1st October 2020

The Right Honourable Master of the Rolls
Sir Terence Etherton PC
7, The Rolls Buildings,
Holborn,
London EC4A 1NL

My Reference: FG101

In the Court of Appeal **Case CH-2020-000043**
England and Wales
Civil Division

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

Appeal against Judgement of Mr. Justice Fancourt

Dear Master of the Rolls,

I took my quarrel to Lancashire Combined Fire Authority (The Respondents) as long ago as December 2015. They, for their part, did all they could to stay my attempts for Justice by their reprehensible actions and inactions which included relying on the 'advice' of an unqualified clerk in the County Council Pension Department.

Finally my dispute went to the Pension Ombudsman's office who, for their part, used delaying tactics, attempts to time me out, and incomprehensible directives all in the attempt to stage-manage closure on my case.

Perseverance on my part resulted in a Determination made by the Deputy Ombudsman. This turned out to be a repeat of the Respondents' statement which was a repeat of the unqualified clerk's opinion.

I am seeking Justice not only for myself but for those veterans who were discharged from the Service as a result of a qualifying injury or because of ill health who are being paid the wrong pension.

Collectively we are being paid a B1 Ordinary Pension instead of the correct B3 Ill-Health Pension.
I believe that either incorrectly, or deliberately, given the time they have now had to correct this, the Respondents are continuing to pay the wrong pensions which advantages them financially and disadvantages the discharged veterans, their widows and their beneficiaries.

The Statutory Instrument No: 129, The Firemen's Pension Scheme Order 1992, contains the Law relating to the payment of pensions.
For the benefit of all concerned there is an easy read of the layman's law to be found on http://www.themorningbugler.com/ website.

In my quest for Justice I have been subjected to all manner of difficulties, some prescribed but most invented in order to stave me off.

Unfortunately this trend has continued since I had the Judgement on my appeal against the Ombudsman's Determination refused by Mrs Justice Falk.

She, for her part, ordered a hearing which was to be between the two of us on July 3rd 2020. As it turned out she did not attend but the hearing went ahead conducted by Mr Justice Fancourt, which both surprised and dismayed me.

It dismayed me because I reasonably thought that Mrs Justice Falk had the knowledge of the case that Mr Justice Fancourt did not have and I rightly, or wrongly, predicted the outcome of the hearing on that fact.

I believed it to be yet another closing down measure. I did contemporaneous notes during the hearing which I have made available to the Court.

I contracted UBIQUS to do a transcript of the hearing. I have this but it is missing the first 21 minutes or so because it was not recorded and Mr Justice Fancourt's summary is also not included in the transcript.

I await the Court's answer to my questions on these matters.

Notwithstanding the inescapable fact that it has taken five years and more to arrive at this point, for my part I have been put through all the hoops and climbed all the barriers, and yet we are now in October from a July hearing and I am still awaiting the Court's answers to my very reasonable questions?

In so far as Justice is being delayed and denied I have in frustration finally decided to send my case back to the Court of Appeal where I seek the fair play I have been continually denied.

Yours sincerely,

F M G[redacted]MIFireE

In the Court of Appeal **Case CH-2020-000043**
England and Wales
Civil Division

On appeal from an order made by the Honourable Mrs. Justice Falk on 2nd. April 2020, ref: CH-2020-000043, determining an appeal from the decision of the Deputy Ombudsman on 10th September 2019 (ref: PO) – 19150) and on further appeal from a subsequent order made by the Honourable Mr Justice Fancourt on 3rd July 2020.

BETWEEN

[redacted]

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

Appeal.

Pursuant to CPR 52 The Appellant seeks leave to appeal out of time, and to have it settled in law that the law of provision as set out in 1992 Statutory Instrument 129 Part lll, B3, ill-Health Pension, on being construed according to normal English, is that 'by reference to' does not mean, 'is' (the terms being mutually exclusive), to the legal effect:

- That the purpose of the legislation was, and is, to compensate for financial loss.
- That the law was, and is, that a B3 notional pension be calculated as the pension which would have fallen due on being required to retire on account of age and is wrongly calculated on the years served until a firefighter is forced to retire prematurely due to ill health ('qualifying injury').
- That the law was, and is, that a B3 notional pension be calculated on the average pensionable pay (APP) at time of enforced retirement but of the rank or scale point the firefighter could have reached, but for injury, and is otherwise wrongly calculated on the actual APP being paid at the time of enforced early retirement.

That upon a correct construction of the law the Appellant's ill-health pension be calculated, ab initio, as though, at time of enforced retirement, he was being retired with the rank which, but for injury, he could have attained on full service (evidenced) of Divisional Officer ll.

Declaring the Respondent's practice, of denying compensation for financial loss under the scheme for financial loss, was, and is, unlawful and that Mrs. Justice Falk and Mr. Justice Fancourt were wrong to sanction a fraudulent practice.

No other party appearing, the Appellant asks for the matter to be dealt with on paper without physical hearing. On no occasion has any argument been advanced by anyone seeking to give any ratio decidendi for the Respondents practice (though, self evidently, the discrimination saves the pension fund money).

And the Appellant Appeals on some, or all, of the following grounds:

A. The Appellant appeals on grounds pursuant to CPR 52. 7. (second appeals):

1. That Mrs. Justice Falk and Mr Justice Fancourt so misdirected themselves at first instance as to sanction fraudulent practice as lawful, an illegal and discriminatory practice repugnant to law.

2. In so doing both gave judgments denying the rules of law by rendering statutory provision for compensation of financial loss to be of no effect.

3. In so doing each judgment breached important principles of law, in particular a presumption at law that in absence of specific wording clearly expressing parliamentary intention to that specific effect, statute is not to be construed to deny common law rights.

4. The judgments were given in denial of the 'Golden Rule' [per Lord Wensleydale in Gray v Pearson (1857) 6HL Cas1, et al] that in construction of a statute all words have meaning and the meaning to be given each is its normal ordinary meaning.

5. Wrongly both judges gave judgments sanctioning the defendant's fraudulent practice of construing the wording of statutory provision 'by reference to', to mean 'is', in denial of normal meaning; being to locate an unknown point by reference to a known point. Given ordinary meaning, 'by reference to', and 'is', are mutually exclusive terms.

6. Both judgments uphold an unlawful status quo. Mrs. Justice Falk, by misdirecting herself, but without any ratio decidendi, that 'by reference to' must mean 'is' to avoid a 'nonsense', and Mr Justice Fancourt, by misdirecting himself, again in absence of any ratio decidendi, that the Appellant's point of law was 'unarguable' and unable to make 'any practical sense' – though reductio ad absurda on any construction based on any English to be found in the Shorter Oxford English Dictionary.

7. Each Judgment was wrong in law in upholding the respondent's practice of paying the Appellant an Ordinary (retiring able bodied by choice) B1 pension in avoidance of the provision made by 1992 SI 129 to compensate firemen for their financial loss, on loss of career through injury, for which the defendants are 100% liable by law.

Therefore:

(a). The Appellant appeals on the basis that Mrs. Justice Falk and Mr. Justice Fancourt were wrong.

(b). That on any proper construction of the words of provision in the statute and on giving them their proper meaning and legal effect the Court of Appeal will find the Respondent's practice of denying compensation for financial loss to be unlawful, egregious, and in most serious breach of important legal principals.

(c). The Appellant further submits that the Respondent's practice is an arbitrary and oppressive misconstruction of statute law to wrongfully deny compensation for financial loss for which the defendants are 100% liable, and that such practice is fraudulent and so repugnant to law that the Court of Appeal will be compelled to reverse judgments sanctioning such practice and allow the Appeal.

B. Further pursuant to CPR 52.7, the Appellant brings to the Appellate Jurisdiction's attention an ostensible irregularity of which he knows or surmises, no more than hereinafter set out:

1, Mrs. Justice Falk, in denying leave to appeal, having also found on the substantive point of law that 'by reference to' must mean 'is', to avoid a 'nonsense', the Appellant filed an Appeal with the Court of Appeal canvassing the great many breaches in law her finding raised.

2. Mrs. Justice Falk was concerned with pensions provided to firefighters by 1992 SI 129, Schedule 2, Part lll, ill-Health Pension B3. The question being the construction of the words 'is' and 'by reference to' used to define what sum in pay is to be used in calculating pension.

3. A material pension is essentially comprised of two multiplicands, the pensionable years served multiplied by average pensionable pay [APP].

4. The Respondent's practice is to calculate all B3 ill-health pensions as Ordinary B1 pensions falling due to an able bodied person taking early retirement by choice. Though paying a B1, the Respondents pay it as though paying a B3 pension.

5. A B1 pension makes no provision for financial loss. If the Appellant is right in law the sole purpose of the B3 pension is to compensate for his financial loss. His pain injury suffering and loss of amenity being compensated for by a B4 pension.

6. 1992 SI 192, Part lll, ill-Health B3 provision begins with paragraph 1 (2) specifying that "In paragraphs 2 to 4, A *is* the person's average pensionable pay" [APP]. But the specification at 5. (2) is "A notional pension is to be calculated *by reference to* the person's *actual* APP (my emphases).

7. Had the Home Office intended the specification at 5 (2) to be the same specification given at 1 (2), then 5 (2) would have been void of meaning and redundant to paragraph 1 (2) which could have read "In paragraphs 2 to 5 A is the person's average pensionable pay".

8. The wording at 5. (2) used in distinction from 'is' was no oversight. Elsewhere in the SI, at Part VI, the APP multiplicand to be used in calculating a B5 'deferred notional pension' is "A is the person's average pensionable pay' – as in B3, 2 - 4 calculations. How to calculate a notional pension is specific to the context of provision in the statute and varies on intent.

9. To make quite sure that lay people would understand the precise meaning of the drafting language used, the Home Office published a Commentary to the SI translating the legal effect of using mutually exclusive 'is' and 'by reference to' mean, in more colloquial terms, "What could have been earned" – "What you could have earnt" (Commentary). This in place of a pension on 'what has been earnt' due to anyone choosing to leave early so being the author of their own consequential financial loss, if any, on leaving early.

10. The distinction in specification has a profound practical legal effect. By specifying that the APP on which to calculate a notional pension is to be arrived at specifically 'by reference to' the 'actual APP', by English usage and simple logic, two APPs are to be in

mind. They can't be the same one. It follows that the actual APP, with its known identity, is the fixed point of reference within rates of pay in a scale from which the APP of the rank or pay point lies, which, but for injury, the Appellant could have attained. It is akin to the Common Law process in quantification of damages in personal injury cases – which this is.

11. The distinction and its legal effect aligns the statutory provision with common law practice of damages being awarded to compensate for financial loss for which an employer is liable. There is no wording in the Statute denying the common law right to compensation.

12. Were Mrs. Justice Falk, (and subsequently Mr Justice Fancourt), to be correct, it would follow:

(a). The ill-health pension now being paid is what the Appellant was and is properly due, though coincidentally, it is the same 'time served' B1 pension which would have been due to him had he chosen to end his career as a firefighter early and leave, able bodied, to pursue another career.

(b). If correct, the whole of the 1992 SI 192 B3 ill health pension provision is redundant, surplus, and to no legal or practical effect.

(c). It also follows that the law is sanctioning discrimination in that whereas any employer, liable for financial loss on injury cutting short an employee's career, pays compensation, not so if employed by the Respondent.

(d). If a B1 Ordinary Pension is properly the Appellant's ill-health pension and his B4 Injury Pension is for his pain suffering and loss of physical amenity, then, as construed by the Respondents, the wording of the statutory B3 provision is fully satisfied by a B1 Ordinary Pension provision, which denies the presumption at law that all statutory wording have meaning and legal effect.

13. Following the filing of an Appeal to the Court of Appeal Mrs. Justice Falk initiated further action requiring the Appellant's appearance at a Hearing she ordered to be held on 3rd July 2020. In her Order she asked parties to agree facts and she also precisely defined the words requiring construction.

14. The Appellant anticipated that, when fully seized of the matter, Mrs. Justice Falk would so construe and distinguish the wording of 5 (2) from 1 (2) as to give full legal effect to 5 (1) to order that a notional pension be calculated on years until required to retire on account of age and on the APP of the rank he could, but for injury, have attained (taken from the then current pay scales.

15. The Appellant put his Appeal to the Court of Appeal into abeyance.

16. Though unable to agree, the Respondent provided full pay scales and the Appellant 3rd party evidence from Senior Officers of the opinion that had the Appellant served his full career to 60 he would have would have been promoted, for which a pension calculation was given.

17. On 2nd July, the Appellant called Mrs. Justice Falk's Clerk only to be told the papers had been taken from her and a Mr. Justice Fancourt would conduct the hearing.

18. The Appellant was assured by Mr. Brilliant, Clerk to Mr. Justice Fancourt, that the judge was 'au fait' with the case and that it would all be fine.

19. For reasons not made clear the Judge's computer did not record the first 21 minutes or so of the "Open Court Hearing". Without reason given, and much to the Appellant's concern, his wife was excluded from being with him, and he was told that he may not record what was said.

20. Not that the Appellant knew no recording was taking place, it was immediately plain to him that the judge had no grasp of the case but clearly intended to rely on the Appellant to set it out. When the Appellant suggested the Judge may read a document the Appellant had only read a small part before the Judge laid it aside with the comment "Well, this clause 5 takes some reading" The rest of the hearing is on the transcript, the judge simply saying "Yes" as the Appellant sought to make his case but in no way engaging with any point made by the Appellant.

21. The Judge did not parse or construe the words of the point of law at issue.

22. After the Appellant had mentioned Mr Bruce the judge misdirected himself on what Mr Bruce had written saying that "Mr. Copplestone Bruce is taking a rather broader approach to the merits of the pension scheme, and what I am concerned with is a much narrower question of the interpretation of the statutory instrument." Vide, the Grounds of Appeal on the point he was to consider:

" 3. She (the Deputy Ombudsman) misdirected herself on the law of construction of documents and the 'Universal rule' Rookes v Barnard 1964 (AC) and drew an inference in law as to the meaning of statute not open to her, as a matter of law, to draw.

8. Though required by the law of construction of documents and otherwise under the 'universal rule', to give words their ordinary meaning, and adhere to it, she misdirected herself in drawing no distinction between the words 'is' and 'by reference to' used in the statute making B3 provision, but, by conflating them, misdirected herself on a whim that in law they be taken to mean the same thing, thereby denying the purpose and intention of the statutory B3 provision".

23. The Appellant having spoken of it, the judge quoted wording from the Commentary but misdirected himself on its meaning, taking "until compulsorily retired" to mean when retired early on ill-health when, in context of being retired on ill-health, "what could have been earned until compulsory retirement", can only mean until retired on account of age - a future event beyond the time of the injury.

24. In the transcript the judge summarises some of what the Appellant had spoken of during the unrecorded 21 minutes of the hearing but then ignores it and does not engage with the Appellant before telling the Appellant "All right. I propose to give a short judgment, giving my reasons for the decision on your application". There is no ratio decidendi in his Judgment. *(set out in full below)*.

"Mr G[redacted], I am sorry that, that goes against you but as I explained, it is a pure question of law, interpretation of the language of the scheme and in my judgment the point is simply

unarguable. There is no material within the wording of the scheme to support the argument, nor in my view would it make any practical sense. So that is the reason why I have dismissed your application. I am sorry that I have had to do that but that is the position as a matter of law".

25. Mr. Justice Fancourt never explained, referred to, or considered any wording that may constitute any 'pure question of law', nor did he define the point he finds 'unarguable' nor any wording which he found 'would not make practical sense' though a calculation showing the practical differences was part of the submission to Mrs. Justice Falk (for the 3rd July Hearing).

26. It seems irregular to the lay Appellant, a Senior Fire Officer, for a case to be taken from one judge who, thinking better of it after having dismissed it, orders a hearing for which she seeks further written input so, presumably when she was fully seized of it and when she may have come to understand the stark beauty and compelling spare simplicity of the draftsmen's language, so may have intended to correct a gross and long standing injustice – If not why revisit law she has decided? – to then have the case is taken from her to be casually dismissed by a judge who conducts the first 21 minutes of an open Hearing without recording it and where, apparently, neither the transcript nor the Judgment may be disclosed.

27. The Appellant is left with a concern of public importance that in the light of the recent McCloud and Sargeant cases (2018) EWCA Civ. 2844, might not there have been an irregularity, an interference in another case of, in this case, egregious, discrimination between a privately employed citizen whose financial loss is compensated at common law but under statute as construed by this respondent, compensation for financial loss is denied. The lay Fire Chief sees no reason to compensate his firefighters for financial loss. Note letter in Bundle.

C. The appellant repeats and adopts his original Appeal against Mrs. Justice Falk's initial Judgment.

D. On the assumption that Mr. Justice Fancourt, adopted Mrs. Justice Falk's first judgment, the Appellant adopts and repeats his grounds of Appeal lodged against Mrs. Justice Falk's judgment as grounds of appeal against Mr. Justice Fancourt's judgment.

E. Further the Appellant Appeals on the grounds of the matters as set out B supra. Mr Justice Fancourt being wrong in law on important points of legal principle such as to compel the Court of Appeal to find in the Appellant's favour to avoid sanction of conduct defrauding the Appellant of his rightful pension entitlement.

F. The Appellant invites the Court to review the fitness for purpose of a system for dispute resolution so heavily weighted against the pensioner and so in favour of the Respondents, though they owe fiduciary duty to put the pensioners interests before their own, that justice is not done (many have died) with delay being introduced by the respondents at every juncture – in this case some 5 years have elapsed from first complaint.

G The Appellant invites the Court to consider the conduct of the Respondents and, if so minded, direct that exemplary or aggravated damages be awarded to deter and punish the arbitrarily and oppressive conduct of the Respondent Authority. In this case the Respondent's avoidance of Counsel's Opinion to 'blind' themselves to legal obligation, their suppression of the Home Office Commentary, and misquoting it deliberately to

mislead, all carried on with impunity in a system so denied judicial oversight that denial of justice has become institutionalised to the point that defrauding its pensioners has long been the norm visited on Firefighters 'injured in keeping the public safe'.

H. The Appellant seeks an account with unpaid pension retained by the Crown to be paid to the Appellant with Statutory Interest and such aggravated or exemplary damages as the Court should see fit to award.

And Costs.

Francis G[redacted]

J. M. Copplestone-Bruce
Inner Temple
25-09-20.

5. For the purposes of this Scheme the annual rate of graduated retirement benefit shall be calculated as if there were 52 1/6th weeks in a year.

6. In this Scheme "contracted-out employment", "contracted-out scheme", "earnings factors", "guaranteed minimum", "guaranteed minimum pension" and "contributions equivalent premium" have the meanings which they have for the purposes of the Social Security Pensions Act 1975.

7. In this Scheme any reference to a case in which a contributions equivalent premium has been paid includes a reference to a case in which such a premium is payable but has not been paid by virtue of regulations under Schedule 2 to the Social Security Pensions Act 1975 dispensing with the payment of such a premium where its amount would be inconsiderable.

8. In this Scheme any reference to the guaranteed minimum in relation to a pension under a pension scheme at a particular time is a reference to the amount certified by the Department of Social Security as that minimum at that time.

9. In the case of a person entitled to reckon a period of pensionable service by virtue of service or employment in Northern Ireland or the Isle of Man in respect of which he was subject to superannuation arrangements, this Scheme has effect as if any reference to the National Insurance Act 1946(a), the National Insurance Act 1965 or the Social Security Pensions Act 1975 included a reference to, as the case may be–

(a) any enactment of Tynwald, or

(b) any enactment comprised in Northern Ireland legislation within the meaning of section 24 of the Interpretation Act 1978,

making provision for corresponding purposes.

SCHEDULE 2

PERSONAL AWARDS

PART I

Rule B1

ORDINARY PENSION

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

$$\frac{30 \times A}{60} + \frac{2 \times A \times B}{60}$$

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.

PART II

SHORT SERVICE PENSION

Rule B2

Subject to Parts VII and VIII of this Schedule, the amount of a short service pension is–

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

where–

A is the person's average pensionable pay,

B is the period in years of his pensionable service up to 20 years, and

C is the period in years by which his pensionable service exceeds 20 years.

(a) 1946 c.67.

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.

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.

PART IV Rules B2 and B3

SHORT SERVICE OR ILL-HEALTH GRATUITY

1. Where the persons pensionable service is less than one year, the amount of the gratuity is that of his aggregate pension contributions.

2. Where the person's pensionable service is one year or more, the amount of the gratuity is the greater of–

(a) his aggregate pension contributions, and

(b) 1/12th of his average pensionable pay multipled by the period in years of his pensionable service.

Subject: Research – A Layman's briefing note on two Pension Schemes.

Descriptors: FSR-Fire Service Regulations; FSR-SI(Statutory Instrument).

PSR-Police Service Regulations;PSR-SI.

To: Mr. J.M. Copplestone-Bruce.

From: Paul P Burns GIFireE.

Dear J.M. Copplestone-Bruce,

At short notice, you have asked me to provide a layman's researched briefing note on a crude comparison between the above sets of Regulations.

I have drawn on pension industry technical advisers; practising and lecturing actuaries; and Dr Ros Altmann the newly appointed Pensions Minister who as you know I have been in private dialogue with for the past several years, for up-to-date information.

I am sorry it is rather rushed, so it is not a dissertation!

1. The FSR and the PSR are 'similar'(Having a resemblance) but not the 'same'(Identical).(OED);

2. The PSR are written in a narrative form without demonstrable formulae whilst the FSR are written with both narrative and actuarial formulae being used extensively to assist pension providers in simple practice;

3. The FSR are clearly more modern. Highlighted in pension calculation where broadly the FSR uses years, 60ths, and applied formulae in the calculation of pensions as opposed to just 60ths in the PSR.
The PSR B3 uses a 'reference' base APP whilst the FSR uses both the 'actual' APP and a 'reference' APP for calculation purposes and is therefore much more wide ranging and generous in its compensation potential than its counterpart.

4. The PSR in calculating APP is much simpler and clearly based on an April financial year where the FSR is usually based on two part year pay scales traditionally commencing in November of each year the result of the first 1977/8 National Strike. This can be tedious to calculate and errors will arise.

5. An acquired understanding of the PSR(with the exclusion of B4 Injury Awards which are identical) leads to a mind-set which will not transpose to the FSR. To attempt to do so will only lead to confusion and a lack of understanding of the FSR minutiae. So a fresh untrammelled mind-set is required.
The FSR regulates a group of public servants who have a defined purpose which is different in service delivery and risk.

6. HO Commentaries on both Pension Schemes are *insightful* as to *intent* but they still cannot replace the law . They correctly state so in the Foreword:

"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".

7. The Commentary K1-1 Para 5 provides an insight into the broad purpose of an ill-health pension.

"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.". **(my underline).**

8. Next to a broad understanding of accrual rates.
Accrual rates can run from 1/30th to 1/120th and no one I have spoken to can be sure where the idea came from though there are suggestions that historically it *might* be the Inland Revenue

The idea of a 60th was that it provided 2/3rds after 40 years with 2/3rds thought to be the old Inland Revenue rules with such a maximum. 80ths often comes with a lump sum of 3/80ths, and enhancement if you will.

In the past the conversion factor to change pension into cash (commutation function) was £1 of pension is worth £9 of cash). In calculation if 3/80ths of cash is taken and converted to a pension, the pension amount is 3/80 x 1/9.

If this is added to a 1/80th pension then the total pension of 1/80 + 3/80 x 1/9 which with a bit of arithmetic is, 9/720 + 3/720 = 12/720 = 1/60th.

In other words 1/60th was seen as "the same" as 1/80th pension and 3/80ths cash. Nowadays the conversion factor is much bigger than 9 so 1/60ths is seen as better.

9. These analyses are reflected in a modern setting by Mr. D. Hamilton, Technical Director at the Pensions Advisory Service who states...

"It is your pension scheme rules rather than legislation which dictate how your pension is calculated.

The situation you describe is quite common, with entitlement to a 40/60ths pension only arising at age 65, regardless of how many years the individual has spent in the scheme.

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.".

11. Following from this what is the legislative position with 1/60ths currently in both the PSR and the FSR , with emphasis on the FSR?

- Both sets of Regulations are subordinate to the Pensions Acts.

Repeated searches of the Pensions Act 1995; the Pensions Act 2004; and the Public Service Pensions Act 2013, fail to elicit any reference to the 60ths of any description.

- The 1973 FSR-SI categorically states that an ill health pension is limited, or if you like, 'capped' at 40/60ths.
- The 1987 PSR-SI categorically states that an ill health pension is 'capped' at 40/60ths.
- The 1992 FSR-SI does not categorically state a 'cap' or limitation of 40/60ths to any pension or formulae throughout its main text.
  However, in the entire FSR-SI there is only one direct reference to a 40/60ths 'cap' of a Short Service or ill-Health pension which is contained in(Sorry the lead in is tortuous), Schedule 11(Page Substitution); Special Cases; Part IV; Rule J6; Modification For Persons Serving On 10th July 1956; Page 82;Para 17 'For Parts I to III of Schedule 2 substitute...Part I and Part II.
  I am not a Special Case and I was not serving on 10th July 1956 and thus these substitute Pages and their content do not apply to my circumstances and I doubt to many others by now.

  Nevertheless this is the only non-relevant quote in the ***entire SI.*** A statutory 'cap' is not stated in Rules B1-B5. Nor, most specifically, in the ill-health or notional retirement pension formulae.

- The 1992 FSR-Commentary does indeed refer to 40/60ths but this is clearly coupled(twice) to the statement of ..."what you could have earned(if you had not been injured)" within the context of a compulsory age/time served discharge, Rule B1 pension.

- The 2006 FSR-SI Explanatory Note, Page 71, Paragraph (g) states:...

  "pension will accrue at 1/60th per year. A firefighter member will be able to accrue more than 40 years' pensionable service;"

  Logically to allow this accrual must then inevitably allow the payment of a pension above any 40/60ths 'cap' which in any event is not stated in this SI either?

12. Rounding up broadly on the 60ths issue.

The Fire Service, over time, has clearly moved from the 1973, 40/60ths 'cap' to a position in the 1992 Scheme where there is no Statute limitation or 'cap' on a pension except by formula; to a position in 2006 Scheme where accrual over 40 years of service is encouraged with the result that future pensions above 40/60ths will be paid without demur.

13. Next a closer look at the operation of the 1992 Scheme in respect of supposed existence of a 40/60ths 'cap'.

- The B1 ‘Ordinary’ formula *always* calculates out to 40/60ths but there is no statutory 40/60ths stated ‘cap’ for this position in the SI.
- The FSR Rule B3 (Paragraph 4) formula consisting of 3 elements and is constructed as follows(Reading left to right).

    - The first *enhancement* element calculates ***up to*** 7/60ths for long(er) service; plus,
    - The second core element calculates ***up to*** 20/60ths for the first 20 years of service; plus,
    - The third core element calculates ***up to*** 20/60ths for the second 20 years of service: plus,

    Mathematically this formula can add up to a maximum of 47/60ths, or, 40/60ths + enhancement.

Finally, when added together this produces an ill-health pension calculation but there is no statutorily stated ‘cap’ of this ill health formula, and to then, on a whim, apply such a 40/60ths ‘cap’ would be mathematically and legislatively absurd.

14. Next to the ‘Notional’ or ‘Hypothetical’ retirement pension.
In the PSR-SI there is no reference to a ‘Notional Retirement Pension’ but instead it refers to a ‘hypothetical’ pension in a narrative which *specifically states a ‘cap’* is applied to this ‘hypothetical’ pension at 40/60ths.

15. In the FSR-SI, a ‘Notional Retirement Pension’ is specifically referred to in Rule B3(Para 5) and a formula for its calculation is provided in Rule B5 (Para 2.(2).
It is actuarially constructed in a different manner. It is mathematically possible to calculate to 40/60ths but there is no statutorily stated ‘cap’ to 40/60ths of this Notional Retirement Pension formulae and for it to be then whimsically applied would also be mathematically and legislatively absurd.

16. The FSR-SI makes provision at Rule L4(3) that where there are two contending ‘amounts’(pensions) the ‘greater’ is always paid. This is Rule is applied within Rule B3. There is no such provision in the PSR-SI.

17. No doubt a defence which will eventually be arrived at by any potential adversary that the Rule B3 formula exceeds 40/60ths, so let us deal with that.

Recently an Actuarial Science Lecturer at Manchester University(a recent 30 year actuary practicing in the real world) after studying the formulae in SI129 commented that it was not at all unusual in negotiating for a new pension Scheme for the employers to recognise, by enhancement, a particular type of award and it was his conclusion that the 7/60th *enhancement* element was just such recognition of service.

However, he also added a caveat, that Actuaries are also human and that from time to time anomalous errors in formulae in legislation may occur though are rarely picked up, but nevertheless, unless legislatively corrected, the law is the law.

18. So let us deal with the history of 1992 SI.N;129 which is the pertinent law.

According to the records of the House of Commons Librarian, in supplying supporting documents, this Bill(Order) which led to the enactment of the 1992 Firemen's Pension Scheme Order, Statutory Instrument 1992 No.129 was laid 'on the table' under the 'affirmative resolution procedure' on the 7th February 1992 . This meant that, unless an objection is raised to it, the Bill is not debated either in Committee, or on the floor of the House of Commons – its passage is a formality.

This Bill was authorised by Parliament as an Order and enacted on the 1st March 1992.

This according to the Librarian was not at all unusual because all parties must have been in agreement.

There has been no retrospective amendment to the SI to both identify and/or correct(if it needed correction) any supposed anomalies in the SI.

Right or wrong, fair or unfair, the fact of the matter is that this is the law and, is the law, is the law....

Paul P Burns GIFire E

15th May 2015.

ORAL HEARING 3rd July 2020

Note for Case

In accordance with Judges Order, G[redacted] v Lancs Comb Fire Auth.

Instructions were received for me (the Appellant) on or about the 2nd July 2020 to take part in a hearing with Mrs Justice Falk on the above date at 10:30 am.

Prior to that date I received instructions on how to go about making the necessary contact with the Court and was given a choice of communication systems; I chose Skype.

I went through the motions of contacting the Court but found that the Hearing app would not load into my iPad. I found this situation quite stressful which added to my apprehension about the forthcoming proceedings.

I rang Mrs. Justice Falk's clerk, M/s Saleem, to report the problem.
I gave her my name and said that I have a hearing with Mrs Justice Falk at 10:30 on the 3rd July2020.
M/s Saleem cut me short and said "no you don't you have a hearing with Mr. Justice Fancourt and then gave me a telephone number for Mr Justice Fancourt's clerk.
M/s Saleem's manner was brusque which surprised me as I had spoken to her previously and, at that time, had found her to be amiable.

Within a minute or two I received a call from Mr Steven Brilliant, Mr. Justice Fancourt's clerk. He had been asked to ring me by M/s Saleem
Mr Brilliant talked me through the alternative hearing procedure which was by telephone.
Mr Brilliant was most efficient, understanding and helpful throughout the proceedings and has been so on further contact.

On the day Mr. Justice Fancourt was a few minutes late in arriving.

He stated that this would be a short hearing and asked if I had anything to add to correspondence already received. Mr Justice Fancourt's manner was formal and business like.

I must say that I did expect him to ease me into the event but he chose not to.

I referred him to the Barrister's Advice which was sent to the Deputy Ombudsman following her Determination. In her Determination she included advice that I could appeal in a Court of Law against the Determination providing it was restricted to points of law only. I stated that Mr Copplestone Bruce had produced in his 'Advice' the points of law relevant to the DPO's Determination.

After a moment he asked if that was a Mr Locke in 2015 ?

I told him it was Mr Copplestone Bruce in 2019 and it was dated 15th or 19th of September. I repeated what I had just said for his benefit.
There followed much shuffling of papers before he, I assume, found the document.

He asked me to give him the details again and then said there would be a "silence" whilst he read the document.

I had read the Advice to the Deputy Ombudsman three times previously and found it hard going as it had been written in "lawyer speak". I read it again during the "silence" and reached only item 16 of the 44 items written by Mr. Copplestone Bruce when the Judge brought the "silence" to an end and stated that he had read the document.

I found this hard to believe and particularly as there are references in the Advice that should be read in conjunction with the Ombudsman's Determination.

Mr. Justice Fancourt stated that, "Well, this clause 5 takes some reading".

Mr. Justice Fancourt stated that the issue is about "further promotion" (which it is not) and in my case before I was 60 when I would have formally retired.

The judge said that promotion was not a 'given' and went on to say that prediction for promotion amounts to guesswork. He said Mrs. Justice Falk encapsulated the matter by her reference to there being a cap imposed (I didn't follow this).
He said that what the Commentary says is highly complex and it has no statutory force.
He stated that there was no realistic argument in law and therefore he refused permission to appeal.
I believe that twice he stated that Mrs Justice Falk "encapsulated" matters in her Judgement.

I put to him the fact that this was not just about me but about those disabled FSVs that are still with us, those who have gone before, and their widows and beneficiaries that struggle on what remains of a pension.

He stated that he was sympathetic but the Judgement had to be made on argument of law.

I await the bill now which had to be pre-paid before the transcript company produce Mr Justice Fancourt's JUDGEMENT. I had asked for the JUDGEMENT only. NOT the whole transcript.

FMG

Addendum – 22nd September 2020.

I contacted UBIQUS and contracted them to prepare a transcript of the hearing.

Later I changed my mind about having the Judge's summary only and asked them to complete

the whole of the transcript. I have received their transcript which is missing the first 21 [sic-27)minutes or so, and the Judge's summary, immediately prior to him declaring the Judgement.

I have requested UBIQUS to ask the Court about releasing the summary and I have asked them to make enquiries about whether or not there might have been a secondary system to record the whole of the hearing?

I have also asked the Court the same questions in a recent e-mail. I await an answer from the Court.