

LANCASHIRE COMBINED FIRE AUTHORITY
Meeting to be held on Monday 15 February 2016

FORMAL COMPLAINT OF MALADMINISTRATION OF THE PENSION SCHEME.

(NOT FOR PUBLICATION – Exempt information as defined in Paragraphs 1, 2, 3, 5 and 7 of Part 1 of Schedule 12A to the Local Government Act 1972)

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Executive Summary

The Authority will recall that at the last meeting The Clerk and Monitoring officer delivered a short oral report concerning a complaint which had been addressed to the Chairman alleging "malfeasant pension maladministration," and "misconduct in a public office" from former firefighter Mr R Berry, which was also copied to the Pensions Regulator (among other statutory bodies,) individual members and was also published on a website managed by former firefighter Mr P Burns. The website is used as a vehicle to levy criticism and other allegations at elected members, senior officers and other LFRS staff.

It was initially unclear as to whether the complaint fell within the statutory remit of the duties of the Clerk and Monitoring Officer, but an early view was taken to produce a report for the Authority, irrespective of statutory requirements, given the lengthy history of similar criticism and actions from the same group of retired firefighters. The report would also then be ready in the event that the Local Government Ombudsman also received notice of the complaint and required the Monitoring Officer to investigate in accordance with their powers. 🔑

As anticipated by the Clerk a complaint has been received by the Local Government Ombudsman, the content of which is unclear (and remains unconfirmed,) however it is believed that it is the same complaint from Mr Berry addressed to the Chairman, alleging "malfeasant pension administration." The Ombudsmen have confirmed in a letter dated 7 January that a complaint is excluded from their jurisdiction under schedule 5/5A paragraph 4 of the Local Government Act 1974 ("LGA") as the complaint relates to "an employment or personnel matter." As such the Commission will include the complaint in its published figures but it will be marked as "closed after initial enquiries – out of jurisdiction." 🔑

The following report is not designed to represent an exhaustive background and list of similar complaints and issues, but will deal with the complaint as stated as well as some of the other similar recent actions and steps taken by its author and his collaborators to ensure that the Authority is informed, especially given the continuing drain on administrative and executive resources which these actions cause.

The conclusion of the investigation is the complaint has no merit. 🔑

Recommendation

The Authority is asked to note and endorse the report and the recommendations outlined in Section 7.

Information

1. Legal Basis for Investigation of Complaint.

It is part of the role of the Clerk and Monitoring Officer to the Authority to fully investigate any allegations about the elected members of the Authority and in accordance with section 5A(2) of the Local Government and Housing Act ("LGHA"), to prepare a report, where necessary. This would be in circumstances where it is alleged that any proposal, decision or omission in the course of the discharge of the functions of the Lancashire Combined Fire Authority has given rise to or is likely to give rise to :-

- A contravention by the Authority's executive or any person on behalf of the executive of any enactment or rule of law; or
- Any such maladministration or injustice as is mentioned in the Local Government Act 1974.


There is a duty to consult with the Executive and specifically the Chief Finance Officer when preparing this report, which will also be sent to the members of the Executive. A meeting would ordinarily then be convened not more than 21 days after copies of the this report are circulated, with decisions if any on it suspended until such time as a decision has been made by the Authority on the report. (Section 5A(6) LGHA.)

Depending on the findings in this report the Authority may then prepare a report which specifies:


1. What action (if any) the Executive has taken in response to that report;
2. What action (if any) the Executive proposes to take in response to it;
3. When it proposes to that that action;
4. The reasons for taking the action specified in the report, or for taking no action, as the case may be. (Section 5A(8) LGHA.)

Consideration should also be given to whether there has been any breach of the Authority's Code of Conduct and following the investigation, in accordance with the provisions of the Localism Act and following the agreement by the Authority to implement proposals made from the Proceedings of New Standards Arrangements Working Group held on 24 April 2012.

The Clerk may then also elect to consult with the Authority's independent person, Hilary Banks as to whether there is a case to answer or whether there are remedial steps to be taken, with the agreement of the member concerned.

As the complaint is, in part, against the Chairman of the Authority the Vice Chairman was also notified, as well as group leaders and members, in brief at the last Authority meeting, as part of the process outlined above. 

2. Findings on Legal Basis for Investigation of the Complaint.

The initial view of the Monitoring Officer was that there had been no contravention by the Authority's executive or any person on behalf of the executive, however Mr Berry was asked to provide any documentary evidence to support his assertions. (See below.) 

Moreover where maladministration or injustice is alleged in accordance with part 3 of the LGA no duty to prepare a report arises unless the Local Government Ombudsman has conducted an investigation, the findings for which are binding on the Authority. (*R v Local Commissioner for Administration ex parte Eastleigh Borough Council.*) The Ombudsman has concluded there is no jurisdiction and accordingly no investigation has taken place, therefore no duty arises.🔑

This report is compiled for the Authority, for information purposes only, given the potentially serious nature of the allegations made and the concern or distress which may be generated as a result, both in relation to the management and governance function of the officers of LFRS and also in terms of those against whom those complaints have been aimed.🔑

3. Synopsis of Complaint.

Mr Berry's complaint to the Chairman opens with allegations of "misconduct in a public office" and "malfeasant maladministration of my pensions in violation of public trust, by certain named staff under your direct legal control." Of the seventy paragraphs in the seventeen page document, of which sixty-nine are numbered, the vast majority refer directly to or allege that Mr Robert Warren, Director of People and Development, is responsible for the above allegations which are generally made but either unsupported with any corroborative evidence, or if they are the evidence appears to be inaccurate, untrue or misleading. 🔑

The complaint starts with outlining the Authority's legal responsibilities regarding the Pension Regulator's Code of Practice (number 14) relating to the "Governance and administration of public service pensions schemes" (April 2015) further outlining the Chairman's statutory duty to report as a whistle blowing issue under the Pensions Act 2004, which Mr Berry states has been taken from his personal record files ("PRF") which he states is "compelling evidence of criminality" and which he urges the Chairman to report immediately, before calling on the Chairman to suspend all LFRS staff who have been engaged in these "unlawful practices."🔑

The complaint lists the allegations levied at Mr Warren as;

"...plain dishonesty, non-confirmation of information regularly supplied to the scheme administrators by members; the failure to record accurate information about members' individual DWP benefits and data in their service records; appropriate essential records not being regularly maintained or monitored; in adequate [sic], irregular or non-robust internal audit controls leading to unsustainable losses to the Public Purse; scheme assets not being safeguarded; poor governance and maladministration; malfeasance in covering up maladministration and conspiracy to defraud; acting deliberately in contravention of the law; knowingly in direct breaches of statutory duty, failing to report significant pension scheme maladministration to the Pensions Regulator."

Mr Berry goes on to explain that these beliefs are supported by LCC and LFRS minutes and have led to a lack of member confidence in the Lancashire Firefighters Pension Scheme and he states that has resulted in record losses to the Public Purse of over £2million. These assertions are not supported with any evidence.


The complainant goes on to allege that the Chairman has failed in his statutory duty to report these issues to the Pensions Regulator in March 2007 when he states there were 167 + overpayments. The Complainant states that there has been a failure to take action.


The complaint includes a considerable amount of articulate and eloquent hyperbole, which is not supported with any corroborating evidence. Among the assertions made about Mr Warren the following are included, which are paraphrased;

"...obvious attempted intimidation in his letters; ", acted "in complicity with his supervising principals...."; "deliberate denial of the existence of information;"; "oppressive regime....compelled innocent LFRS staff under threat of discipline leading to the loss of their employment to engage in unwarranted, unjustifiable amoral pogrom, against any person including myself, or group of people who have had the temerity to oppose his unbridled criminality."


Mr Warren is also credited with being responsible for;

... "manifest tyranny, coupled with lawless pogrom.....for his own self-gratification and protection, during which he acted as primary executor and grandiose sole arbiter for the LFRS, and during which he unhesitatingly stooped to the deliberate use of criminality by Contempts [sic] of Court; perjury, miscarriages of justice; blatant breaches of the law both civil and criminal; intimidation; raw racism; and the false manipulation and criminal misuse of Public and Personal data..... Mr Warren's self-evident and avowed intention to publicly smear, crush and leave me penniless and any of his disabled FSV opponents....."*


**the term "FSV" stands for Fire Service Veteran a self-proclaimed term not recognised by others.* 

"...culminated in the personal application by Mr Warren of his sadistically vicious financial hardship on me, which was nothing short of blackmail, in the application of his self-authored "hardship route" because as he saw it I failed his '5th column' test which was to betray my protesting comrades, the FSVs." 

The Complaint goes on to refer to Mr Warren's


"...smearing and covering up his suppurating trail of corruption" and his "unprincipled contempt for the civilised rule of law...." 

This part of the claim refers to when the complainant appeared as a supporter and witness in a claim brought by the Authority against one of his collaborators, Mr Burns in the High Court, relating to the recoupment of an overpayment of injury pension award. His Honour Judge Butler's judgement was made in favour of the Authority in this case, as will be referred to later.

Mr Berry has been written to on several occasions regarding his proposals for repaying the overpayment made to him after he failed to notify LFRS of a change in his personal circumstances, which it was incumbent on him to do so, and which meant he would not have been entitled to the pension payments he received. To date Mr Berry has not made any proposals for repayment. 

Mr Berry concludes by stating;

"It is time to send the CFA down its very own hardship route."

Mr Berry resides in France and in concluding his complaint seeks a personal response from the Chairman. 

In acknowledging Mr Berry's complaint in a letter to him dated 16 November the Clerk to the Authority informed Mr Berry of the statutory duty which may or may not arise and assured him the issues would be looked in to, given the serious nature of the complaints. Notwithstanding this Mr Berry was asked to produce any supporting evidence within 14 days of the Clerk's letter to him, and although a short email explaining that he would

send further documents to support and corroborate his allegations within a longer time scale, no further information has been received.

Mr Berry was also asked why he had redacted his own name and address from the small amount of information he submitted with his original complaint to the Chairman. No explanation has been received. The complaint was delivered to the Chairman by Mr Burns.

4. Brief Explanation of Injury Benefit Overpayment & Recoupment.

The benefits, whose award or variation may give rise to deductions or increases in injury pensions paid to firefighters, which is the central issue of Mr Berry's complaint, are set out below. At the time of the complainant's retirement from service (as well as that of his collaborators,) the benefits concerned arose under the Social Security Act 1975 and were applied by the Fireman's Pension Scheme 1992 (known as the Firefighters Pension Scheme, from October 2004.) These have been superseded by the corresponding benefits in the Social Security Contributions and Benefits Act 1992 ("SSCBA 1992") also applied by the Firemen's Pension Scheme 1992.

Some of these benefits have had their names changed or have merged with others and some have retained their same titles under new provisions, specifically:

1. "Disablement pension" (s.57 Social Security Act 1975.) This is now industrial injuries benefit (s.94 SSCBA 1992), which includes:
 - (a) Disablement benefit (industrial injuries disablement benefit or "IIDB");
 - (b) Reduced Earnings Allowance ("REA") (s.59A Social Security Act 1975.) Now REA under s.94 (2) (b) SSCBA 1992 – see 2 below.
 - (c) Retirement Allowance ("RA") which replaces REA at a lower rate when the recipient reaches their retirement date.
 - (d) Industrial Death benefit.
2. "Reduced Earnings Allowance" ("REA") (as per statutory references above.)
3. "Sickness benefit" (ss. 4 and 50A Social Security Act 1975.) Now Incapacity Benefit under section 30A SSCBA 1992.
4. Invalidity pension (S.16 Social Security Act 1976.) Now Incapacity Benefit under s.3-A SSCBA.
5. Severe disablement allowance (S.36 Social Security Act 1975.) Now Severe Disablement Allowance under sections 68-69 SSCBA 1992.
6. Disablement gratuity (s.57 Social Security Act 1976.) Now Disablement Gratuity under part 2 Schedule 7, SSCBA 1992.

On retirement with an injury award firefighters were notified of their obligations to inform the Authority of any change to their benefits circumstances.

On his retirement Mr Berry provided a signed undertaking to notify the Authority of any change to his benefit entitlement and this was dated 22 August 1995. He was also written to on several occasions subsequently.

5. Contextual Background and Chronology Leading to this Complaint.

Having reviewed the chronology of issues which has arisen since overpayments of injury pension were first identified by LFRS in or around 2007, with the resulting attempts by the Authority to recoup these overpayments, as a result of the relevant retired firefighters failing to notify the Authority/pension administrator of their receipt of other benefits or other changes in financial circumstances, it is apparent that this move has been understandably unpopular with those affected by the decision of the Authority to exercise regulatory power to recoup.

To this end it is apparent that the complainant Mr Berry, has with others, including but not limited to, Mr Burns, Mr Hinton, Mr Galpin, Mr Bowerman and Mr James have collaborated in a joint enterprise to besmirch the reputation of the Authority and Lancashire Fire and Rescue Service and retaliate for what they regard as the Authority's own mistakes, which they also regard as having had a direct financial (and even personal) effect on their own personal pension funds.

To exemplify the relevance of Mr Berry's complaint and its correlation to other similar complaints and requests for information, progressed by those aforementioned retired firefighters, it may be helpful to lift a quotation directly from the judgment of His Honour Judge Butler (dated 12 April 2013) in the Authority's claim against Mr Paul Burns for recoupment, during which the complainant in this case, Mr Berry, gave evidence on behalf of Mr Burns and attended to support him each day.

"Unfortunately, it is in my judgment clear that as from 2007, if not before, the defendant's personal dispute with LFRS became clouded, intertwined and to a large extent obscured by a wider dispute about the administration of the pension scheme, the question of whether retired firefighters have any obligation to assist in its administration by providing information about their personal affairs and the question whether, and if so, how the Claimant is entitled to expect to enforce such co-operation. In relation to this wider dispute he has become a spokesman or representative for a certain number of other retired firefighters and their families. Although it is clear that the Claimants dispute his right to represent them and assert that his former union and the union solicitors also dispute it, it was nevertheless clear to me during the trial that some people do regard him as their spokesperson and representative. At least three other retired firefighters, whose witness statements appeared in the trial bundle and two of them were called by the Defendant as witnesses, appear to have taken a similar stance to his own and they and others attended to support the Defendant from the public gallery each day.

However in my judgment issues relating to the general maladministration are matters for consideration, if at all, in the context of the separate counterclaim."

In the aforementioned claim the Defendant Mr Burns never notified the Authority (or the Court) that he would not pursue the counterclaim which he had already lodged, resulting in further costs being awarded against the Defendant, when Mr Burns' counterclaim was also dismissed.

The fact that Mr Berry has collaborated with Mr Burns and others, including but not limited to Messrs Hinton, Bowerman, James, in pursuing a course of conduct which is not only diametrically opposite to the best interests and management of the affairs of the Authority, but which seeks to exact retribution or revenge is clear from this point, and also before the aforementioned proceedings.

Mr Burns commenced a lengthy period of correspondence with elected members, senior officers and other staff members of the Authority and also members, officers and lawyers of

Lancashire County Council, as well as other local and national political figures and regulatory bodies as early as March 2008. The comments made in this correspondence were considered by the Authority to be scurrilous, offensive, abusive and grossly defamatory. This was addressed in legal correspondence but legal action for defamation was never taken against him. This correspondence was typically loquacious, often accusative but devoid of evidential corroboration, not unlike the complaint under review and may be indicative of further collaboration, given that Mr Burns delivered Mr Berry's complaint in an envelope bearing his handwriting, to the Chairman's home address.🔑

Mr Burns, (and more recently Mr Hinton, please see later,) have also pursued a significant raft of requests for information both under the Freedom of Information Act and under the Data Protection Act. These requests, which appear myriad and have of themselves, on at least one occasion, involved the First Tier Tribunal of the Office of Information Commissioner, fall in to two broad categories; those requests which relate to information about the expenses of elected members and officers of the Authority; and those requests relating to the disclosure of the relevant applicant's personnel file ("PRF".) The requests relating to the former appear to have no bearing on the central issues to the Complainant's complaint, other than to create nuisance and appear to be vexatious and abusive. The provision of the PRFs would usually follow a legitimate request from the data subject, provided sound data protection principles are applied to the nature of the disclosure.🔑

Mr Hinton has in the past raised a complaint about alleged fraudulent expenses claims resulting in an abortive police investigation, notwithstanding the distress and reputational concern that the investigation caused for those concerned.🔑

After proceedings were lodged by the Authority against the Defendant, Mr Burns, relating to the overpayment of his injury pension, an order for disclosure was obtained from the Department of Work and Pensions relating to the benefits payments he received, which proves overpayments were made of his injury award.🔑

In finding for the Authority against Mr Burns and in ultimately dismissing his counterclaim regarding "maladministration" together with a commensurate order for costs His Honour Judge Butler also commented, to paraphrase;🔑

- *"The Defendant.... Still believed that there had been a concerted decision to cause hardship in the manner in which the review of the problem was conducted and subsequent attempts to recover overpayments were made. Whilst I recognise the strength of the Defendant's feeling, and I am prepared to accept that he honestly believes that such is the case, I have no hesitation in finding he is mistaken. In my judgment the evidence of Mr Warren was compelling and credible."*🔑
- *"Contrary to what the Defendant would wish to believe by reasons of his own idiosyncratic interpretation of the scheme, Schedule 2 Part V paragraphs 3(1) and (2) of the 1992 Order do provide that REA is an "additional benefit" and that so much of it relates to a "qualifying injury" must be taken in to account and that the amount of the injury pension reduced accordingly."*🔑
- *"The Defendant and his colleagues misunderstood or misapplied the law...In my judgment the Claimant was lawfully entitled to ask the Defendant, as a data subject, to consent to the processing of data by DWP, as data controller, and in particular to process it by disclosing data limited as stated in the form of authority to the Claimant (a third party in data protection terms)... there was nothing "unlawful" or "illegal" or contrary to any provision of the Data Protection Act 1998 in either form of authority."*🔑

- *"The Defendant's evidence about when he filled in the form (which as filled in by him is to be found at Vol 5 p 1552) was somewhat contradictory."*
- *"The statement that the Defendant did not receive and had not received 'DWP disability benefits' is in my judgment, to put it kindly, an economy of the truth."*
- *"Whilst I am prepared to accept that the Defendant honestly believes that the note (Vol 5 p 1551) is accurate and was contemporaneously made, it was in fact on the balance of probabilities neither of those things."*
- *"The Claimant insofar as it knows of an award of REA and of the amount relating to the qualifying injury, would be entitled and indeed duty bound by law to make the reduction."*
- *"For the whole period of time during which the Defendant has been receiving REA, his injury benefit should have been reduced by the amount of it, subject only to that allowance not exceeding the amount of the injury pension itself."*
- *"I found the Defendant's conduct to be surprising if not inexplicable. He had in fact applied for REA. He had in fact been awarded REA. He knew by reason of the signed undertaking that the receipt of additional (state) benefits was or at least was potentially relevant to the calculation of his pension. He is an intelligent articulate and experienced man. I find that he must on the balance of probabilities have anticipated that the award of REA would or might lead to a reduction in his injury pension, which he had been enjoying at the full and unreduced amount for the previous two years since retirement and before being awarded REA. When that did not occur I find on a balance of probabilities that he must have noticed and if he did, he made no further enquiries and thereby took advantage of the Claimant's evident "mistake."*
- *"I find that he [the Defendant] had failed to discharge his obligation which he had undertaken and with which he was bound to comply (as he now concedes) and that the Claimant was entitled to exercise the regulatory power to delay payment."*
- *"His [the Defendant's] handwritten notes was at best ambiguous...he knew he was in receipt of REA and I find that he knew from his undertaking that it was a benefit that had to be disclosed because it was deductible."*
- *"In relation to limitation, it [the Claimant] could not with reasonable diligence have discovered the mistake until less than six years before the commencement of proceedings."*

Mr Burns also complained to the Pensions Ombudsman with reference to similar allegation as those now replicated in this complaint. On 15 December 2014 a senior investigator refused to uphold Mr Burns' complaint.

This determination was appealed by Mr Burns and on 23 January 2015, the Pension Ombudsman himself rejected the appeal, agreeing with the opinion already issued and criticising the basis of the claim, including that it failed to give regard to the most basic principles of statutory construction and adding

- *"There is no reason to imply into the regulations something that is so very at odds with what they plainly say".*
- *"There are no grounds for an oral hearing. An oral hearing would only be appropriate if there was a doubt as to the material facts or to test the evidence available. Neither applies in this case. Further, no submissions could be made orally that would change the only possible outcome."*

The Information Commissioner's Office ("ICO") ultimately listed for hearing the complaint brought by Mr Burns against the Authority for failing to comply with or respond to his request for information relating to expenses claimed by officers and elected members. The case was listed before a circuit judge, however notwithstanding this Mr Burns failed to attend the hearing. The Information Commissioner took the unusual step of declaring Mr Burns, "vexatious" as an individual, rather than in relation to his request.

In Summary, the Complainant and his collaborators continue to renew complaints and applications for information with vehement regularity, with the purpose or effect of creating a significant burden on LFRS and its staff. The consequential administrative burden of processing such complaints and requests has already placed significant stress and unnecessary work for the officers and their support staff at LFRS. This has necessitated the service seeking to limit any further response.

6. Other relevant considerations.

Mr Berry along with other retired fire-fighters, particularly Mr Burns, has pursued a variety of avenues to divert officers of the Service from pursuing their overpayment. Mr Berry has complained to the ICO about his personnel file ("PRF") and has initiated internal dispute resolution procedures. He has also pursued officers of LFRS via other regulatory authorities, for which the Authority is expected to be compliant, irrespective of whether such complaints were misconceived when these issues have been externally considered; no elements of the complaints have been upheld.

Mr Berry has for example not only complained to the ICO about non release of information but then subsequently submitted freedom of information requests to ICO for both the ICO and LFRS background documentation. After being declined release of documents subsequently resubmitted the requests considerably later involving both ICO and LFRS in considerable administrative activity.

On 3 January 2016 Mr Paul James made a telephone request for the release of his PRF, supported with an email dated 4 January. Further email correspondence from Mr James indicated that he wished for the file to be collected by a nominated individual as he was currently in the United States, which was in fact Mr Burns.

Upon arrival at Service Headquarters HR would not release the file to Mr Burns as the documentation was not correct. Mr Burns returned later and, given the HR's team's concern that Mr Burns had an inclination to be both confrontational, difficult and intimidating, he was met by the Director of Corporate Services, Keith Mattinson. Mr Burns was duly informed that he did not have acceptable documentation. After Mr Mattinson declined his renewed request, Mr Burns refused to speak with him on the basis that he wanted to speak with "uniformed staff only".

For reasons of staff safety and given recent events outlined below, Mr Burns has been informed that he is no longer welcome at Service Headquarters or any LFRS premises and if he seeks to engage with staff he will be asked to leave. This has been confirmed to Mr Burns in writing, a copy of which is available.

On 16 January 2016 Mr Hinton wrote to the Authority and made an unqualified request for information as to the expenses claimed by certain senior officials over a seven year period. Given that this was a repeat of similar requests which had been made by him and this group of collaborators in relation to the officers and executives and also to some degree has been

the subject of a police investigation which resulted in no case to answer or police action being required, the request was denied on the grounds that it was malicious and vexatious.🔑

Whilst this conduct persists, and for whatever the reason, Mr Burns continues to run a regularly updated blogging website in which he persistently makes comments on and about the alleged professional and personal activities and actions of the elected members, officers and staff of the Authority, past and present, which can only be objectively described as abusive, intimidating, scurrilous, offensive and grossly defamatory. The supporting commentary is often critical, and always loquacious, with members and officers being referred to by only their surnames.🔑

By way of exemplification and hopefully avoid bringing any further undue attention to the existence of this blog, given that the Limitation Act 1980 requires claims for such defamatory conduct are to be raised within one year of being publication/promulgation, some more recent examples, comprising a brief non-exhaustive list include, but are no means limited to the following:🔑

"So the master magpie, the thief of democracy Mr Max Winterbottom DL, JP takes flight for his final green pastures.....where does one begin to analyse the miasmatic bog of corruption that Winterbottom has left his political Leader CC FD Molfetta (Lab) and ultimately his own successor, stuck in the middle of?"

Next to a photo of His Honour Judge Butler, whose judgment against Mr Burns is in part replicated above, are the words;

"...what laughingly passes as judgment, in allowing this continuing slide in to a catastrophic sink hole before he acts? Until he witnesses its consume of one of his own kind, a County Court Circuit Judge?"

Another article goes on to refer to Judge Butler's actions in finding against him to

"...neatly, in an abuse of judicial process, buried in the long grass because it was too complicated for him to deal, he told the court thus disenfranchising the Bugler of his right to a fair hearing under the European Convention."

His Honour Judge Butler is then also later referred to as *"a bad tempered racist, bewigged, Judge afflicted with 'Nelson's eye' and ears."*🔑

Yet another article questions Judge Butler's capability and competence.

Similarly the Information Commissioner is derided and referred to as having a

"catastrophic management failure" and "public embarrassment."

Mr Warren is referred to as *"a master liar, cheat and fraudster."*

Former CFO Mr Holland is referred to as

"a laughing boy called 'Fred' Holland the Master Clown, Master of Mirth and without equal the Master Fraudster."

As with all of these examples, Mr Kenny your Chief Fire Officer is referred to regularly, but in one instance is described thus;🔑

"...by his complete lack of leadership and his in-action, is like those he replaced, condoning institutional racism, bullying, harassment, common theft, discrimination and is therefore by definition corrupt himself."

Mr O'Toole is referred to as *"A politician and master treasury fraudster."*

The Fire Service Solicitor, Mr Harold is referred to as *"A legal vulture, amateur politician and opportunist."* 🔑

Another article in the same blog blatantly accuses Mr Harold, without supporting evidence of falsifying his expenses claims, which given the nature of his professional regulation by the Solicitors Regulation Authority is a very serious allegation of criminal misconduct to make. 🔑

Mr Harold (together with Mr Warren) has also been accused of colluding in a criminal conspiracy to pervert the course of Justice during the legal proceedings involving Mr Burns, for which Mr Berry provided evidence, which ignored HHJ Butler's judgment. 🔑

Former Head of Human Resources, Mr Hamilton is referred to as a *"barbarian and common racist hooligan"* next to a photo of a small child dressed as Hitler. 🔑

HR Manager, Ms Hutchinson is referred to as being *"inept"* and is further referred to thus;

"...ended up on Warren's desk, passed there by Hutchinson (who later denied all knowledge) where it remained until 4th January 2016 over 3.5 months or more. As we know this clerk is an appalling 'administrator', aside from anything else, but this was yet more deliberate procrastination by Warren..... Warren and Hutchinson should be aware that FSV- PJ [assumed to be Mr Paul James] was and is an avid and detailed administrator of his own personal records and Warren would be forensically wise to resist any temptation to 'censor' or 'amend' this PRF but as we well know Warren and his, by now, deputy pension scheme manager Hutchinson are rarely clever and are a law unto themselves, for the moment..... It is to be noted for the keen followers of Toads at Toad Hall that Hutchinson has now been appointed as Head of Human Resources. The same Hutchinson who is deeply involved in the fraudulent deception involving RSV RRB case file which has resulted in the lodging of a formal Complaint with the Pensions Regulator, the Serious Fraud Office, others; and the Fire Authority....."

The article goes on to refer to Ms Hutchinson on many more occasions and even suggest that her own personal freedom is at stake because of her *"acquiescing silence to crimes and criminality...."* 🔑

The new Authority Clerk and author of this report is referred to by Mr Burns, by reference to a legal-academic article prepared by your Clerk in conjunction with the London based marketing team of a previous employer, about the employment law interface between religious belief and sexual orientation discrimination which appeared in (amongst other publications including the Guardian) a gay life style editorial magazine called "Bent" which Mr Burns has suggested is in fact a gay hard core pornographic publication/website of which your Clerk is;

"...an enthusiastic visitor."

The inference of homosexual promiscuity is clear, followed by a photo from google of your new clerk next to the caption 🔑

"But is he man enough for the job?"

The same commentary from Mr Burns then proceeded to go through your clerk's online published Linked-in career history and personal background making certain assertions,

which may have been done having had the benefit of knowing that this report would be created by your clerk for circulation, having already commented on Mr Winterbottom's replacement and doubtlessly being aware that your clerk had acknowledged receipt of this index complaint from Mr Berry, having promised to investigate and where necessary produce a report, perhaps thereby seeking to question its objectivity. This will be a matter for the elected members to conclude. 🔑

The same article goes on to infer the Clerk's non response to 10 questions Mr Burns asks about the appointment of the role of Clerk to the Authority is untoward. Your Clerk is unable to answer, by virtue of the fact that he has not actually been asked the questions and in any event does not have the required knowledge to answer, having not been party to the recruitment process and decisions. 🔑

The above matters have resulted in a hate crime complaint to the Lancashire Police, after a full statement was provided on 27 December 2015. 🔑 Whilst no prosecution has resulted, the police, having taken the view that the online commentary wasn't sufficiently direct to constitute harassment, the Police nevertheless attended at the home of Mr Burns to give words of advice, having identified it as a hate crime incident.

Police feedback has confirmed that Mr Burns has now complained about their attendance at his home and has insisted they did so to arrest him, rather than to give him "words of advice." He has apparently made a complaint to the Independent Police Complaints Commission. The incident, as Mr Burns sees it, has also been the subject of a further entry on his blog. 🔑

7. Conclusions and Recommendations

The members are asked to consider and note the report. In particular:

- To note the complaint by Mr Berry is part of a long standing campaign and is without foundation. 🔑
- To perpetuate the arrangements of Mr Warren being the single point of contact between Mr Burns (and his supporters) for both the Service and Members. 🔑
- To note the Director of People and Development's action in formally prohibiting Mr Burns from attending on any Fire Service premises.
- To note the Service's intention to continue treating both Mr Burns and his supporters, such as Mr Berry, as a single group treating all in the same manner as vexatious. These include Mr Berry, Mr James, Mr Hinton and Mr Bowerman. 🔑
- To note the Service intends minimising contact with regulatory bodies such as the Information Commissioners Office, Pensions and Local Government Ombudsman on these issues to that which is legally required unless advantage to the Authority is seen and to critically consider the legitimacy of any request made through whichever avenue. 🔑
- To endorse a proposal to seek advice from independent solicitors about the potential for defamation action. 🔑
- To note the intention to formally notify the Lancashire Police of any further relevant infractions. 🔑

Should members require sight of any of the papers then please do not hesitate to request this or speak with your Clerk to enable them to be provided. They have not been appended automatically to this report due to their considerable volume and resulting excessive drain on administrative and executive resources.

Business Risk

The Combined Fire Authority's only perceived risks relate to the on-going potential risk to the Authority and its members in relation to allowing those identified in this report to continue to drain resources for malicious purposes and in respect of any worsening reputational damage resulting from allowing defamatory comments to continue to be published.

Environmental Impact

None.

Equality and Diversity Implications


There are issues relating to equality and diversity included in the behaviour and conduct of those identified and failing to adequately address those issues could at some stage impact on the Authority's role as an employer to take steps to prevent such activity.

In terms of implications on equality and diversity for those identified then there appear to be no implications for the rights of those concerned in pursuing the recommendations identified.

HR Implications

None

Financial Implications

Costs arising from any independent advice. These would be estimated at between £1,500 and £2,500 plus VAT to include the revision of relevant documents and draft pleadings, with full assessment of the risks and prospects of success. 

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact
Reason for inclusion in Part II, if appropriate:		
Paragraphs 1, 2, 3, 5 and 7		

