



House of Commons
Committee of Public Accounts

The Pensions Regulator: Progress in establishing its new regulatory arrangements

Fifteenth Report of Session 2007–08

*Report, together with formal minutes, oral and
written evidence*

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The Committee of Public Accounts

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Mr John Healey MP (*Labour, Wentworth*).

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

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Summary

The number of people contributing to work-based private pensions schemes has declined in recent years, but some 4 million people remain active contributors. Approximately 20 million people have contributed at some point in their lives, and the value of the funds managed by final salary schemes alone exceeds £700 billion.

The Pensions Regulator (TPR) was established in April 2005 to regulate work-based pensions. It replaced the Occupational Pensions Regulatory Authority (Opra), on which our predecessors reported in 2003.¹ Their report found that Opra's regulatory arrangements failed to address major risks to pension scheme members and recommended changes both to Opra's objectives and functions, and the way in which Opra operated.

Since its establishment, TPR has acted to put the regulation of pension schemes on a firmer footing. It now takes greater account of risk in deciding where best to focus its regulatory work and has stronger powers to obtain information and intervene to protect members' benefits. There are signs of improvement in the adequacy of the funding of final salary pension schemes.

However, TPR has made a slower start in the regulation of money purchase schemes, and much remains to be done in improving standards of scheme governance and communications with members. Further work is also needed to improve the information held by TPR about schemes and to use this information to target regulatory effort at individual schemes. It must also use its new powers, and clearly explain the reasons for their use, in order that the pensions community understand its expectations. In a field such as pensions, with long term liabilities subject to short term volatility, TPR will need to be alert to the scope for new problems and risks to emerge.

On the basis of a Report by the Comptroller and Auditor General,² we examined TPR's progress in establishing a new regulatory approach since its establishment in 2005.

1 Committee of Public Accounts, Fifteenth Report of Session 2002–03, *OPRA: Tackling the Risks to Pension Scheme Members*, HC 589

2 C&AG's Report, *The Pensions Regulator: Progress in establishing its new regulatory approach*, HC (Session 2006–07) 1035

Conclusions and Recommendations

- 1. Amongst the most serious failings of Opra, The Pensions Regulator's predecessor, was its tendency to treat all cases the same.** This approach prevented it from directing resources at the areas that needed most attention and it became heavily burdened by the quantity of data it collected. The Pensions Regulator (TPR) has put in place processes for determining the schemes which present the greatest risk to members and for collecting data according to its risk assessments.
- 2. TPR has information on 99% of final salary schemes by membership, but on only 32% of money purchase schemes.** It has made good progress in regulating final salary schemes, but is only now implementing an approach to money purchase schemes. TPR expected to have largely completed its database of all pension schemes by March 2008. It should use it to identify those money purchase schemes presenting the highest risk and direct its regulatory effort towards them.
- 3. Fewer than a third of schemes have a conflict of interests register and only two-thirds offer formal structured governance training.** Although TPR has defined what constitutes good governance, standards remain low in many pension schemes, particularly among money purchase schemes and smaller schemes. TPR should raise awareness within these schemes of the standards that it expects and the assistance available, and it should target those schemes that fall short of the required standards.
- 4. Only 15% of all trustees are registered on TPR's trustee web-based training toolkit and the majority do not complete all the modules.** TPR needs to increase take-up of its toolkit and guidance materials for trustees. It should use its database of schemes and of registered users of the toolkit to identify those trustees who have not yet completed the toolkit. TPR should then communicate with these schemes to encourage take up of the toolkit.
- 5. TPR has set itself a goal of year on year improvement in governance standards, but has not been clear about the extent of desired annual improvements or its ultimate goal for governance standards.** TPR should set specific targets for the yearly improvements in overall governance standards that it seeks to achieve and for the minimum standard it aims to achieve in the longer term.
- 6. TPR has been given greater enforcement powers than Opra, but so far has made little use of them.** Where schemes are not governed well, TPR must intervene to ensure that members' benefits are protected, and that the scheme is meeting its statutory objectives. Whilst TPR should only use such powers when there is good reason to do so, it must avoid appearing reluctant to use them.
- 7. In order that its regulatory expectations are clear, TPR needs to be transparent in its decision making.** Initially, TPR did not publish its determinations, but in September 2007 agreed to publish them in future, except in special cases. It also undertook to publish all past determinations except where there was a good reason not to do so, and should do this without delay in order to bring clarity and transparency to its past decisions.

8. **Lack of understanding amongst members is a key risk to money purchase schemes but TPR has done little to generate improvements.** No explicit promises are made to members about the level of their final pension, and they bear all the risk that funds accumulated on their behalf may not provide a reasonable pension. TPR should review with the Financial Services Authority the adequacy of the information provided to members about their likely pension and work with the Financial Services Authority to fill in any gaps identified.

1 The Pensions Regulator's mode of regulation

1. In 2005, The Pensions Regulator (TPR) was established to take a risk based approach to regulating pensions.³ Amongst the most severe failings of Opra, TPR's predecessor body, was its tendency to treat all cases equally regardless of the risk presented. This meant that it was unable to direct its resources to the areas of greatest need, and it became heavily burdened with data because it did not differentiate properly the information it gathered according to risk.⁴

Implementing a risk based approach to regulation

2. A risk based approach means identifying the greatest risks to members' benefits, putting in place processes to gather data that will inform TPR about the prevalence of such risks, and identifying those schemes where members' benefits are most at risk. If executed effectively, these processes should then enable TPR to direct its resources to the areas of greatest risk.⁵ In 2003, our predecessors recommended that Opra and its sponsoring department, the Department for Work and Pensions, should develop an approach that uses better information about individual schemes to categorise them, and enables the regulator to oversee the highest risk schemes closely and intervene promptly.⁶

3. TPR has identified 18 high level risks to its statutory objectives, including scheme underfunding.⁷ It uses a combination of risk assessment and the size of a pension scheme to determine the level of resources that it directs towards a scheme (**Figure 1**).⁸ This model means that, while between 150 and 300 schemes receive a high level of direct attention from TPR, some 81,000 schemes receive very little.⁹ TPR considers it is focusing on the biggest risks to members' benefits, and that the large number of small schemes are most effectively regulated through its education and training activities. These small schemes still have access to TPR's advice and guidance, as well as other protections such as the whistleblowing¹⁰ and notifiable events regimes.¹¹

4. The recent events at Northern Rock demonstrate the continuing scope for companies to fail in ways not previously foreseen either by themselves or their regulators.¹² TPR considers that market wide risks, such as a prolonged economic downturn, would affect all schemes, but there could be scope to manage the impact on scheme funding, for example,

3 Q 2; C&AG's Report, para 1.12

4 C&AG's Report, para 3.18

5 C&AG's Report, para 31

6 Committee of Public Accounts, *OPRA: Tackling the Risks to Pension Scheme Members*, para 5 (vi)

7 C&AG's Report, paras 3.4–3.7

8 C&AG's Report, para 3.8

9 Q 2

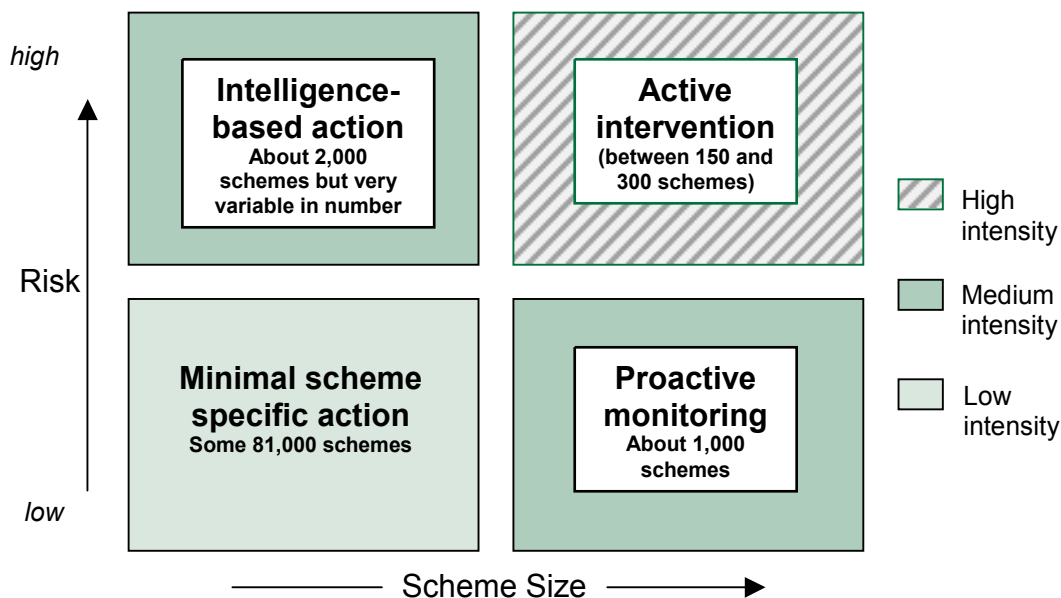
10 Qq 2, 33, 44–46

11 Q 58

12 Treasury Select Committee, Fifth Report of Session 2007–08, *The run on the Rock*, HC 56

by lengthening the period over which deficits are reduced. TPR could also help trustees know what to do and make sure that adequate funding plans were in place. TPR could not prevent the catastrophic failure of a single employer, but, were this to happen and the pension scheme was underfunded, final salary schemes would be supported by the Pension Protection Fund.¹³

Figure 1: Scheme classification model



Note: **Active intervention** involves a high level of activity from TPR such as frequent face to face meetings and regular reviews. **Intelligence-based action** involves collecting additional information on particular schemes, for example from other agencies, to determine whether the overall risk level merits active intervention. **Proactive monitoring** covers scanning of scheme and employer data and other market information. **Minimal scheme specific action** is where TPR relies on its education and support activities.

Source: C&AG's Report, para 3.8, Figure 9

5. The ability of the regulator to identify and analyse risk, or to determine how to intervene, is largely dependent on good quality data. In their 2003 report, our predecessors noted that Opra was unable to collect even basic data, such as the addresses of trustees.¹⁴ TPR recognises the importance of gathering data, and does so through returns made by larger schemes every year and by smaller ones every few years. It has created a web-based scheme return process, which automatically checks the credibility of the data, and is much more efficient than the unwieldy paper-based system it replaced. Information is held on a central database and allows TPR to carry out much more sophisticated risk analysis than before.¹⁵

6. TPR's predecessor, Opra, was established following the Maxwell Communications Corporation and Mirror Group Newspaper case of the early 1990s.¹⁶ The case had involved the use of pension scheme assets to finance the business operations of companies owned by

13 Q 11

14 C&AG's Report, paras 3.9, 3.10; Committee of Public Accounts, *OPRA: Tackling the Risks to Pension Scheme Members*, para 21

15 Qq 31, 32; C&AG's Report, para 3.17

16 C&AG's Report, *Opra: Tackling the risks to pension scheme members*, HC (Session 2001–02) 1262, para 1.4

Robert Maxwell, and had raised serious concerns about the security of pension assets and the effectiveness of trustees.¹⁷ Whilst no regulator would claim that there would never be fraud, TPR considers that, as a result of the controls and checks now in place, it would be very difficult for a problem of the size and magnitude of the *Mirror* case to happen, or, if it happened, to remain undetected.¹⁸ The risk to members' benefits from criminal activity was far lower than that from a company becoming insolvent.¹⁹

Implementing TPR's approach

7. TPR regulates two very different types of pension scheme: final salary and money purchase (**Figure 2**), each with different risks.²⁰ Final salary schemes tend to be larger than money purchase schemes, with some 1,400 having more than 1,000 members, compared to just over 200 money purchase schemes.²¹ However, money purchase schemes are becoming more common and are forecast to cover more than 50% of all active (ie working and contributing) members by 2012.²²

Figure 2: Characteristics of typical final salary and money purchase pension schemes

| | Final salary | Money purchase |
|----------------------------------|---|--|
| Employee contribution | Fixed as a proportion of salary | Fixed as a proportion of salary |
| Employer contribution | Dependent on calculations of how much is needed by the fund to meet its liabilities | Usually fixed as a proportion of the employee's salary |
| Basis of payout to scheme member | Related to final salary and the number of years of contribution to the scheme. | Related to the value of the investment portfolio on retirement |
| Comments on main scheme risk | The risk of being unable to meet the scheme liabilities rests with the employer | The risk of not having adequate payout on retirement rests with the employee |

Source: NAO

Final salary schemes

8. Initially, TPR focused on final salary schemes where there was a pressing need to ensure appropriate funding levels for schemes covering 14 million members.²³ TPR considers that real progress can be seen in terms of funding.²⁴ Final salary schemes are required to undertake a valuation every three years and any schemes showing a funding deficit are required to put in place a recovery plan and send this to TPR for review. Final recovery plans are due to be sent to TPR by December 2009²⁵ and by the time of our hearing, it had

17 Committee of Public Accounts, *OPRA: Tackling the Risks to Pension Scheme Members*, para 6

18 Qq 27, 62

19 Qq 28, 69

20 C&AG's Report, para 1.4

21 C&AG's Report, para 1.5

22 C&AG's Report, Figure 2

23 C&AG's Report, para 5, penultimate bullet

24 Q 31

25 C&AG's Report, paras 2.6–2.7

received some 1,800. The initial plans demonstrated that TPR had had an impact on the level of scheme funding, and showed that schemes are targeting higher levels of funding, shorter recovery periods than before, and are acting according to the unique requirements of their own scheme.²⁶

9. The Pensions Act 2004 gave TPR powers to act against schemes that sought to avoid their pensions responsibilities (anti-avoidance powers). The Act also provided for TPR to provide clearance to schemes for corporate events such as a merger. Clearance is a statement from the regulator that it will not use its anti-avoidance powers in relation to the specific event cleared, based on the evidence provided to it at the time.²⁷ TPR has given clearance to some 360 events, refused it in three cases and told applicants in about a dozen more cases that it was minded not to clear a transaction.²⁸ If a company were to fail to come back with a changed proposal for a transaction when clearance had been refused, TPR clearance team would pass the case to TPR's anti-avoidance team.²⁹

Money purchase schemes

10. Initially, TPR's approach to money purchase schemes had a lower priority, reflecting factors such as the smaller size of such schemes.³⁰ Following consultation in November 2006, it published its approach in April 2007.³¹ TPR's data on money purchase schemes were more limited than for final salary schemes. Whereas, by the time of the publication of the C&AG's report, it had data on schemes covering 99% of final salary scheme members, it had data on schemes covering only 32% of money purchase scheme members. It planned to ask all schemes to complete returns by March 2008.³²

11. Member understanding of their own pension arrangements is one of TPR's three key risks for money purchase schemes.³³ It has identified the key stages in a pension scheme's life when member awareness is particularly important, such as when members choose an annuity.³⁴ TPR is working with trustees to improve members' understanding of these stages. However, third party research suggests that, at the moment, members may not give sufficient attention to understanding or monitoring their pension.³⁵

12. Furthermore, TPR does not seek the views of scheme members in any of its research.³⁶ The Financial Services Authority has a very significant role in addressing member awareness and TPR accepted the National Audit Office's finding that it needed to work closely with the Authority to ensure that the Authority understood pensions issues and fed

26 Q23; C&AG's Report, para 2.7

27 C&AG's Report, paras 2.8–2.9

28 Qq 18, 19, 21

29 Qq 20–22

30 C&AG's Report, para 5, final bullet

31 C&AG's Report, para 2.12

32 Q 40; C&AG's Report, para 3.15

33 C&AG's Report, Figure 7

34 Q 5

35 C&AG's Report, appendix 6

36 Qq 3, 4; C&AG's Report, para 5, final bullet, para 4.7

them into their work. TPR also deliver messages to members through trustees, which is an efficient and effective way of cascading information to the millions of members.³⁷

Relative burden of regulation between different schemes

13. Final salary schemes are in decline although there are signs that the rate of closure is slowing.³⁸ In 2002, some 450 schemes closed to new members, and in the last two years 350 schemes.³⁹ Final salary schemes are now mainly being offered by larger employers.⁴⁰

14. TPR was established by the Pensions Act 2004.⁴¹ This legislation was designed to expose the real costs of final salary schemes.⁴² TPR has emphasised the importance of affordability of pension schemes, advising trustees that as well as needing to negotiate robustly, they also needed to remember that the best guarantees of members' benefits was the continued solvency of the employer. TPR had attempted to adopt a 'light touch' approach, but considered that the legislation had, as intended, highlighted the true cost of providing benefits to members. And it had been an inevitable consequence of TPR's activity in seeking to get a scheme properly funded that Finance Directors and employers had made judgements about the true costs and acted accordingly.

37 Q 4

38 Qq 5, 8–12

39 Q 13

40 Q 14

41 C&AG's Report, para 1.10

42 Qq 8, 14

2 Standards of governance

15. Trustees have fiduciary duties to protect the interests of pension scheme members and beneficiaries. The trustee role is closely aligned with TPR's objectives.⁴³ TPR does not have the capacity to intervene in every scheme and therefore seeks to place reliance on trustees as well as other pension scheme professionals, in meeting its statutory objectives.⁴⁴ To be successful, TPR needs to ensure that both trustees and pension scheme professionals govern schemes well.

TPR's activities to improve governance

16. Shortly after being established TPR identified seven priority areas for good pension scheme governance which need to be improved (**Figure 3**).⁴⁵ It inherited low standards of governance and, in particular, low levels of trustee knowledge and understanding.⁴⁶ For example, 41% of trustees said they had had no training and a further 12% that the training was only of an introductory nature. Furthermore, familiarity with TPR's new guidance and codes of practice was initially relatively low. For example, only 25% of trustees said they were 'very familiar' with TPR's code of practice on reporting breaches of the law. TPR therefore faced a challenge in raising standards of governance.⁴⁷

Figure 3: TPR's seven priority areas for governance

- Knowledge and understanding
- Conflicts of interest
- Monitoring of the employer covenant
- Relations with advisers
- Administration
- Processes for investment
- Governance during wind up

17. To raise standards TPR needs to educate those who govern pension schemes (such as pensions professionals and lay trustees) as to what constitutes good governance and, in particular, influence the trustees who have a duty to report to TPR if they are aware of wrongdoing or a serious risks to members' benefits.⁴⁸ Many trustees are lay volunteers and

43 C&AG's Report, paras 4.11–4.12

44 Qq 47, 48, 59, 60, 96

45 C&AG's Report, appendix 5, Section 1, second para

46 Qq 6, 83; C&AG's Report, para 4.13

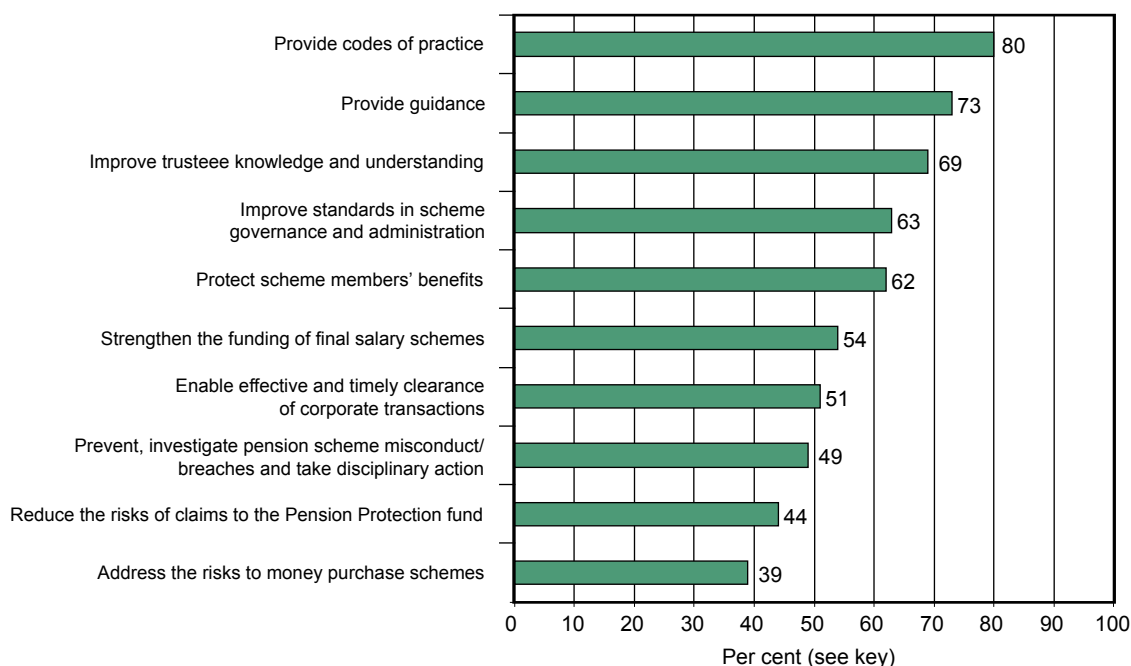
47 C&AG's Report, para 4.13

48 Qq 50, 90, 91

because they represent members' interests and negotiated with the sponsoring employer, TPR has targeted them as being key to raising governance standards.⁴⁹

18. TPR has issued ten codes of practice covering issues such as reporting breaches of the law and funding final salary schemes. It has also issued guidance in 15 areas ranging from the roles of trustees to technical issues such as scheme abandonment and internal controls.⁵⁰ TPR's surveys show that 80% of those who run pension schemes consider that it has been effective with issuing codes of practice, and 73% that it has done a good job with issuing guidance. 63% consider that it has been effective in improving governance standards (Figure 4).

Figure 4: Stakeholder perceptions of TPR's performance against its key challenges



Key: Percentage of stakeholders who thought the regulator was 'effective' in each category; the balance of stakeholders included both those that replied "don't know" and those who disagreed.

Source: C&AG's Report, Figure 6, Q73

19. TPR has created a 'trustee tool kit' which covers governance and technical issues. The tool kit is a web-based learning tool covering the main areas of trustee knowledge and understanding. It is a free resource available for anyone to use. Some 20,000 trustees have registered to use the toolkit but there is no requirement to finish it, and those who have registered represent only 15% of the total of 130,000 trustees.⁵¹ Furthermore, only 3,300 trustees from money purchase schemes have registered, which is where much of the growth in the number of schemes is occurring. TPR's research has found that governance standards are generally lower in smaller schemes, and from March 2008 TPR plans to use

49 C&AG's Report, para 4.12

50 C&AG's Report, para 4.15

51 Qq 34, 35, 37-39; C&AG's Report, para 4.15

its new database to market the tool kit to these smaller schemes in a much more structured way.⁵²

Current standards of governance

20. TPR carries out an annual survey to evaluate standards of governance, and has completed two so far, in 2006 and 2007.⁵³ The surveys are designed to gain a broad understanding of current practice among trust-based private sector pension schemes.⁵⁴ They also give TPR an indication of whether governance standards are improving and support reporting against one of TPR's three key performance indicators. This indicator measures whether there is 'year-on-year improvement in the extent to which trustees demonstrate knowledge and understanding of the governance requirements for their schemes, as evidenced by surveys of knowledge and understanding and key aspects of governance'.⁵⁵

21. TPR's survey results show that three of the seven areas that it has concentrated on have shown improvement. These are trustee knowledge and understanding, management of conflicts of interest, and monitoring the pension promise.⁵⁶ However, there are other areas where governance standards need improving. For example, the proportion of schemes offering no formal structured training is 34%.⁵⁷ Fewer than one third of schemes have a conflict of interests register, and only 35% have a policy on managing conflict of interests. 40% of schemes do not have a process to identify risk.⁵⁸

52 Q 40

53 C&AG's Report, appendix 5

54 Q 43

55 C&AG's Report, Figure 5

56 C&AG's Report, appendix 5

57 Q 83

58 Qq 86-88

3 Enforcement

22. For the majority of schemes, TPR has used education and enablement (support to trustees and pension scheme professionals) to encourage those who govern schemes to protect members' interests.⁵⁹ However, if TPR believes trustees are ineffective in protecting members' benefits it can intervene directly, for example by issuing a direction requiring an employer to provide financial support to a scheme, or by disqualifying a trustee.⁶⁰ To be effective the regulator must be clear about when it will intervene, what it expects from those regulated, and to use its powers if members' benefits are at risk.⁶¹

Use of powers

23. In their 2003 report, our predecessors found that Opra had inadequate powers, for example, in terms of enforcing compliance.⁶² TPR has been granted additional powers which include being able to act against employers who fail to support adequately a scheme, by issuing a Financial Support Direction or Contribution Notice, as well as widening the circumstances in which TPR can act against trustees for not being fit and proper.⁶³

24. TPR considers that these powers are adequate for its current role.⁶⁴ In its survey of those who run pension schemes, 73% considered that TPR had adequate powers (with 8% considering that it did not).⁶⁵ Legislation will be needed, however, when TPR becomes the regulator of the planned personal accounts scheme, and the new Pensions Bill is intended to provide for this.⁶⁶

25. To date TPR has used its education and enablement activities with those who govern pension schemes in preference to using enforcement action.⁶⁷ It has only issued two determinations to issue a financial support directive and disqualified one trustee.⁶⁸ TPR considers that the threat of using its powers has meant that it has not yet had to use them widely, and some of its new powers remain unused.⁶⁹

Transparency and scheme understanding

26. As well as protecting members of a particular scheme, the value of enforcement is in educating the market as to TPR's requirements and demonstrating that it will take action if

59 C&AG's Report, para 4.17

60 C&AG's Report, Figures 12 & 13

61 C&AG's Report, para 4.19

62 Committee of Public Accounts, *OPRA: Tackling the Risks to Pension Scheme Members*, para 10

63 C&AG's Report, para 4.3

64 Qq 26, 64

65 Qq 73,74; C&AG's Report, para 4.5

66 Q 64

67 C&AG's Report, para 4.17

68 Qq 9, 10, 24, 25

69 C&AG's Report, para 4.2

it needs to protect members' benefits.⁷⁰ To achieve this TPR needs to be transparent in its decision making. Prior to September 2007, however, TPR took the view that, because of issues of confidentiality and the risk of gaming, it was better to publish information on its determinations when making use of its enforcement powers on an exception basis only.⁷¹ In September 2007, TPR adopted a presumption in favour of publication in all future determinations except in special circumstances such as where there are commercial confidentiality issues.⁷² Following our examination, TPR advised us that they intend to publish those determinations made previously, unless there was a good reason not to do so, such as where publication would give rise to adverse market behaviours or disclose sensitive personal data.⁷³

70 C&AG's Report, para 4.19

71 Qq 75-80

72 Qq 79-82; C&AG's Report, para 4.21

73 Ev 12

Formal Minutes

Monday 31 March 2008

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr Alan Williams

Mr Keith Hill

Phil Wilson

Mr Don Touhig

Draft Report (*The Pensions Regulator: Progress in establishing its new regulatory arrangements*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 26 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifteenth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Wednesday 2 April 2008 at 3.30 pm.]

Witnesses

Wednesday 21 November 2007

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Mr Tony Hobman, Chief Executive, and **Mr David Norgrove**, Chairman, The Pensions Regulator, and **Mr Bill Galvin**, Pensions Protection Division, Department for Work and Pensions

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List of written evidence

The Pensions Regulator

Ev 12

List of Reports from the Committee of Public Accounts 2007–08

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| First Report | Department for International Development: Tackling rural poverty in developing countries | HC 172 (Cm 7323) |
| Second Report | Department of Health: Prescribing costs in primary care | HC 173 (Cm 7323) |
| Third Report | Building for the future: Sustainable construction and refurbishment on the government estate | HC 174 (Cm 7323) |
| Fourth Report | Environment Agency: Building and maintaining river and coastal flood defences in England | HC 175 (Cm 7323) |
| Fifth Report | Evasion of Vehicle Excise Duty | HC 227 (Cm 7323) |
| Sixth Report | Department of Health: Improving Services and Support for People with Dementia | HC 228 (Cm 7323) |
| Seventh Report | Excess Votes 2006–07 | HC 299 |
| Eighth Report | Tax Credits and PAYE | HC 300 |
| Ninth Report | Helping people from workless households into work | HC 301 |
| Tenth Report | Staying the course: the retention of students on higher education courses | HC 322 |
| Eleventh Report | The compensation scheme for former Icelandic water trawlermen | HC 71 |
| Twelfth Report | Coal Health Compensation Schemes | HC 305 |
| Thirteenth Report | Sustainable employment: supporting people to stay in work and advance | HC 131 |
| Fourteenth Report | The budget for the London 2012 Olympic and Paralympic Games | HC 85 |
| Fifteenth Report | The Pensions Regulator: Progress in establishing its new regulatory arrangements | HC 122 |

Oral evidence

Taken before the Committee of Public Accounts on Wednesday 21 November 2007

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Mr David Curry
Mr Philip Dunne
Nigel Griffiths

Keith Hill
Mr Austin Mitchell
Mr Alan Williams
Phil Wilson

Sir John Bourne KCB, Comptroller and Auditor General, and **Mr Chris Shapcott**, Director, Regulation, National Audit Office, were in attendance.

Ms Paula Diggle, Treasury Officer of Accounts, was in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

THE PENSIONS REGULATOR: PROGRESS IN ESTABLISHING ITS NEW REGULATORY APPROACH (HC 1035)

Witnesses: **Mr Tony Hobman**, Chief Executive, and **Mr David Norgrove**, Chairman, The Pensions Regulator, and **Mr Bill Galvin**, Pensions Protection Division, Department for Work and Pensions, gave evidence.

Q1 Chairman: Good afternoon and welcome to the Committee of Public Accounts where today we are looking at the Comptroller and Auditor General's Report on *The Pensions Regulator: Progress in establishing its new regulatory approach*. We welcome Tony Hobman, who is The Pensions Regulator's Accounting Officer. Would you introduce your two colleagues?

Mr Hobman: Mr David Norgrove, who is Chairman of the Regulator, and Mr Bill Galvin, who is Deputy Director of the DWP's Pensions Protection and Stewardship Division.

Q2 Chairman: Thank you very much. Would you like to please look at Figure 9 on Page 18 of the Comptroller and Auditor General's Report. If you look at that figure you will see that you are giving minimal attention to some 81,000 schemes. How can you assure us that the pensions in these schemes are safe?

Mr Hobman: Based on the premise that we are seeking to be risk based—and that is something that we were set up to do very much at the behest of this Committee amongst others—we feel that with the resources we have we are focusing on the real risks and the big risks to pension members' benefits, and by doing that we have to deploy our resources in a way which recognises that a large number of small schemes are most effectively dealt with through our education and enabling facilities. That said, they are entitled to as much protection as other schemes in terms of the whistle-blowing regime, the degree to which they are able to contact us and receive advice, and the degree to which they benefit from the intelligence work that we do. In the box at the top left of the diagram you see that it is emphasising the degree to which we do, as we say in the Regulator,

look for needles in haystacks, but even in the smaller schemes we do see where we can make connections where there may be issues that we can deal with.

Q3 Chairman: If you look then at Appendix Five on Page 42, you say that this tracker research does not cover pension scheme members. Why are you interested in everybody else's opinion apart from those whose interests are most at stake?

Mr Hobman: Forgive me, I am sorry, I did not get the reference, Chairman.

Q4 Chairman: If you look at Page 42, Appendix Five you will see the Annual Perceptions Tracker Survey to the top left-hand side of the page and you say: "These cover pensions professionals and lay trustees but do not cover pension scheme members . . ." Why are you interested in everybody's views apart from the members' themselves whose livelihoods are most at stake?

Mr Hobman: We are interested in their views and indeed as part of our work on DC schemes and governance we have identified member understanding as one of the key risks that needs to be addressed, but we also recognise that the FSA in particular has a very significant role in addressing financial capability and member awareness. Indeed, one of the findings of the Report that we take on board is that we have to continue to work closely with them to ensure that they understand pensions issues and feed those into their work. That said, we do deliver many of the key messages that members need to know through trustees. That is an efficient and effective way to cascade information, dealing with a population in that case of maybe 130,000 rather than trying with our relatively limited budget and small staff numbers in the Regulator deal with

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millions and millions of members. I do not think we would make much difference if we sought to do so on that basis.

Q5 Chairman: If you look now at the trends in the pensions environment, which is an important point dealt with on Page 8, Paragraph 1.6, as we know, final salary schemes are declining and when members' benefits are at risk in a final salary scheme they have to be told, do they not, but this does not happen with money purchase schemes. Does that worry you?

Mr Hobman: Yes, as I have said, I think the need for there to be member awareness at a number of stages of a pension scheme's life—for example when members come to make choices about annuities—is important to us and they are ones that we have highlighted and the ones that we are working on with trustees to ensure that members have a good understanding of them. We also have to recognise that the funding risk of a scheme transfers from the DB environment, from the employer, to the individual, and we do not pass a judgment on that as a Regulator as to whether that is a good or a bad thing; that is the world in which we live.

Q6 Chairman: That does not answer the question. How will people who invest in money purchase schemes know if their benefits are at risk?

Mr Hobman: They get an annual statement which tells them how much they have in their fund and its value and they also have, in many cases trust-based schemes, trustees looking after their interests, as is intended, and there will be member communications to them as a result of that. We found through our research that not all schemes, and particularly the smaller schemes, have quite the level of understanding and knowledge to give out that information.

Q7 Chairman: That is what I mean, this is a requirement of final salary schemes not of money purchase schemes.

Mr Hobman: Indeed, and that is why we have focused so much of our attention going forward on important issues surrounding communications with those schemes, and getting trustees up to the mark through the Knowledge and Understanding Code and the work we have done with our trustee tool kit so that they understand the importance of communicating with members. That is very much a task that lies ahead of us and we accept that responsibility.

Q8 Chairman: Let us look then at Figure 2 which tells us what I think we are all aware of that the number of occupational pension schemes is declining remorselessly. We also know that there is a declining commitment on the part of employers to offer final salary schemes. I wonder whether you think there is a risk that regulation may push them into closing viable schemes?

Mr Hobman: I think we accept absolutely that there is a cost to regulation and the effect of the legislation that came in in 2004 was very much geared to

exposing the real costs of providing DB schemes. This is a long-term trend and it certainly predated the Regulator, but our task was to take that policy intent and make sense of it. I think one of the things that we did at a very early stage, which in a way helped soften that blow but kept that awareness high, was to emphasise the importance of reasonable affordability, in other words to say to trustees you need to negotiate robustly but you also need to remember that the best guarantee of members' benefits going forward is the continuing solvency of the employer behind the scheme. In many ways we have run the regime in a more flexible and light touch way than we might otherwise have done because we recognise the importance of that.

Q9 Chairman: That leads me straight on to my next question which is your enforcement powers which are dealt with at Paragraph 4.2 on Page 21. You have really made very little use of your enforcement powers. I think you have only served two determination notices; is that right?

Mr Hobman: Yes, that is right.¹

Q10 Chairman: It sounds a very low number to me.

Mr Hobman: Yes, it is a low number. These were some of the most high profile and in many ways when debated in Parliament the most contentious powers that we were given, and they were seen as powers that would not be used lightly; and we do not. We have used our powers extensively in a number of other areas and we would always use them where we felt it was appropriate to do so. Thus far the threat of those powers, not least because they are significant, we believe in our judgment has worked and has led to changes in behaviour. We have, as you will see from the Report, issued some 360 clearance notices, in effect making a judgment every time on a particular transaction as to whether we would use those powers in due course.

Q11 Chairman: Finally, how would you know if there are any Northern Rocks in the schemes that you regulate?

Mr Hobman: That is a very good question. I would say from The Pensions Regulator's perspective our view of the world is a little different in that we are looking at corporate entities through schemes. There is a market-wide risk which could of course occur which would be a sustained economic downturn which would affect all schemes' viability, although there there are some levers which can be pulled in the scheme funding to the degree for example that recovery plans can be lengthened to help mitigate that issue. There is also clearly a risk for any scheme, particularly one with a large deficit, that there could be a sudden and catastrophic failure of the employer. That is something that we as a

¹ *Note by witness:* The Pensions Regulator had only published two determination notices at the time the NAO Report was published (in the cases of Ericsson and Sea Containers). Mr Hobman's response referred to this fact. A further notice was published in relation to the Telent case on 9th November 2007. However, many more determination notices have been served (but not published) by the Regulator since its inception in April 2005.

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Regulator cannot prevent. We were not created to prevent corporate insolvencies. What we can do is make sure that trustees are up to the mark and know what to do should that occur and that they, like us, monitor covenants to ensure that the funding plans they have in place are appropriate. There is of course also now a protection fund in place which there was not prior to the legislation for where that does occur and the scheme is underfunded.

Chairman: Thank you very much. Philip Dunne.

Q12 Mr Dunne: We can see from Page 11, Figure 4 that to fulfil one of your strategic objectives you should seek to strengthen the funding of defined benefit schemes. Since you have been established two and a half years ago how many defined benefit pension schemes have closed to new members?

Mr Hobman: I know that one-third of schemes are now fully opened but I am not sure what the figure for the—

Mr Galvin: Of the schemes that are eligible for the Pension Protection Fund only about 38% are open to new members. However, 63% of the membership of defined benefit schemes are in open schemes which seems to indicate that the larger schemes are the ones that tend to remain open longer.

Chairman: We had better go and vote.

The Committee suspended from 4.00 pm to 4.09 pm for a division in the House.

Chairman: Mr Dunne?

Q13 Mr Dunne: Mr Hobman, were you were interrupted from responding?

Mr Hobman: Indeed, and I have the answer to your question. There were 350 defined benefit schemes that fully closed in the last two years, although I also noted in looking at the figures that in 2002 the figure was larger at 450, so there has at least at this point been a decline in the number.

Q14 Mr Dunne: Have you made any assessment of the extent to which a proportion of those closures are in any way the responsibility of your activities in seeking to provide improved protection for pensioners?

Mr Hobman: I cannot give you a scientific correlation—that is not a piece of research we have done—but I think it is a reasonable assumption to make that the new legislation has, as intended, thrown up and highlighted the true costs of providing these benefits to members and it has asked us to hold the ring in terms of the process that then seeks to redress that. It is, I guess, an inevitable consequence of our activity in seeking to get schemes adequately and properly funded that many finance directors and employers will make judgments about the true costs and the volatility of costs and decide accordingly.

Q15 Mr Dunne: We can see very starkly illustrated in the chart which the Chairman referred to on Page 9 that this is a trend which has been continuing for some time and looks set to continue for the

foreseeable future. Do you anticipate that the era of defined benefit schemes is to all intents and purposes over?

Mr Hobman: I do not anticipate it from a regulatory perspective because although I cannot predict where the trend will go next (although much of the data we collect with our colleagues in the PPF (Pension Protection Fund) through the so-called Purple publication will tell us year on year where that trend is going) from a regulatory perspective we still have a very large legacy issue because although these schemes may close to new and existing members, they still have millions of members in them, so from my perspective we are still holding the ring around very, very sizable liabilities which have to be managed by the trustees.

Mr Norgrove: If I could add one point there. I think one thing that we are seeing is defined benefit pension schemes being left with very large companies—clearly companies that are better able to carry that long tail liability than smaller companies—so I guess the answer to the question really depends on how much employees themselves value those benefits and therefore whether the companies continue to see them as a benefit to be offered. I think there is some evidence of that and with employees now understanding the value of the pension scheme better maybe they will continue to press for it.

Q16 Mr Dunne: Is it you or the Pension Protection Fund that determines the level of contributions for the pooled insurance rate effectively that schemes have to contribute to the PPF?

Mr Hobman: The risk-based levy is set by the PPF.

Mr Galvin: The Board of the Pension Protection Fund sets the risk-based levy.

Q17 Mr Dunne: Do you as Regulator have any influence or discussions over that rate setting?

Mr Hobman: Our role primarily is to provide the data for them from the schemes and from the schemes returns to allow them to calculate that. It is really a decision for the Board as to how they set that although we are party to those discussions.

Mr Norgrove: I sit as an observer on the PPF Board but clearly it is a matter for them.

Q18 Mr Dunne: One of your main roles has been in the event of corporate activity to make sure that if there are unfunded pension schemes in relation to a company on which an offer has been made and may be taken over that it is fully funded. How do you determine at what level it is appropriate to consent to a transfer taking place and how do you balance the competing requirements between shareholders and pensioners?

Mr Hobman: The straight answer is that there is no one answer to that because all these matters are dealt with on a scheme-specific basis and there are many variables that may be in play in any one transaction—for example, the covenant of the company before the transaction and then another company maybe coming in and taking over and then having a different level of covenant, the amount of

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security that might be offered as mitigation, and so on and so forth, but the fact is that we do require that the trustees and their advisers think about those issues and come up with an answer which is, on balance, appropriate for that scheme going forward.

Mr Norgrove: But we have no power, just to be clear, to stop a transaction. Clearance is a voluntary process and it is not for us to say yes or no to it. All we do is give an undertaking that if clearance is sought we will or will not use our powers in relation to the transaction.

Q19 Mr Dunne: How often has clearance been sought?

Mr Hobman: Clearance has about sought in just over 360 cases. It has been refused only three times, although we have had many more informal discussions with parties to potential transactions, something like six times as many, which may then proceed without clearance because it is not required or which may be modified and then come for full clearance.

Q20 Mr Dunne: Of the 360 how many times have transactions taken place ignoring your advice?

Mr Hobman: If they had ignored us we would refuse to give clearance and then the transaction would not have proceeded, so I judge that where the clearance has been given it is because we are content with the transaction.

Q21 Mr Dunne: I thought you told us just now you did not have a power to direct. If a clearance on a voluntary basis is sought—

Mr Hobman: I take your point absolutely, so let me make it clear, what we are saying in the 360 cases where we have given clearance is that we do not deem it appropriate to use our powers at some point in the future in respect of that particular transaction.

Mr Norgrove: I am aware of about a dozen cases where we have told people that we were minded not to give clearance and they have taken the application away. In those circumstances, if we did not see it coming back to us in a changed form, we would send it to another part of the Regulator to investigate whether avoidance was in prospect.

Q22 Mr Dunne: Can you just explain what other part of the Regulator you are referring to?

Mr Norgrove: We have an avoidance team which would look at whether we would then wish to use our powers because the company was looking to avoid its pensions liability.

Q23 Mr Dunne: Thank you. In relation to the governance of trustees you have referred to the trustee tool kit that you have introduced. Does the tool kit and the advice that trustees are encouraged to take mean that we are looking towards a uniform type of trustee and role they fulfil? I am thinking in particular of trustees being driven by the tool kit to make decisions more or less in tandem so that one pension will look increasingly like another pension?

It will have its own liability profile but as far as its investment performance or criteria are concerned that the precautionary principle is likely to apply?

Mr Hobman: I do not think we see evidence of that yet. We have now processed something like 1,800 recovery plans and indeed have played back into the market the summary of the data we have found from about the first 1,200. One of our judgments, from what is admittedly just a snapshot at this stage of the scheme funding process, is that schemes are making scheme-specific decisions. In other words, they are coming up with a considerable range of options which are relevant to their schemes—scheme repayment periods which may be as small as a day and as long as ten years or beyond, for example, differences in discount rates being used, and differences in investment rates being assumed. It is not evident that we have in any way a herd mentality. That said, we think an important role of the tool kit is to establish some common basic standards which we think were missing in many respects in what is after all a very large, lay, volunteer trustee community.

Q24 Mr Dunne: You have the power to fine trustees who are not fit and proper. Have you exercised that yet and if so how many times?

Mr Hobman: In the case referred to in the Report we have disqualified a trustee, someone we felt was not fit and proper. We also have a power where we believe it appropriate to install for example independent trustees where it is not such a clear-cut decision that the existing trustees are not fit and proper but where we feel their resources may need to be boosted by further expertise or indeed where there might be an issue of conflict.

Q25 Mr Dunne: The only individual case referred to in the Report is the only one where you have actually had that finding?

Mr Hobman: Yes.

Mr Dunne: Thank you.

Chairman: Thank you very much. Nigel Griffiths.

Q26 Nigel Griffiths: You have been rather lucky I think in that the previous Report from the National Audit Office into your predecessor the Occupational Pensions Regulatory Authority (OPRA), was fairly damning and you appear to have addressed those criticisms and indeed this is one of the less damning reports. Let me ask you, what are your fears in terms of your present powers being inadequate?

Mr Hobman: I think our view is that the legislative framework that we have been given is fit for purpose, and we continue to have a dialogue with the Department to ensure that that continues to be the case, so, yes, I think the legislative framework we have is fit for purpose.

Q27 Nigel Griffiths: Does it mean that another *Mirror* pension disaster could not happen today?

Mr Hobman: I think no regulator would honestly claim there would never be fraud in the system again and I would not do you the disservice of claiming that now, but I think it would be very, very much

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more difficult for something of the size and magnitude and protraction of a *Mirror* case to occur without it being detected and without powers being brought to bear.

Q28 Nigel Griffiths: And how high risk is your strategy of regulating according to risk as a strategy?

Mr Hobman: I think we have to look at the wrongs which have occurred. That was a very significant fraud; there is no doubt about that. There has been fraud since then; there is no doubt about that either. However, as a proportion of the total assets of maybe a trillion pounds in this industry, then it has been only a very tiny proportion of the risks which have manifested, so if we were to set ourselves up solely to be on the guard for fraud risk—and we do of course have regard for fraud risk—then I think we would be missing many, many other significant risks to members.

Mr Norgrove: I think a non-risk based system is higher risk than a risk-based system and that the attempt to regulate 80,000-odd pension schemes equally would be doomed to failure.

Q29 Nigel Griffiths: One of the criticisms being made is that your body is not sufficiently clear about the level of performance that you think is necessary to ensure that schemes are governed adequately or whether all types of scheme should be aiming for the same standards of governance. What sort of brain storming have you been doing internally to try and clarify those targets to see whether there are targets that can be set?

Mr Hobman: I am not sure that we have lack of clarity about the targets. We do have very clear targets now for where we believe are the important areas of governance across both DC and DB and just for DC. We have for example a performance dashboard, as we call it, which has 65 different measures on it many of which are specifically addressing DC and the governance measures that we continually monitor through our market research. In coming to an agreement on what those risks are as opposed to measuring them, which we do, we have extensive consultation with the industry. We have an advisory panel with very broad representation which meets very regularly. We have a DC working group which also meets very regularly, of industry representatives who make sure that we are focused on the right sorts of things. Our risk model allows us to identify new risks so even though we might feel that we have now got pretty much those which are prevalent taped, we do not ever presume that new ones will not come along, and the sort of feedback we get, for example, from the contacts we get from our front office and from our wider scanning of the markets and from industry I believe will keep us on our toes in this respect.

Q30 Nigel Griffiths: There are two other cross country examples that have been explored by the NAO for comparison purposes. What other countries have got systems that you in any way envy or powers that you would like us to consider as legislators adopting?

Mr Hobman: This is not meant to be in any way smug but I do not think that we envy other regulators their approach. We know that there are different levels of scheme funding in other countries. So for the Dutch regulator it is more of an issue of taking a relatively small number of very large schemes and ensuring that a very high level of solvency is maintained. The Americans and the Irish have quite similar systems to ourselves but I know you have just visited the States, David, and felt that in some ways they are envious of us; is that fair to say?

Mr Norgrove: I think that is true. Their equivalent is the Pension Benefit Guarantee Corporation. They only have one power which is compulsorily to wind up a pension scheme. It is a nuclear power which they use extremely rarely but they have to threaten it all the time.

Q31 Nigel Griffiths: What is the most recent innovation or improvement that you are taking some pride in?

Mr Hobman: If I am allowed two then one would be a process. The importance for us of gathering data is clear and we do that through the scheme returns, and that is a burden that we place certainly on large schemes every year and smaller ones every few years. We have taken what was originally a paper-based, very unwieldy and rather difficult (from their perspective) form to fill in and we have turned it into a much lighter, much more efficient, pre-validated, pre-populated on-line system, and we will be launching that in a couple of weeks, so we are very proud in that sense of being able to reduce the effects of the cost of regulation. In terms of the way we regulate, I think we are proud of having got to a stage where we have seen some real green shoots in terms of the new funding regime through the survey that I have just referred to where we can see that things have started to move on and therefore I have a belief that the way we work and the way we act can have a real influence on protecting members' benefits.

Nigel Griffiths: Do not put the data on disk!

Chairman: Phil Wilson?

Q32 Phil Wilson: Just two or three points really on the risk management side. I think it is on Page 19 of the Report, Paragraph 3.12 where you collect all the data together for the schemes that you have got in place now and you have had to get it from several sources. Do you think the system you have got now is pretty robust?

Mr Hobman: Yes we do. One of the earliest deliverables that we knew we needed to have in place was a decent core database to hold our data, and that is certainly something that we did not inherit from the previous body. We now have that. It is a system called Score. It is a very robust, straightforward relational database and it is at the heart of all our information systems. For example, the data from the scheme returns that we collect goes straight into Score and then it interfaces in different ways with our other systems. I have to say it is still early days in terms of building some of those

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interfaces, we are still improving those as we go, but it is at the heart of our systems and it is much more effective than what we had before.

Q33 Phil Wilson: The other point is I know you have 80,000-odd schemes that you have got to cover and part of what you do is basically down to education.
Mr Hobman: Yes.

Q34 Phil Wilson: I know a colleague has already mentioned the trustee tool kit and you have 20,000 people who have registered for that. I know it is on a voluntary basis and they do not have to complete the course but do you know how many of those 20,000 do actually complete the course?

Mr Hobman: I think that is research that we are currently undertaking. I believe at the moment the figure is a relatively low proportion of that number; I can tell you that much. That said, the course is built to be modular. There are up to 11 modules that you might do as a trustee and you are not required, nor indeed expected, to do all of them. What they are designed to do is to cover all the bases, all the areas you might be interested in as a trustee. For example, you could do one on scheme funding if you were a member of a DB scheme, there would be one on scheme governance that might not be relevant to you, and one on strategic investment that you probably would not want to look at unless you were in a much larger scheme with more complex investments. We do not look for tool kit completions as being evidence that it is necessarily being used, but we acknowledge that we need better information on how it is being used, not least so that we can market it more widely than we have done so far.

Q35 Phil Wilson: 3,300 trustees are involved in the money purchase schemes and 16,700 for final salary. Which of those two groups has seen the most rapid growth rate?

Mr Hobman: The growth rate in terms of numbers of new schemes, as we have seen, is money purchase schemes, and we know from our research that governance standards are generally lower in the smaller schemes, which is the great long tail of schemes in our pensions landscape, so the heart of the challenge, if you like, for us is to ensure that the tool kit is widely used in those smaller schemes, and that is something that we shall be addressing through the way we market it not just this year but also next year, not least because we will have better data on the schemes in order to contact them and market to them through the returns that we are collecting.

Q36 Phil Wilson: That is through the new database?
Mr Hobman: The new database.

Q37 Phil Wilson: What percentage is that of the total number of trustees? How many trustees are there?

Mr Hobman: It is a relatively small number. The tail of schemes, tens of thousands of these smaller schemes that only have two to four members so they will only have a very, very low number of trustees,

although it is a long tail so it is still a sizeable population. We know that we are having to address an issue with tens of thousands of people.

Q38 Phil Wilson: How many trustees are there in total, do you know?

Mr Hobman: 130,000 trustees in total. That is our best estimate.

Q39 Phil Wilson: It is about 15% or so?

Mr Hobman: Of that order.

Q40 Phil Wilson: What you are saying is the main problem is actually getting to these smaller schemes where there may be three or four members and you are going to remarket the tool kit to try and get to those?

Mr Hobman: Yes indeed we are and because the scheme returns that we have focused on thus far have largely been from the bigger schemes and from the DB schemes (because we have had to collect that data for the PPF levy at the very least) all the data collection we will do between now and the launch of the new system I just referred to in March next year will be into this tail of smaller schemes. As soon as we have that good data then we can start marketing to them in a much more structured way than we have been able to do thus far.

Phil Wilson: Thank you.

Chairman: Thank you very much. Austin Mitchell.

Q41 Mr Mitchell: I cannot see how you can do the job. You are skating over the surface of a large number of pension schemes and relying on information to find out what is going wrong. Puff pastry is a by-product of this industry as it is of company reports. We are always doing the best even if we are dithering on the edge of bankruptcy. They are not going to say they are failing in their duties and project a miserable, depressing picture and report in. You cannot regulate on that basis.

Mr Hobman: We do do a considerable amount of market research and although it is certainly true to say, and you have seen from the Report, that some of the measures at least are derived from trustees' own confidence—the heart of your point—there are many other hard-edged measures that we take that tell us whether their confidence is well placed or not. For example, if we were looking at an area such as managing conflicts of interest, then some of the questions that we will be probing on are not just do you think you have a decent policy for managing conflicts but have you actually got a policy in place.

Q42 Mr Mitchell: You have a system for trustees to report in any deficiencies in their schemes?

Mr Hobman: Yes.

Q43 Mr Mitchell: Do they use that? What sort of scale is whistle-blowing used on?

Mr Hobman: The research that we do is based on a sample which is big enough to tell us with confidence whether trustees standards across the board are actually improving. Whistle blowing covers all trustees.

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Q44 Mr Mitchell: Where the trustees of Mega Mitchell Productions, which will manage my future career and public appearances and public speaking engagements (bookings available!) feel that something is wrong and this scheme is not operating properly and Mitchell might be taking money out of it, what can a trustee do to blow the whistle on that?

Mr Hobman: They can pick up the phone to us is the first thing they can do, as can their advisers and many others.

Q45 Mr Mitchell: Do people do that? At what sort of scale does that happen?

Mr Hobman: Yes they do. We get on average about 50 whistle-blowing reports every month from schemes across the piece so we know that the system is active and works.

Q46 Mr Mitchell: What do you do when you get one?

Mr Hobman: We investigate it. We talk with the trustees or whoever it is that has blown the whistle and then try as quickly as we can to unpack the issue and see whether it is a breach that we can deal with and whether it is a significant breach and what response we might have to make. In the diagram in the Report which shows the triage function which we have behind the front office, as it were, whistle-blowing reports are filtered in a way that either allows them to be dealt with swiftly by the front office (and they are very experienced in receiving these things) or quickly to be escalated into the heart of the Regulator where we might open a formal case and deploy whatever resources we feel are appropriate.

Mr Galvin: There is a level of protection built into the system and the trustees are required to take professional advice from a number of professionals—auditors, actuaries, et cetera—and these also have whistle-blowing responsibilities.

Q47 Mr Mitchell: Okay, but in the main you work by their reports, on the basis of them reporting in. You do not have a regular system of inspection that every scheme will be inspected every two years or wherever?

Mr Hobman: No that is true, we do not.

Q48 Mr Mitchell: Do you think that is necessary?

Mr Hobman: We do not judge it is, no. The way we have been set up was to have a whistle-blowing process in the front-line, as it were, together with trustees' competence which, as we have said, is something that we need to improve. Whistle-blowing has been extended to more people than was the case under the previous regime. We also now have something called "notifiable events", in other words significant events in the life of the scheme or the employer where we would also require a report to be made to us. So the front-line, if you like, is deeper than it was. We also put a great deal of effort and activity into the research that I have talked about and into scanning and intelligence, not just sitting in our office and waiting to hear things but actually finding out what is going on out there with

schemes, not least through our discussions with our stakeholders, who of course include many of the professions and the representative bodies who are only too willing to tell us where there are systemic issues arising.

Q49 Mr Mitchell: I am all for more work for auditors! It says in the Report that your research indicates that improving the governance of schemes must be one of your main priorities.

Mr Hobman: Yes.

Q50 Mr Mitchell: How do you do that? Do you have a model constitution, a model governance structure? Do you circulate best practice? Do you pick out some schemes and say Company X's scheme is marvellous whereas Company Y's scheme is a disaster?

Mr Hobman: I am not sure we put it in quite those stark terms but yes is the straight answer. We are starting to move on the governance of DC schemes from the phase where we have been finding out what is wrong, establishing what is wrong, playing back to the market what is wrong and now doing something about it in terms of the products that we produce, so a lot of the guidance that we are now producing and will produce through next year for trustees, particularly on the seven governance areas that we have highlighted as being particularly key, will be full of best practice examples and maybe, as you say, examples of where things have not gone so well. We see that very much as a tool that we would use going forward.

Q51 Mr Mitchell: You could do an annual award: "The Pensions Regulator's Scheme of the year is da-da-da . . ."

Mr Norgrove: I can tell you the pensions industry is not short of awards and dinners!

Q52 Mr Mitchell: I know that. It is not short of rewards either. Let me ask about representation. I am glad you are concentrating so much on education because in my experience pension trustees have been too diffident and too ill-informed and anxious to do the job but not knowing how to do it. In my experience, unions have always provided an effective training and back-up system. Is that your experience too? Do you encourage the unions to be involved?

Mr Hobman: We do encourage the unions and in fact we have worked with the TUC in providing training and information to them so that they are fully appraised of what it is we are doing and what we think the issues are. Indeed, we have a number of unions coming to visit us I am not sure if it is this week or next to talk about some of the current issues that we face. We believe we maintain a good dialogue with all the important representative constituencies.

Q53 Mr Mitchell: Would it be sensible to prescribe some system of election of trustees so they are accountable to a constituency?

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Mr Hobman: Trustees have to be nominated and elected to their boards but that is a matter for the schemes themselves.

Q54 Mr Mitchell: Either by their employees or at the annual general meeting or whatever?

Mr Hobman: Yes, the legislation requires that there are a certain number of members of the scheme as a proportion of the board, so there are at least a third of members on the board and there is to that extent a quota. Who then seeks election and joins is of course a matter for the schemes themselves, but there is meant to be broad representation, at least across member interests and for example other interests, including employers. That is why we do focus quite a lot on issues of conflict of interest to ensure that those do not arise and trustees know how to deal with them.

Q55 Mr Mitchell: When they are elected you help educate them because a lot of the problems arise from the fact that many of these people are company creeps rather than sterling defenders of the independence of the schemes.

Mr Hobman: We are conscious of the issue of conflicts of interests and indeed that is in one of our seven governance risks.

Q56 Mr Mitchell: Let me go back. One of the problems of the 1980s, which was the prelude to the problems we have been having recently, was the practice where firms took contribution holidays. It was largely the consequence of pressure from the company on the pension scheme and now of course they are claiming they cannot afford to give them full and proper pension coverage so they are having to end the schemes. Some of the pensions holidays were effectively weakening the schemes. Do you have the power to stop contributions holidays?

Mr Hobman: I do not believe we have the power to stop holidays, it is a matter of legislation as to pensions holidays.

Mr Galvin: The scheme funding legislation prescribes that where a scheme is in deficit it must submit a recovery plan to the Regulator and that would outline a series of contributions to that scheme in order to make up the deficit. If the scheme is not in deficit, well then, it is a matter for the trustees.

Q57 Mr Mitchell: If now somebody comes along and says we want a contribution holiday do you have to approve it? You cannot stop it? You can enforce contributions and make them bring it up but you cannot stop them draining it out?

Mr Norgrove: As Bill was explaining, under the 2004 Act the company and the trustees have to agree what are called the “technical provisions”, which is in effect the amount of money that needs to go into the scheme. If there is a deficit against those then the company has to fill it. Once you have got to the technical provisions, if they are reached and then do not increase, for example at the next valuation, the company does not have to put more money in to

make up a deficit. It does have to contribute of course the amount of money to pay for the liabilities that are still accruing.

Q58 Mr Mitchell: Okay. Nigel mentioned Captain Bob-Bob-Bob, as he was called at one stage, and the *Mirror* pension scheme, and that was a situation where it seemed to be known to people in the City but not to the people nominally responsible for the pension scheme. Do you have a wider network of contacts and warning systems about the health of the company which will help to keep in touch with the prospects for the pension scheme or is it just whistle-blowing by pension fund trustees?

Mr Hobman: As I was saying earlier, there are now categories of notifiable events which are in place under the legislation where either the trustees or the employers themselves have to report.

Q59 Mr Mitchell: So it depends on the vigilance of the trustees?

Mr Hobman: And of others too.

Q60 Mr Mitchell: Not the tattle-tale within the industry is what I am asking.

Mr Hobman: Of the employer, if it is significant event, for example an employer wrongfully trading or relinquishing control of a company or a change in credit rating are all in some circumstances notifiable events.

Mr Mitchell: That is fine.

Chairman: Thank you very much. Richard Bacon.

Q61 Mr Bacon: May I say, Mr Hobman, your answers so far give me a lot more confidence than when we looked at Opra four years ago when although he was very polite and straightforward with us our chief witness was one Mr Paul Gray. I hope you do not find yourself in a similar position in four years' time.

Mr Hobman: Thank you.

Q62 Mr Bacon: One of the things we found there was that Opra at that time did not consider that it could be sure that it would prevent another Maxwell, and that was something we concluded in our Report, and also there was far too much focus on trivial cases. From everything you have said, it sounds like—but can you confirm it for the record—you are now confident that you would be able to prevent another Maxwell because of your early warning systems and triaging and so on?

Mr Hobman: I am much more confident than we could have been at the time when Maxwell took place that there are controls and there are checks in place and there are mitigations which would make it very much more difficult for that to happen or, if to happen, to remain undetected. To that extent I am confident.

Q63 Mr Bacon: Two more quick questions about that Report. Opra also did little to check the suitability of trustees. What processes do you go through to check the suitability of trustees now?

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Mr Hobman: The processes that we now have in place are that the trustees have to declare to us whether they are fit to be so. It is made clear to them what the bar would be to them being a trustee. We do go through Companies House records for disqualified directors, for example. We do now seek to reference the Insolvency Service so that we can find out for example who is a bankrupt or an undischarged bankrupt. In terms of criminal disqualifications, it is more difficult because the access to the intelligence databases that we have by law does not allow us to go on fishing trips, so described, but we do have much better systems in place through the data that we now hold to identify, at least in one part of the system, if there may be someone we are concerned about, whether they also have influence or presence in other parts of the system.

Q64 Mr Bacon: One other issue astonishing to us at the time was that the then Act did not give Opra any objectives or define its functions. Obviously the situation has improved considerably within the legislation. Are you content that your objectives and your functions are fit for purpose—I hate that phrase—that they meet the case and that you have all the powers and functions that you need to achieve your objectives and that your objectives are adequately broad?

Mr Hobman: I believe that is the case, although I would have to say that I believe the Government having just announced that The Pensions Regulator is to be the regulator of the new personal account scheme and also responsible for employer compliance would give rise to the need for a new objective, which I know is being considered as part of the legislation to cover those responsibilities.

Mr Galvin: And this is a new role for the Regulator. It will require a new statutory objective but the new Pensions Bill will be, as you know, following shortly and that will be a topic for that.

Q65 Mr Bacon: Figure 13 on Page 25 talks about the case of the Chairman of the Trustees of the Ericsson Employee Benefits Scheme who misrepresented the benefits of executive members to Ericsson's senior management, falsely claimed that executive members' benefits accrued at a 1/30th rate and were entitled to receive unreduced benefits from the age of 50 and so on. He also accepted for himself an exceptionally favourable second deferred pension. That was a whistle-blower case and you managed to recover some money and the changes that were proposed were stopped. Presumably the Chairman committed a criminal offence in doing what he did, and has been prosecuted?

Mr Hobman: He has not been prosecuted for a criminal offence.

Q66 Mr Bacon: Did he commit a criminal offence?

Mr Hobman: I have to say I am not clear whether anything that he did would be technically categorised as such an offence.

Q67 Mr Bacon: What it says here is that he falsely claimed that executive members' benefits accrued at a 1/30th rate. He presented this as an existing entitlement, rather than proposals requiring the parent company's approval, despite knowing that it would have a detrimental effect on the fund. "The Chairman also accepted for himself an exceptionally favourable second deferred pension, which potentially could affect other scheme members' benefits, without informing or seeking approval from the other directors." I am not a lawyer but there are lots of laws out there including on deception and various other things. It sounds to me like he committed criminal offences and I am surprised that no-one can tell me whether that is the case or not.

Mr Norgrove: From memory—this was a little while ago—the case for criminal prosecution was considered but given the higher standards of proof required for a criminal case it was decided that it was not worth pursuing.

Mr Bacon: I understand that the phrase whether he committed a criminal offence itself has legal implications. You did not think you could establish to that burden of proof, but if all of those things are accurate, that is to say that he falsely claimed that members' benefits accrued at a certain rate and that he took action which gave himself an extra favourable pension without informing the directors even though he knew it might damage the fund, these are provable things, are they not?

Chairman: I am just wondering if it is appropriate for us to second guess whether criminal prosecutions took place. I do not think it is the role of this Committee.

Mr Williams: It is okay to ask what was done.

Q68 Mr Bacon: I am jolly glad that it was stopped and it looks like your system worked which is good. It is just one of the things I have noticed for years in this Committee is an unwillingness—we saw this with the Charity Commission and DWP—to take out prosecutions. But you are saying that prosecution was considered?

Mr Hobman: Prosecution was considered and it was felt better to pursue this on a civil basis.

Mr Norgrove: You might want to mention, Tony, that there are other cases that are being pursued on a criminal basis.

Q69 Mr Bacon: If there is any further information that you feel is appropriate perhaps you would write to the Committee.

Mr Norgrove: One other thing though, the Committee has, quite rightly I think, focused on criminal activities in the Maxwell case for example, but from our point of view the risk to members' benefits from criminal activity is far lower than the risk from a company going insolvent with an underfunded pension scheme. That is a much higher risk to members' benefits.

Q70 Mr Bacon: There are several other questions I want to ask you but I will turn to Figure 9 on Page 18, I am interested in the two top boxes, the one on

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the left is the high risk large-scale scheme where you have got 150 to 300 schemes and then about 2,000 schemes variable in number on the top left. What I am trying to get a sense of is how big are those as a proportion of the pensions sector? How many employees are affected? How many of those are big companies, the top 500 plcs?

Mr Hobman: The cases in the top right box will tend to be larger schemes, including the very largest, bearing in mind that many of these are those who will come to us through the scheme funding process as a matter of course and through the corporate risk management function, the clearance function. I cannot give you a precise figure but a context I hope will be useful that something like 85% of scheme memberships sit in 1,600 large schemes, so you can see from that that we are at any one time dealing with a caseload which is a very significant proportion of memberships.

Q71 Mr Bacon: Where it says active intervention you may think that something is inappropriate or wrong but they may also have been the subject of an active dispute with the trustees maintaining that they have met their obligations?

Mr Hobman: Absolutely and as time goes on, coming back to a question earlier about whether we use our powers, one of the significant powers we have been given is to decide funding where there has been no agreement. I have no doubt we will be using that more in due course.

Q72 Mr Bacon: Which brings me on neatly to Paragraphs 4.19 and 4.2, where taken together they describe an inherent tension between the need to be transparent and consistent in decision-making so that the market understands what the Regulator deems unacceptable on the one hand and not routinely publishing the findings in such a way that it will encourage gaming of the system or encourage schemes that are actually pretty well funded to be less well funded or even to set a benchmark that people then fall to meet. How do you nonetheless, if you are going to not set benchmarks in that way, and accepting that there are scheme-specific requirements people have different views on, as it says in Paragraph 4.2 at the top there on investment strategies and the asset classes they should adopt and so on, how do you get the message out clearly in a transparent and consistent way as to what is acceptable and what is unacceptable?

Mr Hobman: In part at least it is by playing back relevant data into the market-place. That is one of the good points that the NAO has made as to the components of transparency in their Report. For example, at the earliest stage that we were able to, we took the data from the first 1,200 schemes we processed and analysed and made it available to the market to show, amongst other things, that there are a variety of solutions available on a scheme-specific basis, which reinforces the point that we are not after single funding standards. We repeat constantly in all our guidance that we are not looking for a single

funding standard, and even though, for example, for our regulatory oversight purposes we say that if a scheme is going to take longer than ten years to repay, all other things being equal, we would want to know why, that does not mean to say that the scheme should not repay much earlier or maybe somewhat later, as seems to have been borne out so far from the analysis that we have done.

Q73 Mr Bacon: One more question on paragraph 4.5, it appears that 73% of TPR's stakeholders considered that it had sufficient powers. That is all very encouraging. This is perhaps a question for Mr Shapcott. Self-evidently 27% do not think that TPR has sufficient powers. I am just wondering who are these folk who do not think TPR has adequate powers?

Mr Hobman: Can I answer that. In fact, in all of the statistics shown in this Report you have those who had a positive view, I think it would be fair to characterise it that the remaining percentage is in the main but not in all cases those who had no view or did not know. Those who had a negative view was a relatively small number.

Q74 Mr Bacon: 73% is pretty good I would have thought but you just wonder why nearly a quarter do not, but that is not what it is saying?

Mr Hobman: In that case it was only 8% who actually disagreed to any degree, which again we do not presume is job done but means that we have a fairly solid result in that case.

Mr Bacon: Thank you.

Chairman: Your last questioner is Mr Alan Williams.

Q75 Mr Williams: Do you accept that there is a educative value in making known your determinations when you have found that you need to use enforcement powers?

Mr Hobman: Yes we do.

Q76 Mr Williams: But it is a late conversion, is it not?

Mr Hobman: That is a fair challenge. Yes it is. We started out with a view that given the issues of confidentiality and gaming and the other things that the Report cites that it was better to approach this on a publish by exception basis. We accept and indeed now have a firm policy that we should publish in all cases other than by exception.

Q77 Mr Williams: That is very recent, it is only two months ago in September that you made the decision.

Mr Hobman: The decision was only made formally two months ago although we had been considering it for some while prior to that.

Q78 Mr Williams: Sir John, when did the draft report go to them for their consideration?

Mr Shapcott: We have been discussing it since July/August.

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Q79 Mr Williams: Since July/August? Well, well, well, so in July and August they saw it was going to come to this Committee later in the year and quite miraculously in September they changed their approach? It is a great compliment to this Committee, is it not?

Mr Norgrove: That is one of the functions surely of the NAO work to point out things that can be improved, and we have taken that on board quite properly.

Q80 Mr Williams: We are delighted you have taken it on board. What we cannot understand is why you could not appreciate something so self-evident previously?

Mr Norgrove: Perhaps I can answer that. It is not entirely self-evident because, after all, Parliament in putting in place the Act of 2004 recognised in that that if commercially confidential information were to be published by us regularly then companies would come to us very reluctantly and we would not get the information that we need to do the job properly. To be cautious about publication at the start I think was right and we will continue to be cautious about publication of information that we get through means other than determinations.

Q81 Mr Williams: By demonstration it alerts other practitioners to faults, does it not, so in that case can we now look to you providing the details on all your past determinations? If you are going to do it on all your future determinations, would it not be helpful now for those who have not had the benefit of a determination from you to see where you have given determination so they can avoid them?

Mr Norgrove: I guess that is something that would be worth considering.

Mr Hobman: Thank you.

Q82 Mr Williams: I am delighted. You do not have to thank me. What you could do instead is to send me a note to let me know when it is being published and if possible send a copy of whatever is published to the Clerk of our Committee so he could circulate it to Members. Would that be all right?

Mr Hobman: Yes.²

Q83 Mr Williams: Well, that has been a very satisfactory start. You have recognised that you have to take a risk-based approach to so many schemes and you need the individual schemes also to be based on an awareness of risk, so why is it that 34% of schemes offered no formal training in risk management last year? One in three?

Mr Hobman: Because you have identified one of the important areas of governance that we know we need to seek to improve amongst the trustee community. The truth is that we have started in

many of these areas of governance from quite a low base and that is a tough reality that we all face.

Q84 Mr Williams: It is frightening—and I am not getting at you—that for all these years there has been so little awareness of the need for this training. The miracle is that there have not been more serious problems.

Mr Hobman: I think that is a fair assessment.

Q85 Mr Williams: Do you think we have just been lucky or they have been well managed anyhow?

Mr Hobman: Have we been lucky? Or is it perhaps that because there really has not been the focus on these matters in the past that it has been difficult to say what material issues may have emerged.

Q86 Mr Williams: If you look at Appendix Five, it tells us in (v) that final salary schemes which have £700 billion invested in them have 14 million members, massive numbers, but two-fifths of these schemes did not have a process to identify risk. That is staggering, is it not? When it says two-fifths, is that two-fifths of the 14 million people who were at risk (that is 5.6 million) because their schemes had not recognised it, or is it two-fifths of the £700 billion?

Mr Hobman: It is two-fifths of schemes.

Q87 Mr Williams: So 5.5 million people --- well could you decide amongst yourselves which is right and I will take it from there.

Mr Hobman: Two-fifths of schemes but not members, so in general where these standards are less prevalent are amongst the smaller schemes, so as a total of the number of members it will be quite a large proportion of schemes, it will be a relatively much smaller proportion of members.

Q88 Mr Williams: Yes so is that still the situation? What is being done to reduce the 40% figure?

Mr Hobman: That is why in the priorities that we have set out for governance overall and for DC schemes in particular, where many of these smaller schemes are, we have now agreed with the regulated community through the consultation we have had that this is an important area to work on and where in the year ahead we will be focusing very much on ensuring that the tool kit is accessible and used by trustees. That is one of the reasons that we made sure it was a free resource to them so they could not say this was something they could not afford to do, because we understand that costs are an issue for smaller schemes, and also bolstering it with other guidance and good practice examples which we referred to earlier that we will be creating ourselves in the months ahead, so we will focus on this.

Q89 Mr Williams: As an additional safeguard, it probably is the case and I hope it is—but I just have to ask it—is there a duty to give you an early warning if problems emerge or can they just bury their heads and hope they can scramble their way through it and you will never find out that they were in trouble?

² Ev 12–13

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Mr Hobman: The strict duty in whistle-blowing occurs if they believe there has been a breach. One of the benefits of us helping the industry to focus on these risks is that many of the people who work with trustees—they after all need other people to make their schemes work, they need advisers, providers, administrators and so on and so forth—are themselves now much more focused on these issues and I think are better able to work with us to ensure that some of these standards are raised. That still makes it a big task but it shares the load.

Q90 Mr Williams: Coming back to the title point, I am sure that most of them would alert you. Is there a strict duty imposed on them to alert you if they see themselves running into trouble and their membership being put at risk?

Mr Hobman: If they believe that it amounts to a genuinely material risk to members then yes, we expect them—

Q91 Mr Williams: You said you expect; there is a difference between expecting and there being a duty to do it.

Mr Hobman: It would be a duty under the whistle-blowing requirements because if what they saw amounted to a breach of the Act because it was a position of such significance then they should. Beyond that there is, I have to say, a grey area where they might view things as acceptable and we might look at it and say there is mismanagement and, given the landscape we face, particularly with this large number of small schemes, that is why we have to focus so much of our efforts on education and ensuring that they are enabled and get standards up as quickly as possible.

Q92 Mr Williams: Are there any penalties for anyone who deliberately fails to tell you that a scheme is running into trouble and wilfully therefore runs it into greater difficulty?

Mr Hobman: If they fail to report a breach and it was material then, yes, there will be a penalty under the Act.

Q93 Mr Williams: What would those penalties be?

Mr Hobman: I think it would most likely be us considering whether they are fit and proper persons to consider as trustees.

Q94 Mr Williams: You mean you might sack them?

Mr Hobman: We might sack them.

Q95 Mr Williams: What about anything else if millions of pounds are lost?

Mr Hobman: That would depend, as you say, on the scale of the wrong. It comes back to the conversation we had earlier and the circumstances in which the loss came about. If it was through some form of criminal negligence or fraudulent evasion then our response might be very different to whether it was a large sum but still gross mismanagement.

Mr Williams: Thank you.

Chairman: I think Mr Mitchell has a last supplementary.

Q96 Mr Mitchell: Mr Norgrove mentioned more important now than the problem of the Maxwell-type fraud was the problem of companies going belly-up and leaving the pension scheme in a mess. It can often be that a problem with contributions to the pension scheme is a warning signal that something is going wrong, but it need not necessarily be so, so do you keep an eye on the financial health of companies? Is there any reporting system from the FSA for instance that: “Northern Rock is going funny”? How do you keep in touch with the strength of companies to fulfil their commitments?

Mr Norgrove: The first line of defence is the trustees themselves who are expected now to watch the covenant of their company and its financial health, and if they think they need to do that to re-open the agreement reached with the management about the funding of the scheme. In addition to that, we have our own group of people who, as Tony said earlier, scan all the sources of information that we can get to make sure that we pick up so far as we can problems in companies.

Chairman: That concludes our business. Thank you very much. I think it has been a very good hearing. We were highly critical of Opra, as you know, in 2002 but I think, partly as a result of our efforts, your more powerful organisation has been appointed and you appear to have done your honest best to make some good progress. I am sure in our Report we would be happy to give you plaudits where that is appropriate and no doubt we will therefore get no publicity for our Report! However, we would also wish to encourage you to further effort particularly with money purchase schemes where the governance might be more lax and where they may be more at risk, so I am sure we will have some useful recommendations to make in our Report.

 Supplementary memorandum submitted by The Pensions Regulator

Question 82 (Mr Alan Williams): *Publication of determination made by the Determinations Panel*

Having given this matter detailed consideration, we are persuaded that there is merit in publishing those determinations previously made by the Determinations Panel.

There have been 47 determinations made by the Determinations Panel where we have not published information since April 2005—further information is contained in Annex B. There are nine which involve either the removal; suspension or emergency appointment of a trustee. Other determinations cover more routine issues.

We are now in the process of looking critically at all those past determinations by the Panel, and will seek to publish as soon as is reasonably possible. The considerations listed in our publication policy (Annex A), for example the exceptions criteria, will be applied in the usual way. We will therefore publish all previous determinations, other than where there is good reason not to do so. We will send copies of published determinations to the Clerk of the Committee of Public Accounts to circulate to Members.

Annex A

THE PENSION REGULATOR

Publication of Determinations policy

To publish all determinations reserved to the Pension Regulator's Determination Panel, and in full, unless the Pension Regulator considers there is good reason not to.

Exceptions to publishing a determination or publishing it in full will be considered where publication would give rise to one or more of the following:

- an adverse impact on market behaviours—which can include commercial and/or price sensitivity issues;
- prejudice investigations by other bodies;
- disclosure of information protected under the Official Secrets Act or irrelevant restricted information;
- risk to individual safety or mental health (in relation to reputational and civil liability); and
- disclosure of sensitive personal data.

When will determinations be published?

Determinations will be published as soon as practicable following the determination by the Determination Panel except in the following cases:

- where the determination involves prohibition of trustees—to take into account legislative requirements; and
- where a determination has been made under the Special Procedure—decision on publication will be delayed until after a compulsory review has taken place.

Annex B

PAST DETERMINATIONS MADE BY THE DP

| <i>Subject of determination</i> | <i>Number of cases</i> |
|--|------------------------|
| Applications for extensions to time limits for Cash Equivalent Transfer Values | 7 |
| Normal appointment of trustee | 12 |
| Removal of trustee | 2 |
| Winding up order | 6 |
| Suspension of Trustee | 4 |
| Waiver of disqualification | 5 |
| Variation of existing order | 1 |
| Review of OPRA financial penalty | 4 |
| Revocation of Direction | 1 |
| Vesting of property | 1 |
| Vesting order | 1 |
| Emergency appointment of trustee | 3 |