

**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

BETWEEN

[REDACTED]

Appellant

And

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

Facts pursuant to the Order of the Court made the 6th May 2020.

The parties have sought to agree facts, but the Respondent, being unable (22 years ex post facto) or unwilling to agree any of the Appellants relevant facts, the Respondent asserts the facts set out herein in black text [which are agreed by the Appellant save in so far as his comments in blue text deny, or modify acceptance, or seek to complete information being given to the Honourable Court.](#)

1. Mr G **[REDACTED]** date of birth is 17.12.1943. He turned 55 on 17.12.1998 and 60 on 17.12.2003.
2. He joined the Fire Service on 22.3.65 and retired on 22.7.98 (aged 54) following a road traffic accident when on duty on 5.2.1997, his car being hit from behind when stationary on a roadway while he was driving from an incident to the Fire Station. He suffered [neck and](#) back injuries, adjudged by the respondents to be 'qualifying injuries'

3. This was a compulsory retirement under Rule A15 of the Scheme which reads as follows:-
 - (1) *Subject to paragraph (2), a regular firefighter may be required by the fire authority to retire on the date on which the authority determine that he ought to retire on the ground that he is permanently disabled.*
 - (2) *A retirement under this rule is void if, on an appeal against the medical opinion on which the fire authority acted in determining that he ought to retire, the medical referee decides that the appellant is not permanently disabled.*

4. Officers at Assistant Divisional Officer rank and above could continue to work until the age of 60. Below that rank, the compulsory retirement age was 55. This was set out in Rule A13 which reads as follows:-
 - (1) *This rule applies to every whole-time member of a brigade appointed on terms under which he is or may be required to engage in fire-fighting.*
 - (2) *Subject to paragraph (3), a person to whom this rule applies shall retire—*
 - (a) *if he holds the rank of assistant divisional officer or a higher rank, on attaining the age of 60, or*
 - (b) *if he holds the rank of station officer or a lower rank, on attaining the age of 55.*
 - (3) *In special cases the fire authority may extend the service of a person to whom this rule applies for a further period if they are satisfied that such extension would be in the interests of efficiency.*

5. The three attached sheets entitled; “Uniformed Pay Scales 7.11.1997,” “Uniformed Pay Scales 7.11.1998,” and “Whole-time Pay Scales from 1999 – 2014,” show the ranks in the Fire Service at that time and the relevant pay scales. [The LCFA scales are industry wide, taken from ‘ The National Joint Committee Pay Scales’.](#)

6. Progression “within” any of the ranks shown, based on length of service in that rank and within the Service as a whole would be automatic. For example progressing from 1st through to 3rd year at Assistant Divisional Officer level would be automatic each year, and the 15 years’ service increase was based simply on time in Service. However, progression up through the ranks was not automatic and was dependant on a position becoming available and a successful application. The annual increases in pay were applied automatically.

7. Mr G [REDACTED], was promoted to the rank of Assistant Divisional Officer with effect from 1/4/1988 and acted as a Divisional Officer III from 18/12/1989 – 30/04/1990 within B Division HQ, but no further periods of acting after this. In his ADO Supervisory Officer role Mr. G [REDACTED] was frequently required to stand in and assume the responsibilities of the rank whenever deputising for his immediate superior DOIII when he was away on courses, leave, or other duties, or off sick.
8. At the time of his retirement on 22.7.98, Mr G [REDACTED] was an Assistant Divisional Officer 3rd year, 15 years' service. With reference to the 1997 pay scales which were then applicable (the annual increase did not take effect until the 7th of November each year) his pay was £27,420. This was however subject to a 20% flexible duty allowance, so the total was £32,904.
9. Had Mr G [REDACTED] continued to work until the age 60, the pay scales for 2003 would have been used in the calculation. Assuming he was at the same rank, his pay would either have been i) £41,941.20 (including the flexi duty allowance and Long Service Increment) if he was not responsible for a group of stations, or: ii) £43,053.60 (including the flexi duty allowance and Long Service Increment) if he was responsible for a group of stations.
 - (a). The Appellant was already responsible for a group of stations at the time of being retired on grounds of ill health in 1998.
 - (b). It would seem, with respect, that the Respondents have yet to grasp the point of law so precisely and specifically set out by Mrs. Justice Falk in her order. As the Appellant understands it, it is not – repeat not – with the benefit of hindsight, to see what 2003 pay scales show he would have earned on retiring later, but, at the time of being required to retire, in 1998, at what point on that, current, pay scale could he have expected to find himself to be 5 years later when – but for injury – he would have been retiring on account of age.
 - (c). The Appellant would be delighted to have his pension calculated on either £41,941.20 or, even better, £43,053.60 but as the Appellant understands the law, although he anticipated promotion to DO II [Divisional Officer II], referees attached, the applicable APP for the rank on 1998 rates was £36,547.72 on which, if the law so provides, his notional pension, so ill-health pension, needs to be re-calculated.

10. It is not possible to say whether Mr G [REDACTED] would have been an Assistant Divisional Officer responsible for a group of stations or not. There was a provision in a revised pay structure introduced in 2005 (which was backdated to 7.11.03) to move individuals who were formerly ADOs to a Group Manager pay level if they were responsible for a group of stations. In fact, no ADOs within the Service met the criteria and so no ADOs were paid at Group Manager level.

(a) The Appellant can express no view on who met what criteria in 2005. What he can say is that he was already responsible for a group of stations before retirement. Conditions prevailing in 2005, after amalgamations and immense change, were both different and immaterial to conditions in 1998 and, but for injury, his service until 60.

(b). With fewer rank levels in a Fire Brigade than in the Armed Forces and with 10 years experience as an ADO - being responsible for a group of stations - the Appellant was overdue for promotion later in the year of his accident. Thereafter he would reasonably have expected further promotions in his final 5 years of service.

11. It is also not possible to say whether or not he would have achieved a promotion to a higher rank before he reached 60.

(c). It may assist the Honourable Court to know that the pre-amalgamated Fire Brigade Establishments of the time maintained more higher rank appointments than later with some senior officers taking early retirement rather than change.

12. The attached sheet entitled "G [REDACTED] pension calculation" is dated 24.9.98 and shows that calculation used in his case. Marked A below.

(a). The Appellant's current pension was calculated by Julie Wisdom's (Respondent's Performance Manager) as she sets out in her letters to the Appellant of 23rd February 2015, and 26 May 2015 in which she has taken the paragraph 5 provision as imposing a restriction.

"The restriction is such that we cannot calculate a higher pension than would have become payable had you retired normally on account of age i.e. at age 55 and become entitled to an ordinary pension. Therefore as you had 35 years 285 days

service at retirement your pension was calculated as an ordinary pension under regulation B1”

(b). The Appellant was not made aware that the Home Office had issued a practice guidance to the SI 192. Without it he assumed his pension provider would ensure they knew the law and would apply it. Had he known of the guidance given by the Home Office Commentary he would have questioned the basis upon which his pension was based – both as to effect of not being required to retire on account of age until he was 60 and the loss of future pay and rank.

13. The 1992 Scheme is index linked in accordance with pensions increases legislation.

A BELOW is the current “G [REDACTED] pension calculation” is dated 24.9.98 (paragraph 12).

B BELOW is a B3 paragraph 5 pension of DOII at the Appellant’s date of retirement,

Ill Health Pension. A is being paid. B would be correction to DOII

Retires in accordance with Rule B3

40/60th of Average Pensionable Pay **A.** £32,465.27 = £21,643.51 *being paid*

B. £36,547.72 = £24,365.15 *Notional DOII*

Injury Pension

60% of APP **A. of** £32,465.27 = £19,479.16 **B of.** £36,547.72 = £21,928.63

Less ¾ Of Ill Health Pension £16,232.63 £16,446.47

Less Incapacity Benefit £48.80 pw. £ 2,545.73 £ 2,545.73

Payable £ 700.00 £ 2,236.43

Gratuity 12.5% of A £32,465.27 = £4058.16 or, of B, £36,547.72 = £4,568.47

Pensions payable wef 23.07.1998

Ill Health Pension. **A** £21,643.51 **B** £ 24,365.15

Less Commutation. **A** £ 5,401.88 **B** £ 5,410.88

Plus Injury Pension.	A £ 700.00	B £ 2,236.43
Total annual pension	A £16,933.43	B £21,190.70

16. The Appellant asserts that the question is as set out by Mrs Justice Falk in Paragraph 5 of her Order of 6th May 2020, a question on which the Respondent express no view, other than set out in correspondence quoted supra.

This document is the Appellant's submission pursuant to the order of 6th May 2020 having had sight of the Respondent's intended submission to the Court by Friday 22nd May 2020.

The Respondents have declined to agree any fact with the Appellant so the Appellant agrees with the Respondent on all facts, relevant or not, as set out supra, save where text in blue denies or modifies the Respondent's assertion

This, the Appellant's submission, is by way of correction and comment, pursuant to Directions issued at paragraphs 3 and 2 of the Order, as within "a brief summary of relevant facts" and/or as "reasonable comments" on issues, or inaccuracies, as specified.

Signed.



G [REDACTED]. Litigant-in-Person. Appellant

Dated 22nd May 2020

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24 May 2020

To whom it may concern

Re- Francis G [REDACTED]-Fire Service Pension Scheme

I have known Francis G [REDACTED] for several years. We were both officers in the then Lancashire County Fire Brigade that was the forerunner of the present Lancashire Fire And Rescue Service.

During his service he spent some time on the Fylde Coast of Lancashire in the rank of Station Officer and at that time I was one of his supervisory officers. I remember him as a hardworking person who went about his duties in a quiet and efficient manner with the minimum of fuss. He subsequently returned to his native East Lancashire as a Station Commander before attaining the rank of Assistant Divisional Officer.

Unfortunately, he had to retire from the fire service early in consequence of an injury that I understand he sustained in a road traffic accident whilst returning from an operational incident. Had his career continued it is entirely feasible that he could have progressed to at least one level higher in the rank structure.

Yours faithfully



Colin Swarbrick (Retired Divisional Officer Grade II)

143 Anchorsholme Lane East
Thornton-Clevelys
Lancs
FY5 3BS

16 May 2020

To whom it may concern

Re. [REDACTED]

Mr G [REDACTED] was a well-qualified and diligent officer, who had an exemplary record throughout his career. His role as an Assistant Divisional Officer was initially Fire Prevention Supervisory and then later Training Supervisory. He was well experienced in other aspects of the service including Station Command and Fire Investigation.

Had he remained in the service, he could have achieved the rank of Divisional Officer Grade III and gone on to Divisional Officer Grade II.

D C Rushton Retired DIVISIONAL OFFICER GRADE II

D C Rushton

8 Yewlands Drive

BURNLEY

BB10 2QJ

[REDACTED]

TO WHOM IT MAY CONCERN

I knew F [REDACTED] G [REDACTED] for approximately 15 years during our time together in Lancashire County Fire and Rescue Service. For the last 10 years of our time together I was his superior officer.

F [REDACTED] served as a Station Commander in charge of Darwen Fire Station in the rank of Station Officer and later as Assistant Divisional Officer in the Fire Prevention Department at 'B' Division Headquarters. At all times he was an operational fire fighter.

As a Fire Prevention Officer he occupied a supervisory role, being responsible for checking and advising on the work carried out by lower ranking officers. His standards were high and he worked well both as an individual and as a team member. He was well respected.

I have no doubt that if his service had not been curtailed he could have gone on to further promotion to the rank of Divisional Officer Grade III and then Divisional Officer Grade II.



Charles Speak GIFE

Retired Senior Divisional Officer
Lancashire Fire and Rescue Service

14th May 2020