

HM Courts & Tribunals Service  
Royal Courts of Justice Group  
Chancery Division  
Rolls Building  
7 Rolls Building  
London EC4A 1NL

Our Ref: PO-19150

20 February 2020

Dear Sir or Madam

**Francis G [REDACTED] v Lancashire Combined Fire Authority CH/2020/000043 –  
Request for permission to appeal and request for extension of time**

I would be grateful if this letter could be placed before the Judge assigned to the above appeal. I am the person who is dealing with this case on behalf of the Deputy Pensions Ombudsman (the “Deputy Ombudsman”) and would be grateful if you could address any future correspondence concerning this matter to me.

Mr G [REDACTED] has applied for permission to appeal a determination of the Deputy Ombudsman dated 10 September 2019, and has requested an extension of time as he is outside the 28-day period for appeal.

The Deputy Ombudsman is not a respondent to the appeal, but the Chancery Judges Listing Office has kindly provided us with a copy of the appeal notice, and details of Mr G [REDACTED]’s grounds of appeal and Skeleton Argument.

The Pensions Ombudsman and Deputy Ombudsman (the “Ombudsmen”) do not normally participate in appeal proceedings unless the appeal raises wider questions as to their jurisdiction and powers, issues as to access to justice or equality of arms, or the matter concerns a subject of wider industry importance in which the Ombudsmen consider our involvement will assist the Court - and the court either agrees to their participation or so requires.

The Deputy Ombudsman does not, at this stage, consider that the appeal raises a significant general issue for the Ombudsmen’s office. Therefore, at present, unless the court requires it, the Deputy Ombudsman has no wish to apply to formally participate in the proceedings and to be joined as an interested party in the appeal.

That said, the Deputy Ombudsman wishes to provide the following information to assist the Court in relation to the initial application which is awaiting consideration (and not the merits of the appeal):

- The Deputy Ombudsman's determination was issued on 10 September 2019. That day, a copy of the determination was emailed to Mr G [REDACTED] and to Paul Burns, who Mr G [REDACTED] had nominated as his representative with conduct for his complaint.
- The cover letter accompanying the determination said:

*"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 factsheet accompanying the determination said:

*"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."*

- This letter and factsheet reflect the following two statutes:
  - Section 151(4) The Pensions Schemes Act 1993, which governs the Ombudsmen's powers in England and Wales (and Scotland), provides

that “*An appeal on a point of law shall lie to the High Court ... from a determination or direction of the Pensions Ombudsman...*”

- Section 147(4) of the Pension Schemes (Northern Ireland) Act 1993, which governs the Ombudsmen’s powers in Northern Ireland, provides that “*An appeal on a point of law shall lie to the Court of Appeal from a determination or direction of the Pensions Ombudsman...*”
- Mr G■■■■ resides in England. The respondent, and pension scheme in issue, are also based in England. The appropriate route of appeal for the determination is therefore the High Court in England and Wales, and permission to appeal is required.
- Mr Burns resides in Northern Ireland. Although Mr Burns had been Mr G■■■■’s nominated representative for the complaint with our office, he is not listed as Mr G■■■■’s legal representative in the appeal paperwork, which Mr G■■■■ has completed and filed himself. As set out in the cover letter and factsheet mentioned above, there is no requirement for an applicant to obtain permission to appeal in Northern Ireland, which could be a factor in seeking to appeal in that jurisdiction.
- Mr G■■■■ filed for appeal in the High Court in Northern Ireland on 23 September 2019, 13 days after the date of the determination. Although nobody from my office attended, we understand that at a hearing on 6 November 2019, the Judge struck the matter out, noting that the High Court of Northern Ireland did not have jurisdiction on the basis that appeals are statutory and the statute which applies to Great Britain is the Pension Schemes Act 1993. Further, even if the Pensions Schemes (Northern Ireland) Act 1993 was applicable, the right of appeal under that Act was to the Court of Appeal in Northern Ireland, not the High Court.
- We also understand that following the ruling, the Judge gave “guidance” to Mr G■■■■, in seeking to assist the parties and not in reference to the ruling. We understand that he advised that the Court of Appeal in Northern Ireland would likely also conclude that it did not have jurisdiction, but that there still appeared to be a right of appeal in the High Court in England, subject of course to time requirements and being granted permission to appeal.
- Mr G■■■■’s evidence in support of his application for an extension of time for filing his appeal notice states that he submitted his appeal on 3 December

2019, but that this was misdirected by the Registry and returned to him on 13 January 2020.

- Mr G■■■■'s Appellant's Notice was filed with the Chancery Division on 4 February 2020. This is 148 days from the date of the determination. As set out in both the cover letter and the factsheet that accompanied the determination, the Pensions Ombudsman has directed for England and Wales that a person wishing to appeal must lodge the appeal within 28 days after the date of a determination. This builds in an extra 7 days from that required under the CPR, to allow for the fact that our determinations are posted or emailed out, as opposed to being pronounced in public.
- Perhaps more relevant is the time for which Mr G■■■■ had control of the application, excluding the time waiting for a hearing in Northern Ireland and the delay caused by the misdirection of his paperwork by the Registry. We calculate this as 63 days, being (a) 13 days from the date of the determination to filing the appeal with the High Court of Northern Ireland, (b) 27 days from the hearing in Northern Ireland to filing the appeal with the Registry, and (c) 23 days from the return of the application to Mr G■■■■ to filing the appeal with the Chancery Division.

The Deputy Ombudsman wishes to reserve her position to make further or other submissions or to apply to participate in proceedings in the light of any submissions that might be made by the other parties to the appeal.

I am sending a copy of this letter to Mr G■■■■ and to the respondent.

Yours faithfully

**David Craddock**

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