



Chief Fire Officer C.Kenny  
Lancashire Fire & Rescue Service  
Headquarters  
Garstang Road  
Fulwood  
Preston  
PR2 3LH  
FAO Mr.Warren

7, Kings Drive,  
Preston. Lancashire.  
ENGLAND. PR2 3HN.  
Tel: +44 (0) 1772 715963.  
[symbolseeker@tiscali.co.uk](mailto:symbolseeker@tiscali.co.uk)

**BURNS**

Friday 3<sup>rd</sup> May, 2013.

**My Ref:** PB01813.  
**Your Ref:** BW/HLG.

### **My Pension and Gratuity Awards.**

Dear Mr. Warren,

Thank you for your letter of the 2<sup>nd</sup> inst. If you require until 10<sup>th</sup> to reply then one has to conclude that you did not understand my last letter. I trust this will assist.

The question is what are the intentions of the Act and SI, and whether the construction you have chosen to place on the words 'the ill-health pension is the notional pension' is lawful.

You have interpreted these words to justify your payment of a B1 pension to me on an A15 retirement. If unlawful, it is either from fraudulent policy or from an administrative error. For the former not to be preferred to the latter will, I suggest, require immediate rectification. If not, then in such cases, personal prosecutions for deliberate fraud are usual of all those responsible for and who administer such a fund. This is not mere maladministration in public office.

I wish for none of this, but if you persist in your 'misunderstanding' it becomes very hard to know how these consequences can be avoided.

What seems to lie at the root of your 'misunderstanding' is what you seem to think the legislation is for and why the B1 you have paid is excluded, and so your payment had been unlawful, and why you should have been paying a higher B3 as the "Notional Pension", and why B1 can never be that pension.

On 1<sup>st</sup> February 1997 I retired under rule A15 (disabled) to become entitled to B3 (ill-health) & B4 (injury) awards, instead of the ordinary B1 time served pension which is payable in event of a Fireman choosing to take early retirement or having to retire 'on account of age'. An A15 retirement is imposed early and cuts careers short – this occasions faultless ('qualifying injury') loss and damage. The legislation properly makes provision to compensate Firefighters damaged in the course of their duties, and for those who are required to retire early under rule A15, by way of B3 and B4 (pensions and gratuities). So the State intends compensation for injury, and all its sequellae. It is not for me to catalogue this, but it is for you to understand why an ill-health pension is payable at a much higher rate than the B1 you have been paying as though I had retired by choice early on a B1. Indeed, it was you who chose to compulsorily discharge me on a B3 Ill health pension and B4 Injury.

Compensation is to cover such things as pain injury and suffering, a growing loss of amenity in life, diminished earning power by reason of deafness in the civilian labour market. Also the legislation seeks to compensate for such things as the loss occasioned by the cutting short of a

career, which but for injury, I would ordinarily have served until 'required to retire on account of age', in my rank 60. Within that B3 'notional loss' is the loss of full income from years of service denied by injury, and so, within the B3 "notional pension", are lost promotions, increments in income in service, and the higher pension which but for an A15 early retirement would have led to a retirement 'on account of age' on a B1 pension, calculated on a higher 'average pensionable pay' than the B1 pension you calculated on 1<sup>st</sup> February 1997.

It is for these reasons that the legislation replaced B1 by enhanced B3 and B4.

Some may take the view that you and you staff can have been under no illusions about this. In your letter of 18 April inst., you bring to my attention the exclusion of a B1 in event of a B3. An "Ordinary pension entitlement under regulation B1" - (1)..." applies to a regular firefighter who retires if he (c) does not become entitled to an ill-health award under Rule B3." Nowhere within B3 or B4, or their Schedules, is B1 mentioned, or in any way re-instated, and nor are you authorised to pay a B1.

Yet you have chosen to pay me a B1 Standard pension. You were and are wrong in law to do so. Putting it as charitably as one can, your interpretation of 'the ill-health pension to be the notional pension' was perverse. Can it be thought to be otherwise when as you define the rule so that no-one ever is paid a B3 ill-health pension? If B3 is above B1, you pay B1. If B3 is lower than B1 you pay B1. Yet in no case is B1 the notional pension. There is in law not a shred of justification for your manipulation.

Since the intention of those words 'the ill health is the notional pension' *cannot ever* be taken to avoid the purpose of the legislation, and since that is precisely the effect of the construction you have been putting on the words, then simply quoting the Rules and then blindly misapplying them is no defence now, or in civil, or criminal proceedings. I hope that this matter may soon be resolved by your correction of a long-standing 'error'.

Incidentally, Rule B4 Injury pension and gratuity, you will no doubt produce your authority for your interpretation of the Inclusive "and" linking B3 (2) (a) and (b) to be read as the exclusive "or". Otherwise it would seem plain that a B3 gratuity was payable. I will also be requiring a recalculation.

Should you conclude that there is an error and choose to put the 'error' right, the rest follows as a matter of accountancy and calculation, with indexing correct amounts, and Interest payable.

I agree this should be settled and to that end should you care to afford reasonable recognition of the harm done, and damage above merely money owed as special damage, I do not think you would find me unreasonable.

I notice you threaten me with this and that, and seek to otherwise intimidate me by making life as hard as you can, by not agreeing to a stay pending outcome. So be it.

I attach a draft copy of the Statement of Claim I shall soon be issuing against you, and each one of you. And again I ask you to stay your hand until this has been resolved. If not, I shall, without prejudice, send you a cheque and amend the Statement of Claim to note your further conduct.

With what has been wrong in my case for some 15 years now laid bare it is inescapably the fact that you have been, and are continuing to act illegally. It beggars belief that any pension provider should have allowed themselves to so neglect their fiduciary duties – to put it at the absolute limit of the most charitable view that can possibly be taken, of how you, a pension provider and its staff, have behaved.

This is, in so far as I am concerned, your final chance to make this right and for me to take such a charitable view. I suggest you now settle this to my entire satisfaction.

If not then, in the absence of strong legal authority absolving you from your conduct, one would have no option but to conclude this is not a mistake, but conduct undertaken to deliberately defraud your pensioners including myself.

In the absence of such legal authority, I suggest it would be foolhardy to dismiss finding yourselves heavily indebted to me; the past proceedings, which but for your unlawful conduct would never have arisen being set aside, and a police investigation of fraud etc, ensuing.

I would prefer to avoid all this but it is a matter for you.

Yours Truly,

A handwritten signature in black ink that reads "Paul P Burns". The signature is written in a cursive style with a large initial 'P'.

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

Between:

Paul Peter Burns.  
(Pensioner)

Claimant:

Lancashire Combined Fire Authority	1 <sup>st</sup> Defendant.
And	
Mr.D.M.O'Toole – Chairman LCFA	2 <sup>nd</sup> Defendant.
Mr.C.Kenny – Chief Officer LFRS	3 <sup>rd</sup> Defendant.
Mr.R.Warren – Senior Pensions Manager & Trustee	4 <sup>th</sup> Defendant.
Mr.B.J. Hamilton – Pensions Manager	5 <sup>th</sup> Defendant.
Mrs.D.Lister – Pension Contract Manager	6 <sup>th</sup> Defendant.
Ms.J.Wisdom – Pension Contract Case Manager	7 <sup>th</sup> Defendant.
Ms. E.J.Drinkall – Pensions Manager(Retired)	8 <sup>th</sup> Defendant.

Statement of Claim.

1. At all material times the Claimant was a Fireman compulsorily retired under Rule A15 (disabled) from active service on pensions, awards, and gratuities (hereinafter 'entitlement'), provided for by Statutory Instrument 129 of 1992 made pursuant to the Pensions Acts, as amended.
2. The 1<sup>st</sup> Defendant was the Claimant's employer before retirement and then his pension provider, a public body governed and controlled supervised, and administered by the other Defendants in its calculation and provision of entitlements and payments to the Claimant, pursuant to law.
3. The Defendants jointly and severally owed to the Claimant duties of care to ensure the Claimant was paid the sums the law required them to pay him in the full discharge of his various entitlements.
4. By reason of negligence, failure to exercise due diligence, breaches of Statutory Duty, Misfeasance and/or Malfeasance in Public Office the Claimant has been denied his rightful and just entitlement since his retirement on 1<sup>st</sup> February 1997 and the Defendants, each and every one of them has perverted the course of Justice and conspired to defraud the Claimant, and are liable in some or all the following ways:

- (a) Well knowing of the complexity of the legislation and that the Claimant wholly relied upon the expertise of those engaged in the business of the provision of his

entitlement, each was careless and failed to be duly diligent or expert in the task in hand;

- (b)** They interpreted the legislation against its sense and intention to deny the Claimant his rightful entitlement and to their own benefit and the enrichment of the funds that paid their salaries and bonuses;
- (c)** They wrongfully deducted benefits paid the Claimant from his pension;
- (d)** They wrongfully retained monies owing to the Claimant;
- (e)** They acted in an arbitrary and oppressive way to the Claimant's detriment;
- (f)** They have without the remotest justification alleged the Claimant was indebted to the Pension Fund;
- (g)** They have ignored the Claimant's protests and denied any exercise of their various duties owed to him though alerted to their misconduct;
- (h)** Each and every Defendant failed in the exercise of their statutory duties and acted, throughout the period, in breach of the law and what was required of them;
- (i)** Without justification and wrongfully the Defendants took civil action pursued on the fraudulent premise that the Claimant owed money to the fund when they knew, or ought to have known, he did not do so.

**5.** The Defendants have breached the law and failed by reason of fraud, malfeasance and/or misfeasance, for which the Claimant claims them to be jointly and severally liable in Civil and Criminal Proceeding, by secretly, and wrongfully interpreting provisions of the Fireman's Pension Provisions to the benefit of the fund they administer, their salaries and bonuses, by denial and avoidance of its provisions for an ill-health pension and entitlements to be paid to the Claimant and so, by ignoring his entitlements, have avoided paying sums due and owing to him from the time of his retirement in 1997 provided by the SI for him on and during retirement on account of disablement rather than on account of age.

**6.** The Defendants have denied the provisions of SI 129, 1992 of their meaning and legal effect. and specifically the SI's provision for ill-health award at B3, Sch. 2 Pt B, Part 111, at Cl. 4, to a Fireman retired under Rule A15 (compulsory retirement on grounds of disablement) with more than 10 years pensionable service, where the prescribed amount of the ill health pension is greater of:

$20 \times A/60$  (A being pensionable salary)

and

$(7 \times A/60) + (A \times D/60) + (2 \times A \times E/60)$ ,

where – D is the period in years of his pensionable service up to 20 years, and

–E is the period in years by which his pensionable service exceeds 20

Where-

*(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension (“the notional retirement pension”), and  
(b) the amount calculated in accordance with paragraph (3 or 4 exceeds the amount of the notional retirement pension, the amount of the ill-health pension is that of the notional retirement pension.”*

7. The Defendants have wrongly:

- (a)** Ignored the prescribed formulae for correct calculation of an ill-health pension;
- (b)** Failed to calculate which calculation produced ‘the greater’ sum;
- (c)** Failed to arrive at “The notional retirement pension”;
- (d)** Failed to abide by the legislative denial to the Claimant of any B1 pension when he was to be in receipt of an Ill-health pension;
- (e)** Substituted for the “notional retirement pension” what would have been the Claimant’s B1 pension, had he retired early and voluntarily instead of by reason of being disabled (by an explosion, through no fault of his own, suffered in the course of his Fireman’s duties);
- (f)** Failed to take account of the effect of the proviso to compensate the injured Fireman for his lost service between his A15 date of retirement and “until he could be required to retire on account of age”, namely aged 60 years;
- (g)** Within their failure to use the correct formula and even within their incorrect application of a B1 pension failed to heed the intention of the legislation to compensate an A15 retiree for the pensionable years, lesser retirement salary, and benefits of promotions denied by disablement and wrong counted his pensionable years as those served before the implied voluntary retirement in good health, instead of the years he would have become entitled to as “pensionable years” had the Claimant served “until required to retire on account of age”;
- (h)** So misinterpreted the words “the amount of the ill health pension is that of the notional pension” as to deny the legislation its intended legal effect and consequences, and perverted the course of justice thereby;
- (i)** For the purpose of defeating the intention of the legislation ignored the stricture of SI 129 at L4 (3) by choosing to pay the lowest of two pensions ‘unequal in amount’, when the direction prescribes ‘the one to be paid is the largest of them’;
- (j)** Wrongly defined the “notional pension” as the sum he would have been awarded in pension, had he voluntarily retired early in good health, that being a B1 pension;
- (k)** Though, incorrectly, having arrived at two pensions available the Defendants paid the lesser in contravention of the direction in SI 129,L4 (3);
- (l)** Though the ill-health pension was higher than the notional pension, the Defendants wrongly informed, and misled, the Claimant that his correct entitlement, (which in law was his “notional pension”) was his B1 pension, and that covertly the Defendants wrongfully substituted a B1 pension which had no application in law in any A15 retirement, for his notional pension;
- (m)** Wrongfully substituted for the higher Ill-health pension the notional pension, which is the lower either on the misapplied B1 basis, or if correctly calculated;
- (n)** To save the fund money the Defendants, their servants or agents chose to covertly and secretly avoid the proper payment of monies due and owing by the device of, firstly, wrongfully defining a B1 voluntary early retirement pension as ‘the notional pension’, and secondly, having calculated the ill-health pension as higher than the B1 pension ignoring the clear intention of the legislation that if the ill-health pension is higher than the notional pension then the ill health pension is the pension to be paid;
- (o)** Each defendant well knowing that as the pension providers they were being entirely relied upon to carry out their provision with absolute integrity, honesty, and

with all the due diligence and expertise such a task requires to be lawfully and properly discharged, avoided the law, and betrayed the trust of their pensioner and they have defrauded the Claimant;

**(p)** And have continued to do so over a time of proceedings, in evidence in Court, and to the time hereof, even after trial and a judgment, under leave to appeal, against the Claimant;

**8.** Attached hereto are three letters marked PB01813; PB01713; BW/HLG the contents of which are repeated as though set out seriatim and specifically adopted herein and the Claimant says “res ipsa loquitur” and seeks judgment accordingly.

**9.** And the Claimant claims that the Defendants have perjured themselves, misled him and perverted the course of justice and sought over some years to deny what in the proper exercise of the role of de facto trustees, or employees administering any public pension fund, they knew or ought to have well known was part of their fiduciary duty owed to their pensioner to ensure transparency and that their pensioner interests were safeguarded by them, and not wrongfully and duplicitously denied as here.

**10.** And the Claimant claims:

**(a)** Damages for distress, inconvenience, harassment and ill health, and wrongful action at the hands of the Defendants and he has suffered actual and pecuniary loss which exceeds 4 folios, full particulars of which will be served upon the Defendants, but which, damages suffered to him otherwise, will amount to in excess of £20,000 pa, index linked, in underpayment or non payment during each year of entitlement, and will also include lump sum payments and gratuities wrongfully denied the Claimant;

**(b)** The Claimant invites the Honourable Court to take the view that such failures in the administration of any pension fund and the taking advantage of laymen’s, here firefighting men and women, trust in authority and breaches in avoidance or misuse of expertise and in denial of integrity by the Defendants, is such as to warrant Aggravated Damages, and the Claimant claims such sum as the Honourable Court may adjudge appropriate;

**(c)** And the Claimant alleges arbitrary conduct and abuses of power in the carrying out and administration of public service to the overwhelming and wrongful and oppressive disadvantage of the private individual, causing this Claimant distress and loss, and the Claimant claims Exemplary Damages in an unlimited sum;

**(d)** And the Claimant claims that a full account be ordered at the Defendant’s expense by public actuaries of repute and standing. Within this the Claimant requests that the accounting also apply the correct indexing the law prescribes for his entitlements;

**(e)** The Claimant claims all monies found to be owing to him as a result of underpayment or non payment of any entitlement, with interest at the rate of 8 per cent, per annum, compound interest thereon;

**(f)** The Claimant seeks immediate interim payment on account;

**(g)** The rectification of past action and amendment of records;

**And Costs.**

**Statement of Truth.**

Insofar as the matters to which I refer in this document are within my own knowledge and recollection, they are true; insofar as they are not within my own direct knowledge they are true to the best of my knowledge and belief.



.....  
**Paul Peter Burns.**

**Litigant-in-Person.**

**Dated:** 3<sup>rd</sup> May 2013.

DRAFT