

# Office of the Pensions Ombudsman - Annual Report 2010

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## FOREWORD

A Aire,

I am pleased to present my Annual Report for 2010, the seventh complete year of operation of the Office of the Pensions Ombudsman.

The work of the Office has continued to develop and progress, while the number of new complaints recorded in 2010 has levelled off from the high volume of 2009.

The analysis of our caseload for the year is detailed in Section 3. What is not represented in these figures, however, is the large number of enquiries and informal requests for information and clarification that the Office receives from members of the general public. These are not necessarily specific issues of complaint but a voicing of concern, unease or uncertainty about their pension benefits. In many instances members seek clarification of their rights and entitlements in the changing circumstances of their pension schemes, or an explanation of some communication whose implications they could not understand.

The downturn in the economy through 2010 unfortunately resulted in job losses and company closures, with resultant termination of pension schemes. Many defined benefit schemes were wound up or altered because of deficits that arose from investment under-performance and other factors. Public service employees were concerned at the impact the “pensions levy” and salary reductions would have on their pensions as well as the implications of various early retirement programmes implemented in 2010. Public Service pensioners facing reductions in their payments also voiced their concerns.

All of these areas of anxiety brought enquiries to my Office. While I have previously commented that such enquiries are not necessarily for this Office, I do acknowledge that pension scheme members might experience difficulty in getting the support they expect from employers/administrators, or that trust may have broken down between the parties. In responding to such enquiries my Office can provide an impartial view, give guidance and clarification as to member entitlements, trustee and employer obligations, and outline what the normal procedures should be in given circumstances. I believe that, particularly in these uncertain times, this is a very valuable service and one that can have the effect of reducing the number of formal complaints submitted to my Office.

There is no doubt that many complaints and enquiries arise because of poor or inadequate communication. Those responsible for administering both private and public sector pension schemes should aim for their communications to be effective, clear and understandable and afford members the facility to raise and discuss problems or concerns they may have. At the same time, I recognise that pension scheme administrators face their own pressures and resourcing issues.

I have included a “Frequently Asked Questions” section on my website to add to people’s knowledge and understanding of pensions matters. During the 2010 year there were over 900,000 “hits” on the website -- [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie) -- and I believe that many were focused on this informative section.

I will comment later in this report on the complaints we receive and on the lessons to be learned from them. The casework this year has again highlighted a couple of issues which have been referred to the Pensions Board, the Financial Regulator, and the Financial Services Ombudsman, as appropriate. I wish to record my own and my staff’s appreciation of the ongoing co-operation that exists between these bodies and my Office, the objective of which is to ensure that users of financial services receive the best service we can give.

I wish to thank you, Minister, for the ongoing support you and your predecessors in office have given to me personally and to the work of this Office. I particularly value the help and support given by the staff of your Department – the Pensions Policy Unit with which I have ongoing contact, and also the Personnel, Accounts, IS Services and Facilities Management Sections. Such support allows us to concentrate our resources where they are most needed – on the investigation of complaints. I am also grateful for the help given to us during the course of our investigations, particularly by Scope Section and Client Identity Services, all of which support is given in a spirit which completely respects the independence of the Office.

With this report I have, as in previous years, published a Digest of Cases. I hope that this will prove helpful to those involved in plan administration and complaint-handling as well as to potential complainants and to their advisors. As before, the identities of both the complainants and the respondents have been withheld, to protect privacy. Where public authorities are concerned, it is not always possible to conceal a respondent’s identity, which may be obvious from the context and the occupation of the complainant.

Finally, I am most grateful to our Director Joe Timbs, to Joan Bray, Caitriona Collins, Ciaran Creagh and John Sheehan, Investigators, Joe Dempsey, Office Manager, Michelle O’Keeffe, Investigation Support and Darina Breen and Colette Coghlan, Administrative Assistants for their continued commitment, dedication and hard work.

Beir beannacht,

A handwritten signature in dark ink, appearing to read 'Paul Kenny', with a long horizontal line extending to the left and a vertical line extending downwards to the right.

Paul Kenny

## **SECTION 1- INTRODUCTION**

The role of my Office is to investigate and adjudicate, in an independent and impartial manner, on complaints relating to occupational pension schemes, Personal Retirement Savings Accounts (PRSAs) and Trust Retirement Annuity Contracts involving maladministration and financial loss, and on disputes of fact or law, and to grant redress where appropriate. My Office also has a role in feeding back to policy makers what we learn from complaints submitted so that, where possible, necessary and desirable changes to administration systems and practices can be made.

In a continuing trend, 2010 was another tough year for pensions. The legacy of the collapse of investment markets was still being felt in the deficit position in which many defined benefit schemes found themselves and in the adequacy problems experienced by defined contribution schemes.

The first problem caused when a deficit position arises under a defined benefit scheme is the restriction placed on the payment of early retirement or other discretionary benefits. This can obviously impact badly on some members' retirement plans, born out of earlier commitments given when the scheme was solvent, to pay early retirement benefits. Scheme members facing redundancy at older ages would also have their options restricted. The payment of early retirement benefits cannot be honoured when the scheme is in a deficit position, if an employer is not in a position to inject additional funds into the scheme.

In an effort to correct a deficit under a defined benefit scheme, consideration will be given to a variety of remedies, to include increases in contributions, reduction of benefit scales, restriction on future new entrants, or amendment or replacement of the scheme to a hybrid or defined contribution basis. If a workable solution to the deficit problem is not found then the scheme would have to be frozen or, more probably, wound up. None of these scenarios is good news for scheme members, and this is particularly so for those close to retirement age.

Understandably, it is hugely worrying for members to learn that their pension scheme is in deficit and that its future may be uncertain. What often compounds their worry is the poor level of communication – amounting in some cases to no communication of any value - between the scheme authorities and the members. Many members relay their concerns to my Office. Apart from leading to an increase in the number of formal complaint cases submitted to this Office on this topic, (22 in 2010 compared with 14 in 2009), such concerns gave rise to a large number of phone and email enquiries during 2010. I would ask those administering schemes in winding-up to look to the standard of their communication with members and to allow members as much time as they reasonably can, mindful of the fact that the members may be dealing with the loss of their jobs as well as the end of their pension schemes.

We continue to receive many complaints about investment issues relating to Defined Contribution Schemes, including Additional Voluntary Contribution (AVC) Schemes and Personal Retirement Savings Accounts (PRSAs). I have commented previously to the effect that, while the Trustees must honour the obligations placed on them by trust law and the Pensions Acts, scheme members too have a responsibility in relation to their pension investments. The under-performance of investment markets over the last few years has resulted in reduced fund values for many scheme members. When such a depletion occurs, it is human nature to seek to blame “someone else”. While the members can look to the Trustees or investment advisers for guidance in the matter of their pension investments, they have a responsibility to familiarise themselves with, and understand the nature of their own pension investments and to monitor their progress. Many providers now afford access to considerable amounts of information, through the Internet and otherwise. This is of particular relevance to older members who may wish to consider safeguarding their accumulated funds in the lead-in to their retirement. It has been the experience of my office that poor communications and a shortfall in understanding are frequently the root causes of the difficulties experienced by members with regard to their pension investments.

Some investment-related complaints find their way to the Financial Services Ombudsman, after preliminary examination and consultation between our Offices to determine jurisdiction. Complaints relating to a failure to act on instructions or to invest “properly” generally fall within the remit of my Office, while complaints involving investment advice or the conduct of financial advisors acting as intermediaries may fall to the Financial Services Ombudsman to adjudicate on.

My Office continues to receive a large number of complaints and enquiries from employees in the construction industry. Many more cases are processed through the Labour Court, by the monitoring agencies, CIMA and EPACE, and the Pensions Board is pursuing employers who have broken the law by deducting contributions from employees and not remitting them to the Scheme.

Most of these complaints relate to the non-payment of pension scheme contributions. Unfortunately, the demise of many construction firms and the harsh reality of the construction industry in Ireland at the present time tends to act against the complainant. In many cases, the employees only become aware of a problem with their pension contributions after they have lost their jobs, by which time the employer may well be about to cease trading, or to go into liquidation. If the employer has ceased to trade it obviously makes the task of recouping unpaid pension scheme contributions and correcting the member’s entitlement more difficult.

During 2010 the on-going problems that existed with the administration of many Public Service Schemes were exacerbated by the introduction of various incentivised early retirement schemes.

The implementation of such schemes put a huge burden on the already over-stretched Superannuation Sections, that received little notice of these schemes and no additional staffing to assist with the huge amount of work that the schemes generated. The schemes resulted in many enquiries to my Office from members seeking clarification of their terms and implications and requesting verification of their entitlements.

However, it appears that the incentivised early retirement schemes not only created havoc for the Superannuation Sections and potential early retirees. The schemes appear to have impacted badly on members approaching their normal retirement dates, in that the administration of their retirements appears to have been side-lined in many cases for the duration of the incentivised early retirement schemes. Such members experienced even longer delays in receiving payment of their retirement benefits than had unfortunately become the norm under some Public Service Schemes. Complainants wrote of being obliged to borrow money because their gratuities and pensions were delayed by several months beyond their retirement dates.

The deadlines imposed in relation to some early retirement schemes meant that very large numbers of illustrations had to be prepared in a very short time and, in the nature of these schemes, the numbers of staff requesting information greatly exceeds the numbers who eventually decide to accept retirement. I would ask that Public Service Agencies or Bodies, when considering the introduction of an early retirement scheme, would allow a reasonable timeframe for its implementation and would put processes in place to handle the considerable amount of additional work, such a scheme generates for Superannuation and Human Resources Sections.

## **SECTION 2 – SUMMARY OF ACTIVITIES IN 2010**

### ***Cases Received***

My Office received 1,312 new cases during 2010, compared to the record number of 1,766 received in 2009. This granted a welcome easing of the phenomenal increase in case numbers recorded since 2007 but still represents an increase of 27% over the 2008 figure. Of the new cases, 558 resulted in detailed complaint files being opened during 2010, the balance being dealt with as enquiries in a relatively short period of time.

While we entered 2010 with 398 complaint files open, we ended the year with 428 on hand. A detailed analysis of caseload is dealt with in the next section of this report.

It is important to consider why the number of cases on hand has increased while the number of new cases received has reduced. Many of the types of complaint we deal with are, by nature, quite complex, involving time-consuming exchange of information and clarification of documentation. Attention to detail and clear painstaking analysis is essential to ensure, insofar as is possible, that any Final Determination which I make is not susceptible to being overturned by legal challenge. While the number of cases on hand at any one time is a useful index, the variance in the types of complaint and the amount of investigation time required has a significant impact on this number. However, leaving aside such variance, I am very aware of two factors which have contributed to the increase in the number of live cases at year-end.

Firstly, the introduction of the public service pension levy and the reduction in public service pensions in payment generated huge numbers of calls to my office. While neither of these issues falls within my remit, it would have been unacceptable to try and fob people off with a "nothing to do with me" type of attitude. People were stressed enough as it was. We had to take time to explain to people that the so-called pension levy had nothing to do with their pension but was, in effect, a pay cut. The reduction in pensions in payment created a similar "fire storm" with callers quite correctly pointing out that the Pensions Act precluded any cut to pensions in payment. However, we had to explain that the Oireachtas had passed legislation whose effect was to override the Pensions Act and legitimise the pension reduction. Dealing with these issues diverted staff from normal investigative work to a significant extent.

In addition, delays in getting responses to our queries, particularly in the public sector, were exacerbated by the various incentivised early retirement schemes being introduced. Superannuation Sections in the public sector, not generally the fastest respondents, were now completely swamped in dealing with enquiries about and applications for early retirement.

For example, the already heavily burdened Superannuation Sections in the HSE were completely overwhelmed by two staff reduction schemes:- a Voluntary Early Retirement Scheme and a Voluntary Redundancy Scheme, the latter having a relatively short timeframe for consideration, application and approval. Because two different schemes were in play and because it was necessary to produce two sets of calculations for the VRS applicants (estimate of benefit payable on redundancy and estimate of preserved benefits on reaching retirement age), almost 17,000 estimates had to be prepared. I understand that while just under 4,000 people sought estimates and detailed calculations, just over 2,000 actually left service under the schemes. Consequently, insofar as the Superannuation Sections were concerned, they had to prepare 8.5 detailed estimates for every 1 person who eventually left service. As I have said before, pension administration is a complex area and it is not possible to shove inexperienced people into the area for a couple of months to deal with this sort of situation. One knock-on effect unfortunately appears to be that the "ordinary" retirement applications got sidelined. We have been told that nurses, for example, do not expect to get their retirement benefits sorted out for a period of three months or longer after they retire. Similarly, responses to queries raised by my Office, which can be complicated, were also delayed, meaning that it took us longer to handle the cases submitted to us.

### ***Cases brought to Final Determination or Settled by Mediation***

During 2010, I issued 74 Final Determinations under Section 139 of the Pensions Act, 1990 (as amended). Of these, 27 complaints were upheld either in full or in part and the remaining 47 were disallowed. A more detailed analysis of this appears in Section 3.

Where I think it would be beneficial, I will issue a Preliminary View or Notice of Determination, in advance of a Final Determination. This will set out the main facts, as established by investigation to that point, and what my likely determination will be, based on those facts. This provides both the complainant and the respondent with a final opportunity to clarify aspects of the investigation and to present any further evidence or comments to me before I make my Final Determination. This process generally works well but adds considerably to the overall time to Final Determination. It proved to be of considerable value in a case which was appealed to the High Court. However, in the great majority of cases, the facts are clarified in the course of our investigation and I go straight to a Final Determination.

During the year, 146 cases were settled by mediation; 103 or 71% of these were settled with a result favourable to the complainant. This compares with 2009 where 77% were settled with a result favourable to the complainant. As I have previously stated, I favour a mediated approach to complaint resolution and encourage its use where appropriate. Mediation allows for more flexibility and can very often provide a quicker and more satisfying solution than can be arrived at by a Final Determination.

## ***Information***

As I indicated earlier in relation to the Pension Levy etc, my staff spend considerable time in giving information to individual members of the public. People telephone, e-mail and call into the Office to discuss their concerns. They may wish to explore whether they have a genuine complaint, or whether the complaint issue they have identified should be made to me at all. With the turmoil in the pensions industry generally:- underfunded pension schemes, closures or modifications of pension schemes etc, people feel the need to seek independent authoritative advice. While I cannot give advice to people in relation to options available to them, I can point to where they should look for advice, or comment on whether they may have grounds to submit a complaint to my Office. In 2010 we recorded in excess of 700 such telephone/e-mail enquiries on which we were able to offer guidance. The Office actually dealt with very many more telephone/e-mail enquiries, but as these were general in nature, or more expressions of concern or confusion than enquiries that fell within my remit, they have not been counted in our caseload statistics. Although the provision of information and guidance can be time consuming I believe there is a genuine need for it and am happy to support my staff in making this valuable service available to the public.

In an effort to disseminate information, to give examples of what types of complaints we handle and to reduce enquiries, I publish a “Frequently Asked Questions” (FAQs) section on my website which is updated as required. The FAQs are laid out in four sections – dealing with (i) the Office and our processes, (ii) general pension matters, (iii) private sector pensions issues and (iv) public sector pensions issues. Anecdotal evidence suggests that the FAQs section is particularly useful to the public and our website “hits” for 2010 certainly bear this out, having increased to 912,000 from the 2009 level of 628,000.

## ***Customer Charter***

Our Customer Charter is posted on our website. I have taken the somewhat unusual step of including in this a Statement on Unacceptable Behaviour by Complainants. Our Customer Charter provides that the Office of the Pensions Ombudsman aims to ensure that its services, processes and procedures are of the highest standard, are fair, clear and explicit and are implemented consistently in accordance with our Customer Charter. When a complaint is made, we deal with it in a friendly, courteous and professional manner. The Office expects the same of complainants and almost invariably this happens. There is, however, a very small number of complainants who, because of the manner of their contact with the Office, hinder *both* the consideration of their own complaints and the ability of the Office to provide a quality service to customers as a whole. I recognise that a complainant may have a genuine grievance and that being persistent can be a positive advantage when pursuing a complaint. However, sometimes it is the nature of the complainant’s actions and/or demands that can be a cause for concern and may impinge on my duty of care to staff.

## ***Promotional Activities***

Since we have dealt with almost 6,000 complaints since the establishment of this Office in 2003, it would not be unreasonable to assume that the public were well aware of our existence. However, I am advised by many complainants that they were unaware of the services provided by my Office until they personally came up against a problem with their pension. Given that I provide a service free of charge which is funded by the taxpayer, it is incumbent on me to ensure that the public know that my office is available in the case of a pensions dispute.

Consequently, I promote the Office as efficiently as possible. Possibly the first manifestation of this is our website, [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie), which can help many people determine whether I can be of assistance. However, not all are completely familiar with the electronic world and many may not have easy access to computers, particularly some of the older generation who would form the majority of my clientele. To address this, I undertake a small amount of targeted advertising, by placing articles and advertisements in various publications.

Many newspapers and magazines now produce special sections on pensions once or twice a year and I take these opportunities to submit advertising features.

A regular column is written for “Pensions Ireland” a new publication which replaced ‘Irish Pensions News’.

Details of the Office are included in the Institute of Public Administration and IAPF Yearbooks and on the Consumers’ Association of Ireland wallplanner.

During 2010, because of an increase in the number of enquiries to my office in relation to pension problems following marital breakdown, much of my print media campaign focused on this theme. It was clear to me that problems were being stored up for the future unless the issues surrounding Pensions Adjustment Orders (PAOs) were recognised and properly addressed.

A Pension Adjustment Order can be applied for by any party to a judicial separation or divorce. Essentially a PAO is a Court Order to the trustees of a member spouse’s pension scheme which instructs that the pension scheme benefits can be split between the separated or divorced spouses. In many cases, PAOs simply were not set up, despite an understanding among the separating parties as to what was to happen in the future. Many were badly drafted, were not served on trustees and were unclear as to application. Unfortunately, such errors often tend to come to light only at the time of retirement or upon the death of a spouse. By then it may be too late to rectify such mistakes. Consequently, I advised that anyone who is currently negotiating a judicial separation or divorce should have their financial and legal advisers pay particularly close attention to the area of Pension Adjustment Orders during these proceedings. Under the newly introduced Civil Partnership Act, these Orders can also be applied for by separating Civil Partners and Qualified Cohabitants.

A pension can be comprised of several individual components - some payable at or after retirement, some on death before retirement and the Court's Order must be very specific in relation to each component. In certain instances in the public sector, orders covering up to 6 different contingencies might be needed. Once the Orders are made they must be formally served on the pension scheme trustees and be capable of being implemented by them. PAOs can be applied to a variety of pension funds, not only to Occupational Pension Schemes, Personal Pension Plans and PRSAs. They can also be applied to buyout bonds, annuities in payment or "Section 785" term assurance policies.

During 2010 I gave talks to various professional and representative bodies, including the Irish Association of Pension Funds (IAPF), the Life Insurance Association (LIA), the Irish Institute of Pensions Managers (IIPM), the Ireland Spain Economic Association, the Institute of Public Administration Pension Forum, SIPTU College, IMPACT, TEEU, the Circuit Court Judges' Annual Conference, the National Federation of Pensioners' Associations and the Irish Family Law Association.

My investigators continued to build relationships within the pensions "industry", both in the public and private sectors, and attended a number of training courses during the year provided by the industry. I consider that attendance at these courses is very useful, both from a training and knowledge management perspective and as a means of publicising the role of the Office.

### ***Contacts with National and International Organisations***

As well as the contacts mentioned above, I have had ongoing discussions during the year with the Office of the Ombudsman, the Financial Services Ombudsman and the Pensions Board. My Office has maintained contact with the Consumer Directorate of the Financial Regulator and with the Department of Social Protection. Discussions have taken place with the Revenue Commissioners, the Pensions Board, the UK Pensions Ombudsman, and the Pensions Management Institute. In the course of investigations my Office has also engaged with the Companies Registration Office and the Director of Corporate Enforcement (with whom I completed a formal Memorandum of Understanding) and with the National Employment Rights Authority and the Equality Tribunal. I would like to record my appreciation of the co-operation received from all of these organisations.

Contact has also been maintained with a number of Trades Unions, with the Construction Workers' Pension Scheme, the Construction Industry Monitoring Agency, and with EPACE, which monitor compliance with the Registered Employment Agreements for the Construction Industry and the Electrical Contractors industry, respectively.

I am a member of the Executive of the British and Irish Ombudsman Association (BIOA) and during 2010 I continued to chair the Governance Working Group of that organisation. I consider the work of this Association to be a valuable resource for my Office. The main objectives of the BIOA include encouraging, developing and safeguarding the role and title of Ombudsman; formulating and promoting standards of best practice to be met by Ombudsmen in the performance of their duties; arranging meetings, conferences and seminars on appropriate topics; publishing information and engaging in all such other activities as may improve public awareness of recognised Ombudsman schemes and encourage their efficiency and effectiveness.

### ***Legislative Changes and Legal Matters***

During 2010 there were a number of changes to the regulatory framework which affected this Office and had a significant impact on its workings.

I welcomed the decision by the Minister for Social Protection to provide me with the legal power to have my Determinations enforced through the Courts. My Determinations are legally binding on all parties, subject to appeal to the High Court within 21 days. Heretofore, if a party failed to implement the terms of a Determination, enforcement was a matter for either a party to the complaint or the Minister, if he/she was of the opinion that it was appropriate to seek enforcement through the Circuit Court having regard to all the circumstances. This Ministerial power of enforcement was transferred to me earlier in the year under Section 21 of the Social Welfare and Pensions (No. 2) Act 2009 which amended section 141 (1) of the Pensions Act 1990 (inserted by section 5 of the Pensions (Amendment) Act 2002) by substituting "the Pensions Ombudsman" for "the Minister". This also required an amendment to the Rules of Court. which happened on 10<sup>th</sup> October, 2010.

In announcing this change, I stated my view that, as was the position up till then, the question of enforcement is a matter, in the first instance, for the parties involved in the complaint and it would only be in unusual circumstances that I would step in to enforce my determination. I developed criteria under which applications for enforcement will be considered and each application will be measured against these criteria. The criteria are now available on the Pensions Ombudsman's website, [www.pensionsombudsman.ie/cms/index.php?q=works/decisions/enforcing](http://www.pensionsombudsman.ie/cms/index.php?q=works/decisions/enforcing).

Unfortunately, I have to resort to court action in some cases in order to continue with the investigation of complaints. This happens predominantly in the construction sector where the complaint is that mandatory pension deductions have not been made or where they were made but not remitted to the pension scheme. In a number of cases, the employer refuses to engage with my office, presumably hoping that I will go away. This will not happen and if necessary I will get a Court Order requiring the employer to produce the documentation or information I require.

Depressingly, after a fall in the number of court cases which I initiated in 2009, I am back up to the 2008 level of 16 such Court cases for 2010. Not only does having to engage in such legal proceedings waste valuable time in my office, it delays the investigation considerably, to the detriment of the complainant. It also consumes financial resources. While we have been uniformly successful in being awarded costs against convicted employers, these awards do not adequately reflect the true cost of bringing such prosecutions. I regularly publish the details of these cases on my website and I am now finalising a comprehensive table of all legal actions involving my office which I would expect to publish on the website shortly.

### ***Memoranda of Understanding***

A Memorandum of Understanding with the Pensions Board sets out the respective responsibilities of the Board and the Pensions Ombudsman. This Memorandum can be used by staff of the Board to determine whether the matter they are investigating properly falls within the Pensions Ombudsman's remit and vice versa. It also sets out the arrangements for co-operation and exchange of information between the parties within statutory limits. This complements the memoranda already in existence with the Financial Regulator, the Director of Corporate Enforcement and the Financial Services Ombudsman. This latter memorandum is now due for review, from a technical perspective, because of changes to Central Bank legislation.

A Memorandum of Understanding also exists with the Revenue Commissioners, to give formal effect to the right to exchange information with that body. I fully intend to use the power to exchange information with the Revenue Commissioners, particularly where investigations by this Office uncover abuses of the tax reliefs given to pension schemes and any evasion of tax liabilities by anyone associated with occupational pension schemes.

A Memorandum of Understanding exists with the UK Pensions Ombudsman, and concerns the treatment of complaints and disputes relating to the Pension Scheme for the North-South Bodies established under the Good Friday Agreement. This was necessary, as the scheme is legally constituted on both sides of the Border.

### ***Public Access and Awareness***

My Office makes every effort to ensure that our services are as accessible as possible.

During 2006 the Office of Public Works (OPW) commissioned an accessibility audit on our building. This revealed that renovation work would be required to make the office building fully accessible. Unfortunately, current financial constraints mean that I will not be able to implement the recommendations of the audit in the immediate future. In the meantime, we will continue our policy of meeting with complainants who have a particular access problem, at an alternative suitable location, including their own homes if this is what is required.

I have installed a Portable Induction Loop system within the Office to aid the hard of hearing. In 2010 I had software installed on my website which will read the text for the viewer which should prove helpful for those with difficulty in reading.

### ***Training & Development***

The process of personal training and development continued for all staff during 2010. This involved technical training in pension related areas; instruction in the different areas of information technology with particular reference to our new Case Management System; and other training courses identified as part of each individual's participation in the Performance Management Development System.

### ***Staffing Issues***

I am very pleased to say that there was no change in the staffing level in the Office during 2010, which is particularly important in the context of maintaining skills and corporate knowledge.

## SECTION 3 - CASELOAD SUMMARY & STATISTICS 2010

As stated in last year's report, our new software allows us to record more accurately the number, nature and type of cases submitted to the Office.

While we record the receipt of phone and email enquiries, we do not hold much data on these, as they can generally be answered and resolved promptly. The cases where we do capture data, provide information and report in detail on are the ones that warrant more involvement by us, be that by way of an examination, mediation or formal determination process. To help differentiate between the types of cases we receive we will henceforth refer to the simpler cases as enquiries and the more detailed cases as complaints. While our work is made up of all of cases submitted to us it is important to understand the distinction between total caseload and the more detailed complaint cases of which we provide a fuller statistical breakdown in our annual report.

My Office continued to receive a high volume of new cases during 2010, with 1,312 new cases recorded. While this number is down on the 2009 level of 1,766, it still exceeds the 2008 level of new cases received by 27%.

Adding the 398 cases carried forward from 2009 to the 1,312 new cases received during 2010 meant that we had a total caseload of 1,710 for the year. During the 2010 year we closed 1,278 cases, thereby carrying forward 432 complaint cases into 2011.

Figure 3.1 below outlines the position in relation to all cases for the 2009 and 2010 years.

**Figure 3.1 - Caseload Summary**

<b>Year</b>	<b>Cases Received</b>	<b>Carried Forward</b>	<b>Total for year</b>	<b>Cases Closed</b>	<b>On hand at year end</b>
<b>2009</b>	1766	473	<b>2239</b>	1841	<b>398</b>
<b>2010</b>	1312	398	<b>1710</b>	1278	<b>432</b>

An important aspect of our work is the time taken to resolve cases. In 2010, 39% of all of the cases closed were completed within five weeks or less.

Our statistics also show a number of re-opened files. Some of these may have been the subject of a report or guidance given, where the complainant has identified a new issue, or where the true nature of the complaint was not apparent from the information originally given to us.

## Analysis of Complaints Closed in 2010

Once a complaint submission is examined at my Office a decision is taken as to which of the following is the most appropriate process to employ to bring the complaint to closure:-

- To provide a report and guidance on the matter under dispute,
- To refer the complaint to another Ombudsman or Agency, or advise that it falls outside of my terms of reference.
- To undertake to mediate between the parties,
- To engage in a formal investigation leading to a legally binding Final Determination.

There will always be complaints that do not neatly fit into any of the above-mentioned processes and such cases are listed under Miscellaneous Closures Reasons.

Of the 1278 cases closed in 2010, 555 were detailed complaint cases.

The following paragraphs present a commentary on the complaint closures and an analysis of the data, while Figure 3.2 summarises the closures in tabular form.

**Figure 3.2 –Complaint Closures in 2010**

Year	New Complaints Received	Re-opened Cases	Carried Forward	Total	Complaints Closed	On hand at year end
2009	616	20	473	1109	711	398
2010	558	31	398	987	555	432

### *Report & Guidance Given*

It is not always immediately obvious whether there are legitimate grounds for a complaint: - the true nature of the complaint may not be apparent; the party against whom the complaint might lie may not be clear; or it may not even be evident whether the matter in dispute falls within my remit. An examination of the often considerable body of evidence submitted is therefore needed to determine these matters and decide on the best way to approach and manage the matter under dispute.

Such examinations may uncover that the dispute relates to a breakdown in communication or a lack of understanding that has caused concern or worry to the complainant. In our experience providing clarification about the issue under dispute, explaining a member's entitlement or discussing a scheme procedure or a proposal under consideration can alleviate the complainant's concern and bring the matter to a satisfactory conclusion, without the need to initiate a formal investigation process. The provision of a report or the giving of guidance in such cases allows us to handle and resolve a complaint in a shorter timeframe and generally in a less formal and confrontational manner.

An examination may uncover that there are insufficient grounds for a complaint or that the matter is not one that is within my purview. For example, while maladministration might appear obvious, whether or not this resulted in financial loss might be less so. In cases such as these we provide a report, give guidance or an explanation sufficient to resolve the dispute.

While the provision of reports and the giving of guidance can take a considerable amount of time I believe this to be a valuable method of settling pension disputes and ensuring that the problems experienced by members do not escalate into full blown complaints.

Of the 555 complaints closed during the 2010 year, 203 or 37% of them were closed following an examination and the provision of a report and guidance. This is a higher percentage than applied in the 2009 year.

### ***Mediated Cases***

I have commented in previous reports on my preference for employing mediation as a means of bringing complaints to resolution. It has been our experience that mediation allows for more flexibility and can very often provide a quicker and more satisfying solution than can be arrived at by a Final Determination. In some mediated cases, providers have volunteered additional awards to complainants to recognise the inconvenience and worry they have experienced. I don't have power to make such awards, so it is satisfying when the mediation process results in an additional benefit to the person who has brought the complaint.

I am pleased to report that of the 555 complaint files closed during 2010, 146 or 26% were resolved through mediation. Of these, 103 cases were resolved to the complainant's satisfaction without recourse to the rigour of a full investigation. In the remaining 43 mediation cases, the outcome of our involvement either did not materially alter the complainant's circumstances or did not resolve the dispute in their favour.

The merits of resolving complex cases through mediation, as opposed to requiring a full investigation and determination, are apparent when viewed in terms of the length of time taken to process a case from initial receipt of the complaint to closure. In 2010, the average time taken to arrive at a resolution through mediation was 25 weeks as compared to an average of 76 weeks to the issue of a Final Determination.

### ***Outside my Terms of Reference / Referred to another Ombudsman or Agency***

Many of the complaints submitted to me are complex and multifarious. Thus, it can require a considerable amount of research and examination to discover all of the relevant facts to determine whether or not a complaint actually falls within my remit.

A total of 76 or 13.7% of the complaints closed in 2010 were found to be outside my terms of reference for various reasons. Of these, 36 were considered to fall within the remit of another Ombudsman, a Regulator or a State Agency and were duly referred to them. The remaining 40 complaints were outside my terms of reference for a variety of reasons:- some related to individual or personal pension plans or arrangements that do not come within my jurisdiction, some fell outside of the statutory time limits that apply to my Office, while in other cases no financial loss was found to have occurred.

### ***Final Determinations***

Under Section 139 of the Pensions Act 1990, as amended, I am authorised to issue legally binding Final Determinations on complaint issues. Of the complaint cases closed during the 2010 year, Final Determinations were issued in 74 or 13% of them. Complaints were upheld in 27 cases and not upheld in the remaining 47.

Our statistics show that the average length of time taken to process a complaint from initiation of a formal investigation to issue of a Final Determination was 76 weeks in 2010 compared to 90 weeks in 2009. This is just an average indication, as the length of time taken depends not only on the complexity of the case but also on the co-operation of all the involved parties in furnishing information requested in a timely manner. Other factors at play in determining the time taken to reach Final Determination are whether an oral hearing is required, whether it is appropriate to issue a Preliminary View and, of course, the need for careful drafting of determinations, given that they are legally binding on all parties subject only to appeal before the High Court.

### ***Miscellaneous Closure Reasons***

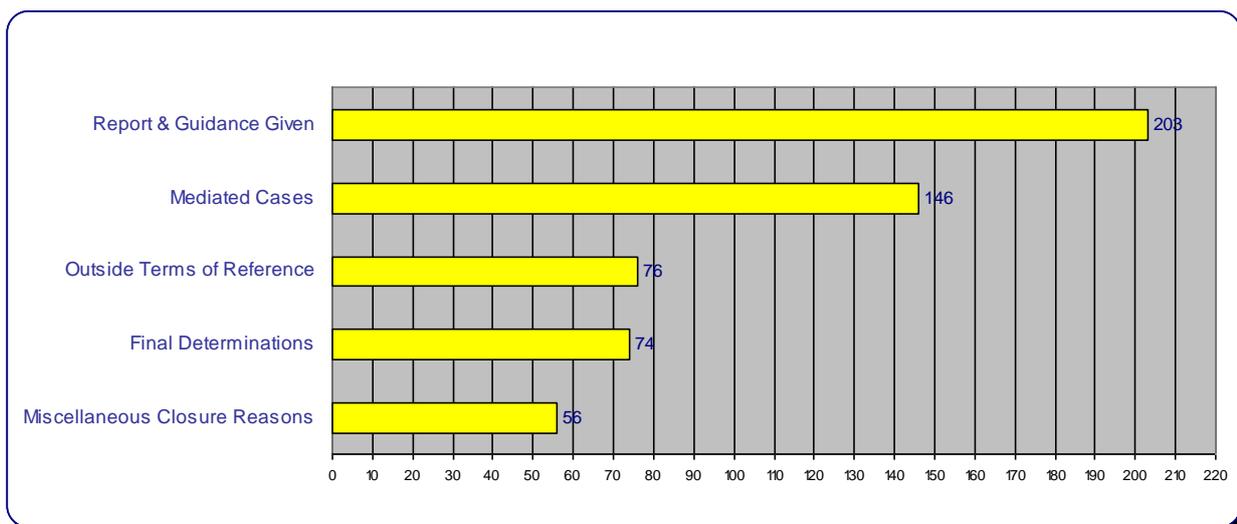
During 2010, 37 complainants, whose cases were under examination at my Office indicated a wish not to proceed with the complaint. This tends to happen where, following our initial examination, it is indicated to the complainant that the complaint is unlikely to be upheld or where the level of redress expected by the complainant is more than I am authorised to award – the Pensions Act limits awards to the “loss of scheme benefit”, and I cannot deliver damages or other forms of compensation which complainants may consider to be their due.

Generally, my Office cannot investigate a complaint or dispute until the matter has been subject to an Internal Disputes Resolution procedure (IDR). If a complaint is submitted to me that has not been considered by the scheme authorities under their IDR procedure, then I must direct the complainant to submit to the IDR procedure. There are certain exceptions to the requirement, which are published on my website and in my explanatory booklet for complainants. I also have a limited jurisdiction to waive the requirement under certain conditions.

During 2010, I directed 8 such cases to IDR. When I did not hear back from these complainants, I believe it reasonable to assume that the IDR process addressed their complaints satisfactorily.

The remaining 11 miscellaneous complaints closures represented cases that were closed following the conclusion of legal proceedings undertaken in relation to obstruction and enforcement issues.

**Figure 3.3 – Summary of Complaint Closures by Reason in 2010**

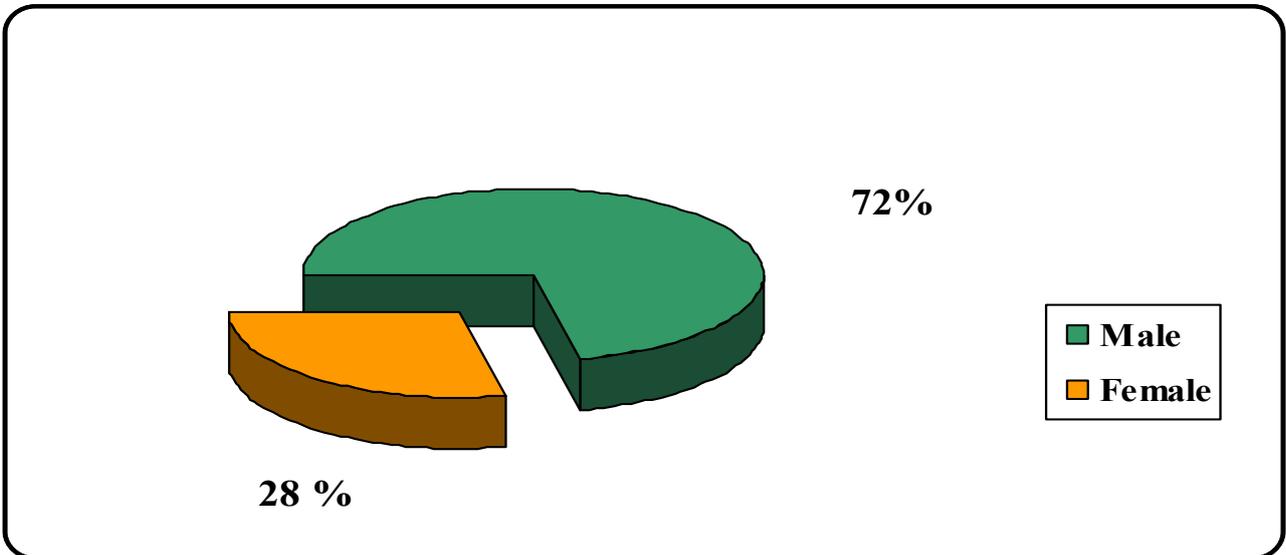


**Note**

Miscellaneous Closures include complaints not proceeded with, referred to IDR and cases closed following the conclusion of legal proceedings for obstruction or enforcement.

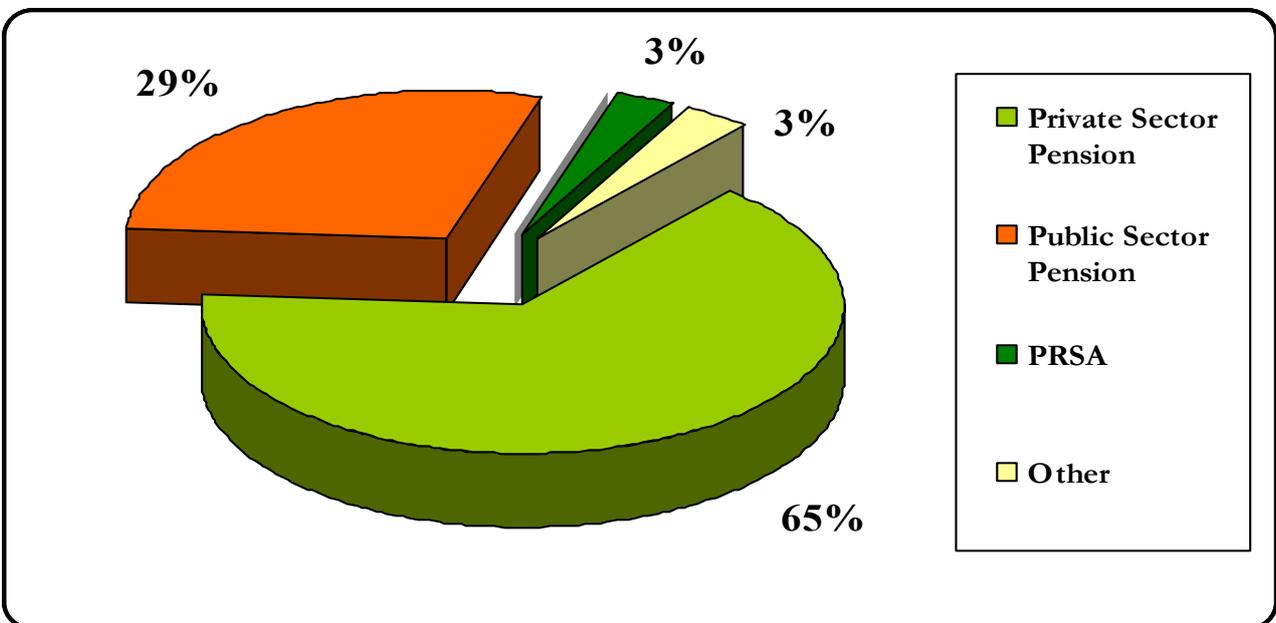
## General Statistics

**Figure 3.4 – Gender Divide in 2010**



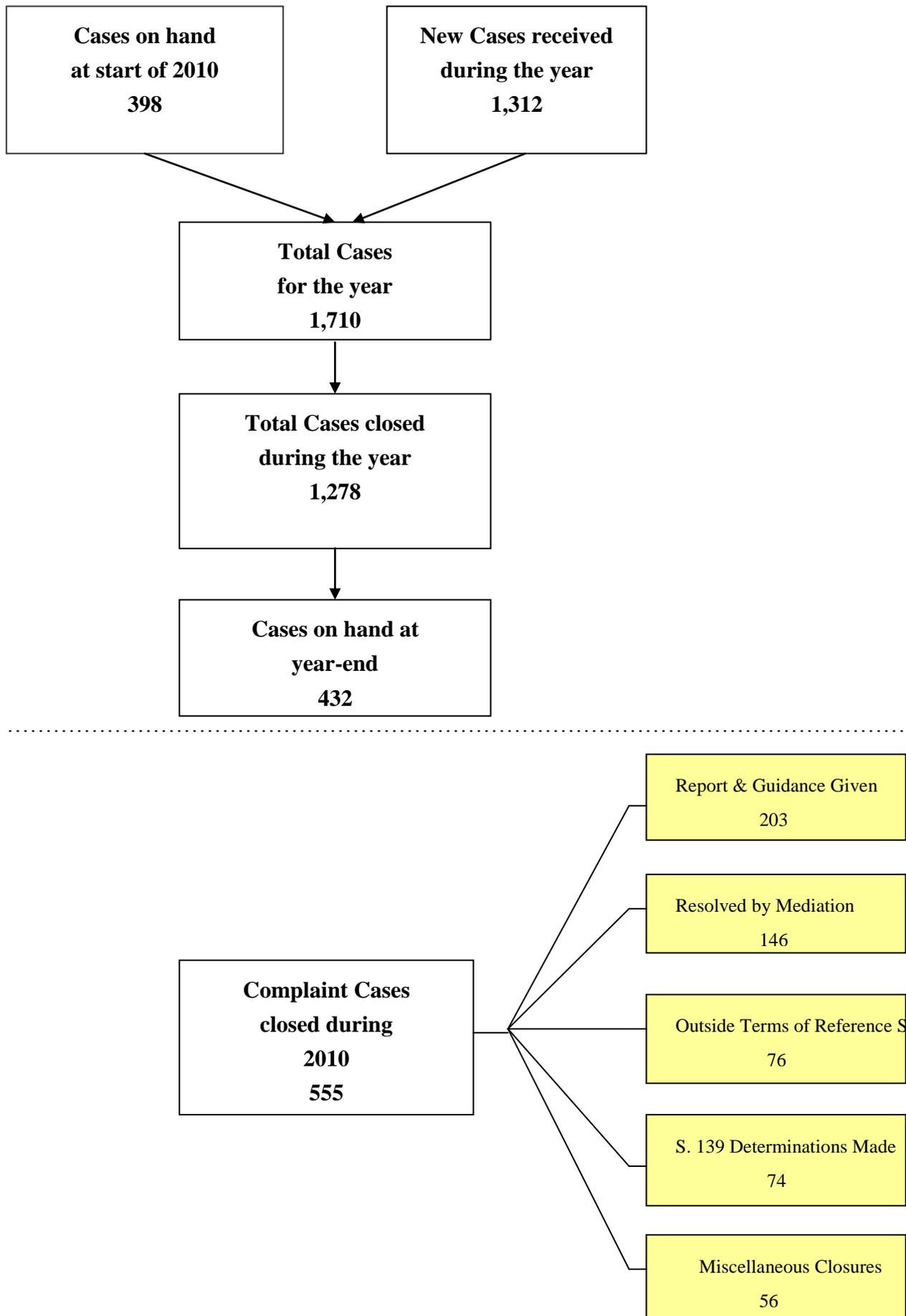
Of the new complaint cases received in 2010, 72 % were submitted by men and 28 % by women. The respective figures in 2009 were 70% and 30%.

**Figure 3.5 –Complaint Cases by Scheme Type in 2010**



The breakdown of new complaint cases received in 2010 classified by the scheme type was – Private Sector pension schemes 65%, Public Sector pension schemes 29%, Personal Retirement Savings Accounts (PRSAs) 3% and miscellaneous others 3%.

**Figure 3.6 – Workflow Summary 2010**



## **SECTION 4 - WHAT WE HAVE LEARNED**

As in the past, I have tried to pass on the learning from the various complaints that have come to my Office during the year. I therefore offer this report as a resource for those responsible for the administration of schemes so that they might avoid some of the pitfalls that these complaints represent. Another source of such learning is the Digest of Cases which I publish each year alongside my Annual Report and Accounts. Outcomes of investigations are also a significant source of information and are contained in the formal Determinations issued to complainants and respondents. In these Determinations, I often make recommendations regarding action which could be taken to avoid the recurrence of a particular problem. In addition, anything which would inform pensions policy in general is passed on to the Department of Social Protection and the Department of Finance.

### ***Public Service Pensions Administration***

I have commented previously on the unevenness of administration in public sector schemes and advocated the implementation of a Shared Services type arrangement to ensure improved accuracy and consistency in their administration. I am very pleased to note that the Government is pushing the shared services agenda through the public service transformation programme.

As referred to in Section 2, the introduction of various incentivised early retirement schemes during 2010 within the public sector and in the HSE in particular, hugely increased the workload of the already overburdened Superannuation Sections. It would appear that some of these schemes were introduced without sufficient consideration being given to the logistical requirements or adequate arrangements put in place to manage the extra burden of work they placed on the Superannuation Sections. What is particularly worrying is the knock-on effect the imposition of this extra work is reported to have had on the regular administration of the schemes – with problems and delays being encountered by members who had attained their normal retiring age and sought payment of their retirement benefits. Apart altogether from putting the pension schemes in breach of legislation vis-à-vis their responsibilities to ensure that members receive their correct benefits when they are due, I would consider this to be unsatisfactory and inconsiderate treatment to mete out to long-serving employees at their point of retirement.

With the extra amount of work and pressure imposed on the Superannuation Sections it was inevitable that mistakes and delays would occur, and many of these found their way to my Office. I wish to acknowledge here the hard work and dedication of the staff in the various public sector superannuation sections and the co-operation and assistance that they afford to my Office in the resolution of complaints. I empathise with their situation of having a huge additional burden of work imposed on them, sometimes within tight timeframes and without the provision of an adequate support structure.

The matter of how best to manage the application, approval and implementation of any future early retirement programmes is something that I believe warrants more attention and consideration by Management in public sector authorities.

Problems continue to arise under the various public sector Widows' & Orphan's / Spouses' & Children's Schemes. Some of those presented to me during 2010 related to arrears payable under these schemes in respect of past service, and the fact that the obligation to pay these arrears was not made clear or even known to staff until the point of retirement, at which time a deduction was made from their retirement gratuities.

Where a public sector employee is obliged, or approved to secure credit for past service, they are generally liable to pay arrears of contribution under the Widows' & Orphan's / Spouses' & Children's Scheme as well as under the main Superannuation Scheme. While the payment options were discussed, agreed and put into place to settle the contribution arrears that arose under the Superannuation Scheme, it appears that, historically, little attention was paid to the settlement of the arrears due under the Widows' & Orphan's / Spouses' & Children's Scheme. I can only surmise that the reason for this was an assumption made by the scheme administrators that it would be acceptable to and preferential for employees to settle the arrears at a lower rate by means of a deduction from their retirement gratuity.

It appears that, in many instances it was not made known or clear to the members that they had a liability to pay a separate set of arrears under the Spouses' & Children's Scheme and so the deduction made from their retirement gratuity came as a shock. I cannot waive the member's obligation to pay contribution arrears but I can examine whether they paid more by the deduction from gratuity than they would have if the alternative settlement methods had been properly made known and available to them. This sort of problem arises because of poor communication, and a slavish devotion to precedent practices. Essentially, members have a right to be told what their options are, and to make their own informed decisions as to what is best for them.

Most of the cases referred to my Office came from the teaching and health sectors where it would be common for staff to have had periods of part-time or temporary service, which historically were not pensionable, but now are. I have been in contact with the Department of Education and the HSE authorities urging them to (i) make known to serving employees who bought back prior service that they have a liability to settle contribution arrears under the Widows' & Orphan's / Spouses' & Children's Scheme and (ii) provide them with details of the settlement options they should have been given at the time of buying back the prior service. This action would put the members in an informed position and hopefully would ensure that complaints relating to the settlement of contribution arrears under the Widows' & Orphan's / Spouses' & Children's Scheme will diminish in the future.

### ***Internal Disputes Resolution Procedure (IDR)***

I am pleased to be able to report a reduction in the number of complaints submitted and cases referred to my Office, across both the public and private sectors, citing problems with the completion of IDR.

The intention of the IDR procedure is to allow pension scheme members a platform to bring their problems or complaints to the authorities directly involved with the management of the scheme – they being the party best placed to address, consider and hopefully to be able to resolve the issue. If this does not prove possible and the complaint is forwarded to my Office, the findings of the IDR procedure are important as a starting point for any examination we undertake. It is also useful in public sector cases, in pinpointing arcane features of practice or regulation which may not be apparent at first sight.

However, when a delay occurs in completing the procedure this does not serve the cause of justice, is most unfair, particularly on those whose complaint is about delays in paying benefits or in giving information and tends to exacerbate what may already be a strained relationship between the member and the pension scheme administrators/ trustees/ employer.

### ***Access to Scheme Membership / Non-Remittance of Contributions***

I continue to receive complaints from workers in the construction industry about non-admittance to the Construction Workers' Pension Scheme (CWPS) and non-payment of contributions thereunder in their respect. The number of such complaints received in 2010 was almost 50% higher than in the 2009 year. Undoubtedly, the current economic downturn, and its impact on the construction sector in particular, has a bearing on the large increase in complaints submitted to me. The fact that some of these complaints do not come to light until a company is already out of business, or in liquidation, tends to act against the complainant and make the possibility of resolution of such complaints more remote.

I wish to acknowledge the co-operation and assistance I receive from the Construction Workers' Pension Scheme, the Department of Social Protection and the Revenue Commissioners in the handling of these complaints. It is unfortunate that I cannot always rely on the same from the employers being complained of.

My Office continues to be hampered by delays or obstruction in the production of data and documentation requested from employers and their professional advisers who may hold the employment or other relevant records.

I have the authority to bring criminal prosecutions against any persons who delay or obstruct my investigations, and to take action in the Circuit Court to enforce my requirements for information. Even though such legal proceedings are time consuming and considerably delay the investigation process I have had to initiate them all too frequently in 2010. It has been my practice to publish details of such cases on my website and it should be noted that my Office has been successful in obtaining costs in all of the actions we have so far been forced to take.

### *Investment*

Investment issues continue to be at the core of many of the cases referred to me.

I have previously commented on the trustees' duty to see to the "proper" investment of scheme resources, and to take seriously their obligations to scheme members in this area. The Pensions Act requires trustees of defined contribution schemes to invest having regard to the "nature and duration" of the liabilities.

At the same time, members cannot expect trustees to anticipate their needs, and have a responsibility to acquaint themselves with the nature of their pension investment and to understand it, as well as their own role and obligations regarding investment.

Allegations are often made to me of financial loss incurred because of a failure of the scheme trustees or administrators to act. Many members presume that "someone else" is responsible for making investment decisions that in reality are their own to make. It is evident from the complaints I receive that a great many scheme members have no clear idea of how or where their pension fund money is invested or of their own responsibilities in relation to the investment of that money. It is essential that members understand what sort of assets their pension fund is invested in, and duly instruct the trustees if they wish to change the basis or nature of this. Such decisions are not someone else's to make – in general the investment decisions and responsibility rests with the member.

Many defined contribution scheme members do find themselves invested in "default" investment options – either because they did not feel competent to make an investment choice themselves, or simply failed to avail of the opportunity to choose. Default positions chosen by trustees many years ago may no longer be suitable in the run-up to retirement. Members should pay close attention to their benefit statements, which identify the funds they are invested in, make further enquiries of their trustees or providers, and use their right to switch investment funds if they consider that appropriate.

One recurring complaint aspect concerns the question of disinvestment and the timing of it. Members complain that when they reached pension age the trustees did not convert their fund to cash, that the money remained in an actively-managed investment vehicle, and as a result, fell in value in line with market falls, while they awaited the administration of their benefits. Similar complaints are made against trustees who are responsible for the winding-up of pension schemes.

While trustees are not expected to be able to foretell movements on the investment markets or anticipate falls before they occur, it is important that they adopt a consistent policy in relation to disinvestment.

If that is to disinvest at maturity (or date of winding-up) they should tell the members this. If their policy is not to disinvest, they must notify the members of this – and leave it to the members to instruct them. It is essential that the trustees give due consideration to the matter of disinvestment and communicate their stance on this to the scheme membership. Trustees will not be faulted for making a decision in good faith. They will, however, be held responsible for failing to consider the matter.

### *Learning from the Complaints*

Avoiding repetition of mistakes by learning from them is an important outcome of dispute resolution. This is one reason why I publish my Digest of Cases each year in conjunction with my Annual Report. I also feed back information to policy-makers and regulators, where the design of schemes or products may be a cause of problems for members and others.

## **SECTION 5 – CONCLUSIONS**

If I was asked to identify what I consider to be at the root of the majority of complaints and enquiries to my Office, I would have to cite problems with communications and the duties and responsibilities that exist under any pension arrangement.

I accept that pensions can be a complicated subject, and that, of late, many pension schemes have not had good news to report to their members. Neither of these are reasons to shy away from communicating effectively with members or for making the language of communication any more difficult than it needs to be. Such actions only serve to elevate the concern many members already feel about their pension benefits – particularly if these benefits have fallen in value or their scheme is in deficit, wind up or alteration mode.

Most pension scheme members are entitled in law to have certain information about their scheme and benefit entitlement disclosed to them on a regular basis. Schemes generally comply with the disclosure requirements by supplied members with Annual Benefit Statements. Unfortunately it often appears that more effort goes into making sure that the format of Statement satisfies the disclosure requirements and thereby “tick all the boxes”, than ensuring that the Statement effectively communicates the pension scheme entitlement to the member. I would urge Trustees and those responsible for managing pension schemes to look to the means they employ to communicate with their members and aim for these to be as effective, clear and understandable as possible. Contact details for the scheme authorities should be made known to the membership to allow them access to raise and discuss pension problems and concerns they may have.

My Office received many enquiries during 2010 from public servants expressing concern at the introduction of the so called pensions levy, at salary reductions imposed and at pension reductions proposed. Still more enquiries were made about the terms of the various incentivised public service early retirement schemes that were put in place during 2010. While these in the main were not matters that fell to me to adjudicate on, the issues raised were of obvious concern to the members concerned and I felt it incumbent on me to assist them by clarifying and explaining matters. The fact that we received so many enquiries on these issues would suggest that the various changes and proposals were not communicated to the members as clearly as they might have been and that members experienced difficulty in making direct contact with the Superannuation and Personnel Sections to raise their queries and to voice their concerns. I accept the fact that the Superannuation and Personnel Sections were over-burdened with the early retirement schemes and that this made contact difficult. However, the members are entitled to receive sufficient information about their pension scheme benefits to allow them to make an informed decision regarding possible early retirement. Before embarking on future early retirement programmes, I would urge the public sector authorities, to make better provision to communicate and provide information to prospective retirees about such programmes.

The main responsibilities that Trustees and scheme authorities have in relation to their pension schemes are to make proper provision for the investment of assets, to ensure the correct contributions are paid into the scheme, to advise members about the scheme and their entitlements and to ensure those entitlements are paid when they fall due.

Members too have responsibilities in relation to their pension scheme entitlements. Unfortunately, it has taken the turmoil and problems suffered of late by pension schemes to make many members take notice and pay due attention to their pension scheme benefit. Members should not abdicate responsibility for what is probably their most valuable asset, apart from their home. They cannot assume that all the responsibility to choose and manage this asset falls to “someone else”. They have a responsibility to familiarise themselves with the nature of their scheme, to understand the investment choices and options they can exercise under it and the implications these may have. While the Trustees and scheme authorities can supervise the proper running of the scheme, present investment strategies for consideration and provide information and guidance to the members, in many instances the pivotal decision on how to invest the pension monies rests with the individual member. If a member is reticent about making the investment decision and chooses to go into a default fund or to adopt a recommended investment strategy, he has a duty to satisfy himself that this is appropriate to his circumstances. Members generally receive Annual Benefit Statements updating them as to their scheme benefit. They should examine these and use them as a means of monitoring the progress of their pension scheme benefit. Pleading ignorance about their scheme benefit or sitting on the fence are not options – members have a responsibility to understand the nature of their pension scheme investment, to choose an investment vehicle that is appropriate to their circumstances and attitude to risk, and to monitor and consider the progression of their scheme asset, particularly as they approach retirement age.

I believe that the vast majority of employers, pension scheme trustees, administrators and providers work conscientiously to properly manage the pension schemes under their control. The members must be engaged in the process and must accept responsibility for their membership, investment choices and benefits. There is room for improvement in the communications about pension scheme obligations and entitlements and scope for members to pay better attention to and take responsibility for their pension scheme assets.

My Digest of Cases is produced each year to accompany my Annual Report, in the hope that those who read it may learn from the mistakes of others. The Digest and Annual Report 2010 will be available on the website at [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie).

## SECTION 6 - FINANCIAL ACCOUNTS

The Exchequer, through the Department of Social Protection funds the Office of the Pensions Ombudsman.

The Office acknowledges the ongoing support of the Department of Social Protection in relation to its Accounts and Payroll obligations.

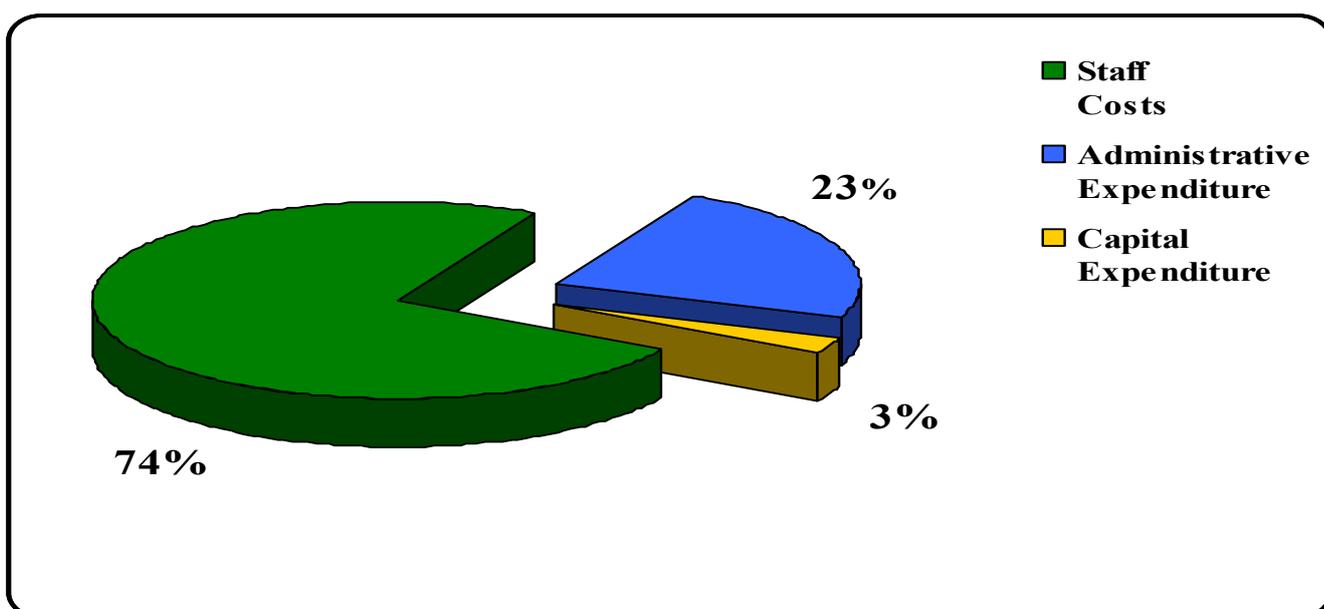
### *Annual Accounts for 2010*

The financial statements for 2010, which are set out in Appendix 9, have been audited by the Comptroller and Auditor General and have been presented to the Minister for Social Protection for presentation to the Oireachtas.

The cost of running the Office in 2010 is set out in Table 6.1.

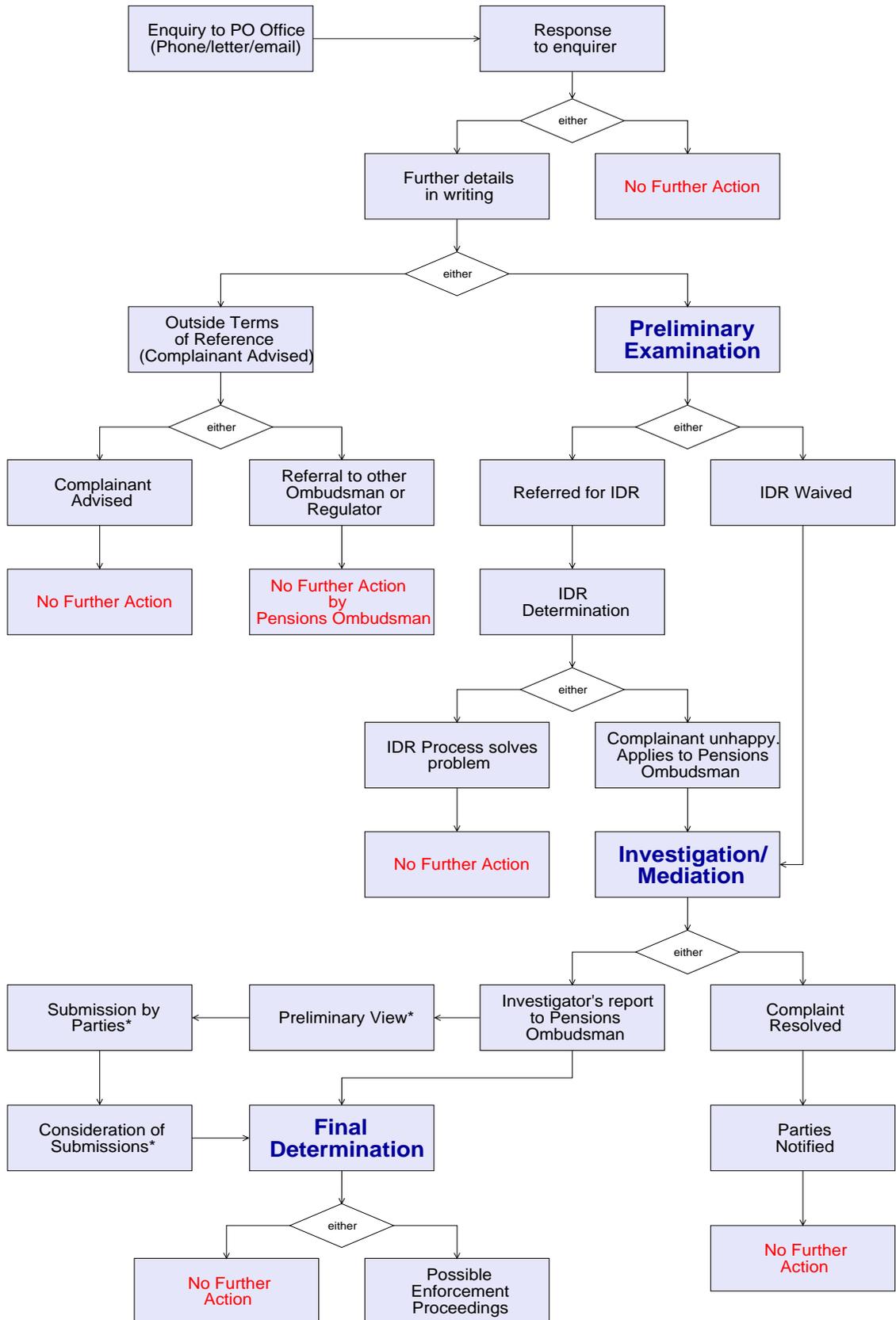
**Table 6.1 - Cost of Running the Office**

	<b>2010</b>
	<b>€</b>
Staff Costs	729,985
Administrative Expenditure	228,218
Capital Expenditure	<u>28,568</u>
<b>Total Running Cost</b>	<b>986,771</b>



# APPENDIX 1

## How a Complaint is Normally Handled



\*Occurs only in cases where the Pensions Ombudsman considers it desirable

## APPENDIX 2

### Summary and Analysis of Complaint Cases for 2010

#### Complaint Cases

Complaint Cases on hand at start of year	398
New complaints received during the year	558
Cases re-opened during the year	31
<b>Total for year</b>	<b>987</b>
Complaints closed during the year	555
<b>Complaints on hand at end of the year</b>	<b>432</b>

#### Details of Complaint Closures

Number of complaints closed	<b>555</b>
Average weeks to closure	33
Longest weeks to closure	316
Shortest period to closure	1 day

#### Closures by Reason

	<b>Number</b>	<b>% of Total</b>
Report and Guidance Given	203	37%
Successful Mediation	103	19%
Unsuccessful Mediation	43	8%
Final Determination - Complaint Upheld	27	5%
Final Determination - Complaint Not Upheld	47	8%
Advised of need for Internal Dispute Resolution	8	1%
Refer to Other Ombudsman/Regulator	36	6%
Outside Terms of Reference	40	7%
Complaint not proceeded with	37	7%
Obstruction Case completed	6	1%
Enforcement Finalised	3	0.5%
Enforcement not for OPO	2	0.5%
<b>Total</b>	<b>555</b>	<b>100%</b>

#### Weeks to Closure in 2010

5 weeks or less	215	39%
6 - 10 weeks	61	11%
11 - 15 weeks	44	8%
16 - 20 weeks	33	6%
21 - 25 weeks	13	2%
26 - 30 weeks	22	4%
31 - 35 weeks	12	2%
36 - 40 weeks	11	2%
41 - 45 weeks	7	1%
46 - 50 weeks	5	1%
Greater than 50 weeks	132	24%
<b>Total</b>	<b>555</b>	<b>100%</b>

### APPENDIX 3 – Nature of Complaint Cases 2009 & 2010

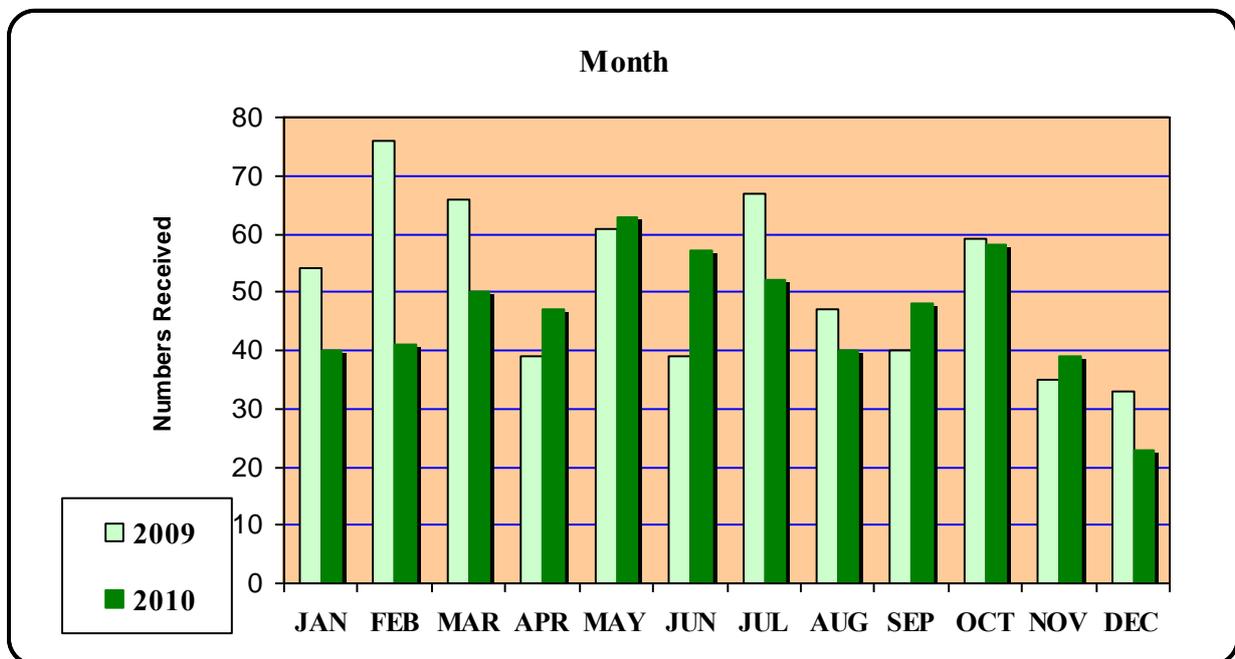
<b>Nature of Complaint</b>	<b>2009</b>	<b>2010</b>
Abatement/Supplementary Pension	1	0
Additional voluntary contributions	16	11
ARF/AMRF queries	3	1
Augmentation/enhancement of benefits	8	5
Buy out Bonds	0	2
Calculation of benefits	113	104
Contribution refunds	8	7
Defined Benefit V Defined Contribution	1	3
Disclosure of information	49	25
Early retirement	18	13
Equal Treatment Issue	1	1
Failure of scheme to respond	1	0
Fund values	84	34
General enquiry	44	53
Ill health	11	17
Incorrect / late/ no benefit payment	21	17
Incorrect info giving rise to false expectation	7	13
Membership/ entry conditions	10	14
Mis-selling	9	4
Pensions Adjustment Orders	6	6
Post-retirement increases	9	12
Preservation of benefits	1	0
Remittance of contributions	73	109
Spouses' and dependants' benefits	18	17
Transfers	43	24
Use of surplus	1	0
Winding up	14	22
Years of service -cost of / credit for	46	44
<b>Totals</b>	<b>616</b>	<b>558</b>

## APPENDIX 4 - Breakdown by Location of Complaints received in 2009 & 2010

Location	2009	2010
Carlow	7	2
Cavan	6	4
Clare	10	15
Cork	58	63
Donegal	13	7
Dublin	158	188
Galway	36	21
Kerry	10	11
Kildare	23	33
Kilkenny	15	10
Laois	6	5
Leitrim	5	1
Limerick	25	12
Longford	7	3
Louth	18	8
Mayo	30	17
Meath	24	24
Monaghan	6	6
Offaly	4	7
Roscommon	9	6
Sligo	4	4
Tipperary	10	15
Waterford	15	19
Westmeath	8	14
Wexford	13	16
Wicklow	12	6
United Kingdom	10	5
Europe	8	10
Rest of the World	20	1
Not known at Registration	46	25
<b>Overall Total</b>	<b>616</b>	<b>558</b>

## APPENDIX 5 – Complaint Cases received by Month in 2009 & 2010

Month	2009	% of Total	2010	% of Total
January	54	9%	40	7%
February	76	12%	41	7%
March	66	11%	50	9%
April	39	6%	47	9%
May	61	10%	63	11%
June	39	6%	57	10%
July	67	11%	52	9%
August	47	8%	40	7%
September	40	6%	48	9%
October	59	10%	58	11%
November	35	6%	39	7%
December	33	5%	23	4%
<b>Totals</b>	<b>616</b>	<b>100%</b>	<b>558</b>	<b>100%</b>



## **APPENDIX 6 – Governing Legislation**

Pensions Act, 1990

Pensions (Amendment) Act, 2002

Social Welfare (Miscellaneous) Provisions Act, 2003

Statutory Instrument No. 119 of 2003

Statutory Instrument No. 397 of 2003

Statutory Instrument No. 398 of 2003

Statutory Instrument No. 399 of 2003

Public Service Superannuation (Provisions) Act, 2004

Social Welfare (Miscellaneous) Provisions Act, 2004

Social Welfare Law Reform and Pensions Act, 2006

Social Welfare and Pensions Act, 2007

Statutory Instrument No. 181 of 2007

Statutory Instrument No. 182 of 2007

Rules of Court for Appeals from Determinations of the Pensions Ombudsman:

Statutory Instrument No. 14 of 2007

Social Welfare and Pensions Act, 2008

Social Welfare and Pensions (No.2) Act, 2009

Rules of Court for Enforcement of Determinations of the Pensions Ombudsman:

Statutory Instrument No. 446 of 2010

## **APPENDIX 7 – Current Publications of the Office**

- **Information Booklets:**

What can the Pensions Ombudsman do for you?

Disputes Resolution Procedures –  
Guidance Notes for Trustees and Administrators

Instructions and Guidance for Respondents

- **Annual Reports and Digest of Cases 2003/4 – 2009**

- **Customer Charter 2009 &  
Statement on Unacceptable Behaviour by Complainants**

- **Statement of Strategy 2010 – 2012**

## APPENDIX 8 –STAFFING AT END 2010

**Paul Kenny**  
Pensions Ombudsman

**Joe Timbs**  
Director

**Joan Bray**  
Investigator

**Caitriona Collins**  
Investigator

**John Sheehan**  
Investigator

**Ciaran Creagh**  
Investigator

**Joe Dempsey**  
Office Manager

**Michelle O’Keeffe**  
Investigation Support

**Darina Breen**  
Administration Support

**Colette Coghlan**  
Administration Support

## APPENDIX 9

### Financial Statements for the year ended 31 December 2010



Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas

#### Office of the Pensions Ombudsman

I have audited the financial statements of the Office of the Pensions Ombudsman for the year ended 31 December 2010 under the Pensions Act 1990, as amended. The financial statements, which have been prepared under the accounting policies set out therein, comprise the Statement of Accounting Policies, the Income and Expenditure Account, the Statement of Total Recognised Gains and Losses, the Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and Generally Accepted Accounting Practice in Ireland.

#### Responsibilities of the Pensions Ombudsman

The Pensions Ombudsman is responsible for the preparation of the financial statements, for ensuring that they give a true and fair view of state of the affairs of the Office and of its income and expenditure and for ensuring the regularity of transactions.

#### Responsibilities of the Comptroller and Auditor General

My responsibility is to audit the financial statements and report on them in accordance with applicable law.

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation.

My audit is carried out in accordance with the International Standards on Auditing (UK and Ireland) and in compliance with the Auditing Practices Board's Ethical Standards for Auditors.

#### Scope of Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements, sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of

- whether the accounting policies are appropriate to the circumstances of the Office of the Pensions Ombudsman, and have been consistently applied and adequately disclosed
- the reasonableness of significant accounting estimates made in the preparation of the financial statements, and
- the overall presentation of the financial statements.

I also seek to obtain evidence about the regularity of financial transactions in the course of audit.

#### Opinion on the Financial Statements

In my opinion, the financial statements, which have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland, give a true and fair view of the state of the affairs of the Office of the Pensions Ombudsman at 31 December 2010 and of its income and expenditure for the year then ended.

In my opinion, proper books of account have been kept by the Office. The financial statements are in agreement with the books of account.

#### Matters on which I Report by Exception

I report by exception if

- I have not received all the information and explanations I required for my audit, or
- my audit noted any material instance where moneys have not been applied for the purposes intended or where the transactions did not conform to the authorities governing them, or
- the Statement on Internal Financial Control does not reflect the Office's compliance with the Code of Practice for the Governance of State Bodies, or
- I find there are other material matters relating to the manner in which public business has been conducted.

I have nothing to report in regard to those matters upon which reporting is by exception.

Gerard Smyth

For and on behalf of the  
Comptroller and Auditor General

7 November, 2011

## **Statement on Internal Financial Control**

### **Responsibility for the System of Internal Financial Control**

The Office of the Pensions Ombudsman is a small office where salary costs represent some 70% of total expenditure. There is a total staff of 10 – the Ombudsman, Director, four investigators, an office manager and three further officials.

The responsibility for ensuring that an effective system of internal controls is maintained and operated falls to myself, as Pensions Ombudsman. Any such system can provide reasonable but not absolute assurance that transactions are certified, authorised and properly recorded, assets are safeguarded and that material errors or irregularities are either prevented or are detected in a timely manner.

The staff of this Office and I have taken steps to ensure that there is a robust system of financial control in place, with regular information on expenditure being supplied to management and transparent administrative procedures in force, including segregation of duties through a clear system of delegation of responsibility. This includes the following procedures:

- An annual estimate of financial requirements is provided to our funding Department, the Department of Social Protection.
- When the budget for the year is agreed, a monthly profile of expenditure is prepared.
- All expenditure by this Office is recorded on the Department's general ledger accounting system. A monthly expenditure report is prepared by the Department's Accounts branch. This is then checked by the Office Manager against the records held in the Office.
- The Office Manager prepares a monthly statement of expenditure which compares actual with profile. This is circulated to all members of staff and is reviewed by myself.
- A twice yearly report is provided to the Department which compares estimated and actual expenditure.
- A segregation of duties exists between the certification, authorisation and execution of payments.
- All pay (and related calculations) and non-pay payments are made by the parent Department.
- The draft annual accounts are prepared by an independent accounting/auditing company prior to submission to the C&AG.
- An internal audit function is available within the Department of Social Protection. Any audit of Departmental pay function will cover 70% of the expenditure by this Office.



**Paul Kenny,**  
**Pensions Ombudsman**  
**3 November 2011**

**Office of the Pensions Ombudsman  
Financial Statements for the  
Year Ending 31 December 2010**

**Statement of Accounting Policies**

**1. Basis of Preparation**

The financial statements are prepared on an accruals basis, except as outlined below, in accordance with generally accepted accounting principles under the historic cost convention and comply with applicable financial reporting standards and with the requirements of section 143 of the Pensions Act 1990 (inserted by Section 5 of the Pensions (Amendment) Act 2002).

**2. Oireachtas Grant**

Oireachtas Grant represents the total payments made by the Department of Social Protection on behalf of the Office, in the year of account.

**3. Pensions**

The employees of the Pensions Ombudsman, being Civil Servants, are covered by the Civil Service pension arrangements. A defined benefits superannuation scheme for the Pensions Ombudsman was introduced in 2007 with effect from 2006. The scheme is funded annually on a pay as you go basis from monies available to it, including monies provided by the Department of Social Protection.

Pension scheme liabilities are measured on an actuarial basis using the projected unit method.

Pension costs reflect pension benefits earned by the Ombudsman in the period and are shown net of his pension contributions which are retained by the Department of Social Protection. An amount corresponding to the pension charge is recognised as income to the extent that it is recoverable, and offset by grants received in the year to discharge pension payments.

Actuarial gains or losses arising from changes in actuarial assumptions and from experience surpluses and deficits are recognised in the Statement of Total Recognised Gains and Losses for the year in which they occur and a corresponding adjustment is recognised in the amount recoverable from the Department of Social Protection.

Pension liabilities represent the present value of future pension payments earned by the Ombudsman to date. Deferred pension funding represents the corresponding asset to be recovered in future periods from the Department of Social Protection.

**4. Tangible Fixed Assets**

Tangible Fixed Assets are stated at cost or valuation less accumulated depreciation. Depreciation is provided for on a straight line basis at rates which are estimated to reduce the asset to their realisable values by the end of their expected useful lives as follows:

IT and Office Equipment	20% Straight Line
Furniture and Fittings	10% Straight Line

**5. Capital Account**

The Capital Account represents the unamortised value of income applied for capital expenditure.

**6. Cash Flow Statement**

No Cash Flow Statement is presented in line with the exemptions granted in FRS 1.

**7. Legal Costs Awarded**

Court award of legal costs in favour of the office of the Pensions Ombudsman are brought to account on a cash receipts basis

**Office of the Pensions Ombudsman  
Year Ended 31 December 2010**

**Income & Expenditure Account  
for the year ended 31 December 2010**

	Notes	2010	2009
Income		€	€
Oireachtas Grant	1	933,767	937,782
Less Superannuation Contributions Repaid	7a	(7,315)	(8,009)
Net Oireachtas Grant		<u>926,452</u>	<u>929,773</u>
Net Deferred Funding for Pensions		42,000	41,000
Transfer to Capital Account	5	25,488	45,144
<b>Total Income</b>		<u>993,940</u>	<u>1,015,917</u>
<b>Expenditure</b>			
Staff Costs	2	729,985	789,768
Administration	3	228,218	178,067
Audit Fee		3,080	2,500
Depreciation	4	25,488	45,144
<b>Total Expenditure</b>		<u>986,771</u>	<u>1,015,479</u>
<b>Surplus/(Deficit) for the year</b>		<u><u>7,169</u></u>	<u><u>438</u></u>
<b>Surplus at 1 January</b>		<u>28,804</u>	<u>28,366</u>
<b>Surplus at 31 December</b>		<u><u>35,973</u></u>	<u><u>28,804</u></u>

The Statement of Accounting Policies and Notes 1 to 8 form part of these financial statements



**Paul Kenny,  
Pensions Ombudsman  
3 November 2011**

**Office of the Pensions Ombudsman  
Year Ended 31 December 2010**

**Statement of Total Recognised Gains and Losses  
for the year ended 31 December 2010**

	Notes	2010	2009
		€	€
Surplus/(Deficit) for year		<b>7,169</b>	<b>438</b>
Experience gains on pension scheme liabilities	7d	25,000	12,000
Changes in assumptions underlying present value of pension scheme liabilities		0	(6,000)
<b>Actuarial gain on pension Liabilities</b>	7b	25,000	6,000
<b>Adustment to Deferred Pension Funding</b>		(25,000)	(6,000)
<b>Total Recognised Gain (Loss) for the year</b>		<b>7,169</b>	<b>438</b>

The Statement of Accounting Policies and Notes 1 to 8 form part of these financial statements



**Paul Kenny**  
**Pensions Ombudsman**  
**Date: 3 November 2011**

**Office of the Pensions Ombudsman  
Year Ended 31 December 2010**

**Balance Sheet as at 31 December 2010**

<b>Fixed Assets</b>	<b>Note</b>	<b>2010</b>		<b>2009</b>	
		€	€	€	€
Tangible Fixed Assets	4		65,279		84,935
<b>Current Assets</b>					
Debtors & Prepayments	6	47,392		41,114	
Bank & Cash		337		205	
		<u>47,729</u>		<u>41,319</u>	
<b>Current liabilities</b>					
Creditors		2,956		0	
Accruals		8,800		12,515	
		<u>11,756</u>		<u>12,515</u>	
<b>Net Current Assets</b>			35,973		28,804
<b>Total Assets Less Current Liabilities</b>					
			<u>101,252</u>		<u>113,739</u>
Deferred Pension Funding	7d		226,000		209,000
Pension Liability	7b		(226,000)		(209,000)
<b>Net Assets</b>			<u>101,252</u>		<u>113,739</u>
<b>Financed By</b>					
Capital Account	5		65,279		84,935
Income and Expenditure Account			35,973		28,804
			<u>101,252</u>		<u>113,739</u>

The Statement of Accounting Policies and Notes 1 to 8 form part of these financial statements.



**Paul Kenny**  
**Pensions Ombudsman**  
**Date : 3 November 2011**

# Office of the Pensions Ombudsman

## Year Ended 31 December 2010

### Notes to the Financial Statements

#### 1 Oireachtas Grant

Funding for the Office of the Pensions Ombudsman is provided by the Department of Social Protection which makes all payments on behalf of the Office. The total grant matches the sum charged to the Appropriation Account of the Department of Social Protection. Income paid to the Office of the Pensions Ombudsman of €12,892, and lodged to the bank account was fully paid over to the Department of Social Protection in Appropriation in Aid reducing the grant required.

#### 2 Staff Costs and Employee

	2010	2009
	€	€
Wages and Salary	686,795	747,017
Travel	8,505	9,760
Pension Costs	34,685	32,991
	729,985	789,768
	729,985	789,768

##### 2.(a) Employee Numbers

The average number of employees during the period was made up as follows

	2010	2009
Ombudsman	1	1
Administrative Staff	9	9
Total	10	10
	10	10

##### 2. (b) Ombudsman Remuneration

	2010	2009
	€	€
Salary	125,434	136,114

Pension entitlements of the Pensions Ombudsman do not extend beyond the Model Public Sector Superannuation Scheme. The Pensions Ombudsman did not receive any performance related payments or any other benefit in kind during the year.

#### 3 Administration Costs

	2010	2009
	€	€
General Expenses	16,755	31,096
Postage and Telecommunications	17,719	18,173
Printing & Stationery	9,319	31,033
IT/Office Machinery (Non-Asset)	12,365	17,176
Maintenance	33,683	55,001
Advertising/Seminars/publications	43,709	18,476
Legal Fees	94,668	7,112
	228,218	178,067
	228,218	178,067

**Office of the Pensions Ombudsman**  
**Year Ended 31 December 2010**

**4 Fixed Assets**

	€	€	€
	IT Hardware, Software and Office Equipment	Furniture and Fittings	Total
<b>Assets at Cost</b>			
Balance at 1 January 2010	108,196	152,843	261,039
Revaluation	7,290		7,290
Additions	-	-	-
Disposals	(986)	(129)	(1,115)
<b>Balance at 31 December 2010</b>	<b>114,500</b>	<b>152,714</b>	<b>267,214</b>
<b>Depreciation</b>			
Balance at 01 January 2010	(71,476)	(104,628)	(176,104)
Depreciation on Revaluation	(1,458)		(1,458)
Acc Dep on Disposals	986	129	1,115
Charge for the year	(13,698)	(11,790)	(25,488)
<b>Balance at 31 December 2010</b>	<b>(85,646)</b>	<b>(116,289)</b>	<b>(201,935)</b>
<b>Net Book Value</b>			
<b>Balance at 31 December 2010</b>	<b>28,854</b>	<b>36,425</b>	<b>65,279</b>
<b>Revaluation Balance at 01 January 2010</b>	<b>42,551</b>	<b>48,216</b>	<b>90,767</b>

The Office of the Pensions Ombudsman carried out a review of its assets in 2010. This resulted in a revaluation of its assets shown in the note above

**5 Capital Account**

	€	€
Balance at 1 January 2010		90,767
Purchase of Fixed Asset	-	
Amortisation in line with Depreciation	(25,488)	
Depreciation on Revaluation		
Transfer to Income & Expenditure Account		(25,488)
<b>Balance at 31 December 2010</b>		<b>65,279</b>

**Office of the Pensions Ombudsman**  
**Year Ended 31 December 2010**

**6 Debtors & Prepayments**

	<b>2010</b>	<b>2009</b>
	€	€
Debtors	32,503	28,234
Prepayments	14,889	12,880
	<u>47,392</u>	<u>41,114</u>

**7 Pensions**

**a) Analysis of total pension costs charged to expenditure**

	<b>2010</b>	<b>2009</b>
	€	€
Current Service Cost	31,000	31,000
Interest on Pension Scheme Liabilities	11,000	10,000
Employee contributions	(7,315)	(8,009)
	<u>34,685</u>	<u>32,991</u>

**b) Movement in net pension liability during the financial year**

	<b>2010</b>	<b>2009</b>
	€	€
Net Pension Liability at 1st Jan	209,000	174,000
Current Service Cost	31,000	31,000
Past Service Cost	-	-
Interest Cost	11,000	10,000
Actuarial (gain)/Loss	(25,000)	(6,000)
Pensions paid in the year	-	-
Net Pension Liability at 31st Dec	<u><b>226,000</b></u>	<u><b>209,000</b></u>

**c) Deferred Funding Assets for Pensions**

The Office of the Pensions Ombudsman recognises this amount as an asset corresponding to the unfunded deferred liability for pensions on the basis of the set of assumptions described at (e) and a number of past events. These events include the statutory basis for the establishment of the pension scheme and the policy and practice currently in place in relation to funding public service pensions including contributions by employees and the annual estimates process. The Office of the Pensions Ombudsman has no evidence that this funding policy will not continue to meet such sums in accordance with current practice.

The net deferred funding for pensions recognised in the Income and Expenditure Account was as follows:

	<b>2010</b>	<b>2009</b>
	€	€
Funding recoverable in respect of current year pension costs	42,000	41,000
State Grant applied to pay pensioners	-	-
	<u><b>42,000</b></u>	<u><b>41,000</b></u>

The deferred funding asset for pensions as at 31 December 2010 amounted to € 226,000 (2009: €209,000)

## Office of the Pensions Ombudsman Year Ended 31 December 2010

**d) History of Scheme Liabilities and experience losses / (gains)**

	<b>2010</b>	<b>2009</b>	<b>2008</b>
	€	€	€
Scheme Liability	226,000	209,000	174,000
Experience (gain)/loss on scheme liabilities	(25,000)	(12,000)	0
Percentage of the present value of scheme liabilities	-11%	-6%	0%

**e) General Description of the Scheme**

The pension scheme is a defined benefit final salary pension arrangement with benefits and contributions defined by reference to current "model" public sector scheme regulations. The scheme provides a pension (one eightieth per year of service), a gratuity or lump sum (three eighths per year of service) and spouse's and children's pensions. Normal retirement age is a member's 65th birthday, and pre 2004 members have an entitlement to retire without actuarial reduction from age 60. Pensions in payment (and deferment) normally increase in line with general public sector salary inflation.

The valuation used for FRS17 (Revised) disclosures has been based on a full actuarial valuation on 23rd February 2010 by a qualified independent actuary taking account of the requirements of the FRS in order to assess the scheme liabilities at 31 December 2010

The principle actuarial assumptions were as follows:

	<b>2010</b>	<b>2009</b>
Rate of increase in salaries	4%	4%
Rate of increase in pensions in payment	4%	4%
Discount Rate	5.50%	5.50%
Inflation Rate	2%	2%

The mortality basis adopted allows for improvements in life expectancy over time, so that life expectancy at retirement will depend on the year in which a member attains retirement age (age 65). The table below shows the life expectancy for members attaining age 65 in 2009 and 2010.

	<b>2010</b>	<b>2009</b>
Years of attaining age 65		
Life expectancy - male	87	87
Life expectancy - female	90	90

**8 Premises**

The accommodation occupied by the Office of the Pensions Ombudsman at 36 Upper Mount Street, Dublin 2 is leased and paid for by the Office of Public Works. The current annual rent paid by the OPW is €200,000 reviewable in 2012. The lease expires in 2017. There is no charge to the Office of the Pensions Ombudsman in respect of this accommodation.