



In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman
on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

CH-2020-000043

BETWEEN

[REDACTED]

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 6th day of May 2020

UPON correspondence with the Appellant, in which the Appellant confirmed that he does wish to proceed with an oral renewal hearing, **AND UPON** correspondence with both parties in connection with the factual context for the appeal and the legal issue raised

IT IS ORDERED THAT

1. The oral renewal hearing of the appeal shall be listed on the first available date on or after 1 July 2020.
2. The Respondent shall no later than 8 May 2020 (or by such later date as the court may agree following a written request for an extension) provide to the Appellant a draft brief summary of relevant facts, covering (so far as is reasonably available) (a) the Appellant's compulsory retirement age, (b) the way in which the Appellant's pension was calculated (currently assumed by the court to be 40/60 x actual pay in the year to retirement) and (c) some information about the relevant pay scales and promotion arrangements, in particular as to whether progression was automatic.
3. The Appellant shall promptly provide any reasonable comments on the draft summary of facts so provided. Those comments must be limited to any necessary corrections to address inaccuracies and to those issues referred to in paragraph 2 of this order.
4. The Appellant and Respondent shall thereafter seek to agree the summary of facts, with a view to the Respondent filing at court and serving on the Appellant an agreed summary of relevant facts by no

later than 4 pm on Friday 22 May. If the summary is not agreed the Respondent should file and serve its version of the summary on that date. In that event the Appellant is at liberty to file and serve a version showing the points with which he does not agree. However, the court will **not** entertain additional written submissions, and anything filed by the Appellant must be limited to the matters referred to in paragraph 3 of this order.

5. Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following:

Whether, as a matter of statutory construction of paragraph 5 of Part III of Schedule 2, contained in Schedule 2 to The Firemen's Pension Scheme Order SI 1992/129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

- a. (as the Respondent contends) that the calculation must be done using actual pay in the year to the date of retirement; or
- b. (as the Appellant contends) that the calculation must be done by reference to the pay scales in place at the date of retirement, but assuming that the individual would have continued to progress through those pay scales, and achieved available promotions, until the date that he or she could have been required to retire absent ill health or injury.

REASONS

The hearing is to be relisted not before 1 July for the reasons referred to in the order of 1 May 2020, namely a) to allow the Appellant to seek legal assistance and b) allow time for the facts to be clarified. The Respondent has kindly agreed to assist the court in relation to b).

The court also considers that, in view of the written submissions provided by or on behalf of the Appellant (including lengthy submissions addressed to the Court of Appeal and received by this court on 24 April 2020) it is important to clarify what appears to be the single legal issue in dispute in this appeal. This is reflected in paragraph 5 of the order.

The sole purpose of seeking a summary of the facts, as contemplated by paragraphs 2 to 4 of the order, is to assist the court in providing a factual context for determining whether permission to appeal should be granted in respect of the legal issue in dispute.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:

Mr FM [REDACTED]

Mr D Howell (solicitor) Lancashire Fire & Rescue Service

dominichowell@lancsfireandrescue.org.uk

The Pensions Ombudsman (ref PO-19150) david.craddock@pensions-ombudsman.org.uk