

Department for Work and Pensions
Dr Brian Davis – Independent Reviewer

REPORT OF THE
QUINQUENNIAL REVIEW OF THE
OCCUPATIONAL PENSIONS
REGULATORY AUTHORITY
(OPRA)

DECEMBER 2002

Quinquennial Review of Opra – Final Report

Foreword and introduction – from Brian Davis

The Rt Hon Andrew Smith MP
Secretary of State
The Department for Work and Pensions

17 December 2002

Dear Secretary of State,

Quinquennial Review of The Occupational Pensions Regulatory Authority (Opra)

This five yearly review of Opra has been conducted by a dedicated team from within the Department for Work and Pensions (DWP) together with myself as the Independent Reviewer and supported by an expert Steering Group.

We issued a consultation document in May 2002 and received 50 written replies from a wide cross section of corporate bodies and some individuals. We also held a number of meetings with organisations and with the Opra Board and staff.

The primary purpose of this review is to comment on Opra's performance over the five years that have passed since its inception and to make recommendations for the future. As will become apparent, part of our recommendations are an endorsement of an aspect of the Pensions Simplification review, conducted by Alan Pickering, that the future regulation of non-State pensions needs to adopt a somewhat different approach. Our recommendations have not, therefore, simply identified ways that Opra might perform better in its present form (as might be expected of a standard Quinquennial Review) but rather what might be more appropriate for a different kind of regulator.

This review has taken place at a time of unprecedented public interest in all aspects of pensions. Again, broader changes in the provision of pensions will impact on the way regulation needs to function in the future. We have refrained from commenting on the interaction of State and non-State provisions although we are encouraged by the work already being undertaken to develop composite pension forecasts which enable individuals to be aware of all their pension entitlements in a single statement.

Concerning Opra's performance over the past five years, **our conclusion is that Opra has performed the task which it was asked to carry out extremely effectively**. In the course of the five years there have been only three identified regulatory 'failings' and none of these have resulted in losses to scheme members. The Report has taken into account the detailed report made about the most recent case and noted that Opra has already responded to the particular issues that were raised. Opra has also been particularly applauded for its industry education programme and general approachability.

Quinquennial Review of Opra – Final Report

However, Opra has achieved this by using a zero-tolerance approach to regulatory breaches and has required official ‘whistleblowers’ to report even the most minor of infringements. This has resulted in unnecessary processing of large volumes of paper and we recommend that this approach be modified to a more risk-based assessment using a *de minimis* reporting requirement.

Similarly, we recommend that the DWP and Inland Revenue undertake further work to establish what regulatory structure is appropriate for small and “very small” schemes – in some cases with only two members. Such schemes currently make up over 50% of Opra’s caseload.

The whistleblowing arrangements, with the exception of the need for trivial breaches to be reported, have functioned well and these should be further strengthened by the inclusion of fund managers.

Although Opra has performed the task set, it has not met the changing expectations of its role to provide pro-active input to the way future regulation should function. This has not been helped by relatively poor communications in the past between Opra and DWP. It is also noted that Opra has had to spend considerable time on detailed determinations and that Board members and staff who have been recruited to carry out this task are not, necessarily, entirely appropriate to a more outgoing, strategic role. This needs to be borne in mind once the nature of the future regulator is fully established.

More fundamentally, it is clear that many expect the pensions regulator to act as a “mini FSA” in terms of both its influence and advice to Government, and by operating a more risk-based approach to regulation. Combine this with both the ability to improve overall efficiency by reducing overlaps with the FSA and the fact that, for personal financial planning purposes, individuals and schemes currently have to potentially deal with both Opra and the FSA, and it is my personal recommendation that consideration is given to bringing the two regulators together.

Opra is also responsible for the Pensions Scheme Registry which, apart from being physically separated from the rest of Opra by some 350miles, undertakes, or has the potential to undertake, a number of functions closely allied to the work of the Audit and Pension Schemes Service (APSS) of the Inland Revenue. Consideration should be given to building on work already undertaken to enable closer and, where possible, more integrated working between the two functions.

In summary, it is our considered opinion that Opra has performed well and that the inevitable lessons learned over the past five years provide **an ideal platform to create an even better regulator for the future.**

On a personal note, as a pensions lay-person I have found this an interesting and enlightening exercise. It is very clear that pensions have become so complex that they are now the domain of an ‘industry’ of experts - the consumer respondents to this review were in a minority. *I very much welcome the Government’s intention to publish a green paper and the opportunity that this will provide for a wider public debate on all the issues.*

Quinquennial Review of Opra – Final Report

Bearing in mind my recent role as a Chief Executive I was specifically asked to provide a strategic management perspective to this review. It is clear that there is considerable overlap and role confusion between the numerous bodies and Departments involved with pensions. Whilst it was inappropriate to investigate in detail, I consider that there is scope for improving the efficiency and effectiveness in dealing with pensions matters by a thorough review tasked with a clear mandate to reduce the present complexities.

I also believe that the effectiveness of the occupational pensions regulatory environment would be best measured by concentrating on the pensions that scheme members actually receive compared to those that the schemes had originally anticipated and promoted.

Finally, I would like to express my thanks for their efforts to the DWP and particularly the review team, led by Catherine Hamp; to the many respondents to the consultation document; to the Steering Group for their input; and to the Board and Staff of Opra for their unstinting co-operation.

Yours sincerely

A handwritten signature in cursive script that reads "Brian Davis".

Dr Brian Davis

Independent Reviewer

Quinquennial Review of Opra – Final Report

Contents

	Page
Foreword and introduction by Brian Davis, Independent Reviewer	1
Executive Summary	6
Introduction	6
Findings	6
Recommendations	7
Next steps	8
Organisations with a role in pensions	9
Opra – Background	10
Legal framework	10
Role and functions	11
“Whistleblowers”	11
Other duties and powers	11
Opra Publications	12
Electronic access and reporting	12
Funding	12
Organisational structure	13
Core Management Team	13
The Board	13
Composition of the Board	13
Pension Schemes Registry	14
Human Resources Issues	14
Office Location	14
Quinquennial Review methodology	15
Public consultation	15
Basis for findings in this report	15
Review of performance – Findings and recommendations	17
Findings – overall	17
Findings – specific	18
Recommendations	18
External factors and other reviews	26
EU Directive	26
Other reviews	26
Draft Objectives	27
Draft objectives for a new pensions regulator	27

Quinquennial Review of Opra – Final Report

Contents – continued

Conclusions	29
Green Paper	29
Next steps	29
Name of the new regulator	29
Performance Management	29
Closer working	29
Outcome	30
Annex A: Summary of Opra’s legal powers	31
Annex B: Opra’s caseload and case handling 1997-2002	32
Annex C: Terms of reference for the Opra Quinquennial Review	33
Annex D: Consultation respondents and organisations interviewed	34
Respondents – organisations/professional bodies	34
Respondents – private individuals	35
Face-to-face interviews	35
Annex E: Summary of comments received during consultation	37
Annex F: Independent reviewer, review team and steering group	39
Annex G: Other reviews – recommendations	40
Department of Trade and Industry (DTI) recommendations	40
National Audit Office (NAO) recommendations	41

Executive summary

Introduction

- ❖ This is not a standard Quinquennial Review Report. The Report is not an end in itself but a milestone in a bigger process of change and development in the pensions field.
- ❖ We are reporting at a challenging and important time for all those concerned with pensions and their regulation. The Government has issued a Green Paper on pensions which will cross-refer to this report in recommending the development of a “new kind of regulator”. The Green Paper consultation period and the work that will follow it will produce a template for new governing legislation for pensions and income in retirement more generally.
- ❖ The timing of the Green Paper has affected the level of detail that is contained here. We have not specified in great detail what the day to day work of the new regulator will be because to do so would have pre-empted consultation responses and wider decisions on the nature of legislation – prescriptive versus simplified – and the legal and regulatory status of codes of guidance or codes of practice.

Findings

- ❖ The summary of findings and recommendations in the Report represents a far larger body of work and takes into account consultation and interview responses, factual research, evidence provided to us by technical experts at Opra and the recommendations of other linked reviews as they relate either to pensions or to the regulator.
- ❖ In five years Opra has grown from a small group of less than twenty staff, venturing into largely uncharted regulatory waters, to an efficient professional organisation which has built up considerable knowledge and expertise in its areas of responsibility.
- ❖ The Review Team found -
 - An organisation that had **performed well** within the limitations of the powers it was given
 - An organisation **with potential** to take on new and different roles and to develop further
 - An organisation that is seen to be open, **accessible and which would now welcome a more pro-active role.**

Quinquennial Review of Opra – Final Report

Recommendations

- ❖ Pension arrangements sponsored by employers will continue to require supervision by a regulator.
- ❖ We accept Alan Pickering’s proposal that a “new kind of regulator” is needed to deliver the regulation of the revised pensions legislation.
- ❖ The pensions regulator should continue to operate at ‘arms length’ from Government.
- ❖ The current pensions environment and public expectation suggest that a pro-active regulator is needed.
- ❖ A pro-active regulator will require a revised legal framework.
- ❖ Opra’s objectives are not currently reflected in law – those of the new regulator should be.
- ❖ The new regulator’s objectives should reflect the need to focus on the key risks to pension scheme members – and to be seen to be doing so.
- ❖ An impact of the current legal framework is that Opra has processed high volumes of relatively low value reports and breaches - this is not consistent with a risk focussed and pro-active approach and must be addressed in the revised legislative structure.
- ❖ Although taking on a pro-active role, the new regulator will still respond to whistle blowing reports from pensions professionals – but we support Alan Pickering’s view that the regulator’s guidance to scheme advisors should direct them to “blow the whistle” only on breaches that are likely to have a direct impact on the security of members’ benefits.
- ❖ A pro-active regulator will not only investigate and sanction, but also encourage compliance through education and guidance.
- ❖ The number of bodies involved in the fields of pensions authorisation, sales, marketing, advice and regulation leads to confusion – this should be addressed.
- ❖ A new kind of regulator will require a new kind of governing Board.
- ❖ The Pensions Scheme Registry should take on a wider role
- ❖ Opra has produced good quality publications and a popular website – the new regulator should build on this foundation.
- ❖ Opra has a low public profile but is well known amongst pensions professionals – the new regulator will need to decide on its key audiences for publications and other communications and co-ordinate this with information issued by other bodies.

Quinquennial Review of Opra – Final Report

- ❖ In order to maintain its profile with appropriate audiences, in the short term, Opra, and in the longer term, the new regulator, should take every opportunity to build on and extend the existing programme of face to face communications.

Next steps

- ❖ DWP will work with Opra to produce an implementation plan which will set out the work to be undertaken during the transitional period from current arrangements to the new kind of regulator. This will highlight areas where further detailed work is needed.
- ❖ We anticipate the implementation and planning process will be taken forward on a project basis – comprising of joint working between Opra and DWP, with input from HMT, Inland Revenue and key professional bodies as necessary.
- ❖ Improved processes will result in the delivery of a pro-active organisation, providing greater protection to scheme members, whilst providing support and advice to schemes. Ultimately, this should result in staff delivering an improved service, providing a greater sense of satisfaction, whilst reducing frustration at the current restrictions which limit their role.

Quinquennial Review of Opra – Final Report

Organisations with a role in pensions

Organisation or body	Nature of function
Department for Work and Pensions (DWP)	Responsible for governing legislation of Opra and for development of future legislative structure within which new regulator will operate.
The Inland Revenue	Initial authorisation of schemes – The Inland Revenue seek to ensure that pension schemes satisfy certain conditions in order to be eligible for tax relief.
The Financial Services Authority (FSA)	Regulation of sales and marketing of personal pensions - 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 Occupational Pensions Regulatory Authority (Opra)	Regulation of pension arrangements, sponsored by employers, that are already up and running – Opra is the UK regulator of such arrangements.
<i>When things go wrong -</i>	
OPAS - The Pensions Advisory Service	Advice and guidance – OPAS is an independent organisation, which provides free information and guidance to members of the public on private pensions matters. It also helps to resolve disputes and complaints concerning private pension arrangements (company pensions, personal pensions and stakeholder pensions).
The Pensions Ombudsman	The Pensions Ombudsman investigates individual complaints of maladministration and makes determinations on disputes of fact or law in 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 Financial Services Ombudsman	The Financial Services Ombudsman handles complaints about the sales and marketing of pension products.
<i>Other interested parties -</i>	
<p>There are a large number of other organisations with a key role in the pensions community. Whilst it would be difficult to list them all here, they include the professional bodies for actuaries, auditors and pension lawyers, the Association of British Insurers, the National Association of Pension Funds, the Society of Pension Consultants and the Pensions Management Institute. Others with a more general interest include the TUC and the Confederation of British Industry.</p> <p>All the groups named above have participated in consultation on the Quinquennial Review of Opra</p>	

Quinquennial Review of Opra – Final Report

Opra – Background

1. The Occupational Pensions Regulatory Authority (Opra) is a Non-Departmental Public Body (NDPB) which was established under Part 1 of the Pensions Act 1995, in response to a recommendation from the Pension Law Review Committee (PLRC)¹. The PLRC had been set up in June 1992 to undertake a comprehensive review of the law relating to occupational pensions, amidst growing concerns about the standard of administration in occupational pension schemes and the risk of misappropriation of scheme assets. These concerns had been further reinforced by events surrounding the collapse of Robert Maxwell’s Mirror Group Newspapers empire.
2. The PLRC Report, published in September 1993, recognised the need for a regulatory body with the powers to monitor and enforce proper standards of administration in occupational pension schemes. The establishment of a regulatory body underpinned many of the other PLRC recommendations concerning pension scheme regulation. The Report recommended that the Regulator should have the power to impose sanctions for designated breaches of the legislation whilst also having the ability to undertake investigations where breaches had not been reported.
3. Opra became fully operational on 6 April 1997 as the statutory regulator for occupational pension schemes in the UK. In addition to its regulatory role, Opra also took responsibility for collecting the Pensions Scheme Levy and, when required, the levy for the Pensions Compensation Scheme. At the same time, Opra took over responsibility for the Pension Schemes Registry from the Occupational Pensions Board. Opra also has a role in educating trustees and others associated with the running of schemes to ensure that they understand their duties and comply with the legislation.

Legal framework

4. The Pensions Act 1995, and subsequent Acts and statutory instruments, establish Opra and set out the powers vested in Opra to investigate breaches of pensions law. It also specifies the penalties that Opra may apply to individuals guilty of such breaches. Opra has at its disposal a number of civil and criminal penalties that can be applied in specific circumstances, including the ability to impose fines on individuals or organisations.
5. During Opra’s early years, a number of breaches of the Pensions Act 1995, e.g. late payment of contributions and failure to obtain audited accounts on time, could only be pursued under criminal law. Since 2000, Opra has been able to impose penalties under civil law, which has removed the burden of carrying out intensive

¹ “Pension Law Reform, The Report of the Pension Law Review Committee”. Chairman Professor Roy Goode. Published September 1993.

Quinquennial Review of Opra – Final Report

investigations and providing a more balanced approach to what are quite frequently administrative failures rather than deliberate acts of non-compliance.

6. The powers available to Opra are summarised in Annex A.

Role and functions

7. Opra's key regulatory function is to investigate breaches of the Pensions Act 1995 (occupational pension schemes); the pension provisions of the Welfare Reform and Pensions Act 1999 (personal and stakeholder pensions) and the Child Support, Pensions and Social Security Act 2000 (winding up). Opra is able to deal with breaches of the areas of pensions legislation for which it is responsible by means of a civil penalty or criminal prosecution.

“Whistleblowers”

8. The Pensions Act 1995 placed a statutory duty on certain professionals, who work closely with pension schemes, to report breaches of legislation to the regulator. The principal "whistleblowers" are scheme auditors and scheme actuaries. Opra also receives reports from other individuals and bodies, for example, trustees and scheme managers. Opra responds also to reports from scheme members. Since April 2001, pension providers have a statutory duty to report late payments of employer and employee contributions to personal pension and stakeholder pension schemes
9. Opra's role has been reactive because the majority of the work it has carried out has been in response to reports of breaches from scheme trustees and statutory “whistleblowers” as defined in Section 48 of the Pensions Act 1995. The bulk of this work has involved breaches of the requirement on employers to pay employee contributions on time or the failure by trustees to obtain audited accounts (see Annex B – Details of Opra's Caseload and Case Handling 1997 - 2002).

Other duties and powers

10. Opra has the authority to refer complex or more serious cases to other bodies such as the Police or the Serious Fraud Office. In specific circumstances, Opra can disqualify scheme trustees and/or appoint an independent trustee.
11. There is provision in the Pensions Act for Opra to take direct action against statutory whistleblowers who fail in their duty to report relevant matters but it was not brought into effect. The respective professional organisations had well-established disciplinary procedures and were able to provide their members with expert, professional guidance on how to work within the Pensions Act and were, therefore, well-placed to take disciplinary action, when necessary. Opra can and does report individuals to their professional bodies.
12. Since 1997, Opra's role has evolved to take on regulatory responsibility for some aspects of personal and stakeholder pension schemes as well as additional duties in relation to schemes in wind-up.

Quinquennial Review of Opra – Final Report

Opra publications

13. Opra produces a large number of free publications, including detailed information and guidance for professional and lay trustees, employers and statutory whistleblowers. They also produce factsheets, highlighting, for example, the respective roles of Opra, OPAS, the Pensions Scheme Registry and the Pensions Ombudsman, how complaints are handled and how pension schemes can be traced via the Pensions Scheme Registry. A number of these publications have received the Plain English Campaign award for clarity.
14. Opra's Annual Reports provide an overview of the cases it has dealt with during the preceding year as well as outlines of more specific cases and how the Opra Board has dealt with these matters. Quarterly "Bulletins" provide regular updates and promote discussions on topical issues.
15. Members of the Opra Management Team have been actively involved in professional events such as conferences, where they have given presentations and participated in panel debates in order to convey to, what is for them the key audience – pensions professionals - Opra's approach to achieving compliance.
16. Opra's web site contains all Opra's published material in electronic form and in October 2000, it launched a stakeholder pensions website for employers and providers.

Electronic access and reporting

17. Opra has already developed a system of electronic reporting of late payment breaches through its website and an online tracing request service for the Pension Schemes Registry. Opra has an important project in hand to extend the electronic reporting facility and to introduce electronic methods to Opra's internal procedures for risk assessment and case management.
18. The option to initiate a search for past pension rights with the Pensions Scheme Registry via the Internet has recently been introduced.

Funding

19. In planning terms Opra is treated like any of the DWP's business units. It provides details to DWP of its expenditure requirements for each financial year as part of the annual allocation process and estimates of its requirements for any particular Spending Review period.
20. The administration costs of Opra and the Pension Schemes Registry are initially met from the DWP Administration Vote. The Pension Schemes Act 1993 allows this expenditure to be recovered by means of an annual general levy on occupational and personal pension schemes (which also funds the Pensions Advisory Service (OPAS) and the Pensions Ombudsman). Levy receipts are

Quinquennial Review of Opra – Final Report

collected by the Pension Schemes Registry on behalf of the Secretary of State and surrendered by DWP to the Treasury's Consolidated Fund.

Annual General Levy Raised 1997 - 2002	
Year	Amount raised*
1997-1998	£11 million
1998-1999	£12 million
1999-2000	£13 million
2000-2001	£15 million
2001-2002	£15 million

*rounded to nearest £ million

Organisational Structure – The Core Management Team

21. Opra's Chief Executive, Tony Hobman, who was appointed on 24th April 2002,² and five senior managers constitute Opra's Core Management Team (CMT). The CMT's main task is to manage the link between Opra's day-to-day operations and the Opra Board. The CMT also attend Board meetings.

The Board

22. The current chairman of the Opra Board is Harriet Maunsell OBE, appointed 1 April 2001³. In addition to the chairman, there are currently nine part-time board members. On average, the part-time board members spend between three and four days each month on Opra business.
23. The Opra Board has both a policy-setting function and a judicial function, and sets the strategic direction of Opra. Acting in committees, and individually, board members are also responsible for making formal decisions, known as 'determinations' and 'reviews', relating to schemes that may have breached the requirements of the Pensions Act 1995 or associated regulations. Whilst the Board delegates the day-to-day running of Opra to the chief executive and staff, it has a general duty to provide direction to the chief executive on matters of policy and to ensure that Opra's objectives are explained and understood.

Composition of the Board

24. Board members are appointed by the Secretary of State for Work and Pensions, in accordance with the provisions set out in Section 1 of the Pensions Act 1995. They are unsalaried. Appointments are made following open competition and nominations from relevant organisations. Board members do not serve in any directly representative capacity but the Board as a whole should represent the views of all parties involved in pension schemes.

² From early 1996 to March 2002, Caroline Instance served as Chief Executive.

³ The previous Chairman was John Hayes, CBE.

Quinquennial Review of Opra – Final Report

Pension Schemes Registry

25. In 1997 Opra assumed responsibility for the Pension Schemes Registry (PSR), which was created in 1990. The PSR, based in Newcastle, holds a database which records relatively limited details of all pension schemes currently operating in the UK or which have operated and are now closed.
26. The PSR has two main functions. The first is the tracing of pension schemes via the database. If an individual has lost touch with their pension scheme, they may be unable to claim their full benefits due at retirement. The records held are particularly helpful where, for example, a past employer has been taken over by another company, or moved head office.
27. The second function is to use the database to collect the general levy on pension schemes, which indirectly funds Opra, OPAS and the Pensions Ombudsman.
28. The PSR's information gathering powers and current database are designed only to serve the functions described above rather than to support the supervision or regulation of pension schemes.

Human Resources issues

29. As an NDPB, Opra is responsible for its own HR policies, pay and recruitment. The Public and Commercial Services (PCS) trade union represent the interests of a majority of the staff and meet regularly with the HR manager, Resources Director and Chief Executive.
30. Opra has recently completed its third successful assessment for the Investors in People (IIP) accreditation.

Office location

31. Opra's location in Brighton, and Newcastle, has given rise to some consultative comment, raising issues around profile and engagement with the rest of the pensions community. We do not accept that these are major issues and we do not recommend a change of location.

Quinquennial Review methodology

32. Government Departments have a general duty to carry out regular reviews of the Agencies and Non-Departmental Public Bodies (NDPBs) that they sponsor. The reason for this is twofold. A review provides the opportunity to consider whether the service being provided is of a high quality and responsive to the needs of its users and whether the organisation is meeting the objectives for which it was set up. A review also provides the further opportunity to consider whether the way in which the service is provided is the most effective one.
33. On 7th May 2002, Ian McCartney, Minister of State for Pensions, announced the first Quinquennial Review of Opra. DWP Ministers appointed Dr. Brian Davis as Independent Reviewer to work with a team of DWP officials and provide external management challenge to their findings. The Minister made it clear that this would be a wide ranging review and that he welcomed comments on Opra to contribute to the review process from interested organisations and individuals. The Terms of Reference for the review are set out at Annex C.

Public consultation

34. A consultation document was issued in May 2002 to over 100 organisations and individuals, including management and trade union representatives at Opra itself. The document was also made available via the DWP and Opra websites. The consultation period ended on 2nd August 2002.
35. The Review Team received 50 responses to consultation and the list of organisations responding and consultation meetings undertaken is at Annex D. Annex E contains a brief summary of key points made by respondents.
36. The unanimity of opinion expressed on the vast majority of key areas was of particular interest to the Review Team, leading us to feel confident that the recommendations made in this Report will be well supported by key customers, and partnership organisations of Opra as well as management and staff within the organisation.

Basis for findings in this report

37. This report is based on the findings from the formal public consultation, but also takes account of –
 - ❖ The views of key individuals and professional bodies that the review team met in person
 - ❖ The results of an extensive series of interviews with staff at all levels within Opra and meetings with Trades Union officials

Quinquennial Review of Opra – Final Report

- ❖ The views of the Steering Group⁴ established to support the review team
- ❖ The findings of other linked reviews⁵

38. **All those whom we met gave their views in a constructive and helpful manner, for which the Review Team is extremely grateful.**

⁴ Membership detailed at Annex F.

⁵ See Annex G.

Review of performance – Findings and recommendations

OVERVIEW

This brief **summary** of findings and recommendations represents a far larger body of work and takes into account consultation and interview responses, factual research, evidence provided to us by technical experts at Opra and the recommendations of other linked reviews as they relate either to pensions or to the regulator.

Findings - overall

39. **In five years** Opra has grown from a small group of less than twenty staff, venturing into largely uncharted regulatory waters, to **an efficient professional organisation which has built up considerable knowledge and expertise in its areas of responsibility**. During that time, problems have occurred and been overcome, and staff and management have formed an increasingly clear view of their own role and of the wider pensions environment. However, this was not always the case and since this Report is concerned with the entire 5-year period of operation to date, the following points of detail reflect both positive and negative findings.
40. The Review Team found
- ❖ An organisation that had **performed well** within the limitations of the powers it was given – to paraphrase “it has done a good job of the job it was given to do”.
 - ❖ An organisation **with potential** to take on new and different roles and to develop and evolve further
 - ❖ An organisation that is seen to be open, **accessible and which would now welcome a more pro-active role**

Pension arrangements sponsored by employers will continue to require regulation

41. **There is a continuing need for a regulator** to operate in this specialised field of employer sponsored pension arrangements even if the role is to be redefined both in terms of the regulator’s powers and the legislative framework within which the regulator operates.

Quinquennial Review of Opra – Final Report

Findings – specific

We accept Alan Pickering’s proposal that a “new kind of regulator” is needed to deliver the regulation of revised pensions legislation

42. The more detailed findings set out below, and the draft objectives detailed at paragraph 81 develop further the concept of the new kind of regulator. In the following sections we set out a series of specific recommendations and proposals for further work which are intended to lead, as part of a wider programme of change, to the creation of both new legislative structures and to use Alan Pickering’s resonant phrase “A New Kind of Regulator” (NKR). **What is needed now in this key area is a pro-active and risk based regulator.**

The pensions regulator should operate at ‘arms length’ from Government

43. The current non-Departmental public body (NDPB) status of Opra is appropriate for a regulatory body and **should be continued in the new regulator**. The Pensions Scheme Registry function, which is currently part of Opra, could be dealt within a central Government Department.

Recommendations

The current pensions environment and public expectation suggest that a pro-active regulator is needed

44. **Opra has been perceived as a reactive and “tick box” regulator.** It has been criticised on these grounds, although it has also been acknowledged that Opra’s approach to enforcement was constrained by the powers it had been given and the legislative framework within which it was operating. It was also appropriate – as noted in the National Audit Office’s (NAO) Report on Opra⁶ - that a cautious and reactive approach was appropriate in the early days of operation of this brand new regulatory body.
45. A more pro-active regulator will have sufficient intelligence about the organisations involved in the activity being regulated to determine where risks are most likely to arise. It will also have the powers to take an active approach to reducing those risks, whether through education, guidance or targeted investigations, rather than simply reacting to reports of breaches.
46. **For employer sponsored pension arrangements, we recommend** that the new regulator’s statutory objectives reflect the need to focus on the key risks to pension scheme members – and be seen to be doing so.

⁶ “Opra: Tackling the risks to pension scheme members” – published 6 November 2002.

Quinquennial Review of Opra – Final Report

47. In practice a pro-active pensions regulator will –
- ❖ Undertake surveys and other research and, where possible share information with other bodies, which will inform risk profiling, risk analysis and the identification of risk indicators
 - ❖ Apply the resultant risk model to their work in such a way that surveys, compliance visits and on-site investigations can be well targeted and carried out on a regular basis
 - ❖ This activity will not only create a more secure system, but also raise the profile of the regulator amongst pension professionals and the wider business community

A pro-active regulator will require a revised legal framework

48. There are **limitations and omissions in the legal framework** that defines Opra’s current role and powers and we welcome the opportunity for these to be addressed by the wider regulatory reform agenda in pensions.
49. This will enable the new regulator to learn from and build on Opra’s experience of the current legislation. We also expect Opra staff to be involved in developing the appropriate legal framework for the new regulator in partnership with DWP.

Powers and sanctions

50. A number of the regulator’s current powers to intervene in badly run or failing schemes are well received in the pensions community and seen by consultation respondents as being existing examples of a pro-active approach. These interventions include –
- prohibiting a person from being a trustee - s.3 Pensions Act 1995 (PA 95)
 - suspending a trustee or trustees – s.4 PA 95
 - appointing an independent trustee – s.7 PA 95
 - power to wind up schemes – s.11 PA 95
 - applying to the courts for an injunction⁷ – s.13 PA 95 – [this section has been singled out for praise as a powerful regulatory tool by the NAO regulatory team]
51. These provisions should therefore be retained as part of the new regulators ‘tool-kit’, even if the powers are presented in a re-drafted legislative form. But this is not the whole story. What is required is a set of criteria that enable all those involved in making recommendations and decisions about regulatory reform to make judgements about the level of involvement of the regulator and the powers and

⁷ The wording here is - “If...the court is satisfied that – there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of an occupational pension scheme [or judges that they have already done so]...the court may grant an injunction restraining him from doing so...”

Quinquennial Review of Opra – Final Report

sanction that are needed **in each technical area**. Such matters will be discussed in more detail during the Green Paper consultation period.

An impact of the current legal framework is that Opra has processed high volumes of relatively low value reports and breaches - this is not consistent with a risk focussed and pro-active approach and must be addressed

52. The current Pensions Act and associated legislation - as it relates to Opra - is seen to be restrictive and **prescriptive**, leading the organisation to spend too much time on trivial matters which in turn result in trivial sanctions and penalties. An alternative description is that it has become a ‘processing factory’ – albeit an efficient one. This in turn has led to the more serious allegation of **“devaluing the regulatory currency”** – which must be addressed both for its own sake and because of the deterrent effect of the imposition of significant sanctions and penalties.
53. Opra has generally taken a cautious approach to interpreting the statutory definitions of its duties and powers, but this is coupled with the fact that DWP⁸ have been relatively unresponsive when Opra has requested change or re-interpretation of existing legislation.
54. This situation has arisen from the fact that neither organisation could know what to expect in terms of volumes and types of breach when the legislation first came into effect but also from DSS/DWP’s intention to only introduce fundamental changes to legislation where there was a compelling business case to do so, based on a full evaluation of Opra’s experience in the first years.
55. The notable exception to this situation was the shift of certain Pensions Act breaches from being criminal matters – with the attendant administrative burdens – to them being treated as civil matters.

Although taking on a pro-active role, the new regulator will still respond to whistle blowing reports from pensions professionals

56. The process of **whistle blowing** to report breaches to Opra is generally **effective**, offering a structure and format for scheme professionals’ interactions with the regulator. It is also cited by some as a form of guidance, training or support for those new to pensions work, giving, as it does, a clear indication of the “things that matter” in pensions regulation. **However, there are professionals working in pensions who are not designated as whistle blowers – most notably investment and fund managers**. Consideration should be given to extending the regime to other parties.
57. **We recommend that the whistleblowing regime should continue but pension scheme professionals should be enabled to exercise discretion as to which**

⁸ Formerly the Department of Social Security or DSS

Quinquennial Review of Opra – Final Report

breaches constitute a matter of "material significance". Opra has acknowledged that its initial interpretation of the key phrase in the current legislation "material significance" was deliberately cautious because the organisation was venturing into an unknown area in terms of the scale and nature of the breaches that were "out there". Experience has now shown that Opra's guidance resulted in a huge number of minor breaches being reported. Opra is currently reviewing the guidance in partnership with the relevant professional bodies.

58. Consultation evidence supported this approach strongly with many respondents expressing the view that the exercise of professional judgement, in the light of individual circumstances, was the appropriate way to proceed. We believe that this change will be in the best interests of members, freeing up finite regulatory resources to focus on "at risk" situations.

A pro-active regulator will not only investigate and sanction, but also encourage compliance through education and guidance

59. Alan Pickering proposed that the new regulator should act as an adviser as well as a regulator. We support this contention but are very aware that a wide range of organisations are involved in giving advice and guidance to the public on pensions matters – the ABI / FSA's online calculator being a recent example.

We therefore recommend that the new regulator will:

- ❖ As part of a proportionate approach to regulation, give support and advice to those seeking to achieve compliance with legislation
- ❖ (As Opra does now) provide guidance to trustees, pension professionals and employers on regulatory matters
- ❖ Depending on the decisions on the nature of pensions legislation arising from the Pensions Green Paper consultation, work with appropriate professional bodies to produce Codes of Practice in particular technical areas.

Opra's objectives are not currently reflected in law – those of the new regulator should be

60. Unlike other regulators, Opra's objectives are not specified in statute - the Pensions Act 1995 specifies Opra's duties and sanctions powers only. Although this was a far from ideal situation for a new organisation, there was little obvious alternative - as the NAO acknowledged in their recent study:

"It would have been difficult in 1996 for Opra to formulate its objectives ... without knowing the extent of non-compliance with the Pensions Act. The extent of non-compliance became apparent only once it had been operating for some time, and only then could Opra have undertaken the risk analysis needed to

Quinquennial Review of Opra – Final Report

determine what its activities should and could reasonably be expected to achieve.”⁹

The number of bodies involved in the fields of pensions authorisation, sales, marketing, advice and regulation leads to confusion, particularly with regard to the FSA and Opra – this should be addressed

61. The table on Page 9 gives some brief indication of the number of organisations in the pension field. Although not a matter for Opra or the new regulator alone, it is incumbent upon all parties to consider options for effective ‘joined up’ communication of their respective roles. **We support** the work that Opra has already initiated with DWP to provide a “single point of contact” phone number for all non-State pension queries which would enable enquirers to be channelled through directly to the appropriate body.

Opra and the Financial Services Authority (FSA)
--

62. In considering the number of bodies involved in the pensions field, we noted specifically that the FSA is the single statutory regulator responsible for the regulation of deposit taking, insurance and investment business. Within the pensions field, the FSA’s primary focus is on the marketing of personal pensions, including stakeholder pensions, with particular emphasis on promotion, selling and advice. Long term savings and investments also fall within the FSA’s scope including ISAs, unit trusts and life assurance products.
63. Opra, on the other hand, (as described elsewhere in this report) is concerned not with sales and marketing but with the ongoing regulation of pension arrangements sponsored by employers – an area in which it has built up specialist knowledge and expertise.
64. However, because of its size and its role in informing people of their rights in the sales and marketing of financial products, the FSA has gained a higher public profile than Opra, giving rise to possible confusion as to where to turn for advice and guidance.
65. Opinions were divided on how to address these issues. Because of the similarity in parts of the roles, a case could be made for amalgamating the pensions regulator with the FSA.
66. The Independent Reviewer has indicated a preference for the amalgamation of the two organisations on the basis of increased clarity for the public and the potential for increased efficiency of operations. However, the majority of respondents believed that the present separation of the FSA and OPRA should continue. Considerable potential change to the legislative framework for employer sponsored pensions is likely over the coming years, and this, coupled with the extent of the

⁹ *Ibid.* p35.

Quinquennial Review of Opra – Final Report

FSA's existing remit has led DWP, on balance, to support continuing separation, whilst encouraging closer working with the FSA, where appropriate. DWP intends to review this issue in the wider context of pension reform.

A new kind of regulator will require a new kind of governing Board

67. **The Board** have overseen the development of Opra extremely effectively in the past. However - as the Chairman herself has acknowledged - they are currently forced by the legislative and administrative structures to **spend the majority of their time working on determinations and reviews of individual cases** rather than considering wider policy and strategic issues. Many of these cases fall into the “high volume, low value” category described in paragraph 49. The Review concluded that **the current demands placed on Board members are unbalanced, and therefore, do not make best use of Board members skills and knowledge.**
68. The **composition of the Opra Board** was the subject of some consultative comment. **We recommend** that the Board (or equivalent body) of the regulator must perform a strategic role, rather than an operational or administrative one. The composition of the Board and the mix of skills and knowledge required will be the subject of further consultation when the full functions of the new regulator become clear. We expect this to be after the conclusion of the Pensions Green Paper consultation period.

The Pensions Scheme Registry should take on a wider role

69. We found the **Pensions Scheme Registry to be well run and efficient, with a motivated team of staff providing excellent customer service.** However, their location in Newcastle, when the rest of the organisation is based in Brighton, means that they sometimes feel isolated from their colleagues and are seen as an “outpost of empire”.
70. The **limited information about individual schemes held by the Pensions Scheme 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 has, therefore, made representations to DWP to allow the Pensions Scheme Registry to become a regulatory tool by collecting and recording information for regulatory and policy evaluation use.
71. Scheme professionals have also pointed to the benefits of an expanded role for the Pensions Schemes Registry for filing returns on audited accounts and actuarial statements (e.g. a simple statement to say that the provisions have been complied with). Such returns, provided at little extra cost to schemes, would allow the regulator to identify more easily the schemes that are not fulfilling particular requirements and, more particularly, those which have not appointed the relevant professional advisors.

Quinquennial Review of Opra – Final Report

72. The EU Directive on occupational pensions (see paragraph 80) may also require development and evolution of the Pension Scheme Registry's role. Further work will be undertaken on this by DWP, Opra and Pensions Scheme Registry staff, also involving the Audit and Pension Schemes Service (APSS) of the Inland Revenue.
73. Currently, people using the Pension Scheme Registry's tracing service must apply in writing and will in turn receive a response in writing. Internet applications are now being accepted and DWP will take forward the work to enable telephone tracing as soon as possible.

Opra has produced good quality publications and website – the new regulator should build on this foundation

74. Opra has worked hard to educate and inform pension schemes, trustees and advisers and has produced a number of **good quality publications**, many of which were commented on favourably during consultation. **Opra's website is of a high standard and is well regarded by customers.**
75. Opra's staff and management make significant efforts **to engage with professional organisations** and other bodies to create an ongoing dialogue and share information. Many of the professional organisations we spoke to described Opra as approachable, amenable and ready to listen. They referred to good formal and informal contact at all levels. It was clear from our own observations of working practices that Opra's customers are able to speak to a named person when they are seeking information or wishing to discuss a point of detail on a case.
76. It was also clear that, looking back, **the efforts that Opra made in the early days of operation to set out its proposed approach to regulation were well received.** Many respondents also appreciated Opra's efforts to provide guidance to professionals and individuals involved in running schemes. In particular, they cited Opra's guidance for trustees as being comprehensive, clear and jargon-free.
77. Opra has promoted higher standards of training for trustees and pension professionals.

Opra has a low *public* profile but is well known amongst pensions professionals – the new regulator will need to decide on its key audiences for publications and other communications and co-ordinate this with information issued by other bodies

78. Although Opra is well known to those in the pensions world, its general **public profile is relatively low**, particularly when compared to that of some other regulators. Opra's current structures are focussed on dealing with trustees, whistle blowers and scheme professionals rather than directly with the public, but, as set out in paragraph 61, **it may be difficult for an individual with a problem, lost in a forest of pensions jargon, to know which way to turn.**

Quinquennial Review of Opra – Final Report

79. **We recommend** that DWP, Opra, FSA, OPAS, Ombudsman and the Inland Revenue undertake further work to ensure that a coherent and consistent message is issued both to the well informed professional audience and to members of the public about the respective roles and responsibilities of those involved in pension provision and regulation. In order to maintain its profile with appropriate audiences, in the short term, Opra, and in the longer term, the new regulator, should take every opportunity to build on and extend the existing programme of (well received) face to face communication.

External factors and other reviews

External factors – EU Directive

80. An important external factor, which will act upon plans for new pensions legislation and for a new kind of pensions regulator, will be the impact of the forthcoming EU Directive on “... the activities of institutions for occupational retirement provision”. This is likely to be implemented via the new Pensions Act. The Directive is in line with the emerging findings of the Quinquennial Review, in that it envisages a pro-active approach for regulators and specifically mentions **on-site inspections of schemes for compliance and investigative purposes**. The Directive will also place additional duties on the regulatory body in each EU country – particularly with regard to authorising cross border pension arrangements and informing partner countries of the relevant legislation relating to pensions in their own country.

Other reviews

81. The timing of the Opra QR is opportune in that it has taken place against the background of a number of other reviews that will have a bearing on how private pensions are regulated. This wider context for the Opra QR has provided the Review Team with an excellent opportunity to take a wider view of the pensions landscape when making recommendations on the future functions of a Pensions Regulator.
82. The reviews or studies that we have considered, either directly or indirectly, are, in chronological order –
- ❖ The pensions aspects of the DTI inspectors report on Mirror Group Newspapers
 - ❖ Alan Pickering’s report on Pensions Simplification – and the Departmental response to it
 - ❖ The NAO study of Opra and to the extent to which they are relevant –
 - ❖ Paul Myners’ Review of Institutional Investment in the UK
 - ❖ Ron Sandler’s Review of Medium and Long-Term Retail Savings in the UK
83. **Decisions made within Government about the response to Alan Pickering's report and the IR pensions tax simplification review will also play a major part in dictating the role and functions of the new pensions regulator.**

Draft objectives

Draft objectives for a new pensions regulator

84. Taking into account the wealth of information, comment and recommendations now available, we have drawn up the following draft objectives as a way of summarising the points made in this report.

What is a pensions regulator for?

The pensions regulator exists to –

- ❖ Protect the interests of “the consumer” (pension scheme members)
- ❖ Promote good practice and sound administration in pensions – offering advice on *regulatory* matters
- ❖ Educate, inform and support those who are seeking to comply with, or understand, statutory provisions which relate to pensions
- ❖ Investigate, take action against and sanction, those who avoid, subvert or commit fraud against statutory provisions which relate to pensions
- ❖ Engage actively with other pensions professionals and with government, raising the profile of pensions issues and, where appropriate, their own profile.

What should the regulator *do*?

The regulator should –

- ❖ Consider the extent of risk to funds and loss to individuals as primary criteria for deciding on a course of action
- ❖ Ensure that regulatory resources are outcome focussed rather than process or “tick box” focussed
- ❖ Ensure that information is shared within the regulatory organisation and that an effective “early warning” system is in place
- ❖ Put in place an evaluation cycle which enables the collation of management information about the impact of the regulator’s interventions in order to establish a programme of continuous improvement¹⁰
- ❖ Have a higher public profile, both in terms of undertaking regulatory activity (“get out there more”) and in terms of active and positive engagement with other pension professionals and Government
- ❖ Produce good quality advice and guidance material – and be given a role in guidance to pension administrators and professionals on regulatory matters
- ❖ “Know more” about the scale and nature of their “live load” – as a result, be used as a source of soundly based information (mainly to Government) e.g. how many schemes, of what size and type

¹⁰ This approach is in accordance with the revised guidance on reviewing NDPBs - “Better Government Services – Executive agencies in the 21st century” published by the Cabinet Office in September 2002.

Quinquennial Review of Opra – Final Report

- ❖ Have a flexible and pro-active approach to the issues, problems and breaches of legislation that are put before it
- ❖ Carry out more compliance visits and/or investigations and fine fewer people/schemes larger amounts of money – and let it be known that this is the approach taken, in order to maximise the deterrent effect

In conclusion –

- ❖ Regulation and regulatory bodies can only be effective – and respected – if they focus on the real risks and are seen to do so. This is the key theme that we want to carry forward in work between DWP and Opra to develop the new regulator.

Conclusions

Green Paper

85. As stated earlier in the Report, the consultation responses which the Government receives following its Green Paper on pensions will play a critical role in driving out the day to day role of the new regulator and will be taken into account during the next period of development work on the new regulator. The changes arising from the Inland Revenue's tax simplification review will also have a major impact.

Next steps

86. This Report is not an end in itself but an important checkpoint stage in a bigger process. In the next two months, DWP and Opra will produce a joint implementation plan which will set out the strands of work which will contribute to the completion of the progress from Opra – through a transitional period – to a new kind of regulator. This will highlight areas where further detailed work is needed and opportunities for staff at all levels and professional partners and contacts to get involved in the process of change.

Name of the new regulator

87. Future work will also include consideration of what the regulator should be called. We believe that a regulator with a different approach to regulation, with new objectives and new powers, should be distinguishable from Opra. Any change should also take account of the new responsibilities that Opra has taken on since 1997, in particular, for stakeholder and personal pensions which means that the term "Occupational Pensions" is no longer wholly appropriate.

Performance Management

88. A new set of performance measures will be put in place in parallel with the new regulator's objectives. This will need to include a direct assessment of the effectiveness or otherwise of the regulatory environment and the regulator. One approach to this would be to have a "lead" measurement which indicates what percentage payouts are achieved by all occupational schemes compared to the theoretical levels that would have been expected. Any such measurement will require the collection of additional data and will be discussed and assessed in greater detail as part of the next steps.

Closer working

89. The next stages will require close and sustained working between Opra and DWP. It is appropriate to reflect at this point the good working relationships that have been established during the Review period and the positive personal impact that

Quinquennial Review of Opra – Final Report

the Chief Executive of Opra, Tony Hobman, has had since his appointment in May. Management structures have been revised and opened up and communication and co-operation with this Review and the NAO study have been of a high standard.

Outcome

90. We believe that the proposals set out in this report, together with the wider regulatory reform agenda in pensions, will produce a new and improved system of pension regulation in the UK. The new pensions regulator will be a pro-active and risk focussed organisation, providing greater protection to scheme members, whilst also providing support and advice to those administering schemes.

Quinquennial Review of Opra – Final Report

Summary of Opra’s legal powers ¹¹

Annex A

Statute	Powers granted to Opra ¹²
Pension Schemes Act 1993, s99	Grant an extension to the maximum period allowed to pay a Cash Equivalent Transfer Value.
Pensions Act 1995, ss3-4	Suspend and prohibit an individual from acting as a trustee for a particular scheme.
Pensions Act 1995, s7	Appoint a trustee to schemes.
Pensions Act 1995, s10	Apply a civil penalty (maximum £5,000 fine in the case of individuals, maximum £50,000 in any other case).
Pensions Act 1995, ss11-12	Direct a scheme (including public service schemes) to be wound-up.
Pensions Act 1995, s13	Apply to the courts to grant an injunction against an individual, thus preventing them from misusing or misappropriating scheme funds.
Pensions Act 1995, s14	Apply to the courts to have returned to a scheme any funds illegally transferred from it.
Pensions Act 1995, s15	Direct scheme trustees to make payments to scheme members as required by regulatory provisions if such payments have not been made.
Pensions Act 1995, s15	Direct scheme trustees to include in the scheme’s annual report, or to send to members, any statement prepared by Opra.
Pensions Act 1995, s29	Permanently disqualify an individual from acting as a scheme trustee.
Pensions Act 1995, s29	Waiver an automatic disqualification from acting as a scheme trustee.
Pensions Act 1995, s30	Initiate action against any individual who acts as a trustee when disqualified.
Pensions Act 1995, s69	Grant an order to enable scheme rules to be modified.
Pensions Act 1995, s72B	Issue binding directions to trustees or managers of schemes in wind-up to expedite the wind-up process.
Pensions Act 1995, ss98-99	Require to be produced any document that Opra considers relevant to the discharge of its duties, and to inspect premises for the purposes of an Opra investigation.
Pensions Act 1995, s103	Make public, with absolute privilege, a report of any Opra investigation and its outcome.
Pensions Act 1995, sch1	Do anything (except borrow money) which is calculated to facilitate the discharge of Opra’s functions.
MFR Regulations 1996, s29	Grant an extension to the maximum period within which a scheme must achieve the Minimum Funding Requirement.

¹¹ This is a summary for illustrative purposes only. The precise nature of Opra’s powers and the circumstances in which they may be applied are specified in the respective statutes.

¹² Opra was established under ss1-2 of the Pensions Act 1995, which also set out the composition of the Opra Board and the requirements for Opra to report annually to the Secretary of State.

Quinquennial Review of Opra – Final Report

Opra's caseload and case handling 1997-2002

Annex B

Type of case or report	1997/1998	1998/1999	1999/2000	2000/2001 ¹³	2001/2002
Audited accounts ¹⁴	223	2,903 ¹⁵	3,152	1,707 ¹⁶	1,571
Late payments	4,447	7,734 ¹⁷	7,372	6,609	6,697
Personal scheme reports ¹⁸					249,437
Stakeholder scheme reports					8,943
Opra appointment of trustees	139	362 ¹⁹	494	613	509
Requests for Opra to appoint trustees	375	559	525	792 ²⁰	Data not available
Amount of funds released	£12.5m	£26m	Over £58m	Over £30m	Over £45m
Determinations made	26	65	35	459 ²¹	568
Financial penalties imposed	£9,100	£34,525	£66,200	£158,000	£632,000

¹³ This year, for the first time, new cases involving late contributions and audited accounts were treated under civil, not criminal, law.

¹⁴ Failure to obtain audited scheme accounts or an auditor's statement.

¹⁵ Because schemes are required to produce a copy of their audited accounts within 12 months of the year-end, very few reports were received in Opra's first year and therefore a clearer picture of the extent of non-compliance only began to emerge from year 1998/1999.

¹⁶ It is likely that the drop in audited accounts breaches between 1999/2000 and 2000/2001 came about due to Opra's work, which included reporting a significant number of auditors to their professional bodies. The result was increased awareness amongst scheme auditors of their requirements under the Pensions Act, which led to increased compliance.

¹⁷ Increased awareness of reporting requirements arising from Opra's work, including the issue of guidance for statutory reporters, may explain the increase in reported breaches between Opra's first and second years of operation.

¹⁸ Opra's responsibility for regulating stakeholder schemes and some aspects of personal schemes came into effect in 2001/2002.

¹⁹ Again, the significant increase between 1997/1998 and 1998/1999 is most likely because of increased awareness of the requirements to appoint trustees and of the whistleblowing process.

²⁰ The increase in year 2000/2001 is likely to have arisen as a result of the impending change in Opra's powers to make directions in respect of schemes in wind-up, which came into force from April 2002.

²¹ The number of determinations increased significantly this year as a result of changes of sanctions from criminal to civil law, which reduced the burden of proof required to reach a determination.

The Minister of State for Pensions (Ian McCartney) agreed the following Terms of Reference for the Opra QR –

- ❖ review the continuing need for the functions carried out by Opra;
- ❖ determine whether those functions are best carried out by an executive Non-Departmental Public Body (NDPB);
- ❖ review the efficiency and effectiveness of Opra’s delivery of services; and
- ❖ identify the scope for improvement in the future

(i) RESPONDENTS – ORGANISATIONS / PROFESSIONAL BODIES

1. Association of British Insurers (**ABI**)
2. Association of Consulting Actuaries (**ACA**)
3. Barnett Waddingham (**BW**)
4. Buck Consultants Limited (**Buck**)
5. Confederation of Occupational Pensioners Associations (**COPAS**)
6. Electricity Pensions Services Limited (**ESPS**)
7. Faculty and Institute of Actuaries (**FIA**)
8. Financial Services Authority (**FSA**)
9. Financial Services Consumer Panel (**FSCP**)
10. Her Majesty's Treasury (**HMT**)
11. Hewitt Bacon & Woodrow (**Hewitt**)
12. Independent Pensions Research Group and Northern Pensions Resource Group (**IPRG&NPRG**)
13. Industry-Wide Pension Schemes Group (**IWPS**)
14. Inland Revenue (**IR**)
15. Institute of Chartered Accountants in England & Wales (**ICAEW**)
16. Institute of Chartered Accountants of Scotland (**ICAS**)
17. Investment and Life Assurance Group (**ILAG**)
18. Jardine Lloyd Thompson Group (**Jardine**)
19. Local Government Pensions Committee (**LGPC**)
20. Marks and Spencer Financial Services Limited (**M&S**)
21. Mercer Human Resource Consulting Limited (**Mercer**)
22. National Association of Pensions Funds (**NAPF**)
23. Nationwide Life Limited (**Nationwide**)
24. Occupational Pensions Regulatory Authority (**Opra**)
25. Office of the Deputy Prime Minister (Local Government Pensions Division) (**LGPD**)
26. The Pensions Advisory Service (**OPAS**)
27. Pensions Board – Dublin (**PB Dublin**)
28. Pensions Management Institute (**PMI**)
29. Pensions Trust for Charities and Voluntary Organisations (**PT Charities**)
30. Prudential Assurance Company (**Prudential**)
31. Public and Commercial Services Union (**PCS**)
32. Royal Liver Assurance (**Royal Liver**)
33. SAUL Trustee Company (Superannuation Arrangements of the University of London) (**SAUL**)
34. Scottish Widows (**SW**)
35. Society of Pension Consultants (**SPC**)
36. Standard Life Assurance Company (**Standard Life**)
37. Towers, Perrin, Forster & Crosby Inc. (**Towers**)
38. **UNISON**
39. West Yorkshire Pension Fund (**WYPF**)
40. Work Foundation (formerly the Industrial Society) (**Work Found.**)

Quinquennial Review of Opra – Final Report

(ii) RESPONDENTS – PRIVATE INDIVIDUALS

1. Michael Darby Scheme Trustee & Managing Director - The School Government Publishing Company Limited
2. Tony Davies Retired Member Private Pension Fund
3. Mike Ferns Pensioner Nominated Trustee Consignia (Post Office) Pension Plan
4. Mike Fitzsimons IT Services Manager - Opra
5. Martin J Hughes IBM Pension Plan subscriber
6. Anthony Isaacs Thorn & EMI Group Pensioners Association Member
7. Alan Luffrum Pensions Scheme Registry – Newcastle
8. William MacGeagh Member Trustee SSAS
9. Mike Post Pensioner Elected Trustee - Airlines Pension Scheme & New Airline Pension Scheme

N.B. Two private individuals have requested we treat their replies
“In Confidence”

(iii) FACE-TO-FACE INTERVIEWS

Opra:

- Staff at all levels and Trades Union representatives
- Past and present Chief Executive and Management Team members
- Board Chairman and Board members
- Pensions Registry – staff and management

DWP

- Staff with direct responsibility for Opra policy
- Staff with responsibility for legislation that affects Opra’s work
- Staff with responsibility for stewardship/target setting/finance relating to Opra

Professional and partner organisations

- Age Concern
- Association of British Insurers (**ABI**)
- Association of Consulting Actuaries (**ACA**)
- Association of Corporate Trustees (**TACT**)
- Association of Pensions Lawyers (**APL**)
- Confederation of British Industry (**CBI**)
- Confederation of Occupational Pensioners Associations (**COPAS**)
- Faculty and Institute of Actuaries (**FaIoA**)
- Financial Services Authority (**FSA**)
- Independent Pensions Research Group and Northern Pensions Resource Group (**IPRG&NPRG**)
- Institute of Chartered Accountants of England and Wales (**ICAEW**)

Quinquennial Review of Opra – Final Report

- Investment Managers Association (**IMA**)
- National Association of Pension Funds (**NAPF**)
- Pensions Advisory Service (**OPAS**)
- Pensions Management Institute (**PMI**)
- Pensions Ombudsman Office
- Pensions Research Accounting Group (**PRAG**)
- Society of Pensions Consultants (**SPC**)
- Trades Union Congress (**TUC**)

**A summary of all consultation responses received is available, on request, from -
Judith Hartley, Opra QR Team, DWP. Telephone (020) 7712 2595 /
e-mail judith.hartley1@dwp.gsi.gov.uk**

Quinquennial Review of Opra – Final Report

Summary of comments received during consultation

Annex E

- ❖ “Does an excellent job given the prescriptive environment in which it operates”.
- ❖ "Opra is unique as a pension regulator in that it’s primary function is enforcement. Most other regulators can determine what the requirement should be as well as enforce it. This allows a more flexible approach".
- ❖ "Recognise Opra’s activities are constrained by overly prescriptive legislation which focuses resources on detailed compliance of Pensions Act, and as such, does not constitute criticism of the staff or Board of Opra. NKR will require a new pensions act".
- ❖ "Opra relies too heavily on reacting to whistle blowing as the result of the legislative remit it has been given. This should be changed".
- ❖ "Primary “fault” lies with the complexity and prescription of the underlying legislative structure. PA ’95 dictates the functions, which require to be performed in a uniform manner, regardless of circumstances and / or scheme compatibility".
- ❖ "At present, Opra does not have specific terms of reference or objectives laid down in law. It needs to be given general duties to promote the interests and security of scheme members, to promote the education of scheme members and trustees in pensions matters, and to research and report to the Government on issues within it’s areas of concern".
- ❖ “New kind of pensions act, defining broad objectives for regulator, but without constraints of detailed procedural requirements".
- ❖ "Fewer constraints would allow Opra to operate in a flexible environment and achieve a more balanced and effective approach".
- ❖ "Opra should have the necessary investigative powers to tackle abuse. It should move away from a regime, which seeks fines from schemes in respect of minor abuses, and move instead to a regime that detects and prevents more serious abuse".
- ❖ "Cost of complying with certain aspects of regulatory regime outweighs benefits to members, particularly documentary requirements administered by Opra, e.g. response to whistle blowing report. Should be commensurate to potential harm to the security of members’ benefits".
- ❖ "(Whistle Blowing) not an appropriate system in respect of “technical” or “minor” breaches which have no adverse effect on the security of members’ benefits. It is time-consuming, and therefore expensive, when considering whether to make a report in each case".

Quinquennial Review of Opra – Final Report

- ❖ "Professional judgement, in the light of individual circumstances, must be an appropriate way to proceed. Such a fundamental change would arguably be in the best interests of members, would free limited resource to focus on “at risk” situations and enable a measure of proactivity”.
- ❖ "Perception that the Opra Board comprises primarily of very senior, high profile people from the upper levels of the pensions industry, with a great deal of experience of various aspects of pension schemes. Suggest that that the Board would be strengthened by the inclusion of one or more, probably lower profile, smaller scheme trustees and general practitioner professionals on whom the “burden” of Opra’s rules and requirements also fall”.
- ❖ "More recently, the pursuit of balance, and in particular the attempt to ensure that some Board members were interested primarily in consumers seems to have been abandoned. Much more effort should be made to ensure that the Board is adequately representative of consumers and scheme members, and that other interest groups are not disproportionately represented”.
- ❖ (Opra could do more to promote the pension tracing service offered by PSR) "... by use of the Internet and the telephone, dependent on appropriate legislation”.
- ❖ "Public does not distinguish between the roles of Opra, OPAS and the Ombudsman”.
- ❖ "Expectation of pension regulator is that it should be acting proactively to search out, expose and prosecute, where appropriate criminal activity and practices”.
- ❖ "They’re A voice in pensions, but not THE voice.”

Quinquennial Review of Opra – Final Report

Independent reviewer, review team and steering group

Annex F

(i) Independent Reviewer

Dr Brian Davis, former Chief Executive, Nationwide Building Society

(ii) DWP Review Team

Catherine Hamp
Judith Hartley
Paul McLaren
Eileen Wilson

(iii) Steering Group

Name	Nominated by or representing
Paul Gray	DWP (Chair)
Dr. Brian Davis	Independent Reviewer
Catherine Hamp	DWP (Review Team Leader)
Harriet Maunsell/ Tony Hobman	Opra
John Hughes/ Charles Ramsden	DWP (Private Pensions Policy)
Rosemary Banner	Cabinet Office
Sarah Wood	HMT
Julia Towns/ John Ashcroft	NAO
David Severn/ Norman Digance	FSA
Mark Thomas/ Jamie Bell	CBI
Jo Rodgers	ICAEW
Peter Tompkins	Actuarial profession
Richard Stroud	NAPF
Malcolm McLean	OPAS
Michelle Lewis	TUC
Alastair Miller/ Graham Vidler	ABI

(i) Department of Trade and Industry (DTI) recommendations

The Quinquennial Review team agreed to take into account the recommendations relating to pensions contained in the DTI inspectors' report into the affairs of Mirror Group Newspapers plc. – published March 2001

The recommendations were:

- ❖ The public must understand that no system of regulation can eliminate all risk of abuse of pension funds;
- ❖ Opra should be given a statutory obligation to provide information and guidance to trustees;
- ❖ Opra should publish guidance for trustees on relationships with professional advisers (auditors, custodians, lawyers, actuaries, investment managers, financial advisers and administrators);
- ❖ Opra should produce model terms of engagement with professional advisers;
- ❖ Pension trust deeds should be required to include a provision that all proposed related party transactions should be subject to approval by the full body of trustees;
- ❖ Should be regarded as standard practice that trustees are trained (proposal being developed by DSS requiring trustees to include a statement on training policy in their annual report is welcomed);
- ❖ Code of conduct for professionals (including actuaries, auditors and others) advising pension funds should include a duty to familiarise themselves with fiduciary duties relevant to pension funds;
- ❖ Opra should be permitted to prohibit an individual from acting as a trustee if they have evidence that s/he do not meet the “fit and proper” standard;
- ❖ See merit in the Myners proposal for mandatory custodians if the custodian performs “services ancillary to pure custodianship and will undertake a higher legal obligation in respect of the propriety of instructions than that which is presently found in the usual form of the custody agreement”

Quinquennial Review of Opra – Final Report

(ii) National Audit Office (NAO) recommendations²²

For much of the review period the team were working alongside colleagues from the NAO. Their key recommendations are quoted below.

“In going forward we recommend that Opra should in particular:

- ❖ Become better informed about the risks facing pension scheme members.
- ❖ Specify clearly Opra’s regulatory functions and objectives
- ❖ Develop different communication approaches for different types of scheme.
- ❖ Develop distinct regulatory approaches for different types of scheme.
- ❖ Shift their resources to target the schemes and common weaknesses posing the greatest risks.
- ❖ Focus more regulatory effort on providers and third-party administrators.
- ❖ Raise the threshold for the reporting by whistleblowers of breaches of the Pensions Act.”

²² Extracted from the NAO report, “Opra: Tackling the risks to pension scheme members” – published 6 November 2002.