

Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

For Court use only

Appeal Court Ref. No.

Date filed

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

SEAL

Section 1 Details of the claim or case you are appealing against

Claim or Case no.

TPO Determination ~ PO-19150

Fee Account no.
(if applicable)

Help with Fees -
Ref no. (if applicable)

HWF - - - - -

Name(s) of the

Claimant(s) Applicant(s) Petitioner(s)

Francis Michael Galpin

Name(s) of the

Defendant(s) Respondent(s)

Lancashire Combined Fire Authority

Details of the party appealing ('The Appellant')

Name

[REDACTED]

Address (including postcode)

[REDACTED]

Tel No.

[REDACTED]

Fax

E-mail

[REDACTED]

Details of the Respondent to the appeal

Name

Lancashire Combined Fire Authority

Address (including postcode)

Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

Tel No.

01772 862545

Fax

E-mail

justinjohnston@lancsfireandrescue.org.uk

Details of additional parties (if any) are attached

Yes No

Section 2

Details of the appeal

From which court is the appeal being brought?

- The County Court at
 The Family Court at
 High Court
 Queen's Bench Division
 Chancery Division
 Family Division
- Other (please specify)
The Pension Ombudsman~Granted Leave to Appeal on Point of Law.

What is the name of the Judge whose decision you want to appeal?

Ms.K.Johnston ~The Deputy Pension Ombudsman.

What is the status of the Judge whose decision you want to appeal?

- District Judge or Deputy Circuit Judge or Recorder Tribunal Judge
 Master or Deputy High Court Judge or Deputy Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

10th September 2019.

Is the decision you wish to appeal a previous appeal decision? Yes No

Section 3**Legal representation**

Are you legally represented?

Yes No

If Yes, is your legal representative (please tick as appropriate)

- a solicitor
- direct access counsel instructed to conduct litigation on your behalf
- direct access counsel instructed to represent you at hearings only

Name of your legal representative

The address (including postcode) of your legal representative

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate?

Yes No

Is the respondent legally represented?

Yes No

If 'Yes', please give details of the respondent's legal representative below

Name and address (including postcode) of the respondent's legal representative

Mr.D.Howell(Solicitor)
Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

Tel No.	01772 862545
Fax	
E-mail	DominicHowell@lancsfireandrescue.org.uk
DX	
Ref.	

Section 4 Permission to appeal

Do you need permission to appeal?

Yes No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

Box A

Date of order granting permission

Name of Judge granting permission

Box B

I

the Appellant(~~'s legal representative'~~) seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

Appeal against all the Determination by the Deputy Pensions Ombudsman ~ PO-19150 ~ on Points of Law.

Have you lodged this notice with the court in time?

(There are different types of appeal - see Guidance Notes N161A)

Yes No

If '**No**' you must also complete **Part B of Section 10 and Section 11**

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

- I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

- I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.

Section 8 Aarhus Convention Claim

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim Yes No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarhus claim set out the grounds below

Section 9

What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

- order a new trial

Section 10

Other applications

Complete this section **only** if you are making any additional applications.

Part A

- I apply for a stay of execution. (You must set out in Section 11 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 11 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- I apply for an order that:

(You must set out in Section 11 your reasons and your evidence in support of your application.)

Section 11 Evidence in support

In support of my application(s) in Section 10, I wish to rely upon the following reasons and evidence:

1. The Deputy Pension Ombudsman(TPO) issued a 'Determination'(including a 'Fact Sheet') on a pension Complaint by myself on the 10th September 2019. The Complaint was not upheld. I was granted leave to Appeal on a point of law advised in writing that an Appeal could be lodged within 28 days in several jurisdictions including the NIreland High Court of Appeal.
2. On the 23rd September 2019 using the TPO Fact Sheet I filed an Appeal Application including a bundle(Case No:19/089130) which was sealed by the Queens Bench Division of the Central Office Belfast.
3. On the 2nd of October 2019 Mr.Burns appeared on my behalf in the Belfast High Court before HJ Sir Paul Maguire; on the 17th October 2019 Mr.Burns then appeared in review before Recorder HHJ McPartland; on the 6th November 2019 I appeared before HJ Sir Paul Maguire.
4. On the 17th October 2019 the Combined Fire Authority lodged a late Affidavit to strike out my Appeal on the grounds of jurisdiction and that my Appeal was vexatious and frivolous; but did not on this occasion nor subsequently at the 6th November 2019 hearing, when again represented by Counsel, challenge my barrister's skeleton arguments(including Addenda) for the Appeal on the points of law which I had served on them simply stating, that I was being paid the correct pension; their Counsel advanced no arguments opposing my ground of appeal in law.
4. On the 6th November 2019 HJ Sir Paul Maguire concluded at the last Hearing , with expressed misgivings, that in his opinion my Appeal did not lie in the NIreland jurisdiction, in spite of the Pension Ombudsman's advice, and he directed that I take my Appeal to the High Court of Appeal in London. He commented that it was not necessary for me to seek leave to Appeal because the case was neither frivolous nor vexatious, and several times, that I was was entitled to Appeal, and extraordinarily, that in his opinion stating that the case was "winnable".Nevertheles having found the application out of jurisdiction he could not consequently grant leave to appeal.
- 5.No direction was ordered for a time scale to take this action to London but without delay and following consultation with the Registry at the High Court of Appeal I resubmitted my Appeal on the 3rd December 2019 including an Application, as advised by the Registry, for a further extension of time should it be required.
- 6.Registry unfortunately misdirected my Appeal Application to the Court of Appeal instead of to the Chancery Division and the CoA returned it to me on the 13th January 2020 further advising that I attach a copy of the Belfast Judgement (included) to confirm the above proceedings and resubmit directly to the Chancery Division.

Statement of Truth – This must be completed in support of the evidence in Section 11

I believe (The appelliant believes) that the facts stated in this section are true.

Full name

~~Name of appelliant's legal representative firm~~

N/A

signed

~~position or office held~~

N/A

Appellant (~~'s legal representative~~)

(~~if signing on behalf of firm or company~~)

Section 12 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the County Court or High Court:

- three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the Civil Legal Aid Agency Certificate (if legally represented).

In the Court of Appeal:

- three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the Civil Legal Aid Certificate (if applicable)
- where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied

Section 13 The notice of appeal must be signed here

Signed Appellant(~~s legal representative~~)

Find out how HM Courts and Tribunals Service uses personal information you give when you fill in a form.

<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Grounds of Appeal.

Concerning TDPO's Determination, concerning the pensions of 'Mr. N', the Deputy Pensions Ombudsman misdirected herself in law in some, or all, of the following ways:

1. The Crown paying a B1 time served pension to a retiree on grounds of ill health 97 days before he would have had to retire on account of age; she misdirected herself in law that Example 7 in the Home Office Commentary to SI 192 could be taken as evidence that the Crown intended that no compensation be paid for future financial loss occasioned by such enforced retirement.
2. She misdirected herself in law that the pension paid in Example 7 was a B1 pension rather than an enhanced 'notional pension' fully compensating to the date of being retired on account of age, and in full reflection of what 'he could have earned'.
3. She misdirected herself on the law of construction of documents and the 'Universal rule' *Rookes v Barnard* 1964 (AC) and drew an inference in law as to the meaning of statute not open to her, as a matter of law, to draw.
4. She misdirected herself on law and acted wrongfully to deny statutory intention and provision in place of common law entitlement though the statute used no language to exclude such statutory provision.
5. By her misdirection and misapplication of the law she, contrary to law, denied the Statutory ill health pension rendering the whole of ill health B3 provision, as specified at paragraphs 3, 4 and 5, redundant, null and void of meaning and superfluous to the statute, wrongfully replacing said provision in each instance by a time served ordinary B1 pension.

6. She misdirected herself, contrary to statute and in breach of its legal provision, in determining that when a Firefighter was being required to retire early on grounds of ill health they be paid, Including Mr.N., an ordinary time served B1 pension instead of a B3 ill health, enhanced, pension provided as compensation for financial loss occasioned by being required to retire early on grounds of ill health. She unlawfully determined that an ordinary time served B1 pension, due to any Firefighter retiring early of own volition, as though choosing to go and do other work, was also the ill-health pension due to Mr. N, on being invalided out of service.

7. She misdirected herself into a Determination ultra vires by finding that [TDPO Determination Para 36] "I can see nothing in the legislation as drafted that is unclear on its face" to mean the legislative intention was to deny compensation for financial loss, so giving unlawful effect in her Determination by replacing B3 by B1 provision and, in so doing, rendering all ill-health provision redundant in the SI, save in nomenclature by calling a time served B1 pension, when being awarded to an injured Firefighter being forced to retire, a B3.

8. Though required by the law of construction of documents and otherwise under the 'universal rule', to give words their ordinary meaning, and adhere to it, she misdirected herself in drawing no distinction between the words 'is' and 'by reference to' used in the statute making B3 provision, but by conflating them, misdirected herself on a whim that in law they be taken to mean the same thing, thereby denying the purpose and intention of the statutory B3 paragraph 5 provision.

9. She misdirected herself in law as to the legal purpose and meaning of the Home Office 'Commentary' accompanying the promulgation of the SI and so denied herself the legal intention of the SI and its provision.

10. The Deputy Pensions Ombudsman has unlawfully misconstrued the SI and its terms of provision to illegal effect and by so doing has misdirected herself into wrongfully denying Mr. N the ill health pension provided for him by statute, wrongfully putting in its place a time served B1 pension; thus denying compensation of any sort due under the law for financial loss occasioned by being required to retire prematurely on grounds of ill health.

11. Though some misdirection may be no more than maladroitness, some can only be construed as determined on a whim to make the law fit a predetermined outcome, relying on age, infirmity, poverty, and absence of legal aid to avoid correction of such ill-practice and its unjust, illegal, arbitrary, and oppressive results.

12. The Appellant humbly begs that the Honourable Court take judicial notice of such conduct and award such exemplary and/aggravated damages as the Honourable Court should deem appropriate.

13. May the Appellant, with the deepest of respect, make mention to the Honourable Court that having relied and trusted his pension provider to look after his interest, that that trust has been betrayed. That he has been impoverished over 21 years and deprived of much quality of life by a deliberate, callous, and fraudulent deception.

14. A deceit maintained even into TPO correspondence by Mr. N's pension provider in an earlier case cited as precedent in Mr. N's Adjudication, upheld by TDPO, and here appealed.

15. That but for such deception by those in a fiduciary relationship with Mr. N, he and others would have seen the 'Commentary' published by the Home Office specifically to give him and other laypeople guidance and the ordinary meaning to the Statute.

16. That the 'Commentary' was wrongfully kept from Mr. N denying him knowledge of his lawful pension entitlement and from knowing that calculation of his pension as a B1 pension was wrong in law and that the B3 provision was intended to be calculated on "...what you could have earned' as the lawful construction of the provision made by Statute at B3 paragraph 5.

17. He submits such conduct has been an unconscionable abuse of power and most oppressive and wholly arbitrary.

18. He submits it should not go unremarked that when he was injured and incapacitated for life and forced to retire on grounds of ill health he was wrongfully given a basic time served

pension as though he has simply chosen to leave, fit and well, and by choice, instead of being given what the law provided for his enforced early retirement on grounds of ill-health.

19. The Appellant is humbly grateful to the Honourable Court for its consideration.

20. The Appellant asks The Honourable Court for his costs.

21. The Appellant claims interest and humbly submits that the time, sum and long loss, and high earlier interest rates make it fair and reasonable that the Honourable Court exercise of its discretion and awards interest at 5% compound per annum on the sum of pension sum withheld from him.

John M Copplestone-Bruce.

Inner Temple

15th. September 2019.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION

APPEAL FROM THE DECISION OF THE COUNTY COURT DIVISION

Between:

 ("Mr. N.").....Appellant

And

Lancashire Combined Fire Authority..... Respondent

TAKE NOTICE that I, the above-named Appellant having lodged Appeal to the High Court from the whole of the Order made by 'The Pension Ombudsman' ('Determination'; ref PO-19150) in this pension matter on the 10th day of September 2019 whereby it was adjudged that "Mr. N's" Pension Complaint was not upheld, the Grounds of Appeal being exclusively on Points of Law.

Take Further Notice of an addendum Grounds of Appeal:

1. In that 1992 SI 129, at Rule K5 (3) provides that an ordinary B1 pension cannot be reduced save on Treason or Breach of the Official Secrets Acts, and that Rule K3 (1) provides that "where a person (a) is permanently disabled, and (b) has brought about or contributed to his infirmity by his own default, the fire authority may reduce any ill-health or injury award payable to him by them to not less than half its full amount", it follows that for the statutory provision to have meaning, sums awarded as ill-health or injury awards must per se, be 'reducible' or the sum is wrong in law. TDPO misdirected herself in law by determining the sum of a B3 ill health pension award was in the irreducible sum of a B1 pension due to Mr. N as if retiring by choice. By her misdirection she denies the statutory wording of Rule K3 (1) meaning, rendering it redundant, void and without legal effect, all contrary to law.

2. By misdirecting herself on the law TDPO set into conflict clauses of provision in the same statute by determining wrongfully that the statute intended no compensation for financial loss, so wrongly determined an irreducible B1 award be paid in place of a compensatory B3 award, able to be reduced by up to "half its full amount", and by so doing put B3 (5) and K (3) into mutual exclusion, into conflict, rendering both to be without meaning, redundant, void, and without legal affect, all contrary to law.

25th. September 2019.

Signed by Appellant.

C/o 'The White House'.

4 Bangor Road,

Groomsport,

Bangor BT19 6JF

Northern Ireland.



Mr Paul Burns
4 Bangor Road
Groomspoint
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

020 7630 2755

Thomas.Coutts@pensions-ombudsman.org.uk

Ombudsman's Determination

Applicant	Mr N
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondent	Lancashire Fire and Rescue Service (LFRS)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by LFRS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that since he was retired on the basis of ill-health, he has been paid a B1 Ordinary Pension rather than a B3 Ill Health Pension. He says this is specifically prohibited by The Firemen's Pension Scheme Order 1992 (**the Order**), has meant his pension has been underpaid and has impacted the benefits payable under the B4 Injury Award.
4. He has also highlighted what he considers to be a flawed interpretation of part of the B3 Ill Health calculation, B3(5).

Background information, including submissions from the parties

5. On 1 March 1992, the Order came into force. (Relevant provisions are at Appendix 1.)
6. Following the implementation of the Order, the Home Office issued a document entitled Commentary on the Firefighters' Pension Scheme (**the Commentary**). I have had sight of a copy that dates from May 2003, this being the last date that it had been amended. The list of amendments shows no changes relevant to this complaint. (Relevant provisions are at Appendix 2.)
7. In July 1998, Mr N retired on the basis of ill-health from LFRS. As a result, he was entitled to a B3 Ill Health award, as calculated by the formulas set out in Part III of Schedule 2 of the Order.

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(4) 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.

PO-19150

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 underline.

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 1/365th 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>	
$\frac{35.4411}{60} \times \text{£}15124 = \text{£}8933.52$	
<u>Gross ill-health pension:</u>	£8933.52
<u>Commutation:</u>	
He commutes 1/4 of his gross pension:	
$\frac{\text{£}8933.52}{4} = \text{£}2233.38$	
<u>Lump sum:</u>	
At age 54 he receives £1390 for each £100 of pension commuted:	
$\frac{\text{£}2233.38}{100} \times 1390 = \text{£}31043.98$	
<u>Pension payable:</u>	
$\text{£}8933.52 - \text{£}2233.38 = \text{£}6700.14$	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 Appeal¹. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman². However, you **must** send the Ombudsman a copy of the Notice of Appeal³. 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.

¹ Unless appeal lodged in Scotland or Northern Ireland and by way of case stated

² 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

³ 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.⁴

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.
- The Community Legal Service Directory which can be found at www.clsdirect.org.uk
- www.justice.gov.uk/about/hmcourts
- www.gov.uk/government/organisations/hm-courts-and-tribunals-service
- <http://scotland-judiciary.org.uk/16/0/Court-Structure>
- www.courtsni.gov.uk

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



**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION**

BEFORE THE HONOURABLE MR JUSTICE MAGUIRE

On Wednesday the 6th day of November 2019

Between

[REDACTED]

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

UPON HEARING Counsel for the respondent and the applicant being a litigant in person.

THE JUDGE ORDERED that the appeal be dismissed on the grounds of incorrect jurisdiction, with no order as to costs.

Christy Byers
Proper Officer

Filed Date 8 November 2019

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20th January 2020.

Chancery Division of the High Court

Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL
United Kingdom.

My Ref: FG73.

Appeal to the Chancery Division of the High Court.

In respect of

[REDACTED]

~ v ~

Lancashire Combined Fire Authority

In the matter of

The Pensions Ombudsman Determination ~ PO-19150.

Dear Madam/Sir,

By reason of explanation for any perceived delay in due process.

1. On 10th September 2019 the Pension Ombudsman(TPO) issued a Determination(including a 'Fact Sheet') on my pension complaint. My Complaint was not upheld and he gave me leave to Appeal on a point of law in three jurisdictions.

2. On 13th September 2019, I served Notice on the TPO and the Respondent of my Intention to Appeal to the High Court on a point(s) of law in writing.

3. On the 23rd September 2019, using the 'Fact Sheet' from the TPO, my Appeal was lodged within time, on my behalf by Mr.Paul P. Burns* in the Belfast Central Office Royal Courts of Justice who sent Case Number:19/08913, after Master's advice, to their Queens Bench Division of the Belfast High Court, where the bundle(including Addenda) and Application was sealed and immediately served by me on the Respondent, the LFRS.

** Mr.Paul.P Burns a respected former colleague in the Fire Service and friend who has been helping me and others for many years on pension issues making no charge, but continuing to care for his comrades and giving extraordinary help to a number of us and our widows and beneficiaries in this difficulty had recently moved back to Ireland; he is a much valued and respected friend.*

4. On the 2nd October 2019 at the first Hearing before HJ Sir Paul Maguire the Respondent made no appearance.

5. On the 17th October 2019 at the second(Review) Hearing, hours before the actual Review Hearing in front of District Recorder HHJ Mr.McPartland, the Respondent's Counsel entered a timed out Affidavit and consequently, a rescheduled Hearing(against objections) was listed.

6. On the 6th November 2019 at the third Hearing before HJ Sir Paul Maguire the Respondent sought to have the Appeal struck out as denied jurisdiction; was vexatious; and was frivolous.

7. The Respondent in presenting their Application, neither by Affidavit, nor by Counsel at Court on a second and third occasion, made no reference to the EU legislative direction contained in the sealed bundle served on them, nor did they specifically draw to HJ Sir Paul Maguire's attention the EU legislation binding on all member States that any Court, in any chosen member State, may become seized of any matter for judgment, and that Court shall have *prime inter partes* jurisdiction, as it clearly was, supported by the overarching authority of the Pensions Ombudsman.

8. Hence, The Royal Courts of Justice(with the exception of Scotland) hear many causes by consent from all parties outside all the UK jurisdictions.

9. The Respondent's Application to strike out was heard over two hours on Wednesday 6th of November 2019 before HJ Sir Paul Maguire at the High Court at the Royal Courts of Justice Chichester Street, Belfast.

10. At the first hearing HJ Sir Paul Maguire had directed that in addition to Mr. Burns, I should appear before him which I did, but, at my request and by HJ Sir Paul Maguire's graceful indulgence I continued to be represented by Mr. Burns long involved in seeking pension redress for Firefighters (and on death, their widows and beneficiaries) where the pensions being paid on being compulsorily retirement early 'on account of ill health' (Crown liability accepted) *are not compensatory as those prescribed by law*, but instead, are the much lesser sums falling to any fit Firefighter who by choice, on leaving the service early, or on completion of service, earns without financial loss.

11. In judgement HJ Sir Paul Maguire concluded that, he was uncertain on jurisdiction even though he stated he had read my bundle repeatedly in his possession for over a month and had studied all available law/legislation. It appeared to him that there were two routes to Appeal from the TPO's 'Determination'.

An English one and a devolved unrelated hybrid scheme for some Northern Ireland Fire Service Pensions.

12. Ruling against me on jurisdiction, I was directed to pursue my Appeal at the High Court of Appeal in London.

13. Continuing, HJ Maguire who was clearly fully seized of the matter under Appeal expressed the view that my Appeal was neither vexatious nor frivolous. Indeed, he was most courteously at pains and repeatedly made the point that I had the right to Appeal and furthermore to make plain that he considered there was a substantial point of law to be considered.

14. Finally, and unusually I thought, stating several times in his own words, that in his opinion the Appeal had the essential grounds for success and was "winnable" and thus I was at liberty to continue my Appeal process.

15. It is noteworthy that the Respondent who was represented at two Court appearances by Counsel had three opportunities *which they created*, namely the Affidavit and the two Court appearances to challenge my barrister's 'Grounds for Appeals'(with addenda) on points of law served on them by me in my sealed bundle; but they failed to do so simply stating that I was being paid the correct pension.

16. HJ Maguire denied the Respondents their costs.

17. On the 3rd December 2019 following detailed helpful advice from the Registry of the High Court I submitted the correct documentation for my Appeal. Unfortunately this documentation was misdirected internally and was return to me on the 13th January with

advice to resubmit directly to the Chancery Division of the High Court of Appeal including a copy of the Belfast Judgement (now included).

18. I hope that given this recent history you may kindly decide to expedite this Appeal avoiding the step of seeking 'leave to appeal' which I reasonably conclude was already extended by not only the Pensions Ombudsman but also confirmed by HJ Sir Paul Maguire; he having stated he considered it an unnecessary step in my case.

19. To avoid further delay I am re-filing my Appeal with this explanation, without criticism, of the route I was advised to follow having administratively consulted directly with the helpful Chancery Registry staff.



Asst Divisional Fire Officer (Rtd) M.I.Fire E.