

RULE H3 Appeal to Crown Court or Sheriff

Rule H3 sets out rights of appeal to Crown Court (England and Wales) or Sheriff (Scotland). Part II of Schedule 9 explains rights of appeal to appeal tribunals for those in temporary employment in connection with training, etc. outside the UK.

Reconsideration of case

If a person believes they have entitlement to an award under the FPS but the fire and rescue authority

- say they do not, or
 - say they do, but not to the extent that the person feels appropriate
- then he or she has a right to have their case reconsidered under Rule H3(1).

The “person” could be you, as a firefighter, or a dependant or other person who believes they are entitled to an award based on your membership of the FPS. The person’s dissatisfaction could be based on the fact that the fire and rescue authority has refused to pay an award, or refused to pay as large an award as the person expects, or perhaps because the fire and rescue authority has withdrawn a pension on conviction of an offence (forfeiture).

You (or the person claiming in respect of your service) may wish to consider using Internal Dispute Resolution Procedures (IDRP) as allowed by the Pensions Act 1995 for the reconsideration process. This would give you an assurance that the fire and rescue authority would handle the process within the statutory guidelines and time limits required by IDRP (see Annexe 12).

Appeal to Crown Court or Sheriff Court

If you (or the person claiming in respect of your service) are dissatisfied with the outcome of the reconsideration then under Rule H3(2) there is a right of appeal to Crown Court or the Sheriff Court. Under Rule H3(6) it will be the Crown Court to which the appeal will be made unless –

- the fire and rescue authority by which you were last employed as a regular firefighter, or
- the fire and rescue authority which employed you before you took up temporary employment in connection with the provision of fire services under Rules A4(2)(a) to (c), or
- the place in which you are serving at a central training institution under Rule A5(2)

is in Scotland, in which case the appeal should be made to the Sheriff Court.

The relevant Court’s rules of evidence and rules relating to the time to appeal will apply to the hearing. You should check with the Court as soon as possible the time limit for giving notice of appeal or you may have to rely on the Court’s discretion to extend the normal time limit.

If you are a former regular firefighter whose claim arises from a period of temporary employment in connection with the training and organisation of firefighting forces in a country outside the UK (i.e. under Rule A4(2)(d)), or if you are a person claiming an award in respect of such a firefighter, your right of appeal is to an appeal tribunal –see “Appeal Tribunals” below.

RULE H3

Appeal to Crown Court or Sheriff

Rule H3 (continued)

Advice If you need help or advice in respect of this type of appeal you should consult your staff association or a solicitor.

Limitations Rule H3(3) states that the Crown Court (Sheriff Court) cannot –

- overrule a fire and rescue authority’s exercise of discretionary powers allowed by the FPS, except in the case of a decision made under Rule K5 (forfeiture of pension on conviction),
- re-open any medical issue decided on an appeal under Rule H2,
- question any certificate of pensionable service which has become conclusive under Rule F1(5).

Appeal tribunals If, had you been employed by a fire and rescue authority, you would have had a right of appeal under Rule H3 to Crown Court or Sheriff Court, but the claim you wish to make arises from a period of temporary employment under Rule A4(2)(d) (i.e. in connection with the training and organisation of firefighting forces in a country outside the UK) then Rule H3(4) gives you similar rights of appeal but to an appeal tribunal appointed by the Secretary of State rather than to Crown/Sheriff Court. As with Crown Court and Sheriff Court appeals, this right also extends to a person claiming an award in respect of your membership of the FPS, e.g. a widow or dependant.

The rules and requirements of an appeal tribunal are given in Schedule 9 Part II. The following references to paragraphs are to those in Schedule 9 Part II.

If you last worked for a Scottish fire and rescue authority before entering the temporary employment, the following references to “a Scottish case” (as described in paragraph 1(b)), apply to you.

As with a Crown/Sheriff Court appeal, the first step to take if you are dissatisfied with –

- the refusal of an award
- the refusal of a larger award than the award granted, or
- the withdrawal (forfeiture) of an award on conviction of an offence

is to ask the Secretary of State to reconsider your case. (If you are covered by Rule A4, the Secretary of State is your “fire and rescue authority” for purposes of the FPS.)

If you are dissatisfied with the outcome of the reconsideration you may then give notice of appeal to the Secretary of State. Your notice must be in writing and state the grounds of appeal.

Rule H3 (continued)

**Appeal tribunals
(continued)**

Under paragraph 1, the Secretary of State will then appoint an appeal tribunal. The persons appointed will be –

- a barrister (in a Scottish case an advocate) or a solicitor of not less than 7 years' standing
- a retired member of a fire and rescue authority whose rank was at least Divisional Officer (Grade 1) or Area Manager A and who was not employed by the fire and rescue authority of the appellant, and

a third member, of unspecified qualification.

In accordance with paragraph 2(1), the tribunal will decide the time and place of the hearing and will give you and the Secretary of State reasonable notice of where and when it will be held. (It must also give you reasonable notice if the proposed hearing is to be postponed or adjourned.)

Paragraph 2(2) allows you to be represented by an authorised advocate as defined in Section 119 of the Courts and Legal Services Act 1990 or anyone else you choose and approved by the tribunal, and you may bring evidence and cross examine witnesses. So may the Secretary of State.

Paragraph 2(3) states that the tribunal will apply the rules of evidence and the rules relating to the time to appeal, of the Crown Court or, in a Scottish case, the Sheriff Court (as in Rule H3). Apart from this, under paragraph 4 the tribunal will determine its own procedure.

The tribunal will make whatever order it regards as just, stating the reasons for its decision. You will be entitled to a copy.

Under paragraph 3 you may appeal to the High Court or, in a Scottish case, to the Court of Session, following any decision of the tribunal, but only on a point of law from a decision of the tribunal. The rules of court will apply to such an appeal.

The same limitations apply to an appeal to an appeal tribunal as apply to a Crown or Sheriff Court see "Limitations" in the explanation of Rule H3 and "Points to Note", Point 1, below.

**Useful reference
source**

- FSC 26/1979: the need to be aware of time limits for lodging an appeal with the Court
- Annexe 12: explains Internal Dispute Resolution Procedures, the Pensions Advisory Service, the Pensions Ombudsman and the Occupational Pensions Regulatory Authority
- FSC 30/2004: amendment to terms of representation at Appeal Tribunal

Rule H3 (continued)

Points To Note

1. In “Limitations” in the explanation of Rule H3, there is reference to the Court not being able to overrule the fire and rescue authority’s exercise of discretion. Examples of discretionary powers available to a fire and rescue authority under the FPS are –
 - resuming payment of a widow(er)’s or civil partner’s award if the subsequent marriage or civil partnership ends (Rule C9)
 - paying a gratuity to a dependent relative (Rule E3)
 - withdrawing a pension during employment as a regular firefighter (Rule K4)
 - determining when to pay a widow(er)’s or civil partner’s pension or a child’s allowance (within a year of a firefighter’s death) where the firefighter has received a gratuity (lump sum) other than an injury gratuity (Rule L3).
2. If you are dissatisfied with a decision of the fire and rescue authority in relation to an ill-health (or an injury award made before 1 April 2006) you must be sure that you are aware of the difference between this route of appeal under Rule H3 and that allowed by Rule H2 (appeal to a Board of Medical Referees – see the explanation of Rule H2). A Rule H3 appeal is used to challenge a decision of the fire and rescue authority which does not rely on a medical opinion; a Rule H2 appeal is used to challenge a medical opinion. Using as an example an award made before 1 April 2006 (the date from which injury provisions were transferred from the FPS to the Firefighters’ Compensation Scheme), a fire and rescue authority may have decided that a firefighter was not entitled to an injury award. Had they based this decision on medical evidence or non-medical evidence? If they had based it on medical evidence, e.g. an independent qualified medical practitioner had given an opinion which said that there was no link between the disability which caused the retirement of a firefighter and an injury sustained by the firefighter, then the normal appeal route would have been through Rule H2. It is the medical opinion which would be challenged. If, however, the fire and rescue authority had arrived at their decision on non-medical grounds, e.g. they said that a firefighter was not entitled to an injury award because he/she was not recorded as being present at the incident to which the claim of injury relates, then the normal appeal route would have been through Rule H3.
3. The right of appeal under this Rule extends to a pension credit member (i.e. the ex-spouse or civil partner of a firefighter entitled to a pension as a result of a pension sharing order made by a court on divorce, dissolution of civil partnership, or annulment).