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Tuesday, 4th March, 2014.

Sir R.W. Kerslake
Head of the Home Civil Service/Permanent Secretary
The Department of Communities & Local Government
Workforce Pay & Pensions
Eland House,
Bressenden Pl,
London.
SW1E 5DU
pspermanentsecretary@communities.gsi.gov.uk

My Ref: PB01214,

Civil Service Code – A Personal Matter.

Dear Sir Bob,

I am a retired Firefighter who in 1997 was compulsorily retired after 33.5 years' service by Lancashire Fire & Rescue Service(LFRS), 6.5 years early on grounds of ill health.

The LFRS in error, contrary to their own written Awards, and in the absence of the correct application of the 1992 Home Office Commentary, paid me an 'Ordinary' Pension as though I had taken early retirement by choice thus depriving me of the compensation which 1992 SI 192 provides for me.

When I discovered this error I also became aware of a Bill in 2012 which later became 'The Public Service Pensions Act 2013' which provides at Schedule 3 Para 5 "The resolution of disputes and appeals (including the referral to a court of law of questions of law which under the scheme fall) to be determined by the responsible authority."

The 'responsible person' and 'responsible authority' is further defined as the Secretary of State for the DCLG which encompasses your Fire Pension Team (FPT).

In the first instance I applied for a correction to my local pension Scheme provider who denied me rectification.

I then put the matter to the DCLG-FPT this year who, to my bewilderment, relied on case law overtaken by the Act, whilst appearing to have no knowledge at all of the 2013 Act. Mr Mooney wrote to Mr Bruce my barrister on that basis. Then Mr Cornelius wrote at length to persuade me, to my amazement, that none of this had anything to do with him or the DCLG!

In 2012, at the Bill stage, your FPT were introduced to the Act, twice in 2012, and finally late in 2013 by a presentation from the Pensions Regulator. The Minutes record that all the members (4) of the FPT were in attendance on all these occasions.

In the light of this both Mr Mooney and Mr Cornelius have at best, you may think, been disingenuous and deliberately misleading - which is a far cry from your requirement that the Civil Service be impartial, honest, transparent, and even handed.

I, and I trust *you believe*, the Civil Service 'Code of Conduct' requires something better of them.

I would be grateful for your intervention, as Head of the Civil Service, whose personal responsibility it surely must be to ensure that your civil servants obey the instructions of the two Cabinet Ministers involved in piloting this Act through Parliament namely Rt Hon Mr.A.Maude M.P. and Rt Hon.Mr.D.Alexander M.P., but also the author of the Act, Lord Hutton of Furness.

Is this another example of the failure of civil servants to modernise, allied with an apparent refusal, or inability, to obey instructions from Cabinet Ministers in such a fundamental issue as their compliance with the current law?

I attach the material correspondence. I would be very grateful for your help in a matter which otherwise *will* become about arbitrary and oppressive abuses of power and breaches of human rights – none of which I want - for all I have ever wanted is what is properly due to me.

Yours Sincerely,



Paul P. Burns. GFireE
Divisional Fire Officer (Rtd)



Department for
Communities and
Local Government

Mr John Bruce
30 Broadway
PR2 9TH

Our Ref: 034124/13
Your Ref:

6 December 2013

Dear Mr Bruce,

Thank you for your letter of 7 November addressed to the Rt Hon Theresa May MP, the Home Secretary, about the firefighters' pension scheme. Your letter has been passed to the Department for Communities and Local Government to respond to as the Department responsible for policy on firefighter pensions in England.

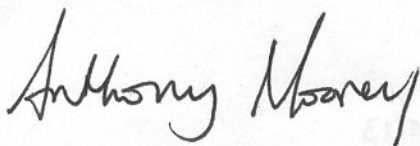
In your letter you have referred to a particular incident where the Lancashire Fire and Rescue Authority (LFRS) made the decision to require one of its firefighters to retire early with an ordinary pension. You have set out that it is your view that the individual's retirement had been caused by a qualifying injury and, as such, should have entitled him to payment of an enhanced ill-health pension and compensatory injury award. You have also suggested that this practice may affect other former employees of the LFRS.

There are currently two firefighters' pension schemes in operation in England, namely the Firefighters' Pension Scheme 1992 and the New Firefighters' Pension Scheme 2006. Whilst the Department has responsibility for the policy framework and legislation of both these schemes, it does not have any involvement in the administration of member pensions. Each employing fire and rescue authority is directly responsible for the local administration of the pensions in respect of the firefighters they employ, and for implementing the rules of the firefighter pension schemes, and to seek legal advice where they think it necessary.

You should be aware that there are established internal established internal disputes resolution procedures for dealing with a dispute between an individual and their employer on pension related issues. In the case where the individual remains dissatisfied with the outcome, they will have a further option of referring their case to the Pensions Ombudsman. LFRS should be able to provide any member of the scheme with details of the process on request.

The Department for Communities and Local Government has no role in the dispute resolution procedures and, in the event that the matter gets referred to the Pensions Ombudsman, it would be inappropriate for me to comment further on this issue.

Yours sincerely,



Anthony Mooney



Department for
Communities and
Local Government

Paul P Burns
Sent via email: symbolseeker999@gmail.com

5 February 2014

Dear Mr Burns

Thank you for your email of 6 January to Brandon Lewis MP, Minister for the Fire Service, enclosing an application that you have submitted to the Pensions Ombudsman in complaint about the calculation of your pension by Lancashire Fire and Rescue Authority. I have been asked to reply on the Minister's behalf.

As explained by Mr Mooney in his earlier correspondence with Mr Copplestone Bruce, it would not be appropriate for the Department to comment on a matter that is currently before the Pensions Ombudsman. The Pensions Ombudsman is independent and his role is to investigate and decide pension complaints between members of pension schemes (including personal pensions) or their beneficiaries, employers, trustees, managers and scheme administrators.

Andrew Cornelius
Head of the Firefighters' Pensions Team



Department for
Communities and
Local Government

Mr Paul Burns
7 Kings Drive
Preston
Lancashire
PR2 3HN

Our Ref:
Your Ref: PB00314

19 February 2014

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

From: [Sharon Mayers](#)
To: [Paul P Burns](#)
Subject: RE: Retirement Allowance
Date: 24 February 2014 14:26:30

Dear Mr Burns

Thank you for your email of Monday 3 February.

As my colleague, Andrew Cornelius, has explained to you this Department is able to provide an informal view on how the Firefighters' Pension Scheme regulations, including those of the Firefighters' Compensation Scheme, should apply in particular cases but cannot give a binding interpretation of the law.

Fire and Rescue Authorities are responsible for applying the rules of the pension scheme in accordance with their interpretation of the pension scheme regulations, and their interpretation of how these regulations interact with other legislation made by Parliament, for example the legislation that introduced the Retirement Allowance from 1988, and the legislation (as referred to in FPS guidance note 4/2010) which permits benefits to be deducted from a firefighter's injury award. Ultimately, however, it is for the courts to provide an interpretation of the law.

The Departmental Guidance Note 4/10 set out the Department's then informal view on the treatment of Retirement Allowances. Guidance notes have no statutory backing, and fire and rescue authorities have no requirement to follow this, or any other informal, guidance that the Department issues.

Best wishes

Sharon

From: Paul P Burns [mailto:symbolseeker999@gmail.com]
Sent: Monday, February 03, 2014 3:23 PM
To: Sharon Mayers
Subject: RE: Retirement Allowance

Dear Sharon,

Thank you for your response.

I am puzzled by the position you, and presumably the Pensions Team, have adopted and thus I need to explore this position more fully in respect of the department's previous Circulars and positional statements, if only to provide clarity for myself and others.

I would be obliged if you would answer my 'Q' points please.

- 1. Firstly the law. The 1992 S.I.129 does not provide for the statutory deduction of RA from an Injury Pension, particularly in its Schedules.
Q. Where would a FA find the 'authority' for such a deduction if it is not to find itself acting in ultra vires and/or making its own law?**
- 2. The Pension's Team issued FPS Guidance Note 4/2010.
This provided 3 distinct legal reasons why Retirement Allowance should not be deducted from an Injury Pension:**
 - (a) The first legal reason-The Rules of the Firefighters Compensation Scheme are drafted differently to the Police (Injury Benefit) Regulations 2006 and do not allow deduction;**
 - (b) The second legal reason-To reinforce this point of law the Fire Pension Team then states... " It is our view that the Retirement Allowance did not replace any of the**

existing DWP benefits that could be deducted from a Firefighter's injury pension under the Social Security Act 1975 or the Social Security Pension Act 1975."

Thus confirming the fact that the 1992 S.I.129 does not provide for the statutory deduction of RA from an Injury Pension, particularly in its Schedules;

- (c) The third legal reason-The Fire Pension Team next states a... "The Retirement Allowance was introduced in 1988 to show a distinction, at state pension age, between a benefit designed to recognise reduced earning capacity as a result of an industrial injury(Reduced Earnings Allowance) and a benefit that recognises reduced pension entitlement due to a lower level of pension benefit accrual."

3. Nothing could be clearer. RA should not be deducted.

But in direct contradiction to its own categorical analysis and guidance the Fire Pension Team then states that... "However, FRAs may wish to seek their own legal advice on this"

Q. Why, if the Fire Pension Team just made the legal position abundantly clear presumably based on the best legal advice it could obtain and the Fire Pension Team controls the policy would it wish to contradict itself?

Q. Where if a FA chose in contradiction of the Fire Pension Team advice to deduct RA from an Injury Award would a FA find the 'authority' for such a deduction if it is not to find itself acting in ultra vires and/or making its own law?

4. In Fire Service Circular FPSC 3/2008 in providing clarity the Fire Pension Team identified the categories of "guidance" it would communicate with FRAs.

Q. In this matter because the Fire Pension Team repeatedly(and correctly) points out that there is no basis in statute law for the deduction of RA from an Injury Award into what category of "guidance" do you define your FPS Guidance Note 4/2010 and if not Statutory, why?

Bearing in mind that FRAs have a Statutory duty in any event to comply with Rule LA10 FPS1992 ;(Part 13,Rule 10 of the 2006 Scheme) with regard to compliance with any "guidance" by the Secretary of State in respect of the Firefighters Pension Fund.

Many thanks,
Sincerely,
Paul P Burns.

From: Sharon Mayers [mailto:Sharon.Mayers@communities.gsi.gov.uk]

Sent: 03 February 2014 12:05

To: Paul P Burns

Cc: Andrew Cornelius; Anthony Mooney

Subject: RE: Retirement Allowance

Dear Mr Burns

Thank you for your email regarding the Guidance Note published on the Retirement Allowance.

As you will be aware, the Firefighters' Compensation Scheme (FCS) came into force on 1 April 2006 and only minor legislative amendments have been made to the FCS since then. The Department intends to review the FCS during 2014/2015 and, at this stage, we will give further consideration to how this works alongside other allowances, such as the Retirement Allowance.

I can therefore not provide you with any update to the Department's informal view that was published in FPS guidance note 4/2010. As you are aware, Fire and Rescue Authorities administer the Firefighters' Pension Scheme and the FCS, and it is the responsibility of each FRA to apply the scheme rules in accordance with their interpretation of the scheme.

Best wishes.

Sharon
Sharon Mayers
Firefighters' Pension Team
0303 444 3565

5/F6 Eland House
Bressenden Place
London
SW1E 5DU

From: Paul P Burns [mailto:symbolseeker999@gmail.com]
Sent: Wednesday, January 29, 2014 3:31 PM
To: Sharon Mayers
Subject: Retirement Allowance

Dear Sharon,
I am seeking clarification with regard to the attached Guidance Note on Retirement Allowance.

Q1: Did the Department reach a final conclusion on this issue?... “We will, therefore, need to consider whether it would be appropriate for the FCS to be amended to provide for the deduction of Retirement Allowance.”.

Q2. In the classification which the Department applies to its statements in line with your clarification in FSC 02/2009 and on this issue which is clearly based on legal opinion provided to the Department can you please inform me what classification you are applying to the statements made in this FSC in respect of implementation by FRS pension administrations?

Q3. What is the unequivocal position of the Department in that RA should be deducted in practice or not?

Thank you.
Sincerely,



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