

Occupational Pensions Regulatory Authority
Invicta House
Trafalgar Place
Brighton
BN1 4DW
Direct Line 01273 627784
Fax 01273 627688
E-mail sean.o'hara@opra.gov.uk

Sir Derek Morris
The Morris Review
Room GC/08
1 Horse Guards Road
London
SW1A 2HQ

Date: 9 September 2004

Our Ref: SJO'H

Your Ref:

Dear Sir Derek

**Morris Review of the Actuarial Profession – Consultation Document
Opra's Response**

Your letter of 28 June addressed to Tony Hobman invited Opra to comment on your consultation document on the review of the actuarial profession. I enclose a copy of Opra's response. A copy has also been sent by email to your nominated email address.

Thank you for giving us the opportunity to comment on this. I trust you will find our comments helpful. We look forward to receiving your interim assessment paper in the autumn.

We trust your work will be of benefit to the actuarial profession and to the industry in general. I confirm we are happy to remain involved as required as your work progresses.

Yours sincerely,

Sean O'Hara
Policy Officer

Response from Opra to the consultation document issued in June 2004 by Sir Derek Morris in connection with his review of the actuarial profession

The numbering scheme follows that in the consultation document. Following Sir Derek's request, only those questions to which we have a response to make are addressed.

Chapter 1: The role of actuaries, the profession and the actuarial services market

The scope of the actuarial role

1.1 It is almost axiomatic that actuaries' training uniquely fits them for the roles they predominantly perform and particularly so in the field of occupational pensions. This training includes elements of probability theory, the mathematics of finance, economics and accounting practice. This training encompasses not just the theory but also the practice of pension scheme administration in its widest sense. Additionally, a pension scheme actuary will be likely to have close exposure to the legal aspects of pensions both through the trust instruments governing schemes and involvement with the pension aspects of company restructuring.

In Opra's experience, the trustees of most schemes rightly have a great deal of confidence in their actuary. Opra does see very many actuarial reports and other advice in connection with our investigations of alleged breaches, and by-and-large we are impressed by their quality and depth. It would be difficult to argue from the evidence we have seen that actuaries are not properly equipped to fulfil their role as advisers on all matters connected with the funding of schemes. At the same time it has to be acknowledged that actuarial matters can be complex and Opra has evidence that the implications of funding decisions may not always have been fully understood by trustees and employers.

We have seen some evidence that actuaries are on occasion persuaded to provide advice not falling naturally within their province, for example in relation to interpretation of scheme rules or pension specific legislation. This does seem to be more a feature of small scheme consulting where the client may be keen to keep costs down and therefore be reluctant to take separate advice, from a lawyer for example. It may also be a consequence of actuaries' broad training. Actuaries can, however, point to the certificate required under section 67 of the Pensions Act 1995 relating to the effects of scheme rule changes on accrued rights. The certificate is reserved to the scheme actuary yet it is not at all clear that the matter is strictly actuarial.

One factor worth noting in connection with actuaries providing, perhaps sometimes inadvertently, legal advice is that the Pensions Act 1995 has a raft of provisions covering actuaries' duties, largely relating to the minimum funding requirement. It has been necessary since 1997 for actuaries to have a very close acquaintance with these legal requirements for them to fulfil their responsibilities to trustees. Similarly, actuaries appointed by employers have had to wrestle with accounting requirements under SSAP 24 and now FRS 17 in order to advise their clients on the incorporation of pension costs into companies' financial statements.

1.3 Opra believes it is in the public interest for trustees, and indeed sponsoring employers, to have high quality advice in relation to the funding of occupational pension schemes. Anyone providing that advice must be suitably qualified and experienced enough to provide it. The actuarial profession currently provides the appropriate training and has in place a practising certificate scheme for "scheme actuaries" designed to ensure that certificates, renewable annually, are only provided to appropriately qualified and experienced actuaries. If actuarial roles are to be opened more widely, some similar system for monitoring training and experience would have to be imposed, since recipients of advice will not generally be in a position to know whether it is reliable.

The scheme actuary has a statutory role as whistle-blower. This, combined with the respect in which the actuary is generally held, provides a very valuable protection for scheme members.

1.5 Opra does not routinely check actuarial reports and advice coming to our attention so we can pass no judgement as to the general accuracy of actuaries' work. Our understanding of practice within actuarial firms is that checking and review of work is a required procedure, though work may often be completed initially by "student" actuaries at various stages in their training and then checked by a qualified actuary. Opra very much supports, as good practice, scrutiny and peer review of work, which has the potential to provide a beneficial check on advice

Nevertheless, Opra has come across occasional mistakes (which we have usually resolved with the actuary concerned without the need for a professional complaint). We have a slight concern that some smaller employers of actuaries may not have the resources to carry out all the checking needed or to keep abreast of all the legislation surrounding pensions relevant to their duties. Clearly there are cost and competition issues as the larger schemes tend to employ the larger firms of actuaries.

1.6 There is little doubt that investment policy is a key decision area for schemes and that assets and liabilities must be considered together. That this should be the case was one of the main recommendations of the Myners Report. Actuaries need to work closely with investment advisers and perhaps fund managers to ensure that this link is maintained. It is our understanding that most investment advice to trustees of occupational pension schemes is provided by the investment advisory arm of actuarial firms so that it is unlikely the liability side will be forgotten. Indeed, we cannot recall any investment advice we have seen which does not address the liabilities and the funding position.

Accountability of actuaries

1.8 – 1.10 Any actuarial advice provided to the trustees of an occupational pension scheme must be provided by an actuary (or firm of actuaries for any actuarial advice not reserved to the Scheme Actuary appointed under section 47 of the Pensions Act 1995) specifically appointed by the trustees themselves and not by the employer. As we understand the current legal position, the contract between the actuary and the trustees makes the actuary accountable to the trustees. Under trust law, it is the trustees who have a duty to act in the best interests of the beneficiaries.

Nevertheless, we would support and welcome an explicit duty to scheme members on the part of the actuary, though we concede that there may be difficulties in the precise framing of such a duty. Whether this duty is set out in statute or in professional guidance is a point for debate.

We are conscious also that employers usually have the power to appoint trustees, and as member nominated representation on trustee bodies need only amount to one third of the trustees, the sponsoring employer may be able to exert influence on trustee decisions. This can extend to the choice of actuary and to the actuarial advice followed, where the actuary offers a range of options for example, and which can have an impact on the security of members' benefits. There is potential here for a conflict of interest and if actuaries were made more directly accountable to scheme members that potential conflict might fall away.

We see no particular current barrier to actuaries being accountable to their client for the advice they give. It is our understanding, however, that a court is only likely to find an actuary to be liable if the advice he gave falls outside a range which another reasonable actuary could have given. In other words, his or her advice must have been extreme and not just sub optimal. Much of an actuary's work revolves around the choice of assumptions and model as to the course of future events about which there is not necessarily a consensus within the profession as we understand it. Thus it may be

difficult for an action against an actuary with an honestly held but minority view to succeed.

The profession

1.11 The profession has met regularly with Opra since its inception in 1997 at various levels. There has been two way consultation on Opra guidance, particularly regarding whistle-blowing, and on relevant professional guidance notes such as GN29 on the scheme actuary's duties. The profession has also organised annual seminars aimed at scheme actuaries to which the Opra actuaries and other Opra staff have contributed.

1.12 We are aware of the recent impact of lessons from the teachings of 'financial economics' on actuarial thinking. It is at least arguable that the profession was late in taking up these ideas.

The regular triennial actuarial valuations are major pieces of work for the scheme actuary's firm and are time consuming and costly. Despite advances in computing, we have seen little evidence that this process has become significantly more efficient in terms of time taken or cost since 1997.

1.14 We understand that the profession is only able to discipline individual actuaries and not the firms employing them. Opra has made around twenty complaints about individual pensions actuaries to the profession since April 1997. A number of those have at least some element of corporate responsibility associated with them; shortcomings in office systems not alerting the actuary to significant dates in relation to a scheme for example. We take the view that there is merit in being able to penalise firms where this is more appropriate.

Generally speaking, it is our view that the inclusion of lay persons in the decision making process always adds value.

The market for actuarial services

1.22 In the area of pensions, the demand for actuarial services per se is mainly linked to the prevalence of defined benefit schemes. However, actuaries have a more limited role to play in money purchase arrangements. The decline in defined benefit schemes, if this trend is not reversed, seems likely to lead to a reduction in demand for actuarial advice, though it has to be recognised that many closed DB schemes will continue for many more years and will still need regular actuarial valuations and other advice connected to funding.

The changes to the statutory funding regime envisaged by the Pensions Bill are likely to lead to more trustee and employer training, and perhaps a demand for separate actuarial advice to trustees and employer.

1.23 – 1.24 We see no evidence that trustees generally have difficulty in changing actuarial advisers. Certainly the market, particularly for large schemes, is dominated by the few major players. However, we have no evidence to suggest this is a barrier to competition.

There are also medium and smaller sized actuarial firms competing for business and we see these appointed to some quite large schemes as well as to those smaller schemes which might be thought of as their natural territory. This suggests that there is pressure from below so the larger firms cannot afford to be complacent.

However, there are particular situations where changing advisers may be difficult; insured schemes and schemes in wind up for example. In the case of the former, it may be necessary to switch insurers if a change of actuarial adviser is concerned and there are often surrender penalties on the switching of contracts. With the latter, there are often cost considerations as there may not be an ongoing employer around to meet the costs of such a change which must therefore come out of scheme resources. Such additional costs come from the need for any new adviser to become fully acquainted with the scheme.

It is often the case that actuarial consultancies provide administration services and/or investment advice to their clients in addition to providing the scheme actuary. We wonder if trustees are more reluctant to change actuarial adviser alone when the actuarial advice comes as part of a package of services as the cost savings from the one-stop-shop approach may then be lost. We do not, however, suggest that actuarial firms should focus exclusively on their core actuarial business to the exclusion of other related services.

1.25 Actuarial valuation reports are lengthy and comprehensive documents often encompassing a variety of valuation results each directed at a different question or legislative requirement. The level of financial expertise of individual trustees varies.

Our experience is that valuation reports are well written with attempts made to explain technical matters. There will often be covering letters expanding upon the critical aspects of the report. For all but the smallest schemes, typically insured, it would be normal for the triennial valuation results to be presented at a trustee meeting with the opportunity for questions. We see actuarial interaction with trustees, either as a body, or by way of the scheme actuary's normal contact, as an important part of the valuation

process. Without these supplementary processes the average trustee may have difficulty fully understanding a formal valuation report.

In recent times, we suggest that the position has not necessarily been helped by the requirements for so many different valuations to be undertaken, eg: funding valuation, MFR valuation, solvency valuation and surplus valuation as well as those valuations required by the employer for corporate accounting purposes. We suggest that such an array is unlikely to lead to clarity for the average trustee. The changes proposed by the Pensions Bill currently before parliament seem likely to lead to at least one fewer type of valuation being needed.

Of course, our experience varies and some trustees, particularly those with some financial training, will have a very clear understanding of actuarial evidence presented to them and will be well able to ask relevant questions and make informed decisions. The fact remains, however, that where trustees are not equipped to question critically actuarial advice they become totally dependent on that advice and that puts a great responsibility on the actuary.

1.29 It is our understanding that GAD only compete to a limited extent with the private sector actuarial firms where there is a connection to the public sector. On the other hand, private sector actuarial firms do compete with GAD in relation to some public sector contracts.

Other professions

1.34 As we understand it, the two actuarial professional bodies within the UK already act as one as far as standard setting is concerned. For example, there is a common examination system and set of professional guidance notes. One aspect of control which is lacking under the current system is any form of checking of adherence to standards by firms employing actuaries such as apparently happens in respect of accountancy firms.

A critical and difficult issue for any standard setting body, whether constituted as at present or by way of a separate board sitting above the professional bodies, is whether and if so to what extent differing views are to be allowed.

Chapter 2: The current regulatory framework of the actuarial profession

The regulatory role of the profession

2.1 We consider the following objectives important to a regulatory framework:

- to ensure that adequate standards are attained by qualified actuaries
- to ensure that such standards are maintained through continued professional training and development
- to provide appropriate guidance to actuaries where necessary and/or desirable
- to be independent of government and other vested interests
- to monitor attainment of standards and adherence to guidance by both individuals and firms as appropriate
- to implement appropriate disciplinary procedures and impose appropriate sanctions
- to be in the public interest

2.2 Taking the objectives identified in 2.1 above and testing the current regime against them we conclude:

- *to ensure that adequate standards are attained by qualified actuaries*
Overall, no evidence to suggest the qualification route is inadequate.
- *to ensure that such standards are maintained through continued professional training and development*
Opra has found little evidence to suggest otherwise. We have made relatively few referrals of actuaries to their professional bodies as a result of evidence uncovered as part of our investigations into alleged breaches of the law (22 from April 1997 to date). As far as scheme actuaries are concerned, they need to hold a practising certificate in order to hold an appointment. One of the requirements for annual renewal of that certificate is that appropriate CPD has been undertaken. However, it is our understanding that the profession does not carry out validation of such CPD claims. We suggest this may be a weakness of the system.
- *to provide appropriate guidance to actuaries where necessary and/or desirable*
Professional guidance appears to cover relevant areas and is comprehensive. Such guidance appears to be reviewed and revised as needed.
- *to be independent of government and other vested interests*
No evidence that the standard setting process is unduly influenced by vested interests as there is wide representation from across the profession on the various controlling committees as far as we are aware. It is not clear that the latitude allowed for in professional guidance in the provision of advice to

- reflect the differing views within the profession would be restricted if a separate body were established for the purpose of standard setting.
- *to monitor attainment of standards and adherence to guidance by both individuals and firms as appropriate*
Currently no remit in relation to firms, only individual actuaries. We believe this is a distinct drawback of the present system. Firms are best placed to monitor the work of their own actuaries and the regulatory system is made more manageable in our view if concentrated on firms.
 - *to implement appropriate disciplinary procedures and impose appropriate sanctions*
Recent changes to disciplinary schemes of Faculty and Institute have been brought into line. Opra has little experience of the new system but it does hold out the prospect of being able to deal with complaints more efficiently and to be able to impose an appropriate sanction. Nevertheless, largely staffed by volunteers from within the profession.
 - *to be in the public interest*
There is an issue about justice being seen to be done in relation to the disciplinary scheme. A similar point can be made about standard setting, though it is not immediately obvious how a standard setting body for the actuarial profession can be devised which is not comprised of a majority of actuaries or indeed whether it should not be.

2.3 We suggest there is always an element of the self interested and protective trade body in any profession. This is probably the strongest argument for having a separate “standards board”.

2.9 It is difficult to see what other professionals would have the range of skills and knowledge to perform the tasks and provide the advice that the scheme actuary does. Nor is it clear what is to be gained by opening up the actuarial function to other disciplines. Accountants are probably the most nearly aligned by training though it is our understanding that the mathematical requirements of actuarial qualification are more complex and specialised than those for accountancy. Surely it would be necessary to have some check that those proposing to provide actuarial advice were fitted to do so? How would this be achieved in the absence of a specific professional qualification?

We would hope that actuarial firms take steps to ensure that work is carried out and advice provided and charged for at appropriate levels within their organisations. It is part of trustees’ responsibilities to satisfy themselves as to value for money.

2.10 Experience varies. It is clear from trustee minutes and other documentation we

have seen, that some trustee bodies are very capable of challenging and sensibly discussing actuarial advice. These trustees will be well placed in the new scheme specific funding environment envisaged by the Pensions Bill to take on board the advice received from their actuary and conduct meaningful and informed negotiations with the sponsoring employer to devise an agreed funding strategy. These will be typically, though not exclusively, trustees of the larger schemes.

There are, however, trustees with little understanding of actuarial and funding issues and these trustees would not be in a good position to challenge actuarial advice. Also, often those members of trustee bodies who have the clearest grasp of actuarial issues will hold senior positions with the employer. This is a potential issue of concern for the proper working of the proposed new funding regime where strategy is to be agreed between employer and trustees. There is a challenge here for scheme actuaries, and perhaps also for the profession as a whole, to explain difficult issues and to educate trustees.

As far as making distributions of benefits between different generations of beneficiaries is concerned, this only applies where schemes wind up unable to fully buy out all promised benefits. It is not an issue where schemes remain in being and pay out benefits as and when members retire. It will be even less of an issue in the era of the Pension Protection Fund.

2.11 At Opra we have seen little evidence to suggest that actuarial “influence” is being exerted. Most actuarial advice we have seen has appeared to us to properly address the risks involved with following alternative strategies, with decisions being very much left to trustees. However, this does assume that the advice is understood by its recipients. Scrutiny and peer review of work has an important role to play here. We believe that most actuarial firms are diligent in this regard.

2.12 The scheme actuary, who must be appointed by the trustees will be accountable to the trustees. This will remain the case in the post April 2005 environment. It is very common for the firm employing the scheme actuary to hold a second appointment to advise the employer. In practice often the same actuary provides advice to both parties. For example, the actuarial firm will provide the employer with company accounting information. Their two roles may not conflict in an ongoing scheme.

However, there are circumstances currently when a potential conflict of interest between employer and trustees may arise, such as when bulk transfer terms are at issue in relation to a corporate deal involving the pension scheme or when the employer wishes to provide enhanced benefits for certain staff. Opra’s experience is

that increasingly, at least amongst the medium to large schemes, the employer will retain a separate actuarial firm to provide its advice.

Certainly, once the scheme funding regime is in force, under which decisions are to be arrived at through a process of negotiation, we expect the practice of employer and trustees engaging separate firms to become more common. We have certainly heard this view expressed within actuarial circles. There are clearly cost issues for smaller schemes/employers and opinion seems still to be divided as to whether it is always actually necessary to have such separate appointments as long as all advice was expressed in terms of options with consequences and inherent risks properly explained.

Pragmatically, it may be acceptable for one adviser, the scheme actuary, to present a range of options openly to both employer and trustees in an atmosphere of trust and understanding with the decisions being taken by those latter two parties. The scheme actuary will be required to certify that the calculation of the scheme's "technical provisions" (the value placed on its accrued liabilities for funding purposes) complies with legislation.

2.13 Ongoing funding valuations, both those prepared prior to April 1997 when the Pensions Act 1995 came into force, and those being prepared currently typically assume that invested assets will enjoy a rate of investment return higher than that on government securities. By doing so, credit is being taken in advance for the expected out-performance of these riskier assets before the risks of holding them have actually been taken. These valuations have historically gone, and to a predominant extent still are going, hand in -hand with an actual investment strategy involving a high weighting in equities.

Thus an argument could be developed that actuarial valuation methods predicated on the expected out-performance of equities have led to the current way pension schemes are funded in the UK.

The pensions bill envisages that funding decisions will be made by the trustees in partnership with the employer in conjunction with actuarial advice. There are potentials for conflicts of interest for trustees, particularly those holding senior management positions within the employer. It will be incumbent on actuaries to make their advice transparent and as easily understood as possible to make this process work effectively. This may be a considerable challenge to some.

2.14 Actuaries have had a statutory whistle-blowing role since April 1997 and it is Opra's experience that they have been, with very few exceptions, diligent in fulfilling those responsibilities and have been willing to exercise judgement in a sensible way in

deciding what matters should be reported. This valuable role is due to continue after April 2005.

Maintenance of professional competence

2.20 Currently, there is a professional requirement for a “scheme actuary” appointed under section 47 of the Pensions Act 1995 to hold a current practising certificate before accepting an appointment. Certificates are renewable on an annual basis and candidates for renewal must demonstrate that they have completed CPD of at least a prescribed minimum amount and have maintained an appropriate level of relevant experience of scheme actuary type work. A committee of the profession oversees this process (but see 2.2 above).

This requirement for a practising certificate goes further than the statutory requirement. However, Opra believes the system works well and enables the profession to withdraw a certificate as one element of its disciplinary process, as happened as a result of one formal complaint brought by Opra against a scheme actuary.

2.21 It is our understanding that the examination syllabus for actuaries is revised from time to time as new areas of expertise are taken on board and some others dropped. This means that actuaries who qualified some time ago may have undergone very different training from their more newly qualified colleagues. This situation is common to all professions. In the absence of formal requirements for further regular study and a demonstration of attainment by some form of continuous examination process, a voluntary system of keeping up to date with developments in an informal way is usually adopted.

Opra has seen little evidence of a widespread ignorance of modern actuarial thinking and consequently we do not positively advocate wholesale change to CPD requirements. Within actuarial firms, there is considerable scope for ideas to percolate because it is our understanding that it would be typical for more than one actuary to be involved in the provision of advice to all but the very smallest clients.

2.22 Opra supports the widening of the practising certificates regime with its implications for mandatory CPD and demonstration of competence through relevant experience.

Whistle blowing

2.24 The requirements on scheme actuaries to report suspected breaches of the law in relation to defined benefit pension schemes to Opra (and this duty is due to remain

after April 2005) does provide very wide ranging protection for members of those schemes. Indeed, professional guidance goes further than the legislation in this regard as it places a duty on an actuary who is not a scheme actuary nevertheless to report to Opra in a situation where a scheme actuary would be obliged to do so. Thus a degree of protection is provided to any scheme to which an actuary has been appointed, such as some money purchase schemes.

Exactly what constitutes the public interest with respect to occupational pension schemes is a moot point. We take the view that as long as schemes adhere to the requirements of their trust deeds and rules, specific pensions legislation, and general trust law, the public interest would be satisfied. To that extent, the actuary's whistle-blowing duties are providing a high degree of protection. However, to the extent that the public interest is not limited to such legislative requirements, then the actuary's duty of disclosure might be considered inadequate.

2.25 Opra has prepared a guidance note for scheme actuaries (also applicable to scheme auditors who have the same duty to report matters to Opra) which sets out our views on the matters which should be reported to us, as well as those which should not. As well as being in hard copy, it is available from our website. When this guidance was revised during 2003, the actuarial profession was consulted, and the revised version launched through several workshops widely advertised and well attended. We would be very surprised if any scheme actuary claimed to be unaware of this Opra guidance.

In addition, the profession has prepared its own guidance note (GN29) specifically covering the duties and responsibilities of scheme actuaries and which has a section on whistle-blowing. All pension scheme actuaries will be well aware of the existence of GN29. Accordingly, we believe it should be sufficiently clear to pensions actuaries what matters should be reported to Opra. Nevertheless, it is interesting to note that Opra was asked to present a case study workshop at this year's actuarial pensions convention attended by some 200 pensions actuaries.

2.26 Opra does not have evidence to suggest that failure on the part of pensions actuaries to disclose matters coming to their attention which Opra considers should have been reported to us, is at all widespread. Indeed, some actuaries have reported concerns which fall within the ambit of trust law rather than being specific breaches of statute. On the other hand, because we rely on exception reporting, we are not in a position to know how many things go unreported that should have been.

Standard setting

2.29 Opra believes there is a case for certain guidance for scheme actuaries to be

prepared by the regulator. It is currently the profession's practice to consult with Opra (and we believe government too) when revising a guidance note which bears on a statutory responsibility. However, in our view this does not go quite far enough and we would prefer to see a clearer separation of those purely professional aspects of guidance with those aspects which are more regulatory in nature. A current example is GN27 on the minimum funding requirement (MFR) of the Pensions Act 1995. Much of the content of this guidance note is in reality expanding on legislation. This might have been better left to Opra.

Opra has issued some guidance applicable to scheme actuaries, notably on the duty to report suspected breaches to us. The pensions bill envisages rather more guidance (some of which will be in the form of more formal codes of practice) to be issued by the regulator, some of which will be applicable to scheme actuaries, including on scheme funding matters. Whilst we envisage that the regulator and the profession will work closely together in the preparation of their respective guidance, there is the risk of disagreement. ..

2.30 It seems to us that much current professional guidance concentrates on identifying matters to be taken into account by the actuary rather than specifying precisely how to do so, thereby leaving considerable scope for the exercise of professional judgement. A case in point is the guidance in GN11 in respect of the calculation of transfer values from defined benefit schemes. Before the advent of the MFR underpin, there was a very wide variation in the calculation of individual transfer values between schemes having similar benefit structures and investment policies. Admittedly, the issue of transfer values is not straightforward but it does illustrate the point that some guidance is capable of wide differences in interpretation by actuaries (and indeed their clients) which might be difficult to justify to scheme members. We contend that there is a public interest case for a more prescriptive approach to guidance in some areas.

2.31 Opra welcomes the profession's proposals for an actuarial standards board. The clear separation of standards setting from the "trade body" aspects of the profession is a move in the right direction. The fact that the proposed board is to have a majority of independent members suggests that self interest will be controlled. Clearly, the actual make-up of the board will be critical to its success and it is difficult to comment further until we have a lot more detail as to how exactly it will work in practice. One of the potential dangers we perceive in a board made up of a broad range of views and backgrounds is that in order to achieve consensus, innovation could be stifled.

Openness, peer review and audit of actuarial work

2.33 Opra believes that Lord Penrose's criticism of actuaries as lacking in openness and transparency is difficult to sustain in the case of the vast majority of actuaries advising pension schemes. Actuarial advice which we have seen in the form of valuation reports or letters on the whole appears to us to be well explained and written in clear language aimed at the layman. It is also the case that consulting actuaries routinely maintain close contact with their trustee clients, often by attending meetings. Pensions actuaries also frequently work closely with other professionals, lawyers in particular, when advising on such matters as scheme or corporate reorganisations and scheme documentation and consequently need to explain and justify their advice. This is a very different environment to that of the life insurer.

On the other hand, some of us have experience of working within firms of actuarial consultants where the actuaries did tend to be somewhat guarded in disseminating their expertise to non-actuarial staff.

2.35 The profession's proposals for peer review of the work of pension scheme actuaries is largely a codification of what we understand is already the practice within the larger firms of consulting actuaries. Opra welcomes the proposals as obvious good practice. Peer review as covered by the profession's proposals is intended to determine whether advice complies with published professional guidance. It is not designed to check figure work for example nor clarity of presentation nor whether it is written in plain English. It is normal practice as we understand it for all figure work to be checked by either another qualified actuary or by a student actuary. Opra welcomes the profession's proposals in this regard.

2.36 It is a current requirement of legislation that actuarial valuation reports must be disclosed to scheme members on request. However, it is our understanding that, in practice, such requests from scheme members are rare. Some trustees, particularly of larger schemes, do include summaries of actuarial valuations in regular newsletters or other communications sent automatically to some or all members. Opra encourages this as good practice which we believe is likely to be more effective than requiring the full valuation to be sent to members directly.

Monitoring, complaints and disciplinary schemes

2.38 – 2.41 Since April 1997, as noted above, Opra has referred 22 pensions actuaries to the profession for their consideration under the previous disciplinary process, not all of which translated to formal complaints. In late 2001, in response to the outcome of three cases referred to them, Opra wrote to the profession making representations about, amongst other things, what we perceived to be a lack of flexibility in the sanctions available to them when dealing with complaints under the Institute's and

Faculty's then different disciplinary schemes. We believe this letter was instrumental in leading to the profession's wide ranging review of those schemes. Accordingly, Opra supported the introduction of what is in effect a common disciplinary scheme with the prospect of speedier progression of most complaints, a wider range of available sanctions and greater independence of the process.

No complaints have so far been referred since the new process was introduced at the start of this year. We are not yet in a position to comment on the effectiveness of the new process, therefore.

However, the new disciplinary scheme does not address Lord Penrose's main criticism that the profession is reactive rather than proactive, since complaints must relate to events which have already happened. Such a proactive system would seem to imply monitoring by the profession of actuarial advice and conduct such as we understand the "joint monitoring unit" undertakes on behalf of the accountancy profession. Current proposals on peer review appear to fall well short of such a system. On the other hand, the proposed standards board would be able to address shortcomings in the guidance issued to actuaries.

2.42 –2.43 The Pensions Act 1995 did make provision for Opra to penalise scheme actuaries who were deemed not to have made a whistle-blowing report when they should have done. These provisions were not brought into force, however, on the understanding that the profession deal with such transgressions under its disciplinary scheme in respect of any actuaries referred to it by Opra.

A similar provision for the new Pensions Regulator to penalise actuaries and others who fail to blow the whistle is incorporated in the current pensions Bill. However, it is expected that the new Regulator will still seek to refer actuaries to their professional bodies for disciplinary purposes. It should be emphasised that the provision in the Bill is only in relation to whistle-blowing failures and not to other professional failings or misconduct; these would still need to be referred to the profession itself.

Whilst it may be appropriate for the pensions regulator to penalise actuaries in the restricted circumstances of whistle-blowing infractions, the regulator does not consider itself best placed to look at wider matters of professional misconduct by pensions actuaries. To start with, not all pensions-related matters are regulated. And the regulator is unlikely to have (or indeed wish to have) the resources available to carry out an investigation into whether, for example, technical guidance of a complex nature, had been adhered to. Opra believes that is the proper role of the profession's disciplinary scheme.

Opra does employ two actuaries full time (in fact on secondment from GAD) within its technical services directorate to provide actuarial advice to caseworkers in respect of particular schemes which are the subject of an investigation as well as to inform Opra policy on funding and other actuarial matters. As part of their duties these actuaries will frequently need to review advice, and other actuarial work such as MFR valuations, provided by scheme actuaries. From time to time they will take issue with other actuaries over professional matters, the culmination of which may be a recommendation to senior management that a referral to the profession is appropriate. Such matters are not confined to whistle-blowing infractions. However, it should be made clear that Opra actuaries do not routinely check actuarial calculations.

Opra considers the role of the actuary at the new pensions regulator will change after the scheme funding requirements of the Pensions Bill take effect and the pensions regulator is required to see scheme recovery plans. However, that still does not mean that actuaries working at the pensions regulator will routinely check actuarial calculations as the pensions regulator will adopt a risk based approach to regulation.

It is also worth pointing out that Opra actuaries only get involved with schemes where there has been an alleged breach of some kind or where there has been an application to Opra, for an extension of time to eliminate an MFR shortfall for, example. Consequently, although the regulator's actuaries have a role to play in maintaining professional standards, it is simply one avenue among many and Opra does not believe that it, or the proposed new regulator, ought to have any wider remit in relation to actuarial discipline.

Chapter 3: Roles and responsibilities of the Government Actuary's Department (GAD)

3.1 From the inception of Opra to date Opra's actuarial advice has been obtained from actuaries employed by GAD.

Initially two GAD actuaries provided advice on a part time consultancy basis until August 1998 when a third actuary was recruited to GAD for a full time secondment post in Brighton. In May 2000, a further GAD actuary was seconded full time to Opra and the actuarial team assumed its present shape of two full time secondees, with a further senior actuary providing part time consultancy support, all employed by GAD.

The main reasons for selecting GAD were:

- In-house direct employment of actuaries not then considered viable due to the workload being unpredictable and salary cost comparisons

- GAD's prior experience of regulatory work
- GAD is used to operating in the public arena
- Freedom from commercial pressure
- Value for money since GAD is a non profit making organisation.

Opra is now currently recruiting a further actuary from industry on a direct employment basis to strengthen and supplement the existing team.

3.2 In addition Opra may call upon GAD resources as and when required and this flexibility has suited us both in terms of managing our actuarial workload and ensuring that appropriate specialist knowledge is available as required.

Opra has been satisfied with the service that GAD and its seconded actuaries provide. The new regulator due to come into operation from April 2005 is likely to need more actuarial support than Opra. Whether this support will continue to be provided at least in part by GAD remains to be decided.