



16 June 2016.

County Councillor Mr.F.DeMolfetta
Chairman-Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

IDRP – Stage II Application.

Dear County Councillor Mr.F.DeMolfetta,

Herewith attached is my IDRP - Stage II Application for consideration by the LCFA Committee.

Please acknowledge receipt of the attached, and inform me when the Stage II panel is to be convened; the names of elected membership of the committee on the panel who will decide Stage II ; and subsequently a record of the duration, the vote taken, and by whom.

For the purpose of this process you should consider that I regard the public records of your Decision as my 'subject data' falling within the meaning of the 1998 Data Protection Act when subsequently accessing any and all records of proceedings held in either Part 1 & Part 2 of your Meetings.

I draw particular attention to the individual legal duties laid on you by the nature of your public appointment and of your other elected Members of the LCFA in respect of the criminal law and your absolute individual obligation in law when an allegation of a crime has been reported to you, for you to investigate such criminal illegality in my case, and if substantiated, to report this matter to the Chief Constable; and concerning which, in the absence of such action by you and your Councillors, I give you notice of my intention to lay Criminal Information, both jointly and severally, with the appropriate authorities.

Yours Sincerely,



F. M. G. [Redacted] MIFireE.
Assistant Divisional Fire Officer(Rtd)

Firefighters' Pension Scheme: Internal Disputes Resolution Procedure (IDRP)



Stage Two Application

If a person is dissatisfied with the decision of the Chief Fire Officer or the person specified by him at Stage 1 of the IDRP, an application may be submitted by that person (or nominated representative) for the decision to be confirmed or replaced by the decision of elected members of the fire and rescue authority. The authority may provide for decisions to be taken by or on their behalf by one or more of their number.

To the Lancashire Combined Fire Authority

1. I am applying for reconsideration of the IDRP Stage I decision of 19th February 2016 made under section 50 of the Pensions Act 1995. I understand that the Fire and Rescue Authority will either confirm the decision or replace it.
2. I understand that an application may not be made where, in respect of the matter:
 - A notice of appeal has been issued under Rule H2 of the Firefighters' Pension Scheme 1992, Part 8, rule 4 of the New Firefighters' Pension Scheme 2006 or Part 6, rule 2 of the Firefighters' Compensation Scheme 2006 (appeal to a board of medical referees against a decision on an issue of a medical nature), or
 - Proceedings in respect of this dispute have begun in any court or tribunal, or
 - The Pensions Ombudsman has commenced an investigation into a complaint or a dispute referred to him.
3. I attach a copy of the notice of the Chief Fire Officer's Decision referred to and a statement of the reasons for my dissatisfaction with that decision.

Complete in all cases (in Block capitals)

Full Name of Scheme Member	[REDACTED]
Role and employment reference	[REDACTED]
Address of Scheme Member	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Member's Date of Birth	[REDACTED]
Member's National Insurance Number	[REDACTED]

Complete if complainant is not a Scheme member (in Block Capitals)

Full Name of Complainant	[REDACTED]
Address for Correspondence	[REDACTED]
Relationship of complainant to Scheme Member (if relevant)	[REDACTED]

Nature of disagreement

Give a statement of the nature of the disagreement with the decision made by the Chief Fire Officer or the person specified by him. If necessary, continue details on to another page and attach the application form with any supporting documents.

IDRP- Conclusion of Stage I.

The Material Facts.

1. On the 22nd July 1998 I was compulsorily retired by the Lancashire Combined Fire Authority(LCFA) as disabled pursuant, inter alia, to the provisions of the Fire Services Superannuation Rules, 'The Firemen's Pension Scheme Order 1992', Statutory Instrument No.129, Rule A9 Qualifying Injury, and Rule A10 Disablement.
2. As a consequence of Rule A9 and Rule A10 the LCFA awarded me, under the Order, a Rule B3 Ill-health Pension, and a Rule B4 Injury Award.
3. However, I have, to date, in contravention of Statutory Instrument No.129, Rule B1.- (1);(C), been paid a Rule B1 Ordinary pension instead of the correct Rule B3 Ill-health pension, and as a miscalculation consequence, the correct Rule B4 Injury Award.
4. Rule B1.-(1);(C) prohibits the payment of a Rule B1 Ordinary pension to those awarded a Rule B3 Ill-health pension stating in Regulation B1 Ordinary pension entitlement:

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

(c) does not become entitled to an ill-health award under rule B3."

Nature of the Disagreement.

1. I disagree that the LCFA have, since inception, paid me my correct pensions. I have not been paid the correct pensions I am lawfully entitled to under the 1992 Statutory Instrument No.129 Regulations.
2. I disagree that the 1992 Statutory Instrument No.129 Regulations, under which the LCFA purports to be paying my correct pension can properly be construed in law in any way to sanction any sum, awarded as a Rule B3 ill-health pension, *as the same in sum as a Rule B1 Ordinary pension* – which is the pension falling due to a Firefighter taking early voluntary retirement by choice.
3. I assert, that the LCFA has illegally, knowingly, dishonestly, and systematically defrauded me, inter alios, of all compensation for loss of career, rank, pension, and for the injury suffered, which is provided for in law to compensate a Firefighter in event of being forced to take early retirement by reason of ill health/injury.
4. I assert, that the LCFA to save money and enrich itself has jointly with those managing, administering, calculating, and paying Rule B3 ill-health and other pensions, severally engaged in criminal action; and have together conspired to avoid paying me the legally proper sums due to me and to those compulsorily required to retire due to ill health/injury; but also to deny to me and those to be retired, sight of any document to inform them of their Statutory rights on their Pension Scheme.

Home Office Commentary on the Firefighters Pension Scheme.

1. I assert, that the LCFA have engaged in deception, to avoid paying due and proper pensions by denying me and other such retirees, sight or knowledge of the 1992 "Home Office Commentary on the Firefighters Pension Scheme" provided for the guidance of laymen pension managers and retirees alike.

2. The Home Office Commentary's legal intent was clear and speaks for itself...

“For the most part the text uses the “second person” to keep the style informal but this does not mean it is addressed only to firefighters. It is intended mainly to help local authority superannuation officers who have to administer the scheme.”

The LCFA have by way of deliberately avoiding this guidance knowingly perverted the course of justice by avoiding the proper calculation and payment of pensions lawfully due to me which are those specifically provided for in law.

3. They did so to deliberately mislead me, who relied on their honesty as the pension provider with their fiduciary duty to me, to make me mistakenly believe that the Rule B1 Ordinary pension and a miscalculated(reduced)Rule B4 Injury award which they were actually paying me was in fact the correct Rule B3 ill-health and Rule B4 Injury awards, as though they were those provided for by law.

The Common Ground.

1. I refer to the Chief Fire Officer's IDRPs Stage I written decision of the 19th February 2016, which is attached in which the LCFA accepts the following in common ground:

- a) The LCFA may terminate service under “Rule 14 – Compulsory retirement on grounds of efficiency of brigade”, but that was not my case.
- b) The LCFA accepts that a Firefighter may choose early retirement in full health to pursue another career, in which case he becomes entitled to a Rule B1 Ordinary pension as provided by law.
- c) The LCFA accepts that it follows that on making such a choice the fire-fighter avoids by his own volition; a full service; promotions; pay increases; and higher pension falling due on full service.
- d) The LCFA accepts that where a Firefighter continues to contribute to the pension scheme(after 30 years) he would have been entitled, in my rank, to have served until aged 60, and then to retire on a full Rule B1 Ordinary pension based on the Average Pensionable Pay (APP) of full service and any further achieved retirement rank;
- e) The LCFA accepts that by receiving my pension Scheme contributions after 30 years' service, and knowing I had not opted out under Rule G3 accepts that but for my enforced retirement I would have so benefitted at the age of 60 years, or 40 years' service, whichever came first.
- f) The LCFA accepts that had I completed my service to the age 60 years, or 40 years' service, whichever came first, that I would have been entitled to receive a Rule B1 Ordinary pension calculated at that time on my APP, and further promotion, if any.
- g) The LCFA accepts that I did not complete my service to the age of 60 years by reason of a 'qualifying' service injury for which they obtained the necessary medical Opinions and confirmation *before* implementing Rule A9 & Rule A10 leading to my compulsory early retirement;
- h) The LCFA accepts that, under the 1992 Statutory Instrument No.129, and its compulsory discharge decision under the Scheme Rules that I was entitled to receive a Rule B3 Ill-Health pension and a Rule B4 Injury Award, which they nominally awarded;
- i) The LCFA accepts that I am not entitled under 1992 Statutory Instrument No.129 to receive a Rule B1 Ordinary pension if awarded a Rule B3 Ill-Health pension by them;

- j) The LCFA accepts that their calculated pension paid to me is in the sum of a Rule B1 Ordinary pension due had I been retiring early by my own choice, and is not in compensation, at all, for loss of future career, potentially higher rank, or a higher pension;
- k) The LCFA accepts that the Rule B3 ill-health and Rule B4 Injury Award provisions are made in law to recognise time served – whether ended by voluntary choice or ill-health/injury - but if by ill health/injury - to compensate for the loss of future service, achieved rank, and pension emoluments, occasioned by enforced compulsory early retirement – such being the effect of the material formulae set out in SI 129, Schedule 2.

2. In arbitrary denial of *this common ground and law* the Chief Fire Officer, by his Decision denies my request for correction of my pensions but supplies no Legal Authority; no independent Opinion, or Opinions, to support his position; nor any logical reason for his Decision and accordingly I am dissatisfied and wish to continue to dispute it.

The Law and LCFA.

1. The 1947 Fire Services Act was pivotal legislation in respect of the post WW II return of Local Authority control to their control functions which included the provisions of lawful Fire Service pensions.

The Act with its Statutory Instruments made specific provision for the anticipated recurring operational injuries which would occur in future Fire Service operations and also anticipated the inevitable Service/personal litigation which would follow.

The purpose of this generous part of the enactment, without fault awards, was to reduce Local Authority and personal litigation legal costs and Court attendances.

This provision, which was welcomed by the Fire Brigades Union and approved by the Central Fire Brigades Advisory Council, eventually led to legislative revisions in the 1973(Rule B3 introduced) and 1992 Pension Schemes, with a further revised Rule B3 within 1992 Statutory Instrument No.129.

2. In his decision the Chief Fire Officer, in absence of legal authority, deliberately misleads and misdirects himself by misusing an Appendix which - having misled the Pensions Ombudsman earlier by the same deception – he knows to be entirely bogus.

There is no such thing as the so called 'Appendix' to the original legislation pursuant to which I was forced to take early retirement. That legislation was and remains the 1992 Statutory Instrument No.129 - guidance, for retirees and user laymen alike, for its legal effects being specified in the companion "Home Office Commentary". In the absence of specific retro-active provisions, any subsequent amendment of legislation can, as the Chief Fire Officer well knows, can be of no legal effect in my case.

There has been no such retro-active legislative provision.

I quote verbatim , your Decision Letter refers:

“ 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 in to early retirement by reason of ill health”

He is fraudulent in ostensibly basing his decision on this bogus legal authority which is a travesty of his public duty when he denies the whole purpose of the applicable legislation.

3. Pursuant to the material Statutory Instrument I ask:

a) Is it therefore the Chief Fire Officer's contention that a Rule B1 Ordinary pension and a Rule B3 ill-health pension are, in effect, one and the same thing?

- b) If not, in what way do they differ in legal practice and why am I being paid a Rule B1 Ordinary pension purporting to be a Rule B3 ill-health pension?
- c) Does the Chief Fire Officer take the view, and if so is it the policy, that it is legally correct to dismiss any injured Firefighter from further service due to ill-health/injury with a Rule B1 Ordinary pension calculated on the same basis as though he was taking early voluntary retirement by choice?
- d) If so, is the Chief Fire Officer confirming that it is the legal policy of the LCFA to compulsorily discharge a Firefighter whilst not awarding more than the sum calculated for a Rule B1 Ordinary pension entitlement to Firefighters, whether or not, their careers are cut short by ill-health/injury?
- e) Is it the policy of the LCFA to cut its pension bill by retiring all injured personnel on a straight B1 Ordinary pension without compensation?
- f) On what basis does the LCFA place its own unlawful interpretation, an illegal and layman's convenient avoidance of the law, which is clearly at odds with the common law and which specifically denies the expressed intention for the Statute to be interpreted as compensatory as in common law, or better, - made inescapably plain in the 1992 'Home Office Commentary' at:

Page B3-2 In answer to question 'How much is the pension...',
“ or what could have been earned by compulsory retirement age”,
 and at...

Page B3-2 states 'your basic ill-health pension is...', stated as...
“or what you could have earned by your compulsory retirement age.”

N.B. Note the difference in tense and language confirming two distinctive statements.

- g) It is a given in common law that where an employer is liable for the loss of a career, quantum of damages includes, above any sum for pain and suffering, the amount required to put that person, in so far as money can, in the position they would have been in but for their loss.
- h) It is a given that the DCLG in their document “Fire and Rescue Authorities - Health, safety and welfare framework for the operational environment” June 2013, accurately states the law, in that 'The Health and Safety at Work Act 1974' applies to 'all activities of', and so imposes a General Duty on the LCFA to ensure the health safety and welfare of its Firefighter employees, breach of which is actionable under common law and by prescription of Section 47 (2) of the Act for damages which binds the Crown (Section 48), the Firefighter being relieved by SI.129 of contribution by reason of contributory negligence on being required to take early retirement on grounds of ill-health, and that damages includes death or injury (Sec 47 (6)) and that damages are defined under tort to compensate for the injury as a matter of general damage and by way of special damage, all financial loss occasioned by the early retirement.
- i) State precisely by what legal authority does the LCFA pay me less than I would be entitled to under common law?

In particular paying me the pension I would have been entitled to had I taken early retirement by choice, thus denying me compensation for my lost career, emoluments, future promotions and the pension which I would have earned but for such enforced retirement?

- j) If the LCFA denies that a Firefighter so forced into retirement may sue the authority, on considering the awarded Rule B3 and/or Rule B4 award insufficient, state precisely the legal authority relied upon for denying such right in law.
If none, then by what right does the LCFA deprive me of Rules B3 and B4 awards in any lesser sum than a Court would award in accordance with the normal quantum of damages, general, and special?
- k) If it be contended that I am being paid the correct pension then distinguish it from an Ordinary B1 pension to demonstrate to me in law that compensation is being paid in 'special damages' for the loss of my career?
- l) Since a Firefighter has common law rights under the 1974 HSW Act on what basis does the LCFA reduce those under Rule B3?
- m) What is the Chief Fire Officer's precise Legal Authority upon which he - a layman - relies to deny those forced into early retirement by reason of ill health/injury, less than a common law award in damages - in compensation for their loss of promotion, salary and pension, et al?
- n) Can the Chief Fire Officer explain, quoting Legal Authority and independent Opinion(s) what purpose does he consider the Statutory Instrument is required to serve by the enactment of its Rule B3 & B4 provisions?
- o) Please explain why having retired me early on the grounds of ill health/injury with a purported Rule B3 ill-health pension and Rule B4 Injury Award, in what way, using what legal authority, does the LCFA say that the present pension I receive, namely a Rule B1 Ordinary Pension (this being the same sum due to me had I been taking early voluntary retirement by choice) in any way compensates me for loss of career and future pension, as provided within the 1992 Statutory Instrument No.129?
- p) Please explain why the LCFA concealed; ignored; was not guided by; and did not produce for its own, mine, and the guidance and understanding of others, the '1992 Home Office Commentary on the Firefighters Pension Scheme' which in intended plain English, provides the clear legal distinctions and benefits between Rules B1; B3; and B4 pensions ?

The Law – The Nub of the Matter.

Throughout the correspondence leading to the implementation of IDRPs the LCFA, though repeatedly asked for its legal authority for application of its layman's interpretation of the 1992 Statutory Instrument No.129, contrary to the law and intended legal effect as construed and specifically set out by the promulgating Department of State in its 'Home Office Commentary', and having wrongfully adopted such laymen's interpretation in denial of Home Office guidance as to the correct legal construction of its legislation, state precisely - on the application of the Chief Fire Officer's/LCFA 'interpretation' reducing my ill health pensions to be, in legal effect, a B1 pension – is to what purpose?

For the intent was its direct impact on the final ill-health/injury pension (under)calculation by misuse of the Statutory formulae.

It follows, does it not, that those attempting to comprehend the form of words used and their legal meaning in Rule B3 are simply incapable of understanding the legal prose and have deliberately avoided seeking an independent Opinion, or Opinions, to defend their unlawful arbitrary position;

Or, they do understand and are avoiding career accountability and transparency when their original significant errors are publicly examined. An examination which they seek to avoid, by

deliberately misconstruing the meaning of the words of the provision in the 1992 Statutory Instrument No.129 *used to distinguish* the five Paragraphs within Rule B3.

In his Stage I Decision the Chief Fire Officer has denied legal effect of Rule B3; Paragraphs 1-4; and Paragraph 5, by his misconstruction of these Paragraphs which ought to have been used in my final B3 ill-health pension calculation formula.

- a) In particular, he has taken the word 'is', in relation to Paragraphs 1-4, to mean the same as 'by reference to' in Paragraph 5 which is to knowingly, fraudulently, deny Paragraph 5 its specified and/or any legal effect;
- b) By such deliberate misconstruction he has fraudulently misrepresented that the sum of a Rule B1 Ordinary pension could be, and lawfully was, a Rule B3 ill-health pension;
- c) By such deceit in misconstruction he has *denied the lawful effects* of Paragraphs 4 and 5 *on* Rule B3.

Another Case.

1. In his decision the Chief Fire Officer referred obliquely to another case which has no bearing on my IDR Application, but in which I believe the then (layman) Pensions Ombudsman was unable to recognise or consider the weight of the '1992 Home Office Commentary on the Firefighters Pension Scheme' by reason that the LCFA had misled him by fraudulently presenting, misrepresenting, and misquoting the '2008 Commentary on the 2006 FPS' as though it was the '1992 Home Office Commentary on the Firefighters Pension Scheme'.
2. This is not my case and the Chief Fire Officer can be under no such delusion that it is. He well knows that the '1992 Home Office Commentary on the Firefighters Pension Scheme' was issued for guidance and understanding to layman of the law as provided for in 1992 Statutory Instrument No.129.
3. By his written Decision, if not withdrawn and my pension corrected, the Chief Fire Officer becomes further complicit in a conspiracy to perpetuate and further such illegal misconduct and will further conspire with his subordinates, and those he has delegated, including his pension contractors managing my pensions, to avoid the lawful payment of my correct pensions.

Misconduct in Public Office.

1. I assert, that those so engaged on behalf of the LCFA, knowingly abused the trust arising from their fiduciary relationship with me in that I was reliant upon their integrity and honesty to calculate and pay me the pensions prescribed by law for me.
2. They have abused their collective public offices and the trust of the Firefighters and have by deliberate and criminal misrepresentation presented false sums in payment to me and others, namely Rule B1 Ordinary pensions, purporting these to be Rule B3 ill-health and Rule B4 Injury Award entitlements as if these payments were their true legal entitlements.
3. If not acting so, then on what Legal Authority are any of the LCFA servants or agents so acting?
If none, then in what way is such conduct not fraudulent, or those engaged in the process of this deception not engaging in an abuse of their public office in a conspiracy to defraud?
4. I assert, that all these malfeasant acts can only be objectively and impartially construed and viewed as *prima facie* Statutory crimes by reason of the ritualised and repeated institutionalised violation and contravention of the applicable regulatory Act, or Acts.

Conclusion.

1. I am dissatisfied and disagree with the Chief Fire Officer's Stage I Decision for the reasons I have stated and I hereby give notice that I now wish to invoke Stage II of the Statutory IDRГ.
2. I request that this Dispute now be placed in *per curiam* before the nominated and duly elected Members of the LCFA for reconsideration which should be executed within the Statutory framework of two calendar months from the date of receipt of this hand delivered Application.
4. I request that I be paid the correct emoluments in compliance *with LCFA original pension decisions* and in compliance with the law, the 1992 Statutory Instrument No.129, Rules B3 and Rule B4.
5. I request that I be reimbursed all underpaid monies due to me, or my estate, which commenced at the inception of my pensions, and that my gratuities and emoluments be re-calculated with commercial compound interest as determined by established and relevant Court case law.
6. I was compulsorily retired on grounds of ill health/injury and awarded a Rule B3 ill-health pension and Rule B4 Injury Award and in closing I reiterate the question:

Why am I being paid the sum of the Rule B1 Ordinary pension I would have been entitled to had I been retiring by voluntary choice, instead of a Rule B3 ill-health pension and Rule B4 Injury Award provided for within the 1992 Statutory Instrument No.129 which was to compensate me for my lost career, the pay and emoluments due to higher rank I may have achieved, and pension falling due on my full service, all lost to me by way of forced early retirement, due to injury in service for which the LCFA is statutorily liable in no lesser sums in compensation for my injury and loss than a Court would award by way of ordinary and special damages – and in such a case as this - aggravated damage should a judge take the view that the LCFA, its servants or agents, deserve censure for the illegal and fraudulent denial of payment due and particularly so where the conduct was in clear and deliberate avoidance of State Guidance on how to interpret and apply the law, - thus perverting the course of Justice for gain.

7. This Application has been sent to each Member of the Committee to each of whom notice is hereby given that should the de facto conspiracy to defraud *not be repudiated individually by the elected Members of the LCFA and my pensions be corrected with appropriate other compensation*, that I shall lay criminal information before the appropriate authorities at the conclusion of Stage II, which said Criminal Information will, jointly and severally, include, each and every, such delinquent Member.



Signature of complainant Date: 16th June 2016.



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