



Mr Paul Burns  
4 Bangor Road  
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Ireland BT19 6JF

Our Ref: PO-19150

10 September 2019

Dear Mr Burns

### **Firefighters Pension Scheme**

The investigation has now been completed and I enclose the Deputy Pensions Ombudsman's final Determination of the complaint. It is also being sent to LFRS.

The Determination is final and binding on all parties, subject only to an appeal on a point of law. In England and Wales, appeal is to the Chancery Division of the High Court, in Northern Ireland to the Court of Appeal and in Scotland to the Court of Session. The courts have quite short time limits within which appeals must usually be set in motion so you should take advice quickly if you are considering an appeal.

Please note that all appeals against determinations or directions of the Ombudsman filed on or after 6 April 2014 require the permission of the High Court. This requirement does not at present affect appeals in Northern Ireland or Scotland.

The enclosed information sheet contains further details on appeals, including time limits, and enforcement.

Yours sincerely

**Thomas Coutts**  
Senior Adjudicator

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8. Having applied the formulas in Mr N's circumstances, LFRS concluded that Mr N was entitled to the notional pension calculated following B3(5), using Mr N's average pensionable pay at the point he left service.
9. On 23 January 2015, a determination addressing the correct interpretation of B3(5) was issued by my predecessor. That case was not upheld, and the previous Ombudsman explained why B3(5) ought not to be interpreted in the way that Mr N believes it should be. The Applicant in that case is representing Mr N here.
10. In 2016, Mr N considered the pension he was receiving and took the view that it was being incorrectly paid.
11. Mr N's position is that since 1998, his pension has been paid on the basis of a B1 Ordinary Pension, as opposed to the B3 Ill Health Pension he is entitled to. Mr N highlights that if an individual is entitled to a B3 Ill Health pension, as he is, they are prohibited from receiving a B1 Ordinary pension. Specifically Part B (B1) of the Order states:

"B1 Ordinary pension

(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—

...

(c) does not become entitled to an ill-health award under rule B3."
12. Mr N considers that the pension must be recalculated, using the correct interpretation of B3(5), which should use an average pensionable pay figure that reflects what he could have earned at the point of compulsory retirement had he not been injured. This should take account of the likely pay increases or promotions he would have earned.
13. The complaint was considered by LFRS under the internal dispute resolution procedure but not upheld. LFRS was satisfied that Mr N is being paid the correct pension. Subsequently, Mr N referred the matter to us.

## Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by LFRS. The Adjudicator's findings are summarised below:-
  - It is not disputed that Mr N is entitled to a B3 Ill Health pension. In calculating that pension, LFRS had correctly compared the result of the B3(4) formula against the notional pension calculated under B3(5). In Mr N's case, because the B3(4) pension exceeded the B3(5) pension, it was the pension calculated under B3(5) that was put into payment. The Adjudicator considered this was the correct approach to Mr N's circumstances.

- Whilst the B3(5) notional pension is calculated following the formula for a B1 Ordinary Pension, and the outcome was equivalent, Mr N was still being paid a B3 Ill Health pension and this was not contrary to B1(1)(c) (set out in paragraph 11 above).
  - Although B3(5) capped Mr N's pension at the same level as the B1 Ordinary Pension, he is receiving a pension under the B3 Ill Health rule, not the B1 Ordinary Pension rule.
  - The Adjudicator considered that the intention of this was to cap the pension payable so that it would not exceed the amount paid had the member retired under ordinary circumstances. This reflects the fact there is an Ill Health Gratuity payable and scope for payment of an Injury Award Gratuity and Pension, dependent on how the ill health came about.
  - The Adjudicator concluded that the range of awards provided by the Order account for the potential loss of future earnings and future earnings growth that Mr N suggests should be paid under his interpretation of B3(5). In the Adjudicator's opinion, it did not appear appropriate that these awards would be payable in addition to the enhanced B3 Ill Health pension that Mr N believes should be paid.
  - The argument that an allowance should be made for lost future increases in salary from promotions or the relevant pay scale, by applying an increase to the average pensionable pay, was already addressed by the Ombudsman under a previous determination, which the Adjudicator understood Mr N had seen. That determination concluded that the notional retirement pension was based on actual average pensionable pay rather than Mr N's suggested forecasted increased average pensionable pay. The Adjudicator saw no reason to reach a different view in this case.
  - The Adjudicator suggested that the use of "actual" in B3(5) was intended to distinguish between the notional (remaining years until compulsory retirement) and "actual" (the actual average pensionable pay) elements of that formula.
15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion.

**Submissions made by Mr N and his representatives**

16. Mr N's barrister has said, in summary: -
- LFRS has attempted to defraud firefighters who were retired on the basis of ill health.
  - The affected members have been callously deprived of their rights, which could lead to criminal prosecutions.

- To minimise costs the matter has been reviewed by an Adjudicator who is an unqualified layman. This has resulted in the use of subjective common sense as opposed to the law. The attempts to avoid the cost associated with legal advice is a criminal enterprise.
- The Pensions Ombudsman has a personal duty to avoid malfeasance by his staff, and ensure the service applies the law in an unbiased and fair way.
- The determination on similar issues made by the previous Ombudsman was a misdirection without application of the law, “pursued on a whim under perceived immunity from redress at the hands of an elderly, long deprived firefighter pensioner layman, with no legal aid”. The Ombudsman should redetermine that case and offer to pay costs should this case be appealed. To not do so would deny justice without redress.
- By allowing the Adjudicator to adjudicate, the Ombudsman has breached the Pensions Act 1993 (section 145 (4C)), which allows it to delegate any function ‘other than determination’.
- The Adjudicator and the Ombudsman that determined the earlier case were required to inform themselves as to how to interpret the law. If not from a lawyer, then from the Commentary, designed to assist non-lawyers.
- The Commentary explains in relation to Rule B3 that the calculation requires reference to what the member “...could have earned until required to retire by reason of age”. This is an interpretation of the Order.
- The Order excludes a Rule B3 pension to someone retiring early or of their own volition, whose entitlement is a Rule B1 pension, with no liability for future loss. But Rule B3 specifically compensates for future financial loss due to early retirement on the basis of ill health.
- The Adjudicator considers there is no allowance for loss of future earnings, and the possible B3 pension is capped at the level of a B1 Ordinary pension. This means that an individual entitled to a B3 pension will never receive anything other than a B1 Ordinary pension, but that renders the B3 formula redundant, and the Adjudicator’s opinion is therefore absurd.
- The language of Rule B3 is plain. A in the formula “is” the actual pensionable pay [APP], whereas the notional pension set out in Rule B3(5)(2) is “by reference to” APP.
- The term “by reference to” is not the same as “is”. If the legislation had meant to refer to actual pensionable pay it would have said so. As it does not, “by reference to” must be distinguished from “is”.
- The legislation does not require speculation on future earnings. If the Rule is followed, you “arrive at a notional pension ‘by reference to’ the current APP. That

does not mean to calculate on the retiree's current APP, as for a current Rule B1, but on applying the meaning of 'by reference to' (Courts tend to rely on the SOED), the calculation of the notional pension come to be on an APP taken from the current pay scale, within which the retirees current APP is to be found, no less that are the APPs being paid at the time, from trainee to Chief Fire Officer."[sic]

- The notional pension should be calculated on the present rank and seniority that could have been achieved had they served until compulsory retirement, but for the curtailment of their career due to injury.
- The correct interpretation can be demonstrated by looking at the possible pensions available to firemen at retirement and a series of hypothetical calculations were provided to support this.
- "Calculation of a notional pension requires a consideration by the Chief Fire Officer, or his delegate, to decide, not on probability but more generously, on what 'could' that fireman's career have achieved, but for being cut short."
- The Chief Fire Office, with the member's consent, would have scope to allow a notional pension based on the firefighter reaching the top of their pay scale with maximum service, or taking account of a possible promotion. Both scenarios would result in a higher notional pension than allowed for under the Adjudicator's interpretation.
- Rule I4(3) specifies that where two sums appear to be payable "the one to be paid is the largest of them."
- This interpretation limits the pension "to the most an injured fireman could have earned but for injury, but it also ensures that he/she gets no less: so no high flyer, cut down in mid-flight, is denied full compensation for loss of future earnings of a glittering career, lost to them on being required to retire early on ill health, injured in our service."
- The intention of the Scheme being designed in this way was to save the Government from the legal costs that could arise from Firefighter's seeking damages through the courts. In exchange for this, the ill health provisions would accept liability in all but rare cases and in additional pension being paid in lieu of damages. It is these damages, ordinarily awardable under common law, that have been denied to Mr N when the Adjudicator's interpretation is applied.
- It is not for the Adjudicator or Ombudsman to conclude that the legislation has become too generous because of compensation from other provisions.
- The Adjudicator reached their view knowing the impossibility for many, due to age, infirmity or poverty, to appeal the opinion in the High Court. This was perhaps to avoid embarrassment, enquiry and expense for the pension fund, and such motivation could warrant the award of aggravated damages.

- The previous Ombudsman and the Adjudicator's failure to apply the law, instead applying their personal opinion, is arbitrary and oppressive, and this again could attract punitive or exemplary damages, as per *Rookes v Barnard*.
- It is unlawful for the Ombudsman to use an arbitrary interest rate "since the rate is well established where public money is withheld to the damage of the individual."
- Unless an authoritative argument can be made that "is" and "by reference to" are intended to mean the same in the legislation, then the Adjudicator's opinion is arbitrary and fraudulent.
- The failure to uphold the case will mean the Ombudsman has adopted an illegal stance and, is "acting dishonestly in public service and engaging in a conspiracy to defraud men and women injured in our service and are in most serious breach of public trust, and you [the Ombudsman] will have institutionalised the criminality."

17. Mr N has said, in summary:-

- The Adjudicator has failed to demonstrate an ability to read and understand the nuanced complexities ("known as 'art' by barristers") of the relevant legislation of his complaint.
- The Adjudicator failed to seek legal advice on the complaint despite it being available to him and that he was faced with two Barristers' opinions in relation to the matters complained of.
- The Rules, B3 and B4 are compensatory packages to compensate for early loss of his career and the promotion and pay he "could", as referred to in the Commentary, have achieved. This is no less than the damages that would have been awarded by a Court.
- The Adjudicator's interpretation of the legislation is "reducing the relevant law to the level of incomprehensible absurdity."
- The Adjudicator describes his B3 Ill Health Pension as "effectively a B1 Pension", however this is nonsense and cannot possibly be. If a B1 pension "fits all" what is the point of Rule B3 and why did the Adjudicator not pick up on this contradiction in his interpretation.
- The Adjudicator is complicit with LFRS, and uses "faux judicial speak", when saying "this means that Mr N is still being paid a B3 Ill-Health Pension, albeit it is equivalent to the B1 Ordinary Pension." This is "tripe", "egregious nonsense".
- The Adjudicator's opinion is sparse, a whitewash, worthless in law and fails to understand the Order and the Guidance that accompanies it.
- The Adjudicator's opinion that he is entitled to a B3 Pension, but is in fact receiving a B1 Ordinary pension, is oxymoronic.

- The Adjudicator has regurgitated LFRS' interpretation of the Order, despite LFRS' historic inability to properly do so.
- The Order sets out the necessary formula to calculate the various awards due to retiring firefighters. They are simple. Under the formula, the B3 yield will always be greater than a Rule B1 Ordinary Pension, and if there is any doubt, Rule L4 (3) directs that the higher be paid.
- This confirms the mathematical logic, the compensating factors involved, and the statute's construction.
- The Rule B4 Injury Pension is a data by-product of Rule B3.
- The Adjudicator has failed to engage with the 57 page legally detailed submission, including two eminent Barristers' opinions, and has simply concluded "I do not agree".
- The Adjudicator made no reference to the Commentary, which was written for the benefit of laypeople such as he.
- The Adjudicator referred Mr N to an earlier determination, which Mr N was aware of, but had not seen. That determination did not address the same matters as this case, although it was similar, and that determination has never been published by the Ombudsman.
- Mr N's representative, the applicant in the previous case, has now shared the previous determination with Mr N, although the Adjudicator ought to have done so when issuing the opinion.
- The earlier determination relied upon by the Adjudicator, refers to the incorrect version of the Commentary. That version is irrelevant to Mr N's complaint. This error arose because LFRS, in the previous case, deliberately provided an incorrect version.
- LFRS has been criminally fraudulent in its handling of ill health pensions.
- The Adjudicator, encouraged by LFRS, failed to adequately investigate the matter, and made the facts fit his assumptions, ignoring the law when it suited.
- Mr N reiterated the questions of his complaint:

"Why am I being paid a basic Rule B1 Ordinary pension which is the correct payment I would have been entitled to had I retired by voluntary choice, or having completed my service uninjured?"

I did *not* retire voluntarily; *nor did I complete my Service* by reason of a no-fault Service 'qualifying' injury which led to my compulsory discharge.



Furthermore Statutory Instrument No:129 Rule B1.-(I); paragraph (c), *effectively prohibits* the payment of a Rule B1 Ordinary Pension to an employee who...

*“does not become entitled to an ill-health award under rule B3.”...*

In plain English, a Rule B1 Ordinary pension is paid unless the payee (myself) becomes ‘*entitled*’, as I am, to a rule B3 ill-health pension, by reason of a decision of the Lancashire Combined Fire Authority.

The LCFB (progenitors) of the LCFA, in accepting legal liability for my in- Service no-fault qualifying injury, stated that they compulsorily medically discharged me under Rule B3, an Ill-Health pension, and as a legal consequence, a Rule B4 Injury Award.

My entitlement to a Rule B3 pension is not disputed by the LCFA nor the TPO.” [original emphasis retained]

18. Mr N has a second representative who submitted an Appendix to Mr N’s submission. Whilst I have read the Appendix, as it involves matters wider than the complaint in front of me, I will not summarise it here or comment on it in my decision.

### **Ombudsman’s decision**

19. It is open to the parties to accept or not accept the Opinion of an Adjudicator. In this case the complainant did not accept the Adjudicator’s Opinion and, as is usual, the case has therefore been referred to me to make a binding determination. I have reached my determination independently of the Adjudicator’s Opinion after consideration of the relevant legal provisions.
20. Mr N contends that the correct interpretation of the Scheme Rules requires LFRS to use an average pensionable pay in the calculation of his pension that would have been payable had he continued in service until his normal retirement, taking account of any promotions or pay increases he could have been entitled to. I do not agree with this interpretation of the Scheme Rules for the reasons set out below.
21. The pension payable under Rule B3 is calculated by applying a formula set out in Paragraphs 2 - 4 of Part III. Each of those calculations requires an input ‘A’. A is defined as ‘the person’s average pensionable pay.’
22. Paragraph 5(1) then creates a cap on the amount of ill health pension payable if it exceeds the ‘notional retirement pension’ which could have been earned if the firefighter had stayed in employment until retirement age:-

Paragraph 5(2) stipulates that “the notional retirement pension is to be calculated by reference to the person’s actual average pensionable pay.”

23. The actual average pensionable pay of the member is defined in Rule G1 (see Appendix 1), which states:-  

“(3) The average pensionable pay of a regular firefighter is, subject to paragraphs (5) to (7), the aggregate of his pensionable pay during the year ending with the relevant date.”
24. For the purposes of Rule B4 (injury award) the relevant date is defined as the date of the person's last day of service as a regular firefighter.
25. The statute is perfectly clear in requiring use of the actual average pensionable pay as at the last day of service. If the intention was to use an alternative average pensionable pay as at a point in the future when the member's salary might have increased, then I consider Part III 5(2) would have stated that and explained the process of determining it.
26. It does not do so and I conclude that LFRS has correctly interpreted the provision.
27. Mr N and his representative have highlighted the Commentary to support their interpretation. The Commentary was not commented on by the Adjudicator, but I will address it here.
28. The Commentary cannot insert meaning into the Order. Therefore, even if the Commentary supported Mr N's position, in contrast to the content of the Order, it would not supersede it. In any event, I do not agree that the Commentary supports Mr N's argument.
29. The sentences intended to be relied upon by Mr N can be found in the passages of the Commentary set out in Appendix 2, and specifically, the wording: -  

“...or what could have been earned by compulsory retirement age.  
...  
or what you could have earned by your compulsory retirement age.”
30. Mr N's position is that this relates to establishing the average pensionable pay required for the notional retirement pension, and that the calculation should take account of the unknown factor of what the individual's pensionable pay could have been at compulsory retirement age. He suggests that figure should be determined by the Chief Fire Officer based on what they think the likely salary could have been at the point of compulsory retirement. However, that interpretation implies a level of guesswork and forecasting that simply is not reflected in the methodology prescribed by the Order or illustrated in the Commentary.
31. Read in the context in which they are used in the Commentary, those two instances of “what could have been earned by compulsory retirement age” are references to the number of years of service, not the average pensionable pay. In both cases, the calculation described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.

32. This position is supported by Example 7 set out within the Commentary (see Appendix 2 below). If that example is worked through, it shows that an individual who meets the criteria for a B3(4) pension should be paid a pension equivalent to the Ordinary B1 Pension, which is the approach LFRS has applied. Example 7 provides no allowance for a higher, assumed, average pensionable pay. If the Commentary intended to explain Part III 5(2) in the way Mr N asserts it does, I can see no reason for Example 7 to contain the variables or have the outcome that it does.
33. Based on the above, I find that the Commentary does not support Mr N's interpretation.
34. Mr N has also argued that his pension calculation is incompatible with Rule B1(1)(c) which states: -
- “(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—
- ...
- (c) does not become entitled to an ill-health award under rule B3.”
35. I do not consider that this argument takes the issues any further because Mr N is not being paid a B1 Ordinary Pension. The pension he is in receipt of may be the same level as he would have received under a B1 Ordinary Pension, but it has been calculated as an entitlement under the B3 Ill Health provisions. In Mr N's circumstances Part III 5(2) restricts his ill health pension to the level of the B1 Ordinary Pension, but that does not mean it is being paid under the B1 Ordinary Pension rule.
36. On the point Mr N has made, about the intention of injured firefighters to be compensated in these circumstances in lieu of damages that might have been paid if the matter was taken to court, I can see nothing in the legislation as drafted that is unclear on its face. I can see no reason to force its natural reading to give effect to the policy as Mr N believes it to have been.
37. Mr N has accused LFRS of defrauding the Scheme's members of their rightful entitlement and implied that for me to not uphold the complaint would be illegal and in doing so I would be complicit with LFRS' alleged criminality. For the avoidance of doubt, I find that LFRS has paid Mr N the correct pension and I have seen no evidence of fraud.
38. Turning to the other points which Mr N's barrister has raised. I am not bound by the determination of my predecessor, but I cannot reopen it either. If Mr N wishes to appeal this determination he is rightfully entitled to do so, but I see no reason for my Office to pay the cost of it.

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39. Therefore, I do not uphold Mr N's complaint.

A handwritten signature in blue ink that reads "K. Johnston". The signature is written in a cursive style with a large initial 'K' and a long, sweeping tail for the 'n'.

**Karen Johnston**

Deputy Pensions Ombudsman  
10 September 2019

## Appendix

### Appendix 1

#### The Firemen's Pension Scheme Order 1992

##### Part B

###### B1 Ordinary pension

- (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.

...

###### B3 Ill health awards

- (1) This rule applies to a regular firefighter who retires by reason of permanent disablement unless, immediately before his retirement, an election under rule G3(1) not to pay pension contributions had effect.
- (2) A regular firefighter who is entitled—
  - (a) to reckon at least two years but less than five years pensionable service becomes entitled on retiring to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2; or
  - (b) to reckon at least five years' pensionable service becomes entitled on retiring—
    - (i) where paragraph (3) applies, to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2, or
    - (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5) ("the higher tier ill-health award").
- (3) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is capable of undertaking regular employment.
- (4) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is incapable of undertaking regular employment.
- (5) The pensions are—

(a) a lower tier ill-health pension calculated in accordance with paragraph 2 of Part III of Schedule 2; and

(b) a higher tier ill-health pension determined in accordance with paragraph 4 of that Part.

(6) A firefighter who is not entitled to a pension under paragraph (2), becomes entitled on retiring to a short service lump sum of an amount equal to the aggregate of his pension contributions.

(7) In paragraphs (3) and (4) "regular employment" means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the question of his disablement arises for decision.

## Schedule 2 Personal Awards

### Part III Ill-Health Pension

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—

$$\frac{A \times B}{60}$$

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—

$$\frac{2 \times A \times C}{60}$$

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—

$$\frac{20 \times A}{60}$$

and

$$\frac{7 \times A}{60} + \frac{A \times D}{60} + \frac{2 \times A \times E}{60}$$

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.

**Appendix 2**

**Commentary on the Firefighters' Pension Scheme (as amended at May 2003)**

“How much is the pension?

The sums are set out in Examples 1 and 4 to 7. The basis of the calculations is explained here. A firefighter's basic ill-health pension is never less than 1/60th of average pensionable pay (APP) and never more than 40/60ths (2/3rds) of APP, or what could have been earned by compulsory retirement age.

...

Your basic ill-health pension is:

Length of pensionable service (1)	No of 60ths of APP counting for pension (2)
less than 5 years	1 for each year (but never less than 1/60th)
5 - 10 years	2 for each year
10 - 13 years	20
more than 13 years	7 and 1 for each year up to 20 and 2 for each year over 20

(1) each day counts as 1/365<sup>th</sup> of a year even in a leap year.

(2) never more than 40/60ths of APP, or what you could have earned by your compulsory retirement age.”



**Commentary on the Firefighters' Pension Scheme (as amended at May 2003)**

Example 7

**FIREFIGHTER'S ILL-HEALTH AWARD - PENSION**

Example  
7

The firefighter retires on grounds of ill-health after 27 years' 166 days service, aged 54 (ninety seven days short of age limit).

Pensionable service: 27 years 166 days  
 Service after 20 years counts double  
 (ie add 7 years 166 days):  
 34 years 332 days (34.9096 years)  
 Equivalent to 34.9096/60ths  
Average pensionable pay: £15124

The pensionable service is enhanced by 7/60ths ("ill-health enhancement") subject to it not exceeding what he would have reckoned by the age of compulsory retirement (55) or 40/60ths in total.

Pensionable service at age limit: 27 years 263 days  
 Service after 20 years counts double  
 (ie add 7 years 263 days)  
 35 years 161 days (35.4411 years)  
 Equivalent to 35.4411/60ths

<u>Gross ordinary pension at age limit:</u>	
$\frac{35.4411}{60} \times \text{£}15124 =$	£8933.52
<u>Gross ill-health pension:</u> £8933.52	
<u>Commutation:</u>	
He commutes 1/4 of his gross pension:	
$\frac{\text{£}8933.52}{4}$	= £2233.38
<u>Lump sum:</u>	
At age 54 he receives £1390 for each £100 of pension commuted:	
$\frac{\text{£}2233.38}{100} \times 1390$	= £31043.98
<u>Pension payable:</u>	
$\text{£}8933.52 - \text{£}2233.38$	= £6700.14 a year

⊙ A firefighter retiring on ill-health grounds will qualify immediately for Pensions Increase.

## Determination by the Ombudsman

A final and binding Determination has been issued by the Ombudsman. In this factsheet we explain about:

- Publication of the Determination
- Complying with the directions in the Determination
- Payment of interest
- What you can do if the Ombudsman has not decided in your favour
- Appealing the Determination

### Publication of the Determination

Ombudsman Determinations are published on our website and are generally anonymised and have the name of the person making the complaint as well as any other identifying personal data removed – unless such data is essential for understanding the decision or there is another reason why we consider it is appropriate to publish it.

If we are considering not anonymising a decision, or we are asked to do so by a party, we will ask you and the other parties involved in the case for their comments. However, ultimately, it will be a matter for the Ombudsman to decide on a case-by-case basis.

If you have any issues with this please contact the Adjudicator assigned to your case.

### Complying with directions

If the Ombudsman has upheld the complaint the Determination will probably include directions against one or more parties, saying what steps they must take to put matters right. They now have to comply with those directions unless they:

- successfully appeal against the Determination; or
- pending an appeal hearing, apply for the Determination to be stayed by the Court (in Scotland the equivalent term is *sisted*), which effectively means that it is put on hold.

If there is an appeal by another party you will know because you will be served with Notice of Appeal.

Directions made by the Ombudsman can be enforced against a person who has failed to comply with them. Where to take enforcement action is generally as follows:

- in England and Wales, in a County Court - the appropriate one being the nearest to the party that has not complied;
- in Northern Ireland, through either the Enforcement of Judgments Office or the County Court depending on the nature of the Ombudsman's directions to be enforced;
- in Scotland, through the Sheriff Officer.

If you think enforcement action is necessary you will need to take the necessary steps yourself. You should contact the investigator in the Ombudsman's office who handled your case for more information.

## If the Ombudsman has not decided in your favour

Because the Determination is final and binding the Ombudsman cannot change it, except for minor errors (such as typing mistakes). There is no point in writing to the Ombudsman further at this stage to ask for the decision to be changed. If you want it changed you must appeal to the appropriate court. You can only appeal on a point of law. If you propose to appeal you may want to consult a solicitor or talk to your local Citizens' Advice Bureau or law centre.

## About Appeals

Appeals are to the Chancery Division of the High Court in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

The Ombudsman has directed for England and Wales that the person wishing to appeal must lodge the appeal within 28 days after the date of an Ombudsman determination. Different time limits apply in Scotland and in Northern Ireland and local advice should be taken.

In England and Wales, appeals require the permission of the High Court. This means that an appellant will need to satisfy the Court that the appeal has a real prospect of success or that there is some other compelling reason why it should be heard. The Appellant's Notice Form (N161) contains a section which deals with permission to appeal. There is no similar requirement at present for appeals in Scotland or Northern Ireland.

If you appeal the Ombudsman should not be listed as a respondent in the Notice of Appeal<sup>1</sup>. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman<sup>2</sup>. However, you **must** send the Ombudsman a copy of the Notice of Appeal<sup>3</sup>. Failure to send the Ombudsman a copy of the Notice of Appeal may have adverse financial implications for you. The High Court suggests that where the appellant is an unrepresented individual, the respondent should also take it upon themselves to confirm that the Ombudsman has been served with the Notice of Appeal. Occasionally the Ombudsman may decide to be represented at the appeal (although the Ombudsman will only take this decision after receipt of the Notice of Appeal). For example if, in the Ombudsman's opinion, being represented would assist the Court to come to the right decision, or if the outcome of the appeal might affect how the Ombudsman's powers can be exercised. If the Ombudsman is represented, it will be for this purpose, not to support either side.

If you appeal and the Court decides that the Ombudsman's decision should be upheld then it is expected that the normal principle will apply, which is that you, as the unsuccessful party, should pay the costs of the successful party.

If an appeal is lodged against you, you will be served with Notice of Appeal. You will then have to decide whether you wish to be represented (or appear in person) at the appeal. If you are represented (or appear), and the Court decides that the Ombudsman's decision should be changed, then you may have to pay some or all of the costs of the appeal. If you decide **not** to be represented (or appear) it is **not expected** that you would be required to pay any of the costs.

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<sup>1</sup> Unless appeal lodged in Scotland or Northern Ireland and by way of case stated

<sup>2</sup> Moore's (Wallisdown) Ltd v Pensions Ombudsman and others [2001] All ER 299 at paras 71-82; [2002] Pensions LR 73 at paras 75-77

<sup>3</sup> Practice Direction 52D, paragraph 3.4 (which relates to Civil Procedure Rule 52.4(3))

It may also be possible for you to apply to the court to have costs recovery limited in the appeal.<sup>4</sup>

## Further Information

Further useful information can be found as follows:

- The Handbook for Litigants in Person. This is produced by the Judiciary and can be found at [www.judiciary.gov.uk](http://www.judiciary.gov.uk).
- The Community Legal Service Directory which can be found at [www.clsdirect.org.uk](http://www.clsdirect.org.uk)
- [www.justice.gov.uk/about/hmcourts](http://www.justice.gov.uk/about/hmcourts)
- [www.gov.uk/government/organisations/hm-courts-and-tribunals-service](http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service)
- <http://scotland-judiciary.org.uk/16/0/Court-Structure>
- [www.courtsni.gov.uk](http://www.courtsni.gov.uk)

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<sup>4</sup> Under 52.9A of the Civil Procedure Rules (orders to limit the recoverable costs of an appeal)