



13th May 2020.

My Ref: FG86

Without Prejudice.

G [REDACTED] v LCFA

Dear Chief Fire Officer,

We stand divided on the point of law and should the Judge find against me, my pension continues but if found that LCFA has misunderstood the law then my pension will have to be recalculated.

Mrs. Justice Falk has ordered that we seek to agree facts.

Should the Judge find for me she may refer the matter back down the line for pension correction.

Reckoning in my pensionable years until 60 cannot take me beyond my currently calculated 40/60ths limit. The next step would to calculate my notional pension on 'what could have been earned'; the notional APP multiplicand to be taken from the pay scales identified by reference to my actual APP, so from the pay scales current when I was injured.

I was due for promotion later in the year of my accident and, had I served my time out, I would have expected higher promotions. Times were very different 20 years ago. Senior Officers were retiring to make sure of pensions calculated under the terms of the SI 192 pension provision, others did not want to be part of the absorption of their independent Divisional Commands into the LCFA, and the amalgamation created a new superstructure with many new senior posts in it - I was well experienced, well known, well liked and well placed in B Division HQ to face my final 5 years in Service.

I am unclear on quite what basis you may challenge any claim I may make as to the Rank I 'could' have achieved but, on an assumption of resistance, I would naturally seek the notional APP of the very highest rank that those I consult consider I 'could' have achieved in all the circumstances. I have no great wish to have to do all this.

Now that the Judge has chosen to widen the scope of her role to fact gathering around the single point of legal construction before her, I suggest we take advantage of her interest and ask her to conclude the matter for us on the basis of a settlement on the basis of our 'Agreed Facts'.

To that end I make a without prejudice offer which, should you decline to agree my offer, is withdrawn at midday Friday 22nd May 2020, shortly before you are to submit your 'Facts' on which the Judge has ordered that I may comment.

In your suggested 'Agreed Facts' you have postulated my retirement APP as an ADO at £41,941 - £43,053, but you can't say 'whether or not' either one, nor 'whether or not' I could have been promoted.

Without prejudice, I am offering to agree a more modest settlement. It is that I could have earned an APP of £36,547.72 pa., as a Divisional Officer II (at pay point L25 on the scale in force wef. November 1997, as the multiplicand in the calculation of my paragraph 5 ill health pension. The Arrears to be paid with 'Statutory' Interest of 8% compound over the years, the 'restitutory' rate applied on debts arising from 'Servants of the State depriving a citizen of monies due'.

With interest it will come to about £275,000 to be paid to me to make up for 22 years shortfall of about £5,000 pa.

If this is not agreed then with all the work done and with an Appeal to the Court of Appeal being stayed at my request pending the outcome before Mrs. Justice Falk, this will proceed.

In that event I would intend additional civil proceedings claiming exemplary damages for your arbitrary and oppressive conduct over 20 odd years, as per Lord Devlin in *Rookes v Barnard* 1964 (AC) 1129. Punitive Damages being awarded where there has been arbitrary and oppressive conduct on the part of the servants of the Government.

I refer you to the Attorney General's Reference No 3 of 2003 [2004] EWCA Crim. 868. Those in the Brigade Suppressing the Commentary were acting dishonestly in public office. Misrepresenting it was another in a litany of betrayal of public trust, which is one of the very few offences that can earn life sentences. If I am made to march on then you must expect me to seek to strengthen any case as best I may.

I am upset by my pension but remain very proud of our Service and I have no wish to see it hauled up for public examination and humiliation with the NFA squad trampling about. And I don't want to have to institute any further proceedings.

I trust you will agree with me that it is to our mutual benefit to present the Judge with the answer whichever way she decides.

In a sincere attempt to avoid that I have sought to avoid anything contentious in my amendments to your Facts. I trust you can agree them and so produce an agreed document for joint submission.

Yours sincerely,

F ■ G ■