

# **Occupational Pensions Regulatory Authority Quinquennial Review**

*A Consultation Document*

**May 2002**



**The Pensions Group**

Part of the Department for Work and Pensions

## **Introductory note**

Thank you for taking an interest in the Quinquennial Review of the Occupational Pensions Regulatory Authority. This document is the public consultation paper which forms a very important part of the review process. We hope you find it helpful and informative and that it stimulates you to respond to the consultation.

## **Content of the consultation paper**

The paper is divided into 3 sections – as set out below -

- Section 1 – Introductory and Background Information – including how to contact the Review Team and how to respond to the consultation
- Section 2 – Opra’s current aim, objectives and operational targets
- Section 3 – Issues and questions to be considered by the Review

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## SECTION 1 – Introductory and Background Information

### ABOUT THE QUINQUENNIAL REVIEW

1.1 Government Departments are responsible, on behalf of their Ministers, for carrying out Quinquennial Reviews (QRs) of the agencies and non-departmental public bodies (NDPBs)<sup>1</sup> for which they are responsible. The aim of these Reviews is to evaluate how effectively the organisation in question is meeting both its own stated objectives and the Government's wider objective to deliver improved and modernised public services. The Review process also examines whether the current organisational structure is still the appropriate one to deliver those objectives. Such reviews also provide the opportunity to consider the scope for improving future performance.

1.2 The Department for Work and Pensions (DWP) is undertaking a Quinquennial Review of the Occupational Pensions Regulatory Authority (Opra). Quinquennial Reviews are carried out in two stages: the first looking back at the rationale for establishing the organisation, its past performance and its organisational structure - the second taking a forward look incorporating options for change, if appropriate.

### AIMS of the Opra QR

1.3 The aims of the Opra Quinquennial Review are to -

- review the continuing need for the functions carried out by Opra;
- determine whether those functions are best carried out by an NDPB (see definition at footnote 1 below);
- review the efficiency and effectiveness of the way in which Opra delivers its services and
- identify the scope for improvement in the future.

### ABOUT OPRA

#### 1.4 Legislative constraint

Opra was brought into existence by Section 1 of the Pensions Act (PA) 1995. The membership of the Opra Board and the scope of the Authority's role and powers to act including its discretion to sanction trustees or employers for breaches of the Act are

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<sup>1</sup> "A **public body**" is officially defined as a body which has a role in the processes of national Government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers. More simply, this means a national or regional public body, operating independently of Ministers, but for which Ministers are ultimately responsible. Such bodies are formally classified as NDPBs - or non-departmental public bodies." – Source – Cabinet Office website

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defined either in the same legislation or associated sets of regulations. Opra was set up in law as a *reactive* rather than a *proactive* regulatory body, so that normally it would act upon reports of non-compliance with pensions legislation rather than actively seek out non-compliance. Its powers to undertake investigations and to impose sanctions are defined in legislation, leaving limited scope for the exercise of discretion.

### 1.5 Summary of background information

The following points may be helpful in considering your response to the questions and issues which are the basis of this consultation and which are set out in Section 3 of this paper -

#### Opra – general

- Since April 1997, Opra has been the statutory regulator for occupational pension schemes in the UK and has also been responsible for maintaining the Pensions Schemes Registry.
- From April 2001 Opra gained additional responsibility for maintaining a public register of stakeholder pension schemes and monitoring schemes' compliance with stakeholder conditions
- Opra's key function is to investigate breaches of the Pensions Act 1995 and the pensions provisions of the Welfare Reform and Pensions Act 1999, and the Child Support, Pensions and Social Security Act 2000.
- Such breaches are reported to the Authority by "whistle blowers" as defined in Section 48 of the Pensions Act 1995
- From April 2001, personal pension providers (insurance companies) were also instituted as whistle blowers in respect of late or non-payment of either employer or employee contributions into a personal pension scheme
- A fundamental principle of the current pensions legislation is that "every breach attracts a penalty" -
- Opra can deal with breaches by means of:
  - financial penalties;
  - criminal prosecution;
  - referral to other bodies such as the Police or the Serious Fraud Office or
  - disqualification of trustees
  - and appointment of independent trustees
- Opra also has a role in educating and informing those associated with pension schemes to reduce the incidence of breaches.

#### The Pensions Scheme Registry (PSR)

- The PSR has been functioning since 1991 and is located in Newcastle. Opra took over the role of Registrar of occupational and personal pensions from the Occupational Pensions Board in April 1997.

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- The PSR has statutory responsibility for obtaining and recording details of all tax-approved occupational and personal pension schemes with two or more members.
- The Registry provides a free public service to help people trace pension schemes that they have lost contact with.
- The PSR also collects a General Levy on behalf of the Secretary of State for Work and Pensions - which pays for Opra, OPAS (the Pensions Advisory Service), the Pensions Ombudsman. When necessary it also collects the Compensation Levy, which funds the amounts paid out by the Pensions Compensation Board.

### Opra – Scale and nature of current activity

#### All figures taken from Opra's Annual Report 2000-2001

- Between 105,000-110,000 'live' schemes fall to be regulated by Opra
- Records for 211,634 schemes were held on the Pension Scheme Registry as at 31/3/01
  
- **In 2000-2001**
  - 43,500 enquiries were dealt with by the Helpdesk
  - 10,700 new cases were handled
  - 21,000 pension tracing requests from the public were dealt with
  - 135,000 tracing requests were dealt with as part of the Financial Services Authority's review of pension mis-selling
  - 110,000 invoices were issued to schemes to collect the general levy
  - £158,000 worth of penalties were imposed by the Opra Board
  - £30 million of assets were released as a result of Opra's appointment of trustees
  - 494,000 copies of publications issued – as part of education and information role
  - 274,500 visits were made to the Opra website

### LINKS to DWP and accountability

1.6 Opra comes under the formal stewardship of the Department for Work and Pensions (DWP) and, as an NDPB, it is accountable directly to Parliament through its parent Department. Equally, the Secretary of State for Work and Pensions is answerable to Parliament for Opra's work and its performance. Opra must satisfy the Secretary of State that its activities are consistent both with its functions under the Pensions Act and the Government's general aims.

1.7 Decisions on issues raised by the Review will be made by the Secretary of State for Work and Pensions and his Ministerial Team. They will be advised by a DWP Review Team, who, in turn, are supported and advised by an independent reviewer, Dr Brian Davis (formerly Chief Executive of the Nationwide Building Society) and an Expert Steering Group

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### **TIMING of the Opra QR**

1.8 Opra will have been in operation for five years in April 2002 and the first stage of the Review, which commenced in April 2002, will report in August, following the end of the consultation period (which will be on 2/8/02). The second stage of the Review will commence in late Summer 2002, and report before the end of 2002.

### **WIDER CONTEXT for the Opra QR**

#### **Pickering/Simplification Review**

1.9 In parallel with the Opra Quinquennial Review, the Secretary of State has asked Alan Pickering to lead a review of private pensions regulation. The objective of that review is to present Ministers with proposals for reducing the regulatory burden, consistent with the maintenance of proper protection for pension scheme members. The review was announced on 26 September 2001, and is due to report to Ministers in July this year. The Pickering review is closely linked to the second stage of the Opra Quinquennial Review in that, subject to Ministerial decisions on the extent of change, the former will set out proposals on the regulatory framework and the latter will examine the most effective and efficient ways of operating that framework.

**Please note – the Opra QR team have seen extracts from any submissions to the Pickering Review which deal directly with the role and functions of Opra.**

#### **Inland Revenue Simplification Review**

1.10 The joint IR/pensions industry review was set up to consider ways to simplify and streamline the pension tax rules. It has recently reported to Ministers with a package of options to improve and clarify the rules to help employers, administrators and consumers. Any changes should result in pensions that are easier to understand, operate and regulate.

#### **National Audit Office examination**

1.11 The National Audit Office (NAO) is currently exploring the potential for carrying out a value for money examination of Opra looking at how it approaches its role of pensions regulator and what more could be done to ensure that pension fund trustees, advisers and employers comply with their statutory duties. The NAO is working in parallel with the Quinquennial Review and the findings of the NAO study will be taken into account during both stages of the Quinquennial Review.

#### **EU Directive**

1.12 There is currently a proposal for an EU Directive on the regulation of occupational pension schemes. If this were to be adopted it would have significant implications for the role and functions of Opra. Details of the Directive are currently being discussed at EU level by member state representatives. UK Ministers have

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welcomed the proposed Directive, which seeks to broaden the availability of secure and affordable occupational pension schemes across Europe, but have warned that there must be recognition of the differing systems that Member States operate, so that unintentional damage to existing funded systems can be avoided.

### **CONSULTATION – How you can help**

1.13 To help us prepare our report and give Ministers soundly based advice, we need informed views on Opra from those affected by, or with an interest in its work. The Review Team is keen to obtain between now and **Friday 2 August**, the views of a wide range of stakeholders: customers; staff, and all other users who have come into contact with Opra – particularly in a professional capacity.

1.14 We wish this Review to be as wide-ranging as possible and we welcome views from both individuals and organisations or corporate bodies, in particular those who have experience of dealing with Opra – in whatever capacity.

### **RESPONDING – Issues to consider**

1.15 A checklist of all the issues that the Review is obliged to cover, and some key questions that you may wish to consider are grouped under headings in Section 3. **We acknowledge that this is a long list, and you may wish to respond only on one or two specific points** - this would still be welcome, the checklist is intended only as a prompt. Questions on some issues are more appropriate to specific groups, such as those working within Opra or DWP but, as mentioned above, the checklist is not intended to exclude any general observations you would like to make. It would, however, assist our analysis of your responses if, where possible, you could use the general headings when responding.

1.16 We would find it very helpful to know who you are and, if relevant, which body or organisation, you represent. Could you also state clearly whether you wish the Review Team to treat your comments in confidence. Under Cabinet Office guidance, *“The Code of Practice on Written Consultation”*, the normal presumption is that your comments may be made available to the general public if requested. However, any specific requests for confidentiality will be honoured by the Review Team.

### **HOW TO CONTACT US**

1.17 To contribute your views to the Review, please submit written contributions to:

Judith Hartley,  
Opra QR Review Team,  
Department for Work and Pensions,  
Level 3,  
The Adelphi,  
1-11, John Adam St., London. WC2N 6HT

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- Alternatively, you can submit your views by e-mail to: [consultation-opra@dwp.gsi.gov.uk](mailto:consultation-opra@dwp.gsi.gov.uk)
- If you have any questions about the consultation process we will be happy to answer them – please phone the DWP Review Leader, Catherine Hamp, on 0207 962 8652.
- An electronic version of this consultation paper is available –
  - on the DWP website - [www.dwp.gov.uk](http://www.dwp.gov.uk)
  - on the Opra website - [www.opra.gov.uk](http://www.opra.gov.uk)
  - or by e-mail from Catherine Hamp - [cath.hamp@dwp.gsi.gov.uk](mailto:cath.hamp@dwp.gsi.gov.uk)
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The closing date for responses is **Friday 2 August 2002**.

## SECTION 2 – Opra’s aims, objectives and targets

### 2.1 Opra’s aims

The following is Opra’s own description of its current key functions and aims, taken from its last Annual Report -

*“Working in partnership to protect pensions<sup>2</sup>”*

#### **What is Opra?**

Opra is the UK regulator of pension arrangements offered by employers.

#### **What does Opra do?**

##### **We look into reports that pension schemes have broken the law**

Opra can take action on certain reported breaches of pensions legislation. We aim to get problems put right and make sure schemes comply with the law. If things are not put right quickly then we can impose civil penalties on those responsible. We have the power to take criminal breaches of pensions law to court.

##### **We help people trace pension schemes that they have lost touch with**

Opra maintains a register of all UK pension schemes at the Pension Schemes Registry in Newcastle upon Tyne. We offer a free service to help people trace pension schemes that they have lost touch with.

##### **We collect the levies that pay for pension protection**

The Registry collects levies from pension schemes to pay for the activities of Opra, the Pensions Ombudsman, and the Pensions Advisory Service (OPAS). It will also collect a levy for the Pensions Compensation Board when necessary.

##### **We educate and inform and work with others to raise standards**

We produce material to help educate and inform pension scheme trustees, employers and pensions professionals to understand the legal requirements. Our website ([www.opra.gov.uk](http://www.opra.gov.uk)) is a key source of information. We work proactively to raise standards with professional bodies and others involved in pensions.

##### **How we perform our regulatory role**

The Pensions Act 1995 created a system of whistleblowers who are required to report to Opra. These are our main source of information. The principal whistleblowers are the scheme auditor and the scheme actuary. They have a legal duty to report breaches of pensions legislation which affect occupational pension schemes and which they consider

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<sup>2</sup> Source – Opra’s Annual Report 2000-2001

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to be important. Opra also reacts to reports from other whistleblowers: for example trustees, scheme managers and providers have a duty to tell us if the employer does not pay pension contributions on time. We also respond to reports from scheme members.

Opra's regulatory staff will look into certain reported breaches and contact the scheme's trustees, the employer or scheme advisers as necessary to request that those problems are put right. The Opra board considers the worst of these cases and can punish offenders - this may involve imposing a fine on trustees or employers and, in some cases, prohibiting trustees from being involved with a particular scheme or disqualifying an individual from acting as a trustee for all schemes.

Where we believe that the assets of a scheme are at risk, we can appoint an independent trustee to take over the running of the scheme. If necessary, this can be done very quickly. In other circumstances, we can appoint trustees to a scheme where there is no-one authorised to release funds to pay benefits or where there are serious problems with the performance of the existing trustees.

Opra maintains a register of stakeholder pension schemes and monitors compliance with stakeholder conditions. We can fine non-compliant schemes, remove non-compliant schemes from the stakeholder register and may require the scheme to wind up".

### **2.2 Opra's Regulatory Objectives for 2001/02**

**Opra will -**

- Undertake new forms of regulatory activity on aspects of stakeholder and personal pensions
- Introduce new systems and procedures to assess the level of risk to the pension fund associated with a particular scheme
- Carry out surveys and conduct research into compliance of different schemes with the '95 Pensions Act

### **2.3 Opra's Targets 2001-02**

As described in Section 1 of this paper, Opra will take action to achieve compliance with the Pensions Act (and associated legislation) involving as appropriate –

- case referral to a determination/prosecution committee
- assignment for regular monitoring
- processing of applications to the Authority to undertake certain actions – e.g. to install a trustee or release surplus funds
- or case closure

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**The key targets agreed between Opra and DWP for the processing of casework are as follows -**

### **2.3.1 Occupational Pensions**

Reports that employers have failed to pay contributions into the pension scheme on time will be dealt with to the following timescales -

- ❖ 80% within 3 months
- ❖ 90% within 6 months
- ❖ 95% within 9 months
- ❖ 100% within 12 months

### **2.3.2 Personal Pensions including Stakeholder.**

Reports that employers have failed to pay contributions into the pension scheme on time will be dealt with to the following timescales -

- ❖ 80% within 3 months
- ❖ 90% within 6 months
- ❖ 95% within 9 months
- ❖ 100% within 12 months

### **2.3.3 Trustee breaches involving live schemes.**

Reports that trustees failed to obtain audited accounts within seven months of the end of the scheme year or failed to appoint a scheme auditor or scheme actuary will be dealt with to the following timescales.

- ❖ 35% within 3 months
- ❖ 75% within 6 months
- ❖ 85% within 9 months
- ❖ 95% within 12 months
- ❖ 100% within 24 months

### **2.3.4 Applications**

Applications to the Authority to exercise its statutory powers and undertake certain actions – e.g. to install a trustee or release surplus funds - will be dealt with to the following timescales –

- ❖ 75% in 6 months
- ❖ 95% in 12 months
- ❖ 100% in 24 months



## Section 3 – Issues and questions for the Review

### NOTE

The following sections represent a checklist of issues that the Review will cover and questions you *may* wish to consider in your response – please note – you are free to respond on as few or as many points as you wish or to give your own general observations. *Some* questions are focussed more closely on those working within Opra or DWP, but all views and opinions are welcome.

### 3.1 Opra’s contribution to DWP and Government Objectives<sup>3</sup>

All Government departments, and the NDPBs they sponsor, must ensure that their activity is focussed on meeting both broad Departmental objectives and specific operational targets.

- Are Opra’s current targets the ones you would expect a pensions regulator to have (see Section 2)?
  - If not, how should they be changed?
- Do Opra’s targets reflect the reality of their current operational activity?
- What burdens does the work of Opra place on you? (This question is in the context of the Government objective, set out below, of “Reducing, where possible, the regulatory impact.”)

### 3.2 Public expectation of the pensions regulator

- How would you summarise either your own or the general public’s expectations of what a pensions regulator should deliver?

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<sup>3</sup> DWP and Government objectives

- To provide security and independence in retirement for today’s and tomorrow’s pensioners (Public Service Agreement Objective III)
- To encourage those who can afford to save for their retirement to do so by improving the options available to them;
- Modernising Government, to provide responsive, efficient and customer-focused services that make pro-active use of IT
- Reducing, where possible, the regulatory impact.

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- If this differs significantly from what Opra currently delivers please offer some additional thoughts on what changes need to be made

### NOTE

**Cost benefit analysis is a tool for identifying and analysing the impact of regulatory regimes on the underlying problems with which the regulator is attempting to deal. In other words, is the cost of the regulation justified in terms of the economic, social and other benefits which accrue as a result of the regulation? In order to assist our cost benefit analysis of any future options for pensions regulation, please consider whether you can provide any information on the points in section 3.3 below.**

### 3.3 Cost benefit analysis

- How much do you estimate are the costs to you/your organisation of complying with the whistle blowing, other reporting, registry/levy or other requirements of the current regulatory regime?
- What have been the qualitative benefits of having in place the detailed provisions of the Pensions Act 1995 – including the existence of Opra as regulatory body? these may be expressed in “negative” terms e.g. the following things have not happened.
- **Please feel free to make any other general comments on the balance between cost and benefits in the current regulatory regime**

### NOTE

**Opra has three key roles – as occupational pensions regulator, in respect of Stakeholder and personal pensions and as pensions schemes registrar. The following sections ask for your comments on each of these roles. In the case of occupational, stakeholder and personal pensions (as detailed in paragraph 1. 5) Opra relies on statutory “whistle blowers” making reports to them of breaches of the Pensions Act or associated regulations – section 3.4 below therefore asks specifically about the “whistle blowing” function.**

### 3.4 Notifications to Opra of Pensions Act breaches – “whistle blowing”

- If you are a whistle blower or represent a professional body which includes them, what are your views of this system?
- Does whistle blowing work?
- Are the current requirements upon whistle blowers too onerous, leaving little room for professional judgement?
- If you are responding as an individual or pension scheme member, were you aware of this arrangement and of who the whistle blowers are in your own scheme?

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### 3.5 Opra’s performance as *regulator*

- Has Opra protected the interests of pension scheme members?
- Has Opra helped occupational pension schemes to comply with the pensions legislation?
- Are there policy or legislative changes that would enhance Opra’s effectiveness?
- Are you content with Opra’s current objectives in respect of occupational pension schemes?

### 3.6 Opra’s performance in respect of stakeholder and personal pensions

- Have you or your organisation had contact with Opra in respect of the register of stakeholder pension schemes and/or the monitoring of schemes’ compliance with stakeholder conditions?
- Have you or your organisation had contact with Opra in respect of the late payment or non-payment of contributions to a personal pension scheme?
- If yes to either of the above, were you content with the service you received?
- If you have not had such contact, were you aware that Opra fulfilled this role as well as dealing with occupational pensions issues?

### 3.7 Opra’s performance as *registrar*

- Do you have any comments on the Pensions Registry’s collection of the pension levy?
- Have you ever used the pensions tracing service offered by the Registry? – If so, were you content with the way your query was handled?
- Should Opra do more to promote the pension tracing service offered by the Pensions Registry?

### 3.8 Links with others

The nature of Opra’s work means that it needs to work effectively with a wide range of external bodies. This consultation is an excellent opportunity to gain views on how well they do this -

- How can Opra improve its joint working with other bodies to enhance its efficiency and effectiveness?
- What current links exist between you/your organisation and Opra?
  - How effective are these links?
- If you feel able to, please comment on Opra’s links with external organisations other than your own – e.g. – DWP, FSA, Pensions Ombudsman & OPAS; other parts of the public sector; the Pensions industry; key professional bodies and the private sector (employers, employees and pensioners?)
- Are there any opportunities for links with other bodies that Opra does not currently take up?

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### 3.9 Responsiveness

A key Government objective is to deliver improved and modernised public services – such services must also be **responsive** to the needs of their customers

- What activities are you aware of that Opra undertakes to identify and meet the needs of customers and stakeholders?
- How responsive is Opra to meeting the needs of those identified?
- How responsive has Opra been to requests for advice, guidance or redress that you have made?
- Are there any potential customers of a pensions regulator whose needs are currently unmet and is there any more pro-active activity that should be undertaken to identify and meet those needs?
- How responsive is Opra's complaints system and its review procedure?
  - If you are not content, what changes would you suggest?
- What arrangements are in place to facilitate staff and TU involvement in how Opra carries out its functions?

#### NOTE

**The questions in section 3.10 below are an important part of the QR process within Government, providing information which enables the QR team to analyse the relationship between the Non Departmental Public Body, in this case, Opra, and their sponsoring Department (DWP).**

**For this reason it is likely to be most appropriate for Opra and DWP staff to respond under this heading – though the comments of others will be welcome.**

### 3.10 Management, governance and reports

- Has Opra made effective use of the financial and human resources flexibilities offered to it as a Non Departmental Public Body?
- Are there any further financial and/or human resources flexibilities that would improve its effectiveness?
- Do DWP and Opra work well together?
- Is there an effective flow of communication between the two organisations?
  - If not, how could this be improved?
- Does Opra's current performance management framework -
  - generate accurate and timely information for DWP?
  - generate information which supports DWP's stewardship of Opra?
  - support policy amendment or formulation within DWP?

### 3.11 New technology

Opra is currently undertaking IT development work to enhance its systems. If you have had dealings with Opra you may wish to consider the following points -

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- How could Opra make better use of IT to -
  - Improve service delivery
  - Promote, publicise and market its services and its role
  - Support business strategies and the re-engineering of processes
  - Extend e-business for customers

You may wish to combine your comments in this section with those on “good practice” – see below.

### 3.12 Good practice

- Are there any examples of good practice and lessons learned within other organisations that may be applied to Opra?
- Are there any examples of good practice and lessons learned within Opra that may be applied to other organisations?

### 3.13 Delivery mechanisms

A key question to be considered by all Quinquennial Reviews is whether the current administrative and organisational structures remain the most appropriate and cost effective method of delivering the service in question. In the context of Opra, we would ask you to consider -

- Should Opra’s regulatory work and/or the Pensions Schemes Registry be abolished or
  - Continue as an NDPB
  - Be merged with another service or body
  - Be market tested
  - Be contracted out
- Should Opra charge for any of its services (e.g. pensions tracing?)

### 3.14 Opra’s overall performance

- Do you have any comments about how Opra fulfils its education and guidance role in respect of its various functions?
- Do you have any additional comments about Opra’s overall performance?
- Is there any particular activity, or group of activities, that you think Opra should do more of? - Or less of?

### 3.15 The “ideal” pensions regulator

- **Finally, in the light of any other comments that you have made, what features would you wish to see in a pensions regulatory body that was being designed “from scratch”?**