



Lancashire Fire
and Rescue Service

Mr P Burns
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Preston
PR2 3HN

Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref:
Our Ref: BW/HLG
Date: 10 May 2013

Dear Mr Burns,

I refer to your letters of 25 April (Ref. PB01713) and 3rd May 2013 (Ref PB01813) to which I respond as follows. I also refer to my letter to you dated 2nd May 2013.

As you are aware, you have already been provided with a detailed response to the issues you raised at the time of the recent proceedings, in my four page letter to you dated 18 April 2013. I set out below a further detailed response to the main issues you raise, concerning the method of calculation of your pension, together with an amplified statement of the calculation steps set out in my letter dated 18th April, with further explanation and expanded to take account of the B4 injury pension to which you are also entitled. I do this in the hope that it will be possible to reach a common understanding as to the correct approach and that a comprehensive statement of your entitlement will be helpful. I remain willing to continue this dialogue in the hope that such a common position can be arrived at.

We do not accept that Schedule 2, Part B, Part III, paragraph 5 of the Firemen's Pension Scheme Order 1992 ("the 1992 Order") bears the interpretation you put on it (see below) and we consider that your approach is inconsistent: you say that "the drafting of SI 129 may leave something to be desired...which might initially be read it (in?) two ways", but then accuse the authority of acting unreasonably in its application of the Order or intentionally misconstruing the rules for its own malign purposes (I shall return to this later).

I note that your whole argument, in your letter dated 3rd May 2013, is predicated upon your words "if unlawful..." (page 1, paragraph 3 of your letter), and we clearly deny having acted unlawfully as you suggest.

Contd ...

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Prince's Trust



Stonewall
DIVERSITY CHAMPION



It appears that the main issue you raise relates to how this provision should be read. We deny that we have been engaged in a “manipulation” of the pension scheme rules as you suggest (your letter dated 3rd May 2013, page 2, paragraph 4). You have argued in your letter (page 3, 1st paragraph) that the effect of paragraph 5 is that, if the amount of the ill health pension as calculated under paragraph 4 exceeds the amount of the notional retirement pension, the amount of the notional retirement pension is effectively increased to that of the ill health pension. With respect, this is not correct: paragraph 5 operates to restrict the amount of an ill health pension, so it is effectively capped at the level of the notional retirement pension. This is not a matter of a choice as to interpretation, or a discretion, that the authority has sought to exercise in your case as you suggest; it is a simple matter of the meaning of the provision, and reflects its application nationally.🔑

The Department of Communities and Local Government Guide to the Firefighters Pension Scheme 1992 clearly explains that for those receiving an ill health pension🔑

“the resultant pension, however, must not be greater than the age retirement pension that could be achieved at the normal pension age of 55, or age 60 in the case of Station Manger B or above. (And an age retirement pension must not be greater than 40/60ths of average pensionable pay.)”🔑

You refer in your letter to your compulsory age of retirement (page 4, 1st paragraph). We accept that the compulsory age for your rank would have been 60 years, rather than 55, although you would have been entitled to retire on a B1 pension at the latter age. This does not, however, affect the calculations in the way you describe because there is a limit of 30 years on the years that may be taken into account in calculating an ordinary pension under Schedule 2, Part B, Part 1 of the 1992 Order. This has the effect that the maximum number of “B” (period of years over 25 years) in the formula for an ordinary pension is 5 years; which restricts both the amount of an ordinary pension, and hence the amount of the “notional retirement pension” under Rule B3.5(1)(a). As the government’s explanatory guidance on rule B3 clearly states;

“one of the limits on the pension derived from the ill-health formula was that it should not be more than the ordinary pension or short service pension which would have been received at compulsory retirement age”.

As has already been outlined to you in my letter dated 18 April 2013, in respect of your original claim (in your calculations produced shortly before the end of the trial) for a normal age retirement pension and an ill health pension, the provisions of Rule B1(1) clearly debar this as in order to be entitled to an immediate ordinary pension an individual must not be entitled to an ill-health award under Rule B3 which of course you received. For the avoidance of doubt, therefore, your entitlement is to a B3 ill health pension, and a B4 injury pension; and as I understand your letter dated 3rd May 2013, you agree with this. The detailed calculations are set out in the Appendix to this letter, with further explanation.


The 1992 Order states that “the notional retirement pension is to be calculated by reference to the person’s actual average pensionable pay”. The term “actual” cannot be interpreted (as you appear to do) on what you believe your pay might have been if you had been promoted to a more senior role. You claim in your letter dated 25th April 2013 (p.1, final paragraph) that it is the intention of the rules “to compensate for loss in promotion, loss of salary and increments and pensionable years lost, and - on promotion and/or higher salary - the higher than the B1 pension (sic), *all of which would have accrued but for the imposed early retirement*” [my emphasis]. These words clearly illustrate that your view is based upon an erroneous presumption that such a “promotion and/or higher salary” would have resulted. Your interpretation is based upon speculation which has no basis in fact or law. For the sake of completeness however as you retired as a Divisional Officer grade (ii) your next promotion would have been to a Divisional Officer (i) position, which you did not attain and there is no evidence that you would have done so. You would then have needed to secure a further promotion to Senior Divisional Officer before having access to what is now a Brigade Manager position (Assistant Chief Fire Officer). Whatever the facts in your case, however, there is no provision to anticipate promotions in respect of the pension scheme in any event.


By virtue of your substantive rank you would not be compelled like a firefighter to retire at 55. Health and fitness allowing you could have continued in the service until you attained the age of 60; but you had the right to retire at any time after attaining the age of 50, with 25 years service and to receive a full pension after 30 years employment. In your circumstances, if an ill health retirement was not (for whatever reason) put into effect, the service could still have invoked rule A14 and compelled you to retire before obtaining compulsory retirement age, on the basis that the authority believed that you remaining in the fire and rescue service would not be in the general interests of efficiency, since you had attained the age of 50 and had completed 25 years pensionable service.

For the record it is wholly denied that we have acted illegally; that “we punish firemen for suffering an injury in the course of their employment” or that our actions are motivated by the intention to “help the fund” or “swell the coffers” (of the pension scheme). I am not in fact a trustee of the Pension Scheme, as you suggest, as unlike occupational pension schemes in the private sector, the Scheme does not have trustees. It is further denied that those operating the pension scheme either do not understand how it operates or that “the pension provision has been a fraudulent operation” (p4, paragraph 3 of your letter dated 25 April 2013). Your suggestion that we have avoided the intention of the legislation to “deny the fireman his compensation” (p1 paragraph 5 of your 25 April letter) or that there has been “a deliberate policy to defraud pensioners” is totally without foundation.


We remain satisfied that our interpretation of the scheme is correct and that your pension has been correctly calculated in accordance with those rules as we have explained to you at some length. I note that you claim that your final pay was incorrectly stated and the index linking is incorrect, but you provide no explanation for these assertions, for which I have seen no evidence. Neither am I aware of any “past errors” which you say require “rectification”. We do not accept therefore that it is necessary to appoint an independent actuary to carry out an audit as you suggest.

Despite what you say it is not for us to establish to your satisfaction that our interpretation of the scheme rules is correct; it is rather for you to prove your case which you have patently failed to do; and which, for the record, we regard as totally misconceived and without merit.

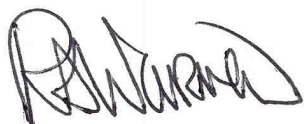
There is neither evidence nor justification for your reference to criminal proceedings, or indeed any legal action, against individuals as you have indicated, which we regard as most unhelpful in seeking to reach a common understanding. Your claims that this authority or its employees have been guilty of criminal actions or malfeasance in public office are totally untrue and unwarranted. We also refute that we have acted wrongfully in relation to the payment of your pension (HHJ Butler's judgment having found in our favour on all points). 

In the event, however, that you choose to pursue proceedings in the High Court on the basis that you have indicated, you should be aware that the Authority is the proper Defendant (not its staff or other persons); and, that it will defend vigorously its position and actions, and those of its members, staff or former staff, or staff of the LPS; and, as already indicated in my letter dated 2nd May 2013 we will seek payment of the Authority's full legal costs from you on a commercial basis in relation to such proceedings. 

The issue of a stay in the event of an appeal against the judgement by HHJ Butler or in relation to your counterclaim is a separate matter, not related to the questions over calculation that you have now raised. We deny that by not agreeing to a stay amounts to seeking to "threaten" or "to otherwise intimidate you" (3rd May 2013, p2, paragraph 9). You have had the opportunity to appeal the judgment (although to date you have not served us with an Appellant's notice); and it would, in that event, remain open to you to seek a stay from the court. We note, however, that you have indicated that you will now make payment of the monies that are due under the terms of the court order of which we now await receipt.

I hope very much that the wasteful course of legal proceedings, in relation to the calculation of your pension entitlement, can be avoided by further explanation; in order to reach a common understanding of how the Rules should be applied. In that context, I hope that this letter may have been helpful. If you remain dissatisfied with the response you have received you may wish to consider the Service's Internal Dispute Resolution Procedure. If you require any further information please let me know. 

Yours sincerely



Bob Warren
Director of People & Development

Appendix

Explanation of pension entitlement of Mr P Burns

The Authority sets out in this Appendix an amplified version of the main points made in its letter dated 18th April 2013 (*with additional clarification in bold type*), extended to take account of your injury pension under Regulation B4, in order to show your full pension entitlement.

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 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.*

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 above.

The Authority thus agrees that no B1 pension is payable to you in this case, and has not paid you such a pension.

Short service award under regulation B2

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.*

As your retirement was due to ill health and not compulsory due to age or on or after attaining age 65 (which are the qualifying conditions for a short service award indicated in (1) (a) or (b) above) , the short service award under regulation B2 is not due.

III-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.

You have thus been entitled to a B3 pension in this case.

Payment of gratuity

Short Service or ill health gratuity payable under Schedule 2 Part B, Part IV

1. *Where the person's pensionable service is less than one year, the amount of the gratuity is that of his aggregate pension contributions.*

2. *Where the person's pensionable service is one year or more, the amount of the gratuity is the greater of—*

(a) his aggregate pension contributions, and

(b) 1/12th of his average pensionable pay multiplied by the period in years of his pensionable service.

3. *Where the person ceased to serve after the beginning of the tax year in which he attains state pensionable age, the gratuity calculated in accordance with paragraph 1 or 2 shall be reduced by the capitalised value, as calculated by the Government Actuary, of any pension paid to him under rule J1 (guaranteed minimum).*

Regulation B3 paragraph 2 instructs us that a person who is entitled to reckon at least 2 years' pensionable service, becomes entitled to an ill health pension calculated in accordance with Part III of Schedule 2, as covered below. It then goes

on to advise that in any other case, an ill-health gratuity calculated in accordance with Part IV of Schedule 2 becomes due. Therefore, as you are entitled to receive the ill health pension under the regulations, a Short Service or ill health gratuity is not due.

You received, however, a gratuity on retirement under Regulation B4(2) (see below)

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

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*

When you retired your pensionable service was more than 10 years; therefore, we use the provisions of paragraph 4 above to calculate the ill health pension. However we also need to take account of paragraph 5, which advises us of the restriction on the length of pensionable service that we are permitted to use as the basis of calculation (and likewise in relation to any ill-health enhancement awarded). The restriction is such that we cannot calculate a higher pension than would have become payable had you retired normally on account of age. Since you had already accrued 30 years' service, the age at which you could have been required to retire normally (whether 55 or 60) made no difference to the cap required to be placed on the amount of the notional retirement pension, namely as at 30 years' service. Therefore, as you had 33 years 188 days service at retirement, we needed to calculate your B3 pension from the level of an ordinary pension under Regulation B1 as follows:

Calculation of an ordinary pension regulation B1 from Schedule 2 Part B, Part I

Subject to Parts VII and VIII of this Schedule, the amount of an ordinary pension is—

$$(30 \times A / 60) + (2 \times A \times B / 60)$$

where—

A is the person's average pensionable pay, and

B is the period in years (subject to a maximum of 5 years) by which his pensionable service exceeds 25 years.

The B3 pension payable to you (calculated from the formula above) is therefore

$$(30 \times \text{£}35,031.36/60) + (2 \times \text{£}35,031.36 \times 5/60) = 17,515.68 + 5,838.56 = \text{£}23,354.24$$

Injury pension under Regulation B4

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.

Your B4 pension entitlement is 60% of average pensionable pay (ie $60/100 \times \text{£}35,031.36 = \text{£}21,018.82$), less 75% of the ill-health pension ($\text{£}17,515.68$) = $\text{£}3,503.14$).

Under Regulation B4(2)(a) you received a gratuity of 12.5% of $\text{£}35,031.36 = \text{£}4,378.92$.

Effect of Regulations L4(3) and (4)

You have referred to Regulations L4(3) and (4). Regulation L4 applies a general rule that, where a pensioner is entitled to two or more pensions, only the larger shall be paid (Regulation L4(3)). This rule is subject to exceptions, of which that in Regulation L4(4)(a) is relevant in your case. This provides that where a person is entitled to an injury pension (ie under Regulation B4) and also (inter alia) to a B3 ill-health pension (as in your case), those pensions shall be treated as one. The effect of this provision is to exempt pensioners who are entitled to two pensions in certain cases, such as yours, from what would otherwise be the rule preventing the lesser one from being paid. In other words, it allows both pensions to be paid in those cases. Beyond this, however, it has no impact on the method of calculation of your pension.

Taking into account all of the above regulations the pension benefits paid to you are correct.

In summary, your overall entitlement at retirement, calculated as set out above, is as follows:

A B3 ill-health pension = $\text{£}23,354.24$ pa; and

A B4 injury pension = $\text{£}3,503.14$ pa = Total $\text{£}26,857.38$ pa