



An tOmbudsman Pinsean  
Pensions Ombudsman

## Annual Report 2009





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### Mission Statement

Our mission is to investigate and decide, in an independent and impartial manner, complaints and disputes concerning occupational pension schemes, Personal Retirement Savings Accounts (PRSAs) and Trust RACs, involving maladministration and financial loss, and to grant redress where appropriate.

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*This publication is available in  
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## FOREWORD

A Aire,

I am pleased to present my Annual Report for 2009, the sixth complete year of operation of the Office of the Pensions Ombudsman.

The work of the Office has continued to progress, against the background of a substantially increasing workload. The number of new complaints received in my Office, at 1,766, represents an increase of 71% on the corresponding number of complaints received in 2008. As you can imagine, this increase has stretched our resources to the limit. The increase in complaints stems from the continuing very difficult position for the pensions industry, much greater awareness among the public of the need to understand and monitor their pension arrangements, poor practices and pension knowledge among administrators, weak complaint handling functions and more accurate recording by my Office of the types and numbers of complaints received. Nevertheless, I am pleased to report that despite the 71% increase in the number of complaints in 2009, the number of live cases on hands at end 2009 was 398, compared with 473 at the end of 2008, a reduction of 16%. This could only have been achieved through the commitment and dedication of my colleagues here and a willingness to adapt and streamline examination and investigation procedures.

I was appointed as the first Pensions Ombudsman by the then Minister for Social and Family Affairs on the 28<sup>th</sup> April 2003 for a 6 year term. During the year under report, I had the honour and privilege of being re-appointed as Pensions Ombudsman by your predecessor in April 2009 for a further 4 years. Looking back over the years since my first appointment, the obvious headline is that complaints to my Office increased from 452 in 2003/2004 to 1,766 in 2009, bringing the total of complaints received to 4,578, ample justification for the decision to establish the Office.

With a small overall complement of just 10 staff, personnel changes can have a dramatic impact on output for the year. Thankfully there were no such changes during the year, allowing skill levels to build. While additional staff would, of course, be most welcome in the light of the large increase in numbers of complaints, I recognise this is not possible and we must make do with what we have.

I analyse our caseload for the year in detail in Section 3. However, it is clear that there is a significant job for those administering pensions in both the public and private sectors to ensure that their communications are timely and understandable, judging by the very large number of contacts with my Office, either by telephone/email/fax/website, from people who are seeking information about their pension entitlements, advice as to where they should seek such information and, in some cases, simple explanations of documents containing obscure pensions terminology. There were over 600,000 “hits” on my website - [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie) - and I would suspect that many were focused on the “Frequently Asked Questions” section which I set up in 2008 to add to people’s knowledge in this area.

Unfortunately I have had to resort to legal action in too many cases where my investigations are being hampered by failure to cooperate with requests for documentation etc. It is difficult to understand why people would risk a criminal conviction and incur fines and legal costs through refusal to give me papers which courts will eventually insist that they deliver to my Office. Initially such people may believe that if they ignore my requests for long enough I will forget about the matter. However, while I act in an impartial manner and will not develop a case on behalf of a complainant, I do have a responsibility to get the basic facts surrounding the issue and I will not abandon a case simply because someone refuses to cooperate. As can be seen from my website, I have been busy in both the District and Circuit Courts during 2009 where my investigators appeared in District Courts 8 times and in the Circuit Court once.

One aspect of investigation which I find particularly irritating, and is probably more so for complainants, is where there has been grave maladministration but no actual financial loss under scheme rules. My legal remit does not extend to allowing me make awards for stress, inconvenience, etc., and I am not making a case to be given such power. However, I have had complaints where people were put through a bureaucratic mangle with no thought whatsoever for the stress which this was causing; and while such people were not actually at a financial loss, they genuinely believed that they might have been. Rather than getting a sympathetic ear from administrators who were quite happy to collect their premiums and fees over many years, they were met with inordinate delay in responding to what were straightforward queries, often with incorrect information provided in response, and an arrogance and complete disregard for their situation. It was left to me to untangle the mess and explain their entitlements in plain English.

Some of this maladministration may have occurred because there were no sanctions available against administrators as such. Thankfully, the Social Welfare and Pensions Act 2008 introduced the concept of Registered Administrators whereby those providing administration services to pension schemes are registered with the Pensions Board. I intend to notify the Board of any case where I find serious maladministration, even though no financial loss may have occurred. In this way, the Board will have before it independent evidence where administrators are failing in their duties, which can be taken into consideration when registration is being renewed.

I am pleased to see that the public service transformation programme is moving ahead and I notice that a particular emphasis will be placed on Shared Services. As I have said many times in the past, I believe that pensions administration in the public sector is ideally suited to a shared service type arrangement. Taking the wider public service to include Government Departments, semi-State bodies, local authorities, HSE, etc, there is a myriad of different pension schemes in operation, with varying rules applying (often depending on when one started employment). I recognise that it is extremely difficult for a public service pension administrator to acquire the required level of understanding and background knowledge necessary for the job in a short space of time. The result is obvious - very uneven administration within the public sector in such areas as the allowability of overtime, allowances, etc., for pension purposes, poor communication and an unfortunate failure in many cases to explain why a decision is made in a particular way. Leaving aside the question of acquiring the requisite knowledge there are, I believe, fundamental reasons why pensions administration in the public sector is

particularly uneven. Firstly, pensions administration is not “sexy” and while I admit to a certain fascination with the subject, this is not shared by most people! There is no career structure attaching to pensions administration in the public service generally. Having, say, five years experience of pensions administration will probably not enhance a CV to any significant degree within the public sector where core competencies being assessed for promotion purposes are probably not strengthened by spending a significant time in the Superannuation Section. Secondly, any available expertise is spread too thinly, with each Department, semi-State body, local authority, etc., having its own pension administration function. It is patently obvious that a coordination of effort through a shared services arrangement would result in immediate benefit, not just in pure administrative terms but also in having a pool of expert knowledge available to advise Government on the implications of changes which they might have in mind in pension arrangements.

The experience of my Office in dealing with complaints in the public service has also highlighted instances where the rules of schemes themselves, or administrative protocols in existence for many years, result in anomalies and outcomes for individuals which defy logic. I am not permitted under the Pensions Act to make determinations which have the effect of changing scheme rules, no matter how insane those rules may be, but I will be examining very closely administrative practices which produce outcomes which are unfair and oppressive to scheme members.

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

In the context of co-operation with other State agencies, I wish to give notice that I will be imparting information to the Revenue Commissioners on breaches of their guidelines, particularly in the area of Small Self-Administered Schemes. For the avoidance of doubt, administrators of such schemes need to be aware that there has been no relaxation, either general or particular, of the published guidelines relating to those schemes.

Since the end of 2009, I am pleased to note the publication of the National Pensions Framework document, and I am aware that the process leading to its implementation is under way. I am very pleased to note that the Framework proposals incorporate a number of the ideas and suggestions put forward by my Office in its submission on the Green Paper. I wish you, Minister, and your Department well in furthering their implementation.

I thank you, Minister, for the ongoing support that you and your predecessors have given to me personally and to the work of this Office. I particularly value the help and support given to me by the staff of your Department – the Pensions Policy Unit with which I have ongoing contact, and also the Personnel, Accounts, IS Services and Facilities Management Units. Such support allows us to concentrate our resources where they are

most needed – in the investigation of complaints. I am also grateful for the help given to us during the course of our investigations, particularly by Scope Section and Client Identity Services, all of which support is given in a spirit which completely respects the independence of the Office.

With this report I have, as in previous years, published a Digest of Cases. I hope that this will prove helpful to those involved in complaints handling as well as to those who may be considering making a complaint and to the people who advise them. As before, the identities of both the complainants and the respondents have been withheld, to protect individual privacy and sensitive corporate information. Where public authorities are concerned, it is not always possible to conceal a respondent's identity, which may be obvious from the context and the occupation of the complainant.

Finally, I am most grateful to our Director Joe Timbs, to Joan Bray, Caitriona Collins, Ciaran Creagh and John Sheehan, Investigators, Joe Dempsey, Office Manager, Michelle O'Keeffe, Investigation Support and Darina Breen and Colette Coghlan, Administrative Assistants for their commitment and dedication. They have not been deterred by a greatly increased workload and their hard work, good humour and enthusiasm have allowed this Office to cope with still increasing volumes of complaints.

Beir beannacht,

A handwritten signature in black ink, appearing to read 'Paul Kenny', with a long horizontal stroke and a vertical line at the end.

Paul Kenny

## SECTION 1- INTRODUCTION

My Office was established to investigate and decide, in an independent and impartial manner, complaints concerning occupational pension schemes, Personal Retirement Savings Accounts (PRSAs) and Trust Retirement Annuity Contracts, involving maladministration and financial loss, and disputes of fact or law, and to grant redress where appropriate. We also have a role in feeding back to policy makers what we learn from the mistakes that are made so that necessary and desirable changes to the system can be made where possible.

Following on from 2008, 2009 was again a dismal year for pensions. Defined benefit schemes continued to suffer drastically, and the continuing collapse of investment markets aggravated the adequacy problems of defined contribution schemes in particular. These problems highlighted the difficulties in such areas as early retirement, where “commitments” given to pay early retirement benefits at a future date could not be honoured - because when the commitment was given the scheme was solvent and it was never envisaged that solvency would be a problem in the future. Unfortunately, in too many cases it became a problem and, regardless of what might have been indicated in the past, discretionary benefits such as early retirement could not be provided if the scheme was insolvent. This problem had been identified and addressed as far back as 2005, when trustees were given a veto over early retirements in insolvent schemes whose rules did not require consent. The huge increase in insolvency over the past few years has thrown the issue into sharper relief.

We continue to receive many complaints about investment issues involving AVCs as well as ordinary defined contribution schemes. Many investment-related complaints find their way to the Financial Services Ombudsman, after preliminary examination and consultation between and among us to determine jurisdiction. Failure to act on instructions or to invest “properly” is within the purview of this Office, and I have no difficulty in awarding redress if the circumstances warrant this. Complaints involving investment advice or the conduct of financial intermediaries not be “maladministration” in relation to pension schemes and so fall to the Financial Services Ombudsman.

Trustees must honour the obligations placed on them by trust law and the Pensions Acts. However, scheme members have some obligations too and this is not often recognised in complaints to my Office. When a significant financial loss occurs, it is human nature to seek to blame the so-called experts in the area but in some cases scheme members must take the blame for not monitoring investments. Neither is it reasonable to expect trustees to anticipate what the scheme member might wish. However, in too many cases the root cause of the difficulty is a failure of communication and understanding on both sides.

2009 saw a significant development in national pensions policy and debate on the much needed reform of the pensions system, much of which was informed by the submissions on the Green Paper on Pensions in 2008. As I have said in the past, changes that are made as a result of this consultation process will have long lasting effects. It is therefore essential that the decisions made are the right ones for this country and its workers. We are fortunate in the age profile of our population which means that the ageing of our

workforce and the increased dependency ratios that this implies will happen later in Ireland than in the neighbouring countries of Europe. While we can watch and learn from these countries, pensions planning requires such long lead times that the full impact of critical decisions which we implement now will not really be felt for many years to come. The opposite also applies, in this case with a vengeance – failure to act now can have dire consequences which will not be amenable to a “quick fix” well down the road. Accordingly, I was very pleased to attend the launch of Government reform proposals and future policy in relation to pensions as set out in the National Pensions Framework when it was published on the 3rd March 2010. The Framework outlines reforms to State, private and public service pension provision and addresses the role of the employee, employer and State in providing for pensions as well as future retirement age. I am pleased to note that many of the ideas and suggestions contained in my submission on the Green Paper found their way, in one form or another, into the Framework proposals and I wish the Minister and Department well in furthering the implementation of the Framework.

In this report, I have highlighted a number of issues that arose from complaints brought during the year. I am happy to report that delays in completing Internal Disputes Resolution (IDR) procedures in Public Authority schemes are becoming less of an issue. The IDR process is not simply a mandatory requirement to help with dispute resolution in the pensions area - its outcome in the form of a detailed determination is invaluable to me in providing background to a complaint and to the Trustee’s decision. For example, it may become clear from the IDR process that the real essence of a dispute arises from the employment contract or from an industrial relations process, rather than from the pension scheme itself. IDR also provides a robust starting place for my Investigators. From the point of view of a complainant, the IDR process is also vital. I have no way of knowing how many complaints are resolved through this process and it is my intention, when my Office is under less pressure, to conduct a survey of pension schemes to test the effectiveness of IDR processes. However, I do come across cases where the process takes an inordinate amount of time to complete. The relevant legislation within the Pensions Act, 1990 (as amended) provides that a determination under IDR should be provided within three months. Recognising the overall importance of the IDR process within the pension system, I have discussed with the Pensions Board how it might be reinforced. I am pleased that they are in principle supportive of my view that they might levy a fine where I would advise them formally of a potential breach of the time limit. This would require an amendment to the Pensions Act and I have requested that that process be put in train.

There continues to be a depressingly high number of complaints relating to the construction industry, with over 600 complaints received since 2003. The complaints I receive are only the tip of the iceberg – mostly relating to contributions outstanding for upwards of three years. Many more cases are processed through the Labour Court by the monitoring agencies, CIMA and EPACE. I am pleased that the Pensions Board is pursuing employers who have broken the law by deducting contributions and not remitting them to the Construction Workers Pension Scheme. A high proportion of the complaints I receive are from workers of Eastern European or Baltic States origin, some of whom have already returned to their homelands. The harsh reality of the construction industry at this time in Ireland also acts against the complainant. Often they become aware of

difficulties with their pension contributions only after they have lost their jobs by which time the employer may well be about to cease to trade, or go into liquidation. Many construction workers are afraid to ask too many questions about pension contributions while they still have a job. There is also the downstream impact of the collapse of major developers, with contractors and subcontractors not being paid. Much to do with these complaints is understandable, even if not acceptable, inasmuch as it relates to recent events, but what is not understandable is that I am often looking at a failure to register or pay contributions for employees at a time when the construction industry was doing particularly well.

The most distressing cases, and those where I put particular emphasis involve non-payment of mortality benefit by the scheme because contributions were unpaid or the employee was not registered in the scheme. Last year in a case mentioned in the Digest of Cases, a determination was made against the employer, which was not complied with, and the complainant now has to take enforcement proceedings. In another case involving enforcement, the employer had agreed to pay, but then ceased to trade in order to evade his obligations. In cases such as these, personal liability should attach to every Director of any company involved. I cannot accept that, particularly in the case of small companies, the abuses that occur can take place without the “knowledge or connivance of, or owing to the neglect of”<sup>\*</sup> the officers and directors of the companies concerned. In that context, I am pleased to note that at least one director has been successfully prosecuted by the Pensions Board in his personal capacity. Civil liability should attach to such people as well, because what has gone on is no better than theft.

In another mortality case in 2009, I had to resort to an oral hearing to establish the appropriate employer/employee relationship following which I issued a determination of fact. On completion of the investigation, I issued a determination in favour of the complainant which was then appealed to the High Court by the Respondent company. Because of the way negotiations were conducted between the complainant and respondent during the appeal and subsequent actions, I deal with this particular case in detail in my Digests of Cases.

Schemes in winding-up are another source of complaint. Scheme members may be given options by the trustees – which can include transfer to a buyout bond, a PRSA or another occupational pension scheme or, in the case of older members, immediate payment of benefits. Sometimes the choices are difficult for members to understand. More often, members have queries about how their benefits and the transfer values they are offered have been calculated. In quite a few of these cases they have complained about very short and, to them, unrealistic deadlines for returning completed option forms. While I realise that members can be slow to respond and that trustees are always anxious to complete the winding-up of a scheme as quickly as they can, I would ask those administering schemes in winding-up to allow as much time as they reasonably can to scheme members who may, after all, be dealing with the loss of their job as well as the end of their pension scheme.

Finally, I receive many complaints and enquiries about changes to scheme rules, redesign of schemes, closure of defined benefit in favour of defined contribution etc., all

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<sup>\*</sup> Pensions Act, 1990, Section 3, which creates the criminal offences under the Act

emanating from companies trying to put their pension arrangements on a more sound financial footing. While technically many of these issues are matters for the Pensions Board, people are often so confused about their own rights, the rights and powers of the employer, the obligations of the trustees, etc., that I cannot simply fob them off. This does consume resources, but I take the view that independent information, or confirmation, given at the right time may help to reduce the number of complaints to my Office in the future.

## **SECTION 2 – SUMMARY OF ACTIVITIES IN 2009**

### *Complaints Received*

My Office received 1,766 new complaints during 2009, as against 1,030 in 2008, representing an increase of 71%. Of these, 616 resulted in detailed investigation files being opened during the year, the balance being dealt with by me or my investigators in a relatively short period of time.

While we entered 2009 with 473 investigation files still open, I am pleased to report that we ended the year with 398 on hand, a decrease of almost 16%. This is a good measure of the productivity of the Office in that, despite the significant increase in the number of complaints, we have succeeded in reducing the “overhang” at year-end. A detailed analysis of caseload is dealt with in Section 3 of this report. While the types of complaint we deal with are often by nature quite complex, involving time-consuming exchange of information and clarification of documentation, I am again concerned about the length of time it takes to process a complaint. This is partly due to the pressure on me and my Investigators due to the numbers and complexity of cases with which we have to deal. However, we are often hampered by less than speedy responses to our queries which obviously results in less speedy outcomes for complainants.

### *Case Management System*

The Case Management System for the Office automates the production of case management statistics and improves the ability to set quality performance indicators and monitor performance. It went “live” in January of 2008 so now we have had the benefit of it for two full years. I believe that the new system has contributed in a positive way to a better understanding of the numbers and types of complaint received but we are by no means finished with its development. The system has the ability to capture a vast amount of data in relation to each complaint but the dilemma for us is balancing the time needed to collect and input such data as against the time needed for actual investigation. One of the significant benefits to date has been the ability to identify where our resources are being consumed. Heretofore we measured our performance solely against the number of detailed investigation cases opened and closed, but this ignored the resources required to deal with the huge number of complaints and queries received by telephone or e-mail which had to be processed. As indicated above, while such complaints can often be dealt with in a short period of time, possibly involving just a few phone calls, the volume involved does consume significant staff resources. Staff training and further development work on the system was undertaken during 2009. In addition, we installed voice recognition software towards the end of 2009 which will lead to further efficiency in the Office in the future through the speedier production of typed documentation.

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

I issued 47 Final Determinations under Section 139 of the Pensions Act, 1990 (as amended) during 2009. Of these, 68% were upheld either in full or in part and the

remaining 32% were disallowed. A more detailed analysis of this is carried out in Section 3.

During the year, 207 detailed investigation cases were settled by mediation; 77% of these were settled with a result favourable to the complainant. This is roughly comparable to 2008 where 75% were settled with a result favourable to the complainant. The difference in what may be termed a positive outcome for the complainant as between Final Determination and mediation can partly be accounted for by the fact that I cannot direct a rule change or override a discretionary power of the trustees in a Final Determination. A Final Determination is also binding on all parties, subject to appeal to the High Court, and the financial awards that I can make are limited to the loss of scheme benefit - i.e., I cannot take account of expenses incurred in fighting the case, or award compensation for stress or worry, etc. Mediation allows for more flexibility and can very often provide a quicker and more satisfying solution than can be arrived at by a Final Determination.

In suitable cases, I will issue a Preliminary Notice of Determination, in advance of a Final Determination, which sets out the main facts as established during the investigation and what my likely determination will be, based on these facts. This provides both the complainant and the respondent with a final opportunity to clarify aspects of the investigation report and to present any further evidence or comments to me before I make my Final Determination. This process generally works well but adds considerably to the overall time to Final Determination. This process proved to be of considerable value in a case which was appealed to the High Court. However, in cases where the facts of the case are clear and I am of the opinion that issuing a preliminary determination will not advance the matter, I go straight to a Final Determination.

## *Information*

My staff members spend considerable time in giving information to individual members of the public. People telephone the Office to discuss their problems – even to explore whether they have a genuine complaint, or whether the complaint that they have identified should be made to me at all. In an effort to disseminate information, to give examples of what types of complaints we handle and to reduce telephone calls, I publish a “Frequently Asked Questions” (FAQs) section on my website which is updated regularly. The FAQs are laid out in four sections – dealing with the Office and our processes, general pension matters, private sector issues and public sector issues. Anecdotal evidence suggests that the FAQs section is particularly useful to the public and our website “hits” for 2009 certainly bears this out, increasing from 353,000 to over 628,000.

## *Customer Charter*

Our Customer Charter is posted on our website. I have also taken the somewhat unusual step of including in the Customer Charter a Statement on Unacceptable Behaviour by Complainants. Our Customer Charter provides that the Office of the Pensions Ombudsman aims to ensure that its services, processes and procedures are of the highest standard, are fair, clear and explicit and are implemented consistently in accordance with our Customer Charter. When a complaint is made, we deal with it in a friendly, courteous

and professional manner. The Office expects the same of complainants and almost invariably this happens. There are, however, a very small number of complainants who, because of the manner of their contact with the Office, hinder *both* the consideration of their own complaints and the ability of the Office to provide a quality service to customers as a whole. I recognise that a complainant may have a genuine grievance and that being persistent can be a positive advantage when pursuing a complaint. However, sometimes it is the nature of the complainant's actions and/or demands that can cause reason for concern and may impinge on my duty of care to staff.

### *Promotional Activities*

During our first six years of operation, the number of complaints and informal queries that we have received has grown substantially each year. Nevertheless there is evidence to suggest that there are quite a few people with pension problems who may still not be aware of the existence of our Office and the services that we provide.

During the last six years we have not been able to devote as much time as we would have liked towards promoting the role of the Office and making people aware of our existence. The main reason for this, paradoxically, has been the increasing number of complaints and queries that we have received and because of this, there is a lack of time to do the promotional work needed. Over the coming years we need to spend more time on promotional activities so that the general public knows that when they are not receiving the required response when dealing with pension issues, there is someone independent who will listen to their concerns. Nevertheless, we are already doing this, to a certain extent, through our website, [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie), by a small amount of targeted advertising and by placing articles in various pension publications and other journals. A regular column is written for "Pensions Ireland" a new publication which has replaced "Irish Pensions News". We also take out advertising features with a number of publications to further improve general public awareness of the role and remit of the Office. Details about the Office are included in the Institute of Public Administration and IAPF Yearbooks and on the Consumers' Association of Ireland wallplanner. Talks have been given to various professional and representative bodies, including the Life Insurance Association, The Insurance Institute of Ireland, the Leinster Society of Certified Public Accountants, the Association of Pension Lawyers in Ireland, the Worker Directors of State-Sponsored Bodies, the Legal Aid Board, the Bar Council, the Irish Institute of Pensions Management and a number of different Trade Unions.

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

### *Contacts with National and International Organisations*

As well as the contacts mentioned above, I have had ongoing discussions during the year with the Office of the Ombudsman, the Financial Services Ombudsman and the

Pensions Board. My Office has maintained contact with the Consumer Directorate of the Financial Regulator and with the Department of Social Protection. Discussions have taken place with the Revenue Commissioners, the UK Pensions Ombudsman, the Irish Institute of Pensions Managers, the Irish Association of Pension Funds and the Pensions Management Institute. In the course of investigations my Office has also engaged with the Companies Registration Office and the Director of Corporate Enforcement, with whom I completed a formal Memorandum of Understanding, and with the National Employment Rights Authority and the Equality Tribunal. I would like to record my appreciation of the co-operation received from all of these organisations.

Contact has also been maintained with a number of Trades Unions, with the Construction Industry Monitoring Agency, and with EPACE, which monitor compliance with the Registered Employment Agreement for the Construction Industry, as well as with the Construction Workers' Pension Scheme itself.

I am a member of the Executive of the British and Irish Ombudsman Association (BIOA) which during 2009 was chaired by my colleague Emily O'Reilly, the Ombudsman of Ireland and I also chair the Governance Working Group of BIOA. Members of my staff participate fully in its work. I consider the work of this Association to be a valuable resource for my Office. The main objectives of the BIOA include encouraging, developing and safeguarding the role and title of Ombudsman; formulating and promoting standards of best practice to be met by Ombudsmen in the performance of their duties; arranging meetings, conferences and seminars on appropriate topics; publishing information and engaging in all such other activities as may improve public awareness of recognised Ombudsman schemes and encourage their efficiency and effectiveness.

### *Legislative Changes and Legal Matters*

During 2009 there were a number of changes to the regulatory framework which affected this Office.

The Pensions Act was amended by the Social Welfare and Pensions Act 2009 but these amendments did not have any direct impact on the workings of the Office. However, the Emergency Financial Measures in the Public Interest Act, 2009 which introduced the Public Service Pension Levy, gave rise to a whole new area of complaints!

In addition, the separate Financial Measures (Miscellaneous Provisions) Act 2009, which brought the pension schemes of the University sector, and a number of other public bodies, directly under State control, did have an impact. This Act did away with the trust-based constitution of a number of schemes effectively removing trustees and depriving them of their functions, while at the same time preserving the Internal Disputes Resolution mechanisms that they already have in place (which require trustees to operate them!). However, I believe I have identified a satisfactory solution to this apparently contradictory situation.

Section 131 of the Pensions Act was amended in 2006 to allow me to bypass the Internal Disputes Resolution procedure in cases where there is clearly nothing to be gained from this process. This does not apply to either statutory or "public authority" schemes.

However, there is provision for the IDR process to be deemed to be exhausted within its terms if it has not been completed within the statutory period of three months, or such longer period as I deem appropriate.

I have used the facility to waive the IDR requirement in a number of cases, routinely in the construction industry, where the complaint is against the employer, involving failure to pay or remit contributions, since no purpose can be served (other than to delay investigation) in these cases by referring the complainant to the trustees. I have increasingly waived the IDR requirement in other cases where I considered it appropriate – for example, where the complaint is against the trustees themselves, or against an employer which is also the sole trustee, or where it is clear that the employer or administrator in the case has simply ignored the complainant up to the point where he or she was driven to approach my Office.

In my Report for 2007, I signalled my intention to initiate criminal prosecutions against persons who obstruct the investigations of this Office. I regret to say that I have had to resort to such action too often. As I mentioned in the Foreword to this Report, my officials attended court 9 times during 2009 - 8 times in District Courts and once in the Circuit Court. The only consolation I can take is that the number of court appearances in 2009 has fallen from the 16 cases in 2008 which may mean that the message is getting out that I will not accept prevarication when it comes to seeking information. Having to take this course in the context of an investigation introduces great delay in the processing of the complaint, is unfair to the complainant and absorbs a large amount of investigation time which could be spent more productively. Moreover, costs awarded in these cases, while they represent an additional penalty for the defendant, go nowhere near the true cost of undertaking prosecutions and are difficult to pursue. Because of the need to ensure that my investigations are treated seriously, I will continue to take action in the Courts in cases where information required for an investigation is withheld. Once a judgement is received, I publish details on my website, including the names and addresses of those seeking to obstruct my work.

### *Memoranda of Understanding*

A Memorandum of Understanding with the Pensions Board, sets out the respective supervisory responsibilities of the Board and the Pensions Ombudsman. The Memorandum can be used by staff of the Board to determine whether the matter they are investigating properly falls within the Pensions Ombudsman's remit and vice versa. It also sets out the arrangements for co-operation and exchange of information between the Parties within statutory limits. This complements the memorandum already in existence with the Financial Regulator and the Financial Services Ombudsman.

A Memorandum of Understanding exists with the UK Pensions Ombudsman, and concerns the treatment of complaints and disputes relating to the Pension Scheme for the North-South Bodies established under the Good Friday Agreement. This was necessary, as the scheme is legally constituted on both sides of the Border. During the year, I also signed a Memorandum of Understanding with the Revenue Commissioners to give formal effect to the right to exchange information with that body. I fully intend to use the power to exchange information with the Revenue Commissioners, particularly

where investigations by this Office uncover abuses of the tax reliefs given to pension schemes and any evasion of tax liabilities by anyone associated with occupational pension schemes.

In October 2009, I signed a Memorandum of Understanding with the Director of Corporate Enforcement which will govern the sharing of information appropriate to our respective roles.

### *Public Access and Awareness*

My Office makes every effort to ensure that our services are as accessible as possible. During 2006 the Office of Public Works (OPW) commissioned an accessibility audit on the building. The ensuing report revealed that major renovation would be required to make the building fully accessible and the OPW reviewed the recommendations in relation to these works. Architectural investigations revealed some structural defects which were remedied during 2007. This meant that the accessibility work had to be postponed at that time. 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, however, we will continue our policy that where complainants have particular access problems to my Office, we will arrange to visit them 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 and it is my intention to have software installed on my website which will read the text for the viewer.

### *Training & Development*

The process of personal training and development continued for all staff during 2009. This involved technical training in pension related areas; instruction in the different areas of information technology with particular reference to our new Case Management System and voice recognition software; and other training courses identified as part of each individual's participation in the Performance Management Development System.

### *Staffing Issues*

I was pleased to say that during 2009 the staff level in the Office continued at full strength which is particularly important in the context of maintaining skills and corporate knowledge.

## SECTION 3 - CASELOAD SUMMARY & STATISTICS 2009

At the beginning of 2008, our new Case Management System went live and for the first time we were in a position to track more accurately the complaints which we receive. Prior to that date, our statistics captured only information on detailed investigation cases. However, a large number of complaints/enquiries, many of which take quite an amount of staff time to process, were recorded as telephone calls. Our new software allowed us to record more accurately both the total number of complaints which we received and background data as appropriate. However, with limited resources, we had to decide what level of background information we should capture and analyse in relation to complaints. We had to strike a balance between those complaints which were received by e-mail/fax/via website/by telephone and which were resolved fairly speedily, possibly with a few phone calls, and those which required completion of a comprehensive complaint form and which developed into detailed investigation cases. With limited resources, it was a question of balancing the time required to collect and input background data and time required for investigation. We came to the conclusion that proper resource allocation required focus on investigation and consequently we decided that we would only capture and input detailed information on complaints which turned into detailed investigation cases. It is important to understand the distinction between total complaints and detailed investigation cases when viewing the figures below.

2009 has once again seen a significant increase in workload for the Office. The total number of complaints received was 1,766 compared with 1,030 in 2008 – an increase of 71%.

Adding the 473 detailed investigation cases carried forward from 2008 to the 1,766 new complaints received during 2009 meant that we had a total workload of 2,239 complaints for that year. In 2009 we closed 1,841 complaints, 711 of which were detailed investigation cases, thereby carrying forward 398 detailed investigation cases into 2010. These figures show that despite the significant increase in the number of complaints received, we finished 2009 with 16% fewer cases on hands than at the end of 2008.

Figure 3.1 under outlines the position in relation to all complaints received, including detailed investigation cases, in respect of the years 2008 and 2009, the years for which this data is available.

**Figure 3.1 - All Complaints**

YEAR	Complaints Received	Carried Forward	Total for year	Complaints Closed	On hands at year end
2008	1030	354	1384	911	473
2009	1766	473	2239	1841	398

An important aspect of our work is the time it takes to resolve complaints. In 2009, 74% of all of the complaints which we closed were completed within five weeks or less.

## Analysis of Detailed Investigation Cases Closed

The following paragraphs present an analysis of the data behind our detailed investigation cases and Figure 3.2 under set out the overall detail in tabular form.

**Figure 3.2 – Detailed Investigations**

YEAR	Detailed Investigation Cases begun	Investigations		Total	Investigations Closed	On Hands at year end
		Re-opened	Carried Forward			
2003	155	NIL		155	43	112
2004	297	NIL	112	409	122	287
2005	389	NIL	287	676	385	291
2006	432	7	291	730	307	423
2007	509	6	423	938	584	354
2008	727	31	354	1112	639	473
2009	616	20	473	1109	711	398

### *Mediated Cases*

I am pleased to say that of the 711 detailed investigation files closed in 2009, 207 were resolved by means of mediation during the year. Of these, 160 cases (23% of the 711 total) were resolved to the complainant's satisfaction without recourse to the rigour of a full investigation, compared with last year's figure of 20%. The merits of resolving complex cases through mediation as opposed to requiring a full investigation and determination are apparent when viewed, for example, in terms of the length of time taken to process a case from initial receipt of the complaint to closure. The average time taken to arrive at a satisfactory resolution through mediation was 26 weeks as compared to an average of 90 weeks to the issue of a Final Determination in which the complaint was upheld.

The remaining 47 detailed investigation cases which were resolved following mediation by my Office either did not materially alter the complainant's circumstances or did not resolve the issue in favour of the complainant.

## *Final Determinations*

Final Determinations under Section 139 of the Pensions Act were made in 47 (7%) of detailed investigation cases closed. Of these, 32 complaints were upheld and 15 rejected.

When it becomes apparent, in the course of examining a complaint, that it will not be possible to resolve the issue through the mediation channel, the complainant is notified that a formal investigation resulting in the issue of a Final Determination is to commence. Our statistics show that the average length of time taken to process a case from initiation of a formal investigation to issue of a Final Determination was 90 weeks in 2009 compared to 83 weeks in 2008. This is just an average indication, as the length of time taken depends not only on the complexity of the case but also on the co-operation of all parties to the complaint in furnishing information requested in a timely manner. Other factors at play in determining the time taken to reach Final Determination are whether an oral hearing is required, whether it is appropriate to issue a Preliminary View and of course the need for careful drafting of determinations, given that they are legally binding on all parties subject only to appeal before the High Court.

Where I issue a Preliminary View to all parties to the complaint prior to issuing the Final Determination, it sets out the material facts of the case as known to me at that point in time and gives an indication of the decision which is likely to be contained in my Final Determination. This allows all the parties one final opportunity to present any additional argument or evidence. While this practice does add to the length of time to bring a case to closure, I believe the benefits far outweigh the additional time given to the complaint.

## *Outside Terms of Reference*

A total of 108 (15.2%) of detailed investigation cases were eventually found to be outside my terms of reference for various reasons. For example, 55 investigations came within the remit of another Ombudsman, Regulator or State Agency. The remaining 53 Investigations were outside my terms of reference for a variety of different reasons, such as being outside the statutory time limits, no financial loss, etc. Unfortunately the complexity of many complaints which I receive is such that it is not immediately evident that the complaint is for my Office and, at times, a considerable amount of investigation may be required to unearth all the relevant facts.

## *Miscellaneous Closure Reasons*

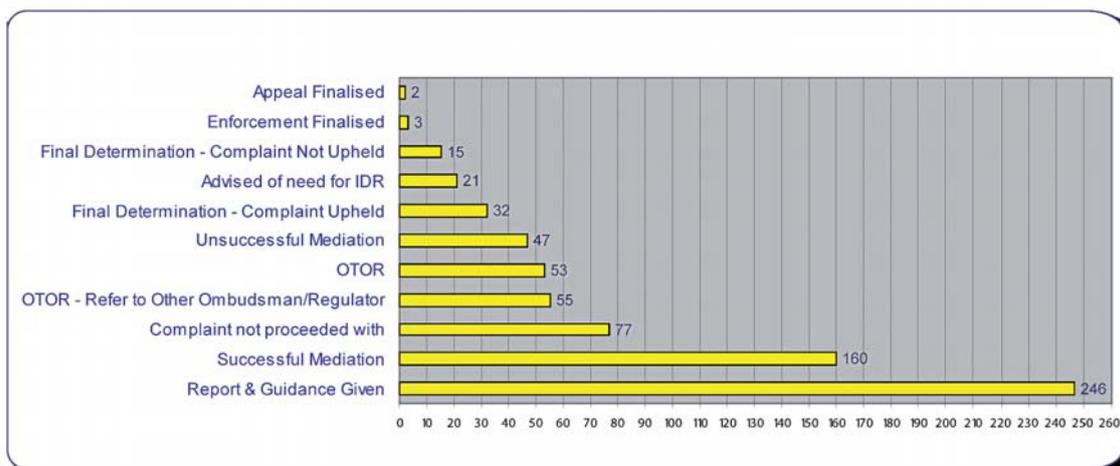
246 detailed investigation cases (34.6%) were closed following investigation of the circumstances surrounding the complaint and the provision of an explanation and advice which was sufficient to satisfy the complainant's enquiry. This is an increase on last year's figure of 146 (22.7%).

The category of "General Advice Given" used in the past might suggest that these cases were straightforward. However, this is not the case and it is more appropriate to use the term "Report and General Guidance Given". Often it is not immediately obvious whether the complaint is legitimate and within my remit, or against whom the complaint

might lie. For example, while maladministration might appear obvious, it might not be as clear that real financial loss resulted. Complainants are entitled to have legitimate complaints investigated and it is therefore incumbent on me to ensure that where I rule that a complaint is not within my purview, the underlying reasoning is sufficiently robust. Unfortunately this takes time, at the end of which we report the reasons for the decision not to investigate and give general guidance.

My Office cannot – with certain exceptions – investigate a complaint or dispute until the matter has been submitted to an Internal Disputes Resolution (IDR) procedure. 21 cases were closed as a result of the complaint not being proceeded with following guidance to the complainant to submit to the IDR procedure. By not hearing back from the complainant, it is reasonable to assume that the IDR process had addressed the complaint satisfactorily. A further 77 cases were closed as the complainant indicated a wish not to proceed with the complaint.

**Figure 3.3 – Closure of Detailed investigation Cases by Reason in 2009**



**Note:** IDR – Internal Disputes Resolution

OTOR – Outside Terms of Reference

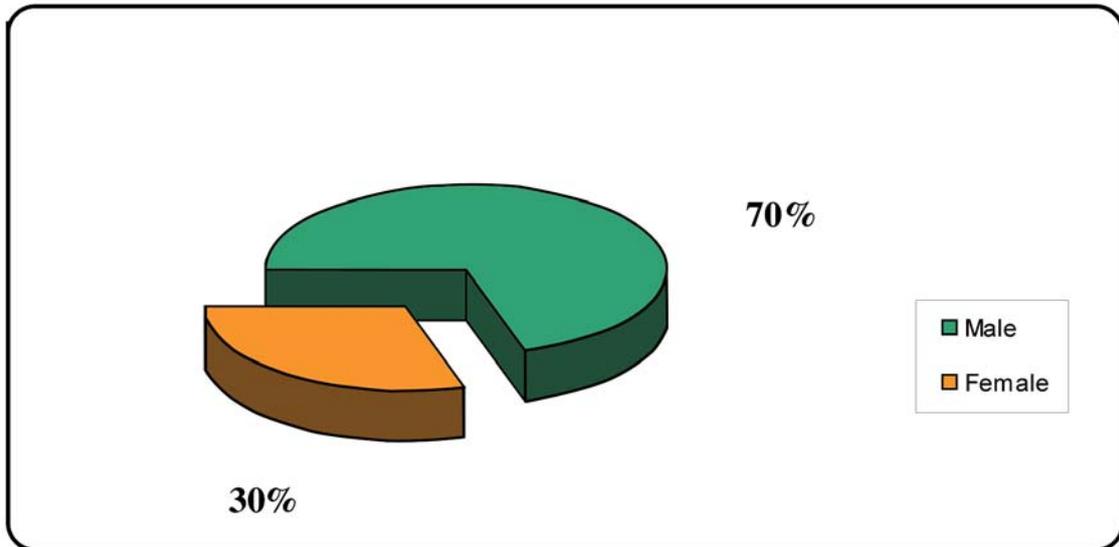
Unsuccessful Mediation – The original issue raised by the complainant was not resolved to his/her satisfaction

Successful Mediation – The original issue raised by the complainant was satisfactorily resolved

## General Statistics

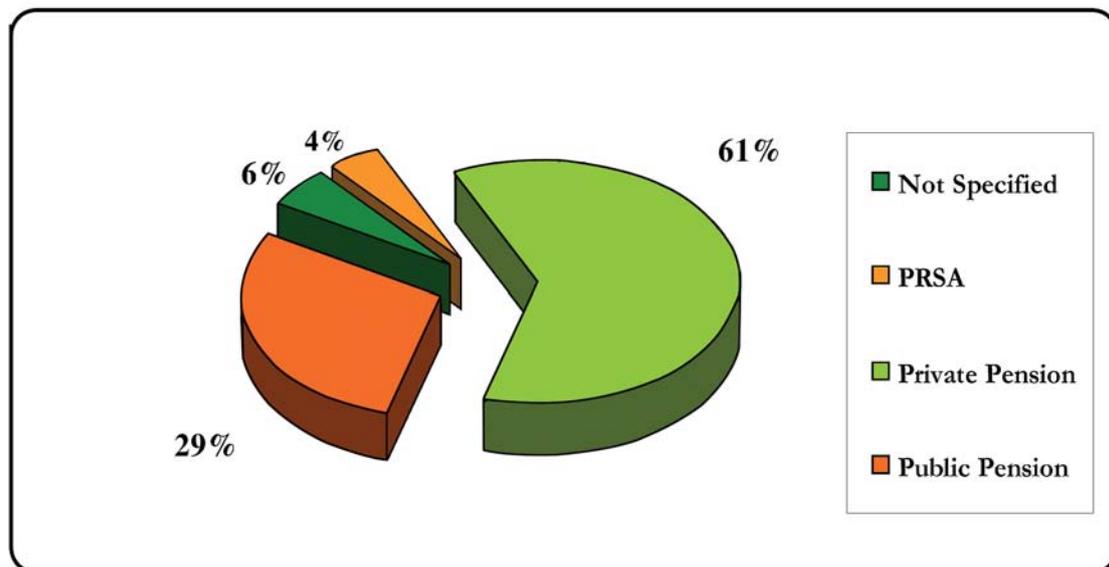
During 2009, 70% of detailed investigation cases were brought by men as compared to 30% by women. The respective figures in 2008 were 68% and 32%.

**Figure 3.4 – Detailed investigation Cases Received from Men and Women in 2009**

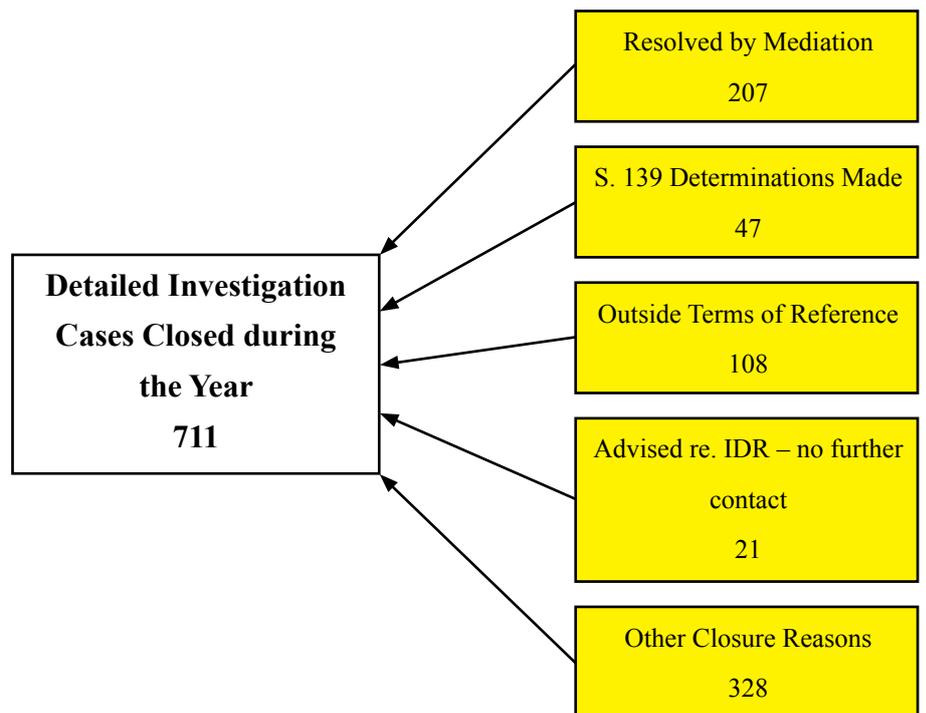
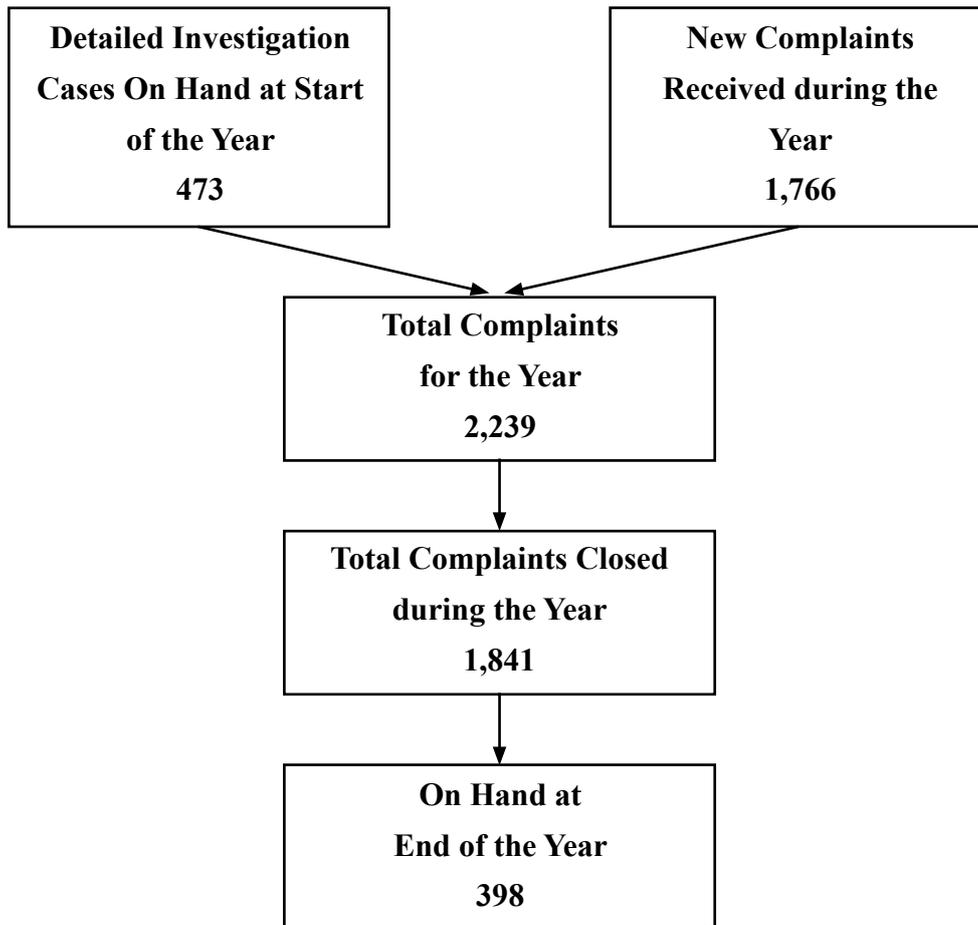


The breakdown of new detailed investigation cases received in 2009 classified by the main pension scheme type was – **private** sector occupational pension schemes 61%, **public** sector pension schemes 29% and complaints concerning Personal Retirement Savings Accounts (PRSAs) 4%.

**Figure 3.5 – Detailed investigation Cases by Scheme Type in 2009**



**Figure 3.6 – Workflow Summary 2009**



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

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

### *Public Service Pensions Administration*

I have commented before on the unevenness of administration in public sector schemes and the solution, as I see it, is in a Shared Services type arrangement as I have advocated in the Foreword to this Annual Report. My experience is that where schemes are tightly controlled and administered by specialist staff, problems tend to be far fewer.

This is by no means a particularly radical suggestion and I am very pleased that the Government is pushing the shared services agenda through the public service transformation programme. I am aware that a very successful Financial Shared Service is operated by the Department of Justice, Equality and Law Reform, initially looking after all of the financial affairs, including salaries, of that Department, the Prison Service, the Gardaí, and the Courts Service but now also servicing the financial needs of the Department of Tourism, Culture and Sport and the Department of An Taoiseach.

One of the reasons why the word “administrator” was deliberately given a very wide definition in the Pensions Ombudsman Regulations is to allow me to scrutinize the actions of those who are actually dealing with members’ entitlements on the ground, not just those with high-level responsibility for schemes and this is particularly important in the case of public sector schemes. It is very useful as it allows me to engage with those officials who actually make the decision in relation to pension scheme benefits. One particular area where we are trying to bring a measure of consistency is in relation to the pensionability of overtime under the Local Government Superannuation Scheme. This scheme provides that overtime is not normally included as part of wages for pension purposes, except in certain circumstances which are set out in the relevant circular. For example, to be included for pension purposes, the overtime must not have been optional, must have been of a regular and recurring nature (specified hours on specified days) and must have been of a kind which could only be performed outside of and in addition to the normal hours of work. Despite this detailed and prescriptive nature of the departmental circular, it is amazing how widely differing interpretations are applied by different local authorities. Indeed, one particular local authority had been the subject of a number of complaints to my Office alleging that overtime in conformity with the circular had not been allowed. Following a review by the local authority of recent overtime cases, it actually reduced the overtime amount which it had previously approved.

Just when I believed that there were certain inviolable rules within public sector pension schemes, I was presented with a complaint which challenged this. One of these inviolable rules is that once a public servant had opted out of the Widows' and Orphan's/Spouses' and Children's pension scheme, they could never opt back in. Despite much pleading over the years, primarily based on incomplete information or a lack of knowledge of the implication of opting out, the rule has never been broken. However, I received a complaint whereby a person transferring from one public sector organisation to another, by way of open competition, was required by the new employer to join the Spouses' and Children's pension scheme. This left the complainant with the option of either transferring service to the new employer thereby incurring a huge financial cost in respect of Spouses' and Children's pension scheme contributions in respect of the transferred service or preserving service with the old employer. Clearly this ran contrary to all convention and should have been picked up when the new employer's scheme was being formulated.

I am forbidden by my terms of reference to make a determination which would have the effect of altering the Rules of a scheme – and there are good and sufficient reasons why this should be so. However, there is nothing to prevent my finding – as a matter of law – that a change in employment conditions which has not been reflected in the rules of the scheme is invalid in terms of the scheme itself.

### *Internal Disputes Resolution – the Public Service*

In the past I have mentioned that there had been a marked improvement in turn-around times for the completion of IDR in the public service generally, though the improvement was emanating from a pretty low base. There are still some areas where something akin to a sense of urgency would be a welcome change.

It continues to be the case that some Departments rely totally on the Department of Finance to steer their IDR, possibly on the basis that the expertise to handle it internally may be absent. This is unfair to the Department of Finance and undermines the idea behind IDR. In many cases, there is provision for onward referral to the Minister for Finance as part of the appeals process, but only after the appropriate Minister has given due consideration to the complaint. The Department of Finance should not have to handle the whole process from beginning to end, or be forced to go back to other Departments seeking information that should have been available and forwarded with the file. Again, a Shared Services arrangement would clearly speed up this important process and help Government Departments and the Department of Finance in ensuring that complaint cases are handled quickly and efficiently as required by legislation.

I stated that I have been reluctant to use the powers conferred on me, to deem the IDR process to be exhausted within its terms after the expiration of three months, or such longer period as I might think fit. The findings of the IDR procedure are important as a starting point for any formal investigation and shed light on the process that leads up to the Notice of Determination. It is also useful in pinpointing particularly arcane features of practice or regulation which may not be apparent at first sight. However, long delay in completing the process does not serve the cause of justice and is most unfair to those who bring complaints – particularly to those whose complaint may be about delays in paying benefits or in giving information in the first place.

## *Private Sector IDR*

In general, private sector compliance with IDR time-limits has been reasonable. However, there are many cases now in which I use my power to waive the requirement. Most of these are in the construction industry where, regrettably, an all too common complaint is of failure to remit contributions on behalf of workers. It was the frequent occurrence of such complaints that led me to request the power to waive IDR in the first place, as I could not see how the process could contribute anything other than further delay in such cases for the simple reason that trustees would simply report that they had or had not received pension contributions, information that was readily available from the administrators. However, there are increasing numbers of cases being brought against scheme trustees, particularly in matters concerning investment of funds, and I do not believe that trustees should be adjudicating on their own performance. Therefore, I tend to waive IDR requirements in these cases also.

Unfortunately, a statutory time limit, as in the case of IDR, does not always produce the intended result, particularly when no penalty attaches. Consequently I have been reviewing the IDR procedure with the Pensions Board and I am pleased to report that they are agreeable, in principle, to my suggestion that where serious breaches of the IDR time limit occur, the board might impose “on the spot” fines. This will of course require an amendment to the Pensions Act and I have raised the matter with the Department of Social Protection. The intention would be that I would advise the Board formally of a breach of the time limit but it would be up to the Board to satisfy itself that such a breach had taken place. I would not see such a new development as anything Draconian. I would only report to the Board in serious cases. Indeed, when I have been approached in the past with a reasonable explanation for a delay and where an extension has been sought, I do not put undue pressure on the decision makers.

## *Learning from the Complaints*

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

Depressingly, some maladministration is hard to cure. Every year I get complaints from workers in the construction industry about non-payment of contributions to the Construction Workers’ Pension Scheme (CWPS). Unfortunately, some of these complaints don’t come to light until a company is already out of business, possibly in liquidation, which has regrettably become more common in that industry. There is, however, continuing evidence of some employers – often on advice from their financial advisers – ceasing to trade or even placing companies in liquidation, and commencing business under another name immediately. (This has happened in other industries also).

In order to verify complaints by construction workers, in particular, it is necessary for us to procure pension scheme records, as well as records from the Department of Social Protection and possibly from the Revenue Commissioners, so that we can check on

the number of weeks for which a complainant worked for a particular employer in an industry where fragmentation of employment patterns is common. I wish to record my thanks to the Construction Workers' Pension Scheme, to the Department and to the Revenue Commissioners for their very prompt and efficient co-operation in these areas.

Apart from that, I also request employment records from employers. Co-operation in this area is often rather less enthusiastic. This may be, in some cases, because the records do not exist at all, which will of course put the employer in a particularly difficult situation. However, if I am left with no other option, I have no hesitation in bringing criminal prosecutions against any persons who obstruct my investigations, and will take action as needed in the Circuit Court to enforce my requirements for information. It should be noted that this applies, not only to employers in these cases, but to accountants and other professional advisers who may hold their records.

The Regulations under which I operate specify deadlines for providing information. These must be met, and it is simply not acceptable to be told that requests made under statutory authority are "being put in my queue". That sort of attitude also invites legal prosecution.

Once again we have had a number of cases in which mortality benefits payable under the CWPS could not be paid, because the employee in question was not registered in the scheme, or where there was a shortfall in contributions. When this happens, the minimum cost to an employer is €63,500. If there are dependent children, it can be quite a bit more. I cannot understand how these employers can be so short-sighted. They must surely realise that where they do not register or pay the appropriate contribution, they are carrying the liability for death benefit for each such employee, regardless of how or when the employee may die. In reality, this should be an extremely worrying burden to bear. Furthermore, the eventual cost of being found out is often many times what they think they are saving by cheating their employees.

### *Investment*

Investment issues are behind a number of cases which we have received in the past year and the ever-present difficulty of clear communication presents itself. It is evident from the complaints reaching me that a great many scheme members have no clear idea of how or where their money is invested. Some of them are in "default" investment options which they don't understand. Others are in investment funds whose names may have had resonance for the marketing departments of the investment institutions when they were thought up – but which are completely meaningless in terms of revealing what might comprise the underlying assets of the fund. It is essential that members understand what is happening to their funds, and what sort of assets they are invested in. The use of fund titles containing words such as guaranteed, secured, etc., should be forbidden by law unless they are actually guaranteed, secured or whatever. In addition, I have asked the industry on several occasions to try to ensure that benefit statements, particularly those issued at retirement or leaving service – but ideally all statements – should contain a warning to those whose money is invested in volatile assets, at very least highlighting the desirability of looking for investment advice.

Once again I must draw trustees' attention to their duty to see to the "proper" investment of scheme resources, and to take their obligations to scheme members in this area seriously. At the same time, members cannot expect trustees to anticipate their needs, and many members have found themselves in difficulties because they failed to understand their own role and obligations. Failure to act on instructions is an allegation that is often made against trustees and administrators. This sometimes turns out, to the displeasure of the complainant, to be failure to transmit proper instructions.

There is also a failure on the part of some trustees to provide a proper choice of investment, or to consider fully the investment vehicles into which members' funds will default if they fail to make a choice. "Lifestyle" options do not seem to be universally available, and I have seen a case in which it was alleged that the trustees did not offer any "cash" option. In addition trustees, when considering what to offer as a "default" option, need to be conscious that a single default position may not be appropriate to members of very different ages.

In the past, many defined contribution schemes were set up by companies with young workforces. Because a number of defined benefit schemes have been discontinued or wound up and are being replaced with defined contribution schemes, groups of older workers will be entering those schemes, and their proximity to retirement age may call for a different approach to investment. The Pensions Act requires trustees to invest having regard to the "nature and duration" of the liabilities.

Where intermediaries are involved in this process, to the extent that they are acting as intermediaries and do not fall into any of the various definitions of "administrator" under my Regulations, I cannot pursue them and must direct a complainant to the Financial Services Ombudsman. In some cases, the complaint may fall to be dealt with by both offices, depending on who is involved, and in what capacity they are acting.

One recurring complaint concerns the question of disinvestment and the timing of it. Members frequently complain that they reached pension age and that the trustees did not convert their fund to cash, the money remained in a volatile investment vehicle, and they suffered a loss as a result. Similar complaints are made against trustees who are responsible for the winding-up of pension schemes.

It is hard for trustees to get it right, of course. If they disinvest and the market rises, the trustees will be blamed. If the market falls, they will get the blame for not getting out. It is important for trustees to adopt a consistent policy. If that is to disinvest at maturity (or date of winding-up) they should tell the members this. If their policy is not to disinvest, they must notify the members that that is what is happening – and leave it to the members to instruct them. The one thing the trustees must not do is fail to consider the matter at all. As far as I am concerned, that is where they will really shoulder the blame.

### *SSIA Incentive*

I mentioned this matter over recent years, and a few additional cases arose in 2009. The SSIA Pension Incentive was emphatically not designed for higher-rate tax payers, and a number of people actually lost money because they did not know this. If there was any indication that they were actually mis-sold, they would be referred to the Financial

Services Ombudsman, but most often they did not take advice at all prior to making the investment, and seemed to be under all kinds of illusions as to how the scheme was supposed to operate. It was never intended as a further bonus for existing pensioners. In a recent case, however, the intermediary did a “fact-find” which somehow failed to find out that one of the parties had no income in her own right, and could not therefore avail of the option of an Approved Retirement Fund, but would have three-quarters of her PRSA proceeds locked away until age 75.

## SECTION 5 – CONCLUSIONS

Once again, as in every year so far, the number of complaints received by my Office has increased considerably - this year by 71%. I am very pleased to say, however, that with the stability in staffing, the introduction of our new Case Management System and the streamlining of our examination/investigation procedures, the rate of closure of files has also improved to the extent that I carry 16% fewer detailed investigation cases into 2010 than I carried into 2009. This meant that despite a 71% increase in complaints, we still managed to gain ground on the backlog. This is most welcome from the complainants' perspective. However, I am also aware that during the first third of 2010, the number of complaints received has continued to increase, though thankfully not quite at such a dramatic rate as in 2009. Even more encouraging is the fact that despite the increase in complaints in 2010, our provisional figures for that period show that we have 33 fewer detailed investigation cases on hands than at the beginning of the year.

Case management systems are mere tools in the administrative process and, as important as they are, I could not have achieved the results reported without the intense commitment and dedication of my staff. That we have been able to process so many complaints with limited resources is in large measure due to their dedication, their versatility, their willingness to get the job done and their ability to remain cheerful even when the system is under severe strain. At a time when public servants seem to be the subject of intense unfavourable comment, I am proud and honoured to work with such a dedicated group.

On the debit side, it becomes clearer with the passing years that many of the mistakes that we come across are repeated, sometimes by the same organisations and even the same people, who have failed to learn from what has gone before. I am often at a loss to understand whether this is through ignorance or ambivalence. My Digest of Cases is published each year with my Annual Report, in the hope that those who read it may learn from the mistakes of others. Copies of the Digest are circulated by my Office to each Government Department and each Local Authority to this end.

If I was asked to identify the essence of the majority of complaints to my Office, I would have to point to failure of communication, poor communication or indeed no communication. I accept that pensions can be a complicated subject, but there is no need for the language of communication to make it more difficult than it needs to be. The results of poor communication – or, to be blunt about it, failed communication, are all too evident in our postbag day after day. A “tick box” approach to compliance with reporting requirements under the Pensions Act is simply not good enough.

I believe that the trauma suffered by so many people in relation to their pensions in recent years, so widely reported in the media, will have a significant impact on how people will look on and live with pension issues in the future. Gone are the days when pension schemes were left to look after themselves, where members did not believe it worthwhile to familiarise themselves with the rules and where interest only awoke as pension age was around the corner. On the one hand I am heartened by the number of complaints/enquiries that I receive from younger people on such issues as preserved benefits and transferability abroad, and the interest they take in the investment of their fund, indicating their reluctance to remain ignorant of pension matters; on the other hand

many of their contacts with my Office reflect an inability to obtain clear explanations and answers from pension providers.

I get annoyed when we have to record a complaint under the heading of “Failure of Scheme to Respond”. When members fail to get information from their trustees or their employers, they often approach insurers or intermediaries in an effort to get what they need, to be told that they need to go to their trustees (which in many cases, will also be their employer). On investigation, we often find that information has been supplied to the trustee/employer by the insurer, but not passed on to the members. I understand the protocols that must be observed in the formal business relationships between brokers, insurance companies and their clients, but there is no excuse for the plain bad manners of failure to reply to enquiries. Scheme members have a right to certain information under the Pensions Act and the Disclosure Regulations, and it is high time that everyone involved in pension scheme administration was conscious of their obligations – and the fact that failure to honour these may make them liable for civil penalties or, worse, for criminal prosecution.

## SECTION 6 - FINANCIAL ACCOUNTS

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

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

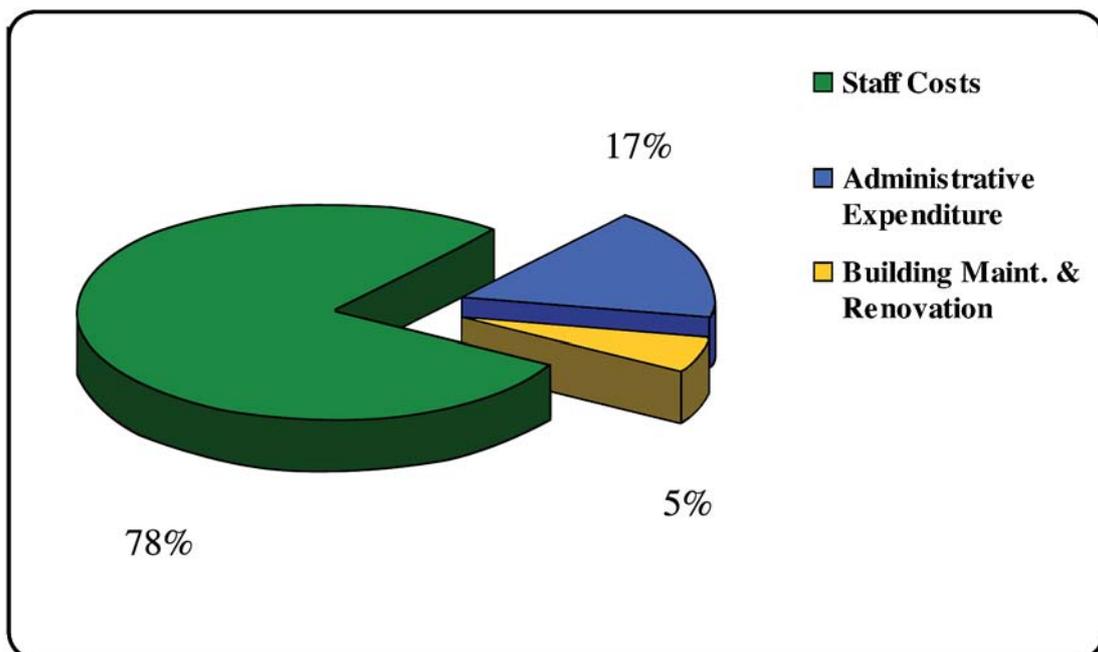
### Annual Accounts for 2009

The financial statements for 2009, which are set out in Appendix 9, have been audited by the Comptroller and Auditor General and have been presented to the Minister for Social Protection for presentation to the Oireachtas.

The major costs of running the Office in 2009 are as set out in Table 6.1 under and a detailed breakdown and commentary is provided in Appendix 9.

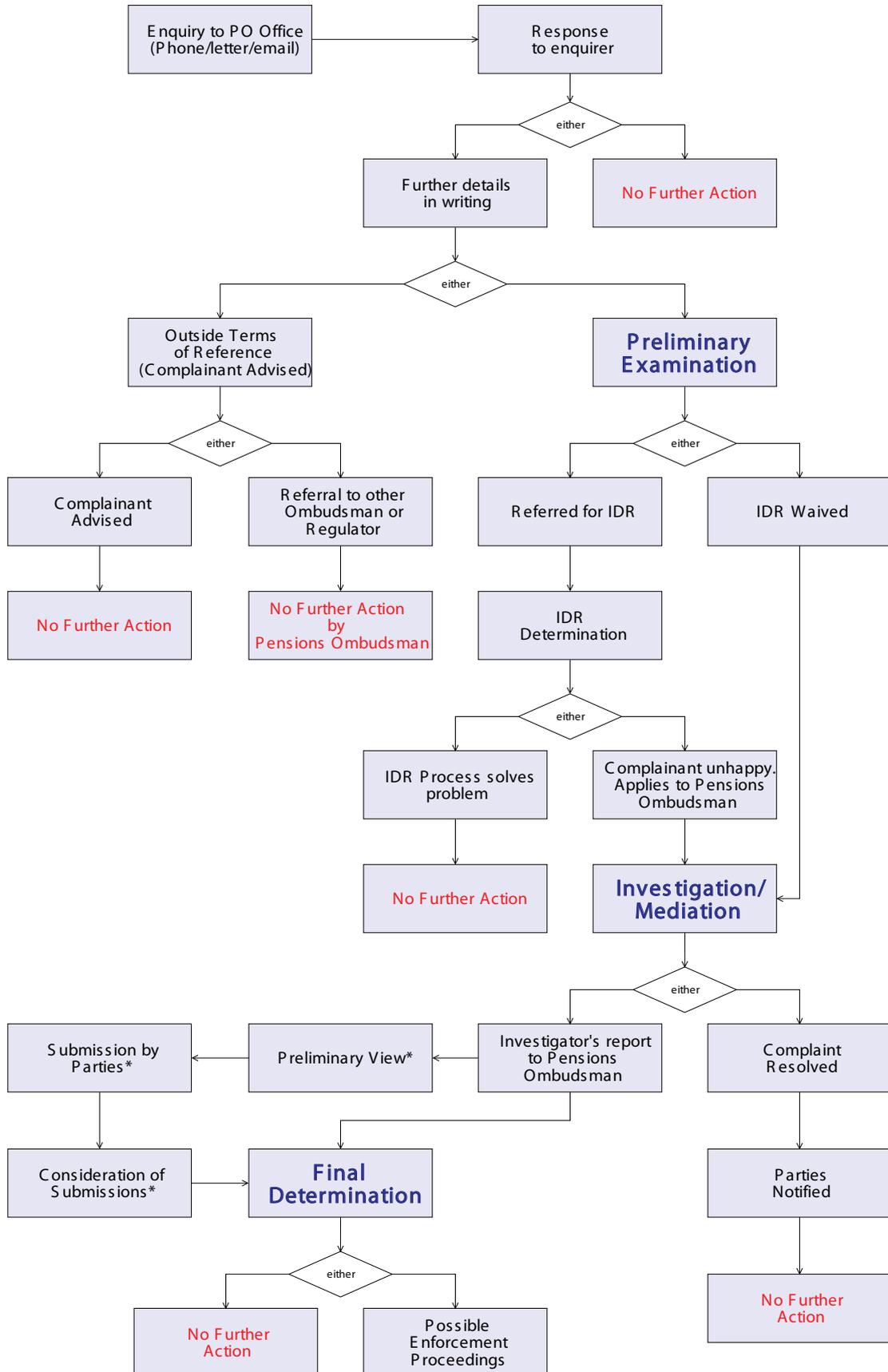
**Table 6.1 - Costs of Running the Office in 2009**

	<b>2009</b>
	<b>€</b>
Staff Costs	789,767
Administrative Expenditure	170,710
Capital Expenditure	55,001
<hr/>	
<b>Total Running Costs</b>	<b>1,015,478</b>



APPENDIX 1

How a Complaint is Normally Handled



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

## Appendix 2

### Summary and Analysis of Detailed Investigation Cases for 2009

Detailed Investigation Cases on hand at start of year	473
Received during the year	616
Re-opened during the year	20
<b>Total for year</b>	<b>1,109</b>
Completed during the year	711
<b>Investigations on hand at end of the year</b>	<b>398</b>

#### Summary of Detailed Investigation Cases Closures

Number of Investigations completed	711
Average weeks to completion	29
Longest weeks to completion	299
Shortest weeks to completion	1 day

#### Completion by Reason

	Number	% of Total
Report and Guidance Given	246	35%
Successful Mediation	160	22%
Complaint not proceeded with	77	11%
OTOR - Refer to Other Ombudsman/Regulator	55	8%
OTOR *	53	7%
Unsuccessful Mediation	47	7%
Final Determination - Complaint Upheld	32	5%
Advised of need for IDR **	21	3%
Final Determination - Complaint Not Upheld	15	2%
Enforcement Finalised	3	0%
Appeal Finalised	2	0%
<b>TOTAL</b>	<b>711</b>	<b>100%</b>

\* OTOR – Outside terms of reference of Pensions Ombudsman

\*\* IDR – Internal Disputes Resolution procedure

#### Weeks to Completion in 2009

5 weeks or less	255	36%
6 - 10 weeks	96	14%
11 - 15 weeks	49	7%
16 - 20 weeks	21	3%
21 - 25 weeks	30	4%
26 - 30 weeks	21	3%
31 - 35 weeks	18	2%
36 - 40 weeks	30	4%
41 - 45 weeks	20	3%
46 - 50 weeks	38	5%
Greater than 50 weeks	133	19%
<b>TOTAL</b>	<b>711</b>	<b>100%</b>

## Appendix 3 – Nature of Detailed Investigation Cases 2008 & 2009

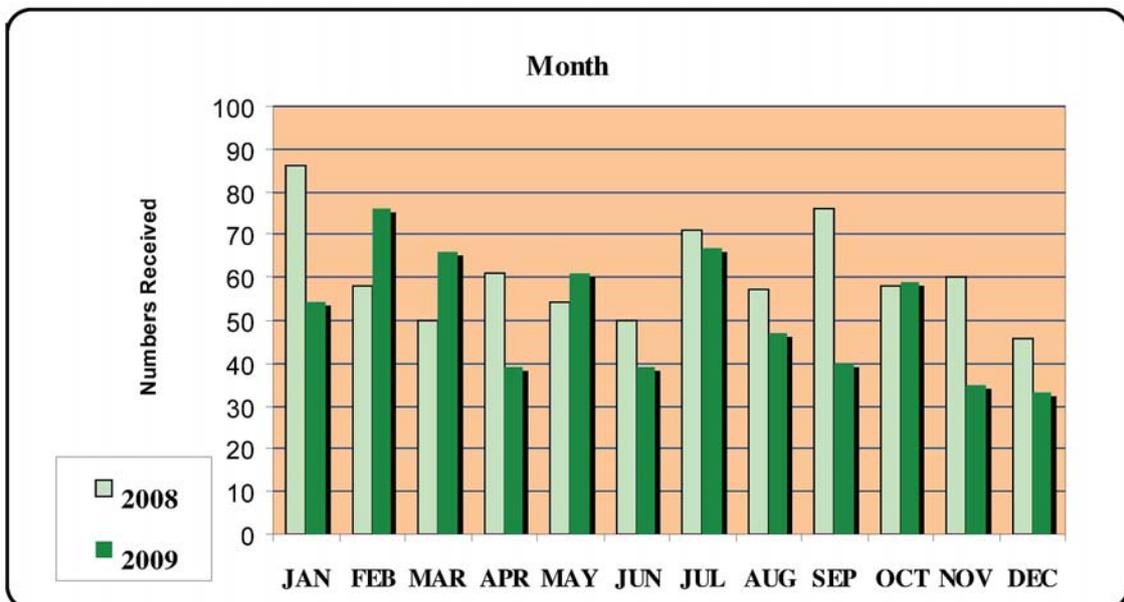
<b>Nature of Investigation 2008</b>	<b>Total</b>		<b>Nature of Investigation 2009</b>	<b>Total</b>	
Calculation of benefits	123	17 %	Calculation of benefits	113	18 %
General enquiry	109	15 %	Fund values	84	13 %
Remittance of contributions	99	14 %	Remittance of contributions	73	12 %
Disclosure of information	62	9 %	Disclosure of information	49	8 %
Membership/entry conditions	46	6 %	Years of service - cost of/credit for	46	8 %
Years of service - cost of/credit for	41	6 %	Transfers	43	7 %
Winding up	36	5 %	General enquiry	43	7 %
Incorrect/late/no benefit payment	35	5 %	Incorrect/late/no benefit payment	21	3 %
Fund values	34	5 %	Spouses' and dependants' benefits	18	3 %
Transfers	23	3 %	Early retirement	18	3 %
Spouses' and dependants' benefits	16	2 %	Additional Voluntary Contributions	16	3 %
Contribution refunds	14	2 %	Winding up	14	2 %
Mis-selling	13	2 %	Ill - health	11	2 %
Preservation of benefits	11	2 %	Membership/entry conditions	10	2 %
Post-retirement increases	9	1 %	Post-retirement increases	9	2 %
Ill - health	9	1 %	Mis-selling	9	2 %
Early retirement	8	1 %	Contribution refunds	8	1 %
Additional Voluntary Contributions	8	1 %	Augmentation/enhancement of benefits	8	1 %
Pensions Adjustment Orders	7	1 %	Incorrect info giving rise to false expectation	7	1 %
Incorrect info giving rise to false expectation	7	1 %	Pensions Adjustment Orders	6	1 %
Abatement/Supplementary Pension	5	1 %	ARF/AMRF queries	3	0.5 %
Augmentation/enhancement of benefits	4	0.6 %	Use of surplus	1	0.2 %
ARF/AMRF queries	3	0.4 %	Preservation of benefits	1	0.2 %
Use of surplus	2	0.3 %	Not specified	1	0.2 %
Failure of scheme to respond	1	0.1 %	Failure of scheme to respond	1	0.2 %
Defined Benefit V Defined Contribution	1	0.1 %	Equal Treatment Issue	1	0.2 %
Equal Treatment Issue	1	0.1 %	Defined Benefit V Defined Contribution	1	0.2 %
			Abatement/Supplementary Pension	1	0.2 %
<b>Total</b>	<b>727</b>	<b>100 %</b>	<b>Total</b>	<b>616</b>	<b>100 %</b>

## Appendix 4 - Breakdown of Detailed Investigation Cases 2008 & 2009 by Location

Location	2008	Location	2009
Carlow	4	Carlow	7
Cavan	8	Cavan	6
Clare	13	Clare	10
Cork	90	Cork	58
Donegal	8	Donegal	13
Dublin	193	Dublin	158
Galway	23	Galway	36
Kerry	18	Kerry	10
Kildare	32	Kildare	23
Kilkenny	23	Kilkenny	15
Laois	7	Laois	6
Leitrim	3	Leitrim	5
Limerick	25	Limerick	25
Longford	2	Longford	7
Louth	18	Louth	18
Mayo	10	Mayo	30
Meath	25	Meath	24
Monaghan	4	Monaghan	6
Offaly	7	Offaly	4
Roscommon	6	Roscommon	9
Sligo	10	Sligo	4
Tipperary	20	Tipperary	10
Waterford	15	Waterford	15
Westmeath	8	Westmeath	8
Wexford	19	Wexford	13
Wicklow	21	Wicklow	12
United Kingdom	15	United Kingdom	10
Europe	4	Europe	8
Rest of the World	1	Rest of the World	20
Not known Registration	95	Not known Registration	46
<b>Overall Total</b>	<b>727</b>	<b>Overall Total</b>	<b>616</b>

## Appendix 5 – Detailed Investigation Cases received by Month in 2008 & 2009

Month	2008	% of Total	2009	% of Total
January	86	12%	54	9%
February	58	8%	76	12%
March	50	7%	66	11%
April	61	8%	39	6%
May	54	7%	61	10%
June	50	7%	39	6%
July	71	10%	67	11%
August	57	8%	47	8%
September	76	11%	40	6%
October	58	8%	59	10%
November	60	8%	35	6%
December	46	6%	33	5%
<b>TOTAL</b>	<b>727</b>	<b>100%</b>	<b>616</b>	<b>100%</b>



## **Appendix 6 – Governing Legislation**

Pensions Act, 1990

Pensions (Amendment) Act, 2002

Social Welfare (Miscellaneous) Provisions Act, 2003

Statutory Instrument No. 119 of 2003

Statutory Instrument No. 397 of 2003

Statutory Instrument No. 398 of 2003

Statutory Instrument No. 399 of 2003

Public Service Superannuation (Provisions) Act, 2004

Social Welfare (Miscellaneous) Provisions Act, 2004

Social Welfare Law Reform and Pensions Act, 2006

Social Welfare and Pensions Act, 2007

Statutory Instrument No. 181 of 2007

Statutory Instrument No. 182 of 2007

Rule of Court for appeals from Determination of the Pensions Ombudsman can be found in  
Statutory Instrument No. 14 of 2007

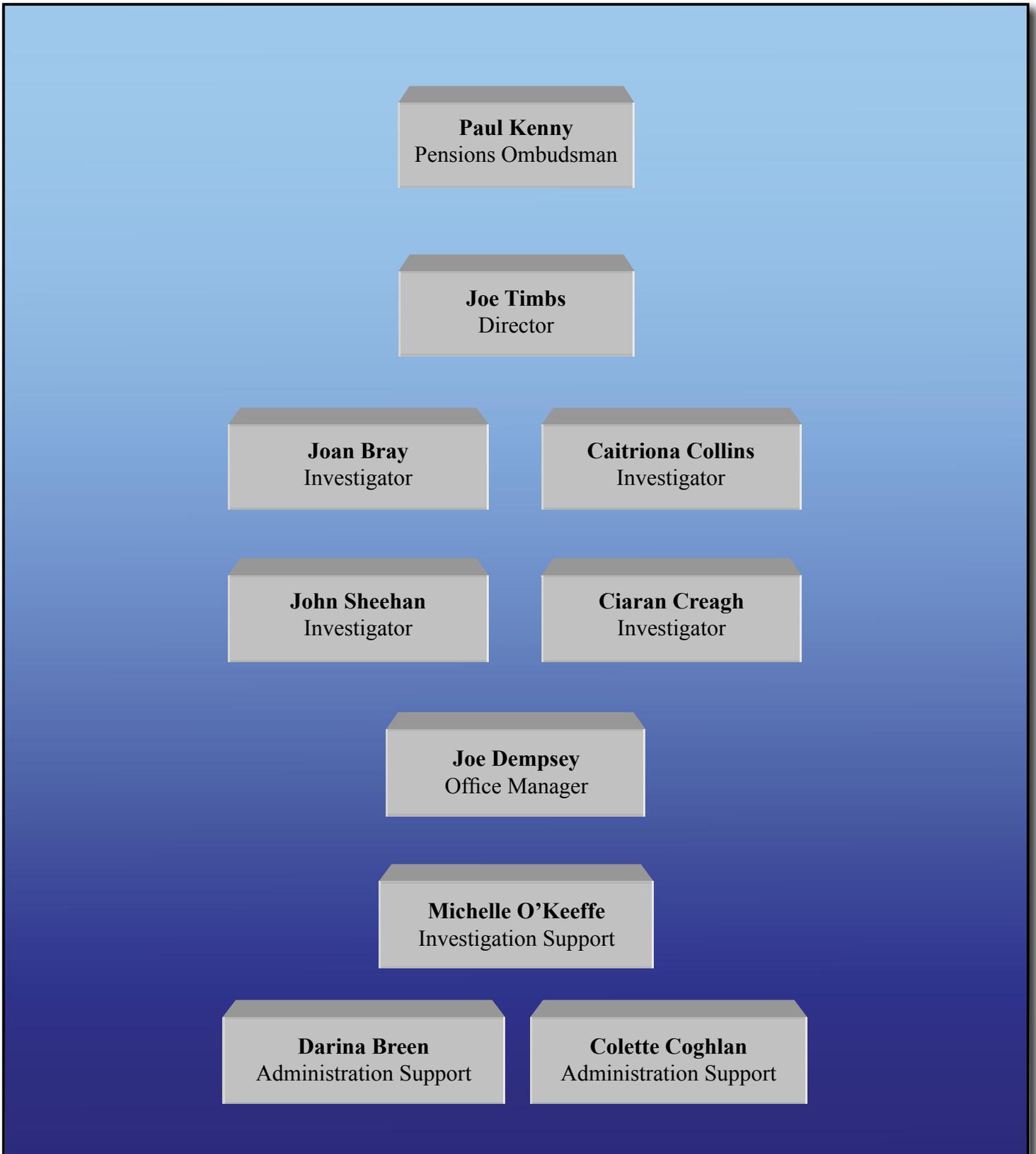
Social Welfare and Pensions Act, 2008

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

## **Appendix 7 – Publications of the Office**

- What can the Pensions Ombudsman do for you? (revised in 2009)
- Disputes Resolution Procedures –  
Guidance Notes for Trustees and Administrators
- Instructions and Guidance for Respondents
- Statement of Strategy 2007 – 2009
- Annual Reports and Digest of Cases 2003/4 – 2008
- Customer Charter 2009 & Statement on Unacceptable Behaviour by Complainants
- Statement of Strategy 2010 – 2012

## Appendix 8 – Pensions Ombudsman staff at end 2009



## Appendix 9

### Financial Statements for year ended 31 December 2009

#### Report of the Comptroller and Auditor General for presentation to the

#### Houses of the Oireachtas

I have audited the financial statements of the Office of the Pensions Ombudsman for the year ended 31 December 2009 under Section 143 (2) of 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.

#### **Respective Responsibilities of the Pensions Ombudsman and the Comptroller and Auditor General**

The Pensions Ombudsman is responsible for preparing the financial statements in accordance with Section 143 of the Pensions Act, 1990 as amended and for ensuring the regularity of transactions. The Pensions Ombudsman prepares the financial statements in accordance with Generally Accepted Accounting Practice in Ireland.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

I report my opinion as to whether the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland. I also report whether in my opinion proper books of account have been kept. In addition, I state whether the financial statements are in agreement with the books of account.

I report any material instance where moneys have not been applied for the purposes intended or where the transactions do not conform to the authorities governing them.

I also report if I have not obtained all the information and explanations necessary for the purposes of my audit.

#### **Basis of Audit Opinion**

In the exercise of my function as Comptroller and Auditor General, I conducted my audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and by reference to the special considerations which attach to State bodies in relation to their management and operation. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures and regularity of the financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgments made in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Pensions Ombudsman's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations that I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

***Opinion***

In my opinion, the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of affairs of the Office of the Pensions Ombudsman at 31 December 2009 and of its income and expenditure for the year then ended.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, identifying Gerard Smyth.

**Gerard Smyth**

For and on behalf of the

**Comptroller and Auditor General**

**24 November, 2010**

## **Statement on Internal Financial Control**

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

The Office of the Pensions Ombudsman is a small office where salary costs represent some 80% of total expenditure. There is a total staff of 10 - the Ombudsman, Director, four investigators, an office manager and three further officials.

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

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

- An annual estimate of financial requirements is provided to our parent Department, the Department of Social and Family Affairs;
- When the budget for the year is agreed, a monthly profile of expenditure is prepared;
- All expenditure by this Office is recorded on the Department's general ledger accounting system. A monthly expenditure report is prepared by the Department's Accounts branch. This is then checked by the office manager against the records held in the Office.
- The office manager prepares a monthly statement of expenditure which compares actual with profile. This is circulated to all members of staff and is reviewed by myself.
- A twice yearly report is provided to the Department which compares estimated and actual expenditure.
- A segregation of duties exists between the certification, authorisation and execution of payments.
- All salary and related calculations and payments are made by the parent Department.
- An internal audit function will be provided by the Department of Social and Family Affairs.

I confirm that I reviewed the Office's system of internal financial control during the year 2009.



**Paul Kenny,  
Pensions Ombudsman.**

12th February 2010.

## **Statement of Accounting Policies**

### **1. Basis of Preparation**

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

### **2. Oireachtas Grant**

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

### **3. Pensions**

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

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

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

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

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

### **4. Tangible Fixed Assets**

Tangible Fixed Assets are stated at cost or valuation less accumulated depreciation. Depreciation is provided for on a straight line basis at rates which are estimated to reduce the assets 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.

## Income & Expenditure Account

for the year ended 31 December 2009

	Notes	2009	2008
Income		€	€
Oireachtas Grant	1	937,782	961,479
Less Superannuation Contributions Repaid		(8,009)	(7,943)
Net Oireachtas Grant		929,773	953,536
Net Deferred Funding for Pensions	6c	41,000	37,000
Transfer from Capital Account	5	45,144	(34,796)
<b>Total Income</b>		<b>1,015,917</b>	<b>955,740</b>
<b>Expenditure</b>			
Staff Costs	2	789,768	769,171
Administration	3	178,067	249,204
Depreciation	4	45,144	29,703
Audit Fee		2,500	4,500
<b>Total Expenditure</b>		<b>1,015,479</b>	<b>1,052,578</b>
<b>Surplus/(Deficit) for the year</b>		<b>438</b>	<b>(96,838)</b>
<b>Surplus at 1 January</b>		<b>28,366</b>	<b>125,204</b>
<b>Surplus at 31 December</b>		<b>28,804</b>	<b>28,366</b>

The Statement of Accounting Policies and Notes 1 to 7 form part of these financial statements.



**Paul Kenny**  
**Pensions Ombudsman**

**Date 19 November 2010**

## Statement of Total Recognised Gains and Losses

for the year ended 31 December 2009

	Notes	2009	2008
		€	€
Surplus/(Deficit) for year		<u>438</u>	<u>(96,838)</u>
Experience gains/(losses) on pension scheme liabilities	6d	12,000	-
Changes in assumptions underlying present value of pension scheme liabilities		(6,000)	-
<b>Actuarial gain on pension Liabilities</b>	6b	6,000	-
<b>Adjustment to Deferred Pension Funding</b>		(6,000)	-
<b>Total Recognised Gain (Loss) for the year</b>		<u>438</u>	<u>(96,838)</u>

The Statement of Accounting Policies and Notes 1 to 7 form part of these financial statements.



**Paul Kenny**  
**Pensions Ombudsman**

**Date 19 November 2010**

**Balance Sheet as at 31 December 2009**

<b>Fixed Assets</b>	<b>Note</b>	<b>2009</b>		<b>2008</b>	
		€	€	€	€
Tangible Fixed Assets	4		84,935		130,079
<b>Current Assets</b>					
Debtors & Prepayments		41,114		48,094	
Cash in Hand		<u>205</u>		<u>224</u>	
		41,319		48,318	
<b>Current Liabilities</b>					
Creditors		0		0	
Accruals		<u>12,515</u>		<u>19,952</u>	
		12,515		19,952	
<b>Net Current Assets</b>			28,804		28,366
			<hr/>		<hr/>
<b>Total Assets Less Current Liabilities</b>			<u>113,739</u>		<u>158,445</u>
Deferred Pension Funding		209,000		174,000	
Pension Liability	6b	(209,000)		(174,000)	
		<hr/>		<hr/>	
<b>Net Assets</b>			<u>113,739</u>		<u>158,445</u>
<b>Financed By</b>					
Capital Account	5		84,935		130,079
Income and Expenditure Account			28,804		28,366
			<hr/>		<hr/>
			<u>113,739</u>		<u>158,445</u>

The Statement of Accounting Policies and Notes 1 to 7 form part of these financial statements.



**Paul Kenny**  
**Pensions Ombudsman**

**Date 19 November 2010**

## Notes to the Financial Statements

### 1. Oireachtas Grant

Funding for the Office of the Pensions Ombudsman is provided by the Department of Social Protection which makes all payments on behalf of the Office. The total grant matches the sum charged to the Appropriation Account of that Department.

### 2. Staff Costs

These comprise :

	2009	2008
	€	€
Wages & Salaries	747,017	728,598
Travel	9,760	11,516
Pension Costs	6a <u>32,991</u>	<u>29,057</u>
<b>Total</b>	<b><u>789,768</u></b>	<b><u>769,171</u></b>

The number of staff employed by the office in 2009 was 10, including the Ombudsman.

	2009	2008
	€	€
<b>3. Administration Costs</b>		
General Expenses	38,208	54,992
Postage and Telecommunications	18,173	22,698
Printing and Stationery	31,033	21,737
IT/Office Machinery	17,176	1,882
Maintenance	55,001	112,472
Advertising/seminars/publications	<u>18,476</u>	<u>35,423</u>
<b>Total</b>	<b><u>178,067</u></b>	<b><u>249,204</u></b>

#### 4. Fixed Assets

	€	€	€
	<b>IT Hardware, Software and Office Equipment</b>	<b>Furniture and Fittings</b>	<b>Total</b>
<b>Assets at Cost</b>			
Balance at 1 January 2009	<u>108,195</u>	<u>152,844</u>	<u>261,039</u>
<b>Depreciation</b>			
Balance at 01 January 2009	(56,598)	(74,362)	(130,960)
Charge for the year	(14,878)	(30,266)	(45,144)
<b>Balance at 31 December 2009</b>	<u>(71,476)</u>	<u>(104,628)</u>	<u>(176,104)</u>
<b>Net Book Value</b>			
<b>Balance at 31 December 2009</b>	<u>36,719</u>	<u>48,216</u>	<u>84,935</u>
<b>Balance at 01 January 2009</b>	<u>51,597</u>	<u>78,482</u>	<u>130,079</u>

#### 5. Capital Account

	€	€
Balance at 1 January 2009		130,079
Amortisation in line with depreciation Transfer to Income & Expenditure Account	(45,144)	(45,144)
<b>Balance at 31 December 2009</b>		<u>84,935</u>

#### 6. Pensions

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

	2009	2008
Current service costs	31,000	29,000
Interest on Pension Scheme Liabilities	10,000	8,000
Employee Contributions	(8,009)	(7,943)
	<u>32,991</u>	<u>29,057</u>

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

	<b>2009</b>	<b>2008</b>
Net Pension Liability at 1st Jan	174,000	137,000
Current Service Cost	31,000	29,000
Past Service Cost	-	-
Interest Cost	10,000	8,000
Actuarial (gain)/Loss	(6,000)	-
Pensions paid in the year	-	-
Net Pension Liability at 31st Dec	<u><b>209,000</b></u>	<u><b>174,000</b></u>

**c) Deferred funding for pensions**

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

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

	<b>2009</b>	<b>2008</b>
	<b>€</b>	<b>€</b>
Funding Recoverable in respect of current year pension costs	41,000	37,000
State Grant applied to pay pensioners	0	0
	41,000	37,000

The deferred funding asset for pensions as at 31 December 2009 amounted to €209,000 (2008: €174,000).

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

	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
	<b>€</b>	<b>€</b>	<b>€</b>	<b>€</b>
Scheme Liability	209,000	174,000	137,000	91,000
Experience (gains) / losses on Scheme Liabilities amount	(12,000)	0	16,000	3,000
Percentage of Scheme Liabilities	-6%	-	12%	3%

## 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 spouse's and children's pensions. Normal retirement age is a member's 65th birthday, and pre 2004 members have an entitlement to retire without actuarial reduction from age 60. Pensions in payment (and deferment) normally increase in line with general public sector salary inflation.

The valuation used for FRS17 (Revised) disclosures has been based on a full actuarial valuation on 23rd February 2010 by a qualified independent actuary taking account of the requirements of the FRS in order to assess the scheme liabilities at 31 December 2009.

The principal actuarial assumptions were as follows:

	<b>2009</b>	<b>2008</b>
Rate of increase in salaries	4%	4%
Rate of increase in pensions in payment	4%	4%
Discount Rate	5.50%	5.50%
Inflation Rate	2%	2%

The mortality basis adopted allows for improvements in life expectancy over time, so that life expectancy at retirement will depend on the year in which a member attains retirement age (age 65). The table below shows the life expectancy for members attaining age 65 in 2008 and 2009.

Year of attaining age 65	<b>2009</b>	<b>2008</b>
Life expectancy – male	87	83
Life expectancy – female	90	87

## 7. 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, (€200,000 - 2008) reviewable in 2012. The lease expires in 2017. There is no charge to the Office of the Pensions Ombudsman in respect of this accommodation.