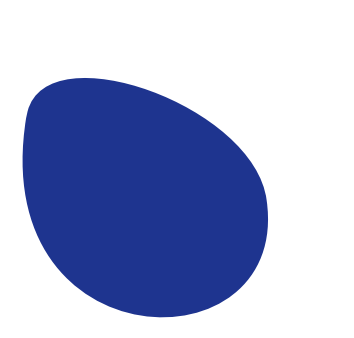
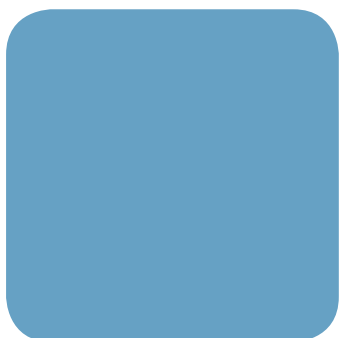
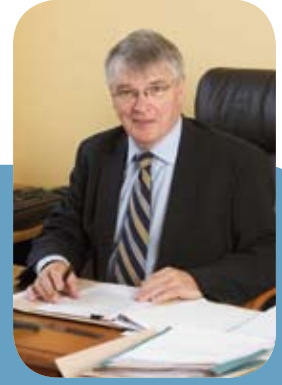


An tOmbudsman Pinsean
Pensions Ombudsman

Annual Report 2011 Tuarascáil Bhliantúil



Paul Kenny
Pensions Ombudsman
An tOmbudsman Pinsean



About the Office of the Pensions Ombudsman

The Office of the Pensions Ombudsman serves as an independent and impartial agency to which citizens can seek resolution of their pension complaints.

By facilitating clear communications between citizens and pension providers and by making recommendations to improve administrative practices and procedures, my Office helps to promote responsiveness and quality in the administration of pensions.

The Pensions Ombudsman has the authority to investigate complaints concerning Occupational Pension Schemes, Personal Retirement Savings Accounts (PRSAs) and Trust Retirement Annuity Contracts (RACs). Typically, complaints relate to financial loss that pension scheme members have suffered or to maladministration on the part of trustees or administrators. I and my colleagues seek to resolve complaints impartially, informally and quickly. The more complex cases may take some time to resolve. If we cannot assist with a particular complaint, we will explain why and may suggest other avenues for resolving the matter.

We do not charge any fees to people who bring complaints or disputes before us.

Maidir le hOifig an Ombudsman Pinsean

Feidhmíonn Oifig an Ombudsman Pinsean mar ghníomhaireacht neamhspleách neamhchlaonta inar féidir le saoránaigh réiteach a fháil ar ábhar gearáin maidir le cúrsaí pinsin.

Trí fhreastal a dhéanamh do chumarsáid shoiléir idir saoránaigh agus soláthraithe pinsin agus trí mholtaí a dhéanamh d'fhonn cleachtais agus gnáis riaracháin a fheabhsú, cothaíonn an Oifig sin agamsa luathfhreagairt agus ardchaighdeán sa riarachán ar phinsin.

Tá d'údarás ag an Ombudsman Pinsean imscrúdú a dhéanamh faoi ghearáin maidir le scéimeanna pinsean ceirde, maidir le Cuntais Coigiltis Scoir Pearsanta Scoir agus maidir le Conarthaí Blianachta Scoir iontaobhais a imscrúdú. Is iondúil go mbaineann gearáin le cailteanas airgeadais a d'fhulaing comhaltai de scéim pinsin nó le míriarachán ó thaobh iontaobhaithe nó riarthóirí. Déanaimse agus mo chuid comhghleacaithe iarracht gearáin a réiteach ar mhodh neamhspleách, neamhchlaon tapa. Dá mhéad castachta ag baint le cás is ea is mó an t-am is gá le réiteach a fháil air. Nuair nach féidir linn cúnaimh a thabhairt maidir le gearáin faoi leith, mínítear an chúis leis sin agus d'fhéadfadh go molfá bealaí eile chun an cheist a réiteach.

Ní ghearrtar aon táillí ar dhaoine a chuireann gearáin ná ábhar aighnis faoinár mbráid.

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An tOmbudsman Pinsean
Pensions Ombudsman

Ms Joan Burton T.D.,
Minister for Social Protection
Áras Mhic Dhiarmada
Store Street
Dublin 1

25th June, 2012

A Aire,

I am pleased to present my Annual Report and Accounts for the year ended 31 December 2011.

In doing so, I wish to thank you, Minister, for the ongoing support you have given to the work of this Office and to me personally.

I particularly value the help and support given to me by the staff of your Department – the Pensions Policy Unit, with which I have contact on an almost daily basis, and also Personnel, Accounts, IS Services and Facilities Management. I am also grateful for the help given to us during the course of our investigations, particularly by Scope and Records Sections. I appreciate that all this support is given in a spirit which completely respects the independence of my Office.

In light of the unprecedented level of demand for our services, reflected in the significant increase in the number and complexity of cases, we would emphasise the importance of the assignment of additional staff to the Office to enable us to resolve cases in an expeditious manner and maintain high levels of service delivery.

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



An tOmbudsman Pinsean
Pensions Ombudsman

Joan Burton Uasal, T.D.,
An tAire Coimirce Sóisialaí
Áras Mhic Dhiarmada
Sráid an Stórais
Baile Átha Cliath 1

25 Meitheamh, 2012

A Aire, a chara,

Is cúis áthais dom an Tuarascáil Bhliantúil agus na Cuntais don bhliain dar críoch an 31 Nollaig 2011 a chur faoi do bhráid.

Á dhéanamh sin dom, is mian liom buíochas a ghabháil leat féin, a Aire, as an gcúnamh taca a thug tú go leanúnach don Oifig agus dom féin go pearsanta san obair a bhíonn ar siúl againn.

Is mór agam go háirithe an chabhair agus an cúnamh taca a fuarthas ó fhoireann na Roinne – ón Aonad Polasaí Pinsin a mbím i dteagmháil leo mórán gach uile lá, agus ó na Rannóga maidir le Cúrsaí Pearsanra, Cuntais, Seirbhísí IS agus Bainistíocht Áiseanna freisin. Tá mé buíoch chomh maith as an gcúnamh a tugadh don Oifig le linn imscrúduithe, go háirithe ón Rannóg Scóipe agus Taifead. Is mór agam go dtugtar an cúnamh de mheon a léirítear meas iomlán ar neamhspleáchas na hOifige seo.

I bhfianaise éileamh níos mó ná riamh ar ár gcuid seirbhísí, mar a léirítear leis an méadú suntasach ar líon agus ar chastacht na gcásanna, ba mhian linn béim faoi leith a leagan ar a thábhachtaí atá sé breis foirne a chur ar fáil don Oifig d'fhonn cur ar ár gcumas cásanna a réiteach go luath tapa agus seirbhísí ar ardleibhéal a chur ar fáil mar is gnáth.

Ba mhaith liom a lua, mar fhocal scoir, gur mór agam dúthracht na n-imscrúdaitheoirí agus an lucht foirne tacaíochta agus an cion oibre a rinne siad a chuireann oiread sin leis an rath leanúnach atá ar an Oifig.

Beir beannacht,

Paul Kenny,

An tOmbudsman Pinsean





Review of the year:
what we have learned

Athbhreithniú na bliana:
a bhfuil foghlamtha
againn

1

1. Review of the year: what we have learned

2011 was another extremely challenging year for the Irish economy and society, and this was reflected in the nature and complexity of the complaints my Office dealt with during the year. While the number of cases we dealt with declined slightly from 2010, the complaints made to this Office in 2011 have been more complex and have required greater investigation resources and consequently took longer to bring to closure. In the course of our investigations, we learn a great deal about what can go wrong with pension schemes and about the problems that face individual scheme members. As in past years, we try to pass on what we learn to those who are responsible for the administration of schemes so that they might avoid some of the pitfalls that these complaints represent.

Knowledge resources

In parallel with the *Annual Report and Accounts*, I have in previous years published a *Digest of Cases*. The purpose of this digest is to give an indication of the range of cases that my Office deals with and the various methods we employ to bring them to resolution. These are all 'true-life' stories of real complaints that were brought before my Office, and they give a strong flavour of the human and personal aspects of the complaints we receive, as well as showing the methodologies we bring to bear to resolve cases. This year I am combining the *Digest of Cases* with the *Annual Report* in a consolidated report and portrayal of the work of this Office.

The formal Final Determinations issued to complainants and respondents also represent a significant resource. In many of these I make recommendations on how to avoid the recurrence of a particular problem.

In some cases I come across issues that impact on the development and administration of public policy, and I pass on observations on these for the attention of the Department of Social Protection, the Department of Public Expenditure and Reform and the Department of

Finance. Some of the issues raised by public servants may have implications across the wider public service, rather than simply affecting the individual who has complained.

Major themes of 2011

In reviewing the events of 2011 and the nature of the cases we dealt with during the year, the following major themes emerge:

- The continuing difficulties in investment markets and the impact that this has had on pension funds;
- The increase in claims for early retirement on grounds of ill-health, including the benefit of added years.
- The significantly increased workload on public service superannuation sections arising from various early retirement schemes, which has given rise to some errors, but also to delays in making payments;
- The proposed introduction of shared services for pensions administration across the public service, which I very much welcome and have championed;
- Continuing problems relating to 'buying back' service – in particular, where members have discovered that they must pay arrears relating to Spouses' & Children's contributions;
- The value and importance of using Internal Dispute Resolution (IDR) procedures as an essential first step in the case of a complaint;
- Complaints relating to the construction industry – particularly hit by the ongoing economic and financial crisis. Most of these relate to non-remittance of contributions by employers;
- 'Phoenix' companies – these are companies that rise from the ashes of failed companies, many of which have not met their obligations to pay employees' pension contributions;

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

Bhí dúshlán mór arís i rith na bliana 2011 roimh gheilleagar agus phobal na hÉireann, rud ba léir ó chineál agus ó chastacht na ngearán a raibh an Oifig ag déileáil leo. Cé go raibh laghdú beag ar líon na gcásanna i gcomparáid le 2010 bhí na gearáin a tháinig go dtí an Oifig i 2011 ní ba chasta agus níorbh fholáir cur leis na hacmhainní imscrúdaithe. D'fhág sin go ndeachaigh sé i bhfad níos faide sular tugadh an obair ar chásanna chun críche. Is mór atá le foghlaim le linn imscrúduithe faoin gcaoi ar féidir le cúrsaí scéimeanna pinsin bheith bunoscionn lena gcuspóirí agus faoi na fadhbanna a thagann roimh chomhaltaí scéimeanna pinsin. Mar a rinneadh sna blianta a chuaigh roimhe seo féachtar lena bhfuil foghlamtha againn a chur ar aghaidh chucu siúd atá freagrach as riarachán na scéimeanna sa chaoi is go seachnófar roinnt de na gaistí riaracháin is léir ó na gearáin.

Acmhainní Eolais

De réir an nós a chleachtaigh mé sna blianta roimhe seo beidh mé ag foilsiú *Achoimre na gCásanna* go comhthreomhar leis an *Tuarascáil Bhliantúil agus Cuntais*. Aidhm na *hAchoimre* is ea raon na gcásanna a ndéileáil an Oifig leo maille leis na modhanna éagsúla a mbaintear úsáid astu lena réiteach a léiriú. Fíorscéalta 'true-life stories' iad sin uile a bhaineann le gearáin a cuireadh faoi bhráid na hOifige dáiríre, agus is tríothu a fhaightear blas ar ghnéithe daonna agus pearsanta na ngearán a thagann chomh fada linn maille leis an modheolaíocht a úsáidtear lena réiteach. I mbliana beidh mé ag ceangal *Achoimre na gCásanna* leis an *Tuarascáil Bhliantúil* in aon tuarascáil chomhdhlúite amháin ina léirítear obair na hOifige

Is acmhainní suntasacha freisin iad na Cinntí Críochnaitheacha a eisítear chuig gearánaithe agus chuig freagróirí. In go leor díobh sin déanaim moltaí maidir lenar féidir a dhéanamh le nach mbíonn fadhb áirithe ag teacht chun cinn in athuair

Tagann saincheisteanna chun suntais i gcásanna áirithe a mbíonn tionchar acu ar fhorbairt agus ar riarachán polasaí poiblí, agus cuirim mo chuid smaointe maidir leo siúd ar aghaidh go dtí an Roinn Coimirce Sóisialaí, an

Roinn Caiteachais Phoiblí agus Athchóirithe agus an Roinn Airgeadais. Chomh maith leis an gcaoi a dtéann roinnt de na ceisteanna a tharraingíonn fostaithe sa tseirbhís poiblí anuas i gcion ar an ngearánaí féin d'fhéadfadh impleachtaí eile a bheith acu ar an tseirbhís poiblí ina hiomláine.

Príomhthéamaí na bliana 2011

Rinneadh athbhreithniú ar imeachtaí na bliana 2011 agus ar chineál na gcásanna ar déileáladh leo i rith na bliana agus seo a leanas na téamaí móra a tháinig chun suntais:

- Na deacrachtaí leanúnacha sa mhargadh infheistíochta agus an tionchar a bhí acu sin ar chistí pinsin;
- Ardú ar líon na ndaoine a éilíonn luathscor ar fhoras drochshláinte, maille le sochar bhlianta breise.
- Méadú mór, mar gheall ar na scéimeanna luathscóir éagsúla, san ualach oibre ar bhraintí aoisliúntais sa tseirbhís poiblí, ar tharla roinnt earráidí dá bharr agus móill maidir le hiocaíochtaí a dhéanamh chomh maith;
- Seirbhísí i gcomhar maidir leis an riarachán ar chúrsaí pinsin ar fud na seirbhíse poiblí mar a bhí mise a áitiú le tamall anuas agus ar díol mór áthais dom é a bheith beartaithe anois;
- Deacrachtaí go fóill maidir le harsheirbhís a cheannach 'buying back service' – go háirithe, nuair is scéal nua do chomhaltaí go bhfuil riaráistí le hóc acu maidir le ranníochtaí leis an scéim do Chéile agus do Leanaí;
- An tairbhe agus an tábhacht a bhaineann leis na próisis do Réiteach Aighnis Inmheánach (RAI) a úsáid agus sin riachtanach mar chéim tosaigh maidir le gach gearán;
- Gearáin maidir le tionscal na tógála – atá buailte go mór ag an ngéarchéim i gcúrsaí eacnamaíochta agus airgeadais. Baineann an chuid is mó de na gearáin le ranníocaíochtaí nach ndearna fostóirí;

Ombudsman warns on clarity of pension deals

Pensions Trustees, scheme administrators and employers have been warned by pensions ombudsman Paul Kenny that they need to set out clearly what people can expect to get in their pension.



- Investment issues – in particular, the importance of members understanding their rights and responsibilities.
- Clear communication – many of the complaints we receive could have been avoided had there been clearer communications between scheme members and administrators.

Continuing difficulties in investment markets

The continuing difficulties in investment markets have led to deficit positions in defined benefit schemes and serious adequacy problems in defined contribution schemes.

When a deficit position arises under a defined benefit scheme, a restriction is usually placed on the payment of early retirement or other discretionary benefits. This can have a serious impact on members who had planned to retire early based on what they believed to be firm commitments made to them when their scheme was solvent. Scheme members who are made redundant could also face restrictions.

The payment of early retirement benefits cannot be honoured when a scheme is in a deficit position and the employer is not in a position to inject additional funds into the scheme.

There are a number of ways in which trustees and scheme administrators can try to deal with a deficit in a defined benefit scheme, including:

- Increases in contributions from members;
- Reductions in scales of benefit;
- Restrictions on new entrants; and
- Restructuring of the scheme as a hybrid or defined contribution scheme.

If a workable solution cannot be found for schemes with a deficit problem, then they will need to be frozen or wound up – none of which is good news for scheme members, particularly 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.

Foláireamh ón Ombudsman Pinsean maidir le bearta pinsin

Tá foláireamh tugtha ag Paul Kenny, an tOmbudsman Pinsean do riarthóirí scéimeanna pinsin agus d'fhostóirí faoina riachtanaí is atá sé go leagfaí amach go soiléir an íocaíocht ar féidir le daoine bheith ag súil leis ina gcuid phinsean.



- Cuideachtaí 'féinics' 'Phoenix companies' – cineál cuideachtaí iad seo a dhéanann aiséirí as conablaigh chuideachta a d'imigh as, cuid mhór acu nár chomhlíon an dualgas a bhí orthu maidir le ranníocaíochtaí a íoc isteach i bpinsean na bhfostaithe;
- Cúrsaí infheistíochta – go háirithe, an tábhacht atá le tuiscint a bheith ag na comhaltaí ar na cearta atá acu agus ar a bhfuil de fhreagracht orthu féin.
- Soiléire sa chumarsáid – d'fhéadfaí cuid mhór de na gearáin a chuirtear faoinár mbráid a sheachaint dá mbeadh cumarsáid níos soiléire idir comhaltaí na scéime agus an lucht riaracháin.

Deacrachtaí leanúnacha leis na margáí infheistíochta

Mar gheall ar na deacrachtaí a bhaineann i gcónaí leis na margáí infheistíochta, bhí easnamh ag baint le scéimeanna sochair shainithe agus fadhbanna dóthanachta tromchúiseacha ag baint le scéimeanna ranníocaíochtaí sainithe.

Nuair a bhíonn easnamh i gceist i scéim shochair shainithe, is iondúil go gcuirtear srian ar shochar luathscoir nó ar shochar lánroghnach eile a íoc. D'fhéadfadh sin cur isteach go mór ar chomhaltaí a raibh beartaithe acu dul ar luathscoir bunaithe ar ar luadh leo nuair a bhí an scéim sócmhainneach, agus iadsan den tuairim gur geallúint

dhaingean a bhí i gceist. D'fhéadfadh srianta a bheith i gceist freisin maidir le comhaltaí scéime a ligtear chun bealaigh de bharr iomarcaíochta.

Ní féidir maith a dhéanamh de gheallúintí maidir le sochair luathscoir a íoc sa chás go bhfuil scéim pinsin i riocht easnaimh agus nach bhfuil an fostóir sa chás gur féidir airgead breise a chur isteach sa scéim.

Tá roinnt bealaí inar féidir le hiontaobhaithe agus riarthóirí scéime féachaint le déileáil le scéim sochair shainithe a bheith i gcás easnaimh, ina measc:

- Leibhéal ranníocaíochtaí na gcomhaltaí a ardú;
- Scála na sochar a isliú;
- Srianta a oibriú maidir le glacadh le daoine nua isteach sa scéim; agus
- Athstruchtúrú a thabhairt ar an scéim go ndéantar scéim dhéchineálach aisti nó scéim ranníocaíochtaí sainithe.

Murar féidir teacht ar réiteach infheidhme maidir le scéim a bhfuil deacracht léi mar gheall ar easnamh, ní mór an scéim a chalcadh nó a fhoirceannadh – agus ní aon deascéal sin do chomhaltaí na scéime, go háirithe dóibh siúd atá gar d'aois an phinsin.

Ar ndóigh, is ábhar mór buartha do chomhaltaí a fháil amach go bhfuil scéim pinsin i gcás easnaimh agus éiginnteacht ann faoina bhfuil i ndán. An ní a chuireann

1. Review of the year: what we have learned

In such cases, members should seek clarification from their scheme administrator – particularly in cases where there are different levels of risk associated with different types of investment. Where members remain dissatisfied with the level of information they are getting from administrators, they should consider seeking independent professional advice. Where someone has exhausted all the available avenues and is not satisfied that the benefits they have been told about reflect their entitlements, my Office is available to examine the matter. We try to ensure that members get their correct entitlements, as set out in the rules of their pension arrangements – and these might not be the same as members believe they are entitled to.

Rights and responsibilities of scheme members

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.

I receive complaints from members who believe that their fund has lost value because scheme trustees or administrators failed to act. However, members must understand that they usually have the right to determine what sort of assets their pension fund is invested in, and that they have the right to instruct trustees if they wish to make a change in their investment.

In some cases it might be appropriate for members to switch funds as they come close 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 where necessary.

Disinvestment

One recurring complaint I receive concerns the question of disinvestment and the timing of it. This is particularly problematical in these turbulent times for pensions and investment markets. 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, they should adopt a consistent policy in relation to disinvestment. If their policy is to disinvest at maturity (or at the date of winding-up) they should tell the members this. Equally, if their policy is not to disinvest, they must tell members, 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 scheme members. Trustees will not be faulted for making a decision in good faith. They will, however, be held responsible for failing to consider the matter.

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

leis an inní sin orthu go minic, cumarsáid nach bhfuil chomh maith sin - cumarsáid i roinnt cásanna ar chuma ann nó as í - idir údarais na scéime agus na comhaltaí.

I gcásanna den sórt sin, ba chóir do na comhaltaí soiléiriú a lorg ó riarthóir na scéime – go háirithe i gcásanna lena mbaineann leibhéal éagsúla baoil maidir le cineálacha éagsúla infheistíochta. Sa chás go mbíonn comhaltaí míshásta go fóill leis an leibhéal eolais atá á chur ar fáil dóibh ag na riarthóirí, ba chóir dóibh smaoineamh ar chomhairle neamhspleách a fháil ó chomhairleoir gairmiúil. Sa chás go bhfuil na modhanna ar fad atá ar fáil chun eolas a fháil triáilte agus nach bhfuil duine sásta go fóill go bhfuil na sochair a luaitear ag teacht lena mbeifí ina theideal, tá an Oifig sin agamsa ar fáil chun an cás a iniúchadh. Féachann an Oifig lena chinntiú go bhfaigheann na comhaltaí gach a bhfuil siad ina theideal faoi mar atá leagtha amach sna rialacha a ghabhann leis an socrú atá acu maidir le pinsean – agus tharlódh nach ionann sin agus an méid a mheasann na comhaltaí féin a bheith ag dul dóibh.

Ceartha agus cúraimí chomhaltaí scéimeanna

Bainneann saincheisteanna infheistíochta go dlúth le go leor de na cásanna a chuirtear faoi mo bhráid go fóill. Thrácht mé cheana ar an dualgas atá ar iontaobhaithe féachaint chuige go ndéantar infheistíocht chuí ar acmhainní scéime bheith dúthrachtach maidir lena gcuid dualgas i leith chomhaltaí na scéime i ndáil leis sin. Éilítear ar iontaobhaithe scéimeanna sochair shainithe faoi Acht na bPinsean infheistíocht a dhéanamh agus aird ar chineál agus ar thréimhse marthana na ndliteanas.

Faighim gearáin ó chomhaltaí a chreideann gur cailleadh roinnt de luach na gcistí toisc faillí iontaobhaithe agus riarthóirí na scéime beart a dhéanamh. Ach ní mór do chomhaltaí tuiscint go mbíonn de cheart acu de ghnáth cinneadh a dhéanamh faoi chineál na sócmhainní a ndéantar a gciste pinsin a infheistiú iontu agus go bhfuil de cheart acu treoir dá réir a thabhairt do na hiontaobhaithe más mian leo athrú a dhéanamh maidir leis an infheistíocht.

I gcásanna áirithe, tharlódh go n-oirfeadh do chomhaltaí athrú idir cistí agus iad ag druidim leis an aois scoir. Ba cheart don chomhalta súil ghéar a choinneáil ar na ráitis faoi shochair (ina n-ainmnítear na cistí a bhfuil infheistíocht dá gcuid iontu), fiosrúchán breise a dhéanamh leis na hiontaobhaithe nó na soláthraithe, agus leas a bhaint as an gceart atá acu aistriú ó chiste infheistíochta go chéile nuair is gá sin.

Dí-infheistíocht

Ar cheann de na gearáin a thagann arís agus arís eile, bíonn gearán faoin dí-infheistíocht agus an tráth a ndéantar é. Tá fadhbanna faoi leith leis an gceist sin agus cúrsaí chomh corraitheach faoi láthair do na margatá pinsin agus infheistíochta. Bíonn comhaltaí ag gearán nach ndearna na hiontaobhaithe a gcuid cistí a aistriú go hairgead tirim ar aois an phinsin a bhaint amach dóibh, gur fhan an t-airgead i gciste infheistíochta faoi bhainistíocht bheo, agus dá thoradh sin, gur ísligh an luach de réir mar a d'ísligh luach an mhargaidh, agus iadsan ag feitheamh go ndéanfaí an riarachán i ndáil lena gcuid sochar. Rinneadh gearáin den chineál céanna maidir le hiontaobhaithe ar a raibh freagracht maidir le scéimeanna pinsin a fhoirceannadh.

Cé nach mbítear ag tnúth go mbeadh ar chumas iontaobhaithe fáistine a dhéanamh maidir le hathrú ar na margatá infheistíochta ná íslíu a thuar sula dtarlaíonn sé, ba chóir go mbeadh polasaí seasmhach i bhfeidhm acu maidir le dí-infheistíocht. Más é atá de pholasaí acu dí-infheistíocht a dhéanamh tráth theacht in aibíocht (nó ar an dáta foirceanta), ba chóir sin a chur in iúl do na comhaltaí. Ar an gcaoi chéanna, más é atá de pholasaí acu gan dí-infheistíocht a dhéanamh, ní mór dóibh sin a chur in iúl do na comhaltaí agus a fhágáil faoi na comhaltaí treoir a thabhairt dóibhsean.

Is den bhunriachtanas go ndéanfadh iontaobhaithe an cheist maidir le dí-infheistíocht a mheas mar is cóir agus an seasamh atá acu ina leith a chur in iúl do chomhaltaí na scéime. Ní dhéanfar iontaobhaithe a lochtú faoi chinneadh a dhéanamh de mheon macánta. Déanfar, ar an taobh eile den scéal, an fhreagracht a leagan orthu sa chás go ndéantar faillí maidir leis an gceist a mheas.

1. Review of the year: what we have learned

Responsibilities of scheme authorities

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;
- Ensure that the correct contributions are paid into the scheme in a timely manner;
- Advise members about the scheme and their entitlements; and
- Ensure those entitlements are paid when they fall due.

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.

Public Service Superannuation sections

As referred to in Section 2, the introduction in 2010 and 2011 of various incentivised early retirement schemes within the public sector, and in the HSE in particular, hugely increased the workload of already overburdened superannuation sections. It would appear that some of these schemes were introduced without sufficient consideration being given to managing 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 had on the regular administration of the schemes – with problems and delays being encountered by members who had attained their normal (in most cases compulsory) retiring age and sought payment of their retirement benefits.

Apart altogether from putting the pension schemes in breach of legislation relating to their responsibilities to ensure that members receive their correct benefits when they are due, this is unsatisfactory and inconsiderate treatment of long-serving employees at their point of retirement. Retirement is a time when people require clear communication and comprehensive information.

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. In one case, two employees made the decision to take early retirement based on estimated figures that were 40 per cent overstated. The fact that such estimates are ‘for guidance only’ and ‘subject to change’ is not good enough when people are taking such life-changing decisions based on them. Such errors are very difficult to undo for the people concerned - the Pensions Act does not permit me to award any more than a person’s strict entitlement under scheme rules.

I wish to acknowledge here the hard work and dedication of the staff in the various public sector superannuation sections and the cooperation 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.

For the future, I would ask policymakers and senior managers to consider the practical implications of large-scale schemes with short decision deadlines.

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

Cúraimí atá ar údaráis scéimeanna

Is iad na príomhchúraimí atá ar iontaobhaithe agus údaráis scéimeanna i ndáil leis na scéimeanna pinsin:

- Soláthar mar is cóir a dhéanamh i ndáil leis an infheistíocht ar shócmhainní;
- Cinntiú go n-foctar na rannaíocaíochtaí cuí isteach sa scéim go tráthúil;
- Chomhairle a chur ar na comhaltaí faoin scéim agus faoina bhfuil na comhaltaí ina theideal; agus
- Cinntiú go n-foctar a bhfuil comhalta ina theideal an tráth a mbíonn sin dlite.

Is é mo thuairim go n-oibríonn mórchuid mhór na bhfostóirí, na n-iontaobhaithe scéime pinsin, na riarthóirí agus na soláthraithe go lándúthrachtach chun bainistíocht chuí a dhéanamh ar na scéimeanna pinsin atá faoina gceannas.

Brainsí Aoisliúntais sa tSeirbhís Phoiblí

Mar a luaitear i Roinn 2, chuir scéimeanna dreasachta luathscoir éagsúla a thabhairt isteach i rith na bliana 2010 agus na bliana 2011 san earnáil phoiblí, agus i bhFeidhmeannacht na Seirbhíse Sláinte go háirithe, go mór leis an ualach oibre ar bhraisí aoisliúntais a raibh an ró-ualach orthu cheana féin. Is cosúil gur tugadh isteach roinnt de na scéimeanna sin gan dóthain airde a thabhairt ar an mbainistíocht ar an ualach breise oibre a chuirfí ar na brainsí aoisliúntais.

Is ábhar buartha faoi leith an tionchar a imríodh ar an ngnáthriarachán rialta ar scéimeanna mar gheall ar an ualach breise oibre seo - agus na fadhbanna agus an mhoill a bhain lena gcuid sochair aoisliúntais a íoc le comhaltaí a raibh an aois scoir (éigeantach sa chuid is mó de na cásanna) bainte amach acu ar an ngnáthbhealach nuair a d'fhéach siad lena bhfáil.

Taobh amuigh dá thabhairt go raibh an reachtaíocht á sárú ag na scéimeanna pinsin maidir lena gcuid cúraimí cinntiú go bhfaigheann na comhaltaí na sochair atá dlite dóibh go díreach in am tráth, ní bealach sásúil ná soilíosach seo le caitheamh le fostaithe a rinne fónamh fada ar an uair scoir acu. Bíonn cumarsáid shoiléir agus eolas cuimsitheach de dhíth ar dhaoine agus iad ag dul ar scor.

Lena raibh d'obair breise agus de bhrú á chur ar na brainsí aoisliúntais, ba é a bhí i ndán go dtarlódh earráidí agus moill agus tháinig tuairisc chuid mhór cásanna de sin faoi bhráid na hOifige. Bhí cás amháin inar shocraigh beirt fostaithe dul ar luathscor bunaithe ar fhigiúirí measta agus áibhéil 40 faoin gcéad sna figiúirí a luadh. Ní leor meastacháin den sórt sin a bheith 'mar threoir amháin' agus 'faoi réir ag athrú' nuair atá daoine ag déanamh socrú bunúsach, a chuireann athrú iomlán ar an saol acu, bunaithe ar na figiúirí a luaitear leo. Bíonn sé an-deacair cásanna earráide den sórt sin a chur ina gceart - ní ligtear dom faoin Acht Pinsean níos mó ná an teidlíocht go díreach atá ag duine faoi rialacha na scéime a dhámhachtain.

Is mian liom an dua agus an díograis a chaith lucht na foirne i mbrainsí aoisliúntais éagsúla de chuid na hearnála poiblí a admháil agus an comhoibriú agus an cúnamh a thugann siad don Oifig maidir le réiteach ar ghearáin. Tuigim dóibh agus an cás inar cuireadh iad trí ualach ollmhór breise oibre a leagan orthu, taobh istigh de thréimhsí gearra ama uaireanta gan bonnstruchtúr taca dóthanach a chur i bhfearas.

D'iarrfainn ar lucht ceaptha polasaí agus ar bhainisteoirí sinsearachsan san am atá romhainn a dtagann i gceist go praiticiúil a chur san áireamh agus scéimeanna ar scála mór le spriocthréimhsí gearra á mbeartú.

1. Review of the year: what we have learned

The proposed introduction of shared services

I have commented previously on the unevenness of administration in public sector schemes and for many years advocated the implementation of a shared services type arrangement to ensure improved accuracy and consistency in their administration. In this context, I am very pleased to welcome the proposed introduction of shared services for the provision of pensions across Government Departments. This follows the announcement in November 2011 by the Minister for Public Expenditure and Reform, Mr Brendan Howlin TD.

Over my years as Pensions Ombudsman, I have investigated many cases relating to pension issues right across the public sector, and it has always surprised me how many different schemes and systems are operated by the Pensions Units of different public sector organisations, each of which requires specialist knowledge that is not common to other schemes. I have seen the parallel problem where knowledge about a pension scheme is confined to an individual or to a very small number of people – and that, unless that knowledge is formally captured, there is a considerable risk of its being lost to the organisation if personnel leave.

A shared service model for public service pension provision will have a number of distinct advantages that I strongly welcome:

- Considerable streamlining in the provision and administration of pensions, including economies of scale and the elimination of unnecessary duplication across public service areas;
- Greater certainty and consistency in pensions administration across the public service;

- A better quality of service for individual employees and pensioners;
- A more widely disseminated base of knowledge about how the pensions system works – insofar as it will be the same from one organisation to the next;
- Development of critical mass and a recognised career path for pensions specialists in the public service and the development of more comprehensive organisational memory;
- Mitigation of the risk of the dispersal of knowledge and expertise; and
- Significant long-term savings in the operation of Government Departments and public sector agencies.

Problems relating to ‘buying back’ service

Where public sector employees ‘buy back’ credit for past service, they are generally liable to pay arrears of contribution under the Spouses’ & Children’s Scheme as well as under the main Superannuation Scheme. In some cases, however, the Spouses’ & Children’s contributions were not included in the calculation of what the employee needed to pay to buy back the required credit. When such individuals came to retirement, they found that they were liable for these arrears, which were usually deducted from their retirement gratuities – not a pleasant surprise.

The most likely reason for this anomaly is that historically, little attention was paid to the settlement of the arrears due under the Spouses’ & Children’s Scheme. I can only surmise that scheme administrators believed that employees would prefer to settle these arrears at a lower rate by means of a deduction from their retirement gratuity.

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

Seirbhísí i gComhar mar atá beartaithe a thabhairt isteach

Tá luaite agam roimhe seo nach ar aon leibhéal an riarachán maidir le scéimeanna uile na seirbhíse poiblí agus táim le blianta fada ag áiteamh gur chóir socrú de chineál na seirbhísí i gcomhar a chur i bhfeidhm d'fhonn feabhas ó thaobh cruinnis agus leanúnachais i ndáil leis an riarachán a chinntiú. Ina chomhthéacs sin, is údar mór áthais dom go bhfuil beartaithe seirbhísí i gcomhar a thabhairt isteach ar fud na ranna rialtais i ndáil le pinsin a chur ar fáil agus sin de réir an fhógra a rinne an tUasal Brendan Howlin, T.D., an tAire Caiteachais Phoiblí agus Athchóirithe, i mí na Samhna 2011.

I rith na mblianta atá caite agam i mo Ombudsman Pinsean, tá imscrúdú déanta agam maidir leis an iliomad cásanna a bhain le ceisteanna pinsin ar fud na hearnála poiblí ar fad, agus ba dhíol iontais dom riamh an líon mór scéimeanna agus coráis éagsúla atá i bhfeidhm ag na hAonaid Pinsin sna heagraíochtaí éagsúla sa tseirbhís phoiblí, a bhfuil eolas speisialtóireachta de dhíth i ndáil le gach ceann faoi leith acu nach mbaineann le scéimeanna eile. Thug mé faoi deara an deacracht a tháinig dá réir sin nuair is ag aon duine amháin nó ag líon an-bheag daoine agus acusan amháin a bhí eolas faoi scéim pinsin – agus mura ndéantar an t-eolas sin a cheapadh amach go foirmeálta, go bhfuil baol láidir ann go mbeidh an eagraíocht dá uireasa sa chás go bhfágann na daoine sin.

Beidh roinnt buntáistí faoi leith ag baint le córas seirbhísí i gcomhar maidir leis an soláthar pinsin ar fud na seirbhíse poiblí agus b'ábhar mór áthais domsa iad a theacht i bhfeidhm:

- Caoinchóiriú suntasach maidir leis an soláthar agus an riarachán i ndáil le pinsin, barainneacht scála agus dúbailt nach gá a chur ar ceal ar fud réimsí den tseirbhís phoiblí san áireamh;
- Cinnteacht agus leanúnachas sa bhreis maidir leis an riarachán ar phinsin ar fud na seirbhíse poiblí;
- Seirbhís ar chaighdeán níos fearr don fhostaí agus don phinsinéir;
- Bunachar eolais níos leathanréimsí maidir le hoibriú chóras na bpinsean – ó thaobh a bheith ar aon dul in eagraíocht amháin leis an gcéad eagraíocht eile;
- Ollmhéid chinniúnach a thabhairt chun cinn agus slí bheatha aitheanta a bheith le feiceáil rompu ag speisialtóirí maidir le cúrsaí pinsin sa tseirbhís phoiblí agus lón cuimhne níos cuimsithí a thabhairt chun cinn in eagraíochtaí;
- Maolaú ar an mbaol go scaipfí an lón tuisceana agus saineolais; agus
- Sábháil airgid den suntas ar bhonn fadtéarmach i ranna rialtais agus i ngníomhaireachtaí de chuid na hearnála poiblí.

Deacrachtaí maidir le seirbhís a 'cheannach ar ais'

Nuair a cheannaíonn fostaithe san earnáil phoiblí creidmheas ar ais maidir le fónamh san am a caitheadh, is iondúil go mbíonn dlite orthu riaráistí a íoc i ndáil le ranníocaíochtaí faoin Scéim do Chéilí agus do Leanaí anuas ar ranníocaíochtaí faoin bpríomh scéim aoisliúntais. Ina ainneoin sin, bhí roinnt cásanna nár tugadh ranníocaíochtaí leis an scéim do Chéilí agus do Leanaí san áireamh agus an tsuim ba ghá don fhostaí a íoc chun an creidmheas a bhí á iarraidh a cheannach ar ais. Ar a theacht do thráth dhul ar scor do na daoine sin, tugadh le fios dóibh go raibh na riaráistí sin á ndlíomh orthu, agus is iondúil gur baineadh as na haisc scoir iad – ní nach raibh súil acu leis agus nach mbeadh ina ábhar sólais acu.

Is í an chúis is dóiche leis an iomrall sin gur beag an aird a tugtaí san am atá caite ar riaráistí maidir leis an Scéim do Chéilí agus do Leanaí a ghlanadh. Ní fhéadaim ach a chur i gcás gur mheas riarthóirí scéimeanna gurbh fhearr le fostaithe na riaráistí sin a ghlanadh ar ráta níos ísle trína mbaint as an aisce scoir.

Tháinig níos mó gearáin faoin ábhar sin chugam i rith na bliana 2011. Is é freagra ginearálta a thugaim go hiondúil nach bhféadaim dualgas an chomhalta riaráistí ranníocaíochtaí a íoc a chur de leataobh ach go bhféadaim scrúdú a dhéanamh an bhféadfadh suim níos mó a bheith

Ombudsman names firm over failure to pay late worker's family after ruling

The Pensions Ombudsman has taken the unprecedented step of naming a company and its directors after they failed to abide by his ruling that they should pay the family of a dead worker a death-in-service benefit.



I continued to receive complaints in relation to this issue in 2011. My response has generally been that I cannot waive the member's obligation to pay contribution arrears, but I can examine whether they might have paid more by the deduction from their gratuity than they would have if the alternative settlement methods had been properly made known and available to them.

Most of the cases referred to my Office came from the education and health sectors where it would be common for staff to have had relatively high mobility, periods of part-time or temporary service, which historically were not pensionable, but can now be reckoned for pension purposes.

I have been in contact with the Department of Education and the HSE authorities urging them to:

- Make known to serving employees who bought back prior service that they have a liability to settle contribution arrears under the Spouses' & Children's Scheme; and
- Provide serving employees with details of the settlement options they should have been given at the time of buying back the prior service.

Where implemented, these actions will have the effect of informing members of what they can expect when they come to retire, and ensure that they won't have an unpleasant shock. I would also hope that there will be a reduction in the level of complaints I receive on this area. Getting it right first time will help to alleviate a lot of stress and anxiety for complainants and reduce the workload of my Office. Although I have singled out the health and education sectors as the most likely to experience these problems, the principles apply across the public service generally.

Rules relating to spouses' and children's schemes in the public service

Another area of concern that cropped up a number of times in 2011 is the manner in which some of the rules of public service pension schemes were administered. This relates particularly to people who had opted out of membership of Spouses' and Children's pension schemes, but were subsequently required to join when they changed job, and were then faced with large bills for arrears. Worse still, in some cases people were not informed about their liability until they came to retirement, when large amounts were deducted from the retirement gratuities to defray this expense.

Ainmníonn an tOmbudsman Pinsean gnóthas ar chlis air íocaíocht a dhéanamh do theaghlach oibrí de réir an ordaithe a rinne sé

Rinne an tOmbudsman Pinsean rud nach ndearna sé riamh cheana nuair a d'ainmnigh sé cuideachta móide stiúrthóirí dá cuid ar loic orthu ordú a rinne sé go n-íocfadh siad sochar báis i seirbhíse do oibrí básaithe a chomhlíonadh.



íochta acu mar gheall ar an asbhaint as an aisce ná mar a bheadh íochta acu dá mbeadh curtha in iúl i gceart dóibh go raibh malairt modh íocaíochta ann agus deis tugtha dóibh an modh sin a úsáid.

Bhain an chuid is mó de na cásanna a cuireadh faoi bhráid na hOifige le hearnáil an oideachais agus earnáil na sláinte inar gnáthrud ag an lucht foirne cuid mhaith gluasteachta a bheith ag baint leo, tréimhsí oibre ar bhonn páirtaimseartha nó ar bhonn sealadach a dhéanamh, cineál fónaimh nach mbíodh inphinsin tráth, ach is féidir a áireamh chun críche pinsin faoin am seo.

Rinne mé caidreamh leis an Roinn Oideachais agus le Feidhmeannacht na Seirbhíse Sláinte arna áiteamh orthu:

- A chur in iúl d'fhostaithe atá i mbun fónaimh faoi láthair agus a cheannaigh seirbhís roimh seo ar ais go bhfuil dlite orthu riaráistí maidir le ranníocaíochtaí faoin Scéim do Chéilí agus do Leanáí a ghlanadh; agus
- Mionsonraí a chur ar fáil d'fhostaithe atá i mbun fónaimh faoi láthair maidir leis an rogha modhanna atá ann chun na riaráistí a ghlanadh faoi mar ba chóir a bheith curtha in iúl dóibh an tráth a raibh siad ag ceannach ar ais na seirbhíse roimh ré.

Is é toradh a bheidh ar na bearta sin, ach iad a chur i bhfeidhm, go gcuirtear in iúl do na comhaltaí an rud a bheadh rompu tráth dhul ar scor agus go gcinntítear nach dtagann sin aniar aduaidh orthu. Bhéinn ag súil chomh maith go dtiocfaidh íslíú ar leibhéal na gearán a

faighimse mar gheall ar an réimse sin. Bheadh de thoradh ar an mbeart seo a dhéanamh i gceart ón tús go maolófaí imní agus strus ar na gearánaithe agus go laghdófaí an t-ualach oibre ar an Oifig sin agamsa. Cé go luaim earnáil an oideachais agus earnáil na sláinte ar na hearnálacha ar mó an seans na deacrachtaí seo a theacht chun cinn iontu, baineann an chomhairle i bprionsabail leis an tseirbhís phoiblí tríd is tríd.

Rialacha maidir le scéimeanna do chéilí agus do leanáí sa tseirbhís phoiblí

Réimse eile lenar bhain ábhar buartha agus a tháinig chun cinn níos mó ná aon uair amháin i rith na bliana 2011 an dóigh ina ndéantar riarachán maidir le rialacha áirithe de chuid scéimeanna pinsin na seirbhíse poiblí. Tháinig sin i gceist go háirithe maidir le daoine a roghnaigh nach mbeidís ina gcomhaltaí de scéimeanna pinsin do Chéilí agus do Leanáí ach ar ceanglaíodh orthu bheith ina gcomhaltaí tráth ab fhaide anonn ar athrú poist dóibh agus billí móra riaráistí i gceist dá bharr. Níos measa ná sin, níor cuireadh in iúl do dhaoine i gcásanna áirithe go raibh dliteanas i gceist go dtí go raibh siad ag dul ar scor agus rinneadh suimeanna móra a bhaint as na aiscí scoir chun an costas sin a ghlanadh.

De ghnáth, ba le hardú céime taobh istigh den láthair fostaíochta (mar shampla, ó ghrád neamhoifigigh go grád oifigigh) a tháinig cásanna den sórt seo chun cinn, nó ar phostanna a athrú go hiomlán taobh istigh den

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Typically, such cases arose for some people when they were promoted within the place of employment (for example, from a non-officer to an officer grade), or when someone has changed jobs altogether within the public service in an open competition. They are not regarded as new entrants to the service as such, but they are treated as new entrants to the Spouses' and Children's scheme, membership of which is now compulsory for joiners.

By contrast, we have also come across cases where people who had previously opted out of the scheme and who subsequently (in changed circumstances) wished to join it were told that their earlier decision is irrevocable, and that they could not now join the scheme. I acknowledge that allowing people to opt into such a scheme at a later date would create all kinds of anomalies, and note that the Commission on Public Service Pensions did not recommend a change in this area. The logic of this, however, would indicate in my view that earlier opt outs should be allowed to stand rather than to force people into joining schemes.

Internal Disputes Resolution (IDR) procedures

Internal Disputes Resolution (IDR) procedures give pension scheme members a platform where they can air any problems or complaints they have directly with the people responsible for managing the scheme. The latter are the people who know the complexities of the scheme better than anyone else and are best placed to address and resolve the issues raised by the members.

In general, my Office deals with cases where a complainant has already tried to settle the issue using IDR; and if IDR has not been tried, I usually advise complainants to do so in the first instance. However, while the Notice of Determination given by trustees (or by Ministers, in public authority schemes) can be a valuable starting point for an investigation, I am sorry

to say that we do receive complaints that the process is not being completed on time, or that trustees have in some cases imposed a sort of 'filter', whereby they decide as a preliminary issue whether the complaint or dispute is 'eligible' for IDR in the first place. That is an attitude I would wish to discourage. Even if, at the end of the process, the matter turns out to be one over which I don't have jurisdiction, that should not be decided in advance by trustees. The IDR process can be a useful tool for addressing complaints and disputes, even if it turns out eventually that the matter cannot be investigated by this Office.

The Pensions Ombudsman Regulations require that a Notice of Determination should include a statement that the *complainant should check* whether the complaint or dispute falls within my jurisdiction. This clearly indicates that such a decision is not to be made at the level of the scheme. That decision lies with me.

I am very conscious that any delays in carrying out the IDR procedure can add to the complainant's sense of injustice – particularly in cases where the core of the complaint is about delays in paying benefits or in giving information. Such delays tend to exacerbate what might already be a strained relationship between the member and the pension scheme administrators/trustees/ employer.

Complaints relating to the construction industry

I continue to receive complaints from workers in the construction industry, and these fall into two broad categories:

- Complaints that workers have not been registered with the Construction Workers' Pension Scheme (CWPS); and

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tseirbhís phoiblí trí chomórtas oscailte. Ní chaitear leo mar iontrálaithe nua amach is amach sa tseirbhís, ach caitear leo mar lucht iontrála nua sa scéim do Chéilí agus do Leanaí a bhfuil comhaltacht inti éigeantach faoin tráth seo ag lucht iontrála nua.

I gcodarsnacht leis sin, thángthas trasna faoi tráth seo ar chásanna dhaoine a raibh roghnaithe acu roimhe seo nach mbeidís ina gcomhaltaí sa scéim agus ar mian leo anois (ar athrú a theacht ar chúinsí an tsaoil acu) bheith ina gcomhaltaí agus gur dúradh leo nach bhféadfaí dul siar ar an rogha a bhí déanta acu níos luaithe agus nach bhféadfaidís bheith ina gcomhaltaí den scéim anois. Glacaim leis go gcruthófaí cásanna iomraill den iliomad cineál le ligean do dhaoine roghnú dul isteach is scéim den sórt sin tráth níos faide anonn, agus tugaim chun aire nár mhol an Coimisiún maidir le Pinsin na Seirbhíse Poiblí athrú i leith an réimse áirithe seo. Bheinn den tuairim, ina ainneoin sin, gurb é a luíodh le réasún ina leith sin gur chóir ligean don rogha níos luaithe nach mbeifí ina gcomhaltaí de scéim seasamh seachas a thabhairt gur éigean do dhaoine dul isteach i scéimeanna.

Próisis maidir le Réiteach Aighnis Inmheánach (RAI)

Tugann próisis maidir le Réiteach Aighnis Inmheánach (RAI) deis do chomhaltaí scéimeanna pinsin aon fhadhbanna nó gearáin atá acu a chur i láthair go díreach leis na daoine ar a bhfuil an fhreagracht maidir le bainistíocht na scéime.

Is iadsan na daoine is fearr a bhfuil eolas acu faoi na gnéithe is casta den scéim agus is iad is fearr atá in ann déileáil le ceisteanna a dtarraingíonn comhaltaí aird orthu agus réiteach a fháil orthu.

Go ginearálta is le cásanna ina bhfuil iarracht déanta cheana féin ag an ngearánaí an cheist a réiteach tríd an gcóras RAI a bhíonn plé ag an Oifig sin agamsa; agus sa chás nár tapaíodh an córas RAI, is iondúil go gcuirim de chomhairle ar na gearánaithe sin a dhéanamh ar an gcéad dul síos. Ina ainneoin sin, cé go bhféadann Fógra Cinnidh a eisíonn iontaobhaithe (nó Airí i gcás scéimeanna údarás poiblí) bheith ina phointe maith mar thús le himscrúdúchán, is oth liom a rá go gcuirtear gearáin

faoinár mbráid nach dtugtar an próiseas chun críche in am tráth, nó gur chuir na hiontaobhaithe ‘scagchóras’ de chineál áirithe i bhfeidhm i roinnt cásanna trína shocrú mar cheist réamhráiteach cibé an bhfuil nó nach bhfuil gearán nó ábhar aighnis ‘inghlactha’ le haghaidh an phróiseas RAI ar an gcéad dul síos. Ba mhian liomsa a mholadh go seachnófaí an meon sin. Fiú amháin má tharlaíonn, i ndeireadh na scríbe, go socraítear gur ábhar atá ann nach dtagann faoi scáth na dlínse a leagtar ormsa, níor cheart go gcinneadh na hiontaobhaithe sin roimh ré. Is féidir leas a bheith as an bpróiseas RAI mar chóras chun dul i ngleic le gearáin agus ábhair aighnis, fiú má tharlaíonn i ndeireadh báire gur ábhar atá i gceist nach féidir leis an Oifig imscrúdú a dhéanamh ina leith.

Éilítear faoi Rialacháin an Ombudsman Pinsean gur chóir ráiteas a bheith mar chuid den Fhógra Cinnidh gur chóir don ghearánaí seiceáil cibé an dtagann nó nach dtagann an gearán nó ábhar an aighnis faoi scáth na dlínse a leagtar ormsa. Tugtar le fios go soiléir leis sin nach ar leibhéal na scéime atá cinneadh den sórt sin le déanamh. Is liomsa an cinneadh ina leith sin a dhéanamh.

Tuigim go rímhaith go bhféadann moill de chineál ar bith maidir leis an bpróiseas RAI treisiú le tuairim an ghearánaí go bhfuil éagóir á dhéanamh air nó uirthi – go háirithe i gcásanna inarb é is mó atá i gceist le hábhar an ghearáin gur bhain moill le sochair a íoc nó faisnéis a chur ar fáil. Is iondúil go ngéaraíonn moill den sórt sin leis an eascairdeas a d’fhéadfadh a bheith ag baint cheana féin leis an gcaidreamh idir an comhalta agus riarthóirí / iontaobhaithe na scéime pinsin nó an fostóir.

Gearáin a bhaineann le tionscal na tógála

Tá gearáin ag teacht chugam i gcónaí ó oibrithe i dtionscal na tógála agus is féidir iad a rangú i dhá chatagóir faoi leith:

- Gearáin nach bhfuil na hoibrithe cláraithe le Scéim Pinsin na nOibrithe Tógála (SPOT); agus
- Gearáin ó oibrithe atá ina gcomhaltaí den SPOT agus nach bhfuil na ranníocaíochtaí cuí déanta ag a gcuid fostóirí.

1. Review of the year: what we have learned

- Complaints from workers who are members of the CWPS, and whose employers have not made the appropriate contributions.

In both of these categories, the number of complaints received in 2011 was lower than in 2010, but remains unacceptably high. The ongoing downturn in the construction sector has a bearing on the large increase in complaints submitted to me.

Problems relating to the remittance of contributions by employers often do not come to light until a company is already out of business, or in liquidation, or the complainant has been laid off and this makes it much more difficult for the complainant to achieve a satisfactory outcome.

While either of these categories of complaint can result in a worker receiving reduced benefits on retirement, the very worst cases are those in which a worker has died in service, and where the mortality benefit that should be available under the CWPS rules is denied to his dependants. That is bad enough. What defies belief, however, is that some of the Determinations in such cases have actually been appealed to the courts by the defaulting employers.

I wish to acknowledge the ongoing cooperation and assistance that I receive from the Construction Workers' Pension Scheme, the Department of Social Protection and the Revenue Commissioners in the handling of these complaints. The continuing contact with and cooperation of the Construction Industry Monitoring Agency and EPACE (Pensions and Conditions Electrical) in the electrical contracting industry is also gratefully acknowledged.

It is unfortunate that I cannot always rely on the cooperation of the employers against whom complaints are made. The work of my Office continues to be hampered by employers and their professional advisers who delay and obstruct the progress of investigations,

in most cases by not forwarding documentation and other relevant records when requested. Criminal proceedings are brought where necessary to enforce the disclosure of relevant information.

'Phoenix' companies in the construction sector

The Irish construction sector has had a number of extremely difficult and challenging years and many companies have gone out of business entirely. My Office is dealing with the human consequences of these difficulties on a daily basis. Some companies have managed to stay in business in spite of the difficult trading conditions, and have managed to meet all their obligations, including those relating to their employees' pensions.

In the course of our investigations, however, we have come across a number of 'phoenix' companies rising from the ashes of companies that have previously been wound up and that have managed to evade tax and other liabilities. It is, of course, important to distinguish between regular business failures and the inappropriate behaviour of companies who manipulate limited liability to their own advantage.

In many cases the controlling directors of such 'phoenix' companies are back in business in a matter of days after the failure of a previous company, often from the same premises, sometimes employing the same construction workers, with a similar business name and finishing contracts that were the obligation of the previous company.

While technically this may not always be illegal, clearly there is an issue of morality, compliance with corporate governance and potentially theft – in cases where pension contributions were deducted from workers' wage packets and not remitted to the CWPS.

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

Bhí líon na ngearán, faoin dá chatagóir sin araon, níos ísle ná mar a bhí sa bhliain 2010, ach tá an líon chomh hard i gcónaí agus nach féidir glacadh leis. Tá baint ag an gcúlú leanúnach in earnáil na tógála leis an ardú mór ar líon na ngearán a chuirtear faoi mo bhráid.

Is minic nach dtagann fadhbanna maidir le fostóirí agus ranníocaíochtaí a íoc chun aire go dtí go mbíonn cuideachta imithe as gnó, nó á leachtú, nó go mbíonn an gearánaí leagtha amach agus fágann sin i bhfad níos deacra é ag an ngearánaí toradh sásúil a thabhairt i gcrích.

Cé gur féidir, i gcás ceachtar den dá chatagóir gearáin seo, go mbeadh laghdú ar na sochair a fhaigheann oibrí ar dul ar scor, is iad na cásanna is measa ar fad na cásanna sin ina bhfaigheann oibrí bás le linn seirbhíse agus go séantar an sochar mortláíochta ba chóir a bheith ar fáil faoi rialacha an SPOT ar na cleithiúnaithe. Tá sin dona go leor. Is é an rud is dochreidte ar fad, ina dhiaidh sin is uile, go ndearna roinnt de na fostóirí mainneachtana achomharc leis na cúirteanna in aghaidh roinnt de na Cinntí i gcásanna den sórt sin.

Is mian liom an comhoibriú agus an cúnamh leanúnach ó Scéim Pinsin na nOibríthe Tógála, ón Roinn Coimirce Sóisialaí agus ó na Coimisinéirí Ioncaim i ndáil leis na gearáin seo a admháil. Admhaítear chomh maith an caidreamh leanúnach agus an comhoibriú le Gníomhaireacht Monatóireachta Thionscal na Tógála (CIMA) agus EPACE (maidir le Pinsin agus Coinníollacha i gcúrsaí Leictreachais) i gcás thionscal na gconraitheoirí leictreachais a bhfuiltear buíoch ina leith.

Is ábhar díomá nach féidir i ngach cás brath ar chomhoibriú ó na fostóirí a ndéantar gearáin ina leith. Tá bac á chur go fóill ar obair na hOifige ag fostóirí agus ag a lucht comhairle gairme a chuireann moill agus bac ar dhul chun cinn an imscrúdúcháin, go hiondúil trí chlis cáipéisíocht nó taifid eile a bhaineann le hábhar a chur ar aghaidh an tráth a n-iarrtar sin. Tionscnaítear imeachtaí dlí nuair is gá sin chun foilsíú na faisnéise a bhaineann le hábhar a thabhairt i gcrích.

Cuideachtaí ‘Féinics’ in earnáil na tógála

Ba dheacair an tréimhse a bhí ann d’earnáil na tógála in Éirinn le blianta beaga anuas agus is iomaí cuideachta atá imithe as gnó ar fad. Bíonn an Oifig ag plé lá i ndiaidh an lae le toradh na ndeacrachtaí sin don ghnáthdhuine. Tá roinnt cuideachtaí ar éirigh leo fanacht i mbun gnó in ainneoin chúinsí trádála anróiteacha agus ar éirigh leo a gcuid dualgas a chur díobh, iad sin a bhaineann le pinsin na bhfostaithe san áireamh.

Le linn bearta imscrúdúcháin dar gcuid, áfach, thángthas trasna ar roinnt áirithe cuideachtaí ‘féinics’ a eascraíonn as conabhlach cuideachta a ndearnadh a foirceannadh roimhe sin agus ar éirigh leo cánachas agus dliteanais eile a sheachaint dá bharr sin. Is den tábhacht, ar ndóigh, go ndéanfaí idirdhealú idir cliseadh den ghnáthchineál i gcúrsaí gnó agus beartaíocht mhíchúí ag cuideachtaí a oibríonn teorantacht an dliteanais ar mhaithe leo féin.

I gcuid mhaith cásanna, bíonn na stiúrthóirí ceannais ar chuideachtaí ‘Féinics’ ‘phoenix companies’ den sórt sin ar ais i mbun gnó in imeacht laethanta beaga ó chlis ar an gcuideachta roimhe sin, san áitreabh chéanna go minic, na hoibríthe tógála céanna fostaithe acu, iad faoi ainm gnó den chineál céanna agus an chuideachta ag críochnú chonarthaí a bhí de dhualgas ar an gcuideachta a chuaigh roimpi.

Cé go bhféadann nach bhfuil sin mídhleathach go teicniúil i ngach cás, is léir go dtagann moráltacht agus comhlíonadh rialacha maidir le rialachas corparáide i gceist agus go bhféadfadh gadaíocht a bheith i gceist – i gcásanna inar baineadh airgead ranníocaíochtaí pinsin as pá na n-oibríthe gan sin a íoc leis an SPOT.

Cad is féidir a dhéanamh?

Tá de ról liomsa i mo Ombudsman Pinsean dom cúiteamh a thabhairt do dhaoine a d’fhulaing cailteanas airgeadais mar gheall ar mhíriarachán. D’éirigh liom i roinnt cásanna le bliain anuas dliteanas pearsanta a dháingniú ar stiúrthóirí cuideachtaí den sórt sin nuair a bhí fianaise ar bheartaíocht éagóir ar fáil. Tá an-chastacht ag baint leis an

1. Review of the year: what we have learned

What can we do about it?

It is my role as Pensions Ombudsman to give redress to individuals who have suffered financial loss due to maladministration. I have in some cases in the past year been able to fix personal liability on the directors of such companies where there is evidence of wrongdoing. This area is legally complex. However, given the increase in such cases, it is my duty to highlight this emerging problem.

When confronted with these cases my Office investigates them vigorously and it is my practice to inform the relevant authorities, including the Revenue Commissioners and the Director of Corporate Enforcement. I will continue to work to safeguard the pension interests of ordinary construction workers, and workers generally, particularly in the current economic climate.

Winding-up schemes

In the course of the year we were made aware of a number of cases where there were severe delays in winding up pension schemes. Most of the defined benefit schemes in the country are in deficit, and trustees have been awaiting the introduction of sovereign annuities in order to try to make the available funds go a bit further. It is unfortunate that those who feel the impact most are people who have already lost their jobs and are depending on the pension funds being released. Delays in winding up not only tie up the benefits of the main fund, but in most cases also prevent the release of funds secured by additional voluntary contributions.

Value of clear communication

Throughout 2011, my Office received many complaints relating to issues that could have been avoided if there had been clearer communications between scheme members and administrators.

On the administrators' side

Those responsible for administering pension schemes (in both public and private sectors) should try to ensure that their communications are effective, clear and understandable. They should also make it easier for members to raise or discuss any problems or concerns they may have.

Effective communication between scheme administrators and members is not just about meeting legal obligations or 'ticking the boxes'. Under the Pensions Act, people who leave or retire from employment have specific rights to information about their benefits and associated regulations, and they must be properly informed about their entitlements and benefits – in language that is clear and unambiguous and, as far as possible, jargon-free.

On the members' side

Too often, I find that people's expectations do not match their entitlements. In some cases that is the result of administrative deficiencies that I find after independent review of complaints. In others, it is because scheme members do not understand the communications they receive or don't understand their own rights and responsibilities in relation to their pension.

While the legislation sets out the information members should receive, each person has a responsibility to ensure that they have a clear grasp of all their entitlements. Making provision for retirement is one of the biggest investment decisions that most people make in their lives. Members who are worried or in doubt about any issue relating to their pension should ask the scheme administrator for clarification – for example, on the different levels of risk associated with different types of fund. In many cases, members will also benefit from independent professional advice.

1. Athbhreithniú na bliana: a bhfuil foghlamtha againn

dlí i ndáil leis an réimse seo. Ina ainneoin sin, i bhfianaise méadú ar líon na gcásanna dá sórt, tá de dhualgas orm aird a dhíriú ar an bhfadhb atá ag teacht chun cinn.

Nuair a chuirtear cásanna mar seo faoi bhráid na hOifige déantar imscrúdú ina leith go lándúthrachtach agus tá de nós agam na húdaráis lena mbaineann, na Coimisinéir Ioncaim agus an Stiúrthóir um Fhorfheidhmiú Corparáideach san áireamh. Leanfaidh mé den obair maidir le leas ghnáthoibríthe i dtionscal na tógála i gcúrsaí pinsin, agus leas na n-oibríthe tríd is tríd, a chur ar bhonn slán go háirithe agus cúrsaí eacnamaíochta mar atá.

Scéimeanna a fhoirceannadh

I rith na bliana, cuireadh ar an eolas muid faoi roinnt cásanna ina raibh moill mhór le scéimeanna pinsin a fhoirceannadh. Tá easnamh ar an gcuid is mó de na scéimeanna sochair shainithe sa tír agus na hiontaobhaithe ag fanacht go dtugtar isteach blianachtaí stáit d'fhonn iarracht a dhéanamh seasamh níos faide a bhaint as na cistí atá ar fáil. Is é an trua go bhfuil an chuid is mó díobh sin is géire a airíonn a thionchar seo tar éis a gcuid postanna a chailleadh agus iad ag brath ar chistí an phinsin a ligean leo. Fágann moill agus foirceannadh nach amháin go mbíonn sochair an phríomhchiste cuibhrithe ach, sa chuid is mó de na cásanna, go mbíonn cosc ar chistí arna n-urrú le ranníocaíochtaí shaorálacha breise a scaoileadh freisin.

An tábhacht atá le soiléire sa chumarsáid

Is iomaí gearán a tháinig faoi bhráid na hOifige i rith na bliana 2011 a bhain le ceisteanna a bhféadfaí iad a sheachaint dá mbeadh soiléire níos fearr ag baint leis an gcumarsáid idir comhaltaí agus riarthóirí na scéime.

Taobh an riarthóra den scéal

Ba cheart dóibh siúd ar a bhfuil de fhreagracht an riarachán a dhéanamh maidir le scéimeanna pinsin (san earnáil phoiblí agus san earnáil phríobháideach araon) féachaint lena chinntiú go mbíonn a gcuid cumarsáide críochnúil, soiléir, intuigthe. Ba cheart dóibh chomh maith

é a dhéanamh níos éasca ag comhalta fadhbanna nó ábhar buartha a lua agus a phlé.

Ní coinníollacha faoin dlí a shásamh ná 'tic a chur sna boscaí' an t-aon rud a bhaineann le cumarsáid den éifeacht. Faoin Acht Pinsean, tá cearta faoi leith ag daoine a fhágann fostaíocht nó a théann ar scoir ar eolas faoina gcuid sochar agus faoi rialacháin a ghabhann leo, agus ní mór iad a chur ar an eolas go ceart agus go cóir mar gheall ar a gcuid teidlíochta agus sochar – i bhfriotal atá soiléir, saor ó dhébhríos agus, chomh mór agus is féidir sin, saor ó bhéarlagar.

Taobh an chomhalta den scéal

Is rómhínic a thugaim faoi deara nach dtagann an rud a mbíonn duine ag tnúth leis agus an rud a bhfuil an té sin ina theideal le chéile. I roinnt cásanna, is mar gheall ar locht sa riarachán sin a thugtar faoi deara ar athbhreithniú neamhspleách a dhéanamh ar an ábhar gearáin. I gcásanna eile, is mar gheall nach dtuigeann comhaltaí na scéime an comhfhreagras a sheoltar chucu nó nach dtuigeann siad na cearta atá acu agus na cúraimí atá orthu i ndáil leis an bpinsean.

Cé go leagtar amach sa reachtaíocht an fhaisnéis ba chóir don chomhalta a fháil, tá de dhualgas ar gach duine cinntiú go bhfuil tuiscint shoiléir acu ar a bhfuil siad ina theideal. Tá an soláthar a dhéantar don tréimhse tar éis na hoibre ar an gcinneadh infheistíochta is suntasaí a bhíonn le déanamh ag an gcuid is mó de na daoine ar feadh a saoil. Ba chóir don chomhalta atá in imní nó in amhras faoi cheist ar bith a bhaineann lena bpinsean soiléiriú a iarradh ar riarthóir na scéime – mar shampla, ar na leibhéil éagsúla baol a bhaineann le cistí de chineálacha éagsúla. I gcuid mhaith cásanna, bheadh tairbhe ag comhaltaí freisin as comhairle ghairmiúil neamhspleách.





Summary of activities in 2011

Cuntas achomair ar
obair na bliana 2011

2

2. Summary of activities in 2011

Case activity

In 2011, my Office took on 1,221 new complaints, which represents a slight decline from the 1,312 new cases received in 2010. Of the new cases, 485 became detailed complaint files, and the rest were dealt with as enquiries in a relatively short period of time.

While we entered 2011 with 432 complaint files open, we ended the year with 409 on hand. See Section 3 of this report for a more detailed breakdown of the cases my Office dealt with in 2011.

There have been some significant changes in the nature of the cases brought to our attention in 2011.

- The cases that became detailed complaint files have considerably increased in complexity, which is a continuing trend.
- There has been a tendency for parties to resist attempts at conciliation and to pursue matters through to Final Determination.
- We dealt with a high volume of enquiries relating to incentivised early retirement schemes in the public service.
- Continuing difficulties in the investment markets have resulted in some pension schemes having adequacy problems.
- People are educating themselves more about their pensions including their benefits, entitlements and all the aspects of their schemes.
- The continuing economic uncertainty has made people apprehensive and concerned about the future, and people are looking carefully at their pensions entitlements in this context.

My Office is facing an unprecedented level of demand for our services. In the first quarter 2011, there were 318 new cases received, and in the first quarter 2012, 695 new cases were received. This reflects a twofold increase in the number of complaint cases being processed, with a resulting negative impact on the speed of resolution. In 2007 there were four investigators dealing with a caseload of 515 for the entire year, which is less than the 695 cases received by my four investigators for the first quarter of 2012. Despite the recent introduction of more streamlined procedures, an increase in the number of investigators is required to enable us to resolve cases in an expeditious manner and to maintain high standards of service delivery.

Increased complexity of cases

In 2011 we introduced new processes to identify cases suitable for early resolution and to deal with them more quickly, where possible. The number of cases on hand at any one time is a useful measure of the volume of activity undertaken by my Office, but we also need to take into account the variance in the types of complaint, along with the amount of investigation time that they require. The detailed complaint files that we dealt with in 2011 were, on average, considerably more complex than those we dealt with in previous years. In some instances, disputes have been in existence for a considerable period of time before they reach my Office, and have already generated significant amounts of paperwork. For that reason they have involved much more time-consuming exchanges of information between parties, clarification of documentation, and analysis of the core issues at play.

Close attention to detail and clear painstaking analysis is essential to ensure that any Final Determination I make is not likely to be overturned by legal challenge.

2. Cuntas achomair ar obair na bliana 2011

Obair cásanna

Chuaigh an Oifig i mbun oibre ar 1,221 gearán nua i rith na bliana 2011, laghdú beag ar an 1,312 cás nua a tháinig i rith na bliana 2010. As na cásanna nua sin, osclaíodh comhad gearáin mionsonraithe maidir le 485 acu, agus déileáladh leis an gcuid eile mar fhiosrúcháin in imeacht tamaill ghairid.

Tosaíodh amach ar an mbliain 2011 le 432 comhad gearáin oscailte, 409 a bhí idir lámha ag deireadh na bliana. Féach Cuid 3 den tuarascáil seo maidir le briseadh síos mion ar na cásanna ar oibrigh an Oifig orthu i rith na bliana 2011.

Bhí roinnt athruithe suntasacha maidir le cineál na gcásanna a cuireadh faoinár mbráid i rith na bliana 2011.

- Tá na cásanna a n-osclaítear comhad gearáin mionsonraithe ina leith ag éirí i bhfad níos casta, pátrún leanúnach faoin tráth seo.
- Tá claonadh sna páirtithe cur in aghaidh iarrachtaí teacht ar chomhréiteach agus cúrsaí a bhrú ar aghaidh go dtugtar cinneadh críochnaitheach.
- Déileáladh le líon mór fíorúcháin maidir le scéimeanna dreasachta luathscóir sa tseirbhís phoiblí.
- Tháinig de thoradh ar na deacrachtaí leanúnacha sna margaí infheistíochta go bhfuil deacrachtaí leordhóthanachta ag roinnt scéimeanna pinsin.
- Tá daoine ag cur eolas níos mó ar chúrsaí maidir lena gcuid pinsean, na sochair, teidlíochtaí agus gnéithe uile na scéimeanna.
- Tá daoine imníoch agus buartha faoina bhfuil i ndán dóibh mar gheall ar an éiginnteacht leanúnach maidir le cúrsaí eacnamaíochta, agus tá daoine déanamh scrúdú ina chomhthéacs sin ar a bhfuil siad ina theideal faoina gcuid pinsean.

Tá éileamh ar sheirbhísí na hOifige ar leibhéal seachas mar a chonacthas riamh cheana. An ráithe tosaigh den bhliain 2011, tháinig 318 cás nua faoi bhráid, agus an ráithe tosaigh den bhliain 2012, tháinig 695 cás nua. Is ionann sin agus méadú faoi dhó ar líon na gcásanna gearáin atá á bpróiseáil agus tionchar chun dochair dá réir sin ar an am a thógann sé cásanna a réiteach. Sa bhliain 2007, bhí ceathrar imscrúdaitheoirí ag plé le 515 cás i rith na bliana ar fad, líon ba lú ná an 695 cás a tháinig faoi bhráid an cheathrar imscrúdaitheoirí in aon ráithe amháin i dtús na bliana 2012. Ainneoin modhanna oibre níos caoinchóirithe a thabhairt isteach, ní foláir méadú ar líon na n-imscrúdaitheoirí chun ligean dúinn cásanna a réiteach go tráthluath agus cloí leis an gcaighdeán ard maidir le seirbhís a chur ar fáil.

Castacht níos mó ag baint leis na cásanna

Tugadh isteach modhanna oibre nua i rith na bliana 2011 d'fhonn cásanna a bheadh oiriúnach maidir lena réiteach go luath a thabhairt chun aire agus déileáil leo ar bhealach níos tapa nuair is féidir sin. Is slat tomhais úsáideach maidir le hoiread na hoibre a dhéanann an Oifig líon na gcásanna a bhíonn idir lámha ag aon tráth ar bith, ach ní mór chomh maith an éagsúlacht maidir le cineálacha na ngearán a thabhairt san áireamh chomh maith leis an méid ama a theastaíonn don imscrúdúcháin ina leith. Bhí na comhaid gearáin mhionsonraithe a rabhtas ag plé leo i rith na bliana 2011, tríd is tríd, i bhfad níos casta ná iad sin a mbítí ag plé leo i rith na mblianta roimhe sin. I gcásanna áirithe, bíonn aighneas ar siúl ar feadh cuid mhór ama sula gcuirtear faoi bhráid na hOifige iad, agus bíonn cuid mhór cáipéisíochta cruthaithe cheana féin ina leith. Ar an gcúis sin, bíonn níos mó ama i gceist le malartú faisnéise idir na páirtithe, le soiléiriú maidir leis an gcáipéisíocht agus le hanailís ar na ceisteanna lárnacha a thagann i gceist.

Is den bhunriachtanas go mbíonn aird ghéar ar na nithe is mine agus go ndéantar diananailís shoiléir d'fhonn cinntiú nach dócha go gcuirfí athrú ar aon Chinneadh Críochnaitheach a eisímse mar gheall ar chúis dlí.

Redundant workers not getting early pension deals as promised

LAI-OFF workers who have been promised early retirement deals may end up disappointed, the pensions ombudsman has warned.



Resistance to conciliation

In 2011 we noticed that parties to disputes tended to take up more entrenched positions and to resist using established conciliation or mediation as ways of arriving at reasonable resolutions. From my point of view, this has led to a higher number of cases requiring more detailed investigation, leading to Final Determination. This has meant that my Office has had to spend a great deal more time on a small number of cases.

Public service retirement incentive schemes

Throughout 2010 and 2011, a number of incentivised early retirement schemes were introduced across the public service. For individuals contemplating retirement under such schemes, the calculation of their pension and gratuity entitlements can be quite complex, and the superannuation sections of government departments and agencies had difficulties coping with the volume of enquiries and illustrations relating to such schemes, while at the same time coping with the management of already scheduled retirements. The scope for error is greatly increased in these circumstances, and we have also had a number of complaints about delays in making payment to retirees. Such difficulties generated a large number of enquiries to my Office in 2011.

Difficulties for pension schemes

Pensions and investments have had another tough year in 2011, and many defined benefit pension schemes have found themselves in deficit. Members' funds in many defined contribution schemes were also depleted. Understandably, this is a very worrying situation for many people, and my Office continues to receive complaints from members concerned by these developments.

Providing impartial pension information

Apart from investigating and adjudicating on complaints relating to pension schemes, my Office also provides general information to individual members of the public. This is a service that is valued by the public and my Office is regarded as an impartial authority whose opinion is independent of any vested interest. People seek clarification from my Office by phone, by email and by calling to our premises in person.

Individuals who contact us may believe that they have a grievance or may be in the early stages of formulating a complaint; or they may just want guidance and information that they can trust.

Níl oibríthe iomarcacha ag fáil luathphínsean de réir na ntéarmaí geallta

De réir fholáireamh an Ombudsman Pinsean d'fhéadfadh nach mbeidh i ndán d'oibríthe a Scaoiltear chun Bhealaigh agus ar ghealladh bearta luathscoir dóibh ach an díomá.



Leisce teacht ar chomhréiteach

Thugamar faoi deara i rith na bliana 2011 go bhfuil claonadh sna páirtithe maidir le haighnis seasamh níos daingne a dhéanamh agus cur in aghaidh aon mhodhanna seanbhunaithe maidir le comhréiteach nó eadráin mar bhealach chun teacht ar réiteach réasúnta. Ó mo thaobhsa den scéal, tá de thoradh air sin gur mó an líon cásanna a dteastaíonn imscrúdúchán níos mine ina leith a dtiocfadh Cinneadh Críochnaitheach dá bharr. Ciallaíonn sin go raibh ar an Oifig i bhfad níos mó ama a chaitheamh le líon bheag cásanna.

Scéimeanna dreasachta scoir sa tSeirbhís Phoiblí

I rith na mblianta 2010 agus 2011, tugadh roinnt scéimeanna dreasachta luathscoir isteach ar fud na seirbhíse poiblí. Is féidir leis an ríomh ar a mbeidís ina theideal ó thaobh pinsin agus aisce bheith casta go maith ag an té a bheadh ag smaoineamh dul ar scor faoi scéimeanna den sórt sin agus bhí deacracht ag na brainsí aoisliúntais i ranna rialtais agus i ngníomhaireachtaí ag déileáil le líon na bhfiosrúchán agus na samplaí léargais a bhain le scéimeanna den sórt sin, an tráth céanna a rabhthas ag déileáil leis an mbainistíocht maidir le daoine a bhí ag dul ar scor de réir an ghnáthsceidil. Cuirtear go mór leis an dóigh go dtarlódh earráid i gcúinsí den chineál sin, agus rinneadh roinnt gearán linn freisin faoi mhoill ar íocaíochtaí a dhéanamh le daoine a chuaigh ar scor. Tharla

cuid mhór fiosrúchán leis an Oifig i rith na bliana 2011 mar gheall ar dheacrachtaí den saghas sin.

Deacrachtaí ag scéimeanna pinsin

Ba chrua an bhliain arís an bhliain 2011 maidir le pinsin agus infheistíocht agus is iomaí scéim pinsin le sochar sainithe a raibh easnamh orthu. Bhí íslíú ar luach chistí na gcomhaltaí i gcuid mhór scéimeanna ranníocaíochtaí sainithe chomh maith. Ar ndóigh, is ábhar mór buartha sin ag cuid mhór daoine agus leanann comhaltaí a bhfuil imní orthu mar gheall ar na cora sin, de ghearáin a dhéanamh leis an Oifig.

Eolas neamhchlaon maidir le cúrsaí pinsin

Taobh amuigh d'imscrúdú a dhéanamh agus breith a thabhairt faoi ghearáin maidir le scéimeanna pinsin, cuireann an Oifig eolas ginearálta ar fáil freisin do dhaoine den phobal. Is seirbhís í shin a mbíonn tairbhe ag an bpobal aisti agus meastar an Oifig a bheith údarásach neamhchlaon agus an tuairim a thugtar neamhspleách maidir le haon leas dílsithe. Iarrann daoine soiléiriú ón Oifig ar an fón, i dteachtaireachtaí ríomhphoist agus trí theacht isteach in áitreabh na hOifige iad féin.

Tharlódh an té a thagann i gcomhfhreagras linn den tuairim go bhfuil údar gearáin aige nó ag tosú amach ar ghearán a chur le chéile. Nó d'fhéadfadh gur treoir agus faisnéis iontaofa atá á lorg aige.

2. Summary of activities in 2011

Sample questions from the FAQ

My pension scheme is insolvent and is being wound up – what are the implications for me?	I am confused as to who is responsible for my pension problem as I hear of Trustees, Administrators, Scheme Providers, Insurance companies etc?	What is a Trust RAC?
Can I “cash in” my pension?	I am employed in the construction industry. There are no deductions from my wages for a pension or benefits such as sick pay, death in service. What should I do?	I want to buy back service under a public service scheme - I find it difficult to get information, understand the terms and conditions etc. Who can I talk to?
I am a single person in the public service and I don't want to contribute to a Spouses' & Children's scheme. Can I opt out?	Is there anything I should do before I make my complaint?	How far back can the Pensions Ombudsman go in relation to a complaint?

While we cannot give advice to people in relation to options available to them, we can point them to other services and resources – for example, to help them establish if they have grounds for a complaint.

In 2011 we dealt with over 700 telephone and email enquiries on which we were able to offer guidance. We also received many more enquiries that were more general in nature – often expressions of concern or confusion rather than enquiries that fell directly within our remit. We have not counted these in our caseload statistics.

Although the provision of such information and guidance to the general public 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.

In an effort to support this work, we have an ongoing programme of publishing 'frequently asked questions' (FAQs) on our website to address many of the more common issues that arise, and to which we can direct enquirers for more detailed information that they can read at their convenience. The FAQs cover the following:

- The Pensions Ombudsman's Office and its functions;
- General pension matters;
- Private sector pensions issues; and
- Public sector pensions issues.

The FAQ pages on our website are particularly popular, and since their introduction we have seen the number of website hits grow by 45 per cent. There were 825,320 hits to my website in 2011.

Promotional activities

As a publicly-funded body we need to do everything we can to make sure that anyone with a pension-related problem knows about us and how we can help. For that reason, we take a strong commitment to public relations and promotional activities, across a number of fronts:

2. Cuntas achomair ar obair na bliana 2011

Ceisteanna samplacha ó Ceisteanna Coitianta

Tá mo scéim pinsin dócmhainneach agus í á foirceannadh - cad a thiocfaidh i gceist leis sin domsa?	Tá mé measctha maidir leis an té ar a bhfuil freagracht i ndáil leis an bhfadhb atá agam faoi chúrsaí pinsin mar cloisim faoi lontaobhaithe, Riarthóirí, Soláthraithe Scéime, comhlachtaí Árachais etc?	Cad is Conradh Blianachta Scoir lontaobhais ann?
An bhféadaim mo phinsean a "shóinseáil"?	Tá mé fostaithe i dtionscal na tógála. Ní bhaintear aon airgead as mo phá maidir le pinsean ná sochair de leithéid pá breoiteachta, bás le linn seirbhíse. Cad is ceart dom a dhéanamh?	Is mian liom seirbhís a cheannach ar ais faoi scéim de chuid na seirbhíse poiblí - Bíonn sé deacair agam eolas a fháil, na téarmaí agus na coinníollacha a thuiscint etc. Cé leis a bhféadaim labhairt?
Duine neamhphósta mise sa tseirbhís phoiblí agus ní mian liom íoc isteach i scéim do Chéilí agus Leanaí. An bhféadaim diúltú?	An bhfuil aon ní ba cheart dom a dhéanamh sula ndéanaim gearán?	Cé chomh fada siar agus is féidir leis an Ombudsman Pinsean dul ag déileáil le gearán?

Cé nach féidir linn comhairle a chur ar dhaoine faoi na roghanna atá acu, is féidir iad a chur ar an eolas faoi sheirbhísí eile agus faoi acmhainní – mar shampla, chun cuidiú leo a dhéanamh amach an bhfuil foras gearáin acu.

Pléadh le líon ba mhó ná 700 fiosrúchán a rabhtas in ann treoir a thabhairt ina leith ar an teileafón nó ar an ríomhphost i rith na bliana 2011. Rinneadh cuid mhór fiosrúchán eile linn chomh maith a bhí níos ginearálta óna gcineál – ba mhinic gur ábhar buartha nó mearbhaill a bhí á gcur in iúl seachas fiosrúcháin a tháinig go díreach faoi scáth chúram na hOifige. Ní chuirtear iad sin san áireamh leis na staitisticí maidir leis an ualach cásanna.

Cé gur féidir cuid mhaith ama a chaitheamh le heolas agus treoir den chineál sin a chur ar fáil do dhaoine den phobal, is dóigh liom go bhfuil gá dáiríre leis agus tá mé sásta seasamh leis an tseirbhís fhiúntach sin a bheith á cur ar fáil ag an bhfoireann.

Ar mhaithe leis an obair seo, tá clár foilsitheoireachta leanúnach ar siúl againn maidir le ‘ceisteanna coitianta’ (FAQs) ar an láithreán gréasáin d’fhonn déileáil le cuid mhór de na ceisteanna is coitianta a thagann chun cinn,

agus ar féidir linn lucht fiosrúcháin a dhíriú orthu maidir le heolas níos mine is féidir leo a léamh ar a gcaoithiúlacht. Baineann na ceisteanna coitianta leis na réimsí seo a leanas:

- Oifig an Ombudsman Pinsean agus feidhmeanna na hOifige;
- Cúrsaí pinsin go ginearálta;
- Ceisteanna maidir le pinsin san earnáil phríobháideach; agus
- Ceisteanna maidir le pinsin san earnáil poiblí.

Bíonn tóir faoi leith ar leathanaigh na gceisteanna coitianta ar an láithreán gréasáin, agus ó cuireadh ar fáil iad tá ardú 45 faoin gcéad a líon na ndaoine a cheadaíonn an láithreán gréasáin. Cheadaíodh an láithreán gréasáin 825,320 uair i rith na bliana 2011.

Bearta bolscaireachta

Ós comhlacht le ciste poiblí atá san Oifig, ní foláir gach ní is féidir a dhéanamh d’fhonn cinntiú go mbíonn aon duine a mbeadh fadhb acu a bhaineann le cúrsaí pinsin

2. Summary of activities in 2011

- Our website, <http://www.pensionsombudsman.ie> is our primary window on the world, and we use it to provide information and advice on all matters relating to pensions, plus access to forms for making complaints. Some of the documents on our website are also available in Irish, French, Spanish and Polish.
- We have revised and updated our brochures to make them clearer and more easily understood.
- As pensions-related issues arise in general news and features, I provide media comment and authoritative opinion. This includes comment on court judgments and other legal matters relating to pensions, and comment on matters that are currently before the public.
- We provide both editorial content and advertising features to newspapers, magazines and to specialist and trade publications.
- During 2011 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 Management (IIPM), the Ireland Spain Economic Association, the Institute of Public Administration Pension Forum, the Association of Pension Lawyers in Ireland (APLI), SIPTU College, IMPACT, TEEU, the Circuit Court Judges' Annual Conference, the National Federation of Pensioners' Associations and the Irish Family Law Association. From our point of view, such activities are an invaluable way of keeping in touch with practitioners in the pensions industry.
- I write occasional articles on pensions-related topics and ensure that my Office is represented at the over 50s shows around the country.
- Details of our Office and its functions are listed in authoritative reference publications such as the *IPA Yearbook and Diary*.
- In 2011, we issued press releases on topics as diverse as public service pension reductions, the abuse of limited liability by companies who walk away from pension liabilities, and on the importance of pension scheme members knowing the detail of their entitlements.

Contacts with other organisations

To deliver effectively on our mission requires us to liaise with many other national and international organisations. There are many areas where our work and that of other agencies overlap – for example, we share common concerns with the Office of the Ombudsman, the Financial Services Ombudsman and with the Pensions Board – and in our different spheres of operation, many of the generic issues we face are the same, including maladministration, abuse of authority, poor communication with stakeholders, and so on. I have maintained contact with the Consumer Directorate of the Financial Regulator and with the Department of Social Protection. I have also held discussions with the Revenue Commissioners, 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 have a formal Memorandum of Understanding), with the National Employment Rights Authority and the Equality Tribunal.

I have also maintained contact with a number of trade unions, with the Construction Workers' Pension Scheme, and with the bodies that monitor compliance with the Registered Employment Agreements for the Construction Industry and the Electrical Contractors

2. Cuntas achomair ar obair na bliana 2011

ar an eolas faoin Oifig agus faoin dóigh inar féidir linn cuidiú leo. Ar an gcús sin, bítear díograiseach maidir leis an gcaidreamh poiblí agus le bearta bolscaireachta i réimsí éagsúla:

- Is é an láithreán gréasáin, <http://www.pensionsombudsman.ie> an príomhfhuinneog idir an Oifig agus an saol mór, agus baintear leas as chun eolas agus comhairle a chur ar fáil faoi gach rud a bhaineann le cúrsaí pinsin, chomh maith leis na foirmeacha a chur ar fáil ar a ndéantar gearáin. Tá roinnt de na cáipéisí ar an láithreán gréasáin ar fáil i nGaeilge, i bhFraincis, i Spáinnis agus i bPolainnis chomh maith.
- De réir mar a thagann ceisteanna maidir le cúrsaí pinsin chun cinn i ngnáth-thuairiscí nuachta agus i ngné-thuairiscí, cuirimse gnáthábhar ar fáil do na meáin nó tuairim údarásach. Bíonn trácht ar bhreitheanna cúirte agus ar cheisteanna eile dlí a bhaineann le cúrsaí pinsin agus trácht ar ábhair eile a bhíonn os comhair an phobail san áireamh leis sin.
- Cuirtear ábhar eagarthóireachta agus gné-altanna fógraíochta ar fáil do nuachtáin, d'irisí agus d'fhoilseacháin speisialtóireachta maidir leis an ngnó.
- Thug mé cainteanna uaim i rith na bliana 2011 do chomhlachtaí gairme agus ionadaíochta éagsúla, ina measc, Cumann Chisté Pinsean na hÉireann (IAPF), an Cumann Árachas Saoil (LIA), Institiúid Bainistíochta Pinsean na hÉireann (IIPM), Cumann Eacnamaíochta na hÉireann agus na Spáinne, Fóram Pinsin an Fhorais Riaracháin, Cumann Dhlíodóirí Pinsin na hÉireann (APLI), Coláiste an Cheardchumainn Seirbhísí, Tionsclaíoch Gairmiúil agus Teicniúil, IMPACT, TEEU, Comhdháil Bhliantúil Bhreithiúna na Cúirte Cuarda, Cónaidhm Náisiúnta na gCumann Pinsinéirí agus Cumann Dlí an Teaghlaigh in Éirinn. Ó thaobh na hOifige de, tá tairbhe as cuimse le beartaíocht den chineál sin ó thaobh caidreamh a chothú leis an lucht feidhme i dtionscal na bpinsean.
- Scríobhaim altanna ó am go chéile faoi ábhair a bhaineann le cúrsaí pinsin agus cinntím go mbíonn ionadaíocht thar ceann na hOifige ag níos mó ná 50 taispeántas ar fud na tíre.
- Luaitear mionsonraí faoin Oifig agus faoi fheidhmeanna na hOifige i bhfoilseacháin údarásacha tagartha de léithéid *IPA Yearbook and Diary* an Fhorais Riaracháin.
- Eisíodh preasráitis i rith na bliana 2011 faoi ábhair chomh héagsúil le laghdú ar phinsin seirbhíse poiblí, mí-úsáid as teorantacht dliteanais ag cuideachtaí agus dliteanais maidir le cúrsaí pinsin á bhfágáil gan sásamh, agus a thábhachtaí agus atá go mbeadh eolas ag comhaltaí scéimeanna pinsin ar mhionphointí maidir lena gcuid teidlíochta.

Caidreamh le heagraíochtaí eile

Chun a leagtar de chúram orainn a thabhairt i gcrích go héifeachtúil, ní mór caidreamh a choinneáil le le cuid mhór eagraíochtaí eile náisiúnta agus idirnáisiúnta. Is iomaí réimse ina dtagann obair na hOifige agus obair ghníomhaireachtaí eile le chéile – bítear ag plé, mar shampla, le hábhar den chineál céanna le hOifig an Ombudsman, leis an Ombudsman um Sheirbhísí Airgeadais agus leis an mBord Pinsean – agus sna réimsí éagsúla oibre atá againn, bíonn cuid mhór de na ceisteanna ginearálta céanna á gcur os ár gcomhair, ar a n-áirítear míriarachán, mí-úsáid as údarás, míchumarsáid le geallsealbhoirí agus mar sin de. Choinnigh mé caidreamh ar bun le Stiúrthóireacht an Tomhaltóra in Oifig an Rialtóra Airgeadais agus leis an Roinn Coimirce Sóisialaí. Bhí plé agam freisin leis na Coimisinéirí Ioncaim, leis an Ombudsman Pinsean sa Ríocht Aontaithe agus leis an Institiúid Bainistíochta Pinsean.

Le linn obair imscrúdúcháin, bhí caidreamh ag an Oifig chomh maith leis an Oifig um Chlárú Cuideachtaí agus leis an Stiúrthóir um Fhorfheidhmiú Corparáideach (a bhfuil Meabhrán Tuisceana idir mé féin agus é féin), leis an Údarás Náisiúnta Cearta Fostaíochta agus leis an mBinse Comhionannais.

2. Summary of activities in 2011

industry – the Construction Industry Monitoring Agency and EPACE.

I would like to record my appreciation of the cooperation received from all of these organisations.

British and Irish Ombudsman Association

I am a member of the Executive of the British and Irish Ombudsman Association (BIOA) and during 2011 I continued to chair the Governance Working Group of that organisation. I consider the work of the 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; and
- Publishing information and engaging in all such other activities as may improve public awareness of recognised Ombudsman schemes and encourage their efficiency and effectiveness.

In April, the Office hosted a meeting of the Ombudsmen in the Republic of Ireland, to discuss matters of mutual interest and to meet the Chairman of the British and Irish Ombudsman Association (BIOA).

The following Ombudsmen attended the meeting:

The Ombudsman, Emily O'Reilly; The Pensions Ombudsman, Paul Kenny. The Financial Services Ombudsman, Bill Prasifka and his Deputy Ombudsman, Tom Comerford; Simon O'Brien, Chair, and Carmel Foley and Kieran Fitzgerald, Commissioners at the Garda Ombudsman Commission; Emily Logan, Ombudsman for Children; Paulyn Marrinan Quinn SC, Ombudsman

for the Defence Forces; Prof. John Horgan, the Press Ombudsman. The meeting was also attended by Peter Tyndall, Welsh Ombudsman and Chair of BIOA and Ian Pattison, Secretary of BIOA.

Reporting to the Oireachtas

In November 2011, I attended before the Public Accounts Committee regarding the 2010 accounts for my Office and briefed the Committee on the role and operation of my Office. I am extremely conscious of the current economic difficulties facing the country and of the drive to make further savings across the entire public service. The Office is a service-based and customer-oriented organisation.

The Department of Social Protection provides 'shared services' for my Office in the areas of Finance, Payroll and ICT. This is a cost-effective arrangement which saves duplication of staff and resources. I acknowledge that the Department gives this support in a spirit that completely respects the independence of the Office.

As Pensions Ombudsman, I rigorously examine every line of expenditure for my Office to ensure maximum value for money for the Exchequer. In 2011, I further reduced expenditure and surrendered as much funds as possible to the Exchequer, as indeed I had done in each of the previous three years.

Legal actions

Legal services are provided to the Office of the Pensions Ombudsman from a panel established following a competitive tendering process. Legal costs were over €76,000 in 2011, which represents a reduction of 19 per cent from 2010. The level of legal costs reflects the litigious situation in which we find ourselves as a quasi-judicial independent and impartial Office. I endeavour to settle as many complaints as possible via mediation and negotiated settlements or by the application of common sense. Regrettably, these solutions do not always work

2. Cuntas achomair ar obair na bliana 2011

Bíonn caidreamh leanúnach le roinnt Ceardchumann, le Scéim Phinsin na nOibríthe Tógála, agus leis na comhlachtaí a dhéanann monatóireacht ar an gcomhlíonadh maidir leis na Comhaontuithe Fostaíochta Cláraithe i gcás Thionscal na Tógála agus thionscal na gConraitheoirí Leictreachais – Gníomhaireacht Monatóireachta Thionscal na Tógála (CIMA) agus EPACE.

Ba mhaith liom mo bhuíochas a lua as an gcomhoibriú a bhí ó na heagraíochtaí sin go léir.

Cumann Ombudsman na Breataine agus na hÉireann

Táim féin i mo chomhalta d'Fheidhmeannas Chumann Ombudsman na Breataine agus na hÉireann (BIOA) agus lean mé i rith na bliana 2011 de bheith i mo chathaoirleach ar Mheitheal Oibre Rialachais na heagraíochta sin. Tá obair an Chumainn ina acmhainn luachmhar i mo thuairimse maidir le hobair na hOifige sin agamsa. I measc na bpríomhchuspóirí ag an BIOA, tá siad seo a leanas:

- Cothú, forbairt agus cosaint ar ról agus ar theideal gach Ombudsman;
- Caighdeáin sáchleachtais a shásóidh gach Ombudsman i mbun a gcuid dualgais a leagan amach agus a chur chun cinn;
- Cruinnithe, comhdhálacha agus seimineáir faoi ábhar cuí a eagrú; agus
- Eolas a fhoilsiú agus páirt a ghlacadh i ngach cineál eile beartaíochta lena gcuirfí leis an tuiscint i measc an phobail ar scéimeanna aitheanta de chuid Ombudsman agus lena gcothófaí an éifeachtacht agus an éifeachtúlacht ina leith.

I mí Aibreáin, d'eagraigh an Oifig cruinniú do gach Ombudsman i bPoblacht na hÉireann d'fhonn cúrsaí is ábhar spéise don iomlán a phlé agus d'fhonn bualadh le Cathaoirleach Chumann Ombudsman na Breataine agus na hÉireann (BIOA).

Bhí na hOmbudsmana seo a leanas i láthair:

An tOmbudsman, Emily O'Reilly; An tOmbudsman Pinsean, Paul Kenny; an tOmbudsman um Sheirbhísí Airgeadais, Bill Prasifka agus a Leas-Ombudsman, Tom Comerford; Simon O'Brien, Cathaoirleach, maille le Carmel Foley agus Kieran Fitzgerald, Coimisinéirí le Coimisiún Ombudsman an Gharda Síochána; Emily Logan, an tOmbudsman do Leanaí; Pauly Marrinan Quinn AS, an tOmbudsman d'Óglaigh na hÉireann; an tOllamh John Horgan, Ombudsman an Phreasa. Bhí Peter Tyndall, Ombudsman na Breataine Bige agus Cathaoirleach BIOA i láthair ag an gcruinniú freisin chomh maith le Ian Pattison, Rúnaí BIOA.

Tuairiscíocht leis an Oireachtas

I mí na Samhna 2011, tháinig mé i láthair an Choiste um Chuntais Phoiblí maidir le cuntais na hOifige don bhliain 2010 agus thug tuairisc ar ról agus ar oibriú na hOifige don Choiste. Tuigim go hiomlán na deacrachtaí eacnamaíochta atá roimh an tír faoi láthair agus an feachtas chun sábháil breise airgid a dhéanamh ar fud na seirbhíse poiblí ar fad. Is eagraíocht an Oifig atá bunaithe ar an tseirbhís a thabhairt agus dírithe ar an gcustaiméir.

Cuireann an Roinn Coimirce Sóisialaí 'seirbhísí i gcomhar' ar fáil don Oifig maidir le cúrsaí Airgeadais, Párola agus TEC. Is socrú sin atá éifeachtach ó thaobh costais de agus a sheachnaíonn dúbailt ar lucht foirne agus ar acmhainní. Is mian liom a lua go dtugann an Roinn an cúnaimh taca sin le meon a mbaineann meas iomlán ar neamhspleáchas na hOifige leis.

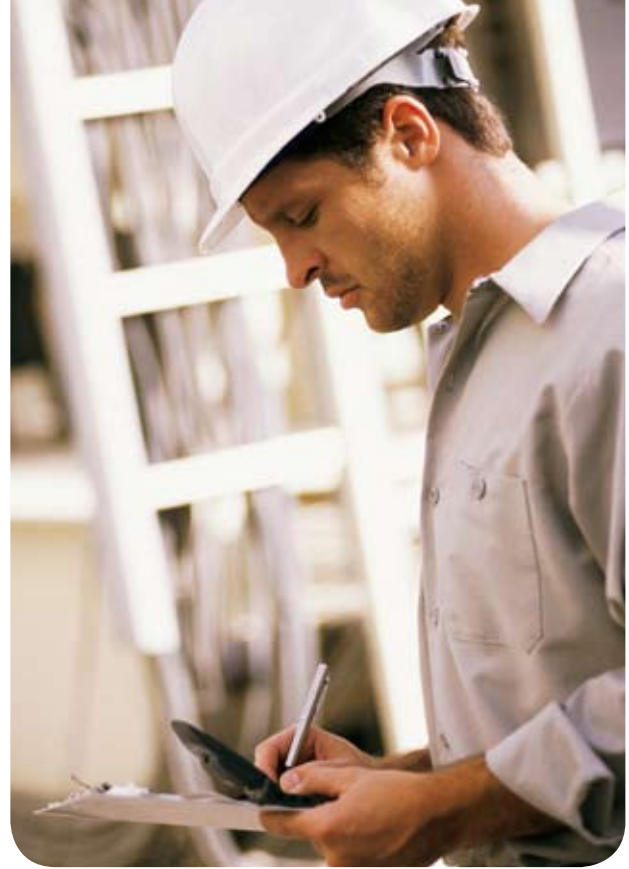
I mo Ombudsman Pinsean dom, scrúdaím go dian gach líne de chaiteachas na hOifige d'fonn an fiúntas is fearr is féidir chinntiú as airgead an Stáitchiste. I rith na bliana 2011, laghdaigh mé an citeachas arís agus ghéill mé oiread airgid don Stáitchiste agus ab fhéidir, rud a bhí déanta agam go deimhin gach bliain le trí bliana roimhe sin.

Cúiseanna dlí

Cuirtear seirbhísí dlí ar fáil d'Oifig an Ombudsman Pinsean ó phainéal a cuireadh ar bun tar éis próiseas tairisceana iomaíochta. Bhí costais dlí na bliana 2011 níos

Ombudsman condemns 'phoenix' – type companies

PENSIONS OMBUDSMAN Paul Kenny has spoken out against abuse of tax law and other unethical business practices by 'phoenix'-type construction companies.



and as a result I am obliged to make Determinations, which inevitably means that one party at least is unhappy with the outcome and we sometimes find ourselves before the courts.

In 2007, I signalled my clear intention to initiate criminal prosecutions against anyone who obstructs my investigations or fails to cooperate in supplying information that could bring investigations to a speedy conclusion.

As with previous years, I regret to say that in 2011 a number of respondents, particularly in the construction sector, continued to ignore my Office and failed to cooperate. A total of twelve criminal cases were successfully taken to various District Courts including Cork, Trim, Wexford, Westport, Manorhamilton, Cavan and Letterkenny, and fines of up to €3,500 were imposed on those prosecuted. In all cases, we were awarded costs.

The prosecution of individuals or companies is not something that I enjoy. On the contrary, it is a drain on the limited resources of my Office when the direct costs of court, together with the associated costs in time and lost productivity of my investigators are taken into account. The most significant sufferers are of course the complainants who must tolerate great delays in

the processing of their complaints. It is all too often forgotten that behind every complaint is a person, a person who may have suffered from maladministration of a pension scheme and I want to make it clear that I have, in the past, not tolerated any respondents who refuse to cooperate with my Office; and will not do so in the future.

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 or within that of the Pensions Board. It also sets out the arrangements for cooperation and exchange of information between the parties within statutory limits. This complements the memoranda already in existence with the Director of Corporate Enforcement, the Financial Regulator and the Financial Services Ombudsman. The Memorandum of Understanding between my Office, the Financial Services Ombudsman Bureau and the Central Bank was revised and renewed during the year in response to changes in the legislation governing the Central Bank.

Lochtaíonn an tOmbudsman Pinsean cuideachtaí den chineál ‘féinics’

Tá ráiteas eisithe ag Paul Kenny, an tOMBUDSMAN PINSEAN ina lochtaíonn sí go tréan mí-úsáid dlí cánach agus cleachtais neamheiticíúla eile gnó a bhíonn ar bun ag cuideachtaí tógála den chineál ‘féinics’.



airde ná €76,000, suim atá 19 faoin gcéad níos ísle ná an costas sa bhliain 2010. Léiríonn leibhéal na gcostas dlí an cás ina bhfuiltear, mar Oifig gharbhreithniúnach atá neamhspleách neamhchlaon, maidir le cúiseanna dlí. Féachtar le réiteach a fháil ar oiread gearáin agus a féidir trí eadráin agus socrú idirbheartaíochta nó tríd an ngnáthchiallmhaireacht a oibriú. Ní i gcónaí, ar mhí-ámharaí an tsaoil, a oibríonn sin agus bíonn orm, dá thoradh sin, cinntí a dhéanamh agus fágtar sa chás sin go mbíonn ar a laghad páirtí amháin míshásta le toradh an cháis agus tarlaíonn uaireanta go mbíonn muid os comhair cúirte.

Thug mé le fios go soiléir sa bhliain 2007 go raibh rún agam ionchúiseamh coiriúil a thionscnamh i gcoinne dhuine ar bith a chuireann bac ar imscrúdú de chuid na hOifige nó nó a chliseann i gcomhoibriú trí fhaisnéis a chur ar fáil lena bhféadfaí imscrúdú a thabhairt chun críche go tráthluath.

Is cúis díomá dom a rá, mar ab ionann i rith na mblianta roimhe seo, go raibh roinnt freagróirí, go háirithe in earnáil na tógála, a lean ag déanamh neamhaird den Oifig agus nach ndearna comhoibriú. Tugadh dhá chúis coiriúil déag ar éirigh leo sa Chúirt Dúiche in áiteanna éagsúla, Corcaigh, Baile Átha Troim, Loch Garman, Cathair na Mart, Cluainín, an Cábhán agus Leitir Ceanainn ina measc, agus gearradh féineál suas le €3,500 orthu siúd a ionchúisíodh. Rinneadh costais a dhámhachtain dúinn i ngach ceann de na cásanna.

Ní sásamh ar bith dom ionchúiseamh a dhéanamh ar dhuine ná ar chuideachta. A mhalairt ar fad, is mór an t-ualach é ar acmhainní teoranta na hOifige nuair a chuirtear san áireamh costas díreach na cúirte chomh maith leis an gcostas ó thaobh ama agus an toradh oibre eile ó mo chuid imscrúdaitheoirí nach dtarlaíonn mar gheall air. Is iad is mó a fhulaingíonn leis, ar ndóigh, na gearánaithe a chaitheann cur suas le moill mhór sa phróiseáil ar an ngearán. Is rómhinic a dhéantar dearmad go bhfuil duine i gceist le gach gearán, duine a d’fhéadfadh a bheith ag fulaingt mar gheall ar mhíriarachán ar scéim pinsin agus is mian liom talamh slán a dhéanamh de nach raibh mé sásta, san am a chuaigh thart, cur suas le haon fhreagróir a dhiúltaigh comhoibriú leis an Oifig, agus nach mbeidh san am atá le theacht.

Meabhráin Tuisceana

Leagtar amach i Meabhrán Tuisceana a aontaíodh leis an mBord Pinsean na freagrachtaí atá ag an mBord agus ag an Ombudsman Pinsean faoi seach. Tig le foireann an Bhoird úsáid a bhaint as an Meabhrán sin chun a dheimhniú cé acu an dtagann an chúis atá siad a imscrúdú faoi scáth shainchúram an Ombudsman Pinsean nó shainchúram an Bhoird Pinsin. Leagtar amach ann freisin na socruithe maidir le comhoibriú agus le malartú faisnéise idir na páirtithe faoi réir ag na teorainneacha faoin reachtaíocht. Cuireann sin leis na meabhráin tuisceana atá ann cheana féin idir an Oifig agus an Stiúrthóir um Fhorfheidhmiú Corparáideach, an Rialtóir

2. Summary of activities in 2011



Darina Breen received a B.A. (Public Management) in 2011.

My Office also has a Memorandum of Understanding with the Revenue Commissioners, giving formal effect to the right to exchange information with that body. I use the powers under this instrument to exchange information with the Revenue Commissioners, particularly where investigations by my Office uncover abuses of the tax reliefs given to pension schemes and any evasion of tax liabilities by anyone associated with occupational pension schemes.

My Office has a Memorandum of Understanding with the United Kingdom's Pensions Ombudsman – this 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. The Office of Public Works (OPW) commissioned an accessibility audit on our building. This revealed that significant 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. I have software installed on my website which reads the text for the viewer which proves helpful for those with difficulty in reading.

I have implemented further measures to assist more effective communication with my Office, for example, with subtitles and signing of the videos on our website.

Training and development

The process of personal training and development continued for all staff during 2011, and included:

- Technical training in pension-related areas;
- Instruction in the different areas of information technology with particular reference to our new Case Management System, which is continuously being upgraded; and
- Other training courses that formed part of each individual's participation in the Performance Management Development System.
- Fire safety training for the entire staff of the Office.

Commitment of my staff

The dedication and hard work of my staff have contributed enormously to the success of this Office. I would like to acknowledge the hard work, professionalism and commitment of my team.

Average sickness was 1.3 days per person in 2011 – which is remarkably low by comparison with other organisations and sectors.

2. Cuntas achomair ar obair na bliana 2011



Fuair Colette Coghlan
Diplóma i Staidéar
Gnó i 2011.

Airgeadais, agus an tOmbudsman Seirbhísí Airgeadais. Rinneadh athbhreithniú agus athnuachan i rith na bliana ar an Meamram Tuisceana idir an Oifig agus Biúró an Ombudsman um Sheirbhísí Airgeadais agus an Banc Ceannais mar gheall ar leasú ar an reachtaíocht maidir leis an mBanc Ceannais.

Tá Meabhrán Tuisceana freisin idir an Oifig agus na Coimisinéirí Ioncaim a thugann éifeacht fhoirmeálta don cheart faisnéis a mhalartú leis an gcomhlacht sin. Bainim úsáid as an gcumhacht faoin ionstraim sin faisnéis a mhalartú leis na Coimisinéirí Ioncaim, go háirithe sa chás go léirítear le himscrúdúchán de chuid na hOifige mí-úsáid as an bhfaoiseamh cánach a thugtar do scéimeanna pinsin nó aon dliteanas cánach a bheith á sheachaint ag duine ar bith a bhaineann le scéimeanna pinsin ceirde.

Tá Meabhrán Tuisceana idir an Oifig agus an tOmbudsman Pinsean sa Ríocht Aontaithe – baineann sin leis an bplé le gearáin agus le haighnis maidir leis an Scéim Phinsin do na Comhlachtaí Thuaidh-Theas a bunaíodh faoi Chomhaontú Aoine an Chéasta. Bhí gá leis sin ó tá an scéim bunaithe ó thaobh dlí an dá thaobh den Teorainn.

Áisiúlacht agus Tuisceant don Phobal

Déanann an Oifig gach dícheall chun a chinntiú go mbíonn an teacht is fusa is féidir ag gach duine ar na seirbhísí. Choimisiúnaigh Oifig na nOibreacha Poiblí (OOP) iniúchadh áisiúlachta ar an bhfoirgneamh. Léiríodh leis sin go raibh obair athchóiriúcháin ionas go mbeadh áisiúlacht iomlán ag baint le háras na hOifige. Fágann na srianta airgid atá i bhfeidhm faoi láthair áfach nach bhféadaim an lón comhairle ón iniúchadh sin a thabhairt i bhfeidhm go ceann tamaill éigin. Leanfar idir an dá linn den pholasáí a bhí againn riamh, casadh le gearánaithe a bhfuil deacracht ar leith acu ó thaobh áisiúlachta de i láthair oiriúnach eile, ina dteach cónaithe féin más é sin is gá.

Chuir mé córas Lúb Induchtúcháin Soghluaiste isteach san Oifig chun cuidiú le daoine a bhfuil deacracht éisteachta acu. Tá bogearra curtha i bhfearas ar an suíomh idirlín trína léitear an téacs don té a bhíonn ag breathnú air agus is cabhair sin dóibh siúd a bhfuil deacracht acu le léamh.

Tá bearta eile curtha i gcrích agam chun cuidiú le cumarsáid níos éifeachtaí leis an Oifig, mar shampla, tá fotheidil agus comharthaíocht láimhe leis na fistuairiscí ar an láithreán gréasáin.

Oiliúint agus Forbairt

Leanadh den phróiseas maidir le hoiliúint phearsanta agus forbairt do gach duine den fhoireann i rith na bliana 2011 agus bhí i gceist leis, i measc ábhar eile:

- Oiliúint theicniúil i réimsí a bhaineann le pinsin;
- Teagasc maidir le réimsí éagsúla de theicneolaíocht an eolais, go háirithe i ndáil leis an gCóras Riaracháin Cásanna nua, a bhfuil forfheabhsú á dhéanamh go leanúnach ina leith; agus
- Cúrsaí oiliúna eile a bhí mar chuid de pháirt gach duine den fhoireann sa Chóras Bainistíochta agus Forbartha Feidhmíochta.
- Oiliúint maidir le sábháilteacht dóiteáin don uile dhuine d'fhoireann na hOifige.

Dúthracht na foirne

Cuireann dúthracht agus díograis na foirne go mór leis an rath atá ar an Oifig seo. Ba mhaith liom an dua, an ghairmiúlacht agus an díocas atá san fhoireann a thréaslú leo.

1.3 lá in aghaidh an duine ar an meán an ráta breoiteachta i rith na bliana 2011 – ráta atá an-íseal go deo i gcomparáid le heagraíochtaí agus le hearnálacha eile.





Caseload summary and statistics 2011

Achoimre agus staitisticí maidir le cásanna 2011

3

3. Caseload summary and statistics 2011

Cases: enquiries and complaints

Anyone who believes that they have suffered financial loss because of poor administration of an occupational pension scheme, Personal Retirement Savings Account (PRSA) or Trust Retirement Annuity Contract (TRAC) can make a complaint to my Office. With all the various cases brought before us, we operate a kind of triage system by which we attempt to resolve cases as quickly and easily as possible.

In the first instance, we encourage complainants to seek resolution of their complaint directly with their pension scheme trustees or PRSA provider, and most often this is achieved through an Internal Disputes Resolution (IDR).

If this procedure does not work, the complainant can then ask my Office to begin a more detailed investigation of the complaint. These become detailed complaint files, and here again, we seek to bring the complaint to a closure as quickly as possible.

- **Onward reference:** Every case is examined initially to determine whether it is in my jurisdiction. Where the complaint falls outside our terms of reference, we refer the complainant to another agency or Ombudsman, or advise that there is nothing we can do.
- **Report and guidance:** Where the complaint is not too complex and does not require formal investigation, we can try to resolve it relatively quickly by providing the complainant with a report and guidance.
- **Mediation:** Where we offer to mediate between the complainant and their pension scheme trustees or PRSA provider, in an effort to resolve the issue amicably.
- **Formal investigation:** For more complex cases that cannot be resolved in any other way, we proceed to a formal investigation leading to a legally binding Final Determination.

While we record the receipt of telephone and email enquiries, we do not hold much data on these, as they can generally be answered and resolved promptly. The cases which we analyse for statistics are those which escalate to detailed complaint files, as described above.

Cases	
Enquiry	A case that is resolved quickly, either in a telephone call or in a short exchange of emails.
Complaint	A more detailed case that requires further investigation, and on which we open a <i>detailed complaint file</i> .

My Office continued to receive a high volume of new cases during 2011, with 1,221 new cases recorded, representing a small fall from the 1,312 recorded for 2010.

Adding the 432 cases carried forward from 2010 to the 1,221 new cases received during 2011 meant that we had a total caseload of 1,653 for the year. During 2011 we closed 1,244 cases, including 557 detailed complaint files, thereby carrying forward 409 complaint cases into 2012.

Table 3.1 summarises my Office's caseload for 2011 and 2010.

In 2011 we reopened 49 cases, compared to 31 in 2010. Some of these were cases where we had already provided a report and guidance, following which the complainant identified a new issue, or where the true nature of the complaint was not apparent from the information originally given to us.

Of the new cases we received in 2011, 485 became detailed complaint files. The nature of these cases is summarised in Table 3.2.

3. Achoimre agus staitisticí maidir le cásanna 2011

Cásanna: fiosrúcháin agus gearáin

Duine ar bith a mheasann gur fhulaing sé cailteanas airgid mar gheall ar dhrochriarachán ar scéim pinsean ceirde, Cuntas Coigiltis Scoir Pearsanta (CCSP) nó Conradh Blianachta Scoir Iontaobhais (CBSI), is féidir leis an té sin gearán a dhéanamh leis an Oifig. Lena dtagann de chásanna éagsúla faoinár mbráid, tá mar a bheadh córas triáiseála i bhfeidhm againn trína bhféachtar le cásanna a réiteach chomh luath agus chomh héasca agus is féidir.

Ar an gcéad dul síos, áitítear ar an ngearánaí féachaint le réiteach a fháil ar an ngearán go díreach le hiontaobhaithe na scéime pinsin nó leis an soláthraí CCSP, agus is minice ná a mhalairt a thugtar sin i gcrích trí Réiteach Aighnis Inmheánach (RAI).

Mura n-éiríonn leis an modh oibre sin, is féidir leis an ngearánaí a iarraidh ar an Oifig tús a chur le himscrúdú níos géire ar ábhar an ghearáin. Tagann *comhad gearáin mionsonraithe* i gceist leis sin agus féachtar, ina leith sin chomh maith, leis an ngearán a thabhairt chun críche a luaithe is féidir.

■ **Cás a chur ar aghaidh:** Déantar gach cás a scrúdú ar an gcéad dul síos d'fhonn a dheimhniú go dtagann sé faoi scáth an dlíne a leagtar ormsa. Sa chás nach dtagann cás faoi théarmaí tagartha na hOifige, luaitear gníomhaireacht nó Ombudsman eile leis an ngearánaí nó cuirtear de chomhairle ar an ngearánaí nach bhfuil aon ní is féidir linne a dhéanamh.

■ **Tuairisc agus treoir:** Sa chás nach bhfuil an gearán róchasta agus nach gá imscrúdúchán foirmeálta ina leith, is féidir linn féachaint lena réiteach luath go leor trí thuairisc agus treoir a chur ar fáil don ghearánaí.

■ **Eadráin:** Sa chás go dtairgítear eadráin a dhéanamh idir an gearánaí agus iontaobhaithe na scéime pinsin nó an soláthraí CCSP, d'fhonn féachaint le réiteach dea-mhéiniúil a fháil ar an gceist.

■ **Imscrúdúchán foirmeálta:** I gcásanna níos casta nach féidir a réiteach ar aon bhealach eile, téimid ar aghaidh le himscrúdúchán foirmeálta a mbíonn Cinneadh Deiridh de thoradh air atá ina cheangal faoin dlí.

Cé go gcoinnítear taifead ar fhiosrúchán a dhéantar ar an teileafón nó ar an ríomhphost, ní choinnítear mórán sonraí ina leith sin ós iondúil gur féidir iad a fhreagairt agus a réiteach go pras. Is iad na cásanna a ndéantar sonraí a cheapadh ina leith na cásanna sin a dtugtar *comhad gearáin mionsonraithe* i gceist ina leith, mar a luaitear thuas.

Cásanna	
Fiosrúchán	Cás a réitítear go tapadh, le glao teileafóin nó le comhfhreagras gairid ar an ríomhphost.
Gearán	Cás níos mionsonraithe a mbíonn breis imscrúdúcháin de dhíth ina leith agus a n-osclaítear <i>comhad gearáin mionsonraithe</i> mar gheall air.

Tháinig líon mór cásanna nua chuig an Oifig arís i rith na bliana 2011, le 1,221 cás nua á gcur ar taifead, laghdú beag i gcomparáid leis an 1,312 cás i rith na bliana 2010.

Ar an 432 cás a tugadh ar aghaidh ón mbliain 2010 a chur leis an 1,221 cás nua a tháinig i rith na bliana 2011, fágfar go raibh ualach iomlán 1,653 cás i gceist i mbliana. Rinneadh 1,244 cás a dhúnadh i rith na bliana 2011, 557 comhad gearáin mionsonraithe ina measc, rud a fhágann go raibh 409 cás gearáin á dtabhairt ar aghaidh go dtí an bhliain 2012.

Leagtar amach go hachomair in Tábla 3.1 an obair ar chásanna san Oifig i rith na bliana 2011 agus na bliana 2010.

Rinneadh 49 cás a oscailt in athuair i rith na bliana 2011, i gcomparáid le 31 cás sa bhliain 2010. Ba chásanna cuid acu sin a raibh tuairisc agus treoir tugtha ag an Oifig ina leith cheana féin ach ar thug an gearánaí ábhar eile i gceist ina leith ina dhiaidh sin nó nárbh léir cineál an ghearáin dáiríre ón eolas a cuireadh ar fáil dúinn an chéad uair.

As na cásanna nua a tháinig faoinár mbráid i rith na bliana 2011, bhí 485 cás ar osclaíodh comhad gearáin mionsonraithe ina leith. Tugtar achoimre maidir le cineál na gcásanna sin in Tábla 3.2.

3. Caseload summary and statistics 2011

Table 3.1 Caseload Summary

Year	Cases Received	Carried Forward	Total for year	Cases Closed	On hand at year end
2010	1312	398	1710	1278	432
2011	1221	432	1653	1244	409

Table 3.2: Nature of investigation in detailed complaint files opened in 2011

Nature of Complaint	2010	2011
Additional Voluntary Contributions (AVCs)	11	19
Approved Retirement Fund / Approved Minimum Retirement Fund (ARF / AMRF) queries	1	3
Augmentation/enhancement of benefits	5	2
Buy out Bonds	2	0
Calculation of benefits	104	116
Contribution refunds	7	5
Defined Benefit versus Defined Contribution	3	1
Disclosure of information	25	25
Early retirement	13	13
Equal Treatment Issue	1	1
Fund values	34	29
General enquiry	53	43
Ill health	17	11
Incorrect, late or no benefit payment	17	28
Incorrect info giving rise to false expectation	13	4
Membership / entry conditions	14	10
Mis-selling	4	8
Pensions Adjustment Orders	6	5
Post-retirement increases	12	3
Preservation of benefits	0	1
Remittance of contributions	109	69
Spouses' and dependants' benefits	17	23
Transfers	24	20
Winding up	22	16
Years of service – cost of / credit for	44	30
Total	558	485

3. Achoimre agus staitisticí maidir le cásanna 2011

Tábla 3.1 Achoimre Maidir le Riar na Gcásanna

An Bhliain	Cásanna a tháinig isteach	Tugadh ar aghaidh	Iomlán na bliana	Cásanna a dúnadh	Idir lámha ag deireadh na bliana
2010	1312	398	1710	1278	432
2011	1221	432	1653	1244	409

Tábla 3.2: Cineál an imscrúdúcháin maidir le comhaid gearáin mhionsonraithe a osclaíodh i rith na bliana 2011

Cineál an Ghearáin	2010	2011
Ranníocaíochtaí Breise Deonacha (AVCanna)	11	19
Fiosrúchán maidir le Ciste Scoir Formheasta / Ciste Scoir Íosta Formheasta (CSF / CSIF)	1	3
Méadú / forfheabhsú ar na sochair	5	2
Bannaí Ceannach-thar-barr-amach	2	0
An ríomh ar shochair	104	116
Aisíoc ranníocaíochtaí	7	5
Sochar sainithe i gcomórtas le Ranníocaíocht Shainithe	3	1
Faisnéis a nochtadh	25	25
Luathscor	13	13
Ceist maidir le caitheamh go cothrom le duine	1	1
Luach ciste	34	29
Fiosrúchán ginearálta	53	43
Drochshláinte	17	11
Íocaíocht sochair a bhí míchruinn, mall nó ar lár ar fad	17	28
Eolas míchruinn ba chúis le dóchas nach dtiocfadh i gcrích	13	4
Coinníollacha ballraíochta / iontrála	14	10
Mílitriú	4	8
Orduithe um Choigeartú Pinsin	6	5
Arduithe iardhul ar scor	12	3
Sochair a chaomhnú	0	1
Ranníocaíochtaí a íoc	109	69
Sochair céile agus cleithiúnaithe	17	23
Aistriú	24	20
Foirceannadh	22	16
Blianta fónaimh – costas / creidmheas ina leith	44	30
Iomlán	558	485

3. Caseload summary and statistics 2011

Analysis of complaints closed in 2011

Of the 1,244 cases we closed in 2011, 557 were detailed complaint files. We categorise the ways in which we achieve closure on complaints based on the reason for the closure – see Table 3.3.

The main categories of closure reason are described immediately below.

Table 3.3 Summary of Complaint Closures by Reason in 2011

Completions by Reason	2010	2011
Outside terms of reference		
General (includes those out of time)	40	19
Referred onward to other Ombudsman / Regulator	36	25
Report and guidance given	203	238
Mediation		
Successful	103	87
Unsuccessful	43	26
Final Determination		
Complaint upheld	27	37
Complaint not upheld	47	25
Miscellaneous		
Advised of need for IDR	8	14
Appeal - determination upheld	0	0
Appeal - not proceeded with	0	3
Complaint not proceeded with	37	73
Enforcement completed	3	1
Enforcement not for OPO	2	2
Obstruction Case Completed	6	7
Total	555	557

3. Achoimre agus staitisticí maidir le cásanna 2011

Anailís ar na gearáin a dúnadh i rith na bliana 2011

As 1,244 cás a dúnadh i rith na bliana 2011, bhí comhad gearáin mionsonraithe ag baint le 557 acu. Déantar na modhanna ina dtugtar dúnadh an cháis gearáin i gcrích a rangú de réir na gcúiseanna a bhíonn leis an gcomhad a dhúnadh – féach Tábla 3.3.

Tugtar cur síos ar na príomhchatagóirí maidir le cúiseanna le cás a dhúnadh sa tábla a leanas.

Tábla 3.3 Achoimre de réir cúiseanna maidir le cásanna gearáin a dúnadh i rith na bliana 2011

Cúis le cás a thabhairt chun críche	2010	2011
Taobh amuigh de na téarmaí tagartha		
Ginearálta (gearáin nach ndearnadh in am tráth san áireamh)	40	19
Cuireadh faoi bhráid Ombudsman / Rialtóir eile	36	25
Tugadh tuairisc agus treoir	203	238
Eadráin		
Toradh sásúil	103	87
Gan toradh sásúil	43	26
Cinneadh Deiridh		
Gearáin ar seasadh leo	27	37
Gearáin nár seasadh leo	47	25
Ilghnéitheach		
Comhairlíodh go raibh gá le RAI	8	14
Achomharc - seasadh leis an mbreith	0	0
Achomharc - ní dheachthas ar aghaidh leis	0	3
Ní dheachthas ar aghaidh leis an ngearán	37	73
Tugadh an forfheidhmiúchán chun críche	3	1
Ní mba le OOP an forfheidhmiúchán a dhéanamh	2	2
Tugadh cás maidir le bac chun críche	6	7
Iomlán	555	557

3. Caseload summary and statistics 2011

Closure: outside terms of reference

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

A total of 44 or 8 per cent of the complaints closed in 2011 were found to be outside my terms of reference for various reasons. Of these, 25 were considered to fall within the remit of another Ombudsman, a regulator or a state agency and were duly referred to them. The remaining 19 complaints were outside my terms of reference for a variety of reasons, such as:

- Those that fell outside of the statutory time limits that apply to my Office; and
- Those in which no financial loss was found to have occurred.

Closure: report and guidance given

For a variety of reasons, it is not always immediately clear whether or not a complainant has legitimate grounds for making a complaint:

- The true nature of the complaint might not be immediately apparent;
- It might not be clear who the complaint should be directed at; or
- Without some further investigation, it might be difficult to determine whether or not the matter in dispute falls within my remit.

So, to determine these matters, it is often necessary for me and my staff to examine a considerable body of evidence submitted by the complainant before deciding on the best approach to take to the matter under dispute. Such an examination may show that there are insufficient grounds for a complaint or that the matter is not one that is within my remit. For example, while maladministration might appear obvious, whether or not this resulted in financial loss might be less so.

In other cases, it may become clear that the primary cause of the issue is a failure of communication or a lack of understanding of some point of detail on the part of the complainant.

In cases such as these, we can usually address a complainant's concerns and bring the matter to a satisfactory conclusion without needing to initiate a formal investigation procedure. This involves providing a report and guidance to the complainant in which we can, for example:

- Explain a pension scheme member's entitlement in more detail; or
- Explain a scheme's procedures in more detail; or
- Explain the requirements of the Revenue Commissioners or of the Pensions Act in a way that can be readily understood by the complainant.

The provision of a report or the giving of guidance in such cases allows us to handle and resolve complaints in a shorter time and generally in a less formal and confrontational manner. It also helps ensure that cases do not escalate into detailed complaint files which tend to take considerably more time to progress.

Of the 557 complaints closed during 2011, 238 or 43 per cent of them were closed following an examination and the provision of a report and guidance.

3. Achoimre agus staitisticí maidir le cásanna 2011

Dúnadh: taobh amuigh de na téarmaí tagartha

Bíonn castacht agus éagsúlacht mhór ag baint le cuid mhaith de na gearáin a chuirtear faoi bhráid. Ar an gcúis sin, d'fhéadfadh go dteastódh cuid mhór taighde agus scrúdúcháin chun na fíorais ar fad a bhaineann le hábhar a thabhairt chun léargais agus deimhniú cibé an dtagann nó nach dtagann gearán faoi mo scáth.

Bhí 44 cás a dúnadh i rith na bliana 2011, nó 8 faoin gcéad de na gearáin, ar measadh nár tháinig siad faoi scáth na dtéarmaí tagartha ar chúiseanna éagsúla. Astu sin, bhí 25 a measadh a theacht faoi scáth chúram ombudsman, rialtóra nó gníomhaireachta stáit eile agus cuireadh faoina mbráid sin iad. Maidir leis an bhfuilleach 19 cás, níor tháinig siad sin faoi scáth mo chuid téarmaí tagartha ar chúiseanna éagsúla, ina measc:

- Níor tháinig siad taobh istigh de na teorainneacha ama a bhaineann leis an Oifig faoin reachtáíocht; agus
- Measadh nár tharla aon chailteanas ó thaobh cúrsaí airgeadais.

Dúnadh: tugadh tuairisc agus treoir

Ar chúiseanna go leor, ní i gcónaí is léir ar an toirt má tá fáthanna dlísteanaigh ag gearánaí le gearán a dhéanamh nó nach bhfuil:

- D'fhéadfadh nach léir cineál dáiríre an ghearáin ar an toirt;
- D'fhéadfadh nach léir cén duine nó dream ar cheart an gearán a dhíriú orthu; nó
- Gan bearta imscrúdúcháin breise, d'fhéadfadh gur deacair a dheimhniú cibé an dtagann an cás is ábhar spairne faoi mo scáthsa nó nach dtagann.

Ar an ábhar sin, d'fhonn breith a thabhairt ar na ceisteanna sin, is minic gur gá domsa agus d'fhoireann na hOifige cuid mhór fianaise a scrúdú a chuireann an gearánaí faoi bhráid sula socraítear ar an modh oibre is fearr chun cur chuig ábhar an ghearáin. D'fhéadfadh go léireodh scrúdú den sórt sin nach bhfuil cúis leordhóthanach le gearán nó gur ábhar atá i gceist nach dtagann faoi mo scáth. Mar shampla, cé go gceapfaí gur léir gur tharla míriarachán, ní móide gur léir gur tharla cailteanas airgid freisin dá thoradh sin.

I gcásanna eile, d'fhéadfadh gur follas, ar scrúdú a dhéanamh, gur easpa ó thaobh cumarsáide nó tuisceana ar an ngearánaí féin, maidir le mionphointe áirithe, an chúis is mó leis an ábhar gearáin.

I gcásanna den sórt sin, is iondúil gur féidir linn déileáil le hábhar buartha an ghearánaí agus an cheist a réiteach go sásúil gan aon chall le próiseas imscrúdúcháin foirmeálta a chur ar bun. Is é a bhaineann leis sin, tuairisc agus treoir a chur ar fáil don ghearánaí inar féidir linn, mar shampla:

- Míniú níos mionsonraithe a thabhairt ar a bhfuil comhalta scéim phinsin ina theideal; nó
- Míniú níos mionsonraithe a thabhairt ar an nós imeachta a bhaineann le scéim pinsin; nó
- Coinníollacha a bhaineann leis na Coimisinéirí Ioncaim nó le hAcht na bPinsean a mhíniú ar bhealach is fusa a thuigfeadh an gearánaí.

Trí tuairisc a chur ar fáil nó treoir a thabhairt i gcásanna den sórt sin, bíonn ar ár gcumas déileáil le gearáin agus iad a réiteach níos luaithe agus ar bhealach atá níos neamhfhoirmeálta agus neamhchoimhlíntí go ginearálta. Cuidíonn sé freisin le cinntiú nach n-éiríonn an cás chomh casta go dteastaíonn comhad gearáin mionsonraithe a mbeadh i bhfad níos mó ama i gceist le hobair ina leith.

As an 557 gearán a tugadh chun críche i rithe na bliana 2011, rinneadh 238 nó 43 faoin gcéad díobh a dhúnadh ar scrúdú a dhéanamh agus tuairisc agus treoir a thabhairt.

3. Caseload summary and statistics 2011

Closure: mediated cases

I have commented in previous annual reports on my preference for employing mediation between parties as a means of bringing complaints to resolution. It has been our experience that mediation is quicker, more flexible, more cost effective and leads to more satisfactory solutions than progressing to a Final Determination.

In some mediated cases, providers have volunteered additional awards to complainants whose cases have been upheld, 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 557 complaint files closed during 2011, 113 or 20 per cent were resolved through mediation. Of these, 87 cases were resolved to the complainant's satisfaction. In the remaining 26 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 2011, the average time taken to arrive at a resolution through mediation was 42 weeks, compared to an average of 25 weeks in 2010.

Closure: 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 2011, I issued Final Determinations in 62 or 11 per cent of them. I upheld the complaints in 37 cases and rejected the complaints in the remaining 25.

The average length of time taken to process a complaint from initiation of a formal investigation to issue of a Final Determination was 113 weeks in 2011 compared to 81 weeks in 2010. This is just an average indication, as the length of time taken depends not only on the complexity of the case but also on how well all the parties cooperate in furnishing information requested in a timely manner. The issue of a Final Determination involves the preparation of a detailed report which can of itself be a lengthy and time-consuming process.

Other factors at play in determining the time it takes to reach a Final Determination include:

- Whether or not an oral hearing is required;
- Whether it is appropriate to issue a Preliminary View; and
- The time required to draft the text of the Final Determination – these are legally binding on all parties, and subject only to appeal before the High Court.

Table 3.4: comparison of time to resolution via mediation and via final determination

	2010	2011
Average time to resolution via mediation	25 weeks	42 weeks
Average time to resolution via Final Determination	81 weeks	113 weeks

3. Achoimre agus staitisticí maidir le cásanna 2011

Dúnadh: cásanna eadrána

Luaigh mé i dtuarascálacha bliantúla roimhe seo go bhfuil eadráin ar an modh oibre is fearr liom chun gearáin a réiteach go tapadh. Tá tugtha faoi deara againn ó na cásanna go mbíonn eadráin níos tapa, níos sochóirithe, níos éifeachtaí ó thaobh costais agus go dtagann réiteach níos sásúla dá thoradh ná mar a thagann ó leanacht ar aghaidh go ndéantar Cinneadh Críochnaitheadh.

Maidir le roinnt cásanna a ndearnadh eadráin ina leith, chuir na soláthraithe íocaíochtaí breise ar fáil dá ndeoin féin do na gearánaithe ar seasadh lena gcás, mar gheall ar an gceataí agus ar an imní a cuireadh orthu. Níl de chumhacht agamsa suimeanna mar sin a lua mar chuid den bhreith, agus is mór an sásamh dá bhrí sin nuair a bhíonn sochar breise as an bpróiseas eadrána ag an té a rinne an gearán.

Is cúis áthais dom a lua gur trí eadráin thángthas ar an réiteach maidir le 113 cás nó 20 faoin gcéad den 557 comhad gearáin a dúnadh i rith na bliana 2011. Astu sin, ba chun sástacht an gearánaí an réiteach ar 87 cás acu. Maidir leis an bhfuilleach 26 cás eadrána, níor chuir páirt na hOifige athrú ábhartha ar chúinsí an ghearánaí nó ní i bhfabhar an ghearánaí a réitíodh an cheist.

Is léir an bhuntáiste le cásanna casta a réiteach trí eadráin in ionad imscrúdú iomlán agus cinneadh a éileamh, nuair a fhéachtar ar an achar ama a theastaíonn chun cás a thabhairt chun cinn ó thráth an gearán a theacht faoi bhráid ar dtús go dtí go ndúntar an cás. I rith na bliana 2011, b'ionann an t-achar ama a theastaigh ar an meán chun teacht ar réiteach trí eadráin agus 42 seachtaine i gcomparáid le 25 seachtaine ar an meán i rith na bliana 2010.

Dúnadh: Cinneadh Críochnaitheach

Faoi Alt 139 d'Acht na bPinsean 1990, arna leasú, leagtar d'údarás ormsa Cinneadh Críochnaitheach a bhfuil ceangal ag baint leis faoin dlí a eisiúint faoi cheisteanna gearáin. As na cásanna gearáin a dúnadh i rith na bliana 2011, d'eisigh mé Cinneadh Críochnaitheach maidir le 62 cás nó 11 faoin gcéad acu. Sheas mé leis an ngearánaí maidir le 37 cás agus dhiúltaigh mé don ghearán maidir leis an bhfuilleach 25 cás.

B'ionann an meántréimhse a caitheadh le gearán a phróiseáil ó cuireadh tús le himscrúdú foirmeálta gur eisíodh Cinneadh Críochnaitheach agus 113 seachtaine i rith na bliana 2011 i gcomparáid le 81 seachtaine i rith na bliana 2010. Níl ansin ach léiriú ar an meán agus braitheann an tréimhse a theastaíonn ní amháin ar chastacht an cháis ach ar a chaoithiúla agus a chabhraíonn na páirtithe ar fad le faisnéis a iarrtar a chur ar fáil in am tráth. Bíonn tuairisc mhionsonraithe a ullmhú ag baint le Cinneadh Críochnaitheach a eisiúint agus is féidir próiseas fada a bheith i gceist leis sin féin.

I measc na dtosca eile a bhaineann leis an tréimhse ama a theastaíonn chun teacht ar Chinneadh Críochnaitheach, bíonn siad seo a leanas:

- cibé an mbíonn éisteacht ó bhéal de dhíth nó nach mbíonn;
- cibé an oireann Tuairim Réamhráiteach a eisiúint nó nach n-oireann; agus
- an t-am a theastaíonn chun téacs an Chinnidh Chríochnaithigh a dhréachtadh – bíonn sin ina cheangal faoin dlí ar gach páirtí agus faoi réir ach achomharc leis an Ard-Chúirt amháin.

Tábla 3.4: Comparáid idir an tréimhse a thógann sé teacht ar réiteach trí eadráin agus trí chinneadh críochnaitheach

	2010	2011
Meántréimhse go dtagtar ar réiteach trí eadráin	25 seachtaine	42 seachtaine
Meántréimhse go dtagtar ar réiteach trí Chinneadh Críochnaitheach	81 seachtaine	113 seachtaine

3. Caseload summary and statistics 2011

Closure: miscellaneous reasons

During 2011, we arrived at closure in 100 cases for a variety of other miscellaneous reasons. Of these, 3 were closed following appeals. The remainder break down into the following three categories.

<p>Complainant withdraws complaint (73 cases)</p>	<p>In these cases, complainants indicated that they did not wish my Office to proceed any further in my investigation.</p> <p>This tended to happen where, following our initial examination, it becomes clear that:</p> <ul style="list-style-type: none"> ■ The complaint is unlikely to be upheld; or ■ The likely level of redress is not significant; or ■ 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. <p>On rare occasions, complaints have been withdrawn in circumstances where I have suspected, but could not prove, intimidation of the complainant.</p>
<p>Cases directed to Internal Dispute Resolution (14 cases)</p>	<p>Generally, my Office cannot investigate a complaint or dispute until the matter has been subject to an Internal Disputes Resolution procedure (IDR) by the scheme providers. If a complaint is submitted to me that has not been considered in this way, then I must direct the complainant to submit to the IDR procedure.</p> <p>There are certain exceptions to this requirement – for example, where a scheme is currently being wound up. See the booklet <i>Guide to Disputes Resolution Procedures</i>, available in the Publications section of our website for full details of such exceptions.</p>
<p>Following legal proceedings (10 cases)</p>	<p>These are cases that were closed following the conclusion of legal proceedings undertaken in relation to obstruction and enforcement issues.</p>

3. Achoimre agus staitisticí maidir le cásanna 2011

Dúnadh: cúiseanna ilghnéitheacha

I rith na bliana 2011, rinneadh 100 cás a dhúnadh ar chúiseanna éagsúla ilghnéitheacha eile. Astu sin, bhí 3 chás a dúnadh tar éis achomhairc. Is féidir an fuilleach a rangú de réir na dtrí chatagóir seo a leanas.

Tharraing an gearánaí siar an gearán (73 cás)	<p>Sna cásanna seo, thug an gearánaí le fios nach rabhtas ag iarraidh ar an Oifig leanacht níos faide leis an imscrúdú.</p> <p>B'iondúil gur tharla sin nuair ba léir, tar éis an scrúdú tosaigh a dhéanamh:</p> <ul style="list-style-type: none">■ Nach dócha go seasfaí leis an ngearán; nó■ Nár dhócha go mbeadh cúiteamh ar leibhéal suntasach i gceist; nó■ Go raibh an leibhéal cúitimh a raibh súil ag an ngearánaí leis níos airde ná a bhfuil d'údarás agamsa a thabhairt. Cuirtear teorainn is ionann le sochar scéime a chailtear leis na suimeanna faoi Acht na bPinsean, agus ní fhéadaimse damáistí ná cúiteamh de chineálacha eile a dhámhachtain a bhféadfadh gearánaí den tuairim go bhfuil siad dlite dóibh. <p>I mbeagán beag cásanna, tarraingíodh siar gearáin agus na cúinsí sa chaoi is go raibh mé in amhras, ach nach bhféadfainn a chruthú, gur imríodh imeaglú ar an ngearánaí.</p>
Cuireadh na cásanna ar aghaidh lena réiteach faoi Réiteach Aighnis Inmheánach (14 cás)	<p>Go ginearálta, ní féidir leis an Oifig imscrúdú a dhéanamh mar gheall ar ghearán nó ar aighneas go dtí go mbíonn an cheist pléite faoi réir phróiseas do Réiteach Aighnis Inmheánach (RAI) de chuid sholáthraithe na scéime. Sa chás go gcuirtear gearán faoi mo bhráid nach ndearnadh a mheas ar an mbealach sin, ní foláir domsa treoir a thabhairt don ghearánaí an cás a chur faoi bhráid an phróisis RAI.</p> <p>Tá roinnt cásanna eisceachta i ndáil leis an gcoinníoll sin – mar shampla, sa chás go bhfuiltear an tráth céanna i mbun foirceannadh a dhéanamh ar an scéim. Féach an leabhrán <i>Guide to Disputes Resolution Procedures/Bealaí Oibre le Conspóidí a Réiteach</i> - Nótaí Treorach, atá ar fáil sa chuid sin den láithreán gréasáin a bhaineann le foilseacháin, maidir le sonraí iomlána faoi na cásanna eisceachta sin.</p>
Tar éis imeachtaí dlí (10 gcás)	<p>Cásanna iad seo a ndearnadh iad dhúnadh tar éis imeachtaí dlí a tionscnaíodh, mar gheall ar cheisteanna bacainníochta agus forfheidhmiúcháin, a thabhairt chun críche.</p>

3. Caseload summary and statistics 2011

Time to closure

In 2011, my Office closed just over 30 per cent of cases within five weeks, which is down from just under 39 per cent in 2010. At the other end of the scale, the number of cases that took more than 50 weeks increased from just under 24 per cent in 2010 to just under 30 per cent in 2011.

Among the factors which tend to lengthen the time to closure are the increasing complexity of the complaints we are dealing with, the requirement to produce Final Determination reports that are robust, clear and authoritative, and the tendency of some parties to obstruct our efforts or to resist the option of using conciliation.

Table 3.5: Time to closure in weeks

	2010		2011	
	Number of cases	Percentage	Number of cases	Percentage
5 Weeks or less	215	38.74	168	30.16
6 - 10 Weeks	61	10.99	80	14.36
11 - 15 Weeks	44	7.93	41	7.36
16 - 20 Weeks	33	5.95	19	3.41
21 - 25 Weeks	13	2.34	17	3.05
26 - 30 Weeks	22	3.96	12	2.15
31 - 35 Weeks	12	2.16	17	3.05
36 - 40 Weeks	11	1.98	16	2.87
41 - 45 Weeks	7	1.26	14	2.51
46 - 50 Weeks	5	0.90	6	1.08
More than 50 weeks	132	23.78	167	29.98
Total	555	100.00	557	100.00

3. Achoimre agus staitisticí maidir le cásanna 2011

An Tréimhse Ama go nDúntar Cásanna

I rith na bliana 2011, dhún an Oifig beagán níos mó ná 30 faoin gcéad de na cásanna taobh istigh de cúig seachtaine, íslíú ó bheagán faoi bhun 39 faoin gcéad sa bhliain 2010. Ar an gceann eile den scála, tháinig ardú ar líon na gcásanna lenar theastaigh níos mó ná 50 seachtaine ó bheagán faoi bhun 24 faoin gcéad sa bhliain 2010 go dtí beagán faoi bhun 30 faoin gcéad i rith na bliana 2011.

I measc na dtosca eile ar cosúil gur gcuireann siad leis an am a theastaíonn chun cás a dhúnadh, tá an chastacht bhreise a bhaineann leis na ngearáin a mbítear ag plé leo, an gá le tuairiscí a chur ar fáil le Cinneadh Críochnaitheach atá docht, soiléir, údarásach, agus an claonadh atá i bpáirtithe áirithe bac a chur ar iarrachtaí na hOifige nó cur in aghaidh an rogha maidir le leas a bhaint as eadráin.

Tábla 3.5: Tréimhse ama go ndúntar cásanna de réir seachtainí

	2010		2011	
	Líon na gCásanna	Céatadán	Líon na gCásanna	Céatadán
5 Seachtaine nó níos lú	215	38.74	168	30.16
6 - 10 Seachtaine	61	10.99	80	14.36
11 - 15 Seachtaine	44	7.93	41	7.36
16 - 20 Seachtaine	33	5.95	19	3.41
21 - 25 Seachtaine	13	2.34	17	3.05
26 - 30 Seachtaine	22	3.96	12	2.15
31 - 35 Seachtaine	12	2.16	17	3.05
36 - 40 Seachtaine	11	1.98	16	2.87
41 - 45 Seachtaine	7	1.26	14	2.51
46 – 50 Seachtaine	5	0.90	6	1.08
Níos mó ná 50 seachtaine	132	23.78	167	29.98
Iomlán	555	100.00	557	100.00





Financial Accounts for 2011

Cuntais Airgeadais na bliana 2011

4

4. Financial Accounts for 2011

The Pensions Ombudsman is independent and impartial in the exercise of his statutory functions. 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 back office services, particularly its Accounts and Payroll obligations.

The financial statements for 2011 have been audited by the Comptroller and Auditor General and have been presented to the Minister for Social Protection for presentation to the Oireachtas.

4. Cuntais Airgeadais na bliana 2011

Tá an tOmbudsman Pinsean neamhspleách neamhchlaon i ndéanamh na bhfeidhmeanna faoin reachtaíocht. Is ón Státchiste, tríd an Roinn Coimirce Sóisialaí a chuirtear ciste ar fáil d'Oifig an Ombudsman Pinsean. Admhaíonn an Oifig an cúnamh taca leanúnach ón Roinn Coimirce Sóisialaí i ndáil le seirbhísí cúloifige, go háirithe i ndáil leis na dualgaisí maidir le Cuntais agus Párolla.

Rinneadh an tArd-Reachtair Cuntas agus Ciste ráitis airgeadais na bliana The 2011 a iniúchadh agus cuireadh faoi bhráid an Aire Coimirce Sóisialaí iad d'fhonn a gcur faoi bhráid an Oireachtais.

Report of the Comptroller and Auditor General

Office of the Pensions Ombudsman

I have audited the financial statements of the Office of the Pensions Ombudsman for the year ended 31 December 2011 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, ensuring that they give a true and fair view of the 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 2011 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

4 May 2012

Tuarascáil an Ard-Reachtair

Cuntas agus Ciste

Oifig an Ombudsman Pinsean

Tá ráitis airgeadais Oifig Fhear an Phobail um Pinsin don bhliain dar chríoch 31 Nollaig 2011 iniúchta agam de réir Acht na bPinsean, 1990, arna leasú.

Is éard atá sna ráitis airgeadais, a ullmhaíodh de réir na bpolasaithe cuntasaióchta dá bhforáiltear ansin, Ráiteas na bPolasaithe Cuntasaióchta, an Cuntas Ioncaim agus Caiteachais, an Ráiteas faoi Ghnóthachain agus Caillteanais Aitheanta Iomlána, an Clár Comhardaithe agus na nótaí gaolmhara. Tá an creat tuairiscithe airgeadais a cuireadh i bhfeidhm le linn an ullmhúcháin ina ndlí infheidhme agus is é an Cleachtas Cuntasaióchta a nGlactar i gCoitinne leis in Éirinn.

Freagrachtaí an Ombudsman Pinsean

Tá an tOmbudsman Pinsean freagrach as ullmhúchán na ráiteas airgeadais, as a chinntiú go dtugann siad léargas fíorcheart ar staid chúrsaí agus ar ioncam agus ar chaiteachas na gOifige agus as a chinntiú go ndéantar na hidirbhearta mar is ceart.

Freagrachtaí Ard-Reachtair Cuntas agus Ciste

I é an fhreagracht atá orm na ráitis airgeadais a iniúchadh agus tuairisc a dhéanamh fúthu de réir dlí infheidhme.

Déanaim an t-iniúchadh faoi threoir na n-imthosca speisialta a bhaineann le Comhlachtaí Stáit i dtaca lena mbainistiú agus lena bhfeidhmíú.

Déanaim an t-iniúchadh i gcomhréir leis na Caighdeáin Idirnáisiúnta Iniúchóireachta (RA agus Éire) agus i gcomhlíontas na gCaighdeán Eiticíúil d'iniúcháirí atá leagtha síos ag an mBord um Chleachtas Iniúchóireachta.

Raon Feidhme an Iniúchta ar na Ráitis Airgeadais

Is éard atá i gceist le hiniúchadh fianaise leordhóthanach a bhailiú i leith na méideanna agus an nochta sna ráitis airgeadais le go mbeidh cinnteacht réasúnta ann go bhfuil na ráitis airgeadais saor ó mhíríteas ábhartha, cibé acu calaois nó earráid eile is cúis leis. Áirítear leis sin measúnú ar:

- Oriúnacht na bpolasaithe cuntasaióchta do na himthosca a bhaineann le hOifig an Ombudsman Pinsean, agus measúnú ar ar cuireadh i bhfeidhm go comhréireach agus ar nochtadh go leordhóthanach iad

- Réasúntacht meastúcháin shuntasacha cuntasaióchta a rinneadh le linn ullmhúcháin na ráiteas airgeadais, agus
- Cur i láthair na ráiteas airgeadais tríd is tríd.

Déanaim iarracht freisin fianaise a fháil i gcúrsa an iniúchta faoi rialtacht na n-idirbheart airgeadais.

Tuairim faoi na Ráitis Airgeadais

Is é mo thuairim go dtugann na ráitis airgeadais a ullmhaíodh go cuí de réir an Chleachtas Chuntasaióchta a nGlactar i gCoitinne leis in Éirinn léargas fíorcheart ar staid chúrsaí Oifig an Ombudsman Pinsean an 31 Nollaig 2011 agus ar a hioncam agus a caiteachas don bhliain dar chríoch an dáta sin.

Tá mé mo thuairim gur choinnigh Oifig an Ombudsman Pinsean leabhair chúil chuntais. Tá na ráitis airgeadais ag teacht leis na leabhair chuntais.

Ábhar a Thuairiscim de réir Eisceachta

Tuairiscim de réir eisceachta:

- Mura bhfuil an fhaisnéis agus na míniúcháin uile a theastaíonn chun críocha an iniúchta faighte agam; nó
- Má thugtar aon ásc ábharach faoi deara le linn an iniúchta nár caitheadh airgead faoi chomhair na gcuspóirí a bhí ceaptha dó nó nach raibh na hidirbhearta i gcomhréir leis na húdaráis a rialaíonn iad; nó
- Mura léiríonn an Ráiteas faoi Rialú Airgeadais Inmheánach go bhfuil an Oifig ag comhlíonadh an Chóid Chleachtas maidir le Rialachán Comhlachtaí Stáit; nó
- Má fhaighim amach go bhfuil aon ábhar ábhartha eile ann a bhaineann leis an gcaoi a ndearnadh gnó poiblí.

Níl aon rud le tuairisciú agam maidir leis na hábhair ar a bhfuilim ag tuairisciú de réir eisceachta.



Gerard Smyth

Le haghaidh agus thar ceann an Ard-Reachtair Cuntas agus Ciste

4 Bealtaine 2012

Statement of Responsibilities of the Pensions Ombudsman

Section 143(1) of the Pensions Act 1990, as inserted by Section 5 of the Pensions (Amendment) Act, 2002 requires the Pensions Ombudsman to prepare financial statements in such form as may be approved by the Minister for Social Protection after consultation with the Minister for Finance. In preparing those financial statements, the Ombudsman is required to:

- Select suitable accounting policies and then apply them consistently.
- Make judgements and estimates that are reasonable and prudent.
- State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements.
- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Office will continue in operation.

The Ombudsman is responsible for keeping proper books of account, which disclose in a true and fair manner at any time the financial position of the Office and which enable it to ensure that the financial statements comply with Section 143(1) of the Act.

The Ombudsman is also responsible for safeguarding the assets of the Office and for taking reasonable steps for the prevention and detection of fraud and other irregularities.



Paul Kenny
Pensions Ombudsman

4 May, 2012

Ráiteas Freagrachtaí an Ombudsman Pinsean

Éilítear de réir Alt 143(1) d'Acht na bPinsean 1990, (arna chur isteach ag Alt 5 d'Acht na bPinsean (Leasú) 2002) go n-ullmhóidh an tOmbudsman Pinsean ráitis airgeadais i cibé foirm a cheadóidh an tAire Coimirce Sóisialaí i ndiaidh dó dul i gcomhairle leis an Aire Airgeadais. Le linn dó na ráitis airgeadais seo a ullmhú ceanglaítear ar an Ombudsman Pinsean:

- Polasaithe oiriúnacha cuntasáíochta a roghnú agus iad a chur i bhfeidhm go comhsheasmhach.
- Breithiúnais agus meastacháin a dhéanamh atá réasúnach agus críonna.
- A rá cé acu ar cloíodh nó nár cloíodh leis na caighdeáin chuntasáíochta infheidhme faoi réir aon difriú ábhartha a nochtadh agus a míníodh sna ráitis airgeadais.
- Na ráitis airgeadais a ullmhú faoi mar ba ghnóthas leantach a bheadh i gceist mura bhfuil sé iomchuí a mheas go leanfaidh an Oifig ag feidhmiú.

Tá an tOmbudsman Pinsean freagrach as leabhair chuí chuntais a choinneáil ina bhfuil nochtadh ag aon am amháin léargas fíorcheart ar staid airgeadais na hOifige agus a chuireann ar a cumas a chinntiú go bhfuil Alt 143(1) den Acht á chomhlíonadh sna ráitis airgeadais.

Tá an tOmbudsman Pinsean freagrach freisin as sócmhainní na hOifige a choimeád faoi choimirce agus as céimeanna réasúnacha a ghlacadh chun calaois agus mírialtachtaí eile a chosc.



Paul Kenny
An tOmbudsman Pinsean

4 Bealtaine 2012

Statement on the system of 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 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, that 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 the 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 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 has been established in the Office, together with documented financial procedures and a petty cash ledger.

In addition, 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. Payroll control monitoring is conducted on a monthly basis.

I confirm that I reviewed the Office's system of internal financial control during the year 2011.



Paul Kenny
Pensions Ombudsman

4 May, 2012

Ráiteas maidir le Rialú Inmheánach Airgeadais

Freagracht as an gCóras Rialaithe Airgeadais Inmheánach

Is Oifig bheag í Oifig an Ombudsman Pinsean inarb ionann costais tuarastail agus 70% den chaiteachas iomlán. Tá foireann deichniúr ann, lena n-áirítear an tOmbudsman, Stiúrthóir, ceithre imscrúdaitheoir, bainisteoir oifige agus trí oifigeach breise.

Is ormsa mar Ombudsman Pinsean atá an fhreagracht a chinntiú go bhfuil córas éifeachtach rialaithe inmheánaigh coinnithe ar siúl agus ag feidhmiú. Is féidir le haon chóras dá leithéid cinnteacht réasúnta a sholáthar ach ní féidir leis cinnteacht absalóideach a sholáthar go mbeidh idirbhearta údaraithe agus cláraithe mar is cuí, go mbeidh sócmhainní faoi choimirce, agus go gcuirfear cosc ar earráidí ábharacha nó ar mhírialtachtaí nó go mbraithfear iad ar mhodh thráthúil.

Tá bearta glactha agam agus ag foireann na hOifige lena chinntiú go mbeidh córas láidir rialaithe airgeadais ann, go gcuirfear faisnéis ar chaiteachas ar fáil go tráthrialta don bhainistíocht agus go mbeidh nósanna imeachta riaracháin trédhearcacha in éifeacht, lena n-áirítear saindeighilt dualgais i gcóras ina dtarmilgítear freagracht ar mhodh soiléir. Cuimsíonn sin na nósanna imeachta a leanas:

- Cuirfear meastachán bliantúil faoi riachtanais airgeadais ar fáil dár Roinn mhaoinithe, don Roinn Coimirce Sóisialaí;
- Nuair a aontaófar an buiséad don bhliain ullmhófar próifíl caiteachais mhíosúil;
- Clárófar caiteachas uile na hOifige seo i gcóras cuntasafóchta mhórleabhar ginearálta na Roinne. Ullmhóidh brainse Cuntasafóchta na Roinne tuarascáil chaiteachais mhíosúil. Ansin cuirfidh bainisteoir na hoifige i gcomparáid í leis na taifid atá coinnithe san Oifig.

- Ullmhóidh bainisteoir na hoifige ráiteas caiteachais míosúil ina ndéanfar comparáid idir an caiteachas iarbhir agus an phróifíl chaiteachais. Scaipfear sin ar na baill foirne uile agus déanfaidh mé féin athbhreithniú uirthi.
- Cuirfear tuarascáil ar fáil don Roinn dhá uair in aghaidh na bliana ina ndéanfar comparáid idir caiteachas iarbhir agus caiteachas measta.
- Tá na dualgais a bhaineann le híocaíochtaí a dheimhniú, a údarú, agus a íoc deighilte óna chéile.
- Is í an Roinn tuismitheora a dhéanann na híocaíochtaí agus na ríomhanna uile maidir le tuarastal agus le cúrsaí gaolmhara.
- Ullmhóidh cuideachta cuntasafóchta/ iniúchóireachta na dréacht-chuntais bhliantúla sulaa gcuirfear faoi bhráid an Ard-Reachtair Cuntas agus Ciste iad.
- Tá feidhm iniúchóireachta inmheánach curtha ar bun san Oifig maille le nósanna imeachta airgeadais doiciméadaithe agus mórleabhar mionairgid.

In addition, 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. Payroll control monitoring is conducted on a monthly basis.

I confirm that I reviewed the Office's system of internal financial control during the year 2011.



Paul Kenny
An tOmbudsman Pinsean

4 Bealtaine 2012

Statement of accounting policy

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 benefit 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 awards of legal costs in favour of the Office of the Pensions Ombudsman are brought to account on a cash receipts basis.

Ráiteas faoin bpolasaí cuntasaíochta

1. Bunús Ullmhúcháin

Ullmhaítear na ráitis airgeadais ar bhonn fabhráithe, cé is moite den chás atá léirithe thíos, de réir na bprionsabal cuntasaíochta a bhfuil glacadh leo go ginearálta faoin gcoinbhinsiún costais stairiúil, agus comhlíonann siad na caighdeáin tuairiscithe airgeadais infheidhme agus ceanglais Alt 143 d'Acht na bPinsean 1990, (arna gcur isteach ag Alt 5 d'Acht na bPinsean (Leasú) 2002).

2. Deontas Oireachtais

Is éard atá sa Deontas Oireachtais na híocaíochtaí iomlána a rinne an Roinn Coimirce Sóisialaí thar cheann na hOifige i mbliain an chuntais.

3. Pinsin

Is Státseirbhísigh na fostaithe in Oifig Fhear an Phobail um Pinsin agus mar sin tá siad clúdaithe ag socruithe pinsin na Státseirbhíse. Tugadh isteach scéim aoisliúntais sochair shainithe don Ombudsman Pinsean i 2007 le héifeacht ó 2006. Maoinítear an scéim go bliantúil ar bhonn íoc-mar-a-úsáidtear ó airgead a chuirtear ar fáil lena haghaidh ar a n-áirítear airgead a chuireann an Roinn Coimirce Sóisialaí ar fáil.

Meastar dliteanais scéime pinsin ar bhonn achtúireach trí úsáid a bhaint as modh chreidiúint réamh-mheasta an aonaid.

Is léiriú costais phinsin ar shochair phinsin atá tuillte ag an Ombudsman Pinsean sa tréimhse agus taispeántar iad glan ó ranniocaíochta pinsin dá chuid atá coinnithe siar ag an Roinn Coimirce Sóisialaí. Aithnítear méid is ionann agus an muirear pinsin mar ioncam sa mhéad agus a bhfuil sé inghnóthaithe agus déanfar é a fhritháireamh in aghaidh deontais a fuarthas i rith na bliana chun íocaíochtaí pinsin a ghlanadh.

Aithnítear ghnóthachan nó cailteanas achtúireach a eascraíonn as athruithe i dtuimhdeana achtúireacha agus as barrachais agus as easnaimh saintaithí sa Ráiteas um Ghnóthachain agus um Chaillteanais Iomlána don bhliain ina dtarlaíonn siad agus aithnítear coigeartú comhréireach sa mhéid atá inghnóthaithe ón Roinn Coimirce Sóisialaí.

Is ionann dliteanais phinsin agus luach láithreach íocaíochtaí todhchaíochta pinsin arna dtuilleamh ag an Ombudsman Pinsean go dáta. Is ionann maoiniú pinsin iarchurtha agus an tsócmhainn chomhréireach a bheidh gnóthaithe ar ais ón Roinn Coimirce Sóisialaí i dtréimhsí todhchaíochta.

4. Sócmhainní Seasta Inláimhsithe

Luaitear Sócmhainní Seasta Inláimhsithe ar a gcostas nó ar a luacháil líuide luachlaghdú carntha. Déantar soláthar do luachlaghdú ar bhonn líne díreach ag rátaí a measfar go laghdóidh siad na sócmhainní go luachanna inréadaithe faoi dheireadh an tsoil úsáidigh a measfar a bheith i ndán dóibh mar a leanas:

TE agus Trealamh Oifige	20% Líne Díreach
Troscán agus Feistis	10% Líne Díreach

5. Cuntas Caipitil

Is ionann an Cuntas Caipitil agus luach neamh-amúchta an ioncaim arna fheidhmiú le haghaidh caiteachas caipitil.

6. Ráiteas um Shreabhadh Airgid Thirim

Ní chuirtear aon Ráiteas um Shreabhadh Airgid Thirim i láthair, rud a thagann leis na heisceachtaí atá deonaithe in FRS 1.

7. Costais Dlí a Deonaíodh

Is ar bhonn airgead tirim a iontráiltear i gcuntas deontas na cúirte i leith costais dlí i bhfabhar Oifig an Ombudsman Pinsean.

Income & Expenditure Account

for the year ended 31 December 2011

	Notes	2011	2010
		€	€
Income			
Oireachtas Grant	1	906,388	933,767
Less Superannuation Contributions Repaid	7a	(7,302)	(7,315)
Net Oireachtas Grant		899,086	926,452
Net Deferred Funding for Pensions		41,000	42,000
Transfer from Capital Account	5	21,928	25,488
Total Income		962,014	993,940
Expenditure			
Staff Costs	2	726,984	729,985
Administration	3	218,670	228,218
Audit Fee		3,290	3,080
Depreciation	4	24,428	25,488
Total Expenditure		973,372	986,771
Surplus/(Deficit) for the year		(11,358)	7,169
Surplus at 1 January		35,973	28,804
Surplus at 31 December		24,615	35,973

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



Paul Kenny

Pensions Ombudsman

4 May 2012

An Cuntas Ioncaim agus Caiteachais, 2011

don bhliain dar chríoch 31 Nollaig 2011

	<i>Nótaí</i>	2011	2010
Ioncam		€	€
Deontas Oireachtais	1	906,388	933,767
Lúide Ranníocaíochtaí Aoisliúntais a íocadh ar ais	7a	(7,302)	(7,315)
Deontas Oireachtais Glan		899,086	926,452
Glanmhaoiniú larchurtha le haghaidh Pinsean		41,000	42,000
Aistriú go Cuntas Caipitil	5	21,928	25,488
Ioncam Iomlán		962,014	993,940
Caiteachas			
Costais Foirne	2	726,984	729,985
Riarachán	3	218,670	228,218
Táille Iniúchta		3,290	3,080
Luachlaghdú	4	24,428	25,488
Caiteachas Iomlán		973,372	986,771
Farasbarr/(Easnamh) don bhliain		(11,358)	7,169
Farasbarr ar 1 Eanáir		35,973	28,804
Farasbarr ar 31 Nollaig		24,615	35,973

Is cuid de na ráitis airgeadais seo Ráiteas na bPolasaithe Cuntasaíochta agus Nótaí 1 go 8.



Paul Kenny
An tOmbudsman Pinsean

4 Bealtaine 2012

Statement of Total Recognised Gains and Losses

for the year ended 31 December 2011

	<i>Notes</i>	2011	2010
		€	€
Surplus/(Deficit) for year		(11,358)	7,169
Experienced gains on pension scheme liabilities	<i>7d</i>	8,000	25,000
Changes in assumptions underlying present value of pension scheme liabilities		0	0
Actuarial gain on pension Liabilities	<i>7b</i>	8,000	25,000
Adjustment to Deferred Pension Funding		(8,000)	(25,000)
Total Recognised Gain/(Loss) for the year		(11,358)	7,169

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



Paul Kenny

Pensions Ombudsman

4 May 2012

Ráiteas Faoi Ghnóthachain agus faoi Chailteanais Aitheanta Iomlána

don Bhliain dar Chríoch 31 Nollaig 2011

	<i>Nótaí</i>	2011	2010
		€	€
Farasbarr/(Easnamh) don bhliain		(11,358)	7,169
Gnóthachain actúireacha maidir le dliteanais scéim pinsin athruithe ar na toimhdeanna is bun le luach dliteanais scéim pinsin faoi láthair	<i>7d</i>	8,000	25,000
		0	0
Gnóthachan achtúireach maidir le Dlíteanais Phinsin	<i>7b</i>	8,000	25,000
Coigeartú ar Mhaoiniú Pinsin Iarchurtha		(8,000)	(25,000)
Gnóthachan (Cailteanas) Aitheanta Iomlán don bhliain		(11,358)	7,169

Is cuid de na ráitis airgeadais seo Ráiteas na bPolasaithe Cuntasaíochta agus Nótaí 1 go 8.



Paul Kenny

An tOmbudsman Pinsean

4 Bealtaine 2012

Balance Sheet as at 31 December 2011

	Notes	2011	2011	2010	2010
		€	€	€	€
Fixed Assets					
Tangible Fixed Assets	4		43,351		65,279
Current Assets					
Debtors & Prepayments	6	40,888		47,392	
Bank and Cash		101		337	
		<u>40,989</u>		<u>47,729</u>	
Current liabilities					
Creditors		960		2,956	
Accruals		<u>15,414</u>		<u>8,800</u>	
		16,374		11,756	
Net Current Assets			<u>24,615</u>		<u>35,973</u>
Total Assets Less Current Liabilities			<u>67,966</u>		<u>101,252</u>
Deferred Pension Funding	7d		259,000		226,000
Pension Liability	7b		<u>(259,000)</u>		<u>(226,000)</u>
Net Assets			<u>67,966</u>		<u>101,252</u>
Financed By					
Capital Account	5		43,351		65,279
Income and Expenditure Account			<u>24,615</u>		<u>35,973</u>
			<u>67,966</u>		<u>101,252</u>

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



Paul Kenny

Pensions Ombudsman

4 May 2012

Clár Comhardaithe ar 31 Nollaig 2011

	<i>Nótaí</i>	2011	2011	2010	2010
		€	€	€	€
Sócmhainní Seasta					
Sócmhainní Seasta Inláimhsithe	4		43,351		65,279
Sócmhainní Reatha					
Fiachóirí agus Réamhíocaíochtaí	6	40,888		47,392	
Banc agus Airgead Tirim		101		337	
		<u>40,989</u>		<u>47,729</u>	
Dliteanais Reatha					
Creidiúnaithe		960		2,956	
Fabhrúithe		15,414		8,800	
		<u>16,374</u>		<u>11,756</u>	
Glansócmhainní Reatha			<u>24,615</u>		<u>35,973</u>
Sócmhainní Iomlána Iúide Dliteanais Reatha			<u>67,966</u>		<u>101,252</u>
Maoiniú Pinsin Iarchurtha	7d		259,000		226,000
Dliteanas Pinsin	7b		(259,000)		(226,000)
Glansócmhainní			<u>67,966</u>		<u>101,252</u>
Arna Airgeadú ag					
Cuntas Caipitil	5		43,351		65,279
Cuntas Ioncaim agus Caiteachais			24,615		35,973
			<u>67,966</u>		<u>101,252</u>

Is cuid de na ráitis airgeadais seo Ráiteas na bPolasaithe Cuntasaíochta agus Nótaí 1 go 8.



Paul Kenny
An tOmbudsman Pinsean

4 Bealtaine 2012

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 that Department. Income paid to the Office of the Pensions Ombudsman of €7,800, and lodged to the bank account was fully paid over to the Department in Appropriation in Aid reducing the grant required.

2 (a) Staff Costs

		2011	2010
		€	€
Wages & Salaries		684,050	686,795
Travel		9,236	8,505
Pension Costs	7(a)	33,698	34,685
Total		<u>726,984</u>	<u>729,985</u>

Pension Related Deductions of €47,530 were made from staff salaries and retained by the Department of Social Protection.

(b) Employee Numbers

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

	2011	2010
Ombudsman	1	1
Administrative Staff	9	9
	<u>10</u>	<u>10</u>

(c) Ombudsman Salary

	2011	2010
	€	€
Salary	<u>125,655</u>	<u>125,434</u>

The Ombudsman did not receive a performance related bonus and his pension entitlements do not extend beyond the model Civil Service scheme.

Nótaí leis na Ráitis Airgeadais

1 Deontas Oireachtais

Is í an Roinn Coimirce Sóisialaí a mhaoiníonn Oifig an Ombudsman Pinsean agus is í a dhéanann gach íocaíocht thar ceann na hOifige. Is ionann an deontas iomlán agus an tsuim a mhuirearaítear ar Chuntas Leithghabhála na Roinne Coimirce Sóisialaí. Íocadh ioncam de €12,892 leis an Oifig agus taisceadh sa chuntas bainc é; íocadh ina iomlán é leis an Roinn Coimirce Sóisialaí i leithghabháil i gCúnamh, beart a laghdaigh an deontas a theastaigh.

2 (a) Costais Foirne

		2011	2010
		€	€
Luach Saothair agus Tuarastal		684,050	686,795
Taisteal		9,236	8,505
Costais Phinsin	7(a)	33,698	34,685
Iomlán		726,984	729,985

Déanann an Roinn Coimirce Sóisialaí Asbhaint de €47,530 a bhaineann le pinsin ó Tuarastail Foirne agus coinníonn siad í.

(b) Líon na bhFostaithe

Seo mar a ríomhtar meánlíon na bhfostaithe sa tréimhse

	2011	2010
An tOmbudsman Pinsean	1	1
Foireann Riaracháin	9	9
	10	10

(c) Tuarastal an Ombudsman Pinsean

	2011	2010
	€	€
Tuarastal	125,655	125,434

Ní fuair an tOmbudsman Pinsean aon bhreisiocaíocht bunaithe ar fheidhmíocht agus ní ghabhann a theidlíochtaí pinsin thar mhúnla scéim na státseirbhíse.

Notes to the Financial Statements

3 Administration Costs

	2011	2010
	€	€
General Expenses	15,792	16,755
Postage and Telecommunications	15,817	17,719
Printing & Stationery	14,926	9,319
IT/Office Machinery (Non-Asset)	7,316	12,365
Maintenance	49,303	33,683
Advertising/Seminars/Publications	39,054	43,709
Legal Fees	76,462	94,668
	218,670	228,218

4 Fixed Assets

	IT Hardware, Software and Office Equipment	Furniture and Fittings	Total
	€	€	€
Assets at Cost			
Balance at 1 January 2011	114,500	152,714	267,214
Additions	2,500	-	2,500
Disposals	-	-	-
Balance at 31 December 2011	117,000	152,714	269,714
Depreciation			
Balance at 01 January 2011	(85,646)	(116,289)	(201,935)
Acc Dep on Disposals	-	-	-
Charge for the year	(12,740)	(11,688)	(24,428)
Balance at 31 December 2011	(98,386)	(127,977)	(226,363)
Net Book Value			
Balance at 31 December 2011	18,614	24,737	43,351
Balance at 31 December 2010	28,854	36,425	65,279

Nótaí maidir leis na Ráitis Airgeadais

3 Costais Riaracháin

	2011	2010
	€	€
Costais Ghinearálta	15,792	16,755
Post agus Teileachumarsáide	15,817	17,719
Clódóireacht agus Stáiseanóireacht	14,926	9,319
TE/Sáslach Oifige (Neamhshócmhainn)	7,316	12,365
Obair Chothabhála	49,303	33,683
Fógraíocht/Seimineáir/Foilseacháin	39,054	43,709
Táillí Dí	76,462	94,668
	218,670	228,218

4 Sócmhainní Seasta

	Crua-earra agus Bogearra TE agus Trealamh Oifige	Troscán agus Feistis	Iomlán
	€	€	€
Sócmhainní ar a gCostas			
Comhardú ar 1 Eanáir 2011	114,500	152,714	267,214
Breiseanna	2,500	-	2,500
Diúscairtí	-	-	-
Comhardú ar 31 Nollaig 2011	117,000	152,714	269,714
Luachlaghdú			
Comhardú ar 1 Eanáir 2011	(85,646)	(116,289)	(201,935)
Acc Dep ar Dhiúscairtí	-	-	-
Muirear don bhliain	(12,740)	(11,688)	(24,428)
Comhardú ar 31 Nollaig 2011	(98,386)	(127,977)	(226,363)
Luach Leabhair Glan			
Comhardú ar 31 Nollaig 2011	18,614	24,737	43,351
Comhardú ar 31 Nollaig 2010	28,854	36,425	65,279

Notes to the Financial Statements

5 Capital Account

	€	€
Balance at 1 January 2011		65,279
Purchase of Fixed Asset	2,500	
Amortisation in line with Depreciation	(24,428)	
Loss on Disposal	-	
Transfer to Income & Expenditure Account		(21,928)
Balance at 31 December 2011		<u>43,351</u>

6 Debtors & Prepayments

	2011	2010
	€	€
Debtors	33,854	32,503
Prepayments	7,034	14,889
	<u>40,888</u>	<u>47,392</u>

7 Pensions

a) Analysis of total pension costs charged to expenditure

	2011	2010
	€	€
Current Service Cost	29,000	31,000
Interest on Pension Scheme Liabilities	12,000	11,000
Employee contributions	(7,302)	(7,315)
Funds recoverable in respect of current year pension costs	<u>33,698</u>	<u>34,685</u>

Nótaí maidir leis na Ráitis Airgeadais

5 Cuntas Caipitil

	€	€
Comhardú ar 1 Eanáir 2011		65,279
Ceannach Sócmhainne Seasta	2,500	
Amúchadh i gcomhréir le Luachlaghdú	(24,428)	
Luachlaghdú ar Athluacháil	-	
Aistriú go Cuntas Ioncaim agus Caiteachais		(21,928)
Comhardú ar 31 Nollaig 2011		43,351

6 Fiachóirí agus Réamhíocaíochtaí

	2011	2010
	€	€
Fiachóirí	33,854	32,503
Réamhíocaíochtaí	7,034	14,889
	40,888	47,392

7 Pinsin

a) Anailís ar chostais iomlána pinsin muirearaithe ar chaiteachas

	2011	2010
	€	€
Costas Láithreach Seirbhíse	29,000	31,000
Ús ar dhliteanais Scéim Pinsin	12,000	11,000
Ranníocaíochtaí Fostaithe	(7,302)	(7,315)
Maoiniú inghnóthaithe maidir le costais phinsin na bliana reatha	33,698	34,685

Notes to the Financial Statements

7 Pensions (continued)

b) Movement in net pension liability during the financial year

	2011	2010
	€	€
Net Pension Liability at 1st January	226,000	209,000
Current Service Cost	29,000	31,000
Past Service Cost	-	-
Interest Cost	12,000	11,000
Actuarial (gain)/Loss	(8,000)	(25,000)
Pensions paid in the year	-	-
Net Pension Liability at 31st December	259,000	226,000

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:

	2011	2010
	€	€
Funding recoverable in respect of current year pension costs	41,000	42,000
State Grant applied to pay pensioners	-	-
	41,000	42,000

The deferred funding asset for pensions as at 31 December 2011 amounted to €259,000 (2010: €226,000).

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

	2011	2010	2009
	€	€	€
Scheme Liability	259,000	226,000	209,000
Experience (gain)/loss on scheme liabilities	(8,000)	(25,000)	(12,000)
Percentage of the present value of scheme liabilities	-3%	-11%	-6%

Nótaí maidir leis na Ráitis Airgeadais

7 Pinsin (ar lean)

b) Gluaiseacht maidir le glandliteanas pinsin i rith na bliana airgeadais

	2011	2010
	€	€
Glandliteanas Pinsin an 1 Eanáir	226,000	209,000
Costas Láithreach Seirbhíse	29,000	31,000
Costas Seirbhíse san Am Atá Caite	-	-
Costas Úis	12,000	11,000
(Gnóthachan)/Cailteanas Achtúireach	(8,000)	(25,000)
Pinsin íoctha sa bhliain	-	-
Glandliteanas Pinsin an 31 Nollaig	259,000	226,000

c) Sócmhainní Maoinithe Iarchurtha le haghaidh Pinsean

Aithníonn Oifig an Ombudsman Pinsean an méid sin mar shócmhainn atá comhréireach leis an dliteanas iarchurtha neamh-mhaoinithe le haghaidh pinsean ar bhonn shraith na dtuairimí a bhfuil cur síos orthu ag (e) agus ar bhonn roinnt imeachtaí san am atá thart. Cuimsíonn na himeachtaí sin foras reachtúil chun an scéim pinsin a bhunú agus an polasaí agus an dea-chleachtas atá ann faoi láthair maidir le maoiniú pinsin seirbhíse poiblí ar a n-áirítear ranníocaíochta fostaithe agus próiseas na meastachán bliantúil. Níl aon fhianaise ag Oifig an Ombudsman Pinsean nach n-íocfar suimeanna dá leithéid go leanúnach tríd an maoiniú sin de réir an chleachtais atá ann faoi láthair.

Seo a leanas an ghlanmaoiniú iarchurtha le haghaidh pinsean a bhí aitheanta sa chuntas ioncaim agus caiteachais:

	2011	2010
	€	€
An maoiniú atá inghnóthaithe maidir le costais phinsin na bliana reatha	41,000	42,000
Deontas Stáit curtha chun feidhme d'fhonn pinsinírí a íoc	-	-
	41,000	42,000

Ba é €259,000 (2010: €226,000) méid na sócmhainne maoinithe iarchurtha le haghaidh pinsin an 31 Nollaig 2011.

d) Stair Dhliteanais Scéime agus cailteanais/(gnóthachain) saintaithí

	2011	2010	2009
	€	€	€
Dlitéanas Scéime	259,000	226,000	209,000
(Gnóthachan)/cailteanas saintaithí i ndáil le dliteanais scéime	(8,000)	(25,000)	(12,000)
Céatadán luach láithreach dhliteanais na scéime	-3%	-11%	-6%

Notes to the Financial Statements

7 Pensions (continued)

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 eightieths per year of service) and spouses' 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 2011.

The principle actuarial assumptions were as follows:	2011	2010
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 2010 and 2011.

Years of attaining age 65	2011	2010
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.

Nótaí maidir leis na Ráitis Airgeadais

7 Pinsin (ar lean)

e) Cur síos Ginearálta ar an Scéim

Sochar sainithe shocrú pinsin an tuarastail deiridh atá sa scéim pinsin ina sainmhínítear sochair agus ranníocaíochta trí thagairt a dhéanamh do rialacháin múnla reatha scéim na hearnála poiblí Soláthraítear pinsean (ochtódú in aghaidh bliain seirbhíse), aisce ar chnapshuim (trí ochtódú in aghaidh bliain seirbhíse), agus pinsin chéile agus leanaí tríd an scéim. Is ionann an gnáthaois scoir agus an aois a bhfuil 65 bliana slán ag an gcomhalta agus beidh teidlíocht ag an lucht a bhí ina gcomhaltaí roimh 2004 ar laghdú achtúireach ón dáta a mbeidh 60 bliain slán acu. Méadaíonn pinsin atá á n-íoc (agus pinsin iarchurtha) i gcomhréir le boilsciú ginearálta tuarastal seirbhíse poiblí.

Tá an luacháil a mbaintear úsáid as le haghaidh nochtadh FRS17 (Athbhreithnithe) bunaithe ar luacháil iomlán achtúireach a rinne achtúire cáilithe neamhspleách ar an 23 Feabhra 2010 inar cuireadh ceangail an FRS san áireamh d'fhonn dliteanas na scéime ar an 31 Nollaig 2011 a mheas.

Seo a leanas na príomhthoimhdeanna achtúireacha:	2011	2010
Ráta ardaithe tuarastal	4%	4%
Ráta méadaithe pinsean atá á n-íoc	4%	4%
Ráta Lascaine	5.50%	5.50%
Ráta Boilscithe	2%	2%

Cuirtear feabhais ar ionchas saoil in imeacht ama san áireamh sa bhunús báis atá glactha sa chaoi is go mbeidh ionchas saoil ag an aois scoir ag brath ar an mbliain a shroichfidh comhalta an aois scoir (65 bliana d'aois). Léirítear sa tábla thíos ionchas saoil na gcomhaltaí a mbeidh 65 bliana slán acu i 2010 agus i 2011.

65 bliana slán sa bhliain	2011	2010
Ionchas saoil - fear	87	87
Ionchas saoil - bean	90	90

8 Áitreabh

Tá an chóiríocht atá á háitiú ag Oifig Fhear an Phobail ag 36 Sráid an Mhóta Uachtarach, Baile Átha Cliath 2 léasaithe agus íoctha ag Oifig na nOibreacha Poiblí. Is é €200,000 an cíós bliantúil reatha a íocann OOP agus déanfar athbhreithniú air sin i 2012. Rachaidh an léas in éag i 2017. Ní íocann Oifig an Ombudsman Pinsean aon mhuirear maidir leis an gcóiríocht sin.



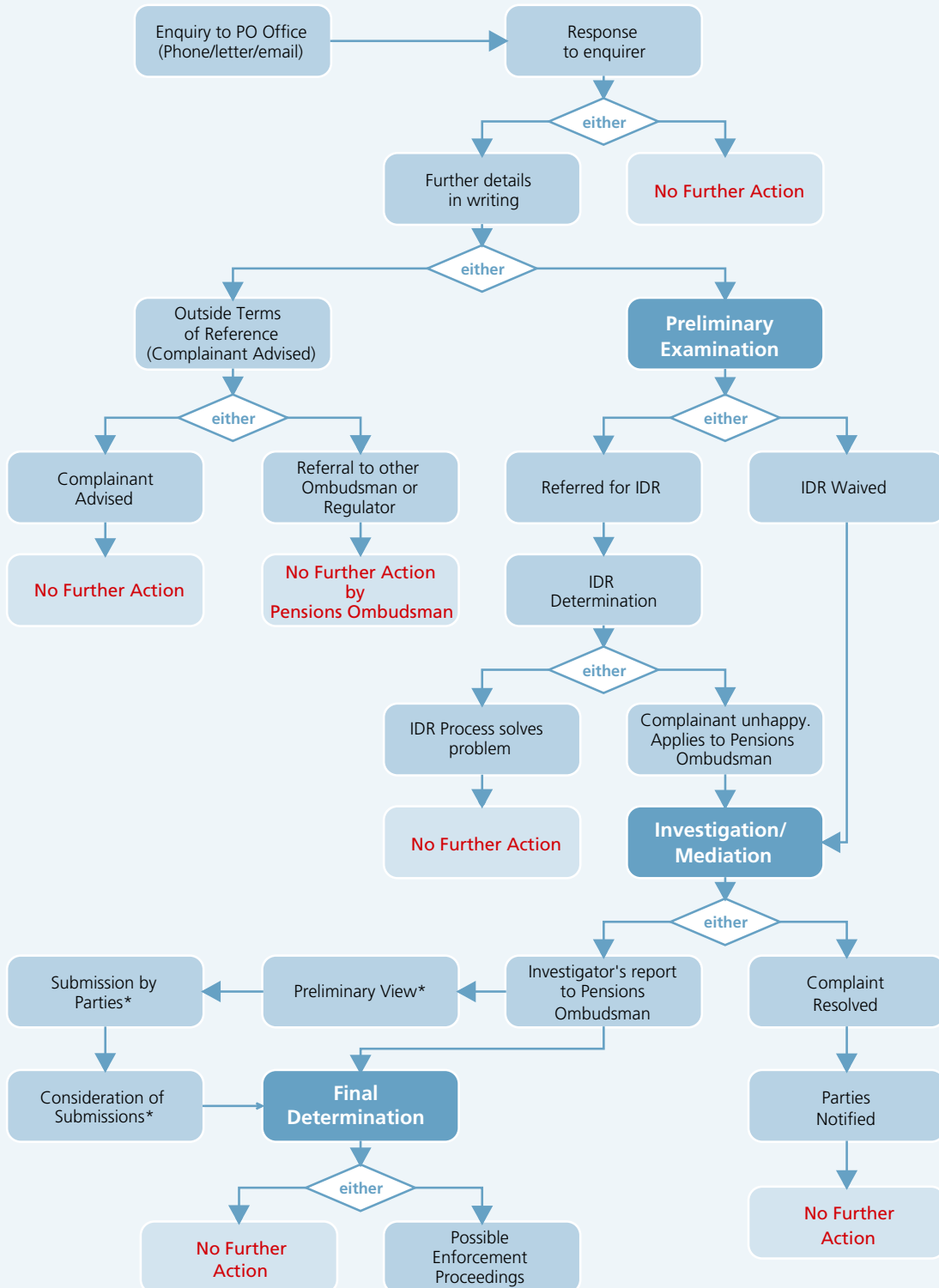


Appendices

Aguisíní

Appendices

Appendix A: How a complaint is normally handled



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

Appendix B: 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

Aguisín B: An reachtaíocht rialaithe

Acht na bPinsean, 1990

Acht na bPinsean (Leasú), 2002

An tAcht Leasa Shóisialaigh (Forálacha Ilghnéitheacha), 2003

Ionstraim Reachtúil Uimh. 119 de 2003

Ionstraim Reachtúil Uimh. 397 de 2003

Ionstraim Reachtúil Uimh. 398 de 2003

Ionstraim Reachtúil Uimh. 399 de 2003

An tAcht um Aoisiúntas na Seirbhíse Poiblí (Forálacha Ilghnéitheacha), 2004

An tAcht Leasa Shóisialaigh (Forálacha Ilghnéitheacha), 2004

An tAcht um Athchóiriú an Dlí Leasa Shóisialaigh agus um Pinsin, 2006

An tAcht Leasa Shóisialaigh agus Pinsean, 2007

Ionstraim Reachtúil Uimh. 181 de 2007

Ionstraim Reachtúil Uimh. 182 de 2007

Rialacha Cúirte maidir le hAchomhairc i leith Chinntí an Ombudsman Pinsean:

Ionstraim Reachtúil Uimh. 14 de 2007

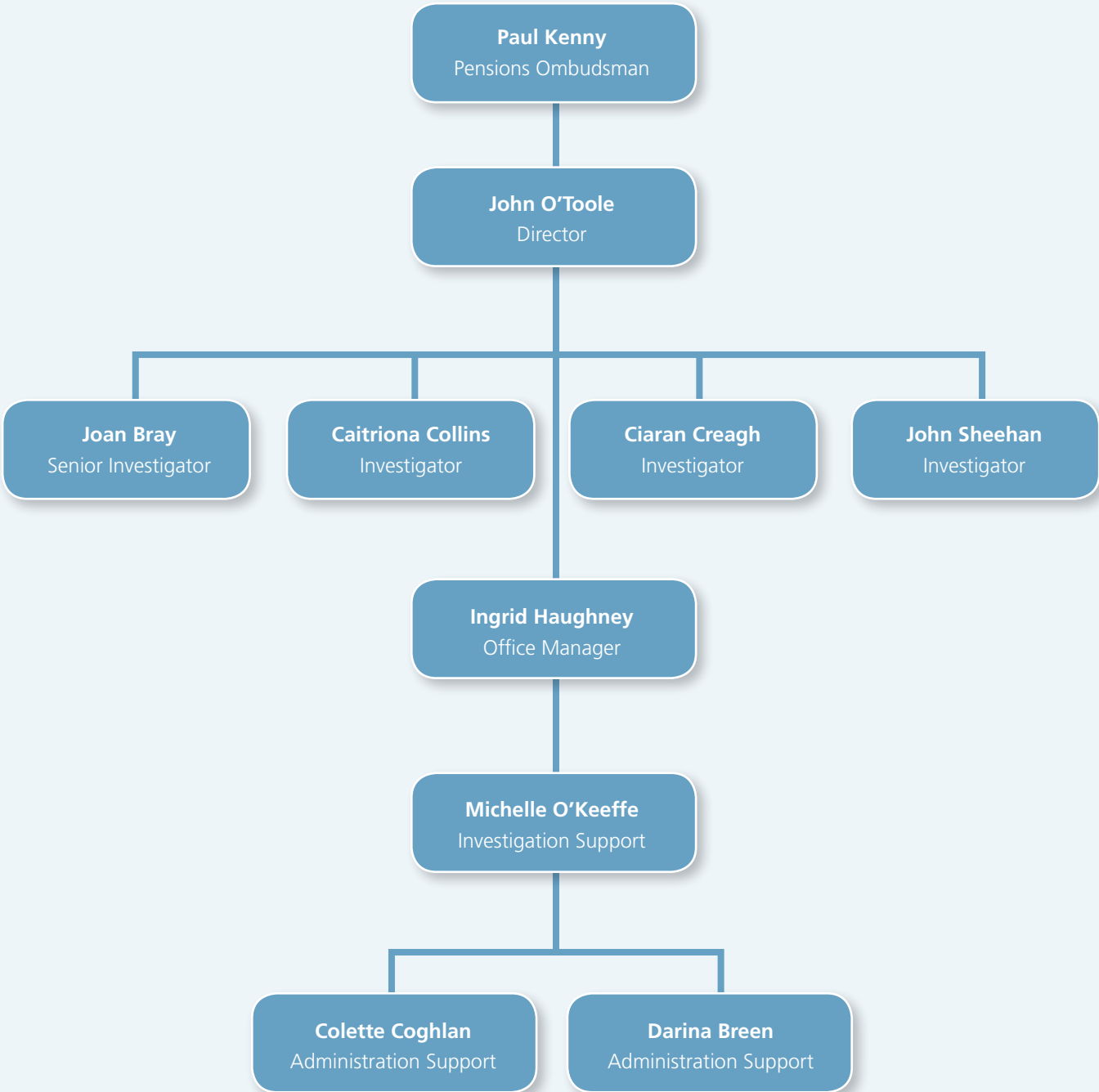
An tAcht Leasa Shóisialaigh agus Pinsean, 2008

An tAcht Leasa Shóisialaigh agus Pinsean (Uimh.2), 2009

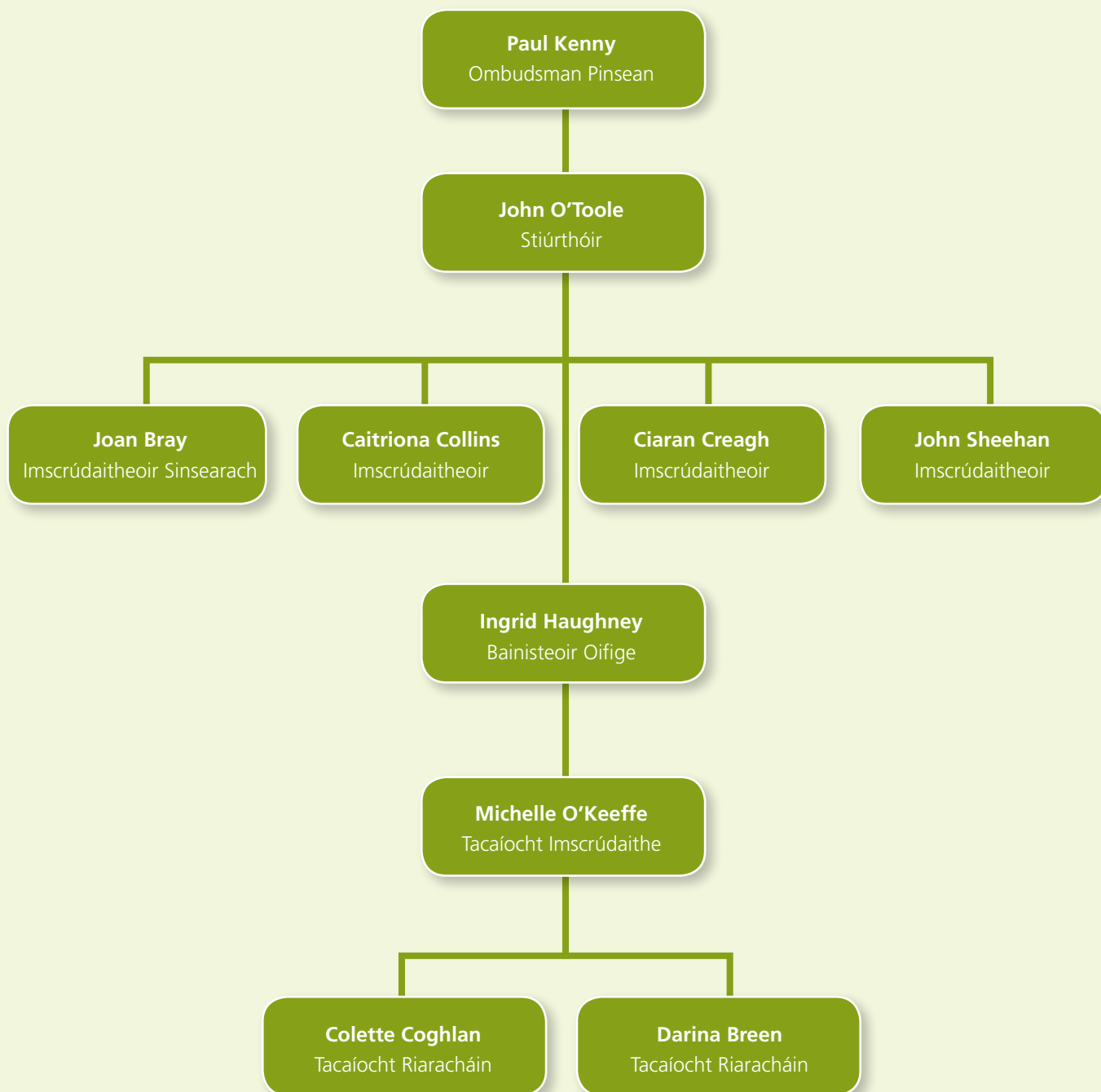
Rialacha Cúirte maidir le Forfheidhmiú Chinntí an Ombudsman Pinsean:

Ionstraim Reachtúil Uimh. 446 de 2010

Appendix C: Organisation chart at 1 January 2012



Aguisín C: Cairt Eagraíochtúil ar 1 Eanáir 2012



Appendix D: Case digest

The cases that we dealt with in 2011 cover a wide range of topics relating to both public and private sector pensions. The examples that I include in this digest of cases are representative and give some idea of the range of our work and of how we address the complaints presented to us.

I have attempted to draw attention to the essential points of contention in each case, without giving detailed blow-by-blow accounts of all the iterations in investigation, negotiation and correspondence that were involved in bringing cases to resolution.

In presenting these cases, I hope that they may be of practical benefit to people working in the pensions industry, particularly to administrators and trustees, and to those involved in dispute resolution. I also believe that they may be of considerable interest to the wider audience of pension scheme members.

All of the cases presented here are actual cases that we have processed.

To preserve confidentiality we have changed the names of the individuals involved; and in some cases we have also changed the gender and numbers involved.

1. Pensionability of overtime

Scenario

Michael S worked as a plant operator with a local authority and retired a number of years ago. As part of his job, he came in an hour earlier than the other workers in order to prepare tar for use and transport it to where it was required. He was paid for this work at overtime rate.

When he came to retire, his employer did not take account of his overtime when calculating his pension entitlements.

Michael, on the other hand, believed that because his overtime was rostered, regular and a requirement of his job, it should have been taken into account in the calculation of his pension. In his complaint, he contended that the failure of his employer to do so was in breach of the rules of his pension scheme, and that this breach amounted to maladministration.

The issue of what constitutes 'reckonable' time when it comes to calculating pension entitlements is one that crops up quite often in the public sector. The rules that determine what is reckonable are set out in a Circular issued by the Department of the Environment and Local Government in 1991.

Aguisín D: Achoimre maidir le cásanna

Bhí réimse leathan ábhair maidir le pinsin san earnáil phoiblí agus san earnáil príobháideach aron ag baint leis na cásanna a raibh plé againn leo i rith na bliana 2011. Is sampla ionadaíoch na cásanna a luaim san achoimre seo ar na cásanna a thabharfaidh tuiscint áirithe ar réimse na hoibre agus ar an gcaoi a dtugtar faoin obair i ndáil leis na gearáin a chuirtear faoinár mbráid.

Tá iarracht déanta agam aird a dhíriú ar na bunphointí aighnis i ngach cás, gan cuntas mion a thabhairt ar gach beart faoi leith a bhain leis an imscrúdú, leis an gcaibidlíocht agus leis an gcomhfhreagrú a bhí i gceist le réiteach a fháil ar na cásanna.

Tá súil agam go mbeidh leas praiticiúil ag daoine a oibríonn i dtionscal na bpinsean as an gcuntas seo ar na cásanna atá mé a chur i láthair, go háirithe an lucht riaracháin agus na hiontaobhaithe agus daoine a mbíonn baint acu le haighnis a réiteach. Táim den tuairim chomh maith go bhféadfadh díol spéise a bheith i gceist do réimse níos leithne daoine, iad siúd atá ina gcomhaltaí i scéimeanna pinsin.

Is cásanna dáiríre a ndearna an Oifig próiseáil orthu gach ceann de na cásanna a dtugtar cuntas orthu anseo.

Athraíodh ainmneacha na ndaoine d'fhonn rúndacht agus príobháideacht a chaomhnú; agus rinneadh i roinnt cásanna inscne na ndaoine agus a líon a athrú chomh maith.

1. An bhfuil íocaíocht ar ragobair inphinsin

Cnámhscéal

Bhí Micheál S ag obair le hinnealra d'údarás áitiúil agus chuaigh sé ar scor roinnt blianta ó shin. Mar chuid den phost a bhíodh aige, thagadh sé isteach uair a chloig níos luaithe ná na hoibríthe eile chun tarra a ullmhú le húsáid agus chun an tarra a thabhairt san áit a mbeadh sé á úsáid. Íoctaí ar an obair seo é de réir ráta ragoibre.

An tráth a ndeachaigh sé ar scor, níor chuir an fostóir an ragobair san áireamh agus an teidlíocht a bhí aige ar phinsean á ríomh.

Ba é a mheas Micheál, ar an taobh eile den scéal, mar gheall go mbíodh an ragobair sin de réir uainchláir, rialta agus ina riachtanas maidir leis an bpost, gur chóir go mbeadh sé san áireamh agus an pinsean á ríomh. D'áitigh sé, mar chuid den ghearán, go raibh faillí an fhostóra maidir leis sin a dhéanamh ina shárú ar rialacha na scéime pinsin agus go raibh míriarachán i gceist leis an sárú sin.

Is minic, i ndáil leis an earnáil phoiblí, a thagann an cheist chun cinn maidir leis an am atá 'inríofa' maidir le teidlíocht pinsin a ríomh. Leagtar amach na rialacha faoina ndeimhnítear an t-am atá inríofa i gCiorclán a d'éisigh an Roinn Comhshaoil agus Rialtais Áitiúil sa bhliain 1991.

Appendix D: Case digest

Overtime payments are <i>not</i> included for superannuation purposes where:	Overtime payments are <i>included</i> for superannuation purposes where:
<ol style="list-style-type: none"> 1. The overtime was occasioned by work volume or staff shortages; 2. The amount of overtime worked fluctuated and where there was no regular and recurring pattern to the overtime worked; or 3. The overtime worked could have been performed within normal hours. 	<ol style="list-style-type: none"> 1. The overtime is scheduled work attached to the office or employment – in other words, work that was an intrinsic part of the employee’s duties; OR The overtime is not optional – and the employee could not refuse to do it; 2. The overtime is of a regular and recurring nature, and the employee was required to do it during specified hours on specified days; AND 3. The overtime work could only be done outside of, and in addition to, the employee’s normal hours of work.

In this case, the local authority contended that the overtime worked by Michael did not comply with all of the conditions outlined in the Circular and that it could not be included in the calculation of his pension. However, it was clear to us that the overtime work carried out by Michael was indeed of a regular and recurring nature, and that it complied at least in part with the conditions set out in the Circular.

The next issues to consider were whether or not the overtime work was an intrinsic part of Michael’s duties and whether or not it was optional. On these matters, the local authority maintained that Michael’s overtime work was not attached to the employment and was optional.

During our investigation it came to light that the Department of the Environment, Heritage & Local Government had previously allowed overtime to be considered as part of pensionable pay in a number of

appeal hearings. The overtime in question generally resulted from specific tasks required of employees, such as the opening and closing of depots and cleaning and refuelling machinery.

There were also precedent cases in the Department where overtime was deemed to be necessary and had, in effect, become an accepted work practice and part and parcel of a person’s conditions of employment. In such cases, the retiring employee was granted the benefit of the doubt as to whether the overtime was reckonable for superannuation purposes. Applying this very reasonable principle in this case, I determined that Michael’s case was such a case.

In my Final Determination, I directed that Michael’s overtime payments should be included in the reckoning of his pension benefits.

Aguisín D: Achoimre maidir le cásanna

Ní áirítear íocaíocht i ndáil le ragobair chun críche aoisliúntais sna cásanna seo a leanas:	Áirítear íocaíocht i ndáil le ragobair chun críche aoisliúntais sna cásanna seo a leanas:
<ol style="list-style-type: none"> 1. Ba mar gheall ar mhéid na oibre nó ganntanas foirne a tharla an ragobair; 2. Bhí an méid ragoibre a rinneadh athraitheach agus ní raibh aon phátrún rialta ná athfhillteach faoin ragobair a rinneadh; nó 3. D'fhéadfaí an obair a rinneadh mar ragobair a dhéanamh taobh istigh de na gnáthuaireanta oibre. 	<ol style="list-style-type: none"> 1. Is obair de réir sceidil atá sa ragobair a bhaineann leis an oifig nó leis an bhfostaíocht – is ionann sin agus a rá, go mba chuid dílis de dhualgais an fhostaí an obair; NÓ Ní obair roghnach an ragobair – agus ní fhéadfadh an fostaí diúltú an ragobair a dhéanamh; 2. Is obair rialta agus athfhillteach an ragobair ó chineál agus bhí ceangal ar an bhfostaí an ragobair a dhéanamh le linn uaireanta áirithe ar laethanta áirithe; AGUS 3. Ba taobh amuigh de ghnáthuaireanta oibre an fhostaí, agus sa bhreis orthu, amháin a d'fhéadfaí an ragobair a dhéanamh.

D'áitigh an t-údarás áitiúil sa chás seo nach raibh an ragobair a rinne Micheál ag teacht leis na coinníollacha ar fad a leagtar amach sa Chiorclán agus nach bhféadfaí a thabhairt san áireamh agus an pinsean á ríomh. Ba léir dúinne, os a choinne sin, gurbh de chineál rialta agus athfhillteach an ragobair a dhéanadh Micheál agus go raibh sé ag teacht, i bpáirt ar a laghad ar bith, leis na coinníollacha a leagtar amach sa Chiorclán.

Ba iad na ceisteanna a bhí le tabhairt faoi mheas ina dhiaidh sin cibé an mba chuid dílis de dhualgais Mhichíl an ragobair agus cibé an obair roghnach a bhí inti nó nach mba ea. D'áitigh an t-údarás áitiúil i ndáil leis na ceisteanna sin nach raibh an ragobair ceangailte leis an bhfostaíocht agus gur obair roghnach a bhí inti.

Le linn an imscrúdúcháin, fuarthas amach rug cheadaigh an Roinn Comhshaoil, Oidhreacht agus Rialtais Áitiúil roimhe seo íocaíocht ar ragobair a mheas mar chuid den phá inphinsin i gcás roinnt éisteachtaí achomhairc. B'iondúil gur tháing an ragobair a bhain le hábhar i

gceist mar gheall ar bhearta sonracha oibre a d'éilítí ar fhostaithe, mar shampla, stórtha a oscailt agus a dhúnadh, nó innealra a ghlanadh agus breosla a chur iontu.

Bhí fasach i gceist le cásanna eile sa Roinn freisin inar measadh ragobair a bheith riachtanach agus go raibh glactha léi, dáiríre, mar gnás oibre agus mar chuid de choinníollacha fostaíochta an duine. Ina leithéid sin de chásanna, ligeadh sochar an amhrais, cibé an raibh nó nach raibh an ragobair inríofa maidir le cúrsaí aoisliúntais, leis an bhfostaí a bhí ag dul ar scor. Ar an bprionsabail an-réasúnach sin a chur i bhfeidhm sa chás seo, thug mé de bhreith go mba cás den sórt sin cás Mhichíl.

Sa Chinneadh Críochnaitheach, d'ordaigh mé gur chóir na híocaíochtaí le Micheál i ndáil leis an ragobair a thabhairt san áireamh agus a chuid sochair pinsin á ríomh.

Appendix D: Case digest

2. Poor record keeping and lack of written instructions

Scenario

Marie J was a member of an AVC plan that was established alongside the main Superannuation Scheme. The trustees of the AVC plan also provided consultancy and administration services.

She claimed that she gave the trustees of the AVC plan instructions relating to the investment of her funds with a view to making these more secure. Marie's funds were invested mainly in a managed fund that fell considerably in value with the downturn in investment markets from September/October 2008, so she was at a loss when she came to retire. She attributed this loss to the trustee/consultant not following her instructions.

Marie's instructions, however, were verbal (not written) and the trustee/consultant had no contemporaneous notes of meetings or phone conversations with Marie.

The absence of clear note-taking and record-keeping by the trustee/consultant exacerbated this case and made it very difficult to determine:

- What was discussed or explained in telephone conversations and meetings between Marie and the trustee/consultant;
- Whether or not Marie and the trustee/consultant understood the words 'securing the funds' in the same way; and
- Whether or not Marie had given clear instructions that were capable of being acted upon to the trustee/consultant in relation to her funds.

If correct notes had been taken and confirmation of instructions at the meeting had been sent by Marie, this complaint could have been resolved easily. Marie, however, claimed that she had not confirmed her instructions in writing because she believed that she had made her wishes very clear in meetings and during telephone calls with the trustee/consultant. She also maintained that her instruction to make the funds more secure was effectively an instruction to move the funds into cash.

Having noticed that her verbal instructions in 2007 were not acted upon, she would have been wise to confirm her instruction in writing, particularly as she was already posting cheques for significant single premiums to trustee/consultant.

Both Marie and the trustee/consultant must bear some of the responsibility for this case. Marie clearly had the intention of trying to ensure that her funds would not suffer any reduction in value, and transferring into cash was the best way to do that. However, without any written instruction to that effect, I also had to consider the possibility that Marie and the trustee/complainant just misunderstood each other in relation to the term 'securing the funds'.

Aguisín D: Achoimre maidir le cásanna

2. Locht maidir le taifid a choinneáil agus easpa treoracha i scríbhinn

Cnámhscéal

Bhí Máire J ina comhalta de phlean AVC a cuireadh ar bun in éineacht leis an bpríomhscéim Aoisliúntais. Bhí seirbhísí comhairleoireachta agus riaracháin á gcur ar fáil freisin ag iontaobhaithe an phlean AVC.

D'áitigh sí gur thug sí treoracha d'iontaobhaithe an phlean AVC maidir leis an infheistíocht ar a cuid cistí d'fhonn go mbeadh an t-airgead níos sábháilte ('securing the funds'). Bhí airgead Mháire infheistithe den chuid is mó i gciste bainistithe ar thit a luach go mór leis an gcúlú ar na margaidí infheistíochta ó mhí Meán Fómhair / Deireadh Fómhair 2008, agus bhí caillteanas i gceist nuair a tháinig an t-am di dul ar scor. Mheas sise gur mar gheall nach ndearna an t-iontaobhaí/comhairleoir de réir na dtreoracha a thug sí a tharla an caillteanas sin.

Ó bhéal a thug Máire na treoracha (agus ní i scríbhinn), áfach, agus ní raibh aon nótaí ag an iontaobhaí/comhairleoir faoi chruinnithe ná comhrá ar an teileafón le Máire óna dtráth sin féin.

D'fhág easpa nótaí agus taifid soiléire a choinneáil ag an iontaobhaí/comhairleoir deacracht sa bhreis ag baint leis an gcás seo agus níorbh fhurasta breith a thabhairt ina leith:

- Cad é a pléadh nó a míníodh le linn comhráití teileafóin agus cruinnithe idir Máire agus an t-iontaobhaí/comhairleoir;
- Arbh é an t-aon tuiscint amháin a bhí ag Máire agus ag an iontaobhaí/comhairleoir araon maidir leis na focail 'securing the funds'; agus
- Cibé ar thug nó nár thug Máire treoracha soiléire don iontaobhaí/comhairleoir maidir lena cuid cistí arbh fhéidir beart a dhéanamh dá réir.

Dá mba rud é go mbeadh nótaí cuí á mbreacadh agus deimhniú maidir leis na treoracha a fuartha seolta chuig Máire, b'fhurasta an gearán seo a réiteach. D'áitigh Máire, áfach, nach ndearna sise a cuid treoracha a dheimhniú i scríbhinn mar gheall go raibh sí den tuairim go raibh an méid a bhí sí a iarraidh curtha in iúl go han-soiléir aici ag cruinnithe agus le linn comhráití teileafóin leis an iontaobhaí/comhairleoir. D'áitigh sí freisin gurbh ionann an treoir na cistí a dhéanamh níos sábháilte agus treoir dáiríre na cistí a aistriú go dtí airgead tirim.

Ar a thabhairt faoi deara nach ndearnadh beart de réir a cuid treoracha sa bhliain 2007, ba chríonna na mhaise di deimhniú a chur i scríbhinn maidir leis an treoir, go háirithe nuair a bhí sí cheana féin ag seoladh seiceanna chuig an iontaobhaí/comhairleoir maidir le préimheanna aonair dar luach suimeanna den suntas.

Ní mór do Mháire agus don iontaobhaí/comhairleoir araon glacadh le cuid den fhreagracht i ndáil leis an gcás seo. Is léir go raibh rún ag Máire iarracht a dhéanamh cinntiú nach dtarlódh aon ísliú ar luach a cuid cistí, agus ba é an t-aistriú go dtí airgead tirim an modh oibre ab fhearr ina leith sin. Ina ainneoin sin, nuair nach raibh aon treoir dá réir sin i scríbhinn ar fáil, bhí orm a chur san áireamh chomh maith go bhféadfadh go raibh míthuiscint idir Máire agus an t-iontaobhaí/comhairleoir maidir lena raibh i gceist leis an téarma 'securing the funds'.

Appendix D: Case digest

The normal policy of the trustee/consultant was to switch members to a more secure fund 12-18 months before their retirement date, unless they were specifically instructed otherwise. It seems to me that Marie made some instruction to the trustee/consultant that was interpreted as an instruction to make no change. Ironically, if Marie had not given any instruction she would have achieved what she set out to achieve – that is, the movement of her funds to cash.

The difference in value between what the fund was worth at Marie's retirement date and what it would have been worth if all assets and future contributions had been invested in cash 18 months before that date was just over €3,200.

I directed the trustee/consultant to pay this amount plus interest to Marie's plan. I also directed the trustee/consultant to ensure that in future all client instructions regarding the payment or investment of contributions were to be given in writing by the client.

In our experience, AVC scheme members are generally quite well looked after, and service providers often hold face-to-face meetings with members, both at the outset and particularly in the run-up to retirement. The benefits of this good service can, however, be easily undone if what appears to be agreed at meetings is not properly recorded and communicated.

Aguisín D: Achoimre maidir le cásanna

Ba é gnáthpholasaí an iontaobhaí/chomhairleora comhaltaí a athrú go dtí ciste níos sábháilte 12–18 mí roimh an dáta scoir, mura dtabharfadh an comhalta treoir faoi leith maidir lena mhalairt. Tá an chosúlacht ar an scéal, feictear domsa, gur thug Máire treoir éigin don iontaobhaí/comhairleoir arbh é tuiscint a baineadh as nach raibh aon athrú le déanamh. Is den íoróin go mbeadh an ní a raibh rún ag Máire é a thabhairt i gcrích tarlaithe mura mbeadh treoir ar bith tugtha aici - is é sin, a cuid cistí a athrú go dtí airgead tirim.

B'ionann an difríocht idir luach an chiste an dáta a ndeachaigh Máire ar scor agus an luach dá mbeadh na sócmhainní ar fad agus gach ranníocaíocht ina dhiaidh sin infheistithe in airgead tirim 18 mí roimh an dáta sin agus beagán le cois €3,200.

Threoraigh mé don iontaobhaí/comhairleoir an tsuim sin móide ús a íoc le plean Máire. Threoraigh mé don iontaobhaí/comhairleoir chomh maith cinntiú go ndéantar gach treoir de chuid na gcliant as seo amach maidir le híocaíocht nó le hinfheistiú na ranníocaíochtaí a chur ar fáil i scríbhinn don chliant.

Tuigtear dúinn ónár gcuid taithí gur iondúil go dtugtar aire mhaith do chomhaltaí scéimeanna AVC, agus gur minic a bhíonn cruinnithe pearsanta ag soláthraithe seirbhíse leis na comhaltaí, nuair a bhíonn socrú á chur ar bun ar dtús agus go háirithe nuair a bhítear ag teannadh le ham dul ar scor. Is furasta, ina dhiaidh sin féin, an buntáiste atá le dea-sheirbhís den sórt sin a thabhairt ar neamhní mura ndéantar an ní a mheastar a aontáíodh ag cruinniú a bhreacadh síos go cruinn agus a chur in iúl arís don athpháirtí.

Appendix D: Case digest

3. Exclusion of sessional pharmacist from superannuation scheme

Scenario	<p>Mary works as a sessional pharmacist for the Health Service Executive (HSE) and has been refused membership of the relevant Superannuation Scheme.</p> <p>Mary believes that she is entitled to be included in the scheme as she works on a part-time 'contract of service' basis for the HSE.</p> <p>The HSE reject this claim and maintain that Mary is not eligible to join the scheme because she is employed under a 'contract for service' – that is, as an independent contractor or individual working on a sessional basis.</p>
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This is not the first time that I have had to deal with complaints relating to the pension entitlements of 'sessional' pharmacists working for the HSE. In particular, there was a case in 2009 where in my Final Determination I directed that the pharmacist in question was a part-time employee working on 'contract of service' basis and therefore should be allowed access to the pension scheme on a pro-rata basis. The guiding legislation here is the Protection of Employees (Part-time Work) Act 2001, which gives part-time employees a right to pro-rata treatment for pension purposes.

I had reasonably expected that the Department of Health and the HSE would apply the guidance I provided in 2009 in subsequent cases of a similar nature. However, I regret to say that despite a number of meetings and communications between my Office and the HSE, the HSE persists in its failure to follow the guidance precedent that I have set.

The Department and the HSE are well aware of my views regarding the issues raised in this and in the previous complaint. I am satisfied that in all material ways, the circumstances of Mary's case are the same as those of the 2009 case – same type of employment contract and same PRSI class.

I have made every effort to show both the HSE and the Department the necessity of recognising the precedent set in my guidance relating to the 2009 case, and of treating other cases on a similar basis as they arise.

While the rates of pay that sessional workers receive tends to cloud the issue, this is not my concern – my focus is on trying to ensure their employment rights under the relevant legislation. I do understand the difficulties faced by the HSE and the Department of Health in relation to these issues, but they must fully adhere to the relevant provisions.

Aguisín D: Achoimre maidir le cásanna

3. Scéim aoisliúntais a shéanadh ar chógaiseoir seisiúnach

Cnámhscéal

Oibríonn Máire ina cógaiseoir seisiúnach d’Fheidhmeannacht na Seirbhíse Sláinte (FSS) agus diúltaíodh cead di bheith ina comhalta den Scéim Aoisliúntais a bhaineann le hábhar.

Is dóigh le Máire go bhfuil sí i dteideal cead isteach sa scéim ó tharla go n-oibríonn sí ar bhonn páirtaimseartha ar ‘chonradh seirbhíse’ don FSS.

Diúltaíonn an FSS don tuairim sin agus áitíonn nach bhfuil Máire i dteideal cead isteach sa scéim ó tharla gur faoi ‘chonradh i gcomhair seirbhíse’ atá sí fostaithe – eadhon, mar chonraitheoir neamhspleách nó mar dhuine aonair a oibríonn ar bhonn seisiúnach.

Níorbh é seo an chéad uair a raibh orm déileáil le gearáin maidir le teidil pinsin chógaiseoirí ‘seisiúnacha’ ag obair don FSS. Bhí cás faoi leith sa bhliain 2009 iar threoraigh mé sa Chinneadh Críochnaitheach gur fostaí páirtaimseartha a bhí sa chógaiseoir a bhí i gceist agus gur ar bhonn ‘conradh seirbhíse’ a bhíodhas ag obair agus dá réir sin gur cheart go mbeadh cead isteach sa scéim pinsin ar bhonn *pro rata*. Is san Acht um Chosaint Fostaithe (Obair Pháirtaimseartha) 2001 atá treoir ina leith seo sa reachtaíocht agus é á thabhairt de cheart d’fhostaithe páirtaimseartha go gcaithfí leo ar bhonn *pro rata* chun críche pinsin.

Mheas mé, ar bhonn réasúnach, go gcuirfeadh an Roinn Sláinte agus an FSS an treoir a thug mé sa bhliain 2009 i bhfeidhm maidir le cásanna den chineál céanna ón am sin amach. Is cúis díomá dom, ina ainneoin sin agus roinnt cruinnithe agus comhfhreagrais idir an Oifig sin agamsa agus an FSS, go leanann an FSS ag déanamh faillí maidir leis an bhfasach treorach atá leagtha síos agam a leanacht.

Tuigtear go maith sa Roinn agus san FSS an dearcadh atá agamsa i leith na gceisteanna a thagann chun cinn leis an ngearán seo agus leis an gceann a chuaigh roimhe. Tá mé cinnte go bhfuil cúinsí an cháis ag Máire, ar gach bealach ábhartha, mar a chéile le cúinsí an cháis sa bhliain 2009 – conradh fostaíochta den chineál céanna, aicme ÁSPC den chineál céanna.

Tá gach iarracht déanta agam an riachtanas a bhaineann leis an bhfasach a leagtar síos leis an treoir a thug mé maidir le cás na bliana 2009 a leanacht agus déileáil le gach cás eile ar an gcaoi chéanna nuair a thagann siad chun cinn, a chur ar a súile don FSS agus don Roinn araon.

Cé go mbíonn claonadh ann na rátaí pá a fhaigheann oibrithe seisiúnacha a tharraingt isteach sa cheist, ní bhaineann sin liomsa – táimse dírithe ar iarracht cinntiú go ndéantar de réir na gceart fostaíochta faoin reachtaíocht a bhaineann le hábhar. Tuigim na deacrachtaí atá ag an FSS agus ag an Roinn Sláinte i ndáil leis na ceisteanna seo, ach ní mór dóibh déanamh go hiomlán de réir na bhforálacha a bhaineann le hábhar.

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4. Refusal to grant early retirement pension

Scenario

When Patrick W left Company A Ltd in 2002, he was presented with two alternative options in relation to his pension:

- He could 'preserve' it so that it would be payable at his normal retirement date; or
- He could take an immediate early retirement pension.

Patrick chose the preserved pension option, having been advised by the company's HR Department that he could change his mind at any stage subsequently and take up the early retirement pension.

After a number of years, Patrick did change his mind, but he was then informed that he could not avail of that option as the scheme was now insolvent.

Patrick believes that by denying him the option of early retirement the trustees and the company have effectively reneged on a prior agreement.

The trustees and the employer, by contrast, argue that the option of taking an early retirement pension was always contingent on a variety of factors including the funding level of the scheme.

From the evidence presented to my Office, it is clear that Patrick gave very serious consideration to his pension options when he was leaving the company in 2002. At that time, he formally sought clarification from his employer and the trustees regarding his options; and he received (in writing) confirmation that if he opted for a preserved pension he could at any stage change his mind and request early retirement benefits, the amount of which would depend on his age when he actually decided to take the pension.

In the light of this clarification, Patrick believed that he was entitled to get an early retirement pension whenever he decided to apply for it.

The trustees and the employer argued that they always maintained that Patrick could request early retirement and that this request must be considered with due regard to all relevant factors and that the overall funding level of the scheme was an extremely relevant factor. The Trust Deed and Rules also provided that the granting of early retirement was subject to the consent of the employer and the trustees. This conditionality, however, was not made clear to Patrick at the time he left the company.

Prior to issuing a Final Determination in this case, I issued a Preliminary View and indicated that I intended to ask the trustees and the employer to reconsider Patrick's request for early retirement. I suggested that they should take the following matters into consideration:

- Their failure in March 2002 to provide Patrick with clear information on the limitations of his entitlement to early retirement;
- The delay on their part in dealing with his request for early retirement;

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4. Diúltú pinsean luathscoir a cheadú

Cnámhscéal

Nuair a d'fhág Pádraig W Cuideachta A Teoranta sa bhliain 2002 tugadh dhá rogha dó maidir lena pinsean:

- D'fhéadfadh sé an pinsean a 'chaomhnú' ionas go mbeadh sé iníoctha ar a ghnáthdháta dul ar scor; nó
- D'fhéadfadh sé pinsean luathscoir a thógáil láithreach.

Roghnaigh Pádraigh an pinsean caomhnaithe tar éis do Roinn AD na cuideachta a chur de chomhairle air go bhféadfadh sé a intinn a athrú tráth ar bith ina dhiaidh sin agus an pinsean luathscoir a ghlacadh.

Tar éis roinnt blianta, d'athraigh Pádraig a intinn ach cuireadh in iúl dó an t-am sin nach bhféadfadh sé an rogha sin a thapú ó bhí an scéim dócmhainneach faoin tráth sin.

Is dóigh le Pádraig go bhfuil na hiontaobhaithe agus an chuideachta ag diúltú déanamh mar a bhí comhaontaithe roimhe sin agus an rogha luathscoir á shéanadh acu air.

Áitíonn na hiontaobhaithe agus an fostóir, i gcodarsnacht leis sin, go raibh an rogha maidir le pinsean luathscoir a thógáil ag brath i gcónaí ar thosca éagsúla, leibhéal cistíochta na scéime ar cheann acu.

Is léir ón bhfianaise a cuireadh faoi bhráid na hOifige go ndearna Pádraig dianmhachnamh ar na roghanna a bhí aige maidir le cúrsaí pinsin agus é ag fágáil na cuideachta sa bhliain 2002. D'iarr sé go foirmeálta an tráth sin, soiléiriú ón bhfostóir agus ó na hiontaobhaithe maidir leis na roghanna a bhí aige; agus tugadh deimhniú (i scríbhinn) dó go bhféadfadh sé, sa chás gur roghnaigh sé pinsean caomhnaithe, a intinn a athrú tráth ar bith agus sochair luathscoir a iarraidh, a mbeadh a luach ag brath ar an aois a bheadh slánaithe aige an tráth a socródh sé an pinsean a thógáil.

I bhfianaise an mhíniúcháin sin, mheas Pádraig go raibh sé i dteideal pinsean luathscoir a fháil tráth ar bith a socródh seisean cur isteach air.

D'áitigh na hiontaobhaithe agus an fostóir gurbh é seasamh a bhí acu riamh go bhféadfadh Pádraig pinsean luathscoir a iarraidh agus go gcaithfí an t-iarratas sin a mheas leis an aird chuí ar na tosca ar fad a bhaineann le hábhar agus go mbaineann leibhéal maoinne an chiste tríd is tríd go géar leis an ábhar sin. Foráiltear freisin i nGníomhas agus i Rialacha an Iontaobhais do luathscor a cheadú a bheith faoi réir ag toiliú an fhostóra agus na n-iontaobhaithe leis an gceadú. Níor cuireadh, ina ainneoin sin, na coinníollacha sin a bheith i gceist in iúl go soiléir do Phádraig an tráth a raibh sé ag fágáil na cuideachta.

Sular eisigh mé Cinneadh Críochnaitheach sa chás seo, d'eisigh mé Tuairim Réamhráiteach agus thug mé le tuiscint go raibh de rún agam a iarraidh ar na hiontaobhaithe agus ar an bhfostóir an t-iarratas ó Phádraig ar luathscor a mheas in athuair. Mhol mé go dtabharfaí na cúrsaí seo a leanas san áireamh:

- Gur theip orthu i mí Márta 2002 eolas soiléir a chur ar fáil do Phádraig faoi theorainn leis an teideal a bhí aige ar luathscor;
- An mhoill óna dtaobhsan de ag déileáil leis an iarratas uaidh ar luathscor;
- Gur cuireadh togra cistíochta ar aghaidh idir dáta an chéad iarratais uaidh agus an dáta ar diúltaíodh é; agus

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- The fact that a funding proposal was put in place between the dates of his original request and its refusal; and
- The fact that the funding proposal itself contained a built-in allowance for limited early retirements.

In reply to my suggestions, the trustees replied that they believed it would be inappropriate for them to exercise their discretionary power in favour of Patrick, given that the scheme was now insolvent.

In formulating my Final Determination in this case, I took into consideration the provisions of the Trust Deed and Rules and the provisions of the Social Welfare and Pensions Act 2005 in relation to the requirement for trustee consent for the payment of early retirement benefits. The trustees and employer had maintained that the reason for not granting an early retirement pension was due to the level of insolvency in the pension scheme. While accepting this, I also took the view that it was possible that, in the absence of an insolvency issue, an early retirement benefit might be granted to Patrick.

My Final Determination directed that a review of the complainant's case be carried out annually by the trustees in consultation with the employer, and taking the advice of the actuary regarding the solvency of the fund and the effect on the solvency if Patrick was granted early retirement. **I directed that the outcome of this annual review be communicated by the trustees in writing to Patrick within one month of the review.**

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- Go raibh soláthar maidir le líon teoranta daoine dul ar luathscor ina chuid den togra cistíochta.

Mar fhreagra ar a raibh á mholadh agam, chuir na hiontaobhaithe in iúl gur mheas siad nár chuí dóibh leas a bhaint as cumhacht roghnach a bhí acu i bhfabhar Phádraig ó tharla an scéim dócmhainneach an tráth seo.

Ag teacht dom ar an gCinneadh Críochnaitheach sa chás seo, chuir mé san áireamh forálacha Ghníomhas agus Rialacha an Iontaobhais agus forálacha an Achta Leasa Shóisialaigh agus Pinsean 2005 i ndáil leis an ngá le toiliú na n-iontaobhaithe le sochair luathscoir a íoc. Bhí áitithe ag na hiontaobhaithe agus ag an bhfostóir gurbh é an leibhéal dócmhainneachta maidir leis an scéim pinsin an chúis nár ceadáíodh pinsean luathscoir. Cé go nglacaim leis sin, bhí mé den tuairim chomh maith go bhféadfadh, murarbh ann don cheist faoin dócmhainneacht, go gceadófaí sochar luathscoir do Phádraig.

Treoraíodh sa Chinneadh Críochnaitheach go ndéanann na hiontaobhaithe i gcomhairle leis an bhfostóir athbhreithniú ar chás an ghearánaí gach bliain, agus comhairle á fáil ó achtúire maidir le sócmhainneacht an chiste agus an tionchar a bheadh ag luathscor a cheadú do Phádraig ar chúrsaí sócmhainneachta. **Threoraigh mé go gcuirfeadh na hiontaobhaithe toradh an athbhreithnithe sin gach bliain in iúl i scríbhinn do Phádraig taobh istigh d'aon mhí amháin dá dhéanamh.**

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5. Wrongful inclusion in pension scheme – intervention of preservation rule

Scenario	<p>When three immigrant workers, Grzegorz, Filip and Piotr, joined Company B Ltd in 2004, they were led to believe that membership of the company's pension scheme was a condition of their employment, and they joined the scheme on that basis.</p> <p>Subsequently, it turned out that when other employees contested the compulsory nature of scheme membership, the company admitted that membership was voluntary.</p> <p>The case of the three workers was brought to my attention by a trade union official. The three now sought to leave the scheme and wanted their contributions refunded.</p>
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Having reviewed the papers provided with the complaints, I decided, as a matter of law, that the three workers could not properly be included as members of a pension scheme without their express consent. Furthermore, because there was no evidence that they had completed application forms for membership of a pension scheme (which would have covered their consent to deduction of contributions from their wages), that consent appeared to be lacking.

There was also evidence that they had contested their original induction into the scheme. They acquiesced in it, only following the insistence of the employer that membership of the scheme was a condition of employment, which the employer now acknowledges was incorrect. This appears to have been a genuine mistake on the part of the employer.

By the time the complaint surfaced, however, more than two years had elapsed since the induction of the three workers into the scheme, and because of preservation requirements under the Pensions Act, the contributions they had made could not be refunded – in other words, they could leave the scheme if they wished, but the benefits already accrued would have to stand as preserved.

From my investigation, it appeared probable that the employer was already aware, prior to the end of 2006, that membership of the pension scheme could not be a condition of employment. So, if contributions from the three workers had been suspended prior to the end of December 2006, the question of preservation of benefits under the Pensions Act would not have arisen and the contributions could have been refunded to the workers when they left the employment. **I therefore directed the employer to give effect to their opt-out decision and to refund the contributions through the payroll.**

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5. Comhaltacht éagórach i scéim pinsin – an rial caomhnúcháin a theacht i gceist

Cnámhscéal	<p>Nuair a thosaigh triúr oibrithe inimirce, Grzegorz, Filip agus Piotr, le Cuideachta B Teoranta sa bhliain 2004, tugadh le tuiscint dóibh go raibh comhaltacht i scéim pinsin na cuideachta ar cheann de na coinníollacha fostaíochta agus chuaigh siad isteach sa scéim ar an mbunús sin.</p> <p>Tharla tráth ab fhaide anall, ar chur d'fhostaithe eile in aghaidh nádúr éigeantach bheith le comhaltacht sa scéim, d'admhaigh an cuideachta go raibh comhaltacht sa scéim deonach.</p> <p>Tharraing oifigeach ceardchumainn m'aird ar chás an triúr oibrithe. Bhí an triúr ag féachaint anois leis an scéim a fhágáil agus le haisíoc a fháil ar a gcuid ranníocaíochtaí.</p>
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Ar an gcáipéisíocht a cuireadh ar fáil leis na gearáin a bhreithníú, shocraigh mé nach bhféadfaí, faoin dlí, an triúr oibrithe a áireamh go cóir mar chomhaltaí de scéim pinsin gan toiliú sainráite uathusan leis sin. Agus ó tharla nach raibh aon fhianaise ar fáil gur líon siad isteach foirmeacha iarratais maidir lena ligean isteach sa scéim pinsin (a dtiocfadh toiliú le hasbhaint ranníocaíochtaí óna dtuarastal faoina scáth), ba chosúil nár tugadh an toiliú sin.

Bhí fianaise ann freisin gur chuir siad in aghaidh a dtabhairt isteach sa scéim ar dtús agus nár ghlac siad leis go dtí gur áitigh an fostóir go raibh comhaltacht sa scéim ina choinníoll fostaíochta, rud a admhaíonn an fostóir faoin tráth seo a bheith éigeart. Is cosúil gur trí earráid dáiríre a d'áitigh an fostóir sin.

Ina dhiaidh sin féin, faoin am ar tháinig an gearán chun cinn, bhí níos mó ná dhá bhliain caite ó tugadh an triúr oibrithe isteach sa scéim, agus mar gheall ar choinníollacha maidir le caomhnúcháin faoin Acht Pinsean, ní fhéadfaí na ranníocaíochtaí a bhí déanta acu a aisíoc – is é sin le rá go bhféadfaidís an scéim a fhágáil dá mba mhian leo, ach go gcaithfeadh na sochair a bhí carntha go dtí sin fanacht ar a gcaomhnú.

Ón imscrúdú a rinne mé, ba dhóigh gur thuig an fostóir cheana féin, roimh dheireadh na bliana 2006, nach bhféadfadh comhaltacht sa scéim pinsin a bheith ar cheann de na coinníollacha fostaíochta. Ó tharla nach dtiocfadh an cheist maidir le caomhnú na sochar faoin Acht Pinsean i gceist dá mbeadh deireadh curtha leis na ranníocaíochtaí ón triúr oibrithe roimh dheireadh mhí na Nollag 2006, d'fhéadfaí sa chás sin na ranníocaíochtaí a aisíoc leis na hoibrithe ar fhágáil na fostaíochta dóibh.

Threoraigh mé don fhostóir dá bhrí sin feidhm a bheith lena socrú gan bheith sa scéim agus na ranníocaíochtaí a íoc ar ais tríd an bpárolla.

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6. Investment instruction not implemented

Scenario

Susan F is a member of a company pension scheme administered by a well-known insurance company.

In September 2008, she formally asked the insurance company to move her pension fund into a cash fund, as she believed that would be more secure than the managed fund it was in up to that point.

The insurance company did not follow her instruction and advised her that she did not have the authority to direct them to move her funds.

Around that time her company went into liquidation and she was made redundant. She took the matter up with the liquidator and with the company's financial controller.

Eventually, her pension was moved into cash, but by this time it had lost value. She believed that the insurance company was at fault for not switching funds when she had asked them to do so, and this was the main thrust of her complaint to my Office.

The main failure that I uncovered in this case was that the administrator (insurance company) did not know the rules of the scheme under its care.

Under the rules of the scheme, members had the right to correspond directly with the administrator and had full authority to direct them in relation to how and where funds were held. So, clearly Susan **did** have the right to move the funds, and they should have been moved when she first requested it.

I directed the insurance company to treat Susan's benefits as if the funds had been switched to cash when she first requested it.

Generally, pension companies provide standard documentation and services in relation to pension schemes and there is usually little variation from scheme to scheme in terms of the options available to members. However, it is clear that some differences and variations do exist, and administrators should not make assumptions about the options available to members until they have checked them out. In this particular case, Susan did have the authority to request the change.

This case highlights the need for administrators and trustees to have an in-depth knowledge of the rules of the schemes they are looking after. Where personnel changes from year to year, the administrator should ensure that incoming personnel are fully briefed on the schemes they are responsible for.

This case was also complicated by the fact that the company was in liquidation and the liquidator did not have access to all of the documentation relating to the pension scheme.

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6. Treoir infheistíochta nár cuireadh i bhfeidhm

Cnámhscéal

Tá Siobhán F ina comhalta de scéim pinsin cuideachta atá á riar ag comhlacht árachais sainaitheanta.

I mí Meán Fómhair 2008, d'iarr sí go foirmeálta go n-aistreadh an comhlacht árachais a ciste pinsin go dtí ciste airgid thirim, ó ba é a mheas sí go mbeadh sin níos sábháilte ná an ciste bainistithe ina raibh an ciste pinsin go dtí sin.

Ní dharna an comhlacht árachais de réir na teorach sin uaithi agus cuireadh in iúl dí nach raibh d'údarás aici treoir a thabhairt dóibhsean maidir lena cuid cistí a aistriú.

Thart ar an am sin, rinneadh an chuideachta ina raibh sí ag obair a leachtú agus ligeadh ise chun bealaigh ar bhonn iomarcaíochta. Tharraing sí an cheist anuas leis an leachtaitheoir agus le ceannasáí airgeadais na cuideachta.

Rinneadh sa deireadh an pinsean a athrú go dtí airgead tirim ach faoin tráth sin bhí íslíú ar a luach. Mheas sí go raibh locht ar an gcomhlacht árachais nuair nár athraigh siadsan na cistí mar a bhí iarrtha aici orthu a dhéanamh agus b'shin an ghné ba thábhachtaí sa ghearán a rinne sí leis an Oifig.

Ba é an t-easpa is mó a thug mé faoi deara maidir leis an gcás seo nach raibh rialacha na scéime a bhí faoina chúram ar eolas ag an riarthóir (an comhlacht árachais).

Faoi rialacha na scéime, bhí de cheart ag na comhaltaí comhfhreagras a dhéanamh go díreach leis an riarthóir agus bhí d'údarás iomlán acu treoir a thabhairt don riarthóir i ndáil leis an áit agus leis an gcaoi a ndéanfaí infheistíocht ar na cistí. Dá réir sin, is léir go raibh go deimhin de cheart ag Siobhán na cistí a aistriú agus gur cheart go n-athrófaí iad an chéad uair a d'iarr sí sin.

Threoraigh mé don chomhlacht árachais déileáil le sochair Shiobháin faoi mar a bheadh na cistí aistrithe an chéad uair a d'iarr sí sin.

Is iondúil le comhlachtaí pinsin cáipéisíocht agus seirbhísí caighdeánaithe a chur ar fáil maidir le scéimeanna pinsin agus is annamh a bhíonn mórán éagsúlacht ó scéim go chéile maidir leis na roghanna atá ar fáil ag na comhaltaí. Ina ainneoin sin, is léir go mbíonn roinnt difríochta agus éagsúlachta ann, agus níor cheart do riarthóirí talamh slán a dhéanamh de thuairim faoi na roghanna atá ar fáil go dtí go mbíonn an cheist scrúdaithe acu. Sa chás áirithe seo, bhí d'údarás ag Siobhán an t-athrú a iarraidh.

Léirítear leis an gcás seo an gá atá le heolas ar leith a bheith ag riarthóirí agus ag iontaobhaithe ar rialacha na scéimeanna a bhfuil siad ag breathnú ina ndiaidh. Cé go dtagann athrú ar an bhfoireann ó bhliain go bliain, ba chóir don riarthóir cinntiú go dtugtar teagasc iomlán don lucht foirne nua ar na scéimeanna a bhfuil freagracht orthu ina leith.

Bhí de chastacht bhreise leis an gcás seo go raibh an chuideachta á leachtú agus nach raibh teacht ag an leachtaitheoir ar an gcáipéisíocht uile a bhainfeadh leis an scéim pinsin.

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7. Delay in paying death benefit

Scenario Arthur M was a member of a company pension scheme when he died in December 2007. At the time of his death, the value of his scheme benefit stood at €149,000.

In April 2009, Arthur's widow, Eileen received a cheque for €106,000 as a full settlement of his death benefit, representing a decline of €43,000 from the date of his death.

Eileen brought this case to me through her solicitor after the pension company's Internal Dispute Resolution (IDR) procedure had failed to resolve her complaint.

The story of the decline in value of Arthur's pension fund can be told in a few points:

Date	Value
December 2007, at Arthur's death	€149,000
August 2008, benefit statement	€136,000
April 2009, final settlement	€106,000

When Arthur died in December 2007, notice of his death was sent promptly (in January 2008) to his employer's adviser.

The adviser replied to the effect that, in order to process the death claim, the pension company would require sight of Arthur's Death Certificate and the Grant of Probate. By the time these documents were forwarded (in March 2009), the value of the fund had dropped to €106,000 and this was the amount of the final settlement.

In June 2009, the adviser explained to Arthur's widow, Eileen, and her solicitor that the trustees had acted properly in the matter and that €106,000 represented the value of the scheme benefit at that time. The matter had been considered under the scheme's Internal Dispute Resolution procedure (IDR), and the trustees had not upheld Eileen's complaint.

In the course of our investigation, the scheme's administrator and trustees came quickly to the realisation that they should have taken steps to protect the value of Arthur's fund from depreciation as soon as they had notice of his death – in other words, they should have immediately moved the fund to cash. They accepted that they had not acted correctly, and regretted the inconvenience and upset that they had caused to Eileen.

They agreed to settle with Arthur's estate and bring the final settlement up to the value of the fund in January 2008. This settlement was satisfactory to Eileen.

Aguisín D: Achoimre maidir le cásanna

7. Moill maidir le sochar báis a íoc

Cnámhscéal	<p>Bhí Artúr M ina chomhalta de scéim pinsin cuideachta nuair a fuair sé bás i mí na Nollag 2007. An tráth a bhfuair sé bás, bhí luach €149,000 leis an sochar a bhí aige sa scéim.</p> <p>I mí Aibreán 2009, fuair baintreach Artúir, Eibhlín, seic dar luach €106,000 mar íocaíocht iomlán ar an sochar báis, suim a d'fhág íslíú €43,000 ó dháta a bháis.</p> <p>Chuir Eibhlín an cás seo faoi mo bhráid trína haturnae nuair nár thángthas ar réiteach ar an ngearán trí chóras na cuideachta pinsin do réiteach aighnis inmheánach (RAI).</p>
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Is féidir an cuntas a thabhairt ar an íslíú ar luach chiste pinsin Artúir le beagán pointí:

Dáta	Luach
Nollaig 2007, bás Artúir	€149,000
Lúnasa 2008, ráiteas faoi shochair	€136,000
Aibreán 2009, socrú deiridh	€106,000

Tar éis bhás Artúir i mí na Nollag 2007, cuireadh fógra faoina bhás go pras (i mí Eanáir 2008) chuig comhairleoir an fhostóra.

D'fhreagair an comhairleoir go mbeadh gá ag an gcuideachta pinsin le amharc a fháil ar Theastas Báis Artúir agus ar an Deonú Probháide chun próiseáil a dhéanamh ar an éileamh i gcás báis.

Faoin am ar cuireadh na cáipéisí sin ar aghaidh (i mí Márta 2009), bhí luach an chiste íslithe go dtí €106,000 agus b'shin an tsuim a bhain leis an socrú deiridh.

I mí Meitheamh 2009, mhínigh an comhairleoir do bhaintreach Artúir, Eibhlín, agus dá aturnae go raibh déanta mar is cóir ag na hiontaobhaithe sa chás seo agus gurbh ionann €106,000 agus luach an tsochair faoin scéim ag an am sin. Pléadh an cás faoi chóras na scéime don Réiteach Aighnis Inmheánach (RAI), agus níor sheas na hiontaobhaithe leis an ngearán a bhí déanta ag Eibhlín.

Le linn an imscrúdúcháin a rinne an Oifig, tháinig riarthóir agus iontaobhaithe na scéime ar an tuiscint go luath gur chóir dóibh bearta a bheith déanta acu chun luach chiste Artúir a shábháil ó dhíluach a luaithe a tugadh fógra dóibh faoina bhás – is é sin le rá gur chóir dóibh an ciste a bheith aistrithe go hairgead tirim acu an tráth sin. Ghlac siad leis nach raibh déanta mar ba chóir acu agus bhí aiféal orthu faoin gcur isteach agus faoin suaitheadh a tarraingíodh ar Eibhlín.

D'aontaigh siad socrú a dhéanamh le heastát Artúir agus luach an tsocraithe deiridh a thabhairt suas go dtí luach an chiste mar a bhí i mí Eanáir 2008. Bhí glacadh ag Eibhlín leis an socrú sin.

Appendix D: Case digest

8. Non-resident and non-compliant

Scenario

Graham R, Donncha S and Gerry M are construction workers who were employed by a company that had operations on both sides of the border.

Like so many other workers in the construction industry, they were made redundant in 2009. Soon afterwards, they discovered that the employer had not remitted all of their pension contributions to the Construction Workers Pension Scheme (CWPS). In Graham's case, a substantial AVC contribution had not been remitted.

In bringing their case to my Office, Graham and his workmates were seeking to have their contributions to the pension scheme honoured by their former employer.

The non-remittance of pension contributions from construction companies on behalf of their employees is a familiar story in my Office, and at first view, this case seemed to follow a standard pattern of non-compliance.

What makes this case particularly complex, however, is the fact that the employer is legally incorporated in Northern Ireland, and operated a branch office south of the border. The branch was listed on the Companies Registration Office as an 'external company' and had ceased trading in late 2009.

With an Irish-registered company, it would be the normal process for this Office to investigate complaints, with the objective of having the unpaid deductions remitted to the CWPS. In the event of the liquidation of the employing company, I, or the Pensions Board would try to pursue the directors personally. However, because the former employing company is based in Northern Ireland and has no legal status here, I do not have jurisdiction in this matter.

To make matters worse, the Pensions Ombudsman in the United Kingdom (with whom I have a Memorandum of Understanding) has no jurisdiction over a pension scheme that is registered in the Republic.

Graham and his former workmates are caught between two jurisdictions and are the victims of their former employer's border hopping; and neither I nor the UK Pensions Ombudsman can do anything about it as things currently stand.

I am frustrated that it is possible for companies legally registered in one EU country to flout the law of another EU country with apparent impunity, and leave former employees without the pension entitlements they should be entitled to. At a policy level, I believe that we need to put in place some kind of reciprocal bonding system to ensure that employers cannot take advantage of non-resident status and just cut and run in this manner.

For the immediate future, I urge construction workers who are employees of companies registered outside of Ireland to seek evidence that their pension deductions are being remitted to the CWPS.

Aguisín D: Achoimre maidir le cásanna

8. Neamhchónaitheach agus neamhchomhlíontach

Cnámhscéal

Is oibrithe tógála Graham R, Donncha S agus Gearóid M atá fostaithe ag cuideachta a bhíonn i mbun gnó an dá thaobh den teorainn.

Mar a tharla do chuid mhór oibrithe eile i dtionscal na tógála, ligeadh chun bealaigh iad mar gheall ar iomarcaíocht sa bhliain 2009. Gairid ina dhiaidh sin, thug siad faoi deara nach raibh a gcuid ranníocaíochta pinsin uile íochta ag an bhfostóir le Scéim Pinsin na nOibrithe Tógála (SPOT). I gcás Ghraham, bhí ranníocaíocht AVC dar luach cuid mhór airgid nach raibh seolta ar aghaidh.

Agus an cás á thabhairt faoi bhráid na hOifige acu, bhí Graham agus a chuid comhghleacaithe ag féachaint lena thabhairt go n-íocfadh an t-iarfhostóir na ranníocaíochtaí leis an scéim pinsin.

Is scéal é neamhíoc ranníocaíochtaí pinsin thar ceann a gcuid fostaithe ag comhlachtaí tógála a chloistear go coitianta san Oifig seo agus ar an gcéad fhéachaint, mheasfaí go raibh an cás seo ag teacht leis an ngnáthphátrún ó thaobh neamhchomhlíontais.

Is é a d'fhág castacht faoi leith ag baint leis an gcás seo, áfach, gur i dTuaisceart Éireann ata an fostóir corpraithe faoin dlí, agus gur oifig brainse a bhí á rith ó dheas den teorainn. Bhí an brainse sin liostaithe leis an Oifig um Chlárú Cuideachtaí mar 'chuideachta sheachtrach' agus éiríthe as trádáil ón gcuid deiridh den bhliain 2009.

I gcás cuideachta a bhí cláraithe in Éirinn, is é gnáthphróiseas na hOifige seo imscrúdú a dhéanamh ar ghearáin, agus de chuspóir leis sin go n-íocfaí na ranníocaíochtaí a bhí gan íoc leis an SPOT. Sa chás go ndéanfaí an chuideachta fostaíochta a leachtú, thabharfainn féin nó an Bord Pinsean faoi sin a thabhairt ar na stiúrthóirí go pearsanta. Mar gheall gur i dTuaisceart Éireann atá an chuideachta fostaíochta bunaithe, áfach, agus nach bhfuil aon stádas aici faoin dlí anseo, ní thagann an cás faoin dlí anseo a leagtar ormsa.

Mar bharr ar an donas, ní thagann scéim pinsin atá cláraithe i bPoblacht na hÉireann faoi scáth na dlí anseo a leagtar ar an Ombudsman Pinsean sa Ríocht Aontaithe (a bhfuil Meabhrán Tuisceana idir mé féin agus é féin).

Tá Graham agus a chuid iar-chomhghleacaithe i gcás dhá leith idir dhá dhlí anseo agus iad ag fulaingt mar gheall ar léim an dá bhruach a bheith ag an bhfostóir thar an teorainn; agus ní féidir liomsa ná leis an Ombudsman Pinsean sa Ríocht Aontaithe aon ní a dhéanamh mar gheall air faoi mar a sheasann cúrsaí faoi láthair.

Is ábhar mire go bhféadfadh cuideachta atá cláraithe faoin dlí i dtír amháin de chuid an AE, an dlí sa dara tír de chuid an AE a shárú gan baol piónóis, agus seanfhostaithe a fhágáil in éagmais na dteideal pinsin ba chóir a bheith ar fáil dóibh. Ar leibhéal an bheartais, is dóigh liom gur gá córas bannaí frithpháirteach de chineál éigin a chur ar bun d'fhonn cinntiú nach féidir le fostóirí leas a bhaint as stádas neamhchónaitheach agus imeacht gan call imní ar an gcaoi seo.

Go dtí go dtugtar sin i gcrích, d'áiteoinn ar oibrithe tógála atá fostaithe ag cuideachtaí ar taobh amuigh d'Éirinn atá siad cláraithe fianaise a lorg go bhfuil a gcuid ranníocaíochtaí pinsin á n-íoc leis an SPOT.

Appendix D: Case digest

9. Transfer from a pension scheme to a retirement bond

Scenario	<p>Monica F worked for the same company for over thirty years and was a member of the company's defined benefit scheme for all of that time.</p> <p>The scheme was wound up in 2007 and each member's funds were transferred as part of a bulk transfer into a retirement bond invested in a consensus fund.</p> <p>The poor performance of the consensus fund meant that the value of Monica's pension fund declined. The main thrust of her complaint to my Office was that the trustees and their advisers had been negligent in transferring the entire funds of the scheme into the consensus fund, and that they were responsible for her considerable financial loss.</p>
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When Monica brought her case to me, it was clear that she had suffered significant financial loss. She had placed a great deal of trust in those managing the scheme, and had assumed that they would behave in a 'proper and responsible fashion'.

She had more or less left it to their good judgement to determine the best investment vehicles to use for her funds. In my investigation, I set out to discover whether or not this was due to poor administration or bad communications on the part of the trustees and their advisers.

At the time of the transfer into the retirement bond in June 2007, the trustees' advisers wrote to all members of the scheme, outlining the background to the transfer. They provided what I would regard as reasonably good information on the retirement bond and on the consensus fund in which it was invested. They also offered to give scheme members further advice if they felt they needed it. After the transfer had taken place, in April 2008, they again wrote to members, providing further information and highlighting the availability of a trustee adviser to deal with any queries that members might have. This, I believe, was as much as the trustees and advisers could do at that point.

The fact that Monica did not take up the offer of more advice and did not take a more active role in the management of her pension fund is unfortunate, and I believe that the problem here is one of 'culture'. As a member of a defined benefit scheme, Monica had never previously had to make any decisions about what to do with her pension fund. When the funds were moved into a retirement bond, she didn't understand that this required her to take responsibility for her own fund. I do sympathise with people in Monica's situation, but I also acknowledge that the fund administrators had kept Monica well informed about the change.

In this particular case, I rejected Monica's claim of negligence on the part of the trustees.

For the future, where defined benefit schemes are being wound up and the funds moved to a retirement bond or other vehicle, I would strongly recommend that trustees do everything they can to impress upon scheme members that they are responsible for managing their own pension fund from now on.

Aguisín D: Achoimre maidir le cásanna

9. Aistriú ó scéim pinsin go dtí banna aoisliúntais

Cnámhscéal

Bhí Moinice F níos mó ná tríocha bliain ag obair don aon chuideachta amháin agus í ina comhalta de scéim shochair shainithe na cuideachta an t-am sin ar fad.

Rinneadh an scéim a fhoirceannadh sa bhliain 2007 agus aistríodh cistí gach comhalta mar chuid de oll-aistriú go dtí banna aoisliúntais arna infheistiú i gciste comhthola.

D'fhág drochthoradh infheistíochta ar an gciste comhthola gur ísligh luach chiste pinsin Mhoinice. Ba é ba mhó a bhí i gceist leis an ngearán a rinne sí leis an Oifig go raibh na hiontaobhaithe agus a gcuid comhairleoirí faillíoch nuair a aistríodh na cistí ar fad isteach sa chiste comhthola, agus go raibh freagracht orthusan maidir leis an gcaillteanas mór airgid uirthise.

Nuair a chuir Moinice an cás faoi mo bhráid, ba léir go raibh cailteanas mór airgid fulaingthe aici. Bhí iontaoibh mhór curtha aici iontu sin a bhí ag bainistiú na scéime agus cheap sí go n-oibreodís 'ar bhealach cóir cúramach'.

Bhí sé fágtha fúthusan aici, a bheag nó a mhór, agus faoina ndea-bhreithiúnas na deiseanna infheistíochta ab fhearr le húsáid dá cuid cistí a shocrú. Chuir mé romham, le linn an imscrúdúcháin, a fháil amach cibé an raibh nó nach raibh sin de thoradh ar riarachán lochtach nó ar chumarsáid lochtach ó thaobh na n-iontaobhaithe agus a gcuid comhairleoirí.

An tráth a ndearnadh an t-aistriú go dtí an banna aoisliúntais i mí Meitheamh 2007, scríobh comhairleoirí na n-iontaobhaithe go dtí gach comhalta den scéim agus leagadh amach buneolas faoin aistriú. Chuir siad eolas a mheasfainnse a bheith réasúnta maith ar fáil faoin mbanna aoisliúntais agus faoin gciste comhthola a mbeadh sé infheistithe ann. Thairg siad freisin breis comhairle a chur ar chomhaltaí na scéime má bhraith siadsan go raibh gá acu leis. Tar éis don aistriú tarlú, i mí Aibreán 2008, scríobh siad arís chuig na comhaltaí ag cur eolas breise ar fáil agus ag díriú airde ar chomhairleoir iontaobhaithe a bheith ar fáil chun déileáil le haon cheisteanna a bheadh ar chomhaltaí. B'shin, i mo thuairimse, oiread agus a d'fhéadfadh na hiontaobhaithe agus na comhairleoirí a dhéanamh an tráth sin.

Is é an trua nár ghlac Moinice leis an tairiscint maidir le comhairle breise agus nár thug sí faoi ról níos forbheartaí i mbun na bainistíochta ar a ciste pinsin. Is dóigh liom gur fadhb 'cultúir' atá i gceist leis sin. Ina comhalta de scéim shochair shainithe di, ní raibh ar Mhoinice riamh roimhe sin aon chinneadh a dhéanamh faoina ndéanfaí lena ciste pinsin. Nuair a aistríodh na cistí go dtí banna aoisliúntais, níor thuig sise go raibh á éileamh leis sin go mbeadh sise freagrach maidir lena ciste féin. Tuigim do dhaoine sa chás ina raibh Moinice, ach admhaím chomh maith go raibh Moinice coinnithe ar an eolas go maith ag riarthóirí an chiste faoin athrú.

Sa chás áirithe seo, dhiúltaigh mé glacadh le gearán Mhoinice go raibh faillí déanta ag na hiontaobhaithe.

As seo amach, sa chás go mbíonn scéimeanna sochair shainithe á bhfoirceannadh agus na cistí á n-aistriú go dtí banna aoisliúntais nó sás infheistíochta eile, mholfainn go tréan go ndéanfadh na hiontaobhaithe gach ar féidir chun a chur ina lúí ar chomhaltaí na scéime go bhfuil siad féin freagrach as an mbainistíocht ar a gciste pinsin féin as sin amach.

Appendix D: Case digest

10. Retirement on grounds of ill-health

Scenario

In 2010, Jennifer L retired from her job as a shop-floor supervisor on grounds of ill health.

She had been a member of her company's pension scheme for over twenty years, and believed at that stage that she was entitled to take up her pension, even though she was still eight years short of her expected retirement age.

Jennifer's pension administrator took a different view, and maintained that leaving the job on grounds of ill health did not meet the scheme's criteria for early retirement.

In Jennifer's case, the medical report suggested that, while she should no longer carry out the role of shop-floor supervisor, she would be capable of doing another, more sedentary job. For that reason, the trustees rejected her claim for ill-health retirement.

In the course of my investigation, I studied the rules of the scheme very carefully, and my conclusion was that, although the rules are not as clear as they might be, the trustees' interpretation was certainly a possible and valid one. As long as they are consistent in the way they interpret the rules, there is little scope for argument.

For these reasons, I had no alternative but to reject Jennifer's claim. However, I did also direct the company to consider changing the wording of the scheme rules to make them clearer and less ambiguous.

It is not unusual for pension schemes to have provisions for members to retire early (sometimes with added benefits) on the grounds of ill-health.

In this case, the nature of Jennifer's job was such that the company considered it too dangerous for her to carry out her duties in the light of her health issues. As the company had no other post for which she was suitable, they offered her a redundancy package.

The rules of the pension scheme of which Jennifer was a member do indeed provide for early retirement due to ill health and there is further provision in the rules allowing the trustees to vary or suspend benefits if the member resumes whole or part-time employment. The trustees interpreted these rules to mean that if the member is capable of any employment then the member is not eligible for ill-health retirement.

Aguisín D: Achoimre maidir le cásanna

10. Dul ar scor ar fhoras drochshláinte

Cnámhscéal	<p>Sa bhliain 2010, chuaigh Sinéad L ar scor óna post mar mhaor urlár siopa ar fhoras drochshláinte.</p> <p>Bhí sí ina comhalta de scéim pinsin na cuideachta níos mó ná fiche bliain agus mheas sí an tráth sin go raibh sí i dteideal a pinsean a thógáil cé go raibh ocht mbliana go fóill go mbeadh sí ag an aois pinsin réamh-mheasta.</p> <p>Bhí riarthóir pinsin Shinéid ar mhalairt tuairime, arna áitiú nach raibh an post a fhágáil ar fhoras drochshláinte ag teacht le critéir na scéime maidir le luathscor.</p>
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Ní rud neamhghnách maidir le scéimeanna pinsin go mbeadh forálacha ag baint leo maidir le comhaltaí ag dul ar luathscor (le sochair bhreise uaireanta) ar fhoras drochshláinte.

Sa chás seo, bhí cineál an phoist ina raibh Sinéad sa chaoi is gur mheas an chuideachta go mbeadh sé róchontúirteach aici leanacht ar aghaidh i mbun a cuid dualgais i bhfianaise a raibh i gceist lena cuid sláinte. Ó tharla nach raibh aon phost eile sa chuideachta a mbeadh sí oiriúnach chuige, tairgíodh pacáiste iomarcaíochta di.

Déantar foráil le rialacha na scéime pinsin a raibh Sinéad ina comhalta ann do luathscor mar gheall ar dhrochshláinte agus déantar foráil thairis sin leis na rialacha do na hiontaobhaithe athrú a chur ar na sochair nó iad a chur ar fionraí sa chás go dtosaíonn an comhalta arís ar fhostaíocht lánaimseartha nó pháirtaimseartha. Bhain na hiontaobhaithe de thuiscint as na rialacha sin nach bhfuil comhalta i dteideal scor ar chúiseanna drochshláinte má tá an comhalta in ann chuig fostaíocht *de chineál ar bith*.

I gcás Shinéid, bhí le tuiscint ón tuairisc dochtúra, cé nár cheart di feasta ról mhaor urlár siopa a dhéanamh, go mbeadh ar a cumas post eile, ina mbeadh sí ar suí, a dhéanamh. Ar an údar sin, dhiúltaigh na hiontaobhaithe dá héileamh ar scor ar chúiseanna drochshláinte.

Le linn an imscrúdúcháin, scrúdaigh mé rialacha na scéime go han-ghéar agus tháinig mé ar an gcomhairle, ainneoin nach bhfuil na rialacha chomh soiléir agus a d'fhéadfadh a bheith, go bhfuil an míniú a bhain na hiontaobhaithe astu intuigthe agus inchosanta mar mhíniú. Chomh fada agus a bhítear seasmhach leanúnach i mbun mhíniú mar sin a bhaint as na rialacha, is beag scóip atá ann le cur ina aghaidh. **Ar na cúiseanna sin, ní raibh de rogha agam ach diúltú glacadh le gearán Shinéid.** Ina ainneoin sin, threoraigh mé freisin do chuideachta smaoineamh ar fhocláíocht rialacha na scéime a athrú ionas gur soiléire aonchialláí iad.



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