

Pensions Ombudsman ■ Fear an Phobail um Pinsin

Annual Report 2004



Pensions

OMBUDSMAN

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Annual Report of the Pensions Ombudsman, 2004

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Pensions Ombudsman Annual Report 2004

1



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Mission Statement

To investigate and decide, in an independent and impartial manner, on complaints and disputes concerning occupational pension schemes and Personal Retirement Savings Accounts (PRSAs).

Table of Contents

Foreword	4
Section 1 – Introduction	5
Section 2 – Summary of Activities in 2003	6
Section 3 – Summary of Activities in 2004	9
Section 4 – Caseload Summary & Statistics 2004	12
Section 5 – Lessons Learned	15
Section 6 – Conclusion	22
Section 7 – Financial Accounts	23
Appendices	24

O

Pensions Ombudsman Annual Report 2004

3

Foreword



A Aire,

I am pleased to present my first Annual Report for a full year as provided for under Section 144 of the Pensions Act. As you are aware, I presented a brief report last year which covered the period from my appointment in April 2003 to the end of that year and its contents have also been summarised in this report.

The progress made since the setting up of the Office has continued throughout 2004. This success is due in no small part to the support that I continue to receive since my appointment, from yourself, your predecessor Mary Coughlan, T.D. and from your staff at the Department of Social and Family Affairs: notably from the Planning Unit, who are my liaison with the Department, but also from Facilities Management, IS Services, Personnel, Accounts branch and others who have helped me along the way to getting this Office established. I am very grateful for this co-operation, which is vital to the success of this Office.

The caseload of the Office steadily increased during the year 2004, and indications are that this trend is likely to escalate during 2005. I will comment later in this report on the sources of some of the increase. I will also remark on some of the lessons that I believe can be learned from the investigation of complaints and disputes to date. In addition, as promised, I have produced with this report a digest of cases which I hope will prove helpful

and informative to complainants and complaint handlers alike. The identities of complainants and respondents have been withheld, as it is my decision that the privacy of certain individuals should be protected.

I wish again to record my appreciation of the co-operation that I and my staff receive from colleagues at the Pensions Board where the Board has been involved in cases that I now have for investigation, and where access has been granted to the Board's files and databases.

Finally, I wish to record my appreciation of the dedication and hard work of my own investigators and support staff, who have contributed so much to the ongoing success of this Office.

Beir beannacht,

Paul Kenny

Pensions Ombudsman

June, 2005

Section 1

Introduction

As this is the first report of the Office of the Pensions Ombudsman for a full financial year, I have set out briefly the events of the “short” year 2003, covering the period from my appointment in April 2003 to the end of that year. The main body of the report records financial information and developments under various headings concerned with the running of the Office, together with comments on the casework undertaken and a number of important issues that have arisen in the course of this work, some of which may have implications for future policy and regulation. I have drawn particular attention to a number of recurring problems and areas where I consider that there is room for improvement in the administration of pension schemes.

In the course of the year, I have come across situations which involve breaches of the Pensions Act and of other legislation. While it is not within my remit to police compliance with the Pension Act, it is my policy to inform the Pensions Board of apparent breaches if I believe them to be of a sufficiently serious nature to warrant further scrutiny by the Board. Similarly, it is the policy of this Office to draw to the attention of the appropriate authorities any breaches of legal or other regulatory requirements where these breaches constitute an abuse, or threaten the security of the members and other beneficiaries of occupational pension schemes and PRSAs.

From a practical point of view, reporting all breaches of the Pensions Act is unlikely to be helpful. At present, the only sanction open to the Pensions Board for breaches of the Act is criminal prosecution. Realistically, therefore, the Board must devote its resources to prosecuting the most serious or blatant breaches or cases of repeated offending. It is my considered opinion that a system of civil penalties should be made available to the Board, to enable it to deal with offences of a minor nature which, although they do not perhaps pose a major danger to the rights of scheme beneficiaries, should nevertheless be discouraged. Such a system is already available to the Financial Services Regulator, IFSRA.

Although the question has not yet arisen in practice it is also my policy, in cases where respondents to complaints fail to co-operate with an investigation by this Office, to initiate prosecutions under the terms of the Pensions Act, if I believe that deliberate obstruction of an investigation is being attempted.

Section 2

Summary of Activities in 2003

Appointment

I was officially appointed to the position of Pensions Ombudsman on the 28th April, 2003. At the time, the legislative framework for the operation of the Office was not complete, and formal operation could not begin until Regulations, in the form of Statutory Instruments Nos. 397 and 398 of 2003, were made on 2nd September, 2003. These Regulations set 2nd September 2003 as the starting date for my Office.

Preparatory Work

Office accommodation was sourced by the Department of Social and Family Affairs on my behalf but considerable refurbishment work was needed as the offices had been in temporary occupation by various bodies over a number of years. The work had to be completed quickly to allow us to occupy the offices by mid-August, in time for the formal opening on 2nd September. Office equipment was ordered, including furniture, computers and a telephone system. In all, a total of €160,000 was spent in renovating the office during 2003.

In the meantime, design work went ahead on a logo for the Office and a website. I also began drafting information booklets which were published early in 2004. In addition, a new case management system was developed to facilitate logging and tracking of complaints. This was achieved with the assistance of personnel in the IT Unit of the Department of Social and Family Affairs.

Recruitment of staff also took place. Jean O'Toole, Higher Executive Officer, and Clerical Officers Martina Brennan and Michelle O'Keefe came on secondment from the Department of Social and Family Affairs in June/July 2003. Kevin Lonergan, Principal Officer, was appointed as Head of Investigations in September 2003 and Gerard Hughes, Assistant Principal, was appointed as investigator in October 2003. Recruitment of two further investigators would take place during 2004.

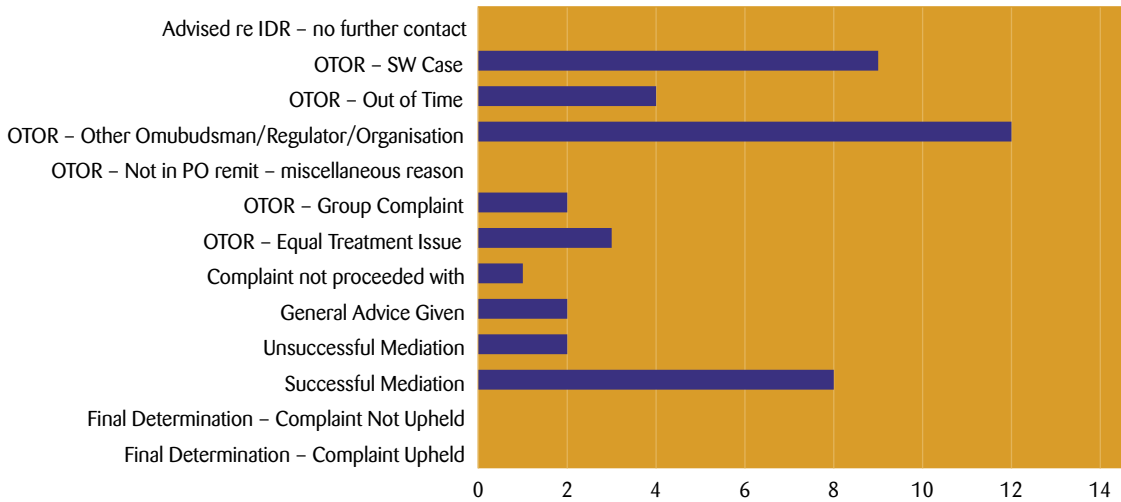
Throughout this period there was extensive contact with other Ombudsman Offices in Ireland and the UK, as well as with Regulators, pensions industry bodies, professional associations and others.

Complaints Handling

Prior to official opening, a total of 53 complaint files were opened. In the four months between 2nd September 2003 and the end of the year, a further 102 complaints were received, giving a total of 155 complaint files for the year. Of these, 30 (19%) were outside the terms of reference of my Office, with the vast majority of these relating to complaints which were more proper to other Ombudsman Offices or Regulators. This was perfectly understandable in the first year of operation of a new complaint handling body as there was a certain degree of confusion about the role and remit of the Office. However, things became clearer over time as information campaigns and the promulgation of information literature began to impact on the general public. While a number of complaints (10) were solved by mediation, no final determinations were made during the short first year of operation. Several investigations were close to being finalised and there were 112 files still open at the end of the year. Some 53% of complaints received related to private sector occupational pension schemes and 46% related to public service schemes. We received only one complaint relating to a PRSA during 2003.

Figures 2.1, 2.2 and 2.3 present statistical information on complaints received during 2003 and summaries of some of these complaints are included in the Digest of Cases published with this report. Further statistics for 2003 are included in the statistical analysis later in this report.

FIGURE 2.1 – FILE CLOSURES BY REASON DURING 2003



Note: IDR – Internal Disputes Resolution
 OTOR – Outside Terms of Reference
 “Unsuccessful Mediation” indicates that the original issue raised by the complainant was not resolved to his/her satisfaction.
 “Successful Mediation” indicates that the original issue raised by the complainant was satisfactorily resolved.

FIGURE 2.2 – COMPLAINTS BY SCHEME TYPE 2003

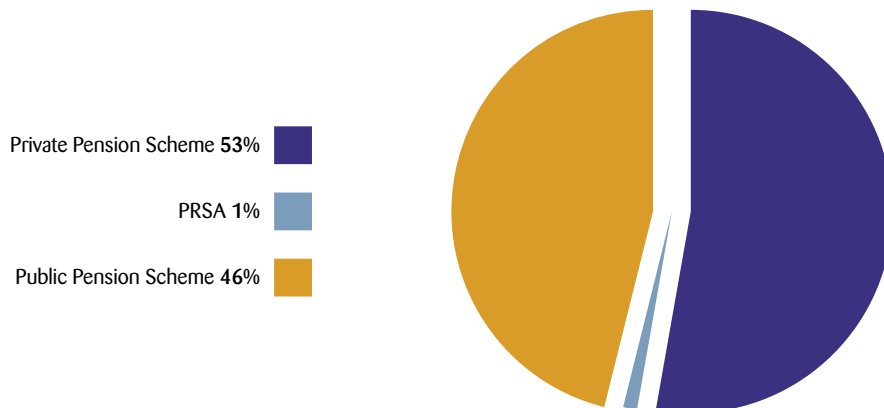
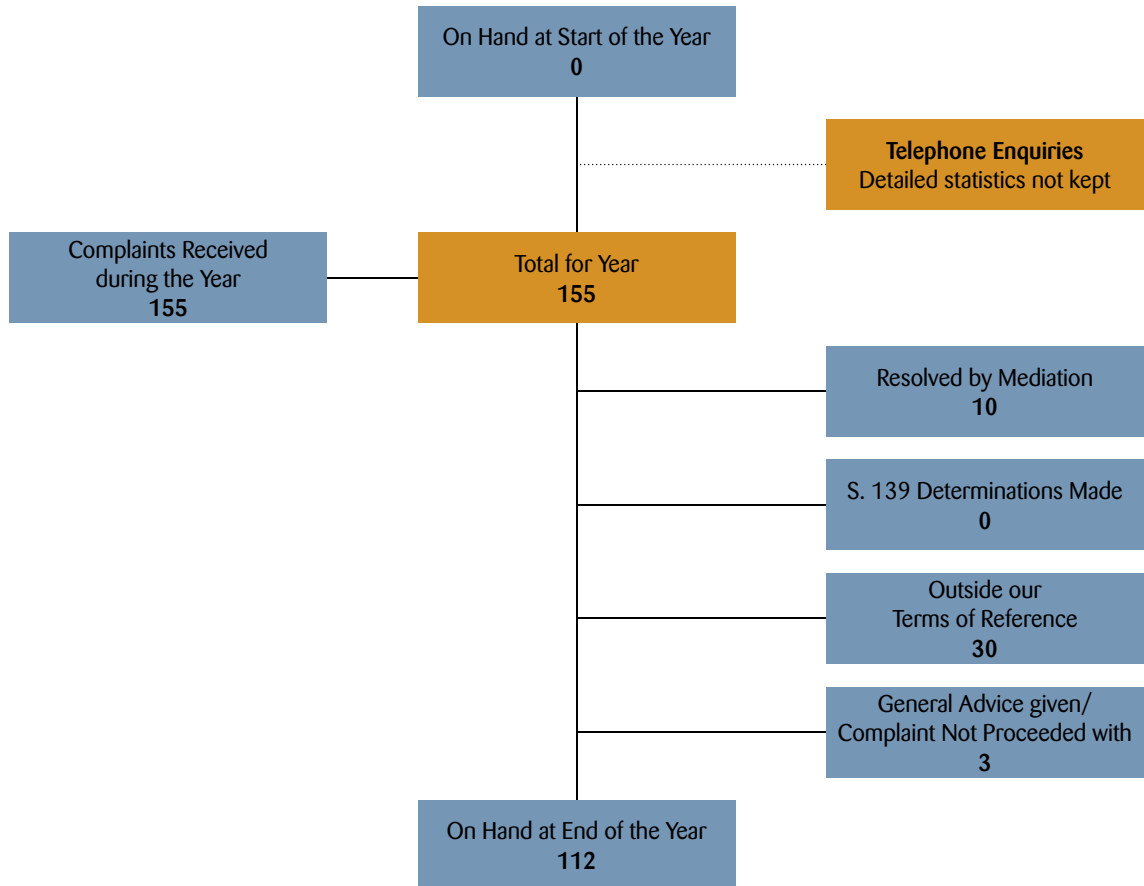


FIGURE 2.3 – WORKFLOW SUMMARY 2003



Section 3

Summary of Activities in 2004

One of my priorities for 2004 was to complete the recruitment process involved in getting a full staff complement in place. The staffing levels authorised for the Office provided for an investigative team comprising a Head of Investigations and three investigators. However, at the end of 2003 only the Head of Investigations and one investigator were in place. The recruitment of the two additional investigators was done through the Civil Service and Local Appointments Commission and my Office was one of the first bodies to benefit from the revised recruitment structures put in place in the civil service under 'Sustaining Progress' to allow for external recruitment at senior level. As a result, Joan Bray and Caitriona Collins were appointed as investigators with the rank of Assistant Principal. Both had previously worked in pensions in the private sector and their arrival brought to the Office a balance of experience comprising both public and private sector pensions knowledge. This brings the Office to its present authorised strength. However, staffing levels must be kept under constant review as current trends in new complaints suggest increasing demand for our services, and complainants, quite rightly, expect a timely decision on their complaints. Until we have more experience, we will not be able to make a realistic assessment of staffing requirements for the longer term. What I can say at this stage is that, in the early days of 2005, the number of complaints being received each week is at about twice the level for the corresponding period of 2004.



Staff of the Pensions Ombudsman's Office

As could be expected, some of the early complaints came with a significant case history, having previously been investigated by the Pensions Board and/or through detailed appeals systems within the schemes themselves, and these cases can take a considerable amount of time to process. I hope that some of the newer cases may prove less time-consuming. Although we measure and record "average" times for processing investigations, this can be misleading as every case has its own peculiar characteristics.

Statement of Strategy

A Statement of Strategy covering the period 2004-2006 was published in January 2004 which sets out my role and functions and also sets clear objectives for the foreseeable future. This was an important development as it helped to focus attention on the core functions of the Office and assisted in the adoption of a Mission Statement and a set of criteria for interaction with both complainants and respondents. To be successful, any strategy must be able to adapt to changing conditions. So while the Strategy Statement falls due for formal review in 2007, it is in fact kept under ongoing review.

Information

Quite an amount of time is spent by my staff in providing individual information to members of the public. For example, over 1,300 telephone queries were dealt with during 2004. People telephone and call to the office to discuss their problems – often to explore whether they have a genuine complaint, or whether the complaint that they have identified should be made to me at all. A good deal of time can be spent in trying to isolate the exact nature of a complaint. This can often result in referring the complainant for Internal Dispute Resolution (IDR), if appropriate, or advising them to approach the trustees of the scheme, another Ombudsman, a Regulator or a government agency with the problem. It is apparent that quite a lot of people find it difficult to identify whom to approach with their

complaint. This raises issues about the quality and timeliness of information being provided to members of pension schemes. It is clear that there is room for improvement in this area. I am happy to note that the Pensions Board is currently considering the adequacy of regulations governing disclosure of information and that new regulations may be introduced soon.

On a more general level, we concentrated on raising awareness of the Office during 2004. Our website, www.pensionsombudsman.ie, was developed for us in-house by the Department of Social and Family Affairs and won an award for the effectiveness of its design. The site was further developed and added to during 2004. We used a small amount of advertising and placed articles in various pension publications and other journals. I also wrote a regular column for "Irish Pensions News", the journal of the Irish Association of Pension Funds. In addition, my staff members worked alongside the Pensions Board during Pensions Awareness Week which involved a number of public information sessions in various parts of the country. Presentations have been made to various professional and representative bodies, including the Irish Association of Pension Funds, the Irish Institute of Pensions Managers, the Insurance Institute of Ireland, the Institute of Certified Public Accountants, the Senior Citizens' Parliament, SIPTU Retired Members' Section and others.

The production of booklets explaining the role and function of the Office was a priority. Three booklets were launched in January, 2004 – the first containing information for complainants; the second, for those charged with Internal Disputes Resolution; and the third, for respondents to complaints. In line with the policy which I adopted from the outset, the text of all booklets is in both Irish and English.

These booklets have been distributed to public libraries, Citizens' Information Centres, Social Welfare Offices

and trades unions, as well as to the industry generally and to agencies involved with the elderly, and are also made available at the conferences and other functions attended by myself and representatives from my Office.

International and National Contacts

As well as making contact with the various organisations already mentioned, I have had discussions during the year with the Public Service Ombudsman, the Insurance Ombudsman of Ireland, the Consumer Directorate of IFSRA and the Department of Social and Family Affairs. Discussions have also taken place with the Revenue Commissioners, the Pensions Board, the UK Pensions Ombudsman, the UK Pre-Retirement Association and the Pensions Management Institute. These meetings have been invaluable to me in learning from the experience of other organisations in dealing with consumer issues.

I am a member of the British and Irish Ombudsman Association (BIOA), and members of my staff participate fully in its work, and sit on the various interest groups which deal with different aspects of an Ombudsman's work. I have found that participation in the activities of this very dynamic Association has been very worthwhile. The main objectives of BIOA are to:

- a) encourage, develop and safeguard the role and title of ombudsmen in both the public and private sectors;
- b) define, publish and keep under review criteria for the recognition of ombudsman offices by the Association;
- c) accord recognition publicly to those persons or offices in the United Kingdom and its dependent territories, the Channel Islands, the Isle of Man, and the Republic of Ireland who satisfy the defined criteria for recognition;

- d) formulate and promote standards of best practice to be met by ombudsmen in the performance of their duties; and
- e) hold meetings, conferences and seminars, publish information and engage in all such other activities as may improve public awareness of recognised ombudsman schemes and encourage their efficiency and effectiveness.

Training

In line with the commitment in the Statement of Strategy targeted training has been provided to staff of the Office on an ongoing basis. This has included technical training in pension related areas, as well as continuing instruction in the different areas of information technology and other training courses identified in consultation with staff members. In addition, the investigators routinely attend the meetings of the Irish Association of Pension Funds and its Trustee Forum, as well as other relevant industry-sponsored meetings. They have also participated in formal trustee training courses. During late 2004, a joint training programme was designed in collaboration with the Pensions Board, the Department of Social and Family Affairs and the Revenue Commissioners, to deliver occupational pensions training to staff of all four bodies. This training has already started, and the full course will be delivered by November 2005.

Section 4

Caseload Summary & Statistics 2004

This has been the first full year for the Office and the annual statistics cannot, therefore, be meaningfully compared with 2003. However, some comparisons are appropriate and will be commented on below. Overall, 112 files were brought forward from 2003 and a further 297 new complaints were received during 2004. Of these, 122 files were closed during the year, leaving 287 on hand at the end of the year. Of the 122 files closed, detailed examination of the complaints found that 59 (48%) were outside my terms of reference. This was for a variety of reasons e.g., 13 were found to be “out of time” and 19 related to Social Welfare matters, with a further 16 falling within the remit of another Ombudsman or Regulator.

Final Determinations under Section 139 of the Pensions Act were made in 23 or 19% of cases during 2004. Of these, only 7 complaints were upheld, the balance being rejected. However, this does not mean that we only finalised 23 cases. A major part of the work of the office involves mediation of complaints. Thirty three cases were solved during 2004 by this process of mediation or intervention and 22 (67%) of these resulted in a payment or other form of redress to the complainant.

During 2004, 78% of complaints were brought by men as compared to 22% by women. This is an interesting statistic as the Labour Force Survey for 1997 reports that 39% of women are employed and the Pensions Board report that 44% of women in the workforce have a personal or occupational pension scheme in place compared to 55% for men. One might expect the gender breakdown of complaints to be more even, but many women are relatively recent entrants to pension schemes, and the majority of those already collecting pensions are men. Pensioners accounted for more than 50% of all complaints received.

Private occupational pension schemes accounted for 59% of the complaints received compared to 53% in 2003; 41% were from the public sector compared to

46% in 2003; and there were no complaints relating to PRSAs. The number of public sector complaints registered, however, is not a good measure, as a single complaint may often conceal large numbers of other members affected by a decision or interpretation of a scheme rule, who may not have complained yet.

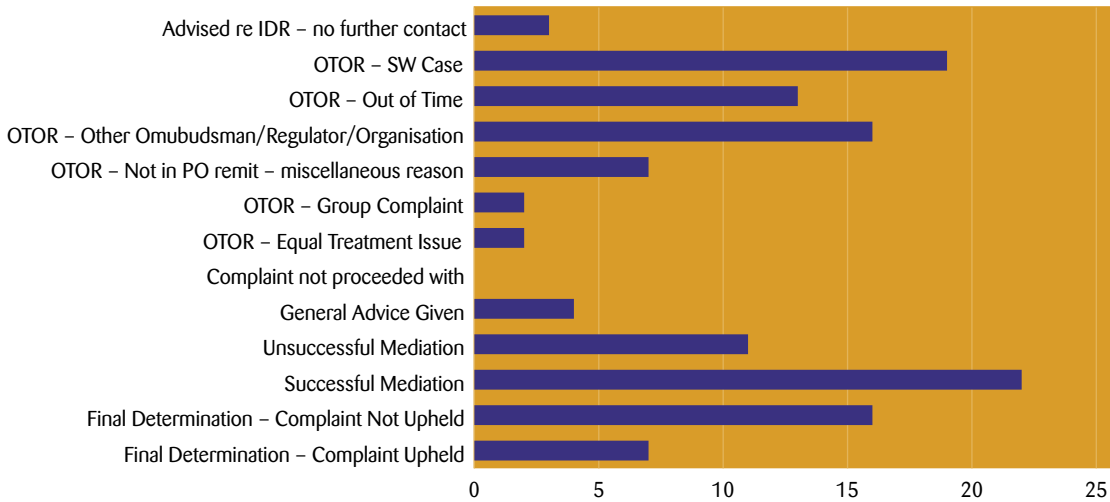
Determinations and the Preliminary View

A great many of the complaints that come to this Office do not result in a formal determination. A considerable number can be brought to resolution between the parties, either in the course of Internal Disputes Resolution, or during an investigation, where intervention from this Office can provide a framework for settlement.

I am particularly pleased about the number of cases which have been resolved as a result of intervention by this Office, without the need of a final determination. It is preferable if a case can be resolved to the satisfaction of all parties concerned without my having to issue a determination.

Where a full investigation has taken place I normally issue a preliminary view before I make a final determination on the complaint. This sets out the material facts of the case as they have been uncovered, and contains an indication of what my final determination will be. Complainants and respondents are then given a few weeks in which to respond to the preliminary view. This sometimes results in new submissions or even in new evidence being discovered, which I then take into account in making my final determination. I believe that this process, although it does prolong the total duration of an investigation, is useful to all concerned, and is conducive to an equitable outcome to complaints.

FIGURE 4.1 – FILE CLOSURES BY REASON DURING 2004



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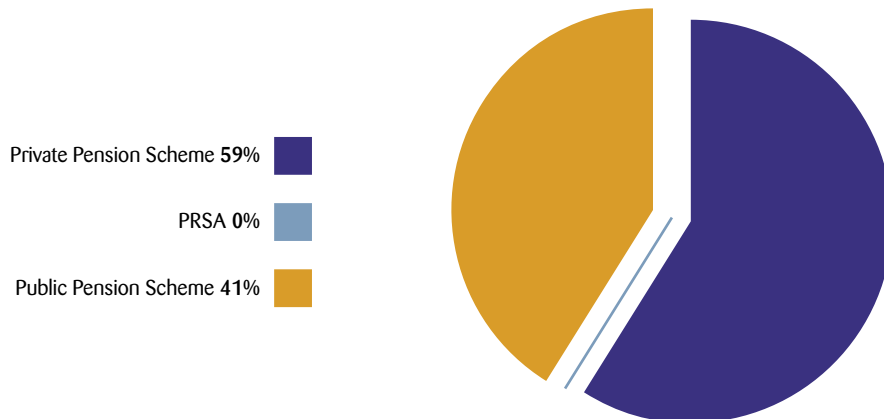
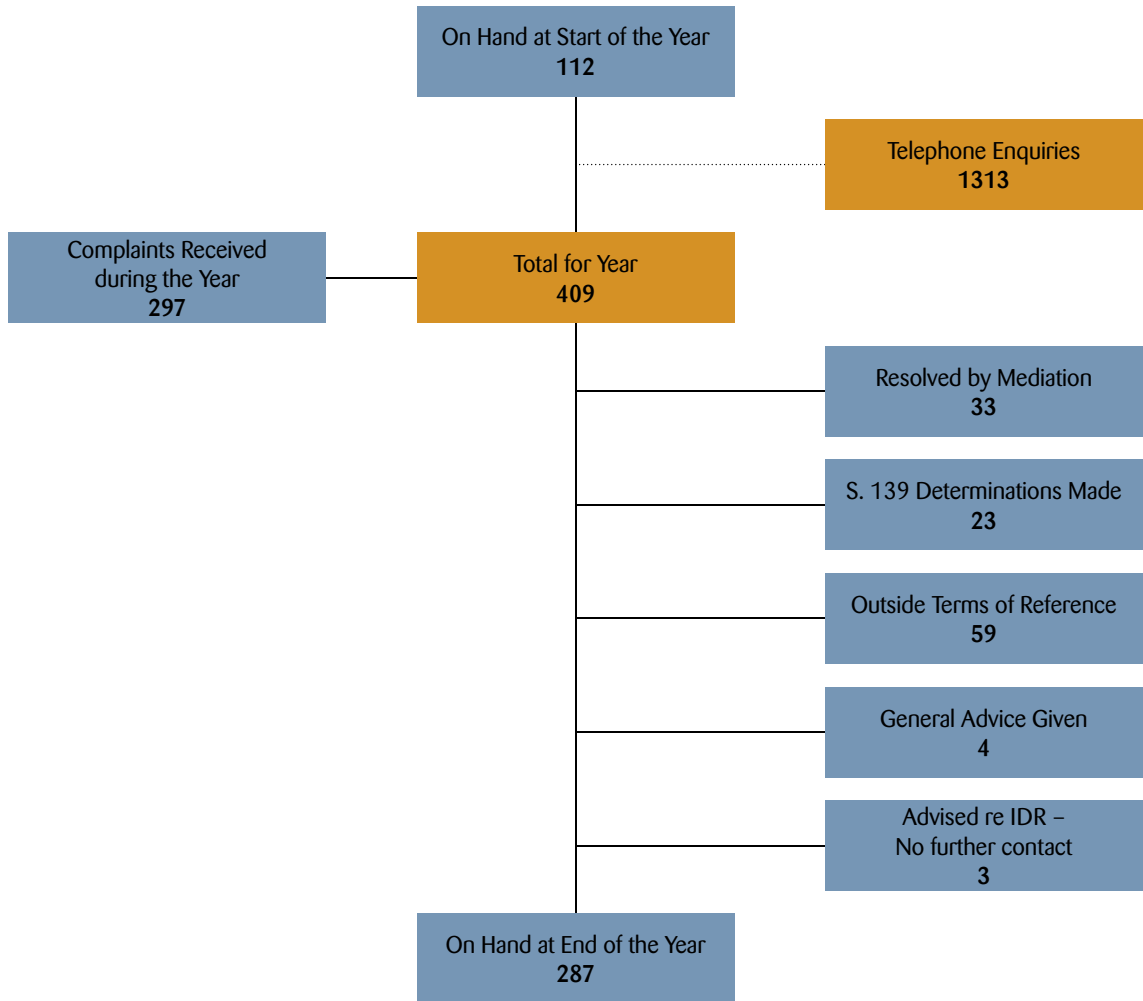


FIGURE 4.3 – WORKFLOW SUMMARY 2004



Section 5

Lessons Learned

When a new venture of this nature is being started, it is impossible to foretell what the workload is likely to be. Anecdotal evidence from the Pensions Board experience indicated that there was likely to be a strong demand for the Pensions Ombudsman service, but the nature and quantity of the complaints made was difficult to anticipate. Nor was it possible to predict a number of practical problems that actually did arise when it came to investigating complaints. The following observations are made from the experience of the first full year of operation. Some of what I have to say concerns structural issues arising from the requirements of the governing legislation. I will also comment on some important issues which arise directly from the numbers and types of complaints received and the areas in which they have arisen.

Structural Concerns

INTERNAL DISPUTES RESOLUTION (IDR)

The first obvious problem arose from the requirement in the Pensions Act for a complaint to be put through an IDR process before I could investigate it. The Regulations in effect exempted certain complaints from this requirement. For example, complaints that had already been investigated by the Pensions Board, prior to the establishment of my Office were exempted, as it was felt unnecessary in this situation to put complainants through a process more appropriate to the start of an investigation. Secondly, those complaints arising in schemes already in winding-up, or where schemes were frozen with no participating employer still trading, were exempted, as it was considered inappropriate that assets of such schemes should be consumed in an IDR process rather than being distributed to beneficiaries.

The IDR process was deliberately made non-prescriptive, allowing trustees to select a method of dealing with complaints that was appropriate to the size and circumstances of their schemes. This meant that existing arrangements could be allowed to remain in place and, in particular, the process of appealing to a Minister in public sector schemes could be maintained.

However, no specific provision was made to deal with deliberate obstruction of the process by delaying, or failing to complete, IDR. Legal proceedings could, of course, be considered by the Pensions Board under Section 3 of the Pensions Act but this might not be the best solution for the complainant who is looking for an impartial and timely hearing of his complaint. It was also becoming apparent that certain areas of the public sector were unable to implement IDR procedures in the time-frame allowed by the Regulations – i.e., three months from the date on which they had the information necessary to consider the complaint. This is particularly frustrating in cases where the nature of the initial complaint relates to delays in making payments or in providing information in the first place! In this respect, the worst offenders to date are certain sectors of the Health and Education services, although I have come across similar situations in the private sector. I have also noticed that in some areas of the public service there seems to be reluctance to come to any decision without first consulting the Department of Finance. This may be because the necessary expertise is not available locally. Whatever the reason, pushing every problem at a single Department is unlikely to improve the chances of meeting the statutory deadline.

I have therefore asked the Minister, as part of a forthcoming revision of the Regulations, to make a provision which would allow me to proceed with an investigation without a formal determination in cases where it is apparent that the IDR process will not be completed within a reasonable time-frame.

Another area where IDR causes unnecessary delay is in multi-employer schemes, where complaints of maladministration lie, very often, against a participating employer rather than against the scheme itself. I am currently considering possible solutions to this problem.

It is difficult to tell how many problems are actually solved by the IDR process. We do not know how many complaints actually go through this process and never reach my office. We can track the cases that come to our notice and which are specifically referred back for IDR, but otherwise we have no idea how many cases are solved at that stage of the proceedings. However, a significant number of complainants who were referred to IDR have made no further contact with my Office. The information that we have been able to gather would indicate that IDR is a worthwhile requirement.

I would, however, ask trustees to take special care in framing Notices of Determination at the end of the process. I am aware of one or two cases where the language used in a determination has had the opposite effect to that intended – far from reassuring the complainant, it made matters seem worse than they already were.

JURISDICTION

As already mentioned, quite a few complaints are brought to my notice which fall outside my terms of reference, and these are routinely referred on to whatever Ombudsman, Regulator, professional body or State agency that may be appropriate.

During the year I identified one area which was outside my jurisdiction but, apparently, not within anyone else's either. This is the case of the Retirement Annuity set up under trust, by groups representing the majority of those self-employed people engaged in a particular trade or profession. Individual Retirement Annuity Contracts (also called Personal Pensions) are insurance contracts

and therefore within the jurisdiction of the Insurance Ombudsman of Ireland. However, most of the trust schemes do not use insurance as an investment medium and, notwithstanding their trust-based constitution, neither are they occupational pension schemes within the meaning of the Pensions Act.

While it would be easy to bring complaints about such schemes under my jurisdiction, wider considerations arise in connection with these arrangements – as, for example, the extent to which their members should be given rights to information and other matters similar to those conferred by the Pensions Act on members of occupational pension schemes. I understand that this matter is under consideration by the Minister.

TIME LIMITS

The limitation imposed by the Pensions Act on my ability to “look back” at alleged acts of maladministration that took place before my appointment has caused a certain amount of concern. Briefly, the earliest date to which I can look back is six years before the passing of the Pensions (Amendment) Act, 2002, which was 13 April 2002. At the time when the Bill was being considered in the Oireachtas, various Members went on record as being anxious to facilitate submission of complaints by certain individuals and groups. At the time, the Minister felt that I had some discretion in the matter of time limits. Legal advice since received has led me to draw the line quite strictly in relation to old complaints. It is not a satisfactory position as far as complainants are concerned; yet most of these complaints would be time-barred if it came to taking action through the courts and, since my determinations can be appealed to the High Court, there is some logic to the restriction.

At the same time, I would like to record my appreciation of the co-operation shown by many firms involved in the pensions industry in dealing with this issue. In some of these old cases, they have agreed to examine the complaints made, knowing that I could not make a determination; and to take appropriate action in any instance where the complaint was justified.

Matters Arising from Complaints

INTERVENTION/MEDIATION

As will be apparent from the statistics in this report, a great many complaints do not result in a formal determination by me. Some are solved by intervention or mediation between this Office and the parties concerned. A number of these interventions have resulted in full redress being given for financial loss sustained; and, in several instances, of additional compensation being offered to complainants for the trouble to which they have been put – something which I do not have the power to order the respondents to do.

Professional Indemnity Insurance

I wish to extend my thanks to those in the industry who have taken an open-minded approach to complaints, and who have shown willingness to consider the possibility that an error might have occurred. There is, however, one issue that I have come across which concerns me. This relates to the nature and administration of the Professional Indemnity Insurance cover of certain practitioners. This tends to manifest itself in an instant and comprehensive denial of liability – and even of proven facts – rather than a willingness to confront the possibility of error. This, in turn, leads to a very legalistic approach being adopted, prolongs the process of investigation (and of securing redress for the complainant) and can result in confrontational situations with this Office. There seems, in these cases, to be a failure to understand what an Ombudsman is here to do – to secure financial redress where maladministration has occurred, from the entity which actually committed

the act of maladministration – not from those with whom legal liability may technically rest (which, in most cases, would be the trustee).

Because my determinations may be appealed to the High Court, there may be a temptation to treat my investigations as if they must inevitably lead there. The desire to take a legally correct approach is therefore, to a degree, understandable. But where the amounts involved and/or the circumstances of the complainant make recourse to the Court a logical impossibility, this approach is difficult to justify. In these situations I would prefer if a more flexible and co-operative approach could be adopted by those concerned.

DISCLAIMERS

I would like to say a word about disclaimers. Many complaints that I receive are part of a broader agenda, possibly involving the dismissal of a complainant from employment. If there has been any failure or error in connection with the administration of pension benefits, it may be difficult to dissociate this from the circumstances of the termination of service. In many termination cases, employees may sign disclaimers, either at the time of leaving service, or in the course of a later settlement. Such disclaimers routinely absolve the employer of liability and the employee usually forgoes all claims that he may have against the employer.

One such disclaimer was used in a serious attempt to prevent an investigation of a complaint. There have been a few more half-hearted efforts to do so. Disclaimers which purport to relieve an employer of liability have no effect on the responsibilities of pension scheme trustees, or even of employers insofar as they have statutory or fiduciary duties imposed by the Pensions Act or other legislation, or by trust law in general. Employees cannot forgo benefits preserved by law. It is difficult to forgo entitlements under a trust, and most disclaimers that I have seen would not be effective in

this area. I regard it in general as a waste of my time and that of respondents to maintain claims of immunity from investigation based on such documents.

PUBLIC SERVICE PENSIONS PARITY

One area relating to public service pensions in which a great many complaints have arisen relates to pension or pay parity. The principle of pay parity is well established in public service pension policy. Pay parity policy is that pensions are increased in line with relevant pay increases applicable to serving staff, and such increases are effective from the same dates as the pay increases. All general pay increases (e.g. increases under national pay agreements) are applied as a matter of course. Special pay increases (i.e. increases pertaining to specific grades or posts) are normally also applicable to pensions subject to the following conditions:

- the increase must apply to all staff serving in the grades or posts concerned
- assimilation of serving staff to the revised pay scales must be on the basis of “corresponding points” (i.e. not on “starting pay on promotion” or “re-grading” terms)
- the increase must not have been awarded in consequence of a substantial restructuring or alteration of duties which, in effect, constitutes regrading of the posts or grades concerned
- the increase must not have been awarded in respect of increased productivity from serving staff
- the increase must be a permanent feature of the pay scale.

There are, therefore, certain rules which apply to these increases. In addition there are prescribed methods for dealing with particular situations, e.g. where posts have been abolished or re-graded etc. However certain

principles apply almost universally – for example, that increases in pay resulting from a productivity agreement made after an individual’s retirement are not passed on to that individual.

Some of the complaints that I have received have involved disputes as to whether increases granted to serving staff can be deemed to be general pay increases, which would apply to pensioners, or productivity increases, which would not. Similar complaints have arisen regarding the regrading of posts. In quite a few cases, complainants did not understand that, in general, productivity increases are excluded under parity rules. In other cases, elements of total pay – typically, allowances of various kinds – were made pensionable after the complainant retired, but without retroactive effect. In this situation pensioners comparing their pensions with current “pay” for the job often feel that they have been unfairly treated or even that they have, in effect, been demoted, even though the strict letter of the rules is being observed.

Many of these disputes arise because pensioners may have an expectation arising out of what they understand as “pay”. This confusion has increased following the introduction of the Programme for Competitiveness and Work (PCW). Under the PCW, productivity agreements became a more common feature of public sector pay settlements than they had been in the past. In general, pay increases granted on the basis of these productivity agreements do not translate into pension increases and pensioners have difficulty in understanding this. I believe that there may be an over-reliance on the ability of pensioners to interpret regulations, and not enough effort in ensuring that retiring employees actually understand what they can expect. It is not reasonable to expect pensioners to appreciate without guidance that what may be “pay” for one purpose may not be regarded as pay for another.

A great deal more effort needs to be made to ensure that people who retire have a clear understanding of their entitlements. Regulations which seem admirably clear to those used to dealing with pension scheme rules can be completely incomprehensible to those who are not. This type of ‘information gap’ was highlighted by the Commission on Public Service Pensions, which commented in its final report that public service schemes have not experienced the same level of investment in terms of administration and technical support as many of the larger funded private sector schemes. It noted that the public service pension administration system is largely geared towards the calculation and payment of pensions, rather than the management of information or communication of benefit entitlements and scheme options. The Commission recommended, and I now further endorse, the implementation of an active policy of pension scheme communication, involving the provision of user-friendly documentation, annual benefit statements and other general scheme information literature.

Discretionary increases under pension plans

A number of complaints concern pension increases outside the area where pension parity is the norm, and where the “normal” pension increases, for one reason or another, have not been granted. In some cases, post-retirement increases are discretionary, and pensioners have found it hard to understand why increases that they see as customary are not now being granted. In most cases this is directly attributable to the funding crisis in which many defined benefit schemes now find themselves – the consequence of which is that any pension increase would have to have its full capital value covered by a cash injection, if the general level of solvency for other members is to be sustained.

Particular difficulties arose in a case where, traditionally, the employer had extended the benefits of productivity savings to retired staff. Over many years, post-retirement increases were met out of the employer’s current revenue and were not reflected in its balance sheet as a capitalised item. Some years ago, the liability for all post-retirement increases was transferred to the pension fund, which now simply cannot afford to pay new increases based on productivity deals without being pushed into insolvency. There is no simple solution to these problems. However, I would again recommend that better information should be provided to members so that they can at least understand what is happening.

COMMUNICATION ISSUES IN GENERAL

Poor communication is not peculiar to public service pension schemes. In the private sector, too, poor communication has led to a great many complaints. Although Disclosure Regulations under the Pensions Act prescribe the information that must be given to scheme members and other beneficiaries in different circumstances, the poor quality and lack of clarity and precision in many communications is all too obvious. Trustees, administrators and employers need to understand that what is required by the Regulations is only the necessary minimum and that mere compliance with these requirements is no guarantee of effective communication. Greater use of plain English should be encouraged and I have come across examples of this which are to be congratulated. However, far too often it is clear that benefit statements and other communications issuing from trustees and administrators represent the “old school” approach to pension communications. Additional investment in effective communication could greatly reduce the number of complaints that trustees and their administrators have to deal with and would also serve to promote member and consumer confidence in pension products.

DELAY

A number of complaints involved delay. Some concerned loss due to delays in receiving payment. Others involved delays in administering benefits, during which time members' funds were left invested in assets whose value was falling on a daily basis. A crucial issue in relation to this type of complaint was often deciding where the trustees' duty of care lay. Deciding on this often revolved around the degree of control exercised by the member over investment matters and – crucially – on the quality and timeliness of the information made available to him or her.

One particular area giving rise to many complaints is delay in notifying members of the cost of buying “added years” or of buying back service which was previously not pensionable in certain areas of the public service. Delays running into years in this area are not unknown. These delays can often result in financial penalty for members of the scheme as a result of having, for example, to contribute more money in a shorter time, and can also result in the loss of tax relief. There is no excuse for delays of this sort. Unfortunately, these delays are most common in those areas of the public sector that seem to have most difficulty in completing IDR in a timely manner, as mentioned above.

COMPENSATION FOR FINANCIAL LOSS

Any award of financial compensation for loss is limited by Section 139 of the Pensions Act to the amount of the loss actually sustained. It is my practice to include, in any amount awarded, compensation for the fall in the value of money between the date on which payment was or should have been made, and the date on which the compensation is paid. I normally calculate this by reference to the Consumer Price Index.

As the law stands, no compensation can be awarded for expenses, such as professional fees for advice, that might be incurred by complainants in the pursuit of their rights before bringing their complaints to me – however necessary it might have been for them to incur such expenses. I believe that redress under the Pensions Act should be broadened to allow for expenses such as might *reasonably* be incurred – for example, by a lay person confronted by a particularly hostile or intransigent attitude on the part of those against whom a complaint is being brought in the first place.

MALADMINISTRATION WITHOUT FINANCIAL LOSS

I have come across a number of cases where there has been obvious maladministration by the administrators of the scheme, but where there was no direct financial loss to the member. In some of these cases, members were put to considerable inconvenience, to say nothing of having to go through the IDR process and so on. Unlike my UK counterpart, I cannot make any award for this inconvenience. Again this is an issue that needs to be considered further in the future.

There was one case where maladministration resulted in a net gain to the complainant. An insurance company had failed to collect a sizeable fraction of the premiums due under a direct debit mandate. This occurred when markets were falling and we found that, had the money been correctly collected and invested, the fund would have been worth less than it was! In this case the insurance company concerned offered the complainant a small ex-gratia payment, which she was happy to accept.

CONSTRUCTION FEDERATION OPERATIVES PENSION SCHEME

It is worth saying a few words about a single scheme which is generating a large number of complaints. In the latter end of 2004, an increasing number of complaints were received about the Construction Federation Operatives' Pensions Scheme (CFOPS). CFOPS was set up by the Construction Industry Federation to meet the legal requirements of a Registered Employment Agreement, which in turn provides that each employer to whom the agreement applies shall become a party to a contributory scheme, approved by the Revenue Commissioners, to provide pension & mortality benefits for construction industry workers. The CFOPS has been approved by the Revenue Commissioners as a bona fide pension scheme for the purposes of the Taxes Consolidation Act 1997 and is considered to be a defined benefits scheme for the purposes of the Pensions Act 1990. I should make it clear that, so far, none of these complaints has concerned the conduct of the scheme itself, but rather the actions – or failures – of certain employers in relation to the scheme. The complaints include allegations of failure to deduct and pay over contributions due to the scheme; failure to register eligible employees; failure to remit contributions already deducted from employees' pay (which is an offence carrying criminal sanctions under the Pensions Act); unethical practices in which workers are forced to pretend to be self-employed – thus avoiding, not only CFOPS contributions, but PRSI obligations as well. Two determinations were made during 2004 concerning employees who had died, and who were not, but who should have been, covered by the scheme. In both cases the employer was found to be liable for the mortality benefit. At the time these deaths occurred the scheme death benefit was €20,000. It has since been increased to €63,500. I cannot understand how employers are willing to take the risk of having to pay this amount as a result of failure to register a member in the scheme.

The number of these complaints is increasing as we enter 2005, and I have no doubt that many more will come to the surface in the future. There is evidence of systematic non-compliance by certain employers in this industry. Where membership of CFOPS is not offered, it is rare that any alternative pension provision exists, and it is clear that, in most of these cases, PRSA obligations under the Pensions Act have not been honoured either. It is my intention, in any case where I believe that the law has been broken, to refer the matter to whatever authority may be appropriate in the circumstances of the case, so that prosecution can be considered.

Section 6

Conclusion

I hope that the contents of this report will prove informative to its readers. Where there are issues of policy arising, or improvements that I believe could be made to the system, I will bring these to the specific notice of the relevant Ministers. I will also draw attention, in the area of public service pensions, to a number of issues which have been brought to my Office, which highlight inflexibilities in the area of scheme design and communication, which makes the system less responsive to the needs of a modern and flexible public service workforce than it ought to be.

By definition, an Ombudsman's Annual Report will highlight where things have gone wrong and identify the remedies that are necessary to correct these errors. I am convinced that a large part of the value of an Office such as this is that lessons can be learned and action taken to ensure that the risk of similar errors in the future is diminished. However, this is not to say that everything is wrong in the administration of pension schemes. I take comfort in the fact that experience to date suggests what has gone wrong is outweighed many times over by what has gone right.

However, we must always look forward, and with the commitment, honesty and integrity – and an openness to admit mistakes – that I know exists among the vast majority of those involved in pension scheme administration and policy making – we can look forward to a better-run, more efficient and transparent system of pension administration in the future.

Section 7

Financial Accounts

The Exchequer through the Department of Social and Family Affairs funds the Office of the Pensions Ombudsman.

The Office acknowledges the ongoing support of the Department of Social and Family Affairs in relation to its accounts and payroll obligations.

The costs of running the Office in 2003 and 2004 are as set out in Table 7.1.

TABLE 7.1 – COSTS OF RUNNING THE OFFICE IN 2003 AND 2004

	2003 ¹ €	2004 €	Change
Overall Running Costs	341,582	500,892	+ 47%

A more detailed account of expenditure in 2003 and 2004 is provided in Appendix 8.

The financial statements of the Office have been submitted to the Comptroller & Auditor General for audit in accordance with Section 143(2) of the Pensions (Amendment) Act 2002.

¹ The Pensions Ombudsman was appointed on 28th April, 2003 and costs for 2003, therefore, cover the period from 28th April, 2003 to 31st December, 2003.

Appendix 1

Office of the Pensions Ombudsman

Staffing 2004

Paul Kenny
Pensions Ombudsman

Kevin Lonergan
Head of Investigations

Gerard Hughes
Investigator

Joan Bray
Investigator

Caitriona Collins
Investigator

Jean O'Toole
Office Manager

Martina Brennan
Clerical Officer

Michelle O'Keeffe
Clerical Officer

Appendix 2

Breakdown of Complaints 2003 & 2004 by County

2003

By County	Total
Carlow	2
Cavan	1
Clare	5
Cork	17
Donegal	1
Dublin	65
Galway	2
Kerry	0
Kildare	4
Kilkenny	3
Laois	2
Leitrim	0
Limerick	7
Longford	1
Louth	5
Mayo	5
Meath	2
Monaghan	0
Offaly	1
Roscommon	1
Sligo	4
Tipperary	3
Waterford	4
Westmeath	3
Wexford	4
Wicklow	3
Australia	1
United Kingdom	3
Address not known	6
Overall Total	155

2004

By County	Total
Carlow	5
Cavan	0
Clare	6
Cork	38
Donegal	7
Dublin	100
Galway	11
Kerry	5
Kildare	12
Kilkenny	6
Laois	2
Leitrim	3
Limerick	11
Longford	0
Louth	3
Mayo	8
Meath	13
Monaghan	2
Offaly	5
Roscommon	1
Sligo	3
Tipperary	15
Waterford	8
Westmeath	1
Wexford	7
Wicklow	14
New Zealand	1
Spain	1
United Kingdom	5
United States	2
Address not known	2
Overall Total	297

Appendix 3

Nature of Complaints 2003 & 2004

Nature of Complaint 2003	Total	%
Outside terms of reference	30	19%
Disclosure of information	19	12%
Post-retirement increases	17	11%
Calculation of benefits	13	8%
Incorrect/late payments	10	6%
Contribution refunds	8	5%
Failure of scheme to respond	8	5%
Preservation of benefits	6	4%
Additional voluntary contributions	5	3%
Membership/entry conditions	5	3%
Transfers values	5	3%
Equal treatment issue	4	3%
Not determined	4	3%
Calculation of years of service	3	2%
Early retirement	3	2%
General enquiry	3	2%
Incorrect information resulting in financial loss	3	2%
Mis-selling	2	1%
Spouses' and dependants' benefits	2	1%
Defined Benefit V Defined Contribution	1	1%
Ill health	1	1%
Remittance of employee contributions	1	1%
Use of surplus	1	1%
Winding up	1	1%
Total	155	100%

Nature of Complaint 2004	Total	%
Outside terms of reference	51	17%
Post-retirement increases	50	17%
Failure of scheme to respond	29	10%
Membership/entry conditions	23	8%
Calculation of benefits	17	6%
Remittance of employee contributions	17	6%
Disclosure of information	14	5%
Incorrect/late payments	14	5%
Additional voluntary contributions	10	3%
Transfers values	10	3%
Calculation of years of service	8	3%
Spouses' and dependants' benefits	8	3%
Early retirement	7	2%
Winding up	6	2%
Preservation of benefits	5	2%
Contribution refunds	4	1%
Incorrect information resulting in financial loss	4	1%
Mis-selling	4	1%
Payment of employer contributions	4	1%
Ill health	3	1%
Use of surplus	3	1%
Commutation of pension	2	1%
General enquiry	2	1%
Defined Benefit V Defined Contribution	1	0%
Equal treatment issue	1	0%
Total	297	100%

Appendix 4

Case Flow Summary and Time Analysis of File Closures 2003 & 2004

Case Flow Summary

	2003	2004
On Hand at Start of Year	0	112
Received During Year	155	297
Total for Year	155	409
Closed during Year	43	122
On Hand at End of Year	112	287

Summary of File Closures

	2003	2004
No. of Files Closed	43	122
Average Weeks to Close	4.92	13.16
Longest Weeks to Close	30.00	54.86
Shortest Weeks to Close	0.00	0.00

Decision Reason

Final Determination – Complaint Upheld	0	0%	7	6%
Final Determination – Complaint Not Upheld	0	0%	16	13%
Successful Mediation	8	18%	22	18%
Unsuccessful Mediation	2	5%	11	9%
General Advice Given	2	5%	4	3%
Complaint not proceeded with	1	2%	0	0%
OTOR* – Equal Treatment Issue	3	7%	2	1.5%
OTOR – Group Complaint	2	5%	2	1.5%
OTOR – Not in PO remit – miscellaneous reason	0	0%	7	6%
OTOR – Other Ombudsman/Regulator/Organisation	12	28%	16	13%
OTOR – Out of Time	4	9%	13	11%
OTOR – SW Case	9	21%	19	16%
Advised re IDR* – no further contact	0	0%	3	2%

File Closures Made

Less than 5 weeks	29	53
5 - 10 weeks	5	13
10 - 15 weeks	4	8
15 - 20 weeks	1	12
20 - 25 weeks	3	5
25 - 30 weeks	0	8
30 - 35 weeks	1	6
35 - 40 weeks	0	4
40 - 45 weeks	0	2
45 - 50 weeks	0	2
Greater than 50 weeks	0	9

* OTOR – Outside Terms of Reference * IDR – Internal Dispute Resolution

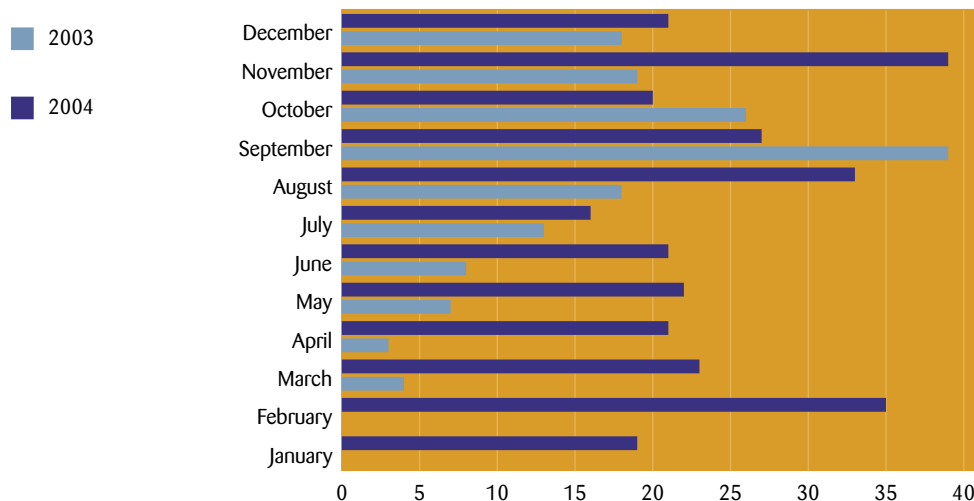
Appendix 5

Number of Complaints Received by Month during 2003 & 2004

	2003	2004
January	0	19
February	0	35
March	4	23
April	3	21
May	7	22
June	8	21
July	13	16
August	18	33
September	39	27
October	26	20
November	19	39
December	18	21
TOTAL	155	297
Average per month	13	25

	2003	2004
1st Quarter	4	77
2nd Quarter	18	64
3rd Quarter	70	76
4th Quarter	63	80
Total	155	297

COMPLAINT FILES RECEIVED PER MONTH



Appendix 6

Governing Legislation

Pensions Act, 1990

Pensions (Amendment) Act, 2002

Social Welfare (Miscellaneous Provisions) Act, 2003

Statutory Instrument 397 of 2003

Statutory Instrument 398 of 2003

Statutory Instrument 399 of 2003

Appendix 7

Publications of the Office

- What can the Pensions Ombudsman do for you?
- Disputes Resolution Procedures –
Guidance Notes for Trustees and Administrators
- Instructions and Guidance for Respondents
- Statement of Strategy 2004-2006
- Understanding Pensions –
The Friendly Guide to Pensions¹

All publications are available free of charge on request to the Office

¹ *Understanding Pensions* was written by Paul Kenny in a private capacity and publication was sponsored by the Department of Social & Family Affairs as part of a National Pensions Awareness Campaign during 2004. Copyright is by the Retirement Planning Council of Ireland and the Irish Association of Pension Funds, Dublin.

Appendix 8

Expenditure in 2003 and 2004

Office of the Pensions Ombudsman
 – Abstract* of Payments
 in the years ended 31 December, 2003
 and 31 December, 2004

	2003 ¹	2004
	€	€
Expenditure		
Staff Costs	129,074	379,547
Printing/Postage/Telecommunications	8,685	29,287
Incidental Expenses	20,534	56,005
IT & Office Equipment	43,339	9,003
Office Premises Expenses	139,950	27,050
	341,582	500,892

* The financial statements of the Office have been submitted for audit to the Comptroller & Auditor General and after audit will be presented to the Minister for Social and Family Affairs for presentation to the Oireachtas.

¹ The Pensions Ombudsman was appointed on 28th April, 2003. Expenditure for 2003, therefore, covers the period from 28th April, 2003 to 31st December, 2003.