

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

**O'REILLY
STEWART**
SOLICITORS

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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 Limited, a company registered in
Northern Ireland at the above address (Company Number NI 631898)

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:

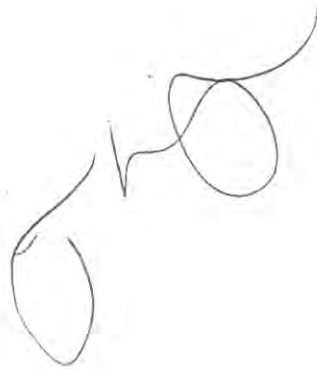
1. I am a Solicitor in the firm of O'Reilly Stewart, the solicitors representing the Defendant in the above-entitled matter. I am duly authorised by the Defendant to make this Affidavit on its behalf.
2. True copies of documents referred to within this Affidavit are exhibited in a paginated Bundle of 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.



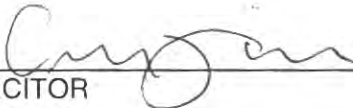
SWORN by the said CHRISTINA LISHMAN

at Victoria Street, Belfast

in the City of Belfast

this 14 day of October 2019

before me

" 
SOLICITOR

This Affidavit is filed on behalf of the Defendant / Respondent by O'Reilly Stewart, Solicitors of Courtside House, 75-77, May Street, BT1 3JL (028 9032 1000).

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

BETWEEN:

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

Plaintiff / Appellant:

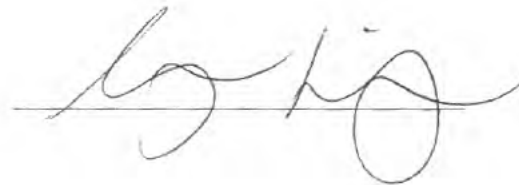
-and-

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





In the Royal Courts of Justice
Northern Ireland

Queens Bench Division
Plaint 2019 No.89130

Between: F [REDACTED] M [REDACTED] G [REDACTED]
~ v ~
[REDACTED] Lancashire Combined Fire Authority

Appellant

Respondent



Reply to the Respondent's Application on Jurisdiction and to Strike Out the Appeal.

I, F [REDACTED] M [REDACTED] G [REDACTED] c/o 'The White House', 4 Bangor Road, Groomsport, Bangor, BT19 6JF
and [REDACTED], upon my oath, say as
follows in reply to the Affidavit of Ms.Christina Lishman, solicitor 75 - 77 May Street, Belfast BT1
3JL.

In Application:

1. Order 8 of The Rules of the Court of Judicature (Northern Ireland) provides at Rule 2 (2) "Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion".
2. The Respondent, by way of first appearance to proceedings (23 days later), listed to be heard at 09.30hrs on Thursday 17th October 2019, served notice of its motion to strike the Appellant's Appeal out as vexatious or frivolous by 1st class post at 15.30hrs on Wednesday 16th October 2019.
3. The Respondent not having sought leave to serve is out of time; the Appellant asks the Court to strike out the Respondent's motion, as out of time.
4. In addition, since the intended motion makes no attempt to address the point of law(Bundle Page No:002-004A) at issue on my Appeal, that the Respondent's motion be struck out as frivolous and vexatious.
5. The Appellant asks for costs.

In Reply:

6. I have duly appointed Mr.Paul P. Burns (Bundle Page No:007) to act for me in so far as he can. He is a much respected retired senior ranking Fire Officer who, for no reward, has long been assisting me and others compulsorily retired on account of ill-health and injury.
7. At my decision he has helped me for the last 7 or 8 years through difficulty and obstruction in this matter, through to the lodgment of my Appeal from the Pensions Ombudsman's 'Determination', in The Royal Courts of Justice for Northern Ireland. The Pensions Ombudsman accepts and writes direct to Mr Burns on my behalf (Bundle Page No:110).
8. The Honourable Court has instructed me to attend a hearing on 6th November which I gladly do, but I would be grateful if the Honourable Court would also accord Mr.Burns the most helpful status which he is granted under Order 5, Rule 6, by continuing to act for me in my absence.

9. My Appeal was filed in this Honourable Court after the Ombudsman wrote to Mr. Burns (Bundle Page No:128) offering alternative Appeal Courts including The Court of Appeal in Northern Ireland; an offer which I accepted.

10. Since an Appeal on a point of law has no witnesses, but might require procedural attendances, filing in Belfast (Order 5, Rule 4,(2)(a), et al) is convenient to Mr. Burns for that purpose. I also accepted, to avoid delay in England, which requires the need to seek "Leave to Appeal"; this also avoids the penalty of burdensome additional costs to file an Appeal there.

11. In addition, I did not wish this to be heard locally where LCFA is part of the Local Authority and where my Pension Complaint from beginning to end has been the subject of offensive continuous obfuscation and human rights abuses.

12. The Respondent takes issue with my Appeal being shown to be an "Appeal from the County Court". I know Mr. Burns sought advice from Central Office who could not have been more helpful, but if I, or he on my behalf, are in error I apologise and ask the Honourable Court to exercise its powers in equity and deem what is done as sufficient, in that the Respondent is in no manner disadvantaged by any such error.

13. At Paragraphs 6 and 7 of the Affidavit the Respondent denies the Court jurisdiction though CPR 4 (1) (b) provides, "Where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction, or if he has no place of residence, the address of a place extended; and within the jurisdiction at or to which documents for him may be delivered or sent"; under EU law litigants-in-person may have a choice of venue.

14. Pursuant to the Civil Jurisdiction and Judgement Act 1982, Schedule 1, Sec 6. Art 17,

"If the parties, one or more of whom is domiciled in a Contracting State (UK), have agreed that a court , or the courts of a Contracting State, are to have jurisdiction to settle any disputes which have arisen, or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either—

"in writing, or evidenced in writing, or", [+ alternative provision] and, "Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction."

15. The Rules of the Court of Judicature (Northern Ireland) 1980 recognises the Tribunal of the Pension Ombudsman listed in the 'The Tribunals and Inquiries Act 1992' mentioned under F65(e) the Pensions Ombudsman established under [F66 Part X of the Pension Schemes Act 1993] in respect of his functions under or by virtue of [F67section 146(1)(c) and (d)] of that Act; CoJ, Order 94, Rule 1 (i), refers.

16. The Lord Chancellor appoints the Northern Ireland Judicial Appointments Committee to appoint Judges in Northern Ireland. By Sections 50-52 of the Tribunals and Enforcement Act, 2007, appointments to the Supreme Court includes High Court Judges from England, Wales, and Northern Ireland. Though Executive powers have been devolved, the wholeness of the Judiciary all within 'The Queens Bench Division', as in this case, remains indivisible.

17. The Respondent's affidavit cites section 63 of the Fire Services and Rescue Act 2004 claiming it restricts jurisdiction. The section provides for the amendment of the "Fire Safety and Safety of Places of Sport Act 1987, which is not relevant to jurisdiction.

18. (1) The Respondent affidavit cites The Pension Scheme Act and The Public Servants Pensions Act yet these Acts apply only to 'defined benefit schemes' (The Pensions Schemes Act 1993 (as amended) Sec 97A 1 (10);

(2) A 'defined benefit scheme' is interpreted and specified by Sec 37 of The Public Servants Pensions Act 2013 which provided (a) a pension scheme is a "defined benefits scheme" if, or to the extent that, the benefits that may be provided under the scheme are not money purchase benefits (within the meaning of the Pension Schemes Act 1993) or injury and compensation benefits'.

(3). This Appeal is solely related to injury and compensation benefits.

(4). Neither the Pension Scheme Act nor the Public Servants Pensions Acts, nor the Northern Ireland Acts, in any way impinge upon the specific provision for compensation by 1992 SI 192 for a Firefighter compelled to retire on account of injury.

(5). Anyone injured whose pension was regulated by the general legislation would, on injury, have recourse to common law damages – in place of which - 1992 SI 192 makes provision.

19. The law does not countenance the irreconcilable in Acts of common provision. Here, the general Social Security Acts conflict with parliament's provision to compensate those forced to retire early on account of attributable injury. This case.

20. Section 70 of the Pensions Scheme Act 1993 (cited by the respondents) provides (a) that service notionally attributable for any purposes of the scheme is not to be regarded as pensionable service; and (b) no account is to be taken of scheme rules by which a period of service can be treated for any purpose as being longer or shorter than it actually is – which is a restriction in diametric opposition to provision by 1992 SI 129 B3 paragraph 5 that a 'notional pension' be the ill-health pension. The two sets of legislation, the general and the specific, are mutually exclusive.

21. At Paragraphs 16 and 17 of the Affidavit the Respondent prays in aid Section 147 of the Public Servants Pensions (Northern Ireland) Act 1993, though of no effect since it was replaced by the 2014 Act. The Respondent also prays in aid Section 151 of the Pensions Scheme Act 1993, but that simply makes provision for appeal to "The High Court".

22. At paragraph 18 the Respondent appear to contend that a judgment of the High Court in Belfast is only enforceable in Northern Ireland thereby denying enforceability to jurisdiction. Under EU law, judgments issued by the High Court in Northern Ireland, extend throughout the EU. The Court of Judicature (Northern Ireland) provides that, "any judgment may, on ex parte application, be registered from any Court within the EU in reciprocity".

23. The Respondent wrongly concludes that CPR 52.29 denies jurisdiction because the system in Northern Ireland does not find it necessary to impose the step of seeking leave to Appeal. This misconceives work load and case management. The Northern Ireland High Court and the English High Court are in the commonality of the same "Queens Bench Division".

24. None of the law cited by the Respondent are material to this Appeal.

25. The Appellant respectfully submits that the Honourable Court is 'seized' of the matter, has jurisdiction, and that the only true matter to decide is as set out in Paragraph 11 of the Respondent Affidavit. "The Plaintiff's contention was that LRFS misunderstood the scheme rules and as a result calculated his pension wrongly (and under paid him). LRFS disputes this and asserted that their interpretation of the rules was correct"; so defining the point at law on which this Appeal turns. It is clearly not vexatious, frivolous, nor in any way an abuse of process.

26. The Appellant asks the Honourable Court to deny the Respondent's Application in all its parts and for such other relief as the Honourable Court deems just, equitable, and sufficient to enable this Honourable Court to consider the points of law on which I, Appeal,

27. And costs.

28. Why Mr. Burns?

Mr. Burns and I both served in the LRFS (LCFA); he earlier in the Belfast City Fire Brigade.

We both achieved Senior rank, he being Senior to me. He was in his time a Divisional Commander and the Commandant of the Lancashire Fire Brigade Training Centre which he elevated to International Training Centre status.

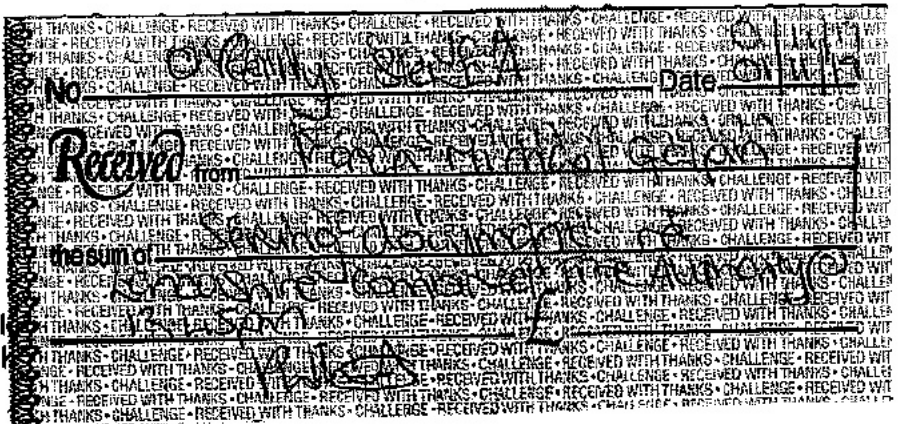
He originated and registered the first ever UNDRP International Fire Service Rescue Team which he subsequently led in the field; to serve to alleviate human suffering in countries where natural disasters occurred.

The nature of the Service is that we are put in harm's way. It is through well-structured training and mutual trust that we cope with the dangers on the fireground and it is with enduring trust that we remain colleagues and friends.

29. Why Northern Ireland?

Mr. Burns is a man driven to seek fairness and justice where one or both have been denied and he has eloquently persuaded me that our final opportunity for fair play is to be found in the Courts of Northern Ireland.

I trust that he will do his very best for us all, and to have his efforts in these past years on behalf of his disabled Veteran colleagues, Widows, and Beneficiaries, described by the LCFA as 'frivolous' is beneath contempt, and just typically gratuitously offensive of our collective efforts to see that our Widows and Beneficiaries get their just entitlement, which we all paid for.



I, [redacted] do so document are, to the best of my

Signed: [redacted]

[redacted]

Witnessed: Paul P Burns

Paul P. Burns, GradIFireE
'The White House',
4, Bangor Road,
Groomsport,
Bangor, BT19 6JF .

Dated this First day of November 2019.