Dear Mr G[redacted]

This email responds to the submissions received from Mr Burns on 24 April (a copy of which are attached). I am attaching a copy of them because this email is being sent in addition to the respondent to the appeal, the Lancashire Combined Fire Authority, and also to the Ombudsman. **Could the relevant representatives of those organisations please note that there are matters for their attention in this email, in particular paragraphs 4 to 7 below.**

I have passed the submissions received from Mr Burns on 24 April to Mrs Justice Falk. She has asked me to respond by explaining the following:

1. What Mrs Justice Falk did was to refuse permission to appeal on the papers. As the order made clear and as I have previously tried to explain, **Mr G[redacted] has the right to renew his application for permission to appeal at an oral hearing**. That means that Mr G[redacted] or his representative would get a chance to explain **orally** why permission to appeal should in fact be granted, contrary to the decision reached on the papers on 2 April 2020.

Having denied a point of law, fully set out for her in writing and fully understood by her (she repeats it in her written decision before casually dismissing it) in what way could Mr G[redacted], a laymen, be expected to so explain the law to the Judge, who has decided his point of law to be a 'nonsense', that she was wrong and must change her mind and reverse her written decision. It is an absurdity that begs the question of actually why does the Judge persuasively (heavy type) invite Mr. G[redacted] to appear again. Why on earth would he wish to humiliate himself in this way. If not to humiliate than what other purpose can the Judge have to want Mr G[redacted] in front of her again – if not to humble, and intimidate him and persuade him he'd best go home and forget all about it. Why on earth would any sane person have the slightest confidence in Mrs Justice's Falk's impartiality sitting in judgement of her own Order. It is a bizarre.

2. The submissions that have now been provided instead request that the matter is referred to the Court of Appeal. Unfortunately, **there is no legal power for this to be done**. As a matter of law, it is simply not possible to appeal against a refusal of permission to appeal. If you wish to discuss this with Mr Bruce, who I understand to be assisting you, then you may wish to refer him to section 54(4) of the Access to Justice Act 1999, together with CPR 52.29.

The Judge's substantive finding that the Appellant's point of law was no such thing but 'a nonsense', the permission to appeal ceased to be relevant. The Judge had decided the point.

More immediately of concern to me, a citizen, is to know quite how it comes about that Mrs. Justice Falk had her Clerk mislead Mr G[redacted]. It was simply untrue to say to him "**there is no legal power for this to be done** ".Since Mrs Falk's Clerk's letter wrongly quotes chapter and verse in support of an dishonest assertion, the effect being to reserve this to Mrs Justice Falk, and stop Mr G[redacted] from taking the matter to second appeal, some may take the view that her selection of authority, given the right authority was equally available to her, the deception was both calculated and deliberate. Maybe we have misunderstood but I find such a lapse in integrity deeply dismaying – I would like some re-assurance from the Master of the Rolls on this which, on the face of it, is corrupt.

In an event it is untrue because the wording giving the Court power to hear matters is essentially discretionary. The Court of Appeal can do whatever it cares to do, including look at any matter of injustice. Sec 55 and CPR 52.30 applies.

3. The oral renewal hearing is currently listed for 4 May 2020. Given the current situation any hearing on that date would need to occur on a remote basis, using Skype or a conference call. Normally, the court is only able to hear submissions from the litigant himself or a practising barrister or solicitor advocate authorised by his or her regulatory body to do that work. It does not appear that Mr G[redacted] currently has access to any such assistance (assuming that Mr Bruce is not practising). It is only exceptionally that the court will allow a lay person assisting the litigant such as Mr Burns (a so-called "McKenzie

Friend") to make representations on the litigant's behalf: please see the attached practice guidance.

Mr. G[redacted] has no wish to venture further into Mrs Justice Falk's Court. She has decided he has no case – that his point of law is a nonsense, so has no intention that he or anyone else, should now engage orally with the Judge in seeking to persuade her she is wrong.

Mrs. Justice Falk's proposal follow but surely 'what next' depends upon the Court of Appeal.

In the circumstances Mrs Justice Falk proposes the following as the fairest way forward:

a. The hearing listed for 4 May is vacated.
b. The parties seek to agree the legal issue or issues in respect of which the appeal is being made (see paragraph 5 below).

It was never a question for the parties to agree anything. This not a question of positions or negotiation.

c. The parties also seek to agree a brief statement of the facts (see paragraph 6 below).

Every single material fact has been set out in the 461 page Bundle, None have been disputed. The Deputy Ombudsman's Decision again canvassed the issues most carefully setting it all out for the Judge. the Respondents have had on full disclosure and full license to raise any matter they wish to put at issue. They have raised none. Their case is they are doing what the law tells them to do. Get rid of men and women injured on a normal time served pension with no compensation for financial loss. Mr G[redacted] case is simply that they are wrongly interpreting the law. All the facts are as set out. The Ombudsman may intervene but has chosen not to. Had the Judge wished, before reaching her decision to know more on any point, her Clerk could have found the answer for her. In the earlier case taken by the Deputy Ombudsman as authority, an earlier 'lay' ombudsman also mis-construed 'by reference to' mean 'is'. But he did so having had quotation by the Fire Authority from the 2004 Commentary most deliberately misrepresented to him as taken from the 1992 Commentary. The matter is fully set out in the bundle.

d. The hearing is listed not earlier than 1 July 2020. Prior to that time, Mr G[redacted] should consider whether he can obtain legal assistance to assist him to put his case in court, perhaps via his Union or, if available, using the charity Advocate (https://weareadvocate.org.uk/). If legal assistance is not available and Mr G[redacted] wants Mr Burns to make representations on his behalf the court will need to be satisfied that that is appropriate, in accordance with the attached McKenzie Friend guidance, in particular paragraphs 18 to 26.

In general where the appellate question is one of construction of documents or a point of law the submissions are written. These are not cases for oral examination of witnesses, or persuasion by any advocacy, but require careful consideration of the law which appellate courts usually require to be fully canvassed in written, legal argument, on which their decisions are made. The Respondents have never advanced any argument, other than by the Chief Fire Officer, a layman, who said he couldn't find anywhere in the Statute saying it intended compensation for career (financial loss) loss'. That was fully answered by Mr. G[redacted] in his appeal to the Ombudsman, whose deputy denied it on a mere assertion, no ratio decidendi given.

5. Although the submissions that have just been provided are extremely lengthy, Mrs Justice Falk's understanding is that, in essence, they raise one legal question. That is whether, as a matter of statutory construction of paragraph 5 of Part III of Schedule 2 (contained in Schedule 2 to The Fireman's Pension Scheme Order 1992/129), the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:
   a. that the calculation must be done using **actual pay** in the year to the date of retirement (as the Ombudsman has found); or
   b. that the calculation must be done by reference to the **pay scales** in place at the date of retirement, but assuming that the individual would have continued to

progress through those pay scales, and achieved available promotions, until the date that he or she could have been required to retire absent ill health or injury.

It is the same question which put in short form she did not understand. The Appeal is as long as it needs be to make the full argument, in all its strands, required to demonstrate the conclusion arrived at by the Judge to be untenable and palpably wrong - in every conceivable way. It seeks to be made both clear and transparent by setting out the logic used in arriving individually at each point of error in the Judges decision. There are many reasons why the Judge was wrong so inevitably there is historical repetition in making different points, each standing alone.

It would be very helpful if the parties could agree whether this is correctly stated as the issue in dispute, or whether there are other legal issues that can and should be determined by this court.

In 5 years no-one has suggested any other point of law. Having dismissed the point as 'non-sense' only to be made sense of if 'is ' replaces 'by reference to', even if further determination lay to this Court, the Judge can only properly recuse herself . She can't seriously be suggesting that she sit in judgment on her own judgement!. Her only alternative is to take the view that on further consideration she was wrong and allow the Appeal ordering the relief sought from the Court of Appeal.

6. Although an appeal is only on a point of law, the factual context can be relevant. It would be of assistance to the court if the facts could be clarified. In particular, clarification would be helpful about the date at which Mr G[redacted] could have been required to retire absent ill health or injury, which according to ground 1 of the grounds of appeal appeared to be age 55, but which the latest submissions indicate was age 60. The relevant pay scales and arrangements for promotion, and confirmation as to whether, for example, progression through the pay scales and/or any relevant promotion was automatic might also be relevant, as well as confirmation of how Mr G[redacted] pension was actually calculated. In addition there is reference in the Ombudsman's decision to an earlier decision relevant to the issues, which may assist the court.

With respect none of this is relevant to the single point before the Court. Not even Mr G[redacted] age or when he could have retired. All that the Judge was required to decide was what did 'with reference to' mean' if not 'is' to give full effect to the Statutory provision. What is at issue is the principle at law upon which pensions are to be calculated, and that turns solely on the construction of the statute. If, as the submission is, Mr G[redacted] is right than as a matter of mechanics a pension calculated on what 'could have been earned' is for each retiree (bringing in his union if necessary), to agree the 'end point' with the provider but in most cases it will be patent and straight forward.

Had the Judge read the bundle she would know all about the earlier decision.

7. Mrs Justice Falk is minded to make directions (that is, a formal court order) setting out what the next steps are, reflecting the points above. Before that is done a brief response from the Fire Authority, as well as from the Pension Ombudsman, about the proposed way forward would assist the court. For example, it may be appropriate to ask the Fire Authority to prepare a first draft of the relevant facts, since they should have access to the necessary information. In particular, confirmation of Mr G[redacted] compulsory retirement age may assist in determining whether, in fact, the outcome of an appeal would have any material impact.

Again the judge makes plain her mind by suggestion that she may seek to allow that the Appellant should have had his pension calculated on the period to full service but to the exclusion of the point of law on which the appeal is made: that correct calculation requires reflection in time and in pay grade to give proper legal effect to 'by reference to'. They go logically hand in hand ,and the words of provision can mean nothing else.

Having arrived at her decision, now being appealed, would surely mean Mrs Justice Falk can take no further part – she's done her part and having found comprehensively against the Appellant he rather lacks the confidence required to wish to seek her help further.

Regards

Miss Supriya Saleem

Clerk to the Hon Mrs Justice Falk DBE

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