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## TRUSTEES - THE SCOPE OF KNOWLEDGE AND UNDERSTANDING

### 1 BACKGROUND

Under the Pensions Act 2004, pension scheme trustees must have sufficient knowledge and understanding (TKU) of pensions and trusts law to run their schemes properly. Trustees should also be conversant with scheme documents. On 4 February 2005, Opra published final lists of issues which "the pensions industry considers trustees need to know and understand, and...policy with which trustees should be conversant" in order to fulfil these requirements. Opra refers to these lists as "the Scope of knowledge, understanding and conversance".

The new lists (or scope documents) are the culmination of Opra's work behind the scenes over the last six months or so, including responses received to pre-consultation scoping documents issued by Opra in October 2004 and subsequent workshops.

### 2 THE TWO "SCOPE" DOCUMENTS

Since the pre-consultation scoping documents were issued in October 2004, Opra has taken account of responses from industry and honed its thinking into two distinct checklists for trustees:

- a scope document for defined benefit (DB) schemes – which applies even if that scheme also contains defined contribution (DC) benefits; and
- a scope document for schemes with defined contribution (DC) benefits only.

(Opra had previously produced separate documents for insured schemes and for self-administered schemes, but these have been jettisoned.) A further refinement is that the scope documents have been amended to include specific TKU requirements where the employer is at risk or the scheme is in wind-up. These issues are deliberately referred to in the scope documents "so that all trustees [will] have awareness of the risks they face before they crystallise".

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### **3 THE CONTENTS**

The two scope documents are broken down into "units" which set out a list of issues for trustees relating to the various aspects of the new TKU requirements. The following is a taste of what is there:

- the law relating to trusts – fiduciary duties, conflicts of interest, investing funds, and professional advice and decision-making;
- the law relating to pensions – ranging from pensions law, disputes resolution (in the pensions context), pensions-related legislation, tax and the "interface between occupational schemes and state pensions provision";
- investment matters – the "major asset classes and their characteristics", risk versus reward etc.;
- funding – funding targets, potential risks to schemes, the impact of trustee powers, risks borne by members (DC) and the "nature and strength of the employer covenant";
- scheme documentation – as well as the formal scheme documents, the scope documents refer to other documents, for example, minutes and terms of reference of sub-committees.

### **4 IS IT A CODE?**

Under the Pensions Act 2004 the Pensions Regulator (TPR), which will take over from Opra on 6 April 2005, is required to issue a Code of Practice on TKU. Opra has said that the Code will be published for consultation in March 2005 and will set out how trustees can comply with the requirements of TKU.

The scope documents are intended to sit alongside the TKU Code and, indeed, look likely to be published as appendices to it. In the meantime, Opra suggests

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that trustees can use the scope documents now as checklists “to identify knowledge and understanding gaps and to plan learning”.

### **5 STEPS FOR TRUSTEES TO COMPLY?**

Whilst the TKU Code of Practice is not intended to be a statement of the law, it will have evidential value and will be taken into account in any proceedings in which trustees are involved (for example, before the TPR tribunal).

But Opra intends that the scope documents will form the basis for a syllabus and formal qualification in trusteeship to be developed by the Financial Services Skills Council. Opra is at pains to stress that this qualification will not be mandatory, but the press release accompanying the scope documents notes that among “a large random sample of trustees there was almost universal recognition that levels of expertise are not high enough”. The clear message is that trustees will have to ensure that they get the training they need to meet the new requirements of TKU.

For more information, please see Opra’s website at:

<http://www.opra.gov.uk/TrusteeKnowledge/Index.asp>