

In the matter of Paul Burns

And in the matter of the Firemen's Pension Scheme Order 1992

ADVICE

1. I have been asked to provide some initial advice concerning the level of pension to which Mr Paul Burns is entitled following his retirement from the Fire Service in 1997.
2. Mr Burns served as a fire fighter in Lancashire. I do not know precisely when he commenced service or the nature of the injury which caused him to be required to leave the service. However I understand that he was a member of the Firemen's Pension Scheme and is now entitled to a B3 and B4 pension.
3. Fire fighters who serve today are generally members of the Firefighters' Pension Scheme (England) Order 2006 ("the 2006 Order") which came into force on 25th January 2007 (but had effect from 6th April 2006). Both the employer and the employee make contributions to a pension scheme¹. As a result a pension is, in law, a form of deferred pay which is earned by a worker during the period of employment. The pension scheme creates a set of legally enforceable rights to any benefits set out in the scheme to which the worker subsequently becomes entitled. Where the pension provider is a state body the worker is entitled to require the rights to be exercised in accordance with the principles set out in Article 1 Protocol 1 of the ECHR.
4. Article 3(4) of the 2006 Order provides:

¹ Rule G2 of the 1992 scheme provided that firefighters paid 11% of their salary into the pension scheme. Hence this sum was deducted at source unless the firefighter elected not to be part of the pension scheme under rule G3 of the 1992 scheme. I understand that this does not apply in any of the relevant cases.

“The 1992 scheme shall continue to have effect in relation to a person who, immediately before 6th April 2006, was a member of it or was entitled to, or in receipt of, an award under it”

5. The reference in the 2006 Order to the “1992 scheme” is a reference to the Firemen's Pension Scheme Order 1992 (“the 1992 Order”). Mr Burns was originally awarded a pension under the 1992 Order because that was the pension scheme in force at the date that he retired from the service. It follows that, pursuant to article 3(4) of the 2006 Order, his pension entitlement continues to be calculated by reference to the 1992 Order and not the 2006 Order.
6. The 1992 Order was subject to various amendments and, for the purposes of this advice, I have worked off the 2005 version of the 1992 Order as helpfully collated in the government on line national archives².
7. The standard pension payable to firefighters who have reached the age of 50 and have 25 years service is set out at Rule B1. This pension is calculated in accordance with Part 1 of Schedule 2. It provides that a person with 35 years service shall be entitled to 40/60ths of their APP as a pension. However rule B1(1)(c) provides that a person who is entitled to an ill-health pension under rule B3 shall not be entitled to a pension under B1. .
8. There were 2 separate pension schemes for injured firefighters, and the differences reflect differing policy objectives which are common in public sector schemes. The schemes reflect the different considerations which apply to public servants who become disabled from being able to perform their duties as a result of a disability which is not related to their job and those firefighters who become disabled as a result of an injury sustained during their service. Pensions for the former group seek to provide a pension to a former firefighter at an earlier date than the person would normally be entitled to a pension where a person becomes disabled during their

² See

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/fire/pdf/319605.pdf>

working life. The disability can arise from an illness or injury of any cause but will usually be unrelated to service as a firefighter. Thus an ill-health pension seeks to provide a payment for someone where their working life (and hence the period when that person would expect to be earning a salary and contributing to a pension scheme) has been cut short for any reason unrelated to their duties as a public servant.

9. There are different policy considerations where a public servant is injured in the course of his or her duties. In such a case additional payments are made to reflect the fact that (without proof of any fault on the part of the public body) an individual has been left disabled as a result of performing his duties as a public servant. It is inevitable that police officers and firefighters put themselves in harm's way when doing their jobs. It is part of the "deal" with such public servants that, if they are injured and have to give up their job as a result, they will be paid an enhanced pension to compensate them for the loss of their ability to earn a living doing another form of work outside the fire service. Thus ill-health pensions and injury pensions provide for payments to former firefighters for significantly different purposes.

10. Rule A9 provides that a "qualifying injury" for a firefighter under the 1992 Order is:

"an injury received by a person without his own default in the execution of his duties as a regular firefighter"

11. Rule A10 refers to disablement and explains what is meant by permanent disablement. Rule A10(30) provides:

"Where it is necessary to determine the degree of a person's disablement, it shall be determined by reference to the degree to which his earning capacity has been affected as a result of a qualifying injury"

12. Accordingly (just as in the police scheme³ but in contrast for example to the scheme for members of the armed forces) an injury pension paid to an injured firefighter is

³ See for example Regulation 7(5) of the Police (Injury Benefit) Regulations 2006.

calculated by reference to the extent to which his (or her) earning capacity has been reduced as a result of the qualifying injury.

13. Rule A15 of the 1992 scheme entitled a fire and rescue authority to require a firefighter to retire from the service if the firefighter became permanently disabled. However if this power was exercised and the individual had at least 2 years reckonable service (or if the person had a qualifying injury), the individual became entitled immediately on retirement to an ill-health pension calculated in accordance with Part III of Schedule 2.
14. Rule B4 provides that a person is entitled to an injury pension under rule B4 if:
 - a. The person has retired;
 - b. The person is permanently disabled; and
 - c. The "infirmity" was caused by a qualifying injury.
15. The injury pension is calculated under Part V of Schedule 2.
16. There is a formula for the calculation of an individual's ill health pension under rule B3. However rule B3(5) provides:

"5. Where:

 - a) if the person had continued to serve until he reached normal pension 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"
17. Rule B3(6) provides that a person's notional retirement pension is to be calculated by reference to the person's actual average pensionable pay. When Mr Burns left the fire

service all firefighters were required to retire at age 55. Hence a firefighter who was not injured could continue to make contributions up to age 55 and then would be required to retire. If the firefighter joined the service at age 20 and continued to serve until the age of 55, the firefighter would have 35 years relevant service and thus would be entitled to a 40/60ths pension.

18. Rule B3(5) thus places an upper limit on the amount of an ill-health pension paid under B3 by providing that the sum paid cannot exceed the amount that an individual would have been paid if he had continued to work until aged 55 and then been entitled to a pension under B1 (calculated at his APP at the date of his actual retirement). However the limit is not the amount of the ordinary pension that the firefighter would have been entitled to receive under B1 when he actually retired but the amount that he would have been entitled if he had continued to work until his normal retirement age (which was then 55). I have not studied the commentary produced by the Home Office on the fire service pension scheme but I cannot see how the commentary could change the plain meaning of the statutory scheme. Further it would appear iniquitous for a former firefighter who became disabled as a result of circumstances that had nothing to do with his job should be paid a pension which was greater than a firefighter who completed his full 35 years service.
19. The position with injury pensions paid under rule B4 is slightly more complex. A former firefighter who is entitled to an injury pension is entitled to a gratuity and an additional pension. The amount of the pension payable under rule B4 is calculated in accordance with the table at paragraph 1 of Part V of Schedule 2. Hence, for example, a former firefighter with 25 years or more relevant service whose qualifying injury results in him losing 25% or less of his earnings capacity will be entitled to a pension of 60% of his APP for life after his retirement.
20. However a person who is entitled to a pension under B4 will almost inevitably also be entitled to an ill-health pension under B3. Whilst the pensions serve different purposes (as set out above) there are provisions to ensure that a person is not, in effect, over-compensated. Paragraph 2(1) of Part V provides:

"The amount of a person's injury pension calculated in accordance with paragraph 1 shall be reduced by three quarters of the amount of any other pension calculated by reference to pensionable service reckonable by virtue of the period of service during which he received the qualifying injury or [*provisions where an election is made not to part of the pension scheme*]"

21. Thus where a former firefighter receives a pension under B3 and B4, the pension under B3 is unaffected but the pension under B4 is reduced by 75% of the amount that the former firefighter is paid under B3. Hence, by way of example, if a former firefighter is entitled to be paid £1000 per month under Rule B3 and (without the Rule B3 pension) he would be entitled to £2000 per month under B4, he is entitled to receive £2,250 per month. This is calculated by paying him £1000 under rule B3 plus £1250 under Rule B4 (namely £2000 less 75% of his payment under B3).
22. There are also provisions in paragraph 3 of Part V which require deductions to be made from a Rule B4 injury pension for various other state provided ill-health pensions and disability benefits. The amount that the B4 pension is reduced is the full amount of any qualifying benefit at the date of the former firefighter's retirement. These are complex provisions and I can advise further on them if needed.
23. Paragraph 4 of Part V then provides:

"No payment shall be made in respect of an injury pension for any week in which the aggregate reductions under paragraphs 2 and 3 equal or exceed the amount of the pension calculated in accordance with paragraph 1"
24. It seems to me that this paragraph is strictly unnecessary but it clarifies that no injury pension is payable if the total of the deductions made due to another pension being payable to the former firefighter and the state ill-health pensions and/or benefits paid to him exceed the injury pension calculated in accordance with the table at paragraph 1.
25. I hope this helps identify whether there are grounds to challenge the amount paid to Mr Burns and others. Please come back to me if anything in this advice is unclear.

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