



14<sup>th</sup> December 2017

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Dear Regulator and Ombudsman,

### **Conspiracy to Defraud**

With respect, may I alert you both, personally as the responsible individual, to what would seem to be a most serious and systemic conspiracy to defraud former firefighters who, though compulsorily retired on ill-health, are being paid a basic time served pension, denying them compensation provided by common law and legislation.

Mr. Galpin, et al (amongst cases in your offices) has stated the whole of it:

***“ 4. SI 129 1992 specifies a B3 ‘Ill-health’ pension as compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reason of ill health.”***

The Lancashire Chief Fire Officer replied on 19<sup>th</sup> Feb 2016 (IDRP/2015/FMG):

*“Appendix 1 is an extract of SI 129 1992 Part B Personal Awards (pages 16 and 17). I am unable to see any reference in the Statutory Instrument to this being compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reasons of ill health”.*

Mr. Kenny, a layman, construes the law to mean that Mr. Galpin, on being required to retire on being injured in our service so suffering financial loss, be paid the same B1 pension which

would have been his entitlement on choosing, when fit, to go early to become a well paid plumber.

A priori, legislation requires congruity between its parts. SI 192 Rule K (1) (b) enables the fire authority to reduce an ill-health pension by up to 50% on contributory negligence, which presupposes a compensatory pension. Congruity requires that where wording departs from formulaic provision, an ill-health pension is intended to be compensatory.

De facto, Mr Galpin is receiving the irreducible sum of a basic time served entitlement - due, injured or not. Since it cannot be reduced it does not in law qualify as an ill-health pension.

More widely, pensions administrators owe a fiduciary duty to those to whom their fund pays pension to know the law and apply it.

There is an over-arching legal presumption in construction of all documents that wording is given its ordinary (SOED) meaning and, in legislation, all words used have meaning and different words denote different meanings.

The law is consistent, so construction of an SI, as in contract, requires wording to be strictly construed against the interest of any party relying on wording to gain self interest, or to deny another's interest – here a pension provider to avoid payment.

The ill-health pension provision is set out in SI 129 at Schedule II, Personal Awards, Part II, Rule B3.

At the same time as it promulgated its SI 192, the Home Office issued its 1992 Commentary.

The Commentary does not make law but in plain language sets out, for lawyers and laymen alike, how the State, HMG, requires its parliamentary language of provision to be construed.

By giving unambiguously, in the plainest of plain English, HMG's intended meaning of wording used in the SI to lay administrators, the Commentary avoids different interpretations in different places, to ensure a common, shared and legally correct, universal interpretation.

Unless the Commentary mis-states the law, payment of any pension not in accordance with the Commentary's interpretation of the meaning of wording in the SI is maladministration.

Ill-health provision in SI 192 is set out at B3. Paragraphs 2, 3, 4 and 5 all make provision.

Whilst paragraphs 2, 3 and 4 are premised on, and limited by, what pay '*is*' being paid, paragraph 5 is premised on '*by reference to*' actual pay, so limiting calculation to being based on the scale of ranks and pay rates in force at time of enforced retirement, within which the actual pay is specified.

As a matter of legal construction, the '*is*' in SI 192, Rule B3 cannot lawfully be conflated with, or be taken to mean the same thing as '*by reference to*', as Mr. Kenny has taken it to mean for the purposes of his reply to avoid any legal duty on the pension fund to compensate for lost career.

The use, meaning and legal effect of '*is*' in the Rule B3 formulaic provision is unmistakable.

To avoid mistake on more difficult language, the Commentary construes into plain English the non-formulaic legal effect to be given to the meaning of *'by reference to'* in paragraph 5.

The Commentary specifically tells, states the law, to pension administrators (third person) that they are to give legal effect to the words *'by reference to'* by awarding pensions sums under B3 as formulated, *"or what could have been earned by compulsory retirement age"*.

To the pensioner, to whom access of the Home Office Commentary was to be made freely available, the Home Office speaks to each personally (second person), your pension is as formulated *"or what you could have earned by your compulsory retirement age"*.

The intention of legislation was inescapably to grant flexibility to calculate future loss within a paragraph 5 award of a notional pension by allowing it to become – *what could have been earned* – including by promotion or, with passage of time, the top pay rate for the rank he or she could have enjoyed.

In practice, to arrive at *"What could have been earned by compulsory retirement age"* the first step is to decide what final rank or pay level full service *'could'* [not probably but a more generous possibly], have yielded the fireman; then, to calculate the notional pension for someone retiring that day in that rank or at that pay point. By specifying calculation *'by reference to'* to his current pay, the SI is avoiding speculation on the sum of future earnings by limiting calculation of notional pensions to the pay scales in force at the time of the enforced retirement,

To avoid an ill-health pension yielding more than possible actual loss, where the paragraph 3 or 4 figures are higher than the notional pension, the lower notional pension is paid. This is to avoid any ill health B3 pension doing more than compensate for loss of earnings a full successful career could have yielded - that is *"What could have been earned by compulsory retirement age"*.

Thus, to compensate for financial loss, SI 192 Rule B3 (5) provides as the ill health pension the sum of a notional B1 of a full and successful career. Being a notional B1 the sum is limited to 40/60<sup>th</sup> of final notional putative pay calculated on the pay scale in force at the date of being required to take ill health retirement.

It was not, and is not, parliamentary intention that its legislation provides injured firemen or women with less compensation than under common law.

Before material legislation firemen who lost their careers and prospects through injury had to go to Court to seek damages for both their injury and financial loss. Legislation replaced that. It replaced uncertainty by certainty. What was good for firemen (whose Unions approved) was good for the taxpayer who avoided having to pay future financial loss up front in damages and the heavy legal costs of endless litigation.

Damages were replaced with an *'injury award'*, in effect a lump sum in compensation, as in damages, for pain, suffering and loss of amenity, and a separate *'ill health pension'*, as compensation, as in damages, for loss of future career earnings.

By not following government guidance, so misconstruing, so denying compensation for financial loss in his awards of notional pension, Mr. Kenny denies paragraph 5 of Rule B3 any legal effect. He also avoids underlying common law entitlement, the 1947 enabling Act, and the 1992 Home Office Commentary, specifically issued to him to ensure a proper legal

construction of the provisions of SI 192 1992 – none of which could have come to pass but for the unlawful suppression of the 1992 Commentary (continuing).

You may care to note in your investigation that Mr. Warren, administrator, misled the former ombudsman Mr. King in writing by quoting him the 2008 Commentary well knowing that it had no application to Mr Burns' pension, to which the 1992 Commentary applied.

Of course, in absence of the Commentary, in ordinary life, the SI would only ever mean what, in breach of his fiduciary duty, the trusted pension provider told the pensioner it meant.

I write to you personally because I am concerned by the way something which, by any yardstick can only be a national disgrace and is scandalous, is still not being dealt with.

It is, is it not, unfair, disreputable and despicable and should have no place in the UK – justice denied and corruption prevailing in systematic theft by those in a fiduciary relationship, of entitlement, so cash, from disadvantaged old civil servants, hurt in helping us who, in their 70's and more, some are without means of redress. I trust Mr Arter will now personally, and most urgently, review the decision taken after his lay predecessor was misled by Mr. Warren.

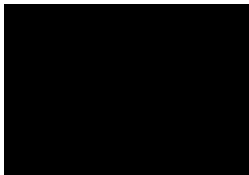
I trust that Mr Burns may now be given the help and support due to any whistle blower seeking justice not just for himself but others from an adverse system. Though I have only looked at Mr. Burns' pension commencing in 1997, it suggests a policy of maladministration.

I trust you will agree that Mr. Burns (G■■■■n, or any fireman) should not have been 'short-changed' in this way and instruct Mr. Kenny to rectify with immediate effect.

If I can assist you further please don't hesitate to call on me.

I would be grateful to be kept informed.

With best wishes,



John Bruce.  
Inner Temple.

PS. Mr Burns has my permission to circulate as he wishes:

Compilation and Circulation by Mr. Paul P. Burns GIFireE:

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Delegated Lancashire Firefighters Pension Scheme manager:

Chief Fire Officer Mr. C. Kenny QFSM.

Lancashire Firefighters Pension Scheme Fund manager:

Mr. K. Keith Mattinson.

Delegated Deputy Lancashire Firefighters Pension Scheme manager:

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