

Your Ref:
Our Ref: CL/BK/L008680001
Date: 15 October 2019

O'REILLY
STEWART
SOLICITORS

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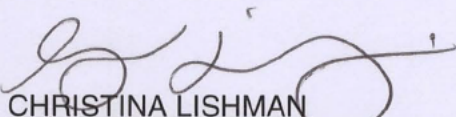
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Dear Sir

Re: You v Lancashire Combined Fire Authority

We refer to the above and herewith enclose Application to Strike Out listed on 17th October 2019 at 9.30am at the High Court of Northern Ireland by way of service upon you.

Yours faithfully
O'REILLY STEWART


CHRISTINA LISHMAN
Email: christina.lishman@oreillystewart.com

Enc

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O'Reilly Stewart Solicitors is a trading name of
O'Reilly Stewart Solicitors Limited, a company registered in
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

BETWEEN:



F [REDACTED] M [REDACTED] G [REDACTED]

Plaintiff / Appellant:

-and-

LANCASHIRE COMBINED FIRE AUTHORITY

Defendant / Respondent:

LET ALL PARTIES concerned attend before the Master in Chambers at the Royal Courts of Justice, Chichester Street, Belfast on the 17 day of Oct 2019 at 9.30 am on the hearing of an application on the part of the Defendant for the following relief:

1. An Order pursuant to Order 18 Rule 19 and/or the inherent jurisdiction of this Honourable Court striking out the purported pleading headed "*Appeal from the Decision of the County Court Division*" and dated 23 September 2019 and filed on behalf of the Plaintiff on the basis that the same discloses no reasonable cause of action, is scandalous, frivolous or vexatious and / or that it is otherwise an abuse of process.
2. Further, an Order pursuant to the aforesaid Rules and/or the inherent jurisdiction of this Honourable Court dismissing the above-entitled claim and proceedings in their entirety, or entering judgment for the Defendant.
3. Such further or other relief as this Honourable Court considers necessary and / or appropriate.
4. Costs.

Dated this 15th day of October 2019

Counsel for the Defendant / Respondent: Anna Rowan BL

Signed: O'Reilly Stewart

O'Reilly Stewart
Courtside House,
75-77 May Street,
Belfast, BT1 3JL

To: The Plaintiff / Appellant

[REDACTED]
c/o The White House
4 Bangor Road
Groomsport
Bangor, BT19 6JF

[REDACTED]

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
 QUEEN'S BENCH DIVISION

BETWEEN:

F [REDACTED] M [REDACTED] G [REDACTED]

Plaintiff / Appellant:



-and-

LANCASHIRE COMBINED FIRE AUTHORITY

Defendant / Respondent:

I, Christina Lishman, Solicitor, of Courtside House, 75-77 May Street, Belfast, BT1 3JL, make OATH and say as follows:

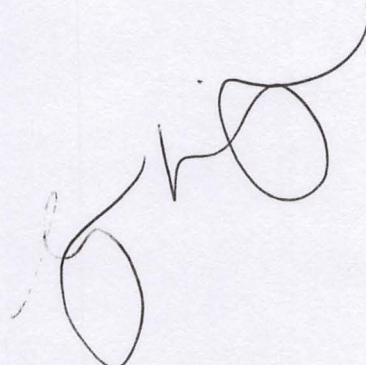
1. I am a Solicitor in the firm of O'Reilly Stewart, the solicitors representing the Defendant in the above-entitled matter. I am duly authorised by the Defendant to make this Affidavit on its behalf.
2. True copies of documents referred to within this Affidavit are exhibited in a paginated Bundle of Documents upon which marked "CL1" I have signed my name at the date of swearing hereof ("**the Bundle**").
3. On 23 September 2019, the Plaintiff issued from the Central Office of the High Court a document entitled "Appeal from the Decision of the County Court Division" and bearing the "ICOS" number 2019/89130. These are the above-entitled proceedings.
4. The document appears to be in the form of an "Appeal from the County Court" to which an Appearance is not required. Insofar as it can be understood, it appears that, from the face of the document, the Plaintiff seeks an appeal from a Pensions Ombudsman Decision in England.
5. In the first instance, I can confirm that there has been no County Court case brought by the Plaintiff that could be appealed. I would, therefore, respectfully submit that the Plaintiff's claim, insofar as it relates to an appeal from a County Court, should be regarded as vexatious and frivolous and, essentially, amounts to an abuse of the Court's process. There can be no cause of action maintained against the Defendant in this regard.
6. I would make the following further observations and respectfully submit that:
 - (a) The Plaintiff and Defendant both reside outside the jurisdiction.
 - (b) The Pensions Ombudsman's decision is an English Pensions Ombudsman's outside the jurisdiction.
 - (c) There is no connection, at all, with this jurisdiction.
 - (d) The High Court in Belfast does not have jurisdiction to hear an appeal from a Pensions Ombudsman's decision outside the jurisdiction.
7. It is difficult to discern how or why the Plaintiff has attempted to issue any proceedings in Northern Ireland. There is no connection to this jurisdiction. This appeal has been lodged in the wrong jurisdiction and in the incorrect manner.
8. By way of background, and for the sake of completeness, Lancashire Fire and Rescue Service ("LFRS") (the named Defendant is the authority made up of elected members which has oversight and ultimate control of the service) derives its authority from the Fire and Rescue Services Act 2004. By virtue of section 63, this Act applies only to England and Wales (and some parts to Scotland). This Act does not apply to Northern Ireland and the Defendant has no statutory authority to take any action in that jurisdiction. The Defendant is a territorially bound service and acts only within the borders of the county of Lancashire, England.

9. LFRS firefighters have access to a pension scheme. The scheme currently open to new members is not of relevance in this case, and the relevant scheme is one that is now closed, The Firemen's Pension Scheme Order 1992 (subject to amendments) ("the 1992 Scheme").
10. The 1992 Scheme is a final salary scheme with provision for early payment of pension to firefighters who retire early due to ill health or injury. Where that injury was received in the execution of duty, there is further provision for an injury award.
11. I am advised and verily believe that the Plaintiff in this case is and always has been a resident of Lancashire. He had been a firefighter with LFRS but retired in 1998 due to ill health and as such became entitled to payment of an ill health pension under this scheme. LFRS have always paid him this and his entitlement to this has never been in dispute. The Plaintiff's contention was that LFRS misunderstood the scheme rules and as a result calculated his pension wrongly (and underpaid him). LFRS disputed this and asserted that their interpretation of the rules was correct.
12. The Plaintiff exhausted the internal appeal channels within LFRS and then referred the matter to the Pensions Ombudsman in England. A Pensions Ombudsman Adjudicator, Mr Coutts, delivered an Opinion in this matter on 13th March 2019, which was in favour of LFRS. I refer to a true copy of that decision at **pages 1-7** of the Bundle.
13. This is not a binding opinion and if either side objects to this Opinion, the case is referred internally to a Pensions Ombudsman for a final determination. The Plaintiff did so object and the Deputy Pensions Ombudsman, Karen Johnston gave a final determination in this matter on 10 September 2019, again in favour of LFRS. I refer to a true copy of that decision at **pages 8-23** of the Bundle. It is this Pensions Ombudsman determination that the Plaintiff now seeks to appeal. He has 28 days to appeal this decision.
14. I am advised by the Defendant and verily believe that if the Plaintiff were to have lodged his appeal in the English High Court, as he must, then he must seek leave to appeal. This would involve a judge taking a preliminary view on the merits of the appeal and preventing hopeless cases from proceeding. Whilst it is not possible to say the Plaintiff's motives for issuing in Northern Ireland, perhaps the Plaintiff was of the view that issuing in a different jurisdiction would circumvent this check.
15. In any event, and aside from the lack of connection of both parties to the jurisdiction, and the lack of a County Court decision from which the Plaintiff can appeal, the High Court in Northern Ireland does not have jurisdiction to hear this appeal for the following reasons.
16. The LFRS is an English public body with no powers or duties in respect of Northern Ireland. In addition, the 1992 Scheme applies only to England and Wales. The right to appeal the decision of the Pensions Ombudsman is set out in statute. The notice of appeal does not cite any legal authority but the two statutes to consider are The Pensions Scheme Act 1993 ("PSA") and The Pensions Schemes Act (Northern Ireland) 1993 ("PSNIA"). The names themselves indicate that these are two separate regimes, but more specifically, section 192 of the PSA explicitly states that this Act does not apply to Northern Ireland (save for some specific provisions), and correspondingly, section 186 PSNIA states that that Act extends to Northern Ireland only. Both statutes have provision to appeal a Pensions Ombudsman's determination (sections 151 and 147 respectively).
17. The Pensions Ombudsman's Office does adjudicate on cases both from England and Northern Ireland, but their power to do so comes from the respective statutes in each jurisdiction. An English case cannot equally be litigated through the courts in either jurisdiction at the whim of the appellant. Section 151(4) PSA states that an appeal lies to the High Court (in England, as this Act does not apply to NI). Section 147(4) PSNIA states that an appeal lies to the Court of Appeal. As a subsidiary point, therefore, the Plaintiff (even if a decision existed in Northern Ireland, which it does not) would have submitted his appeal to the wrong court.
18. The Courts in Northern Ireland do not have jurisdiction over this matter. They would be passing a binding judgment on statutory provisions which apply only to England and do not apply to Northern Ireland. Moreover it would circumvent a provision which was brought in specifically to

ensure that appeals from the Pensions Ombudsman were the subject of leave to appeal - in order to 'weed out' weak cases (CPR rule 52.29).

19. Lastly, the Defendant notes that a "Mr Burns" is purportedly involved in this case, and his name features on the papers. For the avoidance of doubt, the Defendant does not accept that Mr Burns has any status to act in this litigation on the Plaintiff's behalf. The alleged form of authority is void. In any event, I will leave further submissions in this regard to Counsel at the hearing of the matter.
20. Accordingly, I would respectfully submit that the Plaintiff's claim is frivolous, vexatious and amounts to an abuse of the Court's process. Further, and by reason of the facts and matters aforesaid, it is respectfully submitted that the entirety of the Plaintiff's claim should be dismissed for the reasons set forth, and because it does not disclose a reasonable cause of action.
21. It is respectfully submitted that the Defendant is entitled to the relief sought within this application.

SAVE as where otherwise appears I depose to the foregoing from facts and matters within my own personal knowledge.



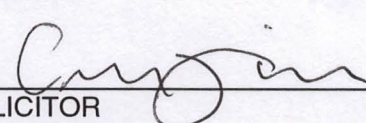
SWORN by the said CHRISTINA LISHMAN

at Victoria Street, Belfast

in the City of Belfast

this 14 day of October 20 19

before me

" 
SOLICITOR

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

BETWEEN:

F [REDACTED] M [REDACTED] G [REDACTED]

Plaintiff / Appellant:

-and-

LANCASHIRE COMBINED FIRE AUTHORITY

Defendant / Respondent:

This is the Exhibit marked "CL1" referred to in the Affidavit of CHRISTINA LISHMAN sworn before me this 14
day of October 2019

