‘An Teach Bán’

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Wednesday, 24th March, 2020.

Private & Personal
Cabinet Minister of State ~ DWP
Rt.Hon., Dr.T. Coffey PhD., M.P.

Caxton House,
Tothill St, Westminster,
London SW1H 9NA.

My Reference: 00121.

Your Reference:

F[redacted] M[redacted] G[redacted] - v - Lancashire Combined Fire Authority

Dear Cabinet Minister,

Lately I have noticed your commendable public actions to correct the appalling underpayment of pensions to over 200,000 UK women pensioners; they are not alone.

During the last 13 years or so, I have been striving for Justice for 11,000 disabled Fire Service Veterans (including myself); their Widows(Partners) and Beneficiaries; whose bread winner was compulsorily discharged from the Fire & Rescue Service as a result of natural ill-health, or because of a no~fault, in-Service injury; *all of whom* have and are being underpaid the wrong pensions.

Widows in particular are deliberately disadvantaged because they receive what is colloquially known as the ‘Widows Half’, taking a double hit, because this pension is calculated from a fraudulently underpaid original, paid to their disabled Fire Service Veteran husband, or partner.

The Firefighters were on what is known as the '92 Scheme. This is enshrined in a 1992 Statutory Instrument, No:129 The Firemen's Pensions Scheme which contains the written law relating to the administration of the Pension Scheme.

During my frustrating contacts with the Lancashire Combined Fire Authority; The Pension Regulator, and the Pensions Ombudsman (under your jurisdiction; the latter of which the Select Chair Stephen Timms MP is currently investigating); and finally I regret to say the UK Court of Appeal who it appears have joined the collective of harsh and strident efforts to de-rail me from my objective.

Writing of MP's I have received invaluable support from Mr. Tim Farron M.P who in particular has looked at the numbers of Veterans involved and the likely cost to HMT when this matter is finally rectified; a document published with his permission on my website 'The Morning Bugler'.

For all these years I have repeatedly jumped through the hoops and over obstacles many of which were invented and malignant. I have experienced obfuscation, time wasting, and deliberate attempts to time me out (wither me on my vine of life) but I remain resolute in my aim to have corrected the misdeeds that has resulted from this deliberate and criminal fraud the knowing under payment of pensions to honourable disabled Fire Service Veterans (and their Beneficiaries) who honestly paid for their pension at the rate of 11% from their wages during their many years of service.

The failure to pay these disabled Veterans their correct pensions due has had hidden consequential and direct lamentable effect on their surviving Widows and Beneficiaries, to whom food banks and supermarket 'bargains' are regularly known.

Letters of this unscrupulous practice were, at an earlier time before your appointment, sent unsolicited from the representing Barrister, Mr. John Copplestone Bruce(Life Member – Inner Temple Bar) to your current Under-Secretaries, Mr.Tomlinson MP and Mr.Opperman MP, neither of who had the common courtesy, without any sense of duty or decorum, to either acknowledge, or reply.

You rightly hold an eminent lead position in Her Majesty's Government regarding Pensions and having had no response, post your appointment, I must assume that you have deliberately not been made aware of this enduring nationwide struggle in the FRS pension community to have these great injustices corrected; at least your Under-Secretaries' 'values' are consistent.

Currently the lead claimant at the Court of Appeal Mr. F[redacted] G[redacted] also a Senior Ranking colleague has responded to an invitation to have his case reviewed by the Court of Appeal following peculiar and extraordinary circumstances which resulted in a Judge Falk having refused his initial appeal, then reflecting, and ordered a further hearing to then be sacked and replaced by a second judge Sir Timothy Fancourt who, as we all expected, then refused the appeal at this hearing. In effect denying us all our Human Right to Justice.

I feel that you should be made cognisant of all this and suggest, time allowing, you might refer to my independent website called, “The Morning Bugler” (which I alone support) where there is to be found a huge amount of information on these serious miscarriages of Justice.

Finally I attach another unsolicited letter which our barrister sent to the Master of the Rolls which is in effect a synoptic records of all these scandalous activities; I am sure you will find it useful.

Thank you for your courtesy in reading thus far; I would appreciate in breaking the ‘tradition’ of the DWP if you would be kind enough to have your PPS acknowledge receipt; even a non-committal kindly response would be welcome and encouraging to us all.

Yours Sincerely,

Paul P Burns

Divisional Fire Officer (Rtd) Grad I Fire E.

Order of Excellent Firefighter	LSGCM Exemplary Fire Service	Oklahoma Medal of Valour & Honorary Citizenship
		
Soviet Union	United Kingdom	State of Oklahoma USA

Department for Work & Pensions

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Mr Paul Burns
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Your ref: 00121

Our Ref: TO2021/25221

15 April 2021

Dear Mr Burns

Thank you for your letter of 24 March to the Secretary of State about the Firefighters pension scheme. Government Ministers receive a large volume of correspondence and they are unable to reply personally on every occasion. I have been asked to respond.

This Department is responsible for a range of Government policies but the issues you have raised fall within the remit of the Home Office. Therefore you may wish to address your concerns there.

You can contact the Home Office at Direct Communications Unit, 2 Marsham Street, London. SW1P 4DF, or by telephone on 0207 035 4848.

Alternatively, you can contact the Home Office by email at; public.enquiries@homeoffice.gov.uk.

Yours sincerely

Robert Watling
Head of the Ministerial Correspondence Team

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6th March 2021

Andrew Caton Esq.,
APS Deputy Head of Civil Service,
APS Master of the Rolls,
andrew.caton2@judiciary.uk,

Dear Caton,

For the first time in my long life I find myself writing amicus curiae to ask you to help this to a reasonable and competent resolution.

Mr. G[redacted] is receiving an ordinary non-compensatory retirement pension although retired on ill health. He is entitled to an ill health pension to compensate him for his injury and loss of earnings on forcibly being retired early on injury and so was not present to be promoted to a higher rank and higher pay. He is being denied his ill health pension as if he had voluntarily taken early retirement while fit for duty.

May I refer you to the 18th January 2021 letter, attached. I think you had kindly discussed this earlier with Mr. Burns, which may have led to the letter referred to.

What you will see is that Mr. G[redacted] has been denied appeal to the Court of Appeal, but what you will not know, any more than did the Master, is that the decision to exclude Mr G[redacted] was on the judgement of one judge being judged by another judge, both refusing permission to appeal on wrong law. Had either looked at their Rule G1 authority, relied on by the ombudsman, provided by 1992 Statutory Instrument 129, they would have seen Rule G1 is in two parts.

There is G1 (4) (a) relied on to misconstrue *'by reference to'* (the point of law on appeal) as a synonym of '*is*' in provision, so it 'is' the actual pay on last day served that is to be used in calculation of a pension, or there is Rule G1 (4) (b) providing calculation *by reference to* actual pay to identify a notional pay point on that same scale which, but for

injury, could have been the man's pay when pension contributions would normally end, on being retired at 55 or 60.

The Ombudsman and both judges were wrong in law to apply G1 (4) (a). The section specifically excludes a fireman's B3 ill health pension from its calculation on pay of the last day worked, instead, a B3 pension is to be calculated pursuant to G1 (4) (b), on notional pay rate (taken from then current scale) of the notional rank he could have achieved had he served through to normal retirement age, denied by injury for which, by statute, the respondents are liable.

The Appellant has long been mystified by the judicial failure to properly construe the B3 provision. The difficulty being that as ombudsman and then judges construed it, the B3 ill health compensatory pension is replaced by, and is made redundant to, an ordinary non compensatory B1 pension, making the Statutory B3 provision absurd, and to no legal effect, which, as you will know, can not be how legislative wording of provision can be legally construed.

Then the lights went on. On 28th October 2020, Mr Justice Fancourt, produced his "Approved Judgement" and by his ratio decidendi finally makes plain why the point of law '*by reference to*' had been misconstrued by the ombudsman, then Mrs. Justice Falk, initially, and finally by Mr. Justice Fancourt who had rightly predicted his judgement on Rule G1 but on the wrong part, G1 (4) (a), so wrongly in law.

Denied access by the letter of 18th January 2021, the judicial process is now enabling the fiduciary pension provider, the government, by its respondent servants, to continue to systematically defraud Mr G[redacted] (contrary to ss 1-4 The Fraud Act 2006 and Theft Act 1968) of his ill health pension of c£33,000 (provided by 1992 SI 129 in compensation for financial loss), paying him his accrued ordinary pension of c£21,000 (1997) – continuing.

The Respondents have unlawfully deprived Mr G[redacted] of £11,516.24 of his property in 1997 and, index linked, each year – continuing. And sadly, and irrecoverably, they have deprived him of the amenity in life his pension would have afforded him over the last 24 years.

I regret to have to say that is not all that is amiss.

The letter of 18th January purports to quote, verbatim, a Master of the Court of Appeal denying further access to justice. Yet it is so economical with the truth as to misrepresent the effect of s 54(4). It is set in absolute terms "It is not possible to appeal to a higher court (e.g. the court of appeal) against the refusal of permission to appeal - This is the effect of s. 54(4) Access to Justice Act 1999".

It tells a half truth, would you not think, denying the other 'effect' of s 54(4) (*but this subsection does not affect any right under rules of court to make a further application for permission to the same or another court)*.

It is a matter for you but I doubt a jury would accept Mr Chowdhury's explanation that to write *"Your papers were referred to a Master of the Court of Appeal who has asked me to inform you of the following*" *followed by quotation verbatim*, was merely something "inadvertently referred to". I attach his letter of 11th February 2021.

Most would see such wording as a deliberate lie, a dishonest and arbitrary and oppressive abuse of power to claim authorship of an authority not given, to add power to the lie put into the authority's mouth to deny Mr. G[redacted] access to justice, having nothing to do with the merits of his case; his papers filed in appeal months ago going unread and returned to him to end his years of struggle.

It all suggests a process with a distinct bias that has lost sight of its purpose – to deliver justice. And with such fervour as to not shrink from, if not dishonesty in public office, then undoubtedly breaches of the Civil Service Code of Conduct.

I don't know what Mr G[redacted] intends but he has, you may think, reason for being distressed by the way his case has been dealt with. But to pass on - for it gets worse.

The author of the letter attached speaks of applications to tell Mr G[redacted] he has had two bites at the cherry, so with both appeals down, he's out.

Yet, the only application made was to the High Court, which Mrs. Justice Falk dealt with by refusing permission. This was appealed. Though intended for the Court of Appeal, it was apparently sent to Falk J, who, on reading the appeal against her judgement, and on her own initiative, re-opened the matter with directions on 6th May 2020 for work to be done by both sides (the Respondents without appearance) for a hearing on 3rd July 2020.

Having refused permission nothing more was required of her. If unhappy an appellant could appeal again (the second bite). There was no point in Falk J doing as she did if not to give permission for appeal. So Mr. G[redacted] was looking forward to Mrs. Justice Falk doing what the law required of her. But he had made no second application.

But, on 2nd July 2020, Mr G[redacted] was told, with no explanation, that the fully seised Mrs. Justice Falk had been replaced by Mr Justice Fancourt, who, next day, denied permission to appeal, finding the point of law 'unarguable'

The impression Mr G[redacted] got, before he suggested the judge refer to a document, which, when handed to him, he quickly moved on from, without picking up the point at issue, was that he didn't seem to have the papers in front of him. It took his clerk some time to find it.

When eventually Mr. G[redacted] got the transcript it was missing its first 20 minutes.

The day before the judge's clerk had assured Mr. G[redacted], helpfully but without being sure of it, that he had no worries, his judge knew all about it. Thus disarmed, the load shifted

from having to try and present and argue a case, later avoided explanation by Mr Justice Fancourt, at 22 in his approved judgement, on the basis that "*The detailed provisions are highly complex and, with respect, not easy for someone who is not very technically minded to understand*, Mr G[redacted] was infinitely dismayed a few minutes into the oral hearing, to realise the judge knew nothing about it.

Mr G[redacted], already upset on being told everyone must leave the room including his wife, in what for any laymen are alien proceedings, and further dismayed on being told he must make no recording, then spoke of what mattered to him including widows on much smaller pensions than their due. Having let him have his say, Fancourt J, with no ratio decidendi given and without identifying the point of law at issue, ended the hearing by a brief judgement in which he found, whatever the point of law was, to be 'unarguable'.

Mr G[redacted] appealed the brief judgement given at the oral hearing. He heard nothing back. Now it appears that it was simply passed to Fancourt J, who produced an 'approved judgment' some 4 months later, on 28th October 2020.

It is a judgement which, but for the letter of 18th January, would have been appealed, fully satisfying CPR 52.7.2 (a). (i). (ii), and (iii). criteria and the delay has not been Mr G[redacted].

Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67, defined when the Court would intervene on: *"material error in law, making a critical finding of fact which has no basis in the evidence, demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence".* (66).

Mr justice Fancourt is in error in his 'approved judgment' in all ways set out by Lord Reed. And having predicated his judgment wrongly in law renders the whole of B3 provision reductio ad absurdam

In his letter of letter of 11th. February 2021 (attached) Mr. Chowdhury offers confirmation, by a Lady or Lord Justice of the order denying Mr. G[redacted] any appeal, but, on the papers seen by your jurisdiction lawyer, without the 'Approved Judgement' and its appeal making plain that what reads well is not the law, they could only confirm the order, on an assumption made in error they could not detect, that the orders made in the, lower court were right in law – when both were materially wrong in law.

May I suggest, with respect, that being more complex than simply predicating a judgement wrongly in law, this is a case for the Court of Appeal, to consider Mr. G[redacted] Appeal against the Approved Judgement of Mr Justice Fancourt, to give full and precise directions on the way to apply the law to end a long instutionalised practice of defrauding pensioners, a matter quite as much in need of remedy as 'McCloud' remedied Judge's pensions. The appeal takes the matter through to B3 ill health templates to avoid future error.

On the assumption that the Master of the Rolls will wish justice to be done, It seems to me that the only sensible way forward is to move on and accept, flawed or not, the order now in being and for the Court of Appeal to re-open Mr G[redacted] case pursuant to CPR 52.30

The test being that:
(a) The grounds of appeal had not been sufficiently confronted and dealt with, to the extent that the process had been critically undermined.
(b) There is a powerful probability that permission to appeal would have been granted if the judge had dealt adequately with the grounds
R(Goring-on-Thames Parish Council v South Oxfordshire District Council (2018) EWCA Civ. 860

Both judges citing Rule G1 as the law on which they relied in construing 'by reference to', but neither having understood that the B3 pension being provided 'by reference to' being excluded from the part of G1 they wrongly applied [G1 (4) (a)], meant that the grounds of appeal were not confronted adequately, or at all, and were not dealt with, critically undermining the process.

As for permission. Mr Justice Maguire (in false start in Belfast, on careless advice from the pensions ombudsman) declined jurisdiction but urged the Appellant not to give up on the 'very winnable case'. The full appeal had been filed in September 2019 and there were two hearings.

It is assumed that Mrs. Justice Falk, having refused permission on 2nd April 2021, re-engaged on 6th May 2020, after reading the appeal against her written refusal to give permission to appeal, precisely setting out the issue and contentions, though not the law behind it, only because she intended to grant permission to appeal - but was denied the opportunity on the case being taken from her. Which would seem to be irregular.

Had Mr. Justice Fancourt, who replaced Mrs. Justice Falk, confronted the law and dealt adequately with the grounds and not misdirected himself in law he would have granted permission to appeal. But denying confrontation he misconstrued the words of provision.

Mr G[redacted] also has claims under HRA (quiet enjoyment) and the Equality Act (denied ill health pension).

But that is not quite the end of it.

This is no mere error for correction as in the recent Judges' 'McCloud' case. This retention of monies remains at the hands of a pension provider who, far from simply being in breach of fiduciary duty, have long acted in an arbitrary and oppressive abuse of power as servants of the government.

When asked by Mr G[redacted] why he was being paid just his ordinary pension, the Chief Fire Officer, not moved by fiduciary duty to seek a judicial review, denied legal entitlement to

compensation on the laymen basis of "*I am unable to see any reference in the Statutory Instrument to this being compensation"*

From the beginning the Respondents have suppressed the Home Office Commentary to their SI and subsequently misrepresented its guidance to the earlier Lay Ombudsman who denied Mr. Burns relief on the same point, misconstruing 'by reference to' to mean 'is' so misapplying Rule G1 (4) (a) instead of (b) .

The Court of Appeal may well wish to mark such egregious conduct by exemplary damages (dicta Lord Devlin in Rookes v Barnard (1964) UKHL 1.)

You mention Mr Burns. If there is to be justice for Mr G[redacted], may I suggest for economy of system resource and judicial time that Paul Burns's case, which is on precisely the same facts and law, be linked in to set a two case template to pre-empt more cases.

Should this recommend itself, Mr Burns could file the correct forms and pay the fees and in a short linking document appeal, sui generis, G[redacted].

If it can be done may I suggest this letter be taken to be an application under CPR52.30 to ask the Court of Appeal to re-open the case out of time to consider Mr. G[redacted] Appeal against Mr Justice Fancourt's Approved Judgement.

Perhaps you would be so kind as to let me know what is decided and I would count it a courtesy to know you have received this. I am grateful for your kind consideration when I well understand that Covid is, no doubt, causing immense difficulty. Indeed, I would think that if matters can now be satisfactorily resolved the distress suffered may fall away.

I am so sorry to have written at such length and to have troubled you, but I hope that bringing this problem to you in some detail, while still nascent, is helpful.

Yours sincerely,

John Bruce.