

The Pensions Ombudsman and  
Pension Protection Fund Ombudsman

# Annual Report & Accounts

2009/10

ppfo pensions ombudsman  
pension protection fund ombudsman

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Pension Protection Fund Ombudsman

# Annual Report & Accounts

2009/10

The Pensions Ombudsman's Accounts presented to Parliament  
pursuant to section 145(9) of the Pension Schemes Act 1993  
and the Pension Ombudsman's report presented to Parliament  
by command of Her Majesty.

The Pension Protection Fund Ombudsman's Accounts presented to Parliament  
pursuant to section 212A of the Pensions Act 2004,  
and the Pension Protection Fund Ombudsman's report presented to Parliament  
by command of Her Majesty

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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 manager of the Financial Assistance Scheme. 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 the Department for Work and Pensions (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 2009/10 the office received £2,930,000 grant-in-aid, incurred net expenditure of £2,864,625 and had net liabilities at 31 March 2010 of £55,734. Full details are in the accounts.

# INTRODUCTION

In our business plan for 2008/09 I said that forecasting future workload was a bit like predicting the weather – in that the forecast most likely to be right for tomorrow is that it would not be very different from today.

That forecasting method (with a few adjustments for expected future events) has more or less held good over the two full years between my taking up office and the end of the year under report. But we may be at the beginning of a change, since this year we accepted for investigation 950 Pensions Ombudsman cases which, after adjustment for anomalies, was 13.5% over the number we planned for – and 22% up on last year. That said, 950 in a year is within the range the office has experienced over time. But an increase in workload when future resources will be tight is bound to put us under pressure. We wait to see, sou'westers at the ready, if this is just a temporary fluctuation in the weather or is a warning of long term climate change.

Encouragingly our output was also higher than expected. We met, or were within spitting distance of, all of the goals we set ourselves at the beginning of the year – and which we knew to be challenging when we set them.

During the year Charlie Gordon, Deputy Pensions Ombudsman, left us when his term of office – already extended – came to an end. Charlie had operational responsibility for the management of casework as well as acting as an ombudsman. He was hugely instrumental in managing and reducing the significant backlog that had built up before he took up the post and had gained the confidence and support of colleagues across the office. And he was a great help to me personally when I took up the post in 2007. So we all wished him well for the future when he departed. He has now taken up a post as ombudsman in the newly created Legal Complaints Service, so perhaps our wishes had some effect!

In place of Charlie there were two part time appointments, Jane Irvine, appointed by the Secretary of State as Deputy Pensions Ombudsman and Kim Parsons, appointed by me, as Casework Director. The two appointments, and the rationale for having two posts, are covered more fully later in this report. For the purposes of this introduction it is enough for me to welcome them both formally and to thank them for settling in so quickly and smoothly.

The cases themselves held no great surprises. They were very much business as usual. Under the Pension Protection Fund jurisdiction we continued to receive referrals concerning the calculation of the risk-based levy, which the schemes in question felt did not represent the true risk of the employer(s) suffering an insolvency. But as we note in the relevant section of the report, the particular jurisdiction over the levy calculation is restricted so that it is not likely to produce what the referrers would regard as a satisfactory result.

And on the subject of business as usual – in one appeal during the year a sleeping dragon awoke in the form of the question of whether I have power to give a remedy that the Courts could not. The issue concerned our time limits – expressly different to those applying to the Courts; on the one side in the extent of discretion that I have and, on the other, in having to be applied even when not pleaded. The appeal succeeded, adding further complexity to our jurisdiction, originally intended to be straightforward. In practice the consequences are unlikely to be unduly restrictive in nature. Staleness of subject matter was already a possible reason for not investigating old cases.

In my opening paragraphs I referred to an increase in new cases, which we have no control over; and success in meeting our goals (including exceeding our output targets), which we do. That success was undoubtedly due, once again, to the considerable efforts of all of the staff – and once again my thanks go to them.

A handwritten signature in black ink, appearing to be 'Tony King', written in a cursive style.

Tony King  
Pensions Ombudsman  
Pension Protection Fund Ombudsman

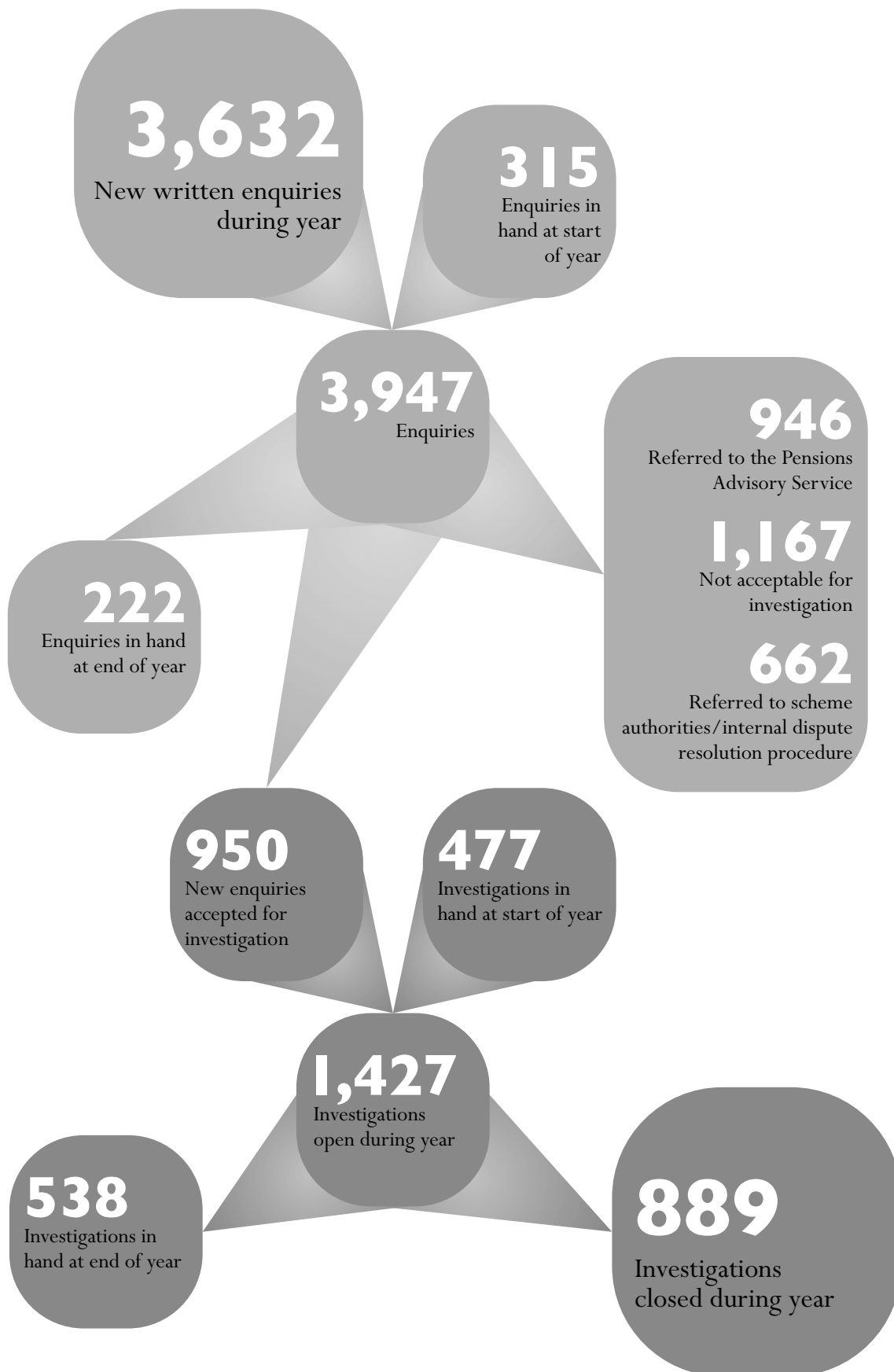
5 July 2010



MANAGEMENT COMMENTARY

## 2.1 Pensions Ombudsman casework review

Pensions Ombudsman investigation flowchart 2009/10



## Dealing with the cases

We divide our caseload in two:

- **Enquiries** – we describe all opening communication from applicants or their representatives as an enquiry until the point that we either accept the case for investigation, or we advise the applicant that we cannot deal with the matter, often by referring them elsewhere.
- **Investigations** – are complaints or disputes that we have decided come within our jurisdiction and should be investigated further.

### Enquiries – key facts and figures

- The number of enquiries received in 2009/10 was higher than expected (3,632 against an estimate of 3,000). Over the last couple of years the number of enquiries has gradually been increasing. It is too early to identify whether any trend is emerging (see Figure 1).
- Of the 3,632 enquiries 299 involved the same issue and were received late in the year (during February and March 2010). All 299 cases have been closed because the complainants had not been through the internal dispute resolution procedure (IDRP) with the scheme in question. Some or all may turn into investigations during 2010/11.
- Excluding the 299 cases involving the same issue there was an 11% increase in the number of enquiries received (based on our estimate of 3,000 new enquiries). Despite this increase we met all of our published goals (see Figure 2).
- Around 43% of enquiries were either referred on to the Pensions Advisory Service (TPAS) 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 necessary (see Figure 3).

Figure 1: New enquiries (last five years)

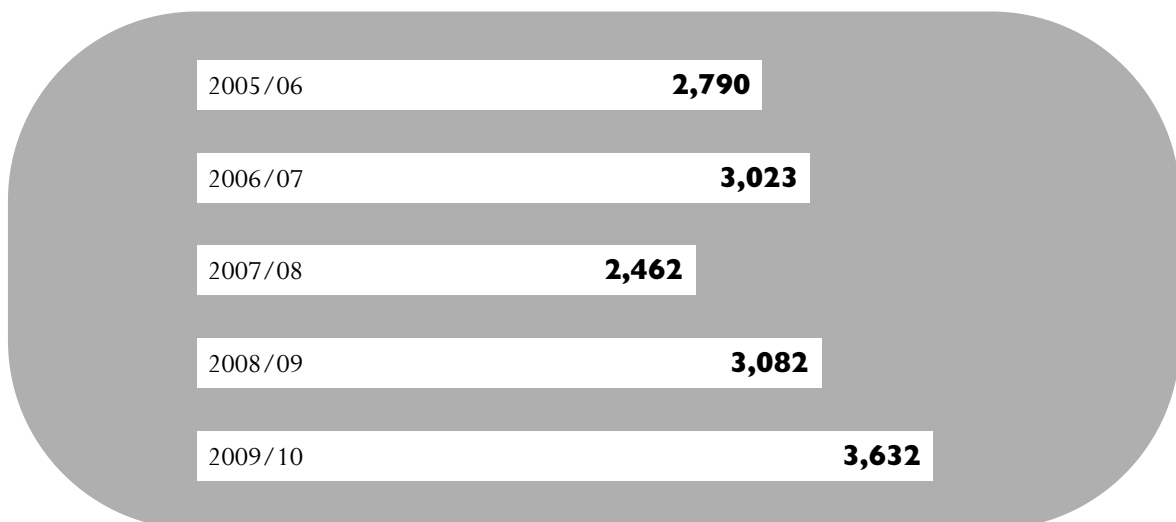


Figure 2: Enquiries – Comparison of performance against goals



Figure 3 shows how we dealt with enquiries referred to us in 2009/10. Some enquiries that we receive have nothing to do with us at all – though we try to find someone who can help, if possible. Many matters that potentially fall within our remit need to be referred elsewhere before approaching us. This might be because the people using our services have not taken their complaint up with the relevant scheme authorities (employer, trustees and so on). Also, our usual practice has always been to ask people to consult TPAS before coming to us, unless doing so would be futile.

In the previous reporting year 47% of individuals making enquiries were either referred on to TPAS 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. This year, just over 43% of enquiries had to be referred on in this way – but the percentage is artificially boosted by the 299 cases that all related to the same matter, referred to earlier.

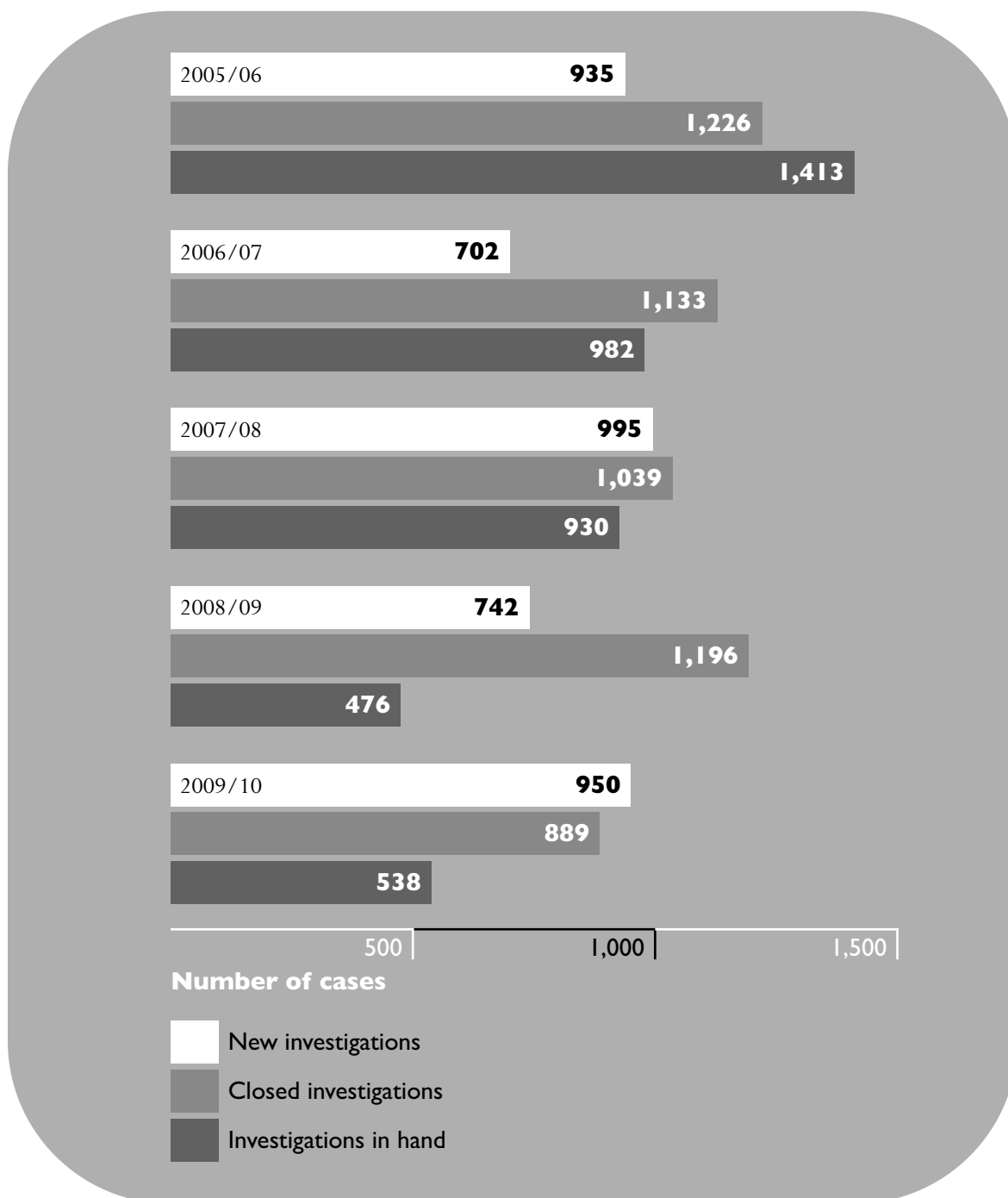
Figure 3: What happened to enquiries

|  | 2009/10      | %    | 2008/09      | %    |
|--|--------------|------|--------------|------|
| Accepted for investigation   | 950          | 24.1 | 742          | 22.1 |
| Complainant outside jurisdiction   | 8            | 0.1  | 92           | 2.7  |
| Discretion not to investigate exercised  | 14           | 0.4  | 15           | 0.4  |
| Enquiry abandoned/no action needed   | 807          | 20.4 | 523          | 15.6 |
| Enquiry not yet put to scheme/IDRP not used  | 662          | 16.8 | 461          | 13.7 |
| Not relating to pension scheme/plan  | 29           | 0.8  | 24           | 0.7  |
| Outside time limits  | 85           | 2.2  | 80           | 2.4  |
| Referred to the Financial Services Authority (FSA)<br>or the Financial Ombudsman Service (FOS) | 76           | 1.9  | 51           | 1.5  |
| Referred to TPAS   | 946          | 24.0 | 983          | 29.2 |
| Respondent not in remit  | 16           | 0.4  | 6            | 0.2  |
| State scheme benefits  | 128          | 3.2  | 99           | 2.9  |
| Subject to prior court proceedings   | 4            | 0.1  | 5            | 0.2  |
| Enquiries in hand at end of year   | 222          | 5.6  | 281          | 8.4  |
| <b>Total</b>   | <b>3,947</b> |      | <b>3,362</b> |      |

### **Investigations – key facts and figures**

- Two thirds of investigations were completed within 6 to 12 months.
- This year, around 8% more investigations were resolved without needing to be referred to the Ombudsman or Deputy Ombudsman than in 2008/09.
- We accepted 950 new cases for investigation, 43 of these cases all concerned the same issue and could be dealt with as one. Therefore in practice we actually accepted 13.5% more cases than the 800 cases we expected.
- The number accepted for investigation this year, even after adjustment as above, was considerably higher than in the previous three reporting years. (In 2007/08 there were 995 new investigations accepted of which 256 cases involved the same issue which could be dealt with as one case, which reduced the number of cases that reporting year to 740).
- Around a quarter of enquiries turned into investigations (see Figure 3). The percentage of cases accepted for investigation has remained relatively stable since 2006 ranging between 23% to 33%.
- Our goal was to close 800 investigations this year, the same number of cases we expected to open during the year. We closed 889 cases (or 847 cases treating the 43 cases involving the same complaint as one).
- Despite closing around 6% more cases than we forecast, because the number of investigations being undertaken was 13% over what we expected to receive, we are carrying forward more open investigations into 2010/11 than planned, as can be seen from Figure 4.

Figure 4: Comparison of cases accepted for investigation, closed investigations and open at year end (last five years)



The new internal casework procedures introduced in 2008/09 are now bedded in. Our investigators have more scope to try and resolve matters as early as possible, but consistent with due process and natural justice. The procedures enable an investigator at any point during an investigation to 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.

If one or both of the parties disagree with the investigator's view, 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, and often where the case is complex, 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 shows the process used to bring cases to a conclusion. 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 is pleasing to note that our plans to resolve cases earlier by more informal means is bearing fruit, 8% fewer cases had to be referred to the Ombudsman or Deputy Ombudsman to be decided during the year than in the previous reporting year.

Figure 5: Investigation closures

|  | 2009/10    | %  | 2008/09      | %  |
|--|------------|----|--------------|----|
| Discontinued                                 | 31         | 3  | 26           | 2  |
| Resolved/withdrawn                           | 156        | 18 | 154          | 13 |
| Investigator's decision                      | 152        | 17 | 175          | 15 |
| Determined following investigator's decision | 319        | 36 | 478          | 40 |
| Determined formally                          | 231        | 26 | 363          | 30 |
| <b>Total</b>                                 | <b>889</b> |    | <b>1,196</b> |    |

We have been continuing to make determined efforts to prevent investigations from being protracted or suffering undue delay.

Figure 6 shows two thirds of cases took 6 to 12 months to close. In 2008/09 only one third of cases were closed within 6 to 12 months, over 60% of cases taking longer than a year to complete.

Figure 6: Age of investigations closed

|                       | 2009/10    | %  | 2008/09      | %  |
|-----------------------|------------|----|--------------|----|
| Less than 6 months    | 70         | 8  | 75           | 6  |
| 6 to 12 months        | 604        | 68 | 399          | 33 |
| Longer than 12 months | 215        | 24 | 722          | 61 |
| <b>Total</b>          | <b>889</b> |    | <b>1,196</b> |    |

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Figure 7: Open investigations – age in months

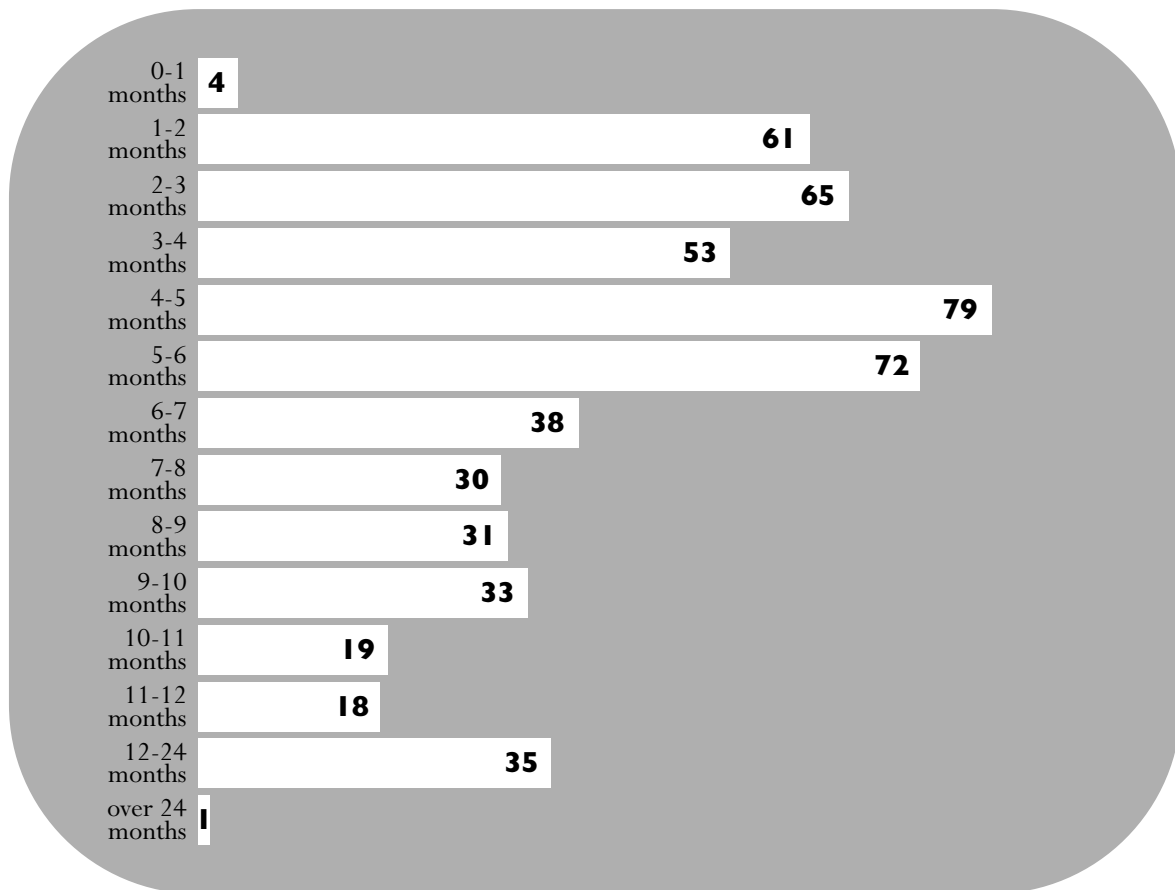
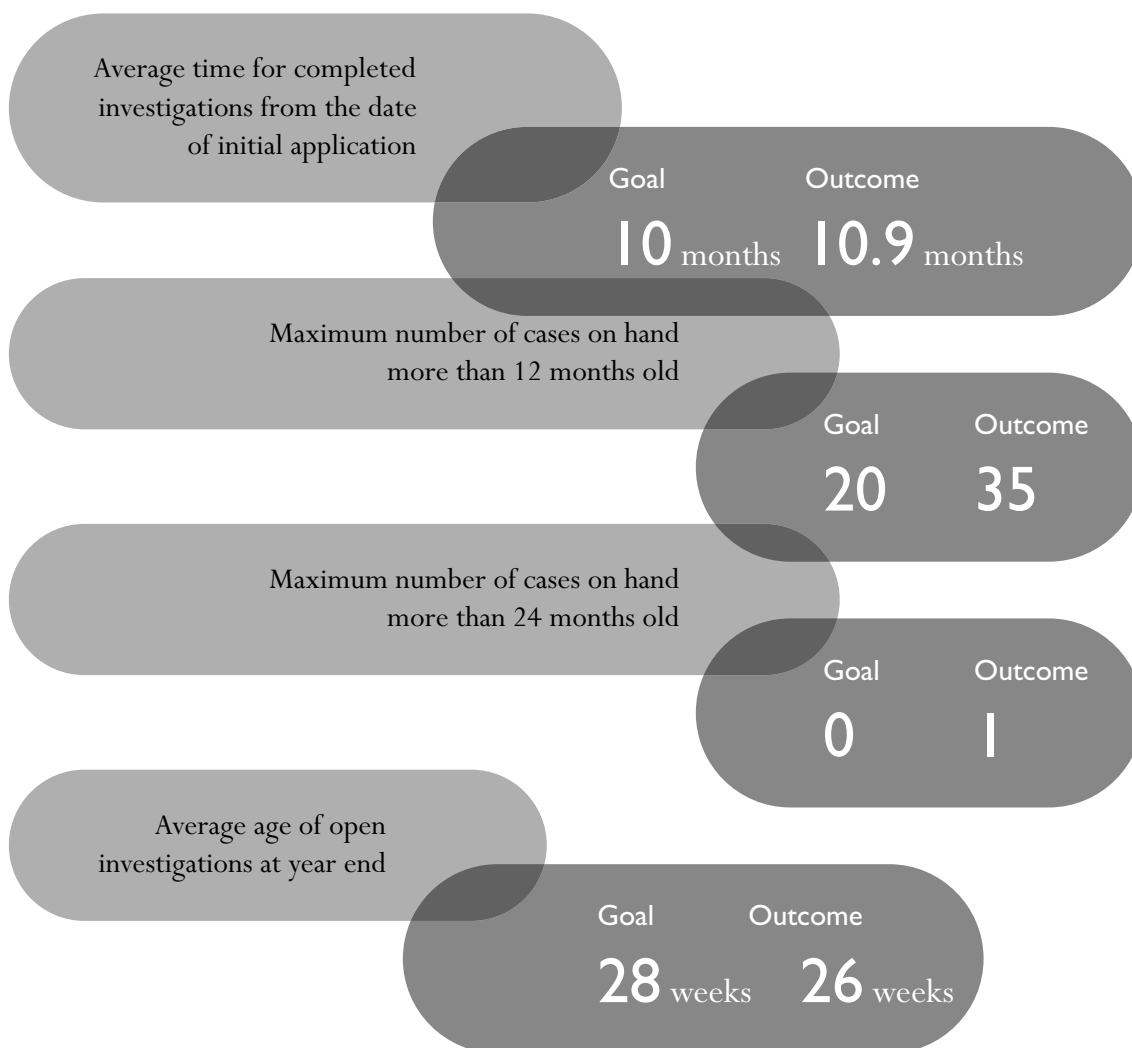


Figure 8: Our goals and results for dealing with cases under investigation

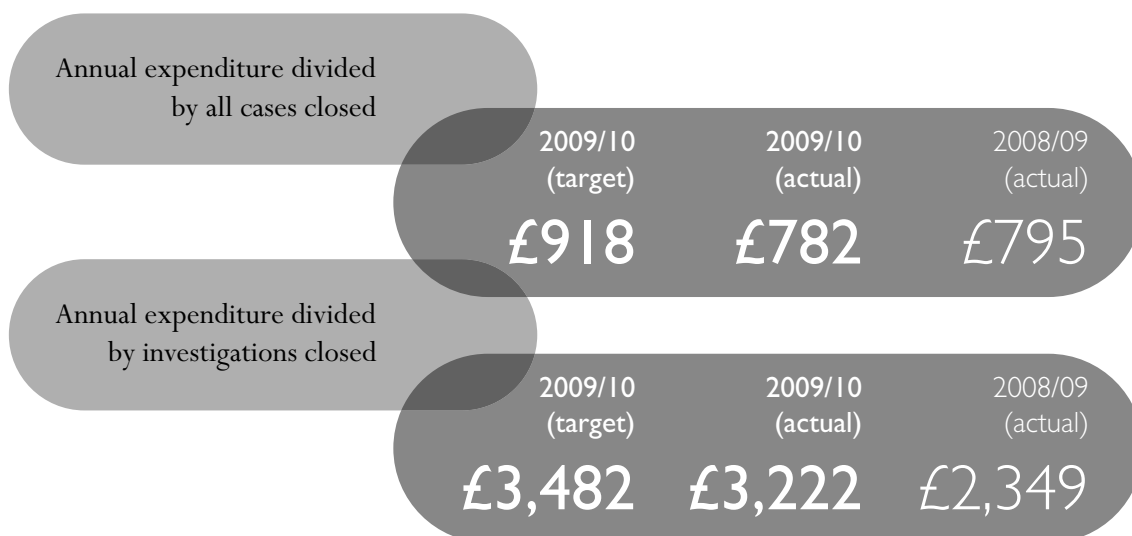


We had 35 cases in hand that were more than 12 months old at the end of the year, and one case over 24 months.

Our goal was to have only 20 cases over 12 months old and no cases over 24 months old by the end of 2009/10. This was however a challenging target, as we had made huge strides in the previous reporting year which were not repeatable (we had 46 at the end of 2008/09 and, in comparable terms, about 450 in 2007/08). Figure 7 gives the current position.

We marginally missed the target of 10 months for average time for completed investigations. However, again there has been significant improvement on previous years. In 2008/09 this was 18.5 months and we opened and closed more investigations this year than we expected to.

Figure 9: Cost ratios



We measure what might be described as “costs per case”. But they do not actually represent the cost of dealing with individual cases – nor are they even a meaningful average cost. For example, the investigations figure attributes all of our costs to investigations and so includes the cost of dealing with initial enquiries. However, the figures do give us meaningful targets for each individual year in the context of known factors at the beginning of the year. They cannot easily be compared to previous reporting years (2008/09 included an exceptional group of investigations, for example) – and certainly not to other organisations, whose casework may not be comparable to ours.

This year we comfortably met our cost targets – essentially because we closed more cases than we forecast whilst staying within budget. But as with 2008/09 there is a significant group of cases that favourably distorts the picture somewhat. (This year showing up in the “all cases closed” ratio).

## **Subject Matter**

One reason for classifying complaints is that it helps us to identify particular subject concentrations that we might develop techniques to deal with. So, for example, we have a special set of questions that we address early in an investigation to respondents with complaints about ill-health early retirement. But our classifications do not tell us, or industry commentators, much about pension scheme members' experiences generally. We deal with predominantly administrative issues. At the moment, however, defined benefit scheme members are more likely to have concerns relating to the financial viability of the scheme that they are in and their employer's ability to support it. Or, in defined contribution schemes, the issues may be risk and investment performance. Wider policy and practical issues of that sort are beyond our remit.

Unsurprisingly, people who come to us with matters that are within jurisdiction do not frame their complaints with statistical analysis in mind. So our classifications are always slightly crude, sometimes picking on one of a number of heads as the main one.

Figure 10: Subject matter of closed complaints

|                                    | 2009/10    | %   | 2008/09      | %  |
|------------------------------------|------------|-----|--------------|----|
| Annuity                            | 8          | 1   | 24           | 2  |
| AVCs                               | 23         | 3   | 31           | 3  |
| Calculation of benefits            | 48         | 5   | 169          | 15 |
| Contributions, refunds and queries | 32         | 4   | 18           | 1  |
| Spouse's and dependants' benefits  | 48         | 5   | 33           | 3  |
| Early retirement pension           | 30         | 3   | 24           | 2  |
| Equal treatment                    | 4          | 0.5 | 0            | 0  |
| Ill-health pension                 | 102        | 11  | 133          | 11 |
| Incorrect/no payment               | 53         | 6   | 49           | 4  |
| Membership conditions              | 10         | 1   | 29           | 2  |
| Misleading advice                  | 77         | 9   | 65           | 5  |
| Preservation                       | 1          | 0.5 | 7            | 1  |
| Transfers                          | 54         | 6   | 240          | 20 |
| Winding up                         | 11         | 1   | 16           | 1  |
| Other                              | 388        | 44  | 358          | 30 |
| <b>Total</b>                       | <b>889</b> |     | <b>1,196</b> |    |

As figure 10 shows, there are no major differences between this report and the last one. As in previous reporting years, we continue to see a significant proportion of our cases relating to how ill health decisions are made. It is not unsurprising that we see a number of these complaints, due to the scope for divergence of view. They involve difficult medical judgements, often the exercise of a discretion and have a significant impact on the financial security of the scheme member.

At first sight, the percentage of transfer value cases appears to have significantly dropped this year. However as mentioned in last year's annual report the figures for 2008/09 were skewed by 212 transfer value cases involving the same issue.

## Case examples

We have selected examples of the cases we dealt with in 2009/10 to range from our normal “bread and butter” business through to some less common issues. They show the different approaches we take to resolution, as well as the varying subject matter. All are simplified and anonymised.

### Early resolution

We continue to work towards proportionality and early resolution. Finding the balance is not always easy. What looks like a proportionate approach to one party may look like a superficial rush job to another. But our first examples are of where appropriate use of proportionate methods worked.

**In this case, we were able to explain to the complainant why he was wrong about the central issue, at the same time as persuading the respondent that it had been at fault in some respects.**

### Retirement overseas – a tale of triviality

The complaint focused on various delays encountered by Mr A when he elected to retire whilst residing in Thailand. Apart from the obvious administrative challenges of time differences and sheer global distance, there was a fundamental dispute ongoing between Mr A and the respondent. Mr A believed that he was entitled to receive the entire proceeds of his pension fund as a tax free lump sum on the grounds of triviality (this being 1% of the Lifetime Allowance).

#### Outcome

Before the complaint came to us, the respondent had accepted there had been delays in settling Mr A’s benefits. This was mainly caused by the time taken to update their database following his change of UK address to an overseas address, and the work required to meet UK money laundering legislation at that time. For this, the respondent had paid £270 to Mr A for his troubles.

During the investigation, it became clear that despite Mr A’s former expatriate status, he was not entitled to take his benefits as a trivial lump sum. If that had been allowed it would have been classified as an unauthorised payment, resulting in legal and tax implications for both Mr A and the respondent.

However, the respondent was persuaded there had been other areas of concern which amounted to maladministration and agreed to compensate Mr A with a further £425. This effectively put him back into the position he would have been in had the delays not occurred. The second award included a reasonable contribution towards Mr A’s out of pocket expenses, namely courier charges and costs incurred from having to make long distance telephone calls and put him in the position as if his pension had become payable a few months earlier.

**In the following example, the decision of the investigator was accepted by the respondent without the need for a formal determination against them by the Pensions Ombudsman or Deputy Pensions Ombudsman.**

### **Transfer value – payment preceding paperwork**

Mr B complained about the delayed allocation of his transfer value under the receiving pension arrangement, and the respondent's point blank refusal to credit his account with any interest for the four week period in question. The respondent maintained it had not gained financially for the one month holding period, and could only allocate funds when its new business paper requirements had been met.

### **Outcome**

The investigator's decision was to partly uphold the complaint on the grounds that the respondent had in fact gained financially from holding the funds on deposit for the month in question, but accepted that monies could only be allocated and invested when the appropriate paperwork had been received.

Critically, during the investigation process, it was discovered that Mr B's funds had been moved to an interest bearing commercial bank account for the one month holding period, and then moved back into a non interest bearing account one day prior to the actual allocation of monies. On these grounds, the respondent had no choice but to credit Mr B's account with a further £267.96; the amount of interest that had accrued.

### Formal determinations

The next cases, some upheld and some not, went through the full investigation process and went on to be formally determined by either the Pensions Ombudsman or the Deputy Pensions Ombudsman.

**Even where cases need to go through the full process, there are sometimes reasons for expediting them or modifying the process to suit the circumstances. In the next case, the Pensions Ombudsman went quickly to a final determination because of the perceived risk of the employer going out of business – possibly deliberately – to avoid the consequences.**

#### **Employer failure – pension contributions not passed to provider for investment**

The facts are straightforward in this case. Mrs C had employee contributions deducted from her monthly salary, but her former employer – a sole trader running a hairdressing business – did not pass these on to the pension provider for investment.

The employer made no attempt to respond to any communications from this office (or those involved before us).

#### **Outcome**

The case went straight to a final determination without a notification of preliminary conclusions, which would normally be the practice for informing both parties of what the final outcome is likely to be. And, as there was no response from the respondent, Rule 8 of the Personal and Occupational Pension Scheme (Pensions Ombudsman) (Procedure) Rules 1995 allowed the ombudsman to determine the case forthwith.

In anticipation of the employer's continued lack of cooperation, the Pensions Ombudsman made it clear in his conclusions that his direction was readily enforceable by Mrs C. This would be enforceable in Scotland "by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff himself have granted such a judgment or order." (The Pensions Schemes Act 1993, S151 (5)).

The former employer was directed to pay £700 to the pension provider for immediate investment, along with a further £150 directly to Mrs C for the distress and inconvenience that had been caused.

**Exceptionally, even when a complaint is upheld it does not necessarily mean that the complainant will recover their financial loss. In this case, the complainant intended to use a self invested personal pension as a vehicle for overseas property investment. The respondent totally failed to co-operate with our investigation (in the face of which we did not allow the case to stagnate) and significant regulatory issues were dealt with by other bodies.**

### **Overseas leaseback property investment – failed purchase through a self invested personal pension (SIPP)**

Mr D's allegations related to certain property and administration fees, and the delayed return of initial property deposits.

At the centre of the dispute was a well known SIPP administrator, a professional corporate trustee and an associated legal practice, who were under investigation by the Financial Services Authority (FSA) and Solicitors Regulatory Authority (SRA). The SRA removed the practising certificate from the legal firm, and the administrator and trustee company were closed to new business following supervisory notices issued by the FSA. They were eventually wound up following a successful petition in the High Court by Her Majesty's Revenue and Customs (HMRC).

Because of the lack of co-operation from the respondent, the investigation was taken forward with just the complainant participating. As part of the investigation process, we had to liaise with the FSA (who were actively assisting HMRC during the wind up process) and former employees of the SIPP administrator.

#### **Outcome**

The Deputy Pensions Ombudsman made a formal direction that the SIPP provider had to refund the various fees in dispute to Mr D, along with interest on the initial property deposits. In addition, the SIPP provider was ordered to pay Mr D £500 for distress and inconvenience and £187 for the legal fees he had reasonably incurred trying to recover the fees in dispute and the unpaid interest on the property deposits.

However, in line with the normal wind up process, Mr D had to contact the liquidator with a claim and take his place alongside other creditors.

**The following case is an example of the provision of an incorrect estimate or illustration. The principle is that a wrong estimate does not usually create a right to the amount incorrectly quoted – but if the recipient has relied on it there may be an entitlement to compensation. In this case the trustees were found to be liable for an additional redundancy sum that would have been paid by the employer but for the wrong estimate.**

#### **Detrimental reliance – substantial compensation award**

Mr E complained that he had been provided with an incorrect normal retirement quotation – a fact that was not denied by the respondent. Mr E had received the quotation (when he was 55) and this set out that he would receive a pension of £28,035 a year when he was 65.

Some months later, after negotiations which included reference to his financial position and the amount of his future pension, he resigned under a compromise agreement. He was paid £33,000. A few days later he received a letter saying that his pension had been wrongly calculated, and that the correct figure at age 65 was £20,056 a year. Mr E said that he would not have resigned for a further two or three years had he known the correct pension figure. During the investigation his employer said, in its defence, that Mr E would ultimately have been made redundant anyway had he not agreed to leave.

#### **Outcome**

Mr E's correct entitlement was £20,056 a year, not £28,035.

However, the Pensions Ombudsman accepted that Mr E would either not have resigned or would have held out for more by way of final settlement had he known his pension at age 65 was only £20,056 a year. But, the Pensions Ombudsman also accepted that Mr E would have been made redundant, had he not agreed to resign.

Had Mr E been made redundant, he would have received a redundancy settlement of £64,345.40, so the trustees were directed to pay Mr E the difference between the sum he had received under the compromise agreement and the redundancy payment he would have received plus interest, and £750 (instead of £500 offered) as compensation for distress and disappointment.

**Although we do not deal directly with employment matters on their own, there is often an interaction between scheme provisions and employment questions. This case required a decision as to whether pay was for contractual hours and, as a result, pensionable.**

### **Additional hours – Council’s refusal to treat them as pensionable**

Mr F was appointed to the office of superintendent registrar of a district council for approximately five years leading up to his retirement. During his appointment, Mr F was a member of the Local Government Pension Scheme (LGPS). He had a letter of appointment to his office which specified the number of hours he was required to work each week. The letter also said that it may be necessary to work on average, an additional hour each day, occasionally accept afternoon appointments outside the times already stated, and be required to work at the weekend on a roster basis.

Mr F complained because the district council refused to deem the additional hours he worked in excess of the hours specified in his letter of appointment as pensionable. The district council argued that Mr F was not obliged to work the additional hours which varied from week to week. They said further that the additional hours were shared amongst staff on a voluntary roster basis and because there were deputy superintendent registrars available to cover the necessary additional hours, then those hours must be regarded as non-pensionable.

### **Outcome**

The fact that additional hours had been worked was not in dispute. The key issue was whether the additional hours should be regarded as “contractual” or “non-contractual” for the purposes of the definition of “pay” as defined in the LGPS Regulations. The term “non-contractual” is not defined in the regulations.

The letter of appointment stated that, in addition to his specified hours, Mr F might be required to work additional hours each day and accept afternoon appointments and, may also be required to work at the weekends on a roster basis.

Also, the terms and conditions of the appointment stated that Mr F was required to appoint a deputy superintendent registrar to provide cover for when he was “ill, on leave or unavoidably absent”. The Deputy Pensions Ombudsman was of the view that the letters suggested that Mr F was “required” to work the extra hours unless he was “ill, on leave or unavoidably absent”, which implied that, had he refused to do so, he would have breached the terms and conditions of his appointment. Additionally, because there was no proviso in the letter of appointment for Mr F to delegate any of his duties, and although in practice he may well have done so, it appeared he was required to undertake the additional duties himself.

The Deputy Pensions Ombudsman concluded that the additional hours should properly have been regarded as envisaged within Mr F’s contract and therefore treated as pensionable, and upheld the complaint.

**Exercising discretion as to the recipient of a lump sum on death may be relatively straightforward where there is an up to date nomination. In this case, the scheme member met the woman who was to become his second wife after completing the form. The issues included whether all of the relevant information had been considered, and whether the decision was made within delegated powers.**

### **Decision outside delegated powers – distribution of a lump sum benefit**

Following the death in service of her late husband in 2006, Mrs G complained about the distribution of the lump sum death benefit. Mr G had completed a nomination form in the year 2000, which set out that he wanted any lump sum paid to his two adult children. Some time after doing so he met the woman who became the new Mrs G who had children who were still financially dependant.

The secretary to the trustees decided to divide the lump sum equally between the two adult children. Under powers delegated to him by the trustees, he was able to decide how to distribute death lump sums in cases where there was “a clear nomination form and no complications”. The decision was later ratified by the trustees.

### **Outcome**

The Pensions Ombudsman determined that the presence of a widow whom the member did not even know when he completed the nomination form amounted to a complication. He also decided that neither the secretary nor the trustees had had full information about the widow or the financial position or degree of dependency of the competing beneficiaries.

The case was therefore remitted to the trustees to be reconsidered based on all the facts and disregarding the previous decision.

**Discretions may be exercised in the context of a pre-established policy (which should not of course fetter the discretion). This case concerned whether a policy, which was required to exist by statute, in fact amounted to a policy at all.**

### **Failure to exercise properly discretionary powers conferred by statutory regulations**

Mr H had complained of maladministration by his former employer because it refused his application to augment his pension entitlement and because of the way that it dealt with his application.

The employer, in exercising its discretion to grant additional pensionable service under regulation 52 of the Local Government Pension Scheme Regulations 1997, was obliged under regulation 106 to formulate and keep under review a written statement of policy concerning the exercise of its discretionary powers.

There were different reasons given for not granting additional service to Mr H, but at a late stage in the investigation the employer produced evidence that its policy was: "Agreement will ... be dependant on the merits of each case and will also be subject to cost implications."

### **Outcome**

Whilst regulation 106 did not specify the contents of the policy, the Pensions Ombudsman had little doubt from the wording of the regulation that it envisaged a policy needed to be more than a simple restatement of the general legal position that would have applied anyway in the absence of a policy. It should have not fettered the power of the decision maker, but it should have indicated a general approach and the considerations that would apply in the exercise of the discretion. Also, it was not clear that the decision had originally been made in the context of any policy.

The Pensions Ombudsman determined that Mr H's complaint should be upheld. He directed that the employer reconsider its decision using a properly formulated policy statement.

**Complaints about mis-selling are usually dealt with by the Financial Ombudsman Service. An exception is where the “sale” involves additional voluntary contributions to an occupational pension scheme, involvement with which cannot be a regulated activity under the Financial Services and Markets Act 2000 (a requirement for it to be within the Financial Ombudsman Service’s jurisdiction).**

**In this case, the primary issue was whether the provider had crossed the boundary between informing and advising.**

### **Information or advice – actively selling an additional voluntary contribution and putting forward an inappropriate fund**

Mr I complained that the insurer who provided the scheme’s additional voluntary contribution arrangement, improperly persuaded him to contribute additional voluntary contributions, and did not carry out a transfer of his free standing additional voluntary contribution fund into the main scheme in time for his first pension instalment to be paid.

Mr I was due to retire in October 2008, and in June 2008 he telephoned the respondent intending to discuss only the possibility of transferring his free standing additional voluntary contribution fund into the scheme’s additional voluntary contribution arrangement. The telephone conversation was recorded and formed part of the evidence.

Mr I was informed that the transfer he was enquiring about was not possible. It was suggested that he might pay his whole earnings as additional voluntary contributions so as to get tax relief at the highest possible rate, and to be able to withdraw the contributions tax free on his retirement.

Mr I initially demurred. However, the respondent persisted. On the basis of what he was told, Mr I made an immediate additional voluntary contribution application over the telephone. When it came to the standard question about attitude to risk, Mr I stated it was “medium”. The respondent proposed the only medium risk fund available (a discretionary fund).

The fund value fell during the very short period to Mr I’s retirement, so that the significant sum that he had paid lost value.

In addition, Mr I had requested that the respondent should proceed with the transfer of his additional voluntary contributions to the main scheme only after receiving his payment made on 3 October 2008, two weeks before his retirement. The transaction was not completed when he retired.

### **Outcome**

The Pensions Ombudsman decided that investing in the markets in the circumstances could not be described as medium risk. The sole purpose of the investment was to obtain tax relief. A three month investment in equities, bonds and property when the upside was of no importance could not be regarded as medium risk. The medium risk strategy for such an investment could only have been one where the downside risk was negligible. As the transaction was proposed and positively driven by the respondent there was a responsibility to ensure the whole package was a rational and viable one.

As far as timing of the transfer was concerned, the respondent only had around four working days to complete the task which, in the view of the Pensions Ombudsman was too short a timeframe to constitute maladministration, and he therefore did not uphold the second part of the complaint.

The cases we deal with sometimes relate to events that took place many years ago. In this case, the original decision was made in 1959; though it was the more recent review that caused the problem.

### **Army “invalidating pension” – change of status following appeal**

Mr J was medically discharged from the Army and received an “invalidating pension”. However, his medical condition was not deemed to be attributable to his Army service. Had his condition been deemed attributable to his service, his invalidating pension would have been free of income tax.

Some time later, Mr J successfully appealed against the decision that his condition was not attributable to his Army service. As a result, he received a refund of the tax he had paid since his retirement, together with interest for the last six years which amounted to just under £20,000.

HMRC would normally only refund tax for the preceding six years unless there had been an error by a government department. They took the view that tax had been correctly deducted until the status of Mr M’s pension had changed on appeal. The additional refund was paid as an ex gratia payment, but they declined to pay any further interest.

Mr J complained against the Ministry of Defence. He argued that he should receive interest for the whole period since his retirement, together with further compensation under an Army scheme, which had paid compensation to pensioners whose invalidating pensions had been deemed to be attributable to their service and had been incorrectly taxed.

### **Outcome**

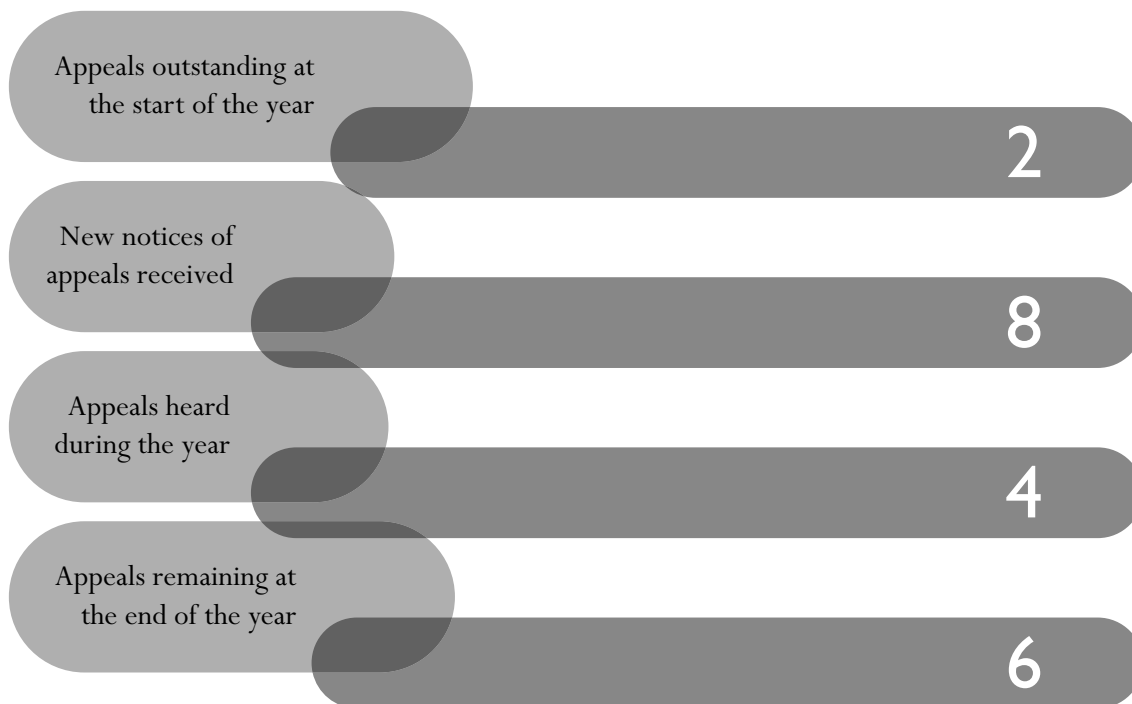
The complaint was not upheld by the Deputy Pensions Ombudsman on the grounds that tax had been correctly deducted by the Ministry of Defence at the time; also, Mr J did not fall into the same category as those pensioners who had received payments under the compensation scheme.

## Appeals and judicial review applications

### Appeals

There is a statutory right of appeal on a point of law against a determination made by the Pensions Ombudsman or the Deputy Pensions Ombudsman. Appeal is to the High Court in England and Wales, Court of Appeal in Northern Ireland and Court of Session in Scotland.

Figure 11: Appeals heard or made during the year<sup>1</sup>



For individual complainants on the receiving end of an appeal by the respondent to a complaint, it is unsatisfactory that there should be a sudden transition from the low cost, informal inquisitorial and investigative ombudsman process to the more formal, adversarial and potentially expensive Court process. We do not usually participate in appeals; as the decision maker, it would be wrong to be apparently taking sides. But if we do not participate, then there is either a one sided appeal without the complainant, or the complainant appears and is at risk as to costs. We may exceptionally apply to the court for leave to participate. In particular we may do so where the case raises an important point potentially affecting the way we do our work.

We are sometimes drawn into appeal proceedings in Scotland because the inappropriate procedure (being by way of stated case) is used. Unless we can persuade the appellant to adopt the alternative, more appropriate procedure (statutory appeal), we have to instruct local solicitors. This involves unnecessary expense and time on our part.

We have not, as we have in past years, summarised all appeals heard in the year. Most turned on the facts of the case and have no broader significance.

However, there was one case of wider significance. We participated in the hearing as it dealt with a subject of considerable significance to us – and was connected to a common question in appeals in earlier years of the office's existence. The broad issue is the extent to which the Pensions Ombudsman's wide power to give directions is constrained so that the remedy should be the same as if the matter had been brought before a Court. The particular case focussed on time limits.

<sup>1</sup> Being appeals we are made aware of by the Court (High Court, Court of Appeal or Court of Session). The party appealing does not have to give us notice of the appeal

**Arjo Wiggins Limited v Henry Thomas Ralph (the Pensions Ombudsman intervening)  
– (2009) ALL ER (D) 65 (DEC)**

Mr Ralph had worked for Wiggins Teape (now Arjo Wiggins) and was a member of its defined benefits pension scheme. He was made redundant in 1986 and transferred his pension to an insurance company which predicted greater benefits than those expected from the scheme. In 2007 he made a complaint to us saying that he had been given negligent advice by Wiggins Teape, and that if he had been given proper advice he would not have transferred his pension and would have remained a member of the scheme. His complaint was upheld and Arjo Wiggins was directed to pay the cost of restoring Mr Ralph to the scheme or to pay for equivalent benefits.

Arjo Wiggins appealed against the determination. The appeal was allowed on the ground that the Pensions Ombudsman had no power to award substantive relief to a complainant whose complaint would have been defeated by a limitation defence if it had been brought before the court. Amongst other things, the judge found:

- Regulation 5 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 provided clear statutory authority for the Pensions Ombudsman to investigate and determine a complaint or dispute that would otherwise be time barred if brought before the court;
- the Pensions Ombudsman was entitled to exercise the powers under section 151(2) of the Pension Schemes Act 1993 (to direct any person responsible for the management of a scheme to take or refrain from taking such steps as he may specify) although these powers had been interpreted narrowly by the courts;
- nevertheless the Pensions Ombudsman could not refuse to give effect to a valid defence in law; and
- in the case of pure maladministration there is no applicable limitation period even if the claim is stale although the staleness of the claim will be relevant to the decision whether or not to investigate the complaint.

**Judicial review applications**

On the whole it is rare for us to be involved in judicial review proceedings. This is because, so far as determinations are concerned, there is an alternative remedy available, being the statutory right of appeal. Sometimes the distinction between the two procedures is not well understood, particularly by litigants in person, and we have to explain it. However, judicial review may be the appropriate route for challenging procedural decisions which we make during the course of an investigation. That said, objections to those decisions may themselves be left as points to raise at a future appeal – particularly where they concern jurisdiction, the Arjo Wiggins appeal above being a case in point.

Most unusually and for no obvious reason, during the space of two months we recently received notice of four applications for judicial review. All were still at the permission stage at the year end.

Figure 12: Judicial reviews heard or made during the year



### Enforcement proceedings

After a complaint has been determined we are sometimes contacted by the successful party for information about enforcing the directions made in his/her favour. Our determinations are final and binding. Strictly, once a complaint has been determined we have no further power to act, and it is for the successful party to take any enforcement action which may be required. When contacted we explain the bones of the process and point the party in the right direction.

In a recent case, we took the unusual step of providing evidence for use in enforcement proceedings in New Zealand. Two respondents, against whom a complaint had been upheld, claimed that they had not been aware of the complaint (they had not responded during the course of our investigation). Our evidence dealt with the numerous steps taken by the office over an extensive period of time to contact them.



## 2.2 Pension Protection Fund Ombudsman casework review

The Pensions Ombudsman is also the Ombudsman for the Board of the Pension Protection Fund (the PPF Ombudsman) and the Deputy Pensions Ombudsman holds an equivalent position. The PPF Ombudsman and Deputy PPF Ombudsman can:

- review decisions made by the Board of the Pension Protection Fund (PPF); and
- investigate and determine complaints of maladministration on the part of the PPF.

There is a separate jurisdiction to determine appeals against decisions made by the manager of the Financial Assistance Scheme (FAS). Originally the scheme manager was the Department for Work and Pensions (DWP). Since 9 July 2009 the scheme manager has been the Board of the PPF. The PPF Ombudsman does not deal with complaints of maladministration on the part of the FAS. They continue to be dealt with by the Parliamentary Ombudsman under arrangements made when the FAS manager was the DWP.

### **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 45 new applications and enquiries to review decisions (a 55% increase on 2008/09 when we received 29 requests). Of the 45, we accepted 38 for investigation. Seven cases were not accepted for the following reasons – two had not been through the Reconsideration Committee, two were outside jurisdiction, two referral forms were not returned and one case was resolved by the applicant and the PPF.

In all, 18 cases were concluded and in each the decision of the PPF was upheld. As in previous reporting years, the matters referred to the PPF Ombudsman almost exclusively concerned the calculation of the risk-based levy and in all cases it was found that the PPF levy calculation was correct.

However, in a number of cases it was observed 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 and for the Board in setting the basis on which the levy is assessed.

The following case study illustrates the point.

### **Reviewable matter**

Mr K brought an application on behalf of the employer saying there was an anomaly in the methodology for rolling forward the MFR data that had led to the scheme's liabilities being overstated. The methodology used was not in accordance with the PPF's Determination; and that had the PPF responded to a query in a more timely manner, a section 179 valuation would have been prepared, which would have avoided the problem.

The scheme utilised the equity easement in the preparation of its MFR valuation, whereby pensioner liabilities could, in certain circumstances, be calculated in part by reference to an assumed rate of return on equities. The scheme's actuary had raised the issue of the anomaly in the way MFR data was rolled forward with the PPF prior to the deadline for submitting a section 179 valuation, but had not received a definitive response. There was however, a 'frequently asked question' relating to the anomaly on the PPF website.

### **Outcome**

The Deputy PPF Ombudsman found that the scheme's risk-based levy had been calculated in accordance with the PPF Determination. It was noted that there had been nothing to prevent the scheme trustees from commissioning a section 179 valuation as a way of addressing the anomaly.

### **Complaints of maladministration**

During the year, four complaints of maladministration were received. Of these, three were rejected on jurisdiction grounds. The single case that was accepted for investigation relates to a scheme member who complained that he received a quotation of his benefits which were later reduced. He said the original figures should have been honoured.

This case was yet to be determined at the end of the year.

### **Financial Assistance Scheme (FAS)**

FAS cases potentially 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.

During 2009/10 there were no new appeals against FAS decisions, although one enquiry was received very late in March 2009 and not reported in the 2008/09 annual report. The complaint was from a member querying the calculation of his FAS award for which the investigator wrote to the applicant stating the award looked correct. As no response was received from the applicant the case was closed in December 2009.

### **Appeals**

This year we received the first notice of appeal against a PPFO determination. It concerned a determination of a reviewable matter under the PPF jurisdiction (a levy calculation). As with appeals against Pensions Ombudsman determinations, it would not generally be appropriate to participate in the absence of an issue that goes to the PPF Ombudsman's jurisdiction or powers. So the office is not participating in this particular appeal. However, the case is due to be heard in Scotland, where the process may call for some involvement and local solicitors have been instructed to keep a watching brief on behalf of the office.

## 2.3 Our people

### Staff

We started the year with 34.9 full time equivalent staff and ended it with 35.7 (not including the Pensions Ombudsman and Deputy Pensions Ombudsman). The apparent increase is not because our headcount has risen in practical terms; in fact it fell by one. The change referred to below has added the part time Casework Director to the numbers (previously, as a statutory appointment, Charlie Gordon was not included). And we have one person on maternity leave for whom we have had to arrange temporary cover.

That change was the departure, referred to in the Introduction to this report, of Charlie Gordon, the Deputy Pensions Ombudsman. Appointed by the Secretary of State, Charlie Gordon held, in effect, a joint post as ombudsman and as the operational manager of the casework teams – the Pensions Ombudsman having ultimate responsibility for the latter.

Accountability was thus more complex than was ideal, though there was never a practical problem. As a tidying measure, it was agreed with DWP that when Charlie Gordon's term of office came to an end the two posts of Deputy Pensions Ombudsman and Casework Director should be recruited for separately – though the process allowed for the possibility that one person could be appointed to both.

In the event, there were two separate part time appointments. In October 2009, the then Secretary of State, Yvette Cooper, appointed Jane Irvine as Deputy Pensions Ombudsman and Deputy Pension Protection Fund Ombudsman. In January 2010, Kim Parsons joined us as Casework Director, taking on operational responsibility for all aspects of casework and reporting to the Pensions Ombudsman.

Jane Irvine, who is also Chair of the Scottish Legal Complaints Commission, lives and works in Edinburgh and so gives us a presence in Scotland for the first time.

Kim Parsons has worked for the DWP and the Pensions Regulator. She lost no time in building an understanding of our office and developing a relationship with colleagues to plan for the years to come.

### Pay

The pay review effective from July 2009 was slightly lower than if we had applied the DWP's settlement to our own staff, being 2.47% on average.

### Sickness

Average sickness was 4.5 days per person. This represents an increase over 2008/9's reported figure of 3.5. A slight change in calculation method accounts for 0.2 of that. The balance relates to identifiable individual absences rather than a wider problem.

### Investors in People

We received reaccreditation as Investors in People in late 2009, having now held that status continuously for a decade or so. Whilst we achieved reaccreditation, there were a number of areas in which everyone in the office can do more to act inclusively, with a true sense of opportunity for involvement and personal responsibility. We have an action plan in place, but the most effective change is likely to be achieved by practical shifts in behaviour throughout the office.

### **Staff guide**

We launched a new staff guide during the year. Previously our terms and conditions, including the detail set out in the staff guide, had followed DWP's arrangements. Whilst the content of the new guide does not differ greatly from those arrangements, it is both more directly applicable to us and more accessible to staff.

### **Staff Communication Forum**

In 2007/08 we established a formal communication forum with elected members from different constituencies across the office. Whilst in such a small office a formal group might seem superfluous, in practice it gives us all a focal point for discussion and feedback when dealing with matters such as pay, terms and conditions or team structures. It cannot, and should not replace more informal day to day discussion, but it has proved helpful all round; the office is indebted to the elected staff who have performed their role co-operatively and effectively.

## 2.4 Other management activities

### IT

In the report for 2008/09 we recorded that our casework handling system was not meeting our needs; it has never done so since it was installed in September 2007. We hoped that relationships would improve following the takeover of the providers by Reed Elsevier plc (the system is now managed by part of their Lexis Nexus subdivision). Unfortunately we have to report that we are still struggling to make it work for us. We – and, in fairness, Lexis Nexus too – have put in a great deal of work to help us move to a later release of the system (we seem to have been lumbered with an earlier release and have been left behind when it was upgraded). There have been several false dawns, when for a range of reasons the upgrade has had to be postponed. When it comes to pressuring to get things done the position is made complex by the fact that contractually we are not a party. The acquisition of the system dates back to when different governance and funding arrangements applied. The contract is actually between DWP and Siemens (the original provider of the casework management system being a subcontractor). It expires in 2010/11.

### Liaison

We have continued to maintain good relations with stakeholders.

The independently run Pensions Ombudsman Liaison Group met twice during the year. One meeting included a presentation from staff about our work. Thanks are due to Mark Grant and Venetia Trayhurn of CMS Cameron McKenna for organising and recording meetings.

We attended conferences and other events – speaking at several. It is important that the industry hears what we have to say – and gets a chance to see our human side.

We also continued to maintain a strong and cordial relationship with the “stewardship” team in the DWP. We are grateful to them for their constructive and helpful approach.

### Key performance indicators

We operate a balanced basket of performance indicators, reviewed monthly, which reflect our annual goals. They cover:

- 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.

### Risks and uncertainties

We maintain a register of key strategic risks (also referred to in the Statement on Internal Control in the Financial Statements). Key risks identified at the year end were (not in order of likelihood or impact):

- a breakdown in good relationships with key stakeholders;
- corporate governance and management controls not being fit for purpose;

- financial controls and systems failing;
- insufficient financial resource;
- overspending;
- 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;
- IT and telephony systems not being fit for purpose;
- the business continuity plan not being sufficiently robust;
- a breach of data security; and
- key suppliers not surviving the recession.

### **Social and community issues**

Our sustainability policy is published on our website. We have recycling facilities for paper, cardboard, cans and some plastics. The building was constructed before environmental considerations were taken into account to any great extent; and heating and power are charged proportionately to our occupation of the building, so we do not stand to save through managing them. We do what we can, however. This year we extended the secondary double glazing to a small area of the office where there was none.

In place of sending Christmas cards we made a charitable donation of £500 to St David's Foundation Hospice Care, a charity providing palliative care in Wales.

### **Freedom of Information**

At the start of the year we updated our Freedom of Information Publication Scheme to comply with the model scheme provided by the Information Commissioner. As a result of the updated guidance we now regularly publish corporate information on our website and; this includes the register of requests we receive and how we responded to them.

### **Data protection and security**

From time to time we receive access requests under the Data Protection Act that are aimed at obtaining information about the investigation of a complaint, rather than having anything to do with personal data per se. Obviously we comply with the statutory requirements; since our process includes full exchange of documents, there is usually no data held that the person making the request does not already know we hold.

During the year we issued new guidance concerning data security, including new restrictions on home working, a clear desk policy and restated guidance about how data should be handled. All staff completed a training module that now forms part of our induction process.

Some of this activity was in response to Government-wide requirements following well publicised data losses. One unwelcome change – surprising to many of the people we deal with – was a complete ban on using internet email for communications that contain personal data. It would have been surprising to them, first because the email exchanges may have been initiated by the person concerned and second, because the data being exchanged is not likely to lead to significant harm (such as identity theft) and finally

because many people, rightly or wrongly, regard internet email as adequately secure for exchanging all but the most risky information.

We have, for the time being, returned to using post for all but procedural correspondence. This is obviously a retrograde step; and we are looking into possible solutions that will allow us to exchange electronic correspondence securely.

### **Complaints about us**

Complaints concerning the way we have handled a case – the service we have provided, rather than the outcome of the case – are dealt with under our internal complaints procedure. We try to deal with concerns informally and at the earliest opportunity, but, if it becomes necessary, complaints are considered by the Casework Director in accordance with our complaints procedure. If the complaint is about the Casework Director it will be dealt with by either the Pensions Ombudsman or the Deputy Pensions Ombudsman.

Sometimes, once the Ombudsman or Deputy Ombudsman has determined the case, parties complain to us about the way the case has been decided and/or the way we have dealt with the evidence. By the time a case reaches us it has often become protracted; generally parties will have been through an internal dispute resolution process or received advice or mediation from TPAS. And so there is clearly a divergence of view, which sometimes prevails after the Ombudsman's or Deputy Ombudsman's determination. As a decision by the Ombudsman or Deputy Ombudsman is final and binding on the parties, if the party is aggrieved they have a right to appeal to the Courts, rather than through our internal complaints procedure.

A complaint about the way we have handled a case and/or about the outcome of a case, are not always easy to separate out – for example, where a person disagrees with the outcome they may say that we have not acted impartially, or have not sufficiently investigated their case. In practice if a party is seeking to change the way a case has been determined they will need to pursue this via an appeal.

We come under the jurisdiction of the Parliamentary Ombudsman. An aggrieved person who is not satisfied with our response to their complaint can, via their Member of Parliament, ask the Parliamentary Ombudsman to consider any administrative issue relating to the service we have provided that they are unhappy about. As with our internal complaints procedure, the Parliamentary Ombudsman will not deal with complaints about the way a case has been determined by the Ombudsman or Deputy Ombudsman.

We received 13 formal complaints about our service this year, one more than the previous year. Whilst it is disappointing to receive any complaints, it is pleasing to note that we received very few complaints bearing in mind the number of people we deal with each year. We regard complaints as learning opportunities and ensure that any feedback received is, where appropriate, used to improve our ways of working. Once again, no formal investigations about our service were undertaken by the Parliamentary Ombudsman.

DISCLOSURES

### 3.1 Statutory background

The Pensions Ombudsman is a statutory commissioner appointed by the Secretary of State for Work and Pensions under section 154 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, the accounting policies and note 4 to the accounts.

The office has a policy of paying invoices within 10 days and monitors compliance with it. The process is such that invoices are in fact paid within a maximum of five working days, unless there is a query on the invoice.

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

So far as the Pensions Ombudsman is aware, there is no relevant audit information of which the auditors are unaware, and the Pensions 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

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 years 2008/09 and 2009/10 (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 (paid in the 2009/10 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 expired in September 2009. Jane Irvine was appointed on a part time basis for 3 years on 18 November 2009.

| Name           | Dates of appointment | Unexpired term               | Notice period          |
|----------------|----------------------|------------------------------|------------------------|
| Tony King      | 1 September 2007     | 5 months                     | 6 months from employee |
| Charlie Gordon | 4 April 2005         | Expired on 30 September 2009 | 6 months from employee |
| Jane Irvine    | 18 November 2009     | 2 years 7.5 months           | 6 months from employee |

Each appointment may be terminated early by 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

|                | 2009/10       |                                    | 2008/09       |                                    |
|----------------|---------------|------------------------------------|---------------|------------------------------------|
|                | Salary (£000) | Benefits in Kind (to nearest £100) | Salary (£000) | Benefits in kind (to nearest £100) |
| Tony King      | £135 – £140 * | 0                                  | £125 – 130    | 0                                  |
| Charlie Gordon | £60 – £65 †   | 0                                  | £95 – £100    | 0                                  |
| Jane Irvine    | £10 – £15 ‡   | 0                                  | N/A           | N/A                                |

\* The salary figure includes bonuses paid in 2009/10 that were earned in 2008/09.

† Contract expired 30 September 2009. Salary figure includes bonuses earned in 2008/09 and 2009/10.

‡ Appointed 18 November 2009 on part time basis.

### Pension Benefits

|                | Accrued pension at age 65 as at 31/3/10 and related lump sum 31/3/10 (£'000) | Real increase in pension at age 65 and related lump sum at pension age (£'000) | CETV at 31/3/10 (£'000) | CETV at 31/3/09 (£'000) | Real Increase in CETV (£'000) |
|----------------|--|--|-------------------------|-------------------------|-------------------------------|
| Tony King      | 40 – 45<br>0   | 2.5 – 5  | 826                     | 711 *                   | 73                            |
| Charlie Gordon | 30 – 35<br>95 – 100  | 0 – 2.5<br>0 – 2.5   | 643                     | 582                     | 15                            |

\* This figure is different from that disclosed in the 2008/09 accounts as transfer values were incorrectly calculated on uncapped pensionable pay.

Jane Irvine does not receive any pension benefits as a result of her appointment.

### 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 pensions 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 1/80<sup>th</sup> 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 1/60<sup>th</sup> 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 his 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 Principal Civil Service Pension Scheme (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 2009/10, employers' contributions were payable to the PCSPS in the range 16.7% to 24.3% of pensionable pay, and in the range 16.7% to 24.3% from 1 April 2010 based on salary bands as follows:

| Band   | 2009/10          |                | From 1 April 2010 |                |
|--------|------------------|----------------|-------------------|----------------|
|        | Salary Band (£)  | Rate of charge | Salary Band (£)   | Rate of charge |
| Band 1 | 20,500 and under | 16.7%          | 21,000 and under  | 16.7%          |
| Band 2 | 20,501 to 42,000 | 18.8%          | 21,001 to 43,000  | 18.8%          |
| Band 3 | 42,001 to 72,000 | 21.8%          | 43,001 to 74,000  | 21.8%          |
| Band 4 | 72,001 and over  | 24.3%          | 74,001 and above  | 24.3%          |

Further details about the Civil Service pension arrangements can be found at the website [www.civilservice-pensions.gov.uk](http://www.civilservice-pensions.gov.uk)

Further staff cost disclosures are included in the notes to the accounts staff costs, note [4].



Tony King  
Pensions Ombudsman  
Pension Protection Fund Ombudsman

5 July 2010

## 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 Pension 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 (DWP) 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 Pensions Ombudsman's and Pension Protection Fund Ombudsman's joint 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.

I am accountable to the DWP, under the terms of a Framework Document. The Framework Document was revised during the year effective from 1 October 2009. The DWP receives reports on performance, finance and risk at quarterly accountability review meetings.

### **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 2010 and up to the date of approval of the annual report and accounts and accords with Treasury guidance.

### **Capacity to handle risk**

The office's Senior Management Team has determined, because of the size of the organisation and our relatively straightforward functions, that risk should be managed proportionately and reasonably in order to ensure that value is added to the office's objectives. Hence we do not expect to eliminate all risk. We do expect to manage risk so as to be able to fulfil our functions effectively and efficiently so as to maintain public confidence.

A virtue of being a small organisation is that those engaged in strategic risk management are predominantly immersed in operational matters. We adapt to change by identifying and managing risks both informally and formally at operational level and recording and acting on any strategic implications of those risks.

### **The risk and control framework**

The Senior Management Team holds monthly operational meetings for which terms of reference were documented during the year:

On a quarterly basis the office's Senior Management Team holds meetings as the "strategic management forum" one task of which is to review risk and the risk register. During the year specific terms of reference were agreed for these quarterly, non operational, meetings.

The Audit Committee also meets quarterly and reviews the risk register in the light of any changes made by the Senior Management Team and auditors' observations. In my capacity as Accounting Officer I attend Audit Committee meetings, as do representatives of the DWP and internal and external auditors. The Audit Committee prepared a report of its activities during the year.

Within that structure, 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;
- there is a consistent scoring system for the assessment of risks on the basis of likelihood and impact;
- we determine appropriate management controls and activities to mitigate the risks identified, having regard to the amount of risk deemed to be tolerable and justifiable;
- risks are 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 are identified to provide assurance that the mitigation actions are appropriate and effective; and
- regular monitoring and updating of risk information to ensure new and emerging risks are captured.

As at 31 March 2010 there were 13 strategic risks identified in the risk register.

### **Review of effectiveness**

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed by the work of the internal auditors and comments made by the external auditors in their management letter and other reports. I have been advised on the implications of the result of my review of the effectiveness of the system of internal control by the Audit Committee and a plan to address weaknesses and ensure continuous improvement of the system is in place.

Our present case management software does not match reasonable expectations as to functionality, speed or reliability of management information. The risks have been mitigated at the expense of resource and workarounds in the form of duplicated data in alternative recording systems.

The business continuity plan was strengthened during the year, with the addition of access to a commercial off-site facility.

There were no protected data related incidents reportable to the Information Commissioner's Office in 2009/10. However we intend to reinforce our existing policy and introduce new processes for secure communication.



Tony King  
Pensions Ombudsman  
Pension Protection Fund Ombudsman

5 July 2010

#### 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 2010 under the Pension Schemes Act 1993 and the Pensions Act 2004. These comprise the Net Expenditure Account, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity 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 Board, Chief Executive Officer and auditor**

The Ombudsman as Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors.

##### **Scope of the Audit of the Financial Statements**

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Ombudsman's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Ombudsman; and the overall presentation of the financial statements.

In addition, I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income reported in the financial statements have been applied to the purposes intended by Parliament, and the financial transactions conform to the authorities which govern them.

##### **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.

### **Opinion on financial statements**

In my opinion:

- the financial statements give a true and fair view of the state of the Ombudsman's affairs as at 31 March 2010 and of its net expenditure, changes in taxpayers' equity and cash flows for the year then ended; and
- the financial statements have been properly prepared in accordance with the Pension Schemes Act 1993 and Pensions Act 2004 and the Secretary of State for Work and Pensions' directions made thereunder.

### **Opinion on other matters**

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with the Secretary of State for Work and Pensions' directions issued under the Pension Schemes Act 1993 and Pensions Act 2004; and
- the information given in the Introduction and Management Commentary for the financial year for which the financial statements are prepared is consistent with the financial statements.

### **Matters on which I report by exception**

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records; or
- I have not received all of the information and explanations I require for my audit; or
- the Statement on Internal Control does not reflect compliance with HM Treasury's guidance.

### **Report**

I have no observations to make on these financial statements.

Amyas C E Morse  
Comptroller and Auditor General  
National Audit Office  
157-197 Buckingham Palace Road  
Victoria  
London  
SW1W 9SP

12 July 2010

## 4.5 Accounts

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

### Net Expenditure Account

Year ended 31 March 2010

|  | Note | 2009/10<br>£       | 2008/09<br>£       |
|--|------|--------------------|--------------------|
| <b>Expenditure</b>   |      |                    |                    |
| Staff costs  | 4    | (1,940,038)        | (1,941,918)        |
| Depreciation   | 6    | (11,276)           | (59,450)           |
| Other expenditure  | 5    | (916,353)          | (808,216)          |
| <b>Operating deficit</b>   |      | <b>(2,867,667)</b> | <b>(2,809,584)</b> |
| Interest receivable  |      | –                  | 427                |
| <b>Net expenditure on ordinary activities before notional interest on capital employed</b> |      | <b>(2,867,667)</b> | <b>(2,809,157)</b> |
| Notional interest on capital employed  |      | 3,042              | (672)              |
| <b>Net expenditure on ordinary activities before tax</b>                                   |      | <b>(2,864,625)</b> | <b>(2,809,829)</b> |
| Taxation   |      | –                  | –                  |
| <b>Net expenditure on ordinary activities after tax</b>                                    |      | <b>(2,864,625)</b> | <b>(2,809,829)</b> |

All activities were continuing throughout the year

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Statement of financial position

31 March 2010

|                                  | Note | 31 March<br>2010<br>£ | 31 March<br>2009<br>£ | 1 April<br>2008<br>£ |
|----------------------------------|------|-----------------------|-----------------------|----------------------|
| <b>Non-current assets</b>        |      |                       |                       |                      |
| Property, plant and equipment    | 6    | 11,276                | 25,393                | 111,044              |
| <b>Total non-current assets</b>  |      | <b>11,276</b>         | <b>25,393</b>         | <b>111,044</b>       |
| <b>Current assets</b>            |      |                       |                       |                      |
| Trade and other receivables      | 7    | 35,109                | 31,436                | 18,621               |
| Cash and cash equivalents        | 8    | 28,745                | 161,341               | 257,814              |
| <b>Total current assets</b>      |      | <b>63,854</b>         | <b>192,777</b>        | <b>276,435</b>       |
| <b>Total assets</b>              |      | <b>75,130</b>         | <b>218,170</b>        | <b>387,479</b>       |
| <b>Current liabilities</b>       |      |                       |                       |                      |
| Trade and other payables         | 9    | 130,864               | 336,237               | 241,389              |
| <b>Total current liabilities</b> |      | <b>130,864</b>        | <b>336,237</b>        | <b>241,389</b>       |
| <b>Assets less liabilities</b>   |      | <b>(55,734)</b>       | <b>(118,067)</b>      | <b>146,090</b>       |
| <b>Capital and reserves</b>      |      |                       |                       |                      |
| General reserve                  |      | (55,734)              | (118,067)             | 146,090              |

The financial statements on pages 55 to 58 were approved on 5 July 2010 and signed by



Tony King  
Pensions Ombudsman  
Pension Protection Fund Ombudsman

5 July 2010

The notes on pages 59 to 69 form part of these statutory accounts.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Statement of cash flows

Year ended 31 March 2010

|   | Note | 2009/10          |   | 2008/09          |   |
|---|------|------------------|---|------------------|---|
|   |      | £                | £ | £                | £ |
| <b>Cash flows from operating activities</b> |      |                  |   |                  |   |
| Net expenditure after taxation              |      | (2,864,625)      |   | (2,809,829)      |   |
| Notional interest                           |      | (3,042)          |   | 672              |   |
| Depreciation                                | 6    | 11,276           |   | 59,450           |   |
| Revaluation of fixed assets                 | 6    | 2,841            |   | 25,984           |   |
| Loss on disposal of fixed assets            |      | –                |   | 216              |   |
| Increase in receivables                     |      | (3,673)          |   | (12,814)         |   |
| Increase/(Decrease) in payables             |      | (205,373)        |   | 94,848           |   |
| Net cash outflow from operating activities  |      | (3,062,596)      |   | (2,641,473)      |   |
| <b>Cash flows from financing activities</b> |      |                  |   |                  |   |
| Grants from parent department               |      | 2,930,000        |   | 2,545,000        |   |
| <b>Net financing</b>                        |      | <b>2,930,000</b> |   | <b>2,545,000</b> |   |
| (Decrease) in cash in the year              |      | (132,596)        |   | (96,473)         |   |
| Cash and cash equivalents at 1 April 2009   |      | 161,341          |   | 257,814          |   |
| Cash and cash equivalents at 31 March 2010  |      | 28,745           |   | 161,341          |   |

The notes on pages 59 to 69 form part of these statutory accounts.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Statement of changes in taxpayers' equity

Year ended 31 March 2010

|   | Note | General Reserve |                 |
|---|------|-----------------|-----------------|
|   |      | £               | £               |
| <b>Balance at 1 April 2008</b>              |      |                 | 146,090         |
| <b>Changes in Taxpayers' Equity</b>         |      |                 |                 |
| Net expenditure on ordinary activities      |      | (2,809,829)     |                 |
| Reversal of notional cost of capital        |      | 672             |                 |
| <b>Total recognised income and expenses</b> |      |                 | (2,809,157)     |
| Grant-in-aid to cover ongoing operations    |      |                 | 2,545,000       |
| <b>Balance at 31 March 2009</b>             |      |                 | (118,067)       |
| <b>Changes in Taxpayers' Equity</b>         |      |                 |                 |
| Net expenditure on ordinary activities      |      | (2,864,625)     |                 |
| Reversal of notional cost of capital        |      | (3,042)         |                 |
| <b>Total recognised income and expenses</b> |      |                 | (2,867,667)     |
| Grant-in-aid to cover ongoing operations    |      |                 | 2,930,000       |
| <b>Balance at 31 March 2010</b>             |      |                 | <b>(55,734)</b> |

The notes on pages 59 to 69 form part of these statutory accounts.

## Notes to the Accounts

Year ended 31 March 2010

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### I. Accounting policies

#### **Basis of accounting**

These financial statements have been prepared in accordance with the 2009/10 Government Financial Reporting Manual (FReM) issued by HM Treasury. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be most appropriate to the particular circumstances of the Pensions Ombudsman for the purpose of giving a true and fair view has been selected. The particular policies adopted by the Pensions Ombudsman are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

#### **Adoption of new and revised Standards**

In the current year, the following new and revised Standards and Interpretations have been adopted and have affected the disclosures given in these financial statements.

- IAS 1 (revised 2007) – Presentation of Financial Statements (effective 1 January 2009)

There were no other new or revised Standards and Interpretations adopted in the current year.

There are a number of other new or revised IFRSs or Interpretations that have been issued but are not yet effective, and it is not expected that the adoption of these in future periods will have an impact on the financial statements of the Ombudsman.

In addition, the FReM for 2010/11 includes other changes, of which one is expected to affect the Ombudsman being the removal of Cost of Capital charging. This will affect the Net Expenditure Account (which for 2009/10 currently includes a credit for £3,042) and the Statement of Changes in Taxpayers' Equity (where that sum is reversed).

#### **a) Accounting convention**

These accounts have been prepared under the historical cost convention modified to account for the revaluation of property, plant and equipment.

#### **b) Going concern**

Future financing of the Ombudsman will be met by grant-in-aid from the Department for Work and Pensions, as the Ombudsman's sponsoring dept. The amount for 2010/11 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.

#### **c) Government grants & grant-in-aid**

Grant-in-aid and grants 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.

## Notes to the Accounts

Year ended 31 March 2010

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### I. Accounting policies (continued)

#### d) Notional costs

A charge, reflecting the cost of capital utilised by the Ombudsman, is included in the Net Expenditure Account. The charge is calculated at the real rate set by HM Treasury (currently 3.5%) on the average carrying amount of all assets less liabilities, except for:

- property, plant and equipment where the cost of capital charge is based on opening values, adjusted pro rata for in-year:
  - additions at cost;
  - disposals as valued in the opening Statement of Financial Position (plus any subsequent capital expenditure prior to disposal);
  - impairments at the amount of the reduction of the opening Statement of Financial Position value (plus any subsequent capital expenditure); and
  - depreciation of property, plant and equipment.

#### e) 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.

#### f) VAT

The Ombudsman was not registered for VAT during the financial year 2009/10.

#### g) Property, plant and equipment

Property, plant and equipment are valued at current replacement cost which is calculated by applying appropriate Office for National Statistics (ONS) indices to the historical cost of each asset. Any surplus on revaluation of these assets is credited to the General Reserve. Any impairment in the value of a non-current asset on revaluation is charged to the Net Expenditure Account when it occurs. The Ombudsman is required to remit the proceeds of disposal of non-current assets to the Secretary of State.

Non-current assets are recognised where expenditure is in excess of £500.

#### h) 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 – 4 years straight line;
- assets are not depreciated until they are commissioned or brought into use.

During 2009/10 the Ombudsman conducted a review of its depreciation rates to ensure assets are charged over the expected useful economic life of the assets. This resulted in IT Equipment being charged over a revised 4 years (3 years 2008/09). The impact of this change in accounting estimate is a £11,276 reduction in charge for the year to the Net Expenditure Account.

## Notes to the Accounts

Year ended 31 March 2010

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### I. Accounting policies (continued)

#### i) Leases

Leases are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases. Rentals payable under operating leases are charged to the Net Expenditure Account on a straight-line basis over the term of the relevant lease.

#### j) Pension arrangements

Past and present 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 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.

#### k) Financial instruments

The Pensions 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 it transfers the financial asset and the transfer qualifies for de-recognition.

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 Pensions Ombudsman assesses at each Statement of Financial Position 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 Statement of Financial Position 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 Net Expenditure Account.

#### l) Critical accounting judgements and key sources of estimation uncertainty

The preparation of financial statements in conformity with IFRS requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts in the financial statements.

We consider there to be no areas of critical judgement used in applying the accounting policies.

There are no significant sources of estimation uncertainty.

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2010

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 previous year we introduced an informal time recording arrangement to support the split of costs. During the year 18 PPFO cases (2008/09: 16 cases) and 889 PO cases (2008/09: 1,196 cases) were closed. Approximately 2% (2008/09: 1%) of expenditure and total net liabilities (corresponding to £57,000 for the year ended 31 March 2010) is deemed attributable to the PPFO (2008/09: £28,000).

No further analysis of costs is made between PPFO and PO cases and these costs are not separately reported to management. Therefore the Ombudsman is considered to only have one operating segment and as such there is no additional segmental analysis requiring disclosure in the accounts.

3. First-time adoption of IFRS

The first-time adoption of IFRS by the Pensions Ombudsman has not resulted in any adjustments being made to Net Expenditure or Taxpayers' Equity, as previously reported under UK GAAP.

4. Staff costs

|   | 2009/10          |                            |              |
|---|------------------|----------------------------|--------------|
|   | Total            | Permanently employed staff | Others       |
|   | £                | £                          | £            |
| Wages and salaries                          | 1,518,156        | 1,515,494                  | 2,662        |
| Employers' national insurance contributions | 124,710          | 124,710                    | –            |
| Staff pension contributions                 | 297,172          | 297,172                    | –            |
|   | <b>1,940,038</b> | <b>1,937,376</b>           | <b>2,662</b> |
|   | 2008/09          |                            |              |
|   | Total            | Permanently employed staff | Others       |
|   | £                | £                          | £            |
| Wages and salaries                          | 1,514,083        | 1,507,020                  | 7,063        |
| Employers' national insurance contributions | 126,358          | 126,358                    | –            |
| Staff pension contributions                 | 301,477          | 301,477                    | –            |
|   | <b>1,941,918</b> | <b>1,934,855</b>           | <b>7,063</b> |

The average number of staff employed during the period was 38 (2008/09: 37).

## Notes to the Accounts

Year ended 31 March 2010

### 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 Retail Price Index. 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 Partnership pension account is a stakeholder 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 called Nuvos was established for new members from that date. Nuvos allows staff to contribute 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](http://www.civilservice-pensions.gov.uk)

During 2009/10 employer contributions of £297,172 (2008/09: £301,477) were payable to the scheme.

| Band   | 2009/10          |                | From 1 April 2010 |                |
|--------|------------------|----------------|-------------------|----------------|
|        | Salary Band (£)  | Rate of charge | Salary Band (£)   | Rate of charge |
| Band 1 | 20,500 and under | 16.7%          | 21,000 and under  | 16.7%          |
| Band 2 | 20,501 to 42,000 | 18.8%          | 21,001 to 43,000  | 18.8%          |
| Band 3 | 42,001 to 72,000 | 21.8%          | 43,001 to 74,000  | 21.8%          |
| Band 4 | 72,001 and above | 24.3%          | 74,001 and above  | 24.3%          |

## Notes to the Accounts

Year ended 31 March 2010

### 5. Other expenditure

|                                  | 2009/10        | 2008/09        |
|----------------------------------|----------------|----------------|
|                                  | £              | £              |
| Education and exams              | 3,011          | 568            |
| Rent and rates                   | 312,441        | 292,817        |
| Insurance                        | 3,312          | 2,893          |
| Business continuity              | 15,222         | –              |
| Travel and subsistence           | 6,355          | 5,940          |
| Telephone                        | 10,084         | 12,439         |
| Hire of equipment                | 13,741         | 9,886          |
| Printing, stationery and postage | 40,289         | 30,082         |
| Staff training                   | 14,248         | 8,280          |
| Staff welfare                    | 391            | 666            |
| Sundry expenses                  | 4,524          | 791            |
| Donations                        | 500            | 500            |
| Computer expenses                | 253,607        | 228,975        |
| Subscriptions                    | 58,150         | 49,313         |
| Staff Recruitment                | 17,655         | 12,867         |
| Legal and professional fees      | 110,554        | 85,211         |
| Accountancy fees                 | 23,567         | 22,390         |
| Auditors remuneration            | 25,000         | 17,500         |
| <b>Non-cash items:</b>           |                |                |
| Revaluation of fixed assets      | 2,841          | 25,984         |
| Loss on disposal of fixed assets | –              | 216            |
| Bank charges                     | 861            | 898            |
|                                  | <b>916,353</b> | <b>808,216</b> |

The auditors did not receive any remuneration for non audit work (2008/09 £Nil).

## Notes to the Accounts

Year ended 31 March 2010

### 6. Property, plant and equipment

|                         | IT<br>Equipment<br>£ |
|-------------------------|----------------------|
| <b>Cost/valuation</b>   |                      |
| At 1 April 2009         | 178,351              |
| Revaluation             | (23,337)             |
| <b>At 31 March 2010</b> | <b>155,014</b>       |
| <b>Depreciation</b>     |                      |
| At 1 April 2009         | 152,958              |
| Revaluation             | (20,496)             |
| Charge for the year     | 11,276               |
| <b>At 31 March 2010</b> | <b>143,738</b>       |
| <b>Net book value</b>   |                      |
| <b>At 31 March 2010</b> | <b>11,276</b>        |
| At 31 March 2009        | 25,393               |
| <b>Cost/valuation</b>   |                      |
| At 1 April 2008         | 233,681              |
| Revaluation             | (54,681)             |
| Disposals               | (649)                |
| <b>At 31 March 2009</b> | <b>178,351</b>       |
| <b>Depreciation</b>     |                      |
| At 1 April 2008         | 122,637              |
| Revaluation             | (28,697)             |
| Charge for the year     | 59,450               |
| On disposals            | (432)                |
| <b>At 31 March 2009</b> | <b>152,958</b>       |
| <b>Net book value</b>   |                      |
| <b>At 31 March 2009</b> | <b>25,393</b>        |
| At 31 March 2008        | 111,044              |

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

Notes to the Accounts

Year ended 31 March 2010

7. Trade and other receivables

|                   | 31 March<br>2010 | 31 March<br>2009 | 1 April<br>2008 |
|-------------------|------------------|------------------|-----------------|
|                   | £                | £                | £               |
| Other receivables | 11,853           | 18,692           | 12,028          |
| Prepayments       | 23,256           | 12,744           | 6,593           |
|                   | <b>35,109</b>    | <b>31,436</b>    | <b>18,621</b>   |

There are no intra-government balances.

8. Cash and cash equivalents

|  | 2009/10       | 2008/09        | 1 April<br>2008 |
|--|---------------|----------------|-----------------|
|  | £             | £              | £               |
| Balance at 1 April                                 | 161,341       | 257,814        | –               |
| Net change in cash and cash equivalent<br>balances | (132,596)     | (96,473)       | 257,814         |
| Balance at 31 March                                | <b>28,745</b> | <b>161,341</b> | <b>257,814</b>  |

The following balances at 31 March 2010 were held at:

Commercial banks and cash in hand £28,745 (31 March 2009 £161,341, 1 April 2008 £257,814).

9. Trade and other payables

|          | 31 March<br>2010 | 31 March<br>2009 | 1 April<br>2008 |
|----------|------------------|------------------|-----------------|
|          | £                | £                | £               |
| Accruals | 130,864          | 336,237          | 241,389         |

**PAYABLES: Balances with other Government bodies**

|                                   | 31 March<br>2010 | 31 March<br>2009 | 1 April<br>2008 |
|-----------------------------------|------------------|------------------|-----------------|
|                                   | £                | £                | £               |
| HM Revenue and Customs            | 17,331           | 142,350          | –               |
| Department for Work and Pensions  |                  |                  |                 |
| • Internal Audit Services         | 24,500           | 24,750           | –               |
| • Prime Facilities Service charge | –                | 1,400            | –               |
| Accruals                          | <b>41,831</b>    | <b>168,500</b>   | <b>–</b>        |

## Notes to the Accounts

Year ended 31 March 2010

### 10. Commitments under operating leases

The total future minimum lease payments under operating leases are given below, analysed according to the period in which payments fall due:

#### Buildings

| Obligations under operating leases comprise:      | 31 March<br>2010 | 31 March<br>2009 | 1 April<br>2008 |
|---|------------------|------------------|-----------------|
|   | £                | £                | £               |
| Not later than one year                           | 288,774          | 282,218          | 198,760         |
| Later than one year and not later than five years | 649,741          | 64,949           | 248,450         |
| Later than five years                             | –                | –                | –               |
|   | <b>938,515</b>   | <b>347,167</b>   | <b>447,210</b>  |

#### Other

| Obligations under operating leases comprise:      | 31 March<br>2010 | 31 March<br>2009 | 1 April<br>2008 |
|---|------------------|------------------|-----------------|
|   | £                | £                | £               |
| Not later than one year                           | 249,012          | 125,685          | 213,792         |
| Later than one year and not later than five years | 129,292          | 17,112           | 145,902         |
| Later than five years                             | –                | –                | –               |
|   | <b>378,304</b>   | <b>142,797</b>   | <b>359,694</b>  |

### 11. 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 the Statement of Changes in Taxpayers' Equity. Service Charges in respect of the accommodation were reimbursed to the Department for Work and Pensions in the sum of £23,667 during the year (2008/09: £16,613). During the year the office accommodation was rented from HM Revenue and Customs at an annual cost of £288,774 (£274,132 in 2008/09). At 31 March 2010 £17,331 and £nil were due to HM Revenue and Customs and the Department for Work and Pensions respectively (2008/09: £142,350 and £1,400). The Ombudsman's Internal Audit Services are provided by the Department for Work and Pensions and £24,500 was due for that service at 31 March 2010 (£24,750 in 2008/09).

### 12. Capital commitments

Amounts contracted for but not provided in the accounts amounts to £nil (2008/09:£nil).

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman)

## Notes to the Accounts

Year ended 31 March 2010

### 13. Financial instruments

It is, and has been, the Pensions 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 Pensions Ombudsman in undertaking its activities. The Ombudsman relies upon the Department for Work and Pensions 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.

The fair values of the Ombudsman's financial assets and liabilities for both the current and comparative year do not differ materially from their carrying values.

#### Financial Assets by category at fair value

|                           | 31 March 2010                | 31 March 2009         |
|---------------------------|------------------------------|-----------------------|
|                           | <b>Loans and receivables</b> | Loans and receivables |
|                           | £                            | £                     |
| Cash and cash equivalents | 28,745                       | 161,341               |
| Other receivables         | 11,853                       | 18,692                |
|                           | <b>40,598</b>                | <b>180,033</b>        |

#### Financial liabilities by category at fair value

|          | 31 March 2010                     | 31 March 2009              |
|----------|-----------------------------------|----------------------------|
|          | <b>Measured at amortised cost</b> | Measured at amortised cost |
|          | £                                 | £                          |
| Accruals | 130,864                           | 336,237                    |

#### Liquidity risk

The Ombudsman's net revenue resource requirements are largely funded by grant-in-aid from its Sponsor Department. The capital expenditure is also financed through grant-in-aid. The Ombudsman is consequently not exposed to significant liquidity risks.

#### Interest rate risk

The Ombudsman is not exposed to any interest rate risk.

#### Foreign currency risk

There is no foreign currency risk as the Ombudsman does not deal in foreign currency.

## 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.



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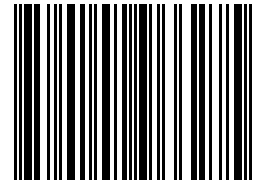
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