Pensions
OMBUDSMAN

Green Paper Consultation
Pensions Policy Unit
Floor 1
Department of Social and Family Affairs
Aras Mhic Dhiarmada
Store Street
Dublin 1

I am pleased to take this opportunity to present to the Department of Social & Family Affairs the attached submission on the Green Paper on Pensions.

This submission was formulated within the Office of the Pensions Ombudsman drawing on both the technical expertise within the Office and on experience gained from the significant number of complaints dealt with by the Office since its establishment five years ago – some 1,800 individual cases.

The submission is in 2 parts. The first part presents our answers to the specific questions set out in the Green Paper in the sequence set out in that Paper, starting with Chapter 6. The second part raises specific issues and anomalies within current pension policy and practice which need to be addressed, possibly within a shorter time frame than might be envisaged for the development of an overall national pension strategy.

My staff and I will be pleased to provide any further elaboration on this submission, as required.

____

PAUL KENNY
Pensions Ombudsman.

21 May, 2008

PART 1 - RESPONSES TO "QUESTIONS FOR CONSIDERATION" IN THE GREEN PAPER ON PENSIONS

Chapter 6: The Social Welfare Pension: Reform Options

1. Implications for people who are not receiving support through the Social Welfare pension system?

Ans: It is now imperative to abolish outdated concepts which actively remove legitimate entrants/beneficiaries from the system. It is vital to get those such as relatives assisting the self employed onto the contribution train and to remove means testing "traps" where there are actually no monetary means. The main thrust of reform should be to avoid, in the future, these sorts of anomalies.

2. Universal pension option desirable?

Ans: The introduction of a universal pension should be the bedrock of future pension policy involving a standard indexed pension payment to all on reaching pension age. In this context, the system should be simplified and anomalies such as the state transition pension abolished – i.e., a single State pension payable at a standard age, but with new flexibilities which are dealt with below. The option of a Universal Pension falls into line with the total contribution concept.

3. If universal pension arrangements are not appropriate, what groups outside the Social Welfare pensions system should be targeted?

Ans: While a universal pension arrangement is advocated, there may well be a limited number of groups that might need to be targeted for a specialist support. We have been unable to identify such groups from our knowledge. These groups should be kept to the minimum

necessary

4. Improve pensions for all or target approach such as Living Alone Increase?

Ans: The general principle of improving the lot of all pensioners should apply. In devising a universal pension arrangement issues such as the Homemakers Scheme and the Living Alone allowance should be specifically addressed within the context of the overall scheme. To achieve equity of coverage, schemes such as the Homemakers Scheme require to be overhauled to avoid depriving potential beneficiaries of credits.

5. Average versus total contribution.

Ans: Pension entitlement should be on a total contribution basis. The total contribution qualification is favoured above the average contribution as the latter has many undesirable side effects which penalises those in, for example, the Homemakers Scheme while accommodating late entrants who may have already accumulated significant pension benefits elsewhere.

6. Should a formal indexing arrangement linking pensions to some indicator be introduced? What about the budgetary/economic implications?

Ans: A formal indexing arrangement linked to an income indicator, such as the average industrial wage, is recommended. However, as we move even more into a service economy, an alternative income indicator might be appropriate. Linking pensions to a non-income indicator would not achieve the social objective providing pensioners with an appropriate level of support in retirement.

Insofar as the budgetary implications are concerned, the level of

contribution, both by employee and employer, should be established by actuarial calculation and then adjusted to compensate for the loss of income from those unable to work. In measuring the overall pension benefit, account should be taken of non-monetary benefits provided to pensioners.

7. How is growing cost of Social Welfare pensions to be addressed?

Ans: See the answer to No. 6 above. It is suggested that in indexing pensions to income indicators, the pension element of the PRSI contribution might be identified and isolated so as to allow this element to be adjusted in accordance with actuarial requirements over time. Present PRSI contributions cover a wide range of benefits and obscure the real cost of pensions.

Chapter 7: Supplementary Pensions/ Incentives for Retirement Saving

What is under consideration are this Chapter were the various means by which supplementary pension coverage could be increased.

There are 2 different aspects under review:-

a Tax relief's/Incentives to encourage workers to make or increase their pension coverage

b Possible introduction of soft or hard mandatory schemes to provide better pension coverage, particularly for those with no supplementary pension coverage – although this is covered in more detail in Chapter 8.

<u>Responses to Questions</u>:

1. Can tax incentives be better targeted to encourage improved coverage in a cost effective way?

2. Should the over-riding principle be coverage or equity and should incentives be offered at the marginal, standard or a hybrid rate?

The proposals put forward by the Pensions Board in their 2007 Review included:

- PRSA Incentive at 1:1 (with Exchequer matching member contribution 1:1, and not allowing any tax or PRSI relief to member, employer contribution would continue to be treated as a business expense)
- Allowing personal tax relief at 41% for all other types of pension provision.

Ans: The Office of the Pensions Ombudsman would consider that offering the PRSA Incentive at 1:1, could encourage retirement savings,

particularly for those in lower paid employment or for those whose income was under the Tax threshold. It might be necessary to limit the amount of member contribution that would qualify for this form of Government subsidy and index-link this.
We would have some reservations about the early release of partial funds under this system, but see the comments on Question 2, Chapter 8.

For all other types of pension provision, this Office would consider it preferable to retain the current regime that allows relief at the tax-payer's marginal rate.

As a move towards equalisation, the same contribution limits should exist under all employer-sponsored arrangements – i.e. employer contributions to PRSAs should be allowable for tax relief on top of maximum amount of employee contributions.

3. Should pension arrangements (e.g. the ARF option) differentiate between individuals or be open to all on the same basis?

Ans: By way of a general comment, this Office considers that there is a need to simplify the pensions system without placing an administrative burden on employers and the authorities.

Anomalies currently exist between the various pension regimes (i.e self-employed, company-paid, PRSA), including benefit/contribution limits, PRSI relief, and the treatment of funds at retirement – e.g. the amount of Tax-free Lump Sums on retirement and the availability of ARF/AMRF options.

Some standardisation across these types of pension arrangement (and

especially within employer-sponsored defined contribution ones) would be welcomed in the area of the greater availability of the ARF/AMRF options at retirement. However before this happens some reform of the existing ARF/AMRF system should be considered. See comments in Section 2 of this submission.

The possible introduction of some type of mandatory supplementary pension provision was mooted by the Pensions Board in their National Pensions Review of 2007. The hoped-for result from the introduction of some type of mandatory provision would be increased pension coverage or adequacy of same but caution would be needed to ensure that any minimum mandatory provision would not replace existing better provision. This is considered in further detail under Chapter 8.

Chapter 8 - Possible Approaches to Pensions Development

1. Is the current system of retirement provision, based on a combination of State provision through the social insurance system, and voluntary provision through occupational and other supplementary pension arrangements, appropriate? If the current system requires to be enhanced, should higher pensions be provided through social insurance or through supplementary provision or both?

Ans: A combined social insurance system and voluntary system to provide overall coverage is required. The State system must ensure that at least a minimum income level can be provided to all individuals. Those individuals who earn higher income in their working lives expect an income in retirement to be related to their earned income. If they do not make provision for this, the social insurance system may not be adequate for such individuals, but the State may inadvertently have to support such individuals to a greater degree because of the inadequacy of their retirement income.

The individual must take responsibility if an income in retirement is to have some relevance to their working income and therefore be adequate for their needs. Reliance on the social insurance system is not enough. However, given the current statistics around take-up of pensions and adequacy of coverage, individuals need to be both informed and persuaded, at an early enough stage in their careers, to ensure that they actively do something about it.

The social insurance system must provide a minimum pension, which must meet the needs of individuals who have relied on this system for income and for those whose income is at the lower end of the spectrum. However, the voluntary system needs to be adapted so that individuals

on higher incomes who expect pensions relative to the income they earned while working will achieve this on retirement.

2. If an enhanced supplementary pension approach to coverage and adequacy is preferred, should it be addressed through changes in the current voluntary system, or by way of soft mandatory or mandatory provision?

Ans: Adopting a 'soft-mandatory' approach is one option which would lead to heightened awareness among individuals leading to increased coverage while making it possible for some individuals to 'opt-out' if they had other financial priorities. It might also address some of the concerns about non-Irish nationals expressed in Section 2 of this submission.

While increasing the awareness in individuals to encourage them to start making pension provision early in their working life has already been attempted, it has met with limited success. The earlier in a person's working life that pension provision can commence is a key factor in achieving adequate coverage or a level of income in retirement related to that earned during a person's working life. However the problem often is that pension provision is not a priority early in most people's working lives.

In addition, adopting a realistic minimum age (eg., 25), after which every employee must be included for pension provision, would avoid the need to include younger people who traditionally would be more inclined to move between jobs early in their working lives, giving rise to increased administration and cost to the employer.

A mandatory minimum contribution from the employer and employee would need to be a feature of such an arrangement, where an employer contribution would only be made when an employee opted to join and

remain a contributory member of the arrangement.

A minimum contribution of 3% from the employee and 3% from the employer should be adopted as a starting point, to be increased over time, with the individual having control over investment choice (within a specified range if adopted as part of an existing pension arrangement). The option of drawing down 25% in cash after age 55 might also be made available.

Where a pension arrangement already exists and the employer is contributing at least the mandatory minimum to it, that employer would not be subject to the 'soft-mandatory' approach. A very simple contracting-out process could be devised.

3. Can either a "soft" or "hybrid" mandatory pension scheme be designed to ensure that it would not operate to the detriment of the existing voluntary pension arrangements, for example by encouraging movement out of existing systems (which may be potentially better from the member's point of view) into any new mandatory arrangement?

Ans: It is a concern among certain sectors that providing for 'soft-mandatory' or 'mandatory' pension provision could lead to employers choosing the cheaper and less beneficial option for employees. However, there has not been a significant movement towards PRSAs away from established pension schemes since the introduction of PRSAs in 2003.

Where pensions are already provided by employers, there are more factors at play than the requirement to provide a minimum in the form of a PRSA facility. This is unlikely to change if 'soft-mandatory' pension provision was introduced. Where some pension schemes do not make pension scheme membership compulsory, the 'soft-mandatory'

approach would help in the take-up of such schemes.

Where currently an employer does not contribute to a pension, this approach would require him to contribute, but only where the employee also contributed. Therefore the onus would be on both the individual and the employer to make provision and the responsibility for ensuring adequate return would be placed primarily on the individual if the arrangement was a PRSA. Any mandatory arrangement would have to be based on a multi-manager investment approach.

4. How can the extra costs of enhanced provision be financed? Are improvements in pension coverage and adequacy through enhancement of the social insurance system and /or the introduction of a system of soft mandatory or mandatory pensions provision outweighed by the likely costs and economic impacts?

Ans: Extra cost will be a factor irrespective of the approach taken. The State system needs to be improved as outlined earlier in order to keep pace with changing living standards. However, given the future pension provision challenge, the existing voluntary system also needs to be adapted and both the individual and the employer will have to take responsibility for the provision of second tier pension benefits with the help of the normal tax reliefs granted by the State.

5. Is the introduction of either a “soft” or “hybrid” mandatory scheme a desirable option given the economic, financial and competitiveness implications of such systems?

Ans: See answers above.

Chapter 9: Defined Benefit and Defined Contributions Schemes.

1. Are there problems with the current integration arrangements for DB schemes? If so, what are the possible solutions?

a. prohibit integration?

b. restrict a reduction in pensionable pay in the last, say, 3 or 5 years?

c. have a different integration formula for lower earners, as is the case in the public sector?

Ans: There are inequities produced as between public servants with modified PRSI contributions and those with Class A contributions. One arises from the apparently discretionary nature of the supplementary pensions which may be paid to the latter if they do not qualify for full State pension through no fault of their own (they can lose the supplementary pension if they work). Secondly, because the State pension does not pro-rate for part-timers, the aggregate pensions that part-time Class A contributors receive can be greater than the pension of a Class D part-timer. This could be addressed if the Social Welfare system is reformed to adopt a "total contribution" approach".

There are other problems with the current integration arrangements. The Office sees these as follows:

- **Increases in State Pension offset in the run-up to retirement may outstrip the pay increases, particularly of lower-paid workers.**
- **Averaging is often not applied to pay for contribution purposes in the run-up to retirement, resulting in contributions being levied on pay that is higher than that used for the eventual pension calculation. (This applies to both integrated and non-integrated schemes).**
- **There are several different models of integration used in respect of various personnel in the Defence Forces, who have, incidentally, the same problem with supplementary pensions as those referred to**

above. These models are peculiar to the Defence forces and probably should be left alone, but some clarity as to their effects is required.

The first problem above requires an overhaul of the State Pension as it applies to part-timers, or alternatively a lot more sophisticated design work on the occupational pension schemes; plus a removal of any possible clawback of supplementary pensions once granted, until the State pension status of the member changes – in other words, supplementary pension not to be affected by re-entry to the workforce.

The second problem needs a restriction on reduction of pensionable pay in the last 3/5 years before NRA (Normal Retirement Age).

The third problem can be addressed by averaging for contribution purposes (e.g., 100% of Year NRA minus-3 increase is taken into account; 2/3 of Year NRA minus-2 increase, and 1/3 of final year increase.) Schemes could be prohibited from basing a pension on a lower pensionable salary than the highest one used for calculating member contribution.

2. How can we ensure that savers understand that the level of contributions, the length of time the contributions will be made, and the return on investments will influence the level of benefits in a DC scheme?

Ans: This is a matter of greatly simplified communication. Present disclosure requirements do not achieve this. While current requirements are well meaning, they can result in information that is accurate but hard to understand, or in information that is so hedged about with assumptions and qualifications as to be practically useless.

3. What would be considered appropriate security of pension benefits? Does this exist at present?

4. Are people sufficiently aware of the trade-off between risk and the return on investments, i.e. usually the higher the potential return the greater the risk?

5. What could be done to enhance guarantees of pension benefit? Do guarantees justify the associated costs and risks?

6. In some countries, there are arrangements to meet at least part of a shortfall in the event of a scheme shortfall. Some of these arrangements include the Pension Protection Fund in the UK, the Pension Benefit Guarantee Corporation (PBGC) in the USA and the German Pensions –Sicherungs-Verein. These arrangements can run into considerable difficulties, with the experience of the PBGC, which is currently experiencing large deficits, being a particular case in point. Having considered the discussion, would you be in favour of any of these arrangements, having regard to the pros and cons outlined in this chapter?

Questions 3-6:

Ans: There is no objective answer to Question 3. Members need to understand the risk/reward problem. Not enough of them do. It is simply not possible to achieve high rates of fund growth matched by total security of investment. Better, and greatly simplified, communication is needed. Present levels of regulation discourage simple communication, as the tightrope between simplicity and compliance is too difficult, or too expensive, for some providers and administrators. Complex communication is not cheap and in most cases the cost is borne by the members' funds.

With regard to DB security, the willingness and ability of the employer to make good any shortfall is critical. However, as long as the Funding Standard is based on a discontinuance model rather than on a going-concern one, life for employers is difficult. The application of accounting standards as they currently stand is also unhelpful. However, it is

desirable that a debt-on-employer mechanism should be introduced in circumstances where a solvent employer decides to wind up an insolvent scheme. Where both employer and scheme are insolvent, it is doubtful whether much improvement is possible to existing provisions under the Companies Acts and the employee protection legislation. Where contributions have been misappropriated in insolvency cases, Directors and Officers should be made personally liable.

Support mechanisms as they exist in other countries to try to enhance security of pension promises may well be viewed as a tax on the well-run pension schemes to prop up the inefficient and the feckless. Exchequer protection on an across-the board basis is not favoured as a matter of principle, and might even encounter difficulties at EU level, and it would take a very long time to build a fund of realistic size by means of annual levies taken at a level acceptable to members and employers.

Chapter 10: The Funding Standard.

1. Are there any particular difficulties with the funding standard? If so, what are these difficulties and what implications do they have in your opinion?

Ans: The first is that it is a discontinuance standard – we value what is supposed to be a going concern on the basis of winding it up. Annuity purchase is a very expensive way to value pensions and would be probably unnecessary in larger schemes. There is a problem with defining "larger schemes", but it might be possible to exempt a scheme from discontinuance valuation on the basis of ratio of pensioners to actives and deferreds? (For example, no discontinuance valuation if pensioners represent fewer than 1/3 of total members, and/or less than 1/3 of liabilities by value.) The other problem is priorities on winding-up, where person aged (NRD[*] + 1 day) gets 100%, while a person aged (NRD – 1 day) may get nothing. This is inequitable and avoidable. A sliding scale of protected entitlement would be relatively easy to devise. It could even include pensioners – e.g., full protection from NRD + 5 years, less protection for shorter duration. Dismantlement of annuities is possible in principle after the *H.Williams* case, regardless of contractual considerations.

2. Should the funding standard be based on long-term expected returns, but leaving the current wind up entitlements unchanged?

Ans: No. See response to Question 1. However, it should be possible to value on a discontinuance basis as well as on long-term expected returns, so that members and trustees would be able to see the divergence of the two, and employers and trustees could plan the funding of the scheme to take into account the long-term realities.

[*] Or actual date of earlier retirement or commencement of payment for dependant.)

3. Should the link between the funding standard and wind-up entitlements be broken?

Ans: Yes. See responses Questions 1 and 2.

4. Should the funding standard remain unchanged?

Ans: No.

5. Should the benefit entitlements underlying the funding standard be reduced in value, thereby reducing member entitlements in the event of a wind-up happening, as compared with the current standard?

Ans: Yes. See response to Question 1.

6. Should the funding standard be changed for large DB schemes only?

Ans: The funding standard would work better for larger defined benefit schemes if it were altered. Smaller DB scheme are more likely in practice to purchase annuities than larger ones so, ironically, the present funding standard is closer to reality for them than for larger schemes. It is, however, probable that the impact of the current funding standard is greater on smaller schemes, where the employer might be less well able to afford to fund to the solvency level it demands on the time-scales it requires.

Chapter 11 – Annuities and Related Issues

1. Do annuities offer value for money?

Ans: This is a question which is impossible to answer. For some it will prove a very good decision but for others, not so. Annuities provide security for a pensioner going forward ensuring a guaranteed income over a period of time which cannot be predicted in advance. At that time of life, guarantees are most welcome.

It may suit certain individuals to be involved in a 'riskier' product instead of an annuity but, in the majority of these cases, the annuity would probably not be the dominant source of income during retirement. It should be remembered that it is a very narrow market in Ireland and the range of annuities and providers available is a fraction of that available in a larger market such as in Britain or mainland Europe.

2. Should DC holders continue to be compelled to buy an annuity at the precise moment of retirement or should they be allowed some flexibility in timing? Should PRSA and other personal fund holders continue to be allowed to avoid annuitisation and to continue to hold their retirement funds until death?

Ans: Given the uncertainty of the markets recently, it has been shown that individuals can be unintentionally penalised depending on the date on which they retire. More active management of the funds together with increased reporting to the individual, say on a sliding scale (the nearer retirement, the more the communication), would give an individual and the fund manager more of an opportunity to maximise the funds available for an annuity. Individuals, with professional advice, should have the opportunity to decide when to purchase an annuity even though it may not come into payment until a specific time point in

the future.

With regard to avoiding annuitisation for PRSA and other personal fund holders, this Office sees nothing wrong in principle but perhaps time delimited ARFs should be considered as an option – meaning that a period of drawdown could be allowed before annuity purchase, to remove the inflexibility that exists in the current system, where purchase is required at point of retirement, leaving the member at the mercy of factors over which s/he has no control. Alternatively, the ARF option could be fully opened to defined contribution members.

For time delimited ARFs, a window of some five years could be considered before annuity purchase becomes compulsory, thus giving the individual more opportunity to get the best value from their saved pension funds.

Reforms in this area need to be considered in the light of changes that need to be made to the current ARF/AMRF regime (see Section 2) and in the light of possible introduction of further flexibility in the area of age of retirement (see comments on Chapter 14, below).

3. Should the State be more involved in the annuity market and, if so, in what way? Is it appropriate that the State takes on the additional risk involved in the form of a State Annuity Fund?

Ans: The state is currently the provider of pensions to many persons who would not have saved specifically for a pension and the financial markets are providing options to those who choose to put in place a private pension. There is no benefit to the State for involving itself in the annuity market. State interference in this market is unlikely to be feasible in an EU competition context. Should the State wish to increase its involvement in the pension market, this should be done

through the existing systems available to it.

4. What measures could be introduced to assist individuals to recognise annuity terms that they may find satisfactory? For example:

- Are there steps which could be taken to better inform customers in relation to the comparative cost of annuities?

Ans: In the credit card market, the Financial Regulator compares and contrasts the costs associated with all the differing credit cards on offer in the Irish market. Such a service cuts though the red mist of the terms and conditions, associated with credit cards, and informs the public in an open and transparent manner. Consideration should be given to the provision of a similar service for the annuity market by the state body responsible for the pensions industry.

- Should providers be obliged to inform a prospective purchaser that their annuity can be bought from a different provider?

Ans: Yes. If an open-market option exists – and this has, we believe, been mandatory for a long number of years – the fact should be disclosed, but it is then up to the consumer to 'shop around'. It is considered that trustees, where they are in control of a pension arrangement, would have a duty to do this in any event.

- Should measures be introduced to encourage people to look at alternatives to fixed single life annuities?

Ans: Measures should be introduced to inform and encourage individuals to look at alternatives, such as Joint Life/ Escalating Annuities.

5. How can the market for annuities be encouraged to diversify and become more competitive? Can measures be taken to encourage new entrants to enter the market?

Ans: With the small number of companies that are at present offering annuities, it is unclear as to what could be done to diversify and make the market more competitive. It is very difficult for Ireland to attract further companies into the pension market due to the fact that the nearest market of significance, the UK, has a different currency and the added complication and cost of having to put in operating systems to comply with the PAYE tax system for such a small pensions market. The Government should consider putting in place measures to make it less onerous for European companies to consider entering the Irish market.

Options that could be considered may be to make the drawdown of annuities more flexible to suit the changing lifestyle patterns by reducing/increasing payments based on the circumstances of individuals; the opening up of the ARF market; and expanding the options available such as Unit Linked or With Profits annuities.

6. In what ways can employers and trade unions be more proactive? Can more information be provided about annuities and the options available when employees are coming up to the point of retirement?

Ans: Information is the key to the selection of the right annuity for an individual and such information should be easily accessed and understood by the non-pension person. This should operate at the many different levels of the pension industry, from the employer to the trade union; from the pension intermediary to the trustees of the scheme.

An onus should be on employers, pension intermediaries and the trustees of schemes to ensure that the individual knows during all stages of his pensionable life what his pension is worth in clear and unambiguous terms. Simplicity of communication is essential. We believe that no good purpose is served by over-regualtion, however well intentioned; and documents such as statements of reasonable projection have to be so qualifed as to assumptions, etc, as to be practically meaningless.

Chapter 12 - The Role of Regulation

There are comprehensive regulations already in place in relation to pensions. However there is still room for improvement in this area. Many of the other chapters of the Green Paper deal with specific areas of the regulations. This chapter identifies the objectives of the regulations and considers whether those objectives are being achieved by the existing disclosure of information regulations.

1. Is the overall approach to the regulation of pensions appropriate to ensure the confidence and security of the system?

Ans: The system of regulation of pensions in Ireland is very comprehensive. Supervisory authorities currently include the Revenue Commissioners, The Pensions Board, The Financial Regulator, The Pensions Ombudsman and the Financial Services Ombudsman.

2. Are the regulatory objectives appropriate?

Ans: The existing objectives as stated in the Green Paper are sound.

3. Is the level of regulation appropriate to the regulatory objectives we are trying to achieve?

Ans: There is concern that existing disclosure regulations are forcing scheme administrators to provide information to members in a format that is difficult for some people to understand. This is counter productive. The danger is that information that cannot be understood will be ignored. Consequently the objectives that deal with assessing adequacy of pension provision and making investment and other

decisions will not be achieved. Current regulation identifies what information must be disclosed but does not properly address how that information should be delivered. A level of simplification in the format of documents that are intended for members (who may have no technical knowledge of pension schemes or the investment industry generally) would be welcomed. Currently the regulations provide for the disclosure of a large quantity of information. A shift in the focus toward the quality of the information that is provided rather than the quantity of information disclosed would be an improvement.

Care should be taken, where possible, not to duplicate disclosure regulations as this can lead to confusion. Some employment legislation also contains disclosure requirements that overlap with existing pension scheme disclosure regulations.

4. Are there measures that could be taken to introduce transparency in relation to pension fund charges?

Ans: There is no question that the lack of transparency in relation to charges is a problem. Charges need to be revealed in their component parts and more detail in relation to charges is required. In the case of life assurance charges it is necessary to bring attention to the fact that these charges may increase as the investor ages (recurring single premiums), and that this increase will be further aggravated if the risk benefits are related to an increasing salary. This is improperly understood even by some practitioners.

The component parts of charges are often obscure. In a recent case dealt with by this Office the investor was under the impression that premiums were the subject of a 5% commission charge, which was true. He could not, however, understand why his fund appeared to be reducing rather than increasing. It transpired that the investor was also

paying for life cover, waiver of premium, stamp duty, policy fees and a management charge and there was, of course a bid/offer spread in the pricing of the investment fund. Significant effort was required to determine the total level of charges. The lack of clarity in relation to the charges can cause considerable confusion and distress and is unacceptable.

Unless more clarity is introduced in the area of charges then disclosure objectives in relation to investment decision making will not be achieved.

Chapter 13: Public Service Pensions:

It is suggested that the detailed report produced by the Commission on Public Service Pensions in 2000 provides various recommendations on reform in this area which should now be specifically incorporated into the current exercise.

1. How should the cost of funding public service pensions be met?

Ans: Improvements in the funding of public service pensions can be obtained by the removal of many of the "anomalous" pensions arrangements currently in the system. The Public Service Superannuation (Miscellaneous Provisions) Act, 2004 went some distance in this regard. While raising the minimum public service pension age and increasing the rate of pension contributions will contribute to defraying funding costs, it is felt that the removal of anomalies such as fast accrual terms and notional added years arrangements would be helpful.

2. What individual reforms offer the most realistic potential?

Ans: If post benchmarking pay levels reflect the value of public service pensions, it is difficult to see how significant changes in pension contributions might be negotiated. As suggested above, removal of such anomalies as fast accrual and notional added years would be a step in the right direction. The implementation of reforms proposed by the Commission on Public Service Pensions in the area of Spouses' and Children's Pension entitlements, together with the introduction of a slower accrual rate would be of benefit. In this regard, a 45/90ths accrual rate would more accurately reflect the longer time at work now envisaged.

Chapter 14: Work Flexibility in Older Age: A New Approach to Retirement

1. Should measures be introduced to encourage later retirement or to encourage employers to retain older workers?

Ans: Yes. Current arrangements in relation to retirement age are too rigid and flexibility should be introduced whereby older workers could move gradually into retirement after a certain age via part time work and part payment of pension. This will necessitate a radical departure from present Revenue regulations which require, for example, retirement for benefits to be administered, and require the simultaneous payment of main-scheme and AVC benefits and, in most circumstances, of lump sum and pension payments.

2. Should voluntary deferral of Social Welfare pensions be introduced?

Ans: Yes. People should have the option of deferring the Social Welfare pension and having it increased on an actuarial basis during deferment. Similarly people should have the option of drawing down the state pension up to five years early, again reduced on an actuarial basis. This is the type of flexibility which can bring about significant benefit to both employer and employee.

3. Other incentives to encourage later retirement?

Ans: Yes. Probably the best incentive is to ensure that people who do chose to defer retirement see a financial advantage. Additional wage/salary simply for deferring is clearly a non-runner but pension deferral attracting increased pension benefit would be attractive. Pensions could benefit from normal pay increases during the period of deferment, members could be given the chance of additional service

credit, and so forth. Artificial maximum limits such as the 2/3rds and 50% limits that currently apply in various sectors are an unnecessary complication and serve no useful purpose in the light of current lifetime maximum fund limits, and they can act as a deterrent to workers remaining in the workforce, which may well be a necessary policy objective in the future.

4. Prohibit employers from setting retirement date below certain age?

Ans: It would be difficult to legislate in this area. There should be no prohibition from setting a retirement age below a certain age and employers should be free to fix pension retirement ages to suit specific circumstances. It is acknowledged that pension funds must have a "retirement age" for each member so as to allow calculation of benefits and funding objectives, but schemes should incorporate rules addressing pension arrangements covering retirement dates both before and after the nominal retirement age.

5. Change in retirement date for Social Welfare pensions?

Ans: Over the longer term, there should be an orderly and phased increase in the retirement age for state pensions, with a provision for actuarial recalculation of benefit for early/late retirement.

PART 2: SPECIFIC ISSUES AND ANOMALIES WITHIN CURRENT PENSION POLICY AND PRACTICE WHICH HAVE COME TO THE ATTENTION OF THE PENSIONS OMBUDSMAN.

MATTERS OF DETAIL TO BE ADDRESSED WITH THE GREEN PAPER SUBMISSION

This part of the submission addresses practical matters not specifically raised in the Green Paper, which arise either from structural issues in the current system, or as a result of investigations into complaints submitted to the Office of the Pensions Ombudsman. They represent anomalies or problems which arise in the current system as a result of historic factors in the main, or bad practices which have grown up and persisted unchecked over time. Some of these may be addressed by reforms proposed or mooted elsewhere. They are essentially practical issues, though some of them have implications for general pensions policy. All of the Public Service issues raised below were the subject of complaints – in some cases, of numerous complaints.

1. ARF/AMRF

(a) Conditions for ARFs and AMRFs require that an AMRF be set up if the minimum pension income condition (€12,700 per annum) is not met at the time of setting up. There are numerous cases where this condition is not met at point of retirement (for example, a person is below State Pension Age, or has a Public Service pension deferred until age 60, which cannot be anticipated). The law needs to be altered so that it becomes possible to convert the AMRF it to an ARF if the income condition is subsequently met. It makes no sense to continue deferment of capital payments to age 75. This reform is particularly important if any expansion of access to ARFs is being considered.

(b) There is no facility for a joint life ARF or AMRF. This brings problems for survivors – delayed access to what may be a primary source of income,

failure to deal with the ARF properly by will in the event of death, lengthy periods taken to administer estate, etc, etc.

(c) Allied to (b), above, where a person entitled to an ARF dies after retirement, but before the ARF is set up, a surviving dependant does not acquire the right to effect the ARF, but might have to purchase an annuity. Had the member died the day after setup, the surviving spouse, for example, could become the owner in due course of the ARF. This has been the subject of complaints.

2. RETIREMENT ANNUITY CONTRACTS (RACs)

Problems with RACs include non-transferability between them and Occupational Pension Schemes. There is no reason for this to continue. RAC proceeds are now payable under PAYE, and they can be transferred to an Occupational scheme by routing them through a PRSA – an unnecessary complication. In addition, RACs do not qualify for PRSI relief, another anomaly, possibly dating from before extension of PRSI to the self-employed. As RAC contributions by employed people can be deducted by an employer at source, this should be reformed.

3. SOCIAL WELFARE

Although there is a general rule that a person cannot receive two different social welfare benefits, there are many cases in which people can be qualified for two separate payments. At present we understand that such persons receive the higher of the two payments. It is considered that, where the aggregate of the two separate payments is greater than or equal to the amount of the State Pension (Contributory), the latter should be payable instead.

4. PUBLIC SERVICE ISSUES

(a) Marriage bar and consequences

Very considerable problems have arisen from the operation of the former marriage bar, which become evident on the person rejoining the workforce, or perhaps some years afterwards, and sometimes not until eventual retirement. The non-pensionability in the past of part-time and temporary service (which has now become pensionable) has resulted in many cases of incomplete, unavailable or unverifiable records. This gives rise to delays in establishing entitlements. In certain cases, where there is doubt, the tendency has been to deny the member the benefit of the doubt.

The introduction of the *post-April 1995 new entrant* concept has given rise to a number of anomalies, particularly when they affect the historic PRSI records of individuals whose employment was uninterrupted in the period immediately around the date mentioned. Employees who have paid at Class A for many years are having their status revised retroactively to an appropriate modified contribution class. On the other hand, employees who had previously paid at Class D for many years are readmitted at Class A because their contract was interrupted. This can give rise to further complications if they are entitled to preserved benefits in respect of previous service.

(b) Supplementary pensions

Another, perhaps unintended, consequence of the marriage bar relates to public servants who may have contributed at a modified contribution class in the past and who re-enter the service post-95 and pay PRSI at Class A. Their occupational pensions are integrated and they will qualify for some element of State Pension at 65/66.. If they retire before State Pension Age, or otherwise do not qualify for a full State Pension through no fault of their own, a supplementary pension is payable, either until State Pension becomes payable, or for life if a full pension cannot be paid.

However, payment of supplementary pension is conditional. In particular, if they enter employment to which PRSI applies, it is withdrawn.

The whole point of supplementary pension is to place co-ordinated or integrated employees on a par with their non-integrated colleagues. However, the latter suffer no barrier to their becoming employed after retirement. At present, the vast majority of people affected in this way for practical purposes are those who re-entered the service and are retiring at the present time. Since virtually every person currently so affected is female, this is indirect discrimination on grounds of sex – and unlawful.

(c) Opters-out

The Department of Finance has set its face against the reopening of scheme membership to persons who opted out of pension arrangements in the past – certain School Secretaries come to mind. Despite the campaigns of various Ministers for Social and Family Affairs to widen scheme coverage, such employees are not allowed to opt in again, even for future service. While the difficulties encountered by the Department of Finance in relation to those who opted out of Spouses' and Children's provisions are understood, there is no reason why those who opted out of primary superannuation arrangements in the past should not be admitted for future service from a current date.

(d) School employees

Some school employees (secretaries and caretakers) are on Departmental payrolls and in Departmental pension schemes. Others are funded through grant aid by the Department of Education & Science and are not pensioned except where the school can afford a private pension arrangement. This is anomalous and discriminatory. Even where schools are aware of and meet their obligation to make available a PRSA, they are not bound to contribute to

it, and there is no indication that grants-in-aid are sufficient to allow a reasonable employer pension contribution.

(e) Temporary/contract staff in public service employment

While the position may well have been alleviated for current employees by recent employee protection legislation, some complaints to this Office revealed a scandalous situation arising from past practice, where employees had no occupational pensions because they were regarded as being "temporary". It is difficult to justify any situation in which a State-owned company was able to regard an employee as being temporary for a continuous period of thirty years.

(f) Public service employment and abatement of pensions

Numbers of complaints are received about the practice of abating pensions when a public servant is re-employed after retirement. In principle, it means that a person will lose pension if they work more than half the normal hours.. Although the practice of abatement is allowed for by statute, it is questionable at best. It cannot happen in a pension scheme which is subject to Part III of the Pensions Act. It is open to question whether the legal basis for exemption of schemes from this Part exists, as the preservation conditions brought about by the possibility of abatement are in essence inferior to those provided for in the Act.

5. PRSI - CLASS K EXEMPTION AND RESULTING ANOMALIES

The PRSI code exempts some employees from contributions to Class K (Health Levy) on the basis of low earnings. However, the exemption limit is expressed as a weekly amount. Where this is exceeded in any week, Class K contributions are charged.

This means that payment of arrears of a pension increase, perhaps of quite a modest amount, can push a person over the threshold for that one week and they are charged what is in effect a surcharge of 2% on the whole of the payment they receive in that week, even if the total annual pension is below the annualised threshold. This exemption should be expressed as an annual amount. In addition, where a person is pushed over the Class K exemption limit, the charge which results is applied to all of the income. For example, in June 2007 a complainant received a 3% pension increase, which pushed him just over the contribution threshold. He had to pay 2% on his entire pension, meaning a net increase of almost zero.

6. SCHEME WINDING-UP - UNTRACEABLE MEMBERS

A good many schemes in winding-up face difficulties in tracing members, who may have left the employment many years before, with entitlement to retained benefits. While the Pensions Act gives trustees some protections in these circumstances, and while trustees are in general very conscientious about trying to trace these members, there are often people who cannot be found. Trustees often purchase buyout bonds from insurance companies, which are retained by the companies on behalf of the members, but there is nowhere the members themselves can look for information as to who holds the benefits. Even where a consultant or outside administrator was involved, there is no certainty that the benefits will be traced – firms merge or go out of existence in other ways.

We believe that there would be a benefit in making available something akin to the Dormant Accounts Fund to accept benefits for untraceable members. The Fund already has a system for recording the amounts lodged and their owners, and it would be easy to publicise the fact that benefits were there.

7. NON-IRISH NATIONALS: PERMANENT EMIGRANTS

With the exception of a few areas such as the construction industry and a number of private sector schemes, pension scheme membership is voluntary. This is not the case in the Public Service at large, where membership of a pension scheme is in general mandatory. In many cases, for example in the nursing profession, non-Irish nationals become scheme members but leave to return to their home countries in a relatively short time. Formerly, preservation of benefits applied after five years of scheme membership. Members could receive contribution refunds if they had worked and been scheme members for three or four years. Now preservation applies after two years. This results in many small deferred benefits being held for such people. This may not be a long-term problem in Europe, as it is probable that arrangements for transferability will be developed in time. For workers from further afield, such as Asia and South America, preservation poses practical difficulties. Workers from these areas simply do not want preserved benefits and have displayed great resentment at being 'forced' into membership of schemes where there is no hope of having contributions refunded.

Where pension scheme membership is voluntary, there is evidence that such workers routinely opt out of schemes. A consequence of this is that their dependants are deprived of death-in-service cover which would otherwise apply.

Apart from the obvious possibility that preserved benefits might never be claimed (possibly due to earlier mortality in these countries), it makes little sense for benefits payable in Euro to be transmitted periodically, to be converted at some expense to local currency, to countries with which we do not have a double taxation treaty. This Office proposes that preservation for non-EEA nationals should take effect only after five years and that these workers should be allowed to take their transfer values in cash, subject to tax, if they are permanently emigrating from Ireland to their home countries.

8. FAMILY LAW AND PENSIONS

It is increasingly clear that the provisions of the Family Law Acts as they affect Pension Adjustment Orders need revision. The requirement, for example, that a transfer value be paid to the estate of a deceased beneficiary of a Pension Adjustment Order (who may have no dependants) while the scheme member has lost a portion of his/her pension, is inconsistent with the fact that a maintenance payment payable to such a person would simply cease on death. There are many other areas of these laws which need urgent attention, and the Department of Finance Pensions Section, which has had to grapple with these anomalies in relation to Public Service pension arrangements, is well aware of these.

Family Law practitioners are also well aware of the minefield represented by the present laws which, it is clear, were not drafted with any great expertise in pension matters. Submissions made by the Pensions Board and by the industry at the time were largely ignored. Reform of the Family Laws as they affect pensions is badly needed, but consultation on the matter should be handled by the Department of Social and Family Affairs.

9. CONSTRUCTION WORKERS PENSION SCHEME

This scheme has been the largest single source of complaints to my Office since inception, so I felt that some comment on it was appropriate, as representations may well be made concerning the existence and operation of the scheme. The vast majority of the complaints received relate to failure by employers to register their employees with the scheme, or to pay contributions on behalf of those who are registered, sometimes compounded by deduction of contributions from wages and failure to remit those contributions.

The existence of the scheme has been a source of numerous representations

to my Office from people who complain that it is uneven in its impact on contractors – small employers being disproportionately affected by having to pay, given that most of their employees would be on the lower end of the industry wage scale That is so. However, many small employers do meet their obligations and are put at a competitive disadvantage by those who don't.

The scheme itself is a bit of a blunt instrument. Because contribution rates are based, in effect, on a national standardised wage it caters better for lower-paid members such as labourers than for higher-paid tradespersons. Nevertheless it represents a medium through which some pensions savings can be accumulated by people employed in an industry where employment is mostly of a casual nature and where pension coverage was negligible in the past..

Any changes which might be proposed to the scheme or to the Registered Employment Agreement whose terms it reflects are solely an industrial relations matter for the construction industry and the stakeholders in it, and outside the scope of the Pensions Green Paper