



Department for
Communities and
Local Government

Mr Paul Burns
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Our Ref:
Your Ref: PB00314

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Sent via email symbolseeker999@gmail.com

Dear Mr Burns

Thank you for your letters of 21 January and 7 February 2014 in which you state that your former employer, Lancashire Fire and Rescue Authority (LFRA), has not correctly calculated your pension.

I understand that you have already made a complaint to the Pension Ombudsman although it is first being considered through the IDRP. As I have explained in previous correspondence, it is not appropriate for the Department to comment on a case that is current being considered through a statutory complaints process. In relation to your request to circulate your case to the Firefighters' Pension Committee, I do not believe that your case, as it stands, would merit consideration by the Committee. Of course our view on this may change depending on the Ombudsman's determination. If you are a member of a union then you may wish to raise this with them direct and they could decide whether to bring the matter to the attention of the Committee on your behalf.

The majority of your first letter is about the rationale for your conclusion that the Department has a specific role in your pension arrangements. It might be helpful if I set out the Department's response on each of the points you raise.

Neither the Department, nor its civil servants, are trustees or managers of the Firefighters' Pension Schemes. You may find the following extract from a case, concerning the similar Police Pension Scheme of interest:

"96. ...There is a clear distinction, as it seems to me, between the power to make Regulations under the 1976 Act, after consultation with the Police Negotiating Board and the Treasury, and the operation of the Regulations themselves. The Home Secretary clearly has functions in relation to the former, where the relevant consultation machinery ensures that the various, competing interests are all considered before any Regulations are made. The Regulations themselves, however, are not concerned with matters of general policy but create rights for individual police officers and obligations to be fulfilled by each police authority in its own area.

"97. Pursuant to the Regulations, the decision as to both entitlement and the pension to be paid in any case is to be made by the relevant police authority.

Where a discretion is to be exercised, in respect of any officer or his/her dependants, which bears upon entitlement, that decision-making power is given expressly to the police authority for the force in which that officer serves, and not to the Home Secretary, save for those officers for whom there is no relevant police authority as, for example, in the case of overseas officers.”
Police Federation of England and Wales & Ors, R (on the application of) v The Secretary for the Home Department & Anor [2009]
<http://www.bailii.org/ew/cases/EWHC/Admin/2009/488.html>

The Courts have ruled that the Home Secretary has no role in the administration of the Police Pension Scheme or in determining the amount of pension to which a police officer may be entitled. That same legal principle can be applied to the Secretary of State for Communities and Local Government in relation to the Firefighters’ Pension Scheme and firefighters.

The Commentary explains that “nothing in this Commentary can override the provisions of the Firemen’s Pension Scheme Order 1992 or any other statutory provision to which reference is made.” It further explains that “the Department can give a view on how the Scheme applies in a particular case but cannot give a binding interpretation of the law. That is a matter for the courts.”

You refer to a paper prepared for the ill-health review group (paper IHRG(08)6) on the status of Departmental issued guidance. This paper set out that statutory guidance:

“...would be made in exercise of powers conferred on the Secretary of State by primary legislation and in secondary legislation. In many cases the statutory guidance would normally be subject to consultation with interested parties when in draft form.”

The IHRG paper states that the only provision for statutory guidance in the 1992 and 2006 schemes is in relation to the Firefighters’ Pension Fund. The Firefighters’ Pension Fund was only introduced in 2006 and does not deal with an individual’s pension entitlement or awards. The Commentary was not issued under such powers and is informal guidance. The same IHRG paper explains the force of informal guidance, in that “informal (i.e. non-statutory) guidance is just that, non-binding advice which is intended to assist decision-taking authorities in the exercise of their statutory duties.” It follows that there is no statutory obligation on an authority to apply the Commentary, although it may be used to assist them.

You suggest that I hold the money that is spent annually on firefighter pensions in trust for taxpayers, the Treasury and the beneficiaries of the scheme. Prior to 2006, pension income (employee contributions and other miscellaneous expenditure) was paid into a fire and rescue authority’s operational accounts and the authority paid out pensions and lump sums from those same operational accounts. Due to the volatility in expenditure this created, it was decided that there should be a new mechanism for funding the schemes. Thereafter, the Department required the payment of employer and employee contributions into a local Firefighters’ Pension Fund, managed by each fire and rescue authority, and from that fund fire and rescue authorities would pay pensioners. If there was a deficit in the fund, the Department would top up that fund through a grant payment. If there was a surplus, that surplus would be returned to the Department. The Department therefore does not hold any pensions money in trust for scheme beneficiaries. Any money that is held is held by individual fire and rescue

authorities, which can make a call on a central funding stream (called Annual Managed Expenditure) if there is a shortfall in their Pension Fund account

You refer to your particular case as a pension awarded following an injury. Injury pensions are paid by individual fire and rescue authorities and cannot be paid from the Firefighters' Pension Fund. The Secretary of State has no intervention powers in the operation or administration of the Firefighters' Pension Schemes. As I have previously explained, there are well established mechanisms for dealing with complaints about the administration of your pension and these are through the IDRPs and Pensions Ombudsman processes which you are exploring.

You refer to there being a 'master' and 'servant' relationship between the Department and fire and rescue authorities. Fire and rescue authorities, like other parts of local government, are constitutionally separate from central Government. This constitutional arrangement has been established by Parliament and there are separate local democratically elected members who make decisions about the delivery of local functions.

You also suggest that the Department has delegated its powers to fire and rescue authorities to administer the scheme. The authority for administering the pension scheme is not provided by any delegated authority from the Department but the *vires* is provided from the Orders establishing the pension scheme that have been approved by Parliament. The Police Federation judgment, referred to above, makes clear that the legislation create rights for individual police officers with the obligations to be fulfilled by each police authority in its own area; any decision as to both entitlement and the pension paid is made by the relevant police authority, not the Home Secretary. The same arrangement holds for the firefighters' pension schemes. The Department cannot suspend the delegation of authority to LFRA, as no such delegation exists.

In summary:

- the Department is not a trustee of the pension scheme
- the administration of your pension is for LFRA and there is no delegation of authority from the Department to LFRA
- the Courts have ruled that the Home Office has no power to determine the pension entitlement for retired police officers – those same principles can be applied in relation to the Department and the firefighters' pension scheme
- the Department does not have any powers to intervene in LFRA's administrative role
- the Commentary is informal guidance, has no statutory backing, and fire and rescue authorities have no requirement to follow the Commentary, and
- the correct mechanism for dealing with your complaint is through the IDRPs process and you can appeal that outcome to the Pensions Ombudsman if appropriate.

Andrew Cornelius

Head of the Firefighters' Pension Team