

The Pensions Ombudsman and
Pension Protection Fund Ombudsman

Annual Report & Accounts

2008/09

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The Pensions Ombudsman's Accounts are presented to Parliament
by the Secretary of State for Work and Pensions in pursuance of section 145(9) of the Pension Schemes Act 1993.
The Pension Protection Fund Ombudsman's Accounts are presented to Parliament
by the Secretary of State for Work and Pensions in pursuance of section 212A of the Pensions Act 2004.

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About us

The Pensions Ombudsman

The Pensions Ombudsman's office investigates and determines complaints and disputes concerning occupational and personal pension schemes. The Pensions Ombudsman and Deputy Pensions Ombudsman are appointed by the Secretary of State for Work and Pensions. They act independently and impartially and their decisions are final and binding (subject to appeal to the courts on a point of law) and enforceable in the courts. The establishing legislation is Part X of the Pension Schemes Act 1993.

The Pension Protection Fund Ombudsman

The present holders of the posts of Pensions Ombudsman and Deputy Pensions Ombudsman have also been appointed Pension Protection Fund Ombudsman (**PPFO**) and Deputy PPFO. In this capacity they deal with complaints and "reviewable matters" connected with the Pension Protection Fund (a statutory corporation) and appeals against decisions of the Financial Assistance Scheme (operated by the Department for Work and Pensions (**DWP**)). The PPFO's functions are carried out by staff of the Pensions Ombudsman's office. The establishing legislation is sections 209 to 218 of the Pensions Act 2004.

Funding

The joint office is funded by grant-in-aid paid by DWP. The grant-in-aid is substantially recovered from the general levy on pension schemes that is invoiced and collected by the Pensions Regulator. The levy is set by and owed to the Secretary of State for Work and Pensions.

In round terms in 2008/09 the office received £2.5 million grant-in-aid, incurred net expenditure of £2.8 million and had net liabilities at 31 March 2009 of approximately £118,000. Full details are in the accounts.

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Tony King

Pensions Ombudsman

Pension Protection Fund Ombudsman

1. Introduction

This is my second annual report as Pensions Ombudsman and Ombudsman for the Pension Protection Fund, and the first to cover a full year in office (I took up the joint posts roughly midway through 2007/08).

Without doubt the year under report has been a good year. We have effectively disposed of the office's long-standing backlog and have substantially met our other targets for the year. It may be traditional to thank staff at the end of forewords such as this, but if so I am determinedly breaking with that tradition. The office as a whole has put in a performance that we should be proud of – and I am grateful to the whole team for their considerable efforts.

More later of what happened during the year. First let me mention some things that, possibly contrary to outsiders' expectations, have *not* happened.

In my last report I summarised our business plan for 2008/09 and the key risks to meeting our objectives. In the business plan for the year we had said that there was a risk that unexpected events in the wider pensions landscape could dramatically affect workload. We thought there was a very low probability of any such events.

Well, as Niels Bohr said, "prediction is very difficult, especially when it's about the future". And so events of apparently very low probability happened. Banks fell, or were rescued as they teetered; entire countries headed towards bankruptcy; the markets plummeted, and pension funds suffered.

But in fact none of those things affected us in the year, and so we were right about our workload. Actually, there is only a very indirect connection between the number of complaints that come to us and the general financial well-being of pension funds. Falling values or weaker solvency levels are not, on their own, subjects for complaint to my office. That said, there may be consequences for complaint numbers in future years. It is possible that, as with Warren Buffett's naked swimmers – visible when the tide goes out – declining markets may expose administrative problems that would not otherwise have been seen. Regulation is designed to limit the risk of such failures on the larger scale but, to the extent that potential sources of complaint lurk under the water, it may be some time before they are apparent.

A more probable effect on our future workload may be from people taking stock of their pensions in straitened times and identifying possible issues that might otherwise have gone unnoticed – or from pension problems associated with redundancy and early retirement or schemes winding up. But there would be a time lag before complaints of that sort reached us and it is unlikely that, if and when they do, we will with any confidence be able to attribute them to present economic circumstances.

However, as world markets quaked there was a local tremor that might have brought about a significant increase in enquiries, if not actual complaints. It was reported that there had been substantial overpayments to about 100,000 public sector pensioners going back many years. I understand that most if not all of the schemes involved are not attempting to recover the overpayments, but they are putting future payments on the correct (lower) footing.

We made sure that lines of communication were open between us and the schemes' representatives. We saw what they proposed to tell the affected pensioners and we liaised with the Pensions Advisory Service (TPAS) so that concerned scheme members would get a consistent response and so as to reduce the risk of us being swamped by mere worries rather than potentially justifiable grievances. That the overpayments will not be recovered means that only a tiny fraction of the pensioners will have cause for a potentially successful complaint. Some, though, may have entered into unavoidable commitments on the expectation of a particular future income level. So we may yet see complaints about reduced future pensions – particularly if the schemes

themselves too aggressively assert that there are no circumstances in which there can be any liability connected to future payments.

So, from what we did not have to deal with, to what we did. Amongst the objectives set at the beginning of the year and achieved during it were the long overdue redesign of our website, a process review (mentioned briefly below) and the reawakening of an industry liaison group. The last was one aspect of our efforts to maintain good relationships with our partners and stakeholders.

One of those partners is the Pensions Advisory Service, which was itself subject to a review of its role during the year. Changes may result from that review with knock-on effects on our own workload, but that will be a subject for future reports.

Another significant partner is the Department for Work and Pensions, our sponsor department. I am pleased to say that we have strong and cordial relationships with them and I would like to express my thanks to members of the team there for their contribution to maintaining those good relationships.

The major success of the year was that the number of Pensions Ombudsman cases more than a year old (our rough measure of what constitutes "backlog") fell from 450 at the start of the year to 46 at the year end. This was all the more pleasing because some of our oldest cases were also some of our most complex, that being one of the reasons for their age in the first place. The Pensions Ombudsman casework review (see section 2.1) gives the full story.

One of the factors contributing to the reduction was that we reviewed the way that we were dealing with cases and made changes intended, amongst other things, to speed the process. A change that had an immediate effect is that we have simplified and shortened the style of formal determinations. We wanted to make them as intelligible and accessible as possible (a difficult balancing act when below the tightrope is a canyon roamed by hungry lawyers and potentially critical judges). A welcome side product for us is that the mechanical part of the process (typing, reviewing and checking) is reduced, so we can be quicker than before.

As to the substance of the cases, though it might make a better story if there were underlying issues of wider significance, in truth there were not. I often note how difficult and dangerous it would be to reach conclusions about the pensions industry as a whole based on our small and skewed sample of unhappy scheme members. Perhaps the most that we can say is that in an industry with perhaps half the UK population as its consumers, things are bound to go wrong from time to time.

If anything, it is surprising how few complaints apparently need to be dealt with by us. I hope, but cannot be certain, that the relatively low numbers are evidence of effective and fair complaint handling at an earlier stage: a suitable topic for a short study, perhaps.

But in fact I am quite happy to have nothing very interesting to say about wider pensions issues emerging from our cases. What matters to us is that we play our proper part in ensuring that redress is available where it is justified and in providing finality where it is not, whether a complaint concerns hundreds of pounds or hundreds of thousands. I am delighted that we have been able to do that so effectively this year.

Tony King

Pensions Ombudsman

Pension Protection Fund Ombudsman

29 June 2009

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2008/09



Charlie Gordon

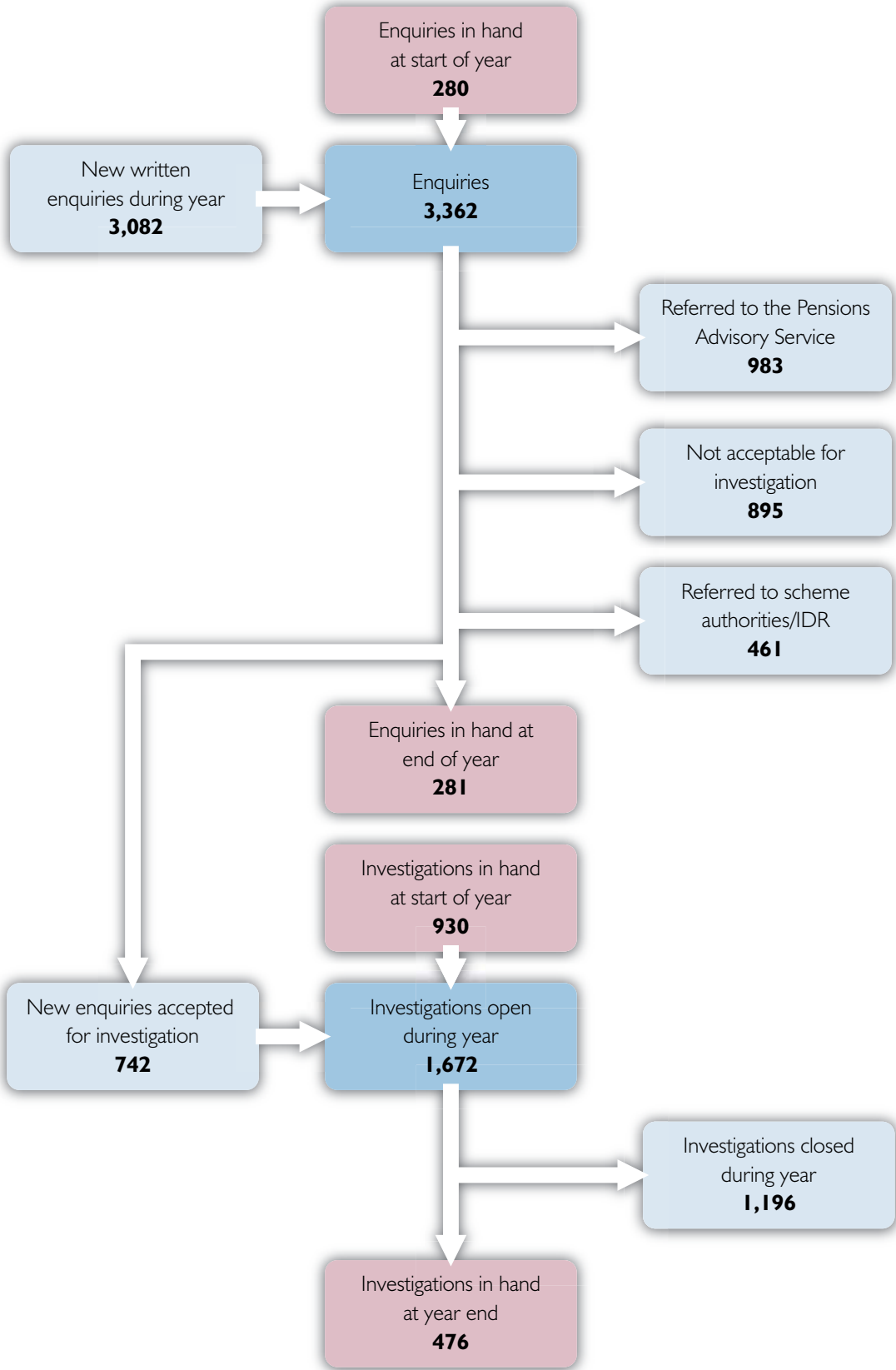
Deputy Pensions Ombudsman

Deputy Pension Protection Fund Ombudsman

2. Management commentary

2.1 Pensions Ombudsman casework review

Pensions Ombudsman investigation flowchart 2008/09



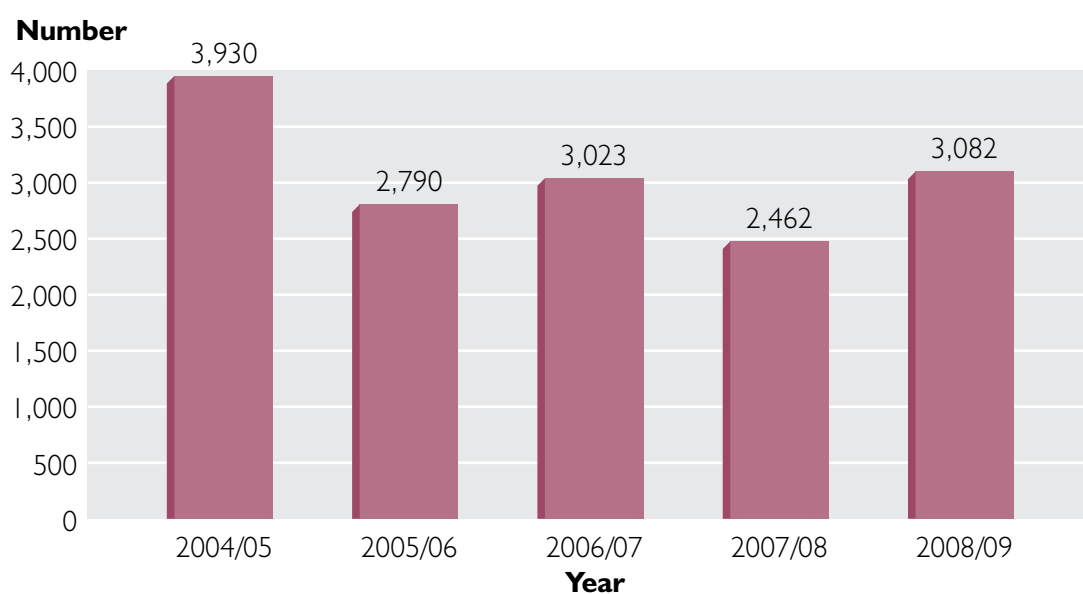
Dealing with the cases

Enquiries

Our caseload can be conveniently divided in two. We receive what we describe as “enquiries”, which represent the first contact that we have with potential applicants or their representatives up to the point at which we tell them we cannot deal with the matter and why (including who else can) or decide that we can and should deal with it as a matter within our jurisdiction.

The number of enquiries of this sort that we received in 2008/09 was higher than expected (3,082 against an estimate of 2,500) but not completely out of line with past years (see Figure 1).

Figure 1: New enquiries (last five years)



Our results against published goals for this part of our work were as set out next.

	Goal	Outcome
Open enquiries at the year end (assuming 2,500 new enquiries in year)	300	281 (3,082 new enquiries received)
Percentage of enquiries to receive an initial response within 2 days, definitive where possible, or asking for further information where not within 2 days	95%	93%
Average time to deal with initial enquiries, deciding whether or not to investigate and, if so, what aspects should be investigated	10 weeks	9.4 weeks

Some enquiries will have been received from people who have come to us but need to be referred elsewhere, either because the problem they raise has nothing to do with pensions at all, or because it has but is better handled by say, the Financial Ombudsman Service. Others will concern issues that we may be able to deal with, but not until the matter has been taken up with the relevant scheme authorities (employer, trustees and so on). And it is our usual practice, unless doing so would be futile, to ask people to consult the Pensions Advisory Service before coming to us.

Figure 2 shows what happened to the enquiries we dealt with during the year. Nearly half (47% in total) were either referred on to the Pensions Advisory Service for advice and mediation or were told that we expected them to take the matter up with the scheme authorities before coming back to us if it was still necessary to do so.

Figure 2: Dealing with enquiries

Reason	2008/09	%	2007/08	%
Accepted for investigation	742	24.1	995	32.7
Complainant outside jurisdiction	92	3.0	90	3.0
Discretion not to investigate exercised	15	0.4	20	0.7
Enquiry abandoned/no action needed	523	17.0	302	9.9
Enquiry not yet put to scheme/IDRP not used	461	15.0	365	12.0
Not relating to pension scheme/plan	24	0.8	11	0.4
Outside time limits	80	2.6	91	3.0
Protective complaint	0	0.0	6	0.2
Referred to FSA or FOS	51	1.6	70	2.3
Referred to Pensions Scheme Registry	0	0.0	12	0.4
Referred to the Pensions Advisory Service	983	31.9	992	32.6
Respondent not in remit	6	0.2	9	0.3
State scheme benefits	99	3.2	68	2.2
Subject to prior court proceedings	5	0.2	12	0.4
Total	3,081		3,043	

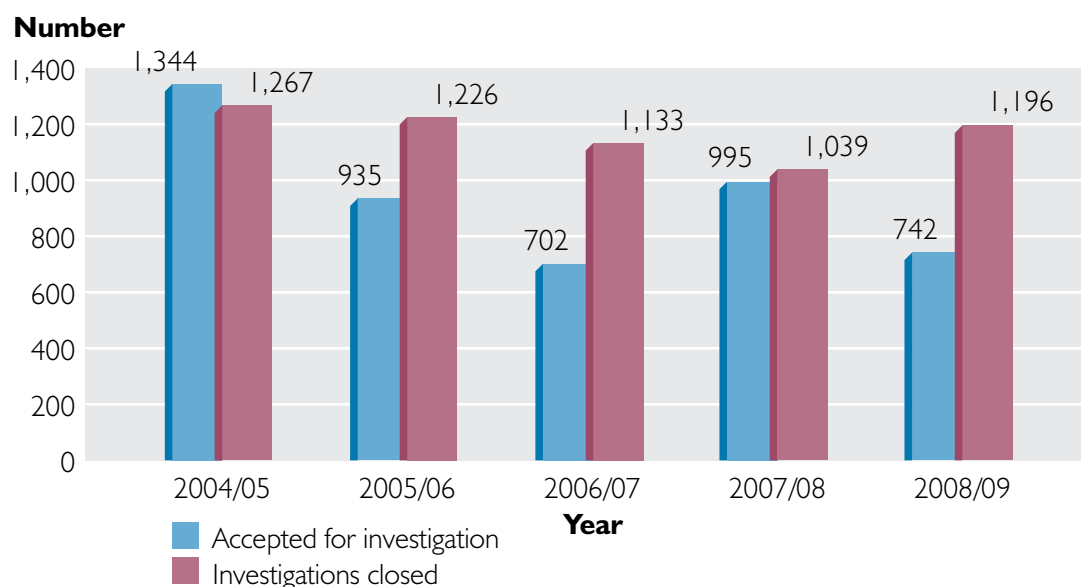
Investigations

As Figure 2 shows, we accepted 742 new cases for investigation. A comparison with the 995 in 2007/08 would be an unequal one. In that year there were 256 cases that all concerned the same issue and could be dealt with as one. After adjustment for that anomaly, the number accepted for investigation in the year under report was consistent with the previous two years, though lower than the two years before that (see Figure 3).

There is no clear reason for this variation, although last year we tentatively suggested that the number of small defined benefit schemes that were winding up in earlier years may have

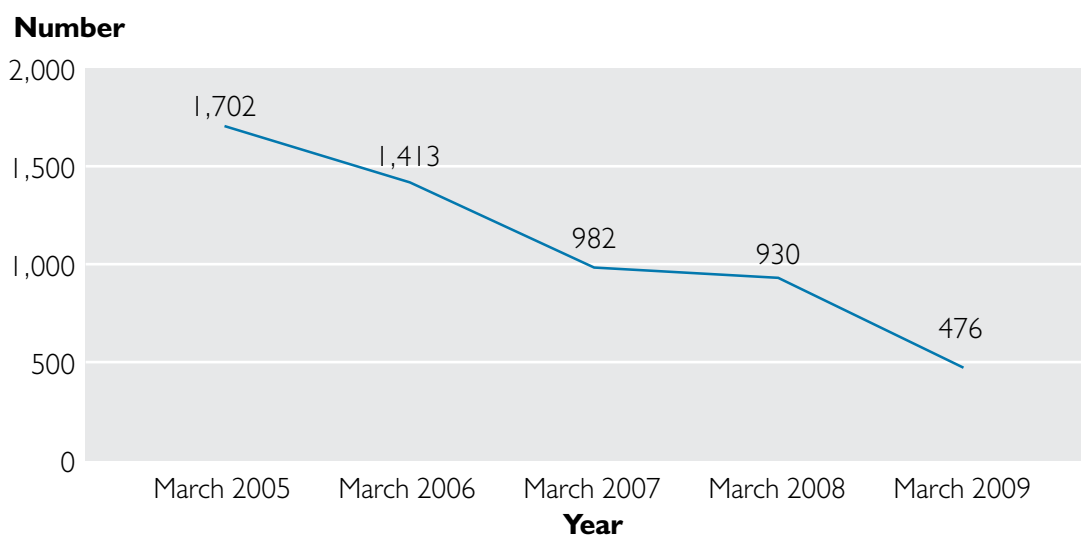
constituted a source of complaint that no longer exists, and that the compensation and support now available from the Pension Protection Fund and the Financial Assistance Scheme has reduced complaints about pensions lost or diminished due to scheme insolvency.

Figure 3: Comparison of cases accepted for investigation and closed investigations (last five years)



For the fourth consecutive year, we closed more investigations than we opened. So the number of investigations carried forward into 2009/10 is at its lowest for many years at 476 (see Figure 4).

Figure 4: Investigations open at year end (last five years)



At any point during an investigation the investigator may reach a view as to the likely outcome. In a small number of cases this will be at a very early stage and an informal settlement will result in the case being closed as resolved or withdrawn. More commonly, the investigator will write to one or both of the parties explaining what their view is and why it has been reached.

In previous years this has only been done when the investigator thought that the complaint was unlikely to be upheld by the Pensions Ombudsman or the Deputy Pensions Ombudsman, or

where it could be upheld but only to the extent of a modest payment to compensate for distress and inconvenience. Also, investigators only had limited room to write such letters in certain categories of case – for example, they rarely (if ever) did so on complaints about rejected ill-health early retirement applications.

This year we have given investigators more scope to express their views at an early stage. The principle is that we should do our best to resolve matters as early as possible (though always consistent with due process and natural justice). So they may express a view when they think that a complaint is likely to be upheld and they may do so whatever the subject matter. That is not to say that they will inevitably express a view. It will often not be appropriate in complex cases, cases with significant primary facts in dispute or cases where there is no probability of the parties accepting the investigator's view.

If one or both of the parties disagree with the investigator, then the case will go forward to either the Pensions Ombudsman or the Deputy Pensions Ombudsman, who will either write a letter agreeing with the investigator and determining the case accordingly, or ask for more work to be done, or move towards a more formal determination.

As an alternative to the investigator expressing a view as described above, when our investigation is complete, we may issue a formal “notification of preliminary conclusions”, which amounts to a draft determination and is based on the view of the Pensions Ombudsman or Deputy Pensions Ombudsman. After opportunity to comment and such further work as is necessary, this process culminates in a formal determination.

Figure 5 identifies the process used to bring cases to a conclusion in the year. Broadly speaking, the earliest possible resolution is where a complaint is resolved or withdrawn and the longest process is the one leading to a formal determination. It may surprise some observers that only 30% of cases received a formal determination, whereas 55% were dealt with either by a letter from an investigator or with ombudsman involvement following such a letter and endorsing it. The comparable figure in the previous year was 39%, so it looks as if our intent to resolve cases earlier is bearing fruit, though it will take a little longer before we can be confident of that.

Figure 5: Investigation closures

Method of closure	2008/09	%	2007/08	%
Discontinued	26	2	109	11
Resolved/withdrawn	154	13	161	15
Investigator's decision	175	15	162	16
Determined following investigator's decision	478	40	199	19
Determined formally	363	30	408	39
Total	1,196		1,039	

On the subject of timescales, we have been making concerted efforts to reduce our backlog of cases (defined broadly as cases that are more than 12 months old). That has had what might seem at first blush to be an unpleasant consequence. Simply because we have been dealing with the older cases, the age of cases when closed has increased by comparison with last year, as Figure 6 shows.

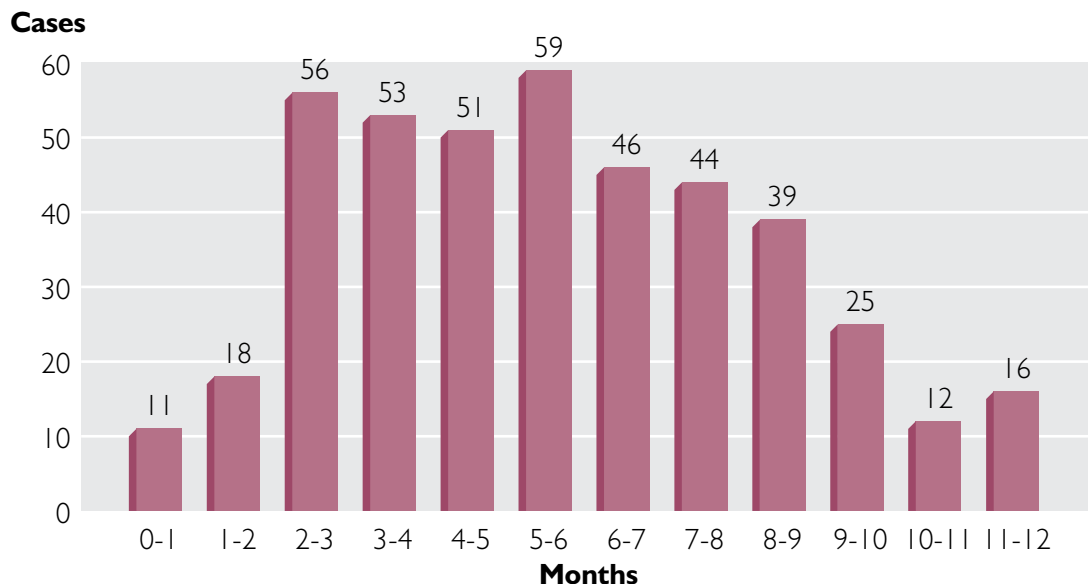
Figure 6: Age of investigations closed

Age of investigations	2008/09	%	2007/08	%
Less than 6 months	75	6	291	28
6 months to 1 year	399	33	286	28
Longer than 1 year	722	61	462	44
Total	1,196		1,039	

Nevertheless, our efforts to complete the older cases have succeeded. Although, because we were catching up, the average age of cases closed was quite high at 18.5 months, the average age of cases still open at the end of the year was much lower at 9.3 months. And at the year end we only had 46 cases that were more than a year old (compared with, in round terms, 450 at the end of 2007/08 and 500 at the end of 2006/07). It is inevitable that for one reason or another, a small percentage of cases will have to be held open for reasons beyond our control (for example because the parties ask us to defer reaching a conclusion during negotiations). We have not quite got to that small percentage, but we are very close to it.

As Figure 7 shows, the average age of open cases is considerably dragged down by the small number of cases more than 12 months old. Looking at the bulk of the cases, more are under six months old than over. (There is in fact a distortion caused by the way we measure the age of cases. There will be some cases not yet formally accepted for investigation that, as soon as they are, would appear as cases less than three months old.)

Figure 7: Age in months (open cases less than 12 months from application date)



Our goals and results for dealing with cases under investigation were as follows.

	Goal	Outcome
Average time for completed investigations from the date of initial application	24 months	18.5 months
Maximum number of cases on hand more than 12 months old	50	46
Maximum number of cases on hand more than 24 months old	15	16
Average age of open investigations at year end	8 months	9.3 months

Our results are very encouraging. While it is slightly disappointing that we very narrowly missed two of the targets, we had set them at a testing level – and the improvement on last year’s position is remarkable.

Figure 8: Cost ratios

Method of closure	2008/9 (target)	2008/09 (actual)	2007/08
Annual expenditure divided by all cases closed	£982	£795	£930
Annual expenditure divided by investigations closed	£2,535	£2,349	£2,763

Our final measures are two cost ratios, as shown in Figure 8: the ratio of total annual cost to number of all cases closed (enquiries plus investigations), and the ratio of total annual cost to the number of investigations closed. These figures mean very little on their own. They are certainly not directly comparable with other ombudsmen, whose cases, jurisdiction and method of assessing costs may all be different. Neither do the figures actually represent the average cost of working on the cases – to do that, we would have to identify the specific costs associated with each of the two areas of our work; and some of the work leading to closing cases in the year will in fact have been undertaken in previous years. However, the ratios do offer a broad indicator of efficiency as long as they are subjected to proper analysis. A particular distortion occurs when, as in this year, we have significant groups of cases that concern the same matters and do not require anywhere near as much work as the numbers alone might suggest. They tend to artificially depress the cost ratios.

Subject matter

We are wary of drawing conclusions about the pensions industry at large from the complaints that we see. Whilst there may be new subjects or changing emphases, that usually just reflects current trends in pension provision (at least one case summary below relates to a change in arrangements from defined benefit to defined contribution, for example). The complaints themselves do not say much about whether administration is generally better or worse over time, or whether there are problems in particular areas.

In any event, our attempts at categorisation for statistical purposes are unavoidably imprecise. Many complaints brought to us involve a number of issues. We choose a single category – the one which we think is the best fit. But that is a subjective decision, and an unfortunate by-product is that too many complaints end up in the “Other” category. In 2009/10 we will be looking at how we can improve our reporting in this area.

Figure 9: Subject matter of closed complaints

Subject	2008/09	%	2007/08	%
Annuity	24	2	0	0
AVCs	31	3	54	5
Calculation of benefits	169	15	145	14
Contributions, refunds and queries	18	1	39	4
Spouse's and dependants' benefits	33	3	38	4
Early retirement pension	24	2	45	4
Enhancement of pension	0	0	10	1
Equal treatment	0	0	11	1
Ill-health pension	133	11	151	14
Incorrect/no payment	49	4	44	4
Membership conditions	29	2	18	2
Misleading advice	65	5	33	3
Preservation	7	1	4	1
Transfers	240	20	114	11
Winding up	16	1	37	4
Other	358	30	296	28
Total	1,196		1,039	

As Figure 9 shows, there are no major shifts of category between the year under report and the previous one. Two significant areas of complaint in 2008/09, as in previous years, were ill-health pension and transfers.

The reason for the former is certainly that granting or not granting ill-health early retirement involves difficult medical judgements and, often, the exercise of a discretion; and the outcome for the scheme member may be fundamental to their financial security for years to come.

As far as transfers are concerned, the category covers many types of transaction: transfers between occupational schemes, for example from a defined benefit to a defined contribution scheme, as well as transfers of personal pension arrangements. Many things can go wrong: the transfer might take a long time, there may be penalties (or legitimate reductions) imposed, or the benefits following transfer may be less than expected. The fact that there appears to be an increase in the “transfers” category is to a considerable extent distorted by one group that concerned the same subject matter, involving 212 cases in total that were categorised as transfers.

A handful of case examples follow. They are only short summaries of what may be quite complex cases. They give a flavour of our work but may not accurately reflect the detail of the actual cases. Full versions of all of our formal determinations are published on our website.

Early resolution

The first two cases are examples of how, even though the complaint may have been running for a long time before it reaches us, we can sometimes mediate a settlement rather than having to follow the full process to a formal determination by the Pensions Ombudsman or the Deputy Pensions Ombudsman.

Annuity purchase

The complaint

Mr A complained that an annuity provider’s financial consultant had promised that two separate incoming fund transfers would be aggregated so as to secure an uplifted annuity at retirement. Mr A also claimed that he had been given assurances that annuity rates quoted in an original illustration would be secured for him as part of the overall arrangement. When Mr A retired, separate annuities had been purchased and at lower rates than those quoted in the illustration.

Conclusion

During the investigation of Mr A’s complaint, it became clear that there was sufficient evidence to suggest that Mr A had indeed been promised that a single annuity would be secured at the level set out in the original illustration. The respondent was persuaded that there had been maladministration.

The respondent agreed to recalculate Mr A’s annuity using the original rates but taking into account the aggregated value of funds, thus providing Mr A with a higher pension. In addition, in recognition of the distress caused, the respondent agreed to pay Mr A £150. Mr A accepted the offer and the complaint was resolved.

Distress and inconvenience

The complaint

Mr B lived overseas and was dependent on his UK pension. He had reached an agreement whereby he would pay tax in the country of residence and his income from the UK would be free from UK tax. The maximum he could receive each year had to be within the Government Actuary's Department (GAD) limits.

The provider had calculated his maximum entitlement incorrectly and had paid less than the GAD limits by £32,393.65. The provider agreed to pay this and interest of £420. They offered £500 in recognition of the distress and inconvenience caused.

Mr B was content with the additional pension and interest but did not accept that the £500 was proper recognition of the distress he experienced.

Conclusion

This office contacted the provider to see if they would be prepared to make an increased offer as it was clear that Mr B had experienced considerable upset.

The provider agreed to increase the offer to £750. When the usual nature of such payments was explained to Mr B, including the fact that £750 was relatively high, he agreed to accept the offer and the matter was resolved.

Formal determinations

The next cases – some upheld and some not – went the full way through the process and were formally determined by the Pensions Ombudsman or the Deputy Pensions Ombudsman.



Transfer from defined benefit to defined contribution scheme

The complaint

Mr C was a member of his employer's defined benefit pension scheme. The employer decided to close that scheme and members were invited to transfer to a defined contribution scheme applying a particular conversion rate to the benefits accrued within the defined benefit scheme to arrive at a transfer value to the new defined contribution scheme.

Mr C said that when the conversion took place, the formula for the conversion was different from that advised in earlier announcements. He considered that he was contractually entitled to a higher conversion rate and alleged that the actions of the employer and the trustee amounted to maladministration, a breach of contract, or were precluded by promissory estoppel.

We received more than 200 similar complaints from other scheme members.

Conclusion

The complaints were not upheld.

In relation to the allegation of maladministration, it was found that the trustees had acted on advice and with the best interests of the scheme's members at heart. The decision by the employer and trustee to apply the particular conversion rate did not amount to maladministration.

Mr C claimed that an offer was contained cumulatively in various announcements, which he had accepted by completing and returning the application form to join the new defined contribution scheme, and that there was thus a binding contract. The Deputy Pensions Ombudsman found that the announcements did not amount to an offer, and there was therefore no contract. They were made in piecemeal fashion over a period of time and were of an informative nature intended to help members decide whether to transfer. Moreover, some were issued by the trustees, some by the employer.

In order to establish a claim of promissory estoppel, Mr C would have needed to demonstrate that, whilst falling short of being a contractual offer, the announcements constituted a promise upon which he relied to his detriment. It was concluded that Mr C could not establish a promissory estoppel as he could not demonstrate the necessary reliance because he had agreed to transfer before seeing a key announcement.

Transfer delay

The complaint

Mr D belonged to a defined contribution pension scheme. Prior to his retirement on 25 July 2006, he asked an Independent Financial Adviser (IFA) about his options. The IFA obtained a transfer value quotation from the scheme administrator, along with other information. Some time passed and, despite reminders from the IFA, Mr D did not decide what he wanted to do. A month before he retired, Mr D requested further advice from the IFA, which resulted in the IFA asking for another transfer quotation. Despite reminders and a formal complaint from the IFA, the administrator took five months to provide the quotation.

A month after the second quotation was issued on 15 December 2006, Mr D decided to transfer his preserved benefits. The transfer value had fallen since the first quotation.

Mr D wanted the transfer value applicable on his retirement date and a contribution to his IFA's fees. The administrator accepted that it had caused a potential loss, but did not accept that 25 July 2006 was an acceptable date. It would not pay any of the IFA's fees; the administrator said that Mr D could have obtained free financial advice from the Pensions Advisory Service.

Conclusion

The complaint was upheld.

The Pensions Ombudsman found that the delay attributable to the administrator had resulted in a loss. However, Mr D had contributed to the problem because, for six months prior to his retirement, he had taken no action. The scheme administrator was directed to recalculate the transfer value as at 18 January 2007, the date that the transfer should have taken place had it not been for its delays.

The Pensions Advisory Service was not an IFA and could not provide Mr D with financial advice tailored to his situation; nor could they arrange a transfer. The IFA submitted a bill for £1,725 in respect of the extra work caused by the administrator's delay. Mr D asked for £500 of that, which the Pensions Ombudsman thought was reasonable and he directed the administrator to pay that amount to Mr D.

Administrative errors preventing a transfer between personal pension arrangements

The complaint

Mrs E was a member of a group personal pension plan. She alleged that the provider of the plan delayed the transfer of her fund to another pension arrangement between June 2003 and November 2004. Errors had been identified in the plan – for example, plan members had been placed in incorrect funds, contributions were not allocated correctly and some members had not been contracted out as instructed. Mrs E therefore did not believe she was in a position to make a transfer from the plan until the errors were rectified.

We received 51 identical complaints from other members in a similar position.

Conclusion

The complaints were upheld.

The pension provider submitted that they had not been in a position to make the transfer because they had not received the necessary transfer request from Mrs E. The provider completely failed to respond to the argument that Mrs E had felt unable to request the transfer until the many problems identified had been rectified and she could be confident about what was being transferred.

The Deputy Pensions Ombudsman concluded that Mrs E could not reasonably have been expected to transfer her fund until the errors had been corrected by the pension provider. The provider was directed to calculate the loss suffered by Mrs E, and the other 51 members who had made identical complaints, as a result of the delay and to top up their pension funds accordingly. In addition, the provider was directed to pay £250 to Mrs E, and each of the other members, in recognition of the distress and inconvenience they had suffered.

Benefits “lost” in winding up

The complaint

Mr F complained that he had been denied his entitlement to preserved benefits arising from his membership of his former employer’s pension scheme.

A new pensions administrator had been appointed in 1992 to deal with the winding-up of the scheme, but by that time Mr F’s name and details of any benefits were missing despite the fact that his preserved benefits, namely a pension of around £1,000 pa, had been confirmed to him in 1986.

Each administrator blamed the other for the omission of details recording Mr F’s preserved pension, but suggested that Mr F may well have transferred his benefits out at some point.

The scheme was wound up with no pension provision for Mr F.

Conclusion

The complaint was upheld.

The Deputy Pensions Ombudsman was satisfied on the balance of probabilities that Mr F had not transferred his benefits to another arrangement. He concluded that there had been a failure to transfer Mr F’s details to the new administrator and directed the former administrator to purchase an annuity for Mr F on the same terms and conditions as had been secured for members of the scheme on winding up.

Retrospective inclusion of part-timer

The complaint

Mrs G had been excluded from a scheme on the (then legitimate) basis that, as a part-time employee, she was not entitled to join. She retired in 1997. In 2007, the respondent said that the scheme would agree to admit Mrs G retrospectively for her period of employment from 1984 to 1997 on payment of appropriate contributions. Mrs G complained that she did not receive interest on the retrospective payments of her pension and lump sum for the period between her retirement in May 1997, and the eventual date of payment in June 2008.

Conclusion

The complaint was not upheld.

The Deputy Pensions Ombudsman concluded that there was no automatic right to interest on late payment of benefits. Mrs G’s late admission to the scheme was not attributable to any maladministration on the part of the respondent. There was no provision within the scheme rules for the payment of interest. It was noted also that the scheme had not looked to Mrs G for the payment of interest on the arrears of her contributions.

Discretionary pension increases after scheme merger

The complaint

In 2002, following various corporate changes, the principal employer to three schemes became the same company (the company) and it was decided to merge the schemes by the creation of the scheme that the complaint related to.

Mr H and Mr I were each receiving a pension from the scheme derived from pensionable service in one of the previous schemes (the scheme). Prior to the merger, the then principal employer granted yearly increases to pensions in payment. Following the merger, no pension increases had been awarded by the company.

Mr H and Mr I complained that:

- the long-standing practice of granting yearly increases had created by “custom and practice” an implied contractual obligation for the company to provide yearly increases in the future;
- the company was bound by a declaration in the transfer deed (dealing with the scheme’s merger), which said: *“it intends to exercise its discretionary powers under [the scheme] in respect of granting approval to discretionary increases to pensions in payment..., in a manner that is consistent with the current practice in the way that the Principal Employer (as defined in [the previous scheme’s deed]) gives consideration to the exercise of such powers under [the previous scheme] ...”*;
- the scheme’s actuary had certified that the terms should be broadly no less favourable than in the transferring scheme.

Conclusion

The complaint was upheld.

The Pensions Ombudsman did not accept Mr H’s and Mr I’s “custom and practice” argument. There could not be a contractual obligation that deprived the company of the express discretion that they had to grant pension increases. The company was required to exercise its discretion taking into account all relevant factors and act in a way not likely to damage the relationship of trust and confidence with its employees.

The company, knowing that the actuary signed the GNI 6 certificate in the belief that the award of increases under the scheme would be broadly no less favourable than under the previous scheme, could not ignore this when deciding whether or not to make an award.

Whilst the company’s declaration of intent in the transfer deed could not fetter its future discretion to grant pension increases, it did create an obligation to exercise discretion taking into account the intent to do so consistently with the way it had been exercised under the previous scheme. Amongst other things, to do so required an annual review. However, following the creation of the scheme, the company had made a single decision of principle not to grant pension increases, rather than reviewing its position annually.

The Pensions Ombudsman directed that the company should reconsider its exercise of discretion to pay pension increases for each year from the creation of the new scheme. In the event that increases were awarded, Mr H and Mr I should be paid back payments with simple interest.

Distribution of death benefits – alleged bias

The complaint

Mrs J complained that, following the death of her partner Mr K, his estranged wife and business partner, Mrs K, who was a trustee of the company's small self-administered pension scheme and also a potential beneficiary, had a conflict of interest in the settlement of his death benefits.

She contested the award of 30% of the lump sum to Mrs K and also said that the trustees had been unreasonable when they requested detailed financial information in order to assess the level of her dependency on Mr K.

There was an independent trustee in place.

Conclusion

The complaint was not upheld.

The Pensions Ombudsman recognised that there was a conflict of interest for Mrs K, but it was also noted that the scheme rules allowed her to participate in the exercise of discretionary power in the circumstances. In addition, the presence of an independent trustee meant that the trustees' joint decision regarding the distribution of the death benefits was not invalidated by the possibility of bias on the part of another trustee.

Abuse of funds (I) – a complex complaint with several heads

The complaints

When their pension scheme wound up in deficit following the demise of the sponsoring employers, a large number of members (represented by the independent trustee) made a series of complaints about decisions taken by the individual trustees and former trustees. They said that the trustees had failed to act on advice they had received, or that the true purpose of their actions was to assist the employers. Additional complaints related specifically to enhanced benefits awarded to Mr L, the chief executive and chairman of the trustees.

The first three complaints were about investment decisions taken by the trustees.

The complaint (1)

At the behest of Mr L, the trustees agreed to accept shares in the company (which was nominally the principal employer at the time) in lieu of unpaid employer contributions. The arrangement was that these shares would be placed on the open market, but no buyer was found. Trading in the company's shares was suspended about a year later and a receiver was subsequently appointed.

Conclusion

The trustees apart from Mr L were entitled to rely on the exoneration and indemnity clauses contained in the trust deed, but Mr L was not, because he should have known that the investment was made in breach of trust.

However, the Pensions Ombudsman found that this employer would have been unable to pay the outstanding contributions in any event and so the scheme had not incurred any additional loss.



The complaint (2)

Soon after it became clear that the above share deal had failed, Mr L invited the trustees to purchase preference shares in another of the companies to the value of £195,000, despite the fact that this company and two other companies together owed the scheme more than £70,000 in unpaid contributions. The trustees were told that the shares would be redeemed after a year from the proceeds of sale of a commercial property. Mr L had sought legal advice about this, but then either acted contrary to the advice or applied it selectively. The purchase duly proceeded and the unpaid contributions were then paid out of the proceeds of the sale, as had been intended.

The company reneged on an agreement to pay interest on the value of the preference shares. Neither of the required two half-yearly interest payments was made. The property had still not been sold at the time the shares were due to be redeemed, and the company later became insolvent. The trustees recovered none of their £195,000, because other creditors ranked as higher priority and (despite the advice Mr L had received) they had not taken security over the property by means of a second charge.

Conclusion

The complaint was upheld.

The Pensions Ombudsman found all the trustees involved in this transaction personally liable. Although legal advice had been obtained, it had effectively been disregarded. The scheme's trust deed contained indemnity and exoneration clauses, but the Pensions Ombudsman found that the trustees were unable to rely on these clauses. Section 33 of the Pensions Act 1995 provides that if trustees do not take care or exercise skill in making investment decisions, their liability cannot be restricted. Section 36 of the same Act provides that they must obtain and consider proper investment advice from an authorised person, which had not happened. He found also that they could not rely on section 61 of the Trustee Act 1925, which requires that they must have acted reasonably. Given that there were unpaid contributions and the new principal employer had stopped contributing almost immediately after its appointment, they should have taken steps to enforce payment of the existing debt rather than lend the employers more money. The resolution proposing the share purchase actually stated that one of its purposes was to provide working capital to the principal employer. The trustees should certainly, at the very least, have obtained security over the property. The sum of £195,000 had been handed over needlessly, and lost. The trustees were liable for this sum, plus interest.

The complaint (3)

The trustees were advised to surrender their investment in a poorly performing fund and to invest the proceeds in two other funds. They duly surrendered the investment but the proceeds remained on deposit for nearly four years. This happened despite regular urging by the administrators, actuary and investment advisers to invest. Following Mr L's departure, worrying news about the state of the scheme funding began to emerge, which the remaining trustees said caused them to hesitate about reaching investment decisions until the position became clearer. Finally, the funds were invested at the time the scheme went into wind-up.

Conclusion

The complaint was upheld.

The Pensions Ombudsman found that the trustees had no reason not to invest within a short time of receiving the initial advice. If they knew there would be a delay, they should not have disinvested immediately. He gave little weight to their statements that they were unable to act because of the constantly changing financial position of the scheme; indeed, their failure to match assets with liabilities, as they had been advised to do, was one of the reasons for the worsening state of the funding.

Using data obtained from the investment houses, it was estimated that their failure to invest as advised had caused an additional loss to the scheme of £330,000. Having received specific advice to invest, it was unreasonable for the trustees to have rejected the advice simply because they might have disagreed with it. The trustees involved were made personally liable for this sum plus interest, for reasons similar to those given above.

The complaint (4)

The other complaints concerned Mr L's benefits.

The trustees twice resolved to augment Mr L's benefits but, despite some concern over the augmentation power on which the trustees apparently relied, the augmentations were found to be valid.

However, apparently unknown to most if not all of the other trustees, Mr L started preparing to leave with an optimum award of retirement benefits. He obtained statements of his benefits from the administrators and made enquiries with the actuary about the state of the funding. Having apparently been advised that the scheme would be fully funded if the other trustees agreed to forgo previously approved augmentations to their own benefits, Mr L got them to resolve to do just this. The actuary then produced an "informal" MFR valuation indicating that the scheme was fully funded, which Mr L got the trustees to authorise him to sign. Mr L disclosed shortly afterwards that his transfer value had now been recalculated as £854,862, around one-sixth of the total value of the scheme fund. At a fourth trustee meeting to be convened during a period of less than three weeks, Mr L's request to take this transfer value and have it paid into an account in Guernsey was duly approved. Not all the trustees were present at these meetings; indeed, the meeting when the trustees "resolved" that Mr L could sign confirming that the scheme was 100% funded was attended only by Mr L and one other trustee, although others were said to be present "by fax and telephone", which the Pensions Ombudsman considered was in practical terms meaningless.

When the true facts emerged in the following months, it was revealed that the scheme had been considerably less than 100% funded at the time in question and, if this had been known, Mr L's transfer value should have been set correspondingly lower.

Conclusion

The complaint was upheld.

The Pensions Ombudsman found that the transfer payment should not have been authorised and that it was paid in breach of trust. Some of the trustees did not seem even to know until some time afterwards that these events were taking place. None of what had happened was made known to the actuary, who had been excluded from the later trustee meetings, or to the administrators, whom Mr L had actually asked to prepare another early-retirement quotation on the day after his transfer of benefits to a nominated Guernsey account had been "authorised". The transfer value was taken out of the funds on deposit.

Although the other trustees gave limited thought to the propriety of what was being done or its consequences, the Pensions Ombudsman concluded that only Mr L had acted in wilful default of his duties and was personally liable. The independent trustee was required to calculate the value of his excess benefits and Mr L was directed to repay accordingly on notification.

Abuse of funds (2)

The complaint

Mr M was a member of his employer's pension scheme, becoming a deferred member in 1989 when he left employment. The scheme's trustees were variously the employer and individuals, a number of whom were directors and/or shareholders of the sponsoring employer. The scheme closed in 1995 and the employer ceased trading.

At various times after 1983, scheme funds were used to purchase two properties, both overseas, for company use. An agreement was drawn up for the company to pay rent on the first property at the rate of £8,000 pa but rent was never paid at the full rate. The first property was sold at a loss and the proceeds reinvested in the second property. It appeared that rent was paid in respect of this property and it was sold in early 1996, making a profit for the scheme of around £2,000.

At various times after 1985, a number of loans were made to the employer from scheme funds. At the time the scheme closed, the outstanding loans, together with interest, totalled around £420,000. The employer was taken over and it was agreed that the loans would be repaid by the new employer. A first repayment of £100,000 was made but none thereafter, although the new company began paying the pensions for those members already in receipt of their benefits, including Mr M. This company went into administration in 2000.

In 2001, Mr M's pension ceased and was not reinstated.

Conclusion

The complaint was upheld.

The Deputy Pensions Ombudsman considered that the purchase of the first property was, with hindsight, a poor investment but was not a purchase that could be said to be unreasonable. However, the failure to collect rent on the property and the purchase of the second property constituted a breach of trust made knowingly by some of the trustees. Accordingly, those trustees were unable to rely on the exoneration clause in the scheme's trust deed and were found to be personally liable for the loss to the scheme. They were directed to repay to it £52,000 in respect of lost rent, plus interest.

The Deputy Pensions Ombudsman considered that some loans made to the sponsoring employer were of doubtful appropriateness but not wholly unreasonable. However, some of the trustees were also shareholders and/or directors of the employer and would have been aware of the company's financial viability. Moreover, the company had not made any repayments to the scheme or paid interest on the loans since 1985. The trustees' decision to keep advancing scheme funds to the company was driven by the company's needs rather than the interests of the scheme and its members and amounted to a breach of trust. Again, some of the trustees were found to be personally liable for the ensuing loss to the scheme in unpaid capital and interest and were directed to repay £360,000 to the scheme, plus interest.

Ill-health early retirement – a need to undergo treatment

The complaint

Mrs N left service on ill-health grounds and applied for ill-health early retirement benefits. The scheme rules provided that a member would qualify if they were incapable of performing their duties and likely to remain so until normal retirement age despite appropriate treatment. Her application was refused on the grounds that, while she was currently incapable of doing her old job, there was not sufficient evidence to show that Mrs N had undergone all reasonable treatment for her condition. Approximately seven months after leaving service, Mrs N made another application, which was eventually successful. Had the original application from service been successful, Mrs N would have qualified for enhanced benefits.

Conclusion

The complaint was upheld.

The Deputy Pensions Ombudsman found that the scheme manager's medical advisers had not considered in their recommendations whether or not the proposed treatment was likely to have been successful, so as to allow Mrs N to return to her former job before her normal retirement date. It was not enough simply to say that there were treatments that had not yet been undergone. The scheme managers were directed to revisit the decision to reject Mrs N's application whilst still in service.



Ill-health early retirement – alternative duties

The complaint

Mr O complained that he had been refused an ill-health early retirement pension following an accident at work. The scheme rules provided that, to qualify, a member should be permanently incapable of undertaking their former duties or any other duties that the trustees considered were suitable for the member. Whilst the trustees accepted that Mr O was not fit enough to resume his role as a fitter, they said that there were other suitable duties that Mr O was capable of undertaking but they did not indicate what those duties might be.

Conclusion

The complaint was upheld.

The Deputy Pensions Ombudsman found that the trustees had not gone far enough in considering the test of suitability. They had not adequately considered suitability for other forms of employment and had simply reached a general view that there were other roles Mr O must be capable of. There were also inconsistencies in the view taken – for example, it was felt that on the one hand Mr O was capable of being employed in “patrolling or security work”, whilst on the other hand he could only undertake “sedentary” duties.

In addition, Mr O’s medical condition was known to fluctuate and, as such, there were expected to be periods when he would be able to perform certain duties for a sustained period of time but, equally, periods when Mr O would not be able to perform alternative duties with any degree of permanency. The Deputy Pensions Ombudsman concluded that the trustees should go further, both in explaining what duties they felt were suitable for Mr O and specifically considering his ability to perform those duties “permanently”.

The respondent was directed to reconsider Mr O’s application taking these factors into account.

Recovery of overpayments – reduction of future pension

The complaint

Mr P complained that he had been misled about what would happen if he worked again after retirement. Mr P had worked for a local authority and retired in 2002. Following his retirement he worked part time for another local authority but did not rejoin the pension scheme. In 2003, he asked the pension scheme administrator whether his part-time work would affect his pension and was told that it would not. In 2006, the administrator told Mr P that his re-employment with another local authority had permanently reduced his pension. Without consulting Mr P or offering any apology for its earlier mistake, the administrator reduced Mr P's pension and clawed back the overpayment.

Conclusion

The complaint was upheld.

The Pensions Ombudsman found that, had Mr P been given the correct information in 2003, he might not have taken the part-time job. Alternatively, he could have rejoined the pension scheme and accrued more pension to offset any reduction in his original benefits. Either way, the overpayment would not have arisen. Mr P was, however, only entitled to benefits calculated in accordance with the scheme rules. So the administrator was directed to pay the overpayment to the scheme, and not reclaim it from Mr P. The administrator was also directed to arrange for Mr P to receive a separate pension equal to the reduction in his scheme pension, including future increases and death benefits, and pay Mr P £250 in recognition of the distress caused to him.

Employment-related issue

The complaint

Mr Q complained that his employer had deliberately terminated his contract on the grounds of gross misconduct rather than incapacity in order to avoid the cost of an early retirement pension. He also complained that the administrator, in accepting his employer's reasons for the termination of his contract, had failed to look into the matter adequately.

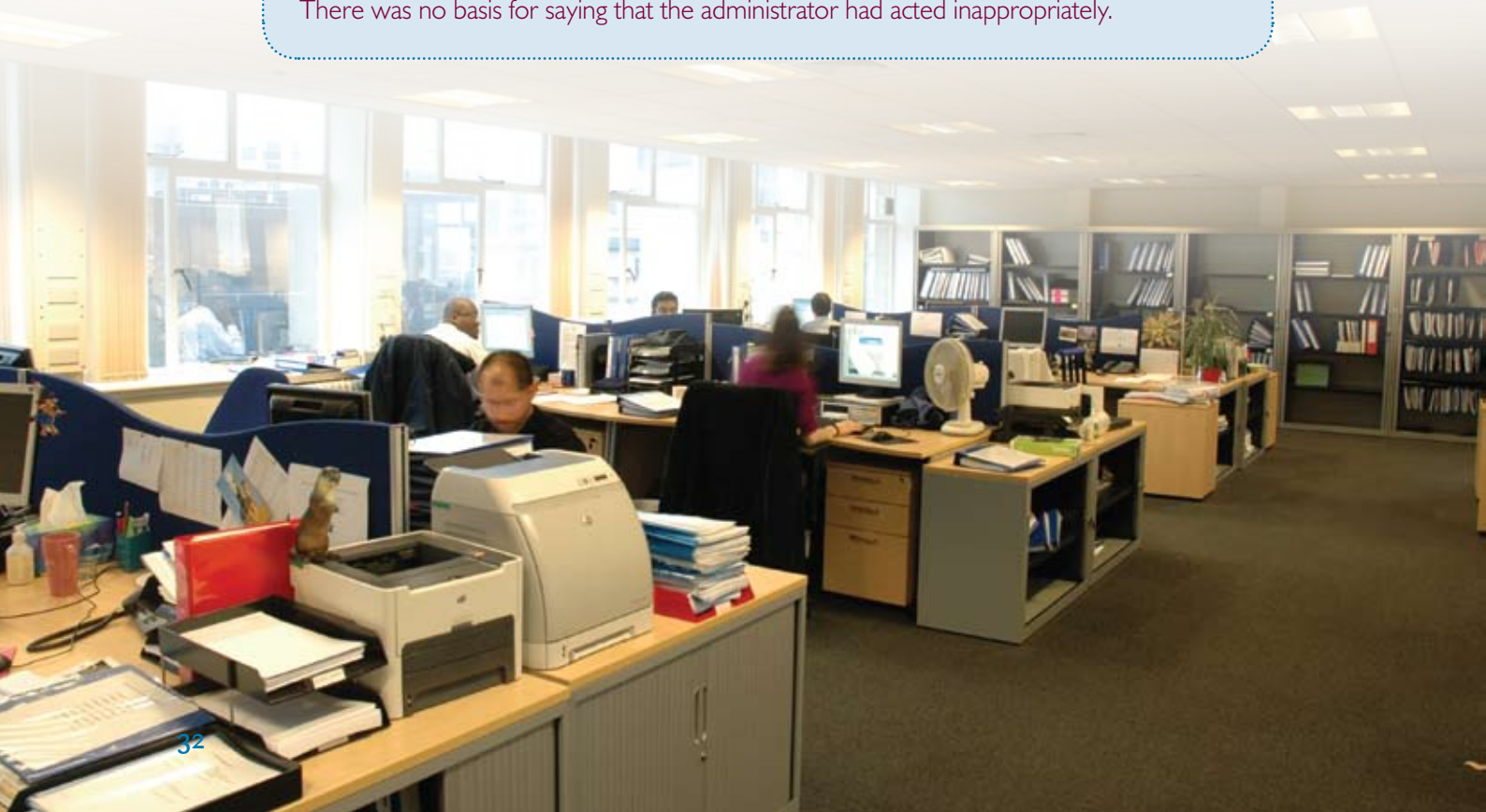
Mr Q was suspended following allegations concerning his conduct. While investigations were being carried out, Mr Q became depressed. During the same period, negotiations were conducted between Mr Q and his employer as to the possible termination of his contract on mutually acceptable terms. At the same time, Mr Q suggested that he was unfit to work and so was entitled to an early retirement pension. Settlement negotiations broke down and more serious allegations came to light. The employer conducted a disciplinary hearing, as a result of which Mr Q was dismissed.

Conclusion

The complaint was not upheld.

The Deputy Pensions Ombudsman recognised that there were clear questions of pure employment law with which he would not become involved. However, Mr Q's complaint was that he was being denied an ill-health pension, which was a matter proper to him. It was found that the decision of the employer (in deciding to go down the disciplinary route rather than the ill health route in order to bring matters to a head) was not perverse. The possible cost of an ill-health pension was not an irrelevant consideration for the employer and it was noteworthy that disciplinary proceedings had commenced before Mr Q's health had deteriorated.

There was no basis for saying that the administrator had acted inappropriately.



Appeals to the Courts

Appeals

Determinations made by the Pensions Ombudsman or the Deputy Pensions Ombudsman are subject to appeal to the High Court (England and Wales), Court of Appeal (Northern Ireland) or Court of Session (Scotland).

The Pensions Ombudsman is not automatically a party to an appeal. (It is a minor irritation that the appellant party frequently joins us in error and we then have to spend time putting matters straight.)

The first two postholders generally, if slightly reluctantly, participated in appeals – applying to be joined where not already so and then being represented, technically to assist the Court but often in substance defending the original determination. This was acknowledged to be procedurally odd. In the Courts, the judge in a case would not be a party to an appeal to a higher court against the judge's decision. I have adopted the same stance as my predecessor, which is that I will not generally participate, whilst recognising that this may leave a complainant who is on the receiving end of an appeal in an uncomfortable position, and that future participation may be necessary where an issue arises that is relevant to the way we work.

We are occasionally asked for data, such as: the proportion of cases that have been appealed; whether appeals are more commonly from disappointed complainants or respondents; and who wins, and how frequently. These are not statistics that we keep, essentially because they would not be meaningful. Naturally, we prefer our determinations to be regarded as “right”. So, broadly, we hope for not too many appeals – or not too many successful ones, anyway. But in almost every case, at least one party will view the outcome as unsatisfactory and probably wrong. Whether that party appeals will depend on a wide range of factors: the degree of their conviction; the direct financial consequence of the determination; precedent for other similar cases; or the depth of the party's pockets – to list just a few.

To further confound hopeful statisticians, if a party does appeal, it is not always clear whether they have won (in the sense of getting the outcome they wanted), or indeed the extent to which the original determination should be regarded as having contained an avoidable error of law. A case that reaches the Pensions Ombudsman and then goes to appeal is not likely to be straightforward – otherwise it could have been resolved earlier. And our decision to watch from the sidelines sometimes leaves us not quite clear about what happened on the pitch. For all these reasons and more, when the Courts disagree with us there may or may not be lessons to be learned – whether for us or for the industry and pensions lawyers.

We can perhaps be forgiven for sometimes being puzzled by outcomes. For example, in *Lyn Jones v Calderdale MBC*, summarised below, the judge, dealing with the determination that Calderdale had reached a rational decision, said that the Pensions Ombudsman (and by inference Calderdale MBC) had not attached sufficient weight to an item of medical evidence that had been before them. He went on to substitute his own decision as to the outcome.

By contrast, in an appeal decided the year before¹ the judge had said, in overturning a decision by the Deputy Pensions Ombudsman, that the trustees had attached little or no weight to relevant evidence:

¹ *Sampson v Hodgson* [2008] All ER (D) 395

“If the Trustees fail to take into account any relevant evidence or material, their decision can be set aside as having been improperly reached. But provided they take it into account, the weight to be given to that evidence or material is entirely a matter for the Trustees, not the Ombudsman or (on appeal) the Court...”

I mention this not to express a direct view on the merits of either judgment, but to show how difficult it is to draw conclusions from appeals about the “correctness” or otherwise of our determinations. (The first case also illustrates how frustrating it can be to stand aside. It might have been helpful to the judge if he had been directed to the earlier judgment and other relevant case law – if only so that the matter in hand could be clearly distinguished.)

Judicial Review

The office’s administrative decisions can be challenged by way of judicial review. Judicial review applications are rare, because the objection to the administrative decision may also amount to a point of law that can form the basis of appeal after the complaint has been determined. But a decision on jurisdictional grounds to reject an application to us, or to discontinue an investigation for whatever reason, cannot be appealed because it follows from the decision that there will be no determination of the complaint to appeal. So for such decisions, judicial review is the only option.

In 2008/09 our only current (and long-running) judicial review application came to an end (see later). In short, my predecessor had decided that the complaint in question should not be investigated because the same issue (concerning a decision made by a public body) had itself been subject to judicial review in parallel proceedings. My predecessor’s decision was set aside, but by the time of the hearing a new potential issue had arisen concerning whether the same matter, at the heart of which was the reason for dismissal, had been before an employment tribunal in an unfair-dismissal claim and so was outside my jurisdiction. This was a point with potentially wider significance for the office, on which I considered clarity would be helpful. We now have that clarity: it did not follow from there being a common factual issue that the subject matter of the employment tribunal claim and the subject matter of the complaint to the Pensions Ombudsman were the same. So there was no bar to investigation on those grounds.

The cases

Appeals heard or made during the year.

Appeals outstanding at the start of the year	3*
New notices of appeal issued	9**
Appeals heard during the year	7
Appeals remaining at year end	2

* One appeal settled. ** One appeal settled, one appeal withdrawn.

The appeals heard during the year were as set out next.

Secretary of State for Health v Marshall (2008) All ER (D) 430 (Apr)

Failure to provide information concerning the right to repurchase refunded pensionable service. Complaint upheld against the manager for the maladministration of failing to provide this information, even though there was no statutory obligation under the Disclosure Regulations to do so.

The manager appealed on grounds that: the Deputy Pensions Ombudsman had confused the statutory obligation to provide specified information with a supposed but non-existent obligation to provide non-specific information; the manager had taken reasonable steps to bring the required information to the member's attention; and the manager could not be blamed for the employer's failure to do so.

Appeal dismissed: the Deputy Pensions Ombudsman was entitled to conclude that there had been maladministration even if there was no breach of the Disclosure Regulations; obligation of the manager compared with the employer's obligation in the case of *Scally*² "to take reasonable steps to bring to the attention of the employee the existence of valuable rights which are contingent upon the employee acting in a particular way, of which the employee could not be expected to be aware unless specifically notified."; and the manager was vicariously liable for any failure by the employer to communicate rights to the member.

Bainbridge v Quarters Trustees Limited (2008) All ER (D) 52 (May)

Dispute concerning the construction of pension scheme rules – whether the money purchase section was separate from the final salary section. The scheme was in deficit and in the process of being wound up.

An appeal was made against the Deputy Pensions Ombudsman's finding that the provisions of the trust deed and rules all pointed towards the existence of one fund only.

Appeal dismissed: the scheme was a hybrid scheme providing both final salary and money purchase benefits; the scheme funds were to be regarded as a single fund to meet all liabilities of the scheme, whether they arose under the final salary section or the money purchase section; the true construction of the trust deed was the starting point; other factors (such as the way the scheme accounts were prepared) were not relevant to this.

Kemp v Sims and another (unreported) 22 July 2008

A cheque, payable to the trustees on the demutualisation of an insurance society, was paid into the employer's account. The Deputy Pensions Ombudsman found that, whilst all trustees had acted in breach of trust, only one (a solicitor) was personally liable under section 61 of the Trustee Act 1925 (there was no exoneration clause in the trust deed).

An appeal was made by the trustee on various grounds including lack of jurisdiction.

Appeal dismissed: the Deputy Pensions Ombudsman had jurisdiction and was correct to uphold the complaint against the one trustee. It was not wrong to treat the demutualisation funds

2 *Scally v Southern Health and Services Board (1992) IAC 294*

as belonging to the trustees as they were members of the society and it was their rights as members that the insurer was buying out.

Luthra v The London Borough of Hounslow (unreported)
17 November 2008

Complaint concerning the refusal to reconsider the start date for the payment of an ill-health early retirement pension. The appeal was made seven years after the pension had been awarded. The rules of the scheme provided that an appeal was to be made within six months of the award. The Deputy Pensions Ombudsman did not uphold the complaint as no maladministration was found.

Appeal dismissed. No error of law.

Hamilton v Monmouthshire County Council and another (2008)
All ER (D) 200 (Dec)

Complaint that an ill-health early retirement pension should be backdated to the date of the onset of illness, following the *Spreadborough*³ case. Complaint upheld in part in relation to the date from which the ill-health pension was payable. *Spreadborough* distinguished as it had been decided under earlier Local Government Pension Scheme regulations and involved the question of whether new evidence should be taken into account years after a failed application. In this case there had been no previous failed application; entitlement under the relevant regulation arose from the date of the application or, if later, from the date when the member became permanently incapacitated.

Appeal dismissed: the Deputy Pensions Ombudsman had made no error of law in distinguishing the complaint from the *Spreadborough* case or in the interpretation of the relevant regulation as to the date from which entitlement arises. It could be backdated to the date of application but no further.

Lyn Jones v Calderdale Metropolitan Borough Council (unreported)
27 January 2009

Various complaints against a former employer concerning delay in the award of an ill-health early retirement pension; the yearly pay used as the basis for calculating the pension; and the rejection of her application for an injury allowance. Complaint dismissed except in relation to delay in the award of the pension but found that there was no outstanding injustice.

Miss Jones appealed. Appeal allowed in part. The judge found that the Pensions Ombudsman had erred in law as: Miss Jones was entitled to the injury allowance on the basis of the regulations; and the Pensions Ombudsman had failed to provide reasons as to why he had not made any award for the maladministration identified. This matter was remitted for reconsideration. No error as to the amount of the yearly pensionable pay.

3 *Spreadborough v The Pensions Ombudsman and another (2004) All ER 152 (Jan)*.

Slattery v Cabinet Office (Civil Service Pensions) and another (2009) All ER (D) 146 (Feb)

Whether a pension sharing order (PSO) made in divorce proceedings should apply to early retirement benefits received from the Civil Service Compensation Scheme (CSCS). The Deputy Pensions Ombudsman found that: the benefits from the CSCS were not compensation but represented preserved pension benefits brought into payment early under the scheme; entitlement was triggered by the application of the CSCS rules; the benefits were taken into account in calculating the cash equivalent transfer value (CETV) as they were benefits Mr Slattery was potentially entitled to from the day he joined the PCSPS; it was only the actual entitlement to receive the benefits early (without reduction) that arose after the date of the PSO.

Mr Slattery successfully appealed: the provisions of the legislation were concerned with “shareable rights” not benefits; Mr Slattery’s entitlement to his early pension benefits was not a right that had accrued at the time of his divorce; it was a contingent discretionary benefit that was separate from and not part of those taken into account in calculating the CETV; the benefits payable under the CSCS were not in contemplation at the time of the PSO; the PSO only applied so as to reduce Mr Slattery’s annual pension from his normal retirement date. It was intended to effect a clean break and future increases in Mr Slattery’s pension belonged to him.

Judicial review in the case of R (on the application of Parish) v Pensions Ombudsman (2009) All ER (D) 151 (Jan)

Application for judicial review of a decision of the then Pensions Ombudsman to discontinue an investigation on the grounds that the complaint that he was being asked to investigate was one that had already been determined by the High Court in another claim for judicial review.

Outcome: the judge found that the original complaint was the same as the earlier claim for judicial review but that it had materially changed by the time the final decision to discontinue was made. The decision to discontinue was quashed, but the judge refused to make an order requiring that the changed complaint be investigated. The judge recognised that there was a discretion to investigate and did not think it would be right to interfere with that discretion.

Further, Section 146(6)(a) of the Pension Schemes Act 1993 did not prevent the investigation of the changed complaint, which involved investigating the circumstances behind a dismissal, even though an application for unfair dismissal had been made to an employment tribunal before the complaint was made. The judge found that the ultimate question for the Pensions Ombudsman was different from the question for the employment tribunal. The mere fact that there was a factual issue in common – regarding the reasons for dismissal – did not mean that the matters that were the subject of the employment tribunal claim were the same as the matters that would be the subject of an investigation by the Pensions Ombudsman.

Appeals outstanding at year end

Mr Musawi v Bevis Trustees Ltd and Legal & General Assurance Society Ltd (ref 72460); and *Mr Head v Gillette Pension Scheme UK* (ref 73013).

2.2 Pension Protection Fund Ombudsman casework review

The Pension Protection Fund (**PPF**) Ombudsman and Deputy PPF Ombudsman:

- review decisions made by the PPF Board; and
- investigate and determine complaints of maladministration on the part of the PPF.

In addition, although nothing directly to do with the PPF, they also:

- determine appeals against decisions made by the manager of the Financial Assistance Scheme (**FAS**). (Complaints of maladministration on the part of the FAS are dealt with by the Parliamentary Ombudsman because the FAS manager was the Department for Work and Pensions).

Pension Protection Fund

Reviewable decisions

The PPF Ombudsman can only consider a matter after it has been reviewed by the PPF Board and then been through their Reconsideration Committee.

During the year, we received 29 new requests to review decisions (compared with nine requests in 2007/08). Of these 29, three had either not been through the Reconsideration Committee or were otherwise outside jurisdiction and were rejected. The remainder mainly related to the levy that the PPF imposes on pension schemes.

In all of the 14 cases concluded, the decision of the PPF was upheld. As last year, the matters referred to the PPF Ombudsman were almost exclusively concerning the calculation of the risk-based levy and in all cases it was found that the PPF calculation of the levy was correct. It was observed again, however, in a number of cases that, whilst the calculation of the levy could not be said to be 'incorrect', it did not always reflect the actual likelihood of the scheme in question being taken on by the PPF – but that was a matter for the legislature.

The following case study illustrates the point.

Reviewable matter

Mr R brought the application on behalf of the employer, saying that the pension protection fund levy for 2007/08 had been calculated incorrectly.

The accounts used to calculate the failure score were those for the year ended 31 March 2006, which revealed a loss of £2,365,000. Mr R complained that Dun & Bradstreet (D&B) had ignored post-balance-sheet events which improved the employer's financial position by some £1,644,500.

Conclusion

The Deputy PPF Ombudsman accepted that it would be extremely difficult to adopt a system that sought to take into account all possible factors affecting a company's viability. D&B's procedure involved using information extracted from accounts filed at Companies House via an automated system, and he accepted that it would be impractical to expect D&B to identify factors extraneous to those accounts. The PPF had calculated the levy in accordance with its determination and was not required to take any action.

Complaints of maladministration

During the year, three complaints of maladministration were received and all were rejected on jurisdiction grounds.

Financial Assistance Scheme

During the year, we received three appeals against FAS decisions, and determined that same number. In all cases the FAS decision was upheld. The cases, whilst small in number, fall into two main categories: whether a scheme is eligible to be accepted by the FAS; and whether members of such schemes receive the correct entitlement. The following case study illustrates that second category.

The appeal

Mr S was a member of a pension scheme that became eligible for payments from the FAS. Before receiving his award from the FAS, Mr S had already taken a transfer value from the pension scheme and some of his remaining pension benefits as a lump sum. To calculate any FAS award due to him, the FAS had first to convert the transfer value and lump sum into a notional pension that Mr S was treated as receiving from the scheme. To make the conversion, the FAS used a notional annuity rate supplied by the Government Actuary's Department based on a number of assumptions. Mr S said that the notional annuity rate used by the FAS was inappropriate and produced a higher figure than was available in the open market. As a result, he considered that his FAS award was less than it should have been and appealed.

The FAS explained that the notional annuity rate aims to approximate the "real" annuity that would have been provided by an insurance company as part of a bulk transfer for annuity purchase. It is unlikely to replicate exactly what an individual would have got had the scheme actually bought an annuity and does not aim to replicate what a member might themselves have achieved with their lump sum. In particular, the notional annuity rate does not include an assumption that the pension will increase in payment. This is because the FAS is generally dealing with underfunded schemes that are being wound up, and pensions from those schemes are unlikely to include indexation.

Conclusion

The appeal was not upheld.

The Deputy PPF Ombudsman accepted that the FAS is permitted to use notional annuity rates as prescribed in The Financial Assistance Scheme Regulations 2005. He recognised that, on a like-for-like basis, a commercial annuity rate is likely to differ from the notional annuity rate used by the FAS but, nonetheless, Mr S's award had been calculated correctly.

2.3 Other activities

Proposed merger with Financial Ombudsman Service

In the first half of the year we worked alongside the various interested parties on the proposal, previously accepted in principle by Ministers, that the Pensions Ombudsman should merge with the Financial Ombudsman Service (*A Review of Pensions Institutions*, Paul Thornton's independent review for the Department for Work and Pensions). A great deal of work was done by all concerned on comparing the two jurisdictions and other related matters. In December 2008, Ministers announced that the merger would not go ahead. As DWP explained:

"A detailed examination of the basis of the two services' decision-making powers established that there are significant differences between them. While these differences could be reconciled in many areas, there are a small number of more fundamental issues that preclude merger of the bodies at this point in time."

But we continued to explore ways that the two organisations could work more closely together in the absence of a merger, concentrating in particular on the experience of potential parties to complaints. We all wanted to minimise the risk of complications resulting from there being two ombudsmen dealing with different aspects of pensions. (The Financial Ombudsman Service deals mainly with complaints about regulated pensions advice. We deal predominantly with complaints about the administration of schemes, whether the activities are regulated or not.)

That work has resulted in clearer signposting, so that complainants should less often go to the wrong office at the start, and in a quicker process for transferring them to the right place if they do.

We continue to maintain strong relations with the Financial Ombudsman Service on both operational and strategic matters.

Liaison group

My predecessor had established a "user group" intended to smooth the working relationships with potential parties (and, in particular, the industry). Over time it became moribund for one reason or another. Almost as soon as I took up office in 2007, the Association of Pension Lawyers expressed an interest in reviving it. We are much indebted to them, and in particular to Mark Grant and his colleagues at CMS Cameron McKenna for getting it under way. It now has contributors from various trade and professional bodies as well as public sector schemes. Now that it exists, the challenge for its members and us will be to get the best out of it.

Website

Pressure of work in previous years had meant that our website had only received minimal attention. It was dated in appearance and did not comply with current expectations of accessibility. During the year a small group of staff worked hard on a complete redesign of the Pensions Ombudsman part of it (by far the most often used), which was launched shortly after the year end. There is work to be done on the Pension Protection Fund Ombudsman website during the current year to bring it up to the same standard.

Process review

I had, from the outset, said that I thought we could usefully look at ways in which we could simplify and speed up our processes, whilst recognising that we have rules under statute describing what the process should be, and of course a requirement to follow due process and comply with the needs of natural justice. Early in the year a group made up of staff from all areas of the office spent time thinking about what could be done. In due course, revised processes were put into practice.

Amongst other changes, both big and small, we gave investigators greater freedom to express a view about the likely outcome of their cases, as reported in the Pensions Ombudsman casework review (section 2.1). We also changed our approach to complaints about ill-health early retirement applications (one of the most common categories that we deal with) in order to be clearer with the parties about what we wanted from them and to manage expectations as to possible outcomes.

Accessibility

As steps towards making ourselves more accessible, in addition to the website review discussed above, we have reviewed our standard communications, changing some of our standard letters, simplifying the style of formal determinations and working on a revised booklet (not yet launched, pending finalisation of some related data protection matters). We also put in place our disability equality scheme.

2.4 Our office and people

Aims and principles

During the year, across the teams we reviewed the aims statement that we had set out towards the end of the previous year, deciding it was substantially fit for purpose and so leaving it fundamentally unchanged. The current version appears in Appendix B. We then worked, as a combined staff exercise, on complementing those aims with a set of principles, appearing also in Appendix B.

We are in territory that is all too capable of producing meaningless correct-speak and/or fine words not backed up by substance. But everyone has had the opportunity to contribute and comment, and we hope that we have identified a set of principles with real values behind them. That said, there is more work to be done in identifying how best to embed them and in doing our utmost to ensure that we all act in accordance with them. That work will continue into the current and future years.

Staffing

At the end of the year we had just under 37 full-time equivalent staff in place (a head count of 38 people), including the Pensions Ombudsman and the Deputy Pensions Ombudsman. The numbers were in line with our business plan and represent a reduction over previous years.

The pay settlement in the year mirrored that of DWP and fortunately we were able to implement it very quickly. The average pay increase for the office as a whole was 4% in 2008/09.

We underwent a preliminary review of our suitability for reaccreditation as an Investor in People, which told us where we fell short and what we needed to do. We took steps accordingly, principally relating to communication. The actual accreditation exercise is due in 2009/10.

The average number of days off due to sickness in the year was 3.5. This figure was 1.4 in 2007/08.

IT systems

It is many years since the Pensions Ombudsman's annual report has included encouraging words about IT. Regrettably that tradition must be maintained.

Last year we reported that the new casework management system that had been requisitioned some time ago and was implemented on the day I arrived in post was unsatisfactory. The fundamental problem is that the system is designed for legal practices – and the reasonable expectation that it would be adequately tailored to suit our rather different activity have so far been disappointed. The providers of that system, Axxia Systems Ltd, were bought during the year by Reed Elsevier plc and became part of their Lexis Nexis division. Any hopes that we had that this would swiftly mean better support and improved service were slowly snuffed out by a prolonged period of inactivity, contrary to undertakings given before the takeover. Recently more useful relationships have been resumed, but the system itself remains inappropriate in many respects, without much indication that this will improve in future, and it is painfully slow. The latter problem may be due to the initial under-specification of hardware under the main contract with Siemens. Work continues to make the system acceptable, with unavoidable distraction from the real business of dealing with pension complaints. We hope that the recently improved relationships will bear fruit in 2009/10.

During the year we reviewed the security of personal data and issued new guidance to staff as well as installing encryption software on all our laptops. There were no personal data-related incidents in the year.

Complaints about us

Our process for dealing with complaints about our own activities is to try first to deal with concerns informally, but then if necessary the matter is reviewed by the Deputy Pensions Ombudsman in his capacity as the office's casework director. (If the complaint is directly about him, then it will be considered by the Pensions Ombudsman.)

In almost all of the cases that come to us, at least one party will disagree with the outcome and this dissatisfaction sometimes manifests itself as a complaint about the way we dealt with the evidence. We try very hard to explain that anything that goes to the outcome of a case is not suitable for our internal complaints process; but this is not an easy point to get across.

We are subject to the jurisdiction of the Parliamentary Ombudsman, to whom people can go if there is an administrative issue that they are unhappy about. As with our internal process, the Parliamentary Ombudsman will not deal with complaints that are directed towards achieving a different outcome for the pension complaint that we originally dealt with.

During the year we received 12 formal complaints about our service. Although an increase on the previous year's figure of five, this is still pleasing considering the number of people with which we deal. Once again, no formal investigations about our service were undertaken by the Parliamentary Ombudsman. We made one consolatory payment of £500 where a wholly unacceptable delay on the part of the office had caused exceptional distress to the individual concerned.

Social and community issues

During the year we introduced a written sustainability policy and additional recycling facilities.

Instead of sending Christmas cards in 2008, we made a donation of £500 to Farleigh Hospice in Chelmsford, a charity nominated by staff.

Risks and uncertainties

To manage and mitigate risk, we maintain a risk register, which is regularly reviewed by the senior management team.

The main risks, as identified at the end of the year (not in any order of significance or current severity), were:

- a breakdown in good relationships with key stakeholders;
- corporate governance and management controls not being fit for purpose;
- financial controls and systems failing;
- insufficient resources;
- failure to fulfil our legal responsibilities as an employer;
- failure to keep pace with the external pensions environment;

- casework input or throughput predictions not being met;
- failure to make the right casework decisions, and/or significant and serious challenges on casework decisions or processes;
- telephony and IT systems not being fit for purpose;
- the business continuity plan not being sufficiently robust;
- a breach of data protection requirements; and
- key suppliers not surviving the economic downturn.

Key performance indicators

Our key performance indicators for the year aligned with our goals for the end of the year (dealt with elsewhere) and related to:

- response times to initial enquiries;
- number of enquiries in hand;
- time taken to decide whether or not to investigate a matter;
- average time taken to complete investigations;
- average age of open investigations;
- number of cases more than 12 months old and their age profile; and
- ratios of completed cases to expenditure.

During the year we deliberately placed emphasis on achieving desired outcomes by the year end. In 2009/10 we will be balancing that necessary attention with ongoing monitoring.

Freedom of information

We received nine explicit requests for information under the Freedom of Information Act, all of which we responded to within the statutory time limits. It is our policy not to charge for processing Freedom of Information requests and we have not refused any requests on the basis of cost. Most refusals were on the grounds that the information did not exist. Some requests were for statistics that were already available in our published annual reports and were therefore strictly exempt. Other requests were framed as Freedom of Information requests when data protection subject-access requests would have been more effective, and they were dealt with accordingly.

3. Disclosures

3.1 Statutory background

The Pensions Ombudsman is a statutory commissioner appointed by the Secretary of State for Work and Pensions under section 145 of the Pension Schemes Act 1993. The jurisdiction and powers of the Pensions Ombudsman are derived from Part X of the Pension Schemes Act 1993 and regulations thereunder.

The Ombudsman for the Board of the Pension Protection Fund (the Pension Protection Fund Ombudsman) is a statutory commissioner appointed by the Secretary of State for Work and Pensions under section 209 of the Pensions Act 2004. The jurisdiction and powers of the Pension Protection Fund Ombudsman are contained in sections 209 to 218 of the Pensions Act 2004 and regulations thereunder.

The respective legislation also provides for the appointment by the Secretary of State for Work and Pensions of a Deputy Pensions Ombudsman and a Deputy Ombudsman for the Board of the Pension Protection Fund (Deputy Pension Protection Fund Ombudsman).

At present the postholder of Pensions Ombudsman also holds the post of Pension Protection Fund Ombudsman. Similarly, the Deputy Pensions Ombudsman also holds the post of Deputy Pension Protection Fund Ombudsman.

3.2 Other interests

Neither the Pensions Ombudsman nor the Deputy Pensions Ombudsman had any significant external interests that conflicted with their management responsibilities.

3.3 Accounting and audit

The accounts have been prepared under a direction issued by the Secretary of State for the Department for Work and Pensions in accordance with Section 145(8)–(10) of the Pension Schemes Act 1993 and Section 212A of the Pensions Act 2004 as inserted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008.

There are no significant future net liabilities that will be financed by grant-in-aid.

Details of the treatment of pension liabilities in the accounts can be found in the Remuneration report and in note 4.

The office had a policy of paying invoices within 30 days, and we complied throughout the year, other than where there was a significant question over the sum invoiced. However, in the reporting year a new 10 day target was introduced for all public sector organisations. We are working towards meeting that target and will report against that in the full year in 2009/10.

The auditors did not receive any remuneration for non-audit work.

So far as the Ombudsman is aware, there is no relevant audit information of which the auditors are unaware, and the Ombudsman has taken all the steps that he ought to have taken to make him aware of any relevant audit information and to establish that the auditors are aware of that information.



Tony King

Pensions Ombudsman

Pension Protection Fund Ombudsman

29 June 2009

4. Financial Statements

4.1 Remuneration report

Remuneration policy

In accordance with Sections 145 and 145A of the Pension Schemes Act 1993, the current and future remuneration of the Pensions Ombudsman and the Deputy Pensions Ombudsman is determined by the Secretary of State for Work and Pensions. The current and future remuneration of the Pension Protection Fund Ombudsman and Deputy Pension Protection Fund Ombudsman is determined by the Secretary of State in accordance with Sections 209(4) and 210(6) of the Pensions Act 2004. For the year 2007/08 (paid in the accounting year) the Deputy Ombudsman's pay included a bonus element of up to 10% of salary as assessed by the Departmental Steward on behalf of the Secretary of State following a recommendation by the Ombudsman. For the year 2008/09 (to be paid in the following year) the Deputy Ombudsman's pay includes a bonus element of up to 10% of salary as assessed by the Departmental Steward on behalf of the Secretary of State following a recommendation by the Ombudsman. For the year 2007/08 (paid in the 2008/09 accounting year) the Ombudsman's payments included a bonus element of up to 10% of salary as assessed by the Departmental Steward on behalf of the Secretary of State.

Service contracts

The length of service contracts is determined by the Secretary of State for Work and Pensions. Tony King was appointed for 3 years on 1 September 2007. Charlie Gordon's contract expires in September 2009.

The information in this table is subject to audit.

Name	Date of appointment	Unexpired term	Notice period
Tony King	1 September 2007	1 year 5 months	6 months from employee
Charlie Gordon	4 April 2005	6 months	6 months from employee

Each appointment may be terminated early by the employer on the following grounds:

1. Misbehaviour
2. Incapacity
3. Bankruptcy or arrangement with creditors.

Any decision to remove on one or more of the above three grounds will be taken by the Secretary of State with the concurrence of the Lord Chief Justice. No compensation will be paid if the appointment is terminated on any of the grounds set out above. Should the appointment be terminated on the basis of misbehaviour one month's notice will be given. Where conduct is so serious as to warrant immediate removal from office pay in lieu of notice will be paid.

The notice periods shall not prevent the Ombudsman, Deputy Ombudsman or Secretary of State waiving the right to notice or the Ombudsman or Deputy Ombudsman accepting a payment in lieu of notice.

Salary and pension entitlements

The following sections provide details of the remuneration and pension interests of the Pensions Ombudsman and Deputy Pensions Ombudsman.

The information in these tables is subject to audit.

Remuneration

	2008/09		2007/08	
	Salary (£'000)	Benefits in kind (to nearest £100)	Salary (£'000)	Benefits in kind (to nearest £100)
Tony King	£125 – £130*	0	£70 – £75**	0
Charlie Gordon	£95 – £100*	0	£100 – £105	0

*The salary figure includes bonuses paid in 2008/09 that were earned in 2007/08

** Appointed 1 September 2007

Pension benefits

	Accrued pension at age 65 as at 31/3/09 and related lump sum 31/3/09 (£'000)	Real increase in pension at age 65 and related lump sum at pensions age (£'000)	CETV at 31/3/09 (£'000)	CETV at 31/3/08* (£'000)	Real Increase in CETV (£'000)
Tony King	35 – 40 0	0 – 2.5	724	653**	0
Charlie Gordon	30 – 35 90 – 95	0 – 2.5 2.5 – 5	582	523	19

*The figure may be different from the closing figure in last year's accounts. This is due to the CETV factors being updated to comply with The Occupational Pension Schemes (Transfer Values) (Amendment) regulations 2008.

**This figure is different from that disclosed in 2007/08 accounts as 2 transfer values have been brought in since then.

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their current service in a senior capacity to which disclosure applies. CETVs are

calculated in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

The real increase in the value of the CETV

This is effectively the element of the increase in accrued pension funded by the Exchequer. It excludes increases due to inflation and contributions paid by the individual and is worked out using common market valuation factors for the start and end of the period.

Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 30 July 2007, members may be in one of four defined benefit schemes; either a 'final salary' scheme (Classic, Premium or Classic Plus); or a 'whole career' scheme (Nuvos). These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under Classic, Premium, Classic Plus and Nuvos are increased annually in line with changes in the Retail Price Index (RPI). Members who joined from October 2002 could opt for either the appropriate defined benefit arrangement or a good quality 'money purchase' stakeholder pension with a significant employer contribution (Partnership pension account).

Employee contributions are set at the rate of 1.5% of pensionable earnings for Classic and 3.5% for Premium, Classic Plus and Nuvos. Benefits in Classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years' pension is payable on retirement. For Premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike Classic there is no automatic lump sum. Classic Plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per Classic and benefits for service from October 2002 worked out as in Premium. In Nuvos a member builds up a pension based on pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and, immediately after the scheme year end, the accrued pension is uprated in line with RPI. In all cases members may opt to give up (commute) pension for lump sum up to the limits set by the Finance Act 2004.

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 3% and 12.5% (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of three providers. The employee does not have to contribute but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.8% of pensionable salary to cover the cost of centrally provided risk benefit cover (death in service and ill-health retirement).

The accrued pension quoted, is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of Classic, Premium and Classic Plus and 65 for members of Nuvos.

Although the PCSPS is unfunded, employer contributions are set at the level of contributions that would be paid by private sector employers to pension schemes for their employees. For 2007/08, employers' contributions were payable to the Principal Civil Service Pension Scheme in the range 17.1% to 25.5% of pensionable pay, and in the range 16.7% to 24.3% from 1 April 2008 based on salary bands as follows:

Band	2008-2009		From 1 April 2009	
	Salary Band (£)	Rate of charge	Salary Band (£)	Rate of charge
Band 1	19,500 and under	17.1%	20,500 and under	16.7%
Band 2	19,501 to 40,500	19.5%	20,501 to 42,000	18.8%
Band 3	40,501 to 69,000	23.2%	42,001 to 72,000	21.8%
Band 4	69,001 and over	25.5%	72,001 and over	24.3%

Further details about the Civil Service pension arrangements can be found at the website www.civilservice-pensions.gov.uk

Further staff cost disclosures are included in the notes to the accounts, note 4 (Staff costs). The financial disclosures within the Remuneration report are subject to audit.

Tony King

Pensions Ombudsman
Pension Protection Fund Ombudsman
29 June 2009

4.2 Statement of Accounting Officer's responsibilities

Under Section 145(8) of the Pension Schemes Act 1993 and Section 212A of the Pensions Act 2004, the Secretary of State for Work and Pensions (with the consent of the Treasury) has directed the Pensions Ombudsman and Pensions Protection Fund Ombudsman to prepare for each financial year a statement of accounts in the form and on the basis set out in the Accounts Direction. The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the Pensions Ombudsman and Pension Protection Fund Ombudsman and of its income and expenditure, recognised gains and losses and cash flows for the financial year.

In preparing the accounts, the Accounting Officer is required to comply with the requirements of the Government Financial Reporting Manual and in particular to:

- observe the Accounts Direction issued by the Secretary of State for Work and Pensions, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed, and disclose and explain any material departures in the accounts; and
- prepare the accounts on a going concern basis.

The Accounting Officer of the Department for Work and Pensions has designated the Pensions Ombudsman as Accounting Officer of the Pensions Ombudsman and Pension Protection Fund Ombudsman. The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the Pensions Ombudsman and Pension Protection Fund Ombudsman's assets, are set out in the Non-Departmental Public Bodies Accounting Officers Memorandum and in Managing Public Money issued by the Treasury.

4.3 Statement on Internal Control

Scope of responsibility

As Accounting Officer I have responsibility for maintaining a sound system of internal control that supports the achievement of the policies, aims and objectives of the Ombudsman's office, whilst safeguarding the public funds and departmental assets for which I am personally responsible, in accordance with the responsibilities assigned in Managing Public Money and the Framework Agreement with the Department for Work and Pensions.

The purpose of the system of internal control

The system of control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives. It can therefore only provide reasonable not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievements of our policies, aims and objectives to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The system of control has been in place for the year ended 31 March 2009 and up to the date of approval of the annual report and accounts and accords with Treasury guidance.

Capacity to handle risk

During the year ended 31 March 2008 we worked closely with DWP Risk Assurance Division and developed a robust risk strategy. This was implemented in the year ended 31 March 2009 and is now thoroughly embedded in our processes. Our Audit Committee is well established and now meets quarterly.

The Office's Senior Management Team now regularly review the strategic and operational risks in consultation with the Audit Committee and internal audit.

The risk and control framework

Risk is controlled through the following steps:

- key risks to the achievement of strategic and or business delivery aims objectives and targets are identified and assigned to named individuals;
- causes and consequences of those risks are identified;
- consistent scoring system for the assessment of risks on the basis of likelihood and impact;
- determination of appropriate management controls and activities to mitigate the risks identified, having regard to the amount of risk deemed to be tolerable and justifiable;
- risks measured at both inherent and residual level to assess the reliance placed on mitigating controls and activities and the Office's exposure should they fail;
- measures and indicators identified to provide assurance that the mitigation actions are appropriate and effective;

- regular monitoring and updating of risk information to ensure new and emerging risks are captured; and
- a transparent process for escalating and de-escalating risks within the organisation.

As of 31 March 2009 there were 12 strategic risks identified in the risk register. Some of those risks are fairly generic to any organisation such as business continuity and staffing. Others are specific to our core business or to changing circumstances.

Data handling

In accordance with our responsibilities, we have in place various robust and specific arrangements to ensure information security. We are complying with the CESG guidance and are currently developing a revised Security policy that will apply to all staff. Other arrangements include secure and confidential storage of data, the prevention of any unauthorised use of removable media such as USB memory sticks and data CDs with laptops and or PCs and a fixed asset register to track the location of items of IT equipment. We have recently purchased and installed the recommended encryption software onto all laptops in compliance with the Cabinet Office guidance. We also have on-site shredders and confidential disposal arrangements in place.

Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness is informed by the work of the Business Manager within the office who has responsibility for the development and maintenance of the internal control framework, Internal Audit reports and comments made by the external auditors in their management letters and other reports. Internal Audit's annual assurance report for 2008/09 said that governance, risk management and control arrangements provide reasonable assurance that material risks are identified and managed effectively. A plan to address weaknesses and ensure continuous improvement is in place.



Tony King

Pensions Ombudsman

Pension Protection Fund Ombudsman

29 June 2009

4.4 Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Pensions Ombudsman and Pension Protection Fund Ombudsman for the year ended 31 March 2009 under the Pension Schemes Act 1993 and the Pensions Act 2004. These comprise the Income and Expenditure Account, the Balance Sheet, the Cash Flow Statement and Statement of Recognised Gains and Losses and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration report that is described in that report as having been audited.

Respective responsibilities of the Ombudsman and auditor

The Ombudsman as Accounting Officer is responsible for preparing the Annual Report, which includes the Remuneration report, and the financial statements in accordance with the Pension Schemes Act 1993 and the Pensions Act 2004 and directions made thereunder by the Secretary of State for Work and Pensions with approval from HM Treasury and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements and the part of the Remuneration report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration report to be audited have been properly prepared in accordance with the Pension Schemes Act 1993 and the Pensions Act 2004 and directions made thereunder by the Secretary of State for Work and Pensions with approval from HM Treasury. I report to you whether, in my opinion, the information, which comprises the Management Commentary, Introduction and Remuneration report included in the Annual Report is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the Ombudsman has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the Ombudsman's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or form an opinion on the effectiveness of the Ombudsman's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Report and consider whether it is consistent with the audited financial statements. This other information comprises the Management Commentary, the unaudited part of the Remuneration report and the Introduction. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration report to be audited. It also includes an assessment of the significant estimates and judgments made by the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the Ombudsman's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the Remuneration report to be audited are free from material misstatement, whether caused by fraud or error; and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the Remuneration report to be audited.

Opinions

In my opinion:

- the financial statements give a true and fair view, in accordance with the Pension Schemes Act 1993 and the Pensions Act 2004 and directions made thereunder by the Secretary of State for Work and Pensions with approval of HM Treasury of the state of the Ombudsman's affairs as at 31 March 2009 and of its deficit, recognised gains and losses and cash flows for the year then ended;
- the financial statements and the part of the Remuneration report to be audited have been properly prepared in accordance with the Pension Schemes Act 1993 and the Pensions Act 2004 and directions made thereunder by the Secretary of State for Work and Pensions with approval of HM Treasury; and
- information, which comprises the Management Commentary, Introduction and Remuneration report included within the Annual Report, is consistent with the financial statements.

Opinion on Regularity

In my opinion, in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

Report

I have no observations to make on these financial statements.

Amyas C E Morse
Comptroller and Auditor General
National Audit Office
151 Buckingham Palace Road
Victoria, London
SW1W 9SS

6 July 2009

4.5 Accounts

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Income and Expenditure Account

Year ended 31 March 2009

		2009	2008 (restated)
	Note	£	£
Expenditure			
Staff costs	4	(1,941,918)	(2,130,186)
Other operating charges	5	(867,666)	(741,218)
Operating deficit		(2,809,584)	(2,871,404)
Interest receivable		427	–
Net expenditure on ordinary activities before notional interest on capital employed		(2,809,157)	(2,871,404)
Notional interest payable on capital employed		(672)	(2,557)
Net expenditure on ordinary activities before tax		(2,809,829)	(2,873,961)
Taxation		–	–
Net expenditure on ordinary activities after tax		(2,809,829)	(2,873,961)
Reversal of notional cost of capital		672	2,557
Net expenditure for the financial year		(2,809,157)	(2,871,404)
All activities were continuing throughout the year			
Statement of recognised gains and losses			
Net expenditure for the financial year		(2,809,157)	(2,871,404)
Total recognised gains and losses relating to the year		(2,809,157)	(2,871,404)
Prior year adjustment (see note 3)		(205,135)	–
Total gains and losses recognised since the last annual report		(3,014,292)	

The notes on pages 59 to 68 form part of these accounts.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Balance Sheet

31 March 2009

		2009			2008 (restated)
	Note	£	£	£	£
Fixed assets					
Tangible assets	6		25,393		111,044
Current assets					
Debtors	7	31,436		18,621	
Cash at bank and in hand	8	161,341		257,814	
		<u>192,777</u>		<u>276,435</u>	
Creditors: amounts falling due within one year					
	9	<u>336,237</u>		<u>241,389</u>	
Net current (liabilities)/assets			<u>(143,460)</u>		<u>35,046</u>
Total assets less current liabilities			<u>(118,067)</u>		<u>146,090</u>
Capital and reserves					
General reserve	13		<u>(118,067)</u>		<u>146,090</u>

Tony King

Pensions Ombudsman

Pension Protection Fund Ombudsman

29 June 2009

The notes on pages 59 to 68 form part of these accounts.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Cash Flow Statement

Year ended 31 March 2009

		2009	2008
	Note	£	£
Net cash outflow from operating activities		(2,641,473)	(2,565,186)
Financing	13	2,545,000	2,823,000
(Decrease)/increase in cash	8	(96,473)	257,814

Reconciliation of net expenditure to net cash outflow from operating activities

	2009	2008
	£	£ (restated)
Net expenditure for the period	(2,809,157)	(2,871,404)
Other working capital introduced	–	6,251
Depreciation	59,450	77,199
Revaluation of fixed assets	25,984	
Loss on disposal of fixed assets	216	–
Increase in debtors	(12,814)	(18,621)
Increase in creditors	94,848	241,389
Net cash outflow from operating activities	(2,641,473)	(2,565,186)

Reconciliation of net cash flow to movement in net funds

	2009	2008
	£	£
(Decrease)/increase in cash in the period	(96,473)	257,814
Movement in net funds in the period	(96,473)	257,814
Net funds at 1 April 2008	257,814	–
Net funds at 31 March 2009	161,341	257,814

The notes on pages 59 to 68 form part of these accounts.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

1. Accounting policies

Basis of accounting

The accounts are drawn up in accordance with a direction given by the Secretary of State for Work and Pensions. The accounts are prepared in accordance with generally accepted accounting practice in the United Kingdom (UK GAAP), the disclosure and accounting requirements contained in HM Treasury's Fees and Charges Guide, and the accounting and disclosure requirements given in Managing Public Money and in the Financial Reporting Manual (FRM), insofar as these are appropriate to the Pensions Ombudsman and are in force for the financial year for which the statements are prepared. The accounts are prepared under the modified historical cost convention by the inclusion of fixed assets at their value to the business by reference to replacement cost.

Going concern

Future financing of the Ombudsman will be met by grants-in aid from the Department for Work and Pensions, as the Ombudsman's sponsoring dept. The amount for 2009/10 has already been agreed and there is no reason to suppose that this will not continue. It has accordingly been considered appropriate to adopt the going concern basis for the preparation of these financial statements.

Financial instruments

The Ombudsman determines the classification of financial assets and liabilities at initial recognition. They are derecognised when the right to receive cash flows has expired or when the Ombudsman has transferred substantially all the risks and rewards of ownership or control of the asset.

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market and which are not classified as available for sale. Loans and receivables are initially recognised at fair value and subsequently held at amortised cost. The fair value of trade and other receivables is usually the original invoiced amount.

Cash at bank and in hand comprises cash in hand and current balances with banks and similar institutions, which are readily convertible to known amounts of cash and which are subject to insignificant changes in value.

The Ombudsman assesses at each balance sheet date whether there is objective evidence that financial assets are impaired as a result of one or more loss events that occurred after the initial recognition of the asset and prior to the balance sheet date and whether such events have had an impact on the estimated future cash flows of the financial instrument and can be reliably estimated.

Interest determined, impairment losses and translation differences on monetary items are recognised in the Income and Expenditure Account.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

Government grants & grant-in-aid

Grant-in-aid and grant received used to finance activities which support the statutory and other objectives of the entity are treated as financing, credited to the general reserve, because they are regarded as contributions from a controlling party.

Notional costs

Certain expenses included in these accounts have not involved actual payments. They include various expenses and notional interest on capital employed (notional interest has been calculated at the Treasury standard rate of 3.5% of the average value of total assets less liabilities). These costs are included in the accounts to ensure that the results reflect the full economic costs of the Ombudsman.

Other income and expenditure

Other income and expenditure is recognised on an accruals basis. Where income received relates to the period of time covering more than one accounting period, that part extending beyond the current accounting period is treated as deferred income.

VAT

The Ombudsman was not registered for VAT during the financial year 2008/09.

Tangible fixed assets

Tangible fixed assets are valued at current replacement cost which is calculated by applying appropriate Office for National Statistics indices (ONS) to the historical cost of each asset class. Any surplus on revaluation of tangible fixed assets is credited to the General Reserve. Any permanent diminution in the value of a fixed asset on revaluation is charged to the income and expenditure account when it occurs. The Ombudsman is required to remit the proceeds of disposals of fixed assets to the Secretary of State.

Tangible fixed assets are recognised where expenditure is in excess of £500.

Depreciation

Depreciation is calculated so as to write off the carrying value of an asset, less its estimated residual value, over the useful economic life of that asset as follows:

IT Equipment – 3 years straight line.

A full year's charge is made in the year of acquisition.

Assets are not depreciated until they are commissioned or brought into use.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

Operating lease agreements

Rent payable under operating leases is charged to the income and expenditure account on a straight line basis over the term of the lease.

Pension arrangements

Employees are covered by the provisions of the Principal Civil Service Pension Scheme (PCSPS) which is a defined benefit scheme and is unfunded and non-contributory, except in respect of dependants' benefits. The Pensions Ombudsman recognises the expected cost of providing pensions on a systematic and rational basis over the period during which it benefits from employees' service by payment to the PCSPS of amounts calculated on an accruing basis. Liability for the payment of future benefits is a charge on the PCSPS.

2. PPFO element of costs

PPFO activity continues to be of relatively limited scale. Previously costs were attributed based purely on a comparison between the number of PPFO cases and PO cases dealt with. During the year we introduced an informal time recording arrangement to support the split of costs. During the year 16 PPFO cases and 1,196 PO cases were closed. As in the previous year approximately 1% of expenditure and total net liabilities (£28,000 and £1,400 respectively) is deemed attributable to the PPFO.

3. Prior year adjustment

The accounts at 31 March 2008 omitted an accrual of £205,135 in relation to an IT software support contract. As at 31 March 2008 the Pensions Ombudsman did not consider that the supplier had delivered the service to an acceptable level, and therefore did not accrue these costs.

Subsequent clarification of the contractual position relating to the level of service provision prior to 31 March 2008 indicates that a liability had accrued at that date. Therefore the Pensions Ombudsman now accepts that costs should have been recognised in the financial accounts covering the period to 31 March 2008.

This has now been reflected by way of a prior year adjustment.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

4. Staff costs

	2009	2008
	£	£
Wages and salaries	1,507,020	1,610,845
Employers national insurance contributions	126,358	129,181
Staff pension contributions	301,477	328,862
External case workers	4,406	5,361
Agency staff	2,657	55,937
	<u>1,941,918</u>	<u>2,130,186</u>

The average number of staff employed during the period was 37. In 2007/08 this figure was 40.

Principal Civil Service Pension Scheme

From 1 October 2002, civil servants and others approved by the Cabinet Office, including certain designated staff of the Ombudsman, may be in one of three statutory based 'final salary' unfunded multi-employer defined benefit schemes (Classic, Premium, and Classic Plus). The schemes are unfunded, with the cost of benefits met by monies voted by Parliament each year. Entrants after 1 October 2002 may choose to join a 'money purchase' stakeholder arrangement with a significant employer contribution (partnership pension account). Pensions payable under Classic, Premium, and Classic Plus are increased annually in line with changes in the RPI. Employee contributions are set at the rate of 1.5% of pensionable earnings for Classic and 3.5% for Premium and Classic Plus.

Benefits in Classic accrue at the rate of 1/80th of pensionable salary for each year of service. In addition, a lump sum equivalent to three years' pension is payable on retirement. For Premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike Classic, there is no automatic lump sum (but members may give up (commute) some of their pension to provide a lump sum). Classic Plus is essentially a variation of Premium, but with benefits in respect of service before 1 October 2002 calculated broadly as per Classic.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 3% and 12.5% (depending on the age of the member) into a stakeholder pension product chosen by the employee. The employee does not have to contribute but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.8% of pensionable salary to cover the cost of centrally provided risk benefit cover (death in service and ill-health retirement).

The existing Schemes closed to new members in July 2007. Existing members retained membership and existing benefits. A new Scheme was established for new members from that date. Nuvos allows staff to earn 2.3% of their pensionable earnings towards their pension each year. Again there is no automatic lump sum but like Premium, members may opt to give up part of their pension for a lump sum which will usually be tax-free.

Further details about the Civil Service Pension arrangements can be found at the website www.civilservice-pensions.gov.uk

During 2008/09 employers contributions of £301,477 were payable to the scheme.

Band	2008-2009		From 1 April 2009	
	Salary Band (£)	Rate of charge	Salary Band (£)	Rate of charge
Band 1	19,500 and under	17.1%	20,500 and under	16.7%
Band 2	19,501 to 40,500	19.5%	20,501 to 42,000	18.8%
Band 3	40,501 to 69,000	23.2%	42,001 to 72,000	21.8%
Band 4	69,001 and over	25.5%	72,001 and over	24.3%

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

5. Other operating costs

	2009	2008 <i>(restated)</i>
	£	£
Education and exams	568	1,303
Rent and rates	292,817	216,958
Insurance	2,893	2,442
Travel and subsistence	5,940	6,709
Telephone	12,439	15,162
Hire of equipment	9,886	9,808
Printing, stationery and postage	30,082	33,635
Staff training	8,280	9,033
Staff welfare	666	869
Sundry expenses	791	5,686
Donations	500	500
Computer expenses	228,975	215,936
Subscriptions	49,313	46,816
Staff recruitment	12,867	13,186
Legal and professional fees	85,211	46,705
Accountancy fees	22,390	22,075
Auditors remuneration	17,500	15,700
Depreciation	59,450	77,199
Fixed asset revaluation	25,984	–
Loss on disposal of fixed assets	216	–
Bank charges	898	1,496
	<u>867,666</u>	<u>741,218</u>

The Auditors did not receive any remuneration for non audit work.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

6. Tangible fixed assets

	IT Equipment
	£
Cost/Valuation	
At 1 April 2008	233,681
Revaluation	(54,681)
Disposals	(649)
At 31 March 2009	<u>178,351</u>
Depreciation	
At 1 April 2008	122,637
Revaluation	(28,697)
Charge for the year	59,450
On disposals	(432)
At 31 March 2009	<u>152,958</u>
Net book value	
At 31 March 2009	<u>25,393</u>
At 31 March 2008	<u>111,044</u>

7. Debtors

	2009	2008
	£	£
Other debtors: staff loans	14,118	12,028
Other debtors: legal fees	4,574	–
Prepayments	12,744	6,593
	<u>31,436</u>	<u>18,621</u>

There are no intra government balances.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

8. Analysis of changes in net funds

	At 1/4/08	Cash flows	At 31/3/09
	£	£	£
Net cash:			
Cash in hand and at bank	<u>257,814</u>	<u>(96,473)</u>	<u>161,341</u>
Net funds	<u>257,814</u>	<u>(96,473)</u>	<u>161,341</u>

9. Creditors: Amounts falling due within one year

	2009	2008 (restated)
	£	£
Accruals	<u>336,237</u>	<u>241,389</u>

Creditors: Balances with other Government bodies

	2009	2008
	£	£
HM Revenue and Customs	142,350	–
Department for Work and Pensions		
Internal Audit Services	24,750	–
Prime Facilities Service charge	1,400	–
Total	<u>168,500</u>	<u>–</u>

10. Commitments under operating leases

At 31 March 2009 the Ombudsman had aggregate annual commitments under non-cancellable operating leases as set out below.

	2009	2008 (restated)
	£	£
Operating leases which expire: Within 2 to 5 years		
Land and Buildings	282,218	198,760
Other	212,441	213,792
	<u>494,659</u>	<u>412,552</u>

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

11. Contingencies

The Pensions Ombudsman is involved as defendant in litigation relating to a claim currently before the courts. The ultimate conclusion of the claim cannot be predicted with certainty and in the opinion of the Pensions Ombudsman the outcome of the claim will not have a material adverse effect on the financial position.

12. Related party transactions

The Department for Work and Pensions are our Sponsor Department and Grant-in-aid is received from them, the amounts are disclosed in note 13. Service Charges in respect of the accommodation were reimbursed to the Department for Work and Pensions in the sum of £16,613 during the year. During the year the office accommodation was rented from HM Revenue and Customs at an annual cost of £274,132. At 31 March 2009 £142,350 and £1,400 were due to HM Revenue and Customs and the Department for Work and Pensions respectively. The Ombudsman's Internal Audit services are provided by the Department for Work and Pensions and £24,750 was due for that service at 31 March 2009.

13. General reserve

	2009	2008 (restated)
	£	£
Balance brought forward before prior year adjustment	351,225	–
Prior year adjustment (note 3)	(205,135)	–
Balance brought forward restated	146,090	–
Grant-in-aid to cover ongoing operations	2,545,000	2,823,000
Fixed assets introduced	–	188,243
Other working capital introduced	–	6,251
Net expenditure for the period	(2,809,157)	(2,871,404)
Balance carried forward	(118,067)	146,090

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2009

14. Capital commitments

Amounts contracted for but not provided in the accounts amounts to nil.

15. Financial instruments

It is, and has been, the Ombudsman's policy that no trading in financial instruments is undertaken.

The Ombudsman does not face the degree of exposure to financial risk that commercial businesses do. In addition financial assets and liabilities generated by day-to-day operational activities are not held in order to change the risks facing the Ombudsman in undertaking its activities. The Ombudsman relies upon DWP for its cash requirements, having no power itself to borrow or invest surplus funds and the Ombudsman's main financial assets and liabilities have either a nil or a fixed rate of interest related to the cost of capital (currently 3.5%). The short-term liquidity and interest rate risks are therefore slight. The Ombudsman's exposure to foreign currency risk is not significant.

Financial assets by category	2009
	Loans and receivables
	£
Cash	161,341
Other debtors	18,692
	180,033
Financial liabilities by category	2009
	Other financial liabilities
	£
Accruals	336,237

16. Post balance sheet events

There are no post balance sheet events. These accounts are authorised to be issued on 6 July 2009.

4.6 Accounts direction

The Secretary of State for the Department for Work and Pensions has issued the following accounts direction.

1. This direction applies to the Pensions Ombudsman/Pension Protection Fund Ombudsman.
2. The Pensions Ombudsman/Pensions Protection Fund Ombudsman shall prepare accounts for the financial year ended 31 March 2009 and each subsequent financial year in compliance with:
 - the accounting principles and disclosure requirements of the current edition of the Government Financial Reporting Manual issued by HM Treasury (“the FReM”) which is in force for the financial year for which the accounts are being prepared;
 - other guidance which HM Treasury may issue from time to time in respect of accounts which are required to give a true and fair view;
 - the Framework Document (containing the Management Statement and Financial Memorandum of Understanding) agreed between the Pensions Ombudsman/Pension Protection Fund Ombudsman and the Department for Work and Pensions; and
 - any other specific disclosure or other requirements required by the Secretary of State.
3. The accounts shall be prepared so as to:
 - a) give a true and fair view of the state of affairs as of 31 March 2009 and subsequent financial year ends, and of the income and expenditure, total recognised gains and losses and cash flows for each year then ended; and
 - b) provide disclosure of any material expenditure or income that has not been applied to the purposes intended by Parliament or material transactions that have not conformed to the authorities which govern them.
4. Compliance with the requirements of the FReM will, in all but exceptional circumstances, be necessary for the accounts to give a true and fair view. If, in these exceptional circumstances, compliance with the requirements of the FReM is inconsistent with the requirement to give a true and fair view, the requirements of the FReM should be departed from only to the extent necessary to give a true and fair view. In such cases, informed and unbiased judgement should be used to devise an appropriate alternative treatment which should be consistent with both the economic characteristics of the circumstances concerned and the spirit of the FReM. Any material departure from the FReM should be discussed with HM Treasury.

Appendix A

Summary of Business Plan 2009/10

Work stream	Activity/target
<p>Casework – dealing with the cases we receive.</p>	<ul style="list-style-type: none"> • deal with initial enquiries, deciding whether or not to investigate, and if so what aspects should be investigated, in an average of 10 weeks; • complete our investigations within an average of 10 months from the date that the initial application is made; • by 31 March 2010 have no more than 20 cases on hand that are more than 12 months old; • achieve an average age of open investigations of 28 weeks at 31 March 2010; and • support consistency and efficiency by maintaining knowledge management facilities and strengthening internal communication.
<p>Process – examining how our service works, and could work better.</p>	<ul style="list-style-type: none"> • continue to review processes and implement change within the scope of existing rules; • take into account the scope for and benefits of compatibility with FOS' processes; • in the context of those changes consider the need to modify legislation; and • update/develop process documentation to accurately record our processes in a way that will allow easy updating.
<p>Communication – including clarity, access, understanding users' needs.</p>	<ul style="list-style-type: none"> • build on and strengthen liaison arrangements with appropriate interest groups; • review our approach to surveying customer satisfaction to establish an approach that produces results that are comparable over time; • review our standard letters, including updates and reminders, and our general approach to written communication to make sure we deal with people in the way they would like, wherever possible and we are clear and consistent in what we say and when we say it; and • strengthen and extend our accessibility arrangements, to include our ability to communicate in languages other than english, our approach to equality issues and the use of technology.

Appendix A (continued)

Summary of Business Plan 2009/10

Work stream	Activity/target
Developing and supporting our staff	<ul style="list-style-type: none">• ensure we apply a focussed approach to individual development, including individual support programmes when needed;• review present pay and grading with a view to introducing a structure independent of DWP and appropriate to our needs;• apply for reaccreditation as an “Investor in People” (due November 2009); and• continue to encourage good communication.
Relationship and policy developments	<ul style="list-style-type: none">• continue to work with DWP, FOS and TPAS on the closer working initiative; and• consider any areas where relationships can be strengthened – in particular looking at the “consumer” side of our business – scheme members and others who may become individual complainants.

Appendix B

Aims and principles statement

We aim to

Deal with complaints and disputes:

- in accordance with our powers;
- in a manner and timescale that is proportionate to the issues;
- by communicating clearly; and
- with the “right” outcome – consistent with the law where that is required.

Ensure that those who need to use our services can do so, by:

- being accessible to all; and
- communicating effectively what we do and how we do it.

Provide information and assistance designed:

- to encourage early resolution of complaints – before coming to us where possible; and
- to assist and promote good administration generally.

Our principles

Service

- we are impartial;
- we value quality;
- we treat people professionally and with courtesy;
- we act with openness and transparency; and
- we comply with our legal and regulatory responsibilities.

Our people

- we treat each other with respect and fairness;
- we help people to develop their potential;
- we recognise the contribution that all our people make to the service we provide; and
- we work as a team to achieve our corporate and personal objectives.

External relationships

- we recognise, respect and value the trust vested in us;
- we listen to our stakeholders and use their feedback; and
- we take practical steps to reduce our negative impact on the environment.



11 Belgrave Road
London
SW1V 1RB

Tel: 020 7834 9144
Fax: 020 7821 0065

www.pensions-ombudsman.org.uk

Email: enquiries@pensions-ombudsman.org.uk



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