September, 2005

Review of Construction Federation Operatives Pension Scheme

On behalf of the Pensions Board and the Department of Enterprise, Trade and Employment

MERCER
Human Resource Consulting

September, 2005

The Pensions Board
28/30 Lower Mount Street
Dublin 2

Construction Federation Operatives Pension Scheme
Membership and Compliance Review

We have pleasure in enclosing our report to the Pensions Board and the Department of Enterprise, Trade and Employment.

During the course of our review, we received input from a wide range of organisations that have an interest, directly or indirectly, in the Scheme. We want to thank those who have helped us in this way. We have used this input in finalising our review and in drawing up our recommendations.

We also want to thank the members of the Steering Committee appointed by the Pensions Board for their advice and guidance.

Sincerely,

Brian Duncan Anne Kershaw

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Introduction

Mercer Human Resource Consulting (Mercer) was appointed by the Pensions Board and the Department of Enterprise, Trade and Employment to carry out a review of the membership and compliance of the Construction Federation Operatives Pension Scheme (CFOPS).

The terms of the review require Mercer to provide the following:

- A description of CFOPS and its operations including:
  - Its current statutory and regulatory basis
  - Its current monitoring arrangements
- Identification of any areas of non-compliance
- Identification of possible ways of addressing non-compliance including roles of State agencies
- Specific recommendation on the method of addressing non-compliance which is considered by Mercer to be most likely to be successful in achieving CFOPS' objectives.

Steering Committee

The Pensions Board appointed a Steering Committee to oversee the completion of the report. The members of the Steering Committee are:

- Jerry Moriarty, (Chair) Head of Compliance, the Pensions Board
- Paul Cunningham, Department of Social and Family Affairs
- Anne Maher, Chief Executive, the Pensions Board

- Fergus Whelan, Irish Congress of Trade Unions
- Terry McEvoy, Construction Industry Federation
- Eddie Nolan, Department of Enterprise, Trade and Employment.

We had the opportunity to discuss our findings and our recommendations with the Steering Committee and we have taken their views into consideration. However the Steering Committee was not asked to sign-off on our recommendations and has not done so.

Consultation Process

Following input from the Steering Committee, we met with a range of organisations that had an interest, directly or indirectly, in the operation of CFOPS. A full list of the organisations met is set out in Appendix A.

In the case of those organisations that have a direct involvement in the operation of CFOPS, their role is detailed in Section 5.

Structure of Review

Essentially our review comprises two aspects of CFOPS:

- a review of membership arrangements, that is, the extent to which those who should be included in the Scheme are actually included, and

- a review of pension compliance arrangements, especially as regards relevant pension legislation and regulation.

Structure of Report

The structure of our report is as follows:

Section 2: Contains an executive overview of our main findings and recommendations.

Section 3: Provides an overview of the main features of CFOPS and the current membership.

Section 4: Outlines the basis on which CFOPS was established initially, and some issues which have arisen in regard to membership.

Section 5: Details the role of the main organisations that are directly involved in the operation of CFOPS – the Construction National Joint Industrial Council, the Construction Industry Federation, the Construction Industry Committee, the CFOPS Trustees, the Compliance Monitoring Agency, the Labour Inspectorate, the Labour Court, the Pensions Board and the Pensions Ombudsman.

Section 6: Sets out the main findings of the Review in regard to Membership and Compliance.

Section 7: Reviews the compliance of CFOPS with pension legislation and regulatory requirements.

2

Executive Summary

Introduction and background

1 Mercer Human Resource Consulting (Mercer) was appointed by the Pensions Board and the Department of Enterprise, Trade and Employment to carry out a review of the membership and compliance of the Construction Federation Operatives Pension Scheme (CFOPS). The Pensions Board appointed a Steering Committee to oversee the completion of the report.

2 The review comprises two aspects of CFOPS

- a review of membership arrangements, i.e. the extent to which those who should be included in the Scheme are actually included, and

- a review of pension compliance arrangements, especially as regards relevant pensions legislation and regulation.

3 As part of the review, we sought comments from a number of organisations with an involvement in the operation of CFOPS. These include employer and trade union organisations, the CFOPS Trustees and administrators, the Construction Industry Monitoring Agency (CIMA), the Labour Court, the Labour Inspectorate, the Pensions Ombudsman and the Pensions Board.

4 CFOPS was founded in 1965 to provide pension and mortality (life assurance) benefits for workers in the Construction Industry who are members of the Construction Industry Federation. In 1969, the Scheme was extended to all employers in the Industry. CFOPS was set up under a Registered Employment Agreement, as provided for under Section 8 of the Industrial Relations Act, 1946.The Agreement is out of date and does not reflect the current circumstances of the Industry.

5 There is also a second parallel Registered Agreement covering employers in the electrical contracting sector, who are also eligible to participate in CFOPS.

6 The Scheme provides a maximum pension for full service of €3,600 per annum, with a maximum lump sum of a similar amount. The total weekly contribution currently is €36.51, of which the employer pays approximately two thirds and the employee one third. Death in service benefit of €63,500 is also payable, with additional amounts for dependant children.

7 The Scheme currently operates a defined benefit arrangement, but proposals have been agreed to move to a defined contribution basis.

8 As at March 2005, CFOPS had 7,077 participating firms, 65,129 active members, 177,422 deferred pensioners, 6,982 pensioners and funds under management of €563 million. The Scheme has experienced significant growth in recent years.

Coverage

9 According to the CSO National Household Survey for Q4 of 2004, there are some 220,000 persons working in the Industry, of which 80,000 (approximately) are employed as operatives and thus should be included in the membership of CFOPS. Currently, 65,000 – approximately 80% - are in membership.

10 In addition, there are approximately 70,000 operatives classified as having self-employed status by the Revenue and who are thus not eligible for inclusion in the Scheme. In our view, many of these operatives are not self employed in the accepted sense of the term.

11 There are also issues in relation to coverage under the Agreement regarding the position of overseas employees working for non-Irish based companies and workers who are employed through employment agencies. We understand in this regard that a review is currently underway in respect of the Employment Agency Act 1971.

Management and compliance

12 There are a number of different organisations involved in the management and compliance arrangements for CFOPS:

- **Construction National Joint Industrial Council (CNJIC):** this is the joint management union body for the industry and comprises representatives of CIF and the Irish Congress of Trade Unions. It is responsible for negotiating terms and conditions for the Industry.

- **The Construction Industry Federation (CIF):** The CIF is the main employer body for employers in the Industry. The CIF negotiates the provision of pension,

life assurance and sick pay arrangements with the CIC, and also appoints Trustees to CFOPS and employer representatives to the Board of CIMA.

- **The Construction Industry Committee:** The Committee comprises representatives of the unions involved in the Industry who are affiliated to the Irish Congress of Trade Unions. CIC also appoints representatives to the Board of CIMA.

- **CFOPS Trustees:** The Trustees comprise five members nominated by the CIF and five members nominated by the Irish Congress of Trade Unions, with an independent chairperson.

- **The Construction Industry Monitoring Committee (CIMA):** The Agency was established in 1998 by CIF and CIC to monitor compliance with the Registered Agreement on their behalf. In 2000, due to continued criticism of its effectiveness, CIMA made a number of major organisational changes, including the appointment of a separate administrator and independent chairman.

13 The complaint process can be protracted. Initial complaints are made to CIMA; if the matter is not resolved in discussion with the employer, it is ultimately referred to the Labour Court, who are responsible for dealing with breaches of a Registered Employment Agreement.

14 Either through discussion with the employer or when the Labour Court hearing is arranged, the complaint may be resolved and appropriate arrears of contribution paid to the Scheme. However, if a Labour Court hearing occurs, and the complaint is found to be valid, the Court issues an Order requiring the company to pay any arrears to CFOPS. If a payment is not made, the matter is referred to the Circuit Court for prosecution.

15 As a result of the increased emphasis on compliance, the number of cases involving CFOPS which have been referred to the Court in recent years has grown very significantly. We believe the use of the Court to address compliance is not an effective use of resources and that alternative, more effective procedures should be introduced.

16 The Pensions Ombudsman investigates complaints by individuals of maladministration in pension schemes. We are advised that the number of complaints referred to the Office of the Ombudsman in respect of CFOPS has also increased significantly recently.

Recommendations

17 The Registered Employment Agreement - and the parallel agreement covering electrical contractors - is the basis on which workers in the construction industry are required to be members of CFOPS, or of an equivalent scheme. The review identified

a number of issues with the Agreement, which has not been updated for some considerable time.

18 The Construction National Joint Industrial Council is the industry body responsible for agreeing the terms of employment in the industry, including the pension and life assurance provisions. We recommend, therefore, as follows:

R1 The Council should review the Registered Agreement with the objective of improving the coverage for pension and life assurance benefits for workers in the construction industry. To be effective, this review needs to address the following issues:

- Covering all capabilities in the construction industry, with the provision to accommodate new capabilities which may arise in the future and a process to ensure regular revisions to the Agreement in this regard.
- Providing that it is necessary to participate in CFOPS to meet the requirements of the Agreement.
- Tightening up the monitoring of any overseas arrangements that are to be accepted as CFOPS alternatives for overseas employers.
- Extending the definition of Employers under the Registered Agreement to cover Employment Agencies.
- Clarifying the position of legitimately self employed workers in the industry and considering what pension provision could be made for them.

19 In our review, we found that there are a significant number of workers in the industry who are classified as self employed by the Revenue, and who are thus not eligible to participate in CFOPS. However, many of these workers are not self employed in the generally accepted sense. Such workers are losing out on benefits under the Scheme. Accordingly, we recommend as follows:

R2 The Revenue should review the application of their guidelines in relation to the self-employed as they apply to the construction industry to ensure that self employed status is only available to workers who legitimately satisfy the appropriate criteria.

R3 The Revenue should then ensure that the appropriate guidelines are applied consistently throughout the industry on an ongoing basis.

20 The increased emphasis in recent years on compliance has proved successful and arrears in contributions of over €41 million have been paid over to CFOPS in the period 2002 to 2004. The new procedures adopted by CIMA have made a significant

contribution to this success, and we believe further improvement is possible. Accordingly, we recommend as follows:

R4 The Board of CIMA should appoint a number of non-industry members with relevant experience.

R5 The procedure in regard to CIF members should be exactly the same as those that apply to other employers.

R6 Subject to suitable transition arrangements, CIMA should move as fast as possible to employ dedicated compliance investigators.

R7 CIMA should have a promotional role in developing coverage and should be adequately funded for this.

R8 The role of CIMA should be recognized in the revised Registered Agreement.

R9 CIMA should be allowed controlled access to PRSI and taxation data for the purpose of monitoring compliance.

21 Compliance would be more effective if CIMA was set up on a statutory basis with the power to fully investigate complaints. This would remove the need to refer cases of non compliance to the Labour Court. We recommend, therefore, as follows:

R10 CIMA should be constituted on a statutory basis with full statutory powers to ensure compliance.

22 In the longer term, we believe the most effective way of maximising coverage under the Registered Agreement would be to require contributions to be levied as part of the PRSI contribution. While we recognise that there are a number of challenges that need to be addressed before this can be done, we recommend as follows:

R11 The possibility of using the PRSI system to collect contributions to CFOPS should be fully explored.

23 In light of concerns expressed during the review, we believe that the monitoring of the arrangements in regard to Letters of Compliance should be reviewed, and accordingly, we recommend as follows:

R12 Requirements in regard to Letters of **C**ompliance for public sector contracts should be reviewed and tightened up to ensure their consistent application across all public sector organisations; we understand this is a matter for the Department of Finance. In the case of contractors based outside the State the question of what constitutes an acceptable equivalent scheme should be clarified.

24 We also noted a large number of deferred members. In our view, this number is likely to increase substantially in the future, given the huge growth of the numbers employed in the industry in recent years. We recommend, therefore, as follows:

R13 The Trustees should consider how best to deal with the significant and growing population of deferred members in the Scheme.

25 The issue of deferred members is a broader issue for the pensions industry, which may need to be addressed at some time by the Pensions Board. It may be that some adaptation of the dormant account provisions for personal bank accounts and life assurance policies will have to be considered.

26 We also reviewed the compliance of CFOPS with pensions, legislative and regulatory requirements. This part of the review was carried out using documents supplied by the Trustees and the administrators of CFOPS. On the basis of our review, we have no reason to believe that anything was other than as advised to us and hence, we believe within the scope of the review, that compliance with the relevant pensions legislation is in generally good order.

3

Overview of Scheme: Benefits and Membership

In this section we outline the key elements of the Scheme, and review the current membership.

Background

The Construction Federation Operatives Pension Scheme (CFOPS) was founded in 1965 by employers who were members of the Construction Industry Federation (CIF) to provide pension and mortality benefits for workers in the construction industry.

The terms of the Registered Employment Agreement (the Agreement) for the construction industry relating to pensions, assurance and sick pay were registered with the Labour Court on the 7 March 1969, under the Industrial Relations Act 1946-1969. As a result of this Agreement, it became compulsory for all employers in the construction industry to provide pension and mortality benefit for all manual workers. At that time, CFOPS was opened to all employers in the industry, whether they were registered with the CIF or not.

The Scheme became contributory in 1976, with employers paying two-thirds of the contribution, and members one-third. At this time, member Trustees were also appointed.

Electrical Contractors

There is a separate Registered Agreement covering operatives employed by electrical contractors. This specifies that such operatives should be provided with the same pension and life assurance benefits as operatives covered by the Construction Industry Agreement. It also provides that these benefits must be provided through CFOPS. Accordingly, our findings and recommendations apply equally for this Group.

Regulatory Framework

The Scheme is unique in that it is set up under a Registered Employment Agreement; the most recent amendment is contained in the Registered Employment Agreement (Construction Industry Pensions Assurance and Sick Pay) Variation Order 1994.

The Registered Employment Agreement was set up under Section 28 of the Industrial Relations Act 1946 and has been varied for the eighteenth time by the Labour Court. The Agreement sets out the criteria for the inclusion of employees in the industry in the Scheme, and the benefits to be provided. As far as this review is concerned, it is the compliance with the Registered Agreement which is the main focus.

In addition, the Scheme is governed by the Pensions Acts 1990-2004, which sets out the basis on which approved pensions schemes are regulated, including the funding requirements. The Occupational Pension Schemes (Funding Standard) (Amendment) (No.2) Regulations 1998 modifies the method by which certain liabilities under the Scheme are calculated for the purpose of meeting the funding standard requirements under Part IV of the Pensions Act.

The Weekly Contribution

The full weekly stamp rate for Scheme Year 2005 is €36.51. This is made up as follows:

Employee		**Employer**	
Pension	€12.22	Pension	€19.20
Death in Service Benefit	€0.74	Death in Service Benefit	€0.74
Sick Pay	€0.59	Sick Pay	€1.18
Health Trust	€0.63	Health Trust	-
Benevolent Fund	€0.38	Benevolent Fund	€0.19
Monitoring Agency	€0.32	Monitoring Agency	€0.32
Total Contribution	€14.88	Total Contribution	€21.63

The employee's pension and death in service portion of the contribution is allowable for PAYE and PRSI. Tax relief is not available on the other elements.

Eligibility

All craft persons and general operatives between the ages of 20 and 65 years are legally bound to be entered into the Scheme (or provided with benefits at least as good as those of the Scheme) once their employing firm is covered by the Registered Employment Agreement for the construction industry, irrespective of whether the firm is a member of

the CIF or not. Other employees, by arrangement with their employer and CFOPS, may be entered in the Scheme.

Compliance Requirements

An employer who fails to register a qualifying employee who is entitled to the pension, assurance and sick pay benefits of the Registered Agreement is in breach of the law. In such cases the employer concerned is fully liable for the payment of all benefits due to the employee under the terms of the Agreement, including the payment of mortality benefit to the employee's dependants in the event of the death of the employee.

Benefits

The current maximum pension for full service is approximately €3,600 per annum with a current maximum tax free lump sum of a similar amount.

A death in service benefit of €63,500 is payable to the next of kin of a deceased member, provided that the deceased was a member of the Scheme and in benefit at the time of death. Additional death in service benefit of €3,175 is payable per dependent child under 18 years of age.

Each year of membership of CFOPS earns the member an entitlement to a fixed amount of pension per annum payable from age 65. At retirement, a member's pension is the sum of the earned entitlements for each year of membership.

Pension Accrual

In the Scheme Year 2005, the annual amount of pension earned for a full years (52) contributions is:

Age Category	Entitlement at Retirement
Up to 34 years	€325.00 per annum
35 to 44 years	€218.40 per annum
45 to 54 years	€174.20 per annum
Over 55 years	€151.84 per annum

The earned entitlement in any year is reduced proportionately for less than a full year’s membership.

Refunds of contributions prior to age 65 years, which is the normal retirement age under the rules, are not permitted.

Ill Health

Ill health retirement pension prior to age 65 years is payable where the applicant was a

member of the Scheme up to the onset of the illness or incapacity and has been advised by his/her doctor to cease employment for ill-health reasons. Ill health retirements are subject to a medical examination by one of the Scheme's doctors and in all cases the granting of ill health retirement pension is subject to the discretion of the Trustees of the Scheme.

A member who leaves the Scheme for reasons other than ill-health and who subsequently becomes unfit to continue working, does not qualify for ill health retirement pension from the Scheme. Benefit will be payable at the normal retirement age of 65 years.

Membership

Membership of the Scheme as at March 2005, is as follows:

Participating Firms	7,077
Active Members	65,129
Inactive Members	177,422
Pensioners	6,982
Assets under Management	€563 Million

The active membership has grown significantly, as the following table shows:

Year	Active Members	Assets under Management
1975	23,023	€4.5 m
1985	24,448	€39.2 m
1995	24,817	€118.8 m
2000	46,715	€377.2 m
2005	65,129	€563.0 m

Membership in 2005 is up 39% over 2000. This is largely due to the explosion in employment in the construction industry in the period, supported by improved compliance. It is estimated by the CFOPS Trustees that 30% of the growth comes from new firms, and 70% from growth in existing firms.

The importance of CFOPS to private pension coverage should be noted. The Pensions Board estimate that there are approximately 475,000 active members in private pension schemes in Ireland, so CFOPS account for roughly 14% of these, based on current membership.

Deferred members

We also want to draw attention to the significant number of deferred members of the Scheme - 177,000 - which is almost three times the number of active members.

Many of these deferred members may not be resident in Ireland any longer or may have very small benefits under the Scheme reflecting a very short period of time in the industry. The issue of managing/dealing with these deferred members is outside the scope of this review. Indeed, there seems no immediately obvious way to reduce the number of such cases. It may, however, be worth reflecting on whether the changes to the Scheme (referred to below) should be reviewed to establish whether there is anyway to abate the increase in the population of deferred members.

In addition, a more detailed review of this issue should be carried out to consider whether (for instance) there could be some mechanism whereby CFOPS benefits for these members are automatically transferred to other arrangements that the members may have subsequently established, or would be prepared to establish (e.g. PRSA) to fund their future pension provision.

Future development

The Scheme currently operates as a defined benefit arrangement (although the final benefit has less certainty than a more traditional defined benefit scheme). Agreement has been reached between the CIF and the unions representing employees in the industry to move CFOPS to a defined contribution arrangement, with a significantly enhanced contribution rate. We understand the new arrangement, with appropriate transitional arrangements, will come into effect in 2006 but the actual details are still to be finalised. We have not reviewed the new arrangements as part of our work.

It is likely that the improved benefits and higher contributions will reinforce the calls for better membership compliance.

4

Basis of establishment of CFOPS and coverage

In this section we outline the key features of the Registered Employment Agreement (the Agreement) under which CFOPS was established and address the critical issue of coverage levels.

The Registered Employment Agreement

CFOPS is set up under a Registered Employment Agreement as provided for in Section 28 of the Industrial Relations Act of 1946. The Agreement was registered on 7 March, 1969, and amended from 10 October 1994.

The parties to the Agreement are the Construction Industry Federation (CIF), previously the Federation of Building and Construction and Allied Employers of Ireland, and a series of unions representing the construction industry workers, collectively known as the Construction Industry Committee (CIC).

The Agreement applies to workers, both male and female, who are employed in one of the key "capacities" mentioned in the Agreement by building and civil engineering firms. A copy of the relevant sections of the Agreement is set out in Appendix B.

The Agreement sets out a number of capabilities which are covered under the Agreement. The industry has changed hugely since the list was drawn up initially, especially as regards the use of new building materials and new skills. As part of a review of the Agreement, the list should be brought up to date, and a process for keeping it updated should be introduced.

Note: See details of parallel Agreement for operatives employed by electrical contractors in Section 3.

Types of Non-Compliance

At the outset of the review we were advised that there are three main areas of non-compliance, as follows:

- Employers who have not signed up as adhering employers to CFOPS and who, accordingly, have not registered any of their employees as members and are not paying any contributions in respect of them.
- Employers who have signed up as adhering employers and have registered some but not all of their employees as members.
- Employers who have signed up as adhering employers and have registered some or all of their employees as members but are not paying contributions in respect of the registered employees, either in whole or in part.

However, as our analysis shows, a significant element of perceived non compliance is due to the large number of operatives who are designated as self-employed contractors.

Estimated Current Coverage

According to CSO National Household Survey for Quarter 4 2004 , there are total of some 220,000 persons employed in the construction industry. Based on data provided separately by the Revenue Commissioners and a previous survey carried out for CIMA, we estimate that the current distribution of the persons employed is as follows:

Category	Number & Category	Source of Data
Overall	220,000	CSO Household Survey
Manager/Professional	30,000	Revenue
Apprentices	18,000	Extrapolation of previous survey
Public sector	15,000	Extrapolation of previous survey
Other	7,000	Extrapolation of previous survey
Operatives – employed	80,000*	Revenue
Operatives – self-employed	70,000	Revenue
No. of eligible employees	80,000*	See above
No. of active participants	65,000	CFOPS
Current Coverage	80%	
Note: Numbers are approximate		

In aggregate, therefore, there is around 80% coverage of eligible employees in CFOPS. However, if those categorized as self-employed were taken into account, the coverage falls to around 43%.

We note that recent Labour Force statistics show a further growth of 36,000 in construction in the twelve months to June 2005, although CFOPS membership has grown by only 5,800 over the longer period from 31 December 2003. We have not investigated this further at this stage, but it may be worth reviewing the issue as a follow on to this project.

Self-Employed Status

During the review, we received many comments regarding the apparently very high level of non-compliance in the industry. Our analysis of employment in the sector is set out above. It is clear from this that the single most important reason for the view that coverage through CFOPS is low arises from those operatives who have self employed status.

Specialist sub-contractors play an important role in the sector. In many construction projects the principal contractor engages the services of a range of specialist sub-contractors to work on the project. In turn, sub-contractors may engage the service of other sub-contractors. Some sub-contractors operate under a separate corporate structure, where others are, in effect, a series of individuals (who work as a group).

The Revenue Commissioners operate special taxation arrangements in respect of sub-contractors for a small number of industries, including the construction industry. There are two main elements to this:

- Sub-contractors who have C2 status receive all payments gross from the principal contractor.

- Sub-contractors who do not have C2 status are subject to a 35% withholding tax deduction – referred to as a Relevant Contractor Tax (RCT) - on all payments from the principal contractor. RCT is a payment on account only and recipients are obliged to make an annual tax return, and to account for the tax due.

In practice it is understood that a significant proportion of individual contractors who suffer RCT do not make a subsequent tax return.

The Revenue Guidance Notes set out a number of criteria which should determine whether a worker should be classified as an employee or as self-employed; in practice, however, these definitions are not rigid and there is a significant element of self-assessment involved.

The issue of self-employed status was raised on a number of occasions in our discussions with the various union groups, and was commented on by the Pensions Ombudsman. It is clear from our Review that a number of individual operatives are working on a self-employed sub-contractor basis (see above). It was also suggested to us that work can be offered on the basis that it is a self employed contract and that it can be difficult, especially for migrant workers to refuse work on this basis.

The Pensions Ombudsman also drew our attention to a case where, faced with a demand to include its workers in CFOPS, one firm immediately converted all its workers into self employed contractors. We were also told of other similar cases.

It should also be noted that workers can be employees in some projects and self employed contractors on others.

Pension Provision by the Self-Employed

It is open to interpretation as to whether those working in a self-employed capacity are workers for the purposes of the Agreement; in any event they have not been included in the industry pension scheme up to now. We understand that clarification has been sought from the Labour Court on the position.

It is clear from our analysis that many of the concerns regarding non-compliance arises from those who are categorised (by the Revenue) as self-employed. Under pensions legislation, such self-employed persons cannot, in any event, participate in CFOPS, which is an Approved Scheme under Section 774 of the Taxes Consolidation Act 1997, but would have to be part of a separate parallel group self-employed arrangement. It should also be noted that in such cases the whole contribution would be the responsibility of the individual.

The CIF operates a group pension scheme for those with a self-employed tax status. We understand that participation in this scheme is low currently, and there is, therefore, scope to significantly improve coverage.

Alternative Pension Arrangements

CFOPS was set up by the CIF to facilitate the provisions of the Registered Agreement. However, the Agreement does not specifically require that companies adhere to CFOPS. We have seen correspondence from a small number of employers indicating that they would wish to operate their own arrangements – which they are free to do currently as long as they provide “no less favourable terms” than those provided under the Agreement.

In our view, the existence of a series of separate arrangements outside CFOPS, typically with a very small number of participants is an unnecessary complication which makes it more difficult to check compliance and to facilitate transfers between employers, which is a key feature of CFOPS. We recommend, therefore, that when the Agreement is being amended it should require membership of CFOPS as being the only way to achieve compliance with the provisions of the Agreement. The only possible exception to this might be for certain overseas employers (see below).

Overseas Employers and Employees

This is also an important group in regard to compliance. The first category is workers from overseas (including Northern Ireland) who are registered for taxation and PRSI in

the Republic. Such employees typically work for Irish companies. They come under the provision of the Registered Agreement and are required, therefore, to be members of CFOPS, or to be in receipt of benefits of an equivalent value from another Irish pension scheme. Other than the greater likelihood that they will give rise to a deferred benefit in time, such employees are in the same position as other Irish based employees.

The second category is workers from outside the country, typically working for non-Irish based companies who are not registered for Irish taxation and PRSI. There is no record of the number of such workers as they are not included in the CSO Household Survey.

Traditionally, many workers in this second category came from Northern Ireland where there is an equivalent scheme to CFOPS. However, more recently workers are coming from other EU countries, particularly Eastern Europe where private (second pillar) pension provision is much less developed. The Labour Court has confirmed that such workers come under the term of the Agreement. However, as they are not resident for tax purposes in the Republic, they cannot participate in CFOPS. For public sector contracts it is a requirement that they provide evidence of equivalent pension provision in their home country. However, it is not clear how compliance with this requirement is checked.

It has to be recognised that this is a difficult area. Clearly, in the interest of a level playing field, employers should be asked to provide evidence of appropriate pension provision and compliance with this will need to be built into the compliance monitoring procedures.

Use of Employment Agencies

The Registered Agreement only covers employees of building and civil engineering firms who work in specified employments. The definitions of a building firm, civil engineering firm and the specific capacities are defined in the Registered Agreement. In particular, employment agencies do not fall under definitions of building or civil engineering firms and so employees of such employment agencies do not fall within the terms of the Registered Employment Agreement.

We have been told of cases whereby employment agencies exist in the industry without the necessary authorisation as an employment agency, as required by the law. We believe that some tightening up of procedures in this area is appropriate. In this regard, we understand that a review is currently underway in respect of the Employment Agency Act 1971.

5

Management and compliance arrangements

In this section, we outline the role of the main organisations involved in the operation of CFOPS including those involved in monitoring membership compliance.

Construction National Joint Industrial Council (CNJIC)

This is the joint management union body for the Construction Industry, and comprises representatives of CIF and the Construction Industry Committee of the Irish Congress of Trade Unions (CIC). It is responsible for negotiating terms and conditions for the industry.

The Construction Industry Federation

The Construction Industry Federation (CIF) is the main employer body for employers in the construction industry.

The CIF role in regard to CFOPS is as follows:

- The CIF is a party to the Registered Employment Agreement; however it should be noted that compliance with the Agreement is required for all employers, including those who are not members of the CIF
- The CIF negotiates the provision of the pension, assurance and sick pay arrangements with the CIC
- The CIF nominates 5 Trustees to CFOPS
- The CIF was responsible, with CIC, for establishing the Compliance Monitoring Agency and appoints employer representatives to the Board of the Agency.

A number of cases were drawn to our attention where the CIF represented member companies who had complaints of non-compliance made against them. It seems this may have led to the perception in some cases that CIMA was not dealing even-handedly with all complaints. The perception may be enhanced because CIF currently employ CFOPS staff, although we understand that the establishment of a separate administration company is under consideration.

Nevertheless, the compliance procedure for CIF members is different – see below. We recommend that a uniform approach be adopted for all employers, whether or not they are CIF members.

For reasons of best practice, it would be preferable that the Board of CIMA should appoint a number of independent members who are not directly involved in the construction industry.

Construction Industry Committee (CIC)

The Construction Industry Committee comprises representatives of the unions involved in the Industry who are affiliated to The Irish Congress of Trade Unions (ICTU). The CIC also appoints representatives to the Board of CIMA.

We met with a number of these unions (see Appendix A), all of whom expressed their concern about the level of non-compliance, and the impact this is having in terms of the lack of coverage for pension, life assurance and sick pay benefits. Each union detailed a number of cases of non compliance, and in some cases provided substantial supporting documentation. While we have not investigated such cases, it is nevertheless clear that they represent very serious elements of non compliance, which are a matter of growing concern and frustration to the unions.

CFOPS Trustees

The Trustees comprise 5 members nominated by the CIF and 5 members nominated by the unions, with an independent chairman.

We met with the Trustees as a group and they made a detailed presentation to us on the management of the Scheme. We subsequently met with the Chairman, Oliver Haslette, and the Administrator, Pat Ferguson, to get their view on some issues which arose during the course of our review.

The Trustees indicated in their presentation to us that they regard it as their sole responsibility in regard to compliance under the Pensions Act 1990 “to ensure as far as is reasonable that contributions payable under the Scheme are received”. The Trustees regard contributions due as those expected from registered employers for notified employees. This is the only practical way they can manage the Scheme. They advised us of the credit control procedures in place to ensure that they meet this requirement.

The responsibilities of the Trustees are addressed in more detail in Section 7; however none of the issues raised are of significance in our opinion.

We agree that the Trustees should limit their role to the specific responsibilities under the rules of the Scheme and relevant pensions legislation and regulation; the matter of compliance, as well as the promotion of the Scheme, should then be the clear responsibility of CIMA. However, the good working relationship between the Trustees and CIMA, in areas such as verifying membership details, should be maintained.

It has also been suggested to us that the staff of CFOPS should be employed directly by the Trustees rather than seconded from CIF. We understand there is a proposal under discussion to form a separate administration company. We support this change as it would emphasise the separate responsibilities of the two organisations.

Letters of Compliance

It is compulsory on public sector contracts to provide a Letter of Compliance, confirming that the contractor is registered with CFOPS and that contributions are paid up to date. The letter issued by CFOPS also gives the number of employees registered. New companies are required to pay 26 weeks contributions in advance to get a Letter.

It is now considered best practice to look for Letters of Compliance on private sector contracts also.

In order to obtain a Letter of Compliance it is necessary that the membership of the Scheme reconciles with the P35 returns, or else a letter is required from the auditor stating that all employees are in the Scheme. Each letter is contract specific. It was suggested to us that current procedures are not uniformly applied.

In view of the major concerns regarding non-compliance, we believe that requirements in regard to letters of compliance for public sector contracts need to be reviewed and tightened up to ensure their consistent application across all public sector organisations. We understand this is a matter for the Department of Finance which compiles and issues guidelines to be followed in relation to public sector procurement.

The Construction Industry Monitoring Agency (CIMA)

Responsibility for compliance with the Registered Employment Agreement rests with the signatories to the Agreement – the Construction Industry Federation (CIF) and the Construction Industry Committee (CIC).

The Construction Industry Monitoring Agency (CIMA) was established in 1988 by CIF and CIC to monitor compliance on their behalf.

In 2000, due to continued criticism of its effectiveness, CIMA commissioned a report on its operations. The CIF made representations arising from this report. In August 2001, a

Review Body published a report of recommendations to improve compliance. Among the recommendations made were that CIMA should appoint some full-time investigators and should have statutory power to investigate complaints.

In 2002, CIMA made a number of major organisational changes, including the appointment of a separate administrator and an independent chairman. It should be noted, however, that voting power on the Board of CIMA still rests with the CIF and CIC representatives. We believe it would further enhance the work of CIMA if a number of non-industry members with relevant experience were appointed.

CIMA mainly relies on full-time union officials to operate its compliance procedures. In addition, there are two union employees fully involved in compliance. The resultant fees paid represent a significant source of income to the unions. It has been suggested to us by employer representatives that this can cause a confusion of roles, which can cause difficulties for some employers. We understand that CIMA has recently appointed its first independent full-time compliance investigator.

CIMA is funded out of the contributions paid by employers and members of CFOPS. However, there is no provision covering this in the Registered Agreement.

Compliance procedures

The compliance procedures operated by CIMA in regard to non-CIF members involves four distinct stages:

Stage 1: Details of a case of possible non-compliance are sent by a union official to CIMA, using Form MA1. The complaint must be accepted by CIMA before the union official can investigate the matter directly with the company. When the complaint is accepted by CIMA, a letter and an information pack is sent out to the company involved.

At the end of Stage 1, a fee of €128 is paid to the union whose official raised the complaint.

Stage 2: On the basis of approval from CIMA, the union official investigates the matter further; CIMA provides Form MA2 which must be completed during the course of the investigation. It is also a requirement that a record is kept of all relevant written communications with the company.

At the end of Stage 2 – on completion of the submission of Form MA2 – a further payment of €350 is made to the union.

Stage 3: This only applies if Stage 2 does not resolve the compliance issue. The matter is referred to the Labour Court for a hearing and the non-compliant company is advised accordingly. The Labour Court would then write to the company

advising that a complaint has been referred to the Court and that they have one month to respond before the Court sets a date for a hearing.

Stage 4: This involves the actual presentation of the case before the Labour Court, which is prepared by the union representative using the guidelines drawn up by CIMA.

On completion of the Labour Court case, a further payment of €400 is made to the union.

Note: A separate organisation, EPACE, provides a similar service to CIMA in respect of compliance for operatives who work with electrical contractors.

CIF Members

The procedure is broadly similar in the case of CIF members, except that the investigation at Stage 2 is carried out by the CIF. If the matter is not satisfactorily resolved through the intervention of the CIF, the complaint is referred back to CIMA and processed through Stages 3 and 4 as necessary.

Results to Date

The increased emphasis on compliance, and the new procedures adopted by CIMA, have proven successful, as the following table shows. This success is consistent with comments made to us by the CFOPS Trustees and administrators.

Year	Arrears €000's	Employer Not Registered €000's	Operatives Under reported €000's	Total payment to CFOPS €000's
2002	3,276	2,235	20	5,531
2003	4,310	3,693	7,239	15,242
2004	9,862	1,582	8,932	20,377
2002-2004	**17,448**	**7,510**	**16,191**	**41,150**

The table shows significant progress over the period. It is worth noting that the heading under which the lowest amount of arrears secured was "Employer Not Registered."

Based on their experience CIMA has provided a set of proposals during the course of the review, which we have drawn on in putting forward our recommendations.

Arrears of contributions

In practice, we understand that the level of backdating of contributions depends on the records available. Employers are only required to keep records for six years and it is

generally accepted that the Labour Court will not go back more than six years without adequate records.

Despite what was said to us on a number of occasions by several parties, CFOPS advised that they will not "do deals" in regard to collective arrears. However, they will accept some spreading of payments with an appropriate interest addition.

The Labour Court

The Labour Court is a statutory agency responsible for deciding on industrial relations issues. One of the key roles of the Court is dealing with complaints from unions on breaches of a registered employment agreement.

There has been a substantial growth in the number of cases referred to the Court in respect of arrears of contribution, as the following table shows.

	2004	2003	2002
No. of IR complaints referred to the Court	1,317	1,041	757
No. of complaints relating to Registered Employment Agreements	558	418	121
Percentage	42%	40%	16%

We understand from the Court that the majority of references are in respect of pensions issues in the construction industry. The Court believes this reflects the increased activity by CIMA. CIMA must be represented in the Court by a party to the Registered Employment Agreement (union/employer) and so this cannot be statistically verified.

When the Court receives a complaint, it passes it to the Labour Inspectorate in the Department of Enterprise, Trade and Employment for examination, following which a formal court hearing is arranged. We understand around two-thirds of cases are resolved at this stage.

If the Court finds the complaint is valid, it issues an order requiring the company to pay any arrears to CFOPS. The CFOPS Trustees have a special actuarially calculated rate of arrears for this purpose. The company in default has one month to pay the arrears due. If the payment is not made, the Labour Court applies to the Minister for Labour Affairs, requesting that a prosecution for non-compliance with the Order of the Court is taken in the District Court. The penalty for non-compliance with an order is an initial fine of €3,000, and a further €1,000 per day for each day which the Order is not complied with.

We believe that the use of the Court to address compliance is not an effective use of its resources and that, alternative, more effective, procedures should be introduced.

Labour Inspectorate

As indicated above, the Labour Court refers complaints of non-compliance to the Labour Inspectorate, which is part of the Department of Enterprise, Trade and Employment, for examination. As a result of the increased activity by CIMA, the number of cases referred to the Inspectorate has grown substantially in recent years, and there is now a significant back-log of cases.

In addition to dealing with pensions management, we understand there has also been a growth in the number of other matters which require investigation by the Labour Inspectorate, and this is putting huge pressure on their resources. In our view, this is further reason why alternative, more direct methods of ensuring compliance should be looked at.

Pensions Board

The Pensions Board has a role in relation to CFOPS in terms of ensuring all requirements of the Pensions Acts are met.

The Board has no formal role in relation to membership compliance except insofar as this impacts on Pensions Act compliance e.g. in relation to meeting the '21 day rule' for payment of contributions.

However, the Board has a leading role in promoting pensions provision in Ireland. As already mentioned, the construction sector represents a significant element of the potentially pensionable workforce. Accordingly, the Board has an interest in anything which can improve CFOPS compliance from a membership perspective; and thus increases overall coverage.

Pensions Ombudsman

The Pensions Ombudsman has the authority to investigate complaints by individuals, of maladministration in pension schemes.

The Ombudsman advised us that a significant proportion of the complaints his office has received related to the Scheme. He provided the following examples as typical of these complaints:

- Failure of the employer to register his employees; this is not within the remit of the Ombudsman and such cases are referred to CIMA.

- Failure of an employer to register all eligible employees. The Ombudsman has had success in dealing with such cases.

- Failure of an employer to pay over deductions made to CFOPS. Such cases are referred to the Pensions Board, who can take appropriate action.

- Attempts to register employees after they had died in order to have the death benefit paid.

- Allegations that workers were told they would not be hired for a project unless they are willing to work as self-employed contractors. The Ombudsman advised us that he is in discussion with the Revenue and the Department of Social and Family Affairs in regard to these cases.

- Employers claiming, for various reasons, not to come within the scope of the registered agreement; in some cases the employer is an employment agency, although we understand these firms may not always be licensed under the 1997 Employment Agency Act.

CIMA has developed a close working relationship with the Office of the Ombudsman and refers individual cases to the Ombudsman, and vice versa, as appropriate.

6

Recommendations: Membership Compliance

In this section we summarise the main findings of our review in regard to membership compliance and we outline our recommendations.

Overview of finding

CFOPS has an important role in the provision of pension coverage in Ireland. The Scheme provides pension and life assurance benefits to many thousands of workers in the construction industry through the diligent efforts of a number of organisations.

In recent years, improvements in CFOPS have been made, and are being made, through the planned introduction of improved benefits, improved administration processes and increased emphasis on membership compliance, including an enhanced role for CIMA.

Nevertheless, responsibility is dispersed among various different bodies and the process of enforcing the Registered Employment Agreement is cumbersome. The Registered Employment Agreement itself is out of date, both in the definitions of those covered and the level of benefit. Some employers appear to exploit areas of doubt and difficulties in enforcement by ignoring their responsibilities to employees. In a competitive industry, this can create a material competitive advantage versus fully compliant employers.

One of the key findings is the high number of workers who are classified as self employed, and who are not thus eligible for membership of CFOPS. It is questionable how many of these workers are self employed in the accepted sense of the term, but they are currently losing out on the pension and life assurance benefits provided by CFOPS. This, therefore, is an issue which needs to be addressed.

The most effective way of increasing compliance would require a fundamental change in the method of collecting contributions. While this is the basis for one of our principal recommendations below, we recognise that considerable preparation work would be

required to make it work and so many of the other recommendations are intended to improve matters under the current structure.

Registered Employment Agreement

The Registered Employment Agreement is the basis on which workers in the construction industry are required to be members of CFOPS, or an equivalent scheme.

As discussed in Section 4, there are a number of issues with the Agreement, which has not been updated for some considerable time. These include the absence of some current capabilities in the industry, the lack of clarity in regard to whether self-employed contractors are required to participate in the pension and life assurance arrangements, the position of overseas workers and employers and the employment of workers through employment agencies. In addition, we believe that the fact that employers may choose to provide alternative arrangements is not conducive to monitoring compliance or in facilitating transfers between employment.

The Construction National Joint Industrial Council is the Industry body responsible for agreeing the terms of employment in the Industry. We recommend, therefore, as follows:

R1 The Council should review the Registered Agreement with the objective of improving the coverage for pension and life assurance benefits for workers in the construction industry. To be effective, this review needs to address the following issues:

- Covering all capabilities in the construction industry, with the provision to accommodate new capabilities which may arise in the future and a process to ensure regular revisions to the Agreement in this regard.
- Providing that it is necessary to participate in CFOPS to meet the requirements of the Agreement.
- Tightening up the monitoring of any overseas arrangements that are to be accepted as CFOPS alternatives for overseas employers.
- Extending the definition of Employers under the Registered Agreement to cover Employment Agencies.
- Clarifying the position of legitimately self employed workers in the industry and considering what improved pension provision could be made for them.

Self-employed status

In our review, we found that there are a significant number of workers in the industry who are classified as self employed by the Revenue, and who are thus not eligible to participate in CFOPS. However, in our view, many of these workers are not self employed in the generally accepted sense.

From a tax perspective, these arrangements appear to be satisfactory to the Revenue as they ensure a reasonable tax take with minimal administration. However, by having self-employed status, many of the workers are losing out on the pension, life assurance and other benefits available under CFOPS, as well as the sickness and unemployment benefits available to employees under the Contributory Social Welfare Schemes. We do not consider that this is in the interest of the workers concerned, or their dependants, especially as the implications of their status may not be fully understood by the workers.

We recommend, accordingly, as follows:

R2 The Revenue should review the application of their guidelines in relation to the self-employed as they apply to the construction industry to ensure that self employed status is only available to workers who legitimately satisfy the appropriate criteria.

R3 The Revenue should then ensure that the appropriate guidelines are applied consistently throughout the industry on an ongoing basis.

We recognise that implementing this recommendation will be a major challenge in view of the numbers involved, and that appropriate transitional arrangements will be necessary. However, these should be kept to a minimum to ensure that employees do not continue to lose out on any benefits available.

Compliance Monitoring Agency (CIMA)

Our work shows that there has been a considerable improvement in membership compliance in recent years. Although not the only reason for this improvement, the enhanced powers provided to CIMA have had a positive impact.

Based on our analysis of the work of CIMA we propose a number of specific recommendations to improve its effectiveness as it is currently structured:

R4 The Board of CIMA should appoint a number of non-industry members with relevant experience.

R5 The procedure in regard to CIF members should be exactly the same as those that apply to other employers.

R6 Subject to suitable transition arrangements, CIMA should move as fast as possible to employ dedicated compliance investigators.

R7 CIMA should have a promotional role in developing coverage and should be adequately funded for this.

R8 The role of CIMA should be recognized in the revised Registered Agreement.

R9 CIMA should be allowed controlled access to PRSI and taxation data for the purpose of monitoring compliance.

Statutory Basis for CIMA

The changes outlined above, in our view, will improve compliance and are a logical development of CIMA's current activities. Because CIMA does not have statutory power, it is necessary to refer cases of non-compliance to the Labour Court, which in turn involves the Labour Inspectorate in the Department of Enterprise, Trade and Employment.

We believe that compliance would be more effective if CIMA was set up on a statutory basis with the power to fully investigate complaints, using appropriate PRSI and taxation data, and to prosecute for non-compliance. In this context CIMA would thus acquire the powers of investigation which are currently exercised by the Labour Inspectorate in relation to the Scheme. We note the Pensions Board has similar powers in respect of non-compliance with other pension regulatory matters.

We recommend, therefore, as follows:

R10 CIMA should be constituted on a statutory basis with full statutory powers to ensure compliance.

Alternative Approach

As indicated above, we believe the most effective way of ensuring compliance is to set up CIMA on a statutory basis, with the powers to fully investigate and resolve complaints. If this is not possible then, as indicated in Recommendation 9, consideration should be given to allowing CIMA controlled access to PRSI and taxation data.

An alternative approach to improving the current compliance process, although less effective in our view, would be to allow a duly authorised officer of the Labour Court to have direct access to the data held by the Revenue for the purposes of investigating complaints.

Integration with PRSI and Taxation System

There are two systems through which employees in the construction industry are provided with pension and life assurance benefits – the Social Welfare PRSI System and the requirements under the Registered Agreement. This in return results in two separate

collection and compliance procedures. The PRSI System has a significant advantage in compliance terms because it is legally binding, with penalties for non-compliance and it is monitored by officials from the Department of Social and Family Affairs.

We are satisfied, therefore, that the most effective way of maximising coverage under the Registered Agreement would be to require contributions to be levied as part of the PRSI contribution. There are already different classes of PRSI contribution so the principle is already well established. The approach has the added advantage that it could be applied equally to employees and the self employed.

There is also a compliance procedure in place in regard to PRSI contributions, so this approach would be more cost effective.

The approach on integration with PRSI has already been raised by some of the unions in the industry. We met with officials at the Department of Social and Family Affairs to discuss the option. Based on our meeting, we note that there are a number of challenges which will need to be addressed, including the difficulty of identifying construction industry workers and pressure on the existing compliance arrangements. The Department also had some concerns about becoming directly involved in the administration of a private scheme, notwithstanding that it is one which is established under statute.

Nevertheless, we are satisfied there are sufficient benefits to justify exploring the option fully.

We recognise if this approach was adopted that the role of CIMA would change from one of compliance to one where the main emphasis would be on promotion.

We recommend, therefore as follows:

R11 The possibility of using the PRSI system to collect contributions to CFOPS should be fully explored.

Letters of Compliance

The requirement that Letters of Compliance be provided for all public sector contracts is an important support for the compliance arrangements. The importance of this was outlined in a letter from the Department of Environment and Local Government in March 2003, which emphasised that tenders could not be accepted from contractors whose employees did not participate in CFOPS, or who did not benefit under equivalent arrangements.

In light of the concerns expressed during the course of the review, we believe that the monitoring of this provision should be reviewed and, accordingly, we recommend as follows:

R12 Requirements in regard to Letters of Compliance for public sector contracts should be reviewed and tightened up to ensure their consistent application across all public sector organisations; we understand this is a matter for the Department of Finance. In the case of contractors based outside the State the question of what constitutes an acceptable equivalent scheme should be clarified.

Deferred pensioners

We also note the large number of deferred members. In our view, this number is likely to increase substantially in the future, given the huge growth of the numbers employed in the industry in recent years. We recommend, therefore, as follows:

R13 The Trustees should consider how best to deal with the significant and growing population of deferred members in the Scheme.

This is a broader issue for the Pensions Industry, which may need to be addressed at some time by the Pensions Board. It may be that some adaptation of the dormant account provisions for personal bank accounts and life assurance policies will have to be considered.

7

Pensions Legislative and Regulatory Review

In this section we review the compliance of CFOPS with pension legislative and regulatory requirements.

Overview of findings

The pensions compliance section of the review was carried out using documents supplied by the Trustees and administrators of CFOPS. Legislation requires that certain actions in the running of a pension scheme are taken within specific timeframes. CFOPS have confirmed that processes are in place and that the Scheme does meet statutory deadlines. We have not undertaken further investigation in this regard.

CFOPS is unique in terms of the breadth of employers it deals with. Under the terms of the Registered Employment Agreement, membership of CFOPS in effect has statutory backing in the absence of alternative provision of benefits at least equal to CFOPS benefits. This raises its own challenges and in recognition of those challenges, the Scheme is also unique in having its own Monitoring Agency. The Trustees only accept responsibility for those employers that have registered with CFOPS. Similarly, the Scheme accepts employer information that is provided regarding membership unless there is evidence to the contrary indicating that there may be some breach of the membership requirements under the Agreement. We understand that there is a policy of tracking members from month to month and requesting a reason for a change of status. There is a specific note to the CFOPS accounts from the auditor regarding the inability of the Trustees of CFOPS to know and trace outstanding contributions.

Scheme rules specify that a member has not technically left until at least one full scheme year since the last contribution has been received. This is a practical expedient to meet the requirement to provide a leaving service statement within two months of leaving but reduces members' ability to keep a check on whether their benefits are being properly dealt with. It is inevitable that there can be a delay before a member finds out if contributions have not been paid on their behalf.

We have been told of non-compliance with the information requirements of the Wages Act in many companies in the sector. This would also reduce the ability of the workers to check that their membership is being kept up to date.

Detailed review

In Appendix C, there is a more detailed commentary on compliance with legislation by the Trustees in the running of CFOPS. This indicates that there are no apparent major breaches of pensions and related legislation. However, the scope of our review was such that in many areas we rely on the assurances of the Trustees and the scheme administrators that compliance with certain requirements is being achieved.

Conclusion

We have no reason at all to believe that anything is other than as advised to us and hence we believe that, within the scope of our review, compliance with the relevant pensions legislation is in generally good order.

We recommend, therefore, that the Pensions Board should deal with CFOPS in the same way as any other scheme for which it has responsibility, i.e., any Pensions Board audit or investigation should occur in the normal course of events as our investigation indicated no need for any earlier intervention.

Appendix A

Organisations met for the Review

Organisation
BATU
CFOPS (1) – Trustees
CFOPS (2) – Chairman and Administrator
Compliance Monitoring Agency
Construction Industry Federation
Department of Social and Family Affairs
Irish Congress of Trade Unions
Revenue
Labour Court
Labour Inspectorate
Pensions Ombudsman
Pensions Board
SIPTU

Appendix B

Relevant Sections of the Registered Employment Agreement

THE LABOUR COURT

Copy of an Employment Agreement relating to PENSIONS ASSURANCE AND SICK PAY in the Construction Industry, registered in the Register of Employment Agreements on 7th March, 1969 as varied for the eighteenth time by the Labour Court under Section 28 of the Industrial Relations Act, 1946 by:

REGISTERED EMPLOYMENT AGREEMENT (CONSTRUCTION INDUSTRY PENSIONS ASSURANCE AND SICK PAY) VARIATION ORDER, 1994 AS FROM 10th OCTOBER, 1994

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1. PARTIES TO THIS AGREEMENT

This Agreement dated the 1st day of January, 1968 is made between:-

The Construction Industry Federation (formerly the Federation of Builders, Contractors and Allied Employers of Ireland) of the one part and

Amalgamated Society of Woodworkers,
Services, Industrial, Professional, Technical Union (formerly Irish Transport & General Workers' Union and Workers' Union of Ireland),
Operative Plasterers and Allied Trades Society of Ireland,
Amalgamated Society of Painters and Decorators
Plumbing Trades Union,
Irish Society of Woodcutting Machinists,
National Engineering Union,
Irish National Painters and Decorators Trades Union,
Irish National Union of Woodworkers,
United House and Ship Painters and Decorators Trade Union of Ireland,
Automobile General Engineering and Mechanical Operatives Union,
Amalgamated Transport and General Workers' Union,
Amalgamated Society of Slaters, Tilers and Roofing Operatives,
Services, Industrial, Professional, Technical Union (formerly Federation of Rural Workers),
Building Workers Trade Union (on behalf of Ancient Guild of Brick and Stonelayers, and Stonecutters Union of Ireland) of the other part.

2. CLASS OF WORKERS TO WHOM THIS AGREEMENT APPLIES

This Agreement applies to workers, both male and female, who are employed in one of the under-mentioned capacities by Building or Civil Engineering firms as defined in the first Schedule hereto and to their employers.

(a) Craftsmen:

Brick and Stonelayers,
Carpenters and Joiners,
Floorlayers (Dublin County Borough and County and Bray Urban District).
Glaziers,
Painters,
Plasterers,
Plumbers,
Slaters and Tilers,
Stonecutters,
Woodcutting Machinists,
and
Apprentices to the foregoing craftsmen,

(b) Construction Operatives.

3. PENSION AND MORTALITY BENEFITS

(a) Every employer to whom this Agreement applies shall become and remain a party to a contributory scheme approved by the Revenue Commissioners for Income Tax purposes under Part XII of the Income Tax Act, 1967 or any other relevant legislation for the time being in force - the main purpose of which shall be the provision of the benefits for every worker who shall have been employed by such an employer for not less than a specified period before retirement of such worker from such employment at a specified age or after incapacity at an earlier age and an ancillary purpose of which shall be the provision upon the death of any such worker while employed by him of benefits for financially dependent relatives of such worker.

(b) The conditions upon which such pension and mortality benefits are payable and the amounts thereof shall be not less favourable than those set out in the second Schedule hereto.

4. SICK PAY

Every employer to whom this Agreement applies shall become and remain a party to a contributory sick pay scheme, approved by the Revenue Commissioners, for income tax purposes, under relevant legislation - the main purpose of which shall be the provision of benefits for every worker, who shall have been in the employment of such an employer immediately before the illness of such worker and who has also been employed for a specified period in the Construction Industry.

5. MACHINERY FOR SETTLEMENT OF DISPUTES

If a trade dispute occurs between workers to whom this Agreement relates and their employers no strike or lock-out shall take place until the following procedure shall have been complied with:-

(i) Notice in writing of the dispute shall have been given by one party (or his trade union) to the other (or his trade union).

(ii) A conference between the parties (or their trade unions) shall have taken place within three days of the receipt of the notice as aforesaid or such longer period as may be mutually agreed.

(iii) Should the conference not result in the settlement of the dispute the matter shall be dealt with in accordance with the Constitution of the Joint Industrial Council for the Construction Industry which stipulates:-

(a) Questions concerning wages and working hours and conditions of employment in the industry shall be dealt with by the Council.

(b) Questions regarding conditions of work and other matters affecting the industry may be dealt with by the Council subject to the provisions of sub clause (c) below.

(c) Questions of an individual character, which in the opinion of the Joint Industrial Council are of a domestic nature and do not affect the Industry generally, may be settled by negotiation between representatives of the union(s) concerned and the firm(s) in which the question originated and if the parties fail to arrive at a settlement, the matter shall be referred to the appropriate local association of employers and of trade unions.

Should no agreement be reached within seven days of such reference the matter may then be referred to the Official Secretary of the Joint Industrial Council. On receipt of such reference the Official Secretary, shall at the request of the complaining party, convene a meeting of a Disputes Sub-Committee constituted of at least two from each side and the Official Secretary or Chairman of the JIC. The Disputes Sub-Committee shall be fully authorised to deal with the dispute as it deems fit. The members of the Sub-Committee shall be drawn from a panel previously approved by the JIC. The firm(s) or union(s) directly involved shall not be entitled to membership of the particular Sub-Committee. Any decision taken by a Disputes Sub-Committee shall be binding on all parties.

A similar procedure shall be adopted with regard to questions which are, in the opinion of both sides of the Joint Industrial Council, of a local character and do not affect the Industry generally.

It is, however, agreed that earnest consideration shall be given to any question in dispute by the parties concerned and that an appeal to the Council shall not be made until both sides have exhausted all other means of reaching agreement.

In the event of the Council failing to agree on a unanimous recommendation on any issue in dispute, the decision of the majority of the employers' representatives and the majority of the workers' representatives, shall be the recommendation of the Council. If the Council is unable to resolve any issue in dispute within one month, the Council shall refer the matter to the Labour Court for investigation and no strike, lock-out or interference with normal working operations shall take place before the Labour Court has made a Recommendation. Should the recommendation be rejected by either side, at least seven days notice of strike, lock-out or interference with normal working operations shall be given by either side in writing.

6. PROVISION FOR VARIATION OF THIS AGREEMENT

This Agreement may be varied in accordance with the provisions of Section 28 of the Industrial Relations Act, 1946.

7. REGISTRATION OF THIS AGREEMENT

The parties to this Agreement shall make application to the Labour Court to have the Agreement Registered.

SIGNED for and on behalf of:

TRADE UNIONS

AMALGAMATED SOCIETY OF WOODWORKERS	Jim Cox
SERVICES, INDUSTRIAL, PROFESSIONAL, TECHNICAL UNION (FORMERLY IRISH TRANSPORT AND GENERAL WORKERS' UNION)	John Conroy
SERVICES, INDUSTRIAL, PROFESSIONAL, TECHNICAL UNION (FORMERLY WORKERS UNION OF IRELAND)	James Larkin
OPERATIVE PLASTERERS & ALLIED TRADES SOCIETY OF IRELAND	G. Doyle
AMALGAMATED SOCIETY OF PAINTERS AND DECORATORS	John O'Leary
PLUMBING TRADES UNION	P. Ferris
IRISH SOCIETY OF WOODCUTTING MACHINISTS	G.H. Wall
NATIONAL ENGINEERING UNION	J. Cassidy
IRISH NATIONAL PAINTERS AND DECORATORS TRADE UNION	John Mulhall
IRISH NATIONAL UNION OF WOODWORKERS	P.F. McGrath
UNITED HOUSE AND SHIP PAINTERS AND DECORATORS TRADE UNION OF IRELAND	L. Hudson
AUTOMOBILE GENERAL ENGINEERING & MECHANICAL OPERATIVES UNION	B. Leonard
AMALGAMATED SOCIETY OF SLATERS, TILERS AND ROOFING OPERATIVES	J.M. Moore
AMALGAMATED TRANSPORT AND GENERAL WORKERS' UNION	M.P. Merrigan

SERVICES, INDUSTRIAL, PROFESSIONAL, TECHNICAL
UNION (FORMERLY FEDERATION OF RURAL WORKERS)
James Tully T.D.

Building Workers Trade Union on behalf of:

ANCIENT GUILD OF BRICK AND STONELAYERS
STONECUTTERS UNION OF IRELAND Frank O'Connor

EMPLOYERS

THE CONSTRUCTION INDUSTRY FEDERATION (FORMERLY THE FEDERATION OF BUILDERS, CONTRACTORS AND ALLIED EMPLOYERS OF IRELAND). Thomas Reynolds

FIRST SCHEDULE

1. For the purpose of this Agreement a building firm means a firm the principal business of which is one or a combination of any of the following activities:

   (a) the construction, reconstruction, alteration, repair, painting, decoration, fitting of glass in buildings and demolition of buildings;

   (b) the installation, alteration, fitting, repair, painting, decoration, maintenance and demolition in any building, or its site, of articles, fittings, pipes containers, tubes, wires or instruments (including central heating apparatus, machinery and fuel containers connected thereto) for the heating, lighting, power or water supply of such buildings;

   (c) (i) the clearing and laying out of sites for buildings.
   (ii) the construction of foundation on such sites.
   (iii) the construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings or the disposal of waste.
   (iv) the construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings.
   (v) the making of roads and paths within the boundaries of such sites.

   (d) the manufacture, alteration, fitting, and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster.

BUT

FOR THE PURPOSE OF THIS AGREEMENT A BUILDING FIRM DOES NOT MEAN A FIRM WHOSE PRINCIPAL BUSINESS IS ONE OR A COMBINATION OF ANY OF THE FOLLOWING ACTIVITIES:

MINING OR CALCINING OF GYPSUM AND/OR THE MANUFACTURE OF PLASTER, PLASTER OF PARIS, BAG PLASTER, PLASTER-BOARD.

2. For the purpose of this agreement a Civil Engineering firm means a firm the principal business of which is one or a combination of any of the following activities:

   (a) the construction, reconstruction, alteration, repair, painting, decoration and demolition of:

roads, paths, kerbs, bridges, viaducts, aquaducts, harbours, docks, wharves, piers, quays, promenades, landing places, sea defences, airports, canals, waterworks, reservoirs, filter beds, works for the production of gas and electricity, sewerage works, public mains for the supply of water or the disposal of sewerage and all work in connection of buildings and their sites with such mains.

river works, dams, weirs, embankments, breakwaters, moles, work for the purpose of road drainage or the prevention of coastal erosion; cattlemarkets, fair grounds, sports grounds, playgrounds, tennis-courts, ball alleys, swimming pools, public baths, bathing places in concrete, stone, tarmacadam, asphalt or such like material, any boundary walls, railings, fences and shelters erected thereon.

(b) the painting or decoration of poles, masts, standards, pylons for telephone, telegraph, radio communication and broadcasting; and

(c) ground levelling, ground formation or drainage in connection with the construction or reconstruction of grass sportsgrounds, public links, play-grounds, racecourses and greyhound racing tracks, but excluding the sowing of grass seed on such grounds.

SECOND SCHEDULE

PENSIONS ACT, 1990

1. In the event that any provision of the Second Schedule of this Agreement conflicts with the Terms of the Pensions Act, 1990 and/or Regulations made thereunder, the Terms of the Pensions Act, 1990 and or Regulations made thereunder shall be deemed to apply and take precedence over any such conflicting provision contained in the Second Schedule except where the provisions of the Second Schedule of this Agreement are more beneficial to the member and provided that application of the Terms of the Second Schedule in any such case shall not be contrary to the form of the Statute in such case made and provided.

2. The scheme shall be contributory. Each employer to whom this Agreement applies shall be entitled to deduct from each worker a sum not exceeding £4.12 per week. The balance of £7.76 shall be payable by the employer, the full weekly contribution for year 1993/94 being £11.88. The first employer in any working week shall be responsible for the full deduction. Employers who fail or neglect to make the authorised deductions from the wage of a worker shall be liable for the total contributions required, to ensure that the worker's pension and mortality benefits are maintained in full during his period of service with such employer.

3. The normal age for retirement from work shall be 65 years.

4. (i) Contributions to the Scheme shall not be refundable before reaching the normal retirement age of 65 years. A member who leaves the Scheme before age 65, and who does not subsequently re-join the Scheme, shall be entitled to a refund of contributions on application to the Scheme at age 65. The amount refunded in such cases shall be a sum equal to the value of the contributory portion of all contributions paid on behalf of the applicant subsequent to 3rd May, 1976, this being the date on which the Scheme became contributory, plus an appropriate rate of interest the amount of which shall be calculated and certified in each case by the Scheme's actuary.

   (ii) Where the member was over the age of 50 years at the date of leaving the Scheme, the benefit payable on application to the Trustees at age 65, shall be assessed in accordance with Paragraph 14(i) of this Schedule relating to preservation of pension rights accruing from contributions credited in respect of service on or after the Scheme year in which a member attains 50 years of age, and Paragraph 14(iii) relating to preservation of pension rights in respect of stamps credited subsequent to 10th April, 1989.

5. Every worker to whom this Agreement applies is eligible for inclusion in the scheme but benefits shall vary as follows:-

   (a) If a worker is between the ages of 20 and 65 on first becoming a member of the scheme he shall be eligible for:-

      (i) a minimum pension plus a minimum cash sum payable at normal retirement date in accordance with the scales set out in paragraph 6 of this schedule, and

      (ii) mortality benefit cover in accordance with paragraph 10 of this schedule.

   (b) A worker who on retirement is eligible for a pension of less than £104 per annum may be granted, in lieu, a lump sum equivalent to nine years pension at the appropriate rate.

6. Where a worker retiring at age 65 has completed the maximum number of full years service (i.e. 45 years with the maximum of contributions each year) the pension payable shall be at least £4,322 per annum and the additional cash sum payable shall be at least £4,657. Where in any one year the contributions have been less than the maximum possible the pension benefit and cash benefit accruing shall be varied pro rata to the amount of the contributions.

7. (i) Subject to the foregoing the amount of pension and cash benefit payable shall vary according to:

(a) the worker's age on entry into the scheme;
(b) his aggregate service in the scheme in accordance with the following scale:

(1) AGE OF ENTRY INTO SCHEME	(2) AGGREGRATE SERVICE * YEARS	(3) MINIMUM PENSION PAYABLE AT AGE 65	(4) MINIMUM CASH BENEFIT PAYABLE AT AGE 65
		£	£
20	45	4,322 per annum	4,657
30	35	3,361 per annum	3,597
40	25	2,401 per annum	2,569
50	15	1,441 per annum	1,542
60	5	600^ per annum	642^

* Years in column 2 means full years, i.e. with the maximum number of contributions each year.

PROJECTED FUTURE PENSIONS

The figures indicated above take no account of future increases in benefit scales. The pension credit (and cash benefit) is reviewed each year and past credits are also increased from time to time. Assuming an average rate of increase of, say 5% a year in both past and future credits the benefit figures are as follows:

AGE AT ENTRY	PENSION AT AGE 65	ADDITIONAL TAX-FREE CASH BENEFIT
	£	£
20	38,833	41,843
30	19,539	19,841
40	8,131	8,700
50	2,996	3,206
60	700^	820^

^ Includes Estimated Bonus

In the case of a scheme member retiring in 1993/94 whose earned pension calculated at retirement date is less than £1,882 per annum, a bonus pension will be added to the earned pension up to the 1993/94 ceiling figure of £1,882 per annum. The bonus pension will be taken into account in determining the amount of the additional cash sum payable at age 65 which will be in accordance with the scale outlined in column 4 above. Pension in respect of contributions prior to the 5th April, 1993 is at various rates lower than indicated above. This is due to the fact that contributions prior to 5th April, 1993 have been at various lower rates.

(ii) The maximum amount of bonus pension payable in the case of a Scheme Member retiring in 1993/94 shall be £450 per annum. Where a member's earned pension calculated at retirement date amounts to £1,432 or more, the bonus pension paid shall be the amount necessary to provide a retirement pension exactly equal to the 1993/94 ceiling figure of £1,882 per annum.

Where the member's earned pension calculated at retirement date is less than £1,432 per annum the member shall be paid a pro-rata proportion of the maximum bonus pension of £450.

Where earned pension calculated at retirement date is equal to or greater than the 1993/94 ceiling figure of £1,882 per annum no bonus pension shall apply and the actual amount of earned pension shall be paid.

8. Where a member retires on grounds of ill-health before age 65 and on an independent medical examination, the Trustees are satisfied that the member can no longer work in the industry for reasons of ill-health, the member shall receive the pension accrued at the date of retiral and the appropriate bonus pension as though the member were aged 65.

9. Pension will be paid monthly for the duration of life after retirement. Where a pensioner whose pension commenced on or after the 1st March, 1980, dies in retirement, and is survived by a spouse, a pension equal to half of the amount of pension payable to the deceased at time of death, shall then become payable to the surviving spouse for the remainder of the spouse's life-time.

10. A lump sum of £15,000 death benefit will be paid to a deceased member's dependents together with an additional benefit of £1,200 in respect of each dependent child under the age of 18 years if death should occur before the age of 65 years, from whatever cause, anytime after completion of 26 weeks membership of the Scheme, provided that the worker was a member of the Scheme at the time of death or that membership of the Scheme had ceased due to ill health not more than 26 weeks prior to the date of death. In no other

circumstances will this benefit be paid. To comply with the requirements of the Revenue Commissioners it may be necessary to apply part of the death benefits to provide annuities for the recipients.

11. Dependents shall mean, for the purpose of clauses 9 and 10 of this Schedule, persons who were, in the opinion of the Trustees of the appropriate pension fund underwriting the liabilities defined by these clauses, financially dependent for support on a member or pensioner immediately prior to the death of the member or pensioner.

12. The Trustees of the Construction Federation Operatives Pension Scheme guarantee that they will not refuse equitable participation to an employer covered by this Agreement on the grounds that such employer is not a member of the Federation and that the workers employed by non-Federation firms shall be entitled to the same benefits as workers employed by Federation firms thereafter.

13. A member shall not lose accrued pension rights by changing his job within the Construction Industry as covered by the Agreement, and the employer to whom the member changes employment shall be liable to ensure that the member's accrued pension rights are retained by continuing to pay the contributions required under the terms of the scheme on behalf of the member.

14. (i) With effect from 1st April, 1986 the pension credit in respect of all stamps secured after age 50 will not be lapsed by virtue of subsequent absences from the Scheme irrespective of the length of such absences. Furthermore, this provision will apply to stamps purchased in the past as well as in the future. In addition, a member retiring prior to age 65 due to ill-health will similarly be given the benefit of all stamps purchased over the previous 15 years irrespective of the extent to which Scheme membership has been interspersed with absences. An absence from the Scheme after age 50 may still cause loss of benefit secured by service in the Scheme before age 50, as set out in paragraph (ii) below.

(ii) A member over the age of 50 who is absent from the Scheme for two or more consecutive Scheme years, shall lose the accrued pension entitlement secured by the employer's portion of all contributions credited to the member prior to the scheme year in which the member reached 50 years of age. In the case of a member under the age of 50 an absence from the Scheme of one full scheme year or more shall cause loss of the accrued pension entitlement secured by the employer's portion of all contributions credited to the member prior to commencement of the break in service. It is emphasised however that the possible loss of accrued benefit in the circumstances referred to in this paragraph, refers only to the benefit secured by the Employers

portion of contributions credited in respect of service before 10th April, 1989, or before the year in which the member reached 50 years of age whichever was the earlier. In this regard please see Paragraph 14(iii) below which confirms that all stamps credited from 10th April, 1989 shall be preserved in full to the members benefit irrespective of age or subsequent broken service.

(iii) With effect from 10th April, 1989, the future pension benefit accruing to a member, in respect of all stamps credited to a member for service in the Scheme on or after 10th April, 1989, shall not be lapsed. This preservation of benefit in respect of future service from 10th April, 1989, is unqualified and will therefore not be effected by a member's age or subsequent broken service in the Scheme or withdrawal from the Scheme. The change will not effect existing accruals secured by stamps credited to a member for service prior to 10th April, 1989, and the existing lapsing rules, as set out in Paragraph 14(ii) of this Schedule, will continue to apply unchanged to all such past accruals.

(iv) For the purposes of preservation of accrued pension benefits, a member shall be deemed to be "a member of the scheme" for each scheme year during which the member has been employed for one or more weeks of pensionable service in the employment of an employer who is registered in the Scheme and who pays the appropriate number of pension contributions on behalf of the member for each week of pensionable employment, not later than 3 months after the end of the scheme year in which the contribution or contributions became due.

Appendix C

Detail of Pensions Legislative and Regulatory Review

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S59 (a)	In the event of failure by Employers to pay contributions Trustees should take immediate steps to ensure that this is done.	Trustee	Yes. Verbal assurances have been given to the effect that the Trustees will always follow up any failure by employers to pay the correct contributions to the Scheme on their own and the members' behalf. This extends only to employers who are registered with CFOPS and only to the employees in respect of whom the Scheme has been provided with membership details.
S59 (a)	Trustees must invest contributions received under section 58A within 10 days of receipt.	Trustee	Trustees have confirmed verbally that the processes they have in place mean that contributions are always invested well within the 10 day period.
S59 (b)	Trustees must check the relevant clause in the Trust Deed to ensure that any investment that might be planned is permissible.	Trustee	There are wide ranging powers of investment set out under Clause 9 of the Definitive Deed. No detailed check of investments held versus the Deed was carried out.

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S59 (c)	Trustees shall make arrangements for the payment of benefits (including death benefits) as provided for under the Rules as they become due, and net of applicable taxes.	Trustee	Yes, documents were reviewed but no detailed analysis. The issue of non-payment of benefits paid for was not raised as a concern during interviews.
S59 (d)	Trustees shall ensure that proper membership and financial records of the scheme are kept.	Trustee	As for S59 (c)
S54 (4)(a)	Trustees should ensure that membership data is provided by Employers in a timely manner.	Trustee	In relation to employers registered with the scheme, there are procedures in place to obtain timely and accurate information from employers.
Data Protection Act 1988 & 2003	Trustees should ensure that data protection legislation is complied with and that all records are kept secure from unauthorised access.	Trustee	An information officer is employed by the scheme to control the flow of information. Information is shard with CIMA for membership compliance purposes.
S59 Code of Practice	Trustees should establish and maintain a bank account to receive contributions, paying benefits etc. Scheme funds must be identifiable and must be kept separate from sponsoring employers.	Trustee	Yes
S60 & S25	Trustees must ensure that the Scheme is registered with the Pensions Board and that fees are paid.	Trustee	Yes
S28 & S29	Trustees must ensure that necessary arrangements are in place in the case of early leavers for the preservation of benefits in accordance with the Act and Regulations and the REA.	Trustee	As for S59 (c)
S34	Trustees must ensure that necessary arrangements are in place for the effecting of transfer payments in discharge of their obligations to pay preserved benefits.	Trustee	As for S59 (c)

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S42	Trustees must ensure that Actuarial Funding Certificates are prepared within the prescribed intervals and are submitted to the Pensions Board within the prescribed timescale.	Trustee	Yes
S56 (1)(b)	Trustees must cause actuarial valuations to be carried out within prescribed intervals and reports prepared on the results of these actuarial valuations.	Trustee	Yes. We have only had sight of draft actuarial valuation report.
S55 SI 349/1998 Articles 4 & 6 & Schedule A & B	Trustees must ensure that a Trustee's annual report (TAR) containing information in accordance with Regulations is prepared at prescribed intervals.	Trustee	Yes. No major omissions vis-à-vis the disclosure requirements under the Act.
	The TAR must be made available to the prescribed persons under the Act.	Trustee	Yes. We have not confirmed that all prescribed persons were forwarded notification or copies of the TAR within the required timescale.
S54(1) SI 349/1998 Article 8	Trustees must ensure that specified documentation and information on the Scheme is made available to members and other specified persons. Essentially access must be provided to any documents constituting the Scheme and its rules.	Trustee	Yes
S54(1) SI 349/1998 Article 9 & Schedule C	Trustees are obliged to disclose certain scheme information to members (and on request to other specified persons) in accordance with the Regulations noted here. Essentially a booklet must be issued to all new entrants within 2 months of joining the Scheme, with any material alterations in these disclosures notified within 4 weeks.	Trustee	Yes. We have not verified that timescales have always been met. The contents of the booklet contain no major omissions.

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S54(1) SI 349/1998 Article 11 & Schedule D	Trustees are obliged to disclose certain individual information to members in accordance with the Regulations noted here.	Trustee	Yes. Some of the information is provided automatically and some on request.
S54(1) SI 349/1998 Article 12 & Schedule E	Trustees are obliged to disclose certain information on individual benefits & options on termination of relevant employment in accordance with the Regulations noted here.	Trustee	It would appear that there is a timing issue here as the Trustees are not generally aware of the change of status until well after the member leaves service i.e. outside the Statutory period. The Trustees use a practical expedient by defining a date of leaving long after receipt of the last contribution. The sample benefit option statement letter is not fully compliant, but contains no major breaches.
S54(1) SI 349/1998 Article 13 & Schedule F	Trustees are obliged to disclose certain information on individual benefits & options on the retirement or death of a member or beneficiary in accordance with the Regulations noted here.	Trustee	Trustees confirmed that the processes exist to provide the information.
S54(1) SI 349/1998 Article 15 & Schedule G	Trustees are obliged to disclose certain information on individual benefits & options to the non-member spouse in the event of a Pension Adjustment Order being made in accordance with the Regulations noted here.	Trustee	No evidence to suggest non-compliance
S69	Trustees must ensure that the Scheme complies with the principle of equal pension treatment as set out in the Act. Rules must be changed to comply (is this true or does Act simply override).	Trustee	Yes

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S79	The principle of equal treatment must be applied in exercising any discretions.	Trustee	Yes
Part VIII	This covers compulsory and voluntary reporting to the Board.	Relevant Persons	We cannot comment on this. As far as we are aware, there has to date been no reporting to the Board.
S132	The Trustees must ensure that an IDR procedure is in place. The Ombudsman will determine disputes of fact or law in relation to an Occupational Pension Scheme.	Trustees	Yes
Family Law Acts 1995 and 1996 S12 & S17 respectively	Trustees must ensure that the necessary arrangements are in place for the purposes of complying with the pensions provisions of the legislation following the grant of a decree of separation or divorce.	Trustee	Yes
Protection of Employees (Part-Time Work) Act 2001 All	Trustees should be aware of any funding implications for the Scheme resulting from the admittance of part-time employees.	Trustee	Not clear but unlikely to be relevant
Protection of Employees (Fixed-Term Work) Act 2003 All	Trustees should be aware of any funding implications for the Scheme resulting from the admittance of fixed-term employees.	Trustee	Not clear, but unlikely to be relevant.
S58A (1)	Employers must remit employee contributions deducted within 21 days of the end of the month in which they were deducted.	Employer	Not in general. Some larger Employers may be complying but we do not have evidence.
S58A (3)	A statement of the amount deducted must be given to the employee.		As above.

Compliance Area	Compliance Obligation	Responsibility Centre	Compliant? Yes/No/Not clear
S78	Employers must comply with the principle of equal treatment in relation to access to pension schemes.	Employer	Yes, based on the documentation provided. We cannot tell whether and to what extent employers are discriminating in terms of which members have access to CFOPS and which do not.
S79	The principle of equal treatment must be applied in exercising any discretions.	Employer	Yes, based on the documentation provided.

Appendix D

Documents provided for pensions, legislative and regulatory review

1 Scheme Documents

- Trustee Annual Report for year ending 31/12/2002
- Trustee Annual Report for year ending 31/12/2003
- Report on Actuarial Valuation as at 31/12/2003
- Second Definitive Trust Deed and Rules dated 16/5/1994
- Summary of Rules and Benefits (Jan 2004 version)
- Pension Scheme Benefits Leaflet (Jan 2005 version)
- AVC Booklet (July 2004 version)
- Sick Pay Scheme (Jan 2005 version)

2 Forms

- Employer registration form
- New member registration form
- Deed of adherence to the CFOPS
- Sample letter issued to new members
- Sample member statement & member reply form
- Sample leaving service benefit statement
- Sample letter to member about unpaid pension contributions
- AVC application form & standing order request
- Member complaint form under Internal Dispute Resolution (IDR) procedure
- Notice of determination under IDR procedure

3 Other Documents

- Report on CFOPS Scheme Review (Aug 2001)
- Outline of CFOPS & Summary of Scheme Review
- Compliance with the Registered Employment Agreement
- Pensions Board correspondence with Trustees, one union & auditor.
- CIMA operating procedures
- Registered Employment Agreement
- Registered Employment Agreement variation order 1994

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