

Opra Note 1 – new traffic light system takes effect

1 BACKGROUND

In October 2002, Opra announced plans to review its guidance for statutory whistleblowers, i.e. the scheme auditors and actuaries appointed by trustees. Earlier this year, Opra consulted on a revised Opra Note 1 (reporting to Opra) setting out a “traffic light” system for reporting breaches to it under section 48(1) of the Pensions Act 1995. On 22 October 2003, Opra published the finalised Opra Note 1 which took effect immediately.

2 HOW WILL THE NEW “TRAFFIC LIGHT” SYSTEM WORK?

The new “traffic light” system will require whistleblowers to divide breaches into the following three categories:

- **“Red” breaches**

Red breaches are of material significance to Opra. Examples include matters “indicating possible dishonesty or a misuse of assets or contributions” and breaches which attract criminal liability. Opra will expect red breaches to be reported.

- **“Green” breaches**

Green breaches are those which “do not normally, on their own, imply or constitute a significant immediate or potential risk to members’ interests” and therefore, do not need to be reported to Opra. Examples include breaches which “are isolated or unintended administrative lapses in an otherwise well-run scheme...which are corrected in a timely manner”. A failure to pay benefits or provide information in a timely manner could fall into this latter category. (Of course, the Pensions Ombudsman may still consider such to be maladministration.)

- **“Amber” breaches**

Opra’s definition of “amber breaches” focuses on the “risk that many breaches constitute to the security of scheme assets or members’ benefits”. Examples include a collection of “Green” breaches in respect of the same scheme which suggest that Opra should intervene. Non-compliance with other requirements such as contracting-out, preservation, indexation and equal treatment legislation is also potentially caught.

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In assessing “amber” breaches, scheme actuaries and auditors will need to take account of factors such as the scheme’s history and the trustees’ “skills and knowledge”. They will also need to assess “the nature and circumstances of the breach” which involves considering Opra’s “published view of similar breaches”.

3 CONCLUSION

The impetus behind the new system is to reduce the number of reports to Opra on relatively minor breaches so as to enable Opra to focus on the more serious ones; and hopefully it will succeed in its aim. Scheme actuaries and auditors will also have a greater degree of discretion than they have done previously to take account of the individual circumstances of a scheme.