



Please ask for: Lee Gardiner
Direct Line: 01772 866903
Email: leegardiner@lancsfirerescue.org.uk
Your Ref:
Our Ref: LG/SAR [redacted]
Date: 9 November 2010

Dear Mr [redacted]

Subject Access Request

I am writing further to your letter of 21 October 2010 where you requested a copy of your PRF, complete.

We are treating your correspondence as a subject access request under Section 7 of the Data Protection Act 1998.

In order for us to process your request please send us a cheque for £10.00 made payable to Lancashire Combined Fire Authority along with proof of your identity such as a copy of your passport or driving licence. Once in receipt of the fee and identity documentation we will begin the process of locating your information.

Please note that a subject access request **does not** allow access to all information held in your personnel file and associated records such as pension files. You are only entitled to receive information which constitutes personal data. For information held to constitute personal data an individual must be the focus of that information.

Please note that as your request for information is a request under Section 7 of the Data Protection Act we have 40 days from receipt of your fee and proof of identity in which to respond to you.

Should you have any queries with regards to this letter or require any additional information, please contact me on the details listed

Yours sincerely,

Lee Gardiner
Data Protection & Freedom of Information Officer

Headquarters

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



Mr F M G [REDACTED]

16th May 2011

Case Reference Number RFA0369450

Dear Mr G [REDACTED]

When I last wrote to you, I explained that when we receive data protection complaints, our obligation is to make an assessment. An assessment is the Information Commissioner's view about whether an organisation has followed the rules of good practice for handling information in the Data Protection Act 1998 (the DPA).

I also explained that our aim is to ensure that organisations deal with personal information properly in the future. Our assessment decisions can help us to decide whether we should take action against a particular organisation.

Our decision

I wrote to Lancashire Fire and Rescue Service about this matter and have now received its response. On the basis of all of the information provided by you and Lancashire Fire and Rescue Service, we have decided that it is unlikely that Lancashire Fire and Rescue Service has complied with the requirements of the DPA in this case.

This is because the ICO consider the personnel filing system at Lancashire Fire and Rescue Service to fall under the DPA, and therefore the Lancashire Fire and Rescue Service obliged to comply with your subject access request.



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forests, controlled sources and
recycled wood or fiber

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It should however be noted that Lancashire Fire and Rescue Service had sought to rely on some guidance issued by the ICO, and which appeared on our website. This guidance did not however accord with the ICO's view and has now been removed from our website and an updated version issued, a copy of which has been provided to Lancashire Fire and Rescue Service.

The Information Commissioner has decided that further regulatory action is not required at this time.

We have however advised Lancashire Fire and Rescue Service that we consider them to need to revisit your subject access request and provide you with a copy of the personal data you are entitled to receive from your Lancashire Fire and Rescue Service personnel file.

If they do not contact you directly I would suggest that you write to Lancashire Fire and Rescue Service 'restating' your subject access request and referring to your complaint to the ICO.

Next steps

However, most organisations want to put things right when they have gone wrong and learn from complaints that are raised with them. We have therefore asked Lancashire Fire and Rescue Service to consider the lessons learned during the course of this assessment and take steps to prevent the situation from happening again.

We will keep a record of your complaint and take this assessment into account if we receive further complaints about Lancashire Fire and Rescue Service. The information we gather from complaints may form the basis for action in the future.

Thank you for bringing this matter to our attention.

Yours sincerely,


Benedict Elliott

Case Officer – Complaints Resolution (Group 1)
Direct telephone 01625 545849





20 May 2011

Mr R Warren
Lancashire Fire and Rescue Service
Service Headquarters
Garstang Road
Fulwood
PRESTON

Dear Mr Warren

Further to my previous requests for sight of my PRF and subject data, I wish to restate that request. I have made reference to the Information Commissioner's Office (ICO) over this matter and have been informed that LCFRS are obliged to comply with that request and that you have been made aware of this fact, so:-

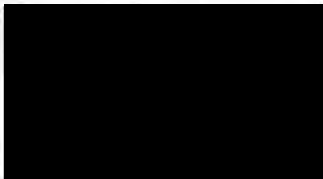
- a) please provide a copy of my personal record file and
- b) a copy of all correspondence between LCFRS and the LCC Pensions Department reference myself, and
- c) a copy of all correspondence between LCFRS and the DWP reference myself, and
- d) a copy of the minutes of the Injury Pension Award Sub-committee reference myself.

I have already paid the £10 fee for this at the time that I made my first request.

Yours

F M G 

Cc The Information Commissioner's office



Please ask for: Lee Gardiner
Direct Line: 01772 866903
Email: leegardiner@lancsfireandrescue.org.uk
Your Ref:
Our Ref: LG/SAR/G [redacted]
Date: 8 August 2011

Dear Mr G [redacted]

Subject Access Request

I am writing further to the determination issued by the Information Commissioner's Office (ICO) on 16 May 2011 and subsequent correspondence from our Director of People and Development dated 27 May 2011.

Having reconsidered your request we remain of the view that our Personal Reference Files (PRFs) are not a *relevant filing system* as defined by the Data Protection Act 1998 (DPA) or by the Court of Appeal in the Durant Ruling (*Michael John Durant v Financial Services Authority [2003] EWCA Civ 174*) despite the ICO issuing revised guidance on the issue.

However, having considered all the guidance now available for responding to access requests as a gesture of goodwill to you I enclose a copy of your PRF as requested by the ICO.

Should you have any queries with regards to this letter or require further clarification which I can provide please contact me on the details listed.

Yours sincerely,

Lee Gardiner
Data Protection & Freedom of Information Officer

Headquarters

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





10 August 2011.

Mr.R.Warren

Lancashire Fire & Rescue Service HQ

Fulwood, Preston, Lancs.

PR2 3LH

Daer Mr.Warren,

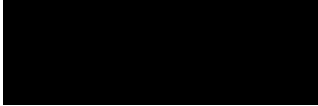
- Thank you for your letter of the 8th inst with its recorded delivery enclosure of my PRF.
- I am glad to note by your action that you have finally conceded to the Information Commissioner and to me that it is my legal entitlement to have all my subject data under the DPA.
- I assume that you will also be forwarding PRFs to all the other FSVs I know have applied to you for their PRFs?
- I am puzzled by the statement, 'gesture of goodwill', by your Mr.Gardiner.You have a duty to comply with the law it has always been as simple as that, goodwill is not involved.
- Mr.Gardiner does not state what the intent of this 'goodwill' is? It would have been more constructive if you and Mr.Gardiner had responded during the last 4 years to the 6 or 7 formal invitations you have received from the FSVs to meet under the auspices of the Leader of the LCC or the Courts Service to construct a resolution to the mess you have created by your maladministration.
- I am surprised if you think that I have shred of goodwill or trust in you or the LFRS after the bullying and hardship treatment you have deliberately meted out to myself, my family, and to all the others involved.
- In moving progress on my part I would like you by return to confirm and give me an assurance, which Mr. Gardiner omitted to state in his letter, that this bundle has in no manner or form been censored or weeded by you to the legal advantage in law of the LFRS?; and that no other records of mine exist which you have decided to be economical with in non compliance with the law?
- Consequently I would like your confirmation in writing that this bundle of documents contains every single record retained by you in respect of my total service, including and especially all the statutory records and most essentially all the DWP records and information I have brought to your attention during

my retirement and which you have a statutory duty to maintain and retain especially in respect of the administration of my pensions.

- If you are unable to confirm the completeness of these records then I expect that you will provide me with a detailed explanation why any records might be missing, where they went, and under whose jurisdiction they are now so that I may obtain them?
- An immediate glance through this bundle confirms that I do not see the other documentation I have requested from the ICO and you in respect of the LCC Pensions Services correspondence and the Minutes of the CFA Injury Sub-Committee. I am sure this is an oversight on your part but I would appreciate some prompt indication when I am likely to receive these?
- It has long been the opinion of myself and the other FSVs that you and the LFRS have engaged in the maladministration of our pension records by not retaining all those statutory records and information from all sources which you have a duty to retain including the DWP records and information I have brought to the attention of the LFRS during my retirement. This is why myself and others have requested copies of our PRFs.
- You will recall that in my case I have repeatedly drawn to your attention the similarity in my case with that of Mr. [REDACTED] and the special treatment which in my opinion he received. You have chosen to ignore my letters when I have repeatedly brought this your attention.
- I have now superficially looked at the contents of my PRF and I conclude even at this early point that my PRF supports my prior position and my contention fully. It is clear I have more records and information than you ought to have, records and information which I have brought to your attention but which in the failure of your statutory duty you have failed to record in my PRF.
- Later I will carry out a detailed examination of my PRF with my family not looking for records or information that are self evidently there but which records and information is not there and which because of your failure of statutory duty you have failed to retain in my PRF.
- Even at this early point it is my conclusion that your action and decision in interfering with and stopping the payment of my Injury Award was based on your statutory failure to retain my proper record and information and thus your decision was and is baseless in law.
This was because of your failure of statutory duty to maintain and retain my records and information properly which I and other agencies brought to your attention in the past years.
You simply did not have the correct and proper information upon which to base the unlawful decision which you took.
- The unlawful circumstances which you created by interfering with and suspending my Injury Award imposed direct financial hardship on me and my family all without having the courtesy to me of considering with me the impact your ill supported in law decision would and did have on me and my family.
- Even though you restored my Injury Award at one point you have failed to give me an accurate accounting of the monies you have removed from me, monies which I believe were in excess of the 'overpayment' you alleged. Neither have you responded to my correspondence which required you to consider returning those monies with County Court interest.

- Your actions have caused me both physical and emotional harm and in the longer term in the light of what my PRF will further reveal I intend to take action against you personally and the LFRS to recover what is justly mine and to seek damages from you for causing me this unnecessary harm and distress.

Yours Sincerely,



F. M. G. [REDACTED] MIFireE.

Assistant Divisional Fire Officer(Rtd)

Mr F M G [REDACTED]

Your ref:
Our ref: YPS/JW
Date: 23 February 2015

Dear Mr G [REDACTED]

I refer to your recent email regarding the calculation of your ill health Injury pension benefits. The regulations that cover this are as follows

Ill health Pension - Regulation B3

Injury Pension – Regulation B4

I have enclosed the extracts from the Firemen's Pension Scheme Regulations 1992 (FPS) that cover these regulations.

When you retired your pensionable service was more than 10 years therefore we use the provisions of paragraph 4 of regulation B3 from Schedule 2 Part B, Part III to calculate the ill health pension. However we also need to take account of paragraph 5 that advises us of the restriction on the pensionable service we can use and any ill health enhancement awarded. The restriction is such that we cannot calculate a higher pension than would have become payable had you retired normally on account of age i.e. at age 55 and become entitled to an ordinary pension.

* Therefore as you had 35 years 285 days service at retirement we need to calculate your pension as an ordinary pension under regulation B1 as follows

Calculation of an ordinary pension regulation B1 from Schedule 2 Part B, Part I

Subject to Parts VII and VIII of this Schedule, the amount of an ordinary pension is—

$$(30 \times A / 60) + (2 \times A \times B / 60)$$

where—

A is the person's average pensionable pay, and

B is the period in years (subject to a maximum of 5 years) by which his pensionable service exceeds 25 years.

Administered by



In partnership with



Your Pension Service

PO Box 100, County Hall, Preston, PR1 0LD



The Government Standard

Your average pensionable pay figure for the period 23 July 1997 to 22 July 1998 as advised by Lancashire Fire was [REDACTED]

The pension payable to you is therefore

[REDACTED]

Injury Pension and Gratuity

Your percentage disablement was assessed as being [REDACTED] and as you had more than 25 years' service your injury pension was based on [REDACTED] of your average pensionable pay.

Therefore the injury pension was calculated as at 22 July 1998 as follows

[REDACTED]

If you require any further details please let me know

Yours sincerely



Julie Wisdom
Performance Manager

Phone: 01772 530530
Web: www.yourpensionsservice.org.uk
Email: AskPensions@lancashire.gov.uk

Mr F M G [REDACTED]

Your ref:
Our ref: YPS/JW
Date: 7 April 2015

Dear Mr G [REDACTED]

I refer to your recent letter regarding the calculation of your ill health Injury pension benefits. The regulations that cover this are as follows

A person's notional retirement pension is—
 $(A \times E / 60) + (2 \times A \times F / 60)$

where—

A is the person's average pensionable pay,
E is the period in years of his notional service up to 20 years, and
F is the period in years by which his notional service exceeds 20 years.

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 B1(2)), or
- (b) be required to retire on account of age,

whichever is the earlier.

As you had attained 30 years within the Fire Pension Scheme when you retired on 22 July 1998 this basis was used to calculate your ill health pension with the pensionable pay for your last 365 days being used.

yours sincerely



Julie Wisdom
Performance Manager

Administered by:



In partnership with



Your Pension Service
PO Box 100, County Hall, Preston, PR1 0LD

Your Pension Service is administered by Lancashire County Council



The Government Standard

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Tuesday 1st September 2015.

My Pensions

Dear Chief Fire Officer,

Prelude:

1. I was an Officer with the rank of Assistant Divisional Officer in Lancashire County Fire Brigade; I was seriously injured on an incident; and I was subsequently compulsorily retired from the Service in 1998.

Pension Law:

2. Thus I became and remain a Member of the Lancashire Fire & Rescue Pension Scheme. By law you are my pension Scheme manager and thus accountable to me for the accurate administration of my pensions.
3. You are in turn accountable in law to Parliament via the Minister of State for Pensions, Pensions Minister Baroness Altmann CBE for the correct and lawful administration of my scheme and its full compliance with all applicable pension scheme law.
4. The Pensions Minister holds jurisdiction over my Scheme using her subordinate Pensions Regulator; Pensions Ombudsman; and for the purposes of the Fire Service her jurisdiction extends to the DCLG Fire Service Pensions Committees and its departmental Fire Pension Team; and thus to you as my Scheme manager;
5. The Pensions Regulator(TPR) duties include ensuring your compliance with the Scheme Rules and its Regulatory law using TPR Standards which preclude obfuscation or deliberate delay. If you are found not to be in compliance, the TPR is empowered to take remedial and/or punitive action.

6. The Pensions Ombudsman and his Deputy are also under the Minister's jurisdiction for the purpose of ensuring that scheme Members' Complaints are dealt with promptly, fairly, and without obfuscation or deliberate delay, a legal duty which also extends to you.
7. Under the existing scheme Regulations you have the right to delegate your legal responsibilities and its day-to-day managerial duties and you have chosen to do so utilising your Mr. R.Warren Director of People & Development but the ultimate responsibility for my scheme in law continues to rest with you.
8. Can I remind those involved with the administration of my pensions that you; by delegation your Mr.Warren; and by legal extension your LCC Pensions Services contractors have a duty at law which is to respond to my enquiries honestly, promptly, and transparently under the terms of Statutory Instrument 2013 No.2734 The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 which came into force on the 6th April 2014.

Dishonest Misconduct:

9. Recently with your approval, Mr. Warren issued two written internal instructions to non-uniformed/uniformed personnel which established, by an abuse of power, an impractical embargo which prevents all LFRS staff from responding to enquiries from the 2000+ Members, Widows, and beneficiaries of your pension Scheme; these instructions listed and named individual Fire Service Veterans and their beneficiaries.
10. Furthermore, Mr.Warren stated that should any member of staff choose to act contrary to his instructions they will be subjected to disciplinary measures including dismissal.
This is regarded as *undesirable fetter on the freedom of both Fire Service Veterans and LFRS staff* and is a matter which I and others intend to raise with the Local Government Ombudsman; the Pension Regulator; the Pensions Ombudsman; and ultimately the Pensions Minister.

The Correspondence:

11. Your Mr.Warren is well aware, or he ought to be, that over the past few months I have been writing to your pensions contractor Lancashire Pensions Services in the person of Ms Julie Wisdom your pension expert raising detailed queries in the matter of my Fire Brigade pensions.
12. Ms.Wisdom failed to answer my initial correspondence for a considerable time then on prompting she did so claiming that, though correctly addressed, the letter had gone to Merseyside before being re-directed to Lancashire?

A second letter was sent in which I raised several points, some of which were legal points, and once again several weeks passed without reply?
I sent a third letter and on the 29th July 2015 Ms.Wisdom replied. She indicated that my second letter, though correctly addressed by me as previously, had not been received?

13. This is a disturbing matter which I intend raising with the Head of Pensions Mrs D. Lister and with the Leader of the County Council.
14. I do not intend here to rehearse my detailed and technical correspondence with Ms Wisdom for I shall assume that if Mr. Warren is correctly discharging his function of my scheme manager he has had available to him copies of my correspondence with Ms. Wisdom.
15. Disappointingly I have never been invited to a pastoral care meeting to discuss my so obvious pension concerns.
16. Suffice it to say that Ms. Wisdom in her responses has *confirmed* that she has, and continues to use, as her legal authority the following:
 - a) the 1992 Statutory Instrument No:129(as amended);
 - b) the 1992 Home Office 'Commentary';
 - c) that had I not been injured I could have remained in pensionable service until aged 60 years;
 - d) that I was compulsorily discharged by the LFRS under Rules B3 – ill Health and Rule B4 – Injury Award;
 - e) that the correct formulae to be applied under these Rules is as follows:
 1. for ill health Pensions- within Schedule II; Personal Awards; Part III; Rule B3;ill health pension; Page 45;
 2. for Injury Awards within Schedule II; Personal Awards; Part V Rule B4;Injury Awards; Page 46;

Disappointingly I have not had answers to some legal questions which were raised in my second letter which Ms.Wisdom now claims she did not receive?

Ordinary Pension vis-a-vis Ill-health Pension:

17. It is a simple breach of Statute Law and contradiction to pay any Member of the Scheme a Rule B1 Ordinary Pension in substitution for an *entitlement to* a Rule B3 Ill-health Pension which the Fire Authority already determined:

Schedule 2;Article2(2);The Firemens's Pension Scheme
1992;Arrangement of Rules; Part B Personal Awards;

Ordinary Pension;

Rule 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.
(My underline).

Simple Questions:

18. You have in correspondence incorrectly claimed that the Statutory Instrument requires you to pay me what is in effect a Rule B1 pension. But since that denies any, and all compensation for loss occasioned by *early compulsory retirement*, and provides precisely the same pension falling due to me as if I had taken early retirement by choice, how in law can your interpretation be correct?

What legal Opinion have you taken?

What 'legal authority' have you used to support your action?

If none, then by what legal authority have you paid me, since 1998, a Rule B1 Ordinary Pension as though it was a compulsory retirement Rule B3 Ill-health Pension?

19. The even simpler question which must be answered by you, my scheme manager, is as follows:

Why am I, and other injured LFRS Firefighters, who have been compulsorily retired by you with compensatory B3 ill health and B4 injury awards (prescribed by law) being denied that compensation by being paid unlawfully by you a B1 Ordinary Pension which is due to those who by choice chose to retire early, or who had completed their full service uninjured?

20. I expect to receive a prompt and detailed explanation within the next 7 days failing which I will initiate without further notice Stage I of the IDRPs provided for such purposes in law.

Yours Sincerely,

Mr F M G [REDACTED]

Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref:
Our Ref: BW/JLW
Date: 1 October 2015

Dear Mr G [REDACTED]

I have been passed the letter you have sent to the Chief Fire Officer dated 1 September 2015 (received on 14 September) concerning your pension as I am the appropriate person for these matters within Lancashire Fire & Rescue Service.

In response to your points I would advise you of the following:

- Lancashire Combined Fire Authority (LCFA) is the scheme manager for the Firefighters Pension schemes.
- Although the LCFA retains accountability they have delegated the management of the scheme to myself.
- Therefore I am the appropriate person to respond to you.

As you are aware, the administration of your pension is undertaken on behalf of LCFA by Lancashire County Council's "Your Pension Service" (YPS).

YPS responded to this query on 23 February 2015 and by their letters of 26 May 2015, 29 July 2015 and 7 April 2015. I believe this correspondence addresses your issue.

I will, however, restate the position in respect of the calculation of your Ill Health Injury Pension.

The regulations that cover this are as follows:

- Ill Health Pension - Regulation B3
- Injury Pension – Regulation B4

Headquarters

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



I have enclosed the extracts from the Firemen's Pension Scheme Regulations 1992 (FPS) that cover these regulations.

When you retired your pensionable service was more than 10 years. Therefore we use the provisions of paragraph 4 of regulation B3 from Schedule 2 Part B, Part III to calculate the ill health pension. However we also need to take account of paragraph 5 that advises us of the restriction on the pensionable service we can use and any ill health enhancement awarded. The restriction is such that we cannot calculate a higher pension than would have become payable had you retired normally.

Therefore as you had 35 years 285 days service at retirement we need to calculate your pension as an ordinary pension under regulation B1 as follows:

Calculation of an ordinary pension regulation B1 from Schedule 2 Part B, Part I

Subject to Parts VII and VIII of this Schedule, the amount of an ordinary pension is

$$(30 \times A / 60) + (2 \times A \times B / 60)$$

where

- A - is the person's average pensionable pay, and
- B - is the period in years (subject to a maximum of 5 years) by which his pensionable service exceeds 25 years.

Your average pensionable pay figure for the period 23 July 1997 to 22 July 1998 as advised by Lancashire Fire was [REDACTED]

The pension payable to you is therefore:

$$(30 \times [REDACTED] / 60) + (2 \times [REDACTED] \times 5 / 60) = [REDACTED] + [REDACTED] = [REDACTED]$$

Injury Pension and Gratuity

Your percentage disablement was assessed as being [REDACTED] and as you had more than 25 years' service your injury pension was based on [REDACTED] of your average pensionable pay.

Therefore the injury pension was calculated as at 22 July 1998 as follows

60% x [REDACTED]	=	[REDACTED]
Less ¾ of ill health pension	=	[REDACTED]
Less Incapacity benefit	=	[REDACTED]
Injury pension due	=	[REDACTED]
Injury Gratuity = 12.5% x [REDACTED]	=	[REDACTED]

Put another way, a person's notional retirement pension is:

- $(A \times E / 60) + (2 \times A \times F / 60)$

where

- A - is the person's average pensionable pay,
- E - is the period in years of his notional service up to 20 years, and
- F - is the period in years by which his notional service exceeds 20 years.

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 B1[2]), or
- (b) be required to retire on account of age,

whichever is the earlier.

As you had attained 30 years within the Fire Pension Scheme when you retired on 22 July 1998 this basis was used to calculate your ill health pension with the pensionable pay for your last 365 days being used.

For the sake of completeness I would also advise you that you are mistaken about the reason and content of the "internal instruction". This instruction was necessary, and issued by myself, as a response to the specific actions of an individual who has been declared vexatious. It was to ensure that any such queries were dealt with appropriately and was an internal administration action.

Yours sincerely



Bob Warren
Director of People and Development

Encs

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	[REDACTED]
Role and employment reference	[REDACTED]
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	[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



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.

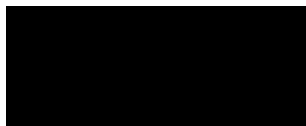
Conclusion.

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 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



Mr F G [REDACTED]

Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancfirerescue.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:

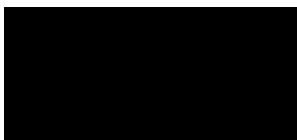
- Would you please be so kind as to let me know by what legal authority you have presumed to act ultra vires to avoid your Statutory duty which is to place my Stage II Application before the Full CFA committee for Statutory adjudication within the required Statutory time frame of two calendar months 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)



Mr F G [REDACTED]
[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





17th August 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.
For the Record**

Dear Chairman,

Little purpose is served by a wasteful continuance of this correspondence, ***now that the Statutory legal time frame has expired today.*** However, I feel that in this third and final letter I should place certain matters 'On the Record' for future Inquiry purposes.

1.00. IDRP Implementation to Date.

- 1.01. I initiated Statutory Stage I, IDRP on 15th December 2015. The Chief Fire Officer and my Pension Scheme Manager Mr Warren were required to complete Stage I within two calendar months, which they failed to do resulting in a Statutory breach, only completing the process on the 19th February 2016.
- 1.02. Under Statutory IDRP no further, or future input is permitted by the CFO or by my Pension Scheme Manager, beyond Statutory Stage I.
- 1.03. Should a Statutory Stage II procedure be initiated, then this Stage II Statutory duty is specifically designated in law as the responsibility of the elected Members of the Fire Authority, including you.
- 1.04. I disagreed with your CFO's Stage I decision.
- 1.05. Legal Service - I served my Statutory Stage II Application on you by hand and on individual elected Members of the Fire Authority electronically on the 16th 2016 at 14:59hrs(2 acknowledgements), whence the time frame of two calendar months commenced to run, which has expired today.
Legal service was further confirmed with individual service on elected Members with hard copies via Recorded Delivery on Tuesday 28th June 2016 at 17:23hrs.
One County Councillor, Britcliffe(Conservative), refused service.
- 1.06. The Statutory Instrument(1996 No:1270) and FSC1/2009(National Agreement) permits the Fire Authority and its elected Members two calendar months within which to reach a detailed legal determination(citing legal authority) on my Stage II Application(which contained two interlinked principal

elements) which should have been communicated to me within the timeframe of completion by the 16th August 2016; that time has now expired.

- 1.07. I continued throughout my Application and these communication to commend to you and your elected Members the use of impartial independent legal advice particularly in respect of the technical pension element when dealing with the intricacies of this technically challenging pension dispute.
- 1.08. You replied with a decision, you stated, on behalf of the Fire Authority on Monday 20th June 2016.
- 1.09. On Saturday 25th June 2016 I responded seeking clarification for the 'legal authority' which you and the Fire Authority had used as the legal basis for your collective determination.
- 1.10. On Wednesday the 6th of July you responded reaffirming, you stated, the CFA's original decision but avoiding supplying me with either the supporting legal detail(a Statutory requirement) or the 'legal authority' which was the legal basis for the Fire Authority's determination.
- 1.11. In spite of presenting you, and the Fire Authority, with two opportunities to reconsider your decision and comply fully with your Statutory duty you have failed to do so and are thus, at this moment in time, in breach of the applicable Statute Pension law and in breach of the LCFA's Statutory duty to comply with the law.
- 2.00. **A Simple Procedural Matter.**
- 2.01. This, essentially, was a simple matter of procedure.
- 2.02. I exercised my Statutory right to implement the Internal Dispute Resolution Procedure(IDRP) which is underpinned in law by section 50 of the Pensions Act 1995 (c.26); Statutory Instrument(1996 No:1270); By virtue of section 273 of the Pensions Act 2004, S50,50A, & 50B; finally The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 which is a provision of the 1995 Pensions Act(as amended-2004).
- 2.03. This final Statutory Instrument was, at the request of Fire Authorities, subsequently clarified by the then CLG(now Home Office) in Fire Service Circular 1/2009 culminating in a National Agreement by the CLG's Firefighters Pension Committee, on which your Fire Authority is represented.
The procedural contents of which have been fully adopted as Fire Authority Policy illustrated in the 'template' format of the IDRP documentation supplied to me.
- 2.04. In exercising my Statutory rights, within this legal framework, you have unequivocal duties to me which includes your duty as an Elected Councillor of Lancashire County Council(LCC); as an assigned LCC Councillor on the Fire Authority; and as the elected Chairman of the Fire Authority, with its 24 other Elected Members in a Combined Fire Authority whose collective legal duties are clear and unambiguous.

- 2.05. You and the Fire Authority also have a clear specific duty to me under the 1995 Pensions Act(as amended), its Statutory Instruments and provisions, as a Member of the Lancashire Firefighters Pension Scheme for which you, individually and severally, are legally politically accountable and liable.
- 2.06. You had a clear and unambiguous Statutory duty to place my Statutory Stage II Application, unabridged, before the full Committee of the Fire Authority so that it could reach a detailed legal conclusion on my pension dispute(first element) and my pension maladministration concerns(second element).
- 2.07. The intrinsic second element of my Stage II Application required, in your collective duty to me and in the Public interest, that you and the Fire Authority transparently investigate and report on my pension maladministration concerns incorporated within my Application.
- 2.08. Regardless of the second element the first element must be fully completed within the 2 month time frame in order to remain in compliance with the Act and its Statutory Instrument and you have failed to do this.
- 3.00. **Statute Law;**
- 3.01. The Statute Law:
- To provide legislative clarity there are no 'local' Fire Authority variations or customs and practices (which you have asserted) permitted within the applicable Statute pension law which is the overarching Statutory compliance framework;
 - Nor is it permitted as part of the implementation of FSC 1/2009(National Agreement) which the Fire Authority has constitutionally approved and incorporated in its own Policies;
 - You have, it seems acting in ultra vires, made the activation of your Statutory duty conditional on what I may, or may not, choose to do.
 - This is an unlawful attempt by you to construct a 'rule', your rule, outside the Statutory framework, which *is* your inescapable legal duty.
- 4.00. **Chain of Public Accountability, Scrutiny, Conduct, and Discipline.**
- 4.01. In the chain of elected Public responsibility and accountability your first and foremost duty to the electorate is as a duly elected Lancashire County Councillor.
- 4.02. On the day of your appointment as a Lancashire County Councillor you are required to sign formal LCC Constitutional documents of Attestation, public records, that you will in your appointment conduct yourself, both in private and those public duties allocated to you, in keeping with these published Code of Conduct and LCC standards.
- 4.03. In the duties which follow any Lancashire County Councillor may be assigned by his or her Party Leader to various LCC Committees, or to represent the LCC's interests on a particular external independent body, and though that body may, or may not, have its own Code of Conduct behavioural standards (which cannot be less than those imposed on Lancashire Councillors) and which may, or may not require your second personal attestation, the primacy

for personal accountability remains with the LCC and its Code of Conduct in compliance with the legal obligation of your personal Attestation.

5.00. Fire Authority Constitution & Policies; ‘Assurance’; and Delegated Powers.

5.01. The Fire Authority Constitution sets out the basic rules governing the legal ambience within which its assigned elected Members must conduct themselves in the procedural curia as it transacts its business.

5.02. This Constitution implicitly recognises that those Councillors assigned to it from various local authorities will already have given an Attestation of Good Conduct to the Local Authority they have been elected to and which has assigned them to the Combined Fire Authority and thus the primacy of accountability still remains in the first instance *with that* Local Authority.

5.03. It is also implicit within these Constitutions that the Fire Authority, for example, individually and severally, has a Statutory duty of compliance with the Statute law, the common law, and its own approved Policies.

5.04. The Fire Authority has further constitutionally bound its public conduct of transparency and honesty, by the incorporation, as a Policy in December 2015 of ‘The Statement of Assurance’ to the Citizens of Lancashire. This is proffered as evidence that the Fire Authority and its constituent parts and those politically assigned to it will deliver essential accountability and transparency during the discharge of all its Statutory duties, policies, and functions.

5.05. I remind you and the elected Members of the Fire Authority, as individuals and severally, that the Fire Authority has further bound itself Constitutionally that elected Members who have already made an Attestation(of primacy) with their own Local Authority will additionally comport themselves with transparency, honesty, and probity within this additional approved framework of Fire Authority’s own ‘Members’ Code of Conduct’.

5.06. As Chairman of the Fire Authority you have delegated powers under the Constitution Rules to authorise that, for example, exceptional ‘Urgent Business’ be conducted on behalf of the Fire Authority in the absence of the Full Committee.

You bear full personal liability for the exercise of these powers until you have sought and received retrospective approval, but only after the full implementation of Constitutional Rule 6.5 which requires Full Committee approval to place the Item on the Agenda followed by scrutiny, debate, and vote by show of hands, all of which *shall* be Minuted.

5.07. In order to ensure that any powers you exercise are lawful e.g., under ‘Urgent Business’ you have immediately available to you the Clerk to the LFCA, a solicitor Mr. Nolan; and the in-house LFRS solicitor Mr. Harold.

Your solicitors are ‘officers of the Court’. Their primary duty to the Court is to ensure that their advice to you is in compliance with the law and their secondary duty of care is to ensure that the Fire Authority and its pension contractors the LCC are not placed in conflict with, or contravention of, the law.

Should they fail in these remits then they become liable to the law themselves and subject to scrutiny by the Solicitors Regulation Authority which the Clerk to the Fire Authority is currently under.

5.08. Mr Warren is unqualified in both law and pensions administration and is thus incapable of advising you in legal matters affecting my pensions.

6.00. Elected Members Statutory Duties.

6.01. The Statute law in respect of my Statutory Stage II Application, which sets the precedence and takes primacy in law, was an unambiguous requirement placed on all Fire Authority elected Members.

6.02. Under Statutory Stage II procedures elected Members were required by law to study my Stage II Application and, if necessary, obtain independent legal advice(which was repeatedly advised) and within the time frame permitted in law(two calendar months) to reach a legally detailed conclusion citing 'legal authority' and communicate their collective determination to me before midnight on Tuesday the 16th August 2016; which you and they have failed to do.

6.03. To assist you, and them, in completing their individual and collective Statutory duty, I legally served my Statutory Stage II Application notice on each elected Member to ensure that great care would be taken, jointly and severally, by each Member to properly consider my Application, rather than 'rubber stamp' an 'officer's' recommendation which may, otherwise, render them as unwitting participants in criminal proceedings.

6.04. My legal service was also confirmation of my Stage II Application and confirmation of their Statutory duty and, if need be, their legal accountability, both individually and severally, in respect of the criminal law and the public duties laid directly upon each individually elected Member, failing which, the Fire Authority publicly risks acquiring a reputation for individual and corporate corruption.

6.05. Because the Full Committee of the Fire Authority has not lawfully considered my Application within the time permitted, or at all, or reached a lawful conclusion there is now a general and answerable criminal liability, both jointly and severally, for 'misconduct in public office' by elected Members, yourself, and your LFRS employees, in addition to any other self-evident Statutory breach.

7.00. Chairman's Decisions.

7.01. In your letter of acknowledgement and response of the 20th June 2016 to my Statutory Stage II Application you asserted that I sought to 'impose restrictions' and 'processes' on the IDRPs yet you made no such assertions on my Stage I Application. The substance of my Stage II Application with its pension dispute technical element and its intrinsic element of pension maladministration concerns were essentially unchanged in my Stage II Application.

- 7.02. Your assertions are without substance or merit, and thus without foundation. They are simply wrong in law and disingenuous because you will know, or ought to have been advised in law by your solicitors, that there was no 'flexibility' for either you, the Fire Authority, or me, to do other than to follow the laid down lawful Statutory procedure.

To do otherwise is to act in ultra vires which I have already pointed out to you.

- 7.03. You decided, presumably acting against this legal advice, unilaterally without any form of investigation, or consultation with other elected Members of the Fire Authority, paradoxically supporting my allegations of the misbehaviour of certain individuals, including my Pension Scheme Manager Mr. Warren, to the effect that my second element, pension maladministration, bore such substance that you advised me to immediately place them before the Chief Constable(CC).

- 7.04. I had grave misgivings about following your advice because it runs contrary to the legal advice I received and acts contrary to the process of natural and Judicial justice and once more I can only conclude that you have been deliberately or improperly advised from a legal standpoint, or are acting disingenuously for your own purposes.

- 7.05. I feel sure your advice to me was well intended but for the wrong reasons because prior to submitting my Stage II Application to you I specifically considered this second pension maladministration element of my pension dispute and unusually sought independent legal advice before I lodged my Statutory Stage II Application.

- 7.06. It seems, judging by your response, that I have not made my position on this pension maladministration clear.

- 7.07. I was advised that in the pursuit of natural justice it would be appropriate, proportionate, and fair that my pension maladministration concerns, which are an intrinsic part my Pension dispute, but were at that point publicly untested and unsupported allegations should be placed before you with the expectation, as part of your dealing with my Statutory Application, that my allegations would be put to the test.

In other words during your investigation it was my expectation that I would be invited to submit hard evidence supporting my allegations which I can but in the event was not invited to do so.

- 7.08. This approach was to anticipate and prevent the reasonable recriminations that you and the Fire Authority might raise that I had been too hasty in approaching the Chief Constable which could have resulted in 'muddying the waters' and impeding the Fire Authority's opportunity to put my allegations to the test using a fresh collective investigative mind.

- 7.09. This thoughtful, and considerate approach, would guard the rights of those under potential investigation, including my Pension Scheme Manager Mr. Warren and others, and provide you and the Fire Authority an opportunity to address my pension maladministration concerns; reject them; correct them if

necessary; and if my presented hard evidence was substantiated, then and only then, in conjunction with the Fire Authority to jointly place prima facie evidence before the Chief Constable(CC) for his criminal investigations.

- 7.10. Mr.Warren made the valuable point that should I be precipitous in approaching the CC he and others may well be under arrest, caution, and one assumes, suspension from their posts, which would indeed frustrate and inhibit the best of intentions of the Fire Authority to impartially investigate my entire Application in all its aspects.
- 7.11. Unfortunately Mr.Warren goes on to draw the wrong conclusion where he and others are concerned in respect of such an investigation because as the Statutory Instrument makes clear at the conclusion of Stage I, the CFO, Mr.Warren and others involvement has ceased in Statute law, they having no further role to play in the IDRPs.
- 7.12. Thus, access to them would be untrammelled by any legal restrictions and thus they would be fully available to you and the Fire Authority to consider Mr Warren, and others, conduct in the maladministration of my pensions. Therefore each of the elected Members could legally approach my Statutory Application 'with a clear mind', free of the influence of those, including the CFO, Mr.Warren and others, whose conduct would, and should, be under transparent review.
- 7.13. However, acting on your imprudent unlawful 'pre-condition' which advised pre-emptive involvement of the CC, you have now in the interim informed me twice that you decided to 'postpone' your, and the Fire Authority's compliance with its Statutory duty, by stating that you will not 'enact' the IDRPs until I have complied with your 'rule'.
- 7.14. I should inform you that you and the Fire Authority's decision is unlawful, acting as it does, in ultra vires.
- 7.15. To reiterate there is no 'flexibility' or provision within the Statutory Instrument which empowers or permits you, or I, to introduce or implement a new 'rule' or 'rules' what would be in effect a calculated and deliberate 'conditional' delay. Nor does the Statute facilitate you in law to act with such unlawful intent, quite the reverse in fact.
I was surprised that you had been so advised by your solicitors and advisors.
- 7.16. You, and they, have ignored and avoided responding to my repeated requests that you provide me with the 'legal authority' for acting so. I can only conclude that this is a conscious unlawful personal act by you and them intended to knowingly breach the Statutory duty of the Fire Authority and thus place it in a direct and embarrassing conflict and breach of the Statute law and its legal obligations.
- 7.17. Why you have done so could be a matter for Public speculation but it is unquestionably a matter for the Fire Authority to urgently question your decisions and satisfy itself, both individually and severally, why as a result of your decisions you have knowingly, under your leadership, placed the

Authority; its individual elected Members; and LFRS staff, in breach of the Statute law(s)?

7.18. I can only conclude at this point, as evidenced by you malfeasant decisions that you were determined to pervert the course of justice whilst being fully aware of your public duties and legal obligations though why you should do so is a matter for the Full Committee of the Fire Authority, and failing them other interested Agencies to ask, why?

7.19. Your decision will also have its *intended consequences* for me, which also brings further legal liability consequences for you and the Fire Authority, namely, that my Stage II will be knowingly and calculatingly delayed for an indeterminate period whilst intending, once more, to punitively expose me and my family to that which is colloquially known as the 'Hardship Route'.

The authorship of which was Mr. Warren but approved by both CC D.O'Toole and you as another tool of harassment in the avoidance of Public interest scrutiny of your actions and those of your 'associates'.

8.00. Fire Authority Annual General Public Meeting Timeline.

8.01. On Monday 20th June 2016 at 10:00 hours the Annual General Public meeting was scheduled to take place in the Main Hall, Washington Hall Training Centre, Euxton Lancashire.

You attended that meeting and were re-elected as the Labour Party Chairman of the Fire Authority for the term of office which will conclude with County Council elections next May 2017.

8.02. Prior to this Fire Authority Meeting on Thursday 16th June 2016 my Statutory Stage II Application was delivered to you by hand.

The covering letter asked that I be informed when the Stage II Full Committee was to be convened; the names of elected membership of the Committee who would decide Stage II; and subsequently a record of the duration, the vote taken, and by whom.

8.03. Regrettably in the event you did not inform me that the scheduled AGM was due the following Monday 20th June 2016 even though, in fact, I was fully aware that it was taking place.

8.04. The Fire Authority published Agenda did not include any item under Part 1 'Item 20 – Urgent Business' though there were 2 working days prior to the meeting to bring forward my Statutory Stage II Application which was an 'Urgent' item because the process was time limited to two calendar months expiring on the 16th August 2016 and because the next Full Committee Fire Authority Meeting was not scheduled until 19th September 2016 by which time my Application would be time expired which would place the Fire Authority and me in contravention of the pension Statute law leading me to have to start the whole IDR process again by reason of your deliberate dissimulation.

8.05. The Minutes of this meeting were subsequently published recording that under Part 2(Exclusion of Press and Public) the only 'Urgent Business' brought forward was Injury Pension Update which is a Standing Item in which Members are regularly updated on the Pension Dispute involving dissenting Lancashire disabled Fire Service Veterans.
The report was noted but not endorsed.

8.06. No other 'Urgent Business' was recorded or took place, and anecdotal evidence from those present supports that position.

8.07. If my Statutory Stage II Application was, as you have inferred twice, presented at this point to the Full Committee, as it ought to have been, as Statutory time limited 'Urgent Business' which required their urgent collective Statutory decision then to do so required the full implementation of the Fire Authority Constitutional Rule 6.5(d) regarding 'Urgent Business',

"An item of business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered as a matter of urgency."

Furthermore such a proposed 'Urgent' item must be placed before the Full Committee before being approved for admission to the Agenda and if this motion is carried then the Item is debated, voted on by a show of hands, and fully recorded in the Minutes regardless of whether or not it was carried out in Part 2(Press & Public Excluded).

8.08. In your correspondence you have twice given the unequivocal impression that your decision not to proceed with the Fire Authority's Statutory duty in respect of my Statutory Stage II Application was heard by, approved, and endorsed, by the Full Committee of the Fire Authority.

- *On the 20th June 2016(the day of the AGM)... "On behalf of the Fire Authority,";*
- *On the 6th July 2016... "I have been asked by the Combined Fire Authority."*

8.09. In this Part 2 meeting I assume that you advised the Full Committee that the advice you had received from Mr.Nolan(Clerk-Solicitor) and Mr.Harold(LFRS-Solicitor), supported by CFO Kenny, was that if the CFA was determined to knowingly follow this course of action, they would in doing so place the Fire Authority, and themselves individually, in direct conflict with the Statute law leading to a direct contravention of their Statutory duty?

8.10. Given these inconceivable circumstances, and because I had gravest doubts about the veracity of your statements, and given that previously I have indicated to you that my Statutory Stage II Application is my 'subject data' under the provisions of the 1998 Data Protection Act, I felt I needed to act to determine the facts of what actually took place in Part 2 of the AGM.

8.11. In the circumstances which appear to have arisen in these proceedings I gave you formal notice on the 5th August 2016 delivered by hand under 1998 Data

Protection Act which requires you to supply me with any and all documents arising from or prior to and during the submission and processing of my Application. I have yet to receive a receipt or acknowledgement?



9.00. Impeachment.

- 9.01. It is my fundamental belief that you and those who advise and serve under your leadership and Chairmanship, including your law 'officers' within the LFRS and the LCC, have treated my Statutory Stage II Application with dissimulation in a deliberately successful attempt to mislead and misinform the Fire Authority, of the true legal position in which you have embarrassingly placed them all both severally, and individually.
- 9.02. When my subject data is released to me after the Fire Authority have discharged its Statutory duty under the provisions of the 1998 Data Protection Act, should my suspicions of your criminal dissimulation prove to be true then it will be my intention to impeach you and those Councillors under your jurisdiction who have knowingly aided and abetted you in perverting the course of Justice.
- 9.03. Accordingly I, and others, will be duty bound to report such personal criminality to the LCC in the first instance, and failing it, the LCC Home Secretary as the Minister of State responsible for the Fire and Rescue Service, and to other relevant authorities, for example, the House of Commons Select Committee for Work and Pensions; the Pensions Regulator; and the Pensions and Local Government Ombudsmen; the Chief Constable, the list is not exhaustive.

10.00. Payment of the Correct Pension.

- 10.01. All I continue to seek is the proper payment of my rightful pension entitlement as prescribed by law, rather than accepting a convenient layman's misinterpretation in aid of cost cutting by means of which those injured in service with the LFRS have been retired without any Statutory compensation.
- 10.02. 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 questions:

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(aged 60), 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 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 gain.


Yours Sincerely,
F. M. G.  MIFireE.
Asst 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]
[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





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.

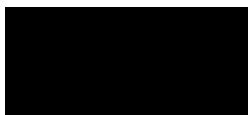
8. The Chairman of the LCFA CC Mr.F.DeMofetta response to his Statutory duty, once more avoiding the question, was to conclude that he would hold my Application 'in abeyance' whilst I placed my Stage II Complaint before the Chief Constable for reasons he fails to explain. In any event, this does not fulfil his Statutory duty nor does the Chief Constable have any role or Statutory duty in this IDRPs.
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 IDRPs 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 First name Title

Address

Postcode

Date of birth / / Telephone

Email address

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

Address

Postcode Telephone

Email

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 (please specify)

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

If yes, give details.

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.

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,

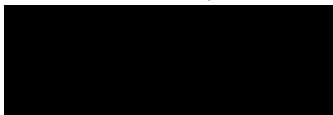
Herewith attached is my IDRP - Stage II Application for consideration by the LCFA Committee.

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 IDR 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.

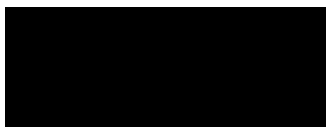
1. I assert, that those so engaged on behalf of the LCFA, knowingly abused the trust arising from their fiduciary relationship with me in that I was reliant upon their integrity and honesty to calculate and pay me the pensions prescribed by law for me.
2. They have abused their collective public offices 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.

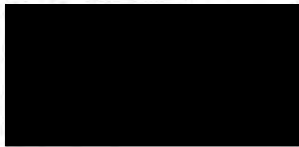
7. This Application has been sent to each Member of the Committee to each of whom notice is hereby given that should the de facto conspiracy to defraud *not be repudiated individually by the elected Members of the LCFA and my pensions be corrected with appropriate other compensation*, that I shall lay 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:

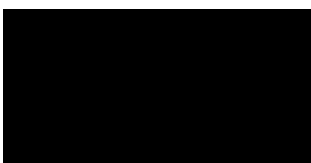
- Would you please be so kind as to let me know by what legal authority you have presumed to act ultra vires to avoid your Statutory duty which is to place my Stage II Application before the Full CFA committee for Statutory adjudication within the required Statutory time frame of two calendar months 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

Page 2 of 4

FG©2016

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:

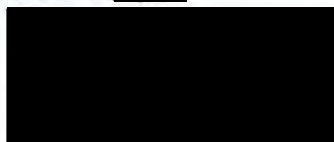
1998 Data Protection Act - Section 61 - Liability of Directors etc

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.
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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-

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

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.

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 $\text{£}37,500$ 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'.

John Merlin Coplestone Bruce

Life Member Inner Temple Bar.

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Chairman-Parliamentary Select Committee

Works & Pensions

Chairman-Rt Hon Frank Field MP, DL.
House of Commons
London
SW1A 0AA

My Ref: PB000417.

Fire Service Pensions - Scrutiny

Dear Mr. Field,

I am responding to your kind invitation to provide you with 'information' in respect of UK Fire Service pensions.

My information covers a 10 year period and of necessity I have presented it in five distinct Parts.

Fire Services Act 1947, was enacted not to take away common law rights to compensation, but to provide compensation for personal losses due to 'qualifying' injuries; for time served; for careers lost; and for actual injuries suffered.

The provision, as it concerns myself and many others both in Lancashire, and more widely, was set out in 1992 SI 192 with its companion guide the Home Office Commentary, not making law, but to promote the correct interpretation of the law for its lay pension administrators and its pensioners alike.

I was compelled to retire early in 1997 due to an earlier 'in service' injury. I was not made aware of the existence of the H.O. Commentary and I was just paid the basic pension due to any fit Firefighter completing his full service, or, choosing to leave early.

This does not compensate me for the loss of my future career, earnings, or injuries.

Having accidentally discovered this error some years later I complained to the Lancashire Combined Fire Authority (LCFA) but to no avail.

Undeterred I then referred my case to the lay person Ombudsman, at that time, a Mr. A. King (TPO). When the LFRS pension administrator was asked to account for this error, he simply lied in writing.

In his response the Scheme manager omitted and concealed the existence of the H.O. Commentary but quoted from, and misrepresented, the 2008 Commentary as though it was the relevant guide whilst knowing full well it was not.

The replacement 2006 Firefighters Pension Scheme with its 2008 Commentary avoids in law and does not provide the substantial benefits of the 1992 Statutory Instrument No:129 compensating provisions, and is only applicable to a 2006 or later retirement.

The 1992 H.O. Commentary gives, in more than one instance, consistent, and clear guidance in the formulae to calculate an ill health pension under Rule B3-3, broadly... *"Never more than 40/60ths of the APP, or what you could have earned by your compulsory retirement age"*.

My pension administrator found it convenient to confine all pension payments to *"Never more than 40/60ths"* whilst ignoring what, but for injury, I could have earned in my future remaining career. I have evidence that I could reasonably have looked forward to promotion to at least Assistant Chief Fire Officer.

Put simply my pension is being stolen with impunity. If one is retired injured, it diminishes one, which, added to this lower income, makes seeking legal redress impossible.

Sadly, I am neither unique nor a single example, but just one of many injured Firefighters, including the 17 FSVs (and Beneficiaries) I directly represent, required to retire early but paid at the basic pension rate instead of the enhanced compensating rate.

I would be very grateful to the Committee if it will find time to look into this travesty of justice and the arbitrary avoidance of the applicable legislation in order to cut costs, including legal costs, to even less than the common law provision intended by the Act; provisions which were meant to supplement our post service incomes.

Since realising the ramifications of what is actually happening and with the support of those I represent I started 'The Morning Bugler' website to help all those with Fire

Service pensions to understand the law. On average it gets over 1000 reader visits(not hits) per week, <http://www.themorningbugler.com/>

I intend to publish all that I have sent you but I would not like to publish anything which might compromise what you or the Committee might choose to do. Would you be so kind as to let me have your thoughts on this please?

In summary, I am very grateful to you for your help and trust that the Committee may rectify this long-standing injustice at the hands of those who have a fiduciary duty of care to us; those whom we trusted without question; but who have utterly betrayed that public trust.

You are a man of undeniable integrity and honesty who until this moment we trust. I hope and know that you will find me to be also.

Many of those who have been cheated have passed away and their Widows and Beneficiaries struggle economically on...it is not decent that that should be so.

Yours Sincerely,



Divisional Fire Officer (Rtd) Grad I Fire E.



Order
of

LSGCM

Oklahoma Medal of Honor
&

Excellent Firefighter

Exemplary Fire Service

Honorary Citizenship



Soviet Union

United Kingdom

Oklahoma USA

FIRE SERVICE PENSION SCHEMES – SCRUTINY

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Fire Service Pension Schemes – Scrutiny.

PART 1.00.

Prelude to the Law.

1.01. Lancashire Fire and Rescue Service(LFRS) disabled Fire Service Veterans(FSV), their Widows, and Beneficiaries are concerned by the long term systematic and systemic theft of compensatory pensions from them by their pension providing Fire Authority; an affliction apparently suffered by other UK Firefighters.

1.02. They were compulsorily retired and invalidated out of Service having received a no-fault injury and loss of career but have not been paid what they are fairly due in Statute law; being only paid what they would have received had they completed their service without injury, or had chosen to retire early, neither of which they did.

1.03. To enable this corporate fraud laymen including the LFRS Pension Scheme manager, not only ignored the law (1992 SI No:129), but avoided their duty to disabled FSVs, Widows, and Beneficiaries by knowingly suppressing the existence of the Home Office Commentary, which is meant as guidance for Firefighters-their representatives-and these so called 'pension practitioners'.

1.04. Indeed, the administrators in all this, deliberately concealed the guide and lied repeatedly, in writing, to mislead the now retired layman Pension Ombudsman Mr.A.King.

1.05. A H.O.Commentary which makes it clear that the Statutory Instrument was to be interpreted in line with common law; compensatory pensions which are to be paid on 'qualifying' injuries which cause early compulsory retirements and loss of careers.

1.06. The legal point is not complicated. To cut pension costs, these lay pension practitioners simply decided that they would take the word "is" to mean the same as "with reference to" to avoid payment under Rule 3 (5) of the Statutory Instrument which specifies by formulae, the amount of disability/compensatory pension to be paid; the provision of which is the purpose of this section of the Rules.

1.07. To the Man on the Clapham omnibus the word 'is' may be taken to mean the same thing as "in relation to". Yet when both occur in the same section of legislation and it is then taken to mean the same thing, *it avoids a provision of law.*

Clearly "in relation to" cannot be taken to mean "is" in law. It is the presumption at law that every word used in legislation is given a meaning.

1.08. The questions all this raises will simply not go away, until addressed publicly.

1.09. Such is the level of criminality involved in supporting their position, '*the material of significance*' as The Pension Regulator(TPR) puts it, that Lancashire County Council(LCC) and LFRS pension management staffs routinely incorporate these wrong

practices, which have become institutionalised, under the direction and control of their delegated Pension Scheme manager Mr. R. Warren; during which the following habitually occurs:

- Plain dishonesty coupled with expected mendacity;
- Obfuscation, deliberate delay, simple stonewalling, and dismissively ignoring questions concerning Scheme Members' pensions rights and entitlements;
- Non-confirmation or recording of routine pension information supplied to the Scheme manager by Members;
- Accurate information about individual DWP benefits and Scheme administration not recorded and held in individual Scheme Members' records;
- In deliberate breach of the applicable laws by failing to promptly release Personal Record Files(PRF) when sought by Scheme Members;
- Appropriate essential Members' records not being routinely audited or maintained;
- Inadequate, irregular, or non-robust internal audit controls of the Scheme;
- Scheme assets not being safeguarded;
- The routine and institutionalised covering up of poor governance by maladministration;
- The intended deliberate fraud of individual Scheme Members by malfeasance;
- Acting wilfully, deliberately, and knowingly in contravention of the law;
- Failing under the Local Government Superannuation Regulations-Scheme of Delegation S5.16e-to comply with the *specific requirement for an annual review of the payee status and/or monthly liability audit*;
- Knowingly, in direct breach of Statutory duty, to fail to report all this pension Scheme maladministration to The Pensions Regulator.

1.10. The essential part of the reason d'être for the existence of the Firemen's Pension Scheme Order 1992 Statutory Instrument 129 in the matter of Rule B3 ill-health/injury pensions is summarised as follows ...

“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.”.

Mr John Merlin Copplestone Bruce-Barrister-Life Member Inner Temple Bar.

The Law-The Opposing Legal Forces.

1.11. Two Barrister, one a ‘Silk’, were invited to give their pro bono Opinions on the issue of whether or not the correct pensions were being paid to disabled FSVs. Each was posed the same Question of Law by FSV-PPB:

“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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Fire Service Pension Schemes - Scrutiny.

PART 2.00.

Fire Authorities and Pensions.

- 2.01. There are 53 Fire Authorities(FRS), including devolved authorities, in the UK employing 43,000 pension accruing Firefighters all with various Firefighters Pension Schemes.
In England there are 46 Fire Authorities;
- 2.02. In 2013 there were approximately 40,000 Fire Service pensions in payment to FSVs and/or their Beneficiaries;
- 2.03. The Firefighters Pension Schemes with an annual pension expenditure of £700+million were formerly administered by the DCLG(currently the Home Office) by means of 4 civil servants forming the Firefighters Pension Team(FPT) who also sat with GAD(Government Actuary Department) representing the Minister on the Firefighters Pension Committee(FPC) which has a representative role with a membership of 21 stakeholders;
- 2.04. The FPT denies that it has a trustees' role but it issues written governance guidance notes, pension directives, and confidential comments to the FRS, the latter which FSVs are not privy to;
- 2.05. The 'spotlighted' Fire Service pension Schemes are those administered by the London Fire Brigade(LFB) and the Lancashire Fire and Rescue Service(LFRS).
- 2.06. The actual Scheme for particular scrutiny is the 1992 Scheme encapsulated in Statutory Instrument 1992 No. 129 'The Firemen's Pension Scheme Order 1992' (9th March). Confusingly there are various hybrid condensed editions of this SI and other related documents in National Archives but all *originals* are available for download from www.themorningbugler.com website;
- 2.07. The pensions for consideration are found under:
- Rule B1 Ordinary-Time served(30 years), or voluntary retirement;
 - Rule B3 ill-health(compulsory retirement-compensating);
 - Rule B4 Injury (compulsory retirement-compensating-qualifying injury in service).

Local Pensions Partnership.

- 2.08. In 2016 the Local Pensions Partnership(LPP) was formed from an amalgamation of The London Pension Fund Authority(LPFA) and the Lancashire County Council(LCC) with an investment valuation of £1.8Billion, administering to 550,000 pensioners;

- 2.09. It seems there is only one person on the LPP executive boards, Ms.S.Bridgeland, who as an actuary may, or may not have, 'hands on' local pension provision administration or local fund management experience; there are no other individual declarations of formal pension management qualifications within the executive.
- 2.10. The LCC Director on the LPP Board is County Councillor A. Schofield(Con)-who has no pension qualifications or knowledge of pensions in spite of sitting on the LCC Pension Fund Administration Sub-Committee which surprisingly only meets once per year;
- 2.11. LPP in its investment portfolio makes no specific provision for pensioner oversight of *the FSV pensioners' own investment* in the LPP nor for independent annual scrutiny/accountability/report back of the success or otherwise of actual pension provision delivery to its base 'investors', the FSV pensioners;
- 2.12. The LPP incorporates the LFPA(LFB) and the LCC(LFRS):
- The LFB has 8,500+ FSV-Pensioners & Beneficiaries;
 - The LFRS has 2,350+ FSV Pensioners & Beneficiaries;

A grand total of 11,000 +/- FSVs and Beneficiaries which is approximately 25% of the paid out FSVs and Beneficiaries in England in just 2 of the 46 Fire Authorities;

- 2.13. The day-to-day management of the LFB Scheme is vested in the Director of Finance & Contractual Service Ms. S. Budden who came as an unqualified clerk from Norfolk, since then she has acquired no discernable pension management qualifications;
- 2.14. The LFB knowingly operates an in-house hybrid IDR Procedure (contrary to the Pensions Act 1995(as amended)) which unlawfully allows the LFB to determine both Stages of the Statutory and FS nationally agreed IDR. The second Stage must by law be placed before Elected Members. This surreptitious action is a denial of both natural and lawful justice and hundreds, if not thousands, of London IDR applicants have suffered miscarriages of justice under this regime;
- 2.15. The day-to-day management of the LCC Scheme is vested in the Head of Pensions Mrs D. Lister a former clerk from BAE Systems. She stated on Oath in Court in 2013 she has "*no pension management qualifications*" of any description;
- 2.16. The LCC-Mrs Lister-administers over 200 individual LA schemes with in total 120,000 pensioners including the 'Blue light' services with approximately 70 staff. *Not a single member of staff or 'manager', have a single qualification by*

examination in pension management, or even in basic audit skills, between them.
The Deputy Head Ms.J.Wisdom claims a 'degree', but that is a false claim;

- 2.17. The LFRS Firefighters Pension Fund contracted to the LCC includes the Chief Fire Officer Mr.C.Kenny QFSM; the delegated Scheme manager Mr.R.Warren; the LFRS finance manager Mr. K.Mattinson; and the local Pension Board none of whom have a pension qualification and scant, if any, pension knowledge;
- 2.18. The UK Fire Service multi-million £pound pension schemes are on a daily basis controlled, 'managed' and administered by clerks or politicians who almost without exception do not have a single nationally recognised Pension provider or Pension Fund financial management qualification, by examination?
- 2.19. Amended pension legislation has not been proposed nor drafted by the Home Office FPT or The Pensions Regulator which makes it mandatory for all those who engaged in, manage, or control expensive pension schemes, including the Fire Service, be required by law to hold *by examination* a nationally recognised sliding scale of qualifications in audit, actuarial skills, and pension law?
- 2.20. Given the recent history of BHS this LPP is a recipe for disaster in waiting for individual FSV pensioners savings and their pension funds in the future.



Fire Service Pension Schemes - Scrutiny.

PART 3.00.

Pension Schemes-Performance Indicators.

3.01. In 2005 all Fire Authorities were instructed by the DCLG to institute a new Firefighters Pension Account, reasons for which seem obscure;

3.02. The Audit Commission(AC) incorporating the National Fraud Initiative(NFI) reports on all Fire Authorities every two years in a data matching exercise with other agencies particularly the DWP.

For pension purposes the two sample Fire Authorities used are London and Lancashire:

- The LFB in its report of 2012 investigating its own pension administration highlights the writing off, of £3.1million unenforceable 'overpayments' of 1906 pensions due to its own maladministration/malfeasance;
- The LFB *unlawfully deducted* DWP Retirement Allowances from hundreds of disabled FSVs to the value of £0.7 million which has now been repaid on the advice of two senior Barristers it employed;
- This was a small portion of the £6.1million other underpayments(but not disability) paid out to FSVs, without interest, which is typical of the dishonourable attitude of all Fire Authorities to those disabled FSVs, widows, and orphaned beneficiaries when the Authority are found to be in error;
- When the error is on the part of the Veteran(rarely), the pensioner is forced to pay commercial rates of interest against the bullying lifeline threat of pension stoppage;

3.03. The AC/NFI reported in 2012 on the LCC/LFRS:

- The LCC Pensions Services had 'achieved' 2215 Fire Service pension payment errors which involved, it appeared, the paying of 1007 deceased pension holders?
- This report identified a further 762 as former employees who retired and then were taken back into employment;
- This left an unaccounted for balance of 446 payees which was neither stated; accounted for; nor detailed in this report;
- The total value of 'overpayments' was reported as £98,436 for 31 payees which amounts to £3175.35 per payee though it is not clear what the total accrued loss was including the amount paid to the 415 unaccounted for others on this 'balance' sheet;

- In 2014 the AC reported an *improvement* with errors down to 1900+.
- There has never been an accounting for monies recovered, if at all;

Failure rates of 1.85%+ are commonly regarded as pension maladministration.

- 3.04. On Wednesday the 13th August 2014 the Essex Gazette headlined an article reporting that the Essex County Fire & Rescue Service(ECFRS) had discovered a 'black hole' in its pension fund amounting to a deficit of £15.0 million which had been accumulating unnoticed since 2006;
- 3.05. The Staffordshire FRS and Cheshire FRS found themselves in a similar predicament with undisclosed figures of their 'black holes', questions about which when posed, remain unanswered;
- 3.06. The DCLG Firefighters Pension Team(FPT) and TPR failed to pick up these published accruing failures of pension scheme management or investigate them when these FAs were directly under their pension accountability control.
- 3.07. Nor did Fire Authorities, in failing their Statutory duty, report this maladministration to the Pensions Regulator;
- 3.08. Currently there is not a single trained pension actuary in any of the 53 Fire & Rescue Service Authorities pension 'management' teams in the entire UK, nor in the DCLG/Home Office-FPT.

Questions of Probity- Nationally.

- 3.09. Fact-Why is it necessary for Fire Authorities to have a secret intranet called 'Fire Finance Network' over which they share information detrimental to public interest, accounting to FSV pensioners, their Pension Funds, and the taxpayers. For example, complicitly defrauding the taxpayers by the retention a 20% overpayment from the Treasury in an error of payment of FRS pension fund reimbursement claims?
- 3.10. Fact-Why is it that UK wide Firefighter Scheme managers obstinately refuse to recognise that overpayments and underpayments of Fire Service Pensions are symptomatic, by the definition of the current Pensions Ombudsman, of failed pension scheme management? A failure called maladministration, which on knee jerk reaction cover-up, becomes malfeasance.
- 3.11. The DCLG FPT,(in released secret documents), are seen to be not only biased against FSV pensioners interests, but complicit with the LFRS(and no doubt other Authorities) in obstructing, rejecting, and ignoring perfectly reasonable pension queries from FSVs' about why they were failing to engage in pension dispute resolution; a function of their controlling Act which requires them to?

- 3.12. The DCLG FPT in complicity with Fire Authorities, supported unwittingly by changing governments, engaged in the wilful defrauding of FSVs and their Beneficiaries by the underpayment of commutations during the period 1998-2006.
- 3.13. Those involved possessed, and covered up the knowledge of their joint failure, to request that GAD(Government Actuary Department) update their commutation valuations tables which led to an unnecessary Parliamentary Early Day Motion and the waste of Parliamentary time; unnecessary expensive litigation for the tax payer; involving the unnecessary misuse of Pensions Ombudsman's resources all of which concluded in an unfair arbitrary cut off point of restitution insisted on as 1998.
- 3.14. The DCLG FPT failed to identify, and take immediate corrective action by informing the TPR, who they are required to inform by Statute law, of an anomalous pension situation, whereby Fire Service personnel who had served between the ages of 18-20,(colloquially known as the 18-20 Club), who had made non-accruing pension scheme contributions which the DCLG/Fire Authorities had a duty to repay, leading to unnecessary procrastination by the FPT, and unnecessary and taxpayer paid expensive litigation, when they ought to have voluntarily returned these pension contributions with compound interest?

N.B. On two occasions now, commutations and the 18-20 'Club' the DCLG have failed to pay compound interest on the sums involved which is normal Court practice. This was a failure by the DCLG and the FBU and another breach of trust and good faith with its FSV pensioners.

- 3.15. Why have/are Fire Authorities wastefully using expensive outside contractors, e.g., Capita, to act punitively on pension payment 'fishing trips' by sending DWP certified disabled FSVs for pension injury medical reviews throughout the UK?
- 3.16. Why did Mr Eric Pickles MP Cabinet Minister and Minister of State for the DCLG, then 'Anti-corruption Czar', criticise Fire Chiefs for *double dipping* their pensions and then allow his own Fire Advisor(ex LFRS CFO Holland the current government advisor) to *triple dip* his pensions?

N.B. The Applicant, Mr.P.Holland, for the vacant post of Fire Advisor failed to declare on his application that he had a criminal record for lewd behaviour in a public place which he also failed to declare to his appointing Select Committee ?

- 3.17. The ever changing Ministers of State at the DCLG, including the latest in April this year, Rt.Hon Mr.S.Javid MP, have failed to grant repeated requests for a Ministerial Enquiry into pension maladministration in the UK Fire Service; requests supported with the quoted examples of the LFB and the LFRS; repeated requests never referred to the TPR, or the Parliamentary Select Committee on Work and Pensions?

Questions of Probity- Lancashire.

- 3.18. In January 2008 CC.R.Wilkinson(Lab),Chair of the LCFA and a retired Firefighter who initiated and directed the September 2007 LFRS Pension Review into its own maladministration of overpayments and underpayments denied that he had failed to 'declare an interest' in that he was receiving a Rule B3 ill-health medical pension which he also denied, but was. The consensus view was that he 'shaped' the enquiry to avoid inquiring into his type of pension. Ironically it may well be that he is also receiving the wrong pension;
- 3.19. In 2008 the LCFA in-house solicitor, Mr.A.Harold was also found to be in a conflict of interest by being a Salford City Ward Councillor with special income of £15,000.0 pa. He was rightly accused of bullying a parking attendant for improper use of disabled parking spaces at the Town Hall(Manchester Evening News);
- 3.20. On 19th January 2010 a complaint of Misconduct in Public Office of CC Mr.D.O'Toole(Con) Chair of the LCFA, based on breaches of the LCFA Code of Conduct was laid before the LCFA. The 'defence', a routine response, was to attempt to issue proceedings for defamation contrary to the 'Derbyshire Principle';
- 3.21. It is alleged that by the 18th February 2010, four LCFA councillors, who remained nameless throughout, had colluded to issue a Decision Notice that 'No further Action' should be taken;
- 3.22. This 'decision' was appealed to the sole 'independent' Public Complaints Monitor Ms. Hilary Banks- Chairman of the LCFA Standards Appeal Committee-a member of the Crown Prosecution Service-who with an unlawful and unconstitutional 'committee' white washed the Appeal;
- 3.23. By the 6th April 2010 Ms.Banks, though requested, failed to publish the date; time; and composition of this Appeal Sub-Committee; who attended; politicians present; where the meeting took place; and whether or not an Agenda was produced and Minutes taken which she was bound to do under the ' Application of the Local Government Act 1972 s8;
- 3.24. In November 2011 with the advent of the Localism Act 2011 it was necessary for the LCFA to re-appoint the post of Public Complaints Monitor. Ms. Banks, in contravention of the new Act, because she was Statute barred from re-appointment for holding the post prior to the enactment was proposed as the single 'independent' person monitoring Public complaints on the recommendation of Mr. M.Winterbottom(Solicitor) Clerk to the LCFA, and reappointed by CC D.O'Toole to the stipend paying post of £5000.0.
- 3.25. The Law states otherwise:

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

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

The definition of ‘co-opted’ lies elsewhere in the Act. That being so Mrs. Banks has been unlawfully appointed by the LCFA , and remains so.

- 3.26. On the 12th April 2012 the LCC under the FOIAAct released 80 pages of CC.D.O’Toole’s LCC mileage and expenses claims in which he over claimed the actual distances, thus inflating his claims to the value of £40,000.0+/- . A report by disabled FSVs was made to the Chief Constable. Following an 16 month investigation by DS 1620 M.Pearson a report was passed to the CPS. Indeed, this Sergeant bizarrely concluded that the taxpayers owed the CC money:

The question remains did CC O’Toole charge the Taxpayer two separate journeys from home address when attending County Hall and then LFRS SHQ(3miles apart) on the same day?

The CPS concluded ‘there was no realistic prospect of a conviction and that no charges should be brought’; not, ‘no case to answer’.

Currently CC O’Toole, still a member of the LCFA, refuses, as does former CFO Holland CBE the current government fire advisor, to release their LFRS mileage and expenses claims for the periods of their appointments;

N.B. For reader continuity - The 2 years which followed involved a County Court Hearing and repeated attempts, without success, to have the LFRS reappraise disabled FSVs pensions in the light of that Court Hearing.

- 3.27. In 2015 why did the newly ‘appointed’ Clerk to the LCFA, a solicitor, deliberately ignore and fail to answer a single one of the 10 public questions posed to him on the unlawful manner and odd method of his a recent ‘appointment’ to a public office which disenfranchised other potential applicants ?
- 3.28. Why did the same clerk, a practising solicitor and an ‘officer’ of the Courts, who reports on pension disputes to the CFA, find it necessary to regularly mislead, groom, and manipulate CFA Councillors views by smearing disabled FSV complainants in attempting to defeat justice and the law; views which they carried forward to the local LCC/LFRS Pension Boards who adjudicate on FSVs, IDRPs Stage II Complaints and which they are required to address with a ‘fresh mind’?
- 3.29. Why did the this clerk find it necessary after the public reporting of his activities on a hard core gay pornographic website in ‘The Morning Bugler’ which raised questions about his suitability for public office, did he lay false information before the Lancashire Constabulary, in an attempt to intimidate the Editor, a disabled

FSV pensioner and the pensioners dispute group leader, into silence by encouraging the late night visitations of two separate sets of two constables to his home address? A gross abuse of state power;

- 3.30. The Chair of the LCFA CC.F.DeMolfetta(Lab), and the Chief Fire Officer C. Kenny QFSM, appeared to 'reward' the Data Protection manager Mr.L.Gardiner, involved in perpetual stonewalling over FOIA and Data Protection Act pension information requests, by making no attempt to recover £40,000.0+/- of fraudulent mileage claims by this clerk when his fraudulence was 'discovered' and he resigned. But who soon after took up a similar post with Cheshire Fire & Rescue Service?
- 3.31. Why did the same Chair of the LCFA authorise the payment of 2 years' salary (£200,000+/-) to the Deputy Pension Scheme manager who mysteriously 'disappeared' but who stood concurrently charged with a racism hate crime, and the bullying and abuse of his own LFRS HQ pension staff, and including, as their published statements confirm, disabled FSV pensioners and their families accused of alleged 'overpayments'?
- 3.32. Why did the finance manager of the LFRS Mr.K.Mattinson, responsible for the Firefighters Pension Fund, assist the Chair of the LCFA and the Chief Fire Officer by hiding the above payments/deficiencies under a catch all statement in the LFRS annual accounts?
- 3.33. Why was it necessary for the Clerk to the LCFA Mr.M.Nolan on Monday 15th February 2016 to prepare and submit a report in secret to Elected Members under Part II Public excluded protection in which he declared that following his 'investigation'(in self-examination) into disabled FSV~RRB comprehensive letter of Complaint to the Chair of the CFA on 5th November 2015 he concluded that the Complaint had 'no merit'?
- 3.34. A conclusion he failed to communicate to the Complainant but in which pension dispute dissenting disabled FSVs and their Beneficiaries are named and personally defamed, without any opportunity of rebuttal, whilst still failing to address their pension underpayment issues?

A Report which it required a FOIA request to the LCC to obtain almost 12 months later.
- 3.35. Why was it necessary for the Clerk to the CFA to initiate on Monday 20th June 2016 an LFRS 'FORMAL POLICY ON DEALING WITH HABITUAL AND VEXATIOUS COMPLAINTS' over and above that which is already provided for in primary legislation within the FOI Act?
- 3.36. A policy whose sole use and aim by democratically Elected Members is intended to muzzle, remove, and obstruct the legitimate civil rights of disabled FSVs, their Widows and Beneficiaries from pursuing their lawful enquiries regarding their Statutory pensions?

- 3.37. Why was it necessary , unsolicited, to send both these CFA Minutes to the civil servants of various governmental agencies?
- 3.38. The answers to this Question concerning a CFA approved Minuted secret report and the labelling of decent disabled FSVs and their families as 'vexatious' by the use a newly published CFA Policy on Vexation is very simple. In the period of almost a year from the report on the 15th February 2016 until its enforced release under FOIA via the LCC this report coupled with the newly published policy on vexation was repeatedly used to 'poison the Well of Truth' at those agencies to which the disabled FSVS were likely to have recourse to for Justice, namely, the Home Office; the TPR; the TPAS;the TPO; and if not already done so to the Chairman and Members of the Select Committee of Work and Pension.
- 3.39. All which is an attack and an affront on Democracy and its citizens in the UK.
- 3.40. Why have the two monitoring officers of the LCC - Mr Ian Young(solicitor)- and the LFRS- Mr.M.Nolan (Solicitor) failed to initiate the required Statutory duty of investigation when CC F.DeMolfetta Chair of the CFA and a Lancashire County Councillor was reported for breaches of the LCC Code of Conduct amounting to Misconduct in Public Office?
Two political administrations-Labour Coalition and Conservatives- in succession have failed to carry out their Statutory duty.
- 3.41. Why is the current Conservative Leader of the LCC, CC G. Driver CBE ,the ultimate head of pension schemes management in Lancashire, still in active office having been arrested in a fraud investigation-Operation Sheridan- on holding charges of suspicion of conspiracy to pervert the course of justice and intimidation of witnesses, and who remains on bail for alleged improprieties in connection with BT Connect contracts.
- 3.42. Lancashire Police and Crime Commissioner Mr.C.Grunshaw has been repeatedly circulated about this criminality at the LCC and the LFRS and repeatedly invited to engage but has failed to do so?



Fire Service Pension Schemes - Scrutiny.

PART 4.00.

Pension Disputes-Nationwide.

- 4.01. The primary dispute is that hundreds of Lancashire FSVs and their Beneficiaries are, and have for decades, been paid the wrong pensions;
- 4.02. Namely, those FSVs and/or their Beneficiaries who have been compulsorily retired under Rules B3/Rule B4 (Ill-health/injury) who are being underpaid a Rule B1-Ordinary (time served/voluntary retirement) pension which is prohibited in this Rule B1 by law if compulsorily retired under Rules B3/B4;
- 4.03. It is speculated on strong anecdotal evidence that *thousands of similar cases exist in the UK Fire Service as a whole*;
- 4.04. There are also other types of disputes not only in Lancashire where other Fire Authorities invent their own unlawful procedures choosing arbitrarily to either ignore the existing law or to stonewall pension complainants. Actions/policies which have created a clear pattern of complicit policies of obfuscation, deceit, and/or fraud (See 3.13.-3.14).

Pension Dispute-Lancashire.

- 4.05. This dispute originated in Lancashire in November 2006 when disabled FSV-DW (a terminally ill former Station Commander compulsorily medically discharged) reported to his pension providers LCC/LFRS and the DWP his concerns of potential DWP overpayments to his carer his wife because of her 60th birthday;
- 4.06. Later in early May 2007 without prelude he was informed in writing by the LCC that he owed the LFRS £30,000.0, in 'overpayments' because it was alleged he had failed to inform the LFRS of the receipt of his DWP benefits which he denied producing written official private records of proof that he had;
- 4.07. Given his wife's untenable position in the event of his impending death under advice from his solicitor he immediately paid back half using an unsecured loan and then died;
- 4.08. His Widow was left in an entirely precarious position about which the Chief Fire Officer Holland (the current government Fire Advisor) in a letter to his Widow 'explained' he could do nothing because the LFRS had 'lost' her husband's Personal Records File (PRF) containing his pension files which were 'lost – found – finally lost';

N.B. It is worthy of note that in UK Fire Service history this was the first occasion *when a Chief Fire Officer was banned from attending a full formal Service funeral by a Widow*;

- 4.09. Later a study of the Widow's private pension records of her husband revealed that he was being underpaid the wrong pension in any case;
- 4.10. Much later the LFRS Pension Scheme manager Mr. R.Warren was to write that his treatment of FSV-DW had been 'too generous'?
- 4.11. A subsequent LFRS pension fund 'review' including Audit Commission statistics identified over 2382 pension errors including the payment of pensions to 1007 who were also certified as dead; £2million+ losses of alleged 167+/- overpayments(Largest-£65,000.0) and underpayments(Largest-£43,000.0), whilst ignoring the maladministration and the Limitations Act 1980, the LFRs demanded immediate restitution with the threat of pension suspensions;

The accurate amounts missing from the Pension Fund remain unpublished by the LFRS but are available.

Questions?

- 4.12. The LCC/LFRS during their so-called Pension Review unlawfully and secretly obtained and used disabled FSVs individual DWP records without the knowledge or permission of the DWP and without the required written authority of the FSVs involved?
- 4.13. The LCC/LFRS failed entirely to treat their FSV pensioners and ultimately their Beneficiaries with dignified pastoral care and respect, choosing instead to create and adopt a policy contained in secret published documents of the LFRS delegated Firefighters Pension Scheme manager Mr.R.Warren who stated... *"I have provided the guiding principles."*, supported by his political masters, who sent dissenting FSVs and their Beneficiaries with disputed pension miscalculations down what he described in his emails as the ... "Hardship Route".
- 4.14. The same LFRS Pension Scheme manager habitually and perpetually engaged in mendacity, wilfully obstruction, then 'finding' and 'losing' IDRPs pension applications, and by engaging in subterfuges, too numerous to list, which included the deliberate supplying of the wrong legal authority to the Pensions Ombudsman in a disabled FSVs pension Complaint in order to repeatedly, and successfully, mislead the Ombudsman's 'investigators' into dismissing the Complaint?
- 4.15. Such was it that during the only pension review ever carried out in the history of Lancashire Fire Service that a large number of 'more equal than others' pensioners received 'get out of jail free' cards(no repayments of alleged 'overpayments') to the detriment of their colleagues and beneficiaries who did have to repay under duress or lose their pensions?
- 4.16. Such was it that in one curious case a disabled FSV-BB had his alleged debt of £3008.0 'overpayment' written off by the Pension Scheme manager oddly and

uniquely conceding after the exchange of just 2 letters that his pension had suffered “poor administration”.

- 4.17. Such was it that the LCC/LFRS repeatedly ignored or rejected requests to investigate and correct underpayments of incorrect FSVs pensions, or at least put it to the test by supplying a supporting legal Opinion of their position when repeatedly asked to do so?
- 4.18. Such was the LFRS(and other Fire Authorities) self-enrichment achieved by the underpayment of FS Pensions that it begged the question was this just a catalogue of errors by unqualified clerks or plain institutionalised and complicit wilful fraud to enhance their pension funds?
- 4.19. Such is it that LCC/LFRS Elected Members failed their collective and individual Statutory duty, which it is to report pension maladministration and malfeasant matters of ‘*material of significance*’ under the Pensions Regulator’s Code of Practice, No. 14 ‘Governance and administration of public service pension schemes’(April 2015)), which constituted material breaches of the relevant provisions of the Pensions Act 2004 which required them *as the persons responsible*, without delay, to *fulfil their Statutory duty* which was to investigate and report evidence of malpractice directly to The Pensions Regulator, so that FSVs Complaints could be fully and impartially investigated?
- 4.20. The TPR, who declare their unhappiness with pension scheme managers, who have had LFRS maladministration and malfeasance regularly reported to them including two written reports “*of material significance*” submitted to them by FSV-RRB of pension malfeasance simply failed to engage and investigate his concerns.

Seeking PRF Answers.

- 4.21. When FSVs sought answers to rebut claims of alleged ‘overpayments’ by seeking to compute their own pensions based on the official records held on them by the LFRS in their PRFs the LFRS refused and stonewalled for 6 years during which several FSVs died leaving their Widows and Beneficiaries income in distress.

More Questions?

- 4.22. Why did it take two individual disabled FSVs 6 years and two Court Orders, privately funded, to finally acquire copies of their own PRFs which contained no continuous pension records held on their files, just a pension compulsory discharge document, which enabled them to compute that they were actually being paid the wrong pensions?

4.23. Why did the Information Commissioner(ICO), in sheer frustration, finally sent 3 inspectors to the LFRS HQ to verify the existence of, and to validate the filing system, confirming that the PRFs were subject to lawful release under the Data Protection Act 1998 and, following a further refusal to release by stonewalling again, did the ICO state he regarded the LFRS refusal as Contempt of Court and intended to issue Proceedings against them, before the PRFs were finally released?



Fire Service Pension Schemes - Scrutiny.

PART 5.00.

Pension Disputes-Personal Examples.

5.01. FSV-'Billy' Milne:

- Retired from full service as a senior ranking officer with the Strathclyde Fire and Rescue Service, aged 50, in 2005;
- He chose to take a tax-free lump sum of £111,038.0 plus a pension of £22,207.0 pa; then with evidence calculated that his commutation was wrong though his Fire Authority rejected his complaints and obstructed his rights to restitution for 8 years;
- FSV-BM supported by Mr. J.McDonnell MP, the FBU, and with a cross party Early Day Motion and a positive Determination by Pension Ombudsman was proven right;
- A re-calculation of his commutation has resulted in him receiving an additional £25,000.0 including backdated interest-which ought to have been 8% compound interest- but was not;
- It took 8 long years to get his complaint to this point in his determination to attain fair play and justice; he is happy to report he is still alive.
- Neither he nor his wife and family ever received a single pastoral visit.

5.02. Disabled FSV-WH:

- Following a serious injury at an incident disabled FSV-WH(deceased) received 4 units of contaminated blood(Hepatitis B) from a US prison; he was compulsorily discharged by the LFRS;
- He wasted 4 years in declining health resolutely harrying the Information Commissioner until finally in frustration taking the matter to Court at his own expense of £2000 to get his PRF;
- His PRF was ultimately, and reluctantly, delivered to him whilst he was terminally ill, though during the many court appearances this was not a consideration by either the Judiciary or the LFRS in-house solicitor Mr.A. Harold;
- His PRF confirmed that he was not being paid the correct pension;
- He remained resolute in his pursuit of fair play and justice until the day he passed away; "keep the flag flying", he said.
- The status of his Widow's correct pension(her Widow's half) remains undetermined almost another 3 years on after his death;

- Neither his Widow nor FSV-WH ever received a single pastoral visit.

N.B. For a second time a Lancashire CFO was banned from a full Fire Service funeral.

5.03. Disabled FSV-RT:

- A former Royal Marine was compulsorily retired following an accumulating series of in-service injuries for which in addition he received lawful DWP benefits which he repeatedly informed his pension provider the London Fire Brigade of, in writing;
- In 2010 he was informed that he had been overpaid £120,000.0 because of his alleged failure to inform the LFB of the receipt of legitimate DWP benefits. The LFB alleged that he had 'doctored' copies of his own personal records which he had subsequently sent to them confirming that they had been informed;
- The LFB bullied and threatened litigation which he rebutted and took issue with using his own solicitor and then when money ran out an advisor. The LFB made him a 'special offer' that they would 'settle' for £19,000.0 which he rejected out of hand because he continued to protest his innocence;
- Subsequently solely representing himself he brought the issue to the point whereby the LFB finally stated miserably, 'without prejudice', that it would no longer proceed against him withdrawing their litigation threats and stating(twice) that they would no longer, or in the future, seek to recover any monies from him or his estate;
- Still aggrieved FSV-RT initiated IDRPs Stage I on his original dispute. His Complaint was dismissed by the LFB who decided, unsolicited, to re-run his Stage 1 (there are no legal provisions or precedents for this) following his repeated Complaint (on behalf of other FSVs) that the IDRPs being used was an unlawful hybrid LFB version of the law and was not legally constituted;
- The re-run Stage I rejected all his Complaints so he instituted IDRPs Stage II stressing the need for Stage II to be placed before independent Elected Members of the LFB; the LFB refused to do so and his Stage II Complaint was also rejected;
- Presently FSV-RT is preparing a Complaint to the Pensions Ombudsman on his original dispute enhanced by a further Complaint that hundreds of LFB FSVs, of which he is one, have been disenfranchised and suffered miscarriages of justice by the LFB failure to comply with the provisions of the IDRPs of the Pensions Act 1995 and the failure of the LFB to comply with a DCLG Fire Service Circular 1/2009 (IDRP) and a National IDRPs agreement of the Home Office Firefighters' Pension Committee to which it was a signatory;
- Currently, because of all the stress and worry FSV-RT now suffers from diabetes.

5.04. Disabled FSV-PPB:

- In early service with Belfast City Fire Brigade in 1964 disabled FSV-PPB was caught in an explosion which damaged his hearing;
- Later after 35.5(33.5 pensionable) years' service due to deteriorated hearing(monitored annually by LFRS medicals) he was compulsorily discharged in 1997;
- In 2008 following a pension scheme 'review' in 2007 he was informed that he had been overpaid £19,000.0 because of his failure to inform the LFB of the receipt of a single DWP benefit;
- He rejected this statement and in response produced a contemporaneous document which confirmed that the LFRS had been informed;
- The LFRS continued to deny that they had been informed even though they had disabled FSV-PPB's note in his unreleased PRF which he required a Court Order to obtain;
- The LFRS issued proceedings against FSV-PPB in the County Court but no other FSVs in this general dispute in a similar situation were ever issued with proceedings; one of whom FSV-DA had a similar alleged overpayment of £65,000.0 for which he regrets making an 'accommodation';
- Why was it necessary in Court before a Circuit Court Judge in January 2013, in a Litigant-in-Person defended case, for the Firefighters Pension Scheme manager, in complicity with the LCC Head of Pensions, and the LFRS solicitor to suborn their principle witness under oath in the Witness box?
- The Judge failed to declare a mistrial and eventually the matter was reported to the Lord Chancellor and the Attorney General who took no action; this matter is not concluded;
- The Judge found against the Defendant which with costs amounted to £64,000.0.
- Later oddly through the medium of the LFRS Pension Scheme manager the Judge sent disabled FSV-PPB a coded warning not to proceed with an exposé on him in 'The Morning Bugler'; this matter is still not concluded either;
- Then disabled FSV-PPB's pro bono Barrister determined that he was being paid the wrong pensions since its inception in 1997; the LFRS rejected that statement;
- He instituted IDRPs Stage I asking the same question why was he being paid the wrong pension which the LFRS rejected;
- He instituted IDRPs Stage II which the Pension Scheme manager alleged had been placed before Elected Members of the LCF Authority, a rejection signed off by the Chairman of the LCFA but subsequent enquiries with County Councillors

to whom Stage II had allegedly been presented revealed that no Stage II proceedings had been place before them for adjudication;

- Disabled FSV-PPB remains resolutely determined to seek personal and collective fair pay and Justice for all and to call for transparent public accounting;
- Disabled FSV-PPB has never received a single pastoral visit though his wife, a former Fire Officer in her own right, passed away and received a Service funeral at the commencement of this pension dispute.

5.05. Disabled FSV-FG:

- Disabled FSV-FG was severely injured at an incident and was compulsorily discharged;
- In 2008 he was accused of failing to inform the LFRS of his receipt of DWP benefits and had been allegedly overpaid £6,000.0 which he denied;
- He subsequently produced his own records dated 26th August 1998 showing they had been informed but nevertheless the LFRS commenced without accounting, agreement, or permission to suspend his Injury Award until the alleged amount was recovered all without any final or formal accounting which he continues to believe was an amount well above the amount of his alleged overpayment;
- After a year of trying via the ICO he finally received his PRF from the LFRS as a 'gesture of goodwill'?.. *"I am surprised if you think that I have shred of goodwill or trust in you or the LFRS after the bullying and hardship treatment you have deliberately meted out to myself, my family, and to all the others involved"...*
- Disabled FSV-FG receipt of his PRF simply confirmed no pension records of his notifications of DWP benefits to the LFRS and also confirmed in the process that he had never been paid the correct pensions;
- Disabled FSV-FG stated... *"Your actions have caused me both physical and emotional harm and in the longer term in the light of what my PRF will further reveal I intend to take action against you personally and the LFRS to recover what is justly mine and to seek damages from you for causing me this unnecessary harm and distress";*
- He instituted IDRPs Stage I asking the simple question why he was being paid the wrong pensions contrary to the law. His IDRPs Stage I was rejected;
- He instituted IDRPs Stage II sending individual copies of his Application to all 25 Councillors on the LCFA pointing out their individual and collective Statutory duty;
- The Pension Scheme manager on behalf of the Chair of the LCFA refused to place the IDRPs Stage II application before Elected Members of the LCFA;

There is no such lawful process, Statutory power, nor discretion in compliance with the IDRPs of the Pensions Act 1995(as amended) which permits the Chairman, or the Pension Scheme manager, to take what is in effect an ultra vires decision;

- Disabled FSV-FG has never received a single pastoral visit;
- Currently he is preparing a formal Complaint to place before the Pensions Ombudsman seeking a 'Determination' asking why the Fire Authority continues to pay him the wrong pensions and why his Stage II application to the Fire Authority has been arbitrarily and unlawfully refused.

5.06. Disabled FSV-JH:

- Disabled FSV-JH(Deceased) a Divisional Commander of the East Lancashire Division, who was also a Justice of the Peace, was injured in a serious incident. He was subsequently compulsorily discharged from the Service;
- Following the 2007 LFRS Pension review it was alleged that he had been overpaid £10,466.57.
He was also informed that he had been underpaid £42,348.05 resulting in a balance to him of £31,881.49 which was paid to him in June 2008 on the basis, when he queried the unsolicited payment, 'just go ahead and spend it', no explanation was forthcoming at that time and he was denied any interest on the sum;
- Finally, the Pension Scheme manager responded stating... 'in reality the overpayment/under payment probably went back much further'...because the DWP had no records either;
- Between June 2008 and November 2010 he attempted to recover the interest due on the balance of the money paid to him but was repeatedly stonewalled and informed that the CFA had decreed otherwise. When he sought to see a copy of the CFA Minute he was informed it was secret because it was held in a Part II Meeting.
- He approached the Information Commissioner in November 2010 because he had been denied a copy of his PRF to check his own pension entitlement; it took until April 2011 with the assistance of the ICO to receive an 'alleged' extract copy of this part of the Minutes;
- He then applied for his full PRF and it was about this time that he was diagnosed terminally ill; once more his request was rebuffed;
- FSV-JH passed away receiving neither his PRF nor his interest on the underpaid sum which he was attempting to retrieve for his anticipated Widow;

5.07. Disabled FSV-PJ:

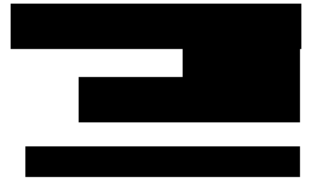
- Disabled FSV-PJ was injured in the appliance room of his station for which the LCFA eventually admitted liability;
- Throughout disabled FSV-PJ's retirement, because of his involvement in the pension dispute, his perpetual concern was for the vulnerability of his Firefighter son's career in the LFRS;
- The usual ritualistic PRF stonewalling took from mid-September 2015 to late January 2016 which involved denial of receipt of a Recorded Delivery letter containing the Statutory £10 fee-a cheque which was cashed-and a Passport photograph;
- When eventually he obtained his PRF it confirmed that not only was not just receiving the wrong pension as a 1992 Scheme Member he was also receiving his pensions under the considerably less advantageous 2004 Firefighters Compensation Scheme;
- When in a face to face meeting with the Scheme manager Mr. R. Warren he asked why this had happened disabled FSV-PJ recorded in a contemporaneous note Mr.Warren's reply,... "because I can...and because I don't think you deserve it..."

Finally in this matter we are all allowed just a little passion. FSV-RRB speaks for us all...

5.08. Disabled FSV-RRB:

- A volunteer International Rescuer; and a post disaster rebuildler in his own time and cost; a man of compassion and passion; a good servant of the Public;
- Following a serious accident at work for which the LFRS admitted liability disabled FSV-RRB was compulsorily discharged in short service;
- In 2010 he began an attempt to recover a copy of his PRF which he finally managed with the assistance of the ICO in November 2015;
- In January 2014 he drew the LFRS and the Pensions Ombudsman attention to the fact that his Retirement Allowance was being unlawfully deducted(see 3.02.) from his Injury Award in spite of DCLG FPS Guidance Note 4/2010 which also directed that it was not to be; in asking what 'legal authority' the LCC/LFRS were using for this deduction the LCC replied that they were acting under the instructions of the LFRS, where as usual there was no reply;
- In September 2014 he formally instituted IDRPs Stage I. His Stage I was rejected;

- In November 2014 he instituted IDR Stage II, all his Stage I & Stage II documents, having being delivered by hand. He did not receive a reply;
- In January 2015 he complained to The Pensions Ombudsman. The TPO rejected his complaint because they said that the LFRS stated that he had not completed his IDR Stage II Procedure. Yet another example of mendacity by the LFRS and now with obstruction by TPO which he is currently trying, yet again, to get the PO Mr. Arter to understand, investigate, and redress the damage to the credibility of TPO;
- Recently he lodged a second failure of Service Complaint letter on the 12th September 2017 with TPO. He did not seek to address his Pension Complaint but addressed his letter directly to Mr. A. Arter on the failure of his department to address this scandalous and deliberately obfuscated 'customer journey' by the LFRS, as TPO describes it, and now with the complicity of the following 6 named staff at TPO including:
 - Messers Monks; Batey; Dartnell; Krishna; Director of Casework Ms.Shona F.Nichol; Ms.Joshua; the latter two who are on record as promising to pass disabled FSV-RRB letter directly to Mr.A.Arter and who after electronic acknowledgment have yet to respond;
- Why has taken 3.75 years for the LFRS and the Pensions Ombudsman to make a determination on a simple pension dispute involving the incorrect deduction of his Retirement Allowance from his Injury Pension?; disabled FSV-RRB will be 70 at his next birthday;
- The answer to this Question is simple but it begs the questions why would these civil servants hazard their employment unless they have been instructed by someone in authority above them to ignore and obstruct the legitimate pursuits of disabled FSV-RRB seeking justice. Who is that person? The Ombudsman himself, or a senior member of his staff in communication with the LFRS? Because it is quite clear that their 'Well of Truth' has been poisoned, yet again, by correspondence from the LFRS which has happened before and will again;
- Disabled FSV-RRB currently lives in an a chicken shed in an old barn in central France without complaint in difficult economic circumstance to the shame of the UK Fire Service using a bucket for his ablutions but he remains resolute in his pursuit of fair play and justice;
- FSV-RRB has never received a single pastoral visit.
- In November 3rd 2015 he wrote a letter of Complaint to the Chair of the Lancashire Combined Fire Authority CC M.F.DeMolfetta(Lab). The Clerk to the Fire Authority 'investigated' his Complaint and deemed it to have 'no merit' and furthermore he was informed that he had now been deemed as a 'vexatious person'; this is his letter...



Friday, 6th November, 2015.

CC F.DeMolfetta
Chairman Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service Headquarters
Garstang Road
Fulwood
Preston
PR2 3LH

A Complaint – Malfeasant Pension Maladministration- The Pensions Regulator.

Dear Chairman,

In a recent letter to one of my colleagues your Mr. Warren(Head of People & Development) pointed out the following... *“Lancashire Combined Fire Authority is the scheme manager for the Firefighters Pension schemes”*.

Accordingly, as the Chairman of the Combined Fire Authority, you are the person ultimately responsible in law for my Pension Scheme and it is on this basis that I place this formal Complaint before you which is **Misconduct in Public Office** coupled with the **Malfeasant Maladministration of my Pensions**, in violation of Public trust, by certain named staff under your direct legal control, or indirect control by means of Contract, namely, the Lancashire County Council ‘Your Pension Service’(YPS), your pension service delivery contractor.

CFA’s Legal Responsibilities.

1. It is my belief that my incontrovertible evidence, which I will place before you in this Complaint, referred to as *‘material of significance’* in The Pensions Regulator’s Code of Practice, No. 14 ‘Governance and administration of public service pension schemes’(April 2015), constitutes material breaches of the relevant provisions of the Pensions Act 2004.

This requires you as the person responsible , without delay, to *fulfil your Statutory duty* which is to investigate and report my Complaint directly to the Pensions Regulator, so that it can be fully and impartially investigated.

2. My compelling evidence of criminality, which I will now present to you, is taken from my Personal Record Files, which includes pensions records, in a file released to me through the legal action of the Information Commissioner.
3. Your Statutory duty is, in part, referred to in this Guidance Paragraph 272 under the title 'Whistle Blowing protection and confidentiality'. For clarity you are referred to as the 'Reporter':

"The Pensions Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have (my underline) such as confidentiality and that any such duty is not breached by making a report. The regulator understands the potential impact of a report on relationships, for example, between an employee and their employer."
4. Such is the level of criminality involved in the malfeasant management of my pensions, "*the material of significance*", that it routinely incorporated institutionalised malpractice by LFRS and LCC staffs under the direction and control of the day-to-day delegated scheme manager, Mr. R. Warren. Practices of :
 - Plain dishonesty;
 - Non-confirmation of information regularly supplied to the scheme administrators by Members;
 - The failure to record accurate information about Members' individual DWP benefits and data in their Service records;
 - Appropriate essential records not being regularly maintained, or monitored;
 - Inadequate, irregular, or non-robust internal audit controls leading to unsustainable losses to the Public Purse;
 - Scheme assets not being safeguarded;
 - Poor governance and maladministration;
 - Malfeasance in covering up maladministration and conspiracy to defraud;
 - Acting deliberately in contravention of the law;
 - Knowingly, in direct breaches of Statutory duty, failing to report significant pension Scheme maladministration to The Pensions Regulator.
5. It is my belief, supported by publicly available LCC/LFRS Minutes and records, that these unsupervised institutionalised practices will lead, and have led, to a lack of Member confidence in the entire Lancashire Firefighters' Pension Scheme under your jurisdiction

resulting in Scheme assets not being safeguarded, extending to recorded losses to the Public Purse of over £2mil+.

6. It is my, and the Lancashire Public's reasonable public interest expectation, that in the interim you will immediately suspend all those LFRS staff, those persons I will identify below, who have been engaged in these unlawful practices, *if only to protect their rights* in law and in natural Justice.
7. In respect of LCC contracted staff it is assumed that that you will liaise with the Leaders of the Coalition of the Lancashire County Council, to whom this letter is copied, to ask for the parallel suspension of their named YPS staff, namely, Mrs. D. Lister Head of YPS, and Ms. J. Wisdom Performance Manager.

Your Statutory Duty.

8. Since 2007 the Lancashire Combined Fire Authority in conjunction with the Lancashire CC have repeatedly been asked in published supporting correspondence, and patently failed, to transparently investigate and address these scandalous failures of pension management and to report them to The Pensions Regulator.

The LCC Pension Services(LCC YPS) administer 120,000 local authority pensions directly or by contract to other Local Authorities including the Lancashire and Cumbria Firefighters' Pension Schemes.

9. Statutory, TPR, and Public accountability is held by the LCC Pension Fund Administration Sub-Committee *of which you are a sitting member* and part of your Statutory duty was, and remains, to ensure that any pension maladministration of significance is reported to TPR.
 - You have failed your Statutory duty repeatedly because these matters were reported directly to you and recorded in LCC and LFRS Committee Minutes which I have read. Reports of these scandalous failures which you choose to ignore contained, for example, in Minutes of the Meeting held on Wednesday, 13th June, 2012 at 10.00 am in Cabinet Room 'B' - County Hall, Preston;
 - You failed to report to TPR poor governance and maladministration of your Firefighters' Pension Scheme identified by a Lancashire Scheme Member in March 2007 which had uncovered 2000+/- errors including 167+/- 'overpayments' to the highest individual value of £65k, and 'underpayments' to the highest individual value of £45k ;

- You failed to report to TPR poor governance and maladministration of your pension Scheme identified by the Audit Commission(National Fraud Initiative) in its data matching exercise of 2010 in which it identified 2,215 errors including the payments of pensions to 1007 Members who were certified as dead.
- You failed to report to TPR poor governance and maladministration of your pension Scheme identified by the Audit Commission(National Fraud Initiative) in its data matching exercise of 2012 in which it identified 2,060 errors including the payment of pensions to 1012 Members who were also certified as dead.
- These failure rates of 1.85%+ are commonly regarded as maladministration;
- You failed to take prompt and effective action to remedy these breaches of pension law and to identify and tackle their causes in order to minimise risk of recurrence;
- You failed to notify individually affected Scheme Members and the Scheme Membership in general of the deficiencies of their Scheme and the detailed remedial action being taken to restore their confidence in their Scheme;
- You failed to take, or pursue, the required Statutory action to a proper conclusion.

10. In framing my Complaint I have drawn evidence from all those, whether directly involved or not, who have supported a campaign for civil rights against the Lancashire Combined Fire Authority in opposing *its collective* scandalous tyranny in the maltreatment of LFRS disabled FSVs, their surviving Widows, and Beneficiaries, in a dispute involving their pensions since March 2007.

Once more you have an opportunity to present and report my irrefutable evidence to The Pensions Regulator which is your Statutory duty.

The Ineluctable Question?

11. The ineluctable question I have regularly asked myself is why your Mr.Warren went to such scandalous lengths of corrupt practice to obstruct my legal right to obtain my Service records, my Personal Record Files(PRF)?

12. This year, 2015, Mr.Warren sent me two letters May/August with enclosures. These letters were of increasingly strident threats when, at last in September, he was being legally forced by the Information Commissioner to release my service PRF after 5 years of deliberate obstruction and delay.

His vain hope was that this late embarrassingly frantic intimidation would finally deflect me from the task of obtaining my PRF, which I had set myself in November 2010.

13. The enforced release of my PRF now starkly reveals, and confirms, what he knew, and I

have always suspected, that he, in complicity with others under his authority, would stop at nothing, including the use of collective mendacity to protect themselves from exposure and the consequences of their, and his, failed legal duty which is, *and remains under Statute law*, to correctly administer my pensions as the LFRS delegated day-to-day pension Scheme administrators and manager.

14. Mr. Warren's obvious attempted intimidation in his letters invites my response in kind.

My Complaint uses evidential content from my PRF; correspondence with him; from FSVs associates; from Court released LFRS internal records and emails; and from the Information Commissioner.

The drafting and framing of my Complaint, which I have approved, also includes the advice of the civil rights anti LFRS pension campaign pro bono barrister.

J'Accuse !

15. In defending the indefensible, Mr Warren's professional persona, he has, since 2007, in complicity with his supervising principals, and those pension management staff with pension malfeasance to hide, without the knowledge or approval of the majority of the 25 Elected Members of the Lancashire Combined Fire Authority (who have signally failed to fulfil their Public inquisitorial mandate), regularly engaged in conceiving, authoring, and authorising undisguised corrupt practices.

His deliberate denial of the existence of information recorded in my PRF is a classic example of his corruption.

16. Mr. Warren has in his oppressive regime, as a matter of published fact, compelled innocent LFRS staff under threat of discipline leading to loss of their employment to engage in an unwarranted, unjustifiable, amoral pogrom, against any person including myself, or group of people, who had the temerity to oppose his unbridled criminality.

17. This is a manifest tyranny, coupled with a lawless pogrom of Mr. Warren's misconduct in public office for his own self-gratification and protection, during which he acted as the primary executor and grandiose sole arbiter for the LFRS, and during which he unhesitatingly stooped to the deliberate use of criminality by Contempts of Court; perjury; miscarriages of justice; blatant breaches of the law both-civil and criminal; intimidation; raw racism, and the false manipulation and malignant criminal misuse of Public and Personal Data under his

confidential control, in the presentation of *misinformation* to Elected Members of the CFA, and thus the Public.

18. It is Mr. Warren's self-evident and avowed intention to publicly smear, crush, and leave me penniless, and any of his disabled FSV opponents, whilst covering up and defending his abject failure to accept responsibility for the daily maladministration of the Lancashire Firefighters' Pension Scheme under his direct control since 2002, and for which you the Chairman; the current Chief Fire Officer C. Kenny QFSM; and Mr. Warren by lawful delegation, share legal culpability as its administrators and my Scheme manager.
19. This culminated in the personal application by Mr. Warren of his sadistically vicious financial hardship on me, which was nothing short of blackmail, in the application of *his* self-authored "Hardship Route" because as he saw it, I failed his '5th column' test which was to betray my protesting comrades, the disabled FSVs.

Contempts of Courts.

20. Now once more in intriguing, smearing, and covering up his suppurating trail of corruption he states in his threatening letter of August, which included a copy of the Court Judgement against disabled FSV Mr. Paul P. Burns, the intent of which can only have been to intimidate me, that I gave evidence in this 4 day County Court Trial, when it cannot have escaped his notice, because he was present, that I most certainly did nothing of the kind. Simply more deceit which is his stock in trade.
21. Mr. Warren's unprincipled contempt for the civilised rule of law displays a person who cares little for the laws and conventions of society in which he knows no legal boundaries, a Misconduct in Public Office which climaxed in February 2013 in the Preston County Court before Circuit Court Judge P. Butler (Knight of the Holy Sepulchre).
22. Mr. Warren is *indeed correct* in that I did provide sworn testimony to the Court but not on the basis he has assumed. But by giving a sworn testimony to the Court Office along with three other members of the Public from the Court public gallery, and two Court officials who between sessions complained directly to Judge Butler, of observed Contempts of Court. Judge Butler has confirmed that these sworn Witness Statements are held on file in the Preston County Court Records.

23. I did state in this sworn Court statement how I observed Mr. Warren and others representing the LFRS/LCC blatantly, in Contempts of Court, engage in personal perjury and by the misuse of banned electronic devices communicating between themselves, contrary to published Court notices on the Court room walls, collude with your LFRS Solicitor Mr. A. Harold; the LCC Head of Pensions Mrs. D. Lister (YPS); and by the use of physical signals suborn *your own complicit primary witness* Ms. J. Drinkall MBE (LFRS-Rtd) who was in the Witness Box.

24. In an obviously pre-planned staged choreography of perjury Mr. Warren and these others collectively conspired and intrigued to pervert the course of Justice by defeating the legitimate cross examination of Ms. J. Drinkall MBE (literally behind the back of the Litigant-in-Person), disabled FSV Paul P Burns.

25. These Witness Statements are linked directly to the Courts own tape records of Judge Butler's rants on this specific matter, including his failures to act, and now lie on file as a matter of Public and Court testimony.

26. All of this misconduct in public office coupled with its unashamed oppression, which documentary evidence supports in released comprehensive internal email exchanges with politicians, was condoned with the prior knowledge and tacit approval of the former Chairman of the CFA County Councillor D. O'Toole; *you as current Chairman of the CFA*; and the recently retired Clerk to the CFA, Mr. M. Winterbottom DL (Lancashire Under Sherriff and Deputy Lord Lieutenant); the former CFO Holland (now DCLG government Fire Advisor); and your current CFO, Kenny.

The "Hardship Route".

27. Mr. Warren it is who conceived and authored a deliberately inhuman, punitive, and secret LFRS policy known as the "Hardship Route" which was intended to, and did bring direct financial hardship to myself and others who refused to accept his financial intimidation and bullying and who were simply exercising their democratic rights within a free society.

It is a matter of factual record that in a circulated self-authored email (Released by the Court) Mr. Warren described the purpose and "principles" of the application of his "Hardship Route" to your former CFO Holland and to *the political leaders of that time*.

28. Mr. Warren did without compunction, apology, or remorse, conceive, direct, and engage in collusion with his staff, as my irrefutable and compelling PRF evidence now confirms, to send myself and other disabled FSVs, their surviving Widows, and Beneficiaries down this "Hardship Route" because we would not yield to his criminality, bullying, intimidation, and his oppressive misconduct in public office.

The intended effect of which in my case was to drive me into personal bankruptcy to a point where today I live in virtual destitution in a chicken shed with a bucket for ablutions within an unconverted dilapidated barn in a farmyard in France, my last refuge.

Corporate Falsehood.

29. At the commencement of Mr. Warren's personal pogrom against me on the 26th February 2008 he insisted that I attend a meeting at Service HQ under threat that if I did not do so he would stop my pensions (unlawful) and my DWP benefits (only the DWP can sanction this) which are all classed as my income, giving the explanation for my required attendance as 'overpayment'.

Under direct duress I did attend with my Fire Brigades Union representatives of which I am an out of trade member.

But, Mr. Warren had not the personal courage to attend himself.

30. This type of meeting, as other harassed and intimidated FSVs and their families had earlier reported, and were to report subsequently in the media was in effect both a combined 'kangaroo court' and 'ambush'.

31. This pre-choreographed staged meeting was attended by your deputy pension Scheme administrator Mr. Hamilton, his assistant Ms J. Hutchinson (Office Manager-Pensions), accompanied by Ms J. Wisdom (LCC-'Your Pension Scheme'), your contractor's Fire Service Pension Performance Manager, all of whom it is now clear to me, were there to enjoy my shock, alarm, and despondency.

It is an interesting reflective footnote that none of those mentioned above had a single Pension Management qualification between them.

32. Mr. Warren and his cohorts decided after consulting my PRF to use, contrived blatant falsehoods to deliberately misrepresent the recorded facts in my PRF to me, which was that according to your deputy pension Scheme administrator Mr. Hamilton at the meeting, I had

failed to inform the LFRS that I had been, and was, receiving deductible DWP Benefits in support of my 'qualifying' service injury(which had led to my early compulsory Service discharge) and that as a consequence I had been 'overpaid' the sum of £37,899.33(LFRS Internal Document entitled "Fire Injury Pension Reviews. As at 21 Jan 08") for which your Mr.Hamilton demanded immediate repayment.

33. When I protested that I had informed the LFRS of the status of my Benefits on the day I was compulsorily discharged, and had signed an LFRS document to that effect, which surely must have been recorded in my PRF, your Mr. Hamilton, clearly acting on Mr.Warren's instructions, refused my request to let me see my PRF even though he had it in his possession on the table in front of him at this meeting.

34. It is obvious now, after consulting my released PRF on the 15th September 2015, the day after your Mr.Warren handed over a copy to me, *that all those present, whom I have named above, were absolutely aware before this meeting that Mr.Warren and they were engaged in criminal corporate falsehood and the deliberate maleficent misrepresentation of the pension facts contained in my PRF.*

35. Those named above, acting under Mr.Warren's direction, repeatedly in falsehood upon falsehood asserted, in the presence of my FBU representatives, that I had not informed the LFRS and/or the LCC YPS about the receipt of deductible DWP benefits *when they knew from shared knowledge which Mr.Warren and they had accessed in my PRF(recorded emails confirm that shared knowledge access)* that I had informed the LFRS of my DWP status from the very first day my pensions were put into payment.

These compelling facts which they *collectively knew* were recorded in my PRF which was lying on the table before them at this meeting, facts which they refused to allow me or my FBU representatives to view.

36. In carrying out this criminal conspiracy of grossly corrupt deceitful malfeasance upon me (and without doubt others), acting under Mr. Warren's express instructions, it is now unequivocally clear that the sole purpose of this 'cover up' was to prevent the exposure to public accountability of those present who had failed in the pension administration of the Lancashire Firefighters' Pension Scheme, including the conveniently absent Mr.Warren, the delegated daily pension Scheme manager.

Compelling Evidence of Deliberate Corporate Mendacity.

37. The enforced release of my PRF now provides irrefutable and compelling documentary evidence of deliberate corporate mendacity under Mr. Warren's directions and the falsification and denial of the existence of my PRF DWP records which directly rebutted the LFRS accusation that I (and no doubt others as well) had failed to inform the LFRS of the status of DWP benefits which I was receiving; pension maladministration by the LFRS which resulted in my alleged so-called 'overpayment'.

38. The first, documentary evidence, of the many I could have chosen, confirms that 2 years prior, whilst I was suffering the effects of a serious on-duty injury which led to my compulsory discharge, there was a clear paper trail of LFRS knowledge of my DWP benefits status and indeed clear evidence of both incompetence and maladministration in LFRS failures to properly administer my pay, apropos DWP benefits.

This, particular example of maladministration, left me without my pensions. *Appendix 'A'*.

39. The second, documentary evidence, demonstrates that on the first day of my compulsory discharge when my pensions were put into payment the LFRS not only included my DWP benefits as a correct deduction from my calculated Injury Pension but I also signed a statement in which I detailed the DWP benefits I was already receiving and in which I gave an 'undertaking' that I would (as my PRF records reflect) inform the LFRS of any future changes. *Appendix 'B'*.

40. The third, documentary evidence, demonstrates that Mr. Warren and his collective staff were fully aware after consulting my PRF that they had been repeatedly informed by both me, and more importantly, the DWP annually, of the value and status of my DWP benefits including the fact that several DWP Benefits were being paid under one heading. *Appendix 'C'*.

41. The fourth documentary evidence demonstrates that when a final letter was being carefully drafted by Ms. J. Hutchinson(LFRS); Ms. J. Wisdom(YPS); and Mr. Hamilton(LFRS) for the final approval of Mr. Warren(LFRS) in a follow up response to the meeting on 26th February 2008, a letter which Mr. Hamilton then signed and sent to me, that this collective drafting was a cohesive, calculated, act of criminality in which they intended to deceive and defraud me.

42. All those involved knew, without a shadow of a doubt, that this letter flew completely in the face of the facts contained in my PRF which included substantial DWP referenced records from my PRF which exposed their collective incompetence for what it was, not just the occasional human error, but which knowingly went beyond institutionalised malfeasance to a point where Mr. Warren, and his staff under his direct control, intended to commit a criminal fraud against me, namely repayment.

Furthermore, in a final cover up, even though Mr Warren had all this DWP information before him, he knowingly failed to send all that DWP information with this letter to me even though Mr. Hamilton in an internal email stated that he would do so.

43. In this final letter to me, approved by Mr. Warren, Mr. Hamilton unequivocally stated a direct falsehood, that there were no records of me having informed the LFRS of my DWP benefits status, but not satisfied with this collective deceit, he then proceeded to repeat this blatant lie to me once more. *Appendix 'D'*.

Mr. Hamilton then went on to state that the DWP had informed the LFRS that there was a further 'schedule' of DWP benefits being paid to me which he knew nothing about. This was another falsehood, when in fact they all knew that the DWP had stated to the LFRS *'that several benefits were included under a single heading'*. *Appendix 'C'*.

44. Later when I reflected on these matters I was certain that *I had complied with my obligations and that I had informed* the LFRS of the status of my DWP Benefits and though having no personal records of my own to confirm this position I nevertheless wrote to Mr. Hamilton on Thursday 20th March 2008 confirming that I had complied with my obligations. *Appendix 'E'*.

Blackmail.

45. When the meeting on the 26th February 2008 broke up your Mr. Hamilton drew me aside privately for an 'off the record' conversation making clear that he was acting on Mr. Warren's instructions. He indicated to me that both Mr. Warren and he were aware of a discipline misdemeanour in my past service filed in my PRF and that they had both noted my activist participation with Mr. Burns the leader of the civil rights anti LFRS pension campaign.

Furthermore, Mr. Hamilton indicated to me that Mr. Warren would find it 'helpful' in any repayment agreement that he/LFRS might make with me if I was able, from time to time, to let him know what this campaign's planned activities might be.

Because I was still in a state of shock, given the large amount of the alleged 'overpayment' and the repayment allegedly due, I was non-committal and left SHQ at this point.

46. Later I reflected on this disturbing development, in which both Mr. Hamilton and Mr. Warren clearly had knowledge of an old spent discipline misdemeanour which could only have come from my PRF, and this coupled with Mr. Warren's 'under the table' offer, painted a very sinister picture which did not escape me.

47. It seemed to me that Mr. Warren's proposal via Mr. Hamilton could only have been approved by your forbear Chairman CC D. O'Toole and/or CFO Holland. A proposal which was that I should in effect spy and report to Mr. Warren from *inside* the civil rights anti LFRS pension campaign on their activities. An action which would be 'helpful' to me resulting in Mr. Warren, and presumably CFO Holland, approving more favourable terms in any repayment scheme Mr. Warren might propose to me concerning this alleged 'overpayment'.

48. Later Mr. Warren proposed that instead of the £37,899.33(LFRS Internal Document entitled "Fire Injury Pension Reviews. As at 21 Jan 08") allegedly due to the LFRS he would be satisfied to receive £25,186.89(LFRS Internal Document entitled "Fire Injury Pension Reviews. As at 21 Jan 08") which was a proposed reduction of one third(30%), presumably for 'services rendered' though from studying these records it is clear that of the 167+/- 'overpaid' disabled FSVs involved I was the only one to be offered this 'opportunity'.

49. It seemed to me that some were more equal than others having their alleged overpayments completely being quashed by Mr. Warren who simply dictated how the Pension fund and its mechanisms ought to work regardless of what the law might state.

My Discipline Misdemeanour.

50. Several years prior to 1987, whilst in Service, I was arrested and charged as a result of an affray in a public house whereby, in defending myself against a person I knew I caused him actual bodily harm.

After attendance in Magistrates Court I was subsequently fined and as required under the then Discipline Regulations I reported my conviction to my Station Commander.

Later I was charged with bringing the Service into disrepute and appeared before the Chief Fire Officer. I was severely admonished and given a final warning by him.

In 1988 I was on a list of International Rescue volunteers approved by him to attend the Armenian Earthquake as only the second ever UK response to an International Disaster(The first, also by Lancashire, was to the Italian Earthquake Disaster in 1980).

A short time after this successful mission and without solicitation I received a Memorandum from my CFO stating that all records of this misdemeanour were to be expunged from my records.

51. Now that I have seen my PRF it was upon this single document in my PRF that Mr. Warren and Mr. Hamilton, considered and decided, they would take it upon themselves to reverse and reopen a closed CFO's decision and use its presence in my PRF in common blackmail, should I fail to see the merit of their 'off the record' proposal. *Appendix 'F'*.

52. Obtaining My PRF.

Because I was uncertain on all counts about what my concealed PRF records actually contained, I repeatedly asked Mr. Warren to release a copy of my PRF to me so that I could correctly evaluate my position, but he and his staff, principally Mr Lee Gardiner your former Information and Data Protection Officer, and Mr. Harold the LFRS solicitor, repeatedly acting on Mr. Warren's standing instructions, over a 5 year period, refused to do so.

53. On the **3rd November 2010 almost 5 years ago I made a formal request** to Mr. Warren under the Data Protection Act 1998 Section 7 to supply me with a copy of my Personal Record File and **all** my associated subject data and records which the LCFB/LFRS still retained on me. Mr. Warren just ignored my request and in the 5 years which followed he continued to direct his staff Mr. Lee Gardiner and Mr. Harold the LFRS solicitor to repeatedly refuse my lawful request.

54. In particular Mr. Warren directed the LFRS solicitor Mr. A. Harold to oppose *with all means* at his disposal including the use of a DPA 'exempt' refusal of my request. A 'defence' which involved repeatedly restating and recycling the 'exemption' that my PRF were not held in a retrieval system which met the terms of the DPA and thus the LFRS were exempt from compliance and thus my requests could with impunity be denied, which was of course simply stonewalling deceit.

55. This legal subterfuge by Mr. Harold your solicitor, who was already fully aware of the

Information Commissioner's 'Assessments' that the LFRS was not 'exempt', and that *'all LFRS PRFs ought to be promptly released'*, then knowingly engaged in professional deceit with the absolute knowledge that neither the LCFB, nor its successor in title, could administratively function without a Personal Record File retrieval system which specifically identified an individual Firefighter by Regimental Number which the LCFB/LFRS allocated at Recruit stage, at their commencement of Appointment-for the duration of Service of at least 30 years.

56. The Courts(2 judgements) and the Information Commissioner(2) had repeatedly 'Assessed' and concluded that my PRF *'was held in a DPA relevant filing system'* and that as a matter of some urgency ought to be *'promptly'* released to me. Yet in spite of all those decisions Mr. Warren continued to blatantly ignore the law until the Information Commissioner at the Taxpayers waste of time and expense sent a 3 person team to physically examine the filing system in which my PRF was stored.

57. This visit simply confirmed the Commissioner's original Assessments whilst supporting the independent Courts decisions that it was an Act compliant filing system and that all PRF should be released on legal demand.

The Commissioner's decision tacitly recognised that Mr. Warren in complicity with his subordinates deliberately and obstructively failed to comply with the law for a 5 year period. But as I well knew this denial of the law and the truth was yet another example of Mr. Warren protecting his own self-interest and covering up his failure of Statutory duty as my daily Pension Scheme manager.

58. Mr. Gardiner and Mr. Hamilton, as you will know as Chairman, have since been suspended with your approval earlier this year, Mr. Gardiner for allegedly making fraudulent expenses claims in excess of £40,000.0. It is common knowledge that he has since resigned.

Mr Hamilton however remains suspended for a 'Race hate' crime on a member of LFRS staff and whilst both may well be 'unavailable' and may not now be in a position to support my claims for my repeated requests to Messers. Warren/Hamilton/Gardiner/Harold for the release of my PRF, undoubtedly both my own private records, and those of the Information Commissioner's Office most certainly will.

It is interesting to note that there is not a single record of my DPA applications for a copy of my PRF contained within my released PRF.

Alleged 'Overpayment'.

59. Given all these unlawful and criminal circumstances I have not the slightest intention of reimbursing the Public Purse one single penny which Mr. Warren wrongly alleges I owe. If Mr. Warren had been doing his job robustly as my daily Scheme manager properly for which he is handsomely rewarded, to the value of £110,000.0k pa, he would not have allowed the circumstances to arise which permitted 'overpayments' to collectively accumulate in the first place.

'Overpayments' which were in excess of £2.0mil+ by maladministration directly under his control and for which you, as the Scheme manager, and ultimately your CFO Kenny as the principal Scheme administrator are inextricably responsible.

60. To reinforce my stance the Pensions Ombudsman in a recent Determination' (Number 2865-June 2015) made a benchmark ruling which said in effect that if maladministration arises in a Scheme which then generates 'overpayments' the ultimate responsibility rests entirely with the Scheme manager, not the Scheme members, and accordingly any monies which are wrongly 'recovered' from Members must be repaid with interest and the Scheme, namely the LFRS Firefighters' Pension Scheme, must carry its own losses, and for those losses you, your CFO, and your Mr. Warren are directly responsible in law.

Misconduct in Public Office.

61. As I see matters which have directly affected me, Mr. Warren has repeatedly since 2002 misused his public office to unlawfully protect his pension management failures by any and all dubious means at his disposal. Mr. Warren has without hesitation ignored the common law which governs good social conduct and professional conduct in public office when it suited him and has regularly and continuously stooped to base criminality to achieve his own self-protective ends rather than accepting responsibility for his own self-generated failures.

62. Mr. Warren, with his supervising principals, which clearly includes you, have repeatedly manipulated and misrepresented the actual 'facts' of what has occurred, to the media and Public at large, which he and you regularly 'fed' over this period of time to the Elected Members of the CFA, thus easily defeating their inquisitorial role, and as a consequence their democratic role of accountability to the local Taxpayers and the Public.

63. Mr. Warren's defence will be, as ever in such cases, that he was only discharging his duty as

approved by his Councillors, including you as Chairman, in which he was just a mindful keeper of the good name of the LFRS whilst husbanding the Public Purse.

But the facts as I have laid them out to you belie these falsehoods as a glance at my PRF will confirm, as example upon example, of simple iniquity and perversity of pension 'management' surface directly under Mr.Warren's mendacious control.

64. Mr. Warren has without compunction in his daily working life at the LFRS, using my case as a prime example, engaged in unbridled common criminality in public office during which he regularly used institutionalised blatant stonewalling; deceit, repeated mendacity; and by the malign manipulation and deliberate supplying of misinformation to those to whom he is Publicly accountable, including you, when it suited his malignant self-preservation.

Your Role - CFA Chairman.

65. How much you actually knew in matters pension, chose to ignore, and/or failed to take action on, or were directly involved in approving, is a moot point for the Combined Fire Authority Elected Members to investigate and ponder on.

66. As a Lancashire County Council elected Councillor it is my expectation that the LCC Scrutiny Committee will surely also want to investigate your role in this pension scandals because of your central role on the LCC Pension Fund Administration Sub-Committee in their oversight and accountability for LCC Pensions Services.

Firstly, in the light of your prior knowledge of significant failures in the administration of YPS pension service, including the LFRS, highlighted by the two National Fraud Initiative Reports of 2010 and 2012 which were reported to you as a Member of the LCC Pension Fund Administration Sub-Committee which were materially significant matters which the Committee failed in its Statutory duty which was to report these failures to The Pensions Regulator.

Secondly, your past and continuing role in pension related scandalous issues involving Mr.Gardiner and Mr.Hamilton which have involved substantial losses/bribery by payments from the Public purse, for example, to Mr. Hamilton.

Suspension and Prosecution.

67.I have called on you to suspend Mr. Warren and all the others involved immediately and regardless of whether or not you have the political will or personal courage to implement such action, including a transparent and independent Inquiry, it is my intention shortly to seek and take legal advice on pursuing, in the long term, personal restitution from your Authority.

It is time to send the CFA down its very own "Hardship Route".

68.By now even you must surely be aware what your Statutory duty is, and remains, in respect of the Law and reporting all these issues to The Pensions Regulator.

Your Personal Response.

69.Finally, there just remains your public duty to me as an elected Councillor of Lancashire.

I would like you to extend the courtesy to me of a personal direct reply(using the above email address) which should include your acknowledgement of receipt my Complaint and any points you may wish to make.

A response which should of course, in observing common conventions, be personally signed by you.

That is why, included in your annual allowance, the Taxpayers' make a provision for your secretarial services.

Yours Truly,


R.R.B

CC
The Pensions Minister-Baroness Altmann CBE;
The Pensions Regulator-CEO Ms. L.Titcomb;
Coalition Leaders of the Lancashire County Council;
Elected Members of the Lancashire Combined Fire Authority.

FF

B

Kinda

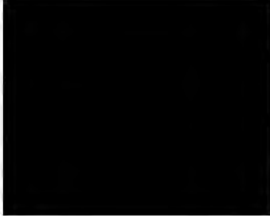
7se note + PRF.

Thanks

205

186

APPENDIX 'A'



Mrs G Southworth
205

GS/DEH/PR
23 April 1992

Dear Mr B

Thank you for your recent letter.

I must firstly apologise for the fact that you were not sent the appropriate form in relation to Department of Social Security sickness payments. The Personnel Section does operate a monitoring system in relation to sick pay but unfortunately on this occasion it failed. Every effort will be made to ensure that a similar situation does not arise again.

In view of the concern expressed in your letter the Department of Social Security have been contacted and have been asked if you can receive priority attention, whilst being sympathetic they could not give any guarantees. However they did indicate that even if you had been sent the form on the correct day no payment would have been made until 27 April 1992 and there would still have been a time lag between the deduction from your salary and the payment from the Department of Social Security.

Yours sincerely

A handwritten signature in cursive script, appearing to be 'J.W.'.

PRF

Firefighter B R R
Station C50 Preston

Miss Drinkall
223

EJD/BML
8 May 1992

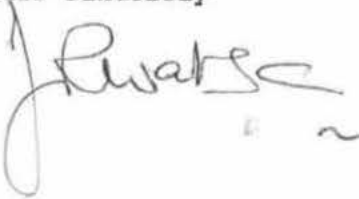
Dear Firefighter B

I refer to my letter of 23 April 1992 and subsequent telephone conversation with the PAO's personal assistant in respect of the deduction of sickness benefit from your salary on the expiration of SSP payments and the likelihood of you incurring bank charges as a result of this.

If a delay had not occurred in the forwarding of the necessary forms to you, you would have been paid invalidity benefit of £93.77 per week on and from the 20 April 1992 and the normal date of payment would have been 27 April 1992. Invalidity benefit is paid a week in arrears. Unfortunately the above mentioned delay resulted in you being paid on 5 May 1992 instead of 27 April 1992.

If you incurred bank charges for the period 27 April to 4 May inclusive you will be reimbursed for these but it will be necessary for you to produce documentary evidence to this effect. The Finance & Personnel Officer at Brigade Headquarters will be pleased to advise you on how to claim.

Yours sincerely



had
You can't be working &
paid for that. 6/5

Paul. H. discuss.

gf

5/5/92
2.30 pm

Glenys

FIREFIGHTER NO [REDACTED] MR [REDACTED]

He has rang with reference to a letter from you dated 23 April 1992. He has been off sick and it has gone into the 28 week period. There has been a mistake with the form from the Brigade which goes to the DHS. In his last pay he was £200 short. This was three weeks ago. He has spoken to Joan Drinkall and apparently she has told him that if he gets overdrawn which is highly likely. Then the Brigade will cover it. But he wants it in writing.

Home Address: [REDACTED]

hder

Date of payment of
↓
Sickness benefit
from
20 April -
date of payment. Invalidity
on
Paid 55.92

4/20

has to
include
with charges.
20/20

1st payment 28th April week in
weekly rate of 93.77 appears

APPENDIX 'B'

used LANCASHIRE COUNTY FIRE BRIGADE
 RETIREMENT PENSION FIREMEN'S PENSION SCHEME ORDER 1992

NAME E R R FF
 STATION C50 PRESTON
 ADDRESS
 DATE OF BIRTH
 PAY REFERENCE NO
 PENSIONABLE PAY 17,232.00 pa
 PENSION CONTRIBUTIONS 11.00%
 NHI NO.
 RETIREMENT DATE 2359 hours on 30 November 1994

SERVICE

 L.C.F.B. 05/07/76 - 30/11/94 18 years 149 days

 18 years 149 days

AVERAGE ANNUAL PENSIONABLE PAY

 01/12/93 - 06/11/94 31/31 + 10 + 6/30 at 16,860.00 15,736.00
 07/11/94 - 30/11/94 24/30 at 17,232.00 1,148.80

 16,884.80

ILL HEALTH PENSION

 Retires in accordance with Rule B3 & B4

25.4082/60 of average annual pensionable pay of 16,884.80 7,150.21 pa

INJURY PENSION (Rule B4 Part V Schedule 2)

 60 % of average pensionable pay of 16,884.80 10,130.88 pa

Less 3/4 of Ill Health Pension 5,362.66

Less Department of Social Security Benefit Invalidation Benefit of 5,333.52 10,696.18 pa

fig 2.24 per week commuted to annual figure of 5333.52 pa

Pension Payable 0.00 pa

Gratuity 25.0 % of 16,884.80 4,221.20

COMMUTATION

 An amount of 1,787.55 has been commuted from ill health pension and will secure a lump sum payment of :-

~~(1,787.55 x 1,500) / 100 = 26,813.25~~

- (a) any incapacity benefit under section 14 of the 1975 Act, including one to which he is only entitled by virtue of section 50A of that Act, and
 - (b) any incapacity pension under section 15 of the 1975 Act, including any additional component comprised in it in pursuance of section 14 of the Social Security Pensions Act 1975, and
 - (c) any severe disablement allowance under section 36 of the 1975 Act.
- (4) In relation to the additional benefit mentioned in sub-paragraph (2)(a), relevant increases comprise any increase in the benefit attributable to an increase in the pension -
- (a) by way of unemployability supplement under section 58 of the 1975 Act, excluding any increase under section 59 in the supplement,
 - (b) under section 60 of the 1975 Act (special hardship), or
 - (c) under section 64 or 66 of the 1975 Act (dependants),
- and so long as the person is receiving treatment as an in-patient at a hospital as a result of the qualifying injury, any increase in the pension under section 62 of the 1975 Act (hospital treatment).
- (5) In relation to the additional benefits referred to in sub-paragraph (2)(c), any increase under any provision of Chapter III of Part II of the 1975 Act (Dependants) is a relevant increase.
- (6) Where the provisions governing scales of additional benefits have changed after the person ceased to be a regular firefighter, the amount of the reduction in his injury pension in respect of any week on account of a particular benefit shall not exceed what it would have been if those provisions had not changed; where the benefit includes an amount attributable to an increase under section 60 of the 1975 Act (special hardship), it is to be assumed that the increase would have borne the same relationship to the former maximum for increases under that section.
- (7) Where a person has become entitled to a disablement gratuity under section 57 of the 1975 Act in respect of the qualifying injury, this paragraph has effect as if he were entitled under that section during the relevant period to a disablement pension of the amount that would be produced by converting the gratuity into an annuity for that period; the relevant period is the period taken into account, in accordance with section 57 of the 1975 Act for the purpose of making the assessment by reference to which the gratuity became payable.
4. 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.

I declare that -

- * (1) ~~I am not in receipt of any of the above mentioned additional benefits.~~
- * (2) I am in receipt of the following additional benefits.
(Please state amounts and dates applicable)

*See attached document from D.S.S.
Invalidity Benefit was 102.24 - 1994
now 103.49 - 1995*

* Delete as appropriate

(3) I undertake to inform the Lancashire County Fire Brigade's Chief Fire Officer of any of the above mentioned additional benefits I may be awarded by the Department of Social Security in the future.

SIGNED *D.S.S.* DATE *22.8.95*

NAME AND ADDRESS

[Redacted Name and Address]

[Redacted]

APPENDIX 'C'

SHQ - Hutchinson, Jayne

From: Wisdom, Julie
Sent: 06 March 2008 15:45
To: SHQ - Hutchinson, Jayne
Subject: RE: B [REDACTED] Draft letter

Attachments: original info received.pdf; revised info received.pdf; B [REDACTED] overpayment schedule.xls

Hi Jayne

Attached is the information received from the DWP for Mr B [REDACTED]. With regards to the draft letter please look at the 'original info received' document as you will see that DWP did provide details of the Industrial injuries benefits however upon contacting them twice they advised up that it was included in the figures quoted under REA (Reduced Earning Allowance). Following our second phone call the lady we spoke to advised us she would send us a copy of the letter sent to Mr B [REDACTED]. It was at this stage that her error was highlighted.

I also attach a revised schedule, which includes the injury pension calculations and breaks down the overpayment between what was due and paid.

If you need any further details please let me know

Regards

Julie



original info received.pdf (92 ... received.pdf (75 ... B [REDACTED] overpayment schedule.xls...

From: SHQ - Hutchinson, Jayne
Sent: 06 March 2008 10:38
To: Wisdom, Julie
Subject: FW: B [REDACTED] Draft letter

Hi Julie

Could you please have a look at this letter and verify that the contents are accurate. I am currently going through Mr B [REDACTED] personal file, for examples of letters and will let you see.

Brendan is happy to send this out on his behalf, so if you could just let me know when you have checked it will arrange for it to be issued.

Thanks very much.

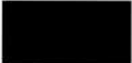
Jayne Hutchinson
Human Resources Manager
01772 866841

<< File: SHQ - Hutchinson, Jayne.vcf >>

From: SHQ - Hamilton, Brendan
Sent: 05 March 2008 14:29
To: SHQ - Hutchinson, Jayne
Subject: B [REDACTED] Draft letter

Jayne

Attached is a rough draft as I am unclear of what has now been received from DWP and the circumstances. Can you review content with Julie and get all relevant correspondence from DWP copied to go out with letter
BH << File: E [redacted] letter.doc >>



Mr R R B [REDACTED]

Upon receipt of information from DWP Lancashire Pensions Services sought clarification of amount of benefit being paid due to details on the form. DWP advised Mr B [REDACTED] was currently receiving £ 52.68 for Industrial Injuries and Reduced Earning Allowance. LPS phoned DWP again to confirm details after meeting with MR B [REDACTED]. DWP confirmed details as previous and advised that Mr B [REDACTED] had asked them for details of benefits received and they would fax a copy of the letter they had issued to him. 10 minutes later LPS received a phone call from DWP and the lady explained she had filled in the original form and had now realised that the information given on the form, and the subsequent phone calls, was incorrect. Mr B [REDACTED] currently receives £52.68 for Reduced Earnings Allowance and £26.34 for Industrial Injuries benefit.



Mr R R B 


Please ask for: Brendan Hamilton
Telephone: 01772 866856
Email: brendanhamilton@lancsfire.org.uk
Your Ref:
Our Ref:
Date: 10 March 2008

Dear Mr B 

SUBJECT: Review of Injury Pension Award

At our meeting on 26 February we provided you with a schedule of apparent over payments of your injury pension award based on information we had received from the DWP. Whilst you acknowledged that such payments were being made, you believed you had advised us of this benefit at the time. We advised we had no such record and have subsequently again checked our files and can find no such referral. You also indicated that you would make your own enquiries of DWP.

Further to our meeting on 26 February I understand that you have initiated enquiries of your own regarding DWP benefits. As a consequence the benefits agency have been in touch with our pension administrators to advise as a result of your contact that they have identified a wider schedule of benefits that you have received than they initially reported to LCC Pension Services in response to their original audit enquiry.

I attach copies of the relevant correspondence from DWP and regretfully what appears to be an increased schedule of overpayment. Given the circumstances outlined above I feel it would be useful to have a further meeting to clarify the matter. Please feel free to bring a colleague/representative with you.

Yours sincerely

Brendan Hamilton
Head of Human Resources

APPENDIX 'E'

LFRS
Mr.B.Hamilton
Human Resources.
SHQ
Preston
PR2 3LH



Thursday, 20th March 2008.

Pension Injury Review.

Dear Sirs,

Thank for your letter of the 10th inst.

I have been advised by my representative body, the FBU and its legal department, that until detailed legal clarification on this subject has been provided by you, that to continue with further meetings would simply be a pointless waste of my time.

Nevertheless, at this point, I feel I ought to make the following clear to you until you do supply me with the clarification I seek, that:

- I deny entirely that a debt in any form exists between myself, the CFA , the DWP, and any other agency contracted by you to handle my pension.
- I deny that I have acted, whether by default or otherwise, in any manner whatsoever in failing to carry out my obligations in respect of my Fire Service pension contract.
- Furthermore, I categorically deny that I have in any manner whatsoever acted unlawfully in respect of the common law and my Fire Service pension.

Yours truly,

R [REDACTED] B [REDACTED].

APPENDIX 'F'

*Please remove
details
from WPA
JW
10/7.*

NB: WOULD YOU PLEASE ENSURE THAT ANY CORRESPONDENCE RELATIVE TO THIS DISCIPLINARY HEARING IS REMOVED FROM FILES HELD AT DIVISIONAL HEADQUARTERS.

CHIEF FIRE OFFICER
220
JPH/DEH/PR
10 July 1989

FIREMAN [REDACTED] B [REDACTED] R R
STATION C50 PRESTON

cc DC 'C', PR

*WPA Record
ided
17-7-89
SET.*

DISCIPLINARY HEARING - 2 JULY 1987

I have to advise you that details in respect of the above disciplinary case have now been removed from your personal record file and destroyed.

JRW

Dear Mr.Strachan,

Thank you for your call on Tuesday 28th inst.

I am sorry if I seemed unable to comprehend entirely the points you were making in relation to my pension complaint to the Ombudsman but just at the moment of your call a carpet layer had arrived and I was thus preoccupied.

If I recall correctly you raised the point that I was not at fault because of the LFRS's failure to complete their Statutory duty in respect of my Stage II IDRPs, in effect, that it was their responsibility to do so, not mine. I agree with your conclusion.

Next you raised the point why it had taken so long from my retirement until 2015 before I raised my concerns with the LFRS about whether or not I was being underpaid the wrong pension which I feel sure I am.

It is one of these conundrums which runs like this ...How do you get to know about the wrong payment of your pension if you live out of contact with others of your peer group you formerly served with and in any case you do not have sufficient knowledge of pension scheme rules to check for yourself?

The answer lies with my pension scheme manager Mr. Warren who it now appears had a Statutory duty when similar issues were raised by other members of the Scheme to firstly investigate, and if similar errors were found, to inform all the members of the scheme and then to inform the Pension Regulator which it is now clear he failed to do.

When, with other colleagues, I was finally convinced in 2015 that I was not being paid the correct pension and raised it with the LFRS it rapidly became clear to me that I was being treated with dishonesty, stonewalling and just fobbed off that I decided I should take the formal action you are now aware of.

The question might also arise now if my complaint to the Ombudsman may have run out of time?

As a Senior Fire Officer who daily read and implemented legislation a quick look at the applicable legislation informs me that my complaint is still in the correct time frame and even it was not so it is clear in the same legislation that the Ombudsman has complete flexibility about when or how he and his deputy may make a Determination on any pension complaint to the Ombudsman.

I am sure you know this but the legislation I am applying is **The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996**

It is the old question, like the Limitations Act 1980, when does the clock start ticking?

Statutory Instrument No. 2475, 1996 Regulation 5:

5 Time limit for making complaints and referring disputes

(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2)Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3)Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.

Following our conversation and my preliminary look at the applicable law I have today briefly approached Mr. Copplestone-Bruce the pro bono barrister who generously helps us all and he is certain that I remain well within the time frame and also within the parameters of Paragraph (3) as well, if that needs to be applied.

Finally I would be obliged for my record purposes if you would be kind enough to always confirm your telephone calls with an email to me which currently should include receipt of my complaint application and any case reference number you may have allocated to it?

I hope all this helps.

Yours faithfully ...etc

Paul.Strachan@pensions-ombudsman.org.uk

The Pensions Ombudsman

Mr.A.Arter

11 Belgrave Road

London SW1V 1RB



7, Kings Drive,
Preston, Lancashire.
PR2 3HN. ENGLAND.
Tel +44 (0) 1772 715963.
symbolseeker999@gmail.com
Thursday, 23rd November, 2017.

**Chairman-Parliamentary Select Committee
Works & Pensions**

Chairman-Rt Hon Frank Field MP, DL.
House of Commons
London
SW1A 0AA
My Ref: PB001317.

Fire Service Pensions – Select Committee

Disabled Fire Service Veteran Mr. R.R.B. [REDACTED] ~ Pension Complaint.

Dear Mr.Field,

To my mind you and the Parliamentary Work & Pension Select Committee represent the ultimate national Watchdog in matters pension with the Parliamentary powers to ask questions, demand honest answers, and to call persons to account.

The Committee are also our last refuge in seeking procedural support for the justice of all matters pension regardless of whether or not a particular pension complaint may be upheld.

As you will be aware I have been forwarding my correspondence on Mr. B. [REDACTED]'s Pension Complaint to you and the Members of the Select Committee.

You will note from the attached that a senior Civil Servant, Ms.F.Nicol at TPO, has repeatedly failed to address not only her department's failure of Service Delivery but has obstructed the lawful due process of Mr. B. [REDACTED]'s original Pension Complaint.

At one point I suggested to move progress that a line be drawn under all these side issues and that Mr. B■■■■'s Pension Complaint be advanced to a Determination. She declined to do that either.

Mr.Arter claims that he operates TPO as a Court within the meaning of CPR (Civil Procedure Rules) and if I accept that then he and his staff are equally bound by those same Rules of judicial procedure. It cannot be a Court when it suits.

Following the natural logic of this Ms.Nicol's repeated denial to Mr.B■■■■ of 'due process' amounts to perverting the course of justice which is a criminal offence.

There is also the question of whether or not Mr. Arter has actually seen my correspondence which was directed to him in the latter stages of this fiasco.

Not having received a formal response from him it is a reasonable conclusion that he has not seen the documentation, for if he has, and he has approved Ms. Nicol's actions, this will be tantamount to a denial of the will of Parliament enshrined in the legislation which created and runs TPO and a contradiction by which he claims that he operates as a Judicial Court of Law.

It would be helpful to us all, if you and the Committee would take the time on our behalf, to clarify this conundrum directly with Mr. Arter, because upon it hangs not only the veracity of a senior member of his staff but more importantly the public credibility and integrity of TPO as an organisation, and if indeed he has approved this denial of 'due process' to Mr. B■■■■, why?

This is a classic example of stonewalling to which we have all been subjected repeatedly to during the last 10 years from the clerks who administer our pensions; to our Pension Scheme managers; to the DCLG/Home Office; to the Information Commissioner to all and sundry Pension Ministers.

This is an archetypal example whereby bureaucrats misuse the various appeals routes and procedures to divert time limited(by age) matters on to their merry-go-round in the hope that the complainant will wither(die) on their anti-democracy vine or will wearily go away.

In the instance of Grenfell Tower one wonders, in the wee small hours, when such people are literally clinging by their fingertips what their thoughts might be if the Fire and Rescue Service subscribed to such obstructive maliciousness and the heroic Mr. B■■■■s of this world simply failed to turn up?

Yours Sincerely,



Divisional Fire Officer (Rtd) Grad I Fire E.



7, Kings Drive,

Preston. Lancashire.PR2 3HN.
ENGLAND.

Tel +44 (0) 1772 715963.

symbolseeker999@gmail.com

Thursday, 23rd November, 2017.

The Pensions Ombudsman

Mr.A.Arter

11 Belgrave Road

London SW1V 1RB

My Reference: PB01217.

FAO Ms.Shona F.Nicol –Casework Director

A Third Service Delivery Complaint.

On behalf of

Mr.R.R.B. [REDACTED] ~ disabled Fire Service Veteran.

Dear Ms.Nicol,

1. Thank you for your email 22nd November @ 17:45hrs, and for pointing out my typographical error. I regret and note that you have simply failed to address a single point I have raised with you as TPO Casework Director and the Civil Servant responsible.
2. Am I to assume that this email, in this format, is both your formal receipt and formal acknowledgement of my letter of the 18th inst?
3. I note that *you say* and *you confirm* that Mr. Arter has seen and noted the contents of this, and my previous letters directed through you to him. I find it puzzling that you have not unequivocally stated that Mr. Arter has instructed you to reply in this format; a manner which the Pension Ombudsman would not normally reply in when

he expects his response to be circulated to higher authority; a reply in which you have disingenuously used the collective 'us'.

4. I will remind you of your duties under the Civil Service Code of Conduct.
5. I note that you have inadvertently confirmed that Mr. B■■■■'s Pension Complaint(PO~7523) still lies on TPO's database. Please ensure that it and its associated case file documentation remains so for future independent investigation.
6. I will of course, acting on your personal advice, 'escalate' this matter.
7. The avenues I may use will include, but not limited to, the Parliamentary Select Committee, the Minister of State for the DWP, the Pensions Minister, the Cabinet Secretary and Head of the Civil Service Sir Jeremy Heywood and not least the Parliamentary Ombudsman.
8. I regret on a purely human level that you have not seen fit to treat Mr. B■■■■'s Pension Complaint, which affects his already limited income, with the dignity, and as we all know, the common humanity it deserves.
9. You have wilfully chosen, rather than correct several error of professional judgement, to harm the credibility of an organisation which it is the Parliamentary cross party desire that its previously tarnished reputation be rebuilt and upon which Mr. Arter is surely engaged.
10. Once more I ask you to ensure, and confirm, that Mr.Arter has read the contents of this letter and has instructed you to respond formally to me.

Yours Sincerely,



Paul P. Burns. GIFireE

Divisional Fire Officer (Rtd)

CC Rt Hon Mr. Frank Field DL M.P. Chair Parliamentary Work & Pension Select Committee.

Parliamentary Under~Secretary of State DWP(Pensions Minister)

Mr. G.Opperman M.P.

Pension Regulator ~ Ms.L. Titcomb.

Mr. John Merlin Coplestone Bruce (Life Member-Inner Temple Bar).

The Editor 'The Morning Bugler' ~ For publication in the Public Interest.

From: [Fiona Nicol](#)
To: ["Paul P Burns"](#)
Cc: [Jordana Joshua](#); [REDACTED]
Subject: RE: Mr. Berry PO-7523
Date: 22 November 2017 17:44:21

Dear Mr Burns

Thank you for your email and attached letter which has indeed been seen by Mr Arter.

There is nothing further for us to add. In my letter of 11 October 2017, I explained the step to take if you remained dissatisfied. I said:

“This is our final response to your complaint about our service. If you remain dissatisfied you may be able to raise your complaint with the Parliamentary and Health Service Ombudsman. The contact details are:
Website: www.ombudsman.org.uk/make-a-complaint
Helpline: 0345 015 4033”

I therefore recommend you escalate this matter in line with the usual procedure.

Incidentally, if you do write to, or about, me again, I would be extremely grateful if you would refer to me by my correct name: Fiona Nicol.

Thank you

Regards

Fiona Nicol | Casework Director | 020 7630 2233

The Pensions Ombudsman

30 Broadway,
Fulwood,
Preston
PR2 9TH
Lancashire.

+44 (0) 1772 712857
jmcbuce@btinternet.com

14th December 2017

Lesley Titcomb
Chief Executive, The Pensions Regulator
Napier House,
Trafalgar Place,
Brighton.
BN1 4DW.

Anthony Arter
The Pensions Ombudsman,
11 Belgrave Road,
London.
SW1V 1RB.

Dear Regulator and Ombudsman,

Conspiracy to Defraud

With respect, may I alert you both, personally as the responsible individual, to what would seem to be a most serious and systemic conspiracy to defraud former firefighters who, though compulsorily retired on ill-health, are being paid a basic time served pension, denying them compensation provided by common law and legislation.

Mr. G [REDACTED], et al (amongst cases in your offices) has stated the whole of it:

“ 4. SI 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.”

The Lancashire Chief Fire Officer replied on 19th Feb 2016 (IDRP/2015/FMG):

“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 reasons of ill health”.

Mr. Kenny, a layman, construes the law to mean that Mr. G [REDACTED], on being required to retire on being injured in our service so suffering financial loss, be paid the same B1 pension which

would have been his entitlement on choosing, when fit, to go early to become a well paid plumber.

A priori, legislation requires congruity between its parts. SI 192 Rule K (1) (b) enables the fire authority to reduce an ill-health pension by up to 50% on contributory negligence, which presupposes a compensatory pension. Congruity requires that where wording departs from formulaic provision, an ill-health pension is intended to be compensatory.

De facto, Mr G [REDACTED] is receiving the irreducible sum of a basic time served entitlement - due, injured or not. Since it cannot be reduced it does not in law qualify as an ill-health pension.

More widely, pensions administrators owe a fiduciary duty to those to whom their fund pays pension to know the law and apply it.

There is an over-arching legal presumption in construction of all documents that wording is given its ordinary (SOED) meaning and, in legislation, all words used have meaning and different words denote different meanings.

The law is consistent, so construction of an SI, as in contract, requires wording to be strictly construed against the interest of any party relying on wording to gain self interest, or to deny another's interest – here a pension provider to avoid payment.

The ill-health pension provision is set out in SI 129 at Schedule II, Personal Awards, Part II, Rule B3.

At the same time as it promulgated its SI 192, the Home Office issued its 1992 Commentary.

The Commentary does not make law but in plain language sets out, for lawyers and laymen alike, how the State, HMG, requires its parliamentary language of provision to be construed.

By giving unambiguously, in the plainest of plain English, HMG's intended meaning of wording used in the SI to lay administrators, the Commentary avoids different interpretations in different places, to ensure a common, shared and legally correct, universal interpretation.

Unless the Commentary mis-states the law, payment of any pension not in accordance with the Commentary's interpretation of the meaning of wording in the SI is maladministration.

Ill-health provision in SI 192 is set out at B3. Paragraphs 2, 3, 4 and 5 all make provision.

Whilst paragraphs 2, 3 and 4 are premised on, and limited by, what pay 'is' being paid, paragraph 5 is premised on '*by reference to*' actual pay, so limiting calculation to being based on the scale of ranks and pay rates in force at time of enforced retirement, within which the actual pay is specified.

As a matter of legal construction, the 'is' in SI 192, Rule B3 cannot lawfully be conflated with, or be taken to mean the same thing as '*by reference to*', as Mr. Kenny has taken it to mean for the purposes of his reply to avoid any legal duty on the pension fund to compensate for lost career.

The use, meaning and legal effect of 'is' in the Rule B3 formulaic provision is unmistakable.

To avoid mistake on more difficult language, the Commentary construes into plain English the non-formulaic legal effect to be given to the meaning of *'by reference to'* in paragraph 5.

The Commentary specifically tells, states the law, to pension administrators (third person) that they are to give legal effect to the words *'by reference to'* by awarding pensions sums under B3 as formulated, *"or what could have been earned by compulsory retirement age"*.

To the pensioner, to whom access of the Home Office Commentary was to be made freely available, the Home Office speaks to each personally (second person), your pension is as formulated *"or what you could have earned by your compulsory retirement age"*.

The intention of legislation was inescapably to grant flexibility to calculate future loss within a paragraph 5 award of a notional pension by allowing it to become – *what could have been earned* – including by promotion or, with passage of time, the top pay rate for the rank he or she could have enjoyed.

In practice, to arrive at *"What could have been earned by compulsory retirement age"* the first step is to decide what final rank or pay level full service *'could'* [not probably but a more generous possibly], have yielded the fireman; then, to calculate the notional pension for someone retiring that day in that rank or at that pay point. By specifying calculation *'by reference to'* to his current pay, the SI is avoiding speculation on the sum of future earnings by limiting calculation of notional pensions to the pay scales in force at the time of the enforced retirement,

To avoid an ill-health pension yielding more than possible actual loss, where the paragraph 3 or 4 figures are higher than the notional pension, the lower notional pension is paid. This is to avoid any ill health B3 pension doing more than compensate for loss of earnings a full successful career could have yielded - that is *"What could have been earned by compulsory retirement age"*.

Thus, to compensate for financial loss, SI 192 Rule B3 (5) provides as the ill health pension the sum of a notional B1 of a full and successful career. Being a notional B1 the sum is limited to 40/60th of final notional putative pay calculated on the pay scale in force at the date of being required to take ill health retirement.

It was not, and is not, parliamentary intention that its legislation provides injured firemen or women with less compensation than under common law.

Before material legislation firemen who lost their careers and prospects through injury had to go to Court to seek damages for both their injury and financial loss. Legislation replaced that. It replaced uncertainty by certainty. What was good for firemen (whose Unions approved) was good for the taxpayer who avoided having to pay future financial loss up front in damages and the heavy legal costs of endless litigation.

Damages were replaced with an *'injury award'*, in effect a lump sum in compensation, as in damages, for pain, suffering and loss of amenity, and a separate *'ill health pension'*, as compensation, as in damages, for loss of future career earnings.

By not following government guidance, so misconstruing, so denying compensation for financial loss in his awards of notional pension, Mr. Kenny denies paragraph 5 of Rule B3 any legal effect. He also avoids underlying common law entitlement, the 1947 enabling Act, and the 1992 Home Office Commentary, specifically issued to him to ensure a proper legal

construction of the provisions of SI 192 1992 – none of which could have come to pass but for the unlawful suppression of the 1992 Commentary (continuing).

You may care to note in your investigation that Mr. Warren, administrator, misled the former ombudsman Mr. King in writing by quoting him the 2008 Commentary well knowing that it had no application to Mr Burns' pension, to which the 1992 Commentary applied.

Of course, in absence of the Commentary, in ordinary life, the SI would only ever mean what, in breach of his fiduciary duty, the trusted pension provider told the pensioner it meant.

I write to you personally because I am concerned by the way something which, by any yardstick can only be a national disgrace and is scandalous, is still not being dealt with.

It is, is it not, unfair, disreputable and despicable and should have no place in the UK – justice denied and corruption prevailing in systematic theft by those in a fiduciary relationship, of entitlement, so cash, from disadvantaged old civil servants, hurt in helping us who, in their 70's and more, some are without means of redress. I trust Mr Arter will now personally, and most urgently, review the decision taken after his lay predecessor was misled by Mr. Warren.

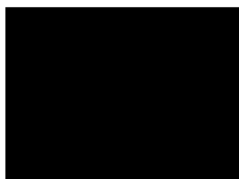
I trust that Mr Burns may now be given the help and support due to any whistle blower seeking justice not just for himself but others from an adverse system. Though I have only looked at Mr. Burns' pension commencing in 1997, it suggests a policy of maladministration.

I trust you will agree that Mr. Burns (G■■■■), or any fireman) should not have been 'short-changed' in this way and instruct Mr. Kenny to rectify with immediate effect.

If I can assist you further please don't hesitate to call on me.

I would be grateful to be kept informed.

With best wishes,



John Bruce.
Inner Temple.

PS. Mr Burns has my permission to circulate as he wishes:

Compilation and Circulation by Mr. Paul P. Burns GIFireE:

Rt. Hon Mr. Frank Field DL M.P., Chair and Members of the Parliamentary Select Committee Work & Pensions:

Ms. Heidi Allen M.P.,
Mr. Andrew Bowie M.P.,
Mr. Jack Brereton M.P.,
Mr. Alex Burghart M.P.,
Mr. Neil Coyle M.P.,
Ms. Emma Dent Coad M.P.,
Ms. Ruth George M.P.,
Mr. Chris Green M.P.,
Mr. Steve McCabe M.P.,
Mr. Chris Stephens M.P.

The (Fire) Minister for Policing, Fire, and Criminal Justice and Victims:
Mr. Nick Hurd M.P:

Firefighters Pension Team (Civil servants):
Mr. A. Mooney
Mr. M. Sherratt
Mr. P. Perry

Minister of State for the Disabled People, Work and Health:
Mrs. Sarah Newton M.P.

Parliamentary Under-Secretary of State DWP (Pensions Minister):
Mr. Guy Opperman M.P.

Mrs. Louise Ellman M.P.
Mr. Jim Fitzpatrick M.P.
Mr. Nigel Evans M.P.

The Pension Regulator (Civil servants):

Executive Director of Finance & Operations:

Ms. H. Ashton;

Head of Complaints & Information Disclosure:

Ms. T. Tyrrell;

Technical Adviser:

Mr. T. Hulbert;

Investigative Staff:

Technical Advisor:

Ms. C. Burton.

The Pensions Ombudsman (Civil servant):
Casework Director

Ms. Shona F. Nicol.

London Fire Brigade:

Director of Finance and Contractual Services&

Delegated London Fire Brigade Pension Scheme manager:

Ms.S.Budden.

Lancashire County Council:

Conservative Leader:

CC. Mr. G. Driver CBE.

Labour Leader:

CC. Mr. Azhar Ali.

Lancashire Pension Services (Local Authority civil servants):

Head ~ Mrs D. Lister.

Performance Manager ~ Ms. J. Wisdom.

Senior Caseworker ~ Mr. K. Mackie.

Lancashire Combined Fire Authority:

Chairman:

CC F. DeMolfetta.

Vice Chairman:

CC M. Parkinson.

All Elected Members Pension Scheme manager(including ~ Local Pension Board Members):

CC L. Beavers; CC P. Britcliffe; CC I. Brown; CC S. Clarke; Cllr D. Coleman; CC J. Eaton; CC N. Hennessy; CC S. Holgate; CC D. Howarth; Cllr F. Jackson; CC A. Kay; Cllr M. Khan; Cllr Z. Khan; CC A. Martin; CC D. O'Toole; CC E. Oades; CC M. Perks; CC J. Shedwick; Cllr D. Smith; CC D. Stansfield; CC M. Tomlinson; CC G. Wilkins; Cllr A. Williams.

Clerk (Part time) to the Fire Authority Mr. M. Nolan.

Lancashire Fire & Rescue Service:

Delegated Lancashire Firefighters Pension Scheme manager:

Chief Fire Officer Mr. C. Kenny QFSM.

Lancashire Firefighters Pension Scheme Fund manager:

Mr. K. Keith Mattinson.

Delegated Deputy Lancashire Firefighters Pension Scheme manager:

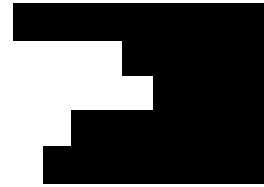
Mr. R. Warren.

Delegated Pension Scheme HR manager:

Ms. J. Hutchinson.

Editor-in-Chief BBC Panorama ~ For publication in the Public Interest

The Editor 'The Morning Bugler' ~ For publication in the Public Interest.



12th February 2018.

The Pensions Ombudsman
Mr.A.Arter
11 Belgrave Road
London
SW1V 1RB
For the attention of Mr.P. Strachan

The Pensions Ombudsman – Pension Complaint.

Dear Mr Strachan,

Thank you for your email of the 24th ult.

I enclose your email in my response to provide reading continuity and transparency for the future independent scrutiny of the Parliamentary Select Committee WP and others:

From: Paul Strachan (Paul.Strachan@pensionsombudsman.org.uk)
To: [REDACTED]
Sent: Wed, 24 Jan 2018 10:44:13 GMT

Dear Mr G [REDACTED]
I hope you were able to access this secure email exchange without any difficulty. Thank you for the two emails that you have sent in connection with your complaint and the information that you have provided. You mention that you were not in contact with your peer group. Am I correct in thinking that you are saying that you felt there was nothing wrong with the calculation of your pension until you came into contact with your peer group? If so, please let me know when this contact came about and when you were told that your pension benefits were not calculated in the manner that you now say that they should have been. If you have any questions, please feel free to telephone me. As per your request I will follow up any conversation with an email.
Kind regards,
Paul Strachan | Senior Jurisdiction Adjudicator | 020 7630 2221
The Pensions Ombudsman

Firstly let me deal with the Statutory law which you, and I as the Pension Complainant, have a Statutory duty of compliance.

In my pursuance of justice as a Pension Complainant, I expect that, in accordance with the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996; SI Regulation 5 Paras 1-3; a 'Determination' will be made by the Pensions Ombudsman or his/her deputy after being in receipt of the full facts of the case. The indication there being that those making the

'Determination' must be legally qualified to do so and hold one of the specific positions referred to in law.

In this matter you do not hold one of these appointments at law; neither do you have delegated Statutory powers to act for them; nor do you hold any legal qualifications whatsoever.

The Regulations also make it clear that every single Pension Complainant compliant with Regulation 5 is entitled by law to a final 'Determination'.

Now, in turning to my Pension Complaint and your latest email, I did expect a little more from you, having regard to the intervening time factors. It made me suspicious that you and those who send you may be trying to use 'creative' means to disbar me instead of treating me with honesty, probity, integrity and trust in accordance with your Charter.

Once more for sake of completeness I must turn to the Statutory Regulations:

Time limit for making complaints and referring disputes

5.—(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complain or dispute if it is received by him in writing within such further period as he considers reasonable.

I, and you, have a Statutory duty to ensure my Pension Complaint is in compliance with Regulation 5 Para (1-2) which it is. In my case this was not by chance but by design which had been set against the 'experience' of others of TPO's duplicity both currently, and in the past.

Even if I was not in compliance, which I am, the Ombudsman is permitted by Statute(Regulation 5 Para 3), 'flexibility', to use his broader Parliamentary Statutory powers to investigate *any* Complaint, particularly in the light of the fact that this particular 'Determination' may well affect the under paid pensions and emoluments of thousands of disabled Fire Service Veterans and their Beneficiaries going back decades.

Indeed, in a stated public policy the Ombudsman has reserved such Complaints, which will have an identified national impact, to himself, and presumably his Deputy.

Since the 5th October 2017, when you received my Pension Complaint, you had a specific duty which was to clerically collate and cross-reference all my correspondence submitted to you against a time line, which I hope you have done. This required you to acquire the relevant correspondence from the LFRS, which surely you must, by now, have. I understand that I should be sent a full copy of all material you have acquired from the LFRS and, should there be gaps appearing in that material, I would be happy to infill any details relevant to my Complaint.

I also understand that it is a Pensions Ombudsman's procedural policy to pass acquired copies of correspondence to a Complainant. By first obtaining that correspondence, and examining it, you would be able to see that my Pension Complaint fulfils the statutory compliance with R5 Para (1-2), without the need to exercise Para (3), though that remains my Parliamentary option, should you decide to act contrary to Statute.

I would like to share an historical moment with you.

On 4th February 2015, Early Day Motion 768, primary sponsor: McDonnell, John(Lab) was placed before Parliament with the 53 sponsor cross party support from Two Houses. The Motion was carried...

"That this House notes that public service firefighters and police officers who retired in a period from 1998 to 2006 were significantly and knowingly disadvantaged by the failure by the Government Actuary's Department, the Department for Communities and Local Government and the Home Office to secure up-to-date actuarial valuations in respect of pension entitlements surrendered on retirement; further notes that maladministration in this matter was established in 2008; further notes that since then the Government Actuary's Department has acted in bad faith by adopting delaying tactics, including a dubious and failed legal challenge to the authority of the Pensions Ombudsman, thereby causing lengthy and unnecessary delay to the resolution of this matter and occasioning a situation whereby many of those affected have not or will not live sufficiently long to see this injustice corrected; and calls on the named departments to accept the imminent ruling by the Pensions Ombudsman and take immediate steps to pay any recommended awards."

Mr. Milne 59, the victim, told The Mail on Sunday: 'The Government played every dirty trick in the book to avoid paying. They knew they were in the wrong but submitted appeal after appeal – and holding up proceedings for all these years will have cost the taxpayer unnecessarily'. The resonance with my Pension Complaint is clear.

I trust there will not be a repeat of that sad and dishonourable state of affairs by any Government Department or any Government Agency, or individual, having responsibility for progressing a legitimate Complaint through the proper channels.

Furthermore, I hope you do not see it as your civil servant 'duty' to act corruptly for those in seniority above you, particularly those who in turn who see it as *their* corrupt duty, to act for a corrupt government, which intends to continue defrauding further those pensioners and beneficiaries who it has already defrauded for decades past?

May I suggest that without further delay my Pension Complaint be placed before the Deputy Ombudsman Ms Karen Johnston, who, as a practising barrister and a current member of the Independent Bar, should have the necessary legal skills to deal with a Pensions Complaint which contains no less than two barristers' opinions. One of whom, Mr John Merlin Copplestone Bruce (Lifetime Member-Inner Temple Bar), decided to write an open letter to Ms L Titcomb (TPR) and Mr A Arter (TPO) on 14th December 2017, entitled "Conspiracy to Defraud" for which he has yet to receive replies.

Perhaps you also may wish to reflect on the contents of that letter.

Please acknowledge.

Yours Sincerely,

[REDACTED]

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

CC.

Rt Hon Mr. Frank Field DL M.P. Chair Parliamentary Work & Pension Select
Committee and all Members;

Parliamentary Under-Secretary of State DWP(Pensions Minister)
Mr. G.Opperman M.P.;

Pension Regulator - Ms.L. Titcomb.

Mr. John Merlin Coplestone Bruce (Lifetime Member-Inner Temple Bar).

The Editor 'The Morning Bugler' - For publication in the Public Interest.



9th March 2018.

The Pensions Ombudsman
Mr.A.Arter
11 Belgrave Road
London
SW1V 1RB
For the attention of Mr.P. Strachan

The Pensions Ombudsman ~ Pension Complaint ~ For the Record.

Dear Mr Strachan,

Thank you for your email of the 12th ult.

As previously, I enclose your email in my response to provide further reading continuity and transparency; for the record; and for the continuing independent scrutiny of the Parliamentary Select Committee W&P and others:

Your complaint to The Pensions Ombudsman

From: Paul Strachan (Paul.Strachan@pensionsombudsman.org.uk)

To: 

Sent: Mon, 12 Feb 2018 12:08:44 GMT

Dear Mr G ,

I write to let you know that your letter was safely received via Mr Burns. Thank you to you and Mr Burns for it.

As you know, our role is to investigate complaints. However, we can only investigate those that are within our jurisdiction. If we can investigate a complaint then the applicant has a right to a Determination of the complaint from the Ombudsman. As you are aware, I cannot issue a determination.

You are aware of the time limits within which complaints need to be brought to us. This is the point that I am considering in respect of your complaint. I have no wish to delay the consideration of your case and I apologise for not confirming before now if we can investigate your complaint.

You are aware of the time limits. As I see it, your complaint is about the calculation of your pension benefits since the late 1990s. I appreciate that you were not aware at that time of your assertion that they were incorrectly calculated – I have no reason to doubt that. What I therefore need to establish is if we received the complaint within three years of when you first reasonably ought to have become aware of this complaint. As you will

appreciate, one person's awareness of an issue can be different to that of someone else and it may well be that your complaint is within our time limits – it is just that I need to establish this.

In your letter of 1 December you mentioned that you (and other colleagues) were finally convinced in 2015 that your benefits had been incorrectly calculated. So that I can consider the point and move the complaint forward, please let me know if it was then that you first became aware that your entitlement ought to

**have been calculated in the manner in which you now say. If it was some other date, please let me know.
I hope that this email clarifies the reason for my request. If you have any questions, please let me know.
Kind regards,
Paul Strachan I Senior Jurisdiction Adjudicator I 020 7630 2221
The Pensions Ombudsman**

I am disappointed that once more, you have decided to deliberately prolong this 'game' of obfuscation and self-evident entrapment in failing to apply 'due process' to my Pension Complaint. A Pension Complaint which is representative of countless similar Fire Service pension complaints.

You do so in a continuing gratuitous personal smear in which you imply, in a 'nod and wink' to the independent readers of this public correspondence, that in some way I am lacking in either transparency, personal integrity, or that I am plainly dishonest.

By continuing to do so you have eliminated my goodwill and now you are causing me grave offence.

Unlike yourself, my public persona and valued self-respect, as a former public servant of long standing, are not for sale. I regret that in selling your 'values' for promotion and title you have destroyed any vestige of respect I might have had for you both as a person, and a civil servant. You have chosen your 'loyalties' and now you must live with them.

In moving forward I am glad, without belabouring the point, that I have now established common ground in that you do not have the lawful capability to issue legal 'Determinations'; nor do you have any delegated Statutory powers to do so; nor any other 'powers' which might be misconstrued that you can.

In point of fact stretching my charity to its extreme you are simply an unqualified, partial, civil servant clerk, as are most of your administrative colleagues.

This coupled with your confirmed and complete lack of legal qualifications, raises the interesting question of how you are going to 'duly process' my rather legally complex Pension Complaint which you continue, month upon month, to delay without reasonable justification?

It is unfortunate that TPO has chosen to apply the misleading title 'Jurisdiction Adjudicator' to your appointment because undoubtedly this will lead uninitiated trusting pensioners to incorrectly assume that they are dealing with some form of 'lawyer' which is misleadingly undesirable, but then perhaps that is the TPO policy intention?

In the matter of your lack of legal credentials, shared by almost all of your colleagues, this fundamental failure cannot be laid at your collective doors, but rather at the doors of TPO's senior management in particular your Director of Casework Ms. Nicol, who has failed to plan for and implement the essential training programmes leading to the acquisition of these essential credentials for the effective performance of your relevant posts.

I remain puzzled how Ms.Nicol's Statutory based Complaint system can function efficiently, or even reach preliminary legal conclusions on complex pension Complaints, or indeed ultimately reach any correct legal conclusion, without having the essential legal skills(reflected in her own professional shortfall) at all levels of TPO's administration?

Your post, with its misleading 'Jurisdiction Adjudicator' title, assumes that you will regularly, and have, engaged in making supposedly binding legal jurisdictional decisions which have required 'judicial' interpretation of pure law when we have publicly established you hold no such credible legal capability nor the Statutory jurisdiction for doing so.

For example, recently you arrived at an incorrect conclusion on the time barring of a colleague's Pension Complaint which now raises the question how many more previous mistakes(justice denied) have you made in similar circumstances in the past either by design, or simple error?

The reality of course is, in the current idiom, that TPO is currently all rather an expensive scam, is it not?

These fundamental senior managerial failures puts you all collectively at rather an unreasonable disadvantage when faced by Complainants supported by experienced legal representatives who do hold, with the exception of your barrister, superior qualifications to those few, correct me if I am wrong, 3 colleagues of yours who are legally qualified from a work force of 55, or so, civil servants.

Once more , and in spite of knowing all this , you remain insistent in continuing to explore Regulation 5 (2) ... ***'the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence'***...which I shall describe as the Point of Knowledge(POK), or, 'when the knowledge clock started ticking'.

Once more it seems in the cart leading the horse I should provide you with what the law and case law actually says...

I am sure you will be aware, or ought to be, that this POK was dealt with by case law in the High Court on the 14th October 2016 involving a PO's incorrect 'Determination' followed by 3 x 'Re-Determinations', on the same subject, which had been repeatedly sent back by the HC for TPO 'reviews'. For your elucidation it is to be found as Neutral Citation Number: [2016] EWHC 2519 (Ch) Appeal No: CH-2016-000032 14th October 2016.

As a consequence of the HC analyses of the Ombudsman complaint receipt procedures (I need only concern myself with the POK) the Court concluded that POK commenced, for example in my case, when I first hand delivered my IDRPs Stage I Complaint on the 18th December 2015 to the LFRS.

Needless to say I am sure you can work up your own calculation on the time factor, but nevertheless the LFRS accepted both Stages of my time limited hand delivered IDRPs which provides the time frame. The LFRS for self-evident reasons of obfuscation then refused to fulfil its Stage II Statutory duty; a duty which was to place my Pension Complaint before Elected Members of the Combined Fire Authority; a *fait accompli which you, in discussions with me, chose to accept when my Pension Complaint was first filed with and accepted by you, as my contemporaneous notes confirm.*

Lest there be doubt, or an inadequacy of TPO calculators, the legal time line calculation commenced with the hand delivered Stage I on 18th December 2015 through Stage II on 25th June 2016, until receipt by the TPO on 10th October 2017, a line which produces a total time span of 663 days, or if you prefer, one year 9 months 23 days including a Leap Year and an end day, which even by my crude finger counting reckoning is well within Regulation 5(2), is it not?; a fact which I have repeatedly stated to you and which you do not seem to wish to grasp?

Now, before you attempt go back to, or before, the 18th December 2015 in your next time wasting obstructive odyssey, and assuming you are minded to do so in your continuing attempted entrapment, can I remind you of your failure to do your duty which I have now confirmed to you in my last two letters and which I now do for a third time.

Digressing for a moment, can I suggest to you and your colleagues, that it would be unwise to assume that the astute Members of the Select Committee W&P cannot figure out for themselves the purpose of all your collective time wasting posturing ; obstructive posturing which raises fundamental questions at law which I am bound to ask.

What legal authority supports the obvious intention of your obfuscation that a delinquent pension provider, the LFRS in complicity with The Pensions Ombudsman, may defeat due process and the will of

Parliament by perversely stonewalling the decision to process my Pension Complaint and thus withholding a 'Determination' from me?; to a point at which it deliberately exceeds the 'qualification' and 3 year stipulation of Regulation 5?

Your duty, which is directed by the Ombudsman's published policies, was to obtain all the correspondence generated from my IDRPs with the LFRS; their correspondence with TPO; and forward copies of this to me.

But because you have signally failed to do so in spite of my regular prompting I must now conclude that you have indeed acquired these (for you) depressing documents from the ever helpful Mr. Warren the Pension Scheme Manager at the LFRS; documents which you are deliberately withholding from me and which will include my first Pension Complaint letter to the LFRS dated 23rd February 2015.

You might ask yourself how I know that date?

Even, acting contrary to the law/case law to which I have drawn your attention, this 'alternative' POK date which you might be minded to perversely misuse will still place my Pension Complaint well within Regulation 5(2), calculated as producing a total time span of 961 days, or if you prefer, 2 years, 7 months, 18 days including a Leap Year and an end day, unfortunately for TPO still well within Regulation 5(2), the three year rule, is it not?

Most objective fair minded readers must surely by now have reached the obvious conclusion that both your Ms. Nicol, you and Mr. Warren the Pension Scheme Manager at the LFRS by your deliberate obstruction of the 'due process' of my Pension Complaint are all, in complicity, knowingly acting criminally to disadvantage me and my Pension Complaint.

Actions including this correspondence, *in res ipsa loquitur*, which also provides the prima facie evidence against all of you of complicity and knowingly 'perverting the course of justice' by obstructing 'due process'. It seems to me you have by conscious choice chosen to swim in these dangerous waters...

In documents published on the Morning Bugler it is concluded that you have 'form' in these matters in complicity with Mr. Warren going back to another published pension Complaint in 2014 (PO-3946) in which you and others, in collusion with Mr. Warren deliberately placed before the then Ombudsman Mr. King the misleadingly wrong Home Office 'Commentary' on the FS Pension Scheme, the purpose of which was to successfully derail a similar Pension Complaint to mine; a joint action which has inevitably led to a miscarriage of justice which still stands unaddressed by this current Pension Ombudsman.

Whilst most trusting Firefighters can be a little slow on the first occasion the second time around is another matter.

Several times in this recording missive, I have returned to the legal framework, and I do so once more, so later when giving a personal accounting there can be no excuse that either the Statutory law was not understood or could not be implemented for this or that spurious excuse, the old adage being as ever, there can be "no excuse for ignorance of the law".

Lest there still remains any doubt what Statutory duty means both individual and corporate can I refer you to the Cambridge English Dictionary which is summarised by two simple words "must obey".

Furthermore because you personally and TPO corporately have, without evidence to the contrary, fully accepted my filed Pension Complaint the applicable laws for you and TPO are the Pensions Act 1993 (as amended) specifically s145(4c) and s146 which places a Statutory duty on TPO to properly investigate and 'Determine' cases it has accepted, the latter function being exclusively by Statute carried out by the PO or his Deputy.

Making 'deals' in ad hoc 'arbitration' whilst perhaps being understandable and even pragmatic in certain agreed circumstances are nevertheless *neither* Statutory nor lawful functions of TPO. This arbitration, as

we have seen, encourages informal behind closed doors non legally binding 'determinations' which exploit pensioners trust and lack of legal knowledge which inevitably leads to corrupt partial practice.

Now whilst it may well be argued that a failure of Statutory duty is in effect a civil misdemeanor(the penalties are not) when carried out deliberately and knowingly and used perversely to corrupt and pervert the course of 'due process' and thus Justice, such acts then become standalone criminal acts with all the sanctions available to the Courts including, but not limited to, personal fines and ultimately incarceration.

Can I suggest to you publicly, and those who direct you including Ms. Nicol, that a much wiser course of action, rather than compounding your criminality would be, without further delay, to place my Pension Complaint before TPO's barrister Ms.K.Johnston the person most likely to understand the legislative complexities of it?

Should you even now, be not minded to do so, I feel I ought to warn you that through the Bar Council where Mr. J.M. Copplestone Bruce is a Lifetime Member Inner Temple Bar I will copy not only this letter and its associated correspondence to her, but Mr. J.M. Copplestone Bruce's letter of highlighted concerns which he has already addressed to TPR; TPO; and the Parliamentary Select Committee, so that not only is Ms.Johnston alerted to your criminal activities within TPO but that she is given the opportunity to disassociate herself from them, whilst I continue to reserve other contemplated actions for another day.


For the briefest of moments I will allow you, your the freedom of choice, even though to the casual observer you are clearly determined to deny me full due process of my Pension Complaint. Regrettably it also seems to have escaped your attention that you and those who direct you, have and are, continuing to act corruptly and dishonestly with gross misconduct in public office, which are yet more identifiable criminal offences.

You may think you are beyond the law but as the Select Committee regularly demonstrates to those within its accountability jurisdiction, no one is above the law.

From your standpoint I fear the subject of Rule 5 is now exhausted and concluded, move on.

Yours Sincerely,



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

CC.

Rt Hon Mr. Frank Field DL M.P. Chair Parliamentary Work & Pension Select Committee and all Members;

Parliamentary Under-Secretary of State DWP(Pensions Minister)
Mr. G.Opperman M.P.;

Pension Regulator - Ms.L. Titcomb.

Mr. John Merlin Copplestone Bruce (Lifetime Member-Inner Temple Bar).

The Editor 'The Morning Bugler' - For publication in the Public Interest.

Your complaint to The Pensions Ombudsman

Paul Strachan <Paul.Strachan@pensions-ombudsman.org.uk>

05/09/2018 at 15:40:53

Expires: 05/10/2018 at 15:40:53

From: Paul Strachan <Paul.Strachan@pensions-ombudsman.org.uk>

Sent: 05/09/2018 at 15:40:53

To: [REDACTED]

Cc: [REDACTED]

Dear Mr G [REDACTED]

I am sorry that we have not written to you for some time.

As I mentioned in my last email, your case was with Fiona Nicol following receipt of an email from Mr Burns. However, Ms Nicol has asked that I progress the complaint as far as I am able.

There is only one thing that I need confirmation of to move the complaint forward. I take on board the points that have been put forward. However, all I need is confirmation that you became aware in December 2015 that your pension benefits ought to have been calculated in the manner that you now say. If you can confirm that this is the case, or whether any other alternative date should apply, I will move the complaint forward.

Dear Paul,
Is this
a trap.

Hope we
can meet
with you

[REDACTED]



7, Kings Drive,
Preston, Lancashire.
PR2 3HN. ENGLAND.
Tel +44 (0) 1772 715963.
symbolseeker999@gmail.com
Tuesday, 16th January, 2018.

Strictly Confidential.

Parliamentary Select Committee Works & Pensions

Chairman-Rt Hon Frank Field MP, DL, and all Members.
House of Commons
London
SW1A 0AA

My Ref: PB000218.

Fire Service Pensions – Select Committee

Dear Members of Parliament,

I am continuing to supply Members with information pertinent to the above subject which, I am informed continues, 'under advisement'.

You may recall that following your invitation to submit 'information' to the Committee I sent a comprehensive report on the 26th of September 2017 headlining a range of concerns troubling Members and Beneficiaries of various Firefighters' Pension Schemes.

Following your recommendation I sent a copy of the report to Ms. L. Titcomb CEO, TPR; to Mr. A. Arter the Pensions Ombudsman; and others.

This was followed shortly after by an open letter(unsolicited) from Mr. J.M. Coplestone Bruce(Life Member~Inner Temple *pro bono* Barrister representing interested Firefighters and Beneficiaries) to both heads of departments; a letter in which he expressed his legal and professional concerns.

TPR has promptly confirmed that since October 2017 an investigation is now under way into these concerns. However, where TPO is concerned matters are not clear.

Currently there are 4 disabled Firefighters' Pension Complaints (underpaid since 1992) and 3 failed Service Complaints (SC) lodged at TPO including one, a simple Pension Complaint by disabled FSV Mr. R.R. Berry, which has been at TPO for some 3.8 years without resolution, or explanation, by the Director of Casework Ms.S.F.Nicol.

Recent research/requests under the FIO Act have revealed the following TPO, SC statistics, which have never been published in its Annual Reports:

Thank you for your request under the Freedom of Information Act. In response to your questions:

1. There is no particular reason why we do not record statistics in our Annual Report.

2. Yes we do retain information about complaints about TPO as an organisation.

3. We have statistics going back to financial year 2013/14.

4. Breakdown as follows:

Amount of Complaints expressed as Year enquiries/ investigations/complaints percentage of total enquiries about TPO

<i>2013/14</i>	<i>3302</i>	<i>1006</i>	<i>25</i>	<i>0.76%</i>
<i>2014/15</i>	<i>4236</i>	<i>1074</i>	<i>63</i>	<i>1.49%</i>
<i>2015/16</i>	<i>4998</i>	<i>1151</i>	<i>44</i>	<i>0.88%</i>
<i>2016/17</i>	<i>6121</i>	<i>1333</i>	<i>40</i>	<i>0.65%</i>

Yours sincerely

Adam Pokun I Business Manager I 020 7630 2231

Given these significant statistics, there remains some rather odd answers/explanations for which I am seeking further clarifications in respect of, why prior to 2013/14, no such records were recorded, even by hand; the sub-categories under which such SCs are held, and the reasons why; and the recording of SC resolution, agreed with the Complainant.

This is set against a suitably vague list of unstated, indeterminate cases, on which presumably Mr. Berry's case will now languish, which records older cases, some more than 5 years old, which have never seen the light of day, or a 'Determination', presumably worked on the theory that if the TPO waits long enough the Grim Reaper will have served TPO's function.

In October 2016 TPO decided that it would initiate an 'experimental' system of dealing with SCs (as opposed to Pension Complaints), an 'experiment' which continues today, under the control of the aforementioned Director of Casework Ms.S.F. Nicol.

This 'experiment' in cynical self-examination by Ms.S.F.Nicol of any SC made against her department has the obvious intent of providing an 'investigation' answer coupled with the convenient 'massaging' of her SC statistics on the basis of 'no case to answer'.

This is confirmed by Mr. Berry's case where after 3 consecutive SCs both his Pension and Service Complaints have been brushed aside by Ms.S.F.Nicol with a peremptory curt statement which still failed to answer the questions arising...

"I therefore recommend you escalate this matter in line with the usual procedure.

Incidentally, if you do write to, or about, me again, I would be extremely grateful if you would refer to me by my correct name: Fiona Nicol."

This dismissive attitude in an obviously arrogant unqualified civil servant (with no legal or pension management qualifications) is hardly likely to engender a Public surge of confidence in TPO as a publicly funded (by pension scheme levy) organisation.

A short time ago I was approached by a former Army serviceman seeking to share his 'experience' of TPO with those I represent confirming that troublesome concerns and lack of confidence in TPO is not only confined to Firefighters' Pension Schemes.

The obvious worrying parallels are reflected in his attached letter to the TPO Head of Legal Services Ms.C. Ryan (a qualified solicitor and Scottish Widow share holder) in which the matter of 'arbitration' by the TPO is raised.

The legal position is clear.

The Pensions Act 1993 (as amended) makes no Statutory provisions for 'arbitration' by TPO, and though it might appear to be a pragmatic solution *for TPO statistics*, this will mean in practice a trusting Pension Complainant, with little or no pension law knowledge, being coerced/manipulated into 'signing up' to an 'arbitrated' solution and in the process signing away their lawful right to a Statutory Determination; a TPO self-serving process of which these pensioners will have little or no understanding.

Such unethical practices and breaches of trust raise other questions of so called TPO 'independence', 'impartiality', and 'transparency' in matters pension, including 'adjudicators' at all levels (including senior management who publish their Declarations of (self) Interest); but especially by those who carry out the initial Pension Complaint handling; who admit to no legal or pension management qualifications; nor the mistaken legal capability, as they see it as unqualified lay clerks, to make 'Determinations' using delegated Statutory powers which in law and actualité, they do not possess.

Based on this calamitous maladministrative mess and other past 'experiences' it can reasonably be concluded that TPO has an unenviable Public profile where 'independence', 'impartiality', and 'honest transparency' is concerned, to say little of its so called 'investigative' capabilities.

A conclusion which is supported by the Pension Ombudsman himself who holds shares in 23 major pension schemes, which he is perfectly entitled in law to do.

Given this partiality and contradiction it is difficult to see how Parliament can pursue its critical need to reassure its Public user pensioners that TPO can, with justification, be viewed as totally independent; impartial; honestly transparent; and fully accountable for

all its actions particularly now when a Carillion call to the pension battlements is required.

An unsustainable state of affairs when set against TPO's self-evident reprehensible sacred pension industry self-interest, for which legislation provides no individual legal nor collective ethical disbarment raises the fundamental question, is TPO fit for its purpose?

Surely the time is fast approaching when the Select Committee ought to use its Parliamentary authority to examine how exactly TPO performs; to whom it owes its first allegiance, the pension 'industry' or the Public pensioners ; and the criterion it applies to the recruitment of its staff particularly in respect of their all essential and required SRA legal qualifications and capability even at the most basic staff entry level.

Such an Enquiry should inevitably lead to a 'root and branch' overhaul of TPO which it has never been subject to in its entire history. Tinkering and simply changing the incumbent partial PO is not the answer.

The question of whether or not TPO should be amalgamated with, for example TPR, or a newly created National Pension Watchdog, are questions for another day.

Yours Sincerely,



Divisional Fire Officer (Rtd) Grad I Fire E.



Order of

LSGCM

Oklahoma Medal of Honor &

Excellent Firefighter

Exemplary Fire Service

Honorary Citizenship



Soviet Union

United Kingdom

Oklahoma USA



21st September 2018.

The Pensions Ombudsman
Mr.A.Arter
11 Belgrave Road
London
SW1V 1RB
FOA Mr.Strachan

The Pensions Ombudsman – Pensions’ Complaints.

Dear Mr. Strachan,

Thank you for your email of the 19th inst @ 14:24:22hrs.

1. I can confirm that you are correct in that following earlier exploratory correspondence, with my Pension Provider and the LFRS, I became fully aware that I was not being paid the correct pension, at which point on the 16th December 2015, I implemented Stage I of the Statutory IDRPs to permit the Chief Fire Officer to formally respond to my pension questions .

2. The CFO responded on 19th February 2016 in which he stated:

“ 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 is not due, as indicated part (1) (c) of the extract below:” ..extract supplied.

3. As a consequence, exercising further Statutory procedures, I continued to ask why then was I being paid a Rule B1 pension?

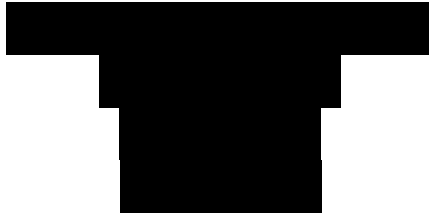
4. I am pleased to note that this Complaint will finally be placed by you, after LFRS and TPO inordinate delays, before a legally qualified adjudicator who will be capable of understanding the complexities and legal nuances of the reading of the law raised in the Barristers’ Opinions attached to my Complaint.

5. Can I thank you for your personal enduring patience and courtesy in dealing with this matter.



Yours Sincerely,

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



21st October 2018.

The Pensions Ombudsman
Mr.A.Arter
11 Belgrave Road
London
SW1V 1RB
FOA Mr.Strachan

The Pensions Ombudsman – Pensions’ Complaints.

Dear Mr. Strachan,

1. It seems I must perpetually at your request return to the question of Statutory Instrument No. 2475, 1996 Regulation 5 and all the associated correspondence with the LCC and the LFRS., when once more you ask me when I first became ‘aware’ that I believed that I was not being paid the incorrect pensions?

2. I am sure you will know such ‘awareness’ is not a Damascene moment but a gradual transition from trusting ignorance to reality.

3. I have repeatedly in response to this question advised you to re-visit all the correspondence which you must surely have in your file on my Complaints after carrying out what I was led by you to believe was a comprehensive ‘investigation’.

4. For these purposes I had assumed that during your investigation, you had obtained copies of all my previous correspondence with my LCC/LFRS Pension Providers? Now this disappointingly after all this delay this seems not to be the case.

5. At an early point you agreed in an exchange of unsolicited telephone calls (by you to me), that my Complaints were indeed within the provisions of Regulation 5 ; you also stated that you were not particularly interested in the self-evident failure of the LFRS to comply with their Statutory duty in respect of the exhaustion of IDRPs to which I also drew your attention.

6. If I recall correctly you raised the point that I was not at fault because of the LFRS’s failure to complete their Statutory duty in respect of my Stage II IDRPs, in effect, that it was their responsibility to do so, not mine. I agreed with your conclusion.

7. Indeed in this letter to you of the 28th November 2017 following yet another telephone call I encouraged you to confirm the contents of these discussions by email for the record but which it seems from my archives you did not do so either:

“ Finally I would be obliged for my record purposes if you would be kind enough to always confirm your telephone calls with an email to me which currently should include receipt of my complaint application and any case reference number you may have allocated to it?”.

8. In this letter in respect of 'awareness', I also stated as follows:

"It is one of these conundrums which runs like this ...How do you get to know about the wrong payment of your pension if you live out of contact with others of your peer group you formerly served with and in any case you do not have sufficient knowledge of pension scheme rules to check for yourself?"

The answer lies with my pension scheme manager Mr. Warren who it now appears had a Statutory duty when similar issues were raised by other members of the Scheme to firstly investigate, and if similar errors were found, to inform all the members of the scheme and then to inform the Pension Regulator, which it is now clear he failed to do.

When, with other colleagues, I was finally convinced in 2015 that I was not being paid the correct pension and raised it with the LFRS it rapidly became clear to me that I was being treated with dishonesty, stonewalling and just fobbed off that I decided I should take the formal action you are now aware of."

9. Now, continuing to run the time-line backwards for your elucidation, it was in mid-February 2015, that my pension curiosity was raised to such a level that I emailed my Pension Provider LCC 'Your Pension Service' asking them to respond my particular interest which was actually concerned about the length of Service I might have accrued towards my pension given my age and rank at 55.

10. In responding incorrectly to my query, Ms.Wisdom then sent me her calculations of my entire pensions which then raised the question in my mind that it appeared to me that she was misreading SI129 and thus miscalculating my pensions, and as you might expect in subsequent correspondence I developed my initial interest in what appeared to be, on the face of it, a simple misreading of the law resulting in me being paid incorrect pensions.

I am sure you will have this LCC correspondence in my file?

11. As you might expect I then raised the matter with my delegated Pension Scheme manager Mr. Warren at the LFRS who to my frustration, then in correspondence, clearly engaged in stonewalling and obfuscation, to say little of mendacity.

12. Matters then came to a head in my detailed letter dated 1st September 2015 addressed to the Chief Fire Officer in exercising the privileges of my former senior rank.

I must assume once more that your investigation must have produced a copy of this letter also?

13. Mr Warren finally, and clearly reluctantly, replied to my letter on the 1st October 2015 which appeared to be a simple a 'cut and paste' reiteration of Ms.Wisdom's statement because it then became clear to me Mr. Warren was unable to understand the law or explain to me why I might well be receiving the wrong pensions.

I assume you have this letter also?

14. It was on the basis that in my opinion neither persons were capable of explaining the legal position to me properly that I then instituted the IDRPs procedure hoping that the LFRS would seek a legal Opinion on my query and resolve the matter to my satisfaction.

15. As you well know this never occurred and thus I brought the matter to the Ombudsman attention all within the time provision of Regulation 5.

14. Can I suggest to you, that it would be helpful if even at this late stage before 'Determination' if you sought out the confirmatory correspondence I have cited, from both the LCC and the LFRS, and though I can easily supply all these documents I am sure you would wish in displaying objective impartiality to seek these document from the LCC and the LFRS who ought to have transparently supplied them to you when one assumes you made a general request to them at that time in 2017?

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



Yours Sincerely,

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



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our Ref: PO-19150

13 March 2019

Dear Mr G [REDACTED]

Firefighters' Pension Scheme

I have looked at your complaint and all the information provided by you and Lancashire Fire and Rescue Service (**LFRS**). I now enclose my Opinion on your complaint. A copy of this is also being sent to LFRS.

Please be aware that our Opinions are often published on The Pensions Ombudsman website, therefore, for confidentiality purposes, your name has been anonymised. The system used is to refer to the applicant by their title, and the last letter of their surname.

If you and LFRS tell me that you agree with my Opinion, or I do not hear from you by 27 March 2019 the investigation will come to an end on the terms explained in my Opinion. Your complaint will be treated as withdrawn, in line with our withdrawal procedures, because all parties have accepted the proposed outcome.

If you disagree with my Opinion, please write to me by 27 March 2019 providing any additional facts or reasons that you think support a different decision from mine. There is no need to repeat arguments already made or send information already provided.

LFRS is being given the same opportunity to comment on my Opinion.

When I have received all the comments I will look at the complaint again. I might need to make further enquiries. If my view is materially changed as a result of comments or further enquiries, I will issue a revised Opinion.

If you or LFRS contest my Opinion it can be referred to an Ombudsman to issue a final and binding decision. Please note: if I have said in my Opinion that an Ombudsman is unlikely to reach a different decision or make a different award, and you decide to ask for an Ombudsman's decision, it is possible that no award will be made by the Ombudsman, and any offer previously made to you by a party might be withdrawn by that party.

Telephone: 08009174487
Email: enquiries@pensions-ombudsman.org.uk
Website: www.pensions-ombudsman.org.uk

10 South Colonnade,
Canary Wharf,
E14 4PU

The letter accompanying this document explains what your options are depending on whether or not you accept my opinion. Please read the letter carefully and take action by the date given, or the investigation might come to an end.

Opinion by adjudicator for the Pensions Ombudsman

Applicant	Mr N
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondent	Lancashire Fire and Rescue Service (LFRS)

Outcome

1. I am authorised by the Pensions Ombudsman to give an opinion on the merits of complaints, whether or not they can be upheld and, if applicable, what should be done to put matters right.
2. I do not agree that this complaint should be upheld and, in my opinion, no further action is required by LFRS.
3. My reasons for reaching this view are explained in more detail in the section, "My findings".

Complaint summary and background

Complaint

4. Mr N has complained that since he was retired on the basis of ill health, he has been paid a B1 Ordinary Pension rather than a B3 Ill-Health Pension. He says this is specifically prohibited by the terms of the Scheme, The Firemen's Pension Scheme Order 1992 (**the Order**).

Background

5. In July 1998, Mr N was retired on the basis of ill health from his employment with LFRS. As a result, he was entitled to an ill-health award set out under B3 of the Order (see Appendix below).
6. In 2016, Mr N considered the pension he was receiving and took the view that his pension was being incorrectly paid. His position is that since 1998, his pension has

been paid on the basis of a B1 Ordinary Pension, as opposed to the B3 Ill-Health Pension he ought to have been entitled to. Mr N highlights that if an individual is entitled to an ill-health pension, they are prohibited from receiving a B1 Ordinary pension.

7. Part B (B1) of the Order states:

“B1 Ordinary pension

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

...

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

8. The complaint was considered by LFRS under the Internal Dispute Resolution Procedure but not upheld. LFRS was satisfied that Mr N is being paid the correct pension. Subsequently, Mr N referred the matter to us.

My findings

9. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were many other exchanges of information between all the parties.
10. Mr N is concerned that his pension has been underpaid quite considerably over a significant period of time. His position is that he is being paid a B1 Ordinary Pension, when in fact the Order, quoted above, prohibits this. He considers that he should be in receipt of a pension calculated on the basis of B3 (4). However, I disagree.
11. Mr N is entitled to a B3 pension. This is not under dispute. To establish Mr N's B3 pension, LFRS has compared the benefits payable under B3 (4) against a notional pension equivalent to the benefits that would have been payable under a B1 Ordinary Pension. This comparison test is set out in B3 (5), which goes on to direct that where the B3 (4) pension exceeds the notional pension, it is the notional pension that is payable. It is this notional pension that is being paid to Mr N.
12. B3 (5) states:
- “the amount of the ill-health pension is that of the notional retirement pension.”
13. In my view, this means that Mr N is still being paid a B3 Ill-Health Pension, albeit it is equivalent to the B1 Ordinary Pension.
14. I understand Mr N's argument that the notional payment is effectively a B1 Ordinary Pension, which by way of being retired on ill health grounds, he is prohibited from receiving. But that does not preclude the B3 Ill-Health Pension from being capped at

the same level as the B1 Ordinary Pension, and I am not persuaded by his argument that the pension being paid is incorrect.

15. For the avoidance of doubt, my view is that the pension being paid to Mr N is not a B1 Ordinary Pension as he asserts. He is receiving a B3 Ill-Health pension calculated on the basis of B3 (5), which, whilst equivalent to a B1 Ordinary Pension, is not a B1 Ordinary Pension.
16. I have considered the legal opinion Mr N has presented, but I do not agree with its analysis. B3 (5) provides a cap on the level of pension an individual receives so that it does not exceed the level that an individual would have received had they retired under ordinary circumstances. In my view this makes sense, particularly given that in addition to the pension, the Regulations allow for an Ill-Health Gratuity and, if the disablement is attributable to a qualifying injury, an Injury Award Gratuity and Injury pension. This range of awards, in my view, provides benefits that recognise the loss of future earnings and the loss of future earnings growth that Mr N suggests should in fact be provided by an Ill-Health Pension paid in excess of the B3 (5) cap. I cannot see how it would be appropriate for these awards to be made in addition to an enhanced B3 Ill-Health Pension that exceeds what a member would otherwise have received had they achieved full service.
17. In summary, I do not agree that a B3 Ill-Health Pension provides an avenue to a pension in excess of what would have been received under the B1 Ordinary Pension.
18. Mr N has also suggested that some allowance ought to be made for lost future increases in salary from the pay scale or promotions that he may have achieved, by increasing his average pensionable pay in line with what he could expect to receive, had he continued employment to the point of compulsory retirement. This argument has already been determined by a former Ombudsman of this Office, and I understand Mr N has had sight of that determination. The Ombudsman found that the notional retirement pension is based on the actual average pensionable pay, not a hypothetically increased average. Nothing in what Mr N has submitted causes me to reach a different view on this issue.
19. I would add that the use of actual in the context of the average pensionable pay, in my view, serves to distinguish between the notional elements of the calculation of the notional retirement pension (i.e. the years to compulsory retirement) and the actual amounts (i.e. the actual average pensionable pay).
20. It is therefore my opinion that this complaint should not be upheld.



Thomas Coutts
Senior Adjudicator

13 March 2019

Appendix

The Firemen's Pension Scheme Order 1992

Part B

B1 Ordinary pension

- (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.

Schedule 2 Personal Awards

Part III

Ill-Health Pension

Rule B3

- 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—

$$\frac{A \times B}{60}$$

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—

$$\frac{2 \times A \times C}{60}$$

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—

$$\frac{20 \times A}{60}$$

and

$$\frac{7 \times A}{60} + \frac{A \times D}{60} + \frac{2 \times A \times E}{60}$$

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

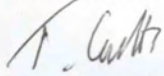
(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension,

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.

Please respond by the date shown above. I will consider reasonable requests for extensions to the deadline so if you need more time to reply, please let me know as soon as possible, explaining why.

Yours sincerely



Thomas Coutts
Senior Adjudicator

020 7630 2755
thomas.coutts@pensions-ombudsman.org.uk