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6th June 2018

The Right Honourable Mr. Frank Field DL, M.P.

Chairman – Parliamentary Select Committee Work & Pensions.
– All Members.

Conspiracy to Defraud.

Dear Chairman & Members,

I have been passed Mr. Field's response to Mr. Thomas, one of the aggrieved disabled Fire Service Veterans who rightly believe that they are not being paid their correct Fire Service disablement pension by their respective Authorities.

For completeness I include Mr. Field's comments to Mr. Thomas:

"Dear Mr Thomas,

Thank you for taking the time to write to the Committee.

I sympathise with the problems you are having pursuing your case. The Committee is not currently, however, inquiring into the performance of the Pensions Ombudsman and nor are we able to investigate individual cases. Should we become aware of a systemic issue with the way TPO are operating we will, of course, consider looking into that.

Best wishes,

Frank Field"

My records indicate that I first began the pro bono support of these disabled Firefighters in December 2012 and in the period which followed I have not only monitored their individual cases but their collective belief that Justice is being delayed and thus Justice denied.

Such was my rising concern that on the 14th December 2017 I took the exceptional course of personally writing directly to Ms. L.Titcomb (who I believe is now leaving her post by common consent)the TPR Regulator and Mr. A. Arter the Pension Ombudsman.

I explained my concerns, at that time, as you will note in the attached copy.

I regret that neither person had the courtesy to reply which is perhaps symptomatic of their response to anyone who might challenge their professional capacity to act within the law; bearing in mind that Mr. Arter claims, erroneously, that his organisation is a properly constituted Court of Law which the High Court disagreed with in a recent judgement.

It is now some 6 months since I wrote to them pointing out that fraudulent denial of a Statute based pension for loss of earnings, career, and enhanced pensions, which is no more than is due under common law, where the employer is liable for all those whose injury curtails employment, is in law a criminal offence by not only them but those whom they individually direct to complicitly take this unlawful position.

Given the considerable volume of correspondence from these disabled Firefighters which repeatedly points out the correct legal position, no politician nor civil servant can deny their personal liability.

A liability placed and pension enhanced by the Fire Services legislation, and in particular by the 1992 SI 192.

Currently four case to my knowledge lie before both organisations:
Mr. Thomas since 2010; Mr. Berry since 2013; Mr. Burns since 2013; and lately since 2016 Mr. Galpin.

Now whilst it could be argued, with the current involvement of TPO, that all these 'stalled' cases are simply the consequences of casework overload a careful study of individual case correspondence rejects that notion by the display, in my opinion, of a marked similarity of administrative machinations which amounts in practice to deliberate systemic delay in reaching a 'Determination' on each case; the purpose of, which for a moment, eluded me.

One can only reach one of two conclusions that either TPO is a systemically failed organisation not fit for its purpose, or, it is following a government edict which realises the consequences in monetary terms of the honest restitution it surely must pay to all those Beneficiaries its Fire Authorities have defrauded; a restitution which by all and any means must be stopped.

It seems inconceivable to me that the senior Civil Servants engaged in this obstructive 'denial' exercise cannot be unaware of the personal consequences for them in criminal terms if they felt they did not have their unlawful actions underpinned by a higher authority, in other words, a government policy of institutionalised fraud in this matter.

Having been fully evidenced to you in the cases mentioned it surely becomes your inescapable duty to act to redress the wrong of this institutionalised theft done to those concerned.

It is precisely this sort of arbitrary and oppressive conduct which your Select Committee was set up by Parliament to avoid and remedy.

To fail to act to redress this grievous wrong is to engage with these conspirators, be they civil servants and/or government Ministers, and will be viewed by the general public as supporting, condoning, and encouraging, dishonest misconduct in public office from the highest politician to the lowest civil servant thus engaged.


All barristers are Officers of the Court and, as we all know, 'Justice delayed is Justice denied' so, in the absence of being told something to act as a stay, you leave me no option but to recommend to these disabled Firefighters and their beneficiaries that, acting either individually, or in class, that they lay criminal complaints before the Metropolitan Police Commissioner against those they identify as being engaged in these criminal frauds.

Finally there is clear anecdotal evidence over this extended period that the disabled Firefighters I am in contact with are simply a very small sample which is indicative of widespread systemic malfeasance in this pension fraud throughout the UK Fire Service.

I hate having to write to you like this but this has all gone on for far too long, so long that there are many instances of the account being closed by death - that is an appalling reflection on us - like Windrush.

Surely that is not the public image you want personally, for your high and esteemed office, nor for the Select Committee?

With best wishes,

A handwritten signature in black ink, appearing to read 'John Bruce'.

John Bruce.

Inner Temple.

PS. These disabled Firefighters have my permission to circulate as they wish.

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14th December 2017

Lesley Titcomb
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Anthony Arter
The Pensions Ombudsman,
11 Belgrave Road,
London.
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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. Galpin, 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. Galpin, 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 Galpin 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 (Galpin, 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,

A handwritten signature in black ink, appearing to read 'John Bruce'. The signature is written in a cursive style with a large initial 'J'.

John Bruce.

Inner Temple.

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