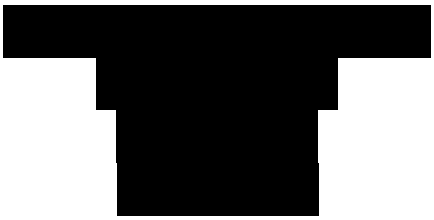

27th April, 2021.

Private and Personal To:

The Rt Hon Lord Reed of Allermuir,
President of the Supreme Court of the United Kingdom.

Parliament Square,
London SW1P 3BD .

My Ref: FG124 Reed; G-v-LCFA.
Your Ref: 2020/PI/10670.

F[redacted] M[redacted] G[redacted]
~V~
Lancashire Fire & Rescue Authority

My Lord President,

I apologise in advance for presenting these documents directly to you.

I am afraid that I have lost trust in the judiciary's administration and in particular the Registry department at the Court of Appeal.

From the very outset of my journey for justice I have been subjected to all manner of obstructions, some designed, some deliberate, some invented, but all intended to bring about closure of this case.

The rocky road to the Supreme Court has left me bemused at times but still determined to bring about the aim of this long action which is to secure justice for those Fire Service Veterans, including myself, their Widows and Beneficiaries who have been paid the wrong pensions.

In my line of work trust was, and is, a vital element.

If that element was to become breached the Service would fail in its duty to save life, save property, and render humanitarian services.

My faith in the democratic structures that knit our country together has been severely dented; not by their principals but unfortunately by most of the people I have had dealings with within those structures.

Along the way, Sir, I have been made to feel unwelcome, a nuisance, a distraction, a source of work that no one wanted, and to my great disappointment I have experienced a lack of common courtesy from those in authority who ought to know better.

Having said that, the shining light was my experience in the Court of Sir Paul Maguire in Belfast who, together with the Court staff, were welcoming and helpful in every way.

My belief is that no one and no organisation should be, or is, above the law. It is with that principle in mind that I submit these documents to the Supreme Court for your consideration.

If I can in any manner help you to advance the cause of Justice by, for example, providing additional documentation please do not hesitate to contact me. I will treat such correspondence in the strictest confidence.

Yours Sincerely,

Fr[redacted] M G[redacted] M.I.Fire E.

Litigant-in-Person.

In the Supreme Court of the United Kingdom

PTA Form

This application for permission to appeal is filed on behalf of F[redacted] M[redacted] G[redacted] .....

On appeal from

Court Court of Appeal
Decision being appealed dated 8th April 2021
Judges Fancourt .....

In that court the proceedings were between

F[redacted] M[redacted] G[redacted] (Litigant-in-Person)

(Appellant/Respondent in the Supreme Court)

——V——

Lancashire Combined Fire Authority

(Appellant/Respondent in the Supreme Court)

Case Number 2020/PI/10670

This form was filed on 27 / APR / 2021
(D D / M M M / Y Y Y Y)

Appellant's solicitors in the Supreme Court

Litigant-in-Person

Respondent's solicitors in the Supreme Court

Mr.Mark Nolan Clerk to Fire Authority

Appellant

Appellant's full name: F[redacted] M[redacted] G[redacted]

Original status: ☒ Claimant/Pursuer ☐ Defendant/Defender ☐ Petitioner ☐ Respondent

Solicitor

Name: Litigant-in-Person

Address: [redacted]

Telephone no.: [redacted]

Fax no.:

DX no.:

Postcode: [redacted]

Ref.: FG 02 123 SC

Email: [redacted]

How would you prefer us to communicate with you?

☐ DX ☒ Email

☒ Post ☐ Other *(please specify)*

Is the appellant in receipt of public funding/legal aid?

☐ Yes ☒ No

If Yes, please give the certificate number

Counsel

Name: Mr John Copplestone-Bruce (Inner Temple) Pro Bono

Address: [redacted]

Telephone no.: [redacted]

Fax no.:

DX no.:

Postcode: PR2 9TH

Email: [redacted]

Counsel

Name

Address

Telephone no.

Fax no.

DX no.

Postcode

Email

Respondent

Respondent's full name: Lancashire Combined Fire Authority

Original status

☐ Claimant/ Pursuer ☐ Defendant/ Defender

☐ Petitioner ☒ Respondent

Solicitor

Name: Mr.Mark Nolan

Address:
Mr.Mark Nolan
Clerk to Fire Authority
LFRS SHQ

Telephone no. 01772862545

Fax no.

DX no.

Postcode: PR2 3LH

Ref.

Email: justinjohnston@lancsfirerescue.org.uk Chief Fire Officer

How would you prefer us to communicate with you?

☐ DX ☒ Email

☒ Post ☐ Other *(please specify)*

Is the respondent in receipt of public funding/legal aid?

☐ Yes ☒ No

If Yes, please give the certificate number

Counsel

Name: Not Known

Address:

Telephone no.:

Fax no.:

DX no.:

Postcode:

Email:

Counsel

Name:

Address:

Telephone no.:

Fax no.:

DX no.:

Postcode:

Email:

Decision being appealed

Name of Court: Court of Appeal

Names of Judges: Justices Fancourt & Newey

Date of order/ Interlocutor/decision: 08 / APR / 2021

Information about the decision being appealed

You should attach the following on separate sheets

This should include

- Narrative of the facts
- Statutory framework
- Chronology of proceedings
- Relevant orders made in the Courts below
- Issues before the Court appealed from
- Treatment of issues by the Court appealed from
- Proposed grounds of appeal
- Reasons why permission to appeal should be granted

Other information about the appeal

Are you applying for an extension of time?

☐ Yes ■ No

If Yes, please explain why

What order are you asking the Supreme Court to make?

Order being appealed

■ set aside ☐ vary

Original order

■ set aside ☐ restore ☐ vary

Does the appeal raise issues under the:

Human Rights Act 1998?

■ Yes ☐ No

Are you seeking a declaration of incompatibility?

■ Yes ☐ No

Are you challenging an act of a public authority?

■ Yes ☐ No

If you have answered Yes to any of the questions above please give details below:

See 'Second Addendum' in Bundle

Court's devolution jurisdiction?

☐ Yes ■ No

If Yes, please give details below:

Are you asking the Supreme Court to:

depart from one of its own decisions or from one made by the House of Lords?

☐ Yes ■ No

If Yes, please give details below:

depart from European Union Law?

☐ Yes ■ No

If Yes, please give details below:

Will you or the respondent request an expedited hearing?

■ Yes ☐ No

If Yes, please give details below:

LiP ~ Age (77) and disablement.

Certificate of Service

Either complete this section or attach a separate certificate

The date on which this form was served on the

1st Respondent 27 / APR / 2021 (D D / M M M / Y Y Y Y)

2nd Respondent ___ / ___ / ____ (D D / M M M / Y Y Y Y)

I certify that this document was served on

27th April 2021

by

Appellant ~ F[redacted] M[redacted] G[redacted]

by the following method

Email & Recorded Delivery

Signature

Other relevant information

Neutral citation of the judgment appealed against e.g. [2009] EWCA Civ 95

References to Law Report in which any relevant judgment is reported.

Contained in 'Second Addendum' in Bundle

Subject matter catchwords for indexing.

'clearly got it wrong'

Please return your completed form to:

The Supreme Court of the United Kingdom, Parliament Square, London SW1P 3BD

DX 157230 Parliament Square 4

Telephone: 020 7960 1991/1992 Fax: 020 7960 1901

email: registry@supremecourt.uk

www.supremecourt.uk

IN THE SUPREME COURT

From

COURT OF APPEAL
ENGLAND AND WALES
CIVIL DIVISION

Case No: 2020/PI/10670

BETWEEN

F[redacted] M[redacted] G[redacted]
Appellant (Litigant-in-Person)

~V~

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

LEAVE TO RE-OPEN *FIRST* APPEAL
AGAINST
LORD JUSTICE SIR TIMOTHY FANCOURT

INTER ALIA

INVITATION TO 'REVIEW'
BY
MASTER MEACHER

DENIAL OF THE *FIRST* APPEAL
BY
LORD JUSTICE NEWEY

APPLICATION TO SUPREME COURT
UNDER
EXTRAORDINARY CIRCUMSTANCES

SECOND ADDENDUM

RES IPSA LOQUITOR

Executive Summary.

1. Section 54(4) of the Access to Justice Act denying him a right to appeal, save by way of the rules of court , the Appellant, a Litigant-in-Person, seeks Leave to Re-Open an Approved Judgement by first instance Mr. Justice Fancourt and second instance Mr. Justice Newey pursuant to, CPR 52.17,(1),(2), or CPR 52.30, otherwise, as Justice requires.

2. The Appellant appeals to remedy "errors in law", Dicta Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67; the Respondent unlawfully denying him some £11,500 of his pension due in 1998 (continuing), for Supreme Court correction.

3. By reason of misapplication of the law the Appellant is being paid a non-compensatory Rule B1 Ordinary Pension under the guise of it satisfying his enhanced compensating Rule B3 ill-Health Pension (Awarded by the Respondent) for financial loss provided for him by the 1992 Fireman's Pension Scheme Order, Statutory Instrument No: 129, on being compulsorily discharged from the Fire and Rescue Service, 5 years early, through a no-fault, 'qualifying' injury.

4. The Deputy Pensions Ombudsman (on an Ombudsman precedent ~2011~ after willful misrepresentation by the Respondents of the Home Office 'Commentary' to the PO); then on appeal to Mrs Justice Falk, (who, initially, adopted the Deputy Ombudsman's 'Determination'); and latterly Mr Justice Fancourt, have all erred in law, applying the wrong law within the Statutory Instrument, Rule G1, to the Appellant's Rule B3 ill-Health pension, enabling the Respondents to continue to defraud him.

5. Apart from the inconvenience the delay causes the Appellant, where the essence of time is declining, the Respondents, making no appearances, are not prejudiced by it.

6. The Appellant has caused no delay, always acting in good faith seeking no advantage, and thus the matter in law, remains 'at large' for the Supreme Appellate Court.

7. The Appellant now appeals to the Supreme Court against the decisions and actions of the Judicature of the lower Court, the Court of Appeal.

Mr. Justice Sir Timothy Fancourt.

8. Following the exemplary analysis of the advising Pro Bono barrister, Mr. John Copplestone–Bruce (Life Member ~ Inner Temple), of Mr. Justice Fancourt's Approved Judgement it is clear to any lay reader that the learned judge simply got it wrong; not on a Point-of-Law, here or there, but from beginning to end, in toto.

9. In particular, and repeatedly, Mr.Justice Fancourt's findings of *his* facts of law were unsupported by the Statutory law contained within the evidence presented by the Appellant, which were critical to his case.

Master Meacher ~ Mrs. Justice Rimmer-Bancroft ~ Mr. Justice Newey.

10. The Appellant was invited by Master Meacher (or did she?) at the hand of Mr. Chowdhury Registry Manager and his colleague Mr.Cobourn to have a 'review' of his Appeal (Bundle-Doc 17), he read it, as it was intended to be read; an offer of a 'review' which he accepted as a Litigant-in-Person on its face value; no attempt was made by Mr. Chowdhury/Cobourn to provide any clarification to the Appellant what this procedural language might actually mean; they could not do so because they were exploiting the ignorance of an LiP.

11. Furthermore, it is clear that Mrs.Angus, 'a jurisdictional lawyer', claimed earlier in 2020 writing to the Appellant that she had placed all his Appeal papers before Mrs Justice Rimmer-Bancroft when, in falsehood, she had not. An alleged act, later challenged by the named Justice, which prompted the Angus 'apology'?

12. Unwittingly the Appellant then wrote to Master Meacher and MR Vos confirming his acceptance for his Appeal to be reviewed (Bundle-Docs 18,20); although previously he had received an acknowledgement to an earlier letter from the MR(via Mr. Caton) 'that there was nothing he could do' (Bundle -Doc15).

13. Mr.Justice Newey then became engaged, or so Registry stated, not, as the Appellant believed in a total case review, but to review the 'Directions' which had been ongoing since the 4th February 2020 when the case was first issued at the High Court.

14. The next questions arising given the background of the Rimmer-Bancroft falsehood did in fact Mr. Justice Newey actually review all, or any, of these 'Directions' possibly because he was unaware of the plethora of 'Directions' which preceded his involvement, or was he in fact never engaged at all?

15. Whilst the Appellant waited patiently in hope for a 'review' to advance his Appeal to Justice it finally came in the form of an oddly abrupt statement issued by the Court of Appeal Registry …

> *"The Court of Appeal has no jurisdiction to entertain an appeal from either Falk J or Fancourt J. The papers should not be issued.".*

16. What is clear was that there were ample evidential grounds for a fair minded man to conclude that the named staff at the CoA Registry were determined over an extended period of time to pervert the course of Justice and did not hesitate on no less than three occasions to use any sleight of hand, subterfuge, and unforgivably to exploit the obvious ignorance of a Litigant-in-Person and did not hesitate to manipulate at least three Judges for their own highly questionable purposes.

17. Now returning to Mr.Justice Fancroft, an Appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the *whole* of the evidence into his consideration: *Thomas v Thomas* 1947 SC (HL) 45, 61; [1947] AC 484, 492, per Lord Simonds; see also *Housen v Nikolaisen* [2002] 2 SCR 235, para 72; though in the case of Mr. Justice Fancourt the tape of the brief Hearing mitigates against this, given his obvious lack of time devoted to preparedness and/or the brief Court hearing.

18. The Supreme Court, the UK Court of last resort, could therefore set aside a judgment, on the basis that Mr.Justice Fancroft failed to give the law and evidence full considered balanced evaluation, and as a consequence his decisions were both irrational and insupportable.

19. The Supreme Court has to be satisfied, in the first instance, that the decision given by Mr. Justice Fancroft was based on full judicial scrutiny of the Appellant's evidential facts and the law; and in the second instance, it has to be further satisfied that Mr. Justice Fancroft did not fail to take full advantage of examining the case, the law, and the Appellant, though the brevity of the Hearing mitigates against that, where a second Hearing could have been used to advantage in what is a relatively complex case of national significance and public interest but by failing to follow through Mr. Justice Fancourt misdirected and disadvantaged himself and more importantly the Appellant and as a consequence, the matter has now become at large for the Supreme Court.

Opinions (Dicta) of Legal Significance ~ 'Plainly Wrong'

Historical Dicta and Quotes by Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67.

20. A dictum from the opinion of Lord President Hamilton in *Hamilton v Allied Domecq plc* [2005] CSIH 74; 2006 SC 221, para 85, concerned a situation where "findings of fact are unsupported by the evidence and are critical to the decision of the case". In the Appellant's case Mr. Justice Fancourt simply ignored the countless supporting Points-of-Law and the facts of the Appeal in order to fulfil his preconceived criteria to reject the Appeal.

21. The dictum of Lord Macmillan in *Thomas v Thomas* 1947 SC (HL) 45, 59; [1947] AC 484, 491, outlined where, after mentioning some specific errors which might justify the intervention of an Appellate Court, his Lordship added that the trial judge may be shown to "otherwise to have gone plainly wrong".

22. This was also cited by Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45; 2004 SC (HL) 1, para 16, where he in turn also cited Lord Shaw of Dunfermline's statement in *Clarke v Edinburgh and District Tramways Co Ltd* 1919 SC (HL) 35, 37 that the duty of the Appellate Court was to ask itself whether it was in a position to come to a clear conclusion that the trial judge was "plainly wrong".

23. Given that the Supreme Court has correctly identified that an Appellate Court can interfere where it is satisfied that the trial judge has gone "plainly wrong", and considered that that this criterion is met in the present Appellant's case, there may be some value in considering the meaning of that phrase. There is a risk that it may be misunderstood.

    The adverb "plainly" does not refer to the degree of confidence felt by the Appellate Court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the Appellate Court considers that it would have reached a different conclusion.
    What matters is whether the decision under Appeal is one that no reasonable judge could have reached.

24. In *Thomas* itself, Lord Thankerton, with whose reasoning Lord Macmillan, Lord Simonds and Lord du Parcq agreed, said that in the absence of a misdirection of himself by the trial judge, an Appellate Court which was disposed to come to a different conclusion on the evidence should not do so "unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witness (concerning which there was itself a significant question regarding the accuracy of the brief Court Tape finally produced for the Fancourt J Hearing) could not be sufficient to explain or justify the trial judge's conclusion": 1947 SC (HL) 45, 54; [1947] AC 484, 487-488.

25. Lord du Parcq's speech is to similar effect. Distinguishing the instant case from "those very rare occasions" on which an Appellate Court would be justified in finding that the trial judge had formed a wrong opinion, he said:
"There are, no doubt, cases in which it is proper to say, after reading the printed record, that, after making allowance for possible exaggeration and giving full weight to the judge's estimate of the witnesses, no conclusion is possible except that his decision was wrong." (1947 SC (HL) 45, 63; [1947] AC 484, 493) emphasised the need for the Appellate Court to consider whether the trial judge's decision could reasonably be regarded as justified:
"If there is no evidence to support a particular conclusion (and this is really a question of law), the Appellate Court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a hearing which heard the witness, the Appellate Court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight." (1947 SC (HL) 45, 47; [1947] AC 484, 486).

26. These dicta are couched in different nuanced language to that which a layman Appellant(Litigant-in-Person) might use, but they are to the same general effect, and assist in understanding what Lord Macmillan is likely to have intended when he said that the trial judge might be shown "otherwise to have gone plainly wrong".

This is consistent with the approach adopted by Lord Thankerton, in particular, the phrase can be understood as signifying that the decision of the trial judge cannot reasonably be explained or justified.

27. It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material errors of law; or the making of a critical finding of fact which has no basis in the evidence; or a demonstrable misunderstanding of relevant evidence; or a demonstrable failure to consider relevant evidence; an Appellate Court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.

28. In the extraordinary circumstances both surrounding and in this presented Appeal it is the Appellant's opinion that there is a sound proper basis for the Supreme Court to intervene by concluding that not only did Mr. Justice Fancourt repeatedly misdirect himself on the Points-of-Law submitted to him but he failed to give satisfactory reasons for the factual conclusions which he reached (on the truncated the evidence he chose to address in an all too brief Hearing) and thus for the Appellant and the Supreme Court to conclude that he had 'plainly gone wrong'.

29. Where, as here, a single judge of the Court of Appeal refuses an application for permission to appeal on specific grounds, that is generally the end of the matter.

Nevertheless, CPR Part 52.17(1) and (2) enables the Court of Appeal to reopen the final determination of an application for permission to appeal if (cumulative):

(a) It is necessary to do so in order to avoid real injustice; it is clear on the record of the brief proceedings of the Appellant's case that this particular aspect was simply not considered by Mr. Justice Fancourt and expressions of sad apology simply will not 'cut the mustard' where detailed Points-of-Law are concerned and especially in these exceptional circumstances;

(b) The circumstances are exceptional and make it appropriate to reopen the appeal; firstly, the removal of an engaged Justice (Falk J) without explanation at the last minute prior to a Hearing; secondly the extraordinary misconduct of the Registry Manager and certain named staff; and thirdly the fact that the Judge of first instance 'plainly got it wrong' are all exceptional (if not appalling) circumstances in this case;

(c) There appears to be no alternative effective remedy at the lower Court of Appeal, nor does it desire so, leading to a fair-minded and informed observer to conclude that there is a real possibility, indeed a real danger, that the lower Court of Appeal had by the misconduct of certain of its staff given the appearance of bias coupled with judicially unauthorised acts leading to a denial of the fundamental Human Right to Justice.

30. The Appellant has the right under Article 6 of the Human Rights Act 1998 to a transparent explanation in detail of how the Court of Appeal reached the judicial decisions it did, and by whom; and by failing to do so, in all these extraordinary circumstances, they have denied the Appellant the right to a fair trial and his Human Right to Justice.

31. The lower Court of Appeal have refused to properly and assiduously address the relevant Law and CPR in complete transparency in its fundamental duty to Public interest and Opinion and in avoiding a real injustice the Appellant's Appeal should be placed before the transparent supreme Appellate Court at the UK Supreme Court.

Mr.F.M.G[redacted] M.I.Fire.E

Signed this 27TH Day April 2021_____

Litigant-in-Person.

IN THE COURT OF APPEAL
ENGLAND AND WALES
CIVIL DIVISON. Case No: 2020/PI/10670

BETWEEN:

F[redacted]S M[redacted] G[redacted]
Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

LEAVE TO APPEAL OUT OF TIME

Nutshell.

1. Section 54(4) of the Access to Justice Act denying him a right to appeal, save by way of the rules of court, the Appellant, a Litigant-in-Person, seeks permission to Appeal an Approved Judgement out of time pursuant to, CPR 52.15, or otherwise, as justice requires.

2. The Appellant appeals to remedy "errors in law", Dicta Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67; the Respondent unlawfully denying him some £11,500 of his pension due in 1998 (continuing), for Court of Appeal correction.

3. By reason of misapplication of the law the Appellant is being paid a non-compensatory Rule B1 Ordinary pension under the guise of it satisfying his compensatory Rule B3 ill-health pension for financial loss provided for him by the Fireman's Pension Scheme Order, SI 1992 No. 129, [SI] on being compulsorily discharged from the Fire Service early through a no-fault 'qualifying' injury.

4. Apart from difficulties the delay causes the Appellant, the Respondents, making no appearance, are not prejudiced by it. But the Appellant has not caused any delay.

5. The Deputy Ombudsman (on an Ombudsman precedent after misrepresentation by the Respondents of the Home Office Commentary to the SI), then on appeal to Mrs Justice Falk, (who, initially, adopted the Deputy Ombudsman's Adjudication), and

latterly Mr Justice Fancourt, have all applied the wrong law within SI, Rule G1, to the Appellants B3 pension, enabling the Respondents to continue to defraud him.

Delay.

6. (i) The Appellant filed his Appeal against the Ombudsman's Adjudication on a point of law of 4th. February 2020.

   (ii) On 2nd April 2020, the Honourable Mrs. Justice Falk wrongly found the Appellant's point of law 'a nonsense', and that '*by reference to'* was to be taken to mean '*is*', but with ratio decidendi insufficient to know, beyond whim, her legal basis for so deciding.

   (iii) With the point of law decided against him, the Appellant appealed to the Court of Appeal. However, it appears that it was diverted back to Mrs. Justice Falk who then, of her own volition, re-engaged to give Directions on 6th May 2020 for work to be done, and to set a hearing for 3rd July 2020.

   (iv) With nothing more required of her after her refusal of permission, her re-engagement and Orders suggests she intended to grant permission to confront and deal with 'the point of law' on 3rd July 2020.

   (v) On the 2nd July 2020, without explanation, the Appellant was told the hearing would not now be before the fully seised, Mrs. Justice Falk, but Mr. Justice Fancourt.

   (vi) On 3rd July 2020, albeit without identifying or touching on the 'point of law', Mr. Justice Fancourt found it to be 'unarguable'. It follows, whether he knew it or not, that construing 'by reference to' as 'is', in the context of the SI, turns its provision into a reductio ad absurdam.
   Not that that is apparent until a later stage in construction of priorities, of what the SI requires to be differing amounts, which the synonym construction denies.

   (vii) Fancourt J having decided the point at law to be unarguable, the Appellant again made a full appeal to the Court of Appeal. It appears this was administratively mislaid, never issued, but returned to the Appellant on 18th January 2020.

   (viii) In any event, Fancourt J subsequently delivered a written, fully reasoned "Approved Judgement" on 28th October 2020 (17 weeks later), in which it became plain why the point at law '*by reference to*' has been persistently wrongly construed as a synonym for '*is'* in SI provision by Sch. 2, Pt. III, Paragraph 5 (2) of Rule B3, rendering reductio ad absurdam all the Rule B3 ill-health compensatory provision. Making it all redundant to become a non-compensatory Rule B1 Ordinary pension provision.

7. The Deputy Ombudsman, Falk J and Fancourt J had all quoted Rule G1 rightly as their authority, SI Rule G1 (4) does, indeed, provide the day on which pay is to be taken on which to calculate pension but all were wrong in applying Rule 1 (4) (a) to the Rule B3 ill-health provision, which is excluded from the specifying list to be calculated under its provision; Rule B3 falling with all else, under Rule G1(4)(b).

8. Finally in that approved judgment it becomes clear that Respondents, Deputy Ombudsman, Falk J and Fancourt J could only construe 'by reference to' as 'is' by wrongly applying Rule G1 (4) (a) to the Rule B3 ill-health provision instead of G1 (4) (b).

9. It is an error in law of public importance. It is causing very real injustice. It is also an error of such magnitude as to entirely deny any effect to the compensating Statutory B3 ill-health pension, to which the Appellant was entitled as a Firefighter compulsorily discharged from Service through a no-fault 'qualifying' injury, for which the Respondents are statutorily liable. In legal effect, the misconstruction renders the statutory provision meaningless, a reductio ad absurdam.

10. In a word the Respondents have systematically been defrauding the Appellant of the whole of his compensating Rule B3 ill-health pension, under the deception that a non-compensatory fully accrued Rule B1 Ordinary pension was his compensatory Rule B3 ill-health pension, since 1998, continuing.

11. To facilitate the fraud the Respondents suppressed, the SI promulgating authority's plain language Home Office Commentary, and misrepresented it to the Ombudsman.

12. Being wrong in law the Appellant again Appeals to the Court of Appeal. Each Judge misapplied the law in 1992 Statutory Instrument No 129.

13. The Appellant received a letter on 2nd January 2021 denying leave to appeal Falk J on 2nd April 2020.

14. The Appellant has only ever made the one application to a Judge in the High Court in England. Mr. Justice Fancourt was in error to think the hearing on 3rd July was on a Second Application by the Appellant, it was not. It was a hearing on the first application first refused, but then re-opened, of her own volition, by Mrs Justice Falk.

15. If required the Appellant seeks leave to Appeal the Approved Judgement of the Honourable Mr. Justice Fancourt, he being so manifestly wrong in law as to render it a reductio ad absurdam permitting the Respondents, his fiduciary pension provider, to continue to defraud the Appellant his Rule B3 pension amount to which, by law, he became entitled in 1998 – continuing.

Mr. F[redacted] M[redacted] G[redacted].
Litigant-in-Person

Signed this 1st Day April 2021_____.

John M. Copplestone-Bruce
Inner Temple (PB).

IN THE COURT OF APPEAL
ENGLAND AND WALES
CIVIL DIVISON. Case No: 2020/PI/10670

BETWEEN:

F[redacted] M[redacted] G[redacted]
Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

GROUNDS OF APPEAL

1. Sec 54(4) of the Access to Justice Act 1999 acting as no bar to justice where the rules provide, the Appellant, a Litigant-in-Person, understands CPR 52 to deny interference by the Court of Appeal unless a judge had gone 'plainly wrong', meaning material decisions cannot be reasonably explained or justified.

2. Mr Justice Fancourt, in his 'Approved Judgement' dated 3rd July 2020, delivered on 28th October 2020 (17 weeks), has gone 'plainly wrong' in a variety of the ways, all within material grounds for appeal found by Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67, to be *"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".* (Paragraph 66).

3. Fancourt J introduced many errors of construction in the Approved Judgement (note Appeal) not hitherto understood to be problematic. But many are errors born of seeking consistency within a judgement predicted on the wrong law, which explains the misconstruction by Fancourt J in misdirecting himself in law to find '*by reference to',* to mean *'is',* or *'using'.*

4. Why (the Respondents; Deputy Ombudsman; Falk J) and Fancourt J, orally on 3rd July 2020, all construed *'by reference to'* wrongly as a synonym for *'is'* was unclear because 'nonsense' or 'unarguable' is insufficient ratio decidendi to know why they misconstrued, until, finally, the lights went on with the 'Approved Judgement' delivered by Fancourt J on 28th October 2020.

5. Fancourt J (at al) rightly relies on Rule G1 to provide the day, on which to take pay, on which to calculate pension, but he wrongly applied (wittingly or not) section, G 1 (4) (a) to be the Appellant's Rule B3 pension. Wrongly, because the compensating Rule B3 ill-health pension is specifically excluded by (a) from its provision; though it does apply to a Rule B4 Injury Award. Instead, a Rule B3 award falls under G1 (4) (b) for calculation. A Correct application of G1 (4) (b), and other provision in the SI, denies – absolutely - taking '*by reference to',* to mean *'is',* or *'using'*. Correct construction avoids the absurdity the synonym creates.

6. By his misconstruction Fancourt J renders provision made by Fire Service Pensions legislation, 1992 Statutory Instrument No129 [SI], reductio ad absurdam, leaving the Court of Appeal no option but to allow the Appeal. And in so doing correctly construe the law on a matter of public importance, to avoid a *mischief* (Dicta, Lord Coke in Heyden's case (1584) 76 ER 637).

7. In this case, of a public body denying statutory provision to calculate and pay pensions, as prescribed by law the fiduciary Respondents, servants, or agents of the government, have been systematically deceiving and defrauding their pensioner, the Appellant, since 1998 when he was compulsorily discharged from the through a no-fault 'qualifying' injury – continuing.

8. Apropos the question of promotion in Rank in the Appellant's present Appeal, *Thomas v Thomas* 1947 SC (HL) 45, 59; [1947] AC 484, 491, is on point, dicta Viscount Simon *"If there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate so to decide".* Fancourt J, entering the arena, found against evidence, with which the Respondents took no issue that, but for injury, the Appellant would have been promoted.

9. Fancourt J so construed the SI, Rule B3 ill health pension provision as to render to no effect, formulaic Paragraph 4 of Rule B3 provision, denying statutory requirement to provide.

10. The Appellant appeals pursuant to CPR 52.7. (2) (a), on the grounds:

(i) That the Appeal has a real chance of success, and;

(ii) That it raises important matters of pubic principle, that Courts construe legislative provision in accordance and consistent with law and settled legal principles including, to so construe the law that Her Majesty's Government honour its statutory, so contractual, pension obligations to its servants, the Appellant's case being, in part, mutatis mutandis, The Lord Chancellor & Anor v McCloud (2018) EWCA Civil.

11. And the Appellant appeals pursuant to CPR 52.7 (2) (b), there being other compelling reasons for the Court to hear it:

- No English Court can be seen to favour arbitrary and oppressive conduct by servants or agents of Her Majesty's Government to deny lawful provision of pension due;

- No English Court can be seen to condone fraudulent practice;
- Should a judge enter the arena, the Court of Appeal must be seen to intervene.

12. The Appellant appeals to avoid a 'real injustice' without other remedy (CPR 52 3 (1) (a)) :

(i) He is just being paid a fully accrued before injury, non-compensatory, Rule B1 Ordinary pension in substitution when he is entitled (by an original statutory decision of the Respondent) to be paid an enhanced compensatory Rule B3 ill-health pension having been compulsorily discharged through a no-fault 'qualifying' injury;

(ii) He has long been defrauded his Rule B3 enhancement of £11,516.24 (index linked) to compensate him for his financial loss first falling due in 1998 – continuing;

(III) His pension - His 'property' being long wrongfully retained (more each month) in an arbitrary and oppressive abuse of power by the Respondents, servants of the government over which he has no control, or remedy, save intervention by the Court of Appeal, the High Court having made material errors in law.

13. The Respondents are in breach of the Human Rights Act 1998, Schedule 1 Part ll, The First Protocol, Article 1 providing that, "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".

Mr. F[redacted] M[redacted] G[redacted]
Litigant-in-Person

Signed this 1st Day April 2021_____.

John M. Copplestone-Bruce Inner Temple (PB).

IN THE COURT OF APPEAL

ENGLAND AND WALES.

CIVIL DIVISION

BETWEEN:

F[redacted] M[redacted] G[redacted]
Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

APPEAL

Nutshell.

1. The Appellant's Fire & Rescue Service employer and fiduciary pension provider, on misconstruing provision to reductio ad absurdam, are paying him an accrued, non-compensatory, Rule B1 Ordinary pension, denying him his enhanced compensatory Rule B3 ill-health pension, provided by 1992 Statutory Instrument No.129 [SI] in compensation for his financial loss, to which he became entitled when compulsorily discharged with a 'qualifying' injury, for which the Respondents are statutorily liable.

2. The Respondent's Chief Fire Officer, seeking neither counsel's opinion nor judicial review explaining "*I am unable to see any reference in the Statutory Instrument to this being compensation".* The Respondents have entered no appearance.

3. In effect the Appellant pension was wrongly calculated in 1998 at £21,936 (B1), instead of his entitlement to £33,452.24 (B3 subsuming B1), defrauding the Appellant his B3 pension of £11,516.24 in 1998, and every year since - index linked.

Law 'bull point.'

1992 SI No:129, Rule G1(4) provides the date on which to take pay, to calculate pension:

> *"(a) for the purposes of rules B 4 (injury award), C2 (spouse's special award), C7 (spouse's award where no other award payable), D2 (child's special allowance), D3 (child's special gratuity) and E2 (adult dependent relative's special pension), the*

date of the person's last day of service as a regular firefighter, and '
(b)for all other purposes, the date of his last day of service in a period during which pension contributions were payable under Rule G2".

(i) In his Approved Judgement (AJ) at AJ 19, Fancourt J finds "*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"*. A notional retirement pension is a Rule B3 provision. In common with those before him, Mr Justice Fancourt refers to 'Rule G1' several times, but never which part he had in mind.

(ii) Perhaps, on simple mistake of misreading D3 as B3, or on taking application of 'Rule G1' on trust from those before him, Fancourt J did not consider (a) or (b) adequately, or at all, before, unwittingly, predicating his whole judgement wrongly in law on Rule G1 (4) (a). Unwittingly, of course, for otherwise would be to conspire to defraud;

(iii) Rule B3 falls within 'for all other purposes" to be calculated under Rule G1 (4) (b) on the APP paid on the *last day of service in a period during which pension contributions were payable* which, but for injury, for which the Respondents are statutorily liable, would have been when the Appellant was retired aged 60;

(iv) For the Appellant the last day of service as a regular Firefighter was the day before injury when he was 54 (the Rule G1 (4) (a) date) but, absent injury he would have paid pension contributions until aged 60 (the Rule G1(4) (b) date). Injury, for which the Respondents are liable, denying him his highest salary years and promotion, and higher pension, all occasioning him financial loss;

(v) His Rule B3 Ill-health pension was wrongly calculated on Rule G1 (a), when (b) applied;

(vi) On misconstruction of Rule G1 it also follows, for consistency, that 'the point of law' had to be misconstrued. Fancourt J holding at AJ 22 "*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay*". Wrongly consistent with G1 (4) (a): inconsistent G1 (4) (b);

(vii) On such misconstruction, the Rule B3 pension becomes, de facto, the amount of a non-compensatory, Rule B1 Ordinary pension, denying the Appellant his enhanced compensatory Rule B3 ill-health pension entitlement in law;

(viii) Given a Rule B4 Injury Award for injury and loss of amenity; a Rule B3 pension can only serve one purpose in law, to compensate for financial loss, for which an unknown APP has to be found "*by reference to*" a known APP, on which to calculate the Rule B3 notional retirement pension. Correctly construed two 'APPs' are required, not the one 'APP', Fancourt finds in error in law on applying Rule G1 (4) (a);

(ix) It follows that Fancourt J omitted to consider or confront the law, or conflicts with the provision arising from his misconstruction, rendering the statutory Rule B3 ill-health enhanced compensatory pension provision, reductio ad absurdam.

Synopsis.

1. The judgement here appealed, is that of The Honourable Mr. Justice Fancourt, [Fancourt J] who, in his Approved Judgement [AJ], delivered on 28th October 2020, after appeal to the Court of Appeal against his oral judgement at Mrs. Justice Falk's intended hearing on 3rd July 2020, misdirected himself in law to uphold the Respondent's unlawful practice by finding that Rule G1 (4) (a) instead of Rule G1 (4) (b) of 1992 Statutory Instrument No. 129 [SI] applied to the calculation of the Appellant's pension, finding at AJ18, "*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",* denying the compensatory enhanced Rule B3 ill-health pension provided by the statute.

2. (i) 1992 Statutory Instrument No. 129 [SI] Rule B1 provides for accrual of entitlement during active service of a non- compensatory (no financial damage suffered), time served Ordinary pension on retirement from the Fire & Rescue Service by right, which Rule B1 also denies to any Firefighter becoming entitled to a compensatory enhanced Rule B3 ill-health pension;

   (ii) In addition to a Rule B3 ill-health pension, the SI provides a Rule B4 'Injury Award'(calculated from a Rule B3 pension) in compensation for pain, suffering, incapacity and loss of amenity, to those compulsorily discharged from Service on receipt of a no-fault 'qualifying' injury, suffered in the course of their employment.

3. The Respondents and Fancourt J deny the purpose of compensatory enhanced Rule B3 provision, in the amount above an already fully accrued, non-compensating Rule B1 Ordinary pension though, in law, the only possible purpose of SI Rule B3 provision is for an accrued Rule B1 pension to be subsumed within the greater Rule B3 "ill-health Pension", for payment in compensation for financial loss in pay and pension that "*could have been earned until required to retire on account of age"* by the Appellant, but for no-fault 'qualifying' injury, (quoting the Home Office Commentary which correctly construes their 1992 Statutory Instrument No. 129, making the provision at Rule B3) and to compensate the Appellant for his future loss of earning capacity.
4. Fancourt J, rendering the compensatory enhanced Rule B3 provision reductio ad absurdam denying legislation legal effect was wrong in law (in many ways) to uphold the Respondent's practice; a practice both repugnant and contrary to law; a practice in an arbitrary and oppressive abuse of power by a servant of government by defrauding a retired Firefighter of his lawfully provided compensatory enhanced Rule B3, entitlement.

5. In breach of fiduciary duty and unlawfully, the Respondents have been paying the Appellant a non-compensating Rule B1 Ordinary pension of £21,936 since 1998, under the pretense of it being his B3 ill health legal entitlement when, had it been lawfully construed, he would have been paid his compensating enhanced Rule B3 ill-health pension of £33,452.24 in compensation for his financial loss of earnings and pension, denied him by a no-fault injury, and in compensation for his reduced

future earning capacity.
The defrauded index linked £11,516.24 shortfall being unlawfully retained by the Respondents, the servants or agents of Her Majesty's Government – continuing.

Errors in Law and Misdirections.

1. (i) 1992 Statutory Instrument No.129 [SI], Rule G1 (4) specifies the *'relevant date',* from which average pensionable pay [APP] is taken on which to calculate pension. The *relevant date* being either (a) the day last worked, or, (b) the day, absent injury, of last pension contribution (aged 55 or 60);

   (ii) By conflating (a) with (b) both to mean (a) in misapplication of Rule B3, Fancourt J premised his judgement on a misdirection in law, rendering reductio ad absurdam, the SI Rule B3, Paragraph 5 ill-health provision, making it redundant and indistinguishable from a Rule B1 Ordinary time served pension, denying legislative meaning.

2. In misunderstanding the promulgating authority's ''Home Office Commentary" to the SI, Fancourt J wrongly transposed it into misconstruction of the SI provision, to misdirect himself to think that years, not pay, may accrue, where the SI made no provision for years to accrue, but does so for pay to accrue.

3. Fancourt J misunderstood the SI and misdirected himself to provide what the SI did not provide, that years may accrue where to do so would be to no legal effect. All Rule B3 ill-health pension is provided either by fixed formulae, calculated on unalterably established pay being paid, and on years already served; or, in the alternative, on a notional retirement pension, being a notional Rule B1 Ordinary, full service, 40/60^{ths} of the Appellant's notional APP; a pension, which more years, had they been available, could not affect.

4. Fancourt misdirects himself that all pensions are limited to 40/60^{ths} of APP, (see Appendix 'A').

5. Fancourt J misconstrued provision made at B3 1 (2) and 5 (2) by conflating different words of provision, '*by reference to'* to be a synonym of '*is*', in a reductio ad absurdam, avoiding statutory intent, purpose, meaning, and legal effect.

6. Fancourt J so failed to construe the Rule B3 ill-health pension provision as to ignore, and render to no effect, formulaic Paragraph 4 of the Rule B3 provision and misdirected himself on the purpose and meaning of Rule B3, Paragraph 5 (1) (b).

7. Fancourt J further misconstrued *'by reference to',* and the meaning and purpose of Rule B3, Paragraph 5 (2) denying Rule B3, Paragraph 5 its legal affect.

8. Fancourt J misdirected himself, the Respondents being liable, to find that the Appellant's financial loss occasioned by no-fault 'qualifying' injury, so denying him Service, and so promotion, during the final 5 year period of intended career, may not be taken into account in calculating an ill-health pension.

9. Fancourt J misdirected himself to be unmindful of the general intention of the statute, evinced by Rule L4 (3) that where two amounts may satisfy the same award, the highest is paid.

10. By finding that a non-compensatory Rule B1Ordinary pension satisfied the Appellant's entitlement to a compensatory enhanced Rule B3 ill-health pension, Fancourt J found contrary to law, rendering the whole of the Rule B3 provision of the SI redundant to a Rule B1 provision, reductio ad absurdam, to no legal effect and repugnant to law.

Particulars.

Common Ground.

1. Having filed his appeal after receiving Mr Justice Fancourt's transcribed oral judgment of 3rd July 2020, the Appellant received a further considered written 'Approved Judgement' on 28th. October 2020 [AJ]. In it the judge sets out common ground that "*Mr G[redacted] is a retired firefighter and he has a pension under the Fireman's Pension Scheme* [AJ 2], and, but for being '*forced to retire, as a fireman, through ill-health as a result of an accident at the age of 54. He would otherwise have been entitled to continue to work until the age of 60",* [AJ 3], and that Mr. G[redacted] considers he is "*wrongly paid a Rule B1 ordinary pension, rather than a Rule B3 ill-health pension"* [AJ 4]*.*

2. Also that [AJ 13], "*The issue is*, *and is accepted to be, purely a question of the true interpretation of the Pension Scheme.."* and [AJ 14]. "*The relevant provisions of the scheme are, first, in appendix one, where Part B differentiates between an ordinary pension, at paragraph B1, and an ill-health award, at paragraph B3. It is common ground that Mr G[redacted] is entitled to an ill-health award and not an ordinary pension".*

Non-compensatory B1 and compensatory B3.

3. (i) Fancourt J failed, however, to consider and distinguish between a Rule B1and a B3 pension, and grasp the intrinsic SI, Rule B3 intent of enhancement of pension for Firefighters denied full fire service careers by no-fault 'qualifying' injury, made plain by, inter alia, the ill-health formulae providing more than a 40/60ths non-compensatory time served Rule B1Ordinary pension.

(ii) A Rule B1 Ordinary pension entitlement accrues with each year served until, on 25 years' service, a 30/60ths of APP pension accrues, rising to 40/60ths on 30 years' Service, thereafter the only variable multiplicand is the average pensionable pay, or APP.

Rule B1 denies the award of a non-compensating Rule B1Ordinary pension to anyone entitled to a compensating enhanced Rule B3 ill-health pension, [SI Rule B1.At AJ 24, Fancourt J confuses years with pay, finding that *"Read in the context in which they are used in the commentary, the two instances of what could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay. In both cases, the calculation*

described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.".

(iii) Having misdirected himself that years not APP may accrue (his fallacia consequentis below) the judge has also mistakenly taken the 40 in 40/60^{ths} to be 40 years, though simply 40 parts of 60 parts to give 2/3rds, as a fraction of APP.

(iv) 40/60^{ths} is the maximum part, 2/3rds, of final pay arrived at on 30 pensionable years completed Service to give a full non-compensatory, time served Rule B1 Ordinary pension which falls due anytime after age 50, until paid, in any event, at the service retirement age of 55 or 60.

(v) 60^{ths} is a convenient measure used to provide affordable units of pension that can be purchased by anyone whose accrued pension falls short of 40/60^{ths}, who can then buy 60^{ths} to reach the maximum 2/3rds, or 40/60^{ths} x APP, for a maximum Rule B1 Ordinary pension.

B3. B4.

4. A compensating enhanced Rule B3 ill-health pension falls due on a Firefighter being required to retire early on account of a no-fault 'qualifying' injury for which, by provision of the SI, the Respondents are liable, both for its financial and physical sequellae.

5. Rule B3 provides a pension in two ways. First, by way of formulae on which to calculate, depending on length of service, an *ill health pension amount* (Paragraphs 2 – 4) using two fixed multiplicands, the years served and extant APP. Second, in the alternative, by way of a Paragraph 5 1 (a) *notional retirement pension* calculated as a full service, notional, Rule B1 pension, calculated on a notional APP, reflecting what a Firefighter could have earned '*until he could be required to retire on account of age'*.

6. Though denied a Rule B1Ordinary pension on becoming entitled to a Rule B3 pension, those forced to retire on account of ill-health, and/or injury receive, in addition to the Rule B3 *ill-health pension*, a Rule B4 *Injury Award,* calculated from a Rule B3 pension, in compensation for physical disablement, pain, suffering and loss of amenity. There can be no reason in law for the Rule B3 provision other than to provide for a compensation for financial loss.

7. Fancourt J. misled himself in finding that the Appellant, on being paid an accrued, non-compensatory, Rule B1 Ordinary pension, was/is in receipt of his correct compensating enhanced Rule B3 ill-health pension.

The Home Office Commentary.

8. (i) On promulgating the SI, the Home Office published a Commentary for lay guidance intended for general use by everyone concerned. The Appellant, a

Firefighter, with no notion of pension law, relied on his pension providers to know and properly apply it.

(ii) Not only did they not properly apply it, but the Respondents suppressed the Commentary's existence (the wording of which they subsequently misrepresented to a past lay Pensions Ombudsman on a similar case).

(iii) Had the Appellant seen it, as intended by the Home Office, he would have seen from its plain English guidance, that his B3 pension was to be calculated by formulae (set out), or on what, but for injury, he "*could have been earned until required to retire on account of age".* It was not just intended for lay administrators, but in addressing retirees put it in the subjective, pension on what "*you could have earned until required to retire on account of age"*. The guidance accords with the SI provision.

9. In effect, the SI codifies the common law damages for Firefighters suffering no-fault injury in course of their employment. Fancourt J in seeking to uphold the Respondent's practice, finds otherwise. The Commentary is not law but Fancourt J relied on it in his misapprehension and misconstruction of the law.

Misconstruction the Commentary.

10. At AJ 27 Fancourt J misdirects himself in a compendium of ways in finding that "*the commentary and guidance uses a phrase which is ambiguous, namely 'or what could have been earned by compulsory retirement age'. However, in context, and by reference to the examples given in the guidance, one of which, example seven, is inconsistent with Mr G[redacted] case, it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion".*

Years confused with pay.

11. (i) Fancourt J misconstrues *'what could have been earned by compulsory retirement age'* by taking it out of context to mean years can be added, where none can. Rule B3 formulaic provision is calculated on established pensionable years served and last paid APP. Both multiplicands once finitely established on actually ending service, and are then fixed in law.

(ii) The alternative Rule B3 provision at paragraph 5.1(a), provides a *notional retirement pension* predicated on having "*continued to serve until he could be required to retire on account of age'.* When compulsorily discharged injured, credit is given for a notional full career Rule B1 Ordinary pension limited to 40/60^{ths} to which more years can add nothing and are, indeed, irrelevant.

(iii) At [AJ 19] Fancourt J takes the confusion further in saying "*He supports his argument* (for promotion) *by reference to guidance in the form of a commentary that was issued by the Home Office at the time when the pension scheme came into effect. The relevant part of that guidance says as follows:*

"How much is the pension? The sums are set out in examples one and four to seven, the basis of the calculations is explained here. 'A firefighter's basic ill-health pension

is never less than 1/60th of average pensionable pay, APP, and never more than 40/60th, two-thirds of APP or what could have been earned by compulsory retirement age".

(iv) Fancourt J misconstrues the Commentary to mean at [AJ 23], that *"What could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay"*. Yet the SI is silent on years save and except as 'pensionable years' (SI definitions) which can only accrue from being actually served.

(v) In so finding Fancourt J finds on no legal authority, the SI making no provision that any period of years can ever be added or subtracted from the pensionable years served. Once served the number is an absolute event, even to the number of days served.

Correction.

(vi) The statutory provision is at Pt. lll, B3, ill health pension, pargraph "5 (1) Where:
(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension (the notional retirement pension)"

(vii) It escaped Fancourt J that those required to retire on grounds of ill health are credited with a full service career which, but for injury, would have been served. Meaning the 5(1) notional pension is a maximum B1 full service career pension to which they would have become entitled, absent injury, had they served until required to retire on account of age. A 5(1) B3 pension is a notional full career B1 pension

(viii) No years can be added of subtracted from a B3 notional retirement ill health pension because it is, in effect, a B1 full career, absent injury, 40/60^{ths} of a notional APP, arrived at by reference to his actual APP.

(ix) Rule B1 provides that a pension could be taken at 50, after 25 to 30 years Service providing a pension rising from 30/60^{ths} to 40/60^{ths} of the final pay.

(x) If, on final reckoning, a retired Firefighter's pension fell short of 40/60^{ths} there was no remedy in years earned, as Fancourt J thought, but any 60ths short of 40 could be purchased. What was not in any way variable is the number of years which can only be acquired by Service.

(xi) Even if a retired Firefighter, on the grounds of ill-health fell short on that credit (a late entrant) he/she cannot acquire more pensionable years than notionally s/he would have served, absent injury, to normal retirement. But s/he could maximize his/her notional ill-health pension by buying real 60^{ths} to make it up to the notional full 40/60^{ths}, pension.

(xii) As already set out there is no provision to add or subtract years. The only variable is the APP and only in terms of Paragraph 5 (1) (a) to calculate a notional retirement

pension on a notional APP.

(xiii) It follows that Fancourt J misunderstands the guidance given by the Commentary, which has nothing to do with years, but tells its reader that an ill-health pension is '*two thirds of APP* '(at the time of injury used in the formulae) 'or two thirds of the 'APP' that *could have been earned by compulsory retirement age',* (60) (notional pension) when earning capacity ended. It is the APP that is at large. There is no provision in the SI for years to be earned. His construction is inconsistent with both the Commentary and the Statutory Instrument.

Ambiguity where there is none.

(xiv) Fancourt J finds the Commentary 'ambiguous'. The statutory (SI) provision at Rule B3 paragraph 5, 1 (a) specifies an amount of notional pension due, as though he had *'continued to serve until he could be required to retire on account of age'.* The Commentary, puts it more simply as on '*what could have been earned by compulsory retirement age".* Both phrases are of a single meaning. What he *'could have earned by compulsory retirement age'* is the APP '*that he would have earned had he continued to serve until he could be required to retire on account of age'*. They are expressions of but one nexus. One phrase is dotting the i's and crossing the t's for lawyers, the other giving colloquial sense to laymen. If ambiguous, it is not the words that create an ambiguity but a reader's misconstruction.

Error on what Example 7 supports.

(xv) Fancourt J, found Example 7 to be inconsistent with the Appellant's case.

(a) Example 7, predicates a 54 year man with 27 years and 161 days service, and begins with "*Gross ordinary pension at age limit: 35.4411/60 x £15124 = £8933.52.* But, then states *'Gross ill-health pension: £8933.52'.* Rule B1Ordinary pension is correctly calculated on using the Rule B1 formula of 30/60 x (twice up to 5 years served over 25 years) x APP/60, but it is not transposable into the *Gross ill-health pension* because the Rule B3, Paragraph 4, ill-health formula is not the Rule B1 formula; it is 7xAPP/60 + 20xAPP/60 + (twice years served over 20) x APP/60, so, correctly, 'Gross ill-health pension' is, 42.4411/60^{ths} x 15,124 = £10,697.99.

(b) When corrected, Example 7 is not only wholly consistent with the Appellant's case, but makes plain the purpose of the SI, in providing a compensatory enhanced Rule B3 pension, most clearly and intentionally more than payable under a non-compensatory Rule B1Ordinary pension.

(c) Indeed, given a B4 Injury award in compensation for injury, loss of amenity, pain and suffering, a Rule B3 award can, in law, only be to compensate for financial loss. As in Example 7's case, where even a loss of 204 days pay of £2,473.71, (£8,452.87 pay loss, mitigated by pension of £5,979.16) is within the Rule B3 compensatory provision.

A loss suffered by a 54 year old being retired early on injury in the year s/he would, absent injury, have been retired on account of age – so his/her RuleB1 and Rule B3 pensions are both calculated on the same APP of £15,124 making plain that an enhanced RuleB3 pension is compensatory where a Rule B1 is

not.
If the law were as Fancourt J found it to be then a Rule B1 would indeed be a Rule B3, making the SI Ill-health provision redundant.

(d) Example 7's enhanced Rule B3 ill-health pension compensates not just for immediate financial loss, but for the future loss in earning capacity. Emergencies demand exceptionally fit Firefighters, right up to time of retirement. But when those tools of work are damaged, by no-fault injury requiring compulsory discharge, a retirement (for the safety of others), the retired Firefighter is denied the future earning capacity s/he would have had when, if fully fit on retirement, s/he could look forward to other, active, well paid work, for a decade or more. The exigencies of Emergency Services making it the policy to retire people early at 55 or, if senior, 60. Fitness is part of the job specification for all ranks, so Chief Fire Officers, in their late 50's, remain in action.

Error in 40/60^{ths}.

12. (i) Fancourt J has predicated his judgment on a premise that no pension may be awarded of more than 40/60^{ths} of APP, but that is not the law(see Appendix 'A').

(ii) He quotes the Commentary, which if not read carefully, may mislead. At page B3 – 3, it says '*The pensionable service is enhanced by 7/60ths ("ill-health enhancement") subject to it not exceeding what he would have reckoned by the age of compulsory retirement (55) or 40/60^{ths} in total'.* There is no overarching restriction to 40/60^{ths} in the Statute. The Commentary's ostensible error at B3–3 is to conflate the Rule B3, Paragraph 4 formula, which is enhanced by 7/60^{ths}, with the Paragraph 5 notional pension, which is restricted to 40/60^{ths}. But there is no nexus. The SI imposes no general 40/60^{ths} restriction. Each provision is wholly unrelated, save in making alternative provision, for the higher to be paid. Throughout the SI each rule of provision determines its own criteria, thus:

(iii) Rule B1 does limit the pension it provides to a maximum of 40/60^{ths}.

"The amount of an ordinary pension is-
30xA/60 + 2xAxB/60
where-

"A is the person's average pensionable pay, and B is the period in years (subject to a maximum of 5 years) by which his pensionable service exceeds 25 years.".

(iv) But a Rule B3, Paragraph 4, provision is not restricted to 40/60^{ths}

"*Where a person has served more than 10 years pensionable service the amount of his ill health pension is the greater of :–*
20xA/60,
or,
7xA/60 + AxD/60 + 2xAxE/60

where:–
D is the period of his pensionable service up to 20 years, and
E is the period by which his pensionable service exceeds 20 years".

(v) The restriction imposed by the SI on a Rule B1 calculation (supra) '*subject to a maximum of 5 years'* is absent from the B3 formulaic provision which is not otherwise restricted. The commentary is also in error in detaching part of a cohesive formula. 7/60^{ths} is not a detachable entity. But by whatever route Mr Justice Fancourt arrived at thinking that Rule B3 pensions were capped at 40/60^{ths}, he misdirected himself in law to think so.

Reductio ad absurdam on Rule G1.

13. The Statutory Instrument provides, as part of its Rule B3 ill-health provision, a Paragraph 5 notional pension (11 (vi) supra) which Fancourt J refers to, at [AJ 18[, correctly quoting the Paragraph 5, (2) method of finding the APP on which to calculate the notional B3 pension, before then misdirecting himself in law.
He says, "*Paragraph 5(2) says that that Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay. Average pensionable pay, for the purposes of the scheme, is defined in rule G1 as the average pensionable pay of a regular firefighter and is, subject to paragraphs five to seven, the aggregate of his pensionable pay during the year ending with the relevant date, and the relevant date is the last day of the firefighter's service as a regular firefighter".*

However, SI Rule G1 (4) provides otherwise:

The relevant date is:
(i) *for the purposes of rules B 4 (injury award), C2 (spouse's special award), C7 (spouse's award where no other award payable), D2 (child's special allowance), D3 (child's special gratuity) and E2 (adult dependent relative's special pension), the date of the person's last day of service as a regular firefighter, and ' for all other purposes, the date of his last day of service in a period during which pension contributions were payable under Rule G2".*

(ii) Fancourt J misdirected himself to find that a Rule B3 notional pension is to be calculated on the APP as provided by (a), being last day of active service where (a) specifically excludes Rule B3 from its provision, leaving a Rule B3 'Notional Retirement Pension' to fall within Rule G1 (4) (b) – 'for all other purposes' – to be calculated to normal retirement on age until when, absent injury for which the Respondents are liable, his *'pensions contributions were payable'*.

(iii) To seek to remain consistent in his wrongly predicated judgement, Fancourt J misconstrues meaning and effect of Paragraph 5(2) at [AJ 17["*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement".*

(iv) Fancourt J misdirects himself to provide a 'cap' to ill-health pension where there is no 'cap' provided by the SI. Rule G1 exists in two parts to avoid such a 'cap'. Its purpose is to enable distinctions to exist between pensions by calculating them on an APP taken from various relevant dates, (as set out above). These *'relevant dates'* as provided by Rule G1 (4) (a) and, G1 (4) (b). From his judgement it would appear that Fancourt J was unaware that Rule G1 lay in two parts.

(v) By misapplying Rule G1 (4) (a) to a B3, Paragraph 5(1) 'notional retirement pension' Fancourt J reduces it to the same basis of calculation as a Rule B1 Ordinary pension so he wrongly 'caps' the Rule B3, Paragraph 5 notional compensatory amount to a Rule B1 Ordinary pension amount.

(vi) Fancourt J also finds that 'capping' the Rule B3, Paragraph 5 notional retirement pension also 'caps' Paragraph 3 or 4 amounts, but that requires a misconstruction of Paragraph 5 (1) (b), dealt with below.
But on his finding Paragraphs 3 and 4 ill-health formulaic provision are denied effect being 'capped' by the notional retirement pension, capped by a Rule B1 Ordinary pension amount.

(vii). Fancourt J misdirects himself in law to hold at [AJ 18], "*Paragraph 5(2) says that the Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay - (as at) - the last day of the firefighter's service as a regular firefighter".*
It is a fundamental error of great magnitude because its effect, in practice, is to replace a compensatory enhanced Rule 3 ill-health provision with a non-compensatory Rule B1 Ordinary pension provision.

Corollary 1.

14. Were Fancourt J to be correct, that a Rule B3 notional pension is to be calculated as provided by the Rule G1 (4) (a) then that is to use the same APP as used to calculate a Rule B1 Ordinary pension, both on the APP being paid on '*the last day of service as a regular firefighter'.*

(i) It would follow, since B1 and B3 pensions are both to be calculated on the same APP and since both are on a full service 40/60^{ths}, then on this construction an ordinary non-compensatory Rule B1and a compensatory Rule B3 pension are indistinguishable in law and effect.

(ii) It is what the Respondents say is the law as they continue to pay the Appellant an actual Rule B1 Ordinary pension as though in satisfaction of a correct Rule B3 ill-health pension, which is wrong in law, indeed, they are defrauding the Appellant of his pension.

(iii) By upholding the practice Fancourt J sets rule G1 and rule B3 into conflict but more importantly renders a Rule B3 provision redundant to a Rule B1 provision,

making it meaningless, with no legal effect, and repugnant to law, a reductio ad absurdam.

Correction allows B3 its purpose to compensate for financial loss.

15. Correctly applying Rule G1 (4) (b) in place of (a) brings no benefit in terms of years since the Appellant had already accrued a full 40/60^{ths} pension on 30 years service (he served 37 years) and, in any event, a 'notional retirement pension' (save for very late entrants) credits a full service 40/60^{ths} Paragraph 5 (1) (a) pension, but there may be benefit from a higher APP on which to calculate his Paragraph 5 'notional retirement' pension: his career could have notionally progressed in the final period of service until required to retire on account of age, but for being denied him by injury.

Conflict.

16. There are other errors, muddles and inconsistencies in the AJ. At [AJ 14[, Fancourt J finds that "*Mr G[redacted] is entitled to an ill-health award and not an ordinary pension",* which predicates a distinction between the two, yet he also finds at [AJ18], *"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",* the latter contention is only sustainable on misapplication in law of Rule G1 (4) (a).

Notional B3 pension APP.

17. Though Fancourt J finds B1, in all but name, a B3, the SI requires that a B3 be differentiated and be distinguished from a B1. The SI provided direction on the way to separate them by application of Rule G1. Calculation of a B1 is on extant APP at time of retirement (provided by Rule B1). But a B3 notional retirement pension is to be calculated as provided by Rule G1 (4) (b). That is on the notional APP when, absent injury, pension contributions would stop on normal retirement on age. The SI requires that the APP be identified in a specific way.

18. Mrs. Justice Falk having initially denied permission, on reading the appeal against her judgement, re-engaged on her own initiative before, fully seised, she was replaced, with no explanation, by Mr Justice Fancourt who at [AJ 13[adopts and repeats Mrs. Justice Falk who:
"*encapsulated the issue in her order of 6 May 2020 in the following terms, and I quote:"*

"Whether as a matter of statutory construction of paragraph 5 of part 3 of Schedule 2 contained in Schedule 2 to the Fireman's Pension Scheme Order, SI 1992 No. 129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

(a) as the respondent contends, that the calculation must be done using actual pay the year to the date of retirement, or,

(b) as the appellant contends, 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 achieve available promotions until the date he or she could have been required to retire, absent ill-health or injury".

19. Fancourt J, having wrongly applied Rule G1 (4) (a), it follows that he finds, also wrongly, Mrs. Justice Falk's variant (a) to be right, as he makes plain at[AJ 26["*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay". There is no warrant for interpreting that as referring to any theoretical pensionable pay that might have been achieved by a later date"* .

'By reference to', synonym fo, 'using', or 'is'.

20. At AJ 25 Fancourt J found "*In my judgement there is no scope at all for construing paragraph 5(2) of Schedule 2 to the order so as to incorporate a requirement to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age".*

(i) While consistent with misapplication of Rule G1 (4) (a), (pension on APP of last active day) Fancourt J omits to consider the meaning and effect of Rule B3 in specifying what APP is to be used in calculating a Rule B3 ill-health 'notional retirement pension provision?

(ii) The SI, Rule B3 makes two different provisions which Fancourt ignores in arriving at his judgement at [AJ 27] "*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension" is to be calculated using the person's actual average pensionable pay*".

(iii) At [AJ 27] he conflates the meaning of 1(2) and 5(2) to mean 'All ill-health pension calculation is calculated on actual APP". But the SI provides otherwise:

SI Rule B3 provides:

1. (2). In paragraphs 2 to 4, A is the person's average pensionable pay".
(2) The Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay".

Corollary 2.

(iv) If the intention was for the two instructions to mean the same thing, as Fancourt J finds, (note [AJ 19], "*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*)", then to avoid repetition, Paragraph

5(2) the legislative draftsmen would have omitted the words *'by reference to'* to read, as Fancourt J would have it read. '*The Notional Retirement Pension is to be calculated using the person's actual average pensionable pay'.* If intended, so it would have been drafted, it is the sole purpose of parliamentary draftsmen and women.

(v) Yet more logically and economically, Rule B3 1 (2) could simply read '*In Paragraphs 2 to 5, A is the person's average pensionable pay'*, making Paragraph 5(2) redundant. The finding at [AJ 19[defeats the purpose of the legislation.

(vi) Law apart, the logic excludes Mr. Justice Fancourt's synonym. With the legislation specifying that Paragraphs 2 – 4 are to be calculated on the actual APP as a multiplicand, '*A is the person's average pensionable pay',* and the Paragraph 5 APP multiplicand is to be arrived at *'by reference to'* that actual APP, they cannot be one and the same APP. So construction of '*by reference to'* requires two actors, not the one 'APP', as found by Fancourt J'.

General Construction.

21. (i) In Grey v Pearson (1857) 6HL Cas. 61, Lord Wensleydale established that in construction "The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further".

(ii) The OECD, Oxford Lexico, et al, makes plain the ordinary usage of '*by reference to*'. The ordinary English use of the word 'reference' in the SI context is to mean to look or think of something known to identify an unknown. There are two entities.

(iii) Thus as used in the SI so here, "One can find the date *by reference to* a calendar" "Tax is usually calculated '*by reference to*' the value of the estate'. "Enemy at 9 o'clock" means "the 9 o'clock position is calculated '*by reference to'* the actual twelve o'clock", or, here, [Paragraph 5 (2)] "*The notional retirement pension is to be calculated by 'reference to' the person's actual APP'*.

Construction of 'by reference to' in context the SI.

22. It follows that the way to calculate a 'notional retirement pension' provided at Rule B3, 5 (2) cannot, in law, be construed as Fancourt J misconstrues the law, for example at [AJ 19] having wrongly applied Rule G1 (4) (a) to Rule B3 to misconstrue and wrongly declare "*It is therefore clear that a normal pension, under Section B1, and the Notional Retirement Pension is to be calculated"* on the same APP, to then correctly take a line of provision at Paragraph 5 (2) *by reference to the person's actual average pensionable"* to then tack onto it what the SI does not provide *"during the last day or service"* to enable the declaration, wrong in law, at [AJ 27[, "*the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension" is to be calculated using the*

person's actual average pensionable pay", is to pervert provision to deny legislative purpose, intent and provision. If the statute intended to provide *"the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay"* it would have said so. And it could have said so if Rule B3 has been included with the provision made by Rule G1 (4) (a). But it did not and the Judge gives no reason why he did.

(i) Rule G1 (4) (b) denying Fancourt J his application of Rule G1 (4) (a), the notional APP is to be properly calculated as at the time, absent injury, of retiring on account of age. Not Fancourt J's tacked on (supra) *"during the last day of service"* [G1(4)(a)].

(ii) The logic (20 (ii) supra) supports the construction of the SI as instructing a pension's administrator to calculate Paragraphs 2 – 4 on the person's actual APP (last day worked), as one, of two, actors.

(iii) The second actor is calculated 'by reference to' that first 'actual APP' actor, to discover the second actor, the notional APP, absent injury, of the Rank or Pay Point on the Pay Scales at retirement on age (but on the then current scale – see below).

(iv) Fancourt J's misconstruction requires him to replace 'by reference to' by synonyms of 'is' or 'using' for him to be able to find at [AJ 27]...*"the 'Notional Retirement Pension' is to be calculated using the person's actual average pensionable pay"* .

(v) But words of provision can only ever be changed from those provided in the legislation if those words lead to a patent absurdity.

(vi) Rule B3 provisions depends upon the ordinary meaning being given to 'by reference to' as a term of art, the proper construction of, which leads to no absurdity, or inconsistency, but is the legal means to open the door for Rule B3, compensatory purposes of the Statutory Instrument, to be expressed.

(vii) To find what APP is the right one on which to calculate the notional Rule B3 retirement pension, two APPs are needed to calculate a Rule B3 provision, not the one premised by Fancourt J, in error in law, at his [AJ 26] "...*"the 'Notional Retirement Pension' is to be calculated using the person's actual average pensionable pay"...".* (19 supra).

Notional APP scale.

23. (i) By correctly construing *'by reference to'* at Paragraph 5 (2), on the correct application of Rule G1 (4) (b), some meaning can begin to be given to what the Appellant could have earned "*had he continued to serve until he was required to retire on account of age*".

(ii) Having established that, *'by reference to the person's actual APP*', signposts where to look for the unknown APP and because the reference is to an APP that is within a Pay Scale, it follows, in absence of any other direction, that the unknown

APP must, of necessity, be found on the same Pay Scale.

(iii) That is a most important step because it avoids speculation and nails down pension calculation to the reality of anchoring the unknown APP to the same Scale of Pay as the actual APP, or in the Appellant's case, to 1998 Rates of Pay.

Rank or pay point.

24. The next step is to establish what Rank, and/or Pay Point (within a Pay Scale) the Appellant could have reached, absent injury, at the point of normal retirement; Service completed.

(i) Two letters from two peer group senior officers were given in evidence to Mrs. Justice Falk that, uninjured, the Appellant could have looked forward to being promoted to Divisional Officer Grade II [DO II].

(ii) The Respondents take no issue with that. Indeed, they provided Pay Scales for year 1997 – 2003 pointing out to Mrs. Justice Falk the APP for the rank of a DO II in 2003, when the Appellant could have been required to retire on account of age, at 60.
On basic pay it would have been of £43,053.60 pa, More than £10,000 pa higher than his pay when he was required to retire on ill-health. So he suffered a substantial financial loss. With allowances it may well be that the gap in pay is greater than basic.

A Finding on no evidence.

25. Fancourt J finds otherwise at [AJ 25], *"In my judgment, there is no scope at all to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age."*. With respect, the judge ceased to be impartial and entered the arena to find against the Appellant on a point against the evidence, not in issue.

Conflict.

26. (i) Mr Justice Fancourt's finds [AJ 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",* which cannot be the law, if the law is, as he found it to be at [AJ 16[, '*the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement.".*

(ii) Only one can be the correct construction. By wrongly basing his judgment as at [AJ 18], on Rule G1 (4) (a), Fancourt J, in finding the Respondents to be correct to compulsorily discharge a no-fault injured('qualifying') Firefighte without compensation, renders the purpose and Rule B3, Paragraph 5 provision reductio ad absurdam, without meaning, or legal effect.

Reductio ad absurdam, B3 1 (1.).

Cap.

27. Fancourt J omitted to consider the meaning and effect of Rule B3, Paragraph 1(1), providing *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5",* because it predicates different amounts and priorities inconsistent with his construction of the SI, Rule B3 provision.

(a) In seeking consistency throughout a judgement, wrongly predicated on Rule G1 (4) and in seeking to uphold the Respondent's practice (and in support of his own brief erroneous oral judgement of 3rd July 2020), Fancourt J 'discovered' what the statutory instrument did not provide, a '*cap*', with which to eliminate differing amounts and priorities.

(b) A 'cap' which, with no ratio decidendi, Fancourt J decided constricted the SI formulaic provision, finding at [AJ 17] that "*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension",* is nowhere to be found within the SI provision:

> *5.(1) Where:*
> *(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension, "the Notional Retirement Pension" and*
> *(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the Notional Retirement Pension, the amount of the ill-health pension is that of the Notional Retirement Pension.*

(c) On the correct construction of SI, Rule B3, 5 (1) provides no 'cap' on higher sums by a lower sum 'notional retirement pension' – which would be absurd. The provision is for alternatives, the most beneficial to be paid – or there is no point to the provision. (Further dealt with at 30, to give legal effect to the correct construction of 'by reference to').

(d) Fancourt J's Rule G1 (4) (a) 'cap' renders the compensatory enhanced Rule B3, 5(1) 'notional retirement pension' into a non-compensatory Rule B1 Ordinary pension.

(e) Yet SI Rule B1 specifically only provides an Ordinary pension to a Firefighter *"if he then does not become entitled to an ill health award under Rule B3"* , [B1 (1) (c)].

(f) Notwithstanding Rule B1(1) (c), the lay Respondents, the Appellant's 'trusted' fiduciary pension providers pay him a non-compensatory, fully accrued, Rule B1Ordinary pension under the deception that he was being paid the full compensatory enhanced Rule B3 ill-health pension to which he was entitled.

Contrary to law, no compensatory payment was provided for his financial loss.

Some Inconsistencies.

(g) The Respondent's practice was upheld by Fancourt J, but on construction made possible only by misapplication of Rule G1 (4) (a) to enable '*by reference to*' to be taken to mean '*is', or 'using',* (synonyms for each other) denying "different amounts and priorities".(Pensions calculated on different APPs, prioritised in payment by amount).

(h) "Different amounts and priorities" are inconsistent with his AJ 28 "*it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion"* - so no possibility of increase in the APP pension multiplicand.

(i) "Different amounts and priorities" are inconsistent with [AJ 19], "*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".*

(j) "Different amounts and priorities" are inconsistent with [AJ 18], *"the Notional Retirement Pension are to be calculated using the average pensionable pay during the last year of actual service",* et al.

Some Failures to confront.

(k) Where Fancourt J found the direction he was giving to himself and the SI to be in conflict from as earlier [AJ 15], "*Mr G[redacted] is entitled to an ill-health award and not an ordinary pension".*
Rather than confront and deal with the predicated distinction between the two which may have avoided the Rule G1 fundamental error on law, the judge ignores it, finding at [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";* Finding Rule B1 and Rule B3 the same.

(l) Mr. Justice Fancourt also did not confront or deal with Rule B3, 5 (1) (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, '* Rule G1 (4) (a) replacing 'by age', by 'last day served', which on injury is earlier than on age.

(o) Indeed, as he further misdirected himself to find at AJ 27 *the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay* "

(p) It follows, though Fancourt J gives no ratio decidendi, that having found at [AJ 17], "*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4",* that whatever the formulaic ill-health pension amount may be on calculation, it is

'capped' by the Paragraph 5 notional pension, itself 'capped' by the Rule B1 amount. He did not confront the absurdity of his conclusion or confront that being absurd, since the legislation cannot be absurd, his construction was incorrect.

(q) It follows that to be consistent Fancourt J had no option but to construe, albeit to himself, Rule B3, 1 (1) *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5",* [27 supra], to mean the only pension that gets paid is the Rule B3, Paragraph 5 1 (a) notional pension, 'capped' as a non-compensating Rule B1 Ordinary pension; as paid guilefully by the Respondents.

B3 Paragraph 4 – denied legal effect.

(r) It follows that if the law were to be as Fancourt J and the Respondents would have it be, since a Paragraph 4 formulaic amount is not paid out as the Rule B3 ill-health pension when greater in amount than a Paragraph 5 notional pension, and it is not paid out when it is a smaller amount, it never gets paid.

(s) It follows, with Paragraph 3 or 4 amounts being 'capped' by the notional pension amount, with itself being calculated as a Rule B1 on misapplication of Rule G1 (4) (a), that all that ever gets paid is the accrued non-compensatory B1Ordinary pension:

a. It follows that, to be consistent, Fancourt J construed Rule B3, 5 (1) (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',* to mean that, whatever the product of the formulae, only the 'notional retirement pension' is paid.

b. As demonstrated by Example 7, when corrected (11 (xv) supra), the Rule B3 formulaic Paragraphs 3 and 4 provision is, essentially, a Rule B1 provision enhanced.

c. It follows that if the Rule B3 notional pension is in a Rule B1 amount, then a Paragraph 4 amount (which applies to the Appellant) will always 'exceed' the Rule B1 amount.

d. But construed as Fancourt J construed the law, the lesser sum, notional pension B1 is paid because the paragraph 4, greater amount, is 'capped' by the B3 5(2) (B1 amount) pension. So his paragraph 4 ill health pension is not paid when more, nor when less than the notional retirement pension – which is the Respondent' practice approved by Mr. Justice Fancourt.

In effect, Fancourt J so construes the SI as to render the whole of the SI, Rule B3 provision redundant to Rule B1, making the Statutory Instrument an exercise in futility, the legislative provision being to no legal effect – a reductio ad absurdam.

Rule B3, 1 (1).

28. (i) For SI Rule B3, 1 (1) – *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5"* – to have its intended legal effect, to compensate for financial loss, (in law, given payment of a Rule B4 Injury Award, there is no other liability to be met and there can be no other lawfully required purpose for a Rule B3 provision, other than to compensate for financial loss).
The words of provision "*paragraphs 3 and 4 have effect*" need to be ordinarily construed to mean "*paragraphs 3 and 4 are paid*", and the words "*subject to 5*" to mean "*subject to 5 not being the greater amount"*. 'Having effect' being to act dependent upon something other talking priority, which would be an absurdity were a lesser amount to take priority, rendering formulaic provision pointless.

(ii) Such construction making plain, on correct application of Rule G1 (4) (b), the intent of the words of provision at Rule B3 1 (1), to compensate for financial loss to the greatest extent provided by the Statutory Instrument.

To take stock.

29. Having established:

- That the Statutory Instrument requires Rule G1 (4) (b) to apply to Rule B3;
- That the Approved Judgement incorrectly applied Rule G1 (4) (a);
- H.O.Commentary, is not ambiguous but on all fours with SI provision;
- Example 7, supports the Appellant's contention that Rule B3 is compensatory;
- That more, or less years, are not provided nor suggested in Commentary;
- That pay, not years, are the variable in 'notional retirement pension' calculation;
- There is no overarching 40/60^{ths} limitation on Rule B3.
- Each SI Rule sets own criteria;
- That a 'notional retirement pension' is not 'capped' by a Rule B1 Ordinary amount;
- That the 'notional retirement pension' does not cap Rule B3,Paragraphs 3, or 4;
- That the 'notional retirement pension' is calculated on the Rank or Pay Point on the Pay Scale which, but for injury, *could* have been achieved by normal retirement age;
- That the amount of the notional APP of the notional Rank or Pay Point is to be taken from the Pay Scale (1998) in being at time of being compulsorily retired on account of a no-fault 'qualifying' injury;
- That a non-compensatory Rule B1 Ordinary pension cannot be a compensatory enhanced Rule B3 ill-health pension.
- That a Rule B3 ill-health pension is a SI provision to compensate for financial loss;
- That a Rule B4 Injury Award (Calculated from a Rule B3 pension) is an Injury Award to compensate for loss of amenity on being compulsorily retired through a no-fault 'qualifying' injury;
- That Rule B3, 1 (1) properly construed means *Paragraphs 2 to 5 have*

effect subject to Parts VII and VIII (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect – are paid – subject to paragraph 5 not being the greater amount ".*

- Rule B3, 1 (2) and 5 (2) avoids *''by reference to"* as a synonym for *'is'* or *"using'. ;*
- The AJ omits consideration the Rule B3, Paragraph 3, or 4, formulaic provisions.
- Rule B3, Paragraphs 3, or 4, formulaic provisions are not 'capped' by the Paragraph 5 'notional retirement pension';
- AJ omitted to consider Rule B3, 5 (1) (b);
- It was established without demur from the Respondents, that the Rank the Appellant *could* have achieved was Divisional Officer II;
- Finding a Rule B3 as the correct Rule B1 amount which the Respondents applyin their Pension Scheme; Fancourt J looked no further.

Having cleared away what denied the correct construction of 'by reference to', it remains to construe its legal effect which depends on construction of Rule B3, 5 (1) (b).

Rule B3, 5 (1) (b); Construed on the error of Rule G1 (4) (a).

30. Rule B3, 5 (1) (b) provides: *Where "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":*

(i) Fancourt J having misdirected himself to find that a 40/60^{ths}, Rule B1 Ordinary pension was a Paragraph 5 (1) (a) 'notional retirement pension', in an amount that 'capped' formulaic Paragraphs 3 and 4, the corollary of his construction of Paragraph 5. (1) (b) is, "*Where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of* – is replaced by – *the notional retirement pension*", which is a non-compensating Rule B1Ordinary pension (as construed by Fancourt J at [AJ 18 et al] as paid by the Respondents to the Appellant under guise of a Rule B3 ill-health pension.

(ii) So, as Fancourt J and the Respondents, would have it, the Rule B3 ill-health pension (the specified product of the formulae) has been 'replaced' by a Rule B3 notional retirement pension; itself 'capped' by a Rule B1 Ordinary pension amount.

(iii) There is no suggestion by the Respondents of paying any pension less than a Rule B1 Ordinary pension.

(iii) It follows that the Rule B3 formulaic provision is not paid when more, and not paid when less, than the notional retirement pension, so the Rule B3 provisions are denied effect in law.

(iv) Construed to be consistent with misapplication of Rule G1 (4) (a); the Rule B3

notional retirement pension being 'capped' as a Rule B1Ordinary pension, has the effect of doing away with, neutering, Rule B3 entirely, which is patently absurd.

(v) So another construction has to be found to give legal effect to Rule B3 5(1) (b), to express the legislative provision made by Paragraphs 3, 4, and 5 of the SI, so that all have use.

Rule B3, 5 (1) (b). Construction based on Rule G1 (4) (b).

31.(i) The assumption made at 28 supra was that the SI requires a construction of Rule B3, 1 that *'have effect'* and '*subject to'* are to be construed as providing that a Paragraph 3 or 4 health amount is payable, unless the notional retirement pension is greater.

(ii) To be consistent with that priority of payment, the priority must also, of necessity, be consistent with the meaning the SI intends to be given Rule B3, 5 (1) (b), which provides that, "*Where 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".*

32. (i) Whilst a construction (30 (ii) & (iv) supra) of the words '*is that of*', to mean '*replaced by*' creates an absurdity, there is no absurdity in a construction of "*Where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of* – becomes, replaces, or is what constitutes – *the notional retirement pension".* It is a question of priority, decreed by amount, or there is no point;

(ii) Things then fall into place, as parliamentary draftsmen intend legislation to do, In this instance, with the Paragraph 3 or 4 Ill health amount paid, if higher than the notional retirement pension, if not, then the notional retirement pension gets paid, thus giving legal effect to all of the Rule B3 provisions, no longer subject to or redundant to Rule B1, as deceitfully practiced by the Respondents, perhaps to save the fund money and enhance personal pay and rewards;

(iii) Given the Appellant's notional rank of DOII, with its APP arrived at on the proper construction of *'by reference to',* and the correct application of Rule G1 (4) (b) to B3, and on correct construction of Rule B3, 5 (1) (b), then the SI Rule B3 provision is no longer rendered absurd and to no effect, but has purpose to provide for financial loss to be given legal effect by those who are to administer it, by doing what they are required to do.

(a) To arrive at the Rule B3 ill-health pension, calculations must be done to arrive at the amount of the Paragraph 3, or 4, *ill-health pension* amount, and the Paragraph 5 (1) (a) *notional retirement pension* amount;

(b) On being calculated, the two amounts must be compared;

(c) Pursuant to Paragraph 5 (1) (b), the *greater* is awarded as the compensating

enhanced Rule B3 ill health pension.

General Intent.

33. (i) Whilst Rule L4 (3) is not specifically provided for a Rule B3 provision, it makes the general legislative spirit and intent of the SI clear, "*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.". So*, mutatis mutandis Rule B3, the *larger* amount, not the lesser, is paid.

(ii) Of course, on calculation, had it been correctly done in 1998, there would have been a time in which either the Appellant's Paragraph 4, or his notional retirement pension, could have become his Rule B3 Ill-Health pension. It is consistent with Rule L4 (3) that the *greater* be paid, but inconsistent with dicta, this case, Fancourt J.

The Provision in operation.

34. (i) Fancourt J found difficulty with the H.O.Commentary (which contains errors but is not the law). On the law, Fancourt J expressed himself at [AJ 22[, "*the detailed provisions are highly complex and, with respect, not easy for someone who is not very technically minded to understand".*

(ii) Two examples may avoid the complexity which denied Mr. Justice Fancourt any attempt at an explanation to the Appellant which he may have understood; why it is he is being paid a non-compensating Rule B1Ordinary pension in place of a compensating enhanced Rule B3 ill-health pension.

Example A.

(a) A 49 year old 'high flyer' graduate, Senior Divisional Officer, with 29 years service, employed on the HQ staff (all of whom remain operational) on becoming injured, is required to retire on account of ill health in 1998, when his/her APP ['A'] was c£42,000. His/her Statutory B3 paragraph 4 formulaic calculation would have *been (7 x A) + (20 x A) + (9 x 2 x A/60),* or 45/60^{ths} his/her £42,000 APP, to provide him/her with *an ill-health pension amount* of £31,500 pa.

(b) His/her Paragraph 5 alternative is a *notional retirement pension*, which would depend on what Rank those concerned with his/her career thought, but for injury, s/he *could* have achieved. Say, Assistant Chief Fire Officer with a 1998 APP of £55,000.

(c) His alternative Paragraph 5 1 (a) *notional retirement pension* amount would have been 40/60^{ths} x £55,000, to give him a notional retirement pension of £36,667 pa.

(d) Paragraph 5 1 (b) requires the higher Paragraph 5 1 (a) *notional retirement pension*, to be paid as a compensating enhanced Rule B3 ill-health pension. His B3 ill health pension award is £36,667, paid solely in compensation for his financial

loss.
A Rule B4 Injury Award(Calculated from the Rule B3 pension) is also granted to compensate him/her for his/her 'qualifying' injury, loss of amenity, pain and suffering.

Example B.

(a) Not a high flyer, but a first rate 'Qualified' Firefighter, aged 49, with 29 years service, at the top of his/her APP scale at £27,000 and unlikely to be promoted above his/her then Rank, of Leading Firefighter, before being required to retire on account of age (at 55). His/her Paragraph formulaic 4 amount would be *7 x A + 20 x A + (9 x 2 x A)/60,* or (as in Example A), 45/60^{ths} of £27,000 APP, or £20,250pa *Ill-health pension amount*.

(b) His/her Paragraph 5 (1) (a) *notional retirement pension* would be 40/60^{ths} of the APP of the Rank or Pay Point on the current Pay Scales s/he could have achieved by 55. In his/her case no more than his/her current APP or Rank on the 1998 Pay Scale, so his/her notional pension would have been 40/60^{ths} of £27,000 = £18,000 pa. Indeed, he/she could have retired within months on that non compensatory pension, fully fit and 5 years before being required to retire on age at 56, not senior enough in Rank to go to 60.

(c) Paragraph 5 (1) (b) requires the *higher* amount to be paid. The Paragraph 4 Formulaic, Rule B3 *ill-health pension amount,* paid solely in compensation for his/her financial loss.
A Rule B4 Injury Award (Calculated from the Rule B3 pension) is also granted to compensate him/her for his/her no-fault 'qualifying' injury, loss of amenity, pain and suffering.

35.(i) In Example A. The high flyer is being compensated not just for loss of a much higher pension, absent injury, falling due at 60, but the very substantial loss of pay over his/her last, and by far the most fruitful 11 years for which the employer is liable. With no lump sum provided by the Rule B3 provision, the effect of his/her loss is that it is subsumed into his/her annual ill-health pension, almost as though what, in damages, Court would have awarded as a lump sum, is invested by HMG to increase ill-health pension.

(ii) Example B. S/He is correctly paid at 45/60^{ths} of APP in enhancement above a Rule B1 pension, fairly reflecting limited future financial loss until he would have retired on account of age in 5 or 6 years in which he was doing a good job, but essentially working his time out.

Non-compensatory Rule B1 Ordinary Pension.

36. (i) As Fancourt J found the law to be, each of these example Firefighters, under the guise of satisfying enhanced Rule B3 statutory entitlement to compensation for their financial loss, would receive their non-compensatory Rule B1Ordinary entitlement of £28,000 and £18,000, respectively. If that was the law then the SI, Rule B3 provisions are to no legal effect.

37. (ii) It was, as mentioned, a pension each could have taken within months, on completing the year to their 50th birthday when, on a whim and as fit Firefighters they could have left on a fully accrued non-compensating Rule B1Ordinary pension calculated on their 'last best' 3 years pay.

38. But they would have been denied any compensation for financial loss of the 6 or 11 years of service, respectively, and its rewards, denied by injury.

39. Disabled and compulsorily discharged out, each would no longer have the future earning capacity they would have had on time served retirement, fit and well.

The Appellant.

40. At 54, the Appellant could have taken his non-compensating Rule B1Ordinary pension at any time he liked from aged 50 – uninjured. Fancourt J misdirected himself that a Rule B3 formulaic pension was restricted to 40/60^{ths} and misdirected himself that a compensating enhanced Rule B3 notional retirement pension was to be calculated under Rule G1 (4) (a) et al.

41. Turning to the Appellants provision. When required to pre-empt his career on account of a no-fault 'qualifying' injury in 1998, the Appellant's APP was £32,904pa. He was expecting promotion. The Respondents provided Mrs. Justice Falk with the 2003 starting APP of £43,058pa, for the rank of Divisional Officer II, the senior Rank the Respondents accepted the Appellant, aged 54 and with 37 years service, *would* have reached, absent injury.

42. The Appellant anticipated being promoted in the year of his injury. His final APP could have been greater than the starting APP, and his pension commensurately so. His financial loss cannot be known but is a substantial sum for amortisation within a pension providing no lump sum (save on commutation which reduces income).

43. 1992 SI No:129, at Rule B3, Paragraph 4, applies in the Appellant's case providing a formula on which to calculate his compensatory enhanced 1998 ill-health pension as [7A + 20A + 17 (years service above 20) x 2A/60], or 61/60^{ths} of 'A', his actual APP of £32,904pa, or £33,452.24pa, to be considered for his Rule B3 ill-health pension award.

44. The Appellant's 1998 Paragraph 5 calculation is 40/60^{ths} of his notional DOII, APP of £36,541pa (not as at 2003 but 1998) providing him with a notional retirement pension of £24,364.67pa to also be considered for the Rule B3 ill-health pension award. If in contention this figure, would need careful revision for, with allowances, the APP is well above the basic APP for the Rank.

Correction.

45. (i) The Appellant's Rule B3, Paragraph 4 amount being *greater* than his Rule

B3, 5 (1) amount, the Rule B3 *ill health pension* amount of £33,452.24pa is what properly should have been awarded to the Appellant in 1998 as his compensating enhanced Rule B3 ill-health pension.

(ii) Since his notional DOII pension with all allowances could not have amounted to the £50,000 APP it would have to have become, to compete with his Paragraph 4 amount, his correct 1998 confirmed entitlement to a compensating enhanced Rule B3 ill-health pension £33,452.24 pa - index linked.

46. The Appellant is being paid an index linked pension of 40/60^{ths} of his last earned APP of £32,904pa, providing him with a non-compensating Rule B1Ordinary pension, as at 1998, of £21,936pa.

47. (i) It follows that the Appellant's Rule B3 pension was underprovided by £33,452.24pa less £21,936pa, the non-compensating Rule B1Ordinary pension awarded him purporting to be his compensating enhanced Rule B3 ill-health pension entitlement; so a wrongful denial of pension due in the sum of £11,516.24pa, since commencement in 1998.

(ii). To adjust the 1998 Rule B1Ordinary pension paid to the Rule B3 ill-health pension entitlement requires a shortfall of £11,516.24 to be added to the paid £21,963pa to pay the correct £ 33,452.24pa.

(iii) The initial 'error' is corrected by adding 52.5% to the Rule B1 pension B1 to correct it to Rule B3 pension.

48. The Appellant's B4 Injury Award is calculated within the Rule G1 (4) (a) provision and will need revision or amendment.

49. The Respondents provided Mrs. Justice Falk with the DOII APP on appointment as at his retirement on account of age date in 2003 at c£43,000pa. He would have expected to be in that Rank for two or three years before retirement at 60. With allowances his APP could well have been c£48,000+ on which aged 60 he would have retired on a non-compensating Rule B1 Ordinary pension of £32,000+. From which it may be thought that the Home Office, more or less, pitched its compensation for financial loss about right.

50. The Appellant, with respect, appeals the judgement of the Honourable Mr. Justice Fancourt on the grounds that he was so wrong in his construction of the law as to confound its meaning, making it, as he sought to find on it, inexplicable. Leaving the Court of Appeal no option but to correct him; he being wrong in law and on important legal principles of public importance.

51. Under common law an employer found liable for injury causing financial loss may pay damages to restore that person to their former position, in so far as money can, Fancourt J misdirected himself to so construe the SI as to deny compensation, where not denied by the Statute.

52. Fancourt J omitted to consider and apply the doctrine of contra preferentem in his construction. The Respondents rely on their interpretation of the law between them, as force majeure administrators, which they practiced in malfeasance.

The Appellant Seeks:

That his Appeal be Allowed (even out of time).

Judgement for the sums due to him, interest, and Exemplary Damages.

A Declaration.

53. "That the law is that in calculation of an ill-health pension pursuant to 1992 Statutory Instrument No.129, the Rule B3, Paragraph 5 notional retirement pension was to be, and is to be, as though the enforced 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, or at the Pay Point in the Pay Scales, the disabled Firefighter could have reached, but for ill-health or no-fault injury.
Such APP for such Rank or Pay Point to be taken from the Pay Scales in force when he/she was compulsorily required to retire on grounds of a no-fault 'qualifying' injury and then; on comparison between calculations of the Paragraph 3, or 4 amount, and the Paragraph 5 amount, the *greater* to be paid as the compensating enhanced Rule B3 ill -health pension".

Exemplary Damages.

54. The Appellant seeks Exemplary Damages:

(i)The Chief Fire Officer seeks to exculpate the Respondents by claiming *"I am unable to see any reference in the Statutory Instrument to this being compensation"*. But it was his delegated duty, and those he delegated, to administer the Respondent's Firefighters Pension Scheme in compliance with the law and to find out what the law was and implement it.

(ii)The Respondent knew, or ought to have known, that they were under a legal obligation of fiduciary duty to put all Pension Scheme Members interests first including the Appellant. They failed to do so.

(iii) Denial of pension payment was not openly done but was done under the guise of it being a compensating enhanced Rule B3 ill-health pension entitlement which the SI required the Respondents to pay to the Appellant.
It was done in breach of duty to make sure the right amount was paid as a compensating enhanced Rule B3 ill-health pension. It was achieved by the Respondents maintaining the trust of their disabled Retired Firefighters, by deceiving them.
Deception included the most deliberate misrepresentation in an earlier case at

the Pensions Ombudsman on the same facts as the Appellant's case.
It has been dishonesty in public office, to which turning a blind eye to the law is no defence.

(iv)The Appellant seeks meaningful exemplary damages to punish the Respondents for deception and suppression of the Home Office Commentary to the SI, on whose plain language the Appellant would have immediately realised that a non-compensating Rule B1 Ordinary pension could not possibly be a compensating enhanced Rule B3 ill-health pension amount.

(v) The Respondents have been dishonest in public office. By their deception to save their Firefighters Pension Fund disbursements as required by law, perhaps to earn performance pay or bonuses, but by such conduct they have casually and malignly denied the Appellant much of the quality of his life over the last 24 years, intended and provided by statute for him, and which his correct pension would have afforded him.
Deceiving the Appellant that his paid non-compensatory Rule B1Ordinary pension was his entitlement and, paying it to him denied him the amenity his proper, 52.5% *higher,* compensating enhanced Rule B3 ill-health pension would have afforded him, and his family, from 1998 onwards.

(vi)The Respondents' unconscionable and unlawful conduct, has been deliberately to frustrate legislative provision, directly at the Appellant's personal financial loss, by an egregiously arbitrary and oppressive abuse of power by servants of the government, such abuse extending into delay from 2015. The Appellant contends the Respondents have taken the law into their own hands to defraud the Appellant of his lawful pension.

(vii)On complaint, rather than immediately seek to correct it, the lay Chief Fire Officer took no advice and sought no judicial review but preferred not to understand the law in order to continue the wrongdoing.

(viii)Contrary to section 15(1) of the Equality Act 2010 the Respondents compulsorily discharged the Appellant on account of his no-fault injury and ill-health, wrongfully discriminated (continuing) against him by denying him the pension provided by law to others require to retire on account of ill-health. Paying him a non-compensatory Rule B1Ordinary pension when the 1992 Statutory Instrument No:129, Rule B3, provides him with an ill-health pension in compensation of his financial loss.

(xix)The Respondents deny the Appellant's human right to protection of his property, his pension, unlawfully withheld from payment being his legal property though not in his possession, and are in breach of the Human Rights Act 1998, Schedule 1 Part ll, The First Protocol, Article 1 providing that " 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".

(x) (a)The Appellant also seeks exemplary damages, dicta Lord Devlin in

Rookes v Barnard (1964) UKHL 1, (1964) AC 1129. The Respondent's conduct has been a long, persistent, and egregiously arbitrary and oppressive abuse of power by servants of the government.
They have long fostered by deceit, and by abuse of their powers they have protected their 'system' to be dishonest in public office, even to the contamination of the Pensions Ombudsman and to the direct financial damage of the Appellant. They have unlawfully retained monies as they fell due, to his detriment, depriving him of his property, but to the benefit of the Firefighters Pension Fund they manage, and perhaps personally, improved 'performance' usually being reflected in personal pay and rewards.

(b) Their conduct continues to be unlawful. It remains arbitrary and oppressive conduct in abuse of the Appellant interest, which it is the Respondents' duty in law to protect,

(c) The Respondents' conduct is repugnant and criminally unlawful contrary to s1-4 of the Fraud Act 2006, the Respondents, their servants or agent, being servants of HMG, unlawfully denying the Appellant his property.

An Account.

55. (i) An account of each monthly Rule B3 pension payment to which the Appellant became entitled from the first month of wrongful deprivation in 1998, to the date of payment of monies wrongly denied the Appellant. And interest compounded thereon monthly at the rate of 8% above base rate.

(ii) The Appellant refers the Honourable Court to Man Nutzfahrzeuge AG v Freightliner Ltd [2005] EWHC 2347 (Comm), Moore-Bick LJ dictum at para 321.

> "*There has been an increasing willingness to recognise that an award of simple interest does not fully compensate the injured party for the loss caused by being kept out of his money, nor does it adequately reflect the benefit to the wrongdoer of having had the use of it. As a result it has become routine for arbitrators to award compound interest in the exercise of their powers".*

(iii) The Appellant also refers the Honourable Court to Perry -v- Raleys Solicitors [2017] EWCA Civ 314 **t** Dicta**,** Lady Justice Gloster in her consideration of the arguments in relation to interest:

> *"62. In my judgment, the appropriate interest rate, in the particular circumstances of this case, for the entire period from 1 December 2006[10] to the date of judgment in this court is the judgment rate of 8% per annum*
>
> *63. Had it not been for Raleys' negligence, the reasonable chances are that by 1 December 2006 at the latest, Mr Perry would have received the sum of £14,556.15 from the Scheme as a services claim award. This would have included an element of interest at the Scheme rate up until December 2006. If he were only to be awarded simple interest thereafter at the special account rate – 6% until 31 January 2009, 3% from February to May 2009, 1.5% in June*

2009 and 0.5% from1 July 2009 until judgment – he would not, in my judgment, be adequately compensated for the lack of the use of that money in the intervening period not least because of the erosion of the value of the fund due to inflation.".

(iv) The Appellant would also wish to refer the Honourable Court to the reality of modern life for those not so well off on credit card debt and Bank Overdraft being above, sometime well above, 16%, bank rate having no presence in the High Street or with ordinary people.

Orders of the Court.

56. The Appellant seeks the following Orders of the Court, or such other orders, as the Honourable Court may think fit to make.

That within 14 Days of Judgment, the Respondents do provide the Appellant for his approval and agreement:

1. A First Schedule showing each monthly pension payment made to him to the next payment date following judgment.
2. A Second Schedule showing each amount uplifted by 52.5% to correct from a Rule B1 pension to Rule B3 pension.
3. A Third Schedule showing the shortfall, month by month, of the Rule B1 payment to the Rule B3 entitlement, wrongly retained by the Respondent's Firefighters Pension Fund.
4. A Fourth Schedule taking the shortfall debt arising month by month and applying bank base rate + 8% pa compound interest, or such rate of interest as the Honourable Court considers just and lawful, to each monthly retained sum, to be added monthly, from the date of wrongful retention, to the pay day following the Judgment.
5. Making payment of all amounts to be paid including costs, as the Appellant directs within 14 days of the Appellant's agreement to the Scheduled amounts.
6. The Respondents supply on demand and render any assistance the Appellant, his servants or agents, may require to settle the matter to his satisfaction.
7. The Respondents shall pay any professional costs incurred should the Appellant be unable to agree the Respondent's Schedules.
8. The Appellant may apply to the Honourable Court for Directions ex parte at any time.
9. On disagreement on any point, the Respondents to bear the costs of proceedings or arbitration, at the Appellant's choice.
10. The Respondents to indemnify the Appellant against payment by him of any sum arising from judgement of monies and payment to him of what, but for the Respondents unlawful retention of his moneys, would have been paid as pension as it fell due attracting no such sum.
11. The Respondents to uplift the Appellant's pension, scheduled to be paid next after the next pay day after judgement to his correct current Rule B1 Ordinary pension amount by + 52.5% to in future pay him his correct

compensating enhanced Rule B3 ill-health pension entitlement.

12. The Respondents to retain 20% of the judgement debt in full and final settlement of tax payable, it falling to the Respondents as his pension administrators to settle any HMRC demand for tax in any guise, in full, arising from any payment made under the judgement.
13. The Respondents resuming normal deductions from first payment of the corrected Rule B3 compensating pension.
14. The satisfaction of the judgment to be registered with the Honourable Court.
15. To pay any sum awarded by the Honourable Court by way of aggravated and/or exemplary damages within 30 days of judgement.

And/or such other relief, or order as The Honourable Court may consider appropriate and be disposed to grant.

57. And Costs.

Mr. F[redacted] M[redacted] G[redacted] _____.

Litigant-in-Person

Filed this 1st Day of April 2021,

John M. Copplestone-Bruce
Inner Temple (PB)

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

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.

****

CH-2020-000043

In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

BETWEEN

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

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 2nd day of April 2020

UPON considering the applications for an extension of time to file the Appellant's notice and for permission to appeal

AND UPON reading the appeal bundle

AND UPON reading a letter from Counsel to the Pensions Ombudsman dated 20 February 2020 in connection with the extension of time application

IT IS ORDERED THAT

1. Permission is granted to the Appellant to bring this appeal out of time, and time is extended to 4pm on 4 February 2020.

2. The Appellant's application for permission to appeal on the merits is refused.

3. The Appellant may, within seven days of receipt of this order, apply for a hearing at which he may renew his application for permission to appeal. Such application may be made by to the High Court Appeal Centre Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL, or by email to ChanceryJudgesListing@justice.gov.uk, in each case quoting the above appeals reference number. Any such application must also be served on the Respondent and the Pensions Ombudsman.

4. This order has been made by the court under paragraph 7.1 of Practice Direction 52B, as the court has disposed of an application

without hearing the Respondent. Under para 7.3 of that Practice Direction, any party may apply to have the extension of time under paragraph 1 of this order set aside or varied within 7 days of the date of service upon that party, and must serve a copy of the application on the other party and the Pensions Ombudsman at the same time.

5. Any application made under paragraph 3 or 4 must confirm the correct identity of the Respondent to this appeal.

6. Any hearing of an application made under paragraph 3 or 4 may be on a remote basis, using Skype for Business (if possible) or otherwise a conference call, and will be a public hearing. The judge will consider written submissions on the communication method that should be used.

REASONS:

Extension of time:
The Appellant had a right to appeal the decision of the Deputy Pensions Ombudsman (the "Decision") on a point of law within 28 days, under s 151(4) of the Pension Schemes Act 1993 and pursuant to a general direction for England and Wales that has been made by the Pensions Ombudsman that appeals should be made within 28 days. Given that both the Appellant and Respondent are based in England, the appeal should have been filed in the High Court in England and Wales. However, an appeal was instead filed in the High Court in Northern Ireland on 23 September 2019, 13 days after the date of the Decision. The reason for this appears to have been related to the fact that the Appellant has been assisted by an ex-colleague, a Mr Burns, who is resident in Northern Ireland.

On 6 November 2019 Maguire J struck the appeal out for want of jurisdiction. It appears from the Appellant's notice that the appeal was then relodged in London on 3 December 2019, but with the Court of Appeal rather than the High Court. It was returned on 13 January when the Appellant was advised to resubmit the appeal to the Chancery Division.

I accept that the Appellant acted promptly after the Decision was issued. I also accept that the information issued with the Decision about appeals does not explain precisely when an appeal may be brought in Northern Ireland or elsewhere. Against that there is no indication that the Appellant took any steps to identify the correct route of appeal, and it is possible that his decision to appeal in Northern Ireland may have been affected by the fact that no permission is required in that jurisdiction.

It is also the case that there were delays between 6 November and 3 December, and again between 13 January and lodging the appeal in the Chancery Division, which according to the court's filing system was first attempted on 31 January. There is no obvious good reason for these delays. However, each delay is of a relatively moderate length.

Time limits are important, and they apply to litigants in person in the same way that they apply to litigants who benefit from professional advice. However, although the overall delay between the expiry of the 28 day time limit and the appeal being filed in the Chancery Division is significant, I think it is outweighed by the fact that there are some reasons for the delay, that there is no indication that the Respondent has been prejudiced by the delay, and by the fact that, in the interests of justice, I consider it preferable to address the substantive merits of the appeal.

I have therefore concluded that in all the circumstances it is appropriate to extend time and deal with the permission to appeal application on its merits.

Permission to appeal:
The appeal bundle contains a significant amount of material, including details of complaints and allegations of a serious nature that are not relevant to this appeal. I confine my comments to the points identified in the grounds of appeal as alleged errors of law by the Deputy Pensions Ombudsman, which I can summarise as follows:

(a) incorrectly interpreting the legislation and therefore failing to identify that the Appellant was wrongly being paid a B1 ordinary pension rather than the enhanced B3 ill-health award to which he was entitled;
(b) wrongly using an example in a Home Office commentary on the legislation to support that result;
(c) failing to recognise that firefighters had had common law entitlements removed, and that the statute should be interpreted in a way that did not deprive the B3 ill-health provision of meaning; and
(d) failing to recognise that rule K3 provides for an ill-health award to be reduced in certain circumstances, which was inconsistent with concluding that the pension due to the Appellant was the irreducible B1 pension.

In my view this appeal has no real prospect of success, and there is no other compelling reason for it to be heard.

The legislation at issue is Schedule 2 to The Firemen's Pension Scheme Order 1992/129 (the "1992 order"). I have proceeded on the basis that the correct version to consider is that in force at the date of the Appellant's retirement, which was 22 July 1998. On that basis the legislation originally enacted, available on the legislation.gov.uk website, appears to be the correct version since although certain changes had been made to the 1992 order by that date, the provisions at issue in this appeal appear not to have been amended.

Part B deals with personal awards, the relevant provisions being B1 and B3. Relevant extracts are as follows:

"Ordinary pension

B1.—(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—
(a) has attained the age of 50, and
(b) is entitled to reckon at least 25 years' pensionable service, and
(c) does not become entitled to an ill-health award under rule B3.
…
Ill-health award
B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).
(2) A person to whom this rule applies becomes entitled on retiring—
(a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and
(b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.
Schedule 2 Part III: Ill-health pension
1.—(1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.
(2) In paragraphs 2 to 4, A is the person's average pensionable pay.
2. Where the person has less than 5 years' pensionable service, the amount of the ill-health pension is—

$$\frac{A \times B}{60}$$

where B is the greater of one year and the period in years of his pensionable service.
3. Where the person has at least 5 but not more than 10 years' pensionable service, the amount of the ill-health pension is—

$$\frac{2 \times A \times C}{60}$$

where C is the period in years of his pensionable service.
4. Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of—

$$\frac{20 \times A}{60}$$

and

$$\frac{7 \times A}{60} + \frac{A \times D}{60} + \frac{2 \times A \times E}{60}$$

where D is the period in years of his pensionable service up to 20 years, and E is the period in years by which his pensionable service exceeds 20 years.
5.—(1) Where—
(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension ("the notional retirement pension"), and
(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension,
the amount of the ill-health pension is that of the notional retirement pension.
(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay."

Pensionable pay is determined under paragraph G1. That provides that average pensionable pay is, subject to some exceptions, the aggregate of the individual's pensionable pay during the year ending with the "relevant date", which is essentially when the individual retired.

The Appellant retired on 22 July 1998, a few months short of his 55th birthday. By the date of his 50th birthday on 17 December 1993 he had already achieved 31 years of pensionable service, and by that stage was already able to choose to retire with a maximum ordinary pension under B1 (see the letter dated 19 February 2016 from LFRS included at tab 3 of the appeal bundle). As I understand it, absent ill-health he could have been required to retire at the age of 55, on 17 December 1998.

In fact the Appellant retired on grounds of ill-health at a time when he had over 35 years of service. There is no dispute that because he retired on grounds of ill-health he is entitled to an ill-health award under B3(1). It is clear that that means that he may not receive a pension under B1: see B1(1)(c).

The real dispute relates to paragraph 5 of Part III of Schedule 2 (confusingly, not Schedule 2 to the 1992 order but instead a Schedule included within Schedule 2 to the 1992 order). The Deputy Ombudsman upheld the Respondent's decision that the Appellant's pension was "capped" at the amount of an ordinary pension under B1, calculated using average pensionable pay determined at the date of retirement. That ordinary pension amount, calculated (given the length of service) on a 40/60 basis under Part I of Schedule 2, was obviously less than the amount that would have been payable under paragraph 4 of Part III (set out above).

I can detect no possible error of law in this conclusion. The key question is to determine the "notional retirement pension" under paragraph 5. If the amount calculated under paragraph 4 is higher than that amount then the amount of the pension payable under B3 is equal to that "notional retirement pension". It is worth emphasising that the pension is still payable under B3, not B1, but the calculation is determined by reference to the ordinary pension.

The Appellant argues that there is significance in the words "by reference to" in paragraph 5(2), in contrast to the word "is" when used to refer to average pensionable pay in paragraph 1(2) of Part III. What it is said that the rules contemplate is that the Respondent should have determined the pay level that the individual could have achieved if he had actually worked up to his normal retirement date, using pay scales available at the time and assuming pay increases and promotions, rather than using actual pay in the year to retirement. (It is not made clear what, if any, difference this would actually make on the facts of this case.)

There is no basis for reading the legislation in this way. What is referred to in paragraph 5(2) is actual average pensionable pay. As already mentioned that is defined under paragraph G1 by reference to the year to retirement. The reason that paragraph 5(2) uses the words "by reference to" is that the word

"is" would not make sense. What it is saying is that the notional retirement pension has to be calculated *using* actual average pensionable pay.

The Appellant also relies on a commentary published by the Home Office. The text relied on, set out at Appendix 2 to the Decision, refers to capping in terms that the pension can never be more than "could have been earned" or that the person "could have earned" by compulsory retirement age. This text has no force of law and cannot affect the clear wording of the legislation. In any event, the text can be read as referring to the pension available by reference to length of service (so if, for example, there would only have been 20 years' service at normal retirement, the pension would be lower than the 40/60ths maximum referred to). In addition, as indicated by the Decision, Example 7 in the commentary appears not to assist the Appellant's case.

I do not agree with the submission that this interpretation deprives B3 of meaning or effect, or that there are no circumstances when paragraph K3 could apply. There will be many situations where either paragraph 3 or paragraph 4 of Part III will produce a result which is lower than the notional retirement pension, and therefore where the pension payable would be determined by those paragraphs. This would be likely to be the case if retirement on grounds of ill health occurred earlier in a firefighter's career, rather than close to retirement. For example, assume retirement on grounds of ill-health after 20 years of service at age 40, and that the individual could otherwise have been required to retire at 55. The calculation under paragraph 4 would produce a pension of 27/60ths of average pensionable pay. If the individual had continued to work until retirement he would have had 35 years' service and a 40/60ths pension. On those facts paragraph 5 would have no application because the amount calculated under paragraph 4 would not exceed the notional retirement pension.

Identity of the Respondent

The Appellant has named the respondent to the appeal as Lancashire Combined Fire Authority. The respondent named in the Decision is Lancashire Fire and Rescue Service, and I would have expected that entity to be the respondent to the appeal.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:
Mr FM [redacted]
Mr D Howell (solicitor) Lancashire Fire & Rescue Service
dominichowell@lancsfirerescue.org.uk
The Pensions Ombudsman (ref PO-19150), enquries@pensions-ombudsman.org.uk and david.craddock@pensions-ombudsman.org.uk

CH-2020-000043

In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

BETWEEN

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

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 6th day of May 2020

UPON correspondence with the Appellant, in which the Appellant confirmed that he does wish to proceed with an oral renewal hearing, **AND UPON** correspondence with both parties in connection with the factual context for the appeal and the legal issue raised

IT IS ORDERED THAT

1. The oral renewal hearing of the appeal shall be listed on the first available date on or after 1 July 2020.

2. The Respondent shall no later than 8 May 2020 (or by such later date as the court may agree following a written request for an extension) provide to the Appellant a draft brief summary of relevant facts, covering (so far as is reasonably available) (a) the Appellant's compulsory retirement age, (b) the way in which the Appellant's pension was calculated (currently assumed by the court to be 40/60 x actual pay in the year to retirement) and (c) some information about the relevant pay scales and promotion arrangements, in particular as to whether progression was automatic.

3. The Appellant shall promptly provide any reasonable comments on the draft summary of facts so provided. Those comments must be limited to any necessary corrections to address inaccuracies and to those issues referred to in paragraph 2 of this order.

4. The Appellant and Respondent shall thereafter seek to agree the summary of facts, with a view to the Respondent filing at court and serving on the Appellant an agreed summary of relevant facts by no

later than 4 pm on Friday 22 May. If the summary is not agreed the Respondent should file and serve its version of the summary on that date. In that event the Appellant is at liberty to file and serve a version showing the points with which he does not agree. However, the court will ***not*** entertain additional written submissions, and anything filed by the Appellant must be limited to the matters referred to in paragraph 3 of this order.

5. Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following:

   Whether, as a matter of statutory construction of paragraph 5 of Part III of Schedule 2, contained in Schedule 2 to The Firemen's Pension Scheme Order SI 1992/129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

   a. (as the Respondent contends) that the calculation must be done using actual pay in the year to the date of retirement; or
   b. (as the Appellant contends) 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.

REASONS

The hearing is to be relisted not before 1 July for the reasons referred to in the order of 1 May 2020, namely a) to allow the Appellant to seek legal assistance and b) allow time for the facts to be clarified. The Respondent has kindly agreed to assist the court in relation to b).

The court also considers that, in view of the written submissions provided by or on behalf of the Appellant (including lengthy submissions addressed to the Court of Appeal and received by this court on 24 April 2020) it is important to clarify what appears to be the single legal issue in dispute in this appeal. This is reflected in paragraph 5 of the order.

The sole purpose of seeking a summary of the facts, as contemplated by paragraphs 2 to 4 of the order, is to assist the court in providing a factual context for determining whether permission to appeal should be granted in respect of the legal issue in dispute.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:

Mr FM G[redacted],[redacted]

Mr D Howell (solicitor) Lancashire Fire & Rescue Service dominichowell@lancsfirerescue.org.uk

The Pensions Ombudsman (ref PO-19150) david.craddock@pensions-ombudsman.org.uk

ORAL HEARING 3rd July 2020

Note for Case

In accordance with Judges Order, G[redacted] v Lancs Comb Fire Auth.

Instructions were received for me (the appellant) to take part in a hearing with Mrs Justice Falk on the above date at 1030 am.

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

At 10 am I went through the motions of contacting the Court but found that the Hearing app would not load into my iPad. I found this situation quite stressful which added to my apprehension about the forthcoming proceedings.

I rang Mrs. Justice Falk's clerk, M/s Saleem, to report the problem.
I gave her my name and said that I have a hearing with Mrs Justice Falk at 1030
M/s Saleem cut me short and said "no you don't you have a hearing with Mr. Justice Fancourt and then gave me a telephone number for Mr Justice Fancourt's clerk.
M/s Saleem's manner was brusque which surprised me as I had spoken to her previously and, at that time, had found her to be amiable.

Within a minute or two I received a call from Mr Steven Brilliant, Mr. Justice Fancourt's clerk.
He had been asked to ring me by M/s Saleem
Mr Brilliant talked me 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.

Mr. Justice Fancourt was a few minutes late in arriving.

He stated that this would be a short hearing and asked if I had anything to add to correspondence already received. Mr Justice Fancourt's manner was formal and business like.

I must say that I did expect him to ease me into the event but he chose not to.

I referred him to the Barrister's Advice which was sent to the Deputy Ombudsman following her Determination. In her Determination she included advice that I could appeal in a Court of Law against the Determination providing it was restricted to points of law only. I stated that Mr Copplestone Bruce had produced in his 'Advice' the points of law relevant to the DPO's Determination.

After a moment he asked if that was a Mr Locke in 2015 ?

I told him it was Mr Copplestone Bruce in 2019 and it was dated 15th or 19th of September.
I repeated what I had just said for his benefit.

There followed much shuffling of papers before he, I assume, found the document.

He asked me to give him the details again and then said there would be a “silence” whilst he read the document.

I had read the Advice to the Deputy Ombudsman three times previously and found it hard going as it had been written in “lawyer speak”. I 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.

I found this hard to believe and particularly as there are references in the Advice that should be read in conjunction with the Ombudsman’s Determination.

Mr. Justice Fancourt stated that the issue is about “further promotion” (which it is not) and in my case before I was 60 when I would have formally retired.

The judge said 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 (I didn’t follow this).
He said that what the Commentary says is highly complex and it has no statutory force.
He stated that there was no realistic argument in law and therefore he refused permission to appeal.
I believe that twice he stated that Mrs Justice Falk “encapsulated” matters in her Judgement.

I put to him the fact that this was not just about me 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.

He stated that he was sympathetic but the Judgement had to be made on argument of law.

I await the bill now which had to be pre-paid before the transcript company produce Mr Justice Fancourt’s JUDGEMENT. I had asked for the JUDGEMENT only. NOT the whole transcript.

FMG

Addendum…NEEDS A DATE…. MAKE IT THE LAST EMAIL

I contacted UBIQUS and contracted them to prepare a transcript of the hearing.

Later I changed my mind about having the Judge’s summary only and asked them to complete the whole of the transcript. I have received their transcript which is missing the first 21 minutes or so, and the Judge’s summary, immediately prior to him declaring the Judgement.

I have requested UBIQUS to ask the Court about releasing the summary and I have asked them to make enquiries about whether or not there might have been a secondary system to record the whole of the hearing?

I have also asked the Court the same questions in a recent e-mail. I await an answer from the Court.

Neutral Citation Number: [2020] EWHC 2789 (Ch) Appeal Ref: CH-2020-000043

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date: 03/07/2020

Before:

THE HONOURABLE MR JUSTICE FANCOURT

Between:

F[redacted] G[redacted]
Intended Appellant (the "Appellant")

and

LANCASHIRE COMBINED FIRE AUTHORITY
Intended Respondent (the "Respondent")

- -
- -

The Applicant appeared In Person
No appearance was made by or on behalf of **the Respondent**

Hearing date: 3 July 2020

- -

Approved Judgment

.....

MR JUSTICE FANCOURT:

1. This is a renewed application by Mr G[redacted] for permission to appeal against a decision of the Pensions Ombudsman, which was given on 10 September 2019. The original application for permission to appeal on a question of law was considered by Falk J on the papers, and on 2 April 2020 she refused permission to appeal, essentially on the basis that the legal issue raised was unarguable. Mr Ga[redacted] as he is entitled to do, renewed his application for permission to appeal.

2. Mr G[redacted] is a retired firefighter and he has a pension under the Fireman's Pension Scheme.

3. He was forced to retire, as a fireman, through ill-health as a result of an accident at the age of 54. He would otherwise have been entitled to continue to work until the age of 60.

4. Mr G[redacted] made a complaint to the Pensions Ombudsman on 10 October 2017 and the complaint, at that stage, was that he was wrongly being paid a Rule B1 ordinary pension, rather than a Rule B3 ill-health pension.

5. The complaint was considered first by a senior adjudicator at the Pensions Ombudsman's office, who wrote an opinion on 13 March 2019 saying that the complaint should not be upheld. Mr G[redacted] as he was entitled to do, did not agree with that opinion and accordingly his complaint was further considered by the Pensions Ombudsman, in fact the Deputy Pensions Ombudsman, who gave her decision for not upholding the complaint on 10 September 2019.

6. Mr G[redacted] sought to appeal to the High Court and after one or two false starts, via the Court of Appeal in Northern Ireland and then the Court of Appeal in this Country, the appeal was finally properly issued in the High Court on 4 February 2020. It was therefore significantly out of time but Falk J considered that there were sufficient reasons to justify an extension of time, and she made that order for an extension of time on 2 April but then refused permission to appeal by the same order.

7. She gave detailed reasons why she considered that, on the true interpretation of the relevant parts of Schedule 2 to the Fireman's Pension Scheme Order 1992, the Ombudsman had clearly been right and therefore Mr G[redacted] s appeal had no reasonable prospect of success.

8. After the application for permission to appeal was renewed, Falk J made a further order on 6 May 2020, adjourning the hearing that was due to take place to enable various matters to be done in the interim so as to give Mr G[redacted] the best possible chance of advancing his arguments on the basis of the relevant facts of the case. The relevant facts, in accordance with Falk J's direction, were set out in a document that the employer Fire Authority prepared, dated 6 May 2020, and Mr G[redacted] then responded directly, and very helpfully, by adding in his points of disagreement, such as they are, in the same document, which I have before me.

9. The relevant facts are that, as I have already said, Mr G[redacted] was forced to retire early, aged 54, as a result of a road traffic accident when he was on duty. That was a compulsory

retirement for the purposes of the pension scheme. Given his rank at the time of Assistant Divisional Officer, he was entitled to retire at 60 and so he was effectively forced to retire more than five years early.

10. The total pay, to which he was entitled with flexible duty allowance at the date of his retirement, was £32,904.00.

11. The issue between Mr G [redacted] and the Pension Scheme is that, he says, the rules of the scheme require to be taken into account the chance of the firefighter obtaining further promotion before what would otherwise have been his normal retirement age, and Mr G [redacted] case, set out in his amendment to the facts document, is that there was a good chance, as he saw it, of promotion to the rank of Divisional Officer 2 by the age of 60. He says that, in effect, he was doing that work and had that responsibility in any event, and that therefore he considered he had a good chance of promotion.

12. With that promotion the pay, as at the date of his actual retirement, would have been £36,547.72. At one stage, it appeared that part of Mr G [redacted] s argument was that, not only any promotion should be taken into account, but also any increase in the pay for the relevant rank by the normal retirement age should also be taken into account. But Mr G [redacted] now accepts that the second point is not a good point. Nevertheless he maintains his case that the prospect of promotion by the normal retirement age of 60 should have been taken into account.

13. The issue is, and is accepted to be, purely a question of the true interpretation of the Pension Scheme comprised in the relevant statutory instrument.

14. Falk J encapsulated the issue in her order of 6 May 2020 in the following terms, and I quote:

> *"Whether as a matter of statutory construction of paragraph 5 of part 3 of Schedule 2 contained in Schedule 2 to the Fireman's Pension Scheme Order, SI 1992 No. 129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:*
>
> *(a) as the respondent contends, that the calculation must be done using actual pay in the year to the date of retirement, or,*
> *(b) as the appellant contends, 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 achieve available promotions until the date he or she could have been required to retire, absent ill-health or injury".*

15. The relevant provisions of the scheme are, first, in appendix one, where Part B differentiates between an ordinary pension, at paragraph B1, and an ill-health award, at paragraph B3. It is common ground that Mr G [redacted] is entitled to an ill-health award and not an ordinary pension.

16. In schedule two to that appendix, there are then detailed provisions for the calculation of an ill-health pension. By virtue of his long years of service, Mr G [redacted] falls within paragraph 4

of that schedule. However, it is the terms of paragraph 5 that are directly in issue and they provide as follows:

> *"(1) Where:*
> *(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension, "the Notional Retirement Pension" and*
> *(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the Notional Retirement Pension,*
> *the amount of the ill-health pension is that of the Notional Retirement Pension.*
> *2. The Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay".*

17. Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement.

18. However, paragraph 5(2) says that that Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay. Average pensionable pay, for the purposes of the scheme, is defined in rule G1 as the average pensionable pay of a regular firefighter and is, subject to paragraphs five to seven, the aggregate of his pensionable pay during the year ending with the relevant date, and the relevant date is the last day of the firefighter's service as a regular firefighter.

19. 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. However, Mr G[redacted] argument is that the significance of the words 'by reference to' in paragraph 5(2) of the order is that they require the prospects of promotion during the remaining years of what would otherwise have been normal service to be taken into account. He argues that the words 'by reference to' signifies something different from what the word "is" would have signified, as for example it is used in an earlier part of the appendix: "the pension is the person's actual average pensionable pay".

20. He supports his argument by reference to guidance in the form of a commentary that was issued by the Home Office at the time when the pension scheme came into effect. The relevant part of that guidance says as follows:

> *"How much is the pension? The sums are set out in examples one and four to seven, the basis of the calculations is explained here. A firefighter's basic ill-health pension is never less than 1/60th of average pensionable pay, APP, and never more than 40/60th, two-thirds of APP or what could have been earned by compulsory retirement age".*

21. Mr Ga[redacted] fastens on the last words in that quotation and say that requires the scheme to consider what the firefighter could have earned had he continued to work until compulsory retirement on grounds of age.

22. The commentary and guidance is provided to give practical guidance to those considering

their pension entitlement on the way that the detailed provisions of the pension scheme operate. The detailed provisions are highly complex and, with respect, not easy for someone who is not very technically minded to understand.

23. The guidance has no statutory force, however; it is the scheme itself that has to be construed. The significance of the guidance was addressed by the Ombudsman in his decision. He referred to the paragraph to which I have referred, and he said, as follows:
'I find that the commentary does not support Mr N's interpretation' (I interpolate Mr N, in the decision, was Mr G[redacted]), and then he referred to a further argument in relation to the scheme.

24. He said Mr G[redacted] suggests that the figure of average pensionable pay should be determined by the Chief Fire Officer, based on what they think the likely salary could have been at the point of compulsory retirement. However, that interpretation implies a level of guesswork and forecasting that simply is not reflected in the methodology prescribed by the order or illustrated in the commentary. Read in the context in which they are used in the commentary, the two instances of what could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay. In both cases, the calculation described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.

25. In my judgment, there is no scope at all for construing paragraph 5(2) of Schedule 2 to the order so as to incorporate a requirement to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age.

26. There is no machinery in the scheme enabling the scheme administrators to assess or predict, or guess, what that promotion might in any given case have been. There is nothing in the wording which suggests that that kind of exercise is required to be undertaken.

27. In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay". There is no warrant for interpreting that as referring to any theoretical pensionable pay that might have been achieved by a later date.

28. I am sympathetic to Mr G[redacted] in the sense that the commentary and guidance uses a phrase which is ambiguous, namely "or what could have been earned by compulsory retirement age". However, in context, and by reference to the examples given in the guidance, one of which, example seven, is inconsistent with Mr G[redacted] case, it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion.

29. It follows, accordingly, that I consider that there is no realistic prospect of the argument on the issue of law succeeding in Mr G[redacted] favour. I consider that Falk J was right for the reasons that she gave. I therefore refuse permission to appeal.

End of Judgment

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IN THE ROYAL COURTS OF JUSTICE

Case No. CH-2020-000043

Rolls Building
7 Rolls Buildings
Fetter Lane
Holburn
London
EH4 1NL

Page Count 6.

Friday, 3rd July 2020

before

THE HONOURABLE MR JUSTICE FANCOURT

G[redacted]

- v -

LANCASHIRE COMBINED FIRE AUTHORITY

THE CLAIMANT appeared IN PERSON
NO APPEARANCE by or on behalf of the DEFENDANT

WHOLE HEARING

Case called at 10.30am.

MR G[redacted]: As I said, I haven't got that in front of me, but as you say –

MR JUSTICE FANCOURT: Well, yes.

THE CLERK OF THE COURT: Sir, sorry to interrupt, my computer just unexpectedly decided to restart itself at about 10:57, so I've started recording again, but I don't know if, just for the sake of the recording, you want to just highlight what was discussed in the last minute or so, for the recording. It is entirely up to you, sir.

MR JUSTICE FANCOURT: For the sake of the recording, I have just had a short discussion with Mr G[redacted] to make sure I understand exactly how he says that paragraph 5.2 of Schedule 2 to the order works, and the position we have reached, is that if someone retires early through ill health, the pensionable pay is that at the date of the retirement through ill health, but it has to take account of any promotion that the fireman could have been expected to have achieved by the normal retirement date for a person of his rank, and in Mr G[redacted] case that is the age of 60. That is right Mr G[redacted], I think, is it not?

MR G[redacted]: Yes, yes, My Lord.

MR JUSTICE FANCOURT: Well, Mr G[redacted], I understand the argument. I think you place reliance on some guidance that -

MR G[redacted]: The Home Office commentary, sir.

MR JUSTICE FANCOURT: The Home Office commentary, yes. Let me see if I can locate that in the bundle that I have got. If not, we will refer to it in the Ombudsman's decision, because I think he quotes from it.

Pause.

Mr JUSTICE FANCOURT: No, I cannot find the Guidance itself, so let us go to the decision of the Ombudsman, that he sets out.

Pause.

MR JUSTICE FANCOURT: Actually, he only sets out the particular sentence that you referred to, which is not very helpful. Let me see if I can locate the guidance somewhere else in this bundle. Yes, it is actually an appendix to the Ombudsman's decision. The commentary says how much is the pension, the sums are set out in Examples 1 and 4 - 7, the basis of the calculations is explained here: 'A firefighter's basic ill-health pension is never less that one sixtieth of average pensionable pay, and never more than 40 sixtieths of average pensionable pay or what could have been earned by compulsory retirement age.' And it is those words, is it not: 'What could have been earned by compulsory retirement age,' that you rely on.

MR G[redacted]: The B3 pension, My Lord, was an agreed introduction by the union and the employers at the time that the statutory instrument was introduced in 1992. And it was designed, it may not have been written very clearly, but it was designed to replace the fact that people who were having to be retired injured out of the service, to get compensation were going to court, and that was expensive, not only for them but for the taxpayer and, you know, the government, and the unions decided that what was drafted was that B3, Pension B3 would hold compensation so that people did not have to go to court to gain their advantage. And they didn't - I and others feel that it wasn't worded awfully well, and I think that Mr [Copplestone Bruce?] feels the same way and has in his advice, has tried to explain that.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: But B3, there is no, there is very little understanding of the fact that that B3 pension stands for compensation for anyone who has years to work, who has chances of promotion, would be compensated for, and in fact lose out that possibility. Yes.

MR JUSTICE FANCOURT: All right. Well, at the end of the day, the legal question is a vey limited one, as encapsulated by Mrs Justice Falk, and I think correctly encapsulated, and I think you agree that she correctly expressed the issue. It turns purely on the interpretation of Schedule 2 to the order.

MR G[redacted]: It is the interpretation that –

JUDGE FALKCOURT: It is purely a legal point

MR G[redacted]: It's a legal point, and I think this is why, well, I'm sure that Mr Copplestone Bruce felt strongly about this, and his last advice that you've read is, from my point of view, from our point of view, as good as it gets.

MR JUSTICE FANCOURT: Well, I quite understand what you say that, but Mr Copplestone Bruce is taking a rather broader approach to the merits of the pension scheme, and what I am concerned with is a much narrower question of the interpretation of the statutory instrument.

MR G[redacted]: Yes, that's correct. Yes.

MR JUSTICE FANCOURT: Well, Mr G[redacted], I have read Mr Copplestone Bruce's advice, I have read the relevant parts of the scheme, is there anything else that you want to say in support of your argument?

MR G[redacted]: Well, except to say, and it hasn't been said previously, that from my point of view and I'm the one you are dealing with now, and has been sort of on this quest for so many years now, it's not from personal greed that I'm doing this.

There's a group of people, of us. The 1992 scheme meant that looking back, those I worked with, those I commanded, those I came out of a building on my hands and knees with, wreaked; a lot of them have died leaving widows and beneficiaries. And when they die the widow loses half the pension. They then lose the injury pension and then of course when that person dies, the state pension goes with them. So, the widows and beneficiaries, despite their husbands' paying 11% of their annual income into the pension scheme have got no advantage over anyone who has served the basic time to age 55 and got the same pension. They haven't had any advantage.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: And I think, and I'm sure, that is why B3 was brought in, to compensate people who have been injured and have gone out of the service through no fault of their own, who have been put in harm's way, which of course is what you accept when you're in the job, and then when they die, their widows and beneficiaries don't get any advantage. We believe that the 1992 scheme, people who were on that scheme then, are being underpaid their pension, for those who were injured, anyway, and it amounts to a legal interpretation of the statutory instrument as to whether or not they are being underpaid or were being underpaid.

MR JUSTICE FANCOURT: Yes, indeed. All right. If there is nothing else that you wish to add, Mr G[redacted], I will give a judgment.

MR G[redacted]: Well, there is such a lot written, My Lord -

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: The bundle is, I meant this has been going on since I introduced, since I started it off in December 2015 by presenting the brigade with an IDRP1 which was in fact the first piece of paper they would receive from us, saying that we found something that really ought to be investigated, and the brigade have failed to do so, and we've got to this stage now. It's a long way down the road, but here we are.

MR JUSTICE FANCOURT: All right. I propose to give a short judgment, giving my reasons for the decision on your application.

Judgment given.

MR JUSTICE FANCOURT: Mr G[redacted], I am sorry that that goes against you but as I explained, it is a pure question of law, interpretation of the language of the scheme and in my judgment the point is simply unarguable. There is no material within the wording of the scheme to support the argument, nor in my view would it make any practical sense. So that is the reason why I have dismissed your application. I am

sorry that I have had to do that but that is the position as a matter of law.

MR G[redacted]: Thank you for your judgment My Lord. I will pass this on to those of us who are in this same position, that is to say hopeful[?]. Well, I suppose we have to swallow that but thank you again.

MR JUSTICE FANCOURT: Mr G[redacted], you are entitled to request or maybe the Trades Union may want to request a transcript of the judgment to be prepared. My clerk when I put the phone down will be able to give you some assistance with how you go about that if that is something that you want to do.

MR G[redacted]: Thank you for that. I would like to study it, as others would I am sure but would we have that in writing do you think or would it have to be…?

MR JUSTICE FANCOURT: No, you will get a full written judgment.

MR G[redacted]: Yes, thank you.

MR JUSTICE FANCOURT: The transcribers will prepare it and I will make any small adjustments as a necessary to correct any obvious errors or bad expression that I used in my judgment that I have just given but otherwise it will be approved and then sent out.

MR G[redacted]: Right.

MR JUSTICE FANCOURT: There is… It does not come free unless your financial circumstances are such that assistance, financial assistance will be given by the courts, which is why I mention that if it is of general importance as you indicated, I think earlier that it might be to a number of people.

MR G[redacted]: Well, I am the stalking horse if you like, that is to say that my particular case was one that could be brought up. I am in a position unlike some of the people; I am still here for a start, the others have died. I had the rank and I had the certain possibility of being promoted in the last five years.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: That's why it was my particular case that we decided to run.

MR JUSTICE FANCOURT: Right, I understand that. As I say, if you or others or a Trade Union decide they want a transcript then they are perfectly entitled to request one but there is a fee to pay to the transcribers to prepare the written transcript of the judgment.

MR GA[redacted]: Yes, okay. I'll pass that on.

MR JUSTICE FANCOURT: Thank you very much. Thank you Mr G[redacted] for your very courteous submission and I wish you good health and a long life.

MR G[redacted]: Thank you My Lord.

MR JUSTICE FANCOURT: Goodbye.

MR G[redacted]: Bye.

Court rises.

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Page Count 6.

Case No: CH 2020-000043

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Date of hearing: Friday 3 July 2020

Page Count: 7
Word Count: 2239
Number of Folios: 31

Before:

MR JUSTICE FANCOURT

Between:

MR F[redacted] M[redacted] G[redacted] **Appellant**

- and -

LANCASHIRE COMBINE FIRE AUTHORITY **Respondent**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

THE CLAIMANT appeared as a **LITIGANT-IN-PERSON**
NO APPEARANCE by, or on behalf of, the **DEFENDANT**

- - - - - - - - - - - - - - - - - - - -

PROCEEDINGS

- - - - - - - - - - - - - - - - - - - -

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[Transcriber's note: transcript prepared without access to all case papers].

THE COURT CLERK: I should also, as I said in my email, Mr G[redacted], just let you know, obviously, only the court should be making a recording of this hearing, and no one else, but I am just saying it for the record. I am sure you already saw that in my email.

MR JUSTICE FANCOURT: Steve, am I audible? Can you hear me?

THE COURT CLERK: Yes, I can hear you, sir.

MR JUSTICE FANCOURT: All right.

Is Mr G[redacted] there?

MR GA[redacted] Is that Justice Fancourt?

MR JUSTICE FANCOURT: Mr G[redacted], good morning.

MR G[redacted] Yes, good morning, My Lord.

MR JUSTICE FANCOURT: The hearing this morning, Mr G[redacted], for reasons I am sure you will understand, is being conducted remotely, and I understand it is telephone in your case. It is, nevertheless, a public hearing because of the way the hearing was listed in the calls list. The court will make a recording of the hearing, which will be available, if necessary, but no one else may make a recording of this hearing. It is against the law to do so.

The purpose of the hearing this morning is to review the decision of Falk J, that she made on 2 April, I think it was, when she granted you an extension of time for your Appellant's notice but refused permission to appeal. So this is not a full substantive hearing of the argument on the appeal. This is just a short hearing, in which you have the chance to seek to persuade me that Falk J was wrong and that there is some significant argument that needs to be heard at a full hearing with the Fire Authority also present and represented.

MR G[redacted] Yes, My Lord.

MR JUSTICE FANCOURT: I have read the papers, Mr G[redacted], so you do not need to explain the background to me. I have read the Adjudicator's decision, I have read the Ombudsman's decision, I have read your grounds of appeal, and I have read Falk J's orders, and I have read the document that was prepared between you and the Fire Authority since the last hearing in front of Falk J, setting out the relevant facts ---

MR G[redacted]: Did you also ---

MR JUSTICE FANCOURT: --- so you do not need to explain any of that to me. You can just launch straight into why you say that there is a real argument as a matter of law about what the pension scheme means.

MR G[redacted]: Well, I think the argument in law has been already explained by Mr Bruce, Mr John Bruce, who is a barrister. He sent what was headed "Advice" off to the Deputy Pensions Ombudsman, following her determination, initially, and I think a copy of that would also go to Falk J, and there are 44 points covered in that advice. I do not know whether you have read that. I have no way of knowing that.

MR JUSTICE FANCOURT: I do not think I have even got that. Let me just have a look and see if I can locate it. *(Pause)*. Yes, I have found it. Is it a document of 77 pages?

MR G[redacted]: No, sir. No, My Lord. It is 44 points, 44 paragraphs, which the barrister produced following the determination from the Pensions Ombudsman. If you have not got it, I could get it to you.

MR JUSTICE FANCOURT: Well, let me tell you what I have got, because I have got two separate documents headed "Advice": one is written by Mr Locke QC, on 11 May 2015 – that is 25 paragraphs.

MR G[redacted]: Yes, that is not it, sir.

MR JUSTICE FANCOURT: That is not it. Then separately, there is another document headed "Advice", which runs to 56-numbered paragraphs, and that has got Mr John Merlin Copplestone Bruce's name at the bottom of it.

MR G[redacted]: That is right. He is the barrister. That was ---

MR JUSTICE FANCOURT: So have I got the right ---

MR G[redacted]: Well, he may have sent; I am just checking. I have got some material on the iPad in front of me. Just let me check. *(Pause)*. No, that is not it.

MR JUSTICE FANCOURT: The first paragraph of the document I am looking at, Mr G[redacted], says, "Mr David Locke QC has most kindly given an initial advice, setting out, as it were, the opposing forces." Is that the right document?

MR G[redacted]: No. I have got it in front of me now. it says, "Advice. I am asked to advise on an appeal in Mr N's case". The Pensions Ombudsman has referred to me as "Mr N" ---

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: --- "…on a point of law from the Deputy Ombudsman's determination". Now, we were invited if we wanted to appeal against the determination to appeal on points of law, and we did. This is from Mr Copplestone Bruce, and there are 46 points, 47 points, and that was 13 September 2019, that was last year, in September.

MR JUSTICE FANCOURT: Bear with me a moment. I am still looking. I have rather a lot of papers in this matter, so it takes a while to ---

MR G[redacted]: Well, it has been going on a long time, My Lord.

MR JUSTICE FANCOURT: Yes. *(Pause)*. No, I do not think that document is in the bundle. There are a good number of other documents written by Mr Copplestone Bruce, but not that one.

MR G[redacted]: Well, this was 13 September, as I said, 2019, 40-odd points. These are the points of law that he prepared, on the invitation of the Pensions Ombudsman, because these are the points that we had permission to appeal on.

MR JUSTICE FANCOURT: Well, you have not go permission to appeal yet from me ---

MR G[redacted]: No, no, that is to say that the Pension Ombudsman said, "If you are going to appeal, you have to do so on points of law".

MR JUSTICE FANCOURT: Yes.

MR G[redacted] These were prepared, as a consequence, and sent. I am sure that they were sent off to Falk J, but if you wish, I can email them to you.

MR JUSTICE FANCOURT: I think I have found it:

"I am asked to advise on an appeal in Mr N's case on a point of law from the Deputy Ombudsman's determination on 10 September 2019."

Is that it?

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: Right.

MR G[redacted]: Yes, that is the one, sir.

MR JUSTICE FANCOURT: Okay. *(Pause)*. Now, when you had a hearing before with Falk J ---

MR G[redacted]: Well, that did not actually come to pass, Your Honour, My Lord. She changed it from 4 June, it was scheduled for, and then it was changed by herself, and this date is the one that she changed it to.

MR JUSTICE FANCOURT: Yes, I understand that. I am sorry, I meant the last order that she made. She set out what she understood to be the legal issue in the appeal, did she not? Do you remember…at 5 of the order of 6 May?

MR G[redacted] Yes, that is going back to…I have not got that handy, but yes.

MR JUSTICE FANCOURT: What she says, let me read it to you, it will refresh your memory, I think.

MR G[redacted]: If you would, please.

MR JUSTICE FANCOURT:

"Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following: whether, as a matter of statutory construction of paragraph 5 of part 3 of schedule 2, contained in schedule 2 to the Fireman's Pension Scheme Order, the requirement to calculate the notional retirement pension by reference to actual average pensionable pay means either:

a. as the Respondent contends that the calculation must be done using actual pay in the year to the date of retirement; or

b. as the Appellant contends, 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."

MR G[redacted] That is what we contend, that was our argument.

MR JUSTICE FANCOURT: Yes, and I think as a result of what she directed at that stage, the Fire Authority set out, first of all, what they thought were the relevant facts in your case, and then you responded to that document, and added some wording to show where you disagreed with anything that they had written.

MR G[redacted] Yes.

MR JUSTICE FANCOURT: I have got that document in front of me.

MR G[redacted]: Right.

MR JUSTICE FANCOURT: But you accept, do you not, you say in that document, that Falk J correctly identified the legal issue?

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: Yes. So that is the question of law that potentially arises on the appeal.

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: What I have to decide is whether that is a point that is sufficiently arguable, that there should be full appeal hearing with you and the Fire Authority represented.

MR G[redacted]: I see.

MR JUSTICE FANCOURT: She thought that there was not a sufficiently strong argument that you were right. She thought it was clear that the relevant pay was the pay for the rank that you had achieved at the date when you actually retired through ill-health.

MR G[redacted]: Yes, well, if you were to read the advice from Mr Copplestone Bruce, he goes into that at great sort of depth and tries to explain, and does explain, the value of what of what we are saying in our argument. I think that followed, well, that was in September. I do not know whether Falk J had taken that into consideration by then.

MR JUSTICE FANCOURT: Well, shall I read it now? It is not very long. It is about eight pages or so.

MR G[redacted]: It is. It is. If you wish, I would be happy for you to do that, sir, yes.

MR JUSTICE FANCOURT: Shall I do that? Then I can be sure that I have understood all the arguments that you want to rely on.

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: When I have read it, you can add anything else that you want to at that stage. So just give me a few minutes; it will take me a few minutes to read it. I will let you know ---

MR G[redacted]: I will stay by the phone. I will stay on the phone.

MR JUSTICE FANCOURT: Stay on the phone. That is right.

MR G[redacted]: Thank you, My Lord.

MR JUSTICE FANCOURT: *(Pause)*. Yes, all right, Mr G[redacted]n. Well, I have read that.

MR G[redacted]: Yes, all right, My Lord.

MR JUSTICE FANCOURT: The key point, I think – tell me if I am wrong about this – is that you say that the wording of paragraph 5 in part B3…sorry, bear with me. Let me just find it again and turn it up. *(Pause)*. Paragraph 5.2 of schedule 2 to the order says,

"The notional retirement pension is to be calculated by reference to the persons actual average…"

[Transcriber note: audio ended].

Marten Walsh Cherer hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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[redacted]

DATE 18 January 2021

YOUR REF:

OUR REF: 2020/PI/10670

Dear Sir/Madam,

Re: G[redacted] -v- Lancashire Combined Fire Authority

Your papers were referred to a Master of the Court of Appeal who has asked me to inform you of the following:

"Mr G[redacted] has filed an appellant's notice seeking permission to appeal the order of Mrs Justice Falk dated 2nd April 2020. That order refused permission to appeal from a decision of the Deputy Pensions Ombudsman. It is not possible to appeal the refusal of permission to appeal to the Court of Appeal. This is because if an appeal court (in this case Mrs Justice Falk) refuses permission to appeal 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. As that decision was made on the papers it was possible for Mr G[redacted] to apply to the High Court for an oral hearing of his permission application. It is clear from the papers that you applied for an oral hearing of his permission application and, on 3 July 2020 Mr J Fancourt refused permission to appeal at an oral hearing (held via remote audio hearing).

Where a High Court Judge refuses permission to appeal at an oral hearing, that decision is final and cannot be further appealed (see section 54(4) of the Access to Justice Act 1999).

The decisions of Mrs Justice Falk and Mr Justice Fancourt cannot be further appealed and the papers are therefore returned unissued."

Mr G[redacted] is advised to cash the cheque refunding him the sum of £1199 previously paid by him to HMCTS.

Yours faithfully,

Yomi Oba
Registry Office

Paul,
Received this
morning 19th Feb 2021

JUDICIARY OF
ENGLAND AND WALES

ANDREW CATON
ASSISTANT PRIVATE SECRETARY TO THE DEPUTY HEAD OF CIVIL JUSTICE
ASSISTANT PRIVATE SECRETARY TO THE MASTER OF THE ROLLS

[redacted]

17th February 2021

Dear Mr G[redacted]

Thank you for your letter which was received by this Office on 17th February 2021.

I am sorry that you still feel aggrieved about your whole experience that occurred during the litigation you were involved in, but the fact remains that as explained in my e-mail to you on 15th January 2021 and during a telephone conversation with your advisor Mr Burns, the Master of the Rolls and this Office are unable to assist in this regard.

As before, I can only suggest that you seek independent legal advice as to the options, if any, that are open to you.

I do wish you all the best for the future.

Yours sincerely

Andrew Caton

Master of the Rolls Private Office Room E214 Royal Courts of Justice Strand London WC2A 2LL
Telephone 0207 947 7402 **Email** andrew.caton2@judiciary.uk
Website www.judiciary.uk

[redacted]

28th January, 2021

Mr. P Cobourn
Registry Office
Case Progression Section
Strand, Holborn,
London WC2A 2LL

My Reference: FG111.
Your Reference:2020/PI/10670

In the Court of Appeal
England and Wales
Civil Division

Case 2020/PI/10670

F[redacted] M[redacted] G[redacted]
Appellant (Litigant~in~Person)

and

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

Dear Mr. Cobourn,

1. I am in receipt your curious document.

2. As you might expect by now I treat all your communications with circumspection since I first became aware of your involvement at an early point after my Appeal was *issued* by the Court of Appeal on the 4th of February 2020 a fact later recorded by Fancourt LJ in an Approved Judgment.

3. From the outset of your involvement I have watched you manipulate each and every step of the way to the detriment of Justice not only for myself but for those veterans who served the public well and who through a no fault of their own in

Service injury were discharged and were underpaid their pensions to *their* loss and the loss of their Widows and Beneficiaries.

4. You are engaged in a dangerous ‘game’ which you will find have consequences.

5. In your latest manipulation in which you now abandon any pretext of subterfuge and engage in a blatant criminal act you seem to infer from its contents that this is a formal Judgment of the Court, though you do not state from which Court, or from which Judge the decision comes, and search as I may I cannot find a Listing at which this ‘Master of the Court’ as you have described him/her sat to reach an Approved Judgment ?

6. If I were new to this ‘game’ and gullible I might well be minded to ‘throw the towel in’. but in fact what you do is to simply encourage me and my comrades to investigate you, your role, and ultimately who you are working for because it cannot be by any stretch of the imagination be the Judiciary, Fair Play, or Justice.

7. I wonder who you really are because I find it noteworthy that you have never stated on a single documentation what your title is; what your responsibilities are; who you answer directly to in line management; and indeed what your Civil Service grade might be?

8. It seems after reviewing your contributions over the last year a clear picture emerges where other than obfuscate, block, delay, or run me around the chicanery, unlike your colleagues in the Belfast Registry, you have provided me as a Litigant-in-Person with no support whatsoever contrary to the Judicature policy on LiPs which governs your ‘work’. In fact overall you have acted with shameless criminality.

9. Indeed even though you write to me under the CoA Reference 2020/PI/10670 you even deliberately failed to inform me that this was the new Reference I was meant to use instead of the one issued by the Court of Chancery and thus you deliberately misled me with the vain hope I would get lost in the legal labyrinth.

10. Now however that you have finally excited my interest in you I have chosen to look at, not only your deliberately misleading ‘performance’ during the last year, but the lead in to your latest criminality.

11. But before I do so I should draw the many readers’ attention, those who will subsequently see this published letter, to your personal misconduct and abuse of authority in public office both of which may I remind you are also criminal offences.

12. What I find especially repugnant, as a former Senior Ranking Officer in the Fire Service, is that I suspect that you do not hesitate to misuse and abuse your authority over your subordinates who you unabashedly use to cloak your criminal activities by placing them under duress and by manipulating them into acquiescence under the threat of their continued employment.

13. Now in gathering evidence against you to present not only to the Lord Chief Justice but to the Commissioner of the Metropolitan Police I require you to indicate to me the following:

    - Who the 'Master of Court' was you state that you placed this matter before?
      No doubt the new Master of the Rolls(MR) will also be interested to know.

    - The Listing Date and Time at which this Judge gave an Approved Judgement on the documents you submitted to him/her.

    - I require a copy of ***all*** the documentation that you placed before that Judge including your written recommendations, whilst reminding you that all this documentation is under the Data Protection Act 2000(GDPR) my 'Subject data' ; you are to regard this paragraph as my formal request to acquire this 'subject data' within the legislative time framework allowed.

14. I must now deal assiduously with the 18th January 2021 the day at 07:36hrs on which I sent you an EFile and file copy of an Addenda to my Appeal.

15. This seems to have galvanised you into action in that you were able in a few short hours until 16:00hrs to get a Court Listing; Court time with a sitting Judge on an issue before the Court since 4th February 2020, and then get him/her to issue you with an Approved Judgment so that you could have a 'willing' subordinate draft, type, issue, and mail to me with your latest creative ideas all pursuant to obstructing Justice in a few stampeding hours.

16. I also presume you presented this Addenda to the Judge or did you in a further criminal act suppress its presence in a blatant act of Contempt of Court by deliberately obstructing due process?

17. When you send me my 'Subject data' no doubt this will be included as proof of your innocent actions and no doubt the Judge will ultimately confirm all that you stated in this letter to me.

18. Next I will examine your role in making legal statements purporting that these come from a 'Master' of the Court of Appeal because as a lay person clerk you

cannot make such statements and if you have done so then you act in ultra vires.

19. The alleged statements from a ‘Master’ do raise an interesting Point of Law in pragmatism.

20. Is this ‘Master of the Court’ to whom you state you have presented all these documents saying that there is no further Appeal process against Fancourt LJ who deliberately failed to understand my Points of Law advanced to him?

21. And if this is so why do we have a Supreme Court whose sole existence is posited on judging Points of Law presented to them if they are all refused at Court of Appeal level by mere layperson clerks or misguided ‘Masters’ ?

22. Now to your risible ‘law’ the briefest glance at which, namely, the ‘Access to Justice Act 1999 S 54’, which you deliberately misquote to mislead and confuse provides a prime example of how you have manipulated my legitimate actions over the preceding year where you cherry pick the quotes which serve your malignant and corrupt purposes counting on my assumed ignorance of the law to defeat my lawful purpose which I seek to attain namely, Justice.

23. In concluding there really is only one action necessary to prevent you and others from continuing to corruptly Misconduct yourself in Public Office and exploiting the innocent and that is to have the Metropolitan Police arrest you; to have you arraigned and charged before the Court, and ultimately to have you and those who direct, encourage, and condone your actions locked up.

24. The harm you and others have caused to Public Confidence in the Judiciary and in particular the Court of Appeal is incalculable.

25. I do so hope Mr. Cobourn that you understand my points of view and I wait your detailed response to all those Questions coupled with my DPA Request which I have raised with you and can no doubt expect you will deal with them with the same alacrity you have dealt with your last communication?

    I will give you 7 working days to respond before I report your criminality to Commissioner Dame Cressida Dick.

[redacted]

F M G[redacted] MIFireE

HM Courts & Tribunals Service

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www.justice.gov.uk

[redacted]

DATE 11 February 2021

YOUR REF:

OUR REF: 2020/PI/10670

BY EMAIL AND POST

Dear Mr G[redacted]

Re: G[redacted] -v- Lancashire Combined Fire Authority

Your email and letter of 28 January has been referred to Master Meacher of the Court of Appeal who has asked me to reply as follows:

Mr G[redacted] letter of 28 January 2021 sent to the Civil Appeals Office and marked for the attention of Mr P Cobourn makes allegations against, and implies improper motives on the part of members of administrative staff in the Civil Appeals Office. The allegations are wholly unsubstantiated and simply have no basis in fact. The threats contained in the letter potentially amount to a breach of section 1 of the Malicious Communications Act 1988 and Mr G[redacted] should desist from such communications in any future correspondence. Mr Cobourn and other members of staff have simply sought to respond to the application filed by Mr G[redacted] and have obtained directions from legal colleagues as necessary.

The directions dated 18 January 2021 were given by the jurisdiction lawyer, Ms L Angus, who deals with all queries regarding the jurisdiction of the Court of Appeal, with the assistance of the Masters. The author of the directions of 18 January 2021 was inadvertently referred to as a Master and I apologise for that error. I confirm, however, that the content of the directions is correct. If, however, Mr G[redacted] would like the directions to be reviewed by a Lord or Lady Justice, he should confirm this in writing.

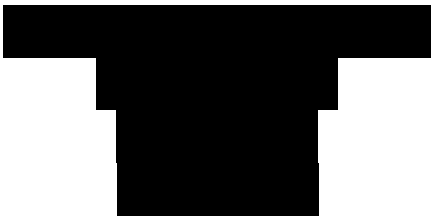
The only documents considered by Ms Angus when she gave the directions dated 18 January were documents filed by Mr G[redacted] (in particular the appellant's notice and a copy of the orders made in the lower court).
In any event, a request under the Data Protection Act does not entitle an individual to copies of documents from court records. The supply of documents on the court file to parties or non-parties is governed by the Civil Procedure Rules (CPR 5.4) As a party to proceedings, Mr G[redacted] is entitled as of right to the documents listed in CPR PD 5A Paragraph 4.2A (copy attached). Most of these documents do not apply in Mr G[redacted] case, but if he would like any of the documents listed which do exist to be copied and sent to him, he should apply to that effect to the Civil Appeals Office. A copying fee is payable for each document (The Civil Proceedings Fees Order 2008, Schedule 1, paragraph 4.1). It should be noted, that the list of documents does not include correspondence of any sort.

If Mr G[redacted] wishes to obtain copies of any *other* documentation on the court file, he requires the court's permission. He must therefore make a formal application (on form N244) and pay the court fee of £528 (see CPR 5.4B and 5.4D attached).

Yours sincerely

Mr Mo Chowdhury
Registry Office
civilappeals.registry@justice.gov.uk

In accordance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 that came into effect from 25th May 2018 if you would like to know more about how HMCTS handles your personal data please visit our website at www.gov.uk/hmcts. If you require a hard copy of the privacy notice please contact the court.



19th March, 2021.

Private and Personal To:

Master A Meacher
Royal Courts of Justice
Strand, Holborn,
London WC2A 2LL.

My Reference: FG119.
Your Reference: 2020/PI/10670.

Dear Master Meacher,

Thank you for your letter dated 11th February 2021, in which you invited me to request a review of the case in hand; being, 'G[redacted] v Lancashire Combined Fire Authority'.

I wish to take up your kind invitation and attach herewith a document for your perusal.

Please be good enough to have your Clerk acknowledge receipt.

Yours Sincerely,

F M G[redacted] MIFireE

Copy - Lancashire Combined Fire Authority.

Truncated for brevity

John M Copplestone-Bruce
Inner Temple

[redacted]

6th March 2021

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

Dear Mr.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. [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 27 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]s 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].

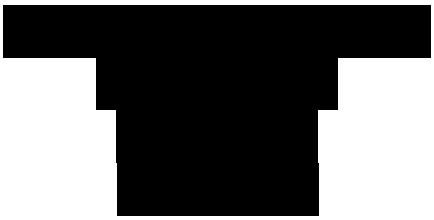
If it can be done may I suggest this letter be taken to be an application under CPR52.30 to ask the Court of Appeal to re-open the case out of time to consider Mr. G[redacted] Appeal against Mr Justice Fancourt's Approved Judgement.

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.



1st April, 2021.

Private and Personal To:

The Right Honourable Sir Geoffrey Vos,
Master of the Rolls,
President of the Court of Appeal of England and Wales, Civil Division.
Royal Courts of Justice
Strand, Holborn,
London WC2A 2LL.

My Ref: FG122; G[redacted]-v-Lancashire Combined Fire Authority.
Your Ref: Ch – 2020 – 000043 & 2020/PI/10670.

My Lord,

I received a letter from the Court dated 11th February 2021, in which I was invited to request a review of the case G[redacted] v Lancashire Combined Fire Authority.

The first line of the letter stated that the previous correspondence which I had sent to the Court (Registry) had been referred to Master Meacher of the Court of Appeal who had asked Mr. Chowdhury to reply to me on her behalf, and I quote:- “who has asked me to reply as follows”.

In what followed came an invitation for me to request a review which I did.

I believed, not unreasonably, that the invitation was instigated by and approved of by Master Meacher and so I wrote to her confirming my request to have the case reviewed.

I included a comprehensive draft of an appeal prepared for me at my request, by Mr. John Copplestone Bruce, my Pro Bono Barrister, which as you might observe took some time.
This, as I stated in my letter, was for her information.

Up to that point in the proceedings Master Meacher, as far as I knew, had not been involved in the case and so might welcome the draft as a personal briefing.

To date, disappointingly, I have had neither the common courtesy of an acknowledgement, nor any helpful administrative guidance how I might proceed as a Litigant-in-Person from this point forward.

I know, from Postal Records, that my correspondence was delivered to the Court and as it included this particular request in respect of the administrative advice above (seeking no advantage) which required an answer.

Given my previous experience I am no longer disappointed that I have yet to have a reply (covid apart).

In my quest for justice, not only for myself but for those disabled Fire Service Veterans, their Widows and Beneficiaries who were on, or associated with the 1992 Scheme; Statutory Instrument 129 Firemen's Pensions Scheme, and, like me, have been paid the wrong pensions, I have been subjected to all manner of spoiling tactics.

After 6 years of a struggle and having been invited to ask for a review of this case I now formally submit to you what I believe is all the material including your not inconsiderable fee (£1200) that the Court requires for consideration of this case.

Historically 'Firemen' were re-titled Fire Fighters which describes our nature as well as our occupation and so we can guarantee you that we will continue to "box on" in adversity.

Lest there be doubt, we seek no unfair advantage, nor 'secret deals', just that our Human Right to Justice, thus far denied to us and now it seems by the Court of Appeal also, be properly applied, 'win or lose'.

Please be kind enough to have your Clerk acknowledge receipt.

Yours Truly,

F M G[redacted] M.I.Fire E.

Copy – President of the Supreme Court.

Subject: Fw: RE: Standard G[redacted] -v- Lancashire Combined Fire Authority 2020/PI/10670
Date: 08 April 2021 16:44:47

On Thursday, April 8, 2021, 1:58 pm, Civil Appeals - Registry <civilappeals.registry@justice.gov.uk> wrote:

Dear Sir/Madam,

This is a follow up to my earlier email.

Your papers were referred to a Lord Justice of the Court of Appeal who has asked me to inform you of the following:

1. The Applicant sought to file an appellant's notice in April 2020. The papers were referred to the Masters for jurisdiction directions. Master Bancroft-Rimmer refused jurisdiction and the following directions were sent with the returned papers on 14 July 2020 (the delay was caused by the pandemic and backlog in working through hard copy documents sent to the Court).

"Mr G[redacted] has filed an appellant's notice seeking permission to appeal the order of Mrs Justice Falk dated 2nd April 2020. That order refused permission to appeal from a decision of the Deputy Pensions Ombudsman. It is not possible to appeal the refusal of permission to appeal to the Court of Appeal. This is because if an appeal court (in this case Mrs Justice Falk) refuses permission to appeal 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.

Accordingly the Court of Appeal does not have jurisdiction in respect of this matter and Mr G[redacted] papers and his cheque for the issue fee are returned to him. The order notes that as it was made on the papers Mr G[redacted] may seek a renewal of his permission to appeal hearing. Mr G[redacted] will now require an extension of time to seek such a renewal if he wishes to pursue this matter."

2. The applicant later re-filed an appellant's notice seeking permission to appeal the order made by Mrs Justice Falk. From the papers he had filed it was possible to see that he had renewed his application for permission to appeal in the High Court and Mr Justice Fancourt had refused permission to appeal at an oral hearing on 3 July 2020. The directions were sent out to Mr G[redacted] on 18 January 2021:

"*Mr G[redacted] has filed an appellant's notice seeking permission to appeal the order of Mrs Justice Falk dated 2nd April 2020. That order refused permission to appeal from a decision of the Deputy Pensions Ombudsman. It is not possible to appeal the refusal of permission to appeal to the Court of Appeal. This is because if an appeal court (in this case Mrs Justice Falk) refuses permission to appeal 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. As that decision was made on the papers it was possible for Mr G[redacted] to apply to the High Court for an oral hearing of his permission application. It is clear from the papers that he applied for an oral hearing of his permission application and, on 3 July 2020 Mr J Fancourt refused permission to appeal at an oral hearing (held via remote audio hearing).*

Where a High Court Judge refuses permission to appeal at an oral hearing, that decision is final and cannot be further appealed (see section 54(4) of the Access to Justice Act 1999).

The decisions of Mrs Justice Falk and Mr Justice Fancourt cannot be further appealed and the papers are therefore returned unissued. Mr G[redacted] is advised to cash the cheque refunding him the sum of £1199 previously paid by him to HMCTS."

3. Mr G[redacted] then wrote a letter of complaint to the Master of the Rolls which was passed to Master Meacher who replied as follows:

"*Mr G[redacted] letter of 28 January 2021 sent to the Civil Appeals Office and marked for the attention of Mr P Cobourn makes allegations against, and implies improper motives on the part of members of administrative staff in the Civil Appeals Office. The allegations are wholly unsubstantiated and simply have no basis in fact. The threats contained in the letter potentially amount to a breach of section 1 of the Malicious Communications Act 1988 and Mr G[redacted] should desist from such communications in any future correspondence. Mr Cobourn and other members of staff have simply sought*

to respond to the application filed by Mr G[redacted] and have obtained directions from legal colleagues as necessary.

The directions dated 18 January 2021 were given by the jurisdiction lawyer, Ms L Angus, who deals with all queries regarding the jurisdiction of the Court of Appeal, with the assistance of the Masters. The author of the directions of 18 January 2021 was inadvertently referred to as a Master and I apologise for that error. I confirm, however, that the content of the directions is correct. If, however, Mr G[redacted] would like the directions to be reviewed by a Lord or Lady Justice, he should confirm this in writing.

The only documents considered by Ms Angus when she gave the directions dated 18 January were documents filed by Mr G[redacted] (in particular the appellant's notice and a copy of the orders made in the lower court).

In any event, a request under the Data Protection Act does not entitle an individual to copies of documents from court records. The supply of documents on the court file to parties or non-parties is governed by the Civil Procedure Rules (CPR 5.4) As a party to proceedings, Mr G[redacted] is entitled as of right to the documents listed in CPR PD 5A Paragraph 4.2A (copy attached). Most of these documents do not apply in Mr G[redacted] case, but if he would like any of the documents listed which do exist to be copied and sent to him, he should apply to that effect to the Civil Appeals Office. A copying fee is payable for each document (The Civil Proceedings Fees Order 2008, Schedule 1, paragraph 4.1). It should be noted, that the list of documents does not include correspondence of any sort.

If Mr G[redacted] wishes to obtain copies of any other documentation on the court file, he requires the court's permission. He must therefore make a formal application (on form N244) and pay the court fee of £528 (see CPR 5.4B and 5.4D attached)."

Mr G[redacted] requested that the papers be referred to a Supervising Lord Justice, pursuant to *Jolly v Jay* [2002] EWCA Civ 277., to reconsider the jurisdiction directions. The papers were therefore referred to Lord Justice Newey, as supervising Lord Justice for appeals from the Chancery Division of the High Court, for a review of the jurisdiction directions, pursuant to *Jolly v Jay.* Lord Justice Newey has confirmed as follows:

"The Court of Appeal has no jurisdiction to entertain an appeal from either Falk J or Fancourt J. The papers should not be issued."

Accordingly, the papers will be returned and should not be re-filed and fees refunded. Mr G[redacted] should note that the Court of Appeal will not correspond further on this matter.

Kind Regards

Mr Yomi Oba

Civil Appeals Office| Room E308 | Royal Courts of Justice | Strand | London | WC2A 2LL | DX 44456 Strand |

Phone: 0207 947 7784

Email: civilappeals.registry@hmcts.gsi.gov.uk

Web: www.gov.uk/hmcts

1st April, 2021.

Private and Personal To:

The Right Honourable Sir Geoffrey Vos,
Master of the Rolls,
President of the Court of Appeal of England and Wales, Civil Division.
Royal Courts of Justice
Strand, Holborn,
London WC2A 2LL.

My Ref: FG122; G[redacted]-v-Lancashire Combined Fire Authority.
Your Ref: Ch – 2020 – 000043 & 2020/PI/10670.

My Lord,

I received a letter from the Court dated 11th February 2021, in which I was invited to request a review of the case G[redacted] v Lancashire Combined Fire Authority.

The first line of the letter stated that the previous correspondence which I had sent to the Court (Registry) had been referred to Master Meacher of the Court of Appeal who had asked Mr. Chowdhury to reply to me on her behalf, and I quote:- “who has asked me to reply as follows”.

In what followed came an invitation for me to request a review which I did.

I believed, not unreasonably, that the invitation was instigated by and approved of by Master Meacher and so I wrote to her confirming my request to have the case reviewed.

I included a comprehensive draft of an appeal prepared for me at my request, by Mr. John Copplestone Bruce, my Pro Bono Barrister, which as you might observe took some time.
This, as I stated in my letter, was for her information.

Up to that point in the proceedings Master Meacher, as far as I knew, had not been involved in the case and so might welcome the draft as a personal briefing.

To date, disappointingly, I have had neither the common courtesy of an acknowledgement, nor any helpful administrative guidance how I might proceed as a Litigant-in-Person from this point forward.

I know, from Postal Records, that my correspondence was delivered to the Court and as it included this particular request in respect of the administrative advice above (seeking no advantage) which required an answer.

Given my previous experience I am no longer disappointed that I have yet to have a reply (covid apart).

In my quest for justice, not only for myself but for those disabled Fire Service Veterans, their Widows and Beneficiaries who were on, or associated with the 1992 Scheme; Statutory Instrument 129 Firemen's Pensions Scheme, and, like me, have been paid the wrong pensions, I have been subjected to all manner of spoiling tactics.

After 6 years of a struggle and having been invited to ask for a review of this case I now formally submit to you what I believe is all the material including your not inconsiderable fee (£1200) that the Court requires for consideration of this case.

Historically 'Firemen' were re-titled Fire Fighters which describes our nature as well as our occupation and so we can guarantee you that we will continue to "box on" in adversity.

Lest there be doubt, we seek no unfair advantage, nor 'secret deals', just that our Human Right to Justice, thus far denied to us and now it seems by the Court of Appeal also, be properly applied, 'win or lose'.

Please be kind enough to have your Clerk acknowledge receipt.

Yours Truly,

F M G[redacted] M.I.Fire E.

Copy – President of the Supreme Court.

Click here to reset form | Click here to print form

Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

For Court use only	
Appeal Court Ref. No.	
Date filed	

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

SEAL

Section 1 Details of the claim or case you are appealing against

Claim or Case no. 2020/PI/10670

Fee Account no. (if applicable)

Help with Fees - Ref no. (if applicable) H W F – – –

Name(s) of the ☐ Claimant(s) ☑ Applicant(s) ☐ Petitioner(s)

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

Name(s) of the ☐ Defendant(s) ☑ Respondent(s)

Lancashire Combined Fire Authority

Details of the party appealing ('The Appellant')

Name

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

Address (including postcode)

[redacted]

Tel No.	[redacted]
Fax	
E-mail	[redacted]

Details of the Respondent to the appeal

Name

Lancashire Combined Fire Authority

Address (including postcode)

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

Tel No.	01772 862545
Fax	
E-mail	justinjohnston@lancsfirerescue.org.uk

Details of additional parties (if any) are attached ☐ Yes ☑ No

Section 2 Details of the appeal

From which court is the appeal being brought?

☐ The County Court at

☐ The Family Court at

☑ High Court

- ☑ Queen's Bench Division
- ☐ Chancery Division
- ☐ Family Division

☐ Other (please specify)

What is the name of the Judge whose decision you want to appeal?

Rt Hon Sir Timothy Fancourt QC (Fancourt LJ).

What is the status of the Judge whose decision you want to appeal?

☐ District Judge or Deputy ☐ Circuit Judge or Recorder ☐ Tribunal Judge

☐ Master or Deputy ☑ High Court Judge or Deputy ☐ Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

3rd July 2020.

Is the decision you wish to appeal a previous appeal decision? ☑ Yes ☐ No

Section 3 Legal representation

Are you legally represented? ☐ Yes ☑ No

If Yes, is your legal representative (please tick as appropriate)

- ☐ a solicitor
- ☐ direct access counsel instructed to conduct litigation on your behalf
- ☐ direct access counsel instructed to represent you at hearings only

Name of your legal representative

Litigant-in-Person.

The address (including postcode) of your legal representative

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate? ☐ Yes ☑ No

Is the respondent legally represented? ☑ Yes ☐ No

If 'Yes', please give details of the respondent's legal representative below

Name and address (including postcode) of the respondent's legal representative

Mr. M Nolan & Mr. D.Howell(Solicitors)
Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service HQ
Fulwood, Preston, Lancs.
PR2 3LH

Tel No.	01772 862545
Fax	
E-mail	DominicHowell@lancsfirerescue.org.uk
DX	
Ref.	

Section 4 Permission to appeal

Do you need permission to appeal? ☑ Yes ☐ No

Has permission to appeal been granted?

☐ **Yes** (Complete Box A) ☑ **No** (Complete Box B)

Box A

Date of order granting permission

Name of Judge granting permission

Box B

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

the Appellant('s legal representative) seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court? ☑ Yes ☐ No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

Appeals against Falk J and Fancourt LJ ~ all their Orders and Approved Judgments ~ on Points of Law.
First Lodged and Issued at the High Court/Court of Appeal on the 4th February 2020.

Have you lodged this notice with the court in time? (There are different types of appeal - see Guidance Notes N161A) ☐ Yes ☑ No

If **'No'** you must also complete **Part B of Section 10 and Section 11**

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

☑ I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

☑ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

☐ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.

Section 8 Aarhus Convention Claim

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim ☐ Yes ☑ No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarthus claim set out the grounds below

Section 9 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

☐ set aside the order which I am appealing

☑ vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

"That the law is that in calculation of an ill-health pension pursuant to 1992 Statutory Instrument No.129, the Rule B3, Paragraph 5 notional retirement pension was to be, and is to be, as though the enforced 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, or at the Pay Point in the Pay Scales, the disabled Firefighter Appellant could have reached, but for ill-health or no-fault injury. Such APP for such Rank or Pay Point to be taken from the Pay Scales in force when he was compulsorily required to retire on grounds of a no-fault 'qualifying' injury and then; on comparison between calculations of the Paragraph 3, or 4 amount, and the Paragraph 5 amount, the greater to be paid to him as his compensating enhanced Rule B3 ill-health pension entitlement.

☐ order a new trial

Section 10 Other applications

Complete this section **only** if you are making any additional applications.

Part A

☐ I apply for a stay of execution. (You must set out in Section 11 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

☑ I apply for an extension of time for filing my appeal notice. (You must set out in Section 11 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

☐ I apply for an order that:

An original Appeal lodgment was issued on 4th February 2020. I made Application in June 2020 for an extension of time. It was acknowledged but no action was taken to place it before a Master, to date(continuing).

(You must set out in Section 11 your reasons and your evidence in support of your application.)

Section 11 Evidence in support

In support of my application(s) in Section 10, I wish to rely upon the following reasons and evidence:

1. In June 2020 prior to the 3rd July 2020 Hearing (Falk J-then-Fancourt LJ) I stayed my issued case at the Court of Appeal and subsequently made Application for an Extension of Time which was acknowledged but which(to date) no order was ever given.
2.On or about the 4th July 2020 I requested and paid for a transcript of this Oral Hearing . The transcript when it finally came was missing two sections of in total 27minutes from the recording ; my resultant requests for an explanation from Fancourt LJ have never been answered.
3. In August 2020 I was informed by a Mrs Angus a 'jurisdiction lawyer'(Without-admitted-a Master's order) that I had to lodge all my Appeal again; a 'lawyer' who did not acquaint herself with my issued case; stayed(?); lying on her EFile system which provided clear evidence of where my case was, for her to see.
4.Under lying all this there was continuing delay, 17 weeks in total, occasioned by Fancourt LJ's failure to respond to my reasonable questions on the missing parts of the transcript of the Oral Hearing with him on the 3rd July 2020 and/or his delay in producing an Approved Judgment which finally arrived on 27th October 2020.
5. This transcript, in part or whole, has still not been explained nor judicially Approved by anyone; the final part not arriving undated until 23rd February 2021.
6. All appropriate fees since 4th February 2020 were paid and as instructed by Mrs Angus re-claimed for a second time with the further instruction to send a reduced fee without explanation for all this embarrassing Order, Counter Order...Disorder.
7.I drew all these matters to the direct attention of the new Master of the Rolls, Judge Vos in personal letters which were acknowledged but with the comment that there was nothing he could , or would administratively do; all this recorded delay was not of my making.The Chancery Registry at one point sent the case file it to the wrong Court and when it arrived at the correct Court the jurisdictional 'lawyer' Mrs.Angus, without consulting a Master(which she has since admitted) decided to return all the case file papers to me and my fees; the latter which occasioned even more delays (as intended).
8.My earlier experience at the Royal Courts of Justice Northern Ireland could not have been more different as a Litigant-in-Person; the Registry Manager (an Englishman) was warm welcoming helpful in every detail, and on occasions suggesting administrative methods to be adopted; the judiciary were helpful, courteous, and civil in their demeanor and actions both in and out of Court via their Registry.
9. The Court of Appeal's Registry Manager Mr.M. Chouwdhury and his colleague Mr. Bourn, contrary to the published policies of the LCJ in respect of declared Litigants-in-Person, could not have been more obstructive if they tried, and try they did. Not a single word of encouragement, guidance, or clarity was ever provided to me indeed in joint malignancy the exact opposite clearly occurred; every bureaucratic hurdle that could be placed in front of me was perversely used, including the appalling exploitation by abuse of power over those subordinates forced under duress of employment or ignorance to carry out Messers Chowdhury and Cobourn's malignant wills.
10. To them must be attributed any and every deliberate delay which they manipulated and abused;not me.

Statement of Truth – This must be completed in support of the evidence in Section 11

I believe (The appellant believes) that the facts stated in this section are true.

Full name F[redacted] M[redacted] G[redacted]

Name of appellant's legal representative firm N/A

signed _____ position or office held Litigant-in-Person.

Appellant ('s legal representative) (if signing on behalf of firm or company)

Section 12 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the County Court or High Court:

- ☐ three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- ☐ one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- ☐ one copy of the sealed (stamped by the court) order being appealed;
- ☐ a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- ☐ a copy of the Civil Legal Aid Agency Certificate (if legally represented).

In the Court of Appeal:

- ☑ three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- ☑ one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- ☑ one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- ☑ a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- ☐ one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- ☑ where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- ☑ in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- ☑ one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- ☑ a copy of the approved transcript of judgment; and
- ☐ a copy of the Civil Legal Aid Certificate (if applicable)
- ☐ where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied

Section 13 The notice of appeal must be signed here

Signed _____ Appellant('s legal representative)

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IN THE COURT OF APPEAL
ENGLAND AND WALES
CIVIL DIVISON. Case No: 2020/PI/10670

BETWEEN:

F[redacted] M[redacted] G[redacted]
Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

LEAVE TO APPEAL OUT OF TIME

Nutshell.

1. Section 54(4) of the Access to Justice Act denying him a right to appeal, save by way of the rules of court, the Appellant, a Litigant-in-Person, seeks permission to Appeal an Approved Judgement out of time pursuant to, CPR 52.15, or otherwise, as justice requires.

2. The Appellant appeals to remedy "errors in law", Dicta Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67; the Respondent unlawfully denying him some £11,500 of his pension due in 1998 (continuing), for Court of Appeal correction.

3. By reason of misapplication of the law the Appellant is being paid a non-compensatory Rule B1 Ordinary pension under the guise of it satisfying his compensatory Rule B3 ill-health pension for financial loss provided for him by the Fireman's Pension Scheme Order, SI 1992 No. 129, [SI] on being compulsorily discharged from the Fire Service early through a no-fault 'qualifying' injury.

4. Apart from difficulties the delay causes the Appellant, the Respondents, making no appearance, are not prejudiced by it. But the Appellant has not caused any delay.

5. The Deputy Ombudsman (on an Ombudsman precedent after misrepresentation by the Respondents of the Home Office Commentary to the SI), then on appeal to Mrs Justice Falk, (who, initially, adopted the Deputy Ombudsman's Adjudication), and

latterly Mr Justice Fancourt, have all applied the wrong law within SI, Rule G1, to the Appellants B3 pension, enabling the Respondents to continue to defraud him.

Delay.

6. (i) The Appellant filed his Appeal against the Ombudsman's Adjudication on a point of law of 4th. February 2020.

   (ii) On 2nd April 2020, the Honourable Mrs. Justice Falk wrongly found the Appellant's point of law 'a nonsense', and that '*by reference to'* was to be taken to mean '*is*', but with ratio decidendi insufficient to know, beyond whim, her legal basis for so deciding.

   (iii) With the point of law decided against him, the Appellant appealed to the Court of Appeal. However, it appears that it was diverted back to Mrs. Justice Falk who then, of her own volition, re-engaged to give Directions on 6th May 2020 for work to be done, and to set a hearing for 3rd July 2020.

   (iv) With nothing more required of her after her refusal of permission, her re-engagement and Orders suggests she intended to grant permission to confront and deal with 'the point of law' on 3rd July 2020.

   (v) On the 2nd July 2020, without explanation, the Appellant was told the hearing would not now be before the fully seised, Mrs. Justice Falk, but Mr. Justice Fancourt.

   (vi) On 3rd July 2020, albeit without identifying or touching on the 'point of law', Mr. Justice Fancourt found it to be 'unarguable'. It follows, whether he knew it or not, that construing 'by reference to' as 'is', in the context of the SI, turns its provision into a reductio ad absurdam.
   Not that that is apparent until a later stage in construction of priorities, of what the SI requires to be differing amounts, which the synonym construction denies.

   (vii) Fancourt J having decided the point at law to be unarguable, the Appellant again made a full appeal to the Court of Appeal. It appears this was administratively mislaid, never issued, but returned to the Appellant on 18th January 2020.

   (viii) In any event, Fancourt J subsequently delivered a written, fully reasoned "Approved Judgement" on 28th October 2020 (17 weeks later), in which it became plain why the point at law '*by reference to*' has been persistently wrongly construed as a synonym for '*is'* in SI provision by Sch. 2, Pt. III, Paragraph 5 (2) of Rule B3, rendering reductio ad absurdam all the Rule B3 ill-health compensatory provision. Making it all redundant to become a non-compensatory Rule B1 Ordinary pension provision.

7. The Deputy Ombudsman, Falk J and Fancourt J had all quoted Rule G1 rightly as their authority, SI Rule G1 (4) does, indeed, provide the day on which pay is to be taken on which to calculate pension but all were wrong in applying Rule 1 (4) (a) to the Rule B3 ill-health provision, which is excluded from the specifying list to be calculated under its provision; Rule B3 falling with all else, under Rule G1(4)(b).

8. Finally in that approved judgment it becomes clear that Respondents, Deputy Ombudsman, Falk J and Fancourt J could only construe 'by reference to' as 'is' by wrongly applying Rule G1 (4) (a) to the Rule B3 ill-health provision instead of G1 (4) (b).

9. It is an error in law of public importance. It is causing very real injustice. It is also an error of such magnitude as to entirely deny any effect to the compensating Statutory B3 ill-health pension, to which the Appellant was entitled as a Firefighter compulsorily discharged from Service through a no-fault 'qualifying' injury, for which the Respondents are statutorily liable. In legal effect, the misconstruction renders the statutory provision meaningless, a reductio ad absurdam.

10. In a word the Respondents have systematically been defrauding the Appellant of the whole of his compensating Rule B3 ill-health pension, under the deception that a non-compensatory fully accrued Rule B1 Ordinary pension was his compensatory Rule B3 ill-health pension, since 1998, continuing.

11. To facilitate the fraud the Respondents suppressed, the SI promulgating authority's plain language Home Office Commentary, and misrepresented it to the Ombudsman.

12. Being wrong in law the Appellant again Appeals to the Court of Appeal. Each Judge misapplied the law in 1992 Statutory Instrument No 129.

13. The Appellant received a letter on 2nd January 2021 denying leave to appeal Falk J on 2nd April 2020.

14. The Appellant has only ever made the one application to a Judge in the High Court in England. Mr. Justice Fancourt was in error to think the hearing on 3rd July was on a Second Application by the Appellant, it was not. It was a hearing on the first application first refused, but then re-opened, of her own volition, by Mrs Justice Falk.

15. If required the Appellant seeks leave to Appeal the Approved Judgement of the Honourable Mr. Justice Fancourt, he being so manifestly wrong in law as to render it a reductio ad absurdam permitting the Respondents, his fiduciary pension provider, to continue to defraud the Appellant his Rule B3 pension amount to which, by law, he became entitled in 1998 – continuing.

Mr. F[redacted] G[redacted].
Litigant-in-Person

Signed this 1st Day April 2021_____.

John M. Copplestone-Bruce
Inner Temple (PB).

IN THE COURT OF APPEAL
ENGLAND AND WALES
CIVIL DIVISON. Case No: 2020/PI/10670

BETWEEN:

F[redacted] M[redacted] L G[redacted]
Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

GROUNDS OF APPEAL

1. Sec 54(4) of the Access to Justice Act 1999 acting as no bar to justice where the rules provide, the Appellant, a Litigant-in-Person, understands CPR 52 to deny interference by the Court of Appeal unless a judge had gone 'plainly wrong', meaning material decisions cannot be reasonably explained or justified.

2. Mr Justice Fancourt, in his 'Approved Judgement' dated 3rd July 2020, delivered on 28th October 2020 (17 weeks), has gone 'plainly wrong' in a variety of the ways, all within material grounds for appeal found by Lord Reed in Henderson (Respondent) v Foxworth Investments Ltd & Anor (2014) UKSC 67, to be *"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".* (Paragraph 66).

3. Fancourt J introduced many errors of construction in the Approved Judgement (note Appeal) not hitherto understood to be problematic. But many are errors born of seeking consistency within a judgement predicted on the wrong law, which explains the misconstruction by Fancourt J in misdirecting himself in law to find '*by reference to',* to mean *'is',* or *'using'.*

4. Why (the Respondents; Deputy Ombudsman; Falk J) and Fancourt J, orally on 3rd July 2020, all construed *'by reference to'* wrongly as a synonym for *'is'* was unclear because 'nonsense' or 'unarguable' is insufficient ratio decidendi to know why they misconstrued, until, finally, the lights went on with the 'Approved Judgement' delivered by Fancourt J on 28th October 2020.

5. Fancourt J (at al) rightly relies on Rule G1 to provide the day, on which to take pay, on which to calculate pension, but he wrongly applied (wittingly or not) section, G 1 (4) (a) to be the Appellant's Rule B3 pension. Wrongly, because the compensating Rule B3 ill-health pension is specifically excluded by (a) from its provision; though it does apply to a Rule B4 Injury Award. Instead, a Rule B3 award falls under G1 (4) (b) for calculation. A Correct application of G1 (4) (b), and other provision in the SI, denies – absolutely - taking '*by reference to',* to mean *'is',* or *'using'*. Correct construction avoids the absurdity the synonym creates.

6. By his misconstruction Fancourt J renders provision made by Fire Service Pensions legislation, 1992 Statutory Instrument No129 [SI], reductio ad absurdam, leaving the Court of Appeal no option but to allow the Appeal. And in so doing correctly construe the law on a matter of public importance, to avoid a *mischief* (Dicta, Lord Coke in Heyden's case (1584) 76 ER 637).

7. In this case, of a public body denying statutory provision to calculate and pay pensions, as prescribed by law the fiduciary Respondents, servants, or agents of the government, have been systematically deceiving and defrauding their pensioner, the Appellant, since 1998 when he was compulsorily discharged from the through a no-fault 'qualifying' injury – continuing.

8. Apropos the question of promotion in Rank in the Appellant's present Appeal, *Thomas v Thomas* 1947 SC (HL) 45, 59; [1947] AC 484, 491, is on point, dicta Viscount Simon *"If there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate so to decide".* Fancourt J, entering the arena, found against evidence, with which the Respondents took no issue that, but for injury, the Appellant would have been promoted.

9. Fancourt J so construed the SI, Rule B3 ill health pension provision as to render to no effect, formulaic Paragraph 4 of Rule B3 provision, denying statutory requirement to provide.

10. The Appellant appeals pursuant to CPR 52.7. (2) (a), on the grounds:

(i) That the Appeal has a real chance of success, and;

(ii) That it raises important matters of pubic principle, that Courts construe legislative provision in accordance and consistent with law and settled legal principles including, to so construe the law that Her Majesty's Government honour its statutory, so contractual, pension obligations to its servants, the Appellant's case being, in part, mutatis mutandis, The Lord Chancellor & Anor v McCloud (2018) EWCA Civil.

11. And the Appellant appeals pursuant to CPR 52.7 (2) (b), there being other compelling reasons for the Court to hear it:

- No English Court can be seen to favour arbitrary and oppressive conduct by servants or agents of Her Majesty's Government to deny lawful provision of pension due;

- No English Court can be seen to condone fraudulent practice;
- Should a judge enter the arena, the Court of Appeal must be seen to intervene.

12. The Appellant appeals to avoid a 'real injustice' without other remedy (CPR 52 3 (1) (a)) :

(i) He is just being paid a fully accrued before injury, non-compensatory, Rule B1 Ordinary pension in substitution when he is entitled (by an original statutory decision of the Respondent) to be paid an enhanced compensatory Rule B3 ill-health pension having been compulsorily discharged through a no-fault 'qualifying' injury;

(ii) He has long been defrauded his Rule B3 enhancement of £11,516.24 (index linked) to compensate him for his financial loss first falling due in 1998 – continuing;

(III) His pension - His 'property' being long wrongfully retained (more each month) in an arbitrary and oppressive abuse of power by the Respondents, servants of the government over which he has no control, or remedy, save intervention by the Court of Appeal, the High Court having made material errors in law.

13. The Respondents are in breach of the Human Rights Act 1998, Schedule 1 Part ll, The First Protocol, Article 1 providing that, "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".

Mr. F[redacted] M[redacted] G[redacted]
Litigant-in-Person

Signed this 1st Day April 2021_____.

John M. Copplestone-Bruce Inner Temple (PB).

IN THE COURT OF APPEAL

ENGLAND AND WALES.

CIVIL DIVISION

BETWEEN:

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

Appellant (Litigant-in-Person)

AND

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

APPEAL

Nutshell.

1. The Appellant's Fire & Rescue Service employer and fiduciary pension provider, on misconstruing provision to reductio ad absurdam, are paying him an accrued, non-compensatory, Rule B1 Ordinary pension, denying him his enhanced compensatory Rule B3 ill-health pension, provided by 1992 Statutory Instrument No.129 [SI] in compensation for his financial loss, to which he became entitled when compulsorily discharged with a 'qualifying' injury, for which the Respondents are statutorily liable.

2. The Respondent's Chief Fire Officer, seeking neither counsel's opinion nor judicial review explaining "*I am unable to see any reference in the Statutory Instrument to this being compensation".* The Respondents have entered no appearance.

3. In effect the Appellant pension was wrongly calculated in 1998 at £21,936 (B1), instead of his entitlement to £33,452.24 (B3 subsuming B1), defrauding the Appellant his B3 pension of £11,516.24 in 1998, and every year since - index linked.

Law 'bullpoint.'

1992 SI No:129, Rule G1(4) provides the date on which to take pay, to calculate pension:

> *"(a) for the purposes of rules B 4 (injury award), C2 (spouse's special award), C7 (spouse's award where no other award payable), D2 (child's special allowance), D3 (child's special gratuity) and E2 (adult dependent relative's special pension), the*

date of the person's last day of service as a regular firefighter, and '
(b)for all other purposes, the date of his last day of service in a period during which pension contributions were payable under Rule G2".

(i) In his Approved Judgement (AJ) at AJ 19, Fancourt J finds "*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"*. A notional retirement pension is a Rule B3 provision. In common with those before him, Mr Justice Fancourt refers to 'Rule G1' several times, but never which part he had in mind.

(ii) Perhaps, on simple mistake of misreading D3 as B3, or on taking application of 'Rule G1' on trust from those before him, Fancourt J did not consider (a) or (b) adequately, or at all, before, unwittingly, predicating his whole judgement wrongly in law on Rule G1 (4) (a). Unwittingly, of course, for otherwise would be to conspire to defraud;

(iii) Rule B3 falls within 'for all other purposes" to be calculated under Rule G1 (4) (b) on the APP paid on the *last day of service in a period during which pension contributions were payable* which, but for injury, for which the Respondents are statutorily liable, would have been when the Appellant was retired aged 60;

(iv) For the Appellant the last day of service as a regular Firefighter was the day before injury when he was 54 (the Rule G1 (4) (a) date) but, absent injury he would have paid pension contributions until aged 60 (the Rule G1(4) (b) date). Injury, for which the Respondents are liable, denying him his highest salary years and promotion, and higher pension, all occasioning him financial loss;

(v) His Rule B3 Ill-health pension was wrongly calculated on Rule G1 (a), when (b) applied;

(vi) On misconstruction of Rule G1 it also follows, for consistency, that 'the point of law' had to be misconstrued. Fancourt J holding at AJ 22 "*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay*". Wrongly consistent with G1 (4) (a): inconsistent G1 (4) (b);

(vii) On such misconstruction, the Rule B3 pension becomes, de facto, the amount of a non-compensatory, Rule B1 Ordinary pension, denying the Appellant his enhanced compensatory Rule B3 ill-health pension entitlement in law;

(viii) Given a Rule B4 Injury Award for injury and loss of amenity; a Rule B3 pension can only serve one purpose in law, to compensate for financial loss, for which an unknown APP has to be found "*by reference to*" a known APP, on which to calculate the Rule B3 notional retirement pension. Correctly construed two 'APPs' are required, not the one 'APP', Fancourt finds in error in law on applying Rule G1 (4) (a);

(ix) It follows that Fancourt J omitted to consider or confront the law, or conflicts with the provision arising from his misconstruction, rendering the statutory Rule B3 ill-health enhanced compensatory pension provision, reductio ad absurdam.

Synopsis.

1. The judgement here appealed, is that of The Honourable Mr. Justice Fancourt, [Fancourt J] who, in his Approved Judgement [AJ], delivered on 28th October 2020, after appeal to the Court of Appeal against his oral judgement at Mrs. Justice Falk's intended hearing on 3rd July 2020, misdirected himself in law to uphold the Respondent's unlawful practice by finding that Rule G1 (4) (a) instead of Rule G1 (4) (b) of 1992 Statutory Instrument No. 129 [SI] applied to the calculation of the Appellant's pension, finding at AJ18, "*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",* denying the compensatory enhanced Rule B3 ill-health pension provided by the statute.

2. (i) 1992 Statutory Instrument No. 129 [SI] Rule B1 provides for accrual of entitlement during active service of a non- compensatory (no financial damage suffered), time served Ordinary pension on retirement from the Fire & Rescue Service by right, which Rule B1 also denies to any Firefighter becoming entitled to a compensatory enhanced Rule B3 ill-health pension;

   (ii) In addition to a Rule B3 ill-health pension, the SI provides a Rule B4 'Injury Award'(calculated from a Rule B3 pension) in compensation for pain, suffering, incapacity and loss of amenity, to those compulsorily discharged from Service on receipt of a no-fault 'qualifying' injury, suffered in the course of their employment.

3. The Respondents and Fancourt J deny the purpose of compensatory enhanced Rule B3 provision, in the amount above an already fully accrued, non-compensating Rule B1 Ordinary pension though, in law, the only possible purpose of SI Rule B3 provision is for an accrued Rule B1 pension to be subsumed within the greater Rule B3 "ill-health Pension", for payment in compensation for financial loss in pay and pension that "*could have been earned until required to retire on account of age"* by the Appellant, but for no-fault 'qualifying' injury, (quoting the Home Office Commentary which correctly construes their 1992 Statutory Instrument No. 129, making the provision at Rule B3) and to compensate the Appellant for his future loss of earning capacity.
4. Fancourt J, rendering the compensatory enhanced Rule B3 provision reductio ad absurdam denying legislation legal effect was wrong in law (in many ways) to uphold the Respondent's practice; a practice both repugnant and contrary to law; a practice in an arbitrary and oppressive abuse of power by a servant of government by defrauding a retired Firefighter of his lawfully provided compensatory enhanced Rule B3, entitlement.

5. In breach of fiduciary duty and unlawfully, the Respondents have been paying the Appellant a non-compensating Rule B1 Ordinary pension of £21,936 since 1998, under the pretense of it being his B3 ill health legal entitlement when, had it been lawfully construed, he would have been paid his compensating enhanced Rule B3 ill-health pension of £33,452.24 in compensation for his financial loss of earnings and pension, denied him by a no-fault injury, and in compensation for his reduced

future earning capacity.
The defrauded index linked £11,516.24 shortfall being unlawfully retained by the Respondents, the servants or agents of Her Majesty's Government – continuing.

Errors in Law and Misdirections.

1. (i) 1992 Statutory Instrument No.129 [SI], Rule G1 (4) specifies the *'relevant date',* from which average pensionable pay [APP] is taken on which to calculate pension. The *relevant date* being either (a) the day last worked, or, (b) the day, absent injury, of last pension contribution (aged 55 or 60);

   (ii) By conflating (a) with (b) both to mean (a) in misapplication of Rule B3, Fancourt J premised his judgement on a misdirection in law, rendering reductio ad absurdam, the SI Rule B3, Paragraph 5 ill-health provision, making it redundant and indistinguishable from a Rule B1 Ordinary time served pension, denying legislative meaning.

2. In misunderstanding the promulgating authority's ''Home Office Commentary" to the SI, Fancourt J wrongly transposed it into misconstruction of the SI provision, to misdirect himself to think that years, not pay, may accrue, where the SI made no provision for years to accrue, but does so for pay to accrue.

3. Fancourt J misunderstood the SI and misdirected himself to provide what the SI did not provide, that years may accrue where to do so would be to no legal effect. All Rule B3 ill-health pension is provided either by fixed formulae, calculated on unalterably established pay being paid, and on years already served; or, in the alternative, on a notional retirement pension, being a notional Rule B1 Ordinary, full service, 40/60^{ths} of the Appellant's notional APP; a pension, which more years, had they been available, could not affect.

4. Fancourt misdirects himself that all pensions are limited to 40/60^{ths} of APP, (see Appendix 'A').

5. Fancourt J misconstrued provision made at B3 1 (2) and 5 (2) by conflating different words of provision, '*by reference to'* to be a synonym of '*is*', in a reductio ad absurdam, avoiding statutory intent, purpose, meaning, and legal effect.

6. Fancourt J so failed to construe the Rule B3 ill-health pension provision as to ignore, and render to no effect, formulaic Paragraph 4 of the Rule B3 provision and misdirected himself on the purpose and meaning of Rule B3, Paragraph 5 (1) (b).

7. Fancourt J further misconstrued *'by reference to',* and the meaning and purpose of Rule B3, Paragraph 5 (2) denying Rule B3, Paragraph 5 its legal affect.

8. Fancourt J misdirected himself, the Respondents being liable, to find that the Appellant's financial loss occasioned by no-fault 'qualifying' injury, so denying him Service, and so promotion, during the final 5 year period of intended career, may not be taken into account in calculating an ill-health pension.

9. Fancourt J misdirected himself to be unmindful of the general intention of the statute, evinced by Rule L4 (3) that where two amounts may satisfy the same award, the highest is paid.

10. By finding that a non-compensatory Rule B1Ordinary pension satisfied the Appellant's entitlement to a compensatory enhanced Rule B3 ill-health pension, Fancourt J found contrary to law, rendering the whole of the Rule B3 provision of the SI redundant to a Rule B1 provision, reductio ad absurdam, to no legal effect and repugnant to law.

Particulars.

Common Ground.

1. Having filed his appeal after receiving Mr Justice Fancourt's transcribed oral judgment of 3rd July 2020, the Appellant received a further considered written 'Approved Judgement' on 28th. October 2020 [AJ]. In it the judge sets out common ground that "*Mr G[redacted] is a retired firefighter and he has a pension under the Fireman's Pension Scheme* [AJ 2], and, but for being '*forced to retire, as a fireman, through ill-health as a result of an accident at the age of 54. He would otherwise have been entitled to continue to work until the age of 60",* [AJ 3], and that Mr. G[redacted] considers he is "*wrongly paid a Rule B1 ordinary pension, rather than a Rule B3 ill-health pension"* [AJ 4]*.*

2. Also that [AJ 13], "*The issue is*, *and is accepted to be, purely a question of the true interpretation of the Pension Scheme.."* and [AJ 14]. "*The relevant provisions of the scheme are, first, in appendix one, where Part B differentiates between an ordinary pension, at paragraph B1, and an ill-health award, at paragraph B3. It is common ground that Mr G[redacted] is entitled to an ill-health award and not an ordinary pension".*

Non-compensatory B1 and compensatory B3.

3. (i) Fancourt J failed, however, to consider and distinguish between a Rule B1and a B3 pension, and grasp the intrinsic SI, Rule B3 intent of enhancement of pension for Firefighters denied full fire service careers by no-fault 'qualifying' injury, made plain by, inter alia, the ill-health formulae providing more than a 40/60ths non-compensatory time served Rule B1Ordinary pension.

(ii) A Rule B1 Ordinary pension entitlement accrues with each year served until, on 25 years' service, a 30/60ths of APP pension accrues, rising to 40/60ths on 30 years' Service, thereafter the only variable multiplicand is the average pensionable pay, or APP.

Rule B1 denies the award of a non-compensating Rule B1Ordinary pension to anyone entitled to a compensating enhanced Rule B3 ill-health pension, [SI Rule B1.At AJ 24, Fancourt J confuses years with pay, finding that *"Read in the context in which they are used in the commentary, the two instances of what could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay. In both cases, the calculation*

described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.".

(iii) Having misdirected himself that years not APP may accrue (his fallacia consequentis below) the judge has also mistakenly taken the 40 in 40/60^{ths} to be 40 years, though simply 40 parts of 60 parts to give 2/3rds, as a fraction of APP.

(iv) 40/60^{ths} is the maximum part, 2/3rds, of final pay arrived at on 30 pensionable years completed Service to give a full non-compensatory, time served Rule B1 Ordinary pension which falls due anytime after age 50, until paid, in any event, at the service retirement age of 55 or 60.

(v) 60^{ths} is a convenient measure used to provide affordable units of pension that can be purchased by anyone whose accrued pension falls short of 40/60^{ths}, who can then buy 60^{ths} to reach the maximum 2/3rds, or 40/60^{ths} x APP, for a maximum Rule B1 Ordinary pension.

B3. B4.

4. A compensating enhanced Rule B3 ill-health pension falls due on a Firefighter being required to retire early on account of a no-fault 'qualifying' injury for which, by provision of the SI, the Respondents are liable, both for its financial and physical sequellae.

5. Rule B3 provides a pension in two ways. First, by way of formulae on which to calculate, depending on length of service, an *ill health pension amount* (Paragraphs 2 – 4) using two fixed multiplicands, the years served and extant APP. Second, in the alternative, by way of a Paragraph 5 1 (a) *notional retirement pension* calculated as a full service, notional, Rule B1 pension, calculated on a notional APP, reflecting what a Firefighter could have earned '*until he could be required to retire on account of age'*.

6. Though denied a Rule B1Ordinary pension on becoming entitled to a Rule B3 pension, those forced to retire on account of ill-health, and/or injury receive, in addition to the Rule B3 *ill-health pension*, a Rule B4 *Injury Award,* calculated from a Rule B3 pension, in compensation for physical disablement, pain, suffering and loss of amenity. There can be no reason in law for the Rule B3 provision other than to provide for a compensation for financial loss.

7. Fancourt J. misled himself in finding that the Appellant, on being paid an accrued, non-compensatory, Rule B1 Ordinary pension, was/is in receipt of his correct compensating enhanced Rule B3 ill-health pension.

The Home Office Commentary.

8. (i) On promulgating the SI, the Home Office published a Commentary for lay guidance intended for general use by everyone concerned. The Appellant, a

Firefighter, with no notion of pension law, relied on his pension providers to know and properly apply it.

(ii) Not only did they not properly apply it, but the Respondents suppressed the Commentary's existence (the wording of which they subsequently misrepresented to a past lay Pensions Ombudsman on a similar case).

(iii) Had the Appellant seen it, as intended by the Home Office, he would have seen from its plain English guidance, that his B3 pension was to be calculated by formulae (set out), or on what, but for injury, he "*could have been earned until required to retire on account of age".* It was not just intended for lay administrators, but in addressing retirees put it in the subjective, pension on what "*you could have earned until required to retire on account of age"*. The guidance accords with the SI provision.

9. In effect, the SI codifies the common law damages for Firefighters suffering no-fault injury in course of their employment. Fancourt J in seeking to uphold the Respondent's practice, finds otherwise. The Commentary is not law but Fancourt J relied on it in his misapprehension and misconstruction of the law.

Misconstruction the Commentary.

10. At AJ 27 Fancourt J misdirects himself in a compendium of ways in finding that "*the commentary and guidance uses a phrase which is ambiguous, namely 'or what could have been earned by compulsory retirement age'. However, in context, and by reference to the examples given in the guidance, one of which, example seven, is inconsistent with Mr G[redacted] case, it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion".*

Years confused with pay.

11. (i) Fancourt J misconstrues *'what could have been earned by compulsory retirement age'* by taking it out of context to mean years can be added, where none can. Rule B3 formulaic provision is calculated on established pensionable years served and last paid APP. Both multiplicands once finitely established on actually ending service, and are then fixed in law.

(ii) The alternative Rule B3 provision at paragraph 5.1(a), provides a *notional retirement pension* predicated on having "*continued to serve until he could be required to retire on account of age'.* When compulsorily discharged injured, credit is given for a notional full career Rule B1 Ordinary pension limited to 40/60^{ths} to which more years can add nothing and are, indeed, irrelevant.

(iii) At [AJ 19] Fancourt J takes the confusion further in saying "*He supports his argument* (for promotion) *by reference to guidance in the form of a commentary that was issued by the Home Office at the time when the pension scheme came into effect. The relevant part of that guidance says as follows:*

"How much is the pension? The sums are set out in examples one and four to seven, the basis of the calculations is explained here. 'A firefighter's basic ill-health pension

is never less than 1/60th of average pensionable pay, APP, and never more than 40/60th, two-thirds of APP or what could have been earned by compulsory retirement age".

(iv) Fancourt J misconstrues the Commentary to mean at [AJ 23], that *"What could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay"*. Yet the SI is silent on years save and except as 'pensionable years' (SI definitions) which can only accrue from being actually served.

(v) In so finding Fancourt J finds on no legal authority, the SI making no provision that any period of years can ever be added or subtracted from the pensionable years served. Once served the number is an absolute event, even to the number of days served.

Correction.

(vi) The statutory provision is at Pt. lll, B3, ill health pension, pargraph "5 (1) Where:
(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension (the notional retirement pension)"

(vii) It escaped Fancourt J that those required to retire on grounds of ill health are credited with a full service career which, but for injury, would have been served. Meaning the 5(1) notional pension is a maximum B1 full service career pension to which they would have become entitled, absent injury, had they served until required to retire on account of age. A 5(1) B3 pension is a notional full career B1 pension

(viii) No years can be added of subtracted from a B3 notional retirement ill health pension because it is, in effect, a B1 full career, absent injury, 40/60^{ths} of a notional APP, arrived at by reference to his actual APP.

(ix) Rule B1 provides that a pension could be taken at 50, after 25 to 30 years Service providing a pension rising from 30/60^{ths} to 40/60^{ths} of the final pay.

(x) If, on final reckoning, a retired Firefighter's pension fell short of 40/60^{ths} there was no remedy in years earned, as Fancourt J thought, but any 60ths short of 40 could be purchased. What was not in any way variable is the number of years which can only be acquired by Service.

(xi) Even if a retired Firefighter, on the grounds of ill-health fell short on that credit (a late entrant) he/she cannot acquire more pensionable years than notionally s/he would have served, absent injury, to normal retirement. But s/he could maximize his/her notional ill-health pension by buying real 60^{ths} to make it up to the notional full 40/60^{ths}, pension.

(xii) As already set out there is no provision to add or subtract years. The only variable is the APP and only in terms of Paragraph 5 (1) (a) to calculate a notional retirement

pension on a notional APP.

(xiii) It follows that Fancourt J misunderstands the guidance given by the Commentary, which has nothing to do with years, but tells its reader that an ill-health pension is '*two thirds of APP* '(at the time of injury used in the formulae) 'or two thirds of the 'APP' that *could have been earned by compulsory retirement age',* (60) (notional pension) when earning capacity ended. It is the APP that is at large. There is no provision in the SI for years to be earned. His construction is inconsistent with both the Commentary and the Statutory Instrument.

Ambiguity where there is none.

(xiv) Fancourt J finds the Commentary 'ambiguous'. The statutory (SI) provision at Rule B3 paragraph 5, 1 (a) specifies an amount of notional pension due, as though he had *'continued to serve until he could be required to retire on account of age'.* The Commentary, puts it more simply as on '*what could have been earned by compulsory retirement age".* Both phrases are of a single meaning. What he *'could have earned by compulsory retirement age'* is the APP '*that he would have earned had he continued to serve until he could be required to retire on account of age'*. They are expressions of but one nexus. One phrase is dotting the i's and crossing the t's for lawyers, the other giving colloquial sense to laymen. If ambiguous, it is not the words that create an ambiguity but a reader's misconstruction.

Error on what Example 7 supports.

(xv) Fancourt J, found Example 7 to be inconsistent with the Appellant's case.

(a) Example 7, predicates a 54 year man with 27 years and 161 days service, and begins with "*Gross ordinary pension at age limit: 35.4411/60 x £15124 = £8933.52.* But, then states *'Gross ill-health pension: £8933.52'.* Rule B1Ordinary pension is correctly calculated on using the Rule B1 formula of 30/60 x (twice up to 5 years served over 25 years) x APP/60, but it is not transposable into the *Gross ill-health pension* because the Rule B3, Paragraph 4, ill-health formula is not the Rule B1 formula; it is 7xAPP/60 + 20xAPP/60 + (twice years served over 20) x APP/60, so, correctly, 'Gross ill-health pension' is, 42.4411/60^{ths} x 15,124 = £10,697.99.

(b) When corrected, Example 7 is not only wholly consistent with the Appellant's case, but makes plain the purpose of the SI, in providing a compensatory enhanced Rule B3 pension, most clearly and intentionally more than payable under a non-compensatory Rule B1Ordinary pension.

(c) Indeed, given a B4 Injury award in compensation for injury, loss of amenity, pain and suffering, a Rule B3 award can, in law, only be to compensate for financial loss. As in Example 7's case, where even a loss of 204 days pay of £2,473.71, (£8,452.87 pay loss, mitigated by pension of £5,979.16) is within the Rule B3 compensatory provision.
A loss suffered by a 54 year old being retired early on injury in the year s/he would, absent injury, have been retired on account of age – so his/her Rule B1 and Rule B3 pensions are both calculated on the same APP of £15,124 making plain that an enhanced Rule B3 pension is compensatory where a Rule B1 is

not.
If the law were as Fancourt J found it to be then a Rule B1 would indeed be a Rule B3, making the SI Ill-health provision redundant.

(d) Example 7's enhanced Rule B3 ill-health pension compensates not just for immediate financial loss, but for the future loss in earning capacity. Emergencies demand exceptionally fit Firefighters, right up to time of retirement. But when those tools of work are damaged, by no-fault injury requiring compulsory discharge, a retirement (for the safety of others), the retired Firefighter is denied the future earning capacity s/he would have had when, if fully fit on retirement, s/he could look forward to other, active, well paid work, for a decade or more. The exigencies of Emergency Services making it the policy to retire people early at 55 or, if senior, 60. Fitness is part of the job specification for all ranks, so Chief Fire Officers, in their late 50's, remain in action.

Error in 40/60^{ths}.

12. (i) Fancourt J has predicated his judgment on a premise that no pension may be awarded of more than 40/60^{ths} of APP, but that is not the law(see Appendix 'A').

(ii) He quotes the Commentary, which if not read carefully, may mislead. At page B3 – 3, it says '*The pensionable service is enhanced by 7/60ths ("ill-health enhancement") subject to it not exceeding what he would have reckoned by the age of compulsory retirement (55) or 40/60^{ths} in total'.* There is no overarching restriction to 40/60^{ths} in the Statute. The Commentary's ostensible error at B3–3 is to conflate the Rule B3, Paragraph 4 formula, which is enhanced by 7/60^{ths}, with the Paragraph 5 notional pension, which is restricted to 40/60^{ths}. But there is no nexus. The SI imposes no general 40/60^{ths} restriction. Each provision is wholly unrelated, save in making alternative provision, for the higher to be paid. Throughout the SI each rule of provision determines its own criteria, thus:

(iii) Rule B1 does limit the pension it provides to a maximum of 40/60^{ths}.

"The amount of an ordinary pension is-
30xA/60 + 2xAxB/60
where-

"A is the person's average pensionable pay, and B is the period in years (subject to a maximum of 5 years) by which his pensionable service exceeds 25 years.".

(iv) But a Rule B3, Paragraph 4, provision is not restricted to 40/60^{ths}

"*Where a person has served more than 10 years pensionable service the amount of his ill health pension is the greater of :–*
20xA/60,
or,
7xA/60 + AxD/60 + 2xAxE/60

where:–
D is the period of his pensionable service up to 20 years, and
E is the period by which his pensionable service exceeds 20 years".

(v) The restriction imposed by the SI on a Rule B1 calculation (supra) '*subject to a maximum of 5 years'* is absent from the B3 formulaic provision which is not otherwise restricted. The commentary is also in error in detaching part of a cohesive formula. 7/60^{ths} is not a detachable entity. But by whatever route Mr Justice Fancourt arrived at thinking that Rule B3 pensions were capped at 40/60^{ths}, he misdirected himself in law to think so.

Reductio ad absurdam on Rule G1.

13. The Statutory Instrument provides, as part of its Rule B3 ill-health provision, a Paragraph 5 notional pension (11 (vi) supra) which Fancourt J refers to, at [AJ 18[, correctly quoting the Paragraph 5, (2) method of finding the APP on which to calculate the notional B3 pension, before then misdirecting himself in law.
He says, "*Paragraph 5(2) says that that Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay. Average pensionable pay, for the purposes of the scheme, is defined in rule G1 as the average pensionable pay of a regular firefighter and is, subject to paragraphs five to seven, the aggregate of his pensionable pay during the year ending with the relevant date, and the relevant date is the last day of the firefighter's service as a regular firefighter".*

However, SI Rule G1 (4) provides otherwise:

The relevant date is:
(i) *for the purposes of rules B 4 (injury award), C2 (spouse's special award), C7 (spouse's award where no other award payable), D2 (child's special allowance), D3 (child's special gratuity) and E2 (adult dependent relative's special pension), the date of the person's last day of service as a regular firefighter, and ' for all other purposes, the date of his last day of service in a period during which pension contributions were payable under Rule G2".*

(ii) Fancourt J misdirected himself to find that a Rule B3 notional pension is to be calculated on the APP as provided by (a), being last day of active service where (a) specifically excludes Rule B3 from its provision, leaving a Rule B3 'Notional Retirement Pension' to fall within Rule G1 (4) (b) – 'for all other purposes' – to be calculated to normal retirement on age until when, absent injury for which the Respondents are liable, his *'pensions contributions were payable'*.

(iii) To seek to remain consistent in his wrongly predicated judgement, Fancourt J misconstrues meaning and effect of Paragraph 5(2) at [AJ 17["*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement".*

(iv) Fancourt J misdirects himself to provide a 'cap' to ill-health pension where there is no 'cap' provided by the SI. Rule G1 exists in two parts to avoid such a 'cap'. Its purpose is to enable distinctions to exist between pensions by calculating them on an APP taken from various relevant dates, (as set out above). These *'relevant dates'* as provided by Rule G1 (4) (a) and, G1 (4) (b). From his judgement it would appear that Fancourt J was unaware that Rule G1 lay in two parts.

(v) By misapplying Rule G1 (4) (a) to a B3, Paragraph 5(1) 'notional retirement pension' Fancourt J reduces it to the same basis of calculation as a Rule B1 Ordinary pension so he wrongly 'caps' the Rule B3, Paragraph 5 notional compensatory amount to a Rule B1 Ordinary pension amount.

(vi) Fancourt J also finds that 'capping' the Rule B3, Paragraph 5 notional retirement pension also 'caps' Paragraph 3 or 4 amounts, but that requires a misconstruction of Paragraph 5 (1) (b), dealt with below.
But on his finding Paragraphs 3 and 4 ill-health formulaic provision are denied effect being 'capped' by the notional retirement pension, capped by a Rule B1 Ordinary pension amount.

(vii). Fancourt J misdirects himself in law to hold at [AJ 18], "*Paragraph 5(2) says that the Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay - (as at) - the last day of the firefighter's service as a regular firefighter".*
It is a fundamental error of great magnitude because its effect, in practice, is to replace a compensatory enhanced Rule 3 ill-health provision with a non-compensatory Rule B1 Ordinary pension provision.

Corollary 1.

14. Were Fancourt J to be correct, that a Rule B3 notional pension is to be calculated as provided by the Rule G1 (4) (a) then that is to use the same APP as used to calculate a Rule B1 Ordinary pension, both on the APP being paid on '*the last day of service as a regular firefighter'.*

(i) It would follow, since B1 and B3 pensions are both to be calculated on the same APP and since both are on a full service 40/60^{ths}, then on this construction an ordinary non-compensatory Rule B1and a compensatory Rule B3 pension are indistinguishable in law and effect.

(ii) It is what the Respondents say is the law as they continue to pay the Appellant an actual Rule B1 Ordinary pension as though in satisfaction of a correct Rule B3 ill-health pension, which is wrong in law, indeed, they are defrauding the Appellant of his pension.

(iii) By upholding the practice Fancourt J sets rule G1 and rule B3 into conflict but more importantly renders a Rule B3 provision redundant to a Rule B1 provision,

making it meaningless, with no legal effect, and repugnant to law, a reductio ad absurdam.

Correction allows B3 its purpose to compensate for financial loss.

15. Correctly applying Rule G1 (4) (b) in place of (a) brings no benefit in terms of years since the Appellant had already accrued a full 40/60^{ths} pension on 30 years service (he served 37 years) and, in any event, a 'notional retirement pension' (save for very late entrants) credits a full service 40/60^{ths} Paragraph 5 (1) (a) pension, but there may be benefit from a higher APP on which to calculate his Paragraph 5 'notional retirement' pension: his career could have notionally progressed in the final period of service until required to retire on account of age, but for being denied him by injury.

Conflict.

16. There are other errors, muddles and inconsistencies in the AJ. At [AJ 14[, Fancourt J finds that "*Mr G[redacted] is entitled to an ill-health award and not an ordinary pension",* which predicates a distinction between the two, yet he also finds at [AJ18], *"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",* the latter contention is only sustainable on misapplication in law of Rule G1 (4) (a).

Notional B3 pension APP.

17. Though Fancourt J finds B1, in all but name, a B3, the SI requires that a B3 be differentiated and be distinguished from a B1. The SI provided direction on the way to separate them by application of Rule G1. Calculation of a B1 is on extant APP at time of retirement (provided by Rule B1). But a B3 notional retirement pension is to be calculated as provided by Rule G1 (4) (b). That is on the notional APP when, absent injury, pension contributions would stop on normal retirement on age. The SI requires that the APP be identified in a specific way.

18. Mrs. Justice Falk having initially denied permission, on reading the appeal against her judgement, re-engaged on her own initiative before, fully seised, she was replaced, with no explanation, by Mr Justice Fancourt who at [AJ 13[adopts and repeats Mrs. Justice Falk who:
"*encapsulated the issue in her order of 6 May 2020 in the following terms, and I quote:"*

"Whether as a matter of statutory construction of paragraph 5 of part 3 of Schedule 2 contained in Schedule 2 to the Fireman's Pension Scheme Order, SI 1992 No. 129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

(a) as the respondent contends, that the calculation must be done using actual pay the year to the date of retirement, or,

(b) as the appellant contends, 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 achieve available promotions until the date he or she could have been required to retire, absent ill-health or injury".

19. Fancourt J, having wrongly applied Rule G1 (4) (a), it follows that he finds, also wrongly, Mrs. Justice Falk's variant (a) to be right, as he makes plain at[AJ 26["*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay". There is no warrant for interpreting that as referring to any theoretical pensionable pay that might have been achieved by a later date"* .

'By reference to',* synonym fo, *'using',* or *'is'.

20. At AJ 25 Fancourt J found "*In my judgement there is no scope at all for construing paragraph 5(2) of Schedule 2 to the order so as to incorporate a requirement to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age".*

(i) While consistent with misapplication of Rule G1 (4) (a), (pension on APP of last active day) Fancourt J omits to consider the meaning and effect of Rule B3 in specifying what APP is to be used in calculating a Rule B3 ill-health 'notional retirement pension provision?

(ii) The SI, Rule B3 makes two different provisions which Fancourt ignores in arriving at his judgement at [AJ 27] "*In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension" is to be calculated using the person's actual average pensionable pay*".

(iii) At [AJ 27] he conflates the meaning of 1(2) and 5(2) to mean 'All ill-health pension calculation is calculated on actual APP". But the SI provides otherwise:

SI Rule B3 provides:

1. (2). In paragraphs 2 to 4, A is the person's average pensionable pay".
(2) The Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay".

Corollary 2.

(iv) If the intention was for the two instructions to mean the same thing, as Fancourt J finds, (note [AJ 19], "*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*)", then to avoid repetition, Paragraph

5(2) the legislative draftsmen would have omitted the words *'by reference to'* to read, as Fancourt J would have it read. '*The Notional Retirement Pension is to be calculated using the person's actual average pensionable pay'.* If intended, so it would have been drafted, it is the sole purpose of parliamentary draftsmen and women.

(v) Yet more logically and economically, Rule B3 1 (2) could simply read '*In Paragraphs 2 to 5, A is the person's average pensionable pay'*, making Paragraph 5(2) redundant. The finding at [AJ 19[defeats the purpose of the legislation.

(vi) Law apart, the logic excludes Mr. Justice Fancourt's synonym. With the legislation specifying that Paragraphs 2 – 4 are to be calculated on the actual APP as a multiplicand, '*A is the person's average pensionable pay',* and the Paragraph 5 APP multiplicand is to be arrived at *'by reference to'* that actual APP, they cannot be one and the same APP. So construction of '*by reference to'* requires two actors, not the one 'APP', as found by Fancourt J'.

General Construction.

21. (i) In Grey v Pearson (1857) 6HL Cas. 61, Lord Wensleydale established that in construction "The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further".

(ii) The OECD, Oxford Lexico, et al, makes plain the ordinary usage of '*by reference to*'. The ordinary English use of the word 'reference' in the SI context is to mean to look or think of something known to identify an unknown. There are two entities.

(iii) Thus as used in the SI so here, "One can find the date *by reference to* a calendar" "Tax is usually calculated '*by reference to*' the value of the estate'. "Enemy at 9 o'clock" means "the 9 o'clock position is calculated '*by reference to'* the actual twelve o'clock", or, here, [Paragraph 5 (2)] "*The notional retirement pension is to be calculated by 'reference to' the person's actual APP'*.

Construction of 'by reference to' in context the SI.

22. It follows that the way to calculate a 'notional retirement pension' provided at Rule B3, 5 (2) cannot, in law, be construed as Fancourt J misconstrues the law, for example at [AJ 19] having wrongly applied Rule G1 (4) (a) to Rule B3 to misconstrue and wrongly declare "*It is therefore clear that a normal pension, under Section B1, and the Notional Retirement Pension is to be calculated"* on the same APP, to then correctly take a line of provision at Paragraph 5 (2) *by reference to the person's actual average pensionable"* to then tack onto it what the SI does not provide *"during the last day or service"* to enable the declaration, wrong in law, at [AJ 27[, "*the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension" is to be calculated using the*

person's actual average pensionable pay", is to pervert provision to deny legislative purpose, intent and provision. If the statute intended to provide *"the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay"* it would have said so. And it could have said so if Rule B3 has been included with the provision made by Rule G1 (4) (a). But it did not and the Judge gives no reason why he did.

(i) Rule G1 (4) (b) denying Fancourt J his application of Rule G1 (4) (a), the notional APP is to be properly calculated as at the time, absent injury, of retiring on account of age. Not Fancourt J's tacked on (supra) *"during the last day of service"* [G1(4)(a)].

(ii) The logic (20 (ii) supra) supports the construction of the SI as instructing a pension's administrator to calculate Paragraphs 2 – 4 on the person's actual APP (last day worked), as one, of two, actors.

(iii) The second actor is calculated 'by reference to' that first 'actual APP' actor, to discover the second actor, the notional APP, absent injury, of the Rank or Pay Point on the Pay Scales at retirement on age (but on the then current scale – see below).

(iv) Fancourt J's misconstruction requires him to replace 'by reference to' by synonyms of 'is' or 'using' for him to be able to find at [AJ 27]...*"the 'Notional Retirement Pension' is to be calculated using the person's actual average pensionable pay"* .

(v) But words of provision can only ever be changed from those provided in the legislation if those words lead to a patent absurdity.

(vi) Rule B3 provisions depends upon the ordinary meaning being given to 'by reference to' as a term of art, the proper construction of, which leads to no absurdity, or inconsistency, but is the legal means to open the door for Rule B3, compensatory purposes of the Statutory Instrument, to be expressed.

(vii) To find what APP is the right one on which to calculate the notional Rule B3 retirement pension, two APPs are needed to calculate a Rule B3 provision, not the one premised by Fancourt J, in error in law, at his [AJ 26] "...*"the 'Notional Retirement Pension' is to be calculated using the person's actual average pensionable pay"...".* (19 supra).

Notional APP scale.

23. (i) By correctly construing *'by reference to'* at Paragraph 5 (2), on the correct application of Rule G1 (4) (b), some meaning can begin to be given to what the Appellant could have earned "*had he continued to serve until he was required to retire on account of age*".

(ii) Having established that, *'by reference to the person's actual APP*', signposts where to look for the unknown APP and because the reference is to an APP that is within a Pay Scale, it follows, in absence of any other direction, that the unknown

APP must, of necessity, be found on the same Pay Scale.

(iii) That is a most important step because it avoids speculation and nails down pension calculation to the reality of anchoring the unknown APP to the same Scale of Pay as the actual APP, or in the Appellant's case, to 1998 Rates of Pay.

Rank or pay point.

24. The next step is to establish what Rank, and/or Pay Point (within a Pay Scale) the Appellant could have reached, absent injury, at the point of normal retirement; Service completed.

(i) Two letters from two peer group senior officers were given in evidence to Mrs. Justice Falk that, uninjured, the Appellant could have looked forward to being promoted to Divisional Officer Grade II [DO II].

(ii) The Respondents take no issue with that. Indeed, they provided Pay Scales for year 1997 – 2003 pointing out to Mrs. Justice Falk the APP for the rank of a DO II in 2003, when the Appellant could have been required to retire on account of age, at 60.
On basic pay it would have been of £43,053.60 pa, More than £10,000 pa higher than his pay when he was required to retire on ill-health. So he suffered a substantial financial loss. With allowances it may well be that the gap in pay is greater than basic.

A Finding on no evidence.

25. Fancourt J finds otherwise at [AJ 25], *"In my judgment, there is no scope at all to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age."*. With respect, the judge ceased to be impartial and entered the arena to find against the Appellant on a point against the evidence, not in issue.

Conflict.

26. (i) Mr Justice Fancourt's finds [AJ 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",* which cannot be the law, if the law is, as he found it to be at [AJ 16[, '*the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement.".*

(ii) Only one can be the correct construction. By wrongly basing his judgment as at [AJ 18], on Rule G1 (4) (a), Fancourt J, in finding the Respondents to be correct to compulsorily discharge a no-fault injured('qualifying') Firefighte without compensation, renders the purpose and Rule B3, Paragraph 5 provision reductio ad absurdam, without meaning, or legal effect.

Reductio ad absurdam, B3 1 (1.).

Cap.

27. Fancourt J omitted to consider the meaning and effect of Rule B3, Paragraph 1(1), providing *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5",* because it predicates different amounts and priorities inconsistent with his construction of the SI, Rule B3 provision.

(a) In seeking consistency throughout a judgement, wrongly predicated on Rule G1 (4) and in seeking to uphold the Respondent's practice (and in support of his own brief erroneous oral judgement of 3rd July 2020), Fancourt J 'discovered' what the statutory instrument did not provide, a '*cap*', with which to eliminate differing amounts and priorities.

(b) A 'cap' which, with no ratio decidendi, Fancourt J decided constricted the SI formulaic provision, finding at [AJ 17] that "*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension",* is nowhere to be found within the SI provision:

> *5.(1) Where:*
> *(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension, "the Notional Retirement Pension" and*
> *(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the Notional Retirement Pension, the amount of the ill-health pension is that of the Notional Retirement Pension.*

(c) On the correct construction of SI, Rule B3, 5 (1) provides no 'cap' on higher sums by a lower sum 'notional retirement pension' – which would be absurd. The provision is for alternatives, the most beneficial to be paid – or there is no point to the provision. (Further dealt with at 30, to give legal effect to the correct construction of 'by reference to').

(d) Fancourt J's Rule G1 (4) (a) 'cap' renders the compensatory enhanced Rule B3, 5(1) 'notional retirement pension' into a non-compensatory Rule B1 Ordinary pension.

(e) Yet SI Rule B1 specifically only provides an Ordinary pension to a Firefighter *"if he then does not become entitled to an ill health award under Rule B3"* , [B1 (1) (c)].

(f) Notwithstanding Rule B1(1) (c), the lay Respondents, the Appellant's 'trusted' fiduciary pension providers pay him a non-compensatory, fully accrued, Rule B1Ordinary pension under the deception that he was being paid the full compensatory enhanced Rule B3 ill-health pension to which he was entitled.

Contrary to law, no compensatory payment was provided for his financial loss.

Some Inconsistencies.

(g) The Respondent's practice was upheld by Fancourt J, but on construction made possible only by misapplication of Rule G1 (4) (a) to enable '*by reference to*' to be taken to mean '*is', or 'using',* (synonyms for each other) denying "different amounts and priorities".(Pensions calculated on different APPs, prioritised in payment by amount).

(h) "Different amounts and priorities" are inconsistent with his AJ 28 "*it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion"* - so no possibility of increase in the APP pension multiplicand.

(i) "Different amounts and priorities" are inconsistent with [AJ 19], "*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".*

(j) "Different amounts and priorities" are inconsistent with [AJ 18], *"the Notional Retirement Pension are to be calculated using the average pensionable pay during the last year of actual service",* et al.

Some Failures to confront.

(k) Where Fancourt J found the direction he was giving to himself and the SI to be in conflict from as earlier [AJ 15], "*Mr G[redacted] is entitled to an ill-health award and not an ordinary pension".*
Rather than confront and deal with the predicated distinction between the two which may have avoided the Rule G1 fundamental error on law, the judge ignores it, finding at [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";* Finding Rule B1 and Rule B3 the same.

(l) Mr. Justice Fancourt also did not confront or deal with Rule B3, 5 (1) (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, '* Rule G1 (4) (a) replacing 'by age', by 'last day served', which on injury is earlier than on age.

(o) Indeed, as he further misdirected himself to find at AJ 27 *the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay* "

(p) It follows, though Fancourt J gives no ratio decidendi, that having found at [AJ 17], "*Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4",* that whatever the formulaic ill-health pension amount may be on calculation, it is

'capped' by the Paragraph 5 notional pension, itself 'capped' by the Rule B1 amount. He did not confront the absurdity of his conclusion or confront that being absurd, since the legislation cannot be absurd, his construction was incorrect.

(q) It follows that to be consistent Fancourt J had no option but to construe, albeit to himself, Rule B3, 1 (1) *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5",* [27 supra], to mean the only pension that gets paid is the Rule B3, Paragraph 5 1 (a) notional pension, 'capped' as a non-compensating Rule B1 Ordinary pension; as paid guilefully by the Respondents.

B3 Paragraph 4 – denied legal effect.

(r) It follows that if the law were to be as Fancourt J and the Respondents would have it be, since a Paragraph 4 formulaic amount is not paid out as the Rule B3 ill-health pension when greater in amount than a Paragraph 5 notional pension, and it is not paid out when it is a smaller amount, it never gets paid.

(s) It follows, with Paragraph 3 or 4 amounts being 'capped' by the notional pension amount, with itself being calculated as a Rule B1 on misapplication of Rule G1 (4) (a), that all that ever gets paid is the accrued non-compensatory B1Ordinary pension:

a. It follows that, to be consistent, Fancourt J construed Rule B3, 5 (1) (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',* to mean that, whatever the product of the formulae, only the 'notional retirement pension' is paid.

b. As demonstrated by Example 7, when corrected (11 (xv) supra), the Rule B3 formulaic Paragraphs 3 and 4 provision is, essentially, a Rule B1 provision enhanced.

c. It follows that if the Rule B3 notional pension is in a Rule B1 amount, then a Paragraph 4 amount (which applies to the Appellant) will always 'exceed' the Rule B1 amount.

d. But construed as Fancourt J construed the law, the lesser sum, notional pension B1 is paid because the paragraph 4, greater amount, is 'capped' by the B3 5(2) (B1 amount) pension. So his paragraph 4 ill health pension is not paid when more, nor when less than the notional retirement pension – which is the Respondent' practice approved by Mr. Justice Fancourt.

In effect, Fancourt J so construes the SI as to render the whole of the SI, Rule B3 provision redundant to Rule B1, making the Statutory Instrument an exercise in futility, the legislative provision being to no legal effect – a reductio ad absurdam.

Rule B3, 1 (1).

28. (i) For SI Rule B3, 1 (1) – *"Paragraphs 2 to 5 have effect subject to Parts VII and VIII* (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect subject to paragraph 5"* – to have its intended legal effect, to compensate for financial loss, (in law, given payment of a Rule B4 Injury Award, there is no other liability to be met and there can be no other lawfully required purpose for a Rule B3 provision, other than to compensate for financial loss).
The words of provision "*paragraphs 3 and 4 have effect*" need to be ordinarily construed to mean "*paragraphs 3 and 4 are paid*", and the words "*subject to 5*" to mean "*subject to 5 not being the greater amount"*. 'Having effect' being to act dependent upon something other talking priority, which would be an absurdity were a lesser amount to take priority, rendering formulaic provision pointless.

(ii) Such construction making plain, on correct application of Rule G1 (4) (b), the intent of the words of provision at Rule B3 1 (1), to compensate for financial loss to the greatest extent provided by the Statutory Instrument.

To take stock.

29. Having established:

- That the Statutory Instrument requires Rule G1 (4) (b) to apply to Rule B3;
- That the Approved Judgement incorrectly applied Rule G1 (4) (a);
- H.O.Commentary, is not ambiguous but on all fours with SI provision;
- Example 7, supports the Appellant's contention that Rule B3 is compensatory;
- That more, or less years, are not provided nor suggested in Commentary;
- That pay, not years, are the variable in 'notional retirement pension' calculation;
- There is no overarching 40/60^{ths} limitation on Rule B3.
- Each SI Rule sets own criteria;
- That a 'notional retirement pension' is not 'capped' by a Rule B1 Ordinary amount;
- That the 'notional retirement pension' does not cap Rule B3,Paragraphs 3, or 4;
- That the 'notional retirement pension' is calculated on the Rank or Pay Point on the Pay Scale which, but for injury, *could* have been achieved by normal retirement age;
- That the amount of the notional APP of the notional Rank or Pay Point is to be taken from the Pay Scale (1998) in being at time of being compulsorily retired on account of a no-fault 'qualifying' injury;
- That a non-compensatory Rule B1 Ordinary pension cannot be a compensatory enhanced Rule B3 ill-health pension.
- That a Rule B3 ill-health pension is a SI provision to compensate for financial loss;
- That a Rule B4 Injury Award (Calculated from a Rule B3 pension) is an Injury Award to compensate for loss of amenity on being compulsorily retired through a no-fault 'qualifying' injury;
- That Rule B3, 1 (1) properly construed means *Paragraphs 2 to 5 have*

effect subject to Parts VII and VIII (pension reductions) *of this Schedule and paragraphs 3 and 4 have effect – are paid – subject to paragraph 5 not being the greater amount ".*

- Rule B3, 1 (2) and 5 (2) avoids *''by reference to"* as a synonym for *'is'* or *"using'. ;*
- The AJ omits consideration the Rule B3, Paragraph 3, or 4, formulaic provisions.
- Rule B3, Paragraphs 3, or 4, formulaic provisions are not 'capped' by the Paragraph 5 'notional retirement pension';
- AJ omitted to consider Rule B3, 5 (1) (b);
- It was established without demur from the Respondents, that the Rank the Appellant *could* have achieved was Divisional Officer II;
- Finding a Rule B3 as the correct Rule B1 amount which the Respondents applyin their Pension Scheme; Fancourt J looked no further.

Having cleared away what denied the correct construction of 'by reference to', it remains to construe its legal effect which depends on construction of Rule B3, 5 (1) (b).

Rule B3, 5 (1) (b); Construed on the error of Rule G1 (4) (a).

30. Rule B3, 5 (1) (b) provides: *Where "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":*

(i) Fancourt J having misdirected himself to find that a 40/60^{ths}, Rule B1 Ordinary pension was a Paragraph 5 (1) (a) 'notional retirement pension', in an amount that 'capped' formulaic Paragraphs 3 and 4, the corollary of his construction of Paragraph 5. (1) (b) is, "*Where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of* – is replaced by – *the notional retirement pension*", which is a non-compensating Rule B1Ordinary pension (as construed by Fancourt J at [AJ 18 et al] as paid by the Respondents to the Appellant under guise of a Rule B3 ill-health pension.

(ii) So, as Fancourt J and the Respondents, would have it, the Rule B3 ill-health pension (the specified product of the formulae) has been 'replaced' by a Rule B3 notional retirement pension; itself 'capped' by a Rule B1 Ordinary pension amount.

(iii) There is no suggestion by the Respondents of paying any pension less than a Rule B1 Ordinary pension.

(iii) It follows that the Rule B3 formulaic provision is not paid when more, and not paid when less, than the notional retirement pension, so the Rule B3 provisions are denied effect in law.

(iv) Construed to be consistent with misapplication of Rule G1 (4) (a); the Rule B3

notional retirement pension being 'capped' as a Rule B1Ordinary pension, has the effect of doing away with, neutering, Rule B3 entirely, which is patently absurd.

(v) So another construction has to be found to give legal effect to Rule B3 5(1) (b), to express the legislative provision made by Paragraphs 3, 4, and 5 of the SI, so that all have use.

Rule B3, 5 (1) (b). Construction based on Rule G1 (4) (b).

31.(i) The assumption made at 28 supra was that the SI requires a construction of Rule B3, 1 that *'have effect'* and '*subject to'* are to be construed as providing that a Paragraph 3 or 4 health amount is payable, unless the notional retirement pension is greater.

(ii) To be consistent with that priority of payment, the priority must also, of necessity, be consistent with the meaning the SI intends to be given Rule B3, 5 (1) (b), which provides that, "*Where 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".*

32. (i) Whilst a construction (30 (ii) & (iv) supra) of the words '*is that of*', to mean '*replaced by*' creates an absurdity, there is no absurdity in a construction of "*Where the ill health pension exceeds the notional retirement pension the amount of the ill health pension is that of* – becomes, replaces, or is what constitutes – *the notional retirement pension".* It is a question of priority, decreed by amount, or there is no point;

(ii) Things then fall into place, as parliamentary draftsmen intend legislation to do, In this instance, with the Paragraph 3 or 4 Ill health amount paid, if higher than the notional retirement pension, if not, then the notional retirement pension gets paid, thus giving legal effect to all of the Rule B3 provisions, no longer subject to or redundant to Rule B1, as deceitfully practiced by the Respondents, perhaps to save the fund money and enhance personal pay and rewards;

(iii) Given the Appellant's notional rank of DOII, with its APP arrived at on the proper construction of *'by reference to',* and the correct application of Rule G1 (4) (b) to B3, and on correct construction of Rule B3, 5 (1) (b), then the SI Rule B3 provision is no longer rendered absurd and to no effect, but has purpose to provide for financial loss to be given legal effect by those who are to administer it, by doing what they are required to do.

(a) To arrive at the Rule B3 ill-health pension, calculations must be done to arrive at the amount of the Paragraph 3, or 4, *ill-health pension* amount, and the Paragraph 5 (1) (a) *notional retirement pension* amount;

(b) On being calculated, the two amounts must be compared;

(c) Pursuant to Paragraph 5 (1) (b), the *greater* is awarded as the compensating

enhanced Rule B3 ill health pension.

General Intent.

33. (i) Whilst Rule L4 (3) is not specifically provided for a Rule B3 provision, it makes the general legislative spirit and intent of the SI clear, "*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.". S*o, mutatis mutandis Rule B3, the *larger* amount, not the lesser, is paid.

(ii) Of course, on calculation, had it been correctly done in 1998, there would have been a time in which either the Appellant's Paragraph 4, or his notional retirement pension, could have become his Rule B3 Ill-Health pension. It is consistent with Rule L4 (3) that the *greater* be paid, but inconsistent with dicta, this case, Fancourt J.

The Provision in operation.

34. (i) Fancourt J found difficulty with the H.O.Commentary (which contains errors but is not the law). On the law, Fancourt J expressed himself at [AJ 22[, "*the detailed provisions are highly complex and, with respect, not easy for someone who is not very technically minded to understand".*

(ii) Two examples may avoid the complexity which denied Mr. Justice Fancourt any attempt at an explanation to the Appellant which he may have understood; why it is he is being paid a non-compensating Rule B1Ordinary pension in place of a compensating enhanced Rule B3 ill-health pension.

Example A.

(a) A 49 year old 'high flyer' graduate, Senior Divisional Officer, with 29 years service, employed on the HQ staff (all of whom remain operational) on becoming injured, is required to retire on account of ill health in 1998, when his/her APP ['A'] was c£42,000. His/her Statutory B3 paragraph 4 formulaic calculation would have *been (7 x A) + (20 x A) + (9 x 2 x A/60),* or 45/60^{ths} his/her £42,000 APP, to provide him/her with *an ill-health pension amount* of £31,500 pa.

(b) His/her Paragraph 5 alternative is a *notional retirement pension*, which would depend on what Rank those concerned with his/her career thought, but for injury, s/he *could* have achieved. Say, Assistant Chief Fire Officer with a 1998 APP of £55,000.

(c) His alternative Paragraph 5 1 (a) *notional retirement pension* amount would have been 40/60^{ths} x £55,000, to give him a notional retirement pension of £36,667 pa.

(d) Paragraph 5 1 (b) requires the higher Paragraph 5 1 (a) *notional retirement pension*, to be paid as a compensating enhanced Rule B3 ill-health pension. His B3 ill health pension award is £36,667, paid solely in compensation for his financial

loss.

A Rule B4 Injury Award(Calculated from the Rule B3 pension) is also granted to compensate him/her for his/her 'qualifying' injury, loss of amenity, pain and suffering.

Example B.

(a) Not a high flyer, but a first rate 'Qualified' Firefighter, aged 49, with 29 years service, at the top of his/her APP scale at £27,000 and unlikely to be promoted above his/her then Rank, of Leading Firefighter, before being required to retire on account of age (at 55). His/her Paragraph formulaic 4 amount would be *7 x A + 20 x A + (9 x 2 x A)/60,* or (as in Example A), 45/60^{ths} of £27,000 APP, or £20,250pa *Ill-health pension amount*.

(b) His/her Paragraph 5 (1) (a) *notional retirement pension* would be 40/60^{ths} of the APP of the Rank or Pay Point on the current Pay Scales s/he could have achieved by 55. In his/her case no more than his/her current APP or Rank on the 1998 Pay Scale, so his/her notional pension would have been 40/60^{ths} of £27,000 = £18,000 pa. Indeed, he/she could have retired within months on that non compensatory pension, fully fit and 5 years before being required to retire on age at 56, not senior enough in Rank to go to 60.

(c) Paragraph 5 (1) (b) requires the *higher* amount to be paid. The Paragraph 4 Formulaic, Rule B3 *ill-health pension amount,* paid solely in compensation for his/her financial loss.

A Rule B4 Injury Award (Calculated from the Rule B3 pension) is also granted to compensate him/her for his/her no-fault 'qualifying' injury, loss of amenity, pain and suffering.

35.(i) In Example A. The high flyer is being compensated not just for loss of a much higher pension, absent injury, falling due at 60, but the very substantial loss of pay over his/her last, and by far the most fruitful 11 years for which the employer is liable. With no lump sum provided by the Rule B3 provision, the effect of his/her loss is that it is subsumed into his/her annual ill-health pension, almost as though what, in damages, Court would have awarded as a lump sum, is invested by HMG to increase ill-health pension.

(ii) Example B. S/He is correctly paid at 45/60^{ths} of APP in enhancement above a Rule B1 pension, fairly reflecting limited future financial loss until he would have retired on account of age in 5 or 6 years in which he was doing a good job, but essentially working his time out.

Non-compensatory Rule B1 Ordinary Pension.

36. (i) As Fancourt J found the law to be, each of these example Firefighters, under the guise of satisfying enhanced Rule B3 statutory entitlement to compensation for their financial loss, would receive their non-compensatory Rule B1Ordinary entitlement of £28,000 and £18,000, respectively. If that was the law then the SI, Rule B3 provisions are to no legal effect.

37. (ii) It was, as mentioned, a pension each could have taken within months, on completing the year to their 50th birthday when, on a whim and as fit Firefighters they could have left on a fully accrued non-compensating Rule B1Ordinary pension calculated on their 'last best' 3 years pay.

38. But they would have been denied any compensation for financial loss of the 6 or 11 years of service, respectively, and its rewards, denied by injury.

39. Disabled and compulsorily discharged out, each would no longer have the future earning capacity they would have had on time served retirement, fit and well.

The Appellant.

40. At 54, the Appellant could have taken his non-compensating Rule B1Ordinary pension at any time he liked from aged 50 – uninjured. Fancourt J misdirected himself that a Rule B3 formulaic pension was restricted to 40/60^{ths} and misdirected himself that a compensating enhanced Rule B3 notional retirement pension was to be calculated under Rule G1 (4) (a) et al.

41. Turning to the Appellants provision. When required to pre-empt his career on account of a no-fault 'qualifying' injury in 1998, the Appellant's APP was £32,904pa. He was expecting promotion. The Respondents provided Mrs. Justice Falk with the 2003 starting APP of £43,058pa, for the rank of Divisional Officer II, the senior Rank the Respondents accepted the Appellant, aged 54 and with 37 years service, *would* have reached, absent injury.

42. The Appellant anticipated being promoted in the year of his injury. His final APP could have been greater than the starting APP, and his pension commensurately so. His financial loss cannot be known but is a substantial sum for amortisation within a pension providing no lump sum (save on commutation which reduces income).

43. 1992 SI No:129, at Rule B3, Paragraph 4, applies in the Appellant's case providing a formula on which to calculate his compensatory enhanced 1998 ill-health pension as [7A + 20A + 17 (years service above 20) x 2A/60], or 61/60^{ths} of 'A', his actual APP of £32,904pa, or £33,452.24pa, to be considered for his Rule B3 ill-health pension award.

44. The Appellant's 1998 Paragraph 5 calculation is 40/60^{ths} of his notional DOII, APP of £36,541pa (not as at 2003 but 1998) providing him with a notional retirement pension of £24,364.67pa to also be considered for the Rule B3 ill-health pension award. If in contention this figure, would need careful revision for, with allowances, the APP is well above the basic APP for the Rank.

Correction.

45. (i) The Appellant's Rule B3, Paragraph 4 amount being *greater* than his Rule

B3, 5 (1) amount, the Rule B3 *ill health pension* amount of £33,452.24pa is what properly should have been awarded to the Appellant in 1998 as his compensating enhanced Rule B3 ill-health pension.

(ii) Since his notional DOII pension with all allowances could not have amounted to the £50,000 APP it would have to have become, to compete with his Paragraph 4 amount, his correct 1998 confirmed entitlement to a compensating enhanced Rule B3 ill-health pension £33,452.24 pa - index linked.

46. The Appellant is being paid an index linked pension of 40/60^{ths} of his last earned APP of £32,904pa, providing him with a non-compensating Rule B1Ordinary pension, as at 1998, of £21,936pa.

47. (i) It follows that the Appellant's Rule B3 pension was underprovided by £33,452.24pa less £21,936pa, the non-compensating Rule B1Ordinary pension awarded him purporting to be his compensating enhanced Rule B3 ill-health pension entitlement; so a wrongful denial of pension due in the sum of £11,516.24pa, since commencement in 1998.

(ii). To adjust the 1998 Rule B1Ordinary pension paid to the Rule B3 ill-health pension entitlement requires a shortfall of £11,516.24 to be added to the paid £21,963pa to pay the correct £ 33,452.24pa.

(iii) The initial 'error' is corrected by adding 52.5% to the Rule B1 pension B1 to correct it to Rule B3 pension.

48. The Appellant's B4 Injury Award is calculated within the Rule G1 (4) (a) provision and will need revision or amendment.

49. The Respondents provided Mrs. Justice Falk with the DOII APP on appointment as at his retirement on account of age date in 2003 at c£43,000pa. He would have expected to be in that Rank for two or three years before retirement at 60. With allowances his APP could well have been c£48,000+ on which aged 60 he would have retired on a non-compensating Rule B1 Ordinary pension of £32,000+. From which it may be thought that the Home Office, more or less, pitched its compensation for financial loss about right.

50. The Appellant, with respect, appeals the judgement of the Honourable Mr. Justice Fancourt on the grounds that he was so wrong in his construction of the law as to confound its meaning, making it, as he sought to find on it, inexplicable. Leaving the Court of Appeal no option but to correct him; he being wrong in law and on important legal principles of public importance.

51. Under common law an employer found liable for injury causing financial loss may pay damages to restore that person to their former position, in so far as money can, Fancourt J misdirected himself to so construe the SI as to deny compensation, where not denied by the Statute.

52. Fancourt J omitted to consider and apply the doctrine of contra preferentem in his construction. The Respondents rely on their interpretation of the law between them, as force majeure administrators, which they practiced in malfeasance.

The Appellant Seeks:

That his Appeal be Allowed (even out of time).

Judgement for the sums due to him, interest, and Exemplary Damages.

A Declaration.

53. "That the law is that in calculation of an ill-health pension pursuant to 1992 Statutory Instrument No.129, the Rule B3, Paragraph 5 notional retirement pension was to be, and is to be, as though the enforced 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, or at the Pay Point in the Pay Scales, the disabled Firefighter could have reached, but for ill-health or no-fault injury.
Such APP for such Rank or Pay Point to be taken from the Pay Scales in force when he/she was compulsorily required to retire on grounds of a no-fault 'qualifying' injury and then; on comparison between calculations of the Paragraph 3, or 4 amount, and the Paragraph 5 amount, the *greater* to be paid as the compensating enhanced Rule B3 ill -health pension".

Exemplary Damages.

54. The Appellant seeks Exemplary Damages:

(i)The Chief Fire Officer seeks to exculpate the Respondents by claiming *"I am unable to see any reference in the Statutory Instrument to this being compensation"*. But it was his delegated duty, and those he delegated, to administer the Respondent's Firefighters Pension Scheme in compliance with the law and to find out what the law was and implement it.

(ii)The Respondent knew, or ought to have known, that they were under a legal obligation of fiduciary duty to put all Pension Scheme Members interests first including the Appellant. They failed to do so.

(iii) Denial of pension payment was not openly done but was done under the guise of it being a compensating enhanced Rule B3 ill-health pension entitlement which the SI required the Respondents to pay to the Appellant.
It was done in breach of duty to make sure the right amount was paid as a compensating enhanced Rule B3 ill-health pension. It was achieved by the Respondents maintaining the trust of their disabled Retired Firefighters, by deceiving them.
Deception included the most deliberate misrepresentation in an earlier case at

the Pensions Ombudsman on the same facts as the Appellant's case.
It has been dishonesty in public office, to which turning a blind eye to the law is no defence.

(iv)The Appellant seeks meaningful exemplary damages to punish the Respondents for deception and suppression of the Home Office Commentary to the SI, on whose plain language the Appellant would have immediately realised that a non-compensating Rule B1 Ordinary pension could not possibly be a compensating enhanced Rule B3 ill-health pension amount.

(v) The Respondents have been dishonest in public office. By their deception to save their Firefighters Pension Fund disbursements as required by law, perhaps to earn performance pay or bonuses, but by such conduct they have casually and malignly denied the Appellant much of the quality of his life over the last 24 years, intended and provided by statute for him, and which his correct pension would have afforded him.
Deceiving the Appellant that his paid non-compensatory Rule B1Ordinary pension was his entitlement and, paying it to him denied him the amenity his proper, 52.5% *higher,* compensating enhanced Rule B3 ill-health pension would have afforded him, and his family, from 1998 onwards.

(vi)The Respondents' unconscionable and unlawful conduct, has been deliberately to frustrate legislative provision, directly at the Appellant's personal financial loss, by an egregiously arbitrary and oppressive abuse of power by servants of the government, such abuse extending into delay from 2015. The Appellant contends the Respondents have taken the law into their own hands to defraud the Appellant of his lawful pension.

(vii)On complaint, rather than immediately seek to correct it, the lay Chief Fire Officer took no advice and sought no judicial review but preferred not to understand the law in order to continue the wrongdoing.

(viii)Contrary to section 15(1) of the Equality Act 2010 the Respondents compulsorily discharged the Appellant on account of his no-fault injury and ill-health, wrongfully discriminated (continuing) against him by denying him the pension provided by law to others require to retire on account of ill-health. Paying him a non-compensatory Rule B1Ordinary pension when the 1992 Statutory Instrument No:129, Rule B3, provides him with an ill-health pension in compensation of his financial loss.

(xix)The Respondents deny the Appellant's human right to protection of his property, his pension, unlawfully withheld from payment being his legal property though not in his possession, and are in breach of the Human Rights Act 1998, Schedule 1 Part ll, The First Protocol, Article 1 providing that " 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".

(x) (a)The Appellant also seeks exemplary damages, dicta Lord Devlin in

Rookes v Barnard (1964) UKHL 1, (1964) AC 1129. The Respondent's conduct has been a long, persistent, and egregiously arbitrary and oppressive abuse of power by servants of the government.
They have long fostered by deceit, and by abuse of their powers they have protected their 'system' to be dishonest in public office, even to the contamination of the Pensions Ombudsman and to the direct financial damage of the Appellant. They have unlawfully retained monies as they fell due, to his detriment, depriving him of his property, but to the benefit of the Firefighters Pension Fund they manage, and perhaps personally, improved 'performance' usually being reflected in personal pay and rewards.

(b) Their conduct continues to be unlawful. It remains arbitrary and oppressive conduct in abuse of the Appellant interest, which it is the Respondents' duty in law to protect,

(c) The Respondents' conduct is repugnant and criminally unlawful contrary to s1-4 of the Fraud Act 2006, the Respondents, their servants or agent, being servants of HMG, unlawfully denying the Appellant his property.

An Account.

55. (i) An account of each monthly Rule B3 pension payment to which the Appellant became entitled from the first month of wrongful deprivation in 1998, to the date of payment of monies wrongly denied the Appellant. And interest compounded thereon monthly at the rate of 8% above base rate.

(ii) The Appellant refers the Honourable Court to Man Nutzfahrzeuge AG v Freightliner Ltd [2005] EWHC 2347 (Comm), Moore-Bick LJ dictum at para 321.

> "*There has been an increasing willingness to recognise that an award of simple interest does not fully compensate the injured party for the loss caused by being kept out of his money, nor does it adequately reflect the benefit to the wrongdoer of having had the use of it. As a result it has become routine for arbitrators to award compound interest in the exercise of their powers".*

(iii) The Appellant also refers the Honourable Court to Perry -v- Raleys Solicitors [2017] EWCA Civ 314 **t** Dicta**,** Lady Justice Gloster in her consideration of the arguments in relation to interest:

> *"62. In my judgment, the appropriate interest rate, in the particular circumstances of this case, for the entire period from 1 December 2006[10] to the date of judgment in this court is the judgment rate of 8% per annum*
>
> *63. Had it not been for Raleys' negligence, the reasonable chances are that by 1 December 2006 at the latest, Mr Perry would have received the sum of £14,556.15 from the Scheme as a services claim award. This would have included an element of interest at the Scheme rate up until December 2006. If he were only to be awarded simple interest thereafter at the special account rate – 6% until 31 January 2009, 3% from February to May 2009, 1.5% in June*

2009 and 0.5% from1 July 2009 until judgment – he would not, in my judgment, be adequately compensated for the lack of the use of that money in the intervening period not least because of the erosion of the value of the fund due to inflation.".

(iv) The Appellant would also wish to refer the Honourable Court to the reality of modern life for those not so well off on credit card debt and Bank Overdraft being above, sometime well above, 16%, bank rate having no presence in the High Street or with ordinary people.

Orders of the Court.

56. The Appellant seeks the following Orders of the Court, or such other orders, as the Honourable Court may think fit to make.

That within 14 Days of Judgment, the Respondents do provide the Appellant for his approval and agreement:

1. A First Schedule showing each monthly pension payment made to him to the next payment date following judgment.
2. A Second Schedule showing each amount uplifted by 52.5% to correct from a Rule B1 pension to Rule B3 pension.
3. A Third Schedule showing the shortfall, month by month, of the Rule B1 payment to the Rule B3 entitlement, wrongly retained by the Respondent's Firefighters Pension Fund.
4. A Fourth Schedule taking the shortfall debt arising month by month and applying bank base rate + 8% pa compound interest, or such rate of interest as the Honourable Court considers just and lawful, to each monthly retained sum, to be added monthly, from the date of wrongful retention, to the pay day following the Judgment.
5. Making payment of all amounts to be paid including costs, as the Appellant directs within 14 days of the Appellant's agreement to the Scheduled amounts.
6. The Respondents supply on demand and render any assistance the Appellant, his servants or agents, may require to settle the matter to his satisfaction.
7. The Respondents shall pay any professional costs incurred should the Appellant be unable to agree the Respondent's Schedules.
8. The Appellant may apply to the Honourable Court for Directions ex parte at any time.
9. On disagreement on any point, the Respondents to bear the costs of proceedings or arbitration, at the Appellant's choice.
10. The Respondents to indemnify the Appellant against payment by him of any sum arising from judgement of monies and payment to him of what, but for the Respondents unlawful retention of his moneys, would have been paid as pension as it fell due attracting no such sum.
11. The Respondents to uplift the Appellant's pension, scheduled to be paid next after the next pay day after judgement to his correct current Rule B1 Ordinary pension amount by + 52.5% to in future pay him his correct

compensating enhanced Rule B3 ill-health pension entitlement.

12. The Respondents to retain 20% of the judgement debt in full and final settlement of tax payable, it falling to the Respondents as his pension administrators to settle any HMRC demand for tax in any guise, in full, arising from any payment made under the judgement.
13. The Respondents resuming normal deductions from first payment of the corrected Rule B3 compensating pension.
14. The satisfaction of the judgment to be registered with the Honourable Court.
15. To pay any sum awarded by the Honourable Court by way of aggravated and/or exemplary damages within 30 days of judgement.

And/or such other relief, or order as The Honourable Court may consider appropriate and be disposed to grant.

57. And Costs.

Mr. F[redacted] M[redacted] G[redacted]_____.

Litigant-in-Person

Filed this 1st Day of April 2021,

John M. Copplestone-Bruce
Inner Temple (PB)

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

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.

****

CH-2020-000043

In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

BETWEEN

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

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 2nd day of April 2020

UPON considering the applications for an extension of time to file the Appellant's notice and for permission to appeal

AND UPON reading the appeal bundle

AND UPON reading a letter from Counsel to the Pensions Ombudsman dated 20 February 2020 in connection with the extension of time application

IT IS ORDERED THAT

1. Permission is granted to the Appellant to bring this appeal out of time, and time is extended to 4pm on 4 February 2020.

2. The Appellant's application for permission to appeal on the merits is refused.

3. The Appellant may, within seven days of receipt of this order, apply for a hearing at which he may renew his application for permission to appeal. Such application may be made by to the High Court Appeal Centre Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL, or by email to ChanceryJudgesListing@justice.gov.uk, in each case quoting the above appeals reference number. Any such application must also be served on the Respondent and the Pensions Ombudsman.

4. This order has been made by the court under paragraph 7.1 of Practice Direction 52B, as the court has disposed of an application

without hearing the Respondent. Under para 7.3 of that Practice Direction, any party may apply to have the extension of time under paragraph 1 of this order set aside or varied within 7 days of the date of service upon that party, and must serve a copy of the application on the other party and the Pensions Ombudsman at the same time.

5. Any application made under paragraph 3 or 4 must confirm the correct identity of the Respondent to this appeal.

6. Any hearing of an application made under paragraph 3 or 4 may be on a remote basis, using Skype for Business (if possible) or otherwise a conference call, and will be a public hearing. The judge will consider written submissions on the communication method that should be used.

REASONS:

Extension of time:
The Appellant had a right to appeal the decision of the Deputy Pensions Ombudsman (the "Decision") on a point of law within 28 days, under s 151(4) of the Pension Schemes Act 1993 and pursuant to a general direction for England and Wales that has been made by the Pensions Ombudsman that appeals should be made within 28 days. Given that both the Appellant and Respondent are based in England, the appeal should have been filed in the High Court in England and Wales. However, an appeal was instead filed in the High Court in Northern Ireland on 23 September 2019, 13 days after the date of the Decision. The reason for this appears to have been related to the fact that the Appellant has been assisted by an ex-colleague, a Mr Burns, who is resident in Northern Ireland.

On 6 November 2019 Maguire J struck the appeal out for want of jurisdiction. It appears from the Appellant's notice that the appeal was then relodged in London on 3 December 2019, but with the Court of Appeal rather than the High Court. It was returned on 13 January when the Appellant was advised to resubmit the appeal to the Chancery Division.

I accept that the Appellant acted promptly after the Decision was issued. I also accept that the information issued with the Decision about appeals does not explain precisely when an appeal may be brought in Northern Ireland or elsewhere. Against that there is no indication that the Appellant took any steps to identify the correct route of appeal, and it is possible that his decision to appeal in Northern Ireland may have been affected by the fact that no permission is required in that jurisdiction.

It is also the case that there were delays between 6 November and 3 December, and again between 13 January and lodging the appeal in the Chancery Division, which according to the court's filing system was first attempted on 31 January. There is no obvious good reason for these delays. However, each delay is of a relatively moderate length.

Time limits are important, and they apply to litigants in person in the same way that they apply to litigants who benefit from professional advice. However, although the overall delay between the expiry of the 28 day time limit and the appeal being filed in the Chancery Division is significant, I think it is outweighed by the fact that there are some reasons for the delay, that there is no indication that the Respondent has been prejudiced by the delay, and by the fact that, in the interests of justice, I consider it preferable to address the substantive merits of the appeal.

I have therefore concluded that in all the circumstances it is appropriate to extend time and deal with the permission to appeal application on its merits.

Permission to appeal:
The appeal bundle contains a significant amount of material, including details of complaints and allegations of a serious nature that are not relevant to this appeal. I confine my comments to the points identified in the grounds of appeal as alleged errors of law by the Deputy Pensions Ombudsman, which I can summarise as follows:

(a) incorrectly interpreting the legislation and therefore failing to identify that the Appellant was wrongly being paid a B1 ordinary pension rather than the enhanced B3 ill-health award to which he was entitled;
(b) wrongly using an example in a Home Office commentary on the legislation to support that result;
(c) failing to recognise that firefighters had had common law entitlements removed, and that the statute should be interpreted in a way that did not deprive the B3 ill-health provision of meaning; and
(d) failing to recognise that rule K3 provides for an ill-health award to be reduced in certain circumstances, which was inconsistent with concluding that the pension due to the Appellant was the irreducible B1 pension.

In my view this appeal has no real prospect of success, and there is no other compelling reason for it to be heard.

The legislation at issue is Schedule 2 to The Firemen's Pension Scheme Order 1992/129 (the "1992 order"). I have proceeded on the basis that the correct version to consider is that in force at the date of the Appellant's retirement, which was 22 July 1998. On that basis the legislation originally enacted, available on the legislation.gov.uk website, appears to be the correct version since although certain changes had been made to the 1992 order by that date, the provisions at issue in this appeal appear not to have been amended.

Part B deals with personal awards, the relevant provisions being B1 and B3. Relevant extracts are as follows:

"Ordinary pension

B1.—(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—
(a) has attained the age of 50, and
(b) is entitled to reckon at least 25 years' pensionable service, and
(c) does not become entitled to an ill-health award under rule B3.
…
Ill-health award
B3.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement).
(2) A person to whom this rule applies becomes entitled on retiring—
(a) if he is entitled to reckon at least 2 years' pensionable service or the infirmity was occasioned by a qualifying injury, to an ill-health pension calculated in accordance with Part III of Schedule 2, and
(b) in any other case, to an ill-health gratuity calculated in accordance with Part IV of Schedule 2.
Schedule 2 Part III: Ill-health pension
1.—(1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.
(2) In paragraphs 2 to 4, A is the person's average pensionable pay.
2. Where the person has less than 5 years' pensionable service, the amount of the ill-health pension is—

$$\frac{A \times B}{60}$$

where B is the greater of one year and the period in years of his pensionable service.
3. Where the person has at least 5 but not more than 10 years' pensionable service, the amount of the ill-health pension is—

$$\frac{2 \times A \times C}{60}$$

where C is the period in years of his pensionable service.
4. Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of—

$$\frac{20 \times A}{60}$$

and

$$\frac{7 \times A}{60} + \frac{A \times D}{60} + \frac{2 \times A \times E}{60}$$

where D is the period in years of his pensionable service up to 20 years, and E is the period in years by which his pensionable service exceeds 20 years.
5.—(1) Where—
(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension ("the notional retirement pension"), and
(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension,
the amount of the ill-health pension is that of the notional retirement pension.
(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay."

Pensionable pay is determined under paragraph G1. That provides that average pensionable pay is, subject to some exceptions, the aggregate of the individual's pensionable pay during the year ending with the "relevant date", which is essentially when the individual retired.

The Appellant retired on 22 July 1998, a few months short of his 55th birthday. By the date of his 50th birthday on 17 December 1993 he had already achieved 31 years of pensionable service, and by that stage was already able to choose to retire with a maximum ordinary pension under B1 (see the letter dated 19 February 2016 from LFRS included at tab 3 of the appeal bundle). As I understand it, absent ill-health he could have been required to retire at the age of 55, on 17 December 1998.

In fact the Appellant retired on grounds of ill-health at a time when he had over 35 years of service. There is no dispute that because he retired on grounds of ill-health he is entitled to an ill-health award under B3(1). It is clear that that means that he may not receive a pension under B1: see B1(1)(c).

The real dispute relates to paragraph 5 of Part III of Schedule 2 (confusingly, not Schedule 2 to the 1992 order but instead a Schedule included within Schedule 2 to the 1992 order). The Deputy Ombudsman upheld the Respondent's decision that the Appellant's pension was "capped" at the amount of an ordinary pension under B1, calculated using average pensionable pay determined at the date of retirement. That ordinary pension amount, calculated (given the length of service) on a 40/60 basis under Part I of Schedule 2, was obviously less than the amount that would have been payable under paragraph 4 of Part III (set out above).

I can detect no possible error of law in this conclusion. The key question is to determine the "notional retirement pension" under paragraph 5. If the amount calculated under paragraph 4 is higher than that amount then the amount of the pension payable under B3 is equal to that "notional retirement pension". It is worth emphasising that the pension is still payable under B3, not B1, but the calculation is determined by reference to the ordinary pension.

The Appellant argues that there is significance in the words "by reference to" in paragraph 5(2), in contrast to the word "is" when used to refer to average pensionable pay in paragraph 1(2) of Part III. What it is said that the rules contemplate is that the Respondent should have determined the pay level that the individual could have achieved if he had actually worked up to his normal retirement date, using pay scales available at the time and assuming pay increases and promotions, rather than using actual pay in the year to retirement. (It is not made clear what, if any, difference this would actually make on the facts of this case.)

There is no basis for reading the legislation in this way. What is referred to in paragraph 5(2) is actual average pensionable pay. As already mentioned that is defined under paragraph G1 by reference to the year to retirement. The reason that paragraph 5(2) uses the words "by reference to" is that the word

"is" would not make sense. What it is saying is that the notional retirement pension has to be calculated *using* actual average pensionable pay.

The Appellant also relies on a commentary published by the Home Office. The text relied on, set out at Appendix 2 to the Decision, refers to capping in terms that the pension can never be more than "could have been earned" or that the person "could have earned" by compulsory retirement age. This text has no force of law and cannot affect the clear wording of the legislation. In any event, the text can be read as referring to the pension available by reference to length of service (so if, for example, there would only have been 20 years' service at normal retirement, the pension would be lower than the 40/60ths maximum referred to). In addition, as indicated by the Decision, Example 7 in the commentary appears not to assist the Appellant's case.

I do not agree with the submission that this interpretation deprives B3 of meaning or effect, or that there are no circumstances when paragraph K3 could apply. There will be many situations where either paragraph 3 or paragraph 4 of Part III will produce a result which is lower than the notional retirement pension, and therefore where the pension payable would be determined by those paragraphs. This would be likely to be the case if retirement on grounds of ill health occurred earlier in a firefighter's career, rather than close to retirement. For example, assume retirement on grounds of ill-health after 20 years of service at age 40, and that the individual could otherwise have been required to retire at 55. The calculation under paragraph 4 would produce a pension of 27/60ths of average pensionable pay. If the individual had continued to work until retirement he would have had 35 years' service and a 40/60ths pension. On those facts paragraph 5 would have no application because the amount calculated under paragraph 4 would not exceed the notional retirement pension.

Identity of the Respondent

The Appellant has named the respondent to the appeal as Lancashire Combined Fire Authority. The respondent named in the Decision is Lancashire Fire and Rescue Service, and I would have expected that entity to be the respondent to the appeal.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:
Mr FM G[redacted]
Mr D Howell (solicitor) Lancashire Fire & Rescue Service
dominichowell@lancsfirerescue.org.uk
The Pensions Ombudsman (ref PO-19150), enquries@pensions-ombudsman.org.uk and david.craddock@pensions-ombudsman.org.uk

CH-2020-000043

In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

BETWEEN

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

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 6th day of May 2020

UPON correspondence with the Appellant, in which the Appellant confirmed that he does wish to proceed with an oral renewal hearing, **AND UPON** correspondence with both parties in connection with the factual context for the appeal and the legal issue raised

IT IS ORDERED THAT

1. The oral renewal hearing of the appeal shall be listed on the first available date on or after 1 July 2020.

2. The Respondent shall no later than 8 May 2020 (or by such later date as the court may agree following a written request for an extension) provide to the Appellant a draft brief summary of relevant facts, covering (so far as is reasonably available) (a) the Appellant's compulsory retirement age, (b) the way in which the Appellant's pension was calculated (currently assumed by the court to be 40/60 x actual pay in the year to retirement) and (c) some information about the relevant pay scales and promotion arrangements, in particular as to whether progression was automatic.

3. The Appellant shall promptly provide any reasonable comments on the draft summary of facts so provided. Those comments must be limited to any necessary corrections to address inaccuracies and to those issues referred to in paragraph 2 of this order.

4. The Appellant and Respondent shall thereafter seek to agree the summary of facts, with a view to the Respondent filing at court and serving on the Appellant an agreed summary of relevant facts by no

later than 4 pm on Friday 22 May. If the summary is not agreed the Respondent should file and serve its version of the summary on that date. In that event the Appellant is at liberty to file and serve a version showing the points with which he does not agree. However, the court will ***not*** entertain additional written submissions, and anything filed by the Appellant must be limited to the matters referred to in paragraph 3 of this order.

5. Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following:

   Whether, as a matter of statutory construction of paragraph 5 of Part III of Schedule 2, contained in Schedule 2 to The Firemen's Pension Scheme Order SI 1992/129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

   a. (as the Respondent contends) that the calculation must be done using actual pay in the year to the date of retirement; or
   b. (as the Appellant contends) 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.

REASONS

The hearing is to be relisted not before 1 July for the reasons referred to in the order of 1 May 2020, namely a) to allow the Appellant to seek legal assistance and b) allow time for the facts to be clarified. The Respondent has kindly agreed to assist the court in relation to b).

The court also considers that, in view of the written submissions provided by or on behalf of the Appellant (including lengthy submissions addressed to the Court of Appeal and received by this court on 24 April 2020) it is important to clarify what appears to be the single legal issue in dispute in this appeal. This is reflected in paragraph 5 of the order.

The sole purpose of seeking a summary of the facts, as contemplated by paragraphs 2 to 4 of the order, is to assist the court in providing a factual context for determining whether permission to appeal should be granted in respect of the legal issue in dispute.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:
Mr FM G[redacted], [redacted]
Mr D Howell (solicitor) Lancashire Fire & Rescue Service
dominichowell@lancsfirerescue.org.uk
The Pensions Ombudsman (ref PO-19150) david.craddock@pensions-ombudsman.org.uk

CH-2020-000043

In the High Court of Justice
Business and Property Courts of England and Wales
Chancery Appeals (ChD)
On appeal from a decision of the Deputy Pensions Ombudsman on 10 September 2019 (ref: PO-19150)
Appeal ref: CH-2020-000043

BETWEEN

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

Appellant

and

LANCASHIRE COMBINED FIRE AUTHORITY

Respondent

ORDER

Before **the Honourable Mrs Justice Falk** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 6th day of May 2020

UPON correspondence with the Appellant, in which the Appellant confirmed that he does wish to proceed with an oral renewal hearing, **AND UPON** correspondence with both parties in connection with the factual context for the appeal and the legal issue raised

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5. Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following:

   Whether, as a matter of statutory construction of paragraph 5 of Part III of Schedule 2, contained in Schedule 2 to The Firemen's Pension Scheme Order SI 1992/129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:

   a. (as the Respondent contends) that the calculation must be done using actual pay in the year to the date of retirement; or
   b. (as the Appellant contends) 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.

REASONS

The hearing is to be relisted not before 1 July for the reasons referred to in the order of 1 May 2020, namely a) to allow the Appellant to seek legal assistance and b) allow time for the facts to be clarified. The Respondent has kindly agreed to assist the court in relation to b).

The court also considers that, in view of the written submissions provided by or on behalf of the Appellant (including lengthy submissions addressed to the Court of Appeal and received by this court on 24 April 2020) it is important to clarify what appears to be the single legal issue in dispute in this appeal. This is reflected in paragraph 5 of the order.

The sole purpose of seeking a summary of the facts, as contemplated by paragraphs 2 to 4 of the order, is to assist the court in providing a factual context for determining whether permission to appeal should be granted in respect of the legal issue in dispute.

SERVICE OF THIS ORDER: The court has provided a copy of this Order to:

Mr FM G[redacted],[redacted]

Mr D Howell (solicitor) Lancashire Fire & Rescue Service dominichowell@lancsfirerescue.org.uk

The Pensions Ombudsman (ref PO-19150) david.craddock@pensions-ombudsman.org.uk

Neutral Citation Number: [2020] EWHC 2789 (Ch) Appeal Ref: CH-2020-000043

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date: 03/07/2020

Before:

THE HONOURABLE MR JUSTICE FANCOURT

Between:

F[redacted] G[redacted]

Intended Appellant (the "Appellant")

and

LANCASHIRE COMBINED FIRE AUTHORITY

Intended Respondent (the "Respondent")

- -
- -

The Applicant appeared In Person
No appearance was made by or on behalf of **the Respondent**

Hearing date: 3 July 2020

- -

Approved Judgment

.....

MR JUSTICE FANCOURT:

1. This is a renewed application by Mr G[redacted] for permission to appeal against a decision of the Pensions Ombudsman, which was given on 10 September 2019. The original application for permission to appeal on a question of law was considered by Falk J on the papers, and on 2 April 2020 she refused permission to appeal, essentially on the basis that the legal issue raised was unarguable. Mr G[redacted], as he is entitled to do, renewed his application for permission to appeal.

2. Mr G[redacted] is a retired firefighter and he has a pension under the Fireman's Pension Scheme.

3. He was forced to retire, as a fireman, through ill-health as a result of an accident at the age of 54. He would otherwise have been entitled to continue to work until the age of 60.

4. Mr G[redacted] made a complaint to the Pensions Ombudsman on 10 October 2017 and the complaint, at that stage, was that he was wrongly being paid a Rule B1 ordinary pension, rather than a Rule B3 ill-health pension.

5. The complaint was considered first by a senior adjudicator at the Pensions Ombudsman's office, who wrote an opinion on 13 March 2019 saying that the complaint should not be upheld. Mr G[redacted], as he was entitled to do, did not agree with that opinion and accordingly his complaint was further considered by the Pensions Ombudsman, in fact the Deputy Pensions Ombudsman, who gave her decision for not upholding the complaint on 10 September 2019.

6. Mr G[redacted] sought to appeal to the High Court and after one or two false starts, via the Court of Appeal in Northern Ireland and then the Court of Appeal in this Country, the appeal was finally properly issued in the High Court on 4 February 2020. It was therefore significantly out of time but Falk J considered that there were sufficient reasons to justify an extension of time, and she made that order for an extension of time on 2 April but then refused permission to appeal by the same order.

7. She gave detailed reasons why she considered that, on the true interpretation of the relevant parts of Schedule 2 to the Fireman's Pension Scheme Order 1992, the Ombudsman had clearly been right and therefore Mr G[redacted] appeal had no reasonable prospect of success.

8. After the application for permission to appeal was renewed, Falk J made a further order on 6 May 2020, adjourning the hearing that was due to take place to enable various matters to be done in the interim so as to give Mr G[redacted] the best possible chance of advancing his arguments on the basis of the relevant facts of the case. The relevant facts, in accordance with Falk J's direction, were set out in a document that the employer Fire Authority prepared, dated 6 May 2020, and Mr G[redacted] then responded directly, and very helpfully, by adding in his points of disagreement, such as they are, in the same document, which I have before me.

9. The relevant facts are that, as I have already said, Mr G[redacted] was forced to retire early, aged 54, as a result of a road traffic accident when he was on duty. That was a compulsory

retirement for the purposes of the pension scheme. Given his rank at the time of Assistant Divisional Officer, he was entitled to retire at 60 and so he was effectively forced to retire more than five years early.

10. The total pay, to which he was entitled with flexible duty allowance at the date of his retirement, was £32,904.00.

11. The issue between Mr [redacted] and the Pension Scheme is that, he says, the rules of the scheme require to be taken into account the chance of the firefighter obtaining further promotion before what would otherwise have been his normal retirement age, and Mr G[redacted] case, set out in his amendment to the facts document, is that there was a good chance, as he saw it, of promotion to the rank of Divisional Officer 2 by the age of 60. He says that, in effect, he was doing that work and had that responsibility in any event, and that therefore he considered he had a good chance of promotion.

12. With that promotion the pay, as at the date of his actual retirement, would have been £36,547.72. At one stage, it appeared that part of Mr Ga[redacted] argument was that, not only any promotion should be taken into account, but also any increase in the pay for the relevant rank by the normal retirement age should also be taken into account. But Mr [redacted] now accepts that the second point is not a good point. Nevertheless he maintains his case that the prospect of promotion by the normal retirement age of 60 should have been taken into account.

13. The issue is, and is accepted to be, purely a question of the true interpretation of the Pension Scheme comprised in the relevant statutory instrument.

14. Falk J encapsulated the issue in her order of 6 May 2020 in the following terms, and I quote:

> *"Whether as a matter of statutory construction of paragraph 5 of part 3 of Schedule 2 contained in Schedule 2 to the Fireman's Pension Scheme Order, SI 1992 No. 129, the requirement to calculate the notional retirement pension "by reference to" actual average pensionable pay means either:*
>
> *(a) as the respondent contends, that the calculation must be done using actual pay in the year to the date of retirement, or,*
> *(b) as the appellant contends, 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 achieve available promotions until the date he or she could have been required to retire, absent ill-health or injury".*

15. The relevant provisions of the scheme are, first, in appendix one, where Part B differentiates between an ordinary pension, at paragraph B1, and an ill-health award, at paragraph B3. It is common ground that Mr G[redacted] is entitled to an ill-health award and not an ordinary pension.

16. In schedule two to that appendix, there are then detailed provisions for the calculation of an ill-health pension. By virtue of his long years of service, Mr G[redacted] falls within paragraph 4

of that schedule. However, it is the terms of paragraph 5 that are directly in issue and they provide as follows:

> *"(1) Where:*
> *(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension, "the Notional Retirement Pension" and*
> *(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the Notional Retirement Pension,*
> *the amount of the ill-health pension is that of the Notional Retirement Pension.*
> *2. The Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay".*

17. Paragraph 5(1) therefore requires a cap to be imposed on the amount of the ill-health pension that would otherwise be calculated under paragraphs 3 or 4 of Schedule 2 by reference to the amount of the Notional Retirement Pension that the retired firefighter would have achieved had he continued to work until the age of retirement.

18. However, paragraph 5(2) says that that Notional Retirement Pension is to be calculated by reference to the person's actual average pensionable pay. Average pensionable pay, for the purposes of the scheme, is defined in rule G1 as the average pensionable pay of a regular firefighter and is, subject to paragraphs five to seven, the aggregate of his pensionable pay during the year ending with the relevant date, and the relevant date is the last day of the firefighter's service as a regular firefighter.

19. 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. However, Mr G[redacted] argument is that the significance of the words 'by reference to' in paragraph 5(2) of the order is that they require the prospects of promotion during the remaining years of what would otherwise have been normal service to be taken into account. He argues that the words 'by reference to' signifies something different from what the word "is" would have signified, as for example it is used in an earlier part of the appendix: "the pension is the person's actual average pensionable pay".

20. He supports his argument by reference to guidance in the form of a commentary that was issued by the Home Office at the time when the pension scheme came into effect. The relevant part of that guidance says as follows:

> *"How much is the pension? The sums are set out in examples one and four to seven, the basis of the calculations is explained here. A firefighter's basic ill-health pension is never less than 1/60th of average pensionable pay, APP, and never more than 40/60th, two-thirds of APP or what could have been earned by compulsory retirement age".*

21. Mr G[redacted] fastens on the last words in that quotation and say that requires the scheme to consider what the firefighter could have earned had he continued to work until compulsory retirement on grounds of age.

22. The commentary and guidance is provided to give practical guidance to those considering

their pension entitlement on the way that the detailed provisions of the pension scheme operate. The detailed provisions are highly complex and, with respect, not easy for someone who is not very technically minded to understand.

23. The guidance has no statutory force, however; it is the scheme itself that has to be construed. The significance of the guidance was addressed by the Ombudsman in his decision. He referred to the paragraph to which I have referred, and he said, as follows:
'I find that the commentary does not support Mr N's interpretation' (I interpolate Mr N, in the decision, was Mr G[redacted]), and then he referred to a further argument in relation to the scheme.

24. He said Mr G[redacted] suggests that the figure of average pensionable pay should be determined by the Chief Fire Officer, based on what they think the likely salary could have been at the point of compulsory retirement. However, that interpretation implies a level of guesswork and forecasting that simply is not reflected in the methodology prescribed by the order or illustrated in the commentary. Read in the context in which they are used in the commentary, the two instances of what could have been earned by compulsory retirement age are references to the number of years of service that could be achieved, not the average pensionable pay. In both cases, the calculation described is based on a maximum of 40 years' service or the length of service that could have been earned by compulsory retirement age.

25. In my judgment, there is no scope at all for construing paragraph 5(2) of Schedule 2 to the order so as to incorporate a requirement to take account of what promotion may or may not have been achieved by a firefighter between the date of early retirement and the normal retirement age.

26. There is no machinery in the scheme enabling the scheme administrators to assess or predict, or guess, what that promotion might in any given case have been. There is nothing in the wording which suggests that that kind of exercise is required to be undertaken.

27. In my judgement, the words 'by reference to' are simply being used as a synonym for 'using' as if the paragraph had said "the Notional Retirement Pension is to be calculated using the person's actual average pensionable pay". There is no warrant for interpreting that as referring to any theoretical pensionable pay that might have been achieved by a later date.

28. I am sympathetic to Mr G[redacted] in the sense that the commentary and guidance uses a phrase which is ambiguous, namely "or what could have been earned by compulsory retirement age". However, in context, and by reference to the examples given in the guidance, one of which, example seven, is inconsistent with Mr [redacted] case, it is reasonably clear that that phrase is intended to connote the number of years of service that would have been achieved by compulsory retirement and has nothing to do with any promotion.

29. It follows, accordingly, that I consider that there is no realistic prospect of the argument on the issue of law succeeding in Mr G[redacted] favour. I consider that Falk J was right for the reasons that she gave. I therefore refuse permission to appeal.

End of Judgment

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IN THE ROYAL COURTS OF JUSTICE

Case No. CH-2020-000043

Rolls Building
7 Rolls Buildings
Fetter Lane
Holburn
London
EH4 1NL

Page Count 6.

Friday, 3rd July 2020

before

THE HONOURABLE MR JUSTICE FANCOURT

G[redacted]

- v -

LANCASHIRE COMBINED FIRE AUTHORITY

THE CLAIMANT appeared IN PERSON
NO APPEARANCE by or on behalf of the DEFENDANT

WHOLE HEARING

Case called at 10.30am.

MR GA[redacted]: As I said, I haven't got that in front of me, but as you say –

MR JUSTICE FANCOURT: Well, yes.

THE CLERK OF THE COURT: Sir, sorry to interrupt, my computer just unexpectedly decided to restart itself at about 10:57, so I've started recording again, but I don't know if, just for the sake of the recording, you want to just highlight what was discussed in the last minute or so, for the recording. It is entirely up to you, sir.

MR JUSTICE FANCOURT: For the sake of the recording, I have just had a short discussion with Mr G[redacted] to make sure I understand exactly how he says that paragraph 5.2 of Schedule 2 to the order works, and the position we have reached, is that if someone retires early through ill health, the pensionable pay is that at the date of the retirement through ill health, but it has to take account of any promotion that the fireman could have been expected to have achieved by the normal retirement date for a person of his rank, and in Mr G[redacted] case that is the age of 60. That is right Mr G[redacted], I think, is it not?

MR G[redacted]: Yes, yes, My Lord.

MR JUSTICE FANCOURT: Well, Mr G[redacted], I understand the argument. I think you place reliance on some guidance that -

MR G[redacted]: The Home Office commentary, sir.

MR JUSTICE FANCOURT: The Home Office commentary, yes. Let me see if I can locate that in the bundle that I have got. If not, we will refer to it in the Ombudsman's decision, because I think he quotes from it.

Pause.

Mr JUSTICE FANCOURT: No, I cannot find the Guidance itself, so let us go to the decision of the Ombudsman, that he sets out.

Pause.

MR JUSTICE FANCOURT: Actually, he only sets out the particular sentence that you referred to, which is not very helpful. Let me see if I can locate the guidance somewhere else in this bundle. Yes, it is actually an appendix to the Ombudsman's decision. The commentary says how much is the pension, the sums are set out in Examples 1 and 4 - 7, the basis of the calculations is explained here: 'A firefighter's basic ill-health pension is never less that one sixtieth of average pensionable pay, and never more than 40 sixtieths of average pensionable pay or what could have been earned by compulsory retirement age.' And it is those words, is it not: 'What could have been earned by compulsory retirement age,' that you rely on.

MR G[redacted]: The B3 pension, My Lord, was an agreed introduction by the union and the employers at the time that the statutory instrument was introduced in 1992. And it was designed, it may not have been written very clearly, but it was designed to replace the fact that people who were having to be retired injured out of the service, to get compensation were going to court, and that was expensive, not only for them but for the taxpayer and, you know, the government, and the unions decided that what was drafted was that B3, Pension B3 would hold compensation so that people did not have to go to court to gain their advantage. And they didn't - I and others feel that it wasn't worded awfully well, and I think that Mr [Copplestone Bruce?] feels the same way and has in his advice, has tried to explain that.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: But B3, there is no, there is very little understanding of the fact that that B3 pension stands for compensation for anyone who has years to work, who has chances of promotion, would be compensated for, and in fact lose out that possibility. Yes.

MR JUSTICE FANCOURT: All right. Well, at the end of the day, the legal question is a vey limited one, as encapsulated by Mrs Justice Falk, and I think correctly encapsulated, and I think you agree that she correctly expressed the issue. It turns purely on the interpretation of Schedule 2 to the order.

MR G[redacted]: It is the interpretation that –

JUDGE FALKCOURT: It is purely a legal point

MR G[redacted]: It's a legal point, and I think this is why, well, I'm sure that Mr Copplestone Bruce felt strongly about this, and his last advice that you've read is, from my point of view, from our point of view, as good as it gets.

MR JUSTICE FANCOURT: Well, I quite understand what you say that, but Mr Copplestone Bruce is taking a rather broader approach to the merits of the pension scheme, and what I am concerned with is a much narrower question of the interpretation of the statutory instrument.

MR G[redacted]: Yes, that's correct. Yes.

MR JUSTICE FANCOURT: Well, Mr G[redacted], I have read Mr Copplestone Bruce's advice, I have read the relevant parts of the scheme, is there anything else that you want to say in support of your argument?

MR G[redacted]: Well, except to say, and it hasn't been said previously, that from my point of view and I'm the one you are dealing with now, and has been sort of on this quest for so many years now, it's not from personal greed that I'm doing this.

There's a group of people, of us. The 1992 scheme meant that looking back, those I worked with, those I commanded, those I came out of a building on my hands and knees with, wreaked; a lot of them have died leaving widows and beneficiaries. And when they die the widow loses half the pension. They then lose the injury pension and then of course when that person dies, the state pension goes with them. So, the widows and beneficiaries, despite their husbands' paying 11% of their annual income into the pension scheme have got no advantage over anyone who has served the basic time to age 55 and got the same pension. They haven't had any advantage.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: And I think, and I'm sure, that is why B3 was brought in, to compensate people who have been injured and have gone out of the service through no fault of their own, who have been put in harm's way, which of course is what you accept when you're in the job, and then when they die, their widows and beneficiaries don't get any advantage. We believe that the 1992 scheme, people who were on that scheme then, are being underpaid their pension, for those who were injured, anyway, and it amounts to a legal interpretation of the statutory instrument as to whether or not they are being underpaid or were being underpaid.

MR JUSTICE FANCOURT: Yes, indeed. All right. If there is nothing else that you wish to add, Mr G[redacted] I will give a judgment.

MR G[redacted]: Well, there is such a lot written, My Lord -

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: The bundle is, I meant this has been going on since I introduced, since I started it off in December 2015 by presenting the brigade with an IDRP1 which was in fact the first piece of paper they would receive from us, saying that we found something that really ought to be investigated, and the brigade have failed to do so, and we've got to this stage now. It's a long way down the road, but here we are.

MR JUSTICE FANCOURT: All right. I propose to give a short judgment, giving my reasons for the decision on your application.

Judgment given.

MR JUSTICE FANCOURT: Mr G[redacted], I am sorry that that goes against you but as I explained, it is a pure question of law, interpretation of the language of the scheme and in my judgment the point is simply unarguable. There is no material within the wording of the scheme to support the argument, nor in my view would it make any practical sense. So that is the reason why I have dismissed your application. I am

sorry that I have had to do that but that is the position as a matter of law.

MR G[redacted]: Thank you for your judgment My Lord. I will pass this on to those of us who are in this same position, that is to say hopeful[?]. Well, I suppose we have to swallow that but thank you again.

MR JUSTICE FANCOURT: Mr G[redacted], you are entitled to request or maybe the Trades Union may want to request a transcript of the judgment to be prepared. My clerk when I put the phone down will be able to give you some assistance with how you go about that if that is something that you want to do.

MR G[redacted]: Thank you for that. I would like to study it, as others would I am sure but would we have that in writing do you think or would it have to be…?

MR JUSTICE FANCOURT: No, you will get a full written judgment.

MR G[redacted]: Yes, thank you.

MR JUSTICE FANCOURT: The transcribers will prepare it and I will make any small adjustments as a necessary to correct any obvious errors or bad expression that I used in my judgment that I have just given but otherwise it will be approved and then sent out.

MR G[redacted]: Right.

MR JUSTICE FANCOURT: There is… It does not come free unless your financial circumstances are such that assistance, financial assistance will be given by the courts, which is why I mention that if it is of general importance as you indicated, I think earlier that it might be to a number of people.

MR G[redacted]: Well, I am the stalking horse if you like, that is to say that my particular case was one that could be brought up. I am in a position unlike some of the people; I am still here for a start, the others have died. I had the rank and I had the certain possibility of being promoted in the last five years.

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: That's why it was my particular case that we decided to run.

MR JUSTICE FANCOURT: Right, I understand that. As I say, if you or others or a Trade Union decide they want a transcript then they are perfectly entitled to request one but there is a fee to pay to the transcribers to prepare the written transcript of the judgment.

MR G[redacted]: Yes, okay. I'll pass that on.

MR JUSTICE FANCOURT: Thank you very much. Thank you Mr G[redacted] for your very courteous submission and I wish you good health and a long life.

MR G[redacted]: Thank you My Lord.

MR JUSTICE FANCOURT: Goodbye.

MR G[redacted]: Bye.

Court rises.

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Page Count 6.

Case No: CH 2020-000043

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Date of hearing: Friday 3 July 2020

Page Count: 7
Word Count: 2239
Number of Folios: 31

Before:

MR JUSTICE FANCOURT

Between:

MR FRANCIS MICHAEL G[redacted] **Appellant**

- and -

LANCASHIRE COMBINE FIRE AUTHORITY **Respondent**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

THE CLAIMANT appeared as a **LITIGANT-IN-PERSON**
NO APPEARANCE by, or on behalf of, the **DEFENDANT**

- - - - - - - - - - - - - - - - - - - -

PROCEEDINGS

- - - - - - - - - - - - - - - - - - - -

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[Transcriber's note: transcript prepared without access to all case papers].

THE COURT CLERK: I should also, as I said in my email, Mr G[redacted] just let you know, obviously, only the court should be making a recording of this hearing, and no one else, but I am just saying it for the record. I am sure you already saw that in my email.

MR JUSTICE FANCOURT: Steve, am I audible? Can you hear me?

THE COURT CLERK: Yes, I can hear you, sir.

MR JUSTICE FANCOURT: All right.

Is Mr G[redacted] there?

MR G[redacted] Is that Justice Fancourt?

MR JUSTICE FANCOURT: Mr G[redacted], good morning.

MR G[redacted]: Yes, good morning, My Lord.

MR JUSTICE FANCOURT: The hearing this morning, Mr G[redacted], for reasons I am sure you will understand, is being conducted remotely, and I understand it is telephone in your case. It is, nevertheless, a public hearing because of the way the hearing was listed in the calls list. The court will make a recording of the hearing, which will be available, if necessary, but no one else may make a recording of this hearing. It is against the law to do so.

The purpose of the hearing this morning is to review the decision of Falk J, that she made on 2 April, I think it was, when she granted you an extension of time for your Appellant's notice but refused permission to appeal. So this is not a full substantive hearing of the argument on the appeal. This is just a short hearing, in which you have the chance to seek to persuade me that Falk J was wrong and that there is some significant argument that needs to be heard at a full hearing with the Fire Authority also present and represented.

MR GA[redacted]N: Yes, My Lord.

MR JUSTICE FANCOURT: I have read the papers, Mr G[redacted], so you do not need to explain the background to me. I have read the Adjudicator's decision, I have read the Ombudsman's decision, I have read your grounds of appeal, and I have read Falk J's orders, and I have read the document that was prepared between you and the Fire Authority since the last hearing in front of Falk J, setting out the relevant facts ---

MR G[redacted]: Did you also ---

MR JUSTICE FANCOURT: --- so you do not need to explain any of that to me. You can just launch straight into why you say that there is a real argument as a matter of law about what the pension scheme means.

MR G[redacted]: Well, I think the argument in law has been already explained by Mr Bruce, Mr John Bruce, who is a barrister. He sent what was headed "Advice" off to the Deputy Pensions Ombudsman, following her determination, initially, and I think a copy of that would also go to Falk J, and there are 44 points covered in that advice. I do not know whether you have read that. I have no way of knowing that.

MR JUSTICE FANCOURT: I do not think I have even got that. Let me just have a look and see if I can locate it. *(Pause)*. Yes, I have found it. Is it a document of 77 pages?

MR G[redacted]: No, sir. No, My Lord. It is 44 points, 44 paragraphs, which the barrister produced following the determination from the Pensions Ombudsman. If you have not got it, I could get it to you.

MR JUSTICE FANCOURT: Well, let me tell you what I have got, because I have got two separate documents headed "Advice": one is written by Mr Locke QC, on 11 May 2015 – that is 25 paragraphs.

MR G[redacted]: Yes, that is not it, sir.

MR JUSTICE FANCOURT: That is not it. Then separately, there is another document headed "Advice", which runs to 56-numbered paragraphs, and that has got Mr John Merlin Copplestone Bruce's name at the bottom of it.

MR G[redacted]: That is right. He is the barrister. That was ---

MR JUSTICE FANCOURT: So have I got the right ---

MR G[redacted]: Well, he may have sent; I am just checking. I have got some material on the iPad in front of me. Just let me check. *(Pause)*. No, that is not it.

MR JUSTICE FANCOURT: The first paragraph of the document I am looking at, Mr G[redacted] says, "Mr David Locke QC has most kindly given an initial advice, setting out, as it were, the opposing forces." Is that the right document?

MR G[redacted]: No. I have got it in front of me now. it says, "Advice. I am asked to advise on an appeal in Mr N's case". The Pensions Ombudsman has referred to me as "Mr N" ---

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: --- "…on a point of law from the Deputy Ombudsman's determination". Now, we were invited if we wanted to appeal against the determination to appeal on points of law, and we did. This is from Mr Copplestone Bruce, and there are 46 points, 47 points, and that was 13 September 2019, that was last year, in September.

MR JUSTICE FANCOURT: Bear with me a moment. I am still looking. I have rather a lot of papers in this matter, so it takes a while to ---

MR G[redacted]: Well, it has been going on a long time, My Lord.

MR JUSTICE FANCOURT: Yes. *(Pause)*. No, I do not think that document is in the bundle. There are a good number of other documents written by Mr Copplestone Bruce, but not that one.

MR G[redacted]: Well, this was 13 September, as I said, 2019, 40-odd points. These are the points of law that he prepared, on the invitation of the Pensions Ombudsman, because these are the points that we had permission to appeal on.

MR JUSTICE FANCOURT: Well, you have not go permission to appeal yet from me ---

MR G[redacted]: No, no, that is to say that the Pension Ombudsman said, "If you are going to appeal, you have to do so on points of law".

MR JUSTICE FANCOURT: Yes.

MR G[redacted]: These were prepared, as a consequence, and sent. I am sure that they were sent off to Falk J, but if you wish, I can email them to you.

MR JUSTICE FANCOURT: I think I have found it:

"I am asked to advise on an appeal in Mr N's case on a point of law from the Deputy Ombudsman's determination on 10 September 2019."

Is that it?

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: Right.

MR G[redacted]: Yes, that is the one, sir.

MR JUSTICE FANCOURT: Okay. *(Pause)*. Now, when you had a hearing before with Falk J ---

MR G[redacted]: Well, that did not actually come to pass, Your Honour, My Lord. She changed it from 4 June, it was scheduled for, and then it was changed by herself, and this date is the one that she changed it to.

MR JUSTICE FANCOURT: Yes, I understand that. I am sorry, I meant the last order that she made. She set out what she understood to be the legal issue in the appeal, did she not? Do you remember…at 5 of the order of 6 May?

MR G[redacted]: Yes, that is going back to…I have not got that handy, but yes.

MR JUSTICE FANCOURT: What she says, let me read it to you, it will refresh your memory, I think.

MR G[redacted]: If you would, please.

MR JUSTICE FANCOURT:

"Following correspondence with the parties, the court confirms its understanding of the legal issue in the appeal as the following: whether, as a matter of statutory construction of paragraph 5 of part 3 of schedule 2, contained in schedule 2 to the Fireman's Pension Scheme Order, the requirement to calculate the notional retirement pension by reference to actual average pensionable pay means either:

a. as the Respondent contends that the calculation must be done using actual pay in the year to the date of retirement; or

b. as the Appellant contends, 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."

MR G[redacted]: That is what we contend, that was our argument.

MR JUSTICE FANCOURT: Yes, and I think as a result of what she directed at that stage, the Fire Authority set out, first of all, what they thought were the relevant facts in your case, and then you responded to that document, and added some wording to show where you disagreed with anything that they had written.

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: I have got that document in front of me.

MR G[redacted]: Right.

MR JUSTICE FANCOURT: But you accept, do you not, you say in that document, that Falk J correctly identified the legal issue?

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: Yes. So that is the question of law that potentially arises on the appeal.

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: What I have to decide is whether that is a point that is sufficiently arguable, that there should be full appeal hearing with you and the Fire Authority represented.

MR G[redacted]: I see.

MR JUSTICE FANCOURT: She thought that there was not a sufficiently strong argument that you were right. She thought it was clear that the relevant pay was the pay for the rank that you had achieved at the date when you actually retired through ill-health.

MR G[redacted]: Yes, well, if you were to read the advice from Mr Copplestone Bruce, he goes into that at great sort of depth and tries to explain, and does explain, the value of what of what we are saying in our argument. I think that followed, well, that was in September. I do not know whether Falk J had taken that into consideration by then.

MR JUSTICE FANCOURT: Well, shall I read it now? It is not very long. It is about eight pages or so.

MR G[redacted]: It is. It is. If you wish, I would be happy for you to do that, sir, yes.

MR JUSTICE FANCOURT: Shall I do that? Then I can be sure that I have understood all the arguments that you want to rely on.

MR G[redacted]: Yes.

MR JUSTICE FANCOURT: When I have read it, you can add anything else that you want to at that stage. So just give me a few minutes; it will take me a few minutes to read it. I will let you know ---

MR G[redacted]: I will stay by the phone. I will stay on the phone.

MR JUSTICE FANCOURT: Stay on the phone. That is right.

MR G[redacted]: Thank you, My Lord.

MR JUSTICE FANCOURT: *(Pause)*. Yes, all right, Mr G[redacted]. Well, I have read that.

MR G[redacted]: Yes, all right, My Lord.

MR JUSTICE FANCOURT: The key point, I think – tell me if I am wrong about this – is that you say that the wording of paragraph 5 in part B3…sorry, bear with me. Let me just find it again and turn it up. *(Pause)*. Paragraph 5.2 of schedule 2 to the order says,

"The notional retirement pension is to be calculated by reference to the persons actual average…"

[Transcriber note: audio ended].

Marten Walsh Cherer hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

ORAL HEARING 3rd July 2020

Note for Case

In accordance with Judges Order, G[redacted] v Lancs Comb Fire Auth.

Instructions were received for me (the appellant) to take part in a hearing with Mrs Justice Falk on the above date at 1030 am.

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

At 10 am I went through the motions of contacting the Court but found that the Hearing app would not load into my iPad. I found this situation quite stressful which added to my apprehension about the forthcoming proceedings.

I rang Mrs. Justice Falk's clerk, M/s Saleem, to report the problem.
I gave her my name and said that I have a hearing with Mrs Justice Falk at 1030
M/s Saleem cut me short and said "no you don't you have a hearing with Mr. Justice Fancourt and then gave me a telephone number for Mr Justice Fancourt's clerk.
M/s Saleem's manner was brusque which surprised me as I had spoken to her previously and, at that time, had found her to be amiable.

Within a minute or two I received a call from Mr Steven Brilliant, Mr. Justice Fancourt's clerk.
He had been asked to ring me by M/s Saleem
Mr Brilliant talked me 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.

Mr. Justice Fancourt was a few minutes late in arriving.

He stated that this would be a short hearing and asked if I had anything to add to correspondence already received. Mr Justice Fancourt's manner was formal and business like.

I must say that I did expect him to ease me into the event but he chose not to.

I referred him to the Barrister's Advice which was sent to the Deputy Ombudsman following her Determination. In her Determination she included advice that I could appeal in a Court of Law against the Determination providing it was restricted to points of law only. I stated that Mr Copplestone Bruce had produced in his 'Advice' the points of law relevant to the DPO's Determination.

After a moment he asked if that was a Mr Locke in 2015 ?

I told him it was Mr Copplestone Bruce in 2019 and it was dated 15th or 19th of September.
I repeated what I had just said for his benefit.

There followed much shuffling of papers before he, I assume, found the document.

He asked me to give him the details again and then said there would be a “silence” whilst he read the document.

I had read the Advice to the Deputy Ombudsman three times previously and found it hard going as it had been written in “lawyer speak”. I 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.

I found this hard to believe and particularly as there are references in the Advice that should be read in conjunction with the Ombudsman’s Determination.

Mr. Justice Fancourt stated that the issue is about “further promotion” (which it is not) and in my case before I was 60 when I would have formally retired.

The judge said 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 (I didn’t follow this).
He said that what the Commentary says is highly complex and it has no statutory force.
He stated that there was no realistic argument in law and therefore he refused permission to appeal.
I believe that twice he stated that Mrs Justice Falk “encapsulated” matters in her Judgement.

I put to him the fact that this was not just about me 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.

He stated that he was sympathetic but the Judgement had to be made on argument of law.

I await the bill now which had to be pre-paid before the transcript company produce Mr Justice Fancourt’s JUDGEMENT. I had asked for the JUDGEMENT only. NOT the whole transcript.

FMG

Addendum…NEEDS A DATE…. MAKE IT THE LAST EMAIL

I contacted UBIQUS and contracted them to prepare a transcript of the hearing.

Later I changed my mind about having the Judge’s summary only and asked them to complete the whole of the transcript. I have received their transcript which is missing the first 21 minutes or so, and the Judge’s summary, immediately prior to him declaring the Judgement.

I have requested UBIQUS to ask the Court about releasing the summary and I have asked them to make enquiries about whether or not there might have been a secondary system to record the whole of the hearing?

I have also asked the Court the same questions in a recent e-mail. I await an answer from the Court.

28th January, 2021

Mr. P Cobourn
Registry Office
Case Progression Section
Strand, Holborn,
London WC2A 2LL

My Reference: FG111.
Your Reference:2020/PI/10670

In the Court of Appeal
England and Wales
Civil Division

Case 2020/PI/10670

F[redacted] M[redacted] G[redacted]
Appellant (Litigant~in~Person)

and

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

Dear Mr. Cobourn,

1. I am in receipt your curious document.

2. As you might expect by now I treat all your communications with circumspection since I first became aware of your involvement at an early point after my Appeal was *issued* by the Court of Appeal on the 4th of February 2020 a fact later recorded by Fancourt LJ in an Approved Judgment.

3. From the outset of your involvement I have watched you manipulate each and every step of the way to the detriment of Justice not only for myself but for those veterans who served the public well and who through a no fault of their own in

Service injury were discharged and were underpaid their pensions to *their* loss and the loss of their Widows and Beneficiaries.

4. You are engaged in a dangerous ‘game’ which you will find have consequences.

5. In your latest manipulation in which you now abandon any pretext of subterfuge and engage in a blatant criminal act you seem to infer from its contents that this is a formal Judgment of the Court, though you do not state from which Court, or from which Judge the decision comes, and search as I may I cannot find a Listing at which this ‘Master of the Court’ as you have described him/her sat to reach an Approved Judgment ?

6. If I were new to this ‘game’ and gullible I might well be minded to ‘throw the towel in’. but in fact what you do is to simply encourage me and my comrades to investigate you, your role, and ultimately who you are working for because it cannot be by any stretch of the imagination be the Judiciary, Fair Play, or Justice.

7. I wonder who you really are because I find it noteworthy that you have never stated on a single documentation what your title is; what your responsibilities are; who you answer directly to in line management; and indeed what your Civil Service grade might be?

8. It seems after reviewing your contributions over the last year a clear picture emerges where other than obfuscate, block, delay, or run me around the chicanery, unlike your colleagues in the Belfast Registry, you have provided me as a Litigant-in-Person with no support whatsoever contrary to the Judicature policy on LiPs which governs your ‘work’. In fact overall you have acted with shameless criminality.

9. Indeed even though you write to me under the CoA Reference 2020/PI/10670 you even deliberately failed to inform me that this was the new Reference I was meant to use instead of the one issued by the Court of Chancery and thus you deliberately misled me with the vain hope I would get lost in the legal labyrinth.

10. Now however that you have finally excited my interest in you I have chosen to look at, not only your deliberately misleading ‘performance’ during the last year, but the lead in to your latest criminality.

11. But before I do so I should draw the many readers’ attention, those who will subsequently see this published letter, to your personal misconduct and abuse of authority in public office both of which may I remind you are also criminal offences.

12. What I find especially repugnant, as a former Senior Ranking Officer in the Fire Service, is that I suspect that you do not hesitate to misuse and abuse your authority over your subordinates who you unabashedly use to cloak your criminal activities by placing them under duress and by manipulating them into acquiescence under the threat of their continued employment.

13. Now in gathering evidence against you to present not only to the Lord Chief Justice but to the Commissioner of the Metropolitan Police I require you to indicate to me the following:

    - Who the 'Master of Court' was you state that you placed this matter before?
      No doubt the new Master of the Rolls(MR) will also be interested to know.

    - The Listing Date and Time at which this Judge gave an Approved Judgement on the documents you submitted to him/her.

    - I require a copy of ***all*** the documentation that you placed before that Judge including your written recommendations, whilst reminding you that all this documentation is under the Data Protection Act 2000(GDPR) my 'Subject data' ; you are to regard this paragraph as my formal request to acquire this 'subject data' within the legislative time framework allowed.

14. I must now deal assiduously with the 18th January 2021 the day at 07:36hrs on which I sent you an EFile and file copy of an Addenda to my Appeal.

15. This seems to have galvanised you into action in that you were able in a few short hours until 16:00hrs to get a Court Listing; Court time with a sitting Judge on an issue before the Court since 4th February 2020, and then get him/her to issue you with an Approved Judgment so that you could have a 'willing' subordinate draft, type, issue, and mail to me with your latest creative ideas all pursuant to obstructing Justice in a few stampeding hours.

16. I also presume you presented this Addenda to the Judge or did you in a further criminal act suppress its presence in a blatant act of Contempt of Court by deliberately obstructing due process?

17. When you send me my 'Subject data' no doubt this will be included as proof of your innocent actions and no doubt the Judge will ultimately confirm all that you stated in this letter to me.

18. Next I will examine your role in making legal statements purporting that these come from a 'Master' of the Court of Appeal because as a lay person clerk you

cannot make such statements and if you have done so then you act in ultra vires.

19. The alleged statements from a ‘Master’ do raise an interesting Point of Law in pragmatism.

20. Is this ‘Master of the Court’ to whom you state you have presented all these documents saying that there is no further Appeal process against Fancourt LJ who deliberately failed to understand my Points of Law advanced to him?

21. And if this is so why do we have a Supreme Court whose sole existence is posited on judging Points of Law presented to them if they are all refused at Court of Appeal level by mere layperson clerks or misguided ‘Masters’ ?

22. Now to your risible ‘law’ the briefest glance at which, namely, the ‘Access to Justice Act 1999 S 54’, which you deliberately misquote to mislead and confuse provides a prime example of how you have manipulated my legitimate actions over the preceding year where you cherry pick the quotes which serve your malignant and corrupt purposes counting on my assumed ignorance of the law to defeat my lawful purpose which I seek to attain namely, Justice.

23. In concluding there really is only one action necessary to prevent you and others from continuing to corruptly Misconduct yourself in Public Office and exploiting the innocent and that is to have the Metropolitan Police arrest you; to have you arraigned and charged before the Court, and ultimately to have you and those who direct, encourage, and condone your actions locked up.

24. The harm you and others have caused to Public Confidence in the Judiciary and in particular the Court of Appeal is incalculable.

25. I do so hope Mr. Cobourn that you understand my points of view and I wait your detailed response to all those Questions coupled with my DPA Request which I have raised with you and can no doubt expect you will deal with them with the same alacrity you have dealt with your last communication?

    I will give you 7 working days to respond before I report your criminality to Commissioner Dame Cressida Dick.

Yours Truly,

[redacted]

F M G[redacted] MIFireE