

Pensions  
OMBUDSMAN



## Annual Report 2008





### **Mission Statement**

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

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large print format on request*

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## FOREWORD

A Aire,

I am pleased to present my Annual Report for 2008, the fifth complete year of operation of the Office of the Pensions Ombudsman.

The work of the Office has continued to progress, against the background of substantially increasing caseload. The number of new cases, at 758, represents an increase of 47% on 2007, which increased the pressure on the staff of the Office quite significantly. The caseload increase is explained partly by the commissioning of our new caseload management system at the beginning of 2008 which more accurately captures the details of all complaints to the Office. Nevertheless, without the intense commitment of my colleagues in the Office, we could not have succeeded in closing 639 in 2008, an increase of almost 10% over 2007, meaning that we carried forward 473 cases into 2009.

I was also fortunate that there was no change in personnel during the year, allowing skill levels to build. With a small overall complement of 10, even one change can have a dramatic consequence for results. While additional staff would, of course, be most welcome in the light of the increased numbers of complaints, I recognise this is not possible.

We receive a very large number of “enquiries” to the Office, either by telephone or by email, many from people who do not necessarily want to make a complaint but who are seeking information about their pension entitlements, advice as to where they should seek information and in some case, simple explanations of documents containing obscure pensions terminology. While I analyse the caseload in detail in Section 3, 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. To this end, I was pleased to set up a new “Frequently Asked Questions” section on my website in 2008, which will hopefully add to people’s knowledge in this area.

In the Foreword to my Annual Report last year, I indicated that I intended to embark on a number of legal initiatives designed to convince certain respondents to complaints of the

need to take this Office seriously. As can be seen from my website, I have been particularly busy in both District and Circuit Courts during 2008. Cases were initiated where people refused to respond to my investigations or failed to produce documents which I requested. My investigators appeared in District Courts 12 times and in Circuit Courts 4 times. I won each of my cases with the defendants receiving fines and or criminal convictions and I was awarded costs. Why people would risk a criminal conviction in such matters is hard to understand but because of attendant publicity, I believe that requests for information or documents by my Office are now met with the respect they deserve.

I was appointed as the first Pensions Ombudsman by the then Minister for Social Welfare on the 28<sup>th</sup> April 2003 for a six year term. I now have had the great honour and privilege of being re-appointed as Pensions Ombudsman by Ms Mary Hanafin, T.D., Minister for Social Welfare in April 2009 for a further four years. Looking back at the first five years, complaints to my Office increased from 297 in 2004 to 758 in 2008, ample justification for the decision to establish the Office. However, one issue strikes me very forcibly and I have commented on it in earlier annual reports – the unevenness in the administration of public service pensions. I am now firmly of the view that a Shared Services arrangement in the public service pension area is the strategic way to approach this problem and I will develop this particular point later in this Report.

I will also comment in detail later 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, 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.

I must record my thanks to the Pensions Board for the access to its files which we are given in the course of our investigations. The Social Welfare and Pensions Act, 2008, enabled an exchange of information with the Revenue Commissioners, and I have now signed a Memorandum of Understanding with them. I am in the process of drawing up a similar Memorandum with the Office of Corporate Enforcement.

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 privacy. Where public authorities are concerned, it is not always possible to conceal a

respondent's identity, which may be obvious from the context and the occupation of the complainant.

I wish to thank you, Minister, for the ongoing support you and your predecessors in office have given to me personally and to the work of this Office. I particularly value the help and support given 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. Such support allows us to concentrate our resources where they are most needed – 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.

I am most grateful to Joe Timbs, Director, 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 such increasing volumes of complaints.

Beir beannacht,

A handwritten signature in black ink, appearing to read 'Paul Kenny', with a long horizontal stroke extending to the right.

Paul Kenny

## SECTION 1 – INTRODUCTION

2008 was probably the worst year ever for pensions. The meltdown of defined benefit schemes continued, and the collapse of investment markets aggravated the adequacy problems of defined contribution schemes in particular. Problems such as denial of early retirement were outnumbered by 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 to determine jurisdiction. Complaints involving investment advice or the conduct of financial intermediaries may not be “maladministration” in relation to pension schemes; but failure to act on instructions, or to invest “properly” are definitely within the purview of this Office, and I have no difficulty in awarding redress if the circumstances warrant this. At the same time, while trustees must honour the obligations placed on them by trust law and the Pensions Acts, scheme members have some obligations too. Failure to monitor investments, or expecting trustees to have second sight, is not reasonable behaviour. However, in too many cases those failures are the result of poor communication – or none at all.

My Office is charged with investigating complaints of maladministration leading to financial loss and to settling questions of fact or law arising from disputes in relation to Occupational Pension Schemes, Personal Retirement Savings Accounts and certain “Trust” Retirement Annuity Contracts. 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.

In this regard, 2008 saw the discussion on the much needed reform of the pensions system intensify, with the deadline for submissions on the Green Paper on Pensions set at 31<sup>st</sup> May, 2008. Changes that are made as a result of this consultation process will have long lasting effects. It is therefore essential that the decisions to be 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. I made a detailed Submission on the Green Paper on Pensions in May, 2008. The submission, which was in two parts, is available on my website – [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie). The first part of the submission presented answers to the specific questions posed in the Green Paper. The second part raised

specific issues and anomalies within current pensions policy and practice which need to be addressed, possibly within a shorter timeframe than might be envisaged for the development of an overall national pension strategy. While it would be impossible to summarise a detailed 36 page submission in a few sentences, my submission favoured the introduction of a universal pension based on the total contribution concept which would provide a basic index linked pension at retirement. Additional pension could be added through a soft mandatory SSIA type arrangement. In addition, I suggested improvements in current arrangements and/or eliminating anomalies in such areas as AMF/ARMF, social welfare pensions, public service pension arrangements, untraceable members in winding up, non Irish nationals/permanent emigrants, and Family Law. I also made a presentation to the Commission on Taxation in relation to pension matters falling within their remit.

In this report, I have highlighted a number of issues to arise from complaints brought during the year. In a previous Annual Report, I referred to delays in completing Internal Disputes Resolution (IDR) in public authority schemes. As a result of the intervention of the then Minister for Social and Family Affairs, who wrote to his colleagues, this situation has improved considerably, although there are still some areas which leave a great deal to be desired. 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 report and determination is invaluable to me in providing detailed background to a complaint so that I can decide whether it falls within my remit. For example, it may become clear from the IDR process that the real essence of a dispute between parties 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. The IDR process and its impact on dispute resolution are of particular interest to me. While my new Case Management System has been operation only from the beginning of 2008, statistics for that period show that where I have received complaints and advised of the need for IDR, (3%) do not re-appear as complaints. However, there are undoubtedly many cases where IDR has operated to solve a problem, which (by definition) never come to the notice of this Office.

I have previously mentioned the possibility of conducting a survey of pension schemes to test the effectiveness of IDR processes, and I intend to proceed with this, possibly when the whole system is under a bit less stress than at present.

Last year I commented on the plight of those involved in superannuation in the public service, the unevenness of administration in different parts of the public service and the fact that those who choose to specialize in pensions and superannuation do not always receive the credit or appreciation they deserve. Allied to that, the “customer” – by definition someone who has probably devoted the best part of their working life to the service of the public – can be treated abysmally. I have had cases where pension entitlements have not been paid for many months after the person has retired, cases where the pension calculation can vary depending on what local authority is the employer. The need for specialized knowledge must not be underestimated in an area as technical as pensions: the expertise that is needed to administer public service pension arrangements properly is not acquired overnight and, once acquired, must be retained within an organisation. Up to one third of all complaints to my Office come from the public sector and my investigators have to navigate a quagmire of legislation, regulations, rules and local practices in Government Departments, semi-State agencies, local authorities and the HSE. More often than not, the pension scheme rules relate to former incarnations of the body (e.g. Health Boards), and more bizarrely, such rules can vary widely in their application as between counties/regions. The idea of receiving a lower pension simply because of local interpretation is nonsense. Could there ever be a better case for a Shared Services arrangement for all public sector pensions, in one location and with a corps of skilled pension practitioners? Not alone would there be economies of scale, co-ordination of interpretation and administration, but the knowledge base within such an organization would be invaluable to Government in streamlining the whole public sector pension business. The fact that the Government has taken control of some of the pension funds in certain public sector bodies might be a first step in the direction of centralised administration.

As far as the private sector is concerned, there has been a depressingly high increase in the number of complaints arising in the construction industry. When I commented on this phenomenon earlier this year, some of the reaction was to compare the small absolute number of complaints with the huge membership of the Construction Workers’ Pension Scheme. It must be remembered that 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.

In addition, a high proportion of the complaints I receive are from workers of Eastern European origin. I am concerned that there may be more such workers out there, who don’t know their rights and may not know they can complain.

Unfortunately, some of the complaints are too late. In some cases workers may check their pension contribution situation only after they have lost their jobs – by which time the employer may well have ceased to trade, or gone into liquidation. The really annoying thing about these cases is that we are often looking at contributions which may have been deducted, but not remitted, at a time when, by common consent, the construction industry was thriving.

An increasing number of cases in this sector have involved non-payment of mortality benefit by the scheme because contributions were unpaid or the employee was not registered in the scheme. In one case reported 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.

## **SECTION 2 – SUMMARY OF ACTIVITIES IN 2008**

### ***Case Management***

My Office received 758 new cases (which include 31 re-opened cases) during 2008 and dealt with 320 telephone enquiries which did not translate into actual complaint cases. This represents an increase in new cases of 47% over 2007. We ‘cleared’ or closed 639 cases during the year. This represents an increase of 9.4% over the number of files closed in 2007.

While we entered 2008 with 354 complaint files still open we ended the year with 473 on hand, an increase of 33.6%. While this is an unwelcome increase, it must be viewed against the 47% increase in new cases received during the year. A detailed analysis of caseload and case management is dealt with in the next Section of this report. While the types of complaint we deal with are 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. The reality is that speedy responses to our queries will result in speedier outcomes for complainants.

### ***Case Management System***

Two years ago I referred to the need for a new Case Management System for the Office which would automate the production of case management information statistics in a real time environment, and would also improve the ability to set quality performance indicators and monitor performance. I am pleased to report that following a tendering process during 2007, the new system went “live” on 2<sup>nd</sup> January of 2008. I believe that our new system has contributed in a very positive way to the 10% increase in case closures for 2008. Staff training and further development work was undertaken during 2008 and this will lead to further increased efficiency in the Office once the system has bedded in. Indeed, preliminary statistics for the first four months of 2009 show that while the caseload increased by some 40% over the same period in 2008, the rate of closure increased by over 80%, demonstrating a huge increase in productivity in the Office.

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

I issued 52 Final Determinations under Section 139 of the Pensions Act, 1990 (as amended) during 2008. Of these, 71% were upheld either in full or in part and the remaining 29% were disallowed. A more detailed analysis of this is carried out in Section 3.

During the year, 171 cases were settled by mediation; 75% of these were settled with a result favourable to the complainant. This is roughly comparable to 2007 where 81% were settled with a result favourable to the complainant. The differences 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 could be arrived at by a Final Determination.

In suitable cases, I will normally 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 is not required 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 published a new “Frequently Asked Questions” (FAQs) section on my website in 2008. The FAQs are laid out in four sections – dealing with the Office and our processes, general pension matter, 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 2008 certainly bears this out, increasing from 260,000 to over 350,000.

### ***Customer Charter***

During 2008, I completed the preparation of our Customer Charter and I posted this on my website in 2008. 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, 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 five years of operation the number of formal complaints and informal queries that we have received has grown significantly 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 five 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, a lack of time to do the promotional work that is needed. Over the coming years we need to spend more time on promotional activities so that the man and woman on the street are aware of our existence. We are already doing this through our website, [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie), by a small amount of advertising and by placing articles in various pension publications and other journals. A regular column is written for ‘Irish Pensions News’, the journal of the Irish Association of Pension Funds (IAPF). We also took 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. We also had a stand at the *Over 50s* Exhibition in Dublin, Cork and Galway in 2008.

My investigators continued to build relationships within the pensions industry 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 and with the Financial Services Ombudsman. My Office has maintained contact with the Consumer Directorate of the Financial Regulator and with the Department of Social and Family Affairs. Discussions have taken place with the Revenue Commissioners, the Pensions Board, the UK Pensions Ombudsman, the UK Pre-Retirement Association 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 am in the process of completing a formal Memorandum of Understanding. 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 is now 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, and sit on the various interest groups which deal with different aspects of an Ombudsman's work. I consider the work of this Association to be a valuable resource for the work of this Office. The main objectives of the BIOA include encouraging, developing and safeguarding the role and title of Ombudsmen; formulating and promoting standards of best practice to be met by Ombudsmen in the performance of

their duties; holding meetings, conferences and seminars; 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 2008 there were a number of changes to the regulatory framework which affected this Office which continue to have a significant impact on the workings of my Office.

The Pensions Act was amended by the Social Welfare and Pensions Act 2008 and the Social Welfare and Pensions (Miscellaneous Provisions) Act 2008. The former was significant, as it introduced a whole new Part of the Pensions Act – Part VI A – which governs the registration of Administrators. Among the seven sets of new Regulations published in 2008, the most significant for my Office are those concerning the registration of Administrators. However, the introduction of the concept of Registered Administrator did not give rise to any alteration of the terms of reference of my Office, as the Pensions Ombudsman Regulations 2003 – 2007 are sufficiently widely drawn to include the new category of administrator.

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. In addition, 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 2008 the Pensions Act was further amended to extend my jurisdiction to Retirement Annuity Contracts held under trust, in cases where the financial instruments in which such assets are invested are not exclusively policies of assurance. The legislation also provides for an IDR requirement for such schemes. Schemes under trust whose assets

are fully insured fall under the jurisdiction of the Financial Services Ombudsman. So far, I have received only one complaint in this category.

In my Report for last year, I signalled my intention to initiate criminal prosecutions against persons who obstruct the investigations of this Office. I regret to say that I had to resort to such action too often. As I mentioned in the Foreword to this Report, my officials attended court 16 times during 2008 – 12 times in the District Court and 4 times in the Circuit Court. While an order for costs has been made in my favour in each of these cases, 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. 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 Ombudsman so that the Memorandum can be used by staff of the Board to determine whether the matter they are investigating properly falls within the 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. Since the end of the year, I have also signed a Memorandum of Understanding with the Revenue Commissioners to give formal effect to the right to exchange information with that body. I am also in the process of finalising 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.

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

The process of personal training and development continued for all staff during 2008. This involved technical training in pension related areas; instruction in the different areas of information technology with particular reference to our new Case Management System; and other training courses identified as part of each individual's participation in the Performance Management Development System.

### ***Staffing Issues***

I was pleased to say that during 2008 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 2008

This year has once again seen a significant increase in workload for the Office. There were a total of **354** cases brought forward from 2007 and a further **758** new complaints received during 2008 giving a total of **1,112** complaints for the year, an increase of 18.5% over 2007. Of these, **639** cases were closed during the year, leaving **473** cases on hand at the end of the year (See details in Figure 3.4 and Appendix 2). The number of cases closed during the year is up on last year's figure of **584** cases.

A critical aspect of our work is the time it takes to resolve cases. In this regard, I am pleased to report that for 2008, there was considerable improvement on 2007. In 2008, 40% of our cases were closed within 5 weeks and a further 10% were closed in the following 5 weeks. This means that in 2008 50% of our caseload was closed within 10 weeks whereas the corresponding figure for 2007 was 37%.

### **Analysis of Closed Cases**

#### *Mediated Cases*

I am pleased to say that **171** cases were resolved by means of mediation during the year. Of these, **128** cases, that is, **20%** of the **639** total cases closed for the year, were resolved to the complainant's satisfaction without recourse to the rigour of a full investigation. This is somewhat **down** on last year's figure of **27%**. The merits of resolving cases through the mediation process as opposed to cases requiring a full investigation 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 **34** weeks as compared to an average of **75** weeks to the issue of a Final Determination in which the complaint was upheld.

The remaining **43** 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 **52 (8%)** of closed cases. Of these, **37** complaints were upheld **15** and 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 **83** weeks in 2008 compared to **54** weeks in 2007. 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 cooperation of all parties to the complaint in furnishing information requested in a timely manner.

In cases where a formal investigation is to take place I generally issue a preliminary view to all parties to the complaint prior to issuing the Final Determination. The preliminary view sets out the material facts of the case and gives an indication of the decision which will be contained in my Final Determination. While this practice will add to the length of time to bring a case to closure, I believe benefits far outweigh the additional time given to the complaint.

## *Outside Terms of Reference*

A total of **145 (22.8%)** of closed cases were found to be outside my terms of reference for various reasons. For example, **29** cases came within the remit of another Ombudsman, Regulator or State Agency. The remaining **116** cases were outside my terms of reference for a variety of different reasons, such as being outside the time limits, no financial loss etc.

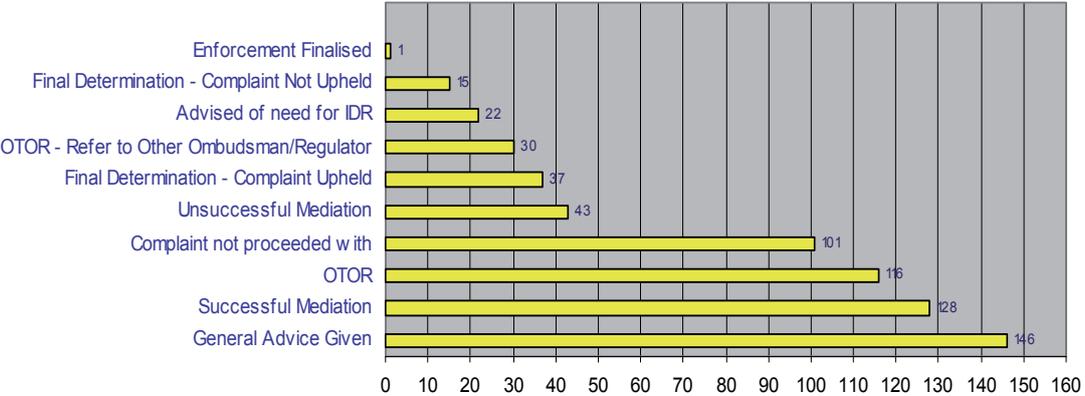
## *Miscellaneous Closure Reasons*

**146** cases (**22.7%**) were closed following the provision of advice which was sufficient to satisfy the complainant's enquiry. This is slightly down on last year's figure of **150 (26%)** which may be is an indication that, not only are the public becoming more aware of the importance of understanding their pension entitlements and pre-empting any problems which might arise in the future but they are also more aware of the function of my Office and the service it can offer.

While the category of “General Advice Given” might suggest that these cases are straightforward. However, this is not the case. 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, is might not be as clear that real financial loss resulted? Complainants are legally 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 explain the reason 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. Twenty two cases were closed as a result of the complaint not being proceeded with following advice to the complainant to submit to the IDR procedure indicating that the IDR process had addressed the complaint satisfactorily. A further **102** cases were closed as the complainant indicated a wish not to proceed with the complaint.

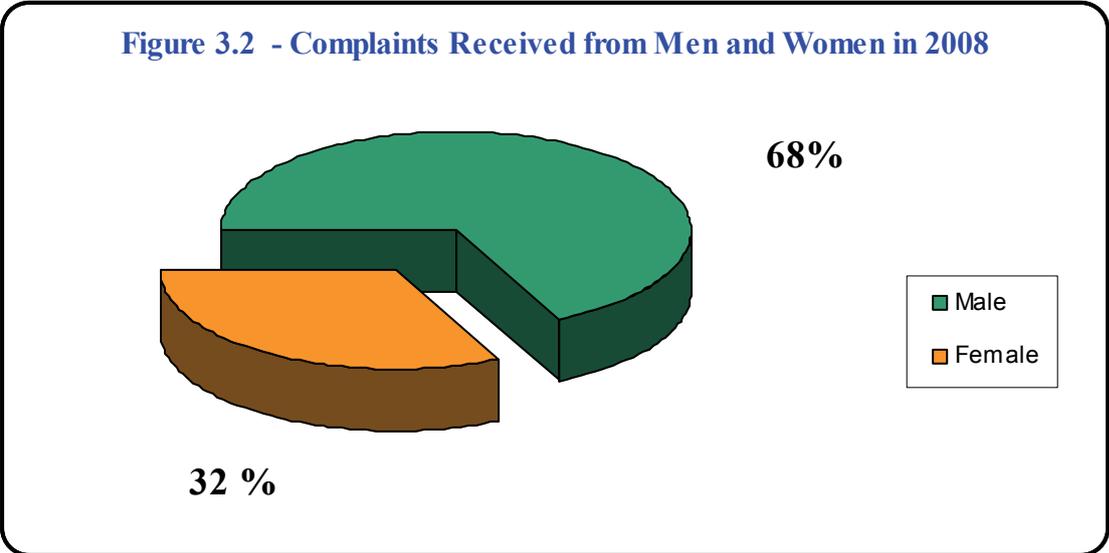
**Figure 3.1 - File Closure by Reason in 2008**



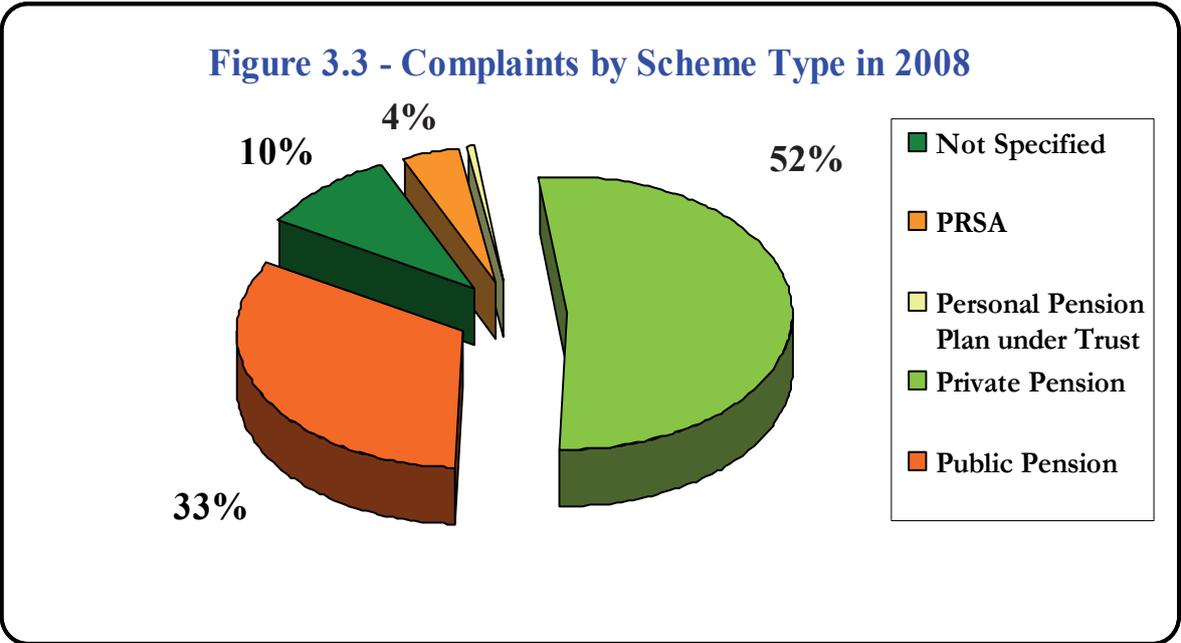
- Note:** IDR – Internal Disputes Resolution
- OTOR – Outside Terms of Reference
- Unsuccessful mediation – The original issue raised by the complainant was not resolved to his/her satisfaction
- Successful mediation – The original issue raised by the complainant was satisfactorily resolved

**Statistics**

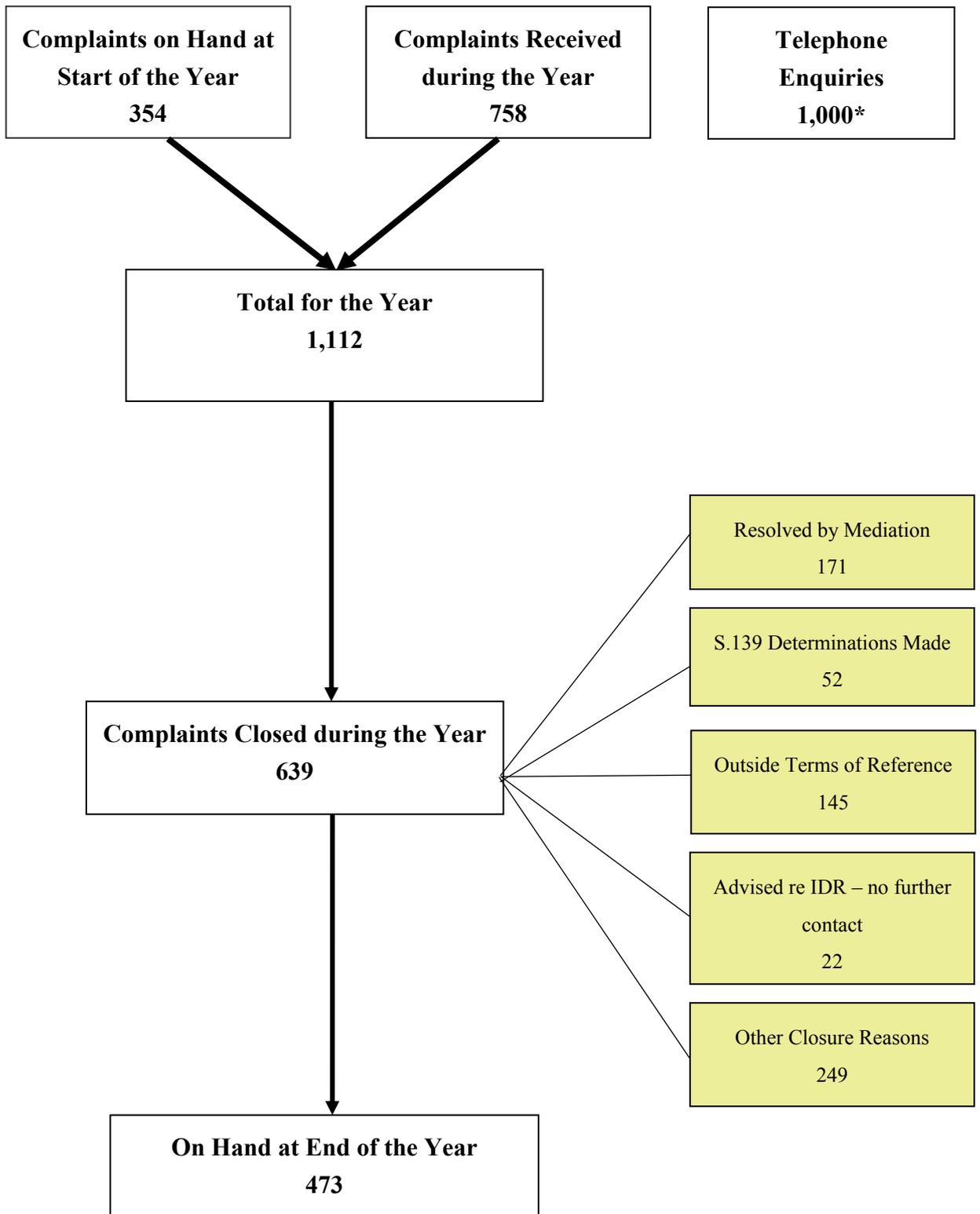
During 2008, **68%** of complaints were brought by men as compared to **32%** by women. The respective figures in 2007 were 72% and 28%. The small increase in complaints from women is in line with the increase in the number of women in the workforce with pension coverage.



The breakdown of new complaints received in 2008 classified by the main pension scheme type was – private occupational pension schemes **52%**, public pension schemes **33%** and complaints concerning Personal Retirement Savings Accounts (PRSAs) **4%**.



**Figure 3.4 – Workflow Summary 2008**



\*Because of a change in the classification of telephone calls under the new Case Management System during 2008, the data for that year is incomplete. Accurate data will be available for 2009. The figure quoted is an extrapolation of 5 months data.

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

As in the past, I have tried to learn 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 to avoid some of the pitfalls that these complaints represent. Lessons learned are also highlighted in the formal Determinations issued to complainants and respondents, and 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 and Family Affairs.

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

Last year I referred to unevenness of administration in Public Sector schemes. This is a problem which has continued to surface in 2008. It is particularly apparent where the responsibility for administration is widely spread – as, for example, in the Health Service area. One of the reasons for the very broad definitions given to the word “administrator” in the Pensions Ombudsman Regulations was precisely to allow me to scrutinize the actions of those who were actually dealing with members’ entitlements on the ground, not just those with high-level responsibility for schemes.

It is simply not acceptable that the pension benefit to which a public servant is entitled can vary according to which former Health Board area he worked in, but this arises because local agreements entered into prior to the formation of the HSE and in the transitional period after January, 2005 are apparently still being honoured, and benefits are not being administered in a harmonised manner nationally. At the same time, we are coming across cases where “developments/agreements” have taken place on the industrial relations front, which have not been reflected in the rules of the relevant superannuation scheme, but where the “small print” is used by officials as an excuse for meting out treatment which is neither fair nor rational.

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.

Last year I mentioned my perception that there is a lack of experience in Superannuation Sections in some parts of the public service and a real need to foster and conserve specialist knowledge. I believe that this problem is likely to increase, as some of those

with a fund of that knowledge either reach normal retirement age, or opt for early retirement. I also mentioned the lack of a clear career structure within the public service for those who would otherwise be prepared to put in the work required to obtain the very specialised knowledge that proper pensions administration requires.

I drew attention to the significant fact that, where schemes are tightly controlled and administered by specialist staff, problems tend to be far fewer. This, despite some local issues, tends to be the case in Local Government, for example.

While steps have been taken, and are ongoing, in the Health Service to concentrate the administration of the various schemes which, for historical reasons, apply to different members of its staff, I believe that much more could be done across the public service at large.

Pensions is one of those areas where the solution of “Shared Services” positively cries out for attention. I believe that very considerable savings could be made by adopting a shared services model for all public sector superannuation, and by all I mean Civil Service, Semi-State, Local Authority, HSE etc. Not only could important economies of scale be achieved, but by concentrating the specialist knowledge and expertise needed to do the job, the scope for error and anomaly – and the expense of putting them right – would be significantly reduced. Government would also have immediately available, in one source, expert advice on all aspects of public service pensions. This is by no means a particularly radical suggestion. 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 servicing the financial needs of the Department of Arts, Sport and Tourism and the Department of An Taoiseach.

### ***Internal Disputes Resolution (IDR) – the Public Service***

I mentioned in my previous report that there had been a marked improvement in turn-around times for the completion of IDR in the public service generally, though there were 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, as I mentioned earlier. This is unfair to the Department of Finance and undermines the idea behind IDR, as, in many cases, there is provision for onward referral to the Minister for Finance as part of the appeals process. 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.

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 in delays in paying benefits or in giving information in the first place.

I suppose that, while acknowledging that there are wide areas of the public service where IDR does not seem to present problems, my overall verdict on the public sector at large would have to be “Could do Better”!

### *Private Sector IDR*

In general, private sector compliance with IDR time-limits has been reasonable, as before. 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. 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.

### *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). The numbers have increased very substantially in the past two years, as the industry has run into greater and greater difficulty. 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 and Family Affairs 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 D/SFA 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 rather less enthusiastic. This may be, in some cases, because the records do not exist at all. In other cases, there seems to be a hope that if they ignore me, I will go away.

I will not go away. Instead, I will bring 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. 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 invites 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. The eventual cost of being found out is often many times what they think they are saving by cheating their employees. In a number of cases the employer has attempted to register the member in the scheme after the date of his death! While I am not suggesting that

deliberate fraud was attempted in these cases, I would advise employers that they are better off not to attempt this sort of thing, and suggestions from their legal advisers that acceptance by the scheme of contributions for these members after their deaths somehow implies that the scheme is going to pay a death benefit are completely misguided. It should be noted that the contributions due in respect of such members are payable to their legal personal representatives on their death, and are due anyway, whether or not the scheme pays the insured mortality benefit. Indeed, this benefit is really very small compensation for the loss of a bread-winner. In one particular case, a number of linked companies were involved and I had to hold an oral hearing and issue a formal determination of fact as to which company was the employer before issuing a determination on the complaint itself. This case has now gone to the High Court.

### *Investment*

Investment is behind a number of cases which we have received in the past year. Again I 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 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 properly 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 recently seen a case in which it was alleged that the trustees did not offer any "cash" option.

In one case I found against trustees and administrators where a transferred-in benefit had been simply invested in the main (defined benefit) scheme fund. There was no evidence that any consideration had been given to the suitability of the investment. However, I did limit compensation a little, because the member himself had arranged for the transfer to be made without seeking clarification of the basis on which it would be accepted. This type of investment "decision", unfortunately, is a theme which recurs from year to year, and I warn trustees that I will find maladministration in any such case unless there is clear evidence that the decision to invest was deliberate and not just the result of laziness or failure to consider the matter properly.

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.

The dilemma faced by trustees in relation to investment is illustrated by one of this year’s concluded cases, which originated some time ago. In this case the member was claiming investment loss because the trustees disinvested his fund when he reached retirement age and he claimed to have lost as a result. In more recent cases, the reverse is true – losses were sustained because the funds (mostly AVCs) were not disinvested in a timely fashion.

Finally, in relation to investment, 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 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.

### *SSIA Incentive*

I mentioned this matter last year, and a few additional cases arose in 2008. 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.

## *Misappropriation*

While, unfortunately, misappropriation of employee contributions is concentrated in the Construction Industry, misappropriation of pension benefits in the world of pensions generally appears to be rare. In 2008 we dealt with the only case since the establishment of my office where an employee has misappropriated the benefits of a scheme member – in this instance, AVCs. In this case an overworked employee used a fund of benefits which should have been administered on retirement, but were not, to pay benefits arising from another claim, for which there was no cover in place due to the administrator’s own error. The employee did not gain personally from the transaction. I instructed the administrator in question to make appropriate restitution and to revise the system of controls to prevent a recurrence of such an event.

## *Co-operation*

In another complaint involving a mistaken interpretation of scheme rules by a complainant, it became apparent that, although every effort had been made by a broker in the case to supply the complainant with the information he required, the employer in its capacity as Trustee was not as active as it should have been in honouring requests made under the terms of the Disclosure of Information Regulations under the Pensions Act.

In this case the scheme member persisted in a completely wrong-headed interpretation of a scheme rule and actually became a nuisance to all involved. While it was understandable that, if a dispute exists between an employer and an employee the employer might feel no particular urge to co-operate with the employee concerned, nevertheless the employer in its capacity as Trustee had clear and specific duties, both in trust law and under the Pensions Act, and the scheme member had clear and specific rights under that Act. No matter what the “nuisance value” might be, no dispute between employer and employee could justify failure to comply in full with the provisions of the Act and the consequent exposure to the risk of criminal prosecution.

## **SECTION 5 – CONCLUSIONS**

Once again, as in every year so far, the number of complaints received by my office has increased considerably. I am pleased to say that, with the stability in staffing and the introduction of our new Case Management System, the rate of closure of files has also improved somewhat in 2008. Nevertheless, I am also aware during the first third of 2009 that the number of complaints received has increased dramatically and is running some 40% higher than in the year under review. During 2008 we bedded in the Case Management System and my belief was that its operation would be extremely beneficial although it was almost inevitable that some modifications would be required before it would be fully operational. In addition, we modified some of operational arrangements. The net effect has been a dramatic increase in our closure rate for the first third of 2009 which is up over 80% on the same period in 2008.

That we have been able to process so many complaints with limited resources is in large measure due to the dedication of my staff, their versatility, their willingness to get the job done and their ability to remain cheerful even when the system is under severe strain. It is a privilege to work with them.

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 people, who have failed to learn from what has gone before. 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.

I have said, over and over again, that a great many complaints could be avoided if a little more time and effort was spent on good communication. Pensions are a complicated subject, but there is no need for the language of communications 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.

## SECTION 6 - FINANCE

The Exchequer, through the Department of Social and Family Affairs funds the Office of the Pensions Ombudsman. The Office acknowledges the ongoing support of the Department of Social and Family Affairs in relation to its Accounts and Payroll obligations.

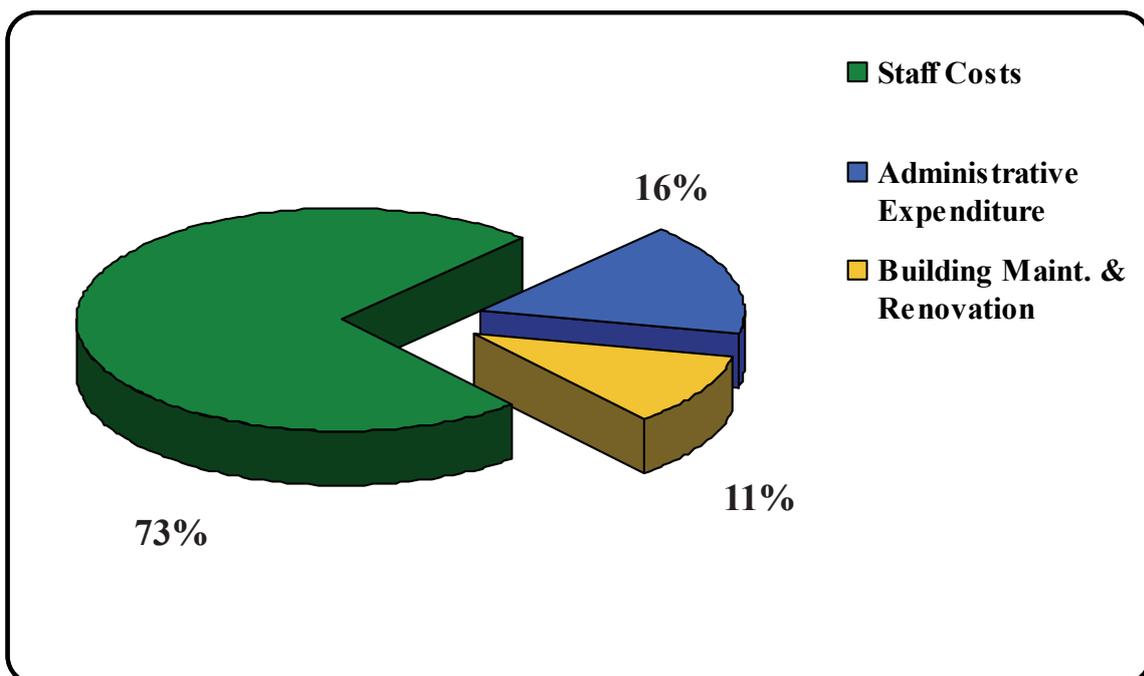
### *Annual Accounts for 2008*

The financial statements for 2008, 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 and Family Affairs for presentation to the Oireachtas.

The costs of running the Office in 2008 are as set out in Table 6.1.

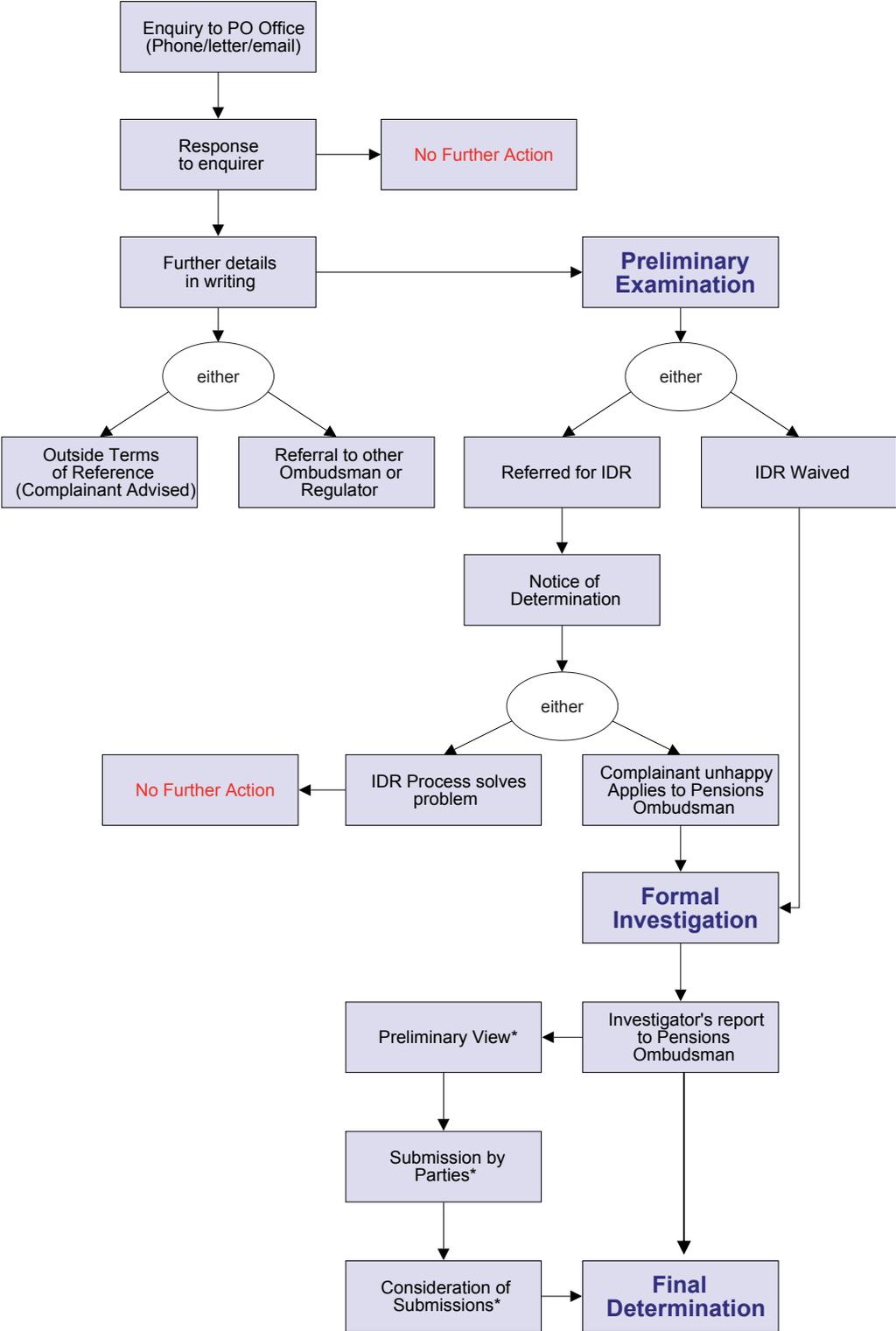
**Table 6.1 - Costs of Running the Office in 2008**

	<b>2008</b>
	<b>€</b>
Staff Costs	769,171
Administrative Expenditure	170,935
Building maintenance and renovation	112,472
<hr/>	
<b>Total Running Costs</b>	<b>1,052,578</b>



# APPENDIX 1

## How a Complaint is Processed



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

## APPENDIX 2

### CASE FLOW SUMMARY AND ANALYSIS OF FILE CLOSURES FOR 2008

<b>Case Flow Summary</b>	<b><u>2008</u></b>
On hand at start of the year	354
Received during the year	727
Re-opened during the year	31
<b>Total for year</b>	<b>1,112</b>
Closed during the year	639
<b>On hand at end of the year</b>	<b>473</b>

#### **Summary of File Closures**

Number of files closed	639
Average weeks to closure	34
Longest weeks to closure	237
Shortest time to closure	1 day

<b>Closures by Decision Reason</b>	<b>Number</b>	<b>% of Total</b>
General Advice Given	146	23%
Successful Mediation	128	20%
OTOR *	116	18%
Complaint not proceeded with	102	16%
Unsuccessful Mediation	43	7%
Final Determination - Complaint Upheld	37	6%
OTOR - Refer to Other		
Ombudsman/Regulator	29	5%
Advised of need for IDR **	22	3%
Final Determination - Complaint Not Upheld	15	2%
Enforcement Finalised	1	0%
<b>TOTAL</b>	<b>639</b>	<b>100%</b>

## Number of Weeks to Closures

Less than 5 weeks	256	41%
5 - 10 weeks	65	10%
10 - 15 weeks	40	6%
15 - 20 weeks	31	5%
20 - 25 weeks	28	4%
25 - 30 weeks	21	3%
30 - 35 weeks	13	2%
35 - 40 weeks	19	3%
40 - 45 weeks	9	1%
45 - 50 weeks	10	2%
Greater than 50 weeks	147	23%
<b>TOTAL</b>	<b>639</b>	<b>100%</b>

\* OTOR – Outside terms of reference of Pensions Ombudsman

\*\* IDR – Internal Disputes Resolution procedure

## APPENDIX 3 – NATURE OF COMPLAINTS 2007 & 2008

Nature of Complaint 2007	Total		Nature of Complaint 2008	Total	
Calculation of benefits	174	34%	Calculation of benefits	123	17%
OTOR	56	11%	General enquiry	109	15%
Membership/ entry conditions	39	8%	Remittance of contributions	99	14%
General enquiry	32	6%	Disclosure of information	62	9%
Transfers	26	5%	Membership/ entry conditions	46	6%
Incorrect / late/ no payment	25	5%	Years of service -cost of / credit for	41	6%
Calculation of years of service	17	3%	Winding up	36	5%
Remittance of contributions	16	3%	Incorrect / late/ no benefit payment	35	5%
Disclosure of information	14	3%	Fund values	34	5%
Failure of scheme to respond	13	3%	Transfers	23	3%
Payment of employer contributions	12	2%	Spouses' and dependants' benefits	16	2%
Early retirement	11	2%	Contribution refunds	14	2%
Preservation of benefits	11	2%	Mis-selling	13	2%
Additional voluntary contributions	9	2%	Preservation of benefits	11	2%
Spouses' and dependants' benefits	9	2%	Post-retirement increases	9	1%
Post-retirement increases	8	2%	Ill health	9	1%
Augmentation/enhancement of benefits	7	1%	Early retirement	8	1%
Mis-selling	7	1%	Additional voluntary contributions	8	1%
Remittance of employee contributions	7	1%	Pensions Adjustment Orders	7	1%
			Incorrect info giving rise to false		
Ill health	5	1%	expectation	7	1%
Multiple complaint	5	1%	Abatement/Supplementary Pension	5	1%
			Augmentation/enhancement of benefits	4	0.6%
Contribution refunds	2	0.4%	ARF/AMRF queries	3	0.4%
Equal Treatment Issue	2	0.4%	Use of surplus	2	0.3%
Incorrect info resulting in financial loss	2	0.4%	Failure of scheme to respond	1	0.1%
Winding up	2	0.4%	Defined Benefit V Defined Contribution	1	0.1%
Defined Benefit V Defined Contribution	1	0.2%	Equal Treatment Issue	1	0.1%
Non-compliance of Final Determination	1	0.2%			
Not yet determined	1	0.2%			
Use of surplus	1	0.2%			
<b>Total</b>	<b>515</b>	<b>100%</b>	<b>Total</b>	<b>727</b>	<b>100%</b>

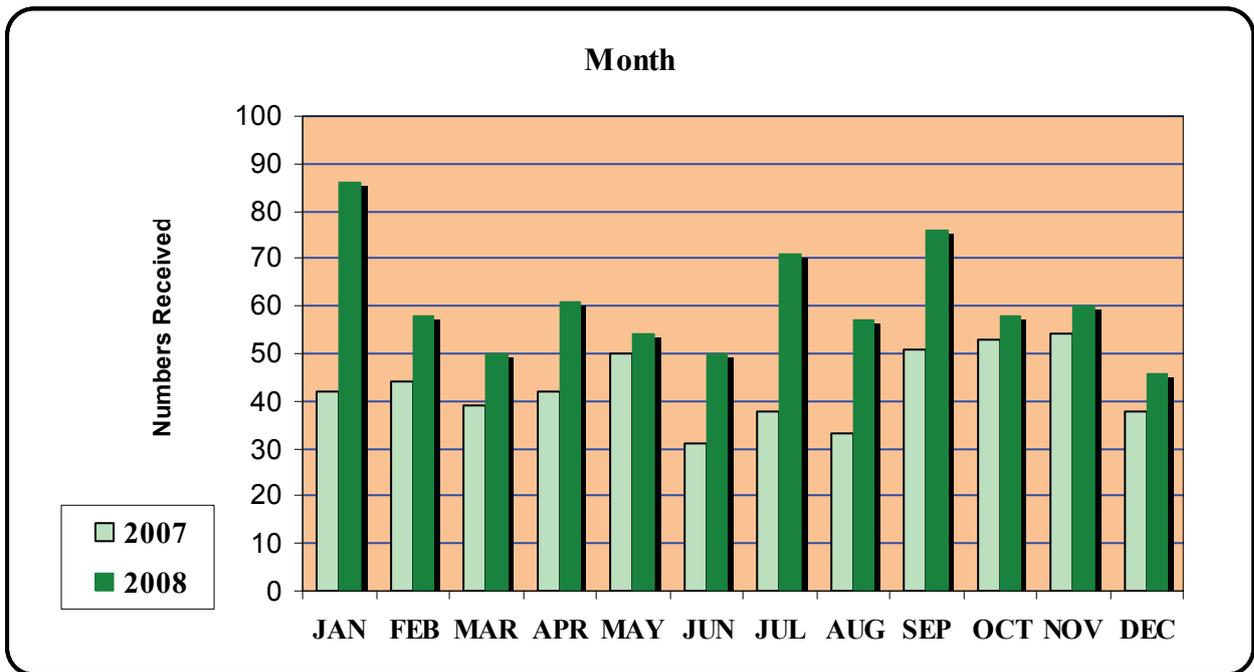
## APPENDIX 4 – BREAKDOWN OF COMPLAINTS 2007 & 2008 BY LOCATION

Location	2007	2008
Carlow	9	4
Cavan	5	8
Clare	9	13
Cork	78	90
Donegal	12	8
Dublin	172	193
Galway	23	23
Kerry	10	18
Kildare	22	32
Kilkenny	9	23
Laois	10	7
Leitrim	1	3
Limerick	21	25
Longford	2	2
Louth	5	18
Mayo	10	10
Meath	12	25
Monaghan	2	4
Offaly	3	7
Roscommon	4	6
Sligo	5	10
Tipperary	6	20
Waterford	11	15
Westmeath	4	8
Wexford	11	19
Wicklow	10	21
Australia	1	1
Belgium	2	2
France	0	1
Germany	1	0
Portugal	1	0
Spain	1	1
United Kingdom	9	15
Not known Registration	34	95
<b>Overall Total</b>	<b>515</b>	<b>727</b>

## APPENDIX 5

### NUMBER OF COMPLAINTS RECEIVED BY MONTH 2007 & 2008

Month	2007	% of Total	2008	% of Total
January	42	8%	86	12%
February	44	9%	58	8%
March	39	8%	50	7%
April	42	8%	61	8%
May	50	10%	54	7%
June	31	6%	50	7%
July	38	7%	71	10%
August	33	6%	57	8%
September	51	10%	76	11%
October	53	10%	58	8%
November	54	11%	60	8%
December	38	7%	46	6%
<b>TOTAL</b>	<b>515</b>	<b>100%</b>	<b>727</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

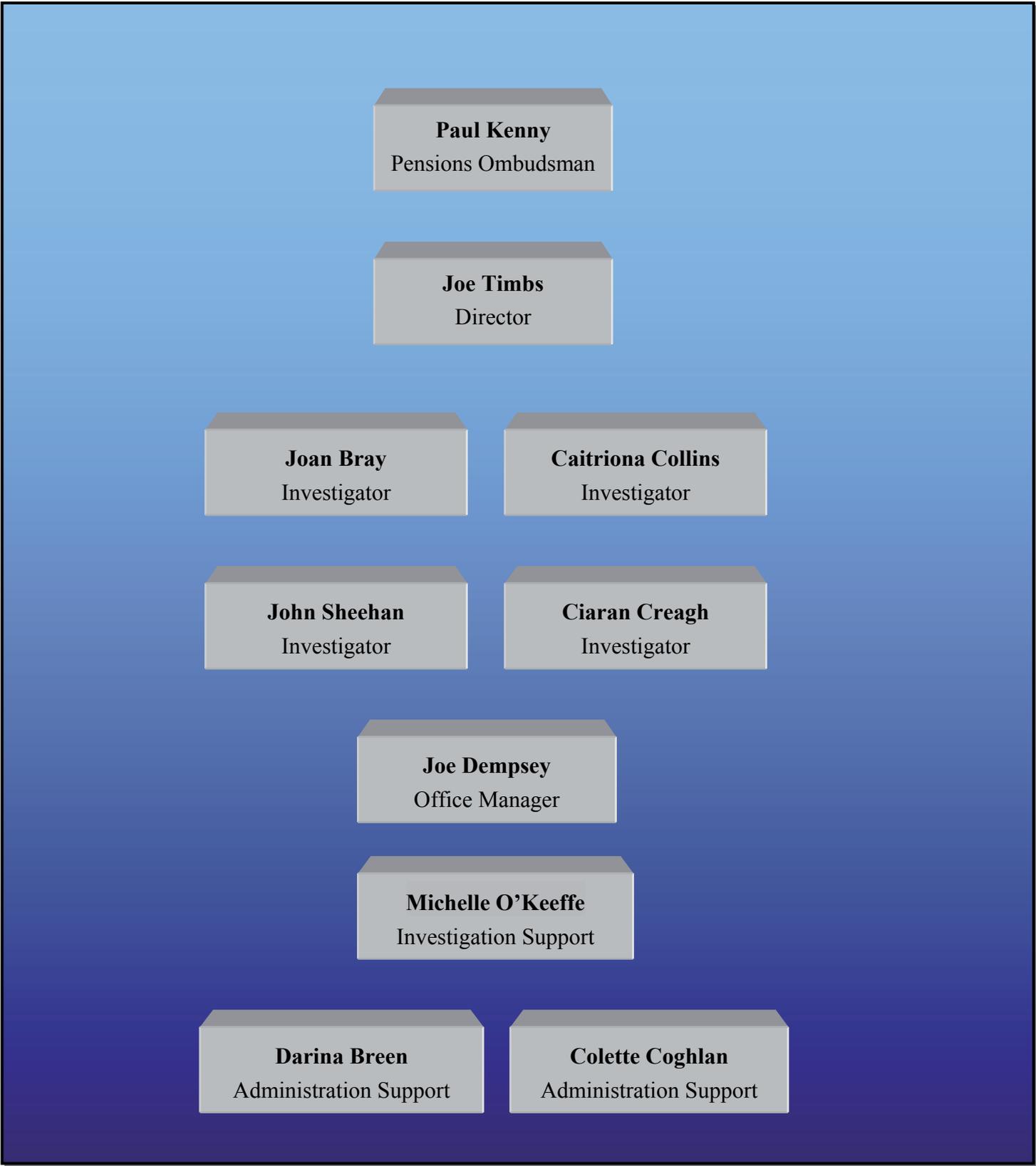
Social Welfare and Pensions Act, 2008

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

## **APPENDIX 7 – PUBLICATIONS OF THE OFFICE**

- What can the Pensions Ombudsman do for you? (revised 2009)
  
- Disputes Resolution Procedures –  
Guidance Notes for Trustees and Administrators
  
- Instructions and Guidance for Respondents
  
- Statement of Strategy 2007 – 2009
  
- Understanding Pensions –  
The Friendly Guide to Pensions (revised 2009)
  
- Annual Reports and Digest of Cases 2003/4 – 2008

**APPENDIX 8 – PENSIONS OMBUDSMAN STAFF AT END 2008**



## APPENDIX 9

# FINANCIAL STATEMENTS FOR YEAR ENDED 31 DECEMBER, 2008

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 2008 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 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**

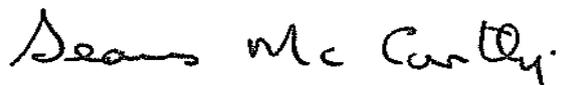
In the exercise of my function as Comptroller and Auditor General, I conducted my audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and by reference to the special considerations which attach to State bodies 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 2008 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 that reads "Seamus Mc Carthy". The signature is written in a cursive style with a large initial 'S'.

**Seamus Mc Carthy**

*For and on behalf of the*

**Comptroller and Auditor General**

**26th June 2009**

## STATEMENT ON INTERNAL FINANCIAL CONTROL

The Office of the Pensions Ombudsman is a small Office in one unit. There is a total staff of 10, including the Ombudsman, a 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 Ombudsman.

The system can only provide reasonable and not absolute assurance that assets are safeguarded, transactions authorised and properly recorded, and that material errors or irregularities are either prevented or would be detected in a timely period.

The staff of this Office and I have taken steps to ensure that there is an effective system of financial control in place, by implementing a system of internal control based on regular information on expenditure being supplied to management, administrative procedures including segregation of duties, and a 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;
- A twice yearly report is provided to the Department which compares estimated and actual expenditure.
- 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 estimated and actual expenditure. This is circulated to all members of staff and is reviewed by myself.
- A segregation of duties exists between the preparation, authorisation and execution of payments.
- 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 2008.



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**Paul Kenny,**  
**Pensions Ombudsman.**

29<sup>th</sup> April, 2009.

## 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 and Family Affairs 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. Further information is contained in Note 6.

### 4. Tangible Fixed Assets

Tangible Fixed Assets are stated at cost or valuation less accumulated depreciation. Depreciation is provided on a straight line basis at rates which are estimated to reduce the asset to 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 2008

	Notes	2008	2007
		€	€
<b>Income</b>			
Oireachtas Grant	1	961,479	1,058,003
Net Deferred Funding for Pensions	6b	29,057	10,500
Transfer to Capital Account	5	(34,796)	25,179
<b>Total Income</b>		<u>955,740</u>	<u>1,093,682</u>
<b>Expenditure</b>			
Staff Costs	2	769,171	649,249
Administration	3	249,204	232,518
Depreciation	4	29,703	26,056
Audit Fee		4,500	4,250
Loss on Disposal of Fixed Asset		-	552
<b>Total Expenditure</b>		<u>1,052,578</u>	<u>912,625</u>
<b>(Deficit)/Surplus for the year</b>		<u><b>(96,838)</b></u>	<u><b>181,057</b></u>
<b>Surplus at 1 January</b>		<b>125,204</b>	<b>(55,853)</b>
<b>Surplus at 31 December</b>		<u><b>28,366</b></u>	<u><b>125,204</b></u>

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



**Paul Kenny**  
Pensions Ombudsman

**Date** 26<sup>th</sup> June, 2009

# STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

for the year ended 31 December 2008

	Notes	2008	2007
		€	€
<b>(Deficit)/Surplus for the year</b>		<u>(96,838)</u>	<u>181,057</u>
Experience losses on pension scheme liabilities	6f	-	16,000
Changes in assumptions underlying present value of pension scheme liabilities		-	-
<b>Actuarial loss on pension liabilities</b>	6e	<u>-</u>	<u>16,000</u>
<b>Adjustment to deferred pension funding</b>	6d	-	(16,000)
<b>Total recognised loss for the year</b>		<u>(96,838)</u>	<u>181,057</u>

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



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

**Date** 26<sup>th</sup> June, 2009

## BALANCE SHEET

### Balance Sheet as at 31 December 2008

	Notes	2008		2007	
		€	€	€	€
<b>Fixed Assets</b>	4		130,079		95,283
<b>Current Assets</b>					
Debtors & Prepayments		48,094		170,504	
Cash in Hand		224		250	
		<u>48,318</u>		<u>170,754</u>	
<b>Current Liabilities</b>					
Creditors				26,970	
Accruals		19,952		18,580	
		<u>19,952</u>		<u>45,550</u>	
<b>Net Current Assets</b>			28,366		125,204
			<u>28,366</u>		<u>125,204</u>
<b>Total Assets less Current Liabilities</b>			<u>158,445</u>		<u>220,487</u>
Deferred Pension Funding	6d	174,000		137,000	
Pension Liability	6e	(174,000)	-	(137,000)	-
<b>Net Assets</b>			<u>158,445</u>		<u>220,487</u>
<b>Financed By</b>					
Capital Account	5		130,079		95,283
Income and Expenditure Account			28,366		125,204
			<u>28,366</u>		<u>125,204</u>
			<u>158,445</u>		<u>220,487</u>

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



**Paul Kenny**  
Pensions Ombudsman

Date 26<sup>th</sup> June, 2009

## NOTES TO THE FINANCIAL STATEMENTS

### 1 Oireachtas Grant

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

### 2 Staff Costs

These comprise:

		<b>2008</b>	<b>2007</b>
		€	€
Wages & Salaries		728,598	631,530
Travel		11,516	7,219
Pension Costs	6c	29,057	10,500
<b>Total</b>		<b><u>769,171</u></b>	<b><u>649,249</u></b>

The number of staff employed by the Office in 2008 was 10, including the Ombudsman (9 in 2007).

		<b>2008</b>	<b>2007</b>
		€	€
<b>3 Administration Costs</b>			
General Expenses		54,992	59,987
Postage and Telecommunications		22,698	13,198
Printing & Stationery		21,737	38,322
IT/Office Machinery (Non-Asset)		1,882	28,677
Maintenance		112,472	53,387
Advertising/Seminars		35,423	38,947
		<b><u>249,204</u></b>	<b><u>232,518</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>			
At 1 January 2008	53,856	152,844	206,700
Additions	64,499	-	64,499
Disposals	(10,160)	-	(10,160)
<b>At 31 December 2008</b>	<b>108,195</b>	<b>152,844</b>	<b>261,039</b>
<b>Depreciation</b>			
At 1 January 2008	(52,339)	(59,078)	(111,417)
Depreciation on Disposal	10,160	-	10,160
Charge for the year	(14,419)	(15,284)	(29,703)
<b>At 31 December 2008</b>	<b>(56,598)</b>	<b>(74,362)</b>	<b>(130,960)</b>
<b>Net Book Value</b>			
At 01 January 2008	<b>1,517</b>	<b>93,766</b>	<b>95,283</b>
<b>At 31 December 2008</b>	<b>51,597</b>	<b>78,482</b>	<b>130,079</b>

#### 5 Capital Account

	€	€
At 1 January 2008		95,283
Purchase of Fixed Assets	64,499	
Amortisation in line with depreciation	<u>(29,703)</u>	
Transfer from Income & Expenditure Account		34,796
<b>At 31 December 2008</b>		<b><u>130,079</u></b>

## 6 Pensions

The Office of the Pensions Ombudsman operates a contributory defined benefits scheme for the Ombudsman. No separate fund is maintained. The results set out below are based on an actuarial valuation of the pension liabilities carried out in 2008.

This valuation was carried out by a qualified independent actuary for the purposes of the accounting standard, Financial Reporting Standard No 17 - Retirement Benefits (FRS17).

The main financial assumptions used

a) were:

	at 31/12/08
Discount rate	5.5%
Rate of increase in salaries	4.0%
Rate of increase in pensions	4.0%
Inflation	2.0%

b) Net deferred funding for pensions in the year:

	2008 €	2007 €
Current service cost	29,000	25,000
Interest on pension scheme liabilities	8,000	5,000
Employee contributions	(7,943)	(19,500)
Funds recoverable in respect of current year pension costs	29,057	10,500

c) Analysis of total pension costs charged to expenditure:

	2008 €	2007 €
Current service costs	29,000	25,000
Interest on pension scheme liabilities	8,000	5,000
Employee contributions	(7,943)	(19,500)
	<b>29,057</b>	<b>10,500</b>

- d) Deferred funding assets for pensions  
The deferred funding asset for pensions at 31st December 2008 amounted to €174,000 (2007 - €137,000).

- e) Movement in net pension liability during the financial year:

	<b>2008</b>	<b>2007</b>
	<b>€</b>	<b>€</b>
Net pension liability at 1st Jan	137,000	91,000
Current service cost	29,000	25,000
Interest cost	8,000	5,000
Actuarial loss	0	16,000
Pensions paid in the year	0	0
Net pension liability at 31st Dec	<b>174,000</b>	<b>137,000</b>

- f) History of Experience Losses

	<b>2008</b>	<b>2007</b>
Experience losses on scheme liabilities	€0	€16,000
Percentage of the present value of scheme liabilities	0%	12%

## 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 (2008 - €200,000). There is no charge to the Office of the Pensions Ombudsman in respect of this accommodation.