In the Court of Appeal
England and Wales
Civil Division

Case Ref: 2020/PI/10670

Appeals & Applications ~ Set Against Time:

1. Appeal lodged and issued (Case Ref 2020/PI/10670) in the UK High Court Queens Bench Division on the 4th February 2020 following jurisdiction Judgment by Sir Paul Maguire High Court Judge at the Royal Courts of Justice Northern Ireland 6th November 2019.

2. Appeal filed against an Order by the Honourable Mrs. Justice Falk on 2nd April 2020 (Ref: CH-2020-000043) who determined a 'permission to appeal' on a Points-of-Law from the decision of the Deputy Ombudsman on 10th September 2019 (Ref: PO – 19150);

3. Application 9th May 2020 (Recorded Delivery/EFile) to 'stay' Appeal 4th February 2020 pending Falk LJ second Hearing – no response to Application, but reminded by CoA on the 14th July 2020 to seek extension of time.

4. Application 9th August 2020 (Recorded Delivery /EFile) for extension of time – no acknowledgement/reply/response;

5. Further, to a subsequent 'permission to appeal' filed against Order by Mrs Justice Falk before Mr. Justice Fancourt on Points-of-Law (by vox) on the 3rd July 2020, (in late substitution for the Honourable Mrs. Justice Falk); Fancourt LJ later issued an 'Approved Judgement' on 27th October 2020;

6. If it is concluded, for whatever reason, that the Appellant's standing Appeal at the Court of Appeal is 'out of time' then the Appellant seeks leave to Appeal under CPR 52.7.(second appeals) on the basis of the 'lost time' facts for which he had no responsibility as advanced in his letter to the Master of the Rolls on the 6th January 2021(Reference FG107) supplemented by this Addenda which follows;

7. To have this case settled in law in that the law of provision as set out in 1992 Statutory Instrument 129 Part lll, B3, ill- Health/disablement Pension be paid by the Respondent to the Appellant since his pensions commenced on 22nd July 1998.

8. Accordingly, the Appellant requests that his Appeal lodged at the Court of Appeal on the 4th February 2020 be 'unstayed' and that due process recommences.

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Francis M. G[redacted]. MIFireE

17th January 2021*ad*

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BETWEEN

F[redacted] M[redacted] G[redacted]

Appellant (LiP)

And

LANCASHIRE COMBINED FIRE AUTHORITY (LCFA)

Respondent

Appeal Addenda ~ Appeal against Fancourt LJ Judgment (3rd July 2020)

Personal Précis

1. The Appellant, a Litigant-in-Person, is 77 years of age and a retired Senior Fire Officer (Assistant Divisional Officer); he served for 36 years until compulsorily discharged by the Respondent on 22nd July 1998 through a no-fault injury sustained whilst on duty;

2. He is, by financial expediency an LiP, though he is legally advised by a retired pro bono barrister and former colleagues and friends.

3. His professional duties required him to have a working knowledge and application of the then current Fire Service related legislative Acts(32). The professional knowledge of which in large measure was acquired through attendance at and by formal education of the Home Office Fire Service College, and in pragmatic application by regular Court attendances including legislative enforcement and Coroners' Courts, etc, all part of his official duties.

4. This knowledge has been considerably enhanced since commencing his Pension Complaint 6 years ago which focuses on one single Statutory Instrument, but he acknowledges that he cannot by any stretch call himself a lawyer but has useful logic and common-sense.

5. The Appellant's first objective in this Addenda is to present his pleadings against Sir Timothy Fancourt QC Judgment on 3rd July 2020; secondly to further plead his case on a Point-of-Law in the Court of Appeal under the Law as *he* understands it whilst drawing on the actuarial experts' 1992 Home Office Commentary on *their* drafted Statutory Instrument; and where the Law and the Commentary goes 'silent' to apply logic, commonsense, and OED meanings of words.

6. What follows is a collation of this advice in plain English and if the Appellant transgress in any manner he apologises in advance.

7. The Statutory References for that which follows is Page 44+ in SI.No:129; but to assist readability the relevant law is also reproduced where necessary to enhance readability.

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The Pension Complaint:

8. There is a Point, or Points-of-Law upon which the Appellant seeks Judgment from the Court of Appeal.

9. The Point(s)-of-Law lie within 1992 Statutory Instrument No:129, specifically Rule B3, Paragraph 5, and the Respondent's misapplication of it *in toto* ;

10. The Respondent's malfeasant act of misapplication of Paragraph 5 renders the whole of the Rule B3 provision void of meaning and legal effect; an avoidance which is repugnant to the principles of law.

11. The Appellant seeks correction of the Respondent's continuing malfeasant breaches of the 1992 Statutory Instrument No:129(as amended); a Common Law Contract with the Appellant; the Pension Scheme Rules; the Pensions Act 1993(as amended); the 2010 Equality Act (as amended); Human Rights Act 1998 (Protocol 1)(As Amended);

12. That the purpose of the primary legislation was, and is, to compensate for financial loss.

13. That the law was, and is, that a B3 pension be calculated as the pension which would have fallen due on being required to retire on account of age and is wrongly calculated on the years served until the Appellant was compulsorily forced to retire prematurely due to ill health ('qualifying injury').

14. That the law was, and is, that a B3 pension be calculated on the average pensionable pay (APP) at time of enforced retirement *but at the Rank and Pay Scale the Appellant could/would have reached*, but for injury, and is otherwise wrongly calculated on the actual APP being paid at the time of enforced compulsory retirement based on his *actual* Rank and Pay Scale.

15. The Respondent, the pension providers, are required under the 1992 Statutory Instrument No:129 and the Pension Scheme Rules to compensate the Appellant with the correct pensions falling due pursuant to the Respondent's Statutory decisions to compulsorily discharge him with a no-fault 'qualifying' injury under Rule B3 ill-Health/disablement Pension and a Rule B4 Injury Award, recorded on his Personal Record File as...*"Retires in accordance with Rules B3 and B4"* ; decisions which were made *prior* to his compulsory discharge at 23:59hrs 22nd July 1998 his last day of Service;

16. The Respondent has failed to comply with *their* Statutory decisions; the provisions of the Statutory Instrument; the Pension Scheme Rules; and their Common Law Contract with the Appellant by failing to correctly calculate and pay the Appellant his pensions due, namely, a Rule B3 ill-Health/disablement pension and his Rule B4 Injury Award; and by failing to do so they have denied him his correct legally compensating pension entitlements;

17. The Respondents by their contravention of Rule B1(which prohibits payment in the event the Appellant was awarded a Rule B3 pension), B3, and B4, and specifically their misapplication of Paragraph 5 within Rule B3 have, since the Appellant's compulsory discharge, paid the Appellant an unlawful Rule B1

Ordinary Pension as though he had left early in his career of his own free will, fit and well, with no financial loss.

18. Further, as a consequence, the Appellant's awarded Rule B4 Injury Award, which is calculated *from* the Rule B3 ill-Health Pension, is also incorrect and continuously underpaid from the date of its inception 1998; to date.

19. Mr Justice Fancourt wrongly upheld the Respondent's misapplication of Paragraph 5 by finding at (his paragraph 18) "*a normal pension, under Section B1, and the Notional Retirement Pension are to be calculated using the average pensionable pay during the last year of actual service"*.

20. Mr. Justice Fancourt's misdirection denies the payment of the compensatory B3 ill-Health/disablement pension to the Appellant which is the Respondent's current practice; a practice which contradicts and denies their prior Statutory decision to award it, and to act in continuing contravention of the provisions of the 1993 Pensions Act (As amended) Rule B3; the 1992 Statutory Instrument No:129; the LCFA' Firefighters Pension Scheme Rules; and their Common Law Contract with him.

21. The Respondent is in breach of a Common Law Contract with the Appellant to pay him his correct pension entitlements in an accurate and timely manner because he was, and remains, a Member of the Respondent's Firefighters' Pension Scheme.

22. Furthermore, the Respondent in a Point-of-Law Paragraph 5 (2) have failed to contemplate, or calculate, the compensatory element contained within the Statute reflected in the expert Home Office Commentary which states *twice*… '*never more than 40/60ths, or what you could(would) have earned'*… a Statute provision which is addressed in Paragraph 5(2) by the use of the distinctive words 'is' and by 'reference to'.

23. Words which recognise the Appellant's potential that had he not been injured(no-fault) and compulsorily discharged by the Respondent he had the career time and potential based on his PRF records, past performance reviews, and supplementary personal references(3) from those senior in Rank to him at the time, to achieve further promotion.

24. Mr. Justice Fancourt failed to take into account Section 15 of the Equality Act 2010 "*A person discriminates against a disabled person if A treats B un-favourably because of something arising as a consequence of his disability*". The Respondent discriminated against the Appellant by treating him unfavourably by denying him financial compensation for the loss of what he would have received but for his disability, for which the Respondent is liable.

25. The Respondent has breached the Appellant's Human Rights specifically,

Human Rights Act 1998(as amended)
Part II, The First Protocol, Article 1. Protection of Property.

" Every natural or legal person is entitled to the peaceful enjoyment of his possessions. *No one shall be deprived of his possessions except in the public*

interest and subject to the conditions provided for by law and by the general principles of international law.". (the Appellant's italics).

'Property' includes the definition *'pensions and certain types of welfare benefits'.* The Respondent, a Public Authority and agent of the Crown, cannot deprive the Appellant of his possession, his pension entitlements, or place restrictions on its use or enjoyment.

26. The Appellant seeks a declaration from the Court that the law *is* that in calculation of an ill-Health/disabled pension pursuant to the 1992 Statutory Instrument No:129, specifically a Rule B3, Paragraph 5 'Notional Retirement Pension', was to be, and is to be, calculated on pensionable years, as though the enforced compulsory ill-Health retirement had not cut short a career before being required to retire on account of age; and on the APP of the Rank and Pay Scale the Appellant '*could/would* 'have reached, but for injury; such APP to be taken from the Rank to Pay Scales in force at the time of his last day of Service when compulsorily retired on the grounds of a 'qualifying injury'.

27. The Respondents have not entered appearances since 8th May 2020, nor denied the probability of the Appellant's promotion in *agreed* documents supplied *jointly* to the Court responding to Falk LJ's Order of 6th May 2020.

28. Particularly in the national circumstances of the moment the Appellant asks for the matter to be dealt with on paper without a physical Hearing.

29. Further the Appellant seeks that this case be determined in the law and on the jointly agreed documents supplied by both parties by Order to the Court.

30. Furthermore, the Appellant invites the Court to review the fitness for purpose of an IDRP system for dispute resolution so heavily weighted against the Appellant and so in favour of the Respondent (and TPO) to whom they owe a fiduciary duty to put the Appellant's interests before their own, that justice is not done (many have died and will die), with delay (wither on the vine) being introduced by the Respondent (and TPO) as a capricious whim at every juncture – in this case some 6 years have elapsed from the first complaint.

31. In this case the Respondent's avoidance of obtaining Counsel's Opinion (at an early, or any point) has allowed them to 'blind' themselves to having any legal obligation to the Appellant; their deliberate suppression of the 1992 Home Office Commentary and misquoting(in an earlier case PO-3946) from the 2008 Pension Scheme Guidance to deliberately mislead the Pension Ombudsman was all carried out with impunity in a fraudulent 'system' to deny judicial oversight that denial of justice has become institutionalised to the point that defrauding its disabled Fire Service Veterans their pensions has long been the norm visited on Lancashire's Firefighters, and others, 'injured in keeping their Public safe'.

32. The Appellant invites the Court to consider the grave misconduct of the Respondent and, if so minded, direct that exemplary or aggravated damages be awarded to deter and punish the arbitrary and oppressive misconduct of the Respondent as a Public Authority and to dissuade other likeminded Authorities as agents of the Crown from acting in a similar lawless and fraudulent manner.

33. The Appellant seeks an account, commencing in 1998, with unpaid pension wrongly retained by the Crown to be paid to him with Statutory Interest because the Respondent, by reason of their contraventions under (as amended) the 1993 Pensions Act , 1992 Statutory Instrument No:129, the Pension Scheme Rules, and in breach of a Common Law Contract, are liable under the 'Late Payment of Commercial Debts (Interest) Act 1998 Chapter 20.

34. And Costs.

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To Err is Human.

35. The Appellant believes that both Mrs Justice Falk CBE and Sir Timothy Fancourt QC were ordered into an arena ill equipped for the jousts which were to follow. The Judge, or Judges, in authority who ordered them to do so has greatly harmed the dignity and reputation of the Judiciary in the eyes of 11,000 disabled Firefighters and their Beneficiaries.

36. In an ill equipped task which he was ordered to do, which was to deny Justice, Mr. Justice Fancourt regularly misdirected himself and was overall wrong in law, avoiding fundamental legal principles; nor was he cognisant at the Hearing which took place on July 3rd 2020, of all the relevant provisions of the 1992 Statutory Instrument No:129 nor in his final Approved Judgement, (which was only made available to me on 27th October 2020).

37. Mr.Justice Fancourt wrongly upheld the practice adopted by the Respondent by finding that "a normal pension", under Rule B1, and the 'Notional Retirement Pension' are to be calculated using the average pensionable pay during the last year of actual service", which if applied would deny the compensatory Rule B3 ill-Health/disabled pension provided by the Statute - thus rendering the Rule B3 provision void of meaning.

38. The Statutory Instrument at provision Rule B3, makes clear the intent is to compensate.

39. Mr. Justice Fancourt failed to distinguish between relevant dates as provided by G1 (4)(a), and G1(4)(b). He misdirected himself by finding that a Rule B3 Pension is to be calculated on the APP described in (a) where (a) specifically excludes Rule B3 from its provision; leaving a Rule B3 'Notional Retirement Pension' to be calculated on the APP as the 'relevant date' specified by Rule G1(4)(b) - being the last day of Service on which the final pension contributions are due (G 2). Such contributions are required to be made from the time of first service until retirement, compulsory or otherwise.

40. Mr.Justice Fancourt stated that it was common ground that the Appellant was entitled to a Rule B3 ill-Health/disabled pension and not a Rule B1 Ordinary pension having been compulsorily discharged from the Service with a Rule B3 ill-Health/disabled pension; however he misled himself finding that the Appellant, in receipt of an accrued non-compensatory, Rule B1 Ordinary pension was being paid the correct Rule B3 ill-health/disabled pension.

41. The Statutory Instrument specifically denies the Appellant a Rule B1 Ordinary pension because the Appellant was compulsorily discharged from the Service with a Rule B3

ill-Health/disabled pension and a Rule B4 Injury Award.

42. Mr. Justice Fancourt sets Rule G1 and Rule B3 into conflict by suggesting that a Rule B3 ill-Health/disabled pension is correctly calculated on the same APP as a Rule B1 Ordinary Pension.

43. Mr.Justice Fancourt misdirects himself by thinking that the 'relevant date' applied a limit to the 'Notional Retirement Pension' by requiring its APP to be calculated as specified by G1 (4) (a) (as at last active day) instead of (until retired on account of age) as specified by G1 (4) (b).

44. Mr. Justice Fancourt repeated Mrs. Justice Falk who chose to give meaning to the term "by reference to" the *actual* APP. The Appellant contends that the calculation must be done by reference to the Rank and Pay Scales in force at the date of retirement (age 60) but also taking into account that he would have continued through the Rank and Pay Scales by being promoted in his lost career years until required to retire, absent ill health, or injury.

45. The Appellant maintains, that being well qualified, very experienced, and having an excellent operational record with an exemplary Personal Record File including annual reviews and having references from contemporaneous Senior Officers (given in evidence to Mrs. Justice Falk and the Respondent - which they did not contest) he would have gained promotion during his lost career years and thus had an optimistic prospect of reaching the rank of Divisional Officer II before being required to retire on account of age, 60 in his case.
Mr. Justice Fancourt saw no reason to consider, as the law required of him, what the Appellant *"would/could"* have achieved had he continued to work until retirement gaining additional pension accruals over that time.

46. The Appellant believes this denial by the Judge was both unreasonable and perverse.

47. The expert Home Office Commentary guidance is specific to the 1992 Statutory Instrument No:129. It sets out in parallel with the S.I. the calculations needed to arrive at pensions to be paid. Mr. Justice Fancourt misunderstood the alternatives. It is not between 'pensionable years' OR 'what you could have earned', BUT between 'pay' at time of retirement, OR, 'what could have been earned' on completing a career.

48. A Rule B3 Pension relevant date is excluded from being "the last day of the firefighter's service" as a regular firefighter by Rule G1, but instead, is the last day on which pension contributions were payable under Rule G2.
Such contributions are required to be made from the time of first service until retirement-which for the purposes of calculating a Rule B3 'Notional Retirement Pension' is to age 60 for Senior Ranks (the Appellant).
It follows that the calculation is not to be made on the APP at the date of compulsory discharge but on the APP of the Rank and Pay Scale which, but for disablement, the Appellant could have earned by the time he was required to retire on account of age.
That APP is to be found *only* 'by reference to' the actual APP, so must be within the Rank and Pay Scale in force at the time of his compulsory discharge.

Mr. Justice Fancourt misdirected himself otherwise and misdirects himself in applying his definition of 'relevant date' to a Rule B3 ill-Health/disabled pension.

49. It follows therefore that a Rule B1Ordinary Pension and a Rule B3 ill-Health/disabled Pension, notional or not, cannot be calculated on the same APP.
If they are, it would nullify the Rule B3 provision of compensation which cannot be correct in law.

50. The Appellant's case is about properly construing the law as the Respondent is bound to do in law which is their fiduciary relationship with him; rather than seeking to save their pension fund money.

51. The Appellant's Rule B3 ill-Health/disabled Pension should be calculated on a multiplicand of the pensionable years he '*could/would*' have served until required to retire on account of age and by the multiplicand of the APP, taken from the appropriate Rank to Pay Scale in force at the time of his compulsory discharge.

52. Declaring the Respondent's practice, of denying compensation for financial loss under the provisions of S.I. No:129, Rule B3, was and is unlawful and that Mrs. Justice Falk and Mr. Justice Fancourt so misdirected themselves at first instance as to sanction fraudulent practice as lawful which is an illegal, and discriminatory practice repugnant to law.

53. In so doing both gave judgments denying the rule of law by rendering Statutory provision for compensation of financial loss to be of no effect.

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

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

56. Mr Justice Fancourt, in his Judgment was specifically wrong in law on important points of legal principle; wrong to sanction the Respondent's fraudulent practices; such as to compel the Court of Appeal to find in the Appellant's favour to avoid the judicial sanction of Mr Justice Fancourt's conduct which defrauds the Appellant of his rightful pension entitlements.

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

58. Accordingly the Appellant Appeals on the grounds of the matters as set out, supra.

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Further Opinion

Fireman's Ill Health Pension Appeal to the Court of Appeal.

The point of law on which the Ombudsman's Adjudication was appealed, was his misconstruction of the words in provision, by 1992 SI No:129, Part III, B3 paragraph 5, of 'by reference to' to wrongly mean 'is', so that paragraph 5 (2) "*The Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay'* was to be taken to have the same meaning as prescribed by B3 paragraph 1 (2) *"In paragraphs 2 to 4, A is the persons average pensionable pay",* for all B3 provision to be based on the same APP, rendering the words use in provision by Paragraph *5. (2)* redundant and of no legal effect, which is repugnant to law.

Otherwise the Ombudsman misdirected herself in applying the wrong '*relevant date*'. She took Rule G1 (4) (a) (last day of active service), to apply though B3 ill health provision is excluded by G1 (4) (a), the B3 provision falling under Rule G1 (4) (b). This provides the different *relevant date* when final pension contribution would fall due on being required to retire on account of age – absent injury, for which the Respondents are statutorily liable.

Fancourt J taking over from Mrs. Justice Falk denied leave on 3rd July 2010, holding the point of law to be 'unarguable'. It was appealed. Later an 'Approved Judgement' arrived with the Appellant on the 27th October 2020.

In it Fancourt J misdirected himself as set out, supra, but in addition raised a new problem. He misconstrued the words used in the Commentary. *'A firefighter's basic ill-health pension is never less than 1/60th of average pensionable pay, APP, and never more than 40/60th, two-thirds of APP or what could have been earned by compulsory retirement age'* to mean that more years may 'be earned' to increase pension. The B3 ill health pension provision formulae is not variable in any way. The paragraph 5 'notional retirement pension', is inflexibly fixed, at 40/60ths (a full career notional B1) but on a variable APP of 'what could have been earned, absent injury.

Fancourt J, by misdirecting himself on adopting, then misconstruing the Commentary, highlighted what it said.

In retrospect, I should have looked beyond the single point of law and not have accepted, if I did, that the commentary in saying an ill health pension 'never more than 40/60ths or two thirds of APP' was expressing a universal truth within the SI.

In the past, in advising that the pension paid was the notional retirement pension, I was in error in two ways.

I wrongly assumed the Commentary was giving uncontroversial general guidance in saying 'never more than 40/60ths' when in context, as high lighted in the

Approved Judgement, the reference is clearly confined in application to the paragraph 5, notional retirement pension where it is entirely correct to say the years are fixed to give 40/60ths, but the APP is variable. The point on which Fancourt J misdirects himself.

My second error has been in not appreciating that formulaic sixtieths of then current APP is nowhere curtailed or restricted in the SI to 40/60ths.

I have corrected in the Appeal against the Approved Judgement of Fancourt J.

Paragraph 4 formula , specifically provides the Appellant an "*ill health pension amount*" of 7/60ths + 20/60ths + 34 x 2/60ths, or 61/60ths of his APP at time of being retired. On that basis the Appellant was deprived of some £11,500 pension (index linked) since 1997. If not dealt with here it could lead to another case to get that construction right.

Correctly construed, the SI provides a choice under B3 provision to pay either the '*the ill health pension* amount' as specifically provided under B3 formula paragraph 4 (in the Appellants case) or under paragraph 5 *'the notional retirement pension'* amount, also the Appellants case.

But which is paid.

To construe B3 provision without error, requires attention to the nomenclature used and application of the literal meaning. Each formulaic amount provided is specified to be *'an ill health pension'* amount. In alternative provision, paragraph 5 (1) (a) provides for a notional retirement pension amount and 5 (1) (b) determines that what is paid. "*Where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of the notional retirement pension*", the sense of which is "*where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of***,** becomes, or is what constitutes, *the notional retirement pension*".

The Respondents wrongly interpret the paragraph 5 provision to mean the notional retirement pension, being less than the formulaic amount, is always paid. Were that correct it follows that calculating the formula has no point to it, there being no provision at all for any lesser formulaic amount to be paid - with it being denied payment when the larger amount – it never gets paid so is irrelevant. The Respondent's practice denies B3 provision meaning and legal effect, rendering it redundant to the B1 ordinary pension provision.

Whilst Rule L4 (3) is provided to avoid duplication, the direction of travel and intent of the legislation is clearly to ensure the best level of compensation, that is provided, is paid. "*Where this rule applies only one of the pensions or allowances shall be paid in respect of the period in question; if they are for the time being unequal in amount, the one to be paid is the largest of them.".* Until decision, the ill health pension amounts payable, formulaic or notional to be paid, are 'for the time being' unequal.

I correct any earlier opinion of mine or advice in which I have taken the view that

what is to be paid is the notional pension as the full measure of financial loss suffered. To be included in the reckoning is a most serious quantum of financial loss of pay, which injury deprived the retiree from earning, until required to retire on account of age.

There is no lump sum provision within B3 ill health pension so financial loss has to be amortised over the life of the pension. In the Appellants case his loss may amount to more than £50,000.

It has been suggested to me that maybe in calculating the paragraph 5 pension that in some way the paragraph 4 current APP x 61/60ths enhancement may be carried over into the paragraph 5 notional pension calculation. It can not do so because there is no provision for it, also it would deny the definition at paragraph 5 (1) (a) of a notional pension as that which would have accrued had someone served until, absent injury, they could have retired on account of age. That is a full service notional B1. No accrued B1 pension may be greater than 40/6ths. A third reason is that to award such a sum, would far exceed the lawful purpose of the B3 provision, which is not to punish or award for loss of amenity, pain and suffering, which is provided by a B4 pension, but simply to compensate for financial loss. Nowhere does the SI provide for more than actual loss suffered.

As I advised on different occasion, any sums wrongfully withheld from due payment attract statutory interest.

John M Copplestone-Bruce
Inner Temple.
31st. January 2021.

The Appellant's Impressions from his Contemporaneous Notes – 3rd July 2020 Appeal Hearing.

59. Instructions were received for the Appellant to take part in a Hearing with Mrs Justice Falk on the above date at 10:30hrs.

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

61. At 10:00hrs,on the day before, he went through the motions of contacting the Court but found that the Hearing app would not load into his iPad. He found this situation quite stressful which added to his apprehension about the forthcoming proceedings.

62. He rang Mrs. Justice Falk's clerk, M/s Saleem, to report the problem.

63. The Appellant gave her his name and said that he had a Hearing with Mrs Justice Falk at 10:30hrs. M/s Saleem cut him short and said "no you don't you have a hearing with Mr. Justice Fancourt and then gave the Appellant a telephone number for Mr Justice Fancourt's clerk.

M/s Saleem's manner was brusque which surprised him as he had spoken to her previously and, at that time, had found her to be amiable.

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

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

66. He stated that it would be a short Hearing and asked if the Appellant had anything to add to correspondence already received. Mr.Justice Fancourt's manner was formal and business like.

67. The Appellant stated that he expected the Judge to ease him into the event but the Judge chose not to.

68. Even though the Appellant considered that the Hearing would be an 'open' Hearing he was instructed by Mr.Justice Fancourt that he was not to record the Hearing, nor was he permitted to have his wife, who was present, to remain with him.

69. Later due to an alleged malfunction at the Court end the first 21 minutes of the Hearing remain unrecorded/unavailable though still under the Appellant's request for a copy, to date.

70. Unaware that no record was being kept the Appellant plainly understood from the outset from his responses that Mr.Justice Fancourt had no grasp of the case but clearly

intended to rely on the Appellant to set it out.

71. The Appellant referred the Judge to the Barrister's Advice which was sent to the Deputy Ombudsman following her Determination. In her Determination she included advice that the Appellant could appeal in a Court of Law against the Determination providing it was restricted to points of law only.

72. The Appellant stated that Mr Copplestone Bruce had produced in his 'Advice' the points of law relevant to the DPO's Determination.

73. After a moment Mr.Justice Fancourt asked if that was a Mr Locke in 2015 ?

74. The Appellant informed him that it was Mr Copplestone Bruce in 2019 and it was dated 15th or 19th of September. He repeated what he had just said for his benefit. There followed much shuffling of papers before the Appellant assumed the Judge had found the document.

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

76. The Appellant had only read a small part before the Judge laid it aside with the comment "Well, this clause 5 takes some reading".

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

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

79. Mr. Justice Fancourt stated that the issue is about "further promotion" (which it is not) and in the Appellant's case before he was 60 when he would have to formally retire.

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

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

82. Mr. Justice Fancourt stated that he was sympathetic but the Judgement had to be made on an argument of law.

83. The Appellant initially pre-paid the bill for a part transcription but later contacted Ubiqus(the transcriber) and asked them to prepare a transcript of the full Hearing.

84. The Appellant months later finally received their transcript which was missing the first 21 minutes or so, and the Judge's Summary, immediately prior to him declaring the Judgement.

85. The Appellant has requested UBIQUS to ask the Court about releasing the Summary and he have asked them to make enquiries about whether or not there might have been a secondary system to record the whole of the Hearing?

86. The Appellant also asked the Court the same questions in recent e-mails. He awaits an answer from the Court.

87. Recently on the 14th January 2021 the Appellant was informed that the missing 21 minutes of the tape of the Court Hearing has now been located and forwarded to Ubiqus for transcription and onward transmission to the Appellant.

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Appendix 'A'

Historical Précis ~ Why the Provisions?

88. Donoghue v Stevenson (1932) (UKHL) 100, more or less gave today's tortious common law duty of care, in breach of which a court will order an employer, found liable for an injury suffered in the course of employment, to pay damages to put the injured employee back, in so far as money can, into the position they would have been in but for this injury.

89. As an award wholly apart and separate from this compensation for financial loss namely Rule B3; the Court, and in the first instance the Statute, can award a sum in damages to compensate for the physical damage – for pain, suffering, and loss of amenity inflicted under which it does under Rule B4 by an Injury Award.

90. Originally such cases were litigated. Such personal injury cases were expensive to pursue, involving medical, as well as engineering expertise.

91. They were particularly expensive for the Crown since few Judges were persuaded to find against a Firefighter whose employment put him/her in harm's way to protect the public. So, the Crown (who funds the Fire Service) usually paid the costs of both sides.

92. Such became the burden to the taxpayer that The Home Office prior to 1992 invited the Fire Brigades Union to negotiate a comprehensive compensation scheme to be more attractive to the Union's membership than going to court, whilst saving the Crown the escalating costs of doing so.
The Crown accepted 100% liability subject to a 50% claw-back in exceptional cases, which has yet to be used.

93. These national negotiations, post the first National Fire Service 9 weeks strike of 1977/78, produced the 1992 Statutory Instrument No: 129.
S.I. No:129 provided a full Firefighter's pension and compensation legislation from 1992 until the 6th April 2004 when the Scheme was closed to new entrants.

94. It also provided a Rule B1 Ordinary pension for any Firefighter who voluntarily chose to leave, fit and well, which was calculated on his/her final pay day their APP; their time served; and their accrued pension. This Rule B1 Ordinary pension recognised no financial loss because there was none.

95. The Rule B1 legislation specifically denied payment of a Rule B1 Ordinary pension to anyone in receipt of a Rule B3 ill-Health/disablement pension.

96. In the first instance, the award of any pension lies within the Statutory powers of the Fire and Rescue Service (FRS), the Respondent (LCFA).

97. The Statutory award of a Rule B3 ill-Health/disablement pension, and/or, a B4 Injury Award adopted the same Common Law division of damages which are quantified in litigation.

98. It is now before the Court of Appeal because the local pension provider the Respondent by avoiding the Statute and the accompanying expert 1992 Home

Office Commentary has denied the Appellant a Rule B3 ill-Health/disablement pension which includes compensation for future financial loss of income and career, and includes a correctly calculated Rule B4 Injury Award paid solely for pain, suffering, and loss of amenity.
Indeed, from the outset of proceedings the lay Chief Fire Officer specifically adopts that denial in his 'Decision' letter of 19th February 2016 at Stage I, IDRP to the Appellant.

99. In 1992 the Home Office promulgated and published a Commentary (394 pages of expert advice, akin to 'The White Book') by expert parliamentary draftsmen to accompany S.I.No:129 which put in plain English guidance for Firefighters and lay unqualified administrators at the pension providers.

For example, what is a fairly complex Rule B3, is elucidated in 5 Paragraphs of Provisions; rendered down to what the compensating purpose of Rule B3 was, including what the Appellant "could/would have earned" but for his no-fault, on duty qualifying injury, and subsequent enforced compulsory discharge on ill-health/disablement.

100. In 2014 the Appellant instituted a Pension Complaint by using the Fire Service Statutory IDR Procedure (Pensions Act 1993 as amended) because instead of being paid a pension in respect of what he 'could/would have earned' in compensation he was wrongly being paid a Rule B1 Ordinary pension (which is denied by Statue). This being the bare minimum pension falling due to him had he left by voluntary choice foregoing what he could have earned had he stayed on to fulfil his career potential; instead of being compulsorily discharged by the Respondents with a qualifying injury from Service.

101. A Rule B3 ill-Health/disablement pension is clearly intended to compensate the Appellant for his lost promotional career and income from the lost years he could have served; and as construed according to Statute law required the Appellant's enforced discharge on grounds of ill health/disablement to be no less well treated than were his case to be litigated.

102. Finally there are no actual words within S.I. No:129 which either "caps" or sets a clear "40/60ths" pension stricture on the years of Service he would/could have completed(until aged 60) nor the income, promotion within his subsequent lost career, which he would have earned had he remained in Service to realise his full career potential.

103. Dealing with "sixtieths" see Appendix 'B'.

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Appendix 'B' Research – A Layman's briefing note on Two Pension Schemes.

104.

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

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

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

From: Paul P Burns GIFireE.

Dear J.M. Copplestone-Bruce,

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

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

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

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

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

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

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

5. An acquired understanding of the PSR(with the exclusion of B4 Injury Awards which are identical) leads to a mind-set which will not transpose to the FSR. To attempt to do so will only lead to confusion and a lack of understanding of the FSR minutiae. So a fresh untrammelled mind-set is required.

The FSR regulates a group of public servants who have a defined purpose which is different in service delivery and risk.

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

"the purpose is to help those who use the Scheme to understand its provisions, bearing in mind that such guidance cannot replace or override those provisions".

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

"The broad purposes of your ill-health pension are to compensate you for the interruption of your career, and (once you reach the age when you could have retired with a pension) <u>to take</u> <u>the place of a retirement pension</u>.". **(my underline).**

8. Next to a broad understanding of accrual rates.

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

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

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

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

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

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

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

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

Your pension will only grow beyond 40/60ths if the scheme rules say so. Certainly legislation will not prohibit this, but it does not require it to happen.".

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

- Both sets of Regulations are subordinate to the Pensions Acts.
  Repeated searches of the Pensions Act 1995; the Pensions Act 2004; and the Public Service Pensions Act 2013, fail to elicit any reference to the 60ths of any description.
- The 1973 FSR-SI categorically states that an ill health pension is limited, or if you like, 'capped' at 40/60ths.
- The 1987 PSR-SI categorically states that an ill health pension is 'capped' at 40/60ths.
- The 1992 FSR-SI does not categorically state a 'cap' or limitation of 40/60ths to any pension or formulae throughout its main text.
  However, in the entire FSR-SI there is only one direct reference to a 40/60ths 'cap' of a Short Service or ill-Health pension which is contained in(Sorry the lead in is tortuous), Schedule 11(Page Substitution); Special Cases; Part IV; Rule J6; Modification For Persons Serving On 10th July 1956; Page 82;Para 17 'For Parts I to III of Schedule 2 substitute...Part I and Part II.

  I am not a Special Case and I was not serving on 10th July 1956 and thus these substitute Pages and their content do not apply to my circumstances and I doubt to many others by now.

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

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

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

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

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

11. Rounding up broadly on the 60ths issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paul P.Burns GIFireE

5th May 2015.

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Appendix 'C': The Clapham Omnibus Man's Law ~ The Alternate View

(With acknowledgment to 'The Morning Bugler'® for permission to paraphrase).

105. Rule B3 and its Provisions are at the centre of the Appellant's Pension Complaint so he asks the obvious question; what is Rule B3 legislative purpose; its provisions; and their application?

106. It is to provide him with enhanced financial compensation for the no-fault loss of his employment and career by reason of ill-health/disablement occasioned by an in-Service 'qualifying' injury;

107. It is common ground that, firstly, the Respondent took a Statutory decision to confirm the Appellant's medical disablement and, secondly, using further Statutory powers within S.I.No:129 to permanently and compulsorily discharge him from Service by awarding him an enhanced Rule B3 ill-health/disabled Pension, and a Rule B4 Injury Award; the Respondent's discharge documents state so.

108. The Appellant is aware he cannot be compensated for more than he would have lost.

109.
Rule B3 Paragraph 4 formula limits his compensation to his envisaged time served which would have been 40 years' service (Rank related) had he not been injured; but which includes enhanced compensation for what he '*could/would'* have lost in terms of income and career promotion had he continued to serve until his 40th year of Service.

110. The Appellant is aware that his awarded Rule B4 Injury pension is consequentially calculated directly from a Rule B3 pension base line using Rule B4 specific formulae, and is thus paid for pain, suffering, and loss of amenity;

111. However, if the Courts decided that the Respondent was fully aware that what they were doing was defrauding the Appellant of his correct pension by their failure to investigate his Complaints, then the Court have the power under Common Law to award exemplary damages to him, and others, upon which no limit is set;

112. The experts' Home Office Commentary states the purposes of an enhanced B3 ill-health/disabled pension which is to financially compensate the Appellant for loss of his income and career.
This is referred to in Rule K and more specifically in, Page K1-1, POINTS TO NOTE, 5 & a. :

> **" 5. 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.**
>
> **That is why:**
> **a. once you have reached the age at which you could have retired with a pension:**
> **– your ill-health pension may no longer be cancelled.".**

113. The word ‘career’ *always* translates into ‘income’;

114. An enhanced Rule B3 ill-health/disabled Pension *cannot* therefore be confused accidentally, or by maladroit application, with a B1 Ordinary pension, where there has been no injury; no financial loss including earnings; and no loss of career.

115. It is common ground, which Justice Fancourt in his Judgment confirmed that, … ‘*Mr G is entitled to an ill-health award and not an ordinary pension.*’…

The Function and Construction of B3 Paragraph 4.

116. Next the Appellant looks at Rule B3, Paragraph 4 *formulae (two),* which stands on its own merit, its own provisions, and its own application ***within*** the framework of Rule B3:

> **4. Where the person has more than 10 years’ pensionable service, the amount of the ill-health pension is the greater of –**
>
> $$\frac{20xA}{60}$$
>
> **and-**
>
> $$\frac{7xA}{60} + \frac{AxD}{60} + \frac{2xAxE}{60}$$
>
> **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.**
>
> **‘A’, which it does not explain, is the Appellant’s APP.**

117. Using the Appellant’s career (cut short) APP, the two competing mathematical formulae are then calculated in sequence and in competition; this automatically identifies the *larger* of the two results which was the result given by the second formula.

118. The design of this larger (second) mathematical formula consists of 3 co-joined parts (identified by the ‘+’sign) thus :

- The first part identifies ‘ill-health enhancement’ which provides 7/60ths (a national agreement) to reflect his Service being compulsorily terminated by the award of an enhanced B3 ill-health/disabled pension;
- The second part reflects his accrued pension earned at the rate of 1/60ths per served year up to and including the 20th year;
- The third part reflects his accrued pension earned at the rate of 2/60ths per year above 20 years’ Service up to a total (which is rank related) of 35 years, or 40 years’ Service for which pension contributions were paid or envisaged;

- An enhanced B3 ill-health/disabled pension can range from 01/60ths up to 67/60ths dependent on the time in Service; *all* concluding at the point of compulsory termination, namely the last day of Service;

- In this worked example the Appellant was entitled, when his employment was compulsorily terminated, to a 59/60ths pension; this consisted of the 7/60ths 'ill-health enhancement' (at this stage *the only compensation)*, because the remaining 52/60ths consisted of his accrued pension for which he had paid;

119. Paragraph 4 provides the only tripartite formula in the Statutory Instrument with which an enhanced B3 ill-health/disabled pension can be correctly calculated. It is the Law, common ground, and mathematical logic that this formula cannot be applied to a 'notional' B1 Ordinary pension.

120. Rule B3 is subject to Parts VII (Deferred Pension) and VIII (Pension reduction at State Pension age); the Deferred Pension cannot be given effect - the Appellant did not apply for a Deferred pension; and Pension reduction can only be applied at State Pension age much later in the life of the pension awarded.

121. Paragraphs 3 and 4 have effect subject to Paragraph 5 which, in this case, cannot have effect because the 'notional' parameters to give it effect did not actually occur. This was because of earlier compromising Statutory decisions by the Respondent; the egg follows the hen.

The Function and Construction of Rule B3 Paragraph 5.

122. Paragraph 5 is in practice a self-defeating hypothesis; a theory; a notion.

123. Its implementation is conditional and subject to satisfying its fulfilment in law, in legal principle; in logic; and in pragmatism in all aspects.

124. It exists in the Land of Legal Absurdities where it is not to be found within 'The White Book'.

125. This *stultum*, according to the Respondent, allows them to substitute a B1 Ordinary pension for a B3 ill-health/disabled pension, thus at a stroke eliminating a 'tiresome' Rule B3 which they had awarded in the first place; A Rule B3 which requires them to pay compensation to the Appellant for a no-fault lost career.

126. This 'notion' is based on two hypothetical co-joined provisions, sub-paragraphs (a) *and* (b), meaning you cannot use one without the other, which is clearly confirmed by the use of the legal word *'and'* between these two sub-paragraphs.

127. This 'notion' is illusory, existing as it does, <u>outside</u> the remit of Rule B3 which is to pay compensation, and based on a hypothetical Rule B1 'notional retirement pension' which does not exist in either Law; mathematical logic; or reality because the parameters to make it function did not occur or exist.

128. The Appellant *did not continue to serve* because of the Statutory decision of the Respondent to compulsorily discharge him…

5.-(I) 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.

129. Sub-paragraph (a) theorises that (based on parameters which are speculative) a Rule B1 Ordinary pension would have been paid at the completion of Service, fit and well. This is the Law and common ground but has no relevance to a Respondent Statute awarded, enhanced B3 ill-Health/disabled pension contractually in force by the Statutory decision of the Respondent. Once more the egg follows the hen.

AND (please note *the* '*and'*),

Sub-paragraph (b) hypothesises that this Respondent's enhanced B3 ill-Health/disabled formula calculation, can then be compared with a substituted, uncalculated, imaginary, Rule B1 Ordinary 'notional retirement pension' to be provided in the future at the completion of Service, fit and well. The absence of mathematical and data logic is inescapable.

130. In its construction these two co-joined hypothetical sub-paragraphs use the words *'if'* ~ a supposition; *'and'* ~ to be taken jointly, also means one cannot use (a) without (b); '*notional'* ~ does not exist in reality or logic.

The full current Oxford English Dictionary verbatim definitions are:

'Where- '*if'*… OED; (introducing a conditional clause) *on the condition or supposition that; in the event that;*

'*and*'…OED; *Used to connect words of the same part of speech, clauses, or sentences, that are to be taken jointly;*

'notional'… OED; *Existing as or based on a suggestion, estimate, or theory; not existing in reality; this word is used 22 times in the SI.*

131. It is postulated, in this theory, using these two conjoined sub-paragraphs (*'to be taken jointly'*) that *'if'* (*in this 'supposition'*) the Appellant had continued to serve until he could have retired on account of his age, he would have become entitled to an Ordinary or Short Service pension; this is the Law but on irrelevant common ground.

132. Furthermore, that this *is* an hypothesis is confirmed by the use of the word '*notional*' in the description of the Appellant's speculated hypothetical B1 Ordinary pension as "the notional retirement pension", a pension which cannot exist in reality or logic because by an *ab initio* (from the beginning) Statutory decision of the Respondent the

Appellant did not complete his Service.

133. The next *absurdum quaestio* is how this hypothetical B1 Ordinary '*notional retirement pension*' is to be calculated years hence (on completion of Service) to allow it to be compared with an *actual* B3 ill-health/disabled pension calculation which has already been calculated and printed on the Appellant's discharge documents by the Respondent before his last day of Service?

134. The Statute is 'silent' on how this theoretical calculation is to be achieved; nor is any expert commentary in the H.O. Commentary propounded to fill this silence?

135. To attempt to take this 'notional retirement pension' calculation to the point whereby it might be capable of being compared with an actual B3 ill-health pension, thus taking this theory to exhaustive absurdity, it may be usefully illustrative to look at another hypothetical situation.

136. A Probationer Firefighter entering operational Service after 12 weeks intensive 24/7 training could on his first day of operations be exposed to a cytotoxic substance which will rapidly cause a terminal illness, or he could simply have been very seriously injured at a farm barn fire by an exploding gas cylinder.

137. Let us assume that both incidents would require compulsory termination of Service of a Probationer Firefighter of unknown career potential under Rule B3.

138. This compulsory discharged hypothetical Probationer Firefighter could have served 40 years and achieved the status of Chief Fire Officer (who were Members of the '92 Scheme) all things being equal.

139. In the first instance his/her B3 ill health pension would have been calculated under Paragraph 4 having earned 8/60ths and based on his/her APP on the last day of Service *as a Probationary Firefighter*.

140. In the second instance to satisfy Paragraph 5 (1) and having assumed no injury; no financial loss of earnings; and no loss of career/promotion this would have to be calculated as his/her 'Ordinary' pension having earned 67/60ths based on his/her projected APP as a Chief Fire Officer having served 39 years + , but how this earnings projection is to be achieved is beyond the scope of this fiction.

141. But if this was achievable, this calculation even in hypotheses, this would far outstrip the calculation made under Paragraph 4. In other words the 'Notional Retirement Pension' would be greater than Paragraph 4, so what then happens?

The SI is silent on this, and silence is taken in law to be acquiescence so, pursuant to 1992 S.I. No:129 Rule L4(3), the *greater* amount is paid.

142. Accordingly following the Respondent's 'logic and law' Paragraph 5 (1) would have to be paid as his/her 'retirement pension' from the first day it was put into payment on his actual last day of Service decades before; quite an enormous compensation, but then as we know, the Respondent prefers its own 'Law'.

143. Mr. Justice Fancourt states in support in his Judgment (AJ 18), *"It is therefore clear that a normal pension, under Section B1, and the Notional Retirement Pension are to*

be calculated using the average pensionable pay during the last year of actual service".

144. If this was so, which year, and how is this to be achieved 39 years hence since this disabled Firefighter has already been compulsorily discharged decades before?

145. In summary an enhanced Rule B3 ill-health Pension *cannot* therefore be confused with, either by accidental or maladroit application, a B1 Ordinary pension, where there has been no injury; no financial loss including earnings; and no loss of career.

146. To advance from hypotheses/theory/supposition/speculation/notion/fanciful fiction to the established fact; it is an irrefutable fact that the Appellant did not continue to serve due to an early decision of the Respondent who absolutely and compulsorily terminated his Service by issuing him with an enhanced B3 ill-Health/disabled pension in 1998.

147. The Respondent by Statutory authority issued the Appellant with an enhanced Rule B3 ill-Health/disabled Pension, an action which superseded Paragraph 5 and effectively removed it from implementation, or any other legal consequence.

148. In addition *both* conjoined sub-para (a) AND sub-para (b) jointly have to be legally satisfied before Paragraph 5 can be activated. In this case sub-para (a) has been compromised permanently by the prior Respondent's Statutory decision to compulsorily discharge the Appellant thus Paragraph 5 can never be implemented because the Appellant did not continue to serve.

149. In this case Paragraph 5 is a self-defeating hypotheses because if ever the circumstances could prevail, or be identified to allow its implementation this would presuppose that an enhanced B3 ill-Health/disabled pension in commission could be compared with a speculative B1 Ordinary pension which did not exist in reality as hypothesised by Paragraph 5.

150. If this was so, this would lead to a further series of interlinked legal absurdities.

151. For this to have the logic to work in the first place it has to be imagined a Firefighter could hold 2 pensions, one while fit the other while disabled so they could be compared; and secondly regardless of what legal provisions there are to provide a variety of pensions in this Statutory Instrument the Respondent's hypotheses are, and currently in unlawful practice is, that 'one Rule fits all' namely a B1 Ordinary pension; and thus Rule B3 by this absurd notion and action serves no legislative purposes and has no legal effect which is an extraordinary absurdity repugnant to the existing Statute law.

152. The Respondent in spite of contradicting its own Statutory decision to award the Appellant his correct B3/B4 pensions then perversely decided to continue and knowingly to pay him a Rule B1 Ordinary pension on the unlawful and legally absurd basis of the misapplication of Rule B3 Paragraph 5 as outlined above to the point of logic less irrationality.

153. The Appellant is unable, even by crystal ball gazing, to contemplate what the legislative purpose was to be served by inserting the hypotheses of Paragraph 5 into Rule B3 other than to save the Respondent pension payment expenditure; when under Paragraph 4 the formula had already been provided to calculate all Rule B3

'notional' pensions to be evaluated ultimately using Rule L4 (3). The tools were already there.

154. Finally, Rule B3 falls 'silent' at this point and in the absence of any other expert commentary from the Home Office Commentary to the contrary, and silence in law being acquiescence, simple logic dictates that the Appellant's notional pensions should continue to be calculated using the Paragraph 4 formulaic convention supported by the bridging advice advanced under, 'the purposes of Rule B3', as contained in the expert Home Office Commentary K1-1, stated above.

155. Finally, to follow this law of 'silence' to the point of obsession what happens if the 'Notional Retirement Pension' calculation is greater that Paragraph 4?

156. The S.I. is also silent on this and silence being acquiescence, the *'greater'* is paid to the Appellant pursuant to 1992 SI 192 Rule L4(3).

****