



10th October 2017.

The Pensions Ombudsman
Mr.A.Arter
11 Belgrave Road
London
SW1V 1RB
My Ref: FG029

The Pensions Ombudsman - Complaint - A Question of Law.

Dear Ombudsman,

1. My Complaint is profoundly simple. Why am I being paid the wrong Fire Service Pensions?
2. I believe that should your Determination reflect the applicable law, and your adjudication find that I am not being paid my correct Fire Service pensions as intended by Statute law, that such a Determination will have implications for hundreds of disabled Fire Service Veterans in Lancashire.
3. I also believe from anecdotal evidence that there may well be thousands of other disabled FSVs throughout the UK who are also not receiving *their* correct pensions.
4. As you will note from the attached correspondence I have repeatedly asked the Lancashire Combined Fire Authority(FA) to address this pension issue before finally in frustration, the consequences of stonewalling and mendacity, implemented the Statutory IDRPs procedure.
5. I am sure you know that this is a special two Stage procedure permitted under the provisions of the 1995 Pensions Act(as amended).
6. The implementation of IDRPs Stage I drew a response from the Chief Fire Officer which simply avoided answering the question at law which I posed to him; why I am being paid a Rule B1 Ordinary pension when *by the decision of the Fire Authority* I am *entitled* to a Rule B3 ill-health and a Rule B4 Injury Award?
7. Stage II requires by law that my Application be placed before Elected Members of the Fire Authority. It is quite simply their individual and corporate Statutory duty to adjudicate on the Application and this fundamental question.

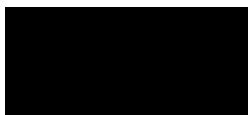
8. The Chairman of the LCFA CC Mr.F.DeMofetta response to his Statutory duty, once more avoiding the question, was to conclude that he would hold my Application 'in abeyance' whilst I placed my Stage II Complaint before the Chief Constable for reasons he fails to explain. In any event, this does not fulfil his Statutory duty nor does the Chief Constable have any role or Statutory duty in this IDRП.
9. As you will also know there is no legal lenience, flexibility, nor ambiguity in the applicable pensions Statute law, namely the 1995 Pensions Act(as amended), which allows the Fire Authority to do so.
10. Accordingly, I conclude that I am left with no alternative having exhausted the two Stages of IDRП but to place a Complaint before you for a Determination in what I regard as a simple question which requires the correct application of law.
11. In this dispute the applicable law is the 1992 Firemen's Pension Scheme Order No:129 within which its relevant 'Rules' B1;B3; and B4 establish, at law, the correct pension payments to be made to me.
12. My dispute is simple. I am being paid a Rule B1 Ordinary pension when in fact the Fire Authority awarded me on *compulsory discharge* a Rule B3 ill-health and Rule B4 Injury pensions.
13. A Rule B1 Ordinary pension is paid for 30 years uninjured completed service, or, upon voluntary retirement. Neither of which applies to me.
14. In addition Rule B1 specifically prohibits by Statute the payment of a Rule B1 award if a Rule B3 ill health pension has been awarded to me, which it has.
15. In summary...
 - By reason of the decision of the Fire Authority I am *entitled* to a B3 ill-health award, and because I am *entitled* to a B3 ill-health award I am *not entitled by reason of Statute B1.-(1)(c)* to a Rule B1 Ordinary pension;
 - The Rule, B1.-(1)(c), states in full..."does not become entitled to an ill-health award under rule B3.";
 - In plain English, a Rule B1 Ordinary pension is paid unless the payee(myself) becomes *entitled* to a Rule B3 ill-health pension which I am.
16. In conclusion therefore, I am not being paid my '*entitlement*' by being paid a B1 Ordinary pension in contravention of the 1992 Firemen's Pension Scheme Order No:129.
17. To assist you in further points of law which arise as a consequence of this fundamental error and the correct application and payment of Rule B3, I am placing before you two Opinions of eminent Barristers(Appendix A-Opinions)

who each accept, as I read the Opinions, that I cannot by law be paid a Rule B1 pension if I am entitled to a Rule B3 ill-health pension with its associated Rule B4 award.

18. It seems the Barristers Opinions digress on complex points of law and as a solicitor of note in the pensions field before your present appointment, I am sure you will have a deeper understanding of the legal arguments propounded.

N.B. Please note that these two Opinions have been extracted, with permission, from an extensive dossier recently placed by invitation before the Rt Hon Frank Field M.P.,DL. Chairman of the Select Committee on Work & Pensions in the matter of Fire Service Pensions.

Should you require any further clarification please do not hesitate to contact me. Please acknowledge receipt.



Yours Sincerely,

F. M. G. [REDACTED] MIFireE.
Asst Divisional Fire Officer(Rtd)

Complaints about personal and occupational pensions

Before we can process your application you must complete all relevant sections of this form and provide the information requested.

1. Your details

Surname G [redacted] First name F [redacted] M [redacted] Title Mr

Address [redacted]

[redacted] Postcode [redacted]

Date of birth [redacted] / [redacted] / [redacted] Telephone [redacted]

Email address [redacted]

2. Representative details

If you are appointing someone to represent you please include their details here. (please note if someone is representing you we will only correspond with them).

Name [redacted]

Address [redacted]

Postcode [redacted] Telephone [redacted]

Email [redacted]

3. Communication preferences

How would you, or your representative, prefer to be contacted?

Email Telephone

Do you need information in another language or format? Yes No

Braille Large print Translator Other [redacted] (please specify)

Do you have any other communication needs we can help with? Yes No

If yes, give details. Please send confirmation of correspondence by hard copy letter and email

4. Previous referrals

Has your complaint been considered by a tribunal, court or another Ombudsman? Or is it in the process of being considered? Yes No

If yes, give details.

[redacted]

Have you referred your complaint to The Pensions Advisory Service? Yes No

If yes, can we request your papers from them? Yes No

What is your Pensions Advisory Service reference number?

Have you brought a complaint to us before? Yes No

5. How did you find out about us? (please select one)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Recommendation from a friend or colleague | <input type="checkbox"/> Pension scheme administrator, manager or trustee |
| <input type="checkbox"/> Referral from The Pensions Advisory Service | <input type="checkbox"/> Pension scheme booklet |
| <input type="checkbox"/> Referral from the Financial Ombudsman Service | <input type="checkbox"/> Internet search |
| <input type="checkbox"/> Employer | Other (please specify)
<input type="text"/> |

6. About your complaint

Please tell us the name of your pension scheme or pension provider. If you have a policy number, please include it here.

Lancashire Fire & Rescue Service Firefighters Pension Scheme
Pension Reference Number: ; Compulsory Retirement .

Please give us the name and address of each party you think is at fault. Your complaint can be about more than one party.

Employer:
Lancashire Fire & Rescue Service

Trustee:
CC Mr.F.DeMolfetta Chair Lancashire Combined Fire Authority

Scheme Manager:
Mr.R.Warren

Scheme Administrator:
Ms.J.Hutchinson

When did you first become aware of this problem?

Please tell us what went wrong and who you think is at fault.

1. The Lancashire Combined Fire Authority are at fault. The Fire Authority (FA) compulsorily retired me under the 1992 Firemen's Pension Scheme Order No: 129(SI) and awarded me a Rule B3 ill-health pension with a Rule B4 Injury Award;
2. Why am I being paid the sum of a Rule B1 Ordinary pension which I would have been entitled to had I retired with completed service uninjured, or by voluntary choice; which I did not ?
3. Under SI 129 rule "B1-(1)(c) does not become entitled to an ill-health award under rule B3.", Rule B1 prohibits payment by Statute because the FA awarded me a Rule B3 pension;
4. Why am I not being paid a Rule B3 ill-health pension and Rule B4 Injury Award which the Fire Authority awarded me and which is provided for within the SI which was to compensate me for my lost career, the pay and emoluments due to higher rank I may have achieved, and the pension falling due on my full service (aged 60), all lost to me by way of compulsory early retirement, due to a no-fault injury in service for which the LCFA is Statutorily liable; payment in no lesser sums in compensation for my injury and loss, than a Court would award me by way of ordinary and special damages – and in such a case as this - aggravated damages should a judge take the view that the LCFA, its servants or agents, deserve censure for the illegal and fraudulent denial of the payments due and particularly so where the Chairman of the LCFA's conduct was in clear and deliberate avoidance of State Guidance on how to interpret and apply the law - thus perverting the course of Justice for LCFA pension fund gain.

Please tell us what personal or financial loss you have suffered.

1. I have lost the considerable difference in financial income between the incorrect pensions I am currently being paid and the correct pensions the Fire Authority determined at the outset that I was entitled to;
2. I estimate that on the first year 1998 I was underpaid the sum of = £ 7,957.24.pa;
3. As a consequence of the Fire Authority's error, I have lost the amenity value of this underpaid income which I would have enjoyed under the European Human Rights Protocol entitled 'my possessions', namely my pensions, had the correct pensions been paid from the beginning.

How would you like the matter put right?

1. I would like my pensions correctly re-calculated, from their inception on 22nd July 1998 in compliance with Rule B3, and consequentially Rule B4, of the 1992 Firemens Pension Scheme Order No:129; and thence forward be paid the correct pensions for life.
- 2.The correct accomplished amount should have the monies already paid deducted and from inception the underpayment should be re-calculated at Court commercial compound interest rates or initially as directed by The Pensions Ombudsman.

7. Declaration

I consent to The Pensions Ombudsman obtaining necessary information to deal with my complaint from other bodies, including the other parties to my complaint. I confirm that I have read and understood the personal information policy (see below).

Signed

[Redacted Signature]

Date

1 0 / 1 0 / 2 0 1 7

Once you have completed the form you should:

Save a copy for your records and email it to enquiries@pensions-ombudsman.org.uk

If you are unable to email you application or have any questions about the process please call us on 020 7630 2200.

Personal Information Policy

Under the Data Protection Act 1998 we must comply with various duties for any personal information that we hold about you. For example we must use your information fairly, and keep it safely and securely.

What is personal information? By “personal information”, we mean information that is about identifiable living individuals. Your complaint will include a considerable amount of information about you, such as your name, age, workplace or former workplace, and possibly your financial affairs and medical history. When we investigate your complaint you or others will probably give us additional information about you.

How we use personal information We use this information to help us reach a decision about your complaint, and we may need to share information with any individuals or organisations that are involved in dealing with your pension. By law, we also have the power to share information about your complaint with a small number of other organisations, if we think it necessary in helping them carry out their own functions, but we will always consider this carefully before doing so.

Publishing Ombudsman decisions We aim to carry out our work openly and transparently and for this reason we usually publish Ombudsman determinations, as well as some opinions made by our adjudicators, on our website. While our published decisions will usually have identifying personal information removed, relevant information about you will remain in order to explain what decision has been reached and why.

For more information visit www.pensions-ombudsman.org.uk

Firefighters' Pension Scheme: Internal Disputes Resolution Procedure (IDRP)



Stage One Application

This application may be submitted by a person (or nominated representative) who is (a) an active, deferred or pensioner member of the Firefighters' Pension Scheme, or the New Firefighters' Pension Scheme; (b) a widow, widower or surviving dependant of a deceased member of the FPS or NFPS; (c) a surviving non-dependant beneficiary of a deceased member of the FPS or NFPS; (d) a prospective member of the NFPS; (e) persons who have ceased to be within any of the categories in (a) to (d); or (f) persons who claim to be a person mentioned in (a) to (e) and the dispute relates to whether he is such a person..

To the Chief Fire Officer, Lancashire Fire and Rescue Authority

1. I wish to apply for a decision to be made, under section 50 of the Pensions Act 1995, in respect of the disagreement set out in this application.
2. I understand that an application may not be made where, in respect of a disagreement:
 - A notice of appeal has been issued under Rule H2 of the Firefighters' Pension Scheme 1992, Part 8, rule 4 of the New Firefighters' Pension Scheme 2006 or Part 6, rule 2 of the Firefighters' Compensation Scheme 2006 (appeal to a board of medical referees against a decision on an issue of a medical nature), or
 - Proceedings in respect of this dispute have begun in any court or tribunal, or
 - The Pensions Ombudsman has commenced an investigation into a complaint or a dispute referred to him.
3. The nature of the disagreement is set out in the attached page(s).

Complete in all cases (in Block capitals)

Full Name of Scheme Member	F [REDACTED] M [REDACTED] G [REDACTED]
Role and employment reference	[REDACTED] 27A
Address of Scheme Member	[REDACTED]
Member's Date of Birth	[REDACTED]
Member's National Insurance Number	[REDACTED]

Complete if complainant is not a Scheme member (in Block Capitals)

[REDACTED]

Full Name of Complainant	F [REDACTED] M [REDACTED] G [REDACTED]
Address for Correspondence	[REDACTED]
Relationship of complainant to Scheme Member (if relevant)	N/A

Nature of disagreement

Give a statement of the nature of the disagreement with sufficient details to show why aggrieved. If necessary, continue details on to another page and attach the application form with any supporting documents.

1. Having contributed into the pension scheme I was entitled to serve until aged 60 to retire on a full B1 pension based on the APP of my full service retirement rank. This involved no loss of salary.
2. Or, I could have chosen to retire early on a B1 pension based on service and APP at my time of leaving. In that case I alone, not the service, would have been liable for loss of future salary and higher pension.
3. In the alternative: on suffering injury for which I was not responsible and if compulsorily discharged from the Service early on grounds of ill health, the service was liable for all future loss in salary and pension.
4. S1 129 1992 specifies a B3 'ill-health' pension as compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reason of ill health
5. SI 129 1992 prohibits payment of a B1 pension to a person awarded a B3 pension.
6. I was retired on grounds of ill health and awarded a B3 pension. I am paid a B1 pension - Why?

Signature of complainant (or representative)

[REDACTED]

Date 18th December 2015.

N.B.

Dear Chief Fire Officer,

Prior correspondence on this matter with your Pension Service contractor the LCC YPS exists and you as my pension Scheme Manager should have copies of that correspondence and be aware of its contents. You should also have recorded this correspondence in my PRF.



Mr F M G [REDACTED]

Please ask for: Chris Kenny
Telephone: 01772 866800
Fax:
Email: chriskenny@lancsfirerescue.org.uk
Your Ref:
Our Ref: IDR/2015/FMG
Date: 19 February 2016

Dear Mr G [REDACTED]

**FIREFIGHTERS' PENSION SCHEME
PENSIONS ACT 1995, SECTION 50
Internal Dispute Resolution Procedures: Stage One**

I have considered your application received on 21 December 2015 for a decision to be made under Section 50 of the Pensions Act 1995 in respect of your disagreement referred to in the application.

From reading your submission, whilst it can be surmised what you consider to be the issue, by virtue of the previous correspondence to which you refer, your statement of the nature of disagreement including why you feel aggrieved contained in your submission does not actually identify any disagreement and why you feel aggrieved.

I have therefore responded below to the statements that you have submitted.

- 1. Having contributed to the pension scheme I was entitled to serve until aged 60 to retire on a full B1 pension based on the APP of my full service retirement rank. This involved no loss of salary.**

As your retirement was due to ill health you became entitled to an ill health pension under regulation B3 therefore the ordinary pension under regulation B1 is not due, as indicated in part (1) (c) of the extract below:

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



Ordinary pension entitlement under regulation B1

B1.-(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then-

- (a) Has attained the age of 50, and
- (b) Is entitled to reckon at least 25 years' pensionable service, and
- (c) **Does not become entitled to receive an ill-health award under rule B3.**

(2) This rule does not apply-

- (a) To a person whose notice of retirement states that he is retiring for the purpose of joining another brigade, or
- (b) Unless his notice of retirement was given with the permission of the fire authority, to a chief fire officer, or in Scotland a firemaster, who retires before attaining the age of 55, or
- (c) Where immediately before the person's retirement an election under rule G3 not to pay pension contributions had effect.

~~(3) A person to whom this rule applies becomes entitled on retiring to an ordinary pension calculated in accordance with Part 1 of Schedule 2.~~

2. **Or, I could have chosen to retire early on a B1 pension based on service and APP at my time of leaving. In that case I alone, not the service, would have been liable for loss of future salary and higher pension.**

Under the terms of the pension scheme you had the option to retire at age 50 with 25 years or more pensionable service. At the point of your 50th birthday, on 17th December 1993 would have achieved 31 years pensionable service and therefore had the option to retire with maximum pension from this date on. In this scenario you would have received a full B1 pension.

3. **In the alternative: on suffering for which I was not responsible and if compulsorily discharged from the Service early on grounds of ill health, the service was liable for all future loss in salary and pension.**

As stated above, as your retirement was as a result of ill health you became entitled to a pension under regulation B3, see below:

Ill-health award under regulation B3

B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).

(2) A person to whom this rule applies becomes entitled on retiring—

(a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and

(b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.

Calculation of ill-health award under regulation B3 from Schedule 2 Part B, Part III

1.—(1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.

(2) In paragraphs 2 to 4, A is the person's average pensionable pay.

2. Where the person has less than 5 years' pensionable service, the amount of the ill-health pension is—

$$A \times B / 60$$

where B is the greater of one year and the period in years of his pensionable service.

3. Where the person has at least 5 but not more than 10 years' pensionable service, the amount of the ill-health pension is—

$$2 \times A \times C / 60$$

where C is the period in years of his pensionable service.

4. Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of—

$$20 \times A / 60$$

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 years.

5.—(1) 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.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay

4. **S1 129 1992 specifies a B3 'ill-health' pension as compensation for loss of future rank, salary, and a higher pension denied those forced into early retirement by reason of ill health.**

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

I would advise you these issues were raised (as I believe you are aware) by another retired member of staff with the Pensions Ombudsman who has confirmed that there is no grounds for this construct.

5. **S1 129 1992 prohibits payment of a B1 pension to a person awarded a B3 pension.**

B1 (c) states "does not become entitled to an ill-health award under rule B3" which appears to prevent a member from receiving a rule B1 pension who has been awarded an ill-health pension under rule B3.

However, as stated in my response to Question 3 above, particularly in reference to "paragraph 5 that advises" that the restriction on pensionable service and any ill health enhancement awarded. The restriction is such that a higher pension than would have become payable had the member retired normally on account of age i.e. at age 55 and become entitled to an ordinary pension.

At retirement you had 35 years 285 days pensionable service. Your pension was calculated as an ordinary pension under regulation B1 as follows:"

6. **I was retired on the grounds of ill health and awarded a B3 pension. I am paid a B1 pension – Why?**

Please refer to response to Question 5.

In considering the pension regulations contained in the above letter I am able to confirm that your pension benefits paid are correct and see no reason to deviate from the explanation already advised to you by your pension and myself.

If you are not content with this decision, you have a right to apply for reconsideration of the disagreement by the Lancashire Combined Fire and Rescue Authority no later than six months from the date of this notice. A form designed for this purpose can be obtained from me at Fire Service Headquarters, Garstang Road, Fulwood, Preston, PR2 3LH.

TPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of pension schemes in connection with any difficulty with a scheme which remain unresolved. TPAS can be contacted at 11 Belgrave Road, London, SW1V 1RB; Telephone 0845 6012923.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Kenny', written over a horizontal line.

Chris Kenny
Chief Fire Officer

Compulsory retirement on grounds of efficiency of brigade

A14. A whole-time member of a brigade who—

- (a) was appointed on terms under which he is or may be required to engage in fire-fighting, and
- (b) has attained the age of 50, and
- (c) has, or but for an election under rule G3 would have, completed 25 years' pensionable service,

may be required by the fire authority to retire on the grounds that his retention in the brigade would not be in the general interests of its efficiency.

Compulsory retirement on grounds of disablement

A15.—(1) Subject to paragraph (2), a regular firefighter may be required by the fire authority to retire on the date on which the authority determine that he ought to retire on the ground that he is permanently disabled.

(2) A retirement under this rule is void if, on an appeal against the medical opinion on which the fire authority acted in determining that he ought to retire, the medical referee decides that the appellant is not permanently disabled.

Effective date of retirement

A16. For the purposes of this Scheme a member of a brigade shall be taken to retire immediately after his last day of service.

PART B

PERSONAL AWARDS

Ordinary pension

B1.—(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—

- (a) has attained the age of 50, and
- (b) is entitled to reckon at least 25 years' pensionable service, and
- (c) does not become entitled to an ill-health award under rule B3.

(2) This rule does not apply—

- (a) to a person whose notice of retirement states that he is retiring for the purpose of joining another brigade, or
- (b) unless his notice of retirement was given with the permission of the fire authority, to a chief officer, or in Scotland a firemaster, who retires before attaining the age of 55, or
- (c) where immediately before the person's retirement an election under rule G3 not to pay pension contributions had effect.

(3) A person to whom this rule applies becomes entitled on retiring to an ordinary pension calculated in accordance with Part I of Schedule 2.

Short service award

B2.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter—

- (a) who retires as required by rule A13 (compulsory retirement on account of age) and does not on retiring become entitled to an ordinary pension under rule B1, or
 - (b) who retires on or after attaining the age of 65, is entitled to reckon at least 2 years' pensionable service, and is not entitled to any other pension or gratuity under this Part.
- (2) A person to whom this rule applies becomes entitled on retiring—
- (a) if he is entitled to reckon at least 2 years' pensionable service, to a short service pension calculated in accordance with Part II of Schedule 2, and
 - (b) in any other case, to a short service gratuity calculated in accordance with Part IV of Schedule 2.

Ill-health award

B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).

- (2) A person to whom this rule applies becomes entitled on retiring—
- (a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and
 - (b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.

Injury award

B4.—(1) This rule applies to a regular firefighter who has retired and is permanently disabled if the infirmity was occasioned by a qualifying injury.

- (2) A person to whom this rule applies is entitled—
- (a) to a gratuity, and
 - (b) subject to paragraphs (3) and (4), to an injury pension,
- both calculated in accordance with Part V of Schedule 2.
- (3) Payment of an injury pension is subject to paragraph 4 of Part V of Schedule 2.
- (4) Where the person retired before becoming permanently disabled, no payment in respect of an injury pension shall be made for the period before he became permanently disabled.

Deferred pension

B5.—(1) This rule applies to a regular firefighter who is entitled to reckon at least 2 years' pensionable service or, though not so entitled—

- (a) has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which, after deducting from it any period during which an election under rule G3 not to pay pension contributions had effect and aggregating the remainder with his pensionable service, amounts to 2 years or more, or



16 June 2016.

County Councillor Mr.F.DeMolfetta
Chairman-Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

IDRP – Stage II Application.

Dear County Councillor Mr.F.DeMolfetta,

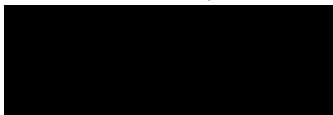
Herewith attached is my IDRP - Stage II Application for consideration by the LCFA Committee.

Please acknowledge receipt of the attached, and inform me when the Stage II panel is to be convened; the names of elected membership of the committee on the panel who will decide Stage II ; and subsequently a record of the duration, the vote taken, and by whom.

For the purpose of this process you should consider that I regard the public records of your Decision as my 'subject data' falling within the meaning of the 1998 Data Protection Act when subsequently accessing any and all records of proceedings held in either Part 1 & Part 2 of your Meetings.

I draw particular attention to the individual legal duties laid on you by the nature of your public appointment and of your other elected Members of the LCFA in respect of the criminal law and your absolute individual obligation in law when an allegation of a crime has been reported to you, for you to investigate such criminal illegality in my case, and if substantiated, to report this matter to the Chief Constable; and concerning which, in the absence of such action by you and your Councillors, I give you notice of my intention to lay Criminal Information, both jointly and severally, with the appropriate authorities.

Yours Sincerely,



F. M. G.  MIFireE.
Assistant Divisional Fire Officer(Rtd)

Firefighters' Pension Scheme: Internal Disputes Resolution Procedure (IDRP)



Stage Two Application

If a person is dissatisfied with the decision of the Chief Fire Officer or the person specified by him at Stage 1 of the IDRP, an application may be submitted by that person (or nominated representative) for the decision to be confirmed or replaced by the decision of elected members of the fire and rescue authority. The authority may provide for decisions to be taken by or on their behalf by one or more of their number.

To the Lancashire Combined Fire Authority

1. I am applying for reconsideration of the IDRP Stage I decision of 19th February 2016 made under section 50 of the Pensions Act 1995. I understand that the Fire and Rescue Authority will either confirm the decision or replace it.
2. I understand that an application may not be made where, in respect of the matter:
 - A notice of appeal has been issued under Rule H2 of the Firefighters' Pension Scheme 1992, Part 8, rule 4 of the New Firefighters' Pension Scheme 2006 or Part 6, rule 2 of the Firefighters' Compensation Scheme 2006 (appeal to a board of medical referees against a decision on an issue of a medical nature), or
 - Proceedings in respect of this dispute have begun in any court or tribunal, or
 - The Pensions Ombudsman has commenced an investigation into a complaint or a dispute referred to him.
3. I attach a copy of the notice of the Chief Fire Officer's Decision referred to and a statement of the reasons for my dissatisfaction with that decision.

Complete in all cases (in Block capitals)

Full Name of Scheme Member	F [REDACTED] M [REDACTED] G [REDACTED]
Role and employment reference	[REDACTED] 27A
Address of Scheme Member	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Member's Date of Birth	[REDACTED] [REDACTED]
Member's National Insurance Number	[REDACTED] 72A

Complete if complainant is not a Scheme member (in Block Capitals)

Full Name of Complainant	
Address for Correspondence	
Relationship of complainant to Scheme Member (if relevant)	

Nature of disagreement

Give a statement of the nature of the disagreement with the decision made by the Chief Fire Officer or the person specified by him. If necessary, continue details on to another page and attach the application form with any supporting documents.

IDRP- Conclusion of Stage I.

The Material Facts.

1. On the 22nd July 1998 I was compulsorily retired by the Lancashire Combined Fire Authority(LCFA) as disabled pursuant, inter alia, to the provisions of the Fire Services Superannuation Rules, 'The Firemen's Pension Scheme Order 1992', Statutory Instrument No.129, Rule A9 Qualifying Injury, and Rule A10 Disablement.
2. As a consequence of Rule A9 and Rule A10 the LCFA awarded me, under the Order, a Rule B3 Ill-health Pension, and a Rule B4 Injury Award.
3. However, I have, to date, in contravention of Statutory Instrument No.129, Rule B1.- (1);(C), been paid a Rule B1 Ordinary pension instead of the correct Rule B3 Ill-health pension, and as a miscalculation consequence, the correct Rule B4 Injury Award.
4. Rule B1.-(1);(C) prohibits the payment of a Rule B1 Ordinary pension to those awarded a Rule B3 Ill-health pension stating in Regulation B1 Ordinary pension entitlement:

"B1.- (1) Subject to paragraph (2), this rule applies to a regular fire-fighter who retires if he then -

(c) does not become entitled to an ill-health award under rule B3."

Nature of the Disagreement.

1. I disagree that the LCFA have, since inception, paid me my correct pensions. I have not been paid the correct pensions I am lawfully entitled to under the 1992 Statutory Instrument No.129 Regulations.
2. I disagree that the 1992 Statutory Instrument No.129 Regulations, under which the LCFA purports to be paying my correct pension can properly be construed in law in any way to sanction any sum, awarded as a Rule B3 ill-health pension, *as the same in sum as a Rule B1 Ordinary pension* – which is the pension falling due to a Firefighter taking early voluntary retirement by choice.
3. I assert, that the LCFA has illegally, knowingly, dishonestly, and systematically defrauded me, inter alios, of all compensation for loss of career, rank, pension, and for the injury suffered, which is provided for in law to compensate a Firefighter in event of being forced to take early retirement by reason of ill health/injury.
4. I assert, that the LCFA to save money and enrich itself has jointly with those managing, administering, calculating, and paying Rule B3 ill-health and other pensions, severally engaged in criminal action; and have together conspired to avoid paying me the legally proper sums due to me and to those compulsorily required to retire due to ill health/injury; but also to deny to me and those to be retired, sight of any document to inform them of their Statutory rights on their Pension Scheme.

Home Office Commentary on the Firefighters Pension Scheme.

1. I assert, that the LCFA have engaged in deception, to avoid paying due and proper pensions by denying me and other such retirees, sight or knowledge of the 1992 "Home Office Commentary on the Firefighters Pension Scheme" provided for the guidance of laymen pension managers and retirees alike.

2. The Home Office Commentary's legal intent was clear and speaks for itself...

“For the most part the text uses the “second person” to keep the style informal but this does not mean it is addressed only to firefighters. It is intended mainly to help local authority superannuation officers who have to administer the scheme.”

The LCFA have by way of deliberately avoiding this guidance knowingly perverted the course of justice by avoiding the proper calculation and payment of pensions lawfully due to me which are those specifically provided for in law.

3. They did so to deliberately mislead me, who relied on their honesty as the pension provider with their fiduciary duty to me, to make me mistakenly believe that the Rule B1 Ordinary pension and a miscalculated(reduced)Rule B4 Injury award which they were actually paying me was in fact the correct Rule B3 ill-health and Rule B4 Injury awards, as though they were those provided for by law.

The Common Ground.

1. I refer to the Chief Fire Officer's IDRPs Stage I written decision of the 19th February 2016, which is attached in which the LCFA accepts the following in common ground:
 - a) The LCFA may terminate service under “Rule 14 – Compulsory retirement on grounds of efficiency of brigade”, but that was not my case.
 - b) The LCFA accepts that a Firefighter may choose early retirement in full health to pursue another career, in which case he becomes entitled to a Rule B1 Ordinary pension as provided by law.
 - c) The LCFA accepts that it follows that on making such a choice the fire-fighter avoids by his own volition; a full service; promotions; pay increases; and higher pension falling due on full service.
 - d) The LCFA accepts that where a Firefighter continues to contribute to the pension scheme(after 30 years) he would have been entitled, in my rank, to have served until aged 60, and then to retire on a full Rule B1 Ordinary pension based on the Average Pensionable Pay (APP) of full service and any further achieved retirement rank;
 - e) The LCFA accepts that by receiving my pension Scheme contributions after 30 years' service, and knowing I had not opted out under Rule G3 accepts that but for my enforced retirement I would have so benefitted at the age of 60 years, or 40 years' service, whichever came first.
 - f) The LCFA accepts that had I completed my service to the age 60 years, or 40 years' service, whichever came first, that I would have been entitled to receive a Rule B1 Ordinary pension calculated at that time on my APP, and further promotion, if any.
 - g) The LCFA accepts that I did not complete my service to the age of 60 years by reason of a 'qualifying' service injury for which they obtained the necessary medical Opinions and confirmation *before* implementing Rule A9 & Rule A10 leading to my compulsory early retirement;
 - h) The LCFA accepts that, under the 1992 Statutory Instrument No.129, and its compulsory discharge decision under the Scheme Rules that I was entitled to receive a Rule B3 Ill-Health pension and a Rule B4 Injury Award, which they nominally awarded;
 - i) The LCFA accepts that I am not entitled under 1992 Statutory Instrument No.129 to receive a Rule B1 Ordinary pension if awarded a Rule B3 Ill-Health pension by them;

- j) The LCFA accepts that their calculated pension paid to *me is in the sum of a Rule B1 Ordinary pension* due had I been retiring early by my own choice, *and is not in compensation, at all*, for loss of future career, potentially higher rank, or a higher pension;
 - k) The LCFA accepts that the Rule B3 ill-health and Rule B4 Injury Award provisions are made in law to recognise time served – whether ended by voluntary choice or ill-health/injury - but if by ill health/injury - to compensate for the loss of future service, achieved rank, and pension emoluments, occasioned by enforced compulsory early retirement – such being the effect of the material formulae set out in SI 129, Schedule 2.
2. In arbitrary denial of *this common ground and law* the Chief Fire Officer, by his Decision denies my request for correction of my pensions but supplies no Legal Authority; no independent Opinion, or Opinions, to support his position; nor any logical reason for his Decision and accordingly I am dissatisfied and wish to continue to dispute it.

The Law and LCFA.

1. The 1947 Fire Services Act was pivotal legislation in respect of the post WW II return of Local Authority control to their control functions which included the provisions of lawful Fire Service pensions.

The Act with its Statutory Instruments made specific provision for the anticipated recurring operational injuries which would occur in future Fire Service operations and also anticipated the inevitable Service/personal litigation which would follow.

The purpose of this generous part of the enactment, without fault awards, was to reduce Local Authority and personal litigation legal costs and Court attendances.

This provision, which was welcomed by the Fire Brigades Union and approved by the Central Fire Brigades Advisory Council, eventually led to legislative revisions in the 1973(Rule B3 introduced) and 1992 Pension Schemes, with a further revised Rule B3 within 1992 Statutory Instrument No.129.

2. In his decision the Chief Fire Officer, in absence of legal authority, deliberately misleads and misdirects himself by misusing an Appendix which - having misled the Pensions Ombudsman earlier by the same deception – he knows to be entirely bogus.

There is no such thing as the so called 'Appendix' to the original legislation pursuant to which I was forced to take early retirement. That legislation was and remains the 1992 Statutory Instrument No.129 - guidance, for retirees and user laymen alike, for its legal effects being specified in the companion "Home Office Commentary". In the absence of specific retro-active provisions, any subsequent amendment of legislation can, as the Chief Fire Officer well knows, can be of no legal effect in my case.

There has been no such retro-active legislative provision.

I quote verbatim , your Decision Letter refers:

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

He is fraudulent in ostensibly basing his decision on this bogus legal authority which is a travesty of his public duty when he denies the whole purpose of the applicable legislation.

3. Pursuant to the material Statutory Instrument I ask:
- a) Is it therefore the Chief Fire Officer's contention that a Rule B1 Ordinary pension and a Rule B3 ill-health pension are, in effect, one and the same thing?

- b) If not, in what way do they differ in legal practice and why am I being paid a Rule B1 Ordinary pension purporting to be a Rule B3 ill-health pension?
- c) Does the Chief Fire Officer take the view, and if so is it the policy, that it is legally correct to dismiss any injured Firefighter from further service due to ill-health/injury with a Rule B1 Ordinary pension calculated on the same basis as though he was taking early voluntary retirement by choice?
- d) If so, is the Chief Fire Officer confirming that it is the legal policy of the LCFA to compulsorily discharge a Firefighter whilst not awarding more than the sum calculated for a Rule B1 Ordinary pension entitlement to Firefighters, whether or not, their careers are cut short by ill-health/injury?
- e) Is it the policy of the LCFA to cut its pension bill by retiring all injured personnel on a straight B1 Ordinary pension without compensation?
- f) On what basis does the LCFA place its own unlawful interpretation, an illegal and layman's convenient avoidance of the law, which is clearly at odds with the common law and which specifically denies the expressed intention for the Statute to be interpreted as compensatory as in common law, or better, - made inescapably plain in the 1992 'Home Office Commentary' at:

Page B3-2 In answer to question 'How much is the pension...',
“ or what could have been earned by compulsory retirement age”,
 and at...

Page B3-2 states 'your basic ill-health pension is...', stated as...
“or what you could have earned by your compulsory retirement age.”

N.B. Note the difference in tense and language confirming two distinctive statements.

- g) It is a given in common law that where an employer is liable for the loss of a career, quantum of damages includes, above any sum for pain and suffering, the amount required to put that person, in so far as money can, in the position they would have been in but for their loss.
- h) It is a given that the DCLG in their document “Fire and Rescue Authorities - Health, safety and welfare framework for the operational environment” June 2013, accurately states the law, in that 'The Health and Safety at Work Act 1974' applies to 'all activities of', and so imposes a General Duty on the LCFA to ensure the health safety and welfare of its Firefighter employees, breach of which is actionable under common law and by prescription of Section 47 (2) of the Act for damages which binds the Crown (Section 48), the Firefighter being relieved by SI.129 of contribution by reason of contributory negligence on being required to take early retirement on grounds of ill-health, and that damages includes death or injury (Sec 47 (6)) and that damages are defined under tort to compensate for the injury as a matter of general damage and by way of special damage, all financial loss occasioned by the early retirement.
- i) State precisely by what legal authority does the LCFA pay me less than I would be entitled to under common law?

In particular paying me the pension I would have been entitled to had I taken early retirement by choice, thus denying me compensation for my lost career, emoluments, future promotions and the pension which I would have earned but for such enforced retirement?

- j) If the LCFA denies that a Firefighter so forced into retirement may sue the authority, on considering the awarded Rule B3 and/or Rule B4 award insufficient, state precisely the legal authority relied upon for denying such right in law.
If none, then by what right does the LCFA deprive me of Rules B3 and B4 awards in any lesser sum than a Court would award in accordance with the normal quantum of damages, general, and special?
- k) If it be contended that I am being paid the correct pension then distinguish it from an Ordinary B1 pension to demonstrate to me in law that compensation is being paid in 'special damages' for the loss of my career?
- l) Since a Firefighter has common law rights under the 1974 HSW Act on what basis does the LCFA reduce those under Rule B3?
- m) What is the Chief Fire Officer's precise Legal Authority upon which he - a layman - relies to deny those forced into early retirement by reason of ill health/injury, less than a common law award in damages - in compensation for their loss of promotion, salary and pension, et al?
- n) Can the Chief Fire Officer explain, quoting Legal Authority and independent Opinion(s) what purpose does he consider the Statutory Instrument is required to serve by the enactment of its Rule B3 & B4 provisions?
- o) Please explain why having retired me early on the grounds of ill health/injury with a purported Rule B3 ill-health pension and Rule B4 Injury Award, in what way, using what legal authority, does the LCFA say that the present pension I receive, namely a Rule B1 Ordinary Pension (this being the same sum due to me had I been taking early voluntary retirement by choice) in any way compensates me for loss of career and future pension, as provided within the 1992 Statutory Instrument No.129?
- p) Please explain why the LCFA concealed; ignored; was not guided by; and did not produce for its own, mine, and the guidance and understanding of others, the '1992 Home Office Commentary on the Firefighters Pension Scheme' which in intended plain English, provides the clear legal distinctions and benefits between Rules B1; B3; and B4 pensions ?

The Law – The Nub of the Matter.

Throughout the correspondence leading to the implementation of IDRPs the LCFA, though repeatedly asked for its legal authority for application of its layman's interpretation of the 1992 Statutory Instrument No.129, contrary to the law and intended legal effect as construed and specifically set out by the promulgating Department of State in its 'Home Office Commentary', and having wrongfully adopted such laymen's interpretation in denial of Home Office guidance as to the correct legal construction of its legislation, state precisely - on the application of the Chief Fire Officer's/LCFA 'interpretation' reducing my ill health pensions to be, in legal effect, a B1 pension – is to what purpose?

For the intent was its direct impact on the final ill-health/injury pension (under)calculation by misuse of the Statutory formulae.

It follows, does it not, that those attempting to comprehend the form of words used and their legal meaning in Rule B3 are simply incapable of understanding the legal prose and have deliberately avoided seeking an independent Opinion, or Opinions, to defend their unlawful arbitrary position;

Or, they do understand and are avoiding career accountability and transparency when their original significant errors are publicly examined. An examination which they seek to avoid, by

deliberately misconstruing the meaning of the words of the provision in the 1992 Statutory Instrument No.129 *used to distinguish* the five Paragraphs within Rule B3.

In his Stage I Decision the Chief Fire Officer has denied legal effect of Rule B3; Paragraphs 1-4; and Paragraph 5, by his misconstruction of these Paragraphs which ought to have been used in my final B3 ill-health pension calculation formula.

- a) In particular, he has taken the word 'is', in relation to Paragraphs 1-4, to mean the same as 'by reference to' in Paragraph 5 which is to knowingly, fraudulently, deny Paragraph 5 its specified and/or any legal effect;
- b) By such deliberate misconstruction he has fraudulently misrepresented that the sum of a Rule B1 Ordinary pension could be, and lawfully was, a Rule B3 ill-health pension;
- c) By such deceit in misconstruction he has *denied the lawful effects* of Paragraphs 4 and 5 *on* Rule B3.

Another Case.

1. In his decision the Chief Fire Officer referred obliquely to another case which has no bearing on my IDRPs Application, but in which I believe the then (layman) Pensions Ombudsman was unable to recognise or consider the weight of the '1992 Home Office Commentary on the Firefighters Pension Scheme' by reason that the LCFA had misled him by fraudulently presenting, misrepresenting, and misquoting the '2008 Commentary on the 2006 FPS' as though it was the '1992 Home Office Commentary on the Firefighters Pension Scheme'.
2. This is not my case and the Chief Fire Officer can be under no such delusion that it is. He well knows that the '1992 Home Office Commentary on the Firefighters Pension Scheme' was issued for guidance and understanding to layman of the law as provided for in 1992 Statutory Instrument No.129.
3. By his written Decision, if not withdrawn and my pension corrected, the Chief Fire Officer becomes further complicit in a conspiracy to perpetuate and further such illegal misconduct and will further conspire with his subordinates, and those he has delegated, including his pension contractors managing my pensions, to avoid the lawful payment of my correct pensions.

Misconduct in Public Office.

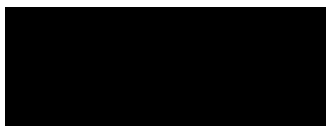
1. I assert, that those so engaged on behalf of the LCFA, knowingly abused the trust arising from their fiduciary relationship with me in that I was reliant upon their integrity and honesty to calculate and pay me the pensions prescribed by law for me.
2. They have abused their collective public offices and the trust of the Firefighters and have by deliberate and criminal misrepresentation presented false sums in payment to me and others, namely Rule B1 Ordinary pensions, purporting these to be Rule B3 ill-health and Rule B4 Injury Award entitlements as if these payments were their true legal entitlements.
3. If not acting so, then on what Legal Authority are any of the LCFA servants or agents so acting?
If none, then in what way is such conduct not fraudulent, or those engaged in the process of this deception not engaging in an abuse of their public office in a conspiracy to defraud?
4. I assert, that all these malfeasant acts can only be objectively and impartially construed and viewed as *prima facie* Statutory crimes by reason of the ritualised and repeated institutionalised violation and contravention of the applicable regulatory Act, or Acts.

Conclusion.

1. I am dissatisfied and disagree with the Chief Fire Officer's Stage I Decision for the reasons I have stated and I hereby give notice that I now wish to invoke Stage II of the Statutory IDRГ.
2. I request that this Dispute now be placed in *per curiam* before the nominated and duly elected Members of the LCFA for reconsideration which should be executed within the Statutory framework of two calendar months from the date of receipt of this hand delivered Application.
4. I request that I be paid the correct emoluments in compliance *with LCFA original pension decisions* and in compliance with the law, the 1992 Statutory Instrument No.129, Rules B3 and Rule B4.
5. I request that I be reimbursed all underpaid monies due to me, or my estate, which commenced at the inception of my pensions, and that my gratuities and emoluments be re-calculated with commercial compound interest as determined by established and relevant Court case law.
6. I was compulsorily retired on grounds of ill health/injury and awarded a Rule B3 ill-health pension and Rule B4 Injury Award and in closing I reiterate the question:

Why am I being paid the sum of the Rule B1 Ordinary pension I would have been entitled to had I been retiring by voluntary choice, instead of a Rule B3 ill-health pension and Rule B4 Injury Award provided for within the 1992 Statutory Instrument No.129 which was to compensate me for my lost career, the pay and emoluments due to higher rank I may have achieved, and pension falling due on my full service, all lost to me by way of forced early retirement, due to injury in service for which the LCFA is statutorily liable in no lesser sums in compensation for my injury and loss than a Court would award by way of ordinary and special damages – and in such a case as this - aggravated damage should a judge take the view that the LCFA, its servants or agents, deserve censure for the illegal and fraudulent denial of payment due and particularly so where the conduct was in clear and deliberate avoidance of State Guidance on how to interpret and apply the law, - thus perverting the course of Justice for gain.

7. This Application has been sent to each Member of the Committee to each of whom notice is hereby given that should the de facto conspiracy to defraud *not be repudiated individually by the elected Members of the LCFA and my pensions be corrected with appropriate other compensation*, that I shall lay criminal information before the appropriate authorities at the conclusion of Stage II, which said Criminal Information will, jointly and severally, include, each and every, such delinquent Member.



Signature of complainant **Date:** 16th June 2016.



Mr F G [REDACTED]



Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref:
Our Ref: BW/JLW
Date: 20 June 2016

Dear Mr G [REDACTED]

IDRP – STAGE II APPLICATION FOR CONSIDERATION BY LCFA COMMITTEE

On behalf of the Fire Authority, I acknowledge receipt of your letter dated 16 June 2016 and attachments which were handed on your behalf to the Chairman of the Authority by Mr Burns.

Unfortunately the restrictions and processes you are trying to impose on the IDRP process are not accepted and would make the process unworkable. Your stipulations seem to be based on incorrect assumptions, out with the provisions of not only the Lancashire CFA IDRP process but also the IDRP provisions.

In addition you make very serious allegations concerning criminal acts. The responsibility for investigating criminal activity is vested with the Lancashire Constabulary and must take primacy. If you genuinely believe or have evidence of criminal activity then you should report such matters to the Constabulary. Until this is resolved the process cannot be enacted.

If the Police consider your allegations have any credibility then they will no doubt commence an investigation. This would undoubtedly involve individuals involved in the IDRP review being interviewed, possibly under caution.

Therefore it is not possible for the same individuals to participate in the IDRP process. Consequently until the criminal allegations have been examined the IDRP process cannot be progressed, especially as if there is any foundation to your allegations, the CFA might inadvertently find itself interfering with criminal procedures.

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



I have accordingly placed your application in abeyance until the Police investigation is concluded.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bob Warren', with a stylized, sweeping flourish extending to the right.

Bob Warren
Director of People and Development



25 June 2016.

County Councillor Mr.F.DeMolfetta
Chairman-Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

IDRP – Stage II Application.

Dear Chairman,

I acknowledge receipt of your letter of the 20th June 2016 signed on your behalf by the Lancashire Firefighters Pension Scheme manager Mr. R. Warren.

I draw your attention to the following in my final response:

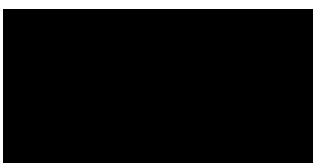
- Would you please be so kind as to let me know by what legal authority you have presumed to act ultra vires to avoid your Statutory duty which is to place my Stage II Application before the Full CFA committee for Statutory adjudication within the required Statutory time frame of two calendar months which commenced on the 16th June 2016?
- You may also care to explain why my Application directed to you and the individual elected Members of the Full Committee has apparently been dealt with by Mr Warren? Please correct me if I am wrong but he is not an elected Member simply a local authority civil servant; nor is he the Clerk to the Combined Fire Authority a similar non-elected local authority civil servant of the CFA? It seems Mr. Warren simply seeks to delay matters;
- Fundamental to dealing with my comprehensive pension Complaint will be the essential investigation of *all the circumstances* I have laid before you, during which it will be necessary for the Full Committee to consider Mr Warren's conduct of my pension management, and thus each of the elected Members is legally required to approach this Application 'with a clear mind', free of the influence of those whose conduct will be under review and transparently so - or risk a reputation for individual and corporate corruption;
- I choose to take the view that until your intrinsic investigative process is completed one cannot know what the right course to take is. If there is an admission of error and full correction to my satisfaction, it would not serve the public interest to pursue any past error or misconduct; nor would it be in my interest to do so.
- Should you take legal advice I believe you will be advised that in event of an alleged crime it is up to the injured party to proceed with it or not.
- Because the Pension Sub-Committee, as presently configured is unconstitutional, I have laid the detail of possible error and/or my suspicions

of continuing corruption and fraud bare for full investigation before all elected Members.

To effect this, I have individually served Statutory notices to each elected Member to ensure that great care will be taken, jointly and severally, by each Member to properly consider my Application, rather than rubber stamp what may, otherwise, render them unwittingly to criminal proceedings.

- Should the Full Committee not consider my Application in time, or at all, then as I understand it, there would be a general and unanswerable criminal liability for 'misconduct in public office', both jointly and severally by elected Members, which I would report to the Home Secretary and Serious Fraud Office, amongst others.
- All I seek is proper payment of my rightful pension entitlement as prescribed by law, rather than accepting a convenient layman's interpretation in aid of cost cutting by means of which those injured in service have been retired without any compensation.
- If corrected then one may be inclined to take the view that this is more a matter of error born of over-zealousness than of deliberate fraud.

Kindly let me know when and where the Full membership of the CFA committee will meet to consider my Application whilst remembering that the Statutory time framework within which they are required to make a Statutory Determination has already commenced on 16th June 2016.



Yours Sincerely,

F. M. G. [REDACTED] MIFireE.
Assistant Divisional Fire Officer(Rtd)



5th August 2016.

County Councillor Mr.F.DeMolfetta
Chairman-Lancashire Combined Fire Authority
LFRS HQ Fulwood, Preston,
Lancs. PR2 3LH

**1998 Data Protection Act .
Section 7- Subject Access Request.**

Dear Chairman,

1. You have written to me twice recently, firstly on Monday 20th June 2016, the day that the Full Committee of the LCFA met for its AGM, and secondly, on Wednesday 6th July 2016.
2. Within your correspondence you have given the unequivocal impression that your proposal not to proceed with the Fire Authority's Statutory duty in respect of my Statutory Stage II Application was fully endorsed by the Full Committee of the Combined Fire Authority:
 - *On the 20th June 2016(the day of the AGM) you wrote... "On behalf of the Fire Authority,";*
 - *On the 6th July 2016 you wrote... "I have been asked by the Combined Fire Authority...on behalf of the Members of the Fire Authority".*
3. I must accept that what you have stated is factually true in both letters and that the Full Committee have endorsed your proposals, twice, after having had the facts of my Statutory Stage II Application presented to them by you.
4. Your first letter of the 20th June 2016, which was clearly written immediately after the Full Committee met on that day would be the logical consequences of their deliberations and endorsed decision.
5. In your second letter of the 6th July 2016 once more you are clearly writing on behalf of the "Combined Fire Authority" and its "Members of the Authority".
6. I have to say I find the Full Committee's actions puzzling. Because Chairman, in fulfilling your duty to them which was to place my Statutory Application before them, which you clearly did, it appears that the Committee, in spite, one assumes, of being advised of their Statutory duty by the CFA Clerk, Mr. Nolan a qualified solicitor, the Committee have chosen **not to fulfil their legal Statutory duty** and have therefore placed themselves both, individually and severally, in conflict with, and contravention of the Statute law.
7. As you are clearly aware any such committee determination(s) can only be concluded after the exercise of Constitutional Rule 6.5 by the Full Committee whereby my Application would of necessity in the first stage have had to be treated as 'Urgent Business', and after moving, seconding, debate and show of hands, placed on the Agenda on that day.

This is simply because of the time factor involved whereby the Statutory 2 months permitted for the Stage II procedure would have been exceeded by the time of the next Full CFA Committee Meeting on the 19th September 2016.

8. Rule 6.5, in the second stage, then requires that this new additional 'Urgent Business' motion be moved, presumably by you? That it be debated; voted on by a show of hands; endorsed; and finally Minuted, by the Full Committee of the Fire Authority.
9. I assume that Rule 6.5 was correctly implemented under Part 2 of the AGM(Press & Public excluded – 12a LGA 1972), which in the normal circumstances would be Statute barred from publication.

However, because my Application and the consequential specific debate by the Full Committee was, and remains, my 'subject data', ***such disbarment cannot apply.***
10. This Minuted debate, which surely must have taken place, will have been recorded under the full exercise of Rule 6.5 and in the circumstances I have outlined also become my 'subject data', and thus I am legally entitled to a *copy of these specific Minutes* under Section 7 of the 1998 Data Protection Act.

In these circumstances S 27 & 35 of the Data Protection Act 1998 have primacy in law(See NotaBenas below) and all my 'subject data' must therefore be released to me.
11. In preparing my response to these puzzling circumstances it is essential that I have all the information available to me to prevent my misreading of this situation, hence my DPA request.
12. Formal Request – See Appendix 'A'.
13. I enclose the Statutory fee of £10.00(ten pounds) in cash with my request which is delivered by hand to you and a receipt is required.
14. You have 40 days, until Tuesday 13th September, 6 days prior to the next Full CFA Committee Meeting on Monday 19th September 2016 within which to release my 'subject data', though the Information Commissioner in a public comment has made it plain that it is *his expectation* that such simple requests will be expedited long before this time frame expires.
15. I will assume for the sake of the ICO's 'expediency' that you have retained on file my previously used identity documents from my other DPA Requests.
16. Please acknowledge by return.


Yours Sincerely,

F. M. G.  MIFireE.
Asst Divisional Fire Officer(Rtd)

FG30 DPA Request

Appendix 'A'.

The Fire Authority and their agents shall within 40 days of this service, inter alia, deliver up to me relevant copies of all records – my subject data- in their possession, power, custody, or control *relating directly or indirectly to my pension(s)*.

My Subject Data:

- *All minutes, contemporaneous notes, and communications of all relevant documents* whether political, quasi-legal, or administrative, relevant to my pension dispute in which I am alluded or referred to, whether held in CFA Public (Part 1) or in Press & Public excluded(Part 2) Minutes.

CFA Chairman:

- *All* relevant reports and emails received;
- *All* relevant internal bilateral communications within the LFRS;
- *All* relevant internal bilateral communications with the LCC;
- *All* relevant bilateral communications with elected Members both on the CFA and the LCC;
- *All* relevant instructions issued to the LFRS by the Chairman; the full Committee and/or the Injury Award Sub-Committee;

LFRS:

- *All* relevant reports submitted to the CFA;
- *All* relevant bilateral internal communications within the LFRS and *its* departments and individuals staff members;
- *All* relevant bilateral communications within the LCC, and *its* departments;
- *All* relevant internal communications both within the LFRS and the LCC;

Without prejudice to the generality of the above *all* relevant pension dispute records(or copies) and a full summary of such records held.

NotaBena.01:

'Communications'.

For the purposes of this Request 'communications' is defined in its broadest sense which includes correspondence; phone text messages; emails; contemporaneous notes; Minutes; telephone conversations; reports; and recordings of vox conversations whether by electronic means or otherwise. The foregoing examples are not meant to be exhaustive, nor exclusive;

'All', as defined in the OED.

NotaBena.02:

1998 Data Protection Act - Section 27 Preliminary:

(5) Except as provided by this Part, the subject information provisions shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

NotaBena.03:

1998 Data Protection Act - Section 35 Disclosures Required by law or made in connection with legal proceedings etc:

- (1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.
- (2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary—

- (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
- (b) or for the purpose of obtaining legal advice, or

or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

NotaBena.03:

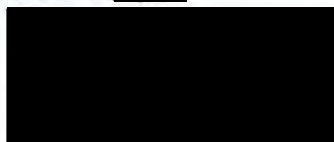
1998 Data Protection Act - Section 61 - Liability of Directors etc

Sub Section 1, of the DPA establishes corporate liability thus:

- (1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.



Mr F G [REDACTED]



Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref:
Our Ref: BW/JLW
Date: 6 July 2016

Mr G [REDACTED]

IDRP – STAGE II APPLICATION

I have been asked by the Combined Fire Authority to respond to your latest letter to Members of the Authority and would refer you to the letter sent to you on 20 June 2016, which outlines the Authority's position.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bob Warren".

Bob Warren
Director of People and Development

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH





Mr P Burns
7 Kings Drive
Fulwood
PRESTON
PR2 3HN

Please ask for: Mr Winterbottom
Telephone: 01772 866720
Email: dianebrooks@lancsfireandrescue.org.uk
Your Ref:
Our Ref: MBW/JLW
Date: 7 October 2013

Dear Sir

Your letter of 19 September to the Chairman of the Authority is acknowledged. Whilst noting your comments I have nothing further to add to my letter of 11 September and Mr Warren's letter of 4 September. These letters clearly state the Service's and Authority's position.

Yours faithfully

pp *Judith L Wilson*

MAX WINTERBOTTOM
CLERK TO THE AUTHORITY

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



APPENDIX A-Opinions

“Why am I being paid a basic Rule B1 Ordinary Pension(in direct contravention of Rule B1) which is the correct payment for a fit Firefighter completing his full service, or taking early retirement by personal choice; instead of the 1992 SI 129, Rule B3 ill-health pension and Rule B4 Injury Award which are the pensions the Fire Authority compulsorily discharged me which are provided to compensate me for my lost career, and the promotion and pay I could have achieved but for enforced early retirement, due to injury in service for which the LCFA is statutorily liable, in no lesser compensation than a Court would have awarded me by way of ordinary and special damages under common law?”.

1.12. Mr.David Lock QC of Landmark Chambers London, a practising Supreme Court advocate; also in the NHS field; and recognised as a national authority on Police Pension law, was of the Opinion that disabled FSV-PPB was being paid the correct pensions.

1.13. To the contrary, Mr.Lock’s Opinion was juxtaposed by Mr. John Merlin Coplestone Bruce a former practising barrister and Life Member of the Inner Temple Bar; a life time specialist in Personal Injury and the Common Law; a specialist in reading pure law and latterly Fire Service pension law; and the actual meanings of words in law, as applied within Statutory instrument No:129, 1992; who was of the Opinion that disabled FSV-PPB was not being paid the correct pensions.

NB01. De Bono, Mr. David Lock QC who acts in police pensions cases kindly offered to give me an opinion on my pension. He appears to argue the common law case [in brackets] in his paragraph 18 which limits my pension to 40/60ths (calculated at my APP at the date of my actual retirement) before in contradiction ignoring what he has just written as though that restriction was not to apply.

If that is so, which is the position of the LFRS lay administrators, then according to them injured Firefighters *are* being lawfully paid just basic time served pensions.

NB02. It is this unresolved conflict between the stricture and common law provision which Mr Coplestone Bruce, given the inestimable benefit of Mr. Lock’s Opinion, has provided his Opinion to resolve this, as he sees it, contradiction in Mr.Lock’s interpretation of the law.

NB03. Part 1.00., of this document deals only with my own example case. But I do have a considerable amount of additional material presented in succeeding Parts 2.00-5.00., which the Committee may wish to consider for scrutiny within the general context of the (mal)administration of Fire Service Pensions in the UK as a whole.

NB04. Whilst this document lays the ground work and justification for Committee scrutiny inevitably other additional questions will arise, the answers to which can found either on my website www.themorningbugler.com. or, in my own archives which are entirely available(unabridged) to the Committee.

In the matter of Paul Burns

And in the matter of the Firemen's Pension Scheme Order 1992

ADVICE

1. I have been asked to provide some initial advice concerning the level of pension to which Mr Paul Burns is entitled following his retirement from the Fire Service in 1997.
2. Mr Burns served as a fire fighter in Lancashire. I do not know precisely when he commenced service or the nature of the injury which caused him to be required to leave the service. However I understand that he was a member of the Firemen's Pension Scheme and is now entitled to a B3 and B4 pension.
3. Fire fighters who serve today are generally members of the Firefighters' Pension Scheme (England) Order 2006 ("the 2006 Order") which came into force on 25th January 2007 (but had effect from 6th April 2006). Both the employer and the employee make contributions to a pension scheme¹. As a result a pension is, in law, a form of deferred pay which is earned by a worker during the period of employment. The pension scheme creates a set of legally enforceable rights to any benefits set out in the scheme to which the worker subsequently becomes entitled. Where the pension provider is a state body the worker is entitled to require the rights to be exercised in accordance with the principles set out in Article 1 Protocol 1 of the ECHR.
4. Article 3(4) of the 2006 Order provides:

"The 1992 scheme shall continue to have effect in relation to a person who, immediately before 6th April 2006, was a member of it or was entitled to, or in receipt of, an award under it"
5. The reference in the 2006 Order to the "1992 scheme" is a reference to the Firemen's Pension Scheme Order 1992 ("the 1992 Order"). Mr Burns was originally awarded a pension under the 1992 Order because that was the pension scheme in force at the date that he retired from the service. It follows that, pursuant to article 3(4) of the 2006

¹ Rule G2 of the 1992 scheme provided that firefighters paid 11% of their salary into the pension scheme. Hence this sum was deducted at source unless the firefighter elected not to be part of the pension scheme under rule G3 of the 1992 scheme. I understand that this does not apply in any of the relevant cases.

Order, his pension entitlement continues to be calculated by reference to the 1992 Order and not the 2006 Order.

6. The 1992 Order was subject to various amendments and, for the purposes of this advice, I have worked off the 2005 version of the 1992 Order as helpfully collated in the government on line national archives².
7. The standard pension payable to firefighters who have reached the age of 50 and have 25 years service is set out at Rule B1. This pension is calculated in accordance with Part 1 of Schedule 2. It provides that a person with 35 years service shall be entitled to 40/60ths of their APP as a pension. However rule B1(1)(c) provides that a person who is entitled to an ill-health pension under rule B3 shall not be entitled to a pension under B1. .
8. There were 2 separate pension schemes for injured firefighters, and the differences reflect differing policy objectives which are common in public sector schemes. The schemes reflect the different considerations which apply to public servants who become disabled from being able to perform their duties as a result of a disability which is not related to their job and those firefighters who become disabled as a result of an injury sustained during their service. Pensions for the former group seek to provide a pension to a former firefighter at an earlier date than the person would normally be entitled to a pension where a person becomes disabled during their working life. The disability can arise from an illness or injury of any cause but will usually be unrelated to service as a firefighter. Thus an ill-health pension seeks to provide a payment for someone where their working life (and hence the period when that person would expect to be earning a salary and contributing to a pension scheme) has been cut short for any reason unrelated to their duties as a public servant.
9. There are different policy considerations where a public servant is injured in the course of his or her duties. In such a case additional payments are made to reflect the fact that (without proof of any fault on the part of the public body) an individual has been left disabled as a result of performing his duties as a public servant. It is inevitable that police officers and firefighters put themselves in harm's way when doing their jobs. It is part of the "deal" with such public servants that, if they are injured and have to give up their job as a result, they will be paid an enhanced pension to compensate them for the loss of their ability to earn a living doing another form of work outside the fire service. Thus ill-

² See

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/fire/pdf/319605.pdf>

health pensions and injury pensions provide for payments to former firefighters for significantly different purposes.

10. Rule A9 provides that a “qualifying injury” for a firefighter under the 1992 Order is:
“an injury received by a person without his own default in the execution of his duties as a regular firefighter”
11. Rule A10 refers to disablement and explains what is meant by permanent disablement. Rule A10(30 provides:
“Where it is necessary to determine the degree of a person's disablement, it shall be determined by reference to the degree to which his earning capacity has been affected as a result of a qualifying injury”
12. Accordingly (just as in the police scheme³ but in contrast for example to the scheme for members of the armed forces) an injury pension paid to an injured firefighter is calculated by reference to the extent to which his (or her) earning capacity has been reduced as a result of the qualifying injury.
13. Rule A15 of the 1992 scheme entitled a fire and rescue authority to require a firefighter to retire from the service if the firefighter became permanently disabled. However if this power was exercised and the individual had at least 2 years reckonable service (or if the person had a qualifying injury), the individual became entitled immediately on retirement to an ill-health pension calculated in accordance with Part III of Schedule 2.
14. Rule B4 provides that a person is entitled to an injury pension under rule B4 if:
 - a. The person has retired;
 - b. The person is permanently disabled; and
 - c. The “infirmity” was caused by a qualifying injury.
15. The injury pension is calculated under Part V of Schedule 2.
16. There is a formula for the calculation of an individual’s ill health pension under rule B3. However rule B3(5) provides:
“5. Where:
 - a) if the person had continued to serve until he reached normal pension 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,

³ See for example Regulation 7(5) of the Police (Injury Benefit) Regulations 2006.
PB000417

the amount of the ill-health pension is that of the notional retirement pension”

17. Rule B3(6) provides that a person’s notional retirement pension is to be calculated by reference to the person’s actual average pensionable pay. When Mr Burns left the fire service all firefighters were required to retire at age 55. Hence a firefighter who was not injured could continue to make contributions up to age 55 and then would be required to retire. If the firefighter joined the service at age 20 and continued to serve until the age of 55, the firefighter would have 35 years relevant service and thus would be entitled to a 40/60ths pension.
18. Rule B3(5) thus places an upper limit on the amount of an ill-health pension paid under B3 by providing that the sum paid cannot exceed the amount that an individual would have been paid if he had continued to work until aged 55 and then been entitled to a pension under B1 (calculated at his APP at the date of his actual retirement). However the limit is not the amount of the ordinary pension that the firefighter would have been entitled to receive under B1 when he actually retired but the amount that he would have been entitled if he had continued to work until his normal retirement age (which was then 55). I have not studied the commentary produced by the Home Office on the fire service pension scheme but I cannot see how the commentary could change the plain meaning of the statutory scheme. Further it would appear iniquitous for a former firefighter who became disabled as a result of circumstances that had nothing to do with his job should be paid a pension which was greater than a firefighter who completed his full 35 years service.
19. The position with injury pensions paid under rule B4 is slightly more complex. A former firefighter who is entitled to an injury pension is entitled to a gratuity and an additional pension. The amount of the pension payable under rule B4 is calculated in accordance with the table at paragraph 1 of Part V of Schedule 2. Hence, for example, a former firefighter with 25 years or more relevant service whose qualifying injury results in him losing 25% or less of his earnings capacity will be entitled to a pension of 60% of his APP for life after his retirement.
20. However a person who is entitled to a pension under B4 will almost inevitably also be entitled to an ill-health pension under B3. Whilst the pensions serve different purposes (as set out above) there are provisions to ensure that a person is not, in effect, over-compensated. Paragraph 2(1) of Part V provides:

“The amount of a person’s injury pension calculated in accordance with paragraph 1 shall be reduced by three quarters of the amount of any other pension calculated by reference to pensionable service reckonable by virtue of the period of service during which he received the qualifying injury or [*provisions where an election is made not to part of the pension scheme*]”

21. Thus where a former firefighter receives a pension under B3 and B4, the pension under B3 is unaffected but the pension under B4 is reduced by 75% of the amount that the former firefighter is paid under B3. Hence, by way of example, if a former firefighter is entitled to be paid £1000 per month under Rule B3 and (without the Rule B3 pension) he would be entitled to £2000 per month under B4, he is entitled to receive £2,250 per month. This is calculated by paying him £1000 under rule B3 plus £1250 under Rule B4 (namely £2000 less 75% of his payment under B3).
22. There are also provisions in paragraph 3 of Part V which require deductions to be made from a Rule B4 injury pension for various other state provided ill-health pensions and disability benefits. The amount that the B4 pension is reduced is the full amount of any qualifying benefit at the date of the former firefighter’s retirement. These are complex provisions and I can advise further on them if needed.
23. Paragraph 4 of Part V then provides:

“No payment shall be made in respect of an injury pension for any week in which the aggregate reductions under paragraphs 2 and 3 equal or exceed the amount of the pension calculated in accordance with paragraph 1”
24. It seems to me that this paragraph is strictly unnecessary but it clarifies that no injury pension is payable if the total of the deductions made due to another pension being payable to the former firefighter and the state ill-health pensions and/or benefits paid to him exceed the injury pension calculated in accordance with the table at paragraph 1.
25. I hope this helps identify whether there are grounds to challenge the amount paid to Mr Burns and others. Please come back to me if anything in this advice is unclear.

DAVID LOCK QC

11th May 2015.

Landmark Chambers,
180 Fleet Street,
London. EC4A 2HG

In the matter of Paul Burns

And in the matter of the Firemen's Pension Scheme Order 1992 SI 129

ADVICE

1. Mr. David Lock QC has most kindly given an initial advice setting out, as it were, the opposing forces and on feeling driven, but clearly uneasily to adopt one has also generously left the door open to the argument to be made that he can rest easy, he was right all along... Mr Burns is also fortunate in that Counsel's Instructing Solicitors could not have been more helpful in their continuing dialogue with Mr Burns.

2. Mr Burns has asked me to give a view on Mr. Lock's Advice that he has the correct pension.

3. I have hesitated before venturing to do so for when I was 'at the top of my trade' it was a long time ago and I am well aware of Mr. Lock's eminence. Indeed, in the ordinary way one would not presume to contradict a Silk of such experience but, I do here because it is by his own words that one can demonstrate that what he takes to be the 'plain meaning' cannot possibly be correct.

4. I would suggest that Mr. Lock, in seeking commendable brevity and clarity, may have been a little too hasty in his initial Advice. I also wonder to what extent both his, and his instructing Solicitor's views, may, inadvertently, not have been allowed to be a little influenced, where there should be none, by their past and most successful work on a similar but different, Police Pension Scheme.

5. On the face of it and in Mr. Burns's discussions with Instructing solicitors, there are, essentially, 4 issues:

(i) What role, if any, does Rule B1 in general, and paragraph (c) in particular, have in the correct payment of Rule B3/B4 pension awards?

(ii) With extensive past persuasive experience in Police Legislation where, if at all, does any 40/60th rule have a role to play in this Firemen's Legislation - the multiplier in pensionable years ?

(iii) Interpretation of precisely what is the correct average pensionable pay [APP], on which to calculate a material Rule B3 pension – the multiplicand ?

(iv) The relationship between Rule B3, Paragraphs 4., with 5., to arrive at what amount is payable ?

6. My conclusions are:

(i) The pension law of Rule B1 plainly speaks for itself in particular in paragraph (c) which prohibits the payment of a Rule B1 pension to a Firefighter who becomes ...

“entitled to an ill-health award under rule B3.”

The failure by the Fire Authority to correctly apply the law of Rule B1(c) to a Firefighter who it had awarded a Rule B3/B4/B5 pension(s) acted as a catalyst for a series of compounding errors in law, which in turn, led to further breaches in the law in respect of Rules B3/B4/B5.

(ii) Unlike prior fire pension schemes there is no 40/60ths rule to be applied in the SI 129, save and except to a retiree who had been in service on 10th July 1956.

The sole reference in SI 129 to 40/60ths is to be found on page 82.

This is a PART dealing with ‘Special Cases’ beginning at Schedule 11 (page 80), PART IV, Rule J6 *“Modifications for person’s serving on 10 July 1956”*. At Paragraph 17 (page 82), PART 11, Short Service or ill-health pension.

Mr. Burns was not yet in service on that date.

(iii) (a) In calculations Rule B3, under Paragraphs 1-4., the multiplicand is the APP on the date of retirement.

(b) In calculation under Rule B3.5. Mr. Lock correctly sets out the law as “the amount that he would have been entitled to if he had continued to work until his normal retirement age”. He was incorrect in applying the Rule B3, 1-4 multiplicand rule [supra at (i) (a)] to Paragraph 5.

(iv) Rule B3.5., takes precedence in providing the amount to be promulgated, unless Rule B3.4., is more.

7. SI 129 is intended to be very precise, but is a poorly drafted piece of legislation, appearing to give ‘plain meaning’ until, elsewhere, that meaning is changed by subjugation.

Mr. Lock, in admirably seeking brevity and to put complicated legislation ‘into plain English’, misdirected himself in law.

With great respect, he so concentrated his focus on what, on the face of it, was all that he thought decided the issue – set out in his paragraphs 16. and 17. – that he denied himself - in 18. - all possibility of realising that, as a matter of law, what he has taken to be ‘the plain meaning of the statutory scheme’ - that Mr Burns pension be (calculated at his APP at the date of retirement) - was wrong.

Mr. Lock, more than once, correctly set out the law to be applied , but clearly felt bound to give priority to what he thought the plain meaning to be.

In fact, nowhere in the SI do the words *‘calculated at his APP at the date of retirement’* appear.

The meaning of the SI, the Scheme, is otherwise.

8. (i) I hope that what occurs to me here will assist Mr. Lock to revise his initial Advice.

Correctly interpreted, I would think there are many more like Mr. Burns, with claims which may well run, as does his, into substantial amounts. The scheme ran from 1992 until 2004. I cannot think his pension provider was alone in 'getting it wrong'.

(ii) It is also a question of a great social injustice; a de facto breach of good faith; and reasonable expectations – to hire men to risk life and limb for you but when hurt in a fire to pay them off as though leaving the service as though by choice, relying on their ignorance of the law to deny them their entitlement to compensation for their loss to keep us safe. That is, surely, much more than merely 'iniquitous', in any language and in any Society, if not sunk in barbarity.

(iii) Without, I hope being impertinent, I would particularly hope that it is Mr. Lock and his Instructing Solicitors who will be pursuing this. It is a matter requiring his high calibre and their expert support in which, in seeking to correct an expensive mistake, it does no harm to plead, or go into Court, with strong successes in similar cases.

9. In consideration I think a number, some, or all of the following, are worth bearing in mind.

(i) The SI gives evolved effect to the 1947 Fire Services Act with the intention of taking compensation out of the Courts. But without any intention to restrict awards to less than a court would award, indeed, to get the Unions 'on side', it leaned the other way. The aim was to give not ungenerous consistency across all local fire services and to cut endless legal costs.

(ii) The SI is a substantive piece of legislation, complete in itself and only applicable to Firemen. Whilst interesting parallels and distinctions may be drawn between it and other public service pension schemes, none can be taken to apply to, alter, or in any way interpret the way in which the 1992 SI 129 makes pension provision. Each stands alone.

(iii) To ensure an even handed approach and common practice and understanding across the Country a Home Office Commentary accompanied the SI, setting out, at exhaustive length and detail, precisely the way in which the State wished the provisions of this, its Contract with the Firemen, to be interpreted and the way its provisions were to be applied.

(iv) The Home Office Commentary was intended to be a simple 'practice bible' (it is a little large at 394 pages to be a *vade mecum*) but for universal access and use, to ensure the retiree Firefighters themselves and all lay administrators (and lawyers or 'pension professionals') understood what the words and phrases, used in this SI, were to be taken to mean and the way they were to be applied.

The Foreword states:

"For the most part the text uses the "second person" to keep the style informal but this does not mean it is addressed only to Firefighters. It is intended mainly to help the local authority superannuation officers who have to administer the Scheme";

Quite plainly it was intended to be in public, unrestricted, use.

(v). But the Home Office Commentary is not the law – it is merely interpretive and for guidance. *“the purpose is to help those who use the Scheme to understand its provisions, bearing in mind that such guidance cannot replace or override those provisions”*.

(vi). At K1-1, Paragraph 5., the Home Office Commentary tells the reader *“The broad purposes of your ill-health pension are to compensate you for the interruption of your career, and (once you reach the age when you could have retired with a pension) to take the place of a retirement pension”*.

(vii). There are three points in the Commentary which gives the Home Office understanding that a Rule B3 pension amount shall be formulaic, or to the effect of, *“or what you could have earned”*.

10. (i) The problems SI129 presents are those of a Home Office draftsman’s production of a very detailed and technical piece of revisionary legislation. Human nature being what it is, during any intense team effort the work can become so well known, here to the draftsmen, that they became blind to any faults it may have had.

(ii). Unfortunately, faults were compounded by the SI going through the ‘Affirmative Resolution Procedure’ rather than go through any scrutiny in Committee or debate in The House. So, it was simply ‘laid on the table’ in the HoC library for any Member to read and, on no objections being lodged, it passed into law on 7th February, 1992.

11. I note that neither Mr Lock nor his Instructing Solicitors have had the benefit of the guidance given by the Home Office Commentary.

It defines a Rule B3 pension to also be, *“or what you would have earned by your compulsory retirement age”*.

That is the common law position and it is what Mr. Lock took the law to be.

That is until he stumbled across what he felt was of such a ‘plain meaning of the statutory scheme’, that, though in conflict with common law, nevertheless he concluded it avoided the common law approach to compensation.

12. The law does not countenance such conflict. Precedent is always right unless what is being proposed can be distinguished, so as to be able to be shown, not to conflict with precedent.

13. (i) *A priore*, Mr Lock, no stranger to public policy, may agree, on reflection, that his Advice may run aground before one gets into the detail of it. He writes, with justified indignation at the end of 18., *“Further it would appear iniquitous for a former fire-fighter who became disabled as a result of circumstances that had nothing to do with his job should be paid a pension which was greater than a fire-fighter who completed his full 35 years service”*.

(ii) The corollary is surely yet more iniquitous? On compulsory retirement on being injured while firefighting, to pay a Firefighter an Ordinary Rule B1 pension, to the

exclusion of any compensation provided by Rule B3 for the loss of career.

(iii) Mr. Lock is clearly right. Any right minded person would be indignant on hearing a pension is being paid where there is neither loss nor liability, yet would not it be more heinous, if it were the case, for Firemen, injured in our service, to be routinely being denied compensation for lost careers. Whilst it would also have been an abuse to deny retirees knowledge of, and access to, the Home Office Commentary, would it not be a greater abuse, relying on their ignorance, to pay them the wrong pension ?

(iv) Both such unjustified or avoided payments would offend public policy and could only be legally imposed on the clearest direction of fully debated legislation. For a Pension Provider to conveniently seek to save money by such means would, go beyond being iniquitous, it would render the authority liable, and not only in the amounts of the sums wrongly denied.

(v) Many, and I have in mind a jury (which, I seem to recollect, is by choice available in an exemplary damages case), could well take the view that for any pension provider, on whose honesty, duty of care, and good faith the retiring Fireman relies for a calculation and payment of a correct pension to:

(a) Avoid, to both staff and retirees, sight of the Home Office Commentary intended for their use;

And,

(b). Having compelled a Fireman to retire on grounds of attributable ill health, to then pretend that an Ordinary Rule B1 pension is what the law requires to be paid as a correct Rule B3 pension;

And then,

(c). To deceitfully pay only the lesser pension falling due to any Fireman who, by choice, cuts short his career to go and be a policeman or on any other whim;

And to then,

(d). Deny the 'error' well knowing a pensioner, a vulnerable person, may neither have the money, the health, nor the will to 'take on Town Hall';

Surely in such a case the law provides and requires that the malfeasant provider ought to be punished by way of exemplary damages?

I think *Rookes v Barnard* (1964) AC 1134. Per Devlin LJ., remains the authority. In Mr. Burns's case, the conduct seems to meet the criteria of being 'arbitrary and oppressive abuse of power in the hands of a servant of the State.'

(vi) Thus, premised here only on common law, to pay an Ordinary Rule B1 pension in place of an ill health/injury Rule B3/B4 pension would be unarguably wrong in law. As a way to save public money it would be contrary to public policy and the law.

If that is correct and it seems so, it follows that to claim that the SI provided for anything in conflict with that premise is to misunderstand the legislation, or, in the alternative, that the Firemen's Pension Scheme Order specifically repeals and replaces common law, to provide that an Ordinary Rule B1 pension can be paid in place of an ill-health Rule B3 pension.

That the SI does that, is Mr Lock's Advice.

14. But it is Mr. Burns's case that he is wrongly being paid an Ordinary Rule B1 pension he would have been entitled to, had his premature retirement had nothing to do with his job, but was being taken early by choice. The common law on damages would agree with Mr. Lock's view. With respect, I have no doubt a Court would agree with Mr. Burns. Public policy or natural justice apart, it is the law.

15. (i) But I only venture to suggest that Mr. Lock has simply misdirected himself in law because, in his own words, he demonstrates that to be so. He makes plain his place of departure from the law in the text of his Advice;

(ii) One can see the problem he faced. Never an easy task to put such diffuse legislation into 'plain English', Mr. Lock seeks to do so at paragraph 18., of his Advice, where he expresses, in a single embracive sub clause, what he takes to be 'the plain meaning of the statutory scheme' as '(calculated at his APP at the date of his actual retirement)';

(iii) That is certainly unambiguous, and yet, with respect, nowhere do those words appear in SI 129 - the scheme;

(iv) Faced with several *similar* phrases, in various places he has for brevity 'cleaned them up', so conflated them into what seemed to be that brief, but immediately intelligible, whole;

(v) But, with respect, in so doing he loses the clear distinctions to be drawn and adhered to. In each case the distinction made apparent by the words actually used, and in which context;

(vii) In absence of conflation, so taken phrase by phrase, distinctions emerge that require *similar* words to have entirely *different* meanings within specific contexts.

16. In best practice, Mr. Lock makes apparent the way he has arrived at his conclusions and so makes the point:

(i) Initially, Mr Lock premised his thinking on what he has always taken the law to be, but on finding that 'his thinking' is not apparently what he takes the SI to mean, he abandons 'his thinking' to premise his Advice on what he refers to as the 'plain meaning of the statutory scheme';

(ii) His omnibus interpretation of 'plain meaning' is expressed in the words 'calculated at his APP at his actual date of retirement' – at 18., line 4 of his Advice.

(iii) 'His thinking' is expressed at 18., line 1, where he defines entitlement as... "Rule B3(5) thus places an upper limit on the amount of an ill-health pension paid under Rule

B3 by providing that the sum paid cannot exceed the amount that an individual would have been paid if he had continued to work until aged 55 and then been entitled to a pension under B1”..., which is a common law entitlement.

(iii). (ii) conflicts with (iii) supra – One cannot have one, and the same pension entitlement, calculated on what ‘he would have been paid if he had continued to work’, and also, ‘calculated at his APP at his actual date of retirement’.

They are wholly different criteria and are mutually exclusive.

(iv) Of necessity, in denying the common law on damages in English Law, he sets the SI against common law in adamant conflict.

He does not seek to resolve this conflict.

(v) Yet it has to be resolved, because the presumption at law is that there can never be any conflict. It is a purpose of the law. Prior legislation and legal precedent is the law unless something in apparent conflict can be so distinguished so as to admit it without conflict.

Lord Wensleydale’s Golden Rule [*Pearson v Grey (1857) 6 HLC 61 at p.106*] remains current...

“In construing all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further”.

And if that was insufficient...

Lord Field said in *Cox v Hakes (1890) 15 App. Cas. 502 at p. 542*:

*Now the admitted rule of construction, from which I am not at liberty to depart, lay down that I cannot infer an intention contrary to the literal meaning of the words of a statute, unless the context, or the consequences which would ensue from a literal interpretation, justify the inference that the Legislature has not expressed something which it intended to express, or unless such interpretation (in the language of Parke B. in *Becke v Smith (1836) 2 M&W 192* leads to any manifest "absurdity or repugnance" ...*

Furthermore, the Literal Golden Rule...

Lord Esher criticising the literal rule in *The Queen v The Judge of the City of London Court [1892] 1 Q.B. 273*:

Now, I say that no such rule of construction was ever laid down before. If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the legislature has committed an absurdity. In my opinion, the rule has always been this - if the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an

absurdity, and the other does not, the Court will conclude that the legislature did not intend to lead to an absurdity, and will adopt the other interpretation. If the learned judge meant to say that, when the meaning of general words is (if you look at them by themselves) clear, that determines their construction at once, even though from the context - from other parts of the same Act - you can see that they were intended to have a different meaning; if he meant to say that you cannot look at the context - at another part of the Act - to see what is the real meaning, then again I say he has laid down a new rule of interpretation, which, unless we are obliged to follow it in the particular case, I would not follow...

Finally, the Golden Rule of Context...

Lord Hoffmann stated in *Charter Reinsurance v Fagan* [1997] AC 313, at p.391:

I think that in some cases the notion of words having a natural meaning is not a very helpful one. Because the meaning of words is so sensitive to syntax and context, the natural meaning of words in one sentence may be quite unnatural in another. Thus a statement that words have a particular natural meaning may mean no more than that in many contexts they will have that meaning. In other contexts their meaning will be different but no less natural.

And thus the presumption at law, '*expressio unis est exclusio alterius*' (mention of one excludes others), remains unaltered.

17. Since one cannot ignore any text within any legislation, 'plain meaning' can only be given meaning consistent with all other parts of the SI; all words passed into law are presumed in law to have meaning.

18. Given that, as matters stand, an apparent conflict exists between the precedent of common law and Mr. Lock's 'plain meaning', the question is... "Can one, on looking only within SI129, find words to distinguish Mr. Lock's 'plain meaning' from the precedent of common law ?".

19. Mr. Lock deals with Mr Burns's substantive Rule B3 'ill-health pension' claim at 16,17, & 18., in his Advice. Mr Burns's Rule B4 qualifying injury award, save on quantum, is not in issue.

20. At 16., and 17., Mr. Lock reproduces Rule B3.5 (1) and (2), respectively. He also sets out a 30 year service Rule B1 entitlement. His consideration and analysis is at 18.

21. (i). At 18., Mr. Lock goes straight to the heart of the matter in seeking to deal with the Rule B3.5 ill-health pension. As a senior and very experienced Silk, Mr. Lock begins by simply setting out the law, as any fully competent lawyer would.

(ii). He correctly identifies that it is not 'time', which is limited to 55, that is at large [I would have added, 'or 60, if before 55, the set senior rank of Asst.Div.Officer was reached'-Rule A13], but 'amount' – the quantum.

(iii). Mr Lock then quantifies the quantum at large by specifying that the material amount is... "the amount an individual would have been paid if he continued to work until 55 and

then been entitled to a pension under B1”.

Thus, far so good, but then without comment, though clearly in direct contradiction with what he has just correctly written, he adds “(calculated at his APP at the date of his actual retirement)” These are his words; they are a direct quote from the SI but a conflation of *similar but not identical*, phrases, within separate contexts.

(iv). Clearly troubled by this inconsistency he seeks to put it on all fours, or avoid the conflict, with what he had just stated as his understanding of the law on damages.

(v). In seeking to find a way through he follows... “(calculated at his APP at the date of his actual retirement)”, by writing... “However the limit is not the amount of the ordinary pension that the firefighter would have been entitled to receive under a B1 when he actually retired but the amount that he would have been entitled to if he had continued to work until his normal retirement age (which was then 55)”..., to repeat, but with slightly greater particularity, what he had just written.

(vi). Unable to reconcile “APP with actual date of retirement” with what he “would have been paid if he had continued to work until aged 55”, he gives up the Sisyphean task and makes no further attempt to reconcile the mutual exclusion.

He chooses to abandon what he had taken the law to be in the belief that the SI made a specific ‘plain meaning’ exception to common law.

22.(i). Was he right? What is the law? Is it Mr.Lock’s correctly stated universal understanding under English law on quantification of damages, or does the SI by its language avoid the common law ?

23. If one accepts the words “calculated at his APP at the date of his actual retirement” at face value, an ill- health pension is based on what the APP (average pensionable pay) is at the date of a physical retirement, irrespective of whether the career is being terminated early by choice, or enforced by ill-health pension. In either case what is paid is an Ordinary Rule B1 pension.

24. On the other hand if an ill-health pension is based on, “the amount he would have been entitled to if he had continued to work until his normal retirement age”, that denies ‘APP as at the date of his actual retirement’, but accords with the provision set out at Rule B3.5 (a) by way of a notional, “notional retirement pension”, defined as what a person would have received “if the person had continued to serve until he reached normal pension age, when he would have become entitled to an Ordinary or Short Service pension (“the notional retirement pension”).

25. Clearly if the ‘plain meaning’, ‘(calculated at his APP at the date of his actual retirement)’ were to be the correct interpretation of the scheme it would entirely vitiate, Paragraph 5. It would have no use, nor serve no legal purpose. Yet that cannot be the legislative intention because it would be to defeat the presumption at law that all legislation has meaning.

26. This drives one to the unavoidable conclusion that since the application of

'(calculated at his APP at the actual date of his retirement)' would vitiate Paragraph 5, it follows, of necessity, that it is incorrect to conflate and take the meaning of the word "is" to be the same as words "with reference to". Where different language is used in legislation it is given its ordinary meaning.

27. It follows that whatever meaning was legislatively intended to be given to the 'meaning of the statutory scheme', it was not that an Ordinary Rule B1 pension be paid in place of, or be substituted for, a Rule B3 ill-health pension.

28. If so, one is required to go back to the SI and see what words are actually used in what context and see if that admits any interpretation not in conflict with any other provision in the SI, or common law.

I set out in PART 111, omitting Paragraphs only 2 and 3 as immaterial.

PART III Rule B3

ILL-HEALTH PENSION

1.-(1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.

(2) In paragraphs 2 to 4, A is the person's average pensionable pay.

4.- Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of:

$$20xA/60$$

and-

$$7xA/60 + AxD/60 + 2xAxE/60$$

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 years.

5.-(1) 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.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay.

29. Construing it requires a word-by-word consideration leaving none without an unassigned meaning. This would appear to yield:

30. (i). As to a Rule B1 and a Rule B3 pension. *A priori*, the SI specifically denies a Rule B1 pension to a Rule B3 ill-health pension recipient.

A Rule B1 'Ordinary Pension' is payable to a regular firefighter who retires but who, B1(c), "does not become entitled to an ill-health award under Rule B3".

(ii). Nowhere within Rule B3, Paragraph 5., is a Rule B1 specified. The text refers to "the notional retirement pension".

(iii). The Paragraph 5., specified 'notional retirement pension' *is not* a straight Rule B1 Ordinary pension.

31. (i). PT III 1. (Supra), at (2) makes the specific and limited provision. In paragraphs 2 to 4, 'A' is "the person's average pensionable pay". There is no mention of APP in Paragraph 5.

(ii). Under the '*expressio*' presumption the exclusion of Paragraph 5., is absolute... "A is the person's average pensionable pay" on being specified for application in 1-4 which denies the addition of Paragraph 5., to the class.

(iii). At Paragraph 5. (2). The provision is "a person's notional retirement pension is to be calculated by reference to the person's actual average pay".

(iv). Since the notional retirement pension APP *is not* 'the person's average pensionable pay' as specified in 1-4, then what other meaning can properly be ascribed to the words used which are(my emphases) '*by reference to*'; and, '*actual*' ?

(v). English law requires words to be given their ordinary meaning; 'by reference to' means, amongst other things 'by drawing attention to' or to 'use something as source' (transitive verb) – OECD

and,

'actual' existing in fact; real; authentic – OECD.

(vi). In the context of Paragraph 5. (2), a "person's notional retirement pension is to be calculated by reference to the person's actual average pensionable pay" means using as a source for calculating a notional APP for the notional pension the actual pay scales of all ranks at the time of retirement.

It avoids speculation of, on what pay may become, whilst allowing for a proper a reflection of promotions lost by early termination of career on grounds of attributable ill-health.

32. This avoids the conflict. It allows effect to be given to Mr. Lock's correct recital of

law, that the pension needs to be, in 'the amount that an individual would have been paid to work until aged 55', which should be a Rule B1 pension based on years of full service, uninterrupted by ill-health and giving credit for a more senior rank that the premature retiree 'could' (Home Office Commentary Pages B3-2;B3-3.) have achieved if 'paid to work until aged 55 or 60'.

Thus the APP on which the notional retirement Rule B1 pension is calculated is the APP of the rank someone 'could' notionally have achieved, but for injury curtailing career, and was taken, to provide the apposite notional APP for the notional rank, from scales of pay actually being paid at time of actual retirement.

33. If this is taken to be the correct interpretation of the SI provision there is no conflict between a "B1 calculated on actual APP", and "A is the APP" in Paragraphs 1-4, and a notional retirement pension (a Rule B1 pension) calculated 'by reference to', an "actual" APP in Paragraph 5; to fix the prevailing scale of rates of pay then prevailing.

34. Furthermore, the Rule B3 nomenclature (name system) is significant. It will be noticed that in Paragraphs 2, 3, and 4 under Rule B3, what each formula is calculating is an 'ill-health pension'. But in Paragraph 5, which takes precedence over 3, and 4, it is called a 'notional retirement pension'. Since this notional pension takes precedence, it is paid.

Nothing is actually a pension until it becomes promulgated as the ill-health pension. The nomenclature defines selection of the amount.

35. At Rule B3 paragraph 1(1) it is specified "that paragraphs 3 and 4 have effect subject to paragraph 5". Given ordinary meaning where A is 'subject to' B, B takes precedence over A in being given effect, or put first in line, or order.

Therefore Paragraph 5 has precedence in application. This means that a Paragraph 5 pension is always paid as the ill-health pension unless there is provision for that precedence to be lost. There is such provision.

36. The 'notional pension' is the ill-health pension paid, unless "the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension" in which case the Rule 3 or Rule 4 'ill-health pension' becomes [takes the place of, supplants] 'the notional pension'.

37. (i). How to calculate a 'notional retirement pension' is specified at PART VI, Rule B5, 2(2). Save that D is replaced by an E - both specifying the same 'up to 20 years', and E is replaced by F - 'years ...exceeds 20 years'. The formulae are identical except the Paragraph 4, Rule B3 ill-health formula is enhanced by an additional 7/60 at its commencement.

(ii). However, unlike a Paragraph 4 calculation which will always exceed 40/60ths there is a limitation imposed on a 'notional retirement pension' in that it is specified at (3) (that):

"A person's notional service is the period in years that he would have been entitled to

reckon as pensionable service if he had continued to serve until he could-

- (a) retire with a maximum ordinary pension (disregarding rule B I (2)), or
- (b) be required to retire on account of age,

whichever is the earlier.

(iii). An Ordinary Rule B1 pension is limited to 40/60ths of APP.

Therefore in a 'notional retirement pension' the formula is, in effect the notional APP x 40/60ths maximum. It is apparent why when one considers that what is offered is the full pension the retiree would have earned on a full service pension calculated on the rank he 'could' have achieved.

Put another way pecuniary loss is extinguished. He is paid all he may have earned and the full service pension. His injury, per se, is compensated under Rule B4 provision.

38. In effect the Paragraph 4., calculation will always exceed the Paragraph 5., calculation *except* where the APP taken for the rank a retiree 'could' have attained is substantially above the APP upon which Paragraph 4., is calculated.

39. In practice Paragraph 5., will rarely be paid, being a safety net to avoid short-changing just a few who, but for injury, would have scaled the heights of promotion. Usually Paragraph 4., will be the greater and be paid.

40. Were any other interpretation given to the provision it would permanently deny one or other calculation (in this instance 4., or 5.) ever being paid and so render the words in the legislation meaningless.

41. This leads to the question of whether or not there is any 40/60ths limit to be applied in Rule B3 ill-health provision ?

42. At Rule B3 – 3. (2) in the Home Office Commentary[Pages B3-2;B3-3] in answer to the question "How much is the pension?" specifies... 'Never more than 40/60ths of APP, or what you could have earned by your compulsory retirement age'.

43. It is as well that the Home Office Commentary cannot make law because it is in error, and patently so in stating (supra) "Never more than 40/60ths". Perhaps here would be a convenient place to correct any misunderstandings.

44. One can only look to the SI 129 for whatever authority, or provision, there may be. No other legislation, whether before or after the promulgation of the SI, is of effect, save and except amending or enabling legislation. There is none. My comments at 6.

45. In considering 40/60ths Mr. D. Hamilton, the Technical Director at the Pensions Advisory Service has published the opinion, "Your pension will only grow beyond 40/60ths if the scheme rules say so. Certainly legislation will not prohibit this, but it does not require it to happen".

46. Clearly the public perception, and so what Unions may negotiate, changes with time. One can see it at work where the 1973 Fire Service Regulations SI 'capped' an ill-health pension at 40/60ths, but 20 years on and SI129 does not cap an ill-health pension, indeed, the formulae makes provision for more than 40/60ths.

But by 2006 The FSR-SI Explanatory note at page 71, paragraph (g) reads "...pension will accrue at 1/60th per year. A firefighter member will be able to accrue more than 40 years pensionable service". That is not in connection with a Rule B3 ill-health pension but an Ordinary B1 pension.

47. The sole reference in SI 129 to 40/60ths is to be found on page 82.

This is a PART dealing with 'Special Cases' beginning at Schedule 11 (page 80), PART IV, Rule J6 "Modifications for person's serving on 10 July 1956". At Paragraph 17 (page 82), PART 11, Short Service or ill-health pension.

There appears at 2. "The amount of the pension is not to be less than 1/60th nor more than 40/60ths of the person's pensionable pay".

48. However, the provision is specifically applicable only to anyone whose service commenced on, or before 10 July 1956 and Mr Burns began his career in the Fire Service in 1963.

49. Save and except at supra, in the special case, there is no restriction of any pension to 40/60ths save by the de facto operation of the formula for an Ordinary Rule B1 pension, which specifies $30 \times \text{APP}/60 + 2 \times \text{APP} \times 5/60$ (years maximum above 20). In effect $30 + 10/60 = 40/60\text{ths}$.

50. Far from restricting a pension to 40/60ths, the SI 129, Rule B3 formula set out at Paragraph 4, is designed specifically to increase pension above 40/60 of APP. Indeed, there is already a 40/60ths Rule B1 pension buried within the formula, which enhancement given by the formula can take to well beyond 40/60ths. In effect, the Firemen's Union negotiated a good deal for its membership. The formula is:

$$7xA/60 + Ax D/60 + 2xAxE/60$$

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 years.

And where 'A is the person's APP'

51. One can immediately see that any firefighter retiring on a Rule B3 pension with more than 30 years service will receive $7 + 20 + 2 \times 10/60\text{ths}$ or 47/60 of APP. This could be exceeded.

The common law argument behind the granting of extra pension provision under Rule B3 is that due to the exigencies of simply being a firefighter all firefighters are required

to retire young, on account of age at 55 (unless in high enough administrative rank, Asst Div Officer and above-Rule A13, to 60). That is young in terms of less demanding occupations and so a fit full term retired firefighter may well have another full time job for 10 or more years after leaving the Fire Service, in which to supplement his full service de facto 40/60ths pension. Such supplementary income tends to be denied the disabled, so it is appropriate that an enhancement above an Ordinary full service Rule B1 pension be paid.

52. Although a 'Notional Retirement Pension' is not specified as an Ordinary Rule B1 pension it is premised on the assumption that an Ordinary Rule B1 pension would have been paid on full service, in which case there would have been no pecuniary loss, just injury which is a Rule B4 matter. In my view a Notional Retirement Pension is limited to 40/60ths.

53. In sum one arrives at a point where a Rule B3 pension is required to be calculated in accordance with the formula (in this case at Paragraph 4) which is calculated on a set APP, but leaves time at large; and at Paragraph 5, which is set in time but allows the APP to be at large.

The *raison d'être* is that it would be quite wrong, in damages, to consider two 40 year old men, both being retired on ill-health from the same rank which for one would have been as far as he would have gone, and for the other be a way station on the way to being a Chief Officer, to be taken to have suffered the same future loss.

Hence the basic provision of Paragraph 4 but only payable subject to being greater than the Paragraph 5 amount.

54. One can be sure that that is the correct view from the specific provision of the scheme.

55. The SI general direction (under duplication) at Rule L 4. 3. Provides that where there are two contending pension amounts the 'larger' is always paid

56. (i). In Mr. Burns's case it remains to do the calculations.

(ii). I understand he has evidence in that he 'could' have reached ACO. In that case his Paragraph 4 requires to be calculated on his APP as at date of retirement of c£31,500 and his Paragraph 5 notional APP on the ACO APP as at 1997, which was c£56,500.

(iii). His Paragraph 4 pension would be:

$$7 \times 31.500 + 31,500 \times 20 + 2 \times 31,500 \times 13.5/60 = \text{c}\pounds 28,350$$

(iv). His Paragraph 5 notional pension on the notional formula is of $56,500 \times 20 + 2 \times 56,500 \times 13.5/60$, which, whilst totalling c£44,000, only does so on 47/60ths which is above the Ordinary pension maximum, so his payable notional retirement pension $56,500 \times 40/60 = \text{£}37,500$ odd

(iv). Paragraph 5. takes precedence unless Paragraph 4. is greater, it is not, so his pension entitlement was £37,500 odd pa.

57. I hope this is rather more transparent than I understand earlier opinions may have been. But if anything is unclear please do not hesitate to contact me.

Incidentally, the link kindly provided by Mr. Lock would not work for me. I am not sure his Advice was written on the full version.

I have found that even in archived material modifications and omissions, as in formulae, seem to creep in. I believe that it was a 'consolidated version' entered into the archive in 2008.

It may be that that the original 1992 version of SI 129 date stamped as sold by HMSO for £9.10 on 9th March 1992 is preferable.

I think that copy can be found on Mr. Burns's web site 'The Morning Bugler'.

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