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Your Ref

Our Ref **19/089130**

25 September 2019

Dear Sir/Madam

Re: G [REDACTED] V LANCASHIRE COMBINED FIRE AUTHORITY

Appeals

Take notice that the above matter has been listed before the
High Court Judge at 09:30am in ~~the~~ The Nisi Prius Court on 17 October 2019 at Royal
Courts Of Justice

Yours faithfully

Allison Hull
Listing Officer

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Grounds of Appeal.

Concerning TDPO's Determination, concerning the pensions of 'Mr. N', the Deputy Pensions Ombudsman misdirected herself in law in some or all of the following ways:

1. The Crown paying a B1 time served pension to a retiree on grounds of ill health 97 days before he would have had to retire on account of age; she misdirected herself in law that Example 7 in the Home Office Commentary to SI 192 could be taken as evidence that the Crown intended that no compensation be paid for future financial loss occasioned by such enforced retirement.
2. She misdirected herself in law that the pension paid in Example 7 was a B1 pension rather than an enhanced 'notional pension' fully compensating to the date of being retired on account of age, and in full reflection of what 'he could have earned'.
3. She 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.
4. She misdirected herself and acted wrongfully to deny statutory intention and provision in place of common law entitlement though the statute used no language to exclude such statutory provision.
5. By her misdirection and misapplication of the law she, contrary to law, denied the Statutory ill health pension rendering the whole of ill health B3 provision, as specified at paragraphs 3, 4 and 5, redundant, null and void of meaning and superfluous to the statute, wrongfully replacing said provision in each instance by a time served ordinary B1 pension.
6. She misdirected herself, contrary to statute and in breach of its legal provision, in determining that when a Fireman was being required to retire early on grounds of ill health they be paid, Including M.N., an ordinary time served B1 pension instead of a B3 ill health, enhanced, pension provided as compensation for financial loss occasioned by being required to retire early on grounds of ill health. She unlawfully determined that an ordinary time served B1 pension, due to any Fireman retiring early of own volition, as though choosing to go and do other work, was also the ill-health pension due to Mr N, on being invalided out of service
7. She misdirected herself into a Determination ultra vires by finding that [TDPO Determination Para 36] "I can see nothing in the legislation as drafted that is unclear on its

face" to mean the legislative intention was to deny compensation for financial loss, so giving unlawful effect in her Determination by replacing B3 by B1 provision and, in so doing, rendering all ill-health provision redundant in the SI, save in nomenclature by calling a time served B1 pension, when being awarded to an injured Fireman being forced to retire, a B3.

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 paragraph 5 provision.

9. She misdirected herself in law as to the legal purpose and meaning of the Home Office 'Commentary' accompanying the promulgation of the SI and so denied herself the legal intention of the SI and its provision.

10. The Deputy Pensions Ombudsman has unlawfully misconstrued the SI and its terms of provision to illegal effect and by so doing has misdirected herself into wrongfully denying Mr N the ill health pension provided for him by statute, wrongfully putting in its place a time served B1 pension; thus denying compensation of any sort due under the law for financial loss occasioned by being required to retire prematurely on grounds of ill health.

11. Though some misdirection may be no more than maladroitness, some can only be construed as determined on a whim to make the law fit a predetermined outcome, relying on age, infirmity, poverty, and absence of legal aid to avoid correction of such ill-practice and its unjust, illegal, arbitrary, and oppressive results.

12. The Appellant humbly begs that the Honourable Court take judicial notice of such conduct and award such exemplary and/aggravated damages as the Honourable Court should deem appropriate.

May the Appellant, with the deepest of respect, make mention to the Honourable Court that having relied and trusted his pension provider to look after his interest, that that trust has been betrayed. That he has been impoverished over 21 years and deprived of much quality of life by a deliberate, callous, and fraudulent deception.

A deceit maintained even into TPO correspondence by Mr. N's pension provider in an earlier case cited as precedent in Mr N's Adjudication, upheld by TDPO, and here appealed. That but for such deception by those in a fiduciary relationship with Mr N, he and others would have seen the 'Commentary' published by the Home Office specifically to give him and other laypeople guidance and the ordinary meaning to the Statute.

That the 'Commentary' was wrongfully kept from Mr N denying him knowledge of his lawful pension entitlement and from knowing that calculation of his pension as a B1 pension was wrong in law and that the B3 provision was intended to be calculated on "...what you could have earned' as the lawful construction of the provision made by Statute at B3 paragraph 5.

He submits such conduct has been an unconscionable abuse of power and most oppressive and wholly arbitrary.

He submits it should not go unremarked that when he was injured and incapacitated for life and forced to retire on grounds of ill health he was wrongfully given a basic time served pension as though he has simply chosen to leave, fit and well, and by choice, instead of being given what the law provided for his enforced early retirement on grounds of ill-health.

The Appellant is humbly grateful to the Honourable Court for its consideration.

13. The Appellant asks The Honourable Court for his costs.

14. The Appellant claims interest and humbly submits that the time, sum and long loss, and high earlier interest rates make it fair and reasonable that the Honourable Court exercise of its discretion and awards interest at 5% compound per annum on the sum of pension sum withheld from him.

John M Copplestone-Bruce.

Inner Temple

15th. September 2019.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION

APPEAL FROM THE DECISION OF THE COUNTY COURT DIVISION

Between:

Mr. F [REDACTED] M [REDACTED] G [REDACTED] ("Mr. N.").....Appellant

And

Lancashire Combined Fire Authority..... Respondent

TAKE NOTICE that I, the above-named Appellant having lodged Appeal to the High Court from the whole of the Order made by 'The Pension Ombudsman' ('Determination'; ref PO-19150) in this pension matter on the 10th day of September 2019 whereby it was adjudged that "Mr. N's" Pension Complaint was not upheld, the Grounds of Appeal being exclusively on Points of Law.

Take Further Notice of an addendum Grounds of Appeal:

1. In that 1992 SI 129, at Rule K5 (3) provides that an ordinary B1 pension cannot be reduced save on Treason or Breach of the Official Secrets Acts, and that Rule K3 (1) provides that "where a person (a) is permanently disabled, and (b) has brought about or contributed to his infirmity by his own default, the fire authority may reduce any ill-health or injury award payable to him by them to not less than half its full amount", it follows that for the statutory provision to have meaning, sums awarded as ill-health or injury awards must per se, be 'reducible' or the sum is wrong in law. TDPO misdirected herself in law by determining the sum of a B3 ill health pension award was in the irreducible sum of a B1 pension due to Mr. N as if retiring by choice. By her misdirection she denies the statutory wording of Rule K3 (1) meaning, rendering it redundant, void and without legal effect, all contrary to law.

2. By misdirecting herself on the law TDPO set into conflict clauses of provision in the same statute by determining wrongfully that the statute intended no compensation for financial loss, so wrongly determined an irreducible B1 award be paid in place of a compensatory B3 award, able to be reduced by up to "half its full amount", and by so doing put B3 (5) and K (3) into mutual exclusion, into conflict, rendering both to be without meaning, redundant, void, and without legal affect, all contrary to law.

25th. September 2019.

[REDACTED]
Signed by Appellant.

C/o 'The White House'.
4 Bangor Road,
Groomsport,
Bangor BT19 6JF
Northern Ireland.



**IN THE HIGH COURT OF JUSTICE IN NORTHERN
IRELAND
QUEENS BENCH DIVISION**

APPEAL FROM THE DECISION OF THE COUNTY COURT DIVISION

Between:

Mr.F [REDACTED] M [REDACTED] G [REDACTED] ("Mr.N.")..... Plaintiff (appellant/respondent)

And

Lancashire Combined Fire Authority.....Defendant (appellant/respondent)

TAKE NOTICE that I, the above-named Plaintiff/~~defendant~~ and Appellant hereby appeal to the High Court from the whole of the Order made by ‘The Pension Ombudsman’ (‘Determination’; ref PO-19150) in this pension matter on the 10th day of September 2019 whereby it was adjudged that "Mr.N's" Pension Complaint was not upheld.

Accordingly, I Appeal against all of the ‘Determination’ ref PO-19150; the Grounds of Appeal are exclusively on Points of Law.

Dated 23rd September 2019.

[REDACTED]

Signed by Appellant.

C/o ‘The White House’.
4 Bangor Road,
Groomsport,
Bangor BT19 6JF
Northern Ireland.

TO: The Principal Clerk. Appeals and Lists Office,
Central Office Royal Courts of Justice,
Belfast.Northern Ireland.

TO: The Respondents :

(1)
Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston,
Lancs. PR2 3LH.

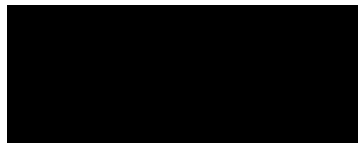
Served, a true copy of the notice of appeal, on the respondents' solicitor Mr.D.
Howell by Recorded Delivery.

(2)
The Pensions Ombudsman
Mr.A.Arter
10 South Colonnade,
Canary Wharf
London
E14 4PU.

Served, a true copy of the notice of appeal, on the respondent Mr.A.Arter ~
The Pension Ombudsman by Recorded Delivery.

Dated 23rd September 2012.

Signed By:



The Duly Authorised Representative for the Appellant

'The White House'.
4 Bangor Road,
Groomsport,
Bangor BT19 6JF,
Northern Ireland.

Letter of Authority to represent included herewith on Page 3 of 3.

To whom it may concern

I, F [redacted] M [redacted] G [redacted], of [redacted]
[redacted]

authorise Mr Paul Peter Burns, of 7 Kings Drive, Fulwood, Preston, Lancashire, PR2
3HN, to act on my behalf in my Pensions dispute with Lancashire Fire and Rescue
Service.

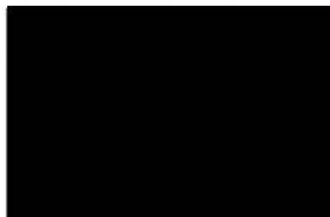
Signed  F M G [redacted] M I Fire E, Assistant Divisional Officer (Ret)

Countersigned [redacted] P J G [redacted]

1st December 2017

To Whom It May Concern

I, the undersigned,



Donaghadee BT21 OBN

Do hereby authorise:

Paul Peter Burns(formerly of)

7, Kings Drive,

Fulwood,

Preston, PR2 3HN

Lancs.

(presently of) 'The White House'

4. Bangor Road,

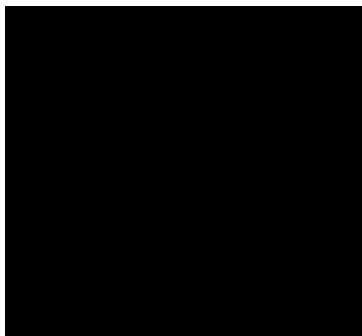
Groomsport BT19 6JF

To continue to act for me exclusively and specifically in the matter of my Fire Service Pensions which he commenced doing on or around the 1st December 2010.

Signed:



A.A. Wright.



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,

A handwritten signature in black ink, appearing to read 'John Bruce'. The signature is stylized with a large 'J' and 'B'.

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.



10th October 2017.

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

The Pensions Ombudsman - Complaint - A Question of Law.

Dear Ombudsman,

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

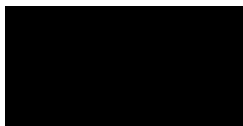
8. The Chairman of the LCFA CC Mr.F.DeMofetta response to his Statutory duty, once more avoiding the question, was to conclude that he would hold my Application 'in abeyance' whilst I placed my Stage II Complaint before the Chief Constable for reasons he fails to explain. In any event, this does not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

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

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

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

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



Yours Sincerely,

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

Complaints about personal and occupational pensions

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

1. Your details

Surname 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: 039607554327; Compulsory Retirement 22nd July 1998.

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 "Bl.-(I)(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	[REDACTED]
Role and employment reference	[REDACTED]
Address of Scheme Member	[REDACTED]
Member's Date of Birth	17 th December [REDACTED]
Member's National Insurance Number	[REDACTED]

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

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.



Please ask for: Chris Kenny
Telephone: 01772 866800
Fax:
Email: chriskenny@lancsfireandrescue.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,

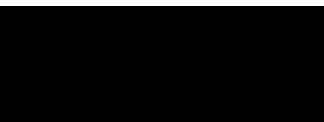
Herewith attached is my IDRP - Stage II Application for consideration by the LCFA Committee.

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	████████████████████
Role and employment reference	██████████
Address of Scheme Member	████████████████████ ██████████ ██████████ y BB12 7PY
Member's Date of Birth	17 th December ██████
Member's National Insurance Number	██████████

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.

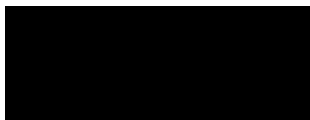
Conclusion.

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 IDRG.
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:

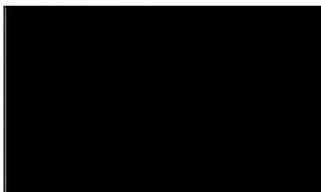
Why am I being paid the sum of the Rule B1 Ordinary pension I would have been entitled to had I been retiring by voluntary choice, instead of a Rule B3 ill-health pension and Rule B4 Injury Award provided for within the 1992 Statutory Instrument No.129 which was to compensate me for my lost career, the 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.



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:

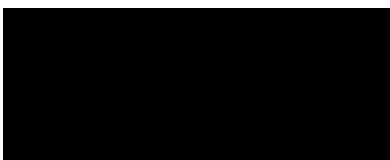
- Would you please be so kind as to let me know by what legal authority you have presumed to act ultra vires to avoid your Statutory duty which is to place my Stage II Application before the Full CFA committee for Statutory adjudication within the required Statutory time frame of two calendar months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

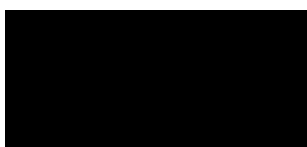
12. Formal Request – See Appendix 'A'.

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.



F. M. G. [Redacted] 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

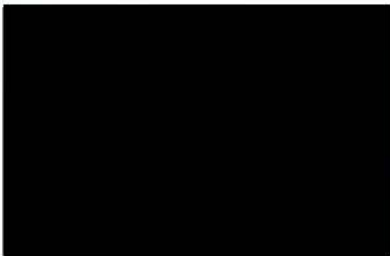
or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

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.



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

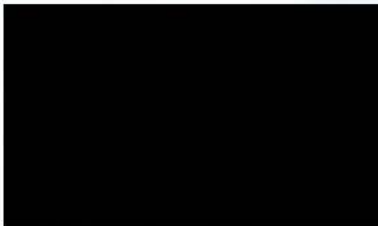
It may be that that the original 1992 version of SI 129 date stamped as sold by HMSO for £9.10 on 9th March 1992 is preferable.

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.





Our Ref: PO-19150

13 March 2019

Dear Mr G

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.

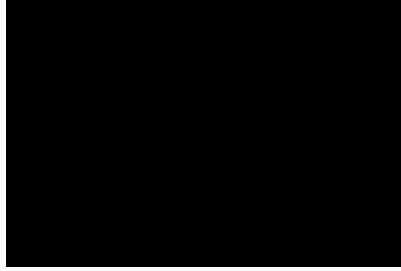
Please respond by the date shown above. I will consider reasonable requests for extensions to the deadline so if you need more time to reply, please let me know as soon as possible, explaining why.

Yours sincerely



Thomas Coutts
Senior Adjudicator

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



Private and Confidential.

Mr. Anthony Arter,
The Pensions Ombudsman,

Ms. Karen Johnston,
Deputy Ombudsman,

10 South Colonnade,
Canary Wharf
London
E14 4PU.

Dear Mr.Arter and Ms. Johnston,

I last wrote to you on 14th December 2017 to alert you and the Chief Executive of the Pensions Regulator (since gone) to evidence that suggested fraud. You did not reply but I understood, mistakenly it seems, that you were making changes, so I held my hand.

However, with the advent of Mr Coutts' opinion it rather seems that either you never got my e-mail; or that a member of your senior staff intercepted it, which I rather hope to be so because the unconscionable alternative is that what is happening is being orchestrated by you.

Since that has to be taken to be inconceivable, no doubt you will be as keen as I am to avoid malfeasance and put matters right. If so, then if I can assist you in any way in this, I will.

I understand a recent advice of mine saw the Lancashire 'day crewing' pension dispute under settlement and you will find past Opinions of mine in Mr Burns's and Mr N's cases.

What worries me, apart from the callous Windrush like way these old pensioners have casually been deprived for years what is their due, is that - as matters stand - unless you sort this out there are likely to be a number of criminal prosecutions and I would expect a Court to award exemplary damages to each defrauded pensioner, maybe in a class action. The paper trail in this matter should alarm you.

To ensure you both get this it will be hard copied to you personally. A copy will also go to Mr Coutts who also stands in the way of indictment.

Whilst it is perfectly reasonable and in the public interest for the State or an industry to minimise its legal costs by Ombudsmen applying the law in alternative dispute resolution it becomes a criminal enterprise when, to avoid cost to the State, resolution is passed to unqualified laymen to adjudicate on their subjective 'common sense' to the exclusion of legal provision and the common law of England and Wales.

It is, as I am sure you will agree, your personal duty to avoid malfeasance at the hands of those in your offices and it is your personal duty to ensure the unbiased, fair application of the law by those acting under your delegated authority.

An example of failure is the case of Mr. Paul Burns whose pension dispute was adjudicated by Mr. King, an unqualified layman civil servant, now retired. On your appointment to replace Mr. King, Mr. Burns had hoped that under your aegis you would have reviewed and revised his case to give him his due.

I confess that I find it troubling that you have not taken it upon yourself to reverse Mr. King's adjudication whose patent misdirection of himself and avoidance of the law, though indefensible, was pursued on a whim under perceived immunity from redress at the hands of an elderly, long deprived firefighter pensioner layman, with no legal aid.

I trust you will now personally review Mr. Burns's and Mr N's cases. May I also suggest that for the public to accept that you are fair and transparently impartial, where a pensioner wishes to appeal on the law, your service pays the pensioner's costs. Less, and you have a Windrush system denying justice without redress.

I attach the 'Adjudication' given by your office in the case of Mr N. Mr Coutts, whose adjudication it is, is also an unqualified layman who, being unversed in the law of construction of documents, and feeling no need to seek legal advice, found no more difficulty than Mr King in allowing his 'common sense' to decide on a whim, and on an arbitrary basis, what pension should be paid. One might as well ask a plumber to do brain surgery.

A further cause for concern is that in having Mr Coutts adjudicate you are acting in breach of Section 145 (4C) of the Pensions Act 1993(as amended) which enables your staff to perform any function of yours 'other than determination' of a matter referred to you.

I am sure that under your aegis the law would have been given proper consideration and these cases settled long ago.

In each case, if only in accordance with the Nolan Principles, Mr. King and latterly Mr. Coutts, were both under a duty to inform themselves, as unqualified laymen, of the way they were required to interpret the law. One would have thought from you and your deputy as the in-house lawyers, but if not, then, at least, as all laymen were required to do, to take guidance on how to give legal effect to the provision by reference to the 1992 SI 192 Home Office Commentary (placed in your office by Mr Burns); 394 pages drafted and promulgated precisely to guide such non-lawyers on interpretation of the legal provision to avoid misfeasance, or malfeasantly, if deliberately misconceiving the SI provisions to defraud the pensioner.

It is not in dispute that Mr. N (and Mr Burns) are both entitled to Rule B3 ill-health pensions under the 1992, SI 192 Firemen's pension provisions nor, that there was a 1992 Home Office 'Commentary' to explain the law basing their ill-health Rule B3 entitlement simply as what "they/you" [there is more than one reference] "could have earned until required to retire by reason of age'. This does not in any way seek to make law – just interpret what the words used in the Statute mean.

The SI specifically excludes a Rule B3 pension due to anyone retiring early of his or her own volition, whose entitlement is a Rule B1 pension (without liability for any future loss). But it is a specific within the SI that a Rule B3 pension is payable to compensate for future financial loss suffered by those forced to retire early due to ill health.

But Mr Coutts knows better. His 'common sense' tells him as he put it at his paragraph 14, all Rule B3 pensions are 'capped at the same level as the Rule B1 Ordinary pension'.

As Mr King and Mr Coutts would have it there is no compensation for loss of earnings, none is due. All that is ever due as an ill health pension is the basic Rule B1 Ordinary pension in all cases.

They take the view that all Rule B3 provision is entirely tethered to the least pension falling due to any retiree who - by choice - is taking early retirement; to use Mr Coutts' word, all Rule B3 provision is 'capped' at that Rule B1 minimum.

It follows that whatever the wording of the 1992 SI 129 Rule B3 it can never mean other than an Ordinary Rule B1 provision; in which case Rule B3, in its entirety, is superfluous, redundant, and without meaning, or effect.

It hardly needs saying that such a reductio ad absurdum is patently wrong. But what has – if not deliberately to defraud - so led Mr. King and Mr Coutts astray?

Lord Justice Evershed in *Rookes v Barnard* (1964) AC held 'There are only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It must be shown either that the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed.'

In Rule B3 the language is plain. For the purpose of a Para 2 – 4 calculation, the 'A' in the formula 'is the actual Pay [APP], but calculation of the notional pension under Rule B3-5 (2) is by reference to APP.

The error into which Mr King and Mr, Coutts fell, was to depart from the ordinary and natural sense, the meaning of words to allow them to take 'by reference to' to also mean 'is'. If the legislation had intended 'by reference to', to mean 'is', it would have used the word 'is'. Since it did not, 'is' has to be distinguished from 'by reference to'.

To give the legislation its proper meaning requires no speculation on future earnings but simply to follow the Rules to arrive at a notional pension 'by reference to' the current APP. That does not mean to calculate on the retiree's current APP, as for a current Rule B1, but on applying the meaning of 'by reference to' (Courts tend to rely on the SOED), the calculation of the notional pension come to be on an APP taken from the current pay scale, within which the retirees current APP is to be found, no less that are the APPs being paid at the time, from trainee to Chief Fire Officer.

The notional pension is then calculated, not on the retiree's current pay, but on the current APP of the present rank and seniority that the retiree '*could*' have achieved, had they served until required to retire on account of age, and would have earned but for curtailment of career due to injury.

One may illustrate the correct application and appreciate the subtlety of the provision by looking at pensions falling due to a fireman taking retirement

- One of his own volition
- On grounds of ill health but at the top of his scale and who could not have expected promotion,
- On grounds of ill health but of one who could have expected promotion;

All on £30,000 APP after 25 years' service at time of curtailment of career.

The standard Rule B1 calculation is $30 \times \text{APP}/60 + 2 \times \text{APP} \times \text{a figure of up to 5 (years served above 25)}/60$. So a man leaving of his own volition goes with a pension of $30 \times 30,000/60 + 2 \times 30,000 \times 0/60 = £15,000 + £1,000 = £16,000$ pa.

The Rule B3 ill health apposite formula (paragraph 4) is $7 \times \text{APP}/60 + \text{APP} \times 20/60 + 2 \times \text{APP} \times \text{years served above 20}/60$. So this ill health retiree has a pension due of $£3,500 + £10,000 + £5,000 = £18,500$ pa. (Denied by King and Co).

However, Rule B3. 5 specifies that where the formulaic B3 pension 'exceeds' the *notional pension*, it is the sum of *the notional pension* that is paid.

Rule B3. 5 (1) (a) specifies precisely that such a pension is not the Ordinary £16,500, Rule B1, supra, but a Rule B1 arrived at on the basis of what the fireman '*would have become entitled to*' had he '*continued to serve until he could be required to retire on account of age*'.

Calculation of a notional pension requires a consideration by the Chief Fire Officer, or his delegate, to decide, not on probability but more generously, on what 'could' that fireman's career have achieved, but for being cut short.

If the Chief Fire Officer, the retiree concurring, concluded that at he was at the top of his scale and he could not have been promoted but could have served at least another 5 years (as most can on 25 years' service and/or above a certain rank), the *notional pension* he could have earned would have been calculated as a full term Rule B1 pension, making due $£15,000 + £5,000$, so the Rule B3 ill health pension would be £20,000 pa. (Denied by King and Co).

But if the Chief Fire Office had concluded that the retiree, but for curtailment, could have been promoted to a rank with a current salary of £40,000 pa then the *notional pension* would be $£20,000 + £6,666.66 = £26,666.66$ pa. [Denied by King and Co].

Rule 5 finally provides that 'the amount of the ill health pension [that is what is actually paid] is that of the 'notional pension' which accords with 1992 SI 192, Rule L4 (3) that specifies where two sums may appear to be payable "unequal in amount, the one to be paid is the largest of them.", [Denied by King and Co].

The purpose of Rule B3-5 is not as Mr. King and Mr. Coutts would have it, to be of no purpose, since all Rule B3's are Ordinary Rule B1s, but actually to limit pension on enforced early ill health retirement to the most an injured fireman could have earned but for injury, but it also ensures that he/she gets no less: so no high flyer, cut down in midflight, is denied full compensation for loss of future earnings of a glittering career, lost to them on being required to retire early on ill health, injured in our service.

HMG and the Fire Service Unions arrived at the primary legislation giving rise to

1992 SI 192 to save HMG legal costs of cases that could eclipse damages, the quid pro quo, being acceptance in all, but rare cases, of liability for those retired on grounds of ill health (retirement at 50 meant most would remain fit if not injured on duty) and provision being made in place of common law damages sufficient for the Unions to recommend to their members; in place of continuing to seek damages in Court. The losers were the lawyers!

What was never in question was that any head of damages awardable under common law was being abandoned, yet that is precisely the effect of Mr King's and Mr Coutts's adjudications.

It is not for any Ombudsman, as Mr Coutts expresses himself, to conclude that the applicant has got enough compensation from the other monies paid to him. If a scheme becomes too generous then it is a matter for the legislature to change its terms.

Further, to so find on a whim, knowing of the impossibility for many by reason of age, infirmity or poverty, to challenge such an opinion in the High Court and to do so perhaps to save a local pension fund embarrassment, enquiry, and the expense of meeting legislative provision, could well persuade a court to award aggravated damages.

Under another head, Mr. King's and Mr. Coutts's replacement of law by their personal opinion is clearly arbitrary and oppressive. Should this go to trial it may well attract punitive or exemplary damages, considered by Devlin LJ, in *Rookes v Barnard*.

It is also, in absence of legislation, unlawful for the Ombudsman to set an arbitrary interest rate since the rate is well established where public money is withheld to the damage of the individual.

There is also the question of criminality.

Unless a reasoned legal and sufficient argument with authority can be adduced to validate a contention that 'is' and 'by reference to' are to be taken mean the same in legislation, and that all Rule B3 pensions are capped in sum as Ordinary Rule B1 pensions, then Mr. King's and Mr. Coutts's adjudications are arbitrary and fraudulent.

I have laid this matter with you in full so that, in so far as I can help you to remedy it as a stitch in time, then that is done without fuss. If not then you adopt the illegality in which case I very much regret to have to point out to you in clear terms that you, your servants or agents, are acting dishonestly in public service, and engaging in a conspiracy to defraud men and women injured in our service and are in most serious breach of public trust, and you will have institutionalised the criminality.

I do so hope that you render further action on my part, or anyone's, unnecessary.

Yours faithfully,

A handwritten signature in black ink, appearing to read "John Bruce", written over a horizontal line.

John M. Copplestone-Bruce.
Inner Temple - June 2019.



6th June, 2019.
The Pensions Ombudsman
Mr.A.Arter
10 South Colonnade,
Canary Wharf
London
E14 4PU.

The Pensions Ombudsman – Pension Complaint.

Mr. Coutt's 'opinion' (Ref PO-19150).

Dear Mr. Arter,

1. Before I rebut your Mr. Coutt's 'opinion' I have a number of Pension Complaints which you may care to publicly comment on before I refer them to the W & P Select Committee.
2. I am not alone; I have a number of colleagues who have suffered unwarranted obfuscating delays which can only be part of a policy of disposal by time; of 'withering on the vine'.
It institutionalises injustice not only at the hands of my pension provider the Lancashire Fire & Rescue Service (LFRS) Firefighters Pension Scheme, but in complicity, at the hands of TPO also.
3. An example case; a 5+ year delay with no action or apology(and in my case 609 days), which prompted three Service Delivery complaints which were sent to the person responsible for the delay, Ms. F. Nicol(Casework Director), who after investigating herself, found no fault?
4. The extent of these abuses within her fiefdom of ambiguity is self-evident.
5. An invitation to provide 'information' on this scandalous affair was issued on 26th September 2017 by the Chair of the W&P Select Committee Mr. Frank Field DL., M.P.

A 77 page conflated document (Ref:PB00417) was sent to every Member of the, then W&P Select Committee.

Because of continuing institutionalised corruption and injustice this has now led to

a supplementary document which is attached as Appendix 'A' which reaffirms the logical conclusion that such unlawful practices are endemic within TPO and TPR in their collective failure to deal with legitimate Pension Complaints.

My Pension Complaint -The Prelude.

6. On 22nd July 1998 I was compulsorily medically discharged late in service (service incomplete) as disabled - like so many others. In sanguinity I then commenced a new life isolated, by circumstances and choice, from my former colleagues.
7. I trusted that those who administered my pensions, or were likely to, were statutorily qualified and accomplished pension administrators who would work honestly and accurately within the 'Nolan Principles' in the application of pension law.
I assumed that they would know what they were doing; but my trust was breached.
8. Rarely, attending a Service funeral, I heard gossip about our pensions and decided to follow up on these rumours by researching my own pensions ultimately reaching the point, with the repeated robust interventions of the Information Commissioner, of engaging with TPO.
9. On the 21st December 2015 having with difficulty acquired my LFRS Personal Record File (PRF), including my pension files, and with accumulated pension knowledge, I instituted without delay, Internal Dispute Resolution Procedure (IDRP) Stage I raising a Pension Complaint against the LFRS under the 1993 Pensions Act(as amended) on the basis of pension underpayment.

This, as expected, was denied, and I advanced on the 16th June 2016, once more without delay, to Stage II, with the Lancashire Combined Fire Authority (LCFA-25 Elected Members).

10. The LCFA did not complete Stage II within the Statutory time limits permitted(two months) then insisting when prompted, that they would, without time limit, 'defer' my Complaint because of alleged spurious allegations in my Complaint; a deferment action not supported in law by any provision in the Pensions Act1993(as amended).

This was not the first time the LCFA/LFRS adopted this *ultra vires* ploy so I was not surprised; nor as Appendix 'A' confirms, would it be the last.

Nevertheless this legally left the way clear for me to approach TPO directly.

11. By 10th October 2017, having exhausted the endemic 'stonewalling' of the LCFA; and being well researched, which included knowledge of the experiences of others with LFRS and TPO, I submitted my own carefully prepared Pension Complaint documentation which was legally well grounded, courtesy of a pension expert, and eminent pro bono Barrister.
12. TPO states that it will not examine a formal Pension Complaint unless the due process with a pension provider has been exhausted. However, misleadingly TPO does not state that this is an informal, but reasonable request, but which carries no Statutory weight.

13. Nevertheless, your Senior Jurisdictional Adjudicator Mr. Strachan (who is not a lawyer but a civil servant) engaged in what I regarded as more unwarranted delay, so much so, that I had to remind him of High Court case law of the jurisdictional point of 'when the clock starts ticking' and that my Complaint was well within the Statutory time limits.

Mr Strachan then reluctantly concluded that my Complaint *was indeed* within the correct legal time limits, and being correct in all other respects it would be investigated then being passed to Mr. Coutts for his 'opinion'.

14. It is important to note that when the TPO decided to 'investigate' my Pension Complaint this *activated in its entirety*, Sections 146-151 of the TPO relevant parts of the 1993 Pension Act, a fact regularly and conveniently ignored by staff at TPO.

My Pension Complaint – The Preamble.

15. When I lodged my detailed formal Pension Complaint consisting of 57 pages with the TPO I commenced by once more raising layman's simple questions of law, which I repeatedly raised, to no avail, throughout the - timed out - IDRPs at the LCFA during which I never received a single formal detailed legal response on behalf of the LCFA which might have encouraged a Barrister-to-Barrister resolution.

16. In consistency, neither Mr. Coutts (who is an unqualified layman civil servant), nor any other TPO civil servant who might be *legally qualified in law*, has dealt with my Pension Complaint at TPO either.

17. I concluded that those who had 'jurisdiction' over my Complaint were civil servants, not lawyers, and consequently were unable to read or understand my persistent simple leading questions in law, from which all else flows, I had little expectation that these laymen civil servants could fairly conclude a 'Determination' in law nor in fact do the Regulations permit them the delegated authority to do so.

18. It follows, if unqualified layman civil servants are unable to read and understand the simple law they certainly will be unable to understand the nuanced complexities (known as 'art' by Barristers) of reading the Statutory construction of the law which requires that they give due regard to the most basic principles of Statutory construction; complexities which demand understanding and implementation, *if resolution in compliance with the law*, is to follow.

19. Compliance which has been knowingly and wilfully ignored by the LCFA and the TPO's refusal to legally address or understand the pension law when required to do so in correcting the payment overdue to me for my pensions.

20. Yet both Mr. Coutts and Mr. Warren/LFRS had at their fingertips the in-house legal support they required to understand pure pension law, and if that was insufficient as it clearly was, then Mr. Coutts and LCFA/TPO always had the option in fall back legal support, whereby they could both have employed a 3rd party Barrister, or used the free service of the Government Actuary Department, in determining lawful resolution, should they be so minded; but inexplicably both chose not to.

21. Given these circumstances I find it incomprehensible that no one in supervisory authority at LCFA/TPO above Coutts/Warren seemed to think that this was necessary in dealing with my submissions especially when faced with no less than

two Barristers Opinions in my Pension Complaint. So I am bound to ask why?

22. Regardless, the simple Leading Question remains, and from whence all else flows...

Why am I being paid a basic Rule B1 Ordinary pension which is the correct payment I would have been entitled to had I retired by voluntary choice, or having completed my service uninjured?

I did ***not*** retire voluntarily; ***nor did I complete my Service*** by reason of a no-fault Service 'qualifying' injury which led to my compulsory discharge.

Furthermore Statutory Instrument No:129 Rule B1.-(1); paragraph (c), *effectively prohibits* the payment of a Rule B1 Ordinary Pension to an employee who...

"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*', **as I am**, to a rule B3 ill-health pension, **by reason of a decision** of the Lancashire Combined Fire Authority.

The LCFB (progenitors) of the LCFA, in accepting legal liability for my in-Service no-fault qualifying injury, stated that they compulsorily medically discharged me under Rule B3, an Ill-Health pension, and as a legal consequence, a Rule B4 Injury Award.

My entitlement to a Rule B3 pension is not disputed by the LCFA nor the TPO.

These Rules, B3 and B4, which in law are inescapably compensatory packages bring legal entitlements which are provided to compensate me for an early loss of my career; the promotion and pay I "could" * have achieved until aged 60(at my rank) but for enforced compulsory medical early retirement; and in no lesser compensation than a Court would have awarded me by way of ordinary and special damages under common law.

* This word and its authority is a direct quote providing plain English guidance from the 1992 Home Office 'Commentary' which accompanies the Statutory Instrument No:129.

But still the LCFA in wilful contravention of the Statute; in contradiction of their decision to compulsory discharge me under Rule B3; still fail to pay me my lawful entitlements, whilst TPO confirms ... "*This is not under dispute.*"

A Review of Mr.T.Coutts – 'Cover Letter' & 'Findings'.

23. I have to say, at the commencement of the review of Mr.Coutts (a 'senior' adjudicator), 'Cover Letter' and his 'Findings', that in the matter of the application of plain English, and common-sense, he chooses to express assumptions, assertions, 'legal' views and distortions which I can only describe as reducing the relevant law to the level of incomprehensible absurdity.

24. Nevertheless it will be useful, for the record, to review the contents of his confusing Cover Letter and secondly his very odd 'Findings'.

This includes a short review of the 'legal' quality of his brief work which is asymptomatic of the 'legal' skills level to be found at TPO; his use of regurgitated non-legal justification provided to him by LFRS/Mr.Warren for the non-payment of my correct pensions, but which Mr. Coutts fails in contravention of TPO policies, to permit me sight of, and from which he has obviously cherry picked supporting legal 'quotes' for his misuse.

A review of the source legal documents Mr.Coutts used, or more accurately, those he failed to use; why he failed to engage or explore the detailed legislative 'art' placed before him from my Barrister which he completely ignored; or why he failed to seek the refuge and the support of his Lead Lawyers in the dilemma he found himself in; and the distortions of law he used to arrive at the conclusions he did, aside from the obvious fact, and he would agree, that he is not in any sense a lawyer.

25. I was disappointed, that unfortunately having trustingly gone to the trouble of giving Mr.Coutts and TPO notification of my intended absence at my Son's wedding in Australia, to find to my dismay on my return his documentation lying on my doormat with a deadline to reply of 27th March 2019, two days hence.

26. After urgent contact, Mr. Coutts then rang me back on the 26th March 2019. He apologised for his date confusion in his correspondence and the general 'confusion' within TPO; a situation which was hardly unexpected.

27. If I was minded to think so, I could also regard his actions as pure cynical opportunism in complicity with LFRS/Mr. Warren who Mr.Coutts indicated, in my absence, he had been in dialogue with, presumably both verbally and in correspondence?

28. I could also be forgiven for concluding that it was Mr.Coutts's deliberate intention to cause me dismay and distress on my return from a happy occasion, or was it yet another variation of TPO's reprehensible 'games' which I am accustomed to which are also regularly played on all complainants at TPO?

The Coutts 'Cover Letter'.

29. In his Cover Letter Mr. Coutts commences by asserting that I accepted his notion that a Rule B3 ill-Health Pension is, as he put it, '*effectively a B1 Pension*'.

I have never advanced to, nor accepted, such egregious nonsense because it simply cannot possibly be.

As a layman to a layman I simply ask Mr. Coutts what is the point of legal drafters including Rules B2 to B5 in the 1992 Statutory Instrument No:129(The Firemen's Pension Scheme Order), if a Rule B1 Ordinary Pension 'fits all', and would suffice for all types of pensions?

Why did Mr.Coutts choose to ignore these other Regulations and their detailed provisions in law as though they did not exist?

30. I disagree with his 'opinion' and thus I am not prepared to withdraw my Pension Complaint from TPO, nor can TPO, under any guise, deem it to be

withdrawn/struck out, because there is no such Statute within the Pensions Act 1993(as amended) and Statutory Instrument No:129(The Firemen's Pension Scheme Order) to do so.

31. Further, because of Mr. Coutts obvious lack of understanding of the 'art' of pension law and its Statutory construction, which he decided not to take into consideration when arriving at his 'opinion', I intend to implement my Statutory entitlement which is to *require* the Ombudsman and/or his Deputy to lawfully adjudicate on my Pension Complaint which Mr.Coutts does actually recognise.
32. Furthermore, Mr. Coutts then seems to give the misleading impression that the Ombudsman's adjudication is 'final and binding'; or that he/she may well give a 'no award', exhibiting once more his profound ignorance of the Statutory and judicial processes. When in fact he should well know as a 'senior' adjudicator that I can require the Ombudsman in law to provide a 'Determination' which itself can be subject to judicial Appeal.
33. Mr. Coutts implies with an impish sense of humour, in misrepresentation, or in a preposterous notion that it is unlikely that either Ombudsman will disagree with his unqualified layman's 'opinion' when in point of fact in law his 'opinion', is simply no more nor no less than mine, just an opinion.
If this was so what would be the legal purpose of having Pension Ombudsmen?
34. TPO knew full well in making work allocations for their new appointee, a *second* 'Lead Lawyer' in 2018, that this appointee will be engaged in expensively wasteful Appeals Courts legal work; a Court which is littered with failed TPO incorrect/meritless-in-law amateur 'Determinations' such as Mr. Coutts's.

A Review of Mr.T.Coutts – 'Findings'.

35. Now I must assiduously deal with the rather sparse minutiae of Mr.Coutt's 'opinion' which to put not too fine a point on it, is in addition to being the anticipated whitewash, completely worthless in law regardless of whether or not, either Ombudsman, may, or may not, agree with his curious conclusions.
36. In my layman's opinion Mr. Coutts failed in his unqualified layman's 'opinion' to either consider, understand, or educate himself in grasping the fundamental underpinning of Statutory Instrument No:129(The Firemen's Pension Scheme Order) and its provisions contained in its Statutory construction, quoted in Paragraph 22, which lays the foundation in law for my detailed Pension Complaint requiring, as it does, that the LCFA implements in full its Statutory duty to me which is to pay me, my estate(and others), my correct overdue pensions.
37. In Mr.Coutts 'Findings' he states that ... *"Mr N is entitled to a B3 pension. This is not under dispute."*... .

This is correct in law but then Mr.Coutts in his misleading confusion proceeds to inform me that this is why I am receiving a Rule B1 Ordinary Pension. These are polar opposites and this is simply oxymoronic.

38. Continuing in his confusion Mr. Coutts then proceeds to adopt the regurgitated manipulated nonsense supplied to him by LFRS/Mr.Warren (to which I am not

privy) concerning Rule B3 paras (4) & (5); ignoring the historical record which shows that Mr. Warren, my pension scheme manager since 2002, who claims to be an expert in pension law and yet another non-lawyer(but a mendacious clerk to boot - see in Appendix 'A'), also has not the vaguest notion about pension law or how this Statute's construction was drafted.

39. In a ludicrously complicit approach with Mr. Warren, Mr. Coutts then reaches his conclusion in which he uses faux 'Judicial speak' by stating ... *"I am not persuaded"*... to inform me in his Homeric view that... *"this means that Mr N is still being paid a B3 Ill-Health Pension, albeit it is equivalent to the B 1 Ordinary Pension."*

In a moment of levity I can be forgiven in concluding that there can only be one Homeric Simpson response to such tripe "D'oh!"

40. I have seldom heard such egregious nonsense which added to Mr. Coutts's risible logic in all this escapes me and though the legal complexities and Statutory construction of these Regulations have long escaped him, I fear the application of a bucket of whitewash has not?

41. Nevertheless, this statement cannot go unchallenged because it goes from complicit stupidity, beyond disingenuity and duplicity, to falsehood. Once more, *'this means...'*, it is no such thing.

42. Statutory Instrument No:129(The Firemen's Pension Scheme Order) publishes a series of Statutory mathematical/template formulae to calculate the Rules B1 to Rules B5 pensions due; on a simple 'monkey see monkey do' principle which is by the substitution of relevant numerical data, produced from the pensioner's final pay day.

Rule B1-Ordinary Pension –Time Served (leaving by choice) publishes the basic simplistic applicable formula/template for the Ordinary Pension due.

Rule B3 Ill-Health Pension –Compulsory termination of service (premature exit) publishes another formula; and because it is a compensating pension in law, it is, as one expects, a more complex formula/template addressing these extra compensating provisions; but nevertheless it is still a 'monkey see monkey do' data substitution exercise.

Rule B3 yield will always be greater than a Rule B1 Ordinary Pension; and lest there be any doubt in the yield between a calculated Rule B1, or a Rule B3 pension, SI129 at Rule L4 (3) gives a specific direction that ... *"if they are for the time being unequal in amount, the one to be paid is the largest of them."*

This simply confirms the drafters/actuary's mathematical logic; the compensating factors involved; and the Statute's construction.

It also emphasises Mr.Coutt's lack of legal knowledge and training.

For sake of completeness a Rule B4 Injury Pension is the data by-product of Rule B3.

43. In addressing Mr.Coutts paltry 3 page dismissive 'opinion' in response to my submission of 57 legally detailed pages, including two eminent Barrister's Opinions, meant to place before the Ombudsman the law in fair, balanced, detailed legislatively structured 'art', to assist him/her in successfully completing their task, Mr. Coutts (or a co-opted 3rd party lawyer had Mr. Coutts engaged one) astonishingly failed to engage at all, simply stating... *"I do not agree"*.

Perhaps these legal Opinions on Statutory construction were all just too much for him?

44. Next there is the lack of detailed reference to the source legal documents Mr. Coutts used, or deliberately avoided using, to arrive at his illuminating 'opinion'.

For example, I note he made no reference whatsoever to the 394 page 1992 Home Office Commentary which is the accompanying layman's guide to the 1992 Statutory Instrument No:129(The Firemen's Pension Scheme Order) which was specifically written by accomplished legal drafters for laymen like Mr.Coutts (it informs us so) in order that collectively we all might have at least a plain English grasp of the drafters intentions behind the Statutory Instrument's legal construction when actually reading and attempting to understand it.

45. Indeed Mr.Coutts seems bemused when in quoting the 'Commentary' I used the phrase... *'what I could have earned'*... stating that there is no such provision in the Statutory Instrument which simply confirms either his complete ignorance of the existence of H.O. Commentary (which cannot be - as we shall see), or more likely his complete refusal to consider the merits of its guiding principles?

46. In Mr.Coutts' Paragraph 18 he expressed the following comment ... *"This argument has already been determined by a former Ombudsman of this Office and I understand Mr N has had sight of that determination."*

47. Indeed it has because when Mr.Coutts first phoned me in dealing with my Pension Complaint I did, in transparency and honesty, make him aware of the presence of this similar(as opposed to 'same') Pension Complaint which preceded mine to TPO several years ago.

48. However, I did not, as Mr.Coutts asserts have sight of Burns-v-LFRS (PO-3946) 'Determination' by Ombudsman King (who was also a civil servant - not a lawyer) because curiously it has never been published by TPO even though confusingly Mr.Coutts appears to see it as a landmark case, and if that was so, then surely TPO ought to have published this 'Determination'.

Or was there an overriding concern for not doing so?

49. I had hoped that Mr. Coutts would in honest transparency have sent me a copy of the Burns 'Determination' PO-3946 because he referenced it, but regrettably he chose not to.

In the interim Mr. Burns has now provided me with full copies of the documentation including unpublished correspondence which I find worthy of comment because Mr. Coutts has raised this seminal Complaint in *the context* of my Pension Complaint.

50. I had the reasonable expectation, as the law demands, that Mr. Coutts would approach my similar Pension Complaint with a fresh 'open mind' but, once more, he oddly chose not to, instead he clearly used Burns PO-3946 as a cherry picked template to form the basis of his negative 'opinion', which was at the very least, lazy and unprofessional, and at worst, packing his 'jury'.

51. This draws me onto another point.

It is the stated policies of the Ombudsman/TPO that in the first instance they will treat my Pension Complaint with transparent, accountable impartiality, and fair play; and in so doing in the second instance that it will *follow its own policies* to the letter.

52. It is a published policy that in this triumvirate exchange between myself, my pension provider, and the TPO in dealing with my Pension Complaint that *all correspondence and contact* between the TPO, and the LFRS, will be copied to me for my comment and response.

53. Yet Mr. Coutts did not follow TPO policies, unlike his colleague Mr. Rattigan in 'Burns PO-3946' who, regardless of Ombudsman King's incorrect unqualified layman's 'Determination', meticulously followed these policies?

54. Mr. Coutts commented that (in my fortuitous absence in Australia for him and Mr. Warren) he had been in contact with Mr. Warren, which he is perfectly entitled to do, but Mr. Coutts surely must have been aware that in discharging this duty he also has a duty to me regarding 'pre opinion' transparency that TPO policies require him to send me copies of the LFRS/Warren/TPO correspondence and the contemporaneous notes he made of his vox conversations he had with Mr. Warren (as Mr. Rattigan had done with the Mr. Burns case) so that I might comment to TPO and then pass them to my Barrister for his information and advice?

55. Because I was not informed of the content of these discussion I am drawn to use the word surreptitious involving Mr. Warren because presumably as a 'senior' adjudicator and senior civil servant Mr. Coutts was fully aware, in dealing with Mr. Warren and my Pension Complaint, that he was bound not only by the published policies of TPO but in his personal actions by the Nolan Principles of Public office?

56. It is because of such surreptitious contacts between Mr. Warren and Mr. Coutts and their complicit failure of transparency in not passing these records to me that the Public must surely conclude that not only does corruption exist at the TPO but it also confirms TPO's institutionalised partiality towards the 'pension industry' and its pension providers to the detriment of pensioners like myself.

57. So I am bound to ask where is the TPO/Warren correspondence and where are Mr. Coutts records of his contemporaneous notes of these vox conversations he so obviously had with Mr. Warren?

58. An objective observer may well draw the conclusion that it was Mr. Coutts's intent, in complicity with Mr. Warren, to disadvantage me in my attempts to challenge and defend any legal arguments which might arise from the TPO/LCFA in pursuit of my legitimate and lawful Pension Complaint.

59. I conclude that not only did Mr. Coutts knowingly fail to follow TPO policies but in doing so he acted arbitrarily contrary to the Nolan Principles of Good Conduct for Civil Servants in Public Office which in both cases bring a liability for a complaint leading to disciplinary action which the Ombudsman must surely take?

60. Now I turn to Mr. Warren who I am sure Ms. Nicol, Mr. Strachan, Mr. Coutts and others at TPO were fully aware, has an appalling reputation of corrupt mendacity and complicity with equally corrupt civil servants (Qui res est?) yet to be formally identified lying at the heart of the TPO, but which most certainly included the former Ombudsman Mr. King.

In doing so I treat Mr. Warren with fair play and transparency (which are unknown ethics to him), but which he has never extended to me, or other Members of the LFRS Pension Scheme, both retired and current serving accruing Members.

61. It will be helpful to analyse his and former Ombudsman King's role in the Complaint Burns PO-3946 which Mr. Coutts introduced into his evaluation of my current Pension Complaint and which ultimately led to the direct intervention of former Ombudsman Mr. King and Mr. Burns's Barrister.

62. Indeed if Mr. Coutts had taken the trouble to read the TPO archived material fully on the Burns Complaint, and I have little doubt he did so, though he carefully avoids saying so in his 'Findings', he would also have noted that Mr. Rattigan, in his 'opinion' quoted from the *'2008 Guidance Note on the 2006 Fire Service Pension Scheme'* which is entirely irrelevant to the *1992 Home Office 'Commentary' on the 1992 Firemen's Pension Scheme* which applies to both myself and Mr. Burns as '92 Scheme Members.

63. Curious as to why Mr. Rattigan misquoted the wrong source document Mr. Burns then pressed Mr. Warren to account for the source documents which he had supplied to TPO. It became immediately clear that Mr. Warren, given his reputation

for mendacity, and as a self-declared 'expert' on Fire Service Pension Schemes, can only have acted criminally, by fraudulently substituting the relevant 1992 Home Office Commentary, for the irrelevant 2008 Guidance Note, thus succeeding in deliberately misleading not only a legally ignorant Mr. Rattigan but an equally legally ignorant and legally unqualified Mr.King; but such was Mr.Warren's intent.

64. In an open and as yet unpublished letter the Barrister, Mr. John M. Copplestone-Bruce (who has provided an Opinion for my Complaint) laid a charge of criminal fraudulence (copied to TPO/TPR) before the LCFA and the Chief Fire Officer inviting a response. But none chose to respond leading to the unavoidable conclusion that the Barrister's charges were well grounded.

65. A unique feature of this unpublished tripartite correspondence was an unqualified-in-law civil servant Ombudsman, Mr. King, attempting to castigate this eminent Barrister, a Member of the Inner Temple in which Mr. King suggested the following....

"I begin by observing that it is to Mr Burns' adviser's discredit that he encouraged Mr Burns in bringing this complaint at all. He apparently gave his opinion in the capacity of a lawyer, but has failed to give regard to the most basic principles of statutory construction."

66. According to the correspondence Mr. Burns then sought an Oral Hearing, to correct this LCFA criminality, which was denied. It seemed, at least on face value, that this Pension Complaint had to be denied at all costs. One again wonders why?

67. Mr. King was, shortly thereafter, having had his governmental Contract renewed peremptorily sacked from his post but of course sought and took refuge back in the pension 'industry' as one might expect.

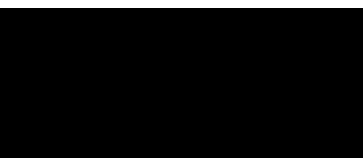
My Conclusions.

68. Part of my role in senior command was regularly to instruct, and guide Junior Officers, following their formal education in fire forensics, when they were investigating causes of fires in actuality, including fatal fires, for subsequent presentation at Coroners' Courts.

69. A repetitive and lazy fundamental error was that these young Officers started from a base of a 'supposed cause' and then made the 'facts', as they saw them, fit their supposition without applying the logic of structured investigative forensic processes which are always demanded.
Mr. Coutts 'Findings', of his own volition, though no doubt encouraged by Mr. Warren, seem to fit this analogy perfectly, pleading ignorance of and avoiding the law when it suited.

70. Given this insightful background, none of LCFA/TPO's actions in the persons of Mr. Warren and/or Mr. Coutts, and in particular the latter's 'Findings'; and their joint complicity to disenfranchise and disadvantage me; are hardly remotely surprising but nevertheless the law still stands supreme.
71. Consequently my Barrister, as you know, decided unsolicited to write directly to the Ombudsman as a solicitor and his Deputy a Barrister, and the W&P Select Committee, *on a second occasion*, once more publicly expressing his disquiet, which in the first instance, to his regret, he received neither an acknowledgement nor a response from Mr. Arter at TPO or Ms. Titcomb at TPR.
72. In rebutting and formally rejecting Mr. Coutt's 'Findings' my Barrister has illuminated once more where Mr. Coutts's 'opinion' has erred in law and the correct conclusions he was duty bound to have reached had he in fact been a qualified lawyer capable of reading and understanding the Statutory construction of the relevant Statutory Instrument.
73. Lest there be doubt, I require that in accordance with the Pension Schemes Act 1993/2018(As amended), sections 145 A, and 146 (1) (a), that my Complaint be placed before an Ombudsman for 'Determination' because I have... "*sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme*", namely by Mr. R. Warren the delegated manager of the LFRS Firefighters Pension Scheme of which I am a Member.
74. Finally, it is important to state that it is the measure of a Nation and those politicians it sets in authority over its civil servants to ensure that the good name and the self-respect of the Nation is maintained by those in public office.

The collective failure to act decently, and any failure to display the decent, virtuous morality towards those it employs, who by their voluntary choice of vocation put themselves in harm's way to protect their fellow citizens, besmirches the name of the individual, their office, and brings shame on the Nation.



Yours Sincerely,

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

Copy to:

The Pensions Minister Mr.Guy Opperman M.P.,
Parliamentary Under-Secretary of State at the Department for Work and Pensions.

Mr. F.Field D.L., M.P., The Chairman & Members of the W&P Parliamentary Select
Committee.

Mr.John McDonnell M.P., Deputy Leader Labour Party.

Lady Silvia Hermon M.P., Independent, Constituency M.P.

Mr. Nigel Evans M.P., Conservative Constituency M.P.

Mr. Matt Wrack - General Secretary – Fire Brigades Union.

The Pension Regulator – Chief Executive Mr.Charles Counsell.

The Editor – The Morning Bugler. (www.themorningbugler.com)

Appendix 'A'

It has never been my joy to read or write appendices, as they are usually boring - this Appendix is not. I know you will find it enlightening and most interesting because it is an evidential indictment of the TPO and TPR as failed organisations.

(For readability the third person is used).

The Pension Ombudsman et al - Fit for Purpose? The need for a Ministerial Inquiry?

75. An invitation to provide 'information' on this scandalous canker was issued on 26th September 2017 by the Chair of the W&P Select Committee Mr. Frank Field DL., M.P.

A conflated 77 page document (Ref:PB00417) was then sent to every Member of the W&P Select Committee.

Because of continuing institutionalised corruption and injustice this has now led to this *supplementary document* which reaffirms the logical conclusion that such unlawful practices are *still* endemic within the LCFA, TPO, and TPR in their collective failure to deal with legitimate Pension Complaints.

76. On the 14th December 2017 pro bono Barrister – Mr. J.M. Copplestone-Bruce wrote to the Heads of TPR and TPO, copied to every Member of the W&P Select Committee expressing his public disquiet at this scandal. He received a single acknowledgement and response from the Chair of the W&P Select Committee.

77. Once more, after 2.5 years, this latest supplementary document simply updates this continuing outrage without the slightest sign of the proactive intervention of the Parliamentary W&P Committee.

One might ask, what is actually required to get the attention of this Committee and Parliament? - because normal life does continue out here beyond Brexit.

78. It is regretted that it is not possible in that which follows to conflation these randomly selected examples of these collective 'experiences' and actual evidence of continuing wrong doing without losing the factual narrative along the way. Had civil servants been doing their jobs assiduously and honestly none of this would be necessary.

79. There is the salient fact that Mr. G [REDACTED]'s Pension Complaint has now been at the Pension Ombudsman's office under the control of Ms. Fiona Nicol, Director of Case Management; then with her colleagues Mr. Strachan, senior jurisdictional clerk, and currently Mr. Coutts senior adjudicator since 5th October 2017, for a total of 609 days.

This exceeds, without explanation or apology, the TPO's own case handling 'target to resolution' of 120 days, by some 365%.

80. Ms. Nicol is regarded by pension Complainants as the 'controller' of TPO's iniquitous fiefdom of ambiguity and corrupt deceit; the intrigues and abuses of authority which she and her staff, under her direction or coercion, perpetually engage in; because given her position of authority it cannot be otherwise.

Intriguing amusements involving deliberate procrastination, obfuscation,

obstruction and 'passing-the-parcel', which in a certain case has amounted to a 5 years + delay of a Fire Service Pension Complaint lying on Ms.Nicol's desk without the slightest action, other than prevarication throughout those years.

Drawing one to the conclusions that not only is she corrupt and underemployed but that she has risen above the level of her own competence.

81. There is, without question, the firm collective conclusion based on extensive personal experience that all this institutionalised corruption is simply designed to 'wither on the vine' difficult complainants with legally difficult and complex pension complaints with the appalling hope of *resolution by boredom or death*, which occurs.
82. In all this one must not forget the consequences to the growing numbers of Beneficiaries suffering further reduced income upon the decease of these pensioners; Beneficiaries who may in many cases now be considering a class action.
83. However, living Benefactors, wisely following their LCFA/TPO criminal 'experiences' of injustice are now adding a codicil to their Wills to keep their pension claims alive in perpetuity for their Beneficiaries.
84. Indeed there is the further firm conviction that any Pension Complaint which arises from the LCFAS/LFRS is doomed from the outset and that this outcome can only be achieved by an unpublished policy of the LCFA with the complicity of politicians of all Parties and certain employees at TPO and the LFRS.
85. Should a complainant be minded to formally complain about poor Service Delivery at TPO, using the published procedure, then that formal complaint goes directly to Ms.Nicol, the original 'controller' of these delays, who 'investigates' and 'adjudicates' on herself, finally, and statistically recording, that there is no case to answer.
86. Not content with this Ms.Nicol then in her annual work of fiction for the TPO Parliamentary Report manipulates these included statistics, which she controls and is accountable for, to not only show how industrious, balanced, and fair minded the TPO is but that informal arbitration is working whilst the TPO continues to be overwhelmed with workload which is probably accounted for by perpetually and aimlessly recirculating difficult cases and troublesome Complainants, all the while demanding an increase of budgets and staff.
87. This jaundiced opinion of TPO is based on the actual archived documented reality of long term exposure to Ms.Nicol machinations and her controlled subordinates where it is best to allow the records to speak for themselves.
88. These are unethical and dishonest intrigues which Ms.Nicol in her fiefdom of ambiguity surely cannot engage in, without one assumes, the Ombudsman's authority or tacit support? If she acts flagrantly so, without his authority, then she is simply an 'out of control' senior civil servant who must be brought to book without delay.
By her cavalier actions she significantly damages TPO's already diminished and

tarnished reputation simply adding to the Public perception of TPO as an expensive, inept, institutionally, and systemically corrupt organisation.

89. This complicitous and capricious framework of ambiguity is not only corrupt but criminal, amounting to Contempt of Court by denial of due process and Justice.
90. In particular when a government department like TPO acts in complicity with LCFA and other pension providers it is setting an example of an out of control government department engaged in not only institutionalised corruption but indeed criminality to deny pensioners the just fruits which they saved for all their working lives.
91. Perhaps the Ombudsman sees his organisation's role as protecting H.M. Treasury by procrastination? But, as has been seen before, this involves delaying the execution of High Court decisions, by delaying the payment of correct lawful pension commutation to thousands of disabled Fire Service Veterans; their Widows; and their Beneficiaries in defiance of Parliament, the Courts and the Law; those who were killed or disabled in the service of their communities and the Nation?
92. Or, it may well be that the Ombudsman is forced to follow an unpublished government policy of perpetuating fraud on those the government contracted with for their services, used, and then indifferently cast aside?
War Veterans and Windrush spring to mind, resonating as they do, with Fire Service Veterans (FSV) antithetical TPO/TPR experiences which is brass necked without apology, remorse, or conscience.
93. In recent times under the leadership of the Rt Hon. Mr. John McDonnell M.P., (the Fire Service pensioners' Champion), in conjunction with the Fire Brigades Union initiated a successful Parliamentary Early Day motion and a series of high profile successful High Court legal actions against these Fire Authority pension providers concluding at the perpetually procrastinating door of TPO.
94. Indeed, currently this pan Fire Service movement now involves several parallel successful High Court actions including one by Mid-Wales Fire Service personnel and now notably 154+ pension accruing Firefighters currently in service with Lancashire Fire & Rescue Service (LFRS) involving a Complaint to TPO and which, as usual, involves their mendacious Pension Scheme manager Mr. Warren.
95. All these collated and published TPO 'experiences' (www.themorningbugler.com) amount to the reason why the pension accruing work force including Firefighters' past, and now present, confidence in TPO/TPR's so called pension guardianship role and its impartiality are at a sceptically all-time low.
96. Regrettably when trusting members of the public, in this case Fire Service Beneficiaries, approach the TPO/TPR with a pension problem they do so on the basis that these organisations are simply points of decision to exhaust on the route to Justice having procedurally exhausted a dialogue with their pension providers on a pension complaint.
TPO nor TPR offer little prospect of either resolution or Justice conveniently forgetting that these pension issues invariably impact on the daily economics of pensioners' lives and/or the quality of their state cared disablement.

97. For example, from the onset of contact with TPO this organisation sets out to create the misleading impression that it is “*independent*”, “*We look at the facts without taking sides*” (indeed it states so unreservedly on its website); an organisation it implies which is fully staffed with nationally qualified pension legal ‘experts’ who will act transparently, honestly, and impartially on their behalf; who will intercede with their former employers to provide, if possible within the relevant pension law, a prompt lawful resolution.
98. TPO in this expensive sham, misleadingly and coyly, without the same enthusiasm for transparency, fails to mention that this ‘independent’ staff are not independent but simply HM graded civil servants with no national pension administration experience or legal qualifications, and with startlingly few civil servants qualified in law, whose fundamental mainstream work is to ‘interpret’ pension law.
99. Neither does the TPO advertise the fact that in addition to being funded by the ubiquitous Taxpayer it is also funded by a levy on the pension ‘industry’ thus establishing an early ‘loyalty link’ which confirms that wherever their loyalties might lie, whether it be with the industry levy payer or the Taxpayer it certainly does not lie with the ill-considered pensioner.
No one can yet serve two masters.
100. Nevertheless TPO knowingly creates an ambience of patronising goodwill which raises confidence and expectations in the complainants that prompt lawful and fair resolution may well follow which will see an improvement in the quality of complainants’ lives when wrongs are righted.
It also more prosaically keeps these civil servants in work.
101. Later as disillusionment and reality sets in, complainants find that all this deceitful window dressing is simply a case of institutionalised fraud, by a government department no less.
102. This systemic fraudulence is deliberately supported by the further mendacious use of ever changing grandiose work titles which include ‘Investigator/Adjudicator/Jurisdiction’ usually prefixed by the word ‘senior’ giving the whiff of a quasi-legal professionals at work when in fact the vast majority of the staff are simply unqualified-in-law civil servant clerks.
103. Laymen who are not only given these deliberately misleading grandiose titles but are also allocated Pension Complaints to ‘adjudicate’ upon on behalf of the Ombudsman(though the term used is ‘authorised to’) *implying* in law they have *delegated powers* to do so, which they do not.
104. This is a cause for major legal concern because in having Mr Coutts adjudicate for him the Ombudsman is acting in breach of Section 145 (4c) of the Pensions Act 1993(as amended) which enables his staff to perform any function of his, ‘*other than determination*’, of a matter referred to him.

The ramifications that this abuse have in law bring quite terrible consequences for TPO, the government of the day, and ultimately the Complainants.

105. Since 1993 every single adjudication not completed directly by an Ombudsman carrying out their Statutory duty, and carrying their legal imprimatur,

is simply illegal and ultra vires, and will have to be re-examined by an Ombudsman for its legality and compliance with the relevant Statute pension law and then signed off by him/her with that Ombudsman taking legal and personal responsibility as a lawyer for to act otherwise is to risk disbarment.

Why? Because integrity is required of solicitors/barristers who are officers of the Court, and they must act in accordance with the Solicitors Code of Conduct and the Bar. To knowingly manipulate language to replace a just legal consequence by an unjust and illegal one is to avoid legal integrity - for which he risks being struck off, as could his Deputy.

Finally, all this must be published so that former Complainants have the opportunity to reconsider the 'adjudication' carried out on their Complaint and seek a full review and re-evaluation strictly by an Ombudsman should they so choose.

106. Thus, these 'lawyerly' civil servants illegally, regularly, and misleadingly appear to a complainant to issue binding 'opinions' whilst choosing to ignore the actual law and the construction of technical pension law about which they know little or nothing.

107. Currently the unspoken 'policy' of the TPO is to reject, under any pretext, a Complaint. This is what the function of the 'Senior Jurisdiction Officer' post (presently Mr. Strachan) has become.

In duplicity yet another 'policy' is for the TPO to 'encourage' Complainants at an early stage in the process to move their Complaint into the TPO 'arbitration system' where TPO is indeed on safe ground because such a system has no binding legal authority in law but, yet again, it does help to create in the Public's mind a *misleading perception of fair play* in the annual published statistics.

Rapid arbitration, of questionable legal value, helps to balance the statistical books.

108. This is a complete and accomplished conspiracy of false institutionalised deceit carefully constructed to lead the unwitting, trusting, and legally ignorant pension complainant into a contrived informal 'arbitration', usually to the benefit of the pension provider, but always well away from the purview of the Courts and actual Justice.

Without shame it exploits pensioners trust and their known lack of financial resources to 'fight on'.

109. Furthermore, feeding on its own self-created mythology, a King legacy, these laymen civil servants who have clothed themselves in 'Emperor's clothes' with pompous hubris actually believe that they *do* have delegated authority in law to carry out these allegedly binding decisions whilst ignoring the actual law made good.

110. Even the briefest study of the relevant Statutory Instrument completely dispels this absurd notion because the legally binding power to 'adjudicate', an *entitlement* for a complainant, is *strictly reserved* in Statute to the Ombudsman and his/her Deputy only.

111. But of course, seek as one may, one will not find a simple single published truth to this effect from the Ombudsman for the benefit of a doubting Public. All this faux structure simply houses an organisation engaged in the perpetuation of a myth of public pension protection when in fact its process actually produces a constant stream of expensive failed ‘Determinations’ at the Court of Appeal and most unforgivably of all endemic institutionalised breaches of trust by exploiting the trusting legally ignorant pensioner.
112. One can only conclude that all this charade must either be an organisation out of control or a hidden government policy at work in spite of trumpeting publically, in juxtaposition, how essential it is for all workers to have a pension.
113. What is the wisdom of expending countless budgets of the Taxpayers/levy benevolence on publicity, including a recent £800K on Google “to promote the benefits of saving for retirement”, when those, aka the TPO/TPR, whom the government sets in supposed guardianship of these achieved pension rights in law then spend all their time, budgets, and energy working in resistance to Justice for pension holders to the clear benefit of the pension ‘industry’?
114. Yet another illusion of this cloak of deceit, and its final loss of ‘integrity’, is the perpetual employment of ex-Ministers from the DWP by the ‘industry’; an observation confirmed by recently having a serving junior DWP Minister sitting on the W&P Select Committee monitoring and reporting back their actions to the DWP Minister.

A presence which confirms an unhealthy relationship between TPR; TPO; the ‘pension industry’; and the government of the day to the detriment of all pension holding workers.

115. An organisation which in April 2018 moved to new palatial offices at Canary Wharf with a staff expansion from 55 to 70 at an annual budgetary cost of £5mil (Plus £1mil to equip these new offices paid to their Landlords) all borne by the Taxpayer.
116. Interestingly during this move TPO advertised for a “*second*”, which is a puzzling oxymoron, “*Lead Lawyer (£76,500 + benefits)*” presumably to address the long standing critical need for TPO to build a properly dedicated; properly legally qualified; and properly accomplished legal team who are especially well educated in pension law to attempt to eradicate the constant expense of the Ombudsman’s original ‘Determinations’ being repeatedly and successfully taken to the Appeal Court when faced with well supported legal challenges raised by Complainants on their Pension Complaints.
All of which contributes to the further steady erosion of its failed Public reputation.

But surely the TPO has this already?

117. It is common knowledge, though again not well published in ‘transparency’ by TPO, that of this number of staff there are only approximately 6 legally qualified staff at the TPO who includes the Ombudsman (a solicitor and his Deputy - a Barrister).
118. This second ‘Lead Lawyer’, one assumes, will also address the issue of providing a continual drip feed of supporting legal guidance to the majority of staff who are

non-lawyer civil servants staff, such as Mr.Coutts, who wrongly form the vast majority of its clerical work force in the vain hope that they may actually begin to get it provisionally right in the first place before *placing it as a matter of law* in the hands of an Ombudsman?

Though appointing a lawyer (Solicitor or Barrister) who is required to... "*be qualified as a solicitor or barrister with at least four years' post qualification*" is unlikely to set the legal world on fire; someone who apparently is to advise the sitting experienced Deputy Ombudsman Barrister? What an odd arrangement, and with 4 whole years of experience!

119. Mr.G■■■■'s Complaint, and others in the future, will increasingly continue to present legally well supported and legally technically challenging cases as the national workforce becomes more pension aware of its rights and more suspicious of the role of TPO/TPR who are meant to defend their pensions.

120. All this raises the question which refuses to go away ... Is the TPO fit for its purpose?

Or should it, as it is envisaged, be absorbed into an increasingly vigilant and proactive Pension Regulator organisation?

Bearing in mind that the TPR, who are still acquiring these virtues, only does so because of the Green disaster at British Home Stores; the vigorous intervention of a truly independent W&P Select Committee; and the subsequent replacement of a comical CEO called Titcomb.

There is undoubtedly a resonance here with TPO though according to a recent in-house DWP triannual 'Tailored Review' all is well at TPR though the W&P Select Committee do not think so.

The LCFA/TPO Complicit Corruption or Criminality?

121. What evidence exists of complicit corruption and criminality in the machinations between TPO, the LCFA, and other Fire Authorities?

122. At the TPO Ms.Nicol, Mr. Strachan, Mr.Coutts, and originally Mr.Rattigan were historically well aware that the LFRS in the person of Mr. Warren as its pension scheme manager had in prior pension complaint cases established an unseemly reputation of duplicity, ignoring the law, and using base criminality in association with the distinct perception of the involvement of complicit staff at the TPO (*Qui reus est?*) but including the former Ombudsman Mr.King, to jointly conspire to unlawfully 'defeat' legitimate pension Complaints originating from Lancashire and other Fire Authorities.

123. This consistent conspiracy of criminality lies at the very heart of an unlawful unspoken LCFA policy which is to deny and defeat legitimate pension complaints arising from Members of the Lancashire Firefighters Pension Schemes; a policy authorised by the current Chairman of the LCFA/LFRS CC F.DeMolfetta (Lab) in conjunction with the delegated Pension Scheme Manager Mr. Warren.

Unlawful actions which have been repeatedly passed to TPR in writing but *who consistently refused to take any action whatsoever*.

124. One cannot leave these comments without presenting a conflated 'flavour' of the archived documentary evidence accumulated over many years which has generously been made available which confirms the existence of these collective 'experiences' which *should lead* to inevitable questions by those placed in authority over these organisations namely the Pensions Minister and the W&P Select Committee.

Some of The Maimed - 'Experiences':

(All these 'experiences' are fully supported by archived documentation)

125. FSV Mr.R.R.B. [REDACTED] - LFRS:

- FSV-RRB injured his head, neck, and upper spine during a fall from a foam tender whilst engaged in routine duties on an FR Station. The LCFA were found liable. He was subsequently compulsorily discharged on ill-health and injury pensions on 30th November 1994 after 19 years' service;
- His simple pension Complaint, in addition to the underpayment of his principle pensions, is that contrary to a Home Office directive 4/2010 his Retirement Allowance is wrongly being deducted from his Injury Award - contrary to thousands of other successful FSV awardees;
- On 3rd November 2010 FSV-RRB made a written application under the Data Protection Act 1998 for a full copy of his Personal Record File (to access his pension records). Mr.Warren/LFRS rejected his application;
- With the assistance of the Information Commissioner who, in frustration *four years later*, on 20th November 2014, sent a team of 3 inspectors to the LFRS and threatened the LFRS with Contempt of Court action in order that FSV-RRB, and all other requesting Lancashire FSVs, received their PRFs;

It was not until 2015 that FSV-RRB finally obtained his pension records including the error of the release of secret emails confirming pension corruption at the LFRS.

- On 5th September 2014 FSV-RRB instituted IDRPs Stage I which was accomplished but after instituting Stage II the LCFA/LFRS 'timed out' and furthermore refused to complete Stage II;
- Accordingly on 15th November 2014 FSV-RRB lodged a Complaint with TPO which the TPO wrongly refused to act on stating incorrectly that Stage II had to be completed, and when pressed, commenced the usual pass-the-parcel games which are now over 5 years old;
- This is a simple Complaint which FSV-RRB has pursued for over 9 years including 1.5 years of obfuscation at the LFRS and a further 5.0. years of pass-the-parcel at TPO during which time it has lain on Ms.Nicol's desk(who rejected repeated Service Delivery Complaints) without resolution or being submitted, as FSV-RRB and the law demands, for a 'Determination' by an Ombudsman?
- FSV-RRB was repeatedly assured in writing by Ms.Nicol and her staff that his letters of personal appeal to Mr. Arter had been 'placed on his desk'?

- During all this time TPR was fully engaged by 'copied in' correspondence and when approached directly with formal written complaints concerning the lawlessness of LFRS Scheme and its Pension Scheme manager Mr. Warren, TPR steadfastly refused to take any action whatsoever – Letter RB052 -1st March 2016 is an example.

117. FSV R.T. [REDACTED] – London Fire Brigade:

- FSV-RT, an ex-Royal Marine, received 5 in-service injuries. On the 6th February 1991 after 18 years' service he was compulsorily discharged with an accumulated disablement of over 40%;
- On 26th October 2010 he received a letter from the LFB alleging that he failed to report the receipt of pension deductible DWP Benefits to the value of £120,000.0., which he strenuously and continually denied producing supporting evidence to the contrary. Furthermore, he was accused of forging an official document but for which no evidence was ever produced;
- On 5th June 2015 after endless correspondence he instituted IDRPs Stage I to which he received a response.
The LFB then decided it could (unlawfully) run Stage I again (having erred in its procedure it said) and then reached the same conclusions.
FSV-RT then instituted Stage II. In contravention of the Statutory Instrument the LFB used the same personnel to reach the same conclusion it had reached at Stage I instead of its Statutory duty which is to place his Stage II before the Elected Members of the London Fire Authority;
- On 15th July 2016 the LFB Head of Legal Services Ms.McKenna wrote withdrawing all its financial claims and allegations explaining its 'errors' and how it had managed to arrive at these erroneous 'conclusions' using, wrongly, the Statute of Limitations. An apology was never forthcoming for this series of stressful malignant acts which undoubtedly damaged FSV-RT's health;
- FSV-RT is now severely disabled with diabetes.
- On the 6th March 2017 FSV-RT made a Pension Complaint to the TPO under extensive headings which included a further error of accounting by the LFB to the value of £700 due to him with compound interest;
- The TPO, ignoring High Court case law, decided that his Complaint was 'timed out'; Mr.Strachan fulfilling his function;
FSV-RT expressed his suspicions of collusion between the LFB and TPO;
- On 27th April 2019 knowing his Pension Complaint was still lying on Ms. Nicol's desk unanswered he once more raised this query with his handler...
"Hello Miss Stephenson, any movement on this yet, as I only have a few years left to live?";
- On the 23rd May 2019 Mr. Dartnell wrote to FSVRT rejecting all his Complaints having arrived at his 'Determination':

- Interestingly Mr. Dartnell had at an early point been engaged with the first rejection of FSV-RT's Complaint following which he commenced the 'pass-the-parcel' leading back through Ms.Nicol within her 'Fiefdom of Ambiguity' to no less than Mr. Darnell himself, who describes himself as a ' Pathway Manager';
 - Mr. Dartnell, a unqualified layperson civil servant demonstrates in his response his complete lack of legal knowledge by selectively misreading the relevant Sections 146-151 of the Pensions Schemes Act 1993(as amended) applicable to the Pensions Ombudsman's Statutory duties;
 - He takes it upon himself to claim a delegated power for this 'Determination' for which no legal provision exists within the Act;
 - Indeed the mere fact that Mr. Darnell and his colleagues work under the misapprehension, and give the impression, that he has the lawfully delegated authority to make a 'Determination' (and he is not alone in this respect with his colleagues at TPO) not only flies in the face of the actual law which allows the Ombudsman's staff to have delegated clerical duties 'other than determinations' but is a further cause for concern because it leads to exploitation of Complainants ignorance of the law that in doing so Mr.Dartnell is acting in breach of Section 145 (4c) of the Pensions Act 1993(as amended) which makes it appear that the Ombudsman is enabling and condoning the actions of his staff to perform any function of his without exception.
 - Mr. Darnell ignores the legal provision that when the PO undertakes an investigation into a Pension Complaint his decision activates in its entirety these relevant Sections of the Act;
 - Mr. Darnell further ignores a Complainants Statutory right to have a 'Determination' made only by the Ombudsman or his Deputy;
 - This is a prime and current example of Ms.Nicol's 'Fiefdom of Ambiguity' at work; her Contempt of Court; her self-examination; and her corruptly coercive abuse of authority over her subordinates by the tacit promise of promotion;
- This, top-to-bottom, is a classic example of a failed government department presided over by corrupt individuals which makes this department unfit for its purpose.

126. FSV Mr.P.Burns - LFRS.

- FSV-PB was blown up in Belfast City in 1964. He received permanent damage to his hearing and by 1997 after 35.0 years' service his hearing had deteriorated to the point where he concluded that it was presenting a hazard to those under his command on operations and medically declared so. He was compulsorily discharged as disabled with a 5% disablement with an Ill-Health and Injury Award after 33.5 years of incomplete pensionable service in 1997;
- During a Court Hearing in February 2013 in Discovery the LFRS were Ordered to provide FSV-PB with his PRF (including his pension records) until that point they had repeatedly refused to do so and the Court case could not proceed. FSV-PB's Barrister deduced that he was being

underpaid the wrong pensions. In addition the Court Ordered the LFRS to investigate and correct its pension errors in conjunction with FSV-PB. This Order was ignored;

- On the 18th April 2013 following the Court decision FSV-PB de facto initiated IDRPs Stage I by correspondence the LCFA was informed it was under this aegis.
On 22nd August 2013 Mr. Warren then denied all knowledge that he was engaged in IDRPs Stage I proceedings;
- On 28th August 2013 FSV-PB wrote directly to the LCFA initiating IDRPs Stage II and on the 11th September the Clerk to the LCFA on behalf of the Authority and Mr. Warren replied stating that FSV-PB's Stage II had been presented to the Elected Members of the LCFA on the 5th September 2013.
- Lobbied County Councillors disagreed. No Minutes; no records of a vote; nor was a Stage II formal decision ever published to FSV-PB by the Fire Authority to confirm these alleged 'facts' by Mr. Warren.
On the 7th October 2013 the Clerk to the LCFA Mr. M. Winterbottom DL reconfirmed the LCFA position in respect of IDRPs;
- On the 16th January 2014 FSV-PB re-instituted IDRPs Stage I which was responded to on the 14th March 2014 and because the response was unacceptable he immediately issued IDRPs Stage II again.
No further response was received from the LCFA/LFRS;
- On the 25th March 2014 TPO (Mr. Strachan) agreed that it would accept FSV-PB's formal Pension Complaint;
- The deliberate criminal fraudulence of the knowing substitution of source reference material by Mr. Warren manager of the LFRS Firefighters Pension Scheme in the case of Burns-v-LFRS in order to criminally deceive TPO and the former Ombudsman Mr. King has been comprehensively covered in Paragraphs 60-67;
- Finally FSV-PB believes he has been the continual subject of ethnic discrimination by uncontrolled Freemasons in Lancashire and at TPO for over 11 years because he led the opposition against corruption and the pursuit of pension Justice for his colleagues; their Widows, and Beneficiaries.

127. FSV Mr. H [REDACTED] -LFRS(Deceased):

- FSV-WH was severely injured on an incident. Taken to hospital he received 4 units of Hepatitis 'C' contaminated blood originally from an Arkansas Prison in the USA. This severely set back his recovery; led to his compulsory medical discharge by the LFRS; the ruination of his life and future employment; and his premature death on 16th May 2014;
- At one point he and his wife were left destitute by Mr. Warren/LFRS's failure to pay his pensions which Mr. Warren described as a 'mistake'; FSV-WH believed that it was because he was active in this LFRS anti-corruption movement;

- In another 'mistake' Mr. Warren/LFRS refused to release FSV-WH Personal Record Files (including his pension records) because he suspected he had been paid the wrong pensions; being terminally ill and time of the essence FSV-WH took the LFRS to Court repeatedly at the cost of £2000.0 which he could ill afford to prove to his satisfaction that indeed he was being under paid the wrong pensions and that ultimately his Widow might benefit from his efforts;
- On his deathbed he kept encouraging his pension disputing colleagues to *"keep the flag flying boys..."*.
- Those of compassion may wish to read his final thoughts...
<http://www.themorningbugler.com/a-star-is-born/pastoral-care/fire-service-veteran-wh/>
- His Widow continues to receive her substantially reduced Widow's Half-Pension.

128. FSV Mr. G [REDACTED] – LFRS.

- FSV-FG whilst on duty was injured in a no fault RTA when his car was rear ended by a member of the Public. He sustained head, neck and spinal injuries which led to his compulsory retirement on the 22nd July 1998 with a disablement of 24% after 35.7 years of incomplete service;
- On the 18th December 2015 FSV-FG issued IDRPs Stage I proceedings on a Pension Complaint to the Chief Fire Officer (CFO);
- On the 19th February 2016 (Within Statute) the CFO replied thus... *"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 B 1 is not due, as indicated in part (1) (c) of the extract below:"*;

but the CFO failed to answer why he was being paid a Rule BI pension;

- On the 16th June 2016 FSV-FG issued IDRPs Stage II proceedings to the LCFA on this Pension Complaint;
- On the 20th June 2016 (within Statute) Mr. Warren in an ultra vires act replied. He stated on 'behalf of the Fire Authority' (although no meetings, scheduled or extraordinary, took place at this time) that until FSV-FG's IDRPs Stage II proceedings had been reported to the Chief Constable... *"this process cannot be enacted"*. Stating further... *"I have accordingly placed your application in abeyance until the Chief Constable's investigation."*, though Mr. Warren gives no indication what evidence, by whom, might be placed before the Chief Constable who holds no legal responsibility in IDRPs;

On 25th June 2016 FSV-FG wrote to the LCFA asking what 'legal authority' it was using to deny the activation of IDRPs Stage II in addition stating ... *"As you will also know there is no legal lenience, flexibility, nor ambiguity in the applicable pensions Statute law, namely the 1993 Pensions Act (as amended), which allows the Fire Authority to do so."*

- On the 6th July 2016 Mr. Warren replied thus... *"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."*
There are no LCFA Meetings during the Summer Recess;
- On the 1st October 2017 FSV-FG placed his Pension Complaint before the TPO.
- The Senior Jurisdictional Officer Mr. Strachan prevaricated as expected and was ultimately forced to accept High Court case law on the 'ticking clock'.
- FSV-FG's Complaint was accepted for 'investigation' thus activating s146-151 of the relevant Statute in its entirety.
- Mr. Coutts's 'opinion' has been rejected and the Complaint has been placed before an Ombudsman in keeping with Statute pending a 'Determination';

129. LFRS Serving Firefighters:

- Mr. Warren's consistent criminality once more lies at the heart of a 'Class Action' Complaint of 154+ Lancashire serving Firefighters and accruing Lancashire Pension Scheme Members who took issue on, whether or not, part of their pay was pensionable; a complex pension case requiring retrospective pension payments to the value of £3mil which is currently before TPO supported by two favourable High Court judgements and a pro bono Barrister;
- Mr. Warren/LFRS alleged that he had a written agreement for the local variation of pensionable pay with the local Fire Brigades Union but neither he, nor the FBU, would or could produce such a written agreement;
- Mr. Warren/LFRS then alleged that the LCFA had approved such a local arrangement but he was unable to produce their 'authority' for so doing either;
- Between October and November 2017 multiple individual applications initiating IDRPs Stage I proceedings were individually lodged with the LFRS. In a timed out response Mr. Warren alleged that he had authority to conclude a local agreement with the disputing Firefighters but once more could not produce documentation and/or LCFA written authority empowering him to do so;
- On the 20th May 2018 the Firefighters submitted a Class Action IDRPs Stage II acknowledged on the 23rd of May 2019.
- On the 4th December 2018 Mr. Warren/LFRS once more having timed out and with no response forthcoming the Firefighters submitted a Class Action Pension Complaint to TPO;
- On the 18th January 2019 timed out by 8 months Mr. Warren/LFRS finally replied in writing once more alleging and failing to issue supporting

documentation that this Class Action Complaint had been initially agreed/settled with the FBU and the Fire Authority when it had not?

- Furthermore, in his response Mr. Warren/LFRS stated that the Class Action had been presented to the Full Committee of the Lancashire Combined Fire Authority (25 Elected Members) at a meeting on 19th December 2018, when subsequently lobbied County Councillors, coupled with a glance at the official LCFA diary, confirmed that no such meeting was scheduled or emergency had occurred, nor had any such Class Action IDRPs Stage II been presented to them?
- The Class Action remains lodged with TPO (Mr.Strachan) updated with further successful High Court decisions.

130. There is little doubt that thousands of other disabled FSVs will wish to bring their individual Complaints forward to TPO until these and other pension issues are finally addressed and Justice is provided to all those entitled to it; especially those who are no longer alive, or who are unable to write for themselves, or are existing on reduced incomes aka Widows, but before they do so they are determined to Publicly press for a root and branch public examination of TPO and TPR by Ministerial Inquiry at the very least.

131. As the Ombudsman and his civil servant staff will also know it is the intention at the conclusion of these proceedings, to publicly present FSVs experiences to the W&P Select Committee, not for resolution, but as current examples of how routine, but legally complex cases with heavy financial implications for the government/Taxpayers, are deliberately side-lined/malevolently delayed by TPO in complicity with the LFRS/Fire Authorities including further delaying the implementation of High Court decisions by applying systemic corruption at the government's behest to avoid the payment of lawful and correct pensions.

132. One final rhetorical question remains.

Should an in-post Ombudsman with, at the last count, pension shares in 26 pension schemes whilst running a private child care business, which is all a perfectly legal, not be required by the DWP in transparency to declare such conflicts of interest more prominently on the TPO website?

133. Finally, it is important to restate that it is the measure of a Nation and those politicians it sets in authority over its civil servants to ensure that the good name and the self-respect of the Nation is maintained by those in public office.

The collective failure to act decently, and any failure to display the decent, virtuous morality towards those it employs, who by their voluntary choice of vocation put themselves in harm's way to protect their fellow Citizens, besmirches the name of the individual, the office, and brings shame on the Nation.



Mr Paul Burns
4 Bangor Road
Groomspoint
Ireland BT19 6JF

Our Ref: PO-19150

10 September 2019

Dear Mr Burns

Firefighters Pension Scheme

The investigation has now been completed and I enclose the Deputy Pensions Ombudsman's final Determination of the complaint. It is also being sent to LFRS.

The Determination is final and binding on all parties, subject only to an appeal on a point of law. In England and Wales, appeal is to the Chancery Division of the High Court, in Northern Ireland to the Court of Appeal and in Scotland to the Court of Session. The courts have quite short time limits within which appeals must usually be set in motion so you should take advice quickly if you are considering an appeal.

Please note that all appeals against determinations or directions of the Ombudsman filed on or after 6 April 2014 require the permission of the High Court. This requirement does not at present affect appeals in Northern Ireland or Scotland.

The enclosed information sheet contains further details on appeals, including time limits, and enforcement.

Yours sincerely

Thomas Coutts
Senior Adjudicator

020 7630 2755
Thomas.Coutts@pensions-ombudsman.org.uk

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr N's complaint and no further action is required by LFRS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. 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 Firemen's Pension Scheme Order 1992 (**the Order**), has meant his pension has been underpaid and has impacted the benefits payable under the B4 Injury Award.
4. He has also highlighted what he considers to be a flawed interpretation of part of the B3 Ill Health calculation, B3(5).

Background information, including submissions from the parties

5. On 1 March 1992, the Order came into force. (Relevant provisions are at Appendix 1.)
6. Following the implementation of the Order, the Home Office issued a document entitled Commentary on the Firefighters' Pension Scheme (**the Commentary**). I have had sight of a copy that dates from May 2003, this being the last date that it had been amended. The list of amendments shows no changes relevant to this complaint. (Relevant provisions are at Appendix 2.)
7. In July 1998, Mr N retired on the basis of ill-health from LFRS. As a result, he was entitled to a B3 Ill Health award, as calculated by the formulas set out in Part III of Schedule 2 of the Order.

8. Having applied the formulas in Mr N's circumstances, LFRS concluded that Mr N was entitled to the notional pension calculated following B3(5), using Mr N's average pensionable pay at the point he left service.
9. On 23 January 2015, a determination addressing the correct interpretation of B3(5) was issued by my predecessor. That case was not upheld, and the previous Ombudsman explained why B3(5) ought not to be interpreted in the way that Mr N believes it should be. The Applicant in that case is representing Mr N here.
10. In 2016, Mr N considered the pension he was receiving and took the view that it was being incorrectly paid.
11. Mr N's 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 is entitled to. Mr N highlights that if an individual is entitled to a B3 Ill Health pension, as he is, they are prohibited from receiving a B1 Ordinary pension. Specifically 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."
12. Mr N considers that the pension must be recalculated, using the correct interpretation of B3(5), which should use an average pensionable pay figure that reflects what he could have earned at the point of compulsory retirement had he not been injured. This should take account of the likely pay increases or promotions he would have earned.
13. 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.

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by LFRS. The Adjudicator's findings are summarised below:-
 - It is not disputed that Mr N is entitled to a B3 Ill Health pension. In calculating that pension, LFRS had correctly compared the result of the B3(4) formula against the notional pension calculated under B3(5). In Mr N's case, because the B3(4) pension exceeded the B3(5) pension, it was the pension calculated under B3(4) that was put into payment. The Adjudicator considered this was the correct approach to Mr N's circumstances.

- Whilst the B3(5) notional pension is calculated following the formula for a B1 Ordinary Pension, and the outcome was equivalent, Mr N was still being paid a B3 Ill Health pension and this was not contrary to B1(1)(c) (set out in paragraph 11 above).
 - Although B3(5) capped Mr N's pension at the same level as the B1 Ordinary Pension, he is receiving a pension under the B3 Ill Health rule, not the B1 Ordinary Pension rule.
 - The Adjudicator considered that the intention of this was to cap the pension payable so that it would not exceed the amount paid had the member retired under ordinary circumstances. This reflects the fact there is an Ill Health Gratuity payable and scope for payment of an Injury Award Gratuity and Pension, dependent on how the ill health came about.
 - The Adjudicator concluded that the range of awards provided by the Order account for the potential loss of future earnings and future earnings growth that Mr N suggests should be paid under his interpretation of B3(5). In the Adjudicator's opinion, it did not appear appropriate that these awards would be payable in addition to the enhanced B3 Ill Health pension that Mr N believes should be paid.
 - The argument that an allowance should be made for lost future increases in salary from promotions or the relevant pay scale, by applying an increase to the average pensionable pay, was already addressed by the Ombudsman under a previous determination, which the Adjudicator understood Mr N had seen. That determination concluded that the notional retirement pension was based on actual average pensionable pay rather than Mr N's suggested forecasted increased average pensionable pay. The Adjudicator saw no reason to reach a different view in this case.
 - The Adjudicator suggested that the use of "actual" in B3(5) was intended to distinguish between the notional (remaining years until compulsory retirement) and "actual" (the actual average pensionable pay) elements of that formula.
15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion.

Submissions made by Mr N and his representatives

16. Mr N's barrister has said, in summary: -
- LFRS has attempted to defraud firefighters who were retired on the basis of ill health.
 - The affected members have been callously deprived of their rights, which could lead to criminal prosecutions.

- To minimise costs the matter has been reviewed by an Adjudicator who is an unqualified layman. This has resulted in the use of subjective common sense as opposed to the law. The attempts to avoid the cost associated with legal advice is a criminal enterprise.
- The Pensions Ombudsman has a personal duty to avoid malfeasance by his staff, and ensure the service applies the law in an unbiased and fair way.
- The determination on similar issues made by the previous Ombudsman was a misdirection without application of the law, "pursued on a whim under perceived immunity from redress at the hands of an elderly, long deprived firefighter pensioner layman, with no legal aid". The Ombudsman should redetermine that case and offer to pay costs should this case be appealed. To not do so would deny justice without redress.
- By allowing the Adjudicator to adjudicate, the Ombudsman has breached the Pensions Act 1993 (section 145 (4C)), which allows it to delegate any function 'other than determination'.
- The Adjudicator and the Ombudsman that determined the earlier case were required to inform themselves as to how to interpret the law. If not from a lawyer, then from the Commentary, designed to assist non-lawyers.
- The Commentary explains in relation to Rule B3 that the calculation requires reference to what the member "...could have earned until required to retire by reason of age". This is an interpretation of the Order.
- The Order excludes a Rule B3 pension to someone retiring early or of their own volition, whose entitlement is a Rule B1 pension, with no liability for future loss. But Rule B3 specifically compensates for future financial loss due to early retirement on the basis of ill health.
- The Adjudicator considers there is no allowance for loss of future earnings, and the possible B3 pension is capped at the level of a B1 Ordinary pension. This means that an individual entitled to a B3 pension will never receive anything other than a B1 Ordinary pension, but that renders the B3 formula redundant, and the Adjudicator's opinion is therefore absurd.
- The language of Rule B3 is plain. A in the formula "is" the actual pensionable pay [APP], whereas the notional pension set out in Rule B3(5)(2) is "by reference to" APP.
- The term "by reference to" is not the same as "is". If the legislation had meant to refer to actual pensionable pay it would have said so. As it does not, "by reference to" must be distinguished from "is".
- The legislation does not require speculation on future earnings. If the Rule is followed, you "arrive at a notional pension 'by reference to' the current APP. That

does not mean to calculate on the retiree's current APP, as for a current Rule B1, but on applying the meaning of 'by reference to' (Courts tend to rely on the SOED), the calculation of the notional pension come to be on an APP taken from the current pay scale, within which the retirees current APP is to be found, no less that are the APPs being paid at the time, from trainee to Chief Fire Officer."[sic]

- The notional pension should be calculated on the present rank and seniority that could have been achieved had they served until compulsory retirement, but for the curtailment of their career due to injury.
- The correct interpretation can be demonstrated by looking at the possible pensions available to firemen at retirement and a series of hypothetical calculations were provided to support this.
- "Calculation of a notional pension requires a consideration by the Chief Fire Officer, or his delegate, to decide, not on probability but more generously, on what 'could' that fireman's career have achieved, but for being cut short."
- The Chief Fire Office, with the member's consent, would have scope to allow a notional pension based on the firefighter reaching the top of their pay scale with maximum service, or taking account of a possible promotion. Both scenarios would result in a higher notional pension than allowed for under the Adjudicator's interpretation.
- Rule I4(3) specifies that where two sums appear to be payable "the one to be paid is the largest of them."
- This interpretation limits the pension "to the most an injured fireman could have earned but for injury, but it also ensures that he/she gets no less: so no high flyer, cut down in mid-flight, is denied full compensation for loss of future earnings of a glittering career, lost to them on being required to retire early on ill health, injured in our service."
- The intention of the Scheme being designed in this way was to save the Government from the legal costs that could arise from Firefighter's seeking damages through the courts. In exchange for this, the ill health provisions would accept liability in all but rare cases and in additional pension being paid in lieu of damages. It is these damages, ordinarily awardable under common law, that have been denied to Mr N when the Adjudicator's interpretation is applied.
- It is not for the Adjudicator or Ombudsman to conclude that the legislation has become too generous because of compensation from other provisions.
- The Adjudicator reached their view knowing the impossibility for many, due to age, infirmity or poverty, to appeal the opinion in the High Court. This was perhaps to avoid embarrassment, enquiry and expense for the pension fund, and such motivation could warrant the award of aggravated damages.

- The previous Ombudsman and the Adjudicator's failure to apply the law, instead applying their personal opinion, is arbitrary and oppressive, and this again could attract punitive or exemplary damages, as per *Rookes v Barnard*.
- It is unlawful for the Ombudsman to use an arbitrary interest rate "since the rate is well established where public money is withheld to the damage of the individual."
- Unless an authoritative argument can be made that "is" and "by reference to" are intended to mean the same in the legislation, then the Adjudicator's opinion is arbitrary and fraudulent.
- The failure to uphold the case will mean the Ombudsman has adopted an illegal stance and, is "acting dishonestly in public service and engaging in a conspiracy to defraud men and women injured in our service and are in most serious breach of public trust, and you [the Ombudsman] will have institutionalised the criminality."

17. Mr N has said, in summary:-

- The Adjudicator has failed to demonstrate an ability to read and understand the nuanced complexities ("known as 'art' by barristers") of the relevant legislation of his complaint.
- The Adjudicator failed to seek legal advice on the complaint despite it being available to him and that he was faced with two Barristers' opinions in relation to the matters complained of.
- The Rules, B3 and B4 are compensatory packages to compensate for early loss of his career and the promotion and pay he "could", as referred to in the Commentary, have achieved. This is no less than the damages that would have been awarded by a Court.
- The Adjudicator's interpretation of the legislation is "reducing the relevant law to the level of incomprehensible absurdity."
- The Adjudicator describes his B3 Ill Health Pension as "effectively a B1 Pension", however this is nonsense and cannot possibly be. If a B1 pension "fits all" what is the point of Rule B3 and why did the Adjudicator not pick up on this contradiction in his interpretation.
- The Adjudicator is complicit with LFRS, and uses "faux judicial speak", when saying "this means that Mr N is still being paid a B3 Ill-Health Pension, albeit it is equivalent to the B1 Ordinary Pension." This is "tripe", "egregious nonsense".
- The Adjudicator's opinion is sparse, a whitewash, worthless in law and fails to understand the Order and the Guidance that accompanies it.
- The Adjudicator's opinion that he is entitled to a B3 Pension, but is in fact receiving a B1 Ordinary pension, is oxymoronic.

- The Adjudicator has regurgitated LFRS' interpretation of the Order, despite LFRS' historic inability to properly do so.
- The Order sets out the necessary formula to calculate the various awards due to retiring firefighters. They are simple. Under the formula, the B3 yield will always be greater than a Rule B1 Ordinary Pension, and if there is any doubt, Rule L4 (3) directs that the higher be paid.
- This confirms the mathematical logic, the compensating factors involved, and the statute's construction.
- The Rule B4 Injury Pension is a data by-product of Rule B3.
- The Adjudicator has failed to engage with the 57 page legally detailed submission, including two eminent Barristers' opinions, and has simply concluded "I do not agree".
- The Adjudicator made no reference to the Commentary, which was written for the benefit of laypeople such as he.
- The Adjudicator referred Mr N to an earlier determination, which Mr N was aware of, but had not seen. That determination did not address the same matters as this case, although it was similar, and that determination has never been published by the Ombudsman.
- Mr N's representative, the applicant in the previous case, has now shared the previous determination with Mr N, although the Adjudicator ought to have done so when issuing the opinion.
- The earlier determination relied upon by the Adjudicator, refers to the incorrect version of the Commentary. That version is irrelevant to Mr N's complaint. This error arose because LFRS, in the previous case, deliberately provided an incorrect version.
- LFRS has been criminally fraudulent in its handling of ill health pensions.
- The Adjudicator, encouraged by LFRS, failed to adequately investigate the matter, and made the facts fit his assumptions, ignoring the law when it suited.
- Mr N reiterated the questions of his complaint:

"Why am I being paid a basic Rule B1 Ordinary pension which is the correct payment I would have been entitled to had I retired by voluntary choice, or having completed my service uninjured?"

I did *not* retire voluntarily; *nor did I complete my Service* by reason of a no-fault Service 'qualifying' injury which led to my compulsory discharge.

Furthermore Statutory Instrument No:129 Rule B1.-(I); paragraph (c), *effectively prohibits* the payment of a Rule B1 Ordinary Pension to an employee who...

“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*’, as I am, to a rule B3 ill-health pension, by reason of a decision of the Lancashire Combined Fire Authority.

The LCFB (progenitors) of the LCFA, in accepting legal liability for my in- Service no-fault qualifying injury, stated that they compulsorily medically discharged me under Rule B3, an Ill-Health pension, and as a legal consequence, a Rule B4 Injury Award.

My entitlement to a Rule B3 pension is not disputed by the LCFA nor the TPO.” [original emphasis retained]

18. Mr N has a second representative who submitted an Appendix to Mr N’s submission. Whilst I have read the Appendix, as it involves matters wider than the complaint in front of me, I will not summarise it here or comment on it in my decision.

Ombudsman’s decision

19. It is open to the parties to accept or not accept the Opinion of an Adjudicator. In this case the complainant did not accept the Adjudicator’s Opinion and, as is usual, the case has therefore been referred to me to make a binding determination. I have reached my determination independently of the Adjudicator’s Opinion after consideration of the relevant legal provisions.
20. Mr N contends that the correct interpretation of the Scheme Rules requires LFRS to use an average pensionable pay in the calculation of his pension that would have been payable had he continued in service until his normal retirement, taking account of any promotions or pay increases he could have been entitled to. I do not agree with this interpretation of the Scheme Rules for the reasons set out below.
21. The pension payable under Rule B3 is calculated by applying a formula set out in Paragraphs 2 - 4 of Part III. Each of those calculations requires an input ‘A’. A is defined as ‘the person’s average pensionable pay.’
22. Paragraph 5(1) then creates a cap on the amount of ill health pension payable if it exceeds the ‘notional retirement pension’ which could have been earned if the firefighter had stayed in employment until retirement age:-

Paragraph 5(2) stipulates that “the notional retirement pension is to be calculated by reference to the person’s actual average pensionable pay.”

23. The actual average pensionable pay of the member is defined in Rule G1 (see Appendix 1), which states:-

“(3) The average pensionable pay of a regular firefighter is, subject to paragraphs (5) to (7), the aggregate of his pensionable pay during the year ending with the relevant date.”
24. For the purposes of Rule B4 (injury award) the relevant date is defined as the date of the person's last day of service as a regular firefighter.
25. The statute is perfectly clear in requiring use of the actual average pensionable pay as at the last day of service. If the intention was to use an alternative average pensionable pay as at a point in the future when the member's salary might have increased, then I consider Part III 5(2) would have stated that and explained the process of determining it.
26. It does not do so and I conclude that LFRS has correctly interpreted the provision.
27. Mr N and his representative have highlighted the Commentary to support their interpretation. The Commentary was not commented on by the Adjudicator, but I will address it here.
28. The Commentary cannot insert meaning into the Order. Therefore, even if the Commentary supported Mr N's position, in contrast to the content of the Order, it would not supersede it. In any event, I do not agree that the Commentary supports Mr N's argument.
29. The sentences intended to be relied upon by Mr N can be found in the passages of the Commentary set out in Appendix 2, and specifically, the wording: -

“...or what could have been earned by compulsory retirement age.


...

or what you could have earned by your compulsory retirement age.”
30. Mr N's position is that this relates to establishing the average pensionable pay required for the notional retirement pension, and that the calculation should take account of the unknown factor of what the individual's pensionable pay could have been at compulsory retirement age. He suggests that figure should be determined by the Chief Fire Officer based on what they think the likely salary could have been at the point of compulsory retirement. However, that interpretation implies a level of guesswork and forecasting that simply is not reflected in the methodology prescribed by the Order or illustrated in the Commentary.
31. Read in the context in which they are used in the Commentary, those two instances of “what could have been earned by compulsory retirement age” are references to the number of years of service, not the average pensionable pay. In both cases, the calculation described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.

32. This position is supported by Example 7 set out within the Commentary (see Appendix 2 below). If that example is worked through, it shows that an individual who meets the criteria for a B3(4) pension should be paid a pension equivalent to the Ordinary B1 Pension, which is the approach LFRS has applied. Example 7 provides no allowance for a higher, assumed, average pensionable pay. If the Commentary intended to explain Part III 5(2) in the way Mr N asserts it does, I can see no reason for Example 7 to contain the variables or have the outcome that it does.
33. Based on the above, I find that the Commentary does not support Mr N's interpretation.
34. Mr N has also argued that his pension calculation is incompatible with Rule B1(1)(c) which states: -
- “(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.”
35. I do not consider that this argument takes the issues any further because Mr N is not being paid a B1 Ordinary Pension. The pension he is in receipt of may be the same level as he would have received under a B1 Ordinary Pension, but it has been calculated as an entitlement under the B3 Ill Health provisions. In Mr N's circumstances Part III 5(2) restricts his ill health pension to the level of the B1 Ordinary Pension, but that does not mean it is being paid under the B1 Ordinary Pension rule.
36. On the point Mr N has made, about the intention of injured firefighters to be compensated in these circumstances in lieu of damages that might have been paid if the matter was taken to court, I can see nothing in the legislation as drafted that is unclear on its face. I can see no reason to force its natural reading to give effect to the policy as Mr N believes it to have been.
37. Mr N has accused LFRS of defrauding the Scheme's members of their rightful entitlement and implied that for me to not uphold the complaint would be illegal and in doing so I would be complicit with LFRS' alleged criminality. For the avoidance of doubt, I find that LFRS has paid Mr N the correct pension and I have seen no evidence of fraud.
38. Turning to the other points which Mr N's barrister has raised. I am not bound by the determination of my predecessor, but I cannot reopen it either. If Mr N wishes to appeal this determination he is rightfully entitled to do so, but I see no reason for my Office to pay the cost of it.

PO-19150

39. Therefore, I do not uphold Mr N's complaint.

A handwritten signature in blue ink that reads "K. Johnston". The signature is written in a cursive style with a large initial 'K' and a long, sweeping tail.

Karen Johnston

Deputy Pensions Ombudsman
10 September 2019

Appendix

Appendix 1

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.

...

B3 Ill health awards

- (1) This rule applies to a regular firefighter who retires by reason of permanent disablement unless, immediately before his retirement, an election under rule G3(1) not to pay pension contributions had effect.
- (2) A regular firefighter who is entitled—
 - (a) to reckon at least two years but less than five years pensionable service becomes entitled on retiring to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2; or
 - (b) to reckon at least five years' pensionable service becomes entitled on retiring—
 - (i) where paragraph (3) applies, to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2, or
 - (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5) ("the higher tier ill-health award").
- (3) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is capable of undertaking regular employment.
- (4) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is incapable of undertaking regular employment.
- (5) The pensions are—

(a) a lower tier ill-health pension calculated in accordance with paragraph 2 of Part III of Schedule 2; and

(b) a higher tier ill-health pension determined in accordance with paragraph 4 of that Part.

(6) A firefighter who is not entitled to a pension under paragraph (2), becomes entitled on retiring to a short service lump sum of an amount equal to the aggregate of his pension contributions.

(7) In paragraphs (3) and (4) "regular employment" means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the question of his disablement arises for decision.

Schedule 2 Personal Awards

Part III 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.

Appendix 2

Commentary on the Firefighters' Pension Scheme (as amended at May 2003)

“How much is the pension?

The sums are set out in Examples 1 and 4 to 7. The basis of the calculations is explained here. A firefighter's basic ill-health pension is never less than 1/60th of average pensionable pay (APP) and never more than 40/60ths (2/3rds) of APP, or what could have been earned by compulsory retirement age.

...

Your basic ill-health pension is:

Length of pensionable service (1)	No of 60ths of APP counting for pension (2)
less than 5 years	1 for each year (but never less than 1/60th)
5 - 10 years	2 for each year
10 - 13 years	20
more than 13 years	7 and 1 for each year up to 20 and 2 for each year over 20

(1) each day counts as 1/365th of a year even in a leap year.

(2) never more than 40/60ths of APP, or what you could have earned by your compulsory retirement age.”

Commentary on the Firefighters' Pension Scheme (as amended at May 2003)

Example 7

FIREFIGHTER'S ILL-HEALTH AWARD - PENSION

Example
7

The firefighter retires on grounds of ill-health after 27 years' 166 days service, aged 54 (ninety seven days short of age limit).

Pensionable service: 27 years 166 days
 Service after 20 years counts double
 (ie add 7 years 166 days):
 34 years 332 days (34.9096 years)
 Equivalent to 34.9096/60ths
Average pensionable pay: £15124

The pensionable service is enhanced by 7/60ths ("ill-health enhancement") subject to it not exceeding what he would have reckoned by the age of compulsory retirement (55) or 40/60ths in total.

Pensionable service at age limit: 27 years 263 days
 Service after 20 years counts double
 (ie add 7 years 263 days)
 35 years 161 days (35.4411 years)
 Equivalent to 35.4411/60ths

<u>Gross ordinary pension at age limit:</u>	
$\frac{35.4411}{60} \times \text{£}15124 =$	£8933.52
<u>Gross ill-health pension:</u> £8933.52	
<u>Commutation:</u>	
He commutes 1/4 of his gross pension:	
$\frac{\text{£}8933.52}{4} =$	£2233.38
<u>Lump sum:</u>	
At age 54 he receives £1390 for each £100 of pension commuted:	
$\frac{\text{£}2233.38}{100} \times 1390 =$	£31043.98
<u>Pension payable:</u>	
$\text{£}8933.52 - \text{£}2233.38 =$	£6700.14 a year

- ⊙ A firefighter retiring on ill-health grounds will qualify immediately for Pensions Increase.

Determination by the Ombudsman

A final and binding Determination has been issued by the Ombudsman. In this factsheet we explain about:

- Publication of the Determination
- Complying with the directions in the Determination
- Payment of interest
- What you can do if the Ombudsman has not decided in your favour
- Appealing the Determination

Publication of the Determination

Ombudsman Determinations are published on our website and are generally anonymised and have the name of the person making the complaint as well as any other identifying personal data removed – unless such data is essential for understanding the decision or there is another reason why we consider it is appropriate to publish it.

If we are considering not anonymising a decision, or we are asked to do so by a party, we will ask you and the other parties involved in the case for their comments. However, ultimately, it will be a matter for the Ombudsman to decide on a case-by-case basis.

If you have any issues with this please contact the Adjudicator assigned to your case.

Complying with directions

If the Ombudsman has upheld the complaint the Determination will probably include directions against one or more parties, saying what steps they must take to put matters right. They now have to comply with those directions unless they:

- successfully appeal against the Determination; or
- pending an appeal hearing, apply for the Determination to be stayed by the Court (in Scotland the equivalent term is *sisted*), which effectively means that it is put on hold.

If there is an appeal by another party you will know because you will be served with Notice of Appeal.

Directions made by the Ombudsman can be enforced against a person who has failed to comply with them. Where to take enforcement action is generally as follows:

- in England and Wales, in a County Court - the appropriate one being the nearest to the party that has not complied;
- in Northern Ireland, through either the Enforcement of Judgments Office or the County Court depending on the nature of the Ombudsman's directions to be enforced;
- in Scotland, through the Sheriff Officer.

If you think enforcement action is necessary you will need to take the necessary steps yourself. You should contact the investigator in the Ombudsman's office who handled your case for more information.

If the Ombudsman has not decided in your favour

Because the Determination is final and binding the Ombudsman cannot change it, except for minor errors (such as typing mistakes). There is no point in writing to the Ombudsman further at this stage to ask for the decision to be changed. If you want it changed you must appeal to the appropriate court. You can only appeal on a point of law. If you propose to appeal you may want to consult a solicitor or talk to your local Citizens' Advice Bureau or law centre.

About Appeals

Appeals are to the Chancery Division of the High Court in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

The Ombudsman has directed for England and Wales that the person wishing to appeal must lodge the appeal within 28 days after the date of an Ombudsman determination. Different time limits apply in Scotland and in Northern Ireland and local advice should be taken.

In England and Wales, appeals require the permission of the High Court. This means that an appellant will need to satisfy the Court that the appeal has a real prospect of success or that there is some other compelling reason why it should be heard. The Appellant's Notice Form (N161) contains a section which deals with permission to appeal. There is no similar requirement at present for appeals in Scotland or Northern Ireland.

If you appeal the Ombudsman should not be listed as a respondent in the Notice of Appeal¹. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman². However, you **must** send the Ombudsman a copy of the Notice of Appeal³. Failure to send the Ombudsman a copy of the Notice of Appeal may have adverse financial implications for you. The High Court suggests that where the appellant is an unrepresented individual, the respondent should also take it upon themselves to confirm that the Ombudsman has been served with the Notice of Appeal. Occasionally the Ombudsman may decide to be represented at the appeal (although the Ombudsman will only take this decision after receipt of the Notice of Appeal). For example if, in the Ombudsman's opinion, being represented would assist the Court to come to the right decision, or if the outcome of the appeal might affect how the Ombudsman's powers can be exercised. If the Ombudsman is represented, it will be for this purpose, not to support either side.

If you appeal and the Court decides that the Ombudsman's decision should be upheld then it is expected that the normal principle will apply, which is that you, as the unsuccessful party, should pay the costs of the successful party.

If an appeal is lodged against you, you will be served with Notice of Appeal. You will then have to decide whether you wish to be represented (or appear in person) at the appeal. If you are represented (or appear), and the Court decides that the Ombudsman's decision should be changed, then you may have to pay some or all of the costs of the appeal. If you decide **not** to be represented (or appear) it is **not expected** that you would be required to pay any of the costs.

¹ Unless appeal lodged in Scotland or Northern Ireland and by way of case stated

² Moore's (Wallisdown) Ltd v Pensions Ombudsman and others [2001] All ER 299 at paras 71-82; [2002] Pensions LR 73 at paras 75-77

³ Practice Direction 52D, paragraph 3.4 (which relates to Civil Procedure Rule 52.4(3))

It may also be possible for you to apply to the court to have costs recovery limited in the appeal.⁴

Further Information

Further useful information can be found as follows:

- The Handbook for Litigants in Person. This is produced by the Judiciary and can be found at www.judiciary.gov.uk.
- The Community Legal Service Directory which can be found at www.clsdirect.org.uk
- www.justice.gov.uk/about/hmcourts
- www.gov.uk/government/organisations/hm-courts-and-tribunals-service
- <http://scotland-judiciary.org.uk/16/0/Court-Structure>
- www.courtsni.gov.uk

⁴ Under 52.9A of the Civil Procedure Rules (orders to limit the recoverable costs of an appeal)

ADVICE.

I am asked to Advise on an Appeal in Mr. N's case on a point of law from the Deputy Ombudsman Determination on 10th. September 2019.

Conclusion.

1. Crucial to the Determination was construction of Statutory Instrument 129 of 1992, and the meaning to be given to the words 'is' and 'by relation to'. The Deputy Ombudsman misdirected herself by conflating 'Is' and 'by reference to', to mean the same thing in order to replace the statutory ill health retirement provision by the ordinary time served pension, wrongfully denying compensation for financial loss. The TDPO has otherwise misdirected herself on law and its application.

2. I advise that there are grounds for Appeal on points of law and an Appeal should succeed.

3. Should the Appeal succeed then the Court may be asked to apply the rate of interest on pension underpaid as in any case of the State withholding payments due, as in HMRC cases.

4. Due to the egregious nature of the conduct of those in a fiduciary relationship to pensioners the Court be invited to mark such oppressive and arbitrary conduct by way of exemplary and/or aggravated damages.

Consideration.

5. The substantive grounds are, as I set out in an earlier Opinion, essentially recited by TDPO in her Determination.

6. In her Determination the DTPO prays in aid of her rejection, Example 7 of the Commentary. Example 7 has bearing in this case, but not, with respect, in the way she has sought to bring it to bear.

7. Mr. N's case is of a fireman deprived of his career on enforced early retirement on the grounds of ill health at a time when, but for ill health (Crown liability admitted), he 'could' have had greater earnings to earn and promotions to win.

8. Example 7 is of a man required to retire on ill health 97 days before being required to retire due to age. He suffered no loss but received all that 1992 SI 129 provided in the same way as Mr. N.

9. Example 7 makes clear that provisions and enhancements provided by 1992 SI 129 unrelated to any financial loss, are not paid in compensation for financial loss – a basis for the Adjudicators Determination, passing without comment in TDPO Determination. Example 7 denies the proposition advanced by the Adjudicator that loss is otherwise accounted for, apart from a B1/B3 sum pension.

10. Example 7 also denies the DTPO's assertion at her paragraph 36 to the effect that if the SI intended compensation to be paid as a Court awards damages for future loss then the SI would have said so. Example 7 apart the SI specifically does make provision for compensation for future loss specified in B3 provision. But, in any event, as a matter of jurisprudence, the law construction of documents and convention, common law provision for loss can only be denied by Statute on express wording to that specific effect. It may not be inferred as TDPO has inferred in order to find against Mr. N. The TDPO has not suggested any 'absurdity' or 'inconsistency' in the Statute. She misdirected herself in deciding that if the Statute did not express the intention of common law it was to be taken as a denial.

11. In *Rookes v Barnard* 1964 (AC). In his Judgment Lord Evershed repeated and adopted "Now it is 'the universal rule' as Lord Wensleydale observed in *Grey v Pearson*, that in construing statutes, as in all other written instruments the grammatical and ordinary sense of the words is to be adhered to unless they lead to an 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 the absurdity and inconsistency, but no further".

12. The foundation of the TDPO's decision is her inferring a denial of compensation because the SI does not say in words that she can understand, that compensation be paid. That position is not, by law, open to her to take. As a matter of application of the law, written wording is construed strictly against the interest of those who seek to rely upon the wording. In this matter TDPO's reliance on an inference of wording where there is none, to deny Mr. N. compensation for financial loss, was wrong in law.

13. In saying (Paragraph 36 of her Determination) "I can see nothing in the legislation as drafted that is unclear on its face" DTPO is, with respect, blinding herself to what is perfectly clear on the face of the SI, in effect she is denying the very purpose of the statute, to replace the court's jurisdiction in all its functions, including damages or provision for financial loss.

14. The TDPO's error lies in the apparent conviction, groundless in law, that it is the intention of the SI to award the sum of an ordinary 'time served', B1 pension in all cases of ill-health pensions. (At Para 35) " In Mr. N's circumstances Part 3 5 (2) restricts his ill health pension to the level of a B1 Ordinary Pension" but (later) "is paid as a B3".

15. By this simple, but unlawful, expedient DTPO renders null, void, and without meaning the whole of the ill-health, B3, pension provision provided for at paragraphs 3, 4 & 5. The maths of the formulae in 3 and 4 ensures such a sum will always far outweigh any ordinary time served B1 pension. It follows that if, as DTPO maintains, B3 5 (2), restricts any B3 5 pension to an ordinary B1 then B3 paragraph 5 provision is denied any legal effect.

16. Given that the only other provision is B3 2 provision for a retiree on ill health of less than 5 years service whose pension is a B1 sum, the TDPO's understanding of the law, means that whatever B3 provision is applied (Paragraphs 2, 3, 4 or 5) the result is the same – a basic time served B1 pension, denying all or any compensation provided by the SI for loss of career and earnings of firefighter incapacitated in service to the Public. TDPO's Determination provides to each invalidated, early retiree, of whom Mr. N is one, a B1, time served pension, as though leaving of their own volition, having decided on a different career, so suffering no loss. TDPO has misdirected herself following an unlawful lay TPO precedent cited in Adjudication.

17. It being that on Royal Assent all that is enacted into Law has meaning, to avoid payment of a pension properly provided by Statute, TDPO is acting ultra vires, unlawfully and perversely in denying meaning to law by misdirecting herself that a B1 pension is payable as a B3, thus denying the whole of B3 provision of meaning and legal effect, rendering B3 provision redundant to the B1 provision in 1992 SI 129.

18. The law is well acquainted with 'the man on the top of the Clapham Omnibus', in effect it is to say 'res ipsa loquitur' the facts speak for themselves That is also this case.

19. Given that before legislation any firemen so injured as to be invalided out had his case routinely put through the Courts to quantify damages under the several heads covered by the SI (barring being the author of his own misfortune), and for future financial loss, the TDPO has failed to inform herself in law, or fact, and has misdirected herself to a wrongful determination on an assumption that the Union ab initio, when negotiating with HMG in replacement of common law rights, agreed to give up compensation for future financial loss a quantum, in many cases, the greater part of common law damages.

20. The Unions did not initiate the move out of Court. HMG did in order to reduce the escalating cost of legal settlement, the parties agreeing the SI provision with common intention of enhanced, not diminished provision on injury on realised risk in public service.

21. The TDPO Determination is, to use Lord Wensleydale's word, 'absurd'. It presuppose the Union in negotiation for the best deal it could get for its members has in effect said to HMG "We agree, to relinquish common law rights to cut costs, and, while we are about it, we'll save the taxpayer more by abandoning the damages that Courts currently award our members". The DTPO's case, no less than the current TPO's predecessor's (a layman) and no less than the Adjudicator's in Mr. N's case, all are logically argumentum ad absurdum.

22. In 21 DTPO correctly sets out the law in B3 that A 'is' the APP in calculating provision pursuant to paragraphs 2 – 4.

23. In 22 DTPO correctly interprets 'the notional retirement pension' as the pension that could have been earned (but for ill health) until required to retire on account of age. She also uses the same words as the SI in specifying "the 'notional retirement pension' is to be calculated by reference to the actual average pensionable pay".

24. DTPO points out APP is, pay as at last day served, but what escapes her is the notional pension is not an actual pension. It is theoretical, estimated, hypothetical or abstract concept, used to define meaning. Only after meaning is ascribed does the Statute then finalise the question by providing that the ill-health pension paid is the notional retirement pension.

25. The words of the SI are, at B3 5 (1) (a) "If the person had continued to serve until he could have been required to retire on account of age, he would have become entitled to an ordinary or short service ("the notional retirement pension")" – if 3 or 4 exceeds it – "the amount of the Ill-health pension is that of the notional retirement pension". The provision is sequential and, of necessity, to decide whether or not 3 or 4 exceeds the notional pension requires that the notional pension be calculated. If, as TDPO determines the Notional pension is always B1 and provision under paragraphs 3 and 4 is also a B1 there is no meaning to B3.

26. This B3, ill health provision, applies to young men (and women). Paragraph 3 to 5

apply to down to 10 years service. 30 to 35 years career cut short. Careers tend to see promotions over such times. Damages are very much based on reasonable expectation.

27. The SI does not provide that in assessing a notional pension that its calculation be restricted the number of years that could be served. TPDO misdirects herself. Such a restriction on common law application where a statute is silent would be struck down. It is for Parliament to make the rules not Ombudsmen and Women to suit the mores or economies of the day. If change is required it is for parliament to make it or under delegated powers.

28. The DTPO at 28 gives as her opinion 'The Commentary cannot insert meaning into the order'. With the greatest of respect, that is its precise purpose, not to make law, but to tell those who use it what, beyond peradventure, it is to be taken to mean.

29. The Home Office drafted, authored and promulgated the SI in tandem with the Commentary. Given that legal language is not necessarily transparent and because its use would be by laymen and laywomen to the benefit of other lay people, with pension funds managed by lay people, a plain language Commentary was 'a necessary', so was contemporaneously issued by the Home Office.

30. In a reductio ad absurdum TDPO interprets "or what you could have earned by compulsory retirement" to mean something other than "what you could have earned by compulsory retirement"

31. If 'the ordinary sense of the words is adhered to' [per Lords Wensleydale et al] there is no tension between the SI and the Commentary. As a side note, had the Commentary not said precisely what the Statute provided, those contemporaneously involved would have amended it before publication.

32. There is no tension between the statute and the Commentary because the statute uses different language in B3, provision, under paragraphs 2, 3 and 4 to distinguish their provision from the provision under paragraph 5.

33. B3 (2) specifies, " In paragraphs 2 to 4, A is the person's average pensionable pay". By using the word 'is' the statute fixes the position, in distinction B3 5 (2) provides "The notional retirement pension is to be calculated 'by reference to' the actual average pensionable pay".

34. In order to arrive at the conclusion she desires, TDPO misconstrues and ignores the distinction made, and denies the meaning of language by conflating "is" to mean "by reference to", to irrationally misdirect herself that "the notional retirement pension is to be calculated on the APP."

35. Had that been the legislative intention then all B3 provision is rendered redundant – 2.3.4 & 5 would all be calculated on A is the APP. That being so then all are rendered down to being in the sum of a B1. It wholly denies B3 its purpose.

36. Since that cannot be so in law – all legislative words have meaning - so it is necessary to look for a meaning that escaped TDPO.

37. When one thing is to be calculated by relation to something, it means the one thing is not in the same position as the something, but it is in some way tied to it. So where a calculation is

based on pay, and the pay in question is the APP to which a calculation is to be made in relation to that actual APP, the calculated APP is not the same as the actual APP, to which it is related. It is not a question of opinion but definitive use of the meaning of language.

38. By using different words in the same clause in legislation two separate things are created.

39. It follows that the questions that arise are simply:

1. When would the ill health retiree have had to retire on account of age?
2. What rank or pay "could" the retiree has anticipated to come to enjoy?

With those question answered, involving annual reports and a Senior Officer, then the notional pension calculation can be done on the putative APP of the fireman retiree qua the current APP of the fireman he 'could' have become, had his career prospered into full maturity. The tie is that actual and putative APP are on the same pay scale prevailing at the time of enforced early retirement.

40. In each instance of Determination against Mr. N's interest, conspicuous by its absence is any scintilla of logical analysis to support the adverse result. It renders the process a game of blind man's buff and is unfair, adversely biased, and ultimately relies on either the poverty of the pensioner to avoid the injustice, or their death. It is an arbitrary and oppressive abuse of power.

41. At 30, TDPO prays in aid guesswork, uncertainty and confusion in calculation, which would be correct on her misdirection to herself on how the statute provides resolution. As provided there is no guesswork on pay - None at all. The APP on which a notional retirement pension can be calculated is restricted by the words "by relation to" to the then current pay scale. The only question at large is at what point on that scale 'could' the ill-health retiree have aspired to be at if, on full service, they were retiring on account of age.

42. At 31. With respect TDPO misses the point. In using the words "what you could have earned" the question is not when in years, which is set at 40 years maximum, but to what level in pay.

43. The point is that whilst firemen have to retire at 55. A Station Officer or above may go on longer and if they entered the service in their late 'teens' their service may run above 40 years. The only relevance to the point is that a notional pension is also subject to the same 40 year rule.

44. At 32. Far from supporting TDPO, Example 7 undermines her decision in that it makes plain that all the other benefits that accrue to a fireman being forced to retire, on grounds of ill health, still accrue though he has suffered no financial loss. It denies TDPO the earlier basis of Determination that compensation for loss of career and earnings had been 'mopped up', as it were, within other benefits.

45. At 36. With respect, the TDPO simply glossed over the fundamental point that is patent in the SI - 'By reference to' are words that do not mean 'is'. The violence done to meaning, to force the SI to deny its express provision, is all at the hands of those whose position in law, but denied by fact, is fiduciary to Mr N.

46. As a matter of grammar and syntax, the mere fact of using distinctive words in one clause in application to APP denies all possibility that the APP each refers to is the same APP.

The DTPO misdirects herself in error in determining otherwise for she avoids Lord Wensleydale's dicta adopted in *Rookes V Barnard*, supra, that "ordinary sense of the words is to be adhered to".

47. 'Ordinary sense' is that of the man on the Clapham Omnibus. Pointing to a tree he may say to his daughter "look, that is a fine oak tree". He might then say "By reference to the oak tree, go right 4 trees and that is a maple tree". The point that escaped TDPO is that all are trees in the same wood at the same time, just as all material APPs are in the same scale at the same time, but no more is one the other, than a maple is an oak.

John Copplestone-Bruce.
Lancashire
Inner-Temple
13th September 2019.

Grounds of Appeal.

Concerning TDPO's Determination, concerning the pensions of 'Mr. N', the Deputy Pensions Ombudsman misdirected herself in law in some or all of the following ways:

1. The Crown paying a B1 time served pension to a retiree on grounds of ill health 97 days before he would have had to retire on account of age; she misdirected herself in law that Example 7 in the Home Office Commentary to SI 192 could be taken as evidence that the Crown intended that no compensation be paid for future financial loss occasioned by such enforced retirement.
2. She misdirected herself in law that the pension paid in Example 7 was a B1 pension rather than an enhanced 'notional pension' fully compensating to the date of being retired on account of age, and in full reflection of what 'he could have earned'.
3. She 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.
4. She misdirected herself and acted wrongfully to deny statutory intention and provision in place of common law entitlement though the statute used no language to exclude such statutory provision.
5. By her misdirection and misapplication of the law she, contrary to law, denied the Statutory ill health pension rendering the whole of ill health B3 provision, as specified at paragraphs 3, 4 and 5, redundant, null and void of meaning and superfluous to the statute, wrongfully replacing said provision in each instance by a time served ordinary B1 pension.
6. She misdirected herself, contrary to statute and in breach of its legal provision, in determining that when a Fireman was being required to retire early on grounds of ill health they be paid, Including M.N., an ordinary time served B1 pension instead of a B3 ill health, enhanced, pension provided as compensation for financial loss occasioned by being required to retire early on grounds of ill health. She unlawfully determined that an ordinary time served B1 pension, due to any Fireman retiring early of own volition, as though choosing to go and do other work, was also the ill-health pension due to Mr N, on being invalided out of service
7. She misdirected herself into a Determination ultra vires by finding that [TDPO Determination Para 36] "I can see nothing in the legislation as drafted that is unclear on its

face" to mean the legislative intention was to deny compensation for financial loss, so giving unlawful effect in her Determination by replacing B3 by B1 provision and, in so doing, rendering all ill-health provision redundant in the SI, save in nomenclature by calling a time served B1 pension, when being awarded to an injured Fireman being forced to retire, a B3.

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 paragraph 5 provision.

9. She misdirected herself in law as to the legal purpose and meaning of the Home Office 'Commentary' accompanying the promulgation of the SI and so denied herself the legal intention of the SI and its provision.

10. The Deputy Pensions Ombudsman has unlawfully misconstrued the SI and its terms of provision to illegal effect and by so doing has misdirected herself into wrongfully denying Mr N the ill health pension provided for him by statute, wrongfully putting in its place a time served B1 pension; thus denying compensation of any sort due under the law for financial loss occasioned by being required to retire prematurely on grounds of ill health.

11. Though some misdirection may be no more than maladroitness, some can only be construed as determined on a whim to make the law fit a predetermined outcome, relying on age, infirmity, poverty, and absence of legal aid to avoid correction of such ill-practice and its unjust, illegal, arbitrary, and oppressive results.

12. The Appellant humbly begs that the Honourable Court take judicial notice of such conduct and award such exemplary and/aggravated damages as the Honourable Court should deem appropriate.

May the Appellant, with the deepest of respect, make mention to the Honourable Court that having relied and trusted his pension provider to look after his interest, that that trust has been betrayed. That he has been impoverished over 21 years and deprived of much quality of life by a deliberate, callous, and fraudulent deception.

A deceit maintained even into TPO correspondence by Mr. N's pension provider in an earlier case cited as precedent in Mr N's Adjudication, upheld by TDPO, and here appealed. That but for such deception by those in a fiduciary relationship with Mr N, he and others would have seen the 'Commentary' published by the Home Office specifically to give him and other laypeople guidance and the ordinary meaning to the Statute.

That the 'Commentary' was wrongfully kept from Mr N denying him knowledge of his lawful pension entitlement and from knowing that calculation of his pension as a B1 pension was wrong in law and that the B3 provision was intended to be calculated on "...what you could have earned' as the lawful construction of the provision made by Statute at B3 paragraph 5.

He submits such conduct has been an unconscionable abuse of power and most oppressive and wholly arbitrary.

He submits it should not go unremarked that when he was injured and incapacitated for life and forced to retire on grounds of ill health he was wrongfully given a basic time served pension as though he has simply chosen to leave, fit and well, and by choice, instead of being given what the law provided for his enforced early retirement on grounds of ill-health.

The Appellant is humbly grateful to the Honourable Court for its consideration.

13. The Appellant asks The Honourable Court for his costs.

14. The Appellant claims interest and humbly submits that the time, sum and long loss, and high earlier interest rates make it fair and reasonable that the Honourable Court exercise of its discretion and awards interest at 5% compound per annum on the sum of pension sum withheld from him.

John M Copplestone-Bruce.

Inner Temple

15th. September 2019.