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Friday, 5<sup>th</sup> September, 2014.

**BURNS**

**My Ref: PB01814.**

**Members of the Public.**

**Complaint Against:**

**County Councillor D.O'Toole**

**Former Chair  
Lancashire Combined Fire Authority**

**In the matter of  
Fraudulent Expenses Claims.**

Dear Chief Constable,

**Historical Prequel.**

1. It is necessary for the sake of completeness and in Public transparency to repeat and update certain salient points which were originally made to you in a letter by Mr.Paul P.Burns GFireE (Ref: PB00313A-dated 20<sup>th</sup> January 2013) in which Criminal Information was laid before you in writing against the above named.

This letter, delivered by hand at Fulwood Police Station(now closed), and posted to the Police Commissioner included a bundle of 83 pages to which, neither you, nor the Commissioner, either acknowledged or responded.

**N.B. That which follows is, for the sake of clarity and the continuity of narrative, leading to ultimate publication, written in the third person.**

2. A group of 17+ disabled Lancashire Fire Service Veterans(FSVs) and their Widows have for the past 7 years been engaged in a pension dispute with their former employers the Lancashire Combined Fire Authority(CFA) and its agent the Lancashire Fire & Rescue Service(LFRS). Once more the detail of this issue is not of concern here.

3. This Complaint of common criminality, namely fraud, arose as a consequence of CC O'Toole(then Chair of the Lancashire Combined Fire Authority) and Mr. P.Holland CBE(then Chief Fire Officer(presently independent Fire Advisor to the Coalition government) and their staff repeatedly and publicly accusing individuals and members of this group of fraudulently obtaining DWP benefits to which they said the group members were not entitled, but which were in actuality overpayments and underpayments caused by LFRS maladministration of their pensions.

4. Least there be doubt the group approached the DWP Fraud Squad at Blackburn at a very early point in this dispute(2007) and after preliminary discussions, the DWP declined to take any form of investigative action against either an individual within the group, or collectively, and

that still remains their formal position today(2014).

### **The Sequel.**

5. Acting on the saying of "what is good for the goose..." the group decided in late 2012 to carry out a private investigation into both CC O'Toole and ex-CFO Holland's taxpayer funded 'expenses' by utilising the Freedom of Information Act 2000(FOI) to obtain copies of both individual's expenses claims.

6. Responding to two individual applications under the Act the Lancashire County Council(Ref 812.289) on the 12<sup>th</sup> April 2012 released 80 pages of CC O'Toole's expenses claim forms incurred with the LCC(commencing in 2003) simultaneously, to Mrs C. Wilson a widow member of the group, and to disabled FSV Mr. J.S.Hinton MIFE, another member of the group. Mrs Wilson subsequently passed her copies to the group leader, disabled FSV Paul.P. Burns GIFireE, in the presence of her daughter and took no further part in these proceedings.

7. The LFRS to date, unlike the LCC, and contrary to their Statutory duty under the FOIA have resolutely refused, without legal explanation or public justification, to release CC O'Toole's (incurred with them) and ex-CFO Holland's mileage and expenses claims, though Detective Sergeant Pearson, one of the investigative team, informed the two Complainants during a recent recorded interview that as a result of his enquiries the Constabulary *now have all these LFRS records in their possession.*

8. At this stage, in this open public letter, it is the intention to deal exclusively with mileage claims though comments on general expenses may arise from time to time but it must not be assumed that the group's interest in irregularities regarding these other types of expenses is in any manner diminished or abrogated.

### **County Councillor Allowances and Payments.**

9. The following is the legal frame work within which all Councillors are required to conduct their claims for expenses reimbursement.

The LCC Constitution operates a Members Allowance Scheme under the provisions of the Local Authorities (Members' Allowances) (England) Regulations 2003. The LCC therefore makes payments to councillors(no salary-no pay) in accordance with this lawful Scheme.

The Scheme and payments can only be amended by consultation with the Independent Remuneration Panel.

In summary, each councillor receives a basic allowance, and reimbursable travel and subsistence allowances, which are re-payable where ***expenditure has necessarily been incurred in the performance of an approved duty.***

Additional allowances are paid to cabinet members, committee chairs, and other 'key' county councillors which reflects their special responsibilities.

One would expect that CC O'Toole, as a key councillor with special responsibilities, would exhibit personal standards of integrity and probity in matters of expenses which would be of a commensurately higher standard than an 'ordinary' councillor?

It is noteworthy when evaluating all the years of CC O'Toole's expenses reimbursements that the levels have, from an apogee during this pension dispute, when the matter of his expenses first arose, been gradually reducing year on year.

Details of payments made to county councillors, including CC O'Toole will be published with this letter on the 'Morning Bugler' website shortly which will also include Appendix 'I' (Allowances) of the Council's Constitution.

The noteworthy paragraphs in Appendix 'I' to be complied with by CC.O'Toole are, 10.3; 11.0;

11.2.1; 11.3; 11.4; and 11.7.

10. It is also significant that one of the Complainants of this letter operated within the provisions of this Scheme for over 2 decades and it is probable that the Chief Constable currently does so. The Public can be certain that his Officers currently operate to these terms because DS Pearson confirmed that he was a current member this Scheme and fully aware of its provisions which he illustrated and confirmed, using himself as an example, during his recorded interview with the Complainants.

### **The Mileage Claim-Time Frame.**

11. In considering CC O'Toole's claims it is noteworthy that his claims records commenced in February 2003 and therefore do not report retrospectively to the benchmark date of May 2001 when CC O'Toole was first elected to the LCC.

During this period, 2001-2003, CC O'Toole home address has remained constant. It can therefore be reasonably assumed that his level of claim (ignoring annual incremental increases, if any) and in respect of the actual physical distance (mileage) from Home Address (HA) to County Hall (CH) has also remained unchanged.

Accordingly it is safe and appropriate to assume that CC O'Toole has been claiming the same mileage/distance for 13+ years (monthly-in-arrears) within the provisions of the Members Allowance unless CC O'Toole corrects to these presumptions.

### **Mileage Claims-HMRC-Fraud.**

12. There are certain fundamentals and procedures to which *any mileage reimbursement claim is subjected*:

***"Each claim shall be certified by the councillor or co-opted member that he/she has actually and necessarily incurred the expenditure claimed in the performance of approved duties as defined in Schedule D and that he/she will not make any other claim in respect of that expenditure other than under this Scheme."***

13. In practice this is how it works.

The mileage or distance in question is calculated and then finally approved by the LCC Treasurers department using specific software, the 'AA Mileage Calculator', in close conjunction with the Member, and thereafter diligently monitored by the HMRC because they regard mileage claims by those on this Scheme as receiving 'benefits-in-kind'.

The mileage claim must directly reflect *the actual physical distance between the claimant's Home Address (HA) and his/her place of duty*, for example between HA-County Hall; or HA-Fire Service HQ; or CH-FSHQ.

There is no tolerance permitted for the 'importance to society' of individual councillors or other officials; neither is a self-indulgent view of how important a person may regard their own 'worth' a consideration; nor is an enhanced intrinsic value placed on an individual's worth in 'hourly rate/time' permitted in this calculation either.

Common abuse is justified thus... 'I am important; I travel the longer route because it is faster and this saves valuable time for the County and myself'. Whilst that may well be true to some extent, it still does not justify fraudulent claims.

The only consideration for mileage reimbursement claim purposes is, and remains, that it *must be the shortest physical distance between these two points*, HA and the Point of Duty-or Base. The Chief Constable's uniformed staff as LCC employees are fully aware of this lack of flexibility, or tolerance.

However, in practice there is some pragmatism in a claim when the actual distance falls

between two mile posts. For example, 2.5 miles. In this case usual audit practice is followed by rounding up any amount above 2.5 to 3.0 and conversely below 2.5 rounded down to 2.0.

14. It is a tenet of criminal law, which should be noted, that on every occasion CC O'Toole or ex-CFO Holland submitted their individual claim forms they did so on the basis of further fundamentals. Namely, that the basic claim was confirmed by each individual signing a specific Declaration on the claim form which confirmed that their claims were accurate and that they had necessarily and actually incurred the expenses claimed in the discharge of their duty; that they were entitled within the current Allowance provisions for reimbursement of that expenditure.

Taken in the round, that these claims were unquestionably as far as the claimant and auditors were concerned (whether correct or incorrect) genuine honest claims (with no *intent* to defraud) and it was upon these fundamental Declarations that they ultimately received recompense from the Public purse.

Thus set against these elemental points, to knowingly make a false claim, is to perpetrate the criminal act of fraud, which has no Statute of limitations.

15. Given all these strictures and the fact that DS Pearson, the investigation officer, is actually a current member of this LCC Allowance Scheme himself and thus aware of its strictures one wonders how he could have reached the conclusions he did in which he 'completely exonerated' CC O'Toole, or at least that is what CC O'Toole stated he said, and as we have seen in the past with his 'crawl back under his rock' comment CC O'Toole has an unhealthy habit of putting words in peoples' mouths, in this case DS Pearson?

### **The First Formal Complaint.**

16. This FOI(part) exercise, including a comprehensive study of CC O'Toole's released expenses claims (in particular his mileage claims) was concluded by physically driving the distances from CC O'Toole's HA to County Hall; between CH and LFRS HQ; and between his HA and LFRS HQ.

As a consequence it became self-evidently clear that a prima facie case of multiple examples of consistent and repeatedly fraudulent claims over a 13+ year period had been perpetrated by CC O'Toole between his HA and CH.

This FOI(part) exercise resulted in the first formal Complaint to the Chief Constable and the Commissioner of Police on the 20<sup>th</sup> January 2013 by the group leader disabled FSV-P.B., with its unfortunate lack of collective response.

One can assume by now that this written Complaint with its supporting evidence has also been 'lost'.

### **A Second Formal Complaint.**

17. Disabled FSV-J.S.H., who is also a group member and the second successive Complainant to lay Criminal Information against CC O'Toole before the Chief Constable in this matter, has been in pension dispute with the LFRS since 2007. It will be recalled that he was the second recipient of CC O'Toole's claims records released by the LCC.

The nature of his pension dispute is more sensitive and different from other disabled FSVs' position. He was compulsorily medically discharged for traumatic injuries which he had received at an incident involving 3 children (*1 child died; one child brain damaged; 1 child rescued unharmed*) for which he received a CFO's Commendation.

Repeatedly, and inappropriately, the intimate details of his medical condition were released to become common knowledge within the LFRS and it is the principle of this breach of trust and confidentiality which has brought disabled FSV-J.S.H into conflict with the LFRS rather than the content of his DWP and Personal Record Files (subject data), the latter which the LFRS are still refusing to release to him for several years now once more contrary to their Statutory duty

under the Data Protection Act 1998.

A document released with his express permission gives an insight into his continuing health crises; a condition, not improved by the inhuman and dismissive attitudes repeatedly exhibited to him by the collective CFA Councillors including CC O'Toole and consecutive CFOs of the LFRS, the impact of which he records in an insight on the Morning Bugler web site.

### **Prelude to the Investigation- a Time Line.**

18. On Saturday the 25<sup>th</sup> January 2013 disabled FSV-J.S.H took a similar bundle of documents to those of disabled FSV-P.B., which also included the laying of Criminal Information against CC O'Toole, to Waterfoot Police Station. He had some difficulty in obtaining a receipted signature from a uniformed officer and he returned later on the same day to achieve this. PC 6943 Davies acknowledged receipt of the bundle and issued reference No:20130123.0402.

19. Also on the morning of the 25<sup>th</sup> January 2013 disabled FSV-J.S.H emailed his laying of Criminal Information before the Police Commissioner which was immediately electronically acknowledged and was promptly followed up with an email on the same day which asked for his agreement-which was given-to forward a copy of this Criminal Information to the Combined Fire Authority, which it was.

20. On Monday the 4<sup>th</sup> February disabled FSV-J.S.H issued a copy of the laying of Criminal Information (but not the evidential bundle) to the LCC copying the original letter to CC Driver, then Conservative Leader of the Council, and similarly to the Combined Fire Authority informing the Leaders of all Parties and Independents of his laying of Criminal Information against CC O'Toole; and to the CFO of the LFRS. None of whom, either acknowledged or replied.

21. On Wednesday the 6<sup>th</sup> February 2013 the then Chief Constable's Staff Officer, Chief Inspector Horn, emailed disabled FSV-J.S.H indicating that he had received the Criminal Information but not the attached bundle of evidence which was apparently missing. This was the second occasion when once more a bundle of evidence went missing and once more no explanation was, or has been proffered, for this recurring state of affairs.

22. CI Horn then proposed that he would, in a rather carousel approach, pass disabled FSV-J.S.H 'parcel' back to the LCC from whence CC O'Toole's expenses records had originally come. CI Horn subsequently received a prompt brusque reply from the LCC stating that they had considered the matter and having carried out initial checks decided to formally refer the 'allegation' back to the Lancashire Constabulary for further consideration and investigation to determine, whether or not, 'criminality' by CC O'Toole was involved.

23. One must draw the reasonable inference from this prompt action that in the opinion of the LCC auditors at the County Treasurer's department there existed a prima facie case of fraud for CC O'Toole to answer after the LCC had re-examined its own data, or they would not have reached this swift conclusion and decision. This initial quick response by the LCC simply confirmed the need for Police action rather than ameliorated it.

24. On Friday the 8<sup>th</sup> February disabled FSV-J.S.H sent a reply to CI Horn.

25. On Tuesday the 19<sup>th</sup> February 2013 disabled FSV-J.S.H received a letter from CI Horn on behalf of the Chief Constable indicating that an investigation under a senior detective officer would be established to enquire in to the Criminal Information which he had laid against CC O'Toole.

26. On Saturday 24<sup>th</sup> February 2013, Detective Constable 1266 Azam Khan from the Criminal Investigation Department Lancaster Road North Preston PR12SA visited disabled FSV-J.S.H by appointment at his home address and commenced the Enquiry.

FSV-J.S. Hinton MIFE was informed that an investigation team had been created by order of the Chief Constable and consisted of the following Ranks and officers:

Assistant Chief Constable A.Rhodes(Now Deputy CC);  
Detective Chief Inspector Ian Dawson;  
Detective Inspector Colum (Paddy) O'Neil;  
Detective Sergeant Martin Pearson;  
Detective Constable Azam Khan.

Later it was confirmed that none of these officers had specialist audit skills or qualifications. No specialist forensic auditor was ever co-opted onto the Enquiry team, nor it seems, consulted at any stage during the investigation. All of which exhibits a shortfall in investigative management of a case which would almost exclusively pivot on the examination of audited expenses claims by the accused.

27. On Wednesday 18<sup>th</sup> September 2013 @09:26hrs DS 1620 Pearson, following a 207 day investigation, and only after receiving a prompting email from FSV-J.S.H., sent an email outlining the results of this team's investigation.

One could perhaps be forgiven for questioning the casual manner, including the lack of formal address, with which the conclusions of such a heavy weight investigative team, enquiring into a matter of substantial Public interest, was delivered to the Complainant.

One might also question the tone, which lacked impartiality, in which DS Pearson seemed to spend an inordinate amount of his energy, in what is otherwise the briefest of conclusions lacking in substance by repeatedly making excuses for and appearing to professionally defend CC O'Toole's position, though one assumes that this was not DS 1620 Pearson's intention.

28. It was also disquieting to note that the former Leader of the LCC, CC Driver was able to publicly announce that CC.O'Toole had been 'completely exonerated', *before the first or second* Complainant had been informed.

One is bound to ask what the protocol sequence of events is when a Police investigation is concluded and the result, which indeed there was, is determined by the Crown Prosecution Service.

Are third party politicians contacted first; then those under Police investigation; and lastly the Complainants?

29. In the period of reflection which followed, some desultory minor email correspondence occurred between DS Pearson and disabled FSV-J.S.H, during which unsuccessful attempts were made to set up a joint meeting to discuss in detail his 'team's' findings.

Surprisingly no formal document was ever produced for the benefit of the Complainants or anyone involved, nor signed off by any senior rank on this team on a matter of important public media reported interest and disquiet; an enquiry which required CC O'Toole to stand down from his elected duties until the investigation was concluded.

At this time disabled FSV-J.S.H required further rehabilitative treatment and diaries could not be made to meet.

30. On Monday the 28<sup>th</sup> April 2014 disabled FSV-J.S.H finally wrote to DS Pearson making the case as a taxpaying member of the Public for his uneasiness about the results of this 'enquiry', expressing in some detail where he felt that the enquiry had failed on simple matters of accountancy and omissions, and highlighting that it was self-evident that CC O'Toole had

breached the published LCC Allowance Scheme Rules for all Councillors.

31. As a consequence of these concerns a follow up meeting was arranged at Preston Police Divisional HQ Lancaster Road North Preston PR1 on the 28<sup>th</sup> May at 10:30hrs.

Present were: Detective Sergeant Martin Pearson(DSP) – Lancashire Constabulary;  
Mr .Paul P. Burns GIFireE- disabled Fire Service Veteran-First Complainant;  
Mr.J.S.Hinton MIFE – disabled Fire Service Veteran-Second Complainant.

Although an informal, non-judicial meeting, the disabled FSVs indicated their intention to take contemporaneous notes and to record the proceedings with two devices. DSP complemented this intention by activating the in-suite recording equipment and identifying those present for the tape record, thus 3 devices recorded this meeting.

32. DSP indicated that he would provide a verbal narrative report of his actions and following a request he identified all the members of the Enquiry team listed above. It was agreed that his narrative would be suspended in the event the disabled FSVs wished to explore a particular dimension of his report.

This recorded meeting extended to 1.5hours and a summary of the key points follow:

33. The impression given by DSP initially was that he found it disturbing to have the detail of this investigation examined but it seemed to the disabled FSVs much better that they be allowed to examine his investigation at this point rather than raise the efficacy of the enquiry formally with the Chief Constable and subsequently, if again dissatisfied, with the Independent Police Complaints Commission, the Serious Fraud Office; and/or the Attorney General.

From this point forward a full, frank, and unreserved discussion took place and DSP is to be commended for his candour.

All of which is reflected on the contemporaneous notes and the 3 tape recordings, only two of which are in the Complainants' possession.

34. Not unnaturally a focal point of interest was CC O'Toole's mileage claim of 65 miles(return journey) from Home Address(HA) to County Hall(CH).

DSP stated that CC O'Toole claimed in his initial defence during a taped interview (under criminal caution one presumes) that his original mileage distance from HA-CH (computed in 2001) had been 'agreed' by the LCC.

DSP, when repeatedly pressed, was unable to indicate who had originated this 65 mile figure, or who, on behalf of the LCC, had 'agreed' on the actual figure of 65 miles.

35. This claim in defence by CC O'Toole is both contradictory and perplexing.

If CC O'Toole *first* mileage claim in July 2001 had been authorised by the County Treasurers Department based on the shortest physical distance from HA-CH(which is the burden of accuracy/proof of claim ) one wonders why in 2013 the same department would, in a sudden volte fascia decide, that there now existed in their collective minds, a prima facie case of fraud. Simple speculation suggests that the LCC Treasurers Department had only just discovered CC O'Toole's fraudulent activities themselves when their attention had been drawn to the matter by the laying of Criminal Information by FSV J.S.H.

36. DSP indicated that he had spoken with the Principal Committee Support Officer at the Chief Executive Office but he could not, when pressed, remember or identify who that person might be.

It was in fact Mr. Chris Mather. Mr.Mather's function in this matter is to ensure that the Members' Allowance Scheme is managed, regularly revised, and updated though interestingly he does not actually handle individual Members' claims. This duty is allocated to a Ms.C.Nuttall

who DSP did not interview.

Later, the Complainants, when exploring the detail of the Allowance Scheme with Mrs Janet Mulligan Senior Committee Support Officer, County Secretary and Solicitor's Group, Office of the Chief Executive replied... " I'm sorry but I don't have sufficient knowledge of the Members' Allowance Scheme to be able to answer your further queries with confidence, but I will pass your email to my colleague who returns from leave on Monday who will no doubt respond asap." ...which in the event Mr.Mather failed to do...

37. DSP further indicated, when pressed, that Mr.Mather had provided him with a statement(unclear whether verbal or written) supporting CC O'Toole's contention that his original claim of 65 miles(return journey) had been 'agreed' which conflicts with his role which is simply to manage and update the detail of the Allowance Scheme and one wonders what he saw as his role in this matter because he did not handle individual Members claims including CC.O'Toole's.

38. If this statement exists, and is true, then Mr.Mather is unwittingly confirming that not only was he in the Members' Allowance Scheme approval post in 2001, but in the very post which 'agreed' CC O'Toole's first mileage claim which in complicity they both knew to be a fraudulent claim because if there was any doubt on Mr.Mather's or CC O'Toole's part then the 'AA Mileage Calculator' which was routinely used for such matters at that time in 2001, and since, was available to Mr.Mather on the internet since 1988 for him to check the distance. This alleged 'statement', the curious contents of which was not shared with the disabled FSVs, may well be the reason for the same Chief Executive's Office deciding to send the matter back to the Police for the investigation of 'criminality'.

39. Furthermore, DSP confirmed that he had not asked for or retrieved any documentary supporting evidence from LCC archives which might have shored up either Mr.Mather or CC'O'Toole's account of their joint claims of agreement which rather contradicts DSP version that he had in fact a 'statement' in which allegedly CC O'Toole states the LCC had 'agreed' the very first mileage claim.

40. However, there may well be a further problem for CC O'Toole if it is found that Mr.Mather was not in the Members' Allowance Scheme 'approval' post in 2001 which then raises the question how can Mr. Mather presently claim in a 'statement', without supporting evidence, that CC O'Toole's claim that his first mileage claim was 'agreed' with him, if Mr.Mather was not there?

Furthermore Mr. Mather failed to proffer documentary proof to DSP(who failed to ask for it-he admits) that some form of 'agreed' mileage had ever existed between the LCC Treasurers and CC O'Toole?

41. Moving assiduously forward it should be stated at this point that, surprisingly, the actual distances set against CC O'Toole's claims have never been firmly calculated by anyone in authority associated with these claims, or this investigation. The man in the street would be rather puzzled that this simple fact was not established by the Lancashire Constabulary investigative team at the very earliest opportunity. It was after all the key issue upon which a major part of these laying of Criminal Information will founder, or are substantiated.

42. DSP confirmed that neither he nor any subordinate had been ordered to drive any of the 3 routes involved to actually physically establish the accurate distances involved in all these claims considering that he had in his possession *all* CC O'Toole's records including those from the LFRS.



43. DSP indicated that he had sampled the mileages involved using 'AutoRoute' and the distance from CC O'Toole's HA-CH was in the 'mid 50's'. This distance is incorrect. The LCC specific route checking program is the AA Mileage Calculator. So one must assume DSP had not set up the correct 'AutoRoute' program parameters or perhaps he was using kms instead of miles?

44. Given the above synoptic circumstances one must conclude that a key component of this investigation was never, at any point, actually properly addressed by this Police investigative team.

45. So what are the actual mileages involved?

Disabled FSV-PB accompanied by a member of his pro bono legal team has driven the actual routes/journeys in question. In fact the 'AutoRoute' and 'AA Mileage Calculator' when run in parallel with the actual vehicle odometer readings almost exactly mirror the odometer readings which were recorded +/- a few yards.

Here are the results:

CC.O'Toole's HA-CH (Arthur St Car Park) and return	19.5milesx2	= 39.0miles;
CC.O'Toole's HA-CH to LFRS HQ and return	22.7milesx2	= 45.4miles;
CC.O'Toole's Expenses claimed return journey to CH		= 65.0miles;
Overclaim to County Hall		= 26.0miles;
Percentage overclaim of return journey to County Hall		= 66.6%;
Flat Rate for travel allowed-per mile 0.45p(2014 rate).		
'Profit' per journey		= £11.70.
CC O'Toole Mileage paid 2011/12 £4922.45(Random Year)		= 10,939 miles
65.8% overclaim equates to		= 7198 miles
'Profit' 2011/12		= £3,239.0
Taking these 'average' values the fraudulent claims over 13+years amount to		= £42,106.64

This substantial amount of money does not include commercial interest on this fraudulent 'self-enrichment' when restitution is finally made and does not include any other monetary penalty the Court may award to the taxpayers(victims) in restitution against CC O'Toole.

**N.B. Because the LFRS have refused to release CC O'Toole's(and ex-CFO Holland's) expenses claims the group are, for the moment, unable to calculate the CH-LFRS SHQ return journey in a similar manner at this time.**

46. DSP stated that when asked the question about the actual distance from HA to CH, CC O'Toole admitted, on tape, and one assumes under Criminal Caution, *that he knew that the physical mileage distance was less than the actual mileage distance which he had for 13+years been claiming.*

It should be recalled:

*"Each claim shall be certified by the councillor or co-opted member that he/she has actually and necessarily incurred the expenditure claimed in the performance of approved duties as defined in Schedule D and that he/she will not make any other claim in respect of that expenditure other than under this Scheme."*

How does CC.O'Toole explain making a fraudulent claim for 26 additional miles for which **he has not** *"actually and necessarily incurred the expenditure"*?

How then does he also explain the lack of veracity in the monthly Declarations in which he confirmed the accuracy and honesty of each claim he made since 2001?

47. At an early point in the Police investigation there was concern in the group that this investigation may be subject to political interference; the influence of other vested interests; or, for example, other persons, including Mrs Hilary Banks, a serving member of the CPS, who had been appointed as an 'independent' member co-opted to the CFA Standards Committee in 2009 at the recommendation of CC O'Toole and for which she currently receives an honorarium.

This Committee, which has now been dissolved by Parliament, leaves Mrs Banks as the sole arbiter to deal with Complaints against the CFA Elected Members and against staff of the LFRS by members of the Public. An unsatisfactory state of accountability and natural justice. There also remain questions concerning the legality of Mrs. Bank's re-appointment under the Localism Act 2011 which in fact disbars her from holding such an appointment given her previous service with the CFA before this Act was enacted.

It was because of these extreme concerns over these vested interests that disabled FSV-PB wrote on the 11<sup>th</sup> March 2013 (Ref-PB001413) to Mr. Nazir Afzal OBE Chief Crown Prosecutor Crown Prosecution Service Northwest presciently expressing the deeply felt concerns of the group *that justice in this enquiry would not be seen to be done.*

48. Meantime in concluding the narrative of his investigation DSP outlined how he had presented his file of collated evidence to Mr. John Dilworth of the CPS North West. Mr. Dilworth concluded *that there was insufficient evidence (note-not none) to bring forward a successful prosecution.*

It should of course be stated that none of the group was surprised by this conclusion.

49. Disabled FSV-PB asked DSP if he was, or was not aware, that assurances had been given in writing by the Chief Crown Prosecutor for the North West and that the group had been offered...

***"re- assurances that if the Lancashire Constabulary do refer a file relating to possible criminal activity within the Lancashire Fire Authority to the Crown Prosecution Service, that it will be reviewed by prosecutors from elsewhere in the country. I trust that this is satisfactory."***

DSP seem startled by these comments and asked to be supplied with a copy of this correspondence which is now included(01 Afzal) for information.

50. When this meeting was concluded DSP was asked for a copy of the tape(Court Procedures and Rules require duplicate taping in all interviews), DSP declined saying that the tapes would need editing and to date this tape has yet to be supplied to the Complainants though of course the Complainants will publish their own unedited tape courtesy of the Bugler.

### **Investigation-Final Conclusions.**

51. This was a very poorly executed and badly managed 'investigation':

- Because it was easily envisaged that forensic audit skills(even of a very low standard) would be required to examine expenses claims it was disquieting to note that no officer of any rank had been appointed to carry out this function. Apparently, according to DSP, DC Khan had 'some knowledge' but no formal qualifications for this type of work. On this basis alone the management of this investigation was fatally flawed;
- The logical and fundamental facts, for example the actual distances involved, were never actually established or cross referenced with the system used by the LSS/LFRS to establish/confirm such distances which were required to be established as a point of

investigative reference at an very early time in this 'investigation';

- Relevant documents especially those dealing with so-called 'agreed' mileage were never actually recovered by the DSP; the LCC staff, or CC O'Toole who claims, one assumes, that they existed.
- DSP later gave his interviewers no indication of any form of internal Constabulary meetings to address progress or indeed case manage an investigation of substantial Public interest prior to the presentation of his file of conclusions to Mr.Dilworth of the CPS;
- The CPS failed to carry out the assurances Mr. Nazir Afzal OBE Chief Crown Prosecutor Crown Prosecution Service Northwest gave to the Complainants, indeed clearly no internal departmental instruction had been given to his staff in respect of this particular case and its subsequent handling and in this matter there was a fundamental failure of natural justice to the Complainants by the CPS, and indeed the accused;
- It is self-evident that no supervision of this 'investigation' by any rank in this team, which extending up to ACC(now Deputy CC) level, ever took place, because surprisingly DSP was unable to report in this interview that his work had been regularly monitored, supervised, or approved;
- There is no doubt that no formal enquiry document with any formal conclusions was ever produced, published, or signed off by any rank or at any interim stage in a 207 day 'enquiry';
- This was also an incomplete investigation because DSP admits and confirms that he made no attempt to investigate the probity of other expenses claims which CC O'Toole had made within the LCC nor has he presented any conclusions on the mileage/expenses claims made within the LFRS which DSP claimed were and are in his possession. On wonders why not?
- It is also clear that at no stage had supervisory officers signed off any management staging of what was after all a high profile Public interest investigation which required CC O'Toole to 'stand down' whilst it was conducted and which was also reflected in the heavyweight ranks applied to the investigation, or was this simply window dressing for an investigation which had already reached a conclusion before it was formally ordered?;

### **A Fresh Opportunity-A fresh Investigation-in the Public Interest.**

52. It is for all these reasons that it is felt that this 'enquiry' must to be referred back to the Chief Constable to give him an opportunity, not to interminably investigate why this initial incomplete enquiry arrived at the odd 'conclusion' it did, but simply to order that it be carried out properly with the correct level of active supervision on a Public Interest matter which remains within his control, for the moment.

53. This second opportunity which he is now presented with will ensure that a properly managed formal and through investigation takes place with formalised conclusions which as Chief Constable he can present to the CPS in another Region for their impartial adjudication to provide the re-assurances to disabled Fire Service Veterans and the Public Interest at large that *Justice is being seen to be properly done.*

54. The simple, unadorned, uncomplicated, inescapable fact is, that for 13+ years CC O'Toole has admitted on a Police taped interview with DSP that he has made mileage claims knowing

them to be fraudulent; mileage claims which he knew, and stated he knew, were 26 miles in excess of the physical round trip distance of 39 miles which he ought to have been claiming.

55. There can be no conclusion to reach other than CC. O'Toole knew, and admitted, these claims were false and thus fraudulent and there can be no excuses in these circumstances for any malefactor not being brought to justice to allow the Public, his peers, make a judgement for themselves and of behalf of the community at large.

**The Role of Councillors on the CFA.**

56. *Based on the simple evidence available CC.O'Toole has impeached himself and in the process destroyed his public integrity, his public probity, and his public credibility.*

For the sake of other LCC councillors who strictly adhere to the Allowance rules, particularly remembering those who claim nothing in return for their public spiritedness in the discharge of their elected duties, CC.O'Toole should, as an immediate act of public contrition and restitution resign and face the judicial consequences.

57. Is this yet another case of inadequate scrutiny by CFA councillors, institutionalised political correctness, and the cover up of public information leading to their failure to take collective action against such criminal activity and gross misconduct of a publicly elected councillor within their midst?

To acquiesce in silence is to condone, and to be complicit in the simple matter of the defrauding, by one of their own, of the public purse which they are sent to guard.

58. Finally, the Public wishes to know why the CFA and the LFRS are hiding from the Public scrutiny expenses claims made at the CFA/LFRS by CC.O'Toole and ex-CFO Holland which they, as tax paymasters, have the right to see and be given an honest accounting for?

Yours Sincerely,



Paul P. Burns. GIFireE  
Divisional Fire Officer (Rtd)  
HM-t-Q-LSGCM



For Exemplary Fire Service

Oklahoma Medal of Honor  
& Honorary Citizen.



Soviet Union  
Order of Excellent Fire-fighter.



CC Lancashire Police Commissioner.



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Sunday, 20<sup>th</sup> January, 2013.

**BURNS**

My Ref: PB00313.

Your Ref:

**A Member of the Public's Complaint Against:**

**County Councillor D.O.Toole  
Lancashire County Council  
Chairman-Lancashire Combined Fire Authority**

Dear Chief Constable,

1. I represent a group of 17 disabled Lancashire Fire Service Veterans(including myself) and their Widows who for the past 5.5 years have been engaged in a pension dispute with our former employers the Lancashire Combined Fire Authority(CFA) and its agent the Lancashire Fire & Rescue Service(LFRS).The detail need not concern us here.
2. During this dispute, at various points and times, the Chair(Current) of the Lancashire Combined Fire Authority County Councillor D.O'Toole and the former Chief Fire Officer(P.Holland-now retired) have both privately and publicly accused individuals and the members of the group, including myself, of allegedly fraudulently obtaining DWP monies and other payments to which we are not entitled. This is of course both individually and collectively rebutted and denied.
3. The DWP Fraud Squad at Blackburn at a very early point in this dispute following my approach to them have declined after preliminary discussions to take any form of investigative action against either any individual within the group or collectively and that remains their formal position today.
4. Because "what is good for the goose is good for the gander" I decided some time back to carry out a private investigation into both CC O'Toole and Mr.Holland's publicly funded 'activities'.
5. The latter you will already be aware of because it is my understanding with strong available anecdotal evidence that on or about 1997 whilst engaged with a female member of his staff in flagrante delecto in a public place, namely the Blackpool Promenade, was arrested by a Special Constable and both individuals subsequently received formal cautions in your Blackpool Central Station.
6. Of special interest, as you might expect, was the financial activities of both these public figures in respect of public monies and expenses.

7. In respect of Mr.Holland there is clear anecdotal evidence of the misuse of Service resources and expenses for private use (a la Mr.Parr former LCC Chief Constable), but in perpetual stonewalling whilst in public office Mr. Holland has refused various FOIA and individual requests from members of my group to release his public records including his mileage logbooks. This remains the position, though he no longer has charge, since retirement, of these public records.
8. In respect of CC.D.O'Toole, he adopted the same stonewalling position as his former chief and has refused similar repeated requests for records, explanations, and public transparency.  
The current chief's staff even at this early stage of his appointment seems to be adopting the stonewalling 'policy' of lack of transparency of his antecedent on this public duty, or perhaps CC.O'Toole, the Chair of the Panel who appointed the present incumbent chief, has instructed him to continue this stonewalling?
9. In April 2012 a member of my group, Mrs.C.Wilson, the Widow of an esteemed comrade and another member made successful applications to the LCC under the FOIA and received copies of CC.O'Toole's LCC's expenses claims going back some 10 years. But the release does not include his expenses claims lodged separately with the CFA for his activities there.
10. CC.O'Toole refuses to release his expenses claims with the CFA so that they may be compared with his LCC claims and the CFA have rejected formal FOIA requests for them.
11. It is clear from further investigation of CC.O'Toole records that 'anomalies' exist, for example, that he has consistently claimed twice the mileage allowance between his home address and County Hall for at least a decade; that he has claimed twice on many occasions in an 'over lapping' exercise by exploiting his roles and duties between his duties at County Hall and those at the LFRS HQ; there are other questions arising regarding the abuse of subsistence allowances and travel to external conferences; there are improper claims against the public purse for his role as the Conservative Party Whip for Lancashire which quite properly are not the responsibility of the Lancashire taxpayers but rightly belong to the Conservative Party.
12. The following is an extract from a letter by a member of the group to the Rossendale Free Press in October 2012...  
  
*"CC O'Toole's previous expenses claims released by the LCC under the Freedom of Information Act confirm that he has regularly been inflating his travel expenses by over 50% - claiming 68 miles per return journey from his home address in Ormskirk to County Hall which is in fact only 38 miles. He also claims expenses for carrying out his Conservative Whip duties claims which are expressly forbidden by all Parties. This confirms not only deliberately lax accounting by the Conservative controlled LCC but demonstrates contempt by Mr O'Toole for the hard working tax payers of Lancashire."*
13. There is also strong anecdotal evidence that the Adminmistrative Clerk to the CFA Mr.C. Keely, and other clerks dealing with CC.O.Toole's claims have repeatedly and unsuccessfully challenged CC.O'Toole on his CFA claims in all these respects only to receive a browbeating in response.
14. I, and others, have repeatedly asked for all these records with explanations appertaining to their roles and duties from both individuals which have been perpetually stonewalled and rejected. A member of the group continues to do so.



15. In my opinion, based on the released expenses claims of CC O'Toole's LCC expenses alone there is evidence of the wilful and calculated misappropriation of public funds amounting to criminality by the said Councillor based on 'res ipsa loquitur' (the facts speak for themselves to prove the fact) and that he has in fact wilfully submitted claims whilst knowing them to be patently untrue.
16. Accordingly I consider that a crime, or crimes as yet undiscovered, have knowingly, wilfully, and untruthfully been perpetrated by CC.D.O'Toole against the public purse for his personal gain and I request that you carry out a full investigation on both him and his former chief Mr.P.Holland in this respect to follow the truth where it may take you.
17. A complaint which I now support with supplied documentation which I have today passed into the safe keeping of PC 1834 Mr.A.Stable(Cadley,Greyfriars & Tulketh-Tel No: 01772 209441) a dossier of eighty three pages (83-including this document) for this purpose.

Yours Sincerely,

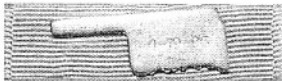


Paul P. Burns. GFireE  
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Oklahoma Medal of Honor  
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**BURNS**

**My Ref: PB01413.**

**Your Ref:**

Monday, 11<sup>th</sup> March, 2013.

**Mrs. Hilary Banks-Lancashire CPS.**

Dear Chief Crown Prosecutor,

1. I represent some 18 disabled Lancashire Fire Service Veterans(FSV) involved in a pension dispute with their former employers the Lancashire Combined Fire Authority(CFA). This has been continuing for the last 5.5 years and recently the matter was brought to civil Court in a 4 day hearing.

2. At the same time an FSV member of this group lodged a formal criminal complaint with the Chief Constable after obtaining, under the FOIA, the 10 year expenses claims of the Chair of the CFA Lancashire County Councillor Mr. D. O'Toole. The CC has appointed a team under a Chief Inspector and an investigation is currently under way.

3. Last week CC O'Toole was forced to stand down until this investigation is completed.

4. The above named member of your staff was appointed as an 'independent' member to the CFA Standards Committee in 2009 by recommendation of CC O'Toole. Mrs Banks ultimately became the Chair of this Committee; a Chair which must be occupied by an 'independent'.

5. On 13<sup>th</sup> December 2009 I made a formal Complaint of misconduct and corruption in public office against CC O'Toole in that among other things he had repeatedly breached the Code of Conduct for elected members. This Complaint was passed to Mrs Banks as the Chair.

6.The 'proceedings' which followed need not concern us here but are available from my archive should you wish to have sight of them.

Suffice it to say that I publicly described that which followed as a blatant 'whitewash' in which in my view Mrs Banks allowed herself to be hoodwinked and manipulated by amongst others the said County Councillor O'Toole.

7. The Localism Act 2011 which was enacted in late 2011 ultimately abolished and revoked all LA Standards Committees including the CFA's on 18<sup>th</sup> June 2012 but in the interim in December 2011 the CFA approved the appointment of one 'independent' person to work in conjunction with a 'monitoring officer'(The CFA Clerk) to deal with any members Complaint which arose. In effect a Judge and Jury of one person. Consequently Mrs Bank's appointment became redundant in December 2011 and she was then reappointed on the recommendation of CC O'Toole, as this 'independent' person, the sole arbiter for evaluating Complaints against elected members though no published material exists of either her short listing and competitive appointment nor any declaration of her 'interests' as proscribed by this Act.

One could reasonably draw the inference and raise the question was this for previous professional services rendered to the said the Councillor?



8. However the tale does not end there.

9. Under the Localism Act 2011, S28 Codes of Conduct; Ss7 (a&b); Ss8 (b) (i) & (ii) Mrs Banks **may not be appointed** to the role she been appointed to by the CFA in contravention of the Act.

The Act states... **“(b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—**  
**(i) a member, co-opted member or officer of the authority, or**  
**(ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;**

The definition of ‘co-opted’ lies elsewhere in the Act.

10. That being so Mrs. Banks has been unlawfully appointed by the CFA.

Accordingly any Complaints which have been brought before her for adjudication in the interim immediately before and after her appointment are automatically rendered null and void and must be reappraised by the CFA.

11. In addition she must tender her resignation forthwith whilst recompensing the taxpayers for that period she has been receiving her expenses and stipend and recompensing her current employer for time allowed to her to carry out these duties.

12. Finally, if any file relating to CC O’Toole is handed over by the Chief Constable to the Crown Prosecution Service it must surely be anticipated that Mrs. Banks will immediately declare an interest and recuse herself from any further or future interest in such a case and in this matter *I seek your reassurance by return* regardless of any other matter relating to her ‘independence’ at the CFA that she will indeed recuse herself.

Yours Truly,



Paul P. Burns. GFireE  
Divisional Fire Officer (Rtd)  
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter  
Soviet Union



Oklahoma Medal of Honor  
& Honorary Citizen





**PRIVATE & CONFIDENTIAL**

Mr Paul P Burns GFireE  
7 Kings Drive  
PRESTON  
Lancashire  
PR2 3HN

Our Ref: NA/IVR/SL  
Date: 22 March 2013

Dear Mr Burns

**MRS HILARY BANKS - CPS LANCASHIRE**

I refer to your letter of 11 March 2013 which I recently acknowledged.

I have carefully noted the comments which you have made about Mrs Banks, the vast majority of which relate to her activities as an independent member of Lancashire Fire Authority rather than her role as a Crown Prosecutor.

All members of the Crown Prosecution Service are bound by a Code of Conduct which provides standards for all employees in order to maintain and promote public confidence in the integrity of the Crown Prosecution Service. This Code sets out the standards of behaviour expected both at work and in the link between the employee's work and their private lives. It takes account of the requirements of the Civil Service Code, the Civil Service Management Code and the general law including Human Rights legislation as well as what is regarded as good practice.

I have considered in particular whether, from the information that you have supplied to me, there is any suggestion that Mrs Banks has put herself in a position where a conflict of interest between her private life and her professional duties arises. Whilst I have noted the concerns which you have about her role in the Fire Authority, there is nothing in your letter to suggest that any specific conflict of interest has arisen. As you may be aware, Mrs Banks is a part-time employee of the Crown Prosecution Service and devotes some of her own time to pursuing activities with the Fire Authority. Quite properly, Mrs Banks gave formal notification of her involvement with the Fire Service some considerable time ago.

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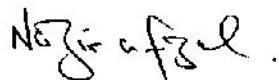
I have noted your comments in relation to the formal complaint of misconduct that you made against County Councillor O'Toole and the response that it has generated. I hope you can appreciate that it would be inappropriate for me to comment further in relation to that issue which is a matter for the Fire Authority.

Similarly, Mrs Banks' re-appointment as an independent member of the Fire Authority following the enactment of the Localism Act 2011 is not something that I can pass comment upon.

Can I conclude by offering you re-assurance that if the Lancashire Constabulary do refer any file relating to possible criminal activity within the Lancashire Fire Authority to the Crown Prosecution Service, that it will be reviewed by prosecutors from elsewhere in the country.

I trust that this is satisfactory.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nazir Afzal'.

Nazir Afzal OBE  
Chief Crown Prosecutor  
CPS North West