

Mr F M G [REDACTED]
[REDACTED]

Please ask for: Chris Kenny
Telephone: 01772 866800
Fax:
Email: chriskenny@lancsfirerescue.org.uk
Your Ref:
Our Ref: IDR/2015/FMG
Date: 19 February 2016

Dear Mr G [REDACTED]

**FIREFIGHTERS' PENSION SCHEME
PENSIONS ACT 1995, SECTION 50
Internal Dispute Resolution Procedures: Stage One**

I have considered your application received on 21 December 2015 for a decision to be made under Section 50 of the Pensions Act 1995 in respect of your disagreement referred to in the application.

From reading your submission, whilst it can be surmised what you consider to be the issue, by virtue of the previous correspondence to which you refer, your statement of the nature of disagreement including why you feel aggrieved contained in your submission does not actually identify any disagreement and why you feel aggrieved.

I have therefore responded below to the statements that you have submitted.

- 1. Having contributed to the pension scheme I was entitled to serve until aged 60 to retire on a full B1 pension based on the APP of my full service retirement rank. This involved no loss of salary.**

As your retirement was due to ill health you became entitled to an ill health pension under regulation B3 therefore the ordinary pension under regulation B1 is not due, as indicated in part (1) (c) of the extract below:

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



Ordinary pension entitlement under regulation B1

B1.-(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then-

- (a) Has attained the age of 50, and
- (b) Is entitled to reckon at least 25 years' pensionable service, and
- (c) **Does not become entitled to receive an ill-health award under rule B3.**

(2) This rule does not apply-

- (a) To a person whose notice of retirement states that he is retiring for the purpose of joining another brigade, or
- (b) Unless his notice of retirement was given with the permission of the fire authority, to a chief fire officer, or in Scotland a firemaster, who retires before attaining the age of 55, or
- (c) Where immediately before the person's retirement an election under rule G3 not to pay pension contributions had effect.

~~(3) A person to whom this rule applies becomes entitled on retiring to an ordinary pension calculated in accordance with Part 1 of Schedule 2.~~

2. **Or, I could have chosen to retire early on a B1 pension based on service and APP at my time of leaving. In that case I alone, not the service, would have been liable for loss of future salary and higher pension.**

Under the terms of the pension scheme you had the option to retire at age 50 with 25 years or more pensionable service. At the point of your 50th birthday, on 17th December 1993 would have achieved 31 years pensionable service and therefore had the option to retire with maximum pension from this date on. In this scenario you would have received a full B1 pension.

3. **In the alternative: on suffering for which I was not responsible and if compulsorily discharged from the Service early on grounds of ill health, the service was liable for all future loss in salary and pension.**

As stated above, as your retirement was as a result of ill health you became entitled to a pension under regulation B3, see below:

Ill-health award under regulation B3

B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).

(2) A person to whom this rule applies becomes entitled on retiring—

(a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and

(b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.

Calculation of Ill-health award under regulation B3 from Schedule 2 Part B, Part III

1.—(1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.

(2) In paragraphs 2 to 4, A is the person's average pensionable pay.

2. Where the person has less than 5 years' pensionable service, the amount of the ill-health pension is—

$$A \times B / 60$$

where B is the greater of one year and the period in years of his pensionable service.

3. Where the person has at least 5 but not more than 10 years' pensionable service, the amount of the ill-health pension is—

$$2 \times A \times C / 60$$

where C is the period in years of his pensionable service.

4. Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of—

$$20 \times A / 60$$

and

$$(7 \times A / 60) + (A \times D / 60) + (2 \times A \times E / 60)$$

where—

D is the period in years of his pensionable service up to 20 years, and

E is the period in years by which his pensionable service exceeds 20 years.

5.—(1) Where—

(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension ("the notional retirement pension"), and

(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension,

the amount of the ill-health pension is that of the notional retirement pension.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay

4. **S1 129 1992 specifies a B3 'ill-health' pension as compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reason of ill health.**

Appendix 1 is an extract of SI 129 1992 Part B Personal Awards (Pages 16 and 17). I am unable to see any reference in the Statutory Instrument to this being compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reason of ill health.

I would advise you these issues were raised (as I believe you are aware) by another retired member of staff with the Pensions Ombudsman who has confirmed that there is no grounds for this construct.

5. **S1 129 1992 prohibits payment of a B1 pension to a person awarded a B3 pension.**

B1 (c) states "does not become entitled to an ill-health award under rule B3" which appears to prevent a member from receiving a rule B1 pension who has been awarded an ill-health pension under rule B3.

However, as stated in my response to Question 3 above, particularly in reference to "paragraph 5 that advises" that the restriction on pensionable service and any ill health enhancement awarded. The restriction is such that a higher pension than would have become payable had the member retired normally on account of age i.e. at age 55 and become entitled to an ordinary pension.

At retirement you had 35 years 285 days pensionable service. Your pension was calculated as an ordinary pension under regulation B1 as follows:"

6. **I was retired on the grounds of ill health and awarded a B3 pension. I am paid a B1 pension – Why?**

Please refer to response to Question 5.

In considering the pension regulations contained in the above letter I am able to confirm that your pension benefits paid are correct and see no reason to deviate from the explanation already advised to you by your pension and myself.

If you are not content with this decision, you have a right to apply for reconsideration of the disagreement by the Lancashire Combined Fire and Rescue Authority no later than six months from the date of this notice. A form designed for this purpose can be obtained from me at Fire Service Headquarters, Garstang Road, Fulwood, Preston, PR2 3LH.

TPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of pension schemes in connection with any difficulty with a scheme which remain unresolved. TPAS can be contacted at 11 Belgrave Road, London, SW1V 1RB; Telephone 0845 6012923.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Kenny', written in a cursive style.

Chris Kenny
Chief Fire Officer

Compulsory retirement on grounds of efficiency of brigade

A14. A whole-time member of a brigade who—

- (a) was appointed on terms under which he is or may be required to engage in fire-fighting, and
- (b) has attained the age of 50, and
- (c) has, or but for an election under rule G3 would have, completed 25 years' pensionable service,

may be required by the fire authority to retire on the grounds that his retention in the brigade would not be in the general interests of its efficiency.

Compulsory retirement on grounds of disablement

A15.—(1) Subject to paragraph (2), a regular firefighter may be required by the fire authority to retire on the date on which the authority determine that he ought to retire on the ground that he is permanently disabled.

(2) A retirement under this rule is void if, on an appeal against the medical opinion on which the fire authority acted in determining that he ought to retire, the medical referee decides that the appellant is not permanently disabled.

Effective date of retirement

A16. For the purposes of this Scheme a member of a brigade shall be taken to retire immediately after his last day of service.

PART B

PERSONAL AWARDS

Ordinary pension

B1.—(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—

- (a) has attained the age of 50, and
- (b) is entitled to reckon at least 25 years' pensionable service, and
- (c) does not become entitled to an ill-health award under rule B3.

(2) This rule does not apply—

- (a) to a person whose notice of retirement states that he is retiring for the purpose of joining another brigade, or
- (b) unless his notice of retirement was given with the permission of the fire authority, to a chief officer, or in Scotland a firemaster, who retires before attaining the age of 55, or
- (c) where immediately before the person's retirement an election under rule G3 not to pay pension contributions had effect.

(3) A person to whom this rule applies becomes entitled on retiring to an ordinary pension calculated in accordance with Part I of Schedule 2.

Short service award

B2.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter—

- (a) who retires as required by rule A13 (compulsory retirement on account of age) and does not on retiring become entitled to an ordinary pension under rule B1, or
 - (b) who retires on or after attaining the age of 65, is entitled to reckon at least 2 years' pensionable service, and is not entitled to any other pension or gratuity under this Part.
- (2) A person to whom this rule applies becomes entitled on retiring—
- (a) if he is entitled to reckon at least 2 years' pensionable service, to a short service pension calculated in accordance with Part II of Schedule 2, and
 - (b) in any other case, to a short service gratuity calculated in accordance with Part IV of Schedule 2.

Ill-health award

B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).

- (2) A person to whom this rule applies becomes entitled on retiring—
- (a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and
 - (b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.

Injury award

B4.—(1) This rule applies to a regular firefighter who has retired and is permanently disabled if the infirmity was occasioned by a qualifying injury.

- (2) A person to whom this rule applies is entitled—
- (a) to a gratuity, and
 - (b) subject to paragraphs (3) and (4), to an injury pension,
- both calculated in accordance with Part V of Schedule 2.
- (3) Payment of an injury pension is subject to paragraph 4 of Part V of Schedule 2.
- (4) Where the person retired before becoming permanently disabled, no payment in respect of an injury pension shall be made for the period before he became permanently disabled.

Deferred pension

B5.—(1) This rule applies to a regular firefighter who is entitled to reckon at least 2 years' pensionable service or, though not so entitled—

- (a) has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which, after deducting from it any period during which an election under rule G3 not to pay pension contributions had effect and aggregating the remainder with his pensionable service, amounts to 2 years or more, or