27 January 2004

sackers extra

# Opra Update 5 – relaxing the rules on reporting late payment of contributions

## 1 BACKGROUND

As part of its aim to adopt a more risk-based approach to dealing with breaches of the Pensions Act, on 23 January 2004 Opra announced a relaxation in its requirements for trustees reporting late payment of contributions by employers. The relaxation will generally mean that Opra will no longer need to be notified if payments are made within 90 days of the "due date". Opra's new initiative is set out in Update 5 and takes effect from January 2004.

## 2 THE LEGISLATION

Under the Pensions Act 1995, contributions should be paid to occupational pension schemes either on or before the "due date" specified in the schedule of contributions (for defined benefit schemes) or the payment schedule (for defined contribution schemes). Contributions deducted from employees must also be paid over to the scheme within 19 days of the end of the calendar month in which they were deducted (for example, contributions deducted at any point in January must be paid across before 19 February).

If these deadlines (or "due dates") are not met, the trustees of an occupational pension scheme must generally make a report to Opra within 30 days of the due date.

## 3 UPDATE 5 – IN SUMMARY

Despite the provisions of the Pensions Act, it is clear from Update 5 that Opra will generally no longer expect to receive reports from trustees that contributions to an occupational pension scheme are late unless they have been outstanding for 90 days or more. However, trustees will still need to notify members if contributions are 60 days or more overdue and must do so within the 90-day period.

Unsurprisingly, there are exceptions to the new initiative. For example, if trustees are concerned that the late payment is indicative of problems with the employer (such as cash flow issues or inadequate procedures for

SACKER & PARTNERS

sackers extra

*Continued*

**Opra Update 5 – relaxing the rules on reporting late payment of contributions**

processing contributions), a report should still be made. The key is whether the non-payment "may pose an immediate or potential significant risk to members' interests".

## 4 WHAT ABOUT OTHER "WHISTLEBLOWERS"?

Of course, the late payment of contributions by an employer can also be the subject of a report to Opra by the statutory "whistleblowers" (namely, the scheme auditor and actuary). But a new "traffic light" system governing the reporting of breaches by them to Opra came into effect on 22 October 2003 in the form of a revised Opra Note 1. Given that Opra's aim in producing both revised Opra Note 1 and Update 5 is the same (to reduce reporting on isolated, temporary breaches and to focus on those which threaten members' interests) hopefully reports can be made consistently by the various parties involved.

## 5 CONCLUSIONS

From a practical perspective, no action will be taken by Opra under the Pensions Act against trustees who, in line with Update 5, do not make a report. However, trustees will need to keep records of the late payment and "the section of [the] Update they are relying on". Records of their decision will also need to be retained in the event that Opra requests information at a later stage.

SACKER & PARTNERS