



An tOmbudsman Pinsean
Pensions Ombudsman

Office of the Pensions Ombudsman

Annual Report 2014

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Ms. Joan Burton,
Tánaiste and Minister for Social Protection,
Aras Mhic Dhiarmada,
Store Street, Dublin 1

To the Minister for Social Protection

A Aire,

26th June 2015

I am pleased to present my Annual Report and Accounts for the 2014 year. In doing so, I would like to record my thanks and appreciation to the Department of Social Protection and to you personally for the ongoing support given to the Office of the Pensions Ombudsman.

2014 proved to be a very challenging year for the Office as we lost four further staff who were not replaced. This has had a huge impact on our small workforce, whose commitment, hard work and resilience I would like to formally acknowledge and commend.

The proposed amalgamation of this Office with the Financial Services Ombudsman's Bureau did not take place in the 2014 year, although additional work was generated in the planning, consideration and preparation necessary to support this future amalgamation.

The Annual Report 2014 I am presenting to you, while providing an over-view of the work and experience of the Office, and the associated costs, is a somewhat less elaborate edition than heretofore, in light of the afore-mentioned factors.

Included in this Report are some examples of cases we handled during the 2014 year. I hope that these will prove helpful to those involved in pension scheme administration and complaint-handling as well as to potential complainants and to their advisors.

Since the inception of this Office, my staff and I have worked diligently to assist the public with their pension-related complaints and disputes. We take cognisance of the fact that many of the people who contact us are approaching retirement, which can be a very worrying and unsettling time for them. We have always tried to deal as informally as we can with complaint issues and continue to conclude more cases by providing information and guidance to complainants than by issuing formal legally-binding determinations.

Beir beannacht,

A handwritten signature in black ink, appearing to read 'Paul Kenny', written over a horizontal line that extends across the width of the page.

Paul Kenny

SECTION 1- INTRODUCTION

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

I have set out below some of the problem issues that came before me in the 2014 year.

Scheme Wind-ups and Reductions imposed under Section 50

In a continuing trend, 2014 was another high profile year for pensions – with the difficulties experienced by a number of pension scheme being highlighted in the media and in front of the Courts:- Waterford Crystal, Irish Airlines/Aer Lingus, Element 6, Omega-Pharma, to name a few. Underlying each of these high profile cases was the insolvency of a defined benefit scheme.

Enquiries relating to scheme wind-ups and planned benefit reductions under the Section 50 provisions of the Pensions Act 1990 continue to be submitted to my Office and can cover such topics as how benefits are calculated, the disclosure of information about the changes being implemented, how benefits might be transferred or put into payment, partial settlements and delays experienced in the winding-up process. Understandably, the winding up of a long established pension scheme, particularly if it is in a deficit position, or the introduction of benefit reductions under Section 50, are matters of grave concern to the members, particularly those closest to retirement.

A number of the queries to the Office reveal that members do not always receive enough clear and timely information on the winding up process, despite the requirements of the Disclosure of Information Regulations under the Pensions Act. Even where the regulations are complied with, members have been known to complain that part of their benefits have been “withheld” by the trustees when a lengthy winding up process has meant that the trustees have tried to behave as reasonably as possible in making an interim payment before the wind up can be finalised.

I can acknowledge that, in the communications they issue, the scheme authorities must be precise in the information they give and comply with the requirements under the Disclosure of Information Regulations. This does not always result in an understandable explanation of the impact that the scheme wind-up or benefit reduction under the Section 50 provision will have on the member.

Too often, the communications from administrators concentrate on the “what”, and don’t give enough information on the “why”.

Many members relay their concerns regarding such communications to my Office. I would ask those administering scheme wind-ups or implementing reductions under the Section 50 provisions to look to the standard of their communication with members, to provide as much assistance as they reasonably can and to allow members as much time as possible to reach an informed decision in the circumstances.

Application of USC to arrears of pension

An area of particular concern is the application of the Universal Social Charge to arrears of pension payments. There have been a number of cases referred to my Office where a pension has been underpaid, for one reason or another, - sometimes over a very considerable period. When the problem giving rise to the underpayment is identified, arrears of pension payment become due. Unfortunately, the legislation governing the Universal Social Charge (the USC) is framed in such a way that this charge becomes payable when the money is paid over. This differs from the treatment of these arrears for income tax purposes, as the Revenue Commissioners treat the arrears payments for tax purposes as being due in respect of the years in which the underpayment arose. Consequently, pensioners who are now entitled to arrears of pension are subject to the imposition of the USC - which charge didn’t exist at the time when a considerable proportion of the payment was actually due.

While it is appreciated that legislation was framed deliberately in this way to prevent avoidance of USC by people who were in a position to decide on the due dates of such things as bonus payments, it is grossly unfair that pensioners should be penalised on the double for the mistakes of others. Not only have they had to endure underpayment of their benefits for a number of years, but are then penalised further by the imposition of the USC where it should not be payable.

Pensions, Separation and Divorce

Over the years, the Annual Reports of this Office have drawn attention to problems surrounding Pension Adjustment Orders made when a Decree of Divorce or Separation is being sought under the Family Law Act. Most of the problems that we encountered were the result of badly drafted Orders or Orders which were not properly served.

However, some recent complaints have drawn our attention to a different phenomenon – the absence of Pension Adjustment Orders. Most of the cases referred to us in this area arise in the pension schemes of Public Sector bodies.

In the Public Service, the main pension scheme tends to provide benefits at the date of retirement and a lump sum death benefit payable in the event of death in service. A separate scheme, a Spouses' and Children's Scheme, caters for pensions payable to spouses and/or children in the event of the member's death, either in service or after retirement.

The individual member's pension, plus any pension payable on death after retirement, are "retirement benefits" under the terms of the Family Law Act. Death in service lump sums and death in service pensions are "contingent" benefits. Separate orders are needed to cater for both types of benefit and further additional orders may be needed if the member is also making Additional Voluntary Contributions (AVCs) to a separate scheme.

The Spouses' and Children's arrangements in the Public Service can be quite complicated and differences exist between the provisions of the original and the revised schemes. My Office has been made aware of many instances of individuals who, when offered the opportunity to join the revised Spouses' and Children's Scheme, failed to take that opportunity. The critical difference between the original schemes and the more modern revised schemes is that the former do not cater for a spouse who was not married to the member at the date of retirement. So, under the original schemes if a member retires and is then divorced and remarried, the second spouse cannot benefit. Furthermore, if there was no Pension Adjustment Order made in favour of the original spouse at the time of the divorce, the original spouse cannot benefit either. In the case of separation, the original spouse is the only possible beneficiary, as there is no provision for diverting these benefits to other dependants. It is vital that members (a) are completely clear about the exact provisions of the scheme of which they are members and (b) get expert advice on the interaction of family law and pensions before proceeding to seek a decree of divorce or a separation order.

Access to ARF options

We have had a number of complaints about denial of access to the option to invest money in an Approved Retirement Fund (ARF), notably in cases where the money to be invested originated in a Defined Benefit (DB) Scheme. The Authorities have set their face against the proceeds of DB Schemes being available for investment in ARFs, although the proceeds of Defined Contribution (DC) Schemes, and all Additional Voluntary Contributions (AVCs) can access these arrangements.

I accept that the policy makers probably have their own reasons for wishing to "preserve" the integrity of DB Schemes. However, very large numbers of these schemes have been wound up in the past few years, resulting in the purchase of "buyout" bonds, also known as Personal Retirement Bonds.

Where the money emerging from a Personal Retirement Bond has originated in a DB Scheme, the owner is not allowed to invest the proceeds in an ARF – even though the Personal Retirement Bond itself is a DC arrangement.

Various reasons have been advanced as to why access to ARFs should not be allowed. An answer to a Parliamentary Question in 2014 alluded to an original Revenue requirement of “correspondence” between the scheme from which the transfer payment was made, and the bond into which money was to be paid. This glosses over the fact that it has not been possible for more than 25 years to buy a bond which would replicate the conditions of the original scheme and all such bonds are now purely and simply DC arrangements, with all the attendant risks for the member. The member is quite simply not entitled to a defined benefit anymore and I fail to see the logic of treating Personal Retirement Bonds as though they were DB Schemes for this purpose.

The plain fact is that the majority of members who wind up owning buyout bonds did not actually volunteer to be where they are. They have had bonds purchased by the trustees of their occupational pension schemes when these schemes were wound up. Obstacles to transfers to Personal Retirement Savings accounts (PRSAs) have meant that for many people a buyout bond is the only available option. Even if there are valid policy considerations which make the authorities reluctant to sanction direct transfers from DB schemes to ARFs, I see no good reason for forcing the holders of Personal Retirement Bonds, which are now DC arrangements to behave as if they still had a DB entitlement. I have made representations on this topic. It would be perfectly possible to restrict access to ARFs by members who were active members of DB schemes before retirement, while, at the same time, allowing access to those who are involuntary holders of buyout bonds. Another exception I would make would be former spouses who are beneficiaries of Pension Adjustment Orders and who transferred to buyout bonds in order to make a “clean break” with the pension schemes of their former partners.

Transfers

The difficulty experienced in transferring benefits between schemes continues to be raised as an issue with my Office. Transfers outside the jurisdiction have been the subject of a number of complaints. In this instance, I am referring to genuine transfer requests, as opposed to requests for “pensions liberation” mentioned previously in our Annual Reports. In particular, the virtual impossibility of transferring benefits to Australia, which is now home to quite a number of Irish emigrants, has come up. Restrictions placed by the Irish Revenue on the treatment of transferred benefits has meant that, in practice, it is impossible to get any provider in Australia to accept transfer funds from Ireland because they cannot replicate these restrictions, under Australian Law.

Restrictions on transfers between Personal Pensions (or Retirement Annuity Contracts (RAC) as they are properly known) and Occupational Pension Schemes and transfers to Personal Retirement Savings Accounts (PRSAs) have also caused difficulties for people, as have delays in making transfer payments.

Fund Values

We continue to receive complaints about investment issues relating to Defined Contribution Schemes, Additional Voluntary Contribution (AVC) Schemes and Personal Retirement Savings Accounts (PRSAs). I have commented previously to the effect that, while the Trustees must honour the obligations placed on them by trust law and the Pensions Acts, scheme members too have a responsibility in relation to their pension investments. While the members can look to the Trustees or investment advisers for guidance in the matter of pension investments, they have a responsibility to familiarise themselves with, and understand the nature of their own pension investments and to monitor their progress. I acknowledge that over the past number of years there has been progress made in the areas of encouraging better member engagement and providing clearer communications. I would hope that these advances will improve member participation in and understanding of their pension schemes.

SECTION 2 – 2014 Caseload Summary and Statistics

My Office received 1,323 new cases during 2014.

While this represented a 30% reduction on the 2013 figures it brought us back to the more manageable level of cases submitted in the 2010 year. This would have produced an easing of the pressure the staff have been working under for the last few years, had we not lost a further 4 experienced personnel during 2014. The Office had 6 vacancies that remained unfilled at the end of 2014.

Furthermore, during 2014, the Office had six Appeal cases before the High Court and a considerable amount of time has to be expended in preparing for and defending these Appeal cases.

It is not possible to say definitively why the number of complaints submitted to my Office has reduced. I would imagine that the recovery on investment markets and the resultant improvement reflected in pension fund values has played a part, as have the settlement agreements reached under some of the larger pension schemes that were in difficulty, such as the Waterford Crystal and the Irish Airlines Schemes.

I am of the view that improved complaint handling by some of the parties responsible for the management of pension schemes and a better understanding by scheme members of the extent of my remit are also factors in the reduction in the number of cases that evolve into complaints to be handled by my Office. The limit of my remit and the methodology I employ in determining financial loss and maladministration have become known to practitioners in the pension field, from contact with my Office, publications in industry journals, talks given and determinations handed down. Many practitioners choose to discuss potential complaint issues with my Office before embarking on the complaint handling process – the Internal Dispute Resolution (IDR) procedure. Scheme members contact my office to outline the difficulties they have experienced and to query if the resolution they seek falls within my remit. We are happy to accept such approaches and give what guidance we can to those making the enquiries. I believe that having a better understanding of how I might evaluate and determine a case has had a positive impact on how the parties approach and try to resolve pension issues and has resulting in the referral of fewer cases to my Office.

Improved complaint handling processes are not evident across all sectors unfortunately – with complaints continuing to be made to my Office about the delay in the production of IDR Determinations under public service schemes.

Of the 1,323 new cases submitted in 2014, 281 resulted in detailed complaint files being set up, with the remainder being dealt with and completed on review, within a short period of time.

We started the 2014 year with 222 complaint cases on hand. During 2014, we re-opened 42 earlier cases and received 1,323 new cases to give a total caseload of 1,587 for the 2014 year. Having completed 1,439 cases during 2014, we ended the year with 148 complaint cases on hand. This represents a 33% reduction in the number of cases on hand at the 2014 year end, compared to the 2013 one.

Of the 1,439 cases completed in 2014, 397 of these were detailed complaint cases.

Figure 2.1 below outlines the position in relation to all cases for the 2014 year.

Figure 2.1 - 2014 Caseload Summary

Year	New Cases Received	Cases Carried Forward	Cases Re-opened	Total 2014 caseload	Cases Completed	Cases on hand at year-end
2014	1,323	222	42	1,587	1,439	148

Analysis of Detailed Complaint Cases in 2014

The statistics quoted in this section of the report refer to the detailed complaint cases handled by my Office in the 2014 year.

As stated, we started the 2014 year with 222 complaint cases on hand. During 2014, we re-opened 42 earlier cases, and set up 281 new detailed complaint cases, to give us a caseload of 545 detailed complaint cases. Having closed 397 of these during 2014, we finished the year with 148 detailed complaint cases on hand.

Figure 2.2 – Nature of Complaint Issues

Nature of Complaint Issues	2013	2014
Abatement/Supplementary Pension	1	0
Additional voluntary contributions	7	6
ARF/AMRF queries	12	1
Buy out Bonds	22	1
Calculation of benefits	138	84
Contribution refunds	2	4
Defined Benefit V Defined Contribution	0	0
Disclosure of information	19	25
Early retirement	20	8
Equal Treatment Issue	0	3
Fund values	21	16
General enquiry	31	8
Ill health	17	9
Incorrect / late/ no benefit payment	33	28
Incorrect info giving rise to false expectation	2	1
Membership/ entry conditions	22	12
Mis-selling	3	0
Multiple Complaint	0	0
Pension Liberation	7	2
Pensions Adjustment Orders	3	2
Post-retirement increases	3	1
Preservation of benefits	4	6
Remittance of contributions	23	11
Spouses' and dependants' benefits	14	11
Transfers	24	16
Winding up	18	14
Years of service -cost of / credit for	17	12
Totals	463	281

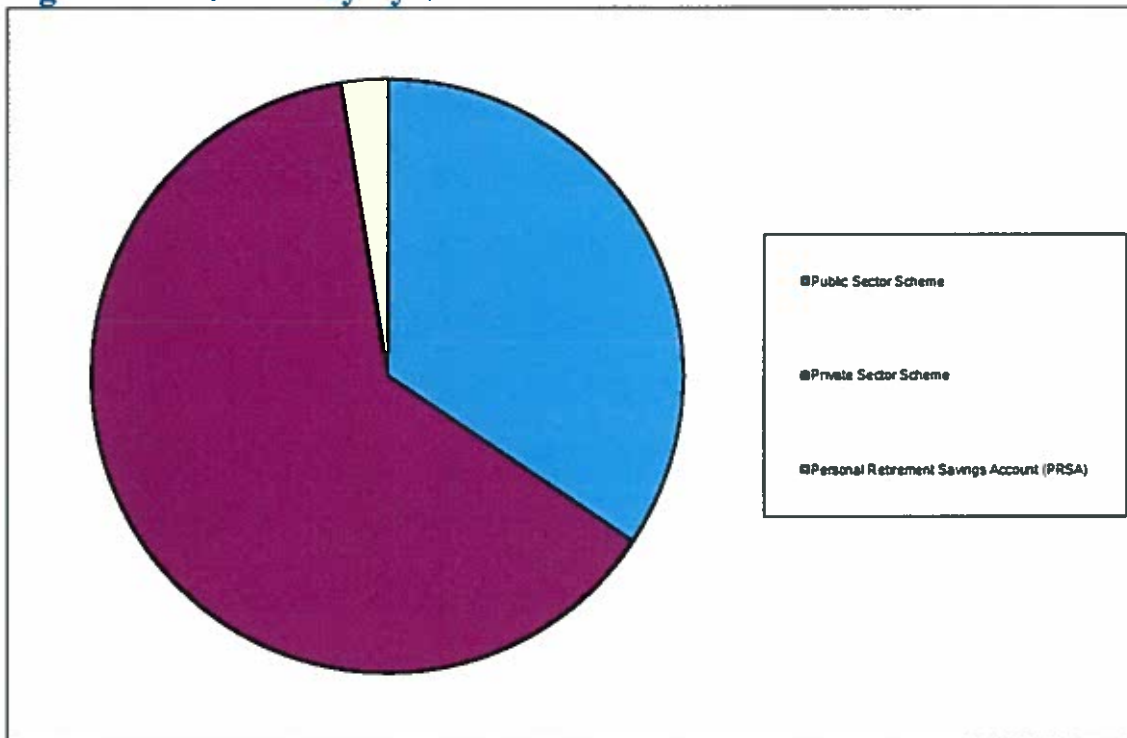
Figure 2.3 –Complaint Completions by reason in 2014

Completions by Reason	2013	2014
Advised of need for IDR	29	14
Appeal - Determination Upheld	3	1
Appeal - Determination Not Upheld	3	1
Complaint not proceeded with	56	51
Enforcement completed	1	1
Enforcement not for OPO	0	1
Final Determination - Complaint Not Upheld	30	11
Final Determination - Complaint Upheld	37	16
Investigation not possible due to legal action	4	2
Obstruction Case Completed	5	0
OTOR**	30	14
OTOR - Refer to Other Ombudsman/Regulator	45	23
Report and Guidance Given	330	209
Successful Mediation	74	50
Unsuccessful Mediation	8	3
Total	655	397

** OTOR = Outside Terms of Reference

As has been our practice over the last number of years, we now close the majority of cases without the need to issue a legally binding determination. As the above table demonstrates, Final Determinations were issued in less than 7% of the cases completed by my Office in 2014. We have found that adopting a less formal mediation or reporting/guidance approach has enabled us to clarify complaint issues, offer an independent adjudication and move matters towards resolution in a less confrontational and speedier manner.

Figure 2.4 – Summary by Sector of new cases in 2014



Within my remit I can examine complaints and disputes arising under both Private and Public Sector Pension Schemes, although I am not authorised to examine complaints or disputes relating to State Benefits payable by the Department of Social Protection, which has its own Appeals Office.

In the early years of the Pensions Ombudsman’s Office, 2003 -2005, the ratio between Private and Public Sector Pension Scheme complaints submitted to us stood at circa 3:2. This ratio has shifted somewhat over time and in the 2014 year, 66% of the detailed new cases submitted to my Office related to Private Sectors Schemes and PRSAs, and 34% related to Public Sector Schemes.

Figure 2.5– Gender Divide

Gender	2013		2014	
	Number	Percent	Number	Percent
Not specified	3	1%	0	0%
Female	149	32%	106	38%
Male	311	67%	175	62%
	463		281	

Likewise the Gender Divide has altered over the years this Office has been in operation. In our initial 2003/04 year approximately 80% of complaints received by us were from males and 20% from females. I can report that in the 2014 year, 62% of new complaints received were from males and 38% were from females.

SECTION 3 – Examples of Cases dealt with in 2014

Case 1 – Refund of Public Service Pension Contributions

In the late 1990s the ESB introduced a voluntary redundancy scheme, a feature of which was that exiting employees who availed of this redundancy scheme continued to accrue service under the ESB pension scheme until age 60. Vincent had worked for the ESB for many years before his application for the voluntary redundancy package was accepted by the ESB.

Having left the ESB Vincent obtained, in 2001, a public service employment in the education sector. He was approximately 50 years of age and his appointment was on a part-time basis. At the time of this appointment, part-time public servants were excluded from membership of the public service pension scheme so Vincent did not become a member of the scheme when his employment commenced.

In 2004, following changes to the legislation regarding part-time workers, Vincent was compulsorily admitted to the public service pension scheme and his membership was back-dated to the commencement of his appointment in 2001.

The Public Service Transfer Network (PSTN) enables an employee, who transfers from one participating public sector employer to another, to choose to transfer the earlier service and so be given the full pension credit by the new employer. A feature of the public service pension scheme is that an employee cannot accrue service with an employer if the employee can transfer service under the PSTN in respect of the same period of employment.

Although it operates very much like a typical private sector scheme, the ESB pension scheme is a member of the PSTN and service accrued under the ESB scheme can be transferred within the public service and aggregated for the purpose of calculating benefits under the public service scheme.

When Vincent retired from the education sector appointment his employer would not give any benefit in respect of his service before 60 years of age (approximately 10 years of part-time service) because Vincent was still accruing service in the ESB scheme until age 60 and the ESB service that he continued to accrue was transferable to the public service scheme.

After the employment legislation for the protection of part-time workers was introduced, the Department of Finance issued guidelines in relation to the admission of existing part-time public service employees to the public service pension scheme. The guidelines indicated that when an existing part-time employee is admitted to the pension scheme the employee should not be placed in a less favourable financial position.

Vincent's admission to the scheme placed him in a less favourable position because membership of the scheme required him to pay a contribution for which he would receive no benefit.

When the Office of the Pensions Ombudsman drew Vincent's employer's attention to the Department of Finance guidelines and suggested that the guidelines had not been followed in his case the employer refunded Vincent's contributions to the public service scheme.

Case 2 - Pension Rate Increase

There are a number of ways that pension scheme benefits can be made payable to a scheme member on retirement. One of the options that is available to the scheme administrators is the purchase of an annuity on behalf of the scheme member.

An annuity is a series of payments made at stated intervals until a particular event, usually the death of the person receiving the annuity, occurs. It is normally secured by the payment of a single premium to an insurance company. It can be designed to be paid only to the individual annuitant for life, or may continue to be paid to a surviving dependant on the death of the annuitant.

When an annuity is purchased it can include provision for a periodic increase in the rate of pension. The increase can be flat rate, for example 2% per year, or can be index linked, for example linked to the Consumer Price Index or annual rate of inflation.

Susan was the member of a defined benefit pension scheme and when she retired the trustees of her pension scheme purchased an annuity to provide her pension. One of the rules of Susan's scheme specified that a pension in payment should be increased annually in line with the Consumer Price Index (CPI) and Susan's annuity contained a clause providing for such an increase.

For several years Susan's pension was increased at the appropriate rate. However, in 2009 the CPI was negative and no increase was applied to Susan's pension. In 2010 the CPI was also negative and, again, no increase was applied to Susan's pension. Neither the scheme rules nor the annuity had any provision for a decrease in the event that the CPI was negative.

In 2011 the CPI became positive again but the provider of Susan's annuity failed to award her any increase. The explanation offered by the annuity provider was that, even though the CPI had increased in 2011, the cumulative effect of all the increases she had received since her pension commenced was more than the cumulative effect of the increase in CPI over the same period.

An examination of the actual annuity document revealed that there was no reference to cumulative rates of CPI. The clause dealing with increases simply stated that the pension should increase by the percentage increase in the CPI over the previous twelve month period and this reflected provisions of the scheme rules in relation to pension increases. I determined that it was inappropriate for the annuity provider not to increase Susan's pension in line with the change in CPI and I directed the provider to apply the increase in CPI for 2011 and subsequent years to Susan's pension.

Case 3 – Absence of a Pensions Adjustment Order

Mary and her husband formally separated and drew up a maintenance agreement some years before he retired from public service employment. Following his retirement, the couple divorced and while a Maintenance Order attached to the Divorce Decree, no Pension Adjustment Orders were put into place.

Some years later the husband died and Mary sought payment of the Spouse's Pension she understood attached to his pension.

Mary was advised that, as a consequence of the divorce, she was no longer the legal spouse and thereby did not qualify as the beneficiary of the Spouse's Pension.

On examining this case we ascertained that to qualify for a Spouse's Pension following her former husband's death in retirement Mary would have needed to have in place a Pensions Adjustment Order, granting her entitlement to that pension. Such an Order could be sought at any time after the divorce decree is granted, but only while the scheme member is alive. As Mary's former husband had died, she could not retrospectively be granted a Pensions Adjustment Order.

In the unfortunate circumstances, the Office of the Pensions Ombudsman was unable to award any redress or direct that any benefit be paid to Mary. To make a Spouse's Pension payable to Mary would require a change to the scheme rules and involve an overriding of legislation under the Family Law Acts, neither of which we have the authority to do.

Case 4 – Additional Voluntary Contributions

It is often the case that the returns on a scheme member's pension fund do not reflect the returns of the underlying fund as publicised by the scheme provider. There can be a number of reasons for this, the most common being that the individual member's fund can have charges, fees, expenses and commission costs imposed that reduce the overall return.

Michelle was a deferred member of a defined benefit scheme. As well as her entitlement to main scheme benefits she had made a significant amount of Additional Voluntary Contributions (AVCs). At the time of her retirement she received a quotation regarding the value of her AVCs. She was unhappy with the level of return specified in the quotation and she made enquiries regarding the value with the AVC provider.

The initial response from the provider was that the low level of return could be accounted for by fees and expenses. Michelle was unhappy with the response from the provider because it indicated excessive levels of fees and expenses.

Michelle continued to correspond with her AVC provider over a number of years in an effort to establish why the level of her AVCs was so low. Eventually the provider discovered that Michelle had been furnished with benefit statements which significantly overstated her level of contribution and the low level of return could be accounted for by the actual level of her contributions.

Having uncovered the cause of the low level of Michelle's fund her AVC provider was prepared to pay her AVC benefit with effect from a date approximately two years after the date of Michelle's retirement. Michelle wanted her benefit backdated to the date of her retirement.

The investigation by my Office discovered that the AVC provider was completely at fault for providing the wrong information on Michelle's benefit statements and that Michelle had provided enough information in her initial communication with the provider at the time of her retirement for the provider to establish the root of the problem. I made a direction that the provider should backdate Michelle's AVC benefit to the date of her retirement.

Case 5 – Impact of break in Public Service Employment

James was a serving member of An Garda Síochána, and a member of their pension scheme when he took up duty with the United Nations (UN) in 1993. This was not a recognised transfer of employment, nor was he given a leave of absence to take up the UN duty. James had to resign from An Garda Síochána to take up the post with the UN in 1993.

On completing the UN tour of duty in 2006, James re-joined An Garda Siochana and was allowed to reckon the UN service under the pension scheme, subject to the payment of the appropriate contributions. This did not mean that he was considered as never having left the service. Because of the distinct break in his service, on re-joining he was classified as a “new entrant” to both the employment and the pension scheme.

Ahead of his 50th birthday, James applied to retire from the Garda service and pension scheme. He was advised that, under the revised terms that applied when he re-joined service in 2006, his normal retirement date was no longer his 50th birthday, but was his 55th birthday.

The revised pension terms referred to are set out under the Public Service Superannuation (Miscellaneous Provisions) Act 2004, which states:- *“A person who is appointed as a new entrant to the Garda Siochana on or after 1 April 2004 shall cease to be a member (a) on attaining the age of 55 years”*

Exclusions applied under the Act to Gardai who were on leave of absence. However, James had not been granted a leave of absence to take up the UN duty:- he had to resign from An Garda Siochana in 1993 to join the UN. On re-joining the Gardai in 2006 James was classified as a new entrant and the provisions of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 applied to him.

We found that the relevant scheme rules and regulations had been properly applied to James and that, as a consequence of his break in service, he was not entitled to have age 50 designated as his normal retiring date under An Garda Siochana Pension Scheme.

Case 6 – Late and possible Non-Remittance of pension scheme contributions

Greg contacted my Office expressing concern about the effect on his pension fund of the late and possible non-payment of some pension scheme contributions. In 2013 he received a copy of the pension scheme’s Annual Report for the year ended 31st December 2012, which highlighted the fact that several of the monthly contributions due in that year had not been passed over for investment within the statutory timeframes set out under the Pensions Act 1990. The report did not list any contribution paid in respect of the month of July 2012 and Greg understood that this month’s contribution remained unpaid to the scheme.

Before coming to my Office, Greg had referred the matter to the Trustees and received a determination from them under the Internal Dispute Resolution (IDR) procedure.

This stated that they had reviewed the payment pattern of contributions in Greg's respect since he joined the scheme and found that he had experienced a loss of circa €135, due to delayed payments. They advised that they had formally requested the employer to settle the shortfall. The Trustees did not comment on the matter of the possible missing contribution for July 2012.

When the settlement was not forthcoming from the employer and Greg received no further advices regarding the July 2012 contribution he referred the matter to my Office.

On examining his submission and liaising with the Trustees and the employer we were able to explain to Greg that:-

- (a) The contributions listed in the 2012 Annual Report were those that had not been paid within the statutory timeframe. The July 2012 contribution was not listed as it had been paid in time.
- (b) Following the discovery of the shortfall in Greg's respect the employer had commissioned a scheme-wide review to assess the impact the delayed contribution payment had on all scheme members.
- (c) While a commitment was received from the employer to settle any shortfalls that came to light, that settlement would have to await the outcome of that review.

I am pleased to report that the review was completed shortly thereafter and Greg's scheme shortfall and those of the other scheme members were settled.

OFFICE OF THE PENSIONS OMBUDSMAN ANNUAL REPORT 2014

SECTION 4

FINANCIAL ACCOUNTS FOR THE YEAR ENDING 31ST DECEMBER 2014

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Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas

Office of the Pensions Ombudsman

I have audited the financial statements of the Office of the Pensions Ombudsman for the year ended 31 December 2014 under the Pensions Act 1990, as amended. The financial statements, which have been prepared under the accounting policies set out therein, comprise the statement of accounting policies, the income and expenditure account, the statement of total recognised gains and losses, the balance sheet and the related notes. The financial statements have been prepared in the form prescribed under Section 143 of the Act, as amended and in accordance with generally accepted accounting practice in Ireland.

Responsibilities of the Pensions Ombudsman

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

Responsibilities of the Comptroller and Auditor General

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

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

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

Scope of Audit of the Financial Statements

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

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

- the overall presentation of the financial statements.

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

Opinion on the Financial Statements

In my opinion, the financial statements, which have been properly prepared in accordance with generally accepted accounting practice in Ireland, give a true and fair view of the state of the affairs of the Office of the Pensions Ombudsman at 31 December 2014 and of its income and expenditure for 2014.

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

Matters on which I Report by Exception

I report by exception if

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

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

Andrew Harkness

For and on behalf of the
Comptroller and Auditor General

21 May 2015

Statement of Responsibilities of the Pensions Ombudsman

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

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

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

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



Paul Kenny
Pensions Ombudsman

18 May 2015

Statement on Internal Financial Control

Responsibility for the System of Internal Financial Control

The Office of the Pensions Ombudsman is a small office where staffing and outsourcing costs in 2014 represented 66% of total expenditure.

As Pensions Ombudsman, the responsibility for ensuring that an effective system of internal controls is maintained and operated falls to me. 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.

Everyone in this Office strives to ensure that there is a robust system of financial control in place. Information on expenditure is supplied regularly to management and transparent administrative procedures are in force, including segregation of duties through a clear system of delegation.

The financial control system includes the following procedures:

- An annual estimate of financial requirements is provided to the Department of Social Protection who fund the Office.
- 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 and submitted to the Office, where it is checked against and reconciled with the records held in the Office.
- A monthly statement of expenditure which compares the actual expenditure with estimates is prepared and circulated to members of staff and is reviewed by myself.
- A twice-yearly report is provided to the Department which compares estimated and actual expenditure.
- A segregation of duties exists between the certification, authorisation and execution of payments.
- All pay (and related calculations) and non-pay payments are made by the Department.
- The draft annual accounts are prepared by an independent auditing company prior to submission to the Comptroller and Auditor General.
- An internal audit function operates in the Office, together with documented financial procedures and a petty cash ledger.

In addition, an internal audit function is available within the Department of Social Protection. Any audit of Departmental pay function will cover the larger part of the expenditure by this Office. Payroll control monitoring is conducted on a monthly basis.

I confirm that I reviewed the Office's system of internal financial control during the year 2014.



Paul Kenny, Pensions Ombudsman

18 May 2015

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

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. Recognition of Income

Oireachtas Grant represents the total payments made by the Department of Social Protection on behalf of the Office, in the year of account. Other income which relates mainly to court awards of legal costs in favour of the Office of the Pensions Ombudsman are brought to account on a cash receipts basis.

3. Pensions

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

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

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

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

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

4. Tangible Fixed Assets

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

IT, Hardware, Software 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.

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

Income and Expenditure Account

for the year ended 31 December 2014

	Notes	2014	2013
Income		€	€
Oireachtas Grant	1	934,861	974,225
Less Superannuation Contributions Repaid	8a	<u>(6,476)</u>	<u>(6,909)</u>
Net Oireachtas Grant		928,385	967,316
Net Deferred Funding for Pensions	8c	47,000	46,000
Transfer from Capital Account	6	4,018	6,616
Other Income	2	63,837	-
Less Other Income Remitted	2	<u>(63,837)</u>	<u>-</u>
Total Income		<u>979,403</u>	<u>1,019,932</u>
Expenditure			
Staff Costs	3	574,505	676,625
Administration	4	409,445	327,668
Audit Fee		8,000	7,700
Depreciation	5	7,266	6,616
Total Expenditure		<u>999,216</u>	<u>1,018,609</u>
(Deficit)/Surplus for the year		<u>(19,813)</u>	<u>1,323</u>
Deficit at 1 January		<u>(7,186)</u>	<u>(8,509)</u>
Deficit at 31 December		<u>(26,999)</u>	<u>(7,186)</u>

The Statement of Accounting Policies and Notes 1 to 10 form part of these financial statements.


Paul Kenny
Pensions Ombudsman

Date 12 May 2015

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

Statement of Total Recognised Gains and Losses

for the year ended 31 December 2014

	Notes	2014	2013
		€	€
Surplus/(Deficit) for year		<u>(19,813)</u>	<u>1,323</u>
Experience gains on pension scheme liabilities	8d	26,000	25,000
Changes in assumptions underlying present value of pension scheme liabilities		-	-
Actuarial gain on Pension Liabilities		<u>26,000</u>	<u>25,000</u>
Adjustment to Deferred Pension Funding	8b	(26,000)	(25,000)
Total Recognised Gains/(Losses) for the year		<u>(19,813)</u>	<u>1,323</u>

The Statement of Accounting Policies and Notes 1 to 10 form part of these financial statements.


Paul Kenny
Pensions Ombudsman

Date 18 May 2015

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

Balance Sheet as at 31 December 2014

Fixed Assets	Note	2014		2013	
		€	€	€	€
Tangible Fixed Assets	5		8,253		12,271
Current Assets					
Debtors and Prepayments	7	9,353		10,481	
Bank and Cash		261		38	
		<u>9,614</u>		<u>10,519</u>	
Current Liabilities					
Creditors		24,665		6,377	
Accruals		11,948		11,328	
		<u>36,613</u>		<u>17,705</u>	
Net Current Liabilities			(26,999)		(7,186)
			<u>(18,746)</u>		<u>5,085</u>
Total Assets Less Current Liabilities			(18,746)		5,085
Deferred Pension Funding	8c		336,000		315,000
Pension Liability	8b		(336,000)		(315,000)
Net (Liabilities)\Assets			<u>(18,746)</u>		<u>5,085</u>
Financed By					
Capital Account	6		8,253		12,271
Income and Expenditure Account			(26,999)		(7,186)
			<u>(18,746)</u>		<u>5,085</u>

The Statement of Accounting Policies and Notes 1 to 10 form part of these financial statements.


Paul Kenny
Pensions Ombudsman

Date 17 May 2015.

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014
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 Other Income

Other income of €63,837 received in 2014 relates to legal costs awarded by the Courts in respect of legal cases undertaken by the Office of the Pensions Ombudsman. This income was remitted in full to the Department of Social Protection as Appropriations-in-Aid in 2014. There was no such income in 2013.

3 (a) Staff Costs

	2014	2013
	€	€
Wages and Salaries	511,333	632,842
Staff secondment costs	18,042	-
Travel	4,606	4,892
Pension Costs	8(a) 40,524	39,091
Total	<u>674,506</u>	<u>676,625</u>

A total of €32,893 (2013: €43,176) was deducted from staff salaries by way of pension related deduction and retained by the Department of Social Protection.

During the latter part of 2014, two employees were seconded to the Office of the Pensions Ombudsman from the Financial Services Ombudsman's Bureau.

(b) Employee Numbers

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

	2014	2013
Ombudsman	1	1
Administrative Staff	7	8
	<u>8</u>	<u>9</u>

(c) Ombudsman Salary

	2014	2013
	€	€
Salary	<u>112,535</u>	<u>119,185</u>

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

4 Administration Costs

	2014	2013
	€	€
General Expenses	12,643	12,456
Outsourcing of investigation support	85,185	48,997
Postage and Telecommunications	10,137	21,059
Printing and Stationery	12,210	35,571
IT/Office Machinery (Non-Asset)	14,176	1,737
Maintenance	18,765	26,619
Advertising/Seminars/Publications	20,641	29,604
Legal Fees	235,688	151,625
	<u>409,445</u>	<u>327,668</u>

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

5 Fixed Assets

	IT Hardware, Software & Office Equipment €	Furniture and Fittings €	Total €
Assets at Cost			
Balance at 1 January 2014	117,000	152,714	269,714
Additions	3,248	-	3,248
Balance at 31 December 2014	120,248	152,714	272,962
Depreciation			
Balance at 1 January 2014	(113,084)	(144,359)	(257,443)
Charge for the year	(2,608)	(4,658)	(7,266)
Balance at 31 December 2014	(115,692)	(149,017)	(264,709)
Net Book Value			
Balance at 31 December 2014	4,556	3,697	8,253
Balance at 31 December 2013	3,916	8,355	12,271

6 Capital Account

	€	€
Balance at 1 January 2014		12,271
Purchase of Fixed Assets	3,248	
Amortisation in line with Depreciation	(7,266)	
Transfer to Income and Expenditure Account		(4,018)
Balance at 31 December 2014		8,253

7 Debtors and Prepayments

	2014 €	2013 €
Debtors	-	92
Prepayments	9,353	10,389
	9,353	10,481

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

8 Pensions

a) Analysis of total pension costs charged to expenditure

	2014 €	2013 €
Current Service Cost	30,000	30,000
Interest on Pension Scheme Liabilities	17,000	16,000
Employee contributions	(6,476)	(6,909)
Funds recoverable in respect of current year pension costs	40,524	39,091

b) Movement in net pension liability during the financial year

	2014 €	2013 €
Net Pension Liability at 1st January	315,000	294,000
Current Service Cost	30,000	30,000
Past Service Cost	-	-
Interest Cost	17,000	16,000
Actuarial (gain)/loss	(26,000)	(25,000)
Pensions paid in the year	-	-
Net Pension Liability at 31st December	336,000	315,000

c) Deferred Funding Assets for Pensions

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

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

	2014 €	2013 €
Funding recoverable in respect of current year pension costs	47,000	46,000
State Grant applied to pay pensioners	-	-
	47,000	46,000

The deferred funding asset for pensions as at 31 December 2014 amounted to €336,000 (2013: €315,000).

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

	2014 €	2013 €	2012 €	2011 €	2010 €
Scheme Liability	336,000	315,000	294,000	259,000	226,000
Experience (gain)/loss on scheme liabilities	(26,000)	(25,000)	(9,000)	(8,000)	(25,000)
Percentage of the present value of scheme liabilities	-8%	-8%	-3%	-3%	-11%

**Office of the Pensions Ombudsman
Financial Statements for the
Year Ending 31 December 2014**

8 Pensions (continued)

e) General Description of the Scheme

The pension scheme is a defined benefit final salary pension arrangement with benefits and contributions defined by reference to current "model" public sector scheme regulations. The scheme provides a pension (one eightieth per year of service), a gratuity or lump sum (three eightieths per year of service) and 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 the actuarial valuation completed by a qualified independent actuary taking account of the requirements of the FRS in order to assess the scheme liabilities at 31st December 2014.

The principal actuarial assumptions were as follows:

	2014	2013
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 2013 and 2014.

Years of attaining age 65	2014	2013
Life expectancy - male	87	87
Life expectancy - female	90	90

9 Premises

The accommodation occupied by the Office of the Pension 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. There is no charge to the Office of the Pension Ombudsman in respect of this accommodation.

The Office is due to relocate to new premises at Lincoln House, Lincoln Place, Dublin 2 as part of the planned amalgamation with the Financial Services Ombudsman's Bureau.

10 Amalgamation with the Financial Services Ombudsman's Bureau

As part of the Public Service Reform Programme, the Office of the Pension Ombudsman was included on a critical review list of bodies that might be amalgamated. A decision was taken by the Government in April 2013 to amalgamate the Office of the Pension Ombudsman with the Financial Services Ombudsman's Bureau. The proposed legislation to give effect to the amalgamation has not yet commenced. It is expected that the amalgamation and relocation of the Office of the Pensions Ombudsman will be completed by the end of 2015.