

**INTERNATIONAL ACTUARIAL ASSOCIATION PENSIONS SEMINAR  
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***THE ROLE OF THE PENSIONS REGULATOR***

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**1. Introduction**

The Occupational Pensions Regulatory Authority (Opra), with offices in Brighton and in Newcastle-upon-Tyne, is the statutory regulator in the United Kingdom of pension arrangements set up by employers. Starting its work in April 1997, Opra was established by the Pensions Act 1995, which also created new statutory roles for actuaries and auditors to pension plans, notably a duty to report relevant breaches of the law to Opra. The 1995 Act was a response to the impact of Mr Robert Maxwell's improper use of pension plan assets. His actions led to serious losses from the pension plans of the Mirror Group companies. As a result, the general intent of the Act was to prevent misuse of pension plan assets. The type of action which the Act was designed to prevent includes failure to pay over employees' contributions to the plan trustees, trustees granting illegal loans to the employer or excessive investment by the pension plan in the employer.

Opra takes action on breaches of pensions legislation which are reported to it. Opra's primary aim is to get problems put right and to achieve compliance with the law, although it has the power to impose fines on those responsible if the problems are significant or not put right in a timely manner. Very serious matters can be taken to court.

Opra also maintains a register of all UK pension plans at the Pension Schemes Registry in Newcastle-upon-Tyne, and offers a service to help people trace pension plans with which they have lost touch. The Registry collects levies from plans which pay for the activities of Opra, the Pensions Ombudsman, and OPAS (the Pensions Advisory Service). It will also collect the levy for the Pensions Compensation Board when necessary.

Appendix 1 sets out statistics drawn from the Registry database as at March 31 2001. These statistics indicate that, although the majority of members are in large plans, around 80% of plans are very small, with between 2 and 11 members. In these circumstances, it would be extremely expensive to have a proactive regulator actively monitoring all plans in the UK. So, Opra is an actively responsive regulator. It does not generally initiate action, but responds to information reported to it by actuaries, auditors, trustees and others involved in plan administration.

## **2. The Board of Opra**

The Board sets the strategic direction of Opra. Acting in committee and individually, Board members are also responsible for making formal decisions (called 'determinations' and 'reviews') relating to plans that may have breached the requirements of the Pensions Act 1995.

The Board ensures that Opra complies with statutory or administrative requirements for the use of public funds and ensures that high standards of corporate governance are observed at all times. The Board also has a general duty to provide direction to the Chief Executive of Opra on matters of policy and to ensure that Opra's objectives are explained and understood.

Board members are appointed by the UK government minister with responsibility for pensions matters, and reflect a wide range of expertise in pensions matters. The Chairman of the Board spends about 12 days each month on Opra business, while other Board members devote, on average, two days a month. Three of the current 10 Board members are actuaries.

## **3. Opra staff**

On March 31 2001, Opra had 160 full time equivalent (FTE) staff in Brighton, where regulatory work is carried out. On the same date Opra had 63 FTE staff at the Pension Schemes Registry in Newcastle-upon-Tyne. Actuarial support is provided to Opra's regulatory staff by two actuaries on secondment from the UK Government Actuary's Department (which also supplies Opra with consultancy services). The team of actuaries at Opra is called upon to provide input to Opra staff on a wide range of actuarial matters.

The main task of Opra's senior management team, headed by the Chief Executive, is to manage the link between Opra's day-to-day operations and the Board. It is responsible for setting operational targets and making sure that they are reached efficiently.

#### **4. How Opra performs its role**

One way of looking at the operation of the Pensions Act is to say that there are three layers of protection for pensions in the UK - trustees, advisors, and Opra, in that order. Trustees are the first layer of protection. The main responsibility for the proper running of pension plans rests with them. It is their role to guard the plan assets and to protect the interests of the plan members. The actuary and the auditor are the second layer of protection. This is because information on relevant breaches of the Pensions Act must be given to Opra by the actuary and the auditor to the plan, who have a statutory duty to report these breaches to Opra. The third layer of protection is Opra, which can take action, if it is advised that the trustees or the employer have broken the law.

Opra's regulatory staff will clarify the nature of any breaches reported to it and will contact the trustees, employer or scheme administrators to request that these problems are put right

Opra does not punish every breach because it takes the view that helping trustees and employers to comply with the law is, in some cases, more important than imposing a fine. Where people are honest about what they have done, and have put it right, Opra is unlikely to impose penalties. The Opra Board considers the worst cases and can punish offenders - this may involve imposing a fine or disqualifying trustees.

Where Opra believes that the assets of a scheme may be at risk, it can appoint an independent trustee with overriding powers to take over the running of the plan. If necessary, this can be done very quickly. Opra may also appoint trustees to a plan where there are no trustees, to authorise the release of funds to pay benefits or where there are serious problems with the performance of the existing trustees.

Opra produces material to help educate and inform pension plan trustees, employers and pensions professionals so that they understand their legal responsibilities. Our website ([www.opra.gov.uk](http://www.opra.gov.uk)) is a key source of information. Opra works proactively with professional bodies - including the Faculty and Institute of Actuaries - and others involved in pensions to raise standards.

#### **5. Working with others to protect pensions**

The Department of Social Security (DSS) and the Inland Revenue are responsible for the development of UK pensions policy and the law which governs UK pension plans. Opra can suggest changes to the law - and has some freedom in choosing how to implement the legislation - but Opra cannot make or change laws or government regulations.

Where fraud or dishonesty threaten the assets of a pension plan, it is the duty of the police to investigate and, if necessary, to prosecute those responsible. Where Opra finds evidence of criminal activity this information is passed to the police.

OPAS (the Pensions Advisory Service) provides general information about pensions and will help people with their individual pension problems. People who believe that their individual pension rights have been affected can ask the Pensions Ombudsman to investigate. Before approaching the Ombudsman they must have exhausted their pension arrangement's own internal complaints procedure.

The Financial Services Authority (FSA) is responsible for overseeing the sale and marketing to individuals of personal pension arrangements. The FSA is also responsible for ensuring the ongoing financial viability of the institutions that manage pension investments.

## 6. Main areas of Opra's work

As an actively responsive regulator, Opra's workload is linked directly to the number of reports received. The statistics below give a flavour of the main areas of Opra's work and summarise the number of each type of breach of pensions legislation reported to it which Opra has dealt with since it began work in April 1997.

<i>Nature of breach</i>	<i>Number of cases</i>
Late payment of pension contributions	26,200
Late accounts or audits	7,980
Failure to appoint plan actuary or auditor	2,130
Breaches relating to the Minimum Funding Requirement (MFR)	1,690

As indicated in the above table, Opra has dealt with many cases where trustees have failed to appoint a plan actuary. Opra regards this failure as serious. Not only does the actuary have a key role in providing a wide range of advice to the trustees on plan funding and related matters, but the plan actuary is one of the statutory reporters to Opra. Without the presence of a statutory reporter, there is a real risk that breaches of the Pensions Act will go undetected and unreported.

Opra has had just under 10,000 cases in the year ending March 31 2001. Only about 350 have come to the Board for a decision as to whether or not a breach has taken place and whether or not to impose a penalty. Of these 350 cases, about 300 are concerned either with the employer's failure to pay employee contributions to the pension plan on time, or the trustees' failure to produce accounts or audits within seven months of the plan year end.

## **7. The actuary's/auditor's duty to report to Opra**

For most funded defined benefit schemes, the Pensions Act 1995 requires the trustees to appoint a named individual as actuary, who must be appointed by the trustees, not the employer. The actuary must be formally appointed and the terms of the appointment must comply with requirements prescribed in legislation.

Section 48 of the 1995 Pensions Act requires the actuary and the auditor of the plan to consider making a report to Opra if a breach of duty or rule of law is suspected. This is called "Blowing the whistle". If the actuary or auditor '*has reasonable cause to believe*' that a breach has taken place and that it is likely to be '*of material significance*' to Opra, they are under a duty to make an immediate report (in writing) to Opra. Opra has given guidance as to what may not be material, such as an isolated, unintentional breach - e.g. a minor mistake in a member's statement of benefits. But it is for the actuary or auditor, using professional judgement, to decide what is material. Opra guidance also makes clear that the actuary or auditor does not have an obligation to seek out relevant compliance failures, but only to report them if and when they are noticed.

For example, an actuary may report that:

- the employer has not paid contributions to the plan at the required time;
- they have not been able to prepare the actuarial valuation, because the pension plan accounts have not been completed.

In year to March 31 2001, actuaries made over 1,100 reports to Opra. Of these reports, 21 related to breaches of the requirements to give members information; 130 related to failures to get audited accounts prepared on time; 320 related to the requirements about funding; and 490 related to the requirement to pay contributions to the plan within a specific period.

## **8. Protection for an actuary who reports to Opra**

It would be impractical to expect a professional to report to Opra about their own client, if they had no protection for doing so. Section 48(3) of the Pensions Act 1995 says that no duty of the actuary or auditor (to the client) is contravened through making a report to Opra. So an actuary or auditor may make a report to Opra without being liable for breaching the duty of confidentiality to the client.

There is power in the Act for Opra to fine or disqualify an actuary or auditor who does not report to Opra in accordance with section 48 of the Pensions Act, but this part of the Act has not been brought into effect. Instead, reliance is placed on the actuarial and auditing professions' own disciplinary processes.

If Opra thinks that an actuary has not reported in a timely way a breach which should have been reported, Opra may make a complaint to the relevant professional body (the Faculty of Actuaries or the Institute of Actuaries). In the year to March 31 2001, Opra made three such complaints; two related to failures to report breaches in relation to funding requirements, and one related to a failure to report illegal loans from the plan to the employer. To put this in context, in just over three years, Opra has referred over 400 auditors to their professional body for not reporting to Opra trustee failures to obtain plan accounts. Many of these auditors have been fined by their professional body.

## **9. Current regulatory issues**

### **(a) Stakeholder pensions**

Opra is responsible for registering stakeholder pension schemes and regulating compliance with the registration requirements. Opra is also responsible for regulating plan management including the payment of contributions to the stakeholder plan.

Opra has been working closely with the Financial Services Authority (FSA) to ensure a clear division between their respective regulatory responsibilities and to make sure that the overall regulatory approach has no duplication or loop holes. (The FSA regulates the marketing and promotion of all stakeholder pension).

From October 2001, Opra will also be responsible for regulating the employer access requirements. Employers with five or more staff must offer access to a stakeholder pension plan to their employees unless they already offer a qualifying alternative pension arrangement.

### **(b) Late payments**

Since April 2001, Opra has had responsibility for regulating employer payments to personal and stakeholder pension plans.

Employers who make direct payments to personal and stakeholder pension plans are required to prepare a record of payments due and to ensure that all contributions are paid in line with this record.

Opra will investigate reports from providers, their advisers and plan members of employers who have failed to prepare a record of payments due or who have failed to pay contributions in line with this record.

Opra has the power to impose a financial penalty on an employer who fails to prepare a record of payments due. Opra also has the power to impose a financial penalty on an employer who fails to pay contributions in line with the record of payments due. Opra does not intend to punish employers for occasional failures or honest mistakes. However, cases of significant or repeated failures will be submitted to the Opra Board, just as currently happens for occupational plans.

### **(c) Plans which are terminating**

Opra has been concerned for some time about the effects on plan members of drawn-out termination processes. This has led to forthcoming legislative changes that will give Opra greater powers to monitor the time that plans take to terminate.

Of the 110,500 'live' occupational pension plans registered as at March 31 2001, around 30,000 plans are estimated to be in the process of terminating. This process can be a worrying time for pension plan members, especially if the employer no longer exists. Many problems that the trustees or administrators face during termination are the result of historically poor or incomplete scheme records.

Opra's approach to dealing with such cases is to take account of the individual circumstances of each plan whilst applying common pragmatic principles about whether trustees should face penalties for failing to follow the law. The critical factor is providing the plan with the most security and therefore protecting members' interests. Opra cannot waive the law but, as long as the trustees show they are taking all reasonable steps to terminate the plan quickly, Opra can take a pragmatic view.

The new legislation comes into effect from April 2002 and will be phased in to apply first to those plans that have been terminating the longest.

The main provisions of the new legislation are that:

- Opra can impose directions to ensure that the termination is carried out quickly and efficiently;
- where there is no trustee or where the trustee does not meet the test of independence, this must be reported to Opra;
- statutory independent trustee appointments must be made within three months of the trustees becoming aware of the need to appoint one;
- trustees must keep records of the formal commencement of termination; and
- trustees must make initial and subsequent reports to Opra about the progress of termination.

## **10. International liaison**

Opra has regular informal meetings with the Dutch, German and Irish pensions regulators, to discuss matters of mutual interest and concern. It has played a full part in the development of the UK contribution to ongoing discussions on the proposed EU pensions directive.

In a broader context, Opra contributes to the Working Party on Private Pensions established by the Organisation for Economic Co-operation and Development (OECD). In November 2000, this Working Party drew up 15 broad principles for the regulation of private occupational pension plans, designed to safeguard the interests of plan members and to ensure the efficient operation of such plans. Appendix 2 sets out these principles, which cover areas ranging from supervision to investment policy.

Opra is also a member of the OECD International Network of Pensions Regulators and Supervisors (INPRS). The INPRS brings together 100 regulatory and supervisory institutions from more than 60 countries, the UK members being Opra, the Financial Services Authority (FSA), the Inland Revenue and the Government Actuary's Department. Its first plenary conference was held in Sofia, Bulgaria, in April 2001. Opra will be represented on the Technical Committee of the INPRS, which will oversee the development and implementation of the programme of work of the Network.

**APPENDIX 1**  
**Pension plans in the United Kingdom**

On March 31 2001, there were 211,500 plans on Opra's Pension Schemes Registry database. This includes both occupational and personal pension plans. The plans fall into the following categories.

<b>Category of pension plan</b>	<b>Number of plans, March 31 2001</b>
'Live' plans*	110,500
Plans which have wound up	58,000
Plans which no longer need to register (for example, because they now have only one member)	34,000
Plans with no traceable address	5,500
Plans with no known employer or trustee	2,000
Plans which have merged	1,500
<b>Total</b>	<b>211,500</b>

\*This includes 'active' plans which are open to new members; 'closed' plans which new members cannot join; plans which have been 'frozen', and plans which are in the process of termination.

**Number of members in pension plans**

At March 31 2001, there were over 38 million members in the 110,500 'live' occupational and personal pension plans on the Pension Schemes Registry database. Some of these may be members of more than one plan. For example, someone may be an 'active' member of one plan and a 'deferred' member of several other plans.

## Occupational pension plans

There are over 24 million members of occupational pension plans. Most occupational pension plans have only a few members while a small number of large plans contain the majority of members.

- About 88,000 plans have 11 or fewer members – 80% of plans represent a mere 1% of total pension scheme plans.
- About 1,750 plans have 1,000 or more members – about 1.6% of plans and 89% of members.
- Of the occupational pension plans on the Pension Schemes Registry database, 331 are 'live' public service plans covering over 8 million members. This represents more than one third of the total number of people in occupational plans.

### Occupational pension plans by number of members (including public service plans)

<i>Size of plan (number of members)</i>	<i>Number of live plans</i>	<i>As % of total live plans</i>	<i>Number of members</i>	<i>Number of members as % of total members</i>
2 to 11	88,200	80%	265,000	1%
12 to 99	14,000	13%	507,000	2%
100 to 999	6,100	6%	1,897,000	8%
1,000 to 4,999	1,200	1%	2,591,000	11%
5,000 to 9,999	200	-	1,595,000	6%
More than 10,000	300	-	17,710,000	72%
<b>Total</b>	<b>110,000</b>	<b>100%</b>	<b>24,565,000</b>	<b>100%</b>

## Personal pension plans

The 372 'live' personal pension plans on the Pension Schemes Registry cover over 14 million members. Not all of these people are currently contributing to personal pension plans; many people have contributed to a variety of pension plans throughout their working lives and will have built up benefits through a number of different arrangements.

**APPENDIX 2**  
**OECD/INPRS principles for the regulation of private occupational  
pension plans**

**1. Adequate regulatory framework**

An adequate regulatory framework for private pensions should be enforced in a comprehensive, dynamic and flexible way (taking into account the complexity of the schemes) in order to ensure the protection of pensions plans beneficiaries, the soundness of pensions funds and the stability of the economy as a whole. This framework should however not provide excessive burden on pensions markets, institutions, or employers.

**2. Appropriate regulation of financial markets**

A productive, diversified investment of retirement savings which spreads risk requires well-functioning capital markets and financial institutions. The development of advance-funded pension systems should go hand-in-hand with a strengthening of the financial market infrastructure and regulatory framework (including the development of new financial instruments and new markets such as inflation-indexed markets and the improved functioning of retirement annuity markets).

**3. Rights of the beneficiaries**

Non-discriminatory access should be granted to private pensions schemes. Regulation should aim at avoiding exclusions based on age, salary, gender, period of service, terms of employment, part-time employment, and civil status. It should also promote the protection of vested rights and proper entitlement process, as regard to contributions from both employees and employers. Policies for indexation should be encouraged. Portability of pensions rights is essential when professional mobility is promoted. Mechanisms for the protection of beneficiaries in case of early departure, especially when membership is not voluntary, should be encouraged.

**4. Adequacy of the private schemes**

Proper assessment of adequacy of private schemes (risks, benefits, coverage) should be promoted, especially when these schemes play a public role, through substitution or substantial complementary function to public schemes and when they are mandatory. Adequacy should be evaluated taking into account the various sources of retirement income (tax-and-transfer systems, advance-funded systems, private savings and earnings).

**5. Regulatory system and separation**

An institutional and functional system of adequate legal, accounting, technical, financial, and managerial criteria should apply to pensions funds and plans, jointly or separately, but without excessive administrative burden. The pension fund must be legally separated from the sponsor (or at least such separation must be irrevocably guaranteed through appropriate mechanisms).

## **6. Funding**

Private schemes should be funded. While full-funding exists in principle for defined contribution plans, other types of plans should be subject to minimum funding rules or other mechanisms to ensure adequate funding of pension liabilities. Rules based on winding-up approach (e.g. ABO, PBO) may be promoted as a minimum level to complement the on-going approach. Flexibility can be allowed for temporary limited under-funding under restricted circumstances. Consideration should be given to the development of adequate but flexible requirements for minimum capital/guarantee in pension funds,-- taking account of the long term nature of their liabilities. Tax and prudential regulations should encourage a prudent level of funding. Private unfunded pay-as-you-go schemes at individual company level (i.e. overheads schemes) should be prohibited.

## **7. Calculation Techniques**

Appropriate calculation methods for asset valuation and liabilities funding, including actuarial techniques and amortisation rules must be set up and based on transparent and comparable standards. Increased reliance on modern and effective risk management, industry-wide risk management standards for pension funds and other institutions involved in the provision of retirement income should be promoted. The development of asset liability management techniques should be given proper consideration.

## **8. Supervisory structures**

Effective supervision of pension funds and plans must be set-up and focus on legal compliance, financial control, actuarial examination and supervision of managers. Appropriate supervisory bodies, properly staffed and funded, should be established in order to conduct when relevant off and on site supervision, at least for some categories of funds and in particular when problems are reported. Supervisory bodies should be endowed with appropriate regulatory and supervisory powers over individual plans, in order to prevent miss-selling cases arising from irregularities in the distribution and expenses methods.

## **9. Self-supervision**

Self-regulation and self-supervision should be encouraged. The role of independent actuaries, custodian services and internal independent supervisory boards should be promoted within an appropriate regulatory framework.

## **10. Fair competition**

Regulation should promote a level playing field between the different operators and take account of the usefulness of a functional approach. The fair competition should benefit to the consumers and allow for the development of adequate private pensions markets

## **11. Investment**

Investment by pension funds should be adequately regulated (see selected principles for regulation of investments by insurance companies and pension funds in Annex). This includes the need for an integrated assets/liabilities approach, for both institutional and functional approaches, and the consideration of principles related to diversification, dispersion, and maturity and currency matching. Quantitative regulations, and prudent-person principles should be carefully assessed, having regard to both the security and profitability objectives of pension funds. Self-investment should be limited, unless appropriate safeguards exist. Liberalisation of investment abroad by pension funds should be promoted, subject to prudent management principles.

## **12. Insurance mechanisms**

The need for insolvency insurance and/or other guarantee schemes has to be properly evaluated. These mechanisms may be recommended in some cases but in an adequate framework. Recourse to insurance mechanisms (group and reinsurance) may be promoted.

## **13. Winding-up**

Proper winding-up mechanisms should be put in place. Arrangements (including, where necessary, priority creditors' rights for pension funds) should be put in place to ensure that contributions owed to the fund by the employer are paid in the event of his insolvency, in accordance with national laws.

## **14. Disclosure and education**

Appropriate disclosure and education should be promoted as regards respective costs and benefits characteristics of pensions schemes, especially where individual choice is offered. Beneficiaries should be educated on misuse of retirement benefits (in particular in case of lump sum) and adequate preservation of their rights. Disclosure of fees structure, plans performance and benefits modalities should be especially promoted in the case of pensions plans that offer individual choice.

## **15. Corporate governance**

The corporate governance role and capacity of pension funds should be considered. This includes: the role of guidelines (statutory or voluntary) for governance activities; the impact of shareholder activism by pension funds on corporate behaviour; and the governance of pension funds themselves and the role of trustees.