



Mr P Burns
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Please ask for: Bob Warren
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Your Ref:
Our Ref: BW/JLW
Date: 15 July 2013

Dear Mr Burns

Thank you for your letter dated 27 June 2013 in response to my letter dated 10 May 2013.

Firstly, I note that your receipt of the Authority's application to strike out your counterclaim appears to have prompted your correspondence both to me and the court on the same date. (As you are aware, the Authority has responded separately to the court).

I obviously welcome your reply; although I find your taking almost two months to do so, and then in such a limited manner, somewhat incongruous by comparison with your letter of 25 April, in which you demanded an urgent reply, failing which you would instigate legal proceedings without further warning (and to which you attached draft particulars of claim). You also indicated that you were going to appeal against the judgement of HHJ Butler, despite which I note that you have now paid the judgement in full (less one penny which it is not proposed to pursue), and that you do not now intend to appeal.

In response to your points, I do not accept that my comments are necessarily "assertions in law" for which I am required to produce "legal authorities" as you suggest. I am not a lawyer and as such I do not regard it as my role to engage in detailed legal argument with you in that way in correspondence. As the relevant statutory provision, paragraph 5 of Schedule 2, Part B, Part III, obviously stands in its own right I would rather describe what you refer to as my "assertions" as an attempt to provide you with practical explanations in relation to how your pension is calculated based upon the statutory framework laid down by the firefighters pension scheme within which we have to operate.

I regard it as self-evident that, in giving effect to a statutory pension scheme, "we need to take account" of its provisions as outlined. In this regard I would refer you to the fourth paragraph of my letter to you dated 10 May 2013,

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Stonewall
DIVERSITY CHAMPION



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where I clearly explain this rationale as follows; "it is a simple matter of the meaning of the provision, and reflects its application nationally". With respect, it is therefore not correct for you to say that I have "avoided providing authority" for such assertions but rather like all other UK fire and rescue services, we act in accordance with the appropriate legislation as drafted.

If you believe that the Authority has misapplied the legislation I would submit that it is for you to provide cogent and persuasive evidence for that assertion, upon receipt of which, I shall consider further. I do, however, understand that it is a basic legal principle that whoever asserts a legal claim must prove it to an appropriate standard, and produce the evidence to support it; and thus if you can provide me with any legal basis for your view that we have misapplied the legislation in your case, I should be pleased to consider the same, but that is for you to provide.

In the spirit of cooperation, however, I will endeavour to explain my rationale further in the hope that this will assist in clarifying these matters; as I appreciate that these concepts may not on first face be the simplest to understand. The term "cap", which I used, is not a statutory term, but was used as a practical explanation of the basis of the statutory limit placed on the notional retirement pension at 30 years service under the firefighters pension scheme rules. In response to your specific questions, this statutory limit is authorised by virtue of the rules of the scheme as outlined in the appendix to my previous correspondence and in the response provided to you after the court ruling, which I reproduce below:

"Calculation of an ordinary pension regulation under B1 from Schedule 2 Part B, Part 1 of the Firefighter's Pension Scheme 1992

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 pension payable to you is therefore

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

Although the regulations themselves do not contain the actual wording that there is a restriction of 30 years service for use in the calculations, the section highlighted above clearly states that only a maximum of 5 years can be used, by which your pensionable service exceeds 25 years (i.e. 25 + 5 = 30 years). I also enclose an extract from the DCLG Commentary on the Firemen's Pension Scheme which also states the maximum service is 30 years.

This applies to all firefighters who are subject to the provisions of the statutory scheme and clearly the "sum" varies depending upon the individual personal

circumstances/pensionable pay received in relation to the firefighter concerned. The maximum of two-thirds of pay (40/60^{ths}) referred to in relation to an ordinary pension corresponds to the calculation of the injury pension payable to you.

As a further point, I am not aware that HHJ Butler "specifically excluded" any matter from your counterclaim as you suggest; as far as I am aware your counterclaim (until you withdrew it by means of your letter to the court dated 27 June 2013) remained as pleaded by you (14 April 2012). I would further deny that I or the authority have sought to introduce "this matter" (i.e. this correspondence since the trial, as to the methodology of calculation of your pension) into the Authority's application to strike out your counterclaim. Rather all the authority has sought to do was to reference subsequent correspondence between the parties, so as to assist the court in understanding the full position. It is further denied that either the Authority or myself have sought to "avoid a question in this way" as you suggest. 🗝

For the avoidance of doubt, in the context of the Authority's application regarding your counterclaim, if there are matters which I can help you to understand better in relation to how your pension entitlement is calculated, I remain willing to try to provide you with any such additional clarification that I can. However I trust you will appreciate that there are limits on the time and resources that it is reasonable for a public authority to devote to such correspondence with one individual in this way; particularly if this ultimately amounts merely to reiterating detailed explanations which have already been provided. 🗝

I hope that this explanation has been helpful in responding to your queries.

Yours sincerely



R J Warren
Director of People and Development

MAIN FEATURES OF THE FIREFIGHTERS PENSION SCHEME

The current Scheme is:

- * The Firemen's Pension Scheme 1992 which
 - consolidated the Scheme of 1973

Members

The FPS covers:

- * regular firefighters both male and female in Great Britain. (There is a similar scheme in Northern Ireland for members of the Northern Ireland Service.)

Limited benefits, in the event of injury or death on duty, are available for:

- * retained firefighters
- * members of a brigade who are not engaged on fire-fighting tasks but who are injured at a fire.

**Pensionable
pay and
service**

Contributions are paid by regular firefighters as a percentage of their pensionable pay (basic pay):

- * 11% with effect from 1 July 1991

Awards are based on:

- * pensionable pay in the last year of service, or the best year of the last 3, and
- * pensionable service which is derived from:
 - fire service,
 - a proportion of transferred-in service (pensionable service after 20 years counts double), or
 - "purchased" service.

**Pension
Awards**

Ordinary pensions of half pay (30/60ths) are paid on retirement to members who are aged 50 or over and have 25 years' service. Maximum pensions of 2/3rds pay (40/60ths) are paid after 30 years' service to members who are aged 50 or over.

Short service pensions are paid to members who reach compulsory retirement age (55 for junior ranks) before completing 25 years' service.

Ill-health pensions are paid to members who have to leave on health grounds with at least 2 years' service, or with an injury on duty. Enhanced rates apply to those with at least 5 years' service.

Lump sum payments of two years' pensionable pay are made in respect of members who die in service on or after 1 July 1991.

On death, whether in service or in retirement; there are provisions for:

- * spouses' pensions generally at the rate of half the member's pension or prospective pension,
- * allowances for dependent children, and
- * in some circumstances, allowances for dependent adults

For the first 3 months after a member's death, the family benefits are increased to equal the member's own last rate of pay or pension.