Mr.P.Dhanda M.P.
Parliamentary Under Secretary of State
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Friday, 4th April 2008.

BURNS

My Ref: PB04208
Y**our Ref:** PD/PD/008905/08

The Fire-fighters Pension Scheme – Injury Pension Review.
Lancashire Combined Fire Authority

Dear Under Secretary,

I have before me a letter from Mr.L.Hoyle M.P. which includes a copy of your letter to him for his constituents. My constituency Member of Parliament, also actively involved in this issue is Mr.Nigel Evans M.P.

All the Fire Service Pensioners in Lancashire are most encouraged by the constructive cross party political support from Members of Parliament which we are receiving on this issue. Would that the same could be said for the moribund CFA in Lancashire whom collectively seem unable to make a single decision on the matter whilst my colleagues continue to suffer direct financial hardship.

It seems the CFA act with alacrity to take their money away but not to implement a moratorium until the CFA's debacle is sorted out. How long should they have to wait in hardship? One retired Officer at the centre of this issue who is suffering from terminal cancer does not have the luxury of navel gazing.

Can I say having corresponded with various Under Secretaries over the years the tone of your letter was most constructive and lucid and whilst clearly dealing with the present generation of potential retirees I would encourage you to look at this specific issue within Lancashire with some urgency for the reasons I have raised.

Clearly there are valuable negative lessons to be learned for the Pensions work that you are now involved in.

I have repeatedly raised this matter with Ms.H.Blears M.P. the Secretary of State over the last 5 months without a single reply. I have called for her intervention and the implementation of a Ministerial Inquiry and continue to do so, the matter cannot be left as it is with the CFA.

I am attaching a "Notional Study" I prepared and distributed to the CFA Members last week via the auspices FBU(I am a member), though they were not contributing authors.

Should you feel the need for clarification please do not hesitate to contact me.

I am continuing my work of investigation, supported by the DWP, into curious activities which seem to occur in the unauthorised,unsolicited, release of subject data from the DWP to FS Pensioners who have not asked for their records and then a follow up unsolicited letter from the CFA/LFRS stating that now the FS Pensioner has received these records that they, the LFRS, would like to see them?

This seems to be a prima facie case of criminality at work and should that prove to be the case then I shall pass a file to the Chief Constable of Lancashire for his criminal investigation under the DPAct

The Information Commissioner who is also involved in this issue will naturally be informed.

Our collective thanks once more.

Yours Sincerely,

Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)

Order of Excellent Fire-fighter
Russia

Oklahoma Medal of Honour
&
Honorary Citizen

CC
Mr.L.Hoyle.M.P.
Mr.N.Evans.M.P.
Information Commissioner **Case Reference Number RFA0192266.**

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Friday, 18th April 2008.

BURNS

My Ref: PB04708
Y**our Ref:** No Reference

The Fire-fighters Pension Scheme – Injury Pension Review.
Lancashire Combined Fire Authority

Dear Minister,
Thank you for the courtesy of a reply. It is a rare Ministerial attribute.

Aside from the technical detail contained therein, with which we are all more than familiar, your letter raises a fundamental question.

You have reasonably assumed that in a well managed Fire Service, arrangements are in place to deal with all disputes or issues arising from a plethora of disciplines, including pension's issues.

In the deplorable case of Lancashire Fire and Rescue Services and its contractor the Lancashire County Council Pensions Services you would be entirely wrong in that assumption.

It is entirely because *no such dispute resolution machinery exists within the LFRS*, or if it does, that it has neither been promoted nor implemented in this crisis, a crises which involves over 170 FS Pensioners, that the FBU have, uniquely in my three decades of trade union experience, moved directly to personal litigation.

I have today written to the Lancashire County Council, the LFRS pension's contractors, on this very subject. The LCC does need see the need either to provide any form of arbitration in discharging its contract with FS Pensioners.

This is my comment to the LCC/LFRS in respect of industrial relations:

> **"No Resolution just Continuing Confrontation.**
> From the outset Mrs.Lister's attitude and the collective LFRS/LCC PS attitude has been one of harrying, bullying, and aggressive confrontation. This remains so in her single letter to me over the 5 month period. Further supported by your unlawful actions in contacting the DWP in respect of subject data. You have chosen to take up Mrs.Lister's cudgel and with that go the LCC's legal liability and accountability.

Throughout this fiasco neither the LCC PS nor the LFRS have given any consideration whatsoever **to discussing this major dispute with the representative bodies**, nor to date have you collectively proposed a single constructive solution.

Throughout, until you re-involved it, the LCC's political stance declared by your Leader has been that *"this issue has nothing whatever to with them".*

Not a single opportunity of the 170+/- occasions that you have collectively communicated with the FS Pensioners has been taken to point out *the existence of an appeals procedure; their human rights; or their rights of democratic representation.* In fact you have ridden roughshod over every single civilised freedom that they most certainly have.

As this crisis has deepened your collective attitude has become even more entrenched and isolated. You have not given the slightest hint of consideration to mature civilised dialogue with either the individual FS Pensioner, or corporately, with the FBU, nor do you propose any system of (expenditure saving) arbitration which may offer a way forward to resolution. Your actions simple fuel resolve on the part of the FS Pensioners and display the unacceptably arrogant face of the establishment as they rightly see it.

Even simple humanitarian appeals *fail to move* the Chief Fire Officer his staff, or your staff.

You do not contemplate nor do you offer the use of independent pensions actuaries in whom all may have confidence to work towards a resolution.

It is your way, or no way.

You have repeatedly resisted direct pressure from a few elected Members to either comply with the law or to look at this fiasco afresh. You have had to be forced late in the day to obtain a legal Opinion which did not favour your position and still you plough on. You seem content to drive this issue into litigious action by the FS Pensioners, the Fire Brigades Union, and ultimately the Courts. Your actions will undoubtedly lead to considerable legal expenditure for the LCC simply because you personally have failed to consider any form of civilised lawful mediation alternative, even at this late stage.

One can only conclude that this is all about saving Mrs.Lister's professional face and her department at any price provided the tax payers foot the bill.

The question is, when the legal bills quite rightly land at your mat will (the newly elected) Members coming fresh to this issue support your expenditure in the budget balancing act of investment against nil return? Or will they conclude on behalf of the tax payers that saving Mrs.Lister's face is a financial luxury too far? **"**

Minister, it is because local democracy has failed within the LFRS and the LCC PS that I have been driven to produce the "Notional Study" document you now have before you. Desperate situations require desperate measures.

Can I encourage you to write to the Chief Fire Officer of Lancashire and the Chair of the CFA CC Wilkinson to ask them if pension dispute resolution machinery does actually exist within the LFRS, and if this is so, why has it not been implemented in this fiasco?

Conversely if, as seems apparent to me and 170+/- FS pensioners, it simply does not exist when does the LCFA and its Chief Fire Officer propose creating such dispute resolution machinery for its FS Pensioners and when do they intend to implement and promote its existence?

This is just one fundamental issue which highlights the many within this pensions fiasco which continues to illustrate the parlous state of political and corporate management of the LFRS and which has driven me to repeatedly call for a Ministerial Inquiry. This intolerable situation simply cannot be allowed to continue for *families suffering direct financial hardship*.

This issue, now in its 5th month, is as politically moribund as when it started all those months ago.

Perhaps there are other questions you might care, as a Labour Minister, to ask a Labour controlled CFA? Why has this appalling situation arisen in the first place? And, why has it not been expeditiously dealt with to prevent FS Pensioners and families' hardship?

Yours Sincerely,

Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)

Order of Excellent Fire-fighter
Russia

Oklahoma Medal of Honour
&
Honorary Citizen

CC
Mr.L.Hoyle.M.P.
Mr.N.Evans.M.P.

A NOTIONAL STUDY

by

Paul P. Burns. GIFireE

Divisional Fire Officer (Rtd)

LANCASHIRE FIRE AND RESCUE SERVICE

FIRE-FIGHTERS INJURY PENSION 'REVIEW'

A MANAGERIAL FIASCO

FOLLOWING AN 'INITIATIVE'

by

COUNTY COUNCILLOR R.WILKINSON
CHAIRMAN – LANCASHIRE COMBINED FIRE AUTHORITY

IMPLEMENTED
by
CHIEF FIRE OFFICER MR.P.HOLLAND

MR.R.WARREN - DIRECTOR OF PEOPLE AND DEVELOPMENT
MR.B.J.HAMILTON - HEAD OF HUMAN RESOURCES
Mr.J.A.HAROLD - SOLICITOR

MRS.D.LISTER MANAGER - LCC PENSIONS SERVICES

An Unparalleled Litany
of
Inhumanity
Human Rights Abuses
and
Lost Management Opportunities.

APRIL 2008©

A NOTIONAL STUDY OF AN LFRS MANAGERIAL FIASCO

THE RIGHT OF REPLY - LOST OPPORTUNITIES.

The LFRS have received 35 letters and copy letters from the author of this study.

These letters, representing Lancashire FRS pensioners' concerns and criticisms, repeatedly invited both the Chairman of the CFA CC R.Wilkinson and Chief Fire Officer P. Holland of the Lancashire Fire and Rescue Service to defend and justify in legal and pragmatic terms their actions in respect of this pension's issue.

Neither has chosen to do so.

In response the Chief Fire Officer has sent a total of 3 replies, all concerning alleged defamation, all of which have been rebutted.

This failure to respond to legitimate Public enquiries is a universal symptom of a completely failed management. Given a platform for the right of reply, this Chief Fire Officer and his senior management believes and repeatedly demonstrates, that he has no obligation to give a public accounting for his actions to anyone, least of all the Public.

In the pursuit of the truth, and as a consequence, offering yet more Public accounting opportunity to the collective CFA, the use of the Freedom of Information Act 2000 and the Data Protection Act 1998 were also both invoked in an early supplementary and parallel attempt to seek documentary evidence of the justification for the CFA's actions and, in the issues of 'cease and desist' notices, to 'stay' any further actions with the hope that the Chief Fire Officer might pause and reflect.

Both the Chief Fire Officer and CC Wilkinson once more did not avail themselves of any of these Public accounting opportunities.

These lawful requests also provided a platform of rebuttal and legal justification for the Chief Fire Officer to confirm the lawfulness of individual and collective actions carried out under his command and under his jurisdiction. *Again he failed to do so.*

As a consequence of the Chief Fire Officer's consistent management failure to produce a structured rebuttal with documentary supporting evidence yet another management opportunity of reply was dismissed with contempt and these applications issued under these Acts were rejected entirely out of hand and without any attempt at Public justification.

However, these particular matters are not concluded because it now falls by default within the jurisdiction of the Information Commissioner who will report in due course.

Given all these circumstances of failures to publicly account for their actions by CC Wilkinson and the Chief Fire Officer there can be little room for criticism by them of this Notional Study which seeks the truth based on what documentary evidence is available, and during which, because of their consistent management failure of accountability, it is bound from time to time to base comments on facts, reasonable assumptions, and well founded assertions.

RETIREMENT.

Retirement means many things to many people. Primarily one supposes the final freedom. When that day comes, as it mostly seems to do unexpectedly, particularly if you enjoy your work, there is a strange sense of bewilderment, perhaps tinged with a little apprehension about the future and what it holds, and a sad sense of not belonging any more, after many years within the ranks of the Fire and Rescue Service(FRS).

Retirement is not a regular drill for a potential FRS Pensioner. It will not have been practiced everyday of the week, or even once before, and no matter what rank may have been achieved, the potential FRS Pensioner will trustingly rely on those whom they recognise as 'pension specialists' to guide them through this strange process.

These are the specialists, the experts, who will manage the FRS pension when the FRS Pensioner is long gone into retirement and therefore trust is of paramount importance if the FRS Pensioner is to achieve tranquillity in their senior days which they and their families have paid for, in certain cases with a disablement, in others the final sacrifice, and from which they have earned the right of dignified respectful treatment.

FRS Pensioners have high expectations based on profound trust that these experts will manage their individual pension portfolio with care and deliberation, hopefully for their many years to come, in the trustworthy manner that these FRS Pensioners themselves served their Public of Lancashire.

This 'processing' to freedom against the backdrop of a celebratory atmosphere within family, with friends, and colleagues, is carried out, or should be, with mutual kindness, tact, sensitivity, and polite gratitude by the FRS Pensioner. Particularly if the FRS Pensioner has been disabled by his or her Service. The least of concerns, at this moment, ought to be how this strange business of the retirement process is actually administered and what it all may mean for the future. That is for the LFRS to do.

It is fair to say that the focus of FS Pensioners' thoughts are for those of their families and how they will manage to financially provide for them, in what is *their* new world also, outside the Fire and Rescue Service.

So, the retiree is deeply reassured by these experts and provided with a ***unique point of administrative reference***, within a minor blizzard of documents in which, from the LFRS standpoint, the LFRS have satisfied themselves, or should, that all the 'sums are correct'; they have also concluded that they have all the records, or should, of all the FS Pensioners entitlements that he is lawfully in receipt of, before bidding a particular FS Pensioner farewell to his green pastures…

HISTORICAL PREAMBLE.

In order to understand the managerial fiasco which was waiting to happen to the ill read, the inexperienced, and the plain negligent, those in fact who have managed the LFRS pension 'system' since 1998, it is necessary to understand the history of FRS Pensions prior to this point.

It is particularly important to understand the historical methodology which was used to discharge disabled Fire-fighters within the Fire and Rescue Service in Lancashire over the preceding, two decades, and more.

Commonsense, which is not very ‘common’, and as we shall see, demonstrably non existent LFRS managerial ‘sense’, can make for a potent recipe for fiascos when completely disregarded in hasty, ill conceived, ill founded ‘review’ initiatives of this type. A trap for the unwary.

Start badly, as this did, and it is all downhill from that point on.

Fire and Rescue Service Pension schemes are a quagmire for the unwary as the LFRS have apparently just ‘discovered’. But this is well known by CC Wilkinson, the Chief Fire Officer, and ‘his senior team’.

Since inception, Fire and Rescue Service Pension Schemes have been fought over, line by line and word by word, by the Fire Brigades Union for decade upon decade to achieve reasonable equity for its members whom it has to be remembered contributed 11% of their take home pay month on month, not an inconsiderable sum over 30 years, or a lifetime.

Indeed, over decades, a consistent bone of contention is that Local Authorities instead of being good husbanders’ of these FRS Pensioners’ savings for their well deserved green pasture days, repeatedly and wantonly, in spite of being regularly reminded not to by the FBU, simply ‘sold off the family silver’.

Today, we see the results of the public larceny of the FRS Pensioners savings by the LFRS.

The LFRS Pensions Budget Head last year was £530,000:00 in *deficit* a negligence bill picked up by central government, ultimately you and me the taxpayers. If this was not bad enough the galling brass necked iniquity is that those who managed to achieve this spectacular own goal go on to celebrate their ‘success’ this year by awarding themselves a handsome 11% (the magical figure pensioners paid in) in bonuses for their management ‘efficiency’.

Now, these self same paragons of managerial virtue tell the world they have ‘lost’ another almost £0.5 million in pension ‘overpayments’, taking into account this year’s forecast figures to a total of well over a breathtaking £1,000,000:00.

One is driven to ask, given even more ‘efficiency’, are these clerks of the counting house paying themselves enough bonus this year?

Senior Fire and Rescue Service management over many many decades, long since recognised that to administer pensions is a highly specialised discipline, requiring dedicated administrative staff whom have spent their entire working lives in the Fire and Rescue Service with this task, learning every nuance and twist, every dotting of ‘i’ and crossing of ‘t’.

Put simply, to understand FRS pensions the administrator needs to have grown up with it and all Chief Fire Officers long since recognised this and consequently placed it in wise and competent hands. Though being parsimonious as usual, without the fulsome fiscal support this essential task demands.

Because this is such an arcane process which operates in the twilight world at the end of Service life little if anything was done by the Chief Fire Officer to regularly upgrade the LFRS pension administrative ‘system’; to check its robustness; to apply and monitor the

proper recording ‘system’ for day to day minutiae of personal records; to provide and regularly supplement the overworked dedicated staff with a new generation of specialists.

It was a forgotten process, just another task to be fitted in around a thousand others, exploiting in the process conscientious staff administering a threadbare, under resourced ‘system’, which for all its managerial and fiscal poverty was nevertheless the unwitting king pin to its contractor, the LCC Pensions Services, who knew precious little or nothing about Fire and Rescue Service pensions, who wanted to know precious little, and continue today as a ‘contractor’, to know even less.

The LCC PS were, and are, the bean counters working to FRS HQ lawful instructions, no more and no less, the incompetent leading the blind. What a ‘lawful’ instruction is remains a very moot point and remains at the core of this issue, in company with the LCC PS common law duties, which seemingly do not apply to this department, according to their Leader of the LCC Mrs.H.Harding CBE.

Prior to 1998 these few LCFB dedicated and exploited pensions experts for all the inadequacies of an under funded, pre IT system, nevertheless achieved wonders, above all else, in their universally acclaimed common humanity and decency.

Yes, mistakes occurred, as in every walk of life, but simple fallible human errors, never driven by the need to exercise power and cruelty over the weak or the disabled.

In all our minds a few of ‘our’ experts will continue to stand in our Pantheon of Care.

These decent people, until finally disillusioned and jaded, all retired with their priceless technical knowledge in a short period when this new ‘entity’ the Combined Fire Authority was conceived in a deal making smoke filled room by the likes of Mr.J.Straw M.P., whom is Publicly recognised as mostly serving his own political ambitions.

This new LFRS under its two new successive Chief Fire Officers had bountiful opportunities. The opportunity to reappraise, to refresh, look anew, including the opportunity to identify and resource properly with new technology an existing threadbare pensions ‘system’. But they failed even this great opportunity.

As we now know, this essential administrative task never made it to anyone’s agenda, until a further decade down the road and then by default of a fiasco. But because a decade has elapsed under this new ‘badge’ there can be no excuse whatsoever that this was a tattered legacy of the old ‘badge’. The responsibility for this scruffy, negligent, and miserably managed pension ‘system’ rests squarely with those who take the bonuses today.

Under this new badge of the LFRS, pension management was handily contracted out by the Chief Fire Officer to the LCC PS who ought surely to know about FRS Pensions? Though no one took the trouble to look and to find out whether they did, or did not. Patently they did not.

‘New look’ staff from industry were recruited and appointed. Staff who had no knowledge whatsoever of the Fire and Rescue Service and an even less dedication to finding out. Who by their own admissions and actions know precious little about the management of FRS Pensions and absolutely nothing about DWP benefits, as they have repeatedly demonstrated.

Now these LFRS 'experts' who know nothing about pensions or benefits, propose to the Chief Fire Officer that when the LCC PS Contract comes up for renewal at the end of March 2008 that he places this out to tender and then the greatest spectre of all looms, privatisation. The greatest and most potent of all ultimate FRS pensions disasters waiting to happen, judging by current national FRS pension privatisation experience elsewhere, but has the Chief Fire Officer paused to look?

And so this Cinderella of Pensions administration was dropped by the Chief Fire Officer, forgotten, into Pandora's Box for another day, and that day came…

THE PRAGMATIC REALITY OF RETIREMENT.

Two contrasting examples, over the generations, of being retired from the Fire and Rescue Service.

(a) Duncan:

Duncan, who allegedly owes £65,000:00, was retired on the 4th September 1990.

A short time prior to this, whilst on day watch as a Leading Fireman(Historical Rank Title), Duncan was painting equipment wearing his issue overalls at Blackburn Fire Station(B71).

He was summoned to the Watch Commander's office and ordered to put on his #1's and following this he then met a non uniformed admin officer from LCFB BHQ(Mr.G.Carrigan-rtd) in the Plan Tracer's Office on a very casual ad hoc basis.

Mr.Carrigan informed Duncan he was to be retired on medical grounds with a Qualifying Service Injury. 'Duncan' states all this came as rather a surprise to him. He was informed he should sign on the 'dole'. Then he was presented with some papers; though he cannot recall whether or not, he was asked to sign anything; and this 'meeting' then concluded. It lasted all of 10 minutes; he took his leave; redressed in his overalls; and resumed painting.

Thus ended 30 years of loyal service to the Lancashire community, and he had no further contact whatever with the Fire and Rescue Service until November 2007, 17 years later.

(b) Mr.Average or A.N.Other:

By the late nineties, in the 'progress' of the human condition and in the belated recognition by the LCC and the LCFB that 'retiring' was not as simple as it seemed from a pension management standpoint pre-retirement courses of two days duration were organised for all retirees from the LCC, not just the Fire Brigade.

Although attendance was not compulsory, these courses were 'sold' on the basis that it was for the common good. But because this was a mixed target audience of potential retirees from across the broad spectrum of LCC departments the course content was quite catholic and dealt with by many diverse speakers, upon equally diverse subjects.

Some 'experts' from the private sectors discussing investments, right across the spectrum to those from the DHSS(DWP) whose expert concluded in response to FRS disabled pensioners questions that the first step was to 'sign on' for incapacity benefits. Indeed the

anecdotal recollection is that this was done right there and then by filling in the necessary, and provided, DHSS standard forms.

This application to the DHSS then led automatically to an evaluation by them using the 'test of suitability' for work which is based on an individual's response to a points based questionnaire, which in turn is based purely on that FRS Pensioner's personal circumstances of discharge, percentage of disability etc, etc, from the Fire and Rescue Service.

The LCFB simply could NOT have been unaware of these applications because they had monitoring staff present at these courses and in addition the LCFB had to fill in the employers section of this form and return it to the DHSS before this evaluation could take place. If there was failure to keep records then that is an issue for the LFRS.

This evaluation, when completed by the DHSS Adjudicating officer, a process which could take anything up to 6 months, concluded with a decision based on this points system that the individual FS Pensioner was either classed fit for 'unspecialised' work and thus incapacity benefits which they had been receiving were immediately terminated without any requirement of repayment, or the individual FS Pensioner remained classed as fully disabled and was thus entitled to the full range of continuing DHSS benefits.

This points qualification is also based on a percentage disability threshold applied against the award of an individual FS Pensioner's percentage of disability agreed jointly by parallel medical examinations by both the LCFB(LFRS) and the DHSS(DWP). This threshold seems to be in the region of +/-15% disability. Below this threshold there is no entitlement to DWP benefits, conversely above, there *is* entitlement. Though it appears the only hard and fast rule is that there are no hard and fast rules.

This entire procedure was well known to the LCFB and its, then, pensions staff, unlike today.

Later, in the routine proactive management of any FRS pension, should any uncertainty arise concerning the Statutory 'liability' to pay an individual's FRS pension, *whether or not*, that FRS Pensioner had raised the question themselves, then the LCFB had a duty in managing this FRS pension to have recourse to the DHSS records which they could freely and lawfully do at that point in time and until June 2000 when a new enactments of law (Data Protection Act 1998) prevented this access in the future. This was good, proactive, pension's management besides being their Statutory duty.

It is reasonable to contemplate that if only one or two FS Pensioners' had any form of aberration with their pensions then clearly these are personal rather than systemic issues for the LFRS to address with them.

Conversely if , as is the case, confirmed by the LFRS own public statistics, there are large numbers of FRS Pensioners involving large amounts of monies, whether under or overpaid, then this simply confirms the complete systemic failure of the LFRS pensions management 'system' which is within the responsible remit of the Chief Fire Officer and ultimately the Chairman of the CFA, CC Wilkinson.

Blaming the FRS Pensioners is not an option.

Claiming the high moral ground by the LFRS that there were 'under payments' is hardly a claim to common humanity, nor to good FRS pensions management either. Why did these 'underpayments' exist in the first place? Simply because LFRS pensions management failed to identify them in routine pension management.

It seems curious that when 'overpayments' occur it is the FRS Pensioners' fault, yet when FRS Pensioners are underpaid it is no one's fault. Equally, when the LFRS reading of a FS Pensioner's data is wrong it is the DWP's fault and when it is finally recognised by the LFRS that their complete management 'system' is a fiasco, it is the government's fault. Heads-I win, and tails-you lose, simply risible double standards yet again.

So off into the sunset trundled this next generation of disabled heroes in the certain knowledge that, supposedly, these 'pension experts' knew what they were doing and if there were any problems FRS Pensioners could expect caring and dignified treatment in resolution of any issues.

Such is wishful thinking.

Loyalty and Pastoral Care?

There was a consistency of failure over the decades in the lack of follow up pastoral care by the Chief Fire Officer, or indeed any sentiment of loyalty to the FRS Pensioner. Nor, apparently, was there the slightest need to stay in touch in any manner with those whose pensions the LFRS manage.
Indeed, it has now reached the cost saving point when only a payslip is issued if any form of change to emoluments occurs. This, one supposes, is regarded as robust pension management, rather than just plain uncaring budget driven idleness?

It is completely reasonable that FRS Pensioners would as a consequence adopt and mirror this 'caring' policy of their former employers, in that, not hearing anything to the contrary, all must be well with their FRS pensions. This, after all, was also based on the now *completely obliterated 'trust factor'.*

Clearly this pastoral care is of the ilk of the dark Satanic Mills managerial model which only continues today to exist in the antediluvian mindset of the Chief Fire Officer and his senior management 'team'.

An attitude best summed up by one FRS Pensioner… "Here is your heroic brass watch and chain, now you can bugger off."

A Litany of Neglect and Management Failures.

(a) *Unfortunately, FRS Pensioners live longer.*

The failure to 'read the wind' in FRS pensions terms commenced in the late 80's. At that time FRS statistics indicated that the natural life span of retirees would amount to, on average, 5 years after commencement of their pension. This startlingly short life span simply reflected the failure to grasp the use of the 'modern' technology e.g, Breathing Apparatus, in the daily lives of a Fire-fighters of the 60's and 70's. In short, and simplistically, Fire-fighters were expendable commodities.

In the late 80's and early 90's compulsory physical training was finally introduced at all levels within the Fire and Rescue Service, spearheaded by the FBU in an attempt to reduce

the ill health/Injury attrition rate in Fire-fighters driven by the philosophy that if it made commonsense to maintain fire engines why not personnel as well? To some degree the unintended 'bonus' of this far sighted policy was to ameliorate the high death rate amongst those enjoying a well deserved FRS pension.

The litany of pension management failures which commenced on or about this time included the LCC/LCFB/LCC Pensions Services negligent failure to put in place a modern IT based robust pensions system which recognised the fundamental impact that this 'enforced' healthier life style would produce in pensions management terms and the ultimate effect this would have in terms of the greater survival rates of FRS Pensioners in the future. More 'survivors' means more work – not less. A concept the LFRS had better embrace, plan, and budget for.

It is indeed a great misfortune for the LFRS that pensioners are 'unfairly' living longer healthier lives and that is hardly something we are, vis-à-vis, going to do a whole lot about in the immediate future for the benefit of the Chief Fire Officer.

In a nutshell the Chief Fire Officer failed to recognise the changing times.

(b) Disability Discrimination Act 1995:

In 1995 the introduction of this Act was a management opportunity for the LCC/LCFB/LCC Pensions Services to identify a special needs group of the disabled FRS Pensioner within the greater groupings of the 2000 Lancashire FRS Pensioners.

It stands to reason, which is a difficult concept for the LFRS to grasp, that this special needs group would have pension requirements unlike any other FRS group in that, by the very nature of their disablement discharge from the FRS, it would logically follow that these pensions would require more intensive and robust management than other groups of FRS Pensioners, rather than less.

They would, for example, have more complex requirements in DWP benefits support because it could reasonably be anticipated, as a disabled pensioner, that general health would decline with advancing age more rapidly than average, which though not directly attributable to their Qualifying Service Injury, could nevertheless be simply regarded as consequential longer term chronic ill health factors.

The Chief Fire Officer's logic, if available, dictated that more vigilance on the part of a caring FRS pensions management service would be required-not less, which would result in even greater expenditure of man hours, not-less.

There is no evidence whatever that any form of impact study was carried out by the Chief Fire Officer with the introduction of this new legislation which created a special needs group. Nor was there a single newsletter despatched to a single disabled FRS Pensioner recognising their newly identified status and what that may mean in pragmatic terms of increased support available to the individual disabled FRS Pensioner from the LFRS.

Nor were the implications of treating these disabled FRS Pensioners less favourably than their peer group taken to the managerial heart, as we have seen.

Yet another failure by the Chief Fire Officer to recognise that the times, they were a changing.

(c) Data Protection Act 1998:

In June 2000 the amended Data Protection Act 1998 was finally placed on the Statute Book and became law. This is a criminal Act of law, *not* a Civil Act, which means if it is breached, corporately or individually, criminal proceedings will follow, not civil.

This is another issue which continues, with the intervention of the Information Commissioner.

This Act was to have an immediate and major impact on the practical day to day 'management' of FRS Pensions within the LFRS and also has intrinsic major implications for any contracting pensions organisation working for the Chief Fire Officer in terms of 'subject data' management and processing. Though it appears the Chief Fire Officer did not seem to notice.

Not a single administrator from the Chairman of the CFA, the Chief Fire Officer, downwards to senior non-uniformed administrators within a 2 year old LFRS administration appear to have taken the slightest heed, or initiative.

Indeed, not a single administrator from the Chairman of the CFA, the Chief Fire Officer, downwards to senior non-uniformed administrators, regardless of titles, paused to consider the implications of this Act until a staggering 7 years later, and even then with scant adherence of interest or compliance.
It just seems no one really understands, or cares if they do.
This is a dereliction of duty by the Chief Fire Officer which can simply be regarded as grossly negligent pension mismanagement, of the worst possible kind.

Why was the introduction of this Act, a new horizon, of such importance to the Chief Fire Officer even if he had paid it scant attention?

Prior to the introduction of this Act if any question arose about the Statutory 'liability' to pay an individual's FRS pension it was perfectly lawful for the LFRS to approach the LCC Pensions Services to discuss the individual's pension details; in parallel it was also perfectly lawful for the LFRS to approach the DWP and for the DWP to release data to both the LCC Pensions Services, and to the LFRS on a specific pensioner, *WITHOUT* that pensioner's prior knowledge or permission.

This casual access to personal data, known as 'subject data', ceased forthwith in June 2000 when the DPA became law and with it the pension communications links that previously existed were permanently severed. This was, quite simply, start again.

This Act laid down strict guidelines between independent agencies which are to be routinely followed in the matter of handling and the **interchange/exchange** of personal data, which FRS personal pensions data are.

It is also important at this point in time to recognise the status of each politically independent entity, set within the context of this Act.

The LFRS, since 1998, is a completely independent agency which has a duty to recognise the necessity for and full compliance with this Act.

In addition, any sub-contractor the LFRS appoints to discharge its FRS pensions 'liability' function has in turn, its own independent common law duty of compliance with this Act.

Equally, the LCC, another independent agency, including its LCC PS department, has its own independent common law duty of compliance with this Act.

The DWP, the data host for FRS Pensioners' benefits, has special strictures and legal complexities it must adhere to in the release, *to any agency or person*, of any such 'subject data' as it is technically described.

The DWP procedure is quite simple; the agency/person seeking another's DWP data writes to the DWP; the DWP refuses and writes to the data subject informing them a request for information to be supplied has been made by this or that agency/person and requesting that the 'subject' sends back express written permission, an authorising signature, before any data is released.

Later we shall see in this LFRS debacle that the DWP failed to carry out its own procedures because it was 'bounced' into a situation by the LFRS by being presented with a bulk collection of authorising signatures obtained by the **unlawful means of corporate deceit and entrapment**, which incorporated the ***duress of threat to stop an Injury pension if the FRS Pensioner did not sign up.***

This is what the Act states with regard to fairness:

> **Schedule 1, Part II**
> **Interpretation of the Principles in Part I**
> ***The first principle***
> **1**
> (1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

To sum up, it became immediately unlawful in June 2000 to employ any of these casual methods previously used to access 'data', or to seek by the use of unlawful means, to obtain personal data such as DWP benefits.

Therefore, FRS Pensioners data can **only** be obtained with the FRS Pensioners' freely given express written permission. Express permission which is conditional, in that the FRS Pensioner granting this permission is in the full and complete knowledge and ramifications for which the data is to be used set against the quoted and applicable Statute law and is not **… "deceived or misled as to the purpose or purposes for which they are to be processed".**

For example, in this case, LFRS attempts to corporately deceive and thus mislead, or to threaten to cease a pension without just cause or reason, which is tantamount to duress, cannot be regarded as lawful. The end, in law, never justifies the means.

From its inception as a draft Bill until it became an Act of Law there was well over 2 years during which a Chief Fire Officer's impact study ought to have been immediately originated

to determine the pragmatic impact such an Act might have on the day to day functionality of the LFRS pension managing 'system'.

No such impact study was considered by the Chief Fire Officer, or ever carried out.

Ignorance of the law is no excuse and well before this, Fire and Rescue Service informational systems formerly driven through the Home Office H.M. Fire and Rescue Service Inspectorate(Now the CLG), regularly flagged up in its "Dear Chief Officers" letters of the existence of draft legislation and indeed where and how this might impact on the day to day management of the Fire and Rescue Service, well in advance of its incorporation in Statute law.

In the case of FRS pensions, as in the case of many other FRS issues, ignorance was not an option.

Had a Chief Fire Officer's impact study been carried out the following would have been the immediate self evident conclusions from June 2000:

- The LFRS could not in the future exchange FRS pension data with its nominated contractor without the express written permission of the data subject viz every single one of these 2000 FRS Pensioners.
  Not a single permission was sought or given.

- The LFRS could not in the future exchange FRS pension data with the DWP without the express written permission of the data subject viz every single one of these 2000 FRS Pensioners.
  Not a single permission was sought or given.

- The DWP could not release subject data without the express written approval of every single one of these 2000 FRS Pensioners.
  Not a single permission was sought or given.

The mystery remains how, in the 10 years that followed the enactment, were FRS pensions being lawfully administered by the LFRS from that day to this without having acquiring a single legitimate written permission from a single FRS Pensioner?

To date, excepting the dubiously 'acquired' permissions of some 170+/- of the FRS Injury Pensioners, the balance of the remaining 2000+/- FRS pensioners have not given a single written permission to any agency for anything remotely connected with FRS pensions data transfer.

Given the complete lack of FRS Pensioners' written permissions supplied directly by request to the LFRS; directly by request to the LCC PS; and directly by request to the DWP the LFRS 'system' was utterly and completely unworkable from a lawful standpoint since 1st April 1998.

It is therefore logical to conclude that from June 2000 until 1st April 2008(ignoring the 170+/- 'signatures'), the existing LFRS pension management operation was, and remains, entirely unlawful.

It is also logical to conclude in processing data unlawfully acquired from the LFRS that the LCC PS have failed to satisfy itself of the lawfulness of this process instruction and are also culpable with the LFRS in criminal law because, as has been repeatedly pointed out in correspondence, the DPA is a criminal Act not a civil Act.

Why is it that the Chief Fire Officer and not a single highly paid administrator have attempted to rectify this appalling situation for the last 10 years? After all it is as CC Wilkinson constantly reminds us, ad nauseam, his responsibility, his Chief Fire Officer's, and his 'senior team's' responsibility to guard the Public purse.

CC Wilkinson described this entire situation in the Press as being 'ridiculous' and blamed the government, which is refreshing company for the FS Pensioners, but before you can describe anything as 'ridiculous', you first of all have to realise it exists.

Judging by this miasma of total pension management failure, the Chief Fire Officer and CC Wilkinson are ***not*** doing a splendid pension management job by any yardstick.

Furthermore, should these FRS Pensioners in the light of their bitterly acquired knowledge, decide to veto, with the power they now recognise they have, the granting of express permission to access their data by any newly appointed privatised contractor of whom they disapprove, such a Contract will remain unfulfilled; FRS pensions will remain unpaid and unmanageable; though not that the latter would necessarily raise any FRS Pensioners' eyebrows after this present management debacle.

It seems in the final analyses that 'overpayment' is the least of all concerns in this continuing and deepening fiasco.

Finally, under the Limitations Act 1980 (common debt), not a single FRS Pensioner involved in this fiasco has had a 'debt' drawn to their attention since either their retirement, the '***unique point of administrative reference'*** referred to, or since the inception of the LFRS in 1998.

Given those circumstances it seems certain that any form of debt recovery is unlikely to bear fruit.

Can the Chief Fire Officer's management get much worse than this? Indeed it can, as events will confirm.

THE CATALYST FOR MANAGERIAL DISASTER.

(a) The Wilson Affair.

On 15th February 1993 Stn Cmdr D.Wilson retired from the FRS, disabled. He Informed the LCFB that he was receiving Incapacity Benefit and that he had made a claim for his wife as a dependant. Subsequently, he informed the LCFB that he was in receipt of additional benefits for his wife as a dependant.
These documents are on his personal record file.

Mr.Wilson heard nothing further from the FRS until 17 Years later. Here is a brief outline of his very honest attempts to inform the LFRS of his pension circumstances based on his own written records:

- **"Mon 27 November 2006.** Phoned Job Centre to query Incapacity Benefit when wife becomes 60. Informed that benefit for my wife would stop when she became 60. Phoned County Hall to inform them of conversation with Jobcentre but was told no action could be taken without written confirmation from Jobcentre
- **Sun 10 December.** My wife was 60 years old.
- **Wed 17 January 2007.** Phoned Job Centre to request letter confirming stoppage of Benefit.
- **Wed 31 January 2007.** Phoned Jobcentre to remind then I had still not received promised letter.
- **Tue 20 February 2007.** Letter to Jobcentre re above.
- **Fri 02 March 2007**. County Hall phoned reminder re confirmation of stopped benefits. Called at Gateway House (Job Centre Preston) and after much cajoling managed to obtain letter confirming stoppage of benefits. Taken by hand to County Hall and handed over to a member of Pensions staff.
- **Wed 27 June 2007.** Pension Advice slip arrived for July. Showed no Injury benefit amounting to a loss of over £200 when I expected an increase of about £200, Phoned County Hall and spoke to Julie Wisdom regarding my pension Advice slip. She explained that they had been sent out early because of the post strike and that I should have received an explanatory letter. Over the telephone she explained that not only was the Injury Benefit being stopped but that for the last 14 years I had been paid it when I was not entitled to it amounting to a sum of **£30,164.61** which the Combined Fire Authority intended to recover commencing on 1 August at a rate of £415 *per month*(sic)."

Given Mr.Wilson's well founded concerns about his deteriorating health and his wife Carol's future he felt compelled, under this extreme pressure, to resolve this as speedily as possible which he did. He accepted an offer to payback (an interesting) six years or approximately 50% of this 'overpayment' using an unsecured loan to do so even though this debt had never ever been brought to his attention, nor 'refreshed' as the Limitations Act 1980 on six year debts require. These strange circumstances have never been explained by the LFRS. If it was a legitimate debt why settle for 50%? Why was no receipt issued for these monies?

Mr.Wilson trusted that all that had been stated to him was entirely accurate and truthful by Ms.J.Wisdom of the LCC PS and Mr.Hamilton of the LFRS, and that an actual 'debt' did exist.

Now he knows differently.

At one point his entire DWP records arrived at his home address with a 'recommendation' from the DWP that these be forwarded to the LFRS. This is the first of many such curious occurrences during this entire pension's fiasco. Mr.Wilson is quite adamant that he did not ask for his records nor did he give anyone else permission to approach the DWP on his behalf, who in any event could only release data lawfully with his express written authorisation which he had not provided to anyone, including the DWP.

Mr. Wilson fulfilled to the letter any requirements laid upon him. Indeed you will notice that to avoid the slightest possible criticism he went repeatedly to the DWP to draw to their attention this change of DWP benefit circumstances, also hand delivering notification of these changed DWP benefit circumstances to the LCC PS.

He honestly believed what he was told by the LCC PS and the LFRS, and in so believing, made immediate reparation repayment thinking he was entirely at fault.

- Were these the actions of a FRS Pensioner intent in not fulfilling his 'obligation' to inform the LFRS?

- Were these the actions of a man and a woman intent on defrauding both the LFRS and the DWP?

- What more ought he, or could he, have done in these circumstances?

The simple LFRS reason for the existence of this alleged 'debt' is that these pension 'experts' failed to ask the DWP what these DWP benefit payments were for; were unable themselves to link them with Mr.Wilson's FRS Qualifying Injury award; because in their abysmal ignorance of FRS pensions they did not have sufficient technical knowledge of FRS pensions in order to ask the DWP the correct questions in order to determine, whether or not, these DWP benefits might or might not be linked to Mr.Wilson's Qualifying Injury award; which indeed they were not.

If ever, given the complete historical litany of failure of the LFRS to manage FRS pensions, there was a shameful and unforgivable act of bad faith which cast Public doubt on this disabled FRS Pensioner's probity and in the process abused his complete trust compounding this officiousness by using a threatening and bullying manner, then this was it.

(2) The Wilson Inhumanity Affair.

Lest we forget the human dimension and common humanity, which the Chief Fire Officer consistently manages to do, we should allow Mrs.C.Wilson to air her views on this situation during which not a single person from the LFRS/LCC PS ever visited their home to enquire about these alleged 'overpayments', or their well being.

No one sought to care, including the Chief Fire Officer or any of his 'uniforms'. This was quite simply an abrogation of their duty to care. The Chief Fire Officer failed to ask whether or not this would cause actual financial hardship at a particularly perilous time in their lives, merely being content to remain 'unaware' of their human condition. Not a single person who has ever served in the Fire and Rescue Service, particularly, at a senior rank, is about to believe such a scenario.

Even if, like Shylock, the Chief Fire Officer patently only cared about money, he should nevertheless in his penuriousness have determined whether or not repayment could be actually be made.

CAROL

"I was not initially aware of any problems until I noticed that David was becoming withdrawn and tetchy. He appeared to be worrying about something and being very off hand. I asked what the problem was only to be told 'you don't want to know'. I insisted he tell me and he told me about the letter from County Hall. He told me he had kept it to himself because he knew I would be upset and worried. When I read the letter I was astounded, shocked and angry at its contents. I read the letter several times and was shocked at its 'bullying' tone. The prospect of finding that sort of money, even at £400 pounds a month, was totally unrealistic.

I felt we were being accused of dishonesty for claiming money we were not entitled to when I was fully aware that David had kept the LCFB fully informed.

After David had sought advice from a friend, who works for Citizens Advice, we contacted a solicitor who agreed to act for us. He was also taken aback at the tone of the letter. Eventually it was agreed that the Fire Brigade would settle for £15,000 but only if it was paid in 28 days. David asked to pay it at £200 pounds a month but this was rejected. David, with some difficulty, secured a bank loan to pay the amount in full.

Since this money has been paid we have not received any acknowledgement of the payment which does not surprise me the way the whole thing has been dealt with.

I also find it shameful that after 28 years service no one from the Fire Authority has had the courtesy to come and see him or contact him. This would have been the norm when he was a serving fire-fighter.

David was discharged from Christies on the 26 of July following 5 years of follow ups after treatment for cancer of the larynx. Within the last three weeks David has been told that he has, in all probability, a tumour on his left lung, which has caused further upset. I am also aware that the loan is uninsured to keep the repayments down and that I will be left with the payments should the worst happen.

This incident caused a lot of upset in our household on top of which I lost my cousin, to cancer, towards the end of June a matter of a week before this started.

Carol A. Wilson"

What a disgraceful way to treat an honourable FRS Pensioner doing his very best to be honest; a FRS Pensioner who served honourably; a FRS Pensioner with inoperable chest cancer.

Can there really be a more shamefully abhorrent and downright uncivilised manner to treat a fellow human being?

TIME LINE TO MANAGEMENT MELT DOWN.

(a)The How:

At the outset it is of critical importance in the understanding of this overall issue of Injury pensions that the following issue of DWP Benefits is clearly understood.

It is, that only those DWP benefits which are paid to a FRS Pensioner which are indisputably paid for, and directly linked to, the FRS Qualifying Injury which led to the discharge of the FRS Pensioner from the Service, which become the subject of an 'obligation' to inform the LFRS. This presupposes that the LFRS have not been involved with the application for such DWP benefits from the outset and are thus not aware of their existence. If they are, and this repeatedly seems to be the case, then the 'obligation' is fulfilled.

These DWP benefits, even if linked, may, or may not, affect the Injury payment award.

In addition it is perfectly feasible and permissible to receive other DWP benefits which are not directly linked with a Qualifying Injury, without informing the LFRS.

Furthermore, this procedure works on the reasonable assumption that the LFRS in discharging its 'liability' to pay the FRS pension have, at the '***unique point of administrative reference'*** at the commencement of the pension, already been party to the original application to DWP for benefits linked directly to the Qualifying Injury and thus are knowledgeable of the existence of these DWP benefits, in which case, the LFRS have a Statutory duty to ensure the correct amount of monies (Liability) is paid monthly to the FRS Pensioner. How many times does the LFRS need to be told, or know, to do its job?

(b) The Who's Who.

From the records it is clear that the following three persons were directly involved with administering the Wilson case:

1. Ms.J. Wisdom, casework supervisor with the LCC PS, who seemingly without hesitation makes decisions for the PS, the DWP, and the LFRS and who reasonably at first glance can be regarded as an 'expert', which is defined as a person with above average knowledge, though appearances can be deceptive.

- Ms.Wisdom it was who initiated and acted as the catalyst for this pensions managerial melt down. We can be sure of this because in her letter 26th June 2007 she states regarding Mr.Wilson's pension … "it has come to my attention."
  This sets the tone of individual and corporate deceit which continues to permeate and ooze through this entire fiasco.
  What Ms.Wisdom fails to honestly write in this self serving deceit and cover up of her failure to proactively manage Mr.Wilson's pension is that it was an honest telephone call from Mr.Wilson who brought this matter to her "attention" in the very first place. She did not, through her own assiduous pension management, discover anything.

- Next Ms.Wisdom continues by exhibiting the paucity of *her* knowledge of the FRS and DWP benefits system using the following statement… " the benefits received are greater than the Injury pension due."
  That may indeed be so, perfectly legitimately, if some, the majority in Mr.Wilson's case, of those DWP benefits are not directly linked to a Qualifying Injury eg, home carers allowance for an overall infirmity etc,etc,.

- She continues …"Therefore the Injury pension should have not been paid and payment has now ceased." This breathtaking decision just about sums up Ms.Wisdom's depth of knowledge as a 'supervisor' and displays an arrogant approach in that she did not meet this FRS Pensioner to determine even for her own professional peace of mind whether this was a factual decision based on established facts or simply conceited superciliousness as it appears to be.

- In reaching this astonishing decision on the basis of her 'expert' knowledge at no time did Ms.Wisdom, the LCC PS, or Mr.Hamilton & Warren of the LFRS attempt to produce a single scintilla of evidence to justify their extraordinary claim of 'overpayment' and/or their subsequent prejudicial action of ceasing Mr.Wilson's pension. This could be construed as simply a case of rushing to demand money with menaces supported by Mr.Harold, the solicitor for the LFRS, in the collective pursuit of career self aggrandisement, also not an uncommon trait in this cynical business.

- At no time, in spite of her 'expert' knowledge, did Ms.Wisdom, the LCC PS or Mr.Hamilton & Warren of the LFRS attempt to determine whether or not that the legitimate DWP benefits that Mr.Wilson had received were linked to and directly for the FRS Qualifying Injury(back) award. In fact had they troubled themselves to do their work properly they would have determined that the actual reality was that these DWP benefits were in fact legitimately received

for another disablement (hip) entirely unconnected with the disablement with which Mr.Wilson had been discharged from the FRS.

- Ms.Wisdom, in her simplistic financial 'expertise' arrived at this alleged debt by taking the gross financial figures paid to Mr.Wilson by the DWP from 1993-2007; she failed to ask for a breakdown of the types of DWP benefits paid because she did know what types of benefit there were; or for what disability, ailment, or DWP disablement support they were paid to Mr.Wilson for; simply proceeding to issue this gross figure as a 'bill'. An error which she and Mr.Hamilton were to regularly repeat.
  The LFRS/LCC PS failed entirely to demonstrate any form of linkage to his FRS discharge Qualifying Injury and simply ceased his entire Injury pension in July 2007 without further consultation.
  Such cavalier action is constantly repeated in this, 'we are very much in charge and you will do as your are told' 'Review', the unacceptable face of autocracy.

- However, what Ms.Wisdom is coy about explaining is whether she did, or did not, obtain these payment figures from the DWP in July 2007 without Mr.Wilson's original permission, for if she did not, who then did?
  DWP 'subject data' does not simply appear out of thin air in Mr.Wilson's letterbox without someone asking for them, but records will tell the true tale, hence the LFRS/LCC PS collective refusal to supply public documents under Freedom of Information Act 2000 requests.

- Neither Ms.Wisdom, nor her departmental Manager Mrs D. Lister, are on record *at that time* as having sought the advice of the LCC Head of Finance Mr.A.Cutts concerning the lawfulness or otherwise of their handling of the Wilson case; or in those cases which flowed from it; or the lawfulness of the 'instructions' issued to them by Mr.Hamilton & Warren of the LFRS until the matter made Press headlines.

- It is a matter of record that neither Ms.Wisdom, Mrs D. Lister, or Mr.A.Cutts at anytime during this particular FRS pension issue, or the consequential FRS pension issues that arose from it, sought the advice of the Mr.K.Watt LCC Data Access Information Manager concerning the lawfulness or otherwise of the manner in which they were receiving and processing data from the LFRS bearing in mind the LCC PS were only permitted to act on the 'lawful' instructions of the LFRS.
  Neither did they seek a legal Opinion *at that time* from the LCC Legal department, nor independently, until CC's representing the electorate forced their hand.

- Is it little wonder given all these circumstances that a complete fiasco has now ensued?

2. Mr.J.A.Harold the LFRS Solicitor who wrote the 'recovery' of debt letter to Mr.Wilson and who remains to have an intriguing part time occupation of Ward Councillor in Salford City paid for by Lancashire Tax payers whilst occupying a politically restricted post within the LFRS, cannot claim expertise either.

- Mr.Harold portrays no knowledge whatsoever of the Fire and Rescue Service or FRS Pensions.

- Mr. Harold, as the LFRS solicitor, and in conjunction with Mr.M.Winterbottom the Clerk to the CFA, also a solicitor, are not on the record *at this time* in the Wilson case of seeking an Opinion concerning whether or not all this process was perfectly lawful, or indeed those cases which later flowed from it. Presumably it was and is their collective duty to guide the Chief Fire Officer and the Chairman of the CFA in all matters legal?

- The correspondence from Ms.Wisdom(26th July 2007) highlights the point of Mr.Harold's sly agenda. Mr.Wilson was encouraged to acknowledge his 'debt' because Mr.Harold and the LFRS recognised the questionable legitimacy of the LFRS pursuit of debt recovery … " In this respect I should be grateful if you would confirm that you agree with the total overpayment figure of £30,164.61 specified on the schedule."

- This critical point in the Ms.Wisdom's correspondence, without doubt driven by Mr.Harold's advice to the LFRS, was a pure act of entrapment designed to get Mr.Wilson to sign away what was left of his rights, and in so doing, seeking to exploit still further the trusting ignorance of this FRS Pensioner in what was a disgraceful manoeuvre of the Chief Fire Officer, advised by his solicitor, to be a party to.

- All this slippery manoeuvring, legally overseen by the LFRS solicitor, which was nothing short of corporate legal chicanery, was subsequently displayed to the Public as an act of mercy by no less a person than the hypocritical Chairman of the CFA, CC Wilkinson.

3. Mr.B.J.Hamilton LFRS Head of Human Resources whose references pensions are could not have been unaware of a single detail of this entire case.

- He represents the Contracting agency the LFRS, and he is expected to issue 'lawful' instructions to the Contractor, the LCC PS.

- Mr.Hamilton portrays scant, to no knowledge of FRS pensions and is busily employed 'learning on the job' about FRS pensions, unsuccessfully it would appear.

- Mr. Hamilton is also not on any record either *at this time* in seeking an Opinion, either in-house, or independently, concerning whether or not all this was perfectly lawful.

- Mr.Hamilton sought to recover this 'overpayment' by instalments of £415:00 per month. This was a completely unrealistic sum for a FRS Pensioner on Mr.Wilson's pension and appears to be just hollow, cynical, political posturing.

- There is anecdotal evidence that Mr.Hamilton has an established, and unenviably colourful reputation among serving personnel in the aggressive manner with which conducts his daily business. This trait was consistently and repeatedly displayed throughout this entire affair. He is the author of

‘exploratory interviews’ and it was he who presided over these interrogative ‘interviews’.

- According to the LCC PS Mr.Hamilton controls, directs, and authorises all decisions directed at individual FS Pensioners by them.

(c) The Tone

The obnoxious tone consistently adopted in correspondence and in action, which was tacitly approved by the LFRS solicitor throughout the Wilson case, set the tone and ‘treatment’ for those FRS Pensioners who were to follow.

Mrs Carol Wilson described this tone as ‘bullying’ with sinister overtones that implied wrong doing, criminality, and dishonesty. The LFRS web site continues this pernicious theme to date, in spite of objections that this is libellous, by using this tone again ..."we needed to investigate their circumstances."

The implication to the general Public of this smearing statement is quite simple, that every single FRS Pensioner suffering a Qualifying Injury must be a thief and a crook until investigated and proven otherwise by the LFRS. Guilt before proof.

This is profoundly distasteful because not only is this an anathema to natural justice, it was disloyally authorised by none other than the Chief Fire Officer against his own FS Pensioners.

These are, in such matters of civility and tone, the ‘Standards’ the LCC PS sets out for itself:

> “Standards of Service
> FIREFIGHTERS’ PENSION SCHEMES
>
> Our commitment to you as one of our Members
> To act fairly and impartially and treat your affairs in strict confidence.
>
> To communicate with you effectively as stated in the standards set out in this leaflet. We aim to provide clear, simple forms and guidance in a helpful and understandable way.
>
> To consult with you wherever possible and to take account of your views before we make any changes.
>
> To provide a good quality service and to be courteous and professional. We encourage you to give us any feedback, good or bad, on our service so that we can continue to make improvements.”

Perhaps the LCC PS should have regard to Mrs Carol Wilson experience and comments?

Finally, if the DWP considered at any point in the Wilson case that he had obtained any payments to which he was not entitled why have the DWP not required a single back

payments or initiated a fraud enquiry? Neither have they investigated a single FRS Pensioner either?

(d) The Final Irony.

Almost to the day, in November 2007, when this affair was financially concluded, Mr.Wilson received another letter from the LCC PS requiring him to fill in all his income and to give his retrospective permission for the LCC PS to access his DWP records?

Continuing in his much maligned trust and honesty he did so even though the LFRS were completely in the knowledge of his affairs over the preceding months.

Clearly, as usual, the left hand did not know what the right was doing in both the LFRS and LCC PS departments, incompetence knew no boundaries.

THE PRAGMATICS OF THE REVIEW.

The LCC PS stated from the outset that Mr.Hamilton initiated and controls the 'investigation' of FS Pensioners on his compiled Qualifying Injury Award list.

He it is who produces the statistics apropos this 'Review' and it seems these statistics are readily accepted by all, though without verification or Public oversight, which is unwise for the LFRS to permit.

Neither may it be a wise decision to vest all this authority in a single individual because it will be open to criticism that the due process of 'Qualifying ' or 'removal' from such a list is entirely subjective and thus open to manipulation by reason that there is no overseeing team involvement in the decision making process, nor is it patently transparent, and thus not open to Public scrutiny and challenge.

The statistics issued by the CFA and the LFRS are at variance with one another and seemingly at variance with themselves from time to time, which is another curious anecdotal business, for example, one FS Pensioner made a call to Mr.Hamilton, informed him he did not get DWP benefits and was informed to 'just ignore the letter'.

Indeed the 'Review' issue was raised right at the outset when serious initial questions were being raised concerning the following:

- Where are the published terms of reference of this 'Review'?
- Where is the published criterion for inclusion, or the exclusion, of an individual FS Pensioner initially placed on the Qualifying Injury award list?
- Who controls this actual inclusion or exclusion process based on this criterion and does this process serve a purpose other than a financial Review?
- Is it possible to influence who may, or may not, be included on this Qualifying Injury list and what or whose legitimate purpose, or otherwise, might that serve?
- Is this process equitable and transparent and will individual case files rejected for inclusion on this initial 'Review' list remain available for inspection by the Information Commissioner expert team?

- Equally will the case files of those deemed to have passed 'Review' scrutiny, using this unpublished criterion, be available for retrospective inspection by the IC Team, by sequestration if necessary, by the Information Commissioner?

WHO KNEW AND IS THUS CULPABLE?

Who knew about the Wilson case and all the cases that flowed from the Wilson case? There is little doubt that there are those within senior LFRS line management who could not have been unaware of this issue and the manner in which it was being prosecuted.

These are:

Politicians:

- The Chairman of the CFA CC.R.Wilkinson.
- The Vice Chairman of the CFA CC T.Burns.
- The Leader of the LCC CC.Mrs.H.Harding CBE.

Uniforms:

- The Chief Fire Officer P.Holland
- The Deputy Chief Fire Officer P. Richarson.
- The Asst Chief Fire Officer C.Kenny.
- The Asst Chief Fire Officer P.O'Brien.

Non-Uniformed:

- Mr.K.Mattinson Director of Finance.
- Mr R.Warren Director of People and Development.
- Mr.B.J.Hamilton Head of Human Resources.
- Mr.J.A. Harold Solicitor.
- Ms.J.Hutchinson Human Resources.

THE INJURY PENSION 'REVIEW' IS MANDATED.

(a) Resources Committee 25th September 2007.

The following are the relevant documents:

LANCASHIRE COMBINED FIRE AUTHORITY

RESOURCES COMMITTEE

Tuesday 25th September 2007 in the Main Conference Room, Lancashire Fire and Rescue Service Headquarters, commencing at 1000 hours

PRESENT:-

County Councillors
T Aldridge
S Derwent
F Heyworth
R Wilkinson

Blackburn with Darwen Councillors

P Browne
A Kay

Blackpool Councillor
J Delves

Officers:-
C Kenny - Director of Support Services (LFRS)
P O'Brien - Director of Policy, Planning and Review (LFRS)
K Mattinson - Director of Finance (LFRS)
J Bowden - Head of Finance (LFRS)
R Warren - Director of People and Development (LFRS)
C Keely - Principal Member Services Officer (LFRS)

APOLOGIES FOR ABSENCE
Apologies for absence were received from County Councillors J Eaton and K Tebbs and from Councillor F Jackson (Blackpool Council).

DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS
None received.

The following are the pertinent facts:

- This Meeting was chaired by CC.Wilkinson though the Minutes do not properly record this fact.

- "DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS
  None received."

- CC. Wilkinson failed to declare both a personal AND a prejudicial interest in respect of Agenda Item 20/07 in that he is in receipt of a Fire and Rescue Service ill health pension, though he blatantly and dishonestly stated in public correspondence that he did not receive such a pension.

- Later, when challenged publicly, he failed to retract this statement when given repeated opportunities, finally, admitting twice to a member of the Press 'on the record' that he does in fact receive such an ill health pension.

- Presently CC.Wilkinson continues to ignore Public requests to declare, whether or not, in addition to this FRS pension he receives DWP state benefits with his FRS ill health pension.

The following is the pertinent Agenda Item:

Agenda Item: "20/07 RESOLVED:- That the report be noted.
INJURY PENSION OVERPAYMENT
(Paragraph 1)
The Committee considered the circumstances of a case where a retired firefighter had received an Injury-related pension since 1993 and it had recently come to light that he had been overpaid, due to non-notification of changes in state benefit."

- The Resources Committee, unaware of CC Wilkinson's prejudicial and personal interests and his failure to recuse himself, received a report from CC Wilkinson, sanctioned by him, recommending that all FRS Qualifying Injury pensions be reviewed.

- Now that the facts of CC Wilkinson's prejudicial and personal interests and his failure to recuse have been established did CC Wilkinson skew and manipulate the Resource Committee's decision to avoid a 'Review' being carried out on the very type of FRS pension that he himself is in receipt of?

- No LFRS/CFA law officers were present at this Meeting, nor was this item deferred, in order to seek any formal legal advice whether in-house or from a specialist independent source concerning the potential lawfulness, or otherwise, of this 'initiative'.

- Was it CC Wilkinson's private agenda that this matter be concluded as swiftly as possible, thus avoiding scrutiny of his own pension, and in the process avoiding any form of in-house or external legal examinations of his motives and methods?

- Mr.Warren, who brought this initial report informally forward to CC Wilkinson and then to the Resources Committee was at this meeting. He reports how he was mandated:

> "The issue came to light when we were reviewing an adjustment to the payment of an individual in respect of his state benefits. A considerable overpayment was identified. When LCC pensions explained the situation we contacted the CLG pension experts as the scenario was new to us. They advised that there is no requirement in the regulations that compels the Department of Work and Pensions or Benefits Agency to report changes in benefits to the pension authority. The onus being on the individual pensioner. The vast majority of our pensioners comply with this requirement but not all.
>
> In simple terms the individual should advise the pensions administrator (LCC Pensions) when their benefits change and the reason for the change (as some changes have no effect on the calculation).
>
> This only effects the Injury element of any pension. LFRS have circa 150 individuals in receipt of an Injury award in addition to their primary pension.
>
> When the issue was discovered the facts were reported to the Resources Committee and a way forward in the individual case was agreed. This resulted in a significant repayment to the Authority and an ongoing adjustment to his pension.
>
> To ensure we demonstrated due diligence in respect of Public funds, the Committee mandated me to ensure a 100% check was undertaken. This has been actioned in conjunction with LCC Pensions whereby they have sent an initial letter to all Injury award pensioners asking for authorisation to contact DWP. We reminded individuals of the requirement to notify us of changes to benefits and that we were reviewing the Injury pensions to ensure correct

payments but that we were not looking at reassessing the degree of disablement.

This has been followed up by two repeat letters. The last letter informed the individual if we did not receive a reply by a certain date then the Injury element would be suspended.

The current situation is all but a few individuals have given us permission and following receipt of the information from DWP the payments are reviewed. (this is an ongoing process) If an overpayment is identified the situation will be examined to decide the route forward, where an underpayment has been identified this has been rectified.

We have also instigated arrangements to remind individuals (via pension payslip notification) of the need to advise us of any change to their benefits on an annual basis."

- "The issue came to light when we were reviewing an adjustment to the payment of an individual in respect of his state benefits."

  Comment: The imputation of this statement is that an existing robust routine supervisory pension management 'system' controlled by Mr.Warren and Mr.Hamilton had identified this issue, when history demonstrates this was simply untrue.

- "When LCC pensions explained the situation we contacted the CLG pension experts as the scenario was new to us."

  Comment: It is clear from this statement that the neither Mr.Warren nor Mr Hamilton Head of Human Resources(The FRS pensions managers) both administratively responsible for FRS pensions, understood the minutiae of this specific FRS Pensioner's issue nor indeed the greater ramifications for the entire administration of LFRS pensions, even though the detail was explained to them by Ms.Wisdom, whose own pension management capability is more than questionable.
  They admit that this was 'new' to them and they did seek advice from a civil servant at the CLG who basically told them in sweeping generalisations what they ought to have known as highly paid professional pension managers in the first place.

- "The vast majority of our pensioners comply with this requirement but not all."

  Comment: When Mr.Warren made this misleading statement to the Resources Committee he was not in a statistical position to know whether or not the 'vast majority' of pensioners complied with their 'obligations'. He could not have known. The initial letter he later referred to was only received by FS Pensioners on or about the 15th November 2007, two weeks before this Committee meeting, and many of the FRS Injury pensioners did not respond until after a reminder was received on or about the 16th January 2008. So when he made this statement to the Resource Committee reminders had not even been despatched.
  He did not circularise all 2000 FRS Pensioners, including his own CFA Chairman, so he could not know anything of the sort in the statement he made.

- Immediately after this Committee Meeting Mr.Warren and Mr.Hamilton discovered for the very first time that they *could not* access FRS Pensioners' records held by DWP because the DWP refused access without express written authority from each of the FRS Pensioners. A procedure that they ought, as professional pension administrators, to have known from the outset but as has been demonstrated the entire administration of FRS pensions was unlawful from the inception of the LFRS and this is a responsibility both of these administrators are directly accountable for.

- This major stumbling block of access to their perceived 'gold mine' within which FRS Pensioners laboured joyfully was slyly addressed by a carefully worded letter to all the FRS Injury Pensioners implying that they could well have been underpaid and to sign up right away, the old 'come on' confidence trick. This was a calculated act of bad faith, pure corporate deceit, and an abuse of FRS Pensioners trust as we have seen, which amounted to nothing less than pure entrapment.

(b) This is how sound management does it.

- This was the moment when thoughtful and experienced administrators would pause for reflection on the implications of this problem for the LFRS and for the 2000 FRS pensions which they administered. It would have been professionally sensible for the Chief Fire Officer, who ought to have been immediately made aware of this potentially catastrophic management failure, to order immediate research on all the implications of this proposed 'Review', including the legal, and to report this back to the Resource Committee for further and deeper consideration with his recommendation that a careful impact study be carried out to determine what the implications and complications, including legal, might be.

- To do otherwise, as they did, in dashing off to seek 'overpayments', which may or may not exist, was an abject failure of commonsense and good sound proactive management.

- A careful and thorough impact study ordered by the Chief Fire Officer would have highlighted all the issues raised in this document, particularly the legal aspects, which should have culminated in him seeking an independent legal Opinion, to confirm or reject, a proposed course of action. Not to do so was lax and unprofessional.

- Not a single managerial thought was given to this approach from the 'initiative' architect, CC Wilkinson downwards. The Chief Fire Officer has a particularly important role in these situations to act as a 'filter' for mandates received from his Committees and should they be unrealistic, unworkable, or as in this case legally fraught the Chief Fire Officer has a duty to investigate and report back his finding and to seek advice from the relevant Committee.

- The Chief Fire Officer, President of his Retired Members Association, had special responsibilities in this issue for his Retired Members to ensure that their well being was protected because a large percentage were either classified as ill health or disabled, conditions which would require special qualities of tact, patience, and forbearance in those staff who were sent out to the FRS Pensioners' homes to deal with the particular humanitarian and hardship problems which may result from such a 'Review'.

- That this 'Review' called for an impact study, because there were potentially many unanswered questions, was beyond doubt. This list is open ended:

    - How many of the 2000 pensioners were involved?

    - What criteria would be used for inclusion, or exclusion?

    - Who would be 'excused' from such a list and why?

    - If there were financial issues of over and under payment(with interest) how might these best be addressed and resolved?

    - Would examination of these issues produce stressful reactions among FRS Pensioners and assuming that it would how would this be addressed in pastoral care terms?

    - Would the consequences of the 'Review' and the solutions proposed cause actual hardship, and if as seemed likely, how was that to be dealt with?

    - How would the representative bodies view this 'Review' and how would they be encouraged to be a part of a solution rather than an all out confrontation?

    - How are FRS Pensioners who live abroad permanently, or for extended periods to be contacted, approached, consulted?

- In this very short paragraph these are some of the consequences which ought have been addressed by competent senior management driven forward by the Chief Fire Officer who in the first instance would report all his impact study findings to the Elected Members so that any 'Review' actually implemented would do so with the full support of every single person and organisation consulted and involved.

- There were repeated and massive failures to grasp commonsense opportunities to apply due diligence and, with tact and sensitivity, to resolve this major issue for the LFRS whilst treating the affected FRS Pensioners with respect and dignity.

- It seems, reviewing available records, that the Chief Fire Officer and his senior uniformed and non-uniformed 'teams' abrogated their entire responsibilities in this grave matter being content to discard common humanity and dignity in their slavering pursuit of money.

(c) Resources Committee 30th November 2007.

The following are the relevant documents:

> LANCASHIRE COMBINED FIRE AUTHORITY
> RESOURCES COMMITTEE
> Friday 30th November 2007 in the Main Conference Room, Lancashire Fire and Rescue Service Headquarters, commencing at 1000 hours
> PRESENT:-
>
> County Councillors

T Aldridge
W Cropper
S Derwent
J Eaton
F Heyworth (Vice-Chairman)
R Wilkinson

Blackburn with Darwen Councillors
P Browne
A Kay (Chairman)

Blackpool Councillor
J Delves

Officers:-
P Holland – Chief Fire Officer (LFRS)
P Richardson – Director of Service Delivery Performance (LFRS)
C Kenny - Director of Support Services (LFRS)
K Mattinson - Director of Finance (LFRS)
R Warren - Director of People and Development (LFRS)
J Hargreaves – Head of Fleet Services (LFRS)
C Keely - Principal Member Services Officer (LFRS)
D Thomas – Member Services Officer (LFRS)
APOLOGY FOR ABSENCE
An apology for absence was received from Councillor F Jackson (Blackpool Council).

DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS
None received.

- CC Wilkinson was present at this meeting and even though not Chairing he nevertheless **had an obligatory duty to declare a personal and prejudicial interest and recuse** himself which he failed to do in respect of Agenda Item 35/07.

The following is the pertinent Agenda Item:

INJURY PENSION OVERPAYMENT
(Paragraph 1)
The Director of People and Development (DoPD) gave a verbal update on the circumstances of a case where a retired firefighter had received an Injury-related pension since 1993 and it had recently come to light that he had been overpaid, due to non-notification of changes in state benefit. The over-payment had been retrieved from the individual concerned and a new system was in place.

The DoPD also reported that it was clear that there were almost certainly further potential future liabilities involving significant amounts of money.
35/07 RESOLVED: That the Committee note the report, and a further report be considered in due course on potential future liabilities.

- … “due to non-notification of changes in state benefit.”

Comment: This statement by Mr.Warren is also patently untrue. It is a matter of Mr.Wilson's personal record file and his contemporaneous notes that he repeatedly informed the LFRS concerning his DWP benefit changes, a record at no time, that the LFRS have challenged, bearing in mind that it was because of another DWP change that Mr.Wilson brought this to the LFRS/LCC PS attention in the first place.

- … "and a new system was in place."

  Comment: This simply confirms that if a 'new system' is needed then the old is grossly flawed which it demonstrably is.

  This statement of a 'new system' is yet another distinctly dubious statement to the Resources Committee by Mr.Warren meant to entirely reassure and as a consequence directly mislead elected Members based on the flimsiest of proposals, not yet even implemented, to rectify a moribund pensions administration under Mr.Warren and Mr.Hamilton's direct control.

  This statement also allows these two administrators to say later, when called to account, that "they had taken immediate action and they had reported this action to the Resources Committee". Some might just view this slick footwork as yet more career saving cover up.

- What this mysterious 'new system' amounts to, which has not yet been elucidated, approved, or mandated by the Resources Committee, though Messers Warren and Hamilton have cunningly placed the ball in their court, is simply the proposed insertion of an annual statement in the payslip reminding FRS Pensioners to inform the LFRS of change of FRS Pensioners' circumstance.
  Mr.Warren gives no indication of applicable guidelines contained in this proposed 'annual statement' which would assist FRS Pensioners in determining whether a change which has occurred, is or is not, reportable under their 'obligation' to the LFRS. How are they supposed to know?

  In its entirety this is a really dynamic 'buck passing' solution; the panacea to all that ails the LFRS management of pensions, by these two administrative architects.

- There was an opportunity to place this 'new' dynamic system before the full Committee of the CFA at its meeting on the 13th February 2008 for its approval yet this 'opportunity' was not grasped by the Chief Fire Officer and his senior 'team', one wonders why?

- Currently the Chief Fire Officer proposes no root and branch review; no change or supplementing of staff and IT systems; no suggestion of employing a suitably knowledgeable and properly qualified pensions expert.
  Just a brown paper and vinegar payslip reminder pasted over a huge Grand Canyon of a management fiasco.

'EXPLORATORY INTERVIEWS'(The LFRS Description).

(a)The Human Rights Act 1998.

This Act guarantees fundamental human rights within the framework of human dignity and respect without fear.

Article 6. Guarantees the right to a fair trial in civil and criminal proceedings. It sets standards for the way that proceedings are run.

Article 14. This Article expressly forbids Discrimination. The list of 'qualifications' is open ended and includes the word 'status'. To be disabled is a 'status' and thus to be treated as less favourably than others similar groups of people is to suffer discrimination.

It is clear in the proceedings that followed, that several major abuses of human rights occurred regularly and rather than as acts of omission, these proceeding were structured and designed to proactively, deliberately, and wantonly contravene the Article, and furthermore, spirit of the Act in the oppressive and intimidating manner in which 'interrogations', rather than 'exploratory interviews' was the primary objective.

The fundamentals of natural justice and dignity *without fear* were not adhered to and the complete lack of independent representation was deliberately designed to make the interviewee feel vulnerable, uncomfortable, and undignified.

To call these disrespectful, intimidating interrogations, 'kangaroo' courts is to malign a marsupial.

(b) Press Statement from LFRS.(6th March 2008)

… "we will make every effort to deal sensitively with people who have been overpaid."

This is how 'sensitively' these 'exploratory interviews' worked in practice.

In the first instance acting on the 'permission' dubiously extracted from the FRS Pensioner the LFRS contact the DWP and ask how much benefits the DWP has paid to the FRS Pensioner between the years 19xx and 2008 ?

It is clear that a cautious DWP will only answer the LFRS's specific question which it does. The DWP, quite rightly, presupposes that the experts at the LFRS/LCC PS knew what they are doing and know what it is they asking for, which palpably they do not.

Because the LFRS do not ask the correct question, the DWP simply replies with the gross total of monies paid between the years specified. This total being a generic figure, in other words, it does not specify the individual years, nor does it specify the DWP benefit type, nor the detail of what that DWP benefit is actually paid for. If the LFRS knew what it was doing and the LFRS asked the right question it would get the correct answer.

So, clutching at straws, the LFRS then contact the FRS Pensioner and 'invite' FRS Pensioner 'Duncan' for an 'exploratory interview' on the basis that this FRS Pensioner owes the LFRS a 'substantial' amount of money and thus when a worried 'Duncan' agrees the stage is set for intimidation and ambush of this undoubtedly prejudged 'criminal'.

That this 'exploratory interview' is deliberately stage set for intimidation and ambush is beyond doubt. Because no rights are spelled out, including the right to refuse to attend; no advice is proffered about any form of representation, whether by the FBU or by private solicitor, that the interviewee might consider bringing with him; that no attempt is made to arrange a face to face meeting at the FRS Pensioners home in order to ameliorate any distress or personal harm that this 'exploratory interview' might cause.

This ‘exploratory interview’ is built entirely on the fear factor of old, namely, sent for by the ‘big house’ to explain oneself.

When the meeting is convened at SHQ unfortunate ‘Duncan’ is accompanied by his wife. He is faced across the table by three people. Mr.Hamilton(LFRS) who presides, with Ms.J.Hutchinson(LFRS), and accompanied by Mrs.Lambert(LCC PS), though Ms.Wisdom(LCC PS) substitutes for this role on other occasions.

Without further preamble, a piece of paper, as ‘Duncan’ describes it, is slid across the table to him. This piece of paper states, on the basis of the generic answer supplied by the DWP, that ‘Duncan’, ***by the LFRS assumption***, owes the LFRS £65,000:00 in ‘overpayment’.
He is informed that his Injury pension is ceased forthwith.

The interview concludes after ‘Duncan’ attempts to defend himself and in so doing provides vital learning information to Mr.Hamilton for another day, and use, on another interviewee.

In a state of shock and distress ‘Duncan’ and his wife return home and stay there for several months in isolation believing that he is the only FRS Pensioner so afflicted and facing complete ruinous destitution, as they see it.

Such is an example of the LFRS ‘dealing sensitively’ with a FRS Pensioner though others may rightly regard this as providing gratuitous enjoyment from calculatingly applied uncivilised heinous cruelty.

Later, this exact procedure is repeated with another FRS Pensioner whom it is alleged by Mr.Hamilton and his cohorts owes over £40,000:00. This FRS Pensioner has suffered from a stroke completely unrelated to any service Injury and because the DWP replied with the generic total the LFRS ***assumed again***, because it did not know better or ask the correct question, that these DWP benefits were for his Qualifying Injury.

At his ‘exploratory interview’, in an extremely and increasingly agitated state, this FRS Pensioner abruptly broke off the interview stating that “if he remained any longer he was likely to suffer yet another stroke”.
No human concern was expressed for this potentially fatal situation to this FRS Pensioner by any of those from the LFRS/LCC PS present and the interview terminated.

Later, after having placed the correct question before the DWP and acquired the correct answer it transpired that this FRS Pensioner did not owe a single penny, but it was all great ‘fun’ on a grey day. Much later, the LFRS/LCC PS duo explained it was the fault of the DWP. Now that *is* a surprise.

(c) What function do these interviews serve?

The following questions require to be addressed and answered publicly by the Chief Fire Officer:

- What purpose are these ‘exploratory interviews’ meant to serve?

Comment: The answer is quite clear and simple in that because of the Wilson affair it is self evident to the LFRS that these FRS Pensioners are all potential criminals and that they must be investigated.

As the LFRS in their Press statement state … "we needed to investigate their circumstances."

Yet there was not a scintilla of evidence to justify this policy if the Wilson case had been dealt with properly. An oppressive policy which was authored, authorised, dictated, and condoned by CC.Wilkinson and the Chief Fire Officer.

However, because the use of corporate deceit and entrapment succeeded right at the outset and was thus proved a useful tool, and because the LFRS got away with it, it was a natural extension of this philosophy to 'grill' these FRS Pensioners using shock and oppressive treatment so that the LFRS could extract useful information which they would in turn use to educate themselves 'on the job' to enable them to ask the right questions from the DWP, and in this gradual process of stick and carrot, further entrap these 'criminal FRS Pensioners'.

- What function was served by the presence of LCC PS at these interviews?

Comment: As the FRS pensions contractors, the LCC PS, has no mandate from the CFA Resources Committee to be present at these interviews and other than educating themselves had nothing, other than being a party to human rights abuses, to contribute. So why are they there?
Throughout this fiasco, the Leader of the LCC has maintained that this whole affair ***"has nothing to do with the LCC"***. Mrs H.Harding CBE persists in being wrong where the common law is concerned. By the complicit presence of her staff at these interviews they contribute to these human rights abuses and in so authorising, she leaves the LCC liable to any litigation for personal Injury and defamation which will surely follow from the legal representatives of these maltreated FRS Pensioners.

- Is this inhuman treatment what the CFA Resources Committee mandated?

Comment: No reasonable person including those fair minded FRS Pensioners who have suffered these abuses and indignities would for one moment contemplate that this is what those elected Members of the CFA mandated the Chief Fire Officer and his staff to do. Yet this is exactly what has occurred and continues to occur in their names. The longer these abuses continue the larger becomes the litigants' bill; the more the Public credibility of the entire CFA suffers in the media; and the more the morale of serving LFRS personnel continues to plummet.

THE POLITICS.

(a) The Final Accounting

Arising from all these latter points it is clear that CC Wilkinson presides over a dictatorial autarchy which encompasses, within his fiefdom, control over his fellow elected Members in what they get to know, when they get to know it, and IF they get to know it.

It is a matter of Public record that in this issue the Resources Committee and the full Committee of the CFA did not know what CC Wilkinson's personal and prejudicial position was and he fought an unsuccessful rearguard action to ensure this remained so.

The CFA did not know what was being carried out in their name and they were kept so by CC Wilkinson. He did not, given the opportunity in February 2008, bring this entire affair before the full Committee of the CFA because he feared exposure of his own self interest and the inhuman and cruel methods being adopted by the Chief Fire Officer and his staff.

It is clear, even at a casual glance, that this is CC Wilkinson's personal Fire and Rescue Service and he is the de facto Chief Fire Officer. He demonstrated this most rampantly by using the entire on-line communications facility of the LFRS to plead his case of 'innocence' in the matter of his FRS ill health pension to all ranks and all Fire Stations under his 'command', whilst in fact, he was engaging in blatant falsehood.

It is impossible to contemplate that the past proud Chief Fire Officers of Lancashire would have tolerated such intrusion into their appointed sphere of responsibility by an out of control politician acting in such a bare faced ultra vires manner.

Where, may we ask, is he who nominally wears the badges of rank, the actual Chief Fire Officer of the LFRS in all this entire debacle?

- The answer is nowhere to be found in public statements;
- The answer is nowhere to be found in demonstrating leadership and command;
- The answer is nowhere to be found in extending a caring hand to his FS Pensioners;
- The answer is nowhere to be found in curtailing and controlling obnoxious abuses of human rights by his staff and visiting LCC staff;
- The answer is nowhere to be found in setting the tone of professional moral authority and professional integrity required by his appointment as head of the LFRS.

Mr. Holland certainly carries the badges of rank but there is more to it than just pomp and circumstance.

CC.Wilkinson's immediate defence to any criticism, which is to be expected, and is always the last line of defence of the whinging cornered, is that *this is all personal*.

It is indeed. It is a personal matter between himself and the high expectations of the electorate of Lancashire. He was elected to a position of Public trust which he has patently abused.

Furthermore, he was elected by his peer group of elected Members to hold higher office which demands even higher standards of political probity, integrity and honesty. In this position it is the electorates' reasonable expectation, indeed it is his duty to his own 'Code of Conduct', that he will comport himself with these Public attributes of probity, dignity, and honesty all of which he has, without conscience, betrayed.

(b) The CFA and Sub-Committees have Questions to answer also.

There are questions to be answered by the Resources Committee and the full Committee of the CFA:

- At the outset, how in depth were the political ramifications of this 'Review' presented to these two Committees by CC Wilkinson?

- Was the complete lawfulness of this 'Review' explored, discussed, and opinions sought from the LFRS law 'officer' and from the Clerk to the CFA himself a solicitor, and if not, why not?

- When this issue became Media headline news, thus damaging the integrity of the LFRS, the credibility of CFA, and the morale of the personnel of the LFRS, why was an emergency meeting of the RC and/or the CFA not called for?

- Did private briefing sessions by CC Wilkininson take place with political group leaders and was the Chief Fire Officer and his relevant managers called to account for their actions in these briefings, and if not, why not?

- Was this entire issue brought forward informally to *all* CFA Members by CC Wilkinson, and if not, why not?

- Why was it not brought forward formally to the full Committee of the CFA in normal, or emergency session?

- Why was the hardship of FRS Pensioners not promptly addressed under emergency powers by the Chairman of the CFA CC.Wilkinson, and if not by him by his Vice Chairman CC.Burns, and failing both, by Party leaders?

Comment: It is clear from Minutes that the various Committees of the CFA have become directly involved in the day to day management of the LFRS. In effect they are getting too close to employees. This is not their remit and leads to well warranted Public criticism that the Public accountability of the CFA and its Committees are being compromised by personal relationships. This is not what they are elected for.

This is a politically systemic failure of the CFA's political duty of objective accountability to the electorate.

In mitigation, it is clear that political 'control' has been allowed to grow into CC.Wilkinson's hands without challenge, but *this must not remain so*, democracy is supposed to prevail.

It is particularly intolerable that the financial hardship that disabled FRS Pensioners are directly suffering day by day has not been promptly addressed.

A delay of several months and the calling for a report for a routine CFA Resource Committee meeting by CC Wilkinson is entirely insufficient and simply appears to the Public as collective lackadaisical political and human motivation. This failure of initiative by CC Wilkinson, for understandable personal reasons, militates against those Councillors who have expressed support and disquiet which results in politicians of the CFA being displayed as ignoring the hardship plight of their FRS Pensioners and their families.

This 'painting of the wrong picture' by CC Wilkinson does great disservice to his fellow Politicians and to the electorate of Lancashire who will naturally conclude that this is just what they have come to expect from their politicians and that "they are all the same".

This perceived CFA corporate political failure will also send out the wrong uncaring message to serving personnel who quite rightly conclude that if this is the cavalier manner with which disabled FRS Pensioners are treated, how will a serving member's family be treated if tragedy should befall them as the breadwinner?

This issue of hardship was practically and politically raised by the Leader of the Conservative Group of the LCC, CC M.Welsh on the 25th of January 2008, and demonstrates to the fair minded that all politicians are not … "just the same", when he stated in public correspondence…

… "If you know of any individual case which has resulted in hardship I will make sure that it is brought to the attention of the CFA."

Individual cases were indeed brought to CC Welsh's attention and it is certain that this was passed via the Conservative spokesman on the CFA CC D.O'Toole to CC Wilkinson but he chose to do completely nothing to respond to distressed FRS Pensioners, it also *appears* to the Public that the CFA continues to do so.

These abject failures to act promptly politically, and to fail to address human issues with care in an expeditious manner because of the control of one individual CC, calls in question the political raison detre for the existence and political health of CFA and its Committees.

RECOVERY OF 'OVERPAYMENTS' – A QUESTION OF LAW?

- From the commencement of an individual FRS pension, its ***unique point of administrative reference***, the LFRS have to demonstrate two points; firstly, that they were NOT an informed party to any procedure involving DWP documentation which ultimately provided DWP benefits to a FRS Pensioner; secondly, that DWP benefits which were directly for, and in support of, the Qualifying Injury for which the FRS Pensioner was discharged from the Fire and Rescue Service.

  Comment: If these two points cannot be demonstrated, without equivocation, by the LFRS then any claim of 'onus' on the FRS Pensioner falls by default. The LFRS are the pension system administrative managers, not the FRS Pensioners. The LFRS ***assumes***, erroneously, that every single DWP benefit paid to every FRS Pensioner is directly linked to his Qualifying Injury award.
  This lazy blunderbuss approach, as we have just seen in 'exploratory interviews' is palpable nonsense, and can backfire spectacularly but at a human cost to the FRS Pensioner and the family involved, and eventually in litigation costs of personal Injury claims against the LFRS.

- Next, the LFRS will have to prove, without equivocation, that each individual FRS Pensioner has not complied with their 'obligation' to inform the LFRS in respect of a change of circumstances they were not aware of, namely in receiving ***specifically*** related payments for the Qualifying disablement Injury with which they were individually discharged from the Fire and Rescue Service.

  Comment: If this failure to 'oblige' and/or this link cannot be established by the LFRS, not the DWP, because unlike the LFRS, it is not the DWP's statutory duty under 'liability' to establish a Qualifying Injury payment link, then the LFRS claim of 'overpayment' again falls by default.

If these FRS pensioners do receive other DWP benefits NOT Qualifying Injury linked then they DO NOT have an obligation to inform the LFRS.

- Finally, within the established parameters outlined above IF it is finally established beyond reasonable doubt that an 'overpayment' exists, can the LFRS in a fact of law recover this 'debt'?

  Comment: The answer in both case law and the Limitations Act 1980 is that the law militates against any such recovery. This is an especially complex area of law which though not incomprehensible to the lay person are laid out in legal arguments for the legally minded in Appendix A.

  The bottom line answer to the man in the street's question of, "Can they?". Is no.

THE FUTURE IS HERE.

"Data Matching" is an expression that the Fire and Rescue Service are likely to know by heart over the next few decades.

'Data Matching' is a government concept implemented by the Audit Commission whose role is to ensure that all Local Authorities put in place robust financial and monitoring systems particularly in respect of payrolls to ensure there is a reduction in fraud(defined as criminal deceit), omissions, or errors though in the first instance the emphasis will always be on deliberate criminal deceit. The goal is to reduce deliberate fraud.

The objective of this Statute Law introduced in April 2008 is to ensure that payments from different sources to a beneficiary match correctly. For example, that someone registered as unemployed does not appear on a payroll, or an employee receiving benefits is receiving the correct amount from one or other sources.

This is, in simplistic theory, how it will work. Data from one agency, which remains under the strict control of the Information Commissioner, is matched with Data from another agency to see if there are anomalies. If anomalies are found to exist it remains the duty of the, for example, LFRS to evaluate this, and if proven so, to rectify this omission, or error.

To achieve a modicum of success the Audit Commission presupposes the fulfilment of certain conditions by the holders of Data. It lays stress on the duty of those providing the Data, either compulsorily or voluntarily, to ensure that the Data is accurate, up to date, correctly interpreted and recorded , and finally, that it reflects truly the details that are meant to be recorded.

If this is not so, in for example the case of the LFRS before us, where the records are virtually non existent, then this data matching starts from a false premise and is completely unworkable. Should this be the situation then, for example, the LFRS would be liable to an

immediate Public audit(or may well be right now) by the Audit Commission with resultant Public criticism.

The Fire Brigades Union in Lancashire throughout this entire fiasco have repeatedly raised the issue of the self evident lack of a robust 'system' in place to fulfil the ***present*** functions of proper FRS pension management, given the advent of these new measures which are to be imposed on the LFRS, the case for an Inquiry and a ***future*** 'clean sheet' pension management system rebuild, is inescapable.

THE INQUIRY.

That a formal Inquiry is required for all these negligences and abuses is beyond reasonable doubt. The question is by whom and within what Terms of Reference should an Inquiry be carried out?

(a) This issue of FRS pensions has been directly dealt with by the following:

- Lancashire Combined Fire Authority;
- The CFA's pension contractor the Lancashire County Council Pensions Services;
- The Department of Works and pensions(DWP);

(b) Interested Parties:

Parties interested in these activities are, in no specific order of importance:

- Independent solicitors acting for individual FRS pensioners;
- The Fire Brigades Union acting for its Pensioner Members and in all subsequent personal Injury litigation and defamation claims;
- The Information Commissioner regarding compliance with the Freedom of Information Act 2000, the Data Protection Act 1998, and particular questions of law;
- The Secretary of State for Communities and Local Government with her Chief Fire and Rescue Adviser regarding FRS pensions issues and future implications for the Fire and Rescue Service;
- Members of Parliament representing their constituents FRS pensioners and the local electorate;
- Under Secretary of State for the Disabled regarding a question of blatant discrimination in action;
- Standards Board of England regarding probity of elected members in the Lancashire CFA;
- Local Government Ombudsman regarding Local Authority failure to follow own procedures;
- Press and Media regarding human interest, abuses of human rights, and questions of accountable democracy;

(c) The CFA.

Consists of 25 elected Members.

The CFA cannot investigate itself, no man may yet be a judge in his own court. The CFA has no jurisdictional powers to order the attendance to an Inquiry of any persons not within its own staff, nor from the contracted staff within the LCC PS , nor the DWP.

It has no jurisdictional powers to apportion blame or responsibility outside it own organisation, nor to apply sanctions against another organisation, or to discipline individuals there from.

(d) The Lancashire County Council.

The LCC 'elects' 19 of the 25 elected Members to the CFA.

As the contractor to the CFA the LCC PS have jurisdictional powers extending over their own staff but do not have jurisdictional powers extending over the CFA.

(e) Blackpool Local Authority.

The Blackpool LA elects 3 Members out of 25 to the CFA.

Has representation in this matter but no jurisdictional powers extending beyond the CFA.

(f) Blackburn Local Authority.

The Blackburn LA elects 3 Members out of 25 to the CFA.

Has representation in this matter but no jurisdictional powers extending beyond the CFA.

(g) The Case for a Ministerial Inquiry.

Given the jurisdictional limitations of each independent Local Authority and given the range of interested parties it would be impossible for an individual Authority, particularly the CFA, to conduct a wide ranging fair minded and independent Inquiry to satisfy all these disparate groups. It would be impossible to reach balanced objective views; propose and recommend workable solutions; apportion responsibility and criticisms; and in the case of individuals, finally recommend disciplinary action.

There are also serious issues of accountability in the fine detail to be addressed in the manner in which FS Pensioners found themselves on the LFRS Qualifying Injury Award list; those who were excused from such a list; those who were deemed to have passed LFRS scrutiny who were on this list; and the manner in which that scrutiny, or otherwise, was applied or indeed whether manipulated.

To do all of these manner of things in a transparent and Publicly accountable process requires Ministerial powers, hence the repeated call by both individuals and Members of Parliament for a Ministerial Inquiry, or an Independent Judicial Inquiry, which would have the confidence, consent, and support of all interested bodies.

In the pursuit of natural justice, signally absent in the issue to date, an immediate moratorium is called for to enforce the *status quo ante* so that affected and innocent FRS Pensioners may be relieved of unnecessary human stress, and the immediate burden of continuing financial hardships imposed upon them as consequence of these abuses of natural justice and human rights.

Yours Truly,

Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)

Order of Excellent Fire-fighter
Russia

Oklahoma Medal of Honor
&
Honorary Citizen

APPENDIX 'A'

The Author of this Notional Study

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Overpayments to Pension Scheme Beneficiaries
Remedies and Defences

BACKGROUND OF THE PROBLEM

The U.K. experience with overpayments to Pension Scheme Beneficiaries, and in the broader context of pension fund transparency reform, illustrates several significant truths. First, that the U.K. legal and regulatory framework for pension funds was (and is) complex, embracing trust law, contract law, tax law, social security law, employment law, privacy law, and the Financial Services Act.

Second, that despite the complexity, effective political leadership combined with active consultation with stakeholders was sufficient to establish broad political and societal consensus for increasing the transparency of pension fund administration in the U.K. with respect to including policies on social, environmental and *ethical issues* in formal statements that were effectively translated into the daily management of pension fund schemes. A key step in the consultation was the government's signalling that the reforms were consistent with established practice in fiduciary duty, thereby removing the "regulatory chill" that applied formerly to pension trustee duties.

Third, that pension fund reform requires active engagement by the fund managers – and for elected officials acting as fund managers no matter where their base constituencies are located or to whom they delegate their authority, pension professionals, pension forums and civil society actors. In the U.K., this engagement first occurred sporadically in the aftermath of significant problems that emerged during the 1990s as a direct result of mismanagement of pension assets by corrupt individuals and sharp practice by large financial institutions with the mis-selling of pension policies and misappropriation of funds. This first outcry led to very active demands for reform and especially for improved accountability and transparency.

Sadly, recent commentary has raised public awareness of the need for more rigorous oversight of pension assets involving the Ministry of Defence and Soldier's Pensions and Local Authorities and Fire-fighters' Pensions.

THE HYPOTHETICAL PROBLEM

Consider the following hypothetical set of facts:

The Millennium Bug plc retirement benefits scheme (`the Scheme`) is an exempt approved final salary scheme. There are 10,000 members comprising 5,000 pensioners, 2,500 deferred pensioners and 2,500 actives. Payment of benefits is administered by Apocalypse Pension Consultants Limited (`Apocalypse`). In July 1999 the sponsoring employer, Millennium Bug plc, goes into insolvent liquidation. This triggers a winding up of the Scheme. In the course of the winding up it emerges that defects in Apocalypse's computer software have led to final pensionable salaries of pensioners and deferreds being overstated by 100% in all benefit statements and calculations which have been issued and made for the previous ten years. The Scheme is now substantially in deficit.

What should the Trustees do?

On a superficial level the answer is obvious:
The Trustees must try to remedy the shortfall by recovering as much as possible of the monies overpaid to members and by ensuring that future payments are restored to their correct level. (In principle, the position is no different if the Scheme remains in surplus notwithstanding the overpayments. However, there is much greater room for manoeuvre. The Trustees might agree with the Employer to augment the benefits of those overpaid up to the `incorrect` level in order to avoid the potentially large expense and administrative nightmare of trying to restore the status quo ante.)
From whom can such recovery be made? Clearly, attempts to recover the statutory debt on the Employer are likely to be largely futile – *but given the recent result in the situation with the MoD and the Soldiers' Pensions, this possibility must not be overlooked when the pensioners were in service to the Crown.* The two other options are:

(1) to seek recovery from overpaid pensioners;

(2) to pursue a claim for breach of contract and/or negligence against Apocalypse.
One of the issues which arises from pursuing the latter option is addressed below. However, the principal concern of this paper is to deal with the difficulties faced by trustees in pursuing scheme members.

This subject can be conveniently examined under the following headings:

(A)Past overpayments to pensioners

(1) What claim do the Trustees have?

1. Can it be enforced by:
   (i) action
   (ii) recoupment from future instalments?

2. What defences are available to overpaid members?

3. What defences are available to members?

(B) Future overpayments to pensioners

(1) Are the Trustees entitled to reduce future payments to the correct level?
(2) If so, do overpaid members have any countervailing claim for compensation?

(C) Overquotations to deferred pensioners

(1) Are the Trustees entitled to reduce benefits to the correct level when they come into payment?
(2) Do the deferreds have any claim for compensation?

(D) Practical problems
How can the Trustees most effectively manage the issues which arise from overpayments to thousands of beneficiaries? How can the Courts help?

(E) Claim for damages against Apocalypse

(F) Conclusions

A. Past overpayments to pensioners
As a result of the defects in Apocalypse's software, pensioners have been receiving double the pension to which they were entitled under the rules of the Scheme. Prima facie the Trustees have a restitutionary claim to recover the amount of the overpayments from each pensioner as money had and received. The overpayments were made under a mistake of fact, although following the abrogation of the rule preventing recovery for a mistake of law, the nature of the mistake is no longer material. - *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349

What defences might be available to overpaid pensioners? There are four candidates which require consideration:
(1) negligence on the part of the Trustees.
(2) limitation.
(3) estoppel.
(4) change of position.

(1) Negligence on the part of the Trustees
Can it be argued that the overpayments are irrecoverable because the Trustees were either indirectly responsible for the error or failed effectively to monitor the administration of the Scheme so that discovery of the overpayments was delayed? In the recent case of *Scottish Equitable plc v Derby (30 September 1999)*, which is considered in more detail below, it was argued that the Court had a residual discretion to refuse relief where the party seeking repayment had been careless. Harrison J rejected the argument. He was plainly correct to do so: the remedy in restitution is not discretionary and it was established as long ago as 1841 that carelessness on the part of the payer is no defence to a claim for repayment of money paid under a mistake - *Kelly v Solari (1841) 9 M&W 54*.

(2) Limitation
The Trustees are faced with overpayments going back up to ten years. Can overpaid pensioners rely on the *Limitation Act* to restrict recovery, at worst, to six years' over-payments? The claim in restitution is, in principle, subject to a six-year limitation period[4]- *Kelly v Solari (1841) 9 M&W 54*. However, since the Trustees' claim will be `for relief from the consequences of a mistake` the six-year period does not start running until the mistake is discovered or should have been discovered: *s.32(1)(c) Limitation Act 1980*. This provides

at least some form of counterbalance to the rule that the payer's negligence does not prevent recovery. If the Trustees *failed to exercise reasonable diligence in their monitoring of the Scheme*, recovery may be limited by the Act.

(3) Estoppel

Until the recognition by the House of Lords in 1991 - *Lipkin Gorman v Karpnale Ltd* (see below). of a general defence of change of position, the only chance the payee had of resisting repayment on the grounds of unfairness was to plead an estoppel. The interrelationship between these two defences is considered further below. Suffice it to say for the present that the defence of estoppel remains alive, if not altogether well, in England and Wales so examination of its elements remains of some practical importance.

The leading case is *Avon County Council v Howlett [1983] 1 WLR 605*. A teacher who was injured at work received sick pay from his local authority employer at a rate higher than that provided for in his contract of employment. He queried the level of payment with council officials but was told that they were correct. By the time the mistake was discovered by the council, the teacher had received overpayments totalling about £1,000. In the meantime he bought a new suit and a second-hand car for about £500 which he would not have done but for the overpayments. The elements which had to be established for an estoppel defence to succeed were identified by Slade LJ:

(a) the claimant must have made a representation of fact which led the defendant to believe that he was entitled to treat the money as his own;

(b) the defendant must have, bona fide and without notice of the claim, changed his position as a result; and

(c) the overpayment must not have been primarily caused by the fault of the defendant.

The third requirement seems somewhat harsh. If the payer's right of recovery is not precluded by negligence, however gross, why should the payee's estoppel defence, if otherwise established, fail merely because he was marginally more careless than the payer? This requirement is also apt to result in costly and acrimonious disputes as to relative fault. Subject to that element, it will be seen that the requirements for an estoppel defence are broadly comparable to those for change of position but with the extra requirement of a representation of entitlement.

The main importance of *Avon County Council v Howlett* is that it establishes the main practical point of distinction between estoppel and change of position. The Court of Appeal held that the defence of estoppel prevented recovery of the entire £1,000 even though the defendant had only changed his position by spending part of it. The defence operated on an all or nothing basis and not *pro tanto* - as will be seen, change of position operates entirely *pro tanto* and is therefore a much more discriminating defence. This followed from the fact that estoppel by representation is a rule of evidence which prevents the claimant from asserting and proving what the defendant's true entitlement is. The members of the Court were not entirely happy with this position for two reasons. First, the parties had contrived a test case on what was in fact a hypothetical basis. The evidence before the first instance judge established that the defendant had actually spent the entire £1,000. However, the defendant (at the insistence of his union which was funding his defence) refused to amend his pleaded case that he had only spent part. Secondly, they recognised that the inflexible application of the all or nothing approach could well work injustice in practice. All three

members of the Court left open the possibility that the Court might prevent a payee making a windfall profit. However, the mechanism by which this could be achieved seems totally unclear. Slade LJ suggested the possibility that the Court, in circumstances where a large mistaken payment had been made and the change of position was small, might in the exercise of its discretion exact an undertaking from the payee to refund the balance. This surely cannot be right. The defence of estoppel is not discretionary so the Court has no power to exact any undertaking. Moreover, how great does the disparity between payment and change of position have to be for this exceptional course to be taken? There is no sensible answer to that question. To adopt this approach would create complete uncertainty.

As mentioned above, the other principal distinguishing feature of the defence of estoppel is the requirement for a representation by the payer that the payee is entitled to the money. How can such a representation be established? Plainly there was no difficulty in *Avon County Council v Howlett* as the defendant specifically queried the level of payment with his employer. But assume in our hypothetical case that no such query has been raised with the Trustees or Apocalypse by any of the overpaid pensioners. It has been said that the mere fact of payment does not entail any representation of entitlement: *Goff & Jones: The Law of Restitution (5th Ed.) p.212*. But this must depend on the identity of both payer and payee. If the relationship between payer and payee is such that there is a legal obligation on the payer to ascertain the payee's entitlement correctly, then the fact of payment should be sufficient. In *Avon County Council v Howlett Slade* LJ appeared to recognise that the relationship of employer and employee might be so classified. The same should apply as between the trustees and members of an occupational pension scheme. The trustees have a statutory obligation to provide members with accurate information about their benefit entitlements (*Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655)* especially *Reg 5* and *Schedule 2)* and a residual obligation in equity to provide information may also exist - *Hamar v Pensions Ombudsman [1996] OPLR 55, 65*. In any event, members can rely not merely on the trustees' duty to provide accurate information but also on the benefit statements received as actual representations of the amount of their entitlements. In practice, members of a pension scheme should have little difficulty in establishing the necessary representation of entitlement.

(4) Change of position

This term simply means that because of an error by the payer irreversible decisions or expenditures by the payee/recipient have been made or entered into, which means the payer/recipient is now worse off if he or she has to give the money back. The development of this defence remains in its infancy.

Since the House of Lords first recognised it as a defence available under English law in *Lipkin Gorman v Karpnale Ltd [1991] 2 AC 548*, it has been relied on in only a handful of reported cases. Of these, only two have any connection with the world of pensions. The first, *Hillsdown Holdings plc v Pensions Ombudsman [1997] 1 All ER 862* at 904, concerned an unlawful payment of surplus to the employer. The second, *Scottish Equitable v Derby*, concerned a personal pension policy. The application of the defence in the context of overpayments to members of occupational schemes therefore remains uncertain for two principal reasons:

(1) the requirements for establishing the defence were left in a fluid state by the House of Lords *in Lipkin Gorman* and have not crystallised much since; and

(2) there has been no exploration of the issues which arise when the overpayment may affect not only the interests of the payer and payee but also those of thousands of other members of an occupational scheme.

In *Lipkin Gorman* the House of Lords refused to define the precise scope of the defence in abstract terms but preferred to let it develop on a case-by-case basis. The nearest there is to a formulation of the defence appears in the speech of Lord Goff - at 580E - but it is clear from the context that this can only be treated as a broad framework:

`*…the defence is available to a person whose position has so changed that it would be inequitable in all the circumstances to require him to make restitution, or alternatively to make restitution in full. I wish to stress however that the mere fact that the defendant has spent the money, in whole or in part, does not of itself render it inequitable that he should be called upon to repay, because the expenditure might in any event have been incurred by him in the ordinary course of things*`.

Against that background it is possible to identify what appear to be the principal issues which arise as to the scope of the defence and to suggest some answers to the main questions:

(a) Mala fides or fault on the part of the payee.

It is clear that the defence is only available to a payee who changes his position in good faith - *Lipkin Gorman* per Lord Goff at 580C. Thus, turning to our hypothetical problem, overpaid pensioners must show that they were not aware of the Trustees' error when they received the overpayments and when they spent them (or otherwise changed their position). Whether they succeed will depend *inter alia* on the scale of the error and the nature of any contemporaneous communications between payer and payee. Benefit statements received by pensioners will have specified their final pensionable salary at twice its correct level. Arguably, only the most apathetic or careless recipient will have failed to notice that something was wrong. It has been suggested in some quarters that the defence should be unavailable if the payee was negligent even though acting *bona fide*. This would be both contrary to the current weight of authority and unjust. A variation on this approach was adopted in the *American Law Institute's Restatement of the Law of Restitution (1937)* at para.142 which requires that the payee be `no more at fault` than the payer. This equates with the third requirement identified in *Avon County Council v Howlett* for establishing the defence of estoppel and should be rejected for the reasons given in paragraph 9 above.

(b) Narrow or wide view of the defence?
Burrows: The Law of Restitution (1993) pp.425-428 argues that the defence could be applied in a narrow or wide way. The narrow approach requires the payee to have changed his position in reliance on the validity of the payment. The wide approach allows the defence to operate whenever the payee's position has changed in such a way that restitution would be inequitable. The difference in practice is best demonstrated by unforeseen events. If the payee receives a mistaken cash payment which is then stolen or which is destroyed in a fire at his home, the defence would be available only on the wide view. It is suggested that the wide view is plainly the more just and is entirely in accordance with Lord Goff's statement of principle.

(c) Causal link

Even on the wide view, it seems plain that there must be a causal link between the mistaken payment and the change of position. It is insufficient if the payee's difficulties in making restitution are wholly unconnected with the payment.

It is time to deal with *Scottish Equitable v Derby [2000] PLR 1*. The facts were in summary as follows: in 1988 Mr Derby invested £90,000 from a redundancy payment in a pension policy with Scottish Equitable. In 1990 he took early retirement benefits in the form of a lump sum and residual single life pension. In 1995 Scottish Equitable,mistakenly overlooking the fact that early retirement benefits had been and were still being paid to him, told Mr Derby that he still had a fund of just over £200,000. Mr Derby took a tax-free lump sum of £51,000 and used the balance to purchase an annual pension from the Norwich Union. His actual residual entitlement from Scottish Equitable was a fund of £30,000 to provide his GMP. Before the error came to light Mr Derby disposed of the money as follows:

(a) he used £42,000 to redeem two-thirds of the building society mortgage on his home;

(b) he used £150,000 to purchase the Norwich Union pension;

(c) he spent the £9,000 balance of the lump sum and the income from the Norwich Union pension on `modest` (but unspecified) improvements to his lifestyle.

Scottish Equitable claimed restitution. Before the trial Mr Derby's marriage broke down and he argued that he would not be able to survive if he had to repay Scottish Equitable in view of his increased financial commitments resulting from the separation. His health was also deteriorating.

Harrison J, although initially (and perhaps understandably!) sceptical, decided that Mr Derby had acted *bona fide* and was not aware of Scottish Equitable's error either when he received the money or when he spent it. He held that:

(i) the £42,000 used to partly redeem the mortgage had to be repaid: early discharge of an existing debt did not amount to a change of position.

(ii) since the Norwich Union was prepared to unwind Mr Derby's policy and his application of the money overpaid was therefore reversible, £120,000 (i.e. the £150,000 invested less the £30,000 residual fund) had to be repaid.

(iii) the £9,000 balance of the lump sum was not repayable.

(iv) no allowance could be made for the general financial difficulties facing Mr Derby as a result of his marital breakdown because they were in no way connected with the receipt of the mistaken payment.

(v) accordingly the defence of change of position was available to Mr Derby only in respect of the £9,000 In many ways the real sting in the judgment from Mr Derby's point of view came in the last paragraph. He was ordered to repay the £161,000 together with interest totalling £35,000. It is wholly unclear where Mr Derby was expected to find this from.

(vi) in reliance on the obiter dicta in Avon County Council v Howlett, it would be unconscionable to allow Mr Derby to rely on a defence of estoppel when the overpayment was £170,000 and his change of position only related to £9,000 of that sum.

It will be necessary to return to a number of aspects of Harrison J's judgement below. The point of immediate relevance is his clear acceptance of the need for a causal link between the mistaken payment and the change of position.

(d) What actions by the payee will count as a change of position?

The following have been considered:

(i) Expenditure on consumables or services: e.g. food and drink, tickets for the theatre or a football match, holidays. All these will found a defence as no enduring asset is created by the expenditure. At the other extreme, if the payee places the payment on deposit at his bank, there will obviously be no defence. One of the curious features of the defence of change of position is that it can operate most favourably in the case of payees who manage to combine apathy or carelessness in checking their entitlements with profligacy in their spending habits.

(ii) Purchase of assets: e.g. a house, a car, quoted securities. What little authority there is suggests that the defence will only be available as regards the excess over the resale value (if any) of the asset. (If the money is invested in a business which fails, the defence will apply to the entire amount *Lipkin Gorman* per Lord Templeman at 560C*).* This is consistent with Harrison J's treatment of the investment with the Norwich Union in *Scottish Equitable v Derby*. However, the position may be different if the asset in question is purchased as a replace-ment for one which is discarded. In *RBC Dominion Securities v Dawson (1994) 111 DLR (4th) 230* the Newfoundland Court of Appeal held that the defence applied where a mistaken payment had been spent on replacement furniture and no attempt was made to assess its resale value. This can be justified on purely pragmatic grounds: credit would have to be given to the payee for the value of the discarded furniture and the calculation becomes unnecessarily complicated.

(iii) Discharge of existing debts: the defence is not available. See *Scottish Equitable v Derby* (mortgage redemption) and *RBC v Dawson* (payment of a Visa account).
(iv) Gifts: the availability of the defence where a gift is made to charity was recognised by Lord Goff in *Lipkin Gorman at 579F. `…the defence is available to a person whose position has so changed that it would be inequitable in all the circumstances to require him to make restitution` (emphasis added).* However, there is no need for the gift to be charitable provided it has been effected.

(e) Anticipatory reliance
Is the defence available if the payee, having been informed of the proposed payment and its amount, changes his position in reliance before the payment is actually received? In *South Tyneside MBC v Svenska International plc [1995] 1 All ER 545* (an interest rate swaps case) Clarke J held that, as a general rule, the change in position had to occur after receipt of the payment. That accords with the American Restatement *para.142(1): `if, after receipt of the benefit, circumstances have so changed…`*. However, it can lead to absurd results. Compare the following examples (adapted from those given by Jules Sher QC in argument in the *South Tyneside* case at 564g):

(i) Trustees inform a member who is approaching retirement that he will be entitled to a lump sum of £100,000. His true entitlement is £50,000. The member then immediately spends £50,000 from his savings account on a round the world cruise which he would not

have spent but for the promised lump sum. On retirement he receives the £100,000 lump sum and uses half to restore the previous balance in his savings account.

(ii) Trustees give the member the same mistaken information but the member does nothing before receipt of the £100,000. He then spends £50,000 of the lump sum received on the cruise.
If anticipatory reliance is insufficient, the defence will fail in (i) but succeed in (ii). As Jules Sher rightly submitted, there is no sense in this. Anticipatory reliance should be permitted. It is essential that it should be if, as is argued below, the defence of estoppel should no longer be recognised in cases of payment under a mistake.

(f) Effect on third parties
The authorities on change of position attempt to balance the competing interests of payer and payee. They do not cover situations in which the success or failure of the defence may have a significant effect on the interests of innocent third parties. This issue is of particular relevance in our hypothetical case. Those who have received overpayments, the pensioners, will have priority over other classes of member under the Scheme's winding-up provisions. If defences of change of position succeed, the pensioners will not only receive their full entitlements but retain the overpayments at the expense of other members whose benefits will be abated. Depending on the extent of the deficit, some members may receive nothing. This would appear to be grossly unjust. It is suggested that the formulation of the defence in Lord Goff's speech in Lipkin Gorman[18] is sufficiently wide to permit the interests of other members to be taken into account. `…the defence is available to a person whose position has so changed that it would be inequitable in all the circumstances to require him to make restitution` (emphasis added). In the circumstances under discussion the defence should fail.

Conflict between estoppel and change of position
In many cases of overpayment by mistake, and in particular those arising in a pensions context, the payee will at present have a choice between the defences of estoppel and change of position. In *RBC v Dawson* the Newfoundland Court of Appeal held that, in such cases, the defence of estoppel was no longer available in that jurisdiction. As Harrison J rightly recognised in *Scottish Equitable v Derby*, the position is not the same here. The House of Lords in *Lipkin Gorman* did not purport to abolish the defence of estoppel. There are however strong grounds for doing so. The change of position defence is much more flexible in terms of its constituent elements and it operates *pro tanto* so that no windfall benefit is retained by the payee. It also appears to be capable of taking into account adverse effects on the interests of third parties whereas the estoppel defence as formulated in *Avon County Council v Howlett* probably cannot. In the light of recent developments, estoppel no longer has anything to recommend it.

In the *Scottish Equitable* case Harrison J held that, on the facts, the defence of estoppel was in principle also available to Mr Derby. However, he held that he was, in effect, able to apply it *pro tanto* as it would be clearly inequitable to allow Mr Derby to keep the entire £170,000 overpayment when he had only changed his position as to £9,000. This was a perfectly understandable but wrong decision. The *dicta* in *Avon County Council v Howlett* merely left open the question of how to deal with large windfall benefits. They provided no authoritative basis for departing from the all or nothing approach and such a departure cannot be justified as a matter of legal principle (see paragraph 10 above). In truth, the facts of *Scottish Equitable v Derby* demonstrate clearly why the defence of estoppel should no longer be permitted to operate in this sphere.

Recoupment

The discussion so far has been in the context of the Trustees seeking recovery of overpayments through the courts. There are obvious practical and economic problems associated with that approach. It would be much more convenient if the Trustees could avail themselves of a self-help remedy, i.e. recouping the over-payments out of future instalments of pension. In principle, such a remedy has long been available –*(Re Musgrave* [1916] 2 Ch 417)- although difficult questions arise as to the rate at which trustees ought to effect recovery (*Re Musgrave* at 425). Could the trustees simply stop paying someone's pension until the overpayment is fully recovered or is a more gradual approach required?) and it is not a means of evading defences of estoppel or change of position as recoupment cannot be effected if it would be `inequitable` - *Re Musgrave* at 425.

However, in the case of occupational schemes, it appears that this option has been closed off by the *Pensions Act 1995*. *s.91(1)* provides:

`*Subject to sub-section (5), where a person is entitled, or has an accrued right, to a pension under an occupational pension scheme –*

(a) the entitlement or right cannot be assigned, commuted or surrendered,

(b) the entitlement or right cannot be charged or a lien exercised in respect of it, and

(c) no set-off can be exercised in respect of it,
and an agreement to effect any of those things is unenforceable`.

s.91(5) provides:
`*In the case of a person (`the person in question`) who is entitled, or has an accrued right, to a pension under an occupational pension scheme, sub-section (1) does not apply to any of the following, or any agreement to effect any of the following –*

[(a) to (c) are not relevant]
(d) Subject to sub-section (6), a charge or lien on, or set-off against, the person in question's entitlement, or accrued right, to pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,
(e) Subject to sub-section (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and –

(i) arising out of a criminal, negligent or fraudulent act or omission by him, or

(ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him`.

Members who receive overpayments as a result of mistakes by the trustees and/or administrators of a scheme will not generally fall within *s.91(5)(d)* or *(e)*. Accordingly, *s.91(1)* prohibits recoupment if that amounts either to the exercise of a `lien` in respect of the payee's entitlement or to the exercise of a `set-off` in respect of it. It is suggested that recoupment does fall within the scope of one or other (or both?) of those expressions and is

thus prohibited. However, there is no good reason for such a blanket prohibition, particularly when recoupment would provide a cost-effective remedy and the interests of other scheme members may otherwise be adversely affected. *s.91* should be amended(Author's Opinion) so as to give the Court a discretion to permit recoupment if it would be just to do so in all the circumstances.

B. Future overpayments to pensioners

Now that the overpayments to Millennium Bug pensioners have come to light, can the Trustees reduce future instalments of pension to the correct level? At first sight, the answer might appear obvious: of course they can. The position is completely different to that obtaining in relation to recovery of past overpayments. The Trustees need only pay what the rules require them to pay. The onus is on the pensioners to establish a legal right to continued payments at the higher level. No such right arises under the Scheme rules and estoppel/change of position operate only as defences. To use the old maxim, they act as shields and not swords.

But it may not be that simple. There are three ways in which overpaid pensioners might seek to establish a right to continue receiving excess benefits or at least a similar financial result:

(1) Estoppel and change of position as quasi-causes of action

It may be that the `shield not a sword` mantra can be disposed of simply by judicious pleading. This was in effect permitted by the Court of Appeal in the context of estoppel by convention in *Amalgamated Investments v Texas Commerce International [1982] QB 84* - see per Lord Denning at 122A and Brandon LJ at 131-132. Brandon LJ dismissed an objection based on the old maxim as largely a matter of semantics. Put simply, in the present context, an overpaid pensioner's particulars of claim would assert his entitlement to payment at the higher rate; the Trustees' defence would plead the Scheme rules and the claimant's actual final pensionable salary and deny entitlement; the pensioner's reply would plead the facts necessary to support an estoppel or change of position defence and assert that the Trustees were precluded from questioning his entitlement.

If this approach is permissible in the context of estoppel by convention, there seems no reason why it should not be equally applicable in cases of estoppel by representation. However, it may be going a stage too far to apply it to change of position. The logic of the strategy holds good in cases of estoppel: the Trustees are precluded by their representation from asserting and proving the pensioner's true entitlement. But change of position does not operate as an evidential bar. It arguably has no application at all unless the payee is subjected to a claim for recovery.

Apart from any legal difficulties, the overpaid pensioner will also find it much harder to establish a change of position on the facts than he would if defending a claim to recover past overpayments. *Ex hypothesi* the money has not been spent. It might be said that he has raised his standard of living in reliance on continued receipt of the excess benefits. But in the absence of any binding financial commitments this would probably be insufficient as it is reversible without loss (except disappointment). Nevertheless, one can envisage circumstances in which the Court's sympathy may be engaged. For example, an overpaid pensioner encourages his teenage son to apply for a University course in veterinary science on the strength of his promise (which, it is to be assumed, is not legally binding) to fund his living expenses for the six-year duration of the course. The pensioner would not have made the promise but for the overpayment. Without the promise the son would have

obtained paid employment instead of going to University. Will the pensioner succeed in establishing a right to receive excess benefits throughout the six-year period?

(2) Contractual analysis
Depending on the facts, an overpaid pensioner may be able to establish a contractual entitlement as against the Trustees to continue receiving the excess benefits. If a retiring member requests a quotation for various options open to him under the rules and he accepts one of the quoted options, arguably a contract arises between the member and the Trustees. Although it might be said that the contractual analysis is unnecessary and inappropriate given the trust law framework governing pension schemes, it has found judicial support: compare *Miller v Stapleton [1996] 2 All ER 449, 459* (cash equivalents) and *Nicol & Andrew Ltd v Brinkley [1996] OPLR 361* (service credits on transfer between schemes).

If this analysis prevails, the Trustees' riposte will be to contend that the contract was vitiated by the parties' common mistake that the quoted benefits represented the member's entitlement under the rules. A similar argument (advanced by the members) succeeded in *Spooner v British Telecommunications plc (Parker J; 12 October 1999).*

(3) Claim for compensation against the Trustees
Even if the overpaid pensioner has no right to insist on the continued payment of excess benefits as such, he may have a claim for breach of duty against the Trustees, viz.

(a) Hedley Byrne claim - *Hedley Byrne v Heller [1964] AC 465*
The pensioner could argue that his benefit statement constituted a negligent misrepresentation upon which he relied to his detriment and the Trustees are liable to him in damages. In principle, such a claim should lie but the claimant pensioner will have to establish a sufficient change of position on the facts and the quantum of any damages awarded will be limited to the extent of the detrimental reliance (i.e. in many cases the cost of reversing it) and will not be equivalent to the value of continued receipt of the excess benefits.

(b) Breach of duty to inform
This appears more doubtful. The remedy for a breach of the *Disclosure Regulations* is an application to the Court for a mandatory compliance order under *s.115 Pension Schemes Act 1993* - and OPRA can impose penalties on the Trustees under reg.11. This strongly suggests that the Court would not recognise a claim for damages for breach of statutory duty. The pensioner would have to claim equitable compensation for breach of a residual non-statutory obligation to provide information (see paragraph 11 above).

C. Overquotations to deferreds
We are here concerned with deferred pensioners who have received benefit statements but whose benefits have yet to come into payment. Conceptually, the analysis should be the same as that applying to overpaid pensioners who wish to assert an entitlement to continue receiving excess benefits.
In practice, it will be even more difficult for deferreds to establish a sufficient change of position. It is one thing to say that one's mode of living has been affected by the previous receipt and expected future receipt of a stated level of income and quite another to assert similar reliance when the stated level of income does not come into payment for another ten years. Much may depend on (a) the length of the period of deferment after the receipt of the

benefit statement and (b) how long before the end of that period the error is discovered (i.e. the period available for adjustment).

D. Practical problems for trustees

Thus far the legal merits of various claims and defences have been considered. But that is only the starting point. The Trustees in our hypothetical case have to grapple with the practical difficulties involved in attempting to rectify overpayments made over a long period to many thousands of members. Some of these difficulties are now examined.

Recovery of past overpayments will in many cases be a non-starter on economic grounds.

Recovery by action requires a separate claim against each overpaid pensioner.

The financial circumstances of each pensioner will have to be examined individually to see if estoppel or change of position defences are available. Unless the aggregate overpayment to the individual pensioner is substantial, the cost of recovery (including the cost of enforcing any judgment obtained) may exceed the value of the claim. The pensioner may be on legal aid or in any event unable to pay costs if he loses. Those pensioners who were overpaid most may have died and their estates been distributed. On top of this there are the acute public relations problems of pursuing such claims at all.

That is why recoupment would be such an attractive remedy. However, as discussed above, it is no longer available in the case of occupational schemes.

Even if it were available, there are still drawbacks. A dissatisfied pensioner could complain to the Pensions Ombudsman under *Part X Pension Schemes Act 1993*. The Ombudsman would investigate whether estoppel, change of position or any other defences were available. Even if the Trustees successfully resist the complaint their costs will not be recoverable.

Similar problems may arise even in relation to reducing future payments to the correct level, where the Trustees are on much stronger legal ground. It would be all too simple for the pensioner or deferred pensioner in question to make a complaint of maladministration to the Ombudsman. He has nothing to lose. He has three years after the reduction is made within which to make his complaint. The Trustees cannot safely complete the winding-up of the Scheme during that period.

In those circumstances, what can the Trustees do:

(a) to ascertain whether individual members may have valid estoppel/ change of position defences without having to initiate recovery proceedings or provoke a complaint to the Ombudsman?

(b) to contain the volume of any Ombudsman complaints?

(c) to ensure that all issues are resolved as soon as possible so that the Scheme may finally be wound up?

The Trustees should make an application to the Court under *Part 8 CPR* joining representative beneficiaries and seeking directions under the Court's *Beddoe*[*[1893] 1 Ch 547*] and *Benjamin [1902] 1 Ch 723* jurisdictions. This will have the effect of

(i) preventing any complaint being made to the Ombudsman unless permitted under the Court Order: *s.146(6)(a) Pension Schemes Act 1993*

(ii) enabling the Court

(a) to direct the Trustees whether individual recovery actions should be commenced or abandoned

(b) to regulate within a suitable time frame the resolution of any claims by members.
In *Mettoy Pension Trustees Ltd v Nicholls (10 February 1999)*, Jacob J was prepared to make an order, binding on the members, which:

(a) directed the trustees, by date X, to write to each deferred pensioner in an approved form (pensioners in payment were by agreement dealt with differently)
(i) explaining that the Court had provisionally decided that deferreds were not entitled to excess benefits but that individuals should have the opportunity to advance special grounds for claiming such benefits
(ii) advising them of the sort of circumstances which might give rise to an estoppel/change of position in a way which (importantly!) emphasised their exceptional nature
(iii) inviting any such claims (supported by documentary evidence) by date Y

(b) gave the trustees liberty to accept any estoppel/change of position claims made within the deadline which appeared to them to be justified

(c) gave the trustees liberty to distribute the fund on the footing that no other claims were valid unless complaints were made to the Ombudsman by date Z.
This highly pragmatic approach is just what is required in these administratively difficult cases.

E. Claim for damages against Apocalypse
Let it be assumed that breach of contract and/or negligence could be established and that Apocalypse is good for the money. It would obviously be attractive to the Trustees to recover their losses from a single third party rather than having to pursue thousands of Scheme members.
Can the Trustees legitimately pursue Apocalypse without even attempting to reverse the overpayments? The answer depends on whether the Trustees are required to attempt recovery from members in order to show that they have taken reasonable steps to mitigate their loss.
So far as past overpayments are concerned, the Trustees would almost certainly not be required to pursue members because:

(a) claimants are not generally required to embark on complex or doubtful litigation against others (even if provided with a costs indemnity by the wrongdoer): *Pilkington v Wood [1953] Ch 770*

(b) there are dicta supporting the view that claimants are not required to take steps which might be considered disreputable or would harm innocent third parties: *London & South of England Building Society v Stone [1983] 1 WLR 1242, 1263.*
The position may be different insofar as the Trustees seek to recover from Apocalypse the capital cost of continuing the overpayments in the future. Reduction to the correct level would not require the Trustees to embark on any litigation although, of course, the likely

result of their making such reductions would be the institution of numerous complaints to the Ombudsman.

F. Conclusions

In the light of the above analysis, the following tentative conclusions can be expressed:
(1) recovery of past overpayments will generally not be a viable option for trustees;

(2) trustees will in most cases be entitled to reduce overpaid pensions to the correct level for the future;

(3) other than in exceptional cases, deferred pensioners will not be entitled to insist on payment of overquoted benefits;

(4) the defence of change of position should be developed so as to apply

(a) irrespective of fault on the part of a bona fide payee
(b) in cases of anticipatory reliance
(c) in such a way that the interests of third parties may be weighed in the balance;

(5) estoppel should no longer be recognised as a separate defence in cases of payment under a mistake;
(6) Trustees should face, joint and several, liability for negligent handling of pensions just like the third party administrators e.g., within the Fire Service;
(7) Should Trustees, TPA's, or others working on their behalf, violate Data privacy requirements, the full force of the Data Protection Act 1998 could be brought to bear upon them and should be considered in determining actions regarding estoppel and change of position.

WARNING:

The information and expressions of opinions which it contains are not intended to be a comprehensive study, nor to provide legal advice, and should not be treated as a substitute for specific advice concerning individual situations.

No responsibility can be accepted for errors or omissions however caused.

It is written on the basis of case law and current practice as at the date it was given.

Communities and Local Government

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23 April 2008

Paul Burns
7 Kings drive
Preston
PR2 3HN

Our Ref:
Your Ref:

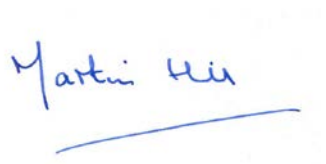
Dear Mr Burns

Thank you for your letter of 18th April to our Minister, Mr Parmjit Dhanda, about the Firefighters' Pension Scheme. I have been asked to reply.

I referred in my letter of 17th April to the established procedures for dealing with disputes between fire and rescue authorities and pension scheme members and these are set out in the Commentary on the Firefighters' Pension Scheme 1992, which is available on the firepensions website. The arrangements are set out in Annexe 12: Appeal procedures which lie outside the FPS.
Bugler-Obsolete link removed

The Secretary of State is not part of the dispute resolution procedure and, as you will see from the Commentary, if you remain dissatisfied at the conclusion of Stage 2 with the outcome, you may take your case to the Pensions Ombudsman.

Yours sincerely



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