASB Press Notice 204, ASB proposes an Extended Transitional Regime for UK Pensions Standard, 2 July 2002.

Association of Consulting Actuaries Press Notice, Survey Results Spell Pensions Misery for Millions, 23 November 2001.

Association of Consulting Actuaries Press Notice, ACA Survey of Final Salary Schemes, 17 June 2002.

Better Regulation Task Force, Principles of Good Regulation re-issued 2000.

Department for Work and Pensions, Service Delivery Agreement for the Department for Work and Pensions, 24 May 2002.

Department for Work and Pensions, The Pensioner's Incomes Series 2000-1, 29 May 2002.

Department for Work and Pensions, A Simpler Way to Better Pensions, (The Pensions Simplification Review or the Pickering Review), 11 July 2002.

Department of Social Security Research Report No.81, "The role of pension scheme trustees", Karen Bunt, Mark Winterbotham and Robert Williams, June 1998.

Department of Social Security Research Report No.82 "Pension Scheme Investment Policies", Cliff Pratten and Steve Satchell, June 1998.

Department of Social Security Pensions Green Paper, A new contract for welfare: Partnership in Pensions, Cm 4179, December 1998.

Department of Trade and Industry, Report by the Honourable Sir Roger John Laugharne Thomas and Raymond Thomas Turner FCA (Inspectors appointed by the Secretary of State for Trade and Industry), Mirror Group Newspapers plc - Investigations under Sections 432(2) and 442 of the Companies Act 1985, 30 March 2001.

The Financial Services and Markets Act 2000.

Government Actuary's Department Press Release, Eleventh survey of occupational pension schemes, 23 August 2002.

Hansard, Written Answer to Richard Burden MP, 26 October 2001.

HM Treasury, Institutional Investment in the United Kingdom: A Review (Myners' Review), March 2001.

HM Treasury, The Review of Medium and Long-Term Savings in the UK, 9 July 2002 or the Sandler Review.

OFT Statement of Purpose 17 July 2001.

Opra Annual Report 1996-97, June 1997.

Opra Annual Report 1997-98, June 1998.

Opra Annual Report 1998-99, June 1999.

Opra Annual Report 1999-2000, June 2000.

Opra Annual Report 2000-01, June 2001.

Opra Annual Report 2001-2, July 2002.

Opra Bulletin 25, more haste, less speed, August 2002.

Opra Press Release, Regulator advises trustees on pension liberation, Wednesday 29 May 2002.

Opra, A Guide to appointing professional advisers - a guide for occupational pension scheme trustees, October 2000.

Opra's Annual Report on Risk Management, May 2002.

The Pensions Act 1995.

The Pensions Board, Annual Report and Accounts 2001, July 2002.

Pensions Law Reform, the Report of the Pension Law Review Committee - Chairman: Roy Goode, CM 2342, HMSO, September 1993. Also known as the Goode Report.

The Pension Schemes Act 1993.

Pensions Week, 8 July 2002.

Report by the Comptroller and Auditor General, Better Regulation: Making Good Use of Regulatory Impact Assessments, HC 329 2001-2, 15 November 2001.

SI 1990 No. 2278 The Register of Occupational and Personal Pension Schemes Regulations 1990.

SI 1997 No. 371 The Register of Occupational and Personal Pension Schemes Regulations 1997.

The Welfare Reform and Pensions Act 1999.

List of Web sites

Accounting Standard Board web site, www.asb.org.uk

Association of British Insurers web site, www.abi.org.uk

Association of Consulting Actuaries web site, www.aca.org.uk

Department for Work and Pensions web site, www.dwp.gov.uk

Government Actuary's Department web site, www.gad.gov.uk

HM Treasury, web site, www.hm-treasury.gov.uk

Office of Fair Trading web site, www.oft.gov.uk

OPAS, the Pensions Advisory Service web site, www.opas.org.uk

Opra web site, www.opra.gov.uk

The Pensions Board (of the Republic of Ireland) web site, www.pensions.board.ie

Pensions Guide (Department for Work and Pensions) web site, www.pensionsguide.gov.uk

The Pensions Ombudsman web site, www.pension-ombudsman.org.uk

The PVK (The Netherlands Pensions regulator) web site, www.pvk.nl/engels

Stakeholder pension web site, www.stakeholder.opra.gov.uk

Glossary

Actuary	An adviser on financial questions involving probabilities relating to mortality and other contingencies. In the UK, the term automatically includes Fellows of the Institute of Actuaries and of the Faculty of Actuaries.
Association of British Insurers (ABI)	The ABI is the trade association for the British Insurance Industry. Its more than 400 member companies provide over 97 per cent of the insurance business in the UK and account for more than a fifth of investments on the London stock market.
Association of Consulting Actuaries (ACA)	ACA draws its membership from individual consulting actuaries working in over 80 consulting firms. Members of the Association are all qualified actuaries.
Association of Chartered Certified Accountants (ACCA)	The ACCA is the largest global professional accountancy body, with nearly 300,000 members and students in 160 countries.
Association of Unit Trusts and Investment Funds (AUTIF)	AUTIF is the trade body for the UK unit trust and open-ended investment company industry. In March 2002 AUTIF and the Fund Managers' Association (FMA) merged to form the Investment Managers' Association (IMA).
Better Regulation Task Force	The Government established the Better Regulation Task Force in September 1997 as an independent body that advises Government on action which improves the effectiveness of Government regulation, taking particular account of the needs of small businesses and ordinary people.
Charity Commission	A non-ministerial Government department which is the regulator of charities in England and Wales.
Child Support, Pensions and Social Security Act 2000	The Child Support, Pensions and Social Security Act 2000 contained a number of measures designed to minimise the regulatory burden on employers while protecting the interests of scheme members. These included schemes having one third member-nominated trustees and giving Opra a more active role in the winding up of schemes.
Defined Benefit	Many occupational pensions are defined benefit schemes where pensioners receive a pre-determined pension commonly related to earnings and the employer is ultimately responsible for providing sufficient contributions to enable the pensions to be paid.
Defined Contribution	Schemes that pay a pension according to the value of the investments made by the scheme. Stakeholder and personal pensions and some occupational pensions are defined contribution schemes.
Financial Ombudsman Service	The Financial Ombudsman Service deals with complaints about the sales and marketing of pension schemes.
Financial Services Authority (FSA)	The FSA is a statutory authority established by the Financial Services and Markets Act 2000 to regulate the UK financial services industry (including personal pensions but excluding occupational pensions). It has powers to authorise financial service providers, to regulate their actions and impose disciplinary sanctions. The regulatory regime set up under the Financial Services and Markets Act provides, among other things, for the investigation of complaints from individuals who believe they have been given wrong or bad advice by the firm that sold them a personal pension. If it is not resolved, then the individual may ask the Financial Ombudsman Service to consider it.

Goode Report	After serious irregularities in the Mirror Group Pension Scheme were found in 1991, the Pensions Law Review Committee, chaired by Professor Goode, produced a report in September 1993. Many of its recommendations were effected by the Pensions Act 1995.
Insured scheme	An occupational pension scheme where the sole long-term investment medium is a form of life insurance policy arranged by the trustees of the scheme.
Member	A person who has been admitted to membership of a pension scheme and is entitled to benefits under the scheme.
Minimum Funding Requirement (MFR)	A requirement under section 56 of the Pensions Act 1995 that, under a prescribed set of actuarial assumptions, the actuarial value of assets of a defined benefit scheme should not be less than its actuarial liabilities.
National Association of Pension Funds (NAPF)	The NAPF is the leading organisation providing representation and services for those involved in designing, operating, advising and investing of employer-sponsored retirement provision.
Non-Departmental Public Body	A national or regional public body, operating independently of Ministers, but for which Ministers are ultimately responsible.
Occupational Pension Scheme	A scheme organised by an employer or on behalf of a group of employers to provide pensions and/or other benefits for or in respect of one or more employees on leaving service or on death or retirement.
Occupational Pensions Regulatory Authority (Opra)	An independent body, set up under the Pensions Act 1995, to regulate occupational pension schemes from 6 April 1997.
OPAS (The Pensions Advisory Service)	An independent organisation which provides free information and guidance to members of the public on pension matters generally. It also helps to resolve disputes and complaints concerning private pension arrangements (company pensions, personal pensions and stakeholder pensions). It does not give investment advice nor does it get involved in disputes concerning state pensions, although it does provide general advice about state pension schemes. OPAS was formerly known as the Occupational Pensions Advisory Service when its remit was restricted to occupational pensions.
Pension Schemes Registry	The registry enables members to trace schemes with which they have lost touch and collects the levy. Opra maintain the register of occupational pension schemes and personal pension schemes, and as such the Registry is part of Opra. A register of stakeholder pension providers was introduced in 2001.
The Pensions Board	The pensions regulator in the Republic of Ireland.
Pensions Compensation Board	An independent body set up on 6th April 1997 which pays compensation to pension schemes where money has been taken dishonestly from occupational pension scheme funds and the employer had become insolvent.
Pensions Ombudsman	The Pensions Ombudsman deals with disputes about entitlement and complaints of maladministration from members of occupational pension schemes and personal pension schemes. The Ombudsman's role also includes investigating complaints or disputes between trustees or managers of occupational pension schemes and employers, and between trustees of the same occupational pension schemes and questions from sole trustees.
Personal Pension Scheme	A scheme approved under Chapter IV Part XIV Income and Corporation Taxes Act 1988, under which an individual who is self employed, in non-pensionable employment, or employed but not a member of an occupational pension scheme, can make pension provision.
Pensions Simplification Review or the Pickering Review	In 2001 the Department for Work and Pensions announced a wide-ranging review of private pensions legislation with the aim of cutting red tape and reducing costs for occupational, personal and stakeholder schemes. The review, led by Alan Pickering, reported in July 2002.
Pensioen en Verzekeringskamer (PVK)	The regulator of pension schemes and insurance companies in the Netherlands.

Quinquennial Review	Every five years non-departmental public bodies such as Opra are required by Government policy to be subject to a quinquennial review. In 2002 the Government appointed Dr Brian Davis to lead the Department for Work and Pensions Review of Opra.
Small Business Service	The Small Business Service (SBS) are an executive agency of the Department of Trade and Industry which, among other things, advises on small business consultation and analysis during the assessment process for new regulations.
Society of Pension Consultants (SPC)	The SPC is the representative body for the providers of advice and services needed to establish and operate occupational and personal pension schemes and related benefit provision.
Stakeholder Pension	An occupational pension scheme or a personal pension scheme can be a stakeholder scheme if it is registered as such (section 2 Welfare Reform and Pensions Act 1999) and meets a number of specific conditions.
Statutory Adviser	An adviser appointed by the trustees under section 47 of the Pensions Act 1995. This includes the scheme actuary and the scheme auditor.
The Pension Service	The organisation set up by the Department for Work and Pensions to offer a unified service for existing pensioners, and a better service for future pensioners by providing accurate information to help them make decisions about future pension provision.
Trustee	An individual or company appointed to carry out the purposes of a trust in accordance with the provisions of the trust instrument and general principles of trust law.
Whistleblowing	The statutory duty imposed on the scheme actuary and scheme auditor by section 48 of the Pensions Act 1995 to advise Opra immediately in writing if they have reasonable cause to believe there is a material problem with an occupational pension scheme. The Act removes any liability the person might have for breaching duties of confidentiality etc. Other specified categories of persons involved in pension schemes may also safely "blow the whistle" but have no statutory duty to do so.
Winding Up	The process of terminating an occupational pension scheme, usually by applying the assets to the purchase of immediate annuities and deferred annuities for the beneficiaries, or by transferring the assets and liabilities to another pension scheme, in accordance with the scheme documentation or statute.
Work-based pension	Work-based pensions are those pensions whose arrangements are to some extent facilitated by the employer. The principal types are occupational, personal and stakeholder pensions.

Some of the above definitions are drawn from the Pensions Institute's "Pension Terminology".

Appendix 1 Study methodology

Scope

1 In undertaking our examination we sought to determine whether Opra are delivering the protection for pension scheme members that is expected of them, and in particular:

- To what extent can Opra work within their framework of legislation and objectives to protect the interests of pension scheme members?
- How well have Opra helped protect the interests of pension scheme members?

Main aspects of the National Audit Office's methodology

2 In undertaking this examination we considered:

- the risks faced by individual pension scheme members - those that are directly relevant to Opra's remit and more general risks. We then analysed the types of control regime applied to these risks, and Opra's response to these risks.
- the evidence available for the impact of Opra's work, and in particular the impact on the governance of pensions schemes. This work involved considering the patterns in the types and volumes of cases reported to Opra, as well as their educational work and performance measures. Because the Pensions Act does not allow Opra to show details of individual cases to the National Audit Office we have relied on the work of their internal auditor for this part of analysis.
- Opra's objectives, and the extent to which they were focussed on addressing the risks we have identified to pension scheme members.

Collection of information

3 We reviewed file evidence and conducted semi-structured interviews at the Department for Work and Pensions (DWP) and Opra. We spoke to the Department's Pensions Private Pensions Policy Branch and the Department's Stewards Office which oversees the work of Opra. We also spoke to those actively engaged in the regulatory process within Opra at all levels, staff, management and Board members. We also met representatives of the Public and Commercial Services Union at Opra. We also conducted semi-structured interviews with the following bodies:

- The Inland Revenue
- The Financial Services Authority
- The Pensions Ombudsman
- OPAS, the Pensions Advisory Service.

4 We analysed the risks to the regulatory arrangements (see Appendix 5 for details). We compared the regulatory arrangements against the Better Regulation Task Force's principles of good regulation.

5 We analysed Opra's management information to explore the types of breaches reported to Opra and the extent to which they have been successful in bringing about compliance.

6 As the Pensions Act 1995 did not give the NAO access to individual case files, we looked for alternative ways of gaining information:

- we drew on the review of case management and compliance being undertaken by Opra's business analyst in conjunction with the Department. We provided statistical support in designing the structure of the sample and the questions to be answered and discussed the limitations on how the results might be used; and
- we examined published details of cases where the Opra Board had considered imposing penalties for breaches of the Pensions Act (known as determinations) and appeals against their determinations (known as reviews).

7 We evaluated the educational materials put out by Opra, including their use of the web, and also those of related bodies such as DWP, the Pensions Ombudsman and OPAS, insofar as they concern Opra and pensions regulation. This was to explore the availability, accessibility and presentation of guidance and educational information to trustees, scheme advisers, scheme members, the public, employers and providers.

8 We benchmarked Opra's objectives against those of the following UK regulators:

- Postcomm, the Postal Services Commission
- OFWAT, the Office of Water Services
- OFGEM, the Office of Gas and Electricity Markets
- OFT, the Office of Fair Trading
- FSA, the Financial Services Authority
- The Charity Commission
- ORR, the Office of the Rail Regulator
- OFTEL, the Office of Telecommunications.

9 We benchmarked what Opra do against the compliance and enforcement activities of the Charity Commission, Companies House, the Inland Revenue, Customs and Excise and Financial Services Authority, and relevant features of the work of the economic regulators (Appendix 3). We also looked at the pensions regulation arrangements in the Netherlands and the Republic of Ireland, the countries with the arrangements closest to those in the UK (Appendix 2).

Survey of small businesses

10 We approached the Small Business Service (SBS), an executive agency of the Department of Trade and Industry which, among other things, advises on small business consultation and analysis during the assessment process for new regulations. With the help of the Service, we obtained the views of small businesses who bear a disproportionate burden in dealing with pensions legislation, by adding questions to the Service's Summer 2002 quarterly survey of 2,000 Small and Medium Enterprises.

Seeking views of interested parties

11 We sought the views of interested parties, including:

- The Association of British Insurers
- The Association of Chartered Certified Accountants
- The Association of Consulting Actuaries
- The Association of Unit Trusts and Investment Funds (they have since merged with the Fund Managers' Association to form the Investment Managers Association)
- The Federation of Small Businesses
- The National Association of Pension Funds
- The Society of Pension Consultants
- The Small Business Service.

We are grateful to the trustees of Alfred McAlpine Pension Scheme Trustees Ltd for allowing us to attend one of their meetings and to the National Association of Pension Funds for facilitating this.

12 In addition, we exchanged information with the Department's Quinquennial review on key messages received from consultations.

13 We also set up an Expert Panel to provide us with informed comment on the scope of the study, the study methodology, findings and conclusions. The panel had the following members:

Panel Member	Details
Rob Baldwin	Professor of Law, London School of Economics, and author of several works on regulation, including with Martin Cave, Understanding Regulation (1999).
Norman Braithwaite	Chair of Mineworkers Pension Fund trustees (one of the largest occupational pension schemes). Formerly partner at actuaries Bacon and Woodrow.
Clive Cutbill	Trust Law. Principal, Withers LLP.
Donald Duval	Consultant, Aon Consulting. Former Australian Pensions Regulator. President of the Society of Pension Consultants.
Catherine Hamp	Department for Work and Pensions, Quinquennial Review Team.
Teresa Sienkiewicz	Director KPMG. Chairman of Pensions Research Accountants Group (PRAG).

Appendix 2 Pensions regulatory agencies in the Republic of Ireland and the Netherlands

1 The pensions regulation arrangements in the Netherlands and Republic of Ireland are the most relevant comparisons to the United Kingdom, since both countries have a regime of occupational pensions, and agencies responsible for the regulation of public sector agencies. This Appendix picks out the key elements of comparison between Opra and the Pensions Board, the Irish pensions regulator, and the pensions regulator in the Netherlands, *Pensioen en Verzekeringskamer (PVK)*, which are of interest in the context of Opra's work.

The Pensions Board

2 Of a workforce of around 1.75 million in the Republic of Ireland, there is pension coverage of some 50.7 per cent, with 35.2 per cent members being members of an occupational scheme only[50]. As at December 2001, there were nearly 98,000 occupational pension schemes, almost as many as in the UK (103,000). However, 80,000 out of the 98,000 schemes are one-member schemes. Fifty-eight schemes have over 1,000 members, and are over half in total of the Republic of Ireland's employees in pension schemes (340,000 out of 670,000). As in the UK there is currently a trend away from defined benefit to defined contribution schemes[51].

3 The Pensions Board were established in 1991. Their latest mission statement, adopted in 2002, is:

- to promote the security and protection of members of occupational pension schemes and contributors to Personal Retirement Savings Accounts[52], in accordance with the Pensions Act, 1990;
- to promote the development of efficient national pension structures;
- to promote a level of participation in the national pension system which enables all citizens to acquire an adequate retirement income; and
- to provide information and authoritative guidance to relevant parties in support of pension security, structures and participation.

What does the Pensions Board do?

4 The main functions of the Board are:

- to monitor and supervise the operation of the Pensions Act 1990 and pension developments generally;
- to issue guidelines or guidance notes on the duties and responsibilities of trustees of schemes and codes of practice on specific aspects of their responsibilities;
- to encourage the provision of appropriate training for trustees of scheme and to advise the Minister for Social and Family Affairs on standards for trustees of schemes; and
- to advise the Minister on all matters in relation to the Pensions Act and on pension matters generally.

Comparisons with Opra

5 The Pensions Board have a wider remit than Opra. For example, in the field of education the Board:

- operate a register of training providers and training courses for trustees which is available to all enquirers on request. Course providers are only included on this register when they have satisfied the Board on the content of their training course. The Board, from time to time, carry out detailed evaluations of these courses with their staff attending as observers. The outcome of these evaluations determines whether courses remain on the register.
- publish a trustee handbook to help trustees in the exercise of their duties, which contains guidance including codes of practice. The annual report of each scheme is required by law to disclose whether the trustees have access to the handbook.
- produce a wide range of guidance, some of which is for scheme members. For instance, there is a guide to help pension scheme members read and understand their scheme's annual report.

50 *Central Statistics Office, Quarterly National Household Survey, September 2002.*
51 *The Pensions Board, Annual Report and Accounts 2001, July 2002. www.pensionsboard.ie.*
52 *The Republic of Ireland's equivalent to the UK's stakeholder pension schemes (see paragraph 9 below).*

6 The Board play a wide role in promoting the further development of pensions in Ireland, and also provide policy advice to Government. Opra do not have such a role in the UK.

7 A wider range of advisers are legally required to report to the Pensions Board than to Opra. This specified range includes auditors, actuaries, trustees, insurance intermediaries, investment advisers and any person, other than a legal adviser, who has been involved in assisting the trustees of a pension scheme. But these advisers only have to report material matters, defined as mainly actual or suspected fraud or material misappropriation. Other matters can be reported voluntarily. The Board have received 48 reports since whistleblowing provisions were introduced in 1996 (10 compulsory and 38 voluntary), 15 of which are ongoing. This compares with the 56,000 reports of breaches received by Opra in five years. So far the Board have brought 33 cases to completion without having to take legal action.

8 Since 1997 the Pensions Board have surveyed 170 to 200 schemes a year, requesting information such as the trustee annual report, to check whether the schemes are meeting disclosure requirements. In the first two years the Board found clear evidence that scheme administration was not up to date in that a large number of schemes were failing to meet the statutory requirement to prepare annual reports within nine months of the end of the scheme year. During 2001 the Board monitored 16 large pensions administration services and confirmed significant improvements in service provided. While the Board starts from a position of trying to pursue a policy of securing compliance without recourse to legal action, it remains committed, where necessary, to using its full powers under the Act.

9 New developments in the Irish pensions regime include:

- improved operation of the Funding Standard which requires pension schemes to have enough assets to meet their liabilities. There is now a mechanism to identify schemes where funding is likely to fall below the Minimum Funding Standard in the three and a half year interval between Actuarial Funding Certificates and to provide for corrective action in such cases. Additional information from the scheme actuary regarding the funding of a scheme is also required in the annual report;
- a statutory requirement for employers to remit pension contributions within 21 days of the end of the month (Opra have a similar statutory requirement) and to give a monthly statement to the employees and the trustees of the amount remitted. Trustees must invest these contributions within 10 days of the latest date on which they should have been remitted by the employer;
- mandatory disclosure and consultation with members regarding the treatment of surpluses in the case of scheme wind-ups and bulk transfers occurring from 1 June 2002, and in relation to defined benefit schemes, that the possibility of indexation of pensions in payment be examined and considered; and
- the introduction of Personal Retirement Savings Accounts. These are intended to be low cost, flexible and portable pension products that should suit the needs of part-timers, other "atypical" workers and the lower paid generally.

The Netherlands: Pensioen en Verzekeringskamer (PVK)

10 Over 90 per cent of employees in the Netherlands are covered by occupational pension schemes. The Netherlands has a population of 16 million as opposed to the UK's 61 million and a labour force of 7 million[53]. Pension regulatory arrangements are fairly comparable to the UK, but schemes are generally much larger; the numbers of schemes in the Netherlands are equivalent to just 4 per cent of the number in the UK per head of population. This is because Dutch legislation encouraged the setting up of industry-wide rather than company pension schemes and there is compulsion to join an industry-wide scheme. The total number of registered pension schemes (industry-wide pension schemes, company pension and savings schemes and occupational pension schemes) declined in 2000 from 1,014 to 986. The PVK attributed the decline at least partly to the increasingly stringent requirements being set for the schemes, which has made a number of scheme boards decide to place the rights with an insurer.

53 *Netherlands figures from Statistics Netherlands, rounded to the nearest million. Annual report of PVK 2000- English version, 7 June 2001. www.pvk.nl/engels/algemeen/act_themas/persb_eng_jaarverslag.html.*

PVK's aim

11 The PVK regulate pensions schemes and insurance companies (insurers) in the Netherlands. The PVK's aim is to ensure that insurers and pension schemes are and remain financially sound and that they are also able to fulfil their obligations to policyholders, pension scheme members and pension recipients in the future.

What does the PVK do?

12 The PVK supervise all insurance companies and pension schemes that operate in the Netherlands. In addition, the PVK advise the relevant Government ministries, including giving advice on national and European legislation. At present, the supervision of pension schemes is under review. The PVK ensure that pension schemes comply with statutory requirements.

13 They assess an institution through examining annual accounts and auditors' and other reports. The PVK can compel institutions to supply information through the sanction of fines and penalties. An early warning system ensures that the information received is quickly analysed, so that the PVK can quickly respond if they have cause to do so, including deviations from the scheme's investment policy. Financial reporting is intended to give a good impression of the financial and actuarial structure of the pension scheme, its financial situation and financial management. The PVK supplement this by undertaking on-the-spot investigations and thorough periodic consultation with the management and directors of a pension scheme.

14 The PVK have also, from 2001, undertaken checks on the expertise and trustworthiness of all current and new managers and directors of insurance companies and pension schemes. The PVK have issued 'Principles of Internal Management', for directors to use in the management of their institutions.

Comparison with Opra

15 With less than 1,000 schemes to regulate the PVK are able to apply more resources to individual schemes and they approach their work in a different way from Opra. In particular, the PVK:

- receive reports on investments. Reporting requirements differ in the Netherlands. Pension schemes that invest for their own account must report to the PVK on their investments each quarter. Smaller schemes have a limited duty to report;
- place great emphasis on the investment performance of pensions schemes, as mentioned above they assess scheme accounts and reports. In the year 2000 there were no significant issues for the PVK to address concerning some 90 per cent of the pension schemes. In cases where pension schemes needed additional attention, a solution was found that was supported by the schemes and complied with the legal and supervisory requirements. Most cases involved threatened shortfalls in the necessary financial strength and weak financing systems. There was direct intervention in the structure and financing of one per cent of the schemes. The cause was usually inadequate organisation and excessive influence by the employer on investment policy. In these cases a formal instruction was given to take certain corrective measures concerning the way pension schemes invest. Two pension schemes were instructed to place their pension obligations with an insurer;
- apply substantial resources to assessing the quality of risk management in individual schemes and the sector as a whole, to ensure that they can always meet their obligations towards the consumer. One element of PVK supervision is cross-checking criminal records and police files. The PVK make use of written sector-wide supervisory inquiries when they need a general picture of the situation in the sector or for indicators for the supervision of a specific insurer. In 2000 there were five sector-wide surveys. The PVK looked at the risks faced by insured schemes and contacted individual schemes concerning deficiencies, for instance uninsured risks. They have also been looking at developing risk-analysis models to enable them to deploy their resources most effectively for their own work;
- can give their own interpretation of statutory provisions and make non-binding recommendations to institutions. By doing so, the PVK show how they will approach the matters in question. The policy rules are binding on the PVK, and if an institution deviates from PVK's interpretation, the PVK may impose a sanction or withhold a requested facility or service.

Appendix 3 Risk assessment in other organisations

This Appendix sets out a brief summary of how risk assessment is used by other public sector organisations to allocate resources and prioritise their compliance and enforcement work.

Name of Organisation	Action taken to address risk
Charity Commission	After someone brings a potential cause for concern to the Commission's attention, it draws up a written plan for the inquiry setting out the scope of the investigation based on a formal assessment of the risk to be tackled.
Financial Services Authority	The FSA prioritises its work so that the identified risks are mitigated before they cause significant damage. The FSA does this by: ■ identifying the risks to its statutory objectives ■ assessing and prioritising the risks through use of a scoring mechanism. The risk score is based on the probability and impact of the risk materialising.
Inland Revenue	High-risk employees/schemes are identified using pre-determined risk criteria.
Customs and Excise	A risk assessment methodology is used to allow resources to be focused on companies where the risk is perceived as highest (the probability of it occurring multiplied by the financial impact). Priority is given to large traders as they represent a higher concentration of risk to the revenue than do the general population. Risk assessment makes use of information, intelligence and past performance. Traders are divided into groups according to the relative risks they pose, with increased resources allocated to the higher risk groups. Increased assurance validation action is directed to those where non-compliance is more likely. In applying the centrally developed risk model, local teams also consider other information available, to make a final judgement on the compliance level of individual companies.

Appendix 4 Conclusions of the main recent reviews of pensions and savings in the UK

The Myners Review of Institutional Investment in the UK

1 In the 2000 Budget, the Government made clear its concern that there may be factors encouraging institutional investors to follow industry-standard investment patterns which focus overwhelmingly on quoted equities and gilts and avoid investing in small and medium-sized enterprises and other companies. It therefore commissioned this review to consider whether there were factors distorting the investment decision-making of institutions, including institutional investment in private equity. The main conclusions were that:

- pension scheme trustees should be able to take decisions with the skill and care of someone familiar with the issues concerned. To meet this higher standard of care, this would involve training;
- the Minimum Funding Requirement, a requirement aimed at protecting members through setting a benchmark for the acceptable level of a scheme's assets, should be replaced;
- there should a statutory requirement for funds of pension schemes to be held by an independent custodian; and
- those responsible for the investment of pension scheme assets should have a legal duty of shareholder activism to intervene at companies where they invest if members' and beneficiaries' interests appear to be at risk[54].

2 The Government have accepted the recommendations of the Myners' review and are consulting on how they should be implemented.

The Sandler Review of Medium and Long-Term retail savings in the UK

3 The Myners' review concluded that "…competition to offer retail customers superior investment performance should be the primary driver of investment decision-making. In principle, several factors work against this." It recommended a further review, now known as the Sandler Review, be set up to examine these markets. The terms of reference for the Sandler Review were:

"to identify the competitive forces and incentives that drive the industries concerned, in particular in relation to their approaches to investment, and, where necessary, to suggest policy responses to ensure that consumers are well served".

4 The main conclusions of the Sandler Review were that:

- the introduction of a suite of simple and comprehensible products. The features of these would be sufficiently tightly regulated to ensure that, with certain additional safeguards, a consumer could be sold these products safely without regulated advice. The products include a pension.
- guidance (drawn up by the review) should be made available to the trustees of insured pension schemes[55].

The Pickering Review

5 The overall objective in carrying out this review was to identify ways to make it easier for employers to provide good quality pensions for their employees, easier for commercial providers to sell appropriate products to appropriate people, and easier for individuals to accumulate pension benefits. The Review sought to identify ways to make the private pensions framework more efficient, whilst at the same time ensuring that pension scheme members are properly protected and can have confidence in the system.

54 *HM Treasury, Institutional Investment in the United Kingdom: A Review (Myners' Review), March 2001.*
55 *HM Treasury, Medium and Long-Term Savings in the UK -- A Review, paragraphs 10.12, 10.21 and 10.200, 9 July 2002. www.hm-treasury.gov.uk.*

6 The report had three key themes:

- "A proportionate regulatory environment". Statutory requirements should focus on the objective to be achieved rather than the process needed to achieve it. The review proposed a "new kind of regulator", which would be more pro-active than Opra's current role, to act as an adviser as well as a regulator, and issue codes of practice or guidance notes, leaving the detail of this new kind of regulator to the Quinquennial Review.
- "A pension is a pension is a pension". Pension scheme members deserve the same level of protection, irrespective of whether the pension scheme comes via the workplace or the marketplace. Likewise small and large employers or schemes should be treated even-handedly by the regulatory framework. The streamlining of Inland Revenue and DWP legislation should lead to a substantial reduction of pension products, substantially simplifying the pensions landscape. The differences in the rules governing occupational and personal/stakeholder pensions should be eradicated as far as possible.
- "More pension/less prescription". The objective is to enable individuals to build up as much pension as possible during their working lives. Employers should be allowed to make membership of their pension scheme a condition of employment if they so wish. This would be regardless of the type of pension scheme provided the employer is making a contribution of at least, say, four per cent of salary. There should be immediate vesting in all types of pension arrangement. This would benefit the young who have a greater tendency than older people to change jobs frequently and may work for years without accruing any pension. There should be much easier pension transfer rules[56].

The Quinnquennial Review

7 The Department for Work and Pensions is undertaking a Quinquennial Review of Opra. Quinquennial Reviews are carried out in two stages: the first looking back at the rationale for establishing the organisation, its past performance and its organisational structure - the second taking a forward look incorporating options for change, if appropriate. The report is expected in November 2002.

The Inland Revenue Review

8 The Inland Revenue are carrying out a radical review of pension fund taxation. It is not clear whether it will have any significant impact on Opra. In February 2002, the Department and the Inland Revenue issued a consultation paper on Modernising Annuities. The review is designed to bring the annuity market up to date, giving pensioners more choice, information and control. Responses were invited by 5 April 2002. The Financial Secretary to the Treasury announced in a Parliamentary Question in July that changes in this area would be swept up with the intended simplification of the taxation of pensions.

56 *Department for Work and Pensions, A Simpler Way to Better Pensions (The Pensions Simplification Review or the Pickering Review), 11 July 2002.*

Appendix 5 Preliminary analysis of risks to pension scheme members

1 Pension scheme members face a variety of risks to receiving a reasonable retirement income from their pension scheme. This Appendix sets out a preliminary analysis of these risks.

2 Opra are continually developing their analysis of the pensions environment they regulate, and in particular are keen to develop a risk-based approach to regulation, through an exercise called Focused Regulation. Opra can take forward the NAO's preliminary analysis by:

- evaluating the likelihood and impact of each risk, to identify which risks require the most attention;
- considering the impact of each risk to each type of pension scheme;
- evaluating the effectiveness in relation to risk of controls currently in place; and
- identifying changes to legislation that might be needed to enable risks to be tackled effectively.

3 The risk analysis has been designed with occupational pension schemes in mind, but most of these risks (though by no means all) may also apply to other forms of work-based pension, including group personal pensions and stakeholder pensions.

4 The risks are:

- A: Misappropriation of scheme assets
- B: Funds are insufficient to provide scheme members with the benefits they could reasonably expect
- C: Incorrect benefits accrue to scheme members in due course
- D: Scheme members lose track of pension schemes or vice versa

A: Misappropriation of scheme assets

<table>
<tr><th rowspan="2">Cause of risk</th><th colspan="3">Controls</th></tr>
<tr><th>Prevention</th><th>Detective</th><th>Remedial</th></tr>
<tr><td>Dishonest trustee</td><td>■ Conduct minimal checks over trustees' appointment to prevent the wrong people being trustees
■ Scheme rule to prevent a single trustee acting alone
■ Opra must in some circumstances approve changes to scheme rules</td><td rowspan="3">■ Whistleblowing if the statutory adviser (auditor, actuary) or others (member, pension provider, administrator) detects irregularities
■ Auditors detect problems during audit and report to Opra
■ Opra action on delays in preparing audited accounts
■ Opra intelligence gathering on pension schemes</td><td rowspan="3">■ Opra can apply to court to grant a restraining injunction against anyone associated with a pension scheme misusing or misappropriating its assets
■ Opra can apply to court to seek restitution where scheme assets have been illegally transferred to the employer
■ Pensions Compensation Board can compensate for misappropriation, if the employer is insolvent
■ Opra can appoint trustees to prevent further misappropriation and initiate recovery action
■ Opra action on reports that schemes have not appointed an auditor or actuary</td></tr>
<tr><td>Dishonest employer persuading trustees to allow funds to be diverted, particularly where employer is in financial difficulty</td><td>■ Trustees act to stop misappropriation
■ Education of trustees</td></tr>
<tr><td>Dishonest administrator</td><td>Education of trustees - to implement sound internal control system</td></tr>
<tr><td>Dishonest fund manager</td><td>Financial Services Authority (FSA) regulation of the fund management industry</td><td>FSA regulation of the fund management industry</td><td></td></tr>
<tr><td>Pension liberation by ignorant/dishonest members, fraudulent pension liberation companies</td><td>Education of trustees and members (to prevent pension liberation)</td><td>Whistleblowing by trustees, members or statutory advisers</td><td>■ Opra action and liaison with the Inland Revenue and law enforcement agencies
■ Original pension scheme could be liable to make up losses incurred</td></tr>
</table>

Comments

Trustees

There are more checks that Opra could undertake on trustee suitability (eg by cross checking to the register of disqualified company directors, and to criminal records), but their powers to do so are uncertain.

Auditors and other advisers

Auditors can only work as a detective control when they are in place.

There is no mechanism in place to monitor routinely whether appointments of statutory advisers (auditor, actuary and independent fund manager) have been made. Opra do, however, check for their appointment in response to reports of other types of breaches.

It is rare for audit firms to inform Opra when they resign as auditors of pension schemes. When they do, this can provide an indication to Opra of potential problems with the scheme, although Opra need not act in these circumstances.

Opra have no power to force trustees to obtain audited accounts; once Opra have fined trustees for late accounts the case cannot be resubmitted for further fines if the trustees take no further action. But the risk of Opra fines may give trustees an incentive to ensure audited accounts are prepared in a timely manner.

Type of scheme

Fully-insured schemes provide some assurance to pension scheme members that they are not exposed to these misappropriation risks because it is very difficult for dishonest persons associated with schemes to gain access to the funds held by insurance companies.

B: Funds are insufficient to provide scheme members with the benefits that they could reasonably expect

1. Insufficient contributions to the scheme

Cause of risk	Controls		
	Prevention	Detective	Remedial
Insufficient contributions required due to: ■ Trustees ignoring actuarial advice ■ Poor actuarial advice ■ Insolvency of employer ■ Employers ignore actuarial advice and trustees' requests	Education of trustees/actuaries	■ Professional body such as Faculty and Institute of Actuaries can take disciplinary action following complaints by members (in the case of poor actuarial advice) ■ Actuaries can report in certain circumstances to Opra	■ Damages from legal action by scheme against actuary ■ Pensions Compensation Board can minimise the effect of misappropriation, if the employer is insolvent
Minimum Funding Requirement breached inadvertently or wilfully by trustees/administrator	Education of trustees/administrator	Whistleblowing by statutory adviser (auditor, actuary) and members	
Employer does not make the employer's contribution as required by the schedule (Defined Contribution schemes only)	Trustees/administrators and pension providers monitor and check on timely payment of contractual employers' contribution	Whistleblowing by trustees, pension provider, statutory adviser (auditor, actuary) and members	
Employee contributions not paid over, at all or before scheme closes (or for a defined contribution scheme, substantially late)	■ Trustees/administrators and pension providers monitor and check on timely payment of employees' contributions to all schemes ■ The threat of Opra enforcement action may deter employers from deferring or avoiding payments	Whistleblowing by trustees, pension provider, statutory adviser (auditor, actuary) and members	

Other Regulatory Responses

Opra action on reported breaches in respect of non-appointment of statutory and professional advisers, non-payment or when Minimum Funding Requirement Certificate not obtained.

Comments

- Opra's powers to enforce Minimum Funding Requirement (MFR) in practice are limited.
- MFR may soon be replaced by scheme-specific funding requirement.
- Opra cannot force an employer to pay contributions due, it can only impose sanctions on the employer when they are not paid.
- Opra could have a role in encouraging informed scrutiny by trustees.

B: Funds are insufficient to provide scheme members with the benefits that they could reasonably expect

2. Inadequate or inappropriate investment

Cause of risk	Controls		
	Prevention	**Detective**	**Remedial**
Poor decisions by trustees on investment strategy	■ Trustees take investment advice from professional advisers (S36 Pensions Act 95) ■ Education and training of trustees/administrator of pension providers/members ■ Trustees are required to prepare a Statement of Investment Principles (SIP) and adopt a balanced investment strategy	■ Actuary draws problems to the attention of trustees or pension providers ■ Opra receive and act upon a report on the absence of a SIP or on unbalanced investments	Member appeals to Pensions Ombudsman where investment decisions are sufficiently poor to constitute maladministration
Poor day-to-day investment decisions by fund manager	■ FSA guidance on investment ■ Trustees satisfy themselves that investment manager is competent	Regular and comparative performance reporting	Damages from legal action by scheme against fund manager
Excessive investment in employer and investments subsequently perform poorly	Education of trustees/administrator	■ Statutory advisers draw problems to the attention of trustees ■ Whistleblowing by trustees, pension provider, statutory adviser (auditor, actuary) and members	■ Opra can apply to court to grant a restraining injunction against anyone associated with a pension scheme misusing or misappropriating its assets ■ Opra can apply to court to seek restitution where scheme assets have been illegally transferred to the employer ■ Pensions Compensation Board can compensate for misappropriation, if the employer is insolvent ■ Opra can appoint trustees to prevent further misappropriation and initiate recovery action
Funds invested are materially diminished by costs of regulation or enforcement Trustees could add to burdens because of their actions	■ Sensitive regulation ■ Avoid high fees or heavy-handed enforcement ■ Education of trustees so that they know their responsibilities		

Other Regulatory Responses

Opra action on reported breaches in respect of non-appointment of statutory and professional advisers and trustees not taking proper investment advice.

Comments

Opra could have a stronger educational role in encouraging informed scrutiny of investment decisions by trustees. Opra could target schemes that do not have a Statement of Investment Principles.

B: Funds are insufficient to provide scheme members with the benefits that they could reasonably expect

3. Risks arising from the winding-up process

Cause of risk	Controls		
	Preventive	**Detective**	**Remedial**
Poor record-keeping prior to wind-up	■ Education of trustees/administrator ■ Oversight of the administrator by the trustees or auditor	Statutory advisers draw problem to trustees' attention	Opra taking action to facilitate wind-up
Excessive benefits paid to small number of members prior to wind-up	Opra must approve changes to scheme rules in some circumstances		Opra could in some circumstances take out an injunction in the event that a case comes to their attention
Dilatory action during wind-up	Supervision of wind-up		

Comments

- There are few controls over extensive benefits being paid to a small number of members, such as directors of a company about to go into liquidation.

C: Incorrect benefits accrue to scheme members in due course

Cause of risk	Controls		
	Preventive	**Detective**	**Remedial**
Poor record-keeping by trustees/administrator/provider (eg where names of members might not even be recorded)	■ Education of trustees/administrator ■ Oversight of the administrator by the trustees or auditor	■ Member complaints to The Pensions Ombudsman upon receiving incorrect payment ■ Adequate disclosure of individual records to members ■ Whistleblowing by members to Opra	■ The Pensions Ombudsman can act on disputes ■ Appointment of new trustees by Opra

Comments

- Although trustees are expected to maintain adequate records, Opra do not at present have a role in monitoring and enforcing this.
- Opra have no powers over the appointment of administrators.
- Opra's educational work to promote good record-keeping by trustees is still in its infancy.
- It is difficult for the trustees to oversee the quality of administration of their fully-insured scheme as providers' systems may not be good and the systems may administer many schemes.

D: Scheme members lose track of pension schemes or vice versa

Cause of risk	Controls		
	Preventive	**Detective**	**Remedial**
Poor record-keeping Companies change names/taken over Employees change jobs many times	Up to date and easily accessible pension records		All pension schemes with 2 or more members must register with the Pension Schemes Registry, including personal and stakeholder pension schemes