

CFA -v- PAUL PETER BURNS

DEFENCE & COUNTERCLAIM – STATEMENTS OF FACT & TRUTH(SoF&T).

DEFENCE STATEMENT.

Prelude.

- 1.00.** At the County Court case management Hearing on 10th January 2012 the Claimant was ordered:
- a) To complete standard disclosure by lodging an indexed bundle with the Court and Defendant not later than 16:00hrs on Tuesday 7th February 2012; he failed to lodge his bundle with the Defendant;
 - b) To sequentially lodge verified copies of his Statement of Truth and his verified Witness Statements with the Court and Defendant not later than 16:00hrs on Tuesday 20th March 2012; he failed to lodge verified copies on time with the Defendant.
- 1.01. At this Hearing on 10th January 2012, Mr. Paul Peter Burns of 7 Kings Drive Fulwood Preston PR2 3HN the Defendant was ordered:
- a) To complete standard disclosure by lodging an indexed bundle with the Court and Claimant not later than 16:00hrs on Tuesday 7th February 2012; this was completed by hand on Monday 6th February 2012;
 - b) To lodge in sequence verified Statements of Fact and Truth with the Court and the Claimant not later than 16:00hrs on Tuesday 17th April 2012; this will be completed.
- 1.02. The Defendant is disadvantaged by the Claimant's failure to exchange verified copies of their Statements but will comply with the current Court order by partly using the original Statements of Truth and Case Particulars; the current unverified hearsay 'statements'; and those limited documents supplied during the Claimant in part and late disclosure simply because there is no alternative at this late stage for the Defendant.
- 1.03. A reconvened Specific Disclosure Hearing is scheduled for the Friday 11th May 2012. The Defendant anticipates the release by further Court Order of additional relevant documentary evidence which he seeks for his counterclaim and anticipates that such releases will also have a future bearing on his current SoF&T. The Defendant anticipates making an application to have such documentary evidence lodged with the Court and in the foreseeable future integrated into a revised SoF&T.
- 1.04. The following protocols will be used in the Defendant's SoF&T:
- a) For ease of reading the Defendant will complete his statements in the third person;
 - b) The Statement of Truth in compliance with CPR will be in the first person and verified;
 - c) Cross referencing of the Claimant's documents and statements will use, if available, the Claimant's defaced index thus C(claimant)-D(document number)-P(page number) or alternatively use direct quotes from a particular document citing its source.
 - d) The Defendant's bundle reference is D(Doc No:) a simple super script D001+.

2.00. Defendant's Personal Circumstances.

It is especially germane to this dispute, though not a *cri de coeur*, that when the Claimant's 'review' commenced in November 2007 the Defendant's wife of 38 years Jill had passed away in their bathroom from cancer on 4th June 2007.

The Defendant was attempting to Probate Jill's estate and to rebuild his life. His pension was the last thing on his mind.

Jill, who was a senior Fire Control Officer and a senior Magistrate, received a formal Fire Service funeral in her own right. Thus the Claimant was entirely aware of the Defendant's personal circumstances and did not deal 'sensitively' with this issue as they publicly state. The offensive manner in which this dispute has been mishandled by the Claimant goes to the heart of the issue.

3.00. The Defendant.

3.01. The Defendant is Mr. Paul Peter Burns of 7, Kings Drive Fulwood Preston PR2 3HN. He held the rank on compulsory retirement of Divisional Officer Grade II and operationally commanded 10 fire & rescue stations and approximately 400 operational Officers and personnel.

3.02. The Defendant has been decorated by four Nations on one occasion being decorated in the field. Those nations are the United Kingdom; Armenia; the Soviet Union and Russia; and the United States of America from whom he holds the US Medal of Valor (second only to the Congressional Medal of Honor) and Honorary Citizenship of the State of Oklahoma.

3.03. The Defendant is an honourable compulsorily discharged disabled Fire Service Veteran (FSV) ^(D001). The term FSV is an official Government title used in conjunction with the British Fire Services Association in commissioning a medal for such personnel.

3.04. The Defendant has never been charged or convicted of a single civil or criminal offence in his entire life. His discharge papers note ***"Honesty and Trustworthiness: Never doubted"***. The DWP confidential record on this current issue is contained in the following statement on a DWP internal document dated Saturday 28th March 2010... ***"The customer never misled or provided any incorrect information to the department."*** ^(D042).

3.05. The Defendant in this matter carries the personal and written mandate of representation for 16 other disabled FSVs and Widows and thus cannot be described as 'self-appointed'.

4.00. Compulsory Retirement 1996-7.

4.01. The Defendant joined the Northern Ireland Fire Authority in October 1961 and served for 35 years and 6 months with various Brigades and departments, including the Home Office Fire Service College and the Foreign and Commonwealth Office.

4.02. The Defendant transferred to Lancashire County Fire Brigade (LCFB) on the 1st March 1968, not as the Claimant states on Court Form N265 the 1st March 1966, and again incorrectly in his bundle ^(C-D1).

4.03. On Thursday 26th September 1996 the Defendant informed his Divisional Commander of his personal concerns about his hearing and the safety implications for those under his operational command and he was immediately placed on non-operational modified duties ^(D002).

4.04. On Friday 27th September 1996 the Defendant by letter informed the Chief Fire Officer of his concerns ^(D003).

- 4.05. On Thursday the 3rd October 1996 the Defendant was subjected to a Brigade Medical and on Thursday the 10th October 1996 he received an audiometric assessment.
- 4.06. On Friday 18th October 1996 the Defendant was suspended from all operational duties^(D004) and was informed he was to be compulsorily retired on the grounds of ill health.
- 4.07. The Defendant's compulsory retirement was the long term consequences of a 'qualifying' injury sustained in a street explosion with the Belfast City Fire Brigade in 1964, during which he suffered serious injuries to both ears.
Currently he wears NHS hearing aids to restore some quality of life.
- 4.08. On Wednesday 23rd October 1996 at a pre-retirement meeting at FBHQ with Ms.E.J.Drinkall the then Pensions Officer, the Defendant was passed documents *(D005/D006/D007/D008/D009)* without explanation for him to sign, and/or, copies to be retained.
Note:D008 the Pension Retirement Calculation Statement was produced twice:
a) the first occasion of maladministration was when this Statement was calculated on the 10th September 1996 and passed unsigned to the Defendant subsequently proving to be incorrect.
b) The second occasion was when it was re-calculated on 13th November 1996 verified, signed off, and passed to the Defendant.
- 4.09. On 24th October 1996^(D009) the Defendant provided the Claimant with Minutes of the above meeting.
- 4.10. This pre-retirement meeting was ***a unique point of administrative reference***. A point at which the Claimant had a clear statutory duty to ensure that:
a) their liability for the Defendant's pensions was fully established and made clear and certain to the Defendant;
b) that the Defendant was explicitly and fully informed when freely consenting to sign documents which were placed before him to sign;
c) that this meeting was fully recorded later in his Personal Record Files(PRF);
d) that subsequently these records and other relevant pension records were retained and maintained for future pension administration purposes.
- 4.11. At this pre-retirement meeting the Defendant in trust and good faith signed, an 'undertaking'^(D005) that he would inform the Claimant of the receipt of any 'relevant'(to his qualifying injury) DWP benefits or allowances, or of significant changes of such relevant payments (other than annual increases) which are those paid directly for, and directly attributable to his 'qualifying' injury and which ***"may have an effect"*** ^(D010) when determining the Claimant's liability, or equally, *may not*.
- 4.12. The Defendant was not informed at this meeting that by signing this written 'undertaking' that he was in effect unwittingly being asked to discharge part of the statutory duty of liability of the Claimant which was not the Defendant's statutory duty or role nor was it ever the moral imperative of the Defendant, acting in voluntary 'goodwill' or otherwise, to assist in the management or administration of his pension Scheme.
- 4.13. The Minutes of the 24th October 1996 re-confirmed that the Defendant was not at that time in receipt of any DWP benefits or allowances, whether relevant or not.
This DWP status was also recorded by hand as "NIL" on the first and second Pension Calculation Statement dated issued to him.
Subsequently the Defendant has always repeatedly fulfilled this 'undertaking' to the letter, whether this 'undertaking' was lawful or not.

4.14. After 3 months of Statutory Notice on Statutory Sick Pay(SSP) the Defendant's service was compulsorily terminated on Friday 31st January 1997^(D006) at 23:59hrs, aged 54 and thus he became a member of the Claimant's Pension Scheme.

5.00. LCFB Pension Scheme.

5.01. By virtue of Statutory Instrument 1992 No. 129, 'The Firemen's Pension Scheme Order'(hereinafter the 'Scheme') and its 'Rules' are the Statutory framework for the provisions of the Defendant's awarded pensions and their regular and timely payments by the LCFB and its successors in title Lancashire Fire & Rescue Service(LFRS) which is an agent of the Lancashire Combined Fire Authority(Claimant) the statutory pension authority.

5.02. The Claimant and the Lancashire County Council Pensions Services(LPS), their pensions contractor, are the joint administrators of the Lancashire Scheme(just one of 120 Schemes they administer) as detailed in their 'Service Level Agreement' (SLA) of January 2007^(D011). In addition by common law and in a special relationship they jointly share a duty of care to the Defendant.

5.03. Under the Scheme Rules the Defendant was discharged under Rule B4(1) with a 'Ordinary' pension. Thirty years service is the statutory period for a full service 'Ordinary' pension from the Fire Service after contributing 11% of his monthly salary for 33 years and 188 days of pensionable service out of a total of 35 years and 6 months service.

5.04. In addition to his 'Ordinary' pension the Defendant, after medical adjudications by both the Claimant and the DWP was awarded a permanent 5% disability the consequence of an industrial injury.

This disability, which was confirmed as a 'qualifying injury' under the Scheme Rule 9A led to the award of an additional pension known as an Injury Award(IA) which amounts to approximately £400:00pm tax free.

5.05. This IA recognises not only the Defendant's qualifying injury but his *loss of earning capacity* and in keeping with his Ordinary pension is *paid for life* on a statutory monthly basis.

The Scheme Rule L4,4(a) states that both of the Defendant's pensions shall be "treated as one" the inference being that in the event of a liability dispute all or none of the pension may be delayed, not just a constituent part.

6.00. The Dispute and the Scheme 'Rules'.

6.01. It is the statutory duty of the Claimant under Rule L3(1) to determine their *liability* to pay the Defendant's pensions. In so doing the Claimant is not permitted in law to create its own arbitrary 'Rules' to administer the Scheme.

a) In 1996 the Claimant did knowingly and unlawfully delegate in part this liability to the Defendant at the commencement of his pensions in an abuse of trust and in an act of bad faith by in effect creating an unlawful 'Rule' under the Scheme which required the Defendant's to sign an 'undertaking'^(D005) on 24th October 1996 whilst under the direct duress of the 'delay' of liability;

b) The Claimant made the signing of an 'undertaking' a precondition to the Defendant's discharge and a precondition to the *receipt of the first payment of his pensions*.

c) The Claimant's 'undertaking', fails the Unfair Contract Terms Act 1977 (c.50) SCHEDULE 2 "Guidelines" for Application of Reasonableness Test which by requiring a signature under circumstances of duress fetters this 'undertaking' in law making it unenforceable.

- d) The Claimant was 'advantaged' in their 'bargaining' position by the implicit threat that if the Defendant declined to sign such an 'undertaking' they would delay payment of the his pensions;
- e) The Defendant received an 'inducement' under duress which was that *if he did sign* this 'undertaking' then he would receive his pensions.
- f) The Claimant has by this ultra vires act, whilst determining their liability, created an unlawful 'Rule' outside the Scheme Rules.

6.02. The Defendant does not have a statutory; common law; lawful contractual duty; or moral obligation in 'goodwill' to comply with this 'undertaking' a common ground fact confirmed in the Claimant's second hearsay statement of truth.

Nevertheless, the Defendant did voluntarily in ignorance; in good faith; and in an abuse of trust by the Claimant comply with this 'undertaking' by informing the Claimant when the he received a DWP Reduced Earnings Income Allowance(REA)1999 and on numerous other occasions when this question arose.

6.03. The Claimant was confidentially informed on 7th July 1999 by the DWP that the Defendant had made application for REA. This was by means of the DWP issuing to the Claimant its standard (first) REA anti-fraud check to which the Claimant responded.

On the 19th July 1999 the Claimant contacted the Defendant and asked the Defendant if he was successful with his application to let them know.

On the 2nd August 1999 the Defendant was informed by the DWP that his application had been successful and was retrospective to the 31st March 1999 (D015;D016).

On or about the 2nd August 1999, the Defendant orally informed the Claimant that he had received notification from the DWP that he been successful in his application for REA. He retained a contemporaneous not to this effect.

6.04. The Claimant had a statutory duty under Rule 4B,3,(2),(a), which they failed, to declare *apportionment* to the Defendant.

This Rule requires that the Claimant must declare to the Defendant '*so much of any*' of the Defendant's REA which they 'may' consider is being paid for and directly attributable to the Defendant's qualifying injury, and invite the Defendant's response.

6.05. Neither the Claimant's PRF records of the Defendant nor the Defendant's own records show any record existing of any declared apportionment from the Claimant to him.

In addition no relevant correspondence on this subject of *apportionment* exists on the Defendant's PRF file between the Defendant; the Claimant; and the LPS who would have been required to act on the instructions of the Claimant should this have been decided.

6.06. In the absence of such records, confirmed in common ground by the Claimant's second hearsay statement of truth, the Defendant is entitled to draw the inference that the Claimant concluded that none of the REA allowance was deductible from his IA because in fact none was deducted and because no instruction for deduction was ever issued to the LPS to carry out such a deduction.

6.07. Consequently the Claimant by failing to react to receipt of this information from both the DWP and the Defendant, that the Defendant was about to receive his initial REA, the Claimant created a situation whereby they failed to communicate any decisions to the Defendant or the LPS and failed to record and file any decisions in the Defendant's PRF a fact which the Claimant also in common ground confirms in their hearsay statement.

6.08. In time this maladministration led to the unlawful withdrawal of the Defendant's entire IA on 1st July 2008.

- 6.09. On the 13th November 2007^(D012), the Claimant once more attempted to create a second unlawful 'Rule' outside the Scheme by making the signing of a 'consent' form to access *all* (not just the relevant records) of the Defendant's DWP records an *additional precondition* to the receipt of his IA and thus they continued to *act in ultra vires*:
- a) No statutory powers exist within the Scheme which empowers the Claimant to create or implement any such arbitrary 'Rules', mechanisms, or preconditions;
 - b) The Defendant had no statutory duty as a Scheme member to sign a 'consent' form or any other document as a precondition to the receipt of his pensions;
 - c) No lawful 'arrangement', based on a members' consensus approved amendment to the Scheme was jointly constructed by the Claimant within the Scheme which required the Defendant's 'consent' as a precondition to the receipt of his pensions;
 - d) The Claimant confirms in common ground in his hearsay 2nd witness statement ^(C-D24) that the Defendant's applicable Scheme of 1992 does not expressly place an obligation on any member of the Scheme, including the Defendant, to sign any authorisation to allow access to his DWP personal data; neither is there any authority within the regulations to offset an alleged overpayment unless there is a proven charge of negligence, dishonesty, or deceit;
 - e) The Claimant now concedes that whilst there is no statutory duty placed on the Defendant and others in the Scheme there is in these circumstances a goodwill moral imperative placed on the Defendant and others to assist the Claimant in the management of the Scheme for which they hold the Statutory duty but for which the Defendant and others have no responsibility;
A Scheme for which the Claimant is paid public monies to administer; and for which the Defendant and others will receive no inducement or incentive on their part;
 - f) Furthermore, the Claimant contends against the established facts and the reality of what actually occurred that they attempted to use this non incentivised hypothetical 'goodwill' to encourage the Defendant and others to help the Claimant out of their self-created maladministration on this rare occasion by the use of a one off goodwill gesture of 'consent' whilst completely ignoring the counterproductive atmosphere which the Claimant had themselves already generated^(C-35) by their intimidating and bullying bad manners and in their maltreatment of the disabled FSVs, including the Defendant, from whom they were now asking for assistance.

7.00. The Defendant's Voluntary Compliance with the Scheme.

- 7.01. In January 1997 in anticipation of discharge the Defendant was advised during a joint Claimant/LCC two day pre-retirement seminar at Alston Hall Grimsargh at which the DWP attended to 'sign on' for Short-Term Benefit(STB) and complete the DWP's 'all work test'. The Claimant filled in their part of the application Form^(D013) and the Defendant 'signed on' for the first and only time of his working life on the 1st February 1997.
- 7.02. The Defendant has never received Incapacity Benefit (IB) nor currently is he *legally entitled* to receive IB or Short-Term Benefit(STB), his disablement is 5% not 12.5%-85%. He received STB, which was not reimbursable, for 8 months in 1997 immediately after his compulsory retirement during which period he was assessed by the DWP under its 'All Work' test.
- 7.03. On the 1st October 1997 the Defendant failed the DWP 'All Work Test', the Defendant's STB was ceased *'forthwith'*^(D014). He was found fit for certain types of non-Fire Service work which included white van bakery delivery driver and continuing as an author and publisher of specialist technical books recognised as world standards which ironically are purchased by the Claimant.
- 7.04. On Saturday the 22nd May 1999 May 1999 the Defendant, two years after his compulsory retirement, following an original error of misdirection of entitlement by a lady called Diane from the DWP who was the District Information Officer (Preston 84109) ^(D013)

in attendance at the above mentioned seminar applied for and was eventually granted REA by the DWP.

REA was an allowance introduced on 1st October 1986 to replace the Special Hardship Allowance.

The Defendant was awarded a maximum REA to the value of £41:88per week from 31st March 1999 according to the DWP for the loss of a well-paid job^(D017). An allowance which he continues to qualify for to date.

- 7.05. With the exception of the Defendant's subsequent notification to the Claimant of the receipt of REA in August 1999 the Defendant's circumstances remained completely unchanged until the advent of the Claimant's 'review' on 13th November 2007 over 8 years later.
- 7.06. The Defendant's released PRF records clearly shows that the Claimant was fully aware from two independent sources. Firstly, by direct notification from the DWP on the 7th July 1999 by means of its *first* REA anti-fraud check. Secondly, on the 2nd August 1999 the Defendant received notification from the DWP that his REA application had been successful^(D015;D016), and on or about that date the Defendant by phone passed on this information to the Claimant, an action for which he retained a contemporaneous note^(D018).
- 7.07. The Claimant's both Statements of Truth confirms the common ground that there was late, indifferent, and confused reaction by the Claimant to these two events, a confusion which is recorded in the Defendant's PRF.
No PRF record exists that at any point the LPS was informed to take any action by the Claimant given the DWP's and the Defendant's independent notifications that he was about to receive REA.
- 7.08. According to the Defendant's DWP records the first routine anti-fraud check was carried out by the DWP on the 7th July 1999 and a second routine anti-fraud check was carried out on the 11th January 2002 though this was latter was not recorded by the Claimant. Both confidential checks required a positive response from the Claimant to the DWP. It is common ground that whilst the Claimant did respond positively to the 7th July 1999 check and furthermore recorded this check in the Defendant's PRF the Claimant confirms, again on common ground, that no records exist of their response in the Defendant's PRF of the second DWP anti-fraud check.
- 7.09. From his retirement in January 1997 to date the Defendant has informed the Claimant *twelve times* of his DWP status in accordance with the Claimants informal 'undertaking' *whether or not*, this 'undertaking' was lawful.
- 7.10. The Defendant remained throughout in full compliance with the Scheme Rules and this Claimant's 'undertaking'. In failing to pay his IA since the 1st July 2008, as an original consequence of their maladministration, the Claimant have breached their statutory and their informal contractual duty.
- 7.11. This statutory duty is based on a regular monthly and annual review to determine the Claimant's liability set against the recorded Defendant's supplied information; set against the statutory information retained in his Personal Record Files(PRF); set against LPS files; and set against the records of information supplied to them by other statutory Agencies including the DWP and the Audit Commission.
All records which the Claimant has a statutory duty to retain and maintain within the Defendant's PRF.

8.00. DWP Reduced Earnings Income Allowance(REA).

- 8.01. REA was introduced on 1st October 1986 to replace the Special Hardship Allowance. The DWP state that this prequalified allowance recognises loss of *earnings potential* unlike the IA which recognises *earnings capacity*.
The DWP applicable in-house guide on REA for its 'Decision Makers' was entitled IIDB(DO)-General Topics-Amdt8-February 2005. Relevant parts are Part 5-Reduced Earnings Allowance-Lines 5047-5100-5104-5129-5150-5153/5-5205/6/7/8-320.
- 8.02. When compulsorily retired the Defendant was entitled to serve in his existing rank of Divisional Officer Grade II until his 60th birthday, a further 6+ years during which it was reasonable to assume that he would have received further promotion and advancement to Principal Officer rank, viz Assistant Chief Fire Officer and above.
Thus the Defendant lost, as a consequence of this industrial injury:
- a) his profession;
 - b) his *earnings potential* (but not his earnings capacity which is recognised by the receipt of an Injury Award for life);
 - c) his potential promotional advancement.
- 8.03. On Saturday the 22nd May 1999 the Defendant applied to the DWP for REA^(D019). It was clear, following discussions with the DWP, that the Defendant had originally been *misdirected* earlier regarding his entitlement by the DWP's District Information Officer^(D013).
- 8.04. REA is an obscure allowance which is regularly, and incorrectly, referred to as a disablement benefit by the Claimant in their correspondence even though the DWP supplied them with their 33 page Abbreviation list ^(C277-P1243-1276). Decision Makers of the DWP state that whilst REA is **not defined** as a disablement benefit it is administered under the umbrella of the IIDBranch principally in the case of the Defendant, at Barrow-in-Furness but is nevertheless defined and specifically referred to as an 'Allowance' rather than a 'benefit' where it stands apart from other disablement benefits on its own merits with separate and distinctive qualification/disqualification for payment purposes.
- 8.05 The DWP state that REA compensates for the loss of *earnings potential*, not *capacity* which is recognised by the Injury Award, and where as a result of an industrial accident or disease a person is unable:
- a) to return to their regular occupation;
 - b) or to carry out other work producing the "same level of earnings" ^(DWP website 2009);
 - c) or has lost promotional advancement.
- 8.06. The DWP state that whilst a recorded Industrial Injury is the starting point, it is simply that, a starting point. No automatic link to a Fire Service 'qualifying' injury is established by the payment of REA.
Declaring apportionment, if any, within the Scheme Rules is the statutory duty of the Claimant, not the DWP, nor the LPS.
- 8.07. Although the Defendant was *qualified* to apply this did not mean he would automatically receive this allowance. REA is not awarded automatically, or by percentage disability, and authorisation to pay REA requires its own significant independent preconditions and qualifications to be met. REA is paid to the Defendant by the DWP^(D017) conditionally for reasons of:
- a) loss of 'faculty', viz, a high salary post, and thus loss of *earnings potential*;
 - b) loss of promotional advancement;

- c) passing confidential DWP 'anti-fraud proofing' checks in conjunction with the Claimant;
 - d) engaging in (any form of) work (with or without remuneration) for 10 or more hours per week which the Defendant does as author of his own literary *works*.
- 8.08. When notified by a Scheme member of the initial receipt of REA the Claimant has a statutory duty in seeking to avoid double payments to comply with "**Schedule 2 Personal Awards; Part 1; Part V; Rule B4; Injury Awards; S3-(2)(b)**"; in considering... '**so much of any**'...relevant DWP Benefit... '**as relates to the Defendant's Qualifying Injury**'^(CC13) ...which may be... "**taken into account**"...in calculating their liability. In effect a standard apportionment procedure.
- 8.09. Whilst it may over time have grown into custom and practice, the Claimant does not have an automatic right to deduct all the REA from the Injury Award. They must state to the recipient as the Scheme requires from the outset of an award, what apportionment, if any, of the REA they consider '*may*' be taken into account in their liability calculations. The Claimant and the Scheme member must jointly agree why REA is being paid and must jointly agree what apportionment (0-100%), if any, is directly paid for and directly attributable to the member's 'qualifying' injury. Whilst the joint conclusion may confirm that no proportion is being paid for the qualifying injury the statutory duty to avoid double or 'overpayments' rests entirely with the Claimant not in this case with the Defendant; a Scheme member; the DWP; or the LPS. It is the statutory duty of the Claimant who must finally action and record a decision in the Defendant's PRF whilst ultimately communicating this decision for action to the LPS.
- 8.10. In 1999 when first notified by the Defendant of his *intended* receipt of the REA it is common ground that the Claimant failed on the first opportunity to investigate apportionment when calculating their liability in the Defendant's case; failed to contact him until such time as this could be determined; failed to communicate any final decision to him at the conclusion of their deliberations, or at any other time; failed to record this decisions in his PRF; failed to action this decision with the LPS; It is to be noted that even though this first opportunity to take action was presented to the Claimant by both the Defendant and the DWP it went into drift. It is of particular note that when a second opportunity arose and was presented by the DWP with its second confidential anti-fraud check 18 months later this opportunity also continued in drift; and the Claimant finally failed on a routine monthly and annual pension review basis to record the Defendant's receipt of REA in his PRF as the Claimant's statutory duty requires.
- 8.11. At no point in spite of repeated requests has the Claimant in the last 5+ years explained to the Defendant how or why these maladministrative failures occurred.
- 8.12. The single confirmed DWP record^(D020) contained in the Defendant's PRF which was copied to the Defendant's solicitor by the Claimant in April 2009, confirms that the Claimant was fully aware of the Defendant's successful REA application in 1999^(D021). It is implausible to argue that the Claimant did not know this fact given their interaction with the DWP on the Defendant's application for REA at that time and subsequently in 2002.
- 8.13. It is a reasonable inference and conclusion by the Defendant, supported by independent DWP evidence, then and now, that in the absence of any Claimant's or LPS correspondence to the contrary, then or now, confirmed by their failure to respond to questions repeatedly addressed to them by the Defendant's solicitors and the Defendant and for the last 5 years that the Claimant or his agents did decide that *no apportionment* of the Defendant's REA allowance was being paid directly for or directly attributable to his 'qualifying' injury.

Therefore *no apportionment* of the Defendant's REA was taken into account when determining their liability and through their maladministrative failure they did not communicate this decision to the Defendant; the LPS; nor did they record it in his PRF.

8.14. On 22nd June 2008 the Defendant's solicitors^(D022) wrote to the LFRS...

"We require you to:

(i) Bring our client's injury award into payment,

(ii) Confirm that allowance has been made for the Statutory benefits he has informed you of;

On 30th October 2008 the Defendant's solicitors^(D023) wrote to the LFRS...

"the Defendant's refer to our letter of 22nd September 2008 (copy attached for ease of reference). We do not appear to have had an acknowledgement to our letter."

No response was ever received, in particular, to point(ii).

8.15 By failing to robustly administer the Defendant's pension; to record; to take decisions and communicate those decisions to the Defendant and the LPS; and to fail to maintain the Defendant's pension PRF on a monthly and annual review basis, the Claimant is unable to demonstrate the completeness of their records and thus they conclude, wrongly, that their failure to determine their liability was a consequences of the Defendant's failed 'undertaking' and not as is evidentially demonstrated, by their maladministration.

9.00. Evidential Proof of Defendant's Compliance.

9.01. **The 1st -Evidential Proof of DWP status, supplied by the Claimant to the Defendant.**

On 10th September 1996 the Defendant received a Retirement Pension Statement and subsequently a corrected Statement on 13th November 1996 ^(D008). In both copies under the 'Injury Pension' section the following statement was entered by hand 'Less Incapacity Benefit (Benefits Agency)'... 'NIL'.

9.02. **The 2nd -Evidential Proof of DWP status, supplied by the Defendant to the Claimant.**

The Defendant's letter to the Claimant dated 24th October 1996^(D009) :

"Retirement Notice Para 5'... 'I confirm that I will inform you of any benefit paid [none presently] or to be paid by the Dept. of Social Services in the future, in due course."

9.03. **The 3rd -Evidential Proof of DWP status, supplied by the Defendant to the Claimant.**

a) On the 27th January 1995 after advice from the DWP and *whilst still in service* the Defendant made application to record the Defendant's industrial injury using Form BI 95^(D024). Following LCFB Brigade Orders the Defendant informed the Pension Manager at BHQ of his action and asked if the Defendant's original PRF transferred from Belfast City Fire Brigade(BFB) contained a record of the incident at which he was injured in Belfast. The Claimant informed the Defendant that his PRF only contained his BFB pension transfer valuation and that BHQ had advised the DWP that this was the position;

b) On the 21st March 1995 the DWP contacted the Northern Ireland Fire Authority with Form BI 76 who stated that they were unable to supply *any* information due to the destruction of the Defendant's records and others by terrorist activities, though a Staff Officer still in service at their BHQ, provided a detailed account of the Defendant's accident having been a member of one the attending crews^(D025;D027),

c) On the 13th July 1995 the DWP recorded the Defendant's injury as an Industrial Injury^(D026),

d) On the 22nd July 1995 the Defendant completed Claim Disablement Benefit Form BI 100A though he continued in service and he never made any form of claim;

e) On 31st October 1995 the DWP on Form BI 132B^(D028) accepted the Defendant's claim as an in-service injury which was recognised by the Claimant as a 'qualifying injury' under the Scheme;

- f) Prior to the Defendant's retirement in 1997 the Defendant was misinformed by the DWP at a pre-retirement seminar that the Defendant was not entitled to receive REA and for the two years following until in 1999 when eventually the Defendant revisited this issue;

9.04. **The 4th - Evidential Proof of DWP status, supplied by the DWP to the Claimant.**

- a) On 25th May 1999 the Defendant made application to the DHSS on Form BI 103^(D019) for REA;
- b) On the 7th July 1999^(D029) the Defendant gave a statement to the DHSS in support of his claim for REA. The Defendant agreed to be re-categorised for employment as a bakery light van driver and was informed that his application would be forwarded to the Claimant which it was;
- c) On the 7th July 1999 the DWP records confirm that the DWP sent Form BI 112(superseded by BI 36) to the Claimant ^(D030) seeking information by carrying out a first REA Award specific earnings anti-fraud check^(D020).
It states on the Form... ***"The person named on the next page(the Defendant)has claimed a reduced earnings allowance under the industrial injuries provisions"***.

9.05. **The 5th - Evidential Proof of DWP status, supplied by Claimant to the Defendant.**

- a) On the 19th July 1999 the Claimant wrote to the Defendant and confirmed that they had received the DWP enquiry Form BI 36 and reminded the Defendant, that "if successful" he should inform them so^(D031). The Defendant had at discharge given an 'undertaking' to do so, whether lawful or not, and his contemporaneous record confirms he did so;
- b) Note the Claimant's hand written contemporaneous reminder instructions on this document to enter the correspondence to the Defendant in the Bring Forward system hence... ***"B/F 4.8.99 (which was deleted) to read 23.8.99"*** ;
- c) It is speculation by the Defendant that this means that if the Defendant did not respond to the Claimant's initial note of the 19th July 1999 then they would send the Defendant a reminder on the 4th August 1999 though none was sent or recorded. No record remains why the B/F reminder was changed from the 4th to the 23rd nor according to the Defendant's PRF was any communication with the Defendant recorded on the 4th or subsequently for the next eight years.

9.06. **The 6th - Evidential Proof of DWP status, supplied by the Defendant to the Claimant.**

On the 2nd August 1999 the Defendant received notification from the DWP that he had been granted the maximum REA ^(D015) on the following basis:

- a) The Defendant was qualified to apply by reason of an Industrial Injury. This is recognised by the DWP as a starting point. The DWP made no reference, direct or indirect, to the Defendant's 'qualifying' injury being linked to REA;
- b) the Defendant was granted REA because of his "loss of faculty" which is *loss of earnings potential*, confirmed in writing by the DWP^(D017) in which they state... ***"This is because the probable standard of remuneration in your regular occupation of Fire-Fighter is £439.78 and the probable standard of remuneration in employed earners employment which is suitable in your case, namely Light Van Driver, which you are not incapable of following as a result of the relevant loss of faculty, is £206.21."***;
- c) the Defendant was also granted REA under the DWP in-house guide conditions because of his loss of substantial ***"prospects of advancement"*** which was the third of three major qualifying factors in the granting REA... ***"the customer has claimed REA because they have lost prospects of advancement..."***

This was a matter of detailed discussion with a DWP Decision Maker, Mr.Tarrant, at the time of the compilation of the Defendant's REA application statement and interview with him^(D029) on the 7th July 1999 ;

- d) The DWP policy is that a recorded Industrial Injury is a prerequisite for application for REA and simply regarded as a “starting point”. This starting point has no bearing on whether or not REA is eventually awarded because REA stands on its own merit and qualification;
- e) On or after the 2nd August 1999 the Defendant informed the Claimant, specifically Ms.J.Drinkall, that he had been awarded REA and the Defendant’s contemporaneous note... “*Rang Joan and told her yes.*”^(D018) confirms this notification to her by phone; There was no ambiguity about this statement. The Defendant was directly responding to the Claimant’s earlier request which was framed in the following words... “*I should be glad if you would let me know if you are successful in your application...*”. A simple request and the simple answer, “yes”.
- f) The Defendant’s action which was contemporaneously recorded, negated the need for any further reminder (“*B/F 23.8.99*”) from the Claimant. Neither the Claimant nor the Defendant have any record of one being issued nor ought there to have been because the Defendant had fulfilled his original undertaking;
- g) From this point forward it is common ground that no pension or REA records exist in the Defendant’s PRF nor was the Defendant ever contacted again by the Claimant until 8 years later;

9.07. **The 7th - Evidential Proof of REA status, supplied by DWP to the Claimant.**

- a) The Defendant’s independent DWP records recovered by the Claimant by Court Order show that the DWP sent Form BI 36(which superseded Form BI112) to the Claimant seeking information to carry out a second REA award specific earnings anti-fraud check on Friday the 11th January 2002^(D030).
- b) The DWP(Mrs Fiona Hodge,Barrow-I-F)^(D017) whom the Defendant regularly dealt with states that this confidential second routine anti-fraud check is automatically sent(deliberately without the Defendant’s knowledge) to the Claimant **18 months after** the first anti-fraud check;
- c) The DWP state they have not retained a physical copy of the response from the Claimant for this second anti-fraud check in the Defendant’s records drawing his attention to the annotated word ‘Weeded’ on their file which is dated on Friday the 22nd November 2003^(D030). It is departmental policy that such records are not retained for longer than 14 months;
- d) The DWP in *their* analyses of *their* records explain that a positive response *must* have been received from the Claimant because in the event *no response* was received payment would have been suspended and a reminder would have been sent to the Claimant and there is no DWP documented record of such a reminder having being sent either in the DWP records or the Defendant’s PRF;
- e) Furthermore, the DWP state that payment to the Defendant of the REA **would not** have proceeded, which it did, without a positive response from the Claimant because this was a significant departmental anti-fraud procedural requirement and an essential second component of the three REA Award ‘specific earnings enquiry’ anti-fraud checks with the Claimant;
- f) Furthermore, the DWP state that as payment *did* continue it can safely be assumed that the Claimant did receive; did process; did respond; and did return the DWP’s second ‘specific earnings enquiry’ Form BI 36;
- g) Furthermore, it is not possible to weed nothing therefore an exchange of anti-fraud check records must have occurred which ultimately required those records to be ‘weeded’;
- h) This was a second opportunity for Claimant to identify their major maladministration of the Defendant’s pension; to correct it if it needed correction; and to apply apportionment to the Defendant’s REA payment if they had not already done so in August 1999;
- i) The Claimant, as statutory administrators of the Scheme, give no rational explanation why they are not able to produce these DWP statutory records from the Defendant’s

PRF or from the LPS records which the Claimant had a statutory duty to retain as independent DWP transactions.

- j) For 5 years the Claimant deliberately refused to supply any copies of these documents or to confirm whether or not they actually existed in the Defendant's PRF;
- k) Eventually the Information Commissioner forced the release of the Defendant's PRF which now confirms without contradiction that with the exception of one record, the first DWP anti-fraud check, no DWP records exist in Defendant's PRF:

N.B. A "Third REA Award" 'specific earnings enquiry', and subsequent award checks are not made using Form BI 36 but are carried out by the DWP 'Indexation' process.

9.08. The 8th - Evidential Proof of REA status, supplied by the Defendant to the Claimant.

- a) On Tuesday the 13th November 2007 the Defendant received a 'consent' form^(D012) (Ed1of 5) from the Claimant requiring him to give the Claimant written 'consent' to access **all** the Defendant's DWP records. The Defendant filled in the form and left it aside for posting;
- b) On the morning of Thursday the 15th November 2007 to expedite matters the Defendant rang the LPS and spoke to the letter's signatory, Mrs Dorothy Lambert (LPS-Deputy Manager), for the following purposes:
 - 1) Firstly, the Defendant's primary concern in contacting her was to inform her, and thus prevent double taxation confusion arising, that the Defendant had received, and was receiving taxable DWP Bereavement Benefits due to the Defendant's late wife Jill's estate. Mrs Lambert stated she was not interested in this;
 - 2) Secondly, the Defendant reminded her that the Defendant was not entitled, with a 5% disability, to receive DWP Incapacity Benefit whether '*relevant*' or not, and that the Defendant did not do so;
 - 3) Thirdly, that the Defendant was, as she knew or ought to know from the Defendant's PRF, receiving a single DWP Allowance, namely, REA;
 - 4) Curiously, as the Defendant's contemporaneous notes show, Mrs Lambert asked the Defendant what REA was which the Defendant explained. She informed the Defendant(after leaving the phone and returning post consultation with someone else) that she was not interested in the Defendant's REA, only Incapacity Benefit '*relevant*' to the Defendant's '*qualifying*' Injury. Once more the Defendant stated to her that he only received REA. The Defendant's contemporaneous notes support this phone call and he is confident once more that he had satisfied any '*undertaking*', whether lawful or not, which he was required to comply with by divulging **all** the Defendant's DWP benefits, including Bereavement benefits, even though he had no obligation to do so.
 - 5) The Defendant was puzzled. Surely the Claimant must know all these facts from the Defendant's existing PRF maintained records? ;
 - 6) It is to be noted that on the day of receipt, Tuesday 13th November 2007 the Defendant filled and dated the actual 'consent' form and placed it for posting to the Claimant but having just informed them by phone on Thursday 15th November 2007 of **all** the Defendant's benefits the Defendant did not consider a further response was necessary and left the form aside.
- c) There is no statutory power for the Claimant to access **all** the Defendant's DWP records nor is there a statutory power to access **any** of DWP records yet the Defendant had divulged to Mrs Lambert all the information the Defendant had available to him at the time which was more than the Claimant had required.
- d) It is common confirmed ground between the Claimant; the LPS; Mrs Lambert (now retired); and the Defendant that this telephone conversation did take place.

9.09. **The 9th - Evidential Proof of DWP status' supplied by the Defendant to the Claimant.**

- a) Subsequently, in spite of informing Mrs Lambert fully of *all* the Defendant's DWP status on Thursday the 15th November 2007 the Defendant received a reminder letter on Wednesday the 28th November 2007^(D033) which the Defendant simply ignored and then a further letter on Wednesday 16th January 2008 ^(D034) all written in an increasingly bullying tone stating that if the Defendant did not sign his 'consent' form the Claimant intended to withdraw his IA;
- b) The Defendant simply attributed these reminders to incompetence because the Defendant had clearly informed the Claimant fully of *all* the Defendant's DWP income;
- c) On the Thursday 24th January 2008 in response to yet another abrasive and bullying letter the Defendant wrote to Mrs Lambert reminding her again of the action which he had taken on the morning of Thursday 15th November 2007 quoting from the Defendant's contemporaneous notes of his conversation with her on that morning^(D035)...

"My contemporaneous notes of a conversation with you on the morning of the 15th November 2007 state that I was, as a matter of courtesy, informing you fully of my status and that since commencement of my pension my physical circumstances had not altered and that as a continuing consequence the I did not, nor do not, receive DWP disability benefits for my injury. Although not required to do so, for the reasons I have given, that is no material change, I have nevertheless discharged fully my legal obligation to the LCC under my 1997 pension Contract."

9.10. **On the 1st July 2008 the LFRS/LPS withdrew all the Defendant's Injury Award.**

The complete cessation of payment was a complete breach of the Claimant's statutory duty.

There was no evidence at this point presented to the Defendant suggesting that continued payment of the Defendant's Injury Award was an "unlawful gift". The Defendant considered the Claimant's actions at such an early point in this issue to be an overreaction which was completely unreasonable, disproportionate; and without established legal authority. Actions, which denied the Defendant his legal rights.

9.11. **The 10th - Evidential Proof of REA status, Defendant's Solicitor to Claimant.**

On Friday the 4th July 2008 the Defendant's solicitors wrote to the Claimant^(D036) in response to their letter stating once more that the Defendant was receiving REA and reminding the Claimant that the Defendant's solicitors had documentary evidence to support the his position since 1999 which the Claimant had a statutory duty to retain in the Defendant's PRF...

"We have on record Mr Bums' declaration as to his entitlement to DWP/Benefits Agency payments and have seen sight of correspondence as far back as July 1999 confirming receipt of a Reduced Earnings Income Allowance. This information has been supplied to you on more than one occasion."

9.12. **The 11th - Evidential Proof of REA status, Defendant's Solicitor to Claimant.**

On Monday the 22nd September 2008 the Defendant's solicitor wrote to the Claimant^(D037) in response to the Claimant's letter of Friday the 4th July 2008 stating... *"Our clients(sic) continues to be willing to disclose any "additional benefits" he has received in connection with his Injury Award as set out in the Fireman's Pension Scheme Order 1973, Article 15 and Schedule 1 Part V and any subsequent amendments. Indeed he has done so on numerous occasion(s) since the payment commenced in November 1983(sic-March 1999)."*

9.13. **The 12th - Evidential Proof of DWP status, NFI to Claimant.**

On Friday the 12th June 2009^(D021) the Claimant wrote to the Defendant's solicitors copied to the Defendant enclosing a 'screen print copy', that by means of the routine bi-annual the use of the National Fraud Initiative(NFI) data matching exercise in October 2008^(D038), they had obtained the Defendant's DWP REA records from which they wrongly deduced, without investigation, that the Defendant was receiving double payments.

This two yearly routine NFI exercise returned 53 data sets of mismatch(error) to the Claimant^(D039) of which the Defendant's was one with the following comment: **"No assumption can be made as to whether there is fraud, error or other explanation until an investigation is carried out."**

- 9.14. Subsequently the Claimant was heavily criticised by the NFI for misappropriating and misusing 53 screen print records from the secure national data base and for distributing this to the Defendant and others without complying with the NFI protocols. In effect the Claimant had directly breached the Data Protection Act 1998. The Claimant's response in complicit conjunction with the LPS to this criticism provides a useful insight into the collective nature of how such matters as need for compliance with the law was dealt with by the Claimant^(C-203).
- 9.15. The Defendant's facts confirm the following:
- a) That 53 mismatches of Claimant data set against existing DWP data records illustrate de facto that substantial maladministration by the Claimant had occurred across a wide range and type of all Fire Service pensions for which the Claimant had a statutory duty to hold securely and to administer accurately;
 - b) That the Claimant in maladministration did not hold, with the exception of one document, any of the Defendant's REA DWP records in his PRF prior to receipt of these NFI records, confirmed years later by the forced release of his PRF;
 - c) That the Claimant in maladministration was not prepared to accept simple repeated statements of truth directly from the Defendant himself; the DWP; the Audit Commission; or from the Defendant's solicitors;
- 9.16. In the period from the end of August 1999 until the commencement of the Claimant's 'review' on Tuesday the 13th November 2007 the Defendant did not receive any correspondence from the Claimant regarding any matter.
- 9.17. Given the factual records advanced in defence by the Defendant including those from the DWP the Claimant cannot claim that the Defendant did not discharge his 'undertaking', whether lawful or unlawful, or that they did not know, or ought to have known that he was in receipt of REA.
Neither can the Claimant dismiss the facts that they have engaged in maladministration on a personal and corporate scale and that they did not have in place a robust check and balance system for the Lancashire Pension Scheme for which they have a statutory duty and for which above all else they receive public monies to administer.
- 9.18. In spite of ignoring all the previous information supplied to the Claimant from all sources on the subject of the Defendant's REA the Claimant made the following statement to him on Monday the 16th June 2008 that the Defendant's Injury Award would remain suspended^(D040)... **"until such time as the necessary information is available to determine correctly the amount of payments to be made."**
- 9.19. The Claimant in the continuing maladministration of the Defendant's PRF since 1999 engaged in a blatant discriminatory and punitive act of deliberate corporate and Combined Fire Authority Elected Members approved imposed hardship against the Defendant and others who disagreed with their standpoint.
- 9.20. These facts have only recently come to light by the Court enforced release of internal documents which now provide irrefutable documentary evidence of the existence of a secret Elected Members approved policy of 'principles' of the mailed fist intended to deal with those who did not agree with the merit of their particular opinion... **"it is hoped to persuade the individuals of an appropriate resolution, potentially using the hardship if this is necessary"**.^(C-164)

- 9.21. To date the Claimant has refused to provide the Defendant with a statement of alleged 'overpayments' or 'underpayments' due, or to provide a calculation of monies retained from the Defendant.
- 9.22. The Claimant has perversely chosen to disbelieve the independent documentary evidence supplied by the DWP and the Audit Commission; has perversely refused to act on *all* this information from diverse sources since 1999; and has continued perversely to refuse to determine their liability because to do so will expose their negligence; their maladministration; the uncertainty of the their legal position^(D041); because to do so will finally remove the existing financial leverage of hardship which they continue by approved policy to unlawfully to exert over the Defendant and others.
- 9.23. In DWP confidential internal documents released under Court Order to the Claimant on Thursday 25th August 2011 and never before released to the Defendant the following statement appears on a DWP internal document dated Saturday 28th March 2010... ***"The customer never misled or provided any incorrect information to the department."***^(D042)

10.00. Documents with Uncertain Provenance. CPR 22.4(1)

10.01. At a late stage in these proceedings the Claimant has introduced two documents ^(C15-C16) which the Defendant and the Court are expected to accept have always been retained in the Defendant's PRF but because of the 5 year delay in releasing the Defendant's PRF the Defendant cannot be certain whether or not this is in fact true and accordingly the Defendant under CPR requests permission from the Court to apply the test of provenance to these two documents.

10.02. The Claimant makes reference to these two documents in his first statement of truth and again in his second hearsay statement of truth. It is a matter for the Claimant to prove the provenance of a particular document or documents they intend to rely on. Equally the Defendant has the right to challenge the quality of any document under CPR 22.4(1).

10.03. These are the Claimant's relevant statements:

First Statement of Truth:

"29. In the absence of any response from Mr Burns, a letter was sent to the Benefits Agency on 23 August 1999 requesting clarification (p24). I understand that, when no response was received to this letter, an officer (no longer employed by the Service) spoke to an official of the Agency, who responded that the Agency should not disclose such information without the authority of the pensioner concerned, but who indicated that no claim had been received relating to the Defendant. It appears from subsequent events (notably as set out in paras 46-49 below) that this information may not have been correct."

10.04. Second draft hearsay statement:

"27. Mr Burns was specifically asked to let the Service know if he was successful with this benefit application (p.19, para.2). It will be noted that the Defendant claims to have telephoned an official of the Claimant, Miss Drinkall, "on or after 2"d August 1999" (Defendant's Statement of Truth, 13th January 2011 , paragraph 1 0.06(e)) to inform her that he had been awarded REA. He has also produced a manuscript note on a copy of the letter sent to him by the Claimant dated 19th July 1999 (LFRS 18), which reads: "Rang Joan and told her yes". The note is not dated. Its meaning is ambiguous (eg it could be confirming the request in the letter to give notification to the service when an outcome was known). The Service has no record of any such conversation of notification. Miss Drinkall, moreover, was evidently unaware of having been informed of the outcome, since a further letter was sent to the Benefits Agency (which was copied to her, and which it is likely that she drafted) dated 23rd August 1999 (page 24), stating that no information had been received from the Defendant.

Furthermore, the telephone conversation described below also then took place. Neither would have been necessary if Miss Drinkall had been informed by the Defendant as he claims.

28. In the absence of any response from Mr Burns, as indicated above, a letter was sent to the Benefits Agency on 23 August 1999 requesting clarification(p.24). I understand that, when no

response was received to this letter Miss Drinkall (no longer employed by the Service) spoke to an official of the Agency, who responded that the Agency should not disclose such information without the authority of the pensioner concerned, but who indicated that no claim had been received relating to the Defendant. A note of a telephone conversation between Joan Drinkall of LCC Pensions Service and a member of the Benefits Agency staff is attached at p.25 of the bundle.”

10.05. The Defendant has attempted to analyse these documents for any relevance they may have to these proceedings.

For over 5 years the Defendant has without success sought an explanation from the Claimant how maladministration of his pension arose. It is uncertain whether or not these documents contribute to an explanation for Claimant’s maladministration.

This position which rests on the ability of the Claimant to unequivocally establish their provenance and credibility, explanations which thus far, have provided more questions than answers adding more confusion to the Claimant’s already confused and contradictory position.

Furthermore:

- a) It is common ground which the Claimant confirms and as the Defendant now knows, that only one DWP record existed in his PRF. It is clear that the Claimant took no further investigative steps in August 1999 or January 2002 to provide themselves with clarity for its statutory liability purposes.
- b) The Claimant does not offer an explanation why, as in the first instance in July 1999, they did not simply write to or contact the Defendant again to seek clarification concerning the Defendant’s REA status even though they clearly had in their possession and in the Defendant’s PRF proof positive of the DWP’s first standard ‘anti-fraud check’ Form BI 36 and in addition his verbal confirmation to them;
- c) In matter of the ^(C-P24) (letter to DWP) the Claimant states initially that this document was authored by Ms.Drinkall. In Ms.Drinkall’s alleged hearsay statement she states that she authored this letter to the DWP. In a subsequent shift of position the Claimant now states that this was drafted for Ms.Drinkall though it does not indicate by whom and whether that person continues in the employ of the Claimant or not, or who actually signed or sent it some 3 to 4 weeks late;
- d) The Claimant does not offer an explanation why their alleged letter to the DWP went unanswered though they provide no proof that it was actually sent in the first place or why this odd lack of response by the DWP was not recorded or re-acted ;
- e) There is no explanation of provenance which comments on why the “B/F” was clearly altered from the “25” to the “27” and what or whose purpose that served and why the original typed date has been partially removed and substituted by a freehand entry for the “23”. Once more the question arises what or whose purpose does this serve?
- f) In matter of the ^(C-P25) **“A note of a telephone conversation between Joan Drinkall of LCC Pensions Service and a member of the Benefits Agency staff is attached at p.25 of the bundle.”**. Ms.Drinkall was never employed by the LPS and the Defendant only has Ms.Drinkall’s unsupported assertion in her unverified hearsay statement that a phone call took place.
- g) The Claimant does not offer an explanation why when they received the DWP’s standard negative response to a public telephone call they did not write again to the DWP and/or contact the Defendant, or both?;
- h) Ms.Murray who allegedly dealt with this ‘communication’ does not confirm what type of ‘communication’ it was, or if it was indeed a phone call, or indeed if it was Ms.Drinkall who made such a call to her;
- i) The Claimant does not offer an explanation why if an actual telephone call took place and that call was rightly rebuffed by the DWP^(D032) the Defendant is now expected to believe that the DWP in a complete volte facia then inexplicably proceeded to unlawfully and incorrectly inform the Claimant that the Defendant had not lodged an application when the Claimant knew or ought to have known from the Defendant’s

PRF and DWP records in their possession that he had. This scenario simply defies any form of logic;

- j) The Claimant in admirable opportunism seizes a line from this (presumed) internal DWP document... "No claim has been received"... to imply that Ms. Drinkall had been informed of this during this alleged telephone conversation when only two lines above the memo states this sort of information ought not to be supplied without permission;
- k) At no point does this memo use the words telephone conversation it states 'communication' which can mean whatever anyone wants it to;
- l) It is conjecture by the Defendant but it is likely that the Claimant obtained the Defendant's subject data (this note) by Court order in August 2011 and then conveniently placed it in the Defendant's PRF deliberately without evidence of its provenance in the vain expectation that a casual reader might conclude it has been there since 1999;
- m) The note of this alleged telephone call is undated and marked Item 2 raising the question what happened to item No:1? No provenance of any description is provided by the Claimant for this document but the Defendant is expected to accept it on face value?
- n) There is the reasonable assumption by the Defendant that Ms. Murray was the authoress of this note though no provenance is provided for such an assumption and it might well have been Ms. Murray's supervisor writing in the third person;
- o) This undated document is entirely ambiguous and the Defendant contends this note could equally well refer to an enquiry made by the Claimant after receipt of the DWP second standard 'anti-fraud check' which took place on Friday 11th January 2002 a check which DWP records support as a fact that a second DWP anti-fraud did occur and was responded to by the Claimant;
- p) The Claimant does not explain on the basis of this alleged telephone call why they decided to take no further administrative action apropos the Defendant's REA in spite of existing DWP correspondence in their possession which confirmed an application had been made and a first and second DWP anti-fraud check was carried out;
- q) The Claimant provides no explanation how this odd evidence has been acquired; whether or not it was recorded at the time; and entered into the Defendant's PRF or indeed whether or not it is true;
- r) In the matter of Ms. Drinkall's alleged hearsay statement it is self-evident that there are two authors at work on this document.
The Defendant worked with Ms. Drinkall on a regular basis for at least 20 years. There is no doubt in his mind that the section added to the bottom of this draft statement would not be the tone or the polite quality with which Ms. Drinkall would ever engage an FSV or anyone else.
This document was not verified by her signature or date.
- s) The Defendant requests under CPR 22.4(1) that these 3 documents be put to proof by the Claimant before the Court.

11.00. The Simple Unadorned Facts.

Did the Defendant do what he was asked to do in complying with this informal 'undertaking'? Yes. Has he evidentially demonstrated this to the Court? He believes so.

11.01. It is clear to the Defendant that the Claimant in managing his pensions made many grievous errors of judgment compounded with an unreasonable, aggressive, and disproportionate response to a self-created situation all of which has amounted to maladministration and which has deliberately harmed the Defendant.

It is not nor never has been the wish of the Defendant to receive any form of payment to which he believes he is not entitled and that remains his position.

This Defence in part can be summarised to the Court as follows:

“ where an innocent defendant’s position is so changed that he will suffer an injustice if called upon to repay or to repay in full, the injustice of requiring him so to repay outweighs the injustice of denying the claimant restitution.”

These were the words of Lord Goff in the case of Lipkin Gorman –v- Karpnale decided by the House of Lords in 1991.

I believe that the facts stated in this witness statement are true.

A handwritten signature in black ink that reads "Paul P Burns". The signature is written in a cursive style with a large initial 'P' and 'B'.

.....
Signature Paul P Burns
Date: Tuesday 14th April, 2012.

COUNTERCLAIM OPENING STATEMENT:

The Defendant's counter claim is founded on the use of comprehensive evidence from the Claimant's own hand released to him by Court Order which confirms that both personal and corporate maladministration occurred for at least a decade before this debacle was 'discovered' by the Claimant.

A 'discovery' which led to a cover up supported by deliberate abuses and discriminations perpetrated against the Defendant for whom the Claimant had not only a duty of care but a statutory duty to ensure the safe keeping of his pension records by means of the use of a robust pension management protocol with checks, balances, and alerting systems.

These corporate abuses approved by Elected CFA Members as the Claimant's documents claim and state have caused financial and physical hardship to the Defendant which has led to frustration, distress, worry, and stress causing direct harm to his good name and wellbeing.

12.00. The Political Dimension of Maladministration Minutes of the Combined Fire Authority(Claimant).

12.01. On Friday 2nd March 2007 this pension issue was first brought to the attention of the Claimant by a Scheme member, disabled FSV Mr.D.Wilson(now deceased). The Claimant baselessly assumed without investigation or incontrovertible evidence, that this disabled FSV *had* misappropriated DWP benefits by deliberately receiving double payments.

Later, using this same assertion, still without supporting evidence, the Claimant included all disabled FSVs(167+/-) with a 'qualifying' compulsory discharge IA, including the Defendant (whom they exclusively identified) concluding they also had 'misappropriated' the funds.

12.02. On Tuesday the 25th September 2007^(D043), the injury pension issue was first reported to the Claimant's Resources Committee by the penultimate Scheme Manager, Mr.Warren Director of People & Development(DoPD), *5 months after* it was raised by disabled FSV.Mr.D.W, *(abridged)*:

- a) ***"a retired firefighter had received an injury-related pension since 1993 and it had recently come to light that he had been overpaid, due to non-notification of changes in state benefit."***
- b) This issue did not 'come to light' through vigilance on the Claimant's part or by being flagged up by a robust pension management system, but by an honest Scheme member.
- c) From the outset it was clear that the Claimant did not know the difference between relevant and non-relevant DWP benefits received by disabled FSVs but they concluded without investigation and without having all the incontrovertible salient facts before them that disabled FSV Mr.D.W. had been 'overpaid'.
- d) Based on the Claimant's erroneous assumptions the Committee mandated Mr.Warren to enter into negotiations with this disabled FSV's solicitor to agree a resolution of this alleged 'debt' which he did. Later commenting waspishly that... ***"this could be seen as being too generous"***.^(C-164).

12.03. Friday 30th November 2007^(D044), *(abridged)*:

- a) ***"The Director of People and Development (DoPD) gave a verbal update on the circumstances of case where a retired firefighter had received an injury-related pension since 1993 and it had recently come to light that he had been overpaid, due to non-notification of changes in state benefit. The over-payment had been retrieved from the individual concerned and a new system was in place. The DoPD also reported that it was clear that there were almost certainly further potential future liabilities involving significant amounts of money,35/07 RESOLVED: That the***

Committee note the report, and a further report be considered in due course on potential future liabilities”.

- b) The Claimant, once more, lacking honesty failed to report in detail how this issue had arisen.
- c) The alleged ‘overpayment’ was £30,164:61 and £14,399:00 was ‘retrieved’ in an unusual precedent setting settlement loosely based on the Limitations Act 1980, estopples, changes of position etc. Following this precedent no other such proposal was ever again made to a disabled FSV by the Claimant nor was any explanation ever proffered why if £30,164:61 was allegedly owed that amount was not paid in full. These settlement figures were never reported to the CFA Committee and a receipt for the amount paid was never issued to the Widow of the deceased;
- d) The Claimant reported on this date that a **“new system was in place”** but did not explain what this ‘new system’ was, whilst later on 4th January 2008 in contradiction the Claimant was seeking from the LPS ... **“reassurances that robust processes were now in place” (C-24)**.
- e) This simply confirms significant maladministration which the Claimant in their internal document (C-20) confirmed as an estimated accumulated loss to them as £0.5 to £1million at an annual cost of £50k-£80k, plus interest all round.
- f) The Claimant’s ‘edited’ version of events reported to the Resources Committee led them to conclude, without taking independent evidence to the contrary, that all disabled members IA’s had been ‘overpaid’.
- g) No formal independent transparent investigation with Heads of Reference was ever mandated by the CFA Committee. Heads of Reference which ought to have included how alleged over or underpayments were accrued; over what time span; whose responsibility this was; why or if a systemic failure in pension management had occurred; and finally in commissioning an impact study how alleged overpayments were to be ‘sensitively’ recovered(if at all) in consultation and conjunction with disabled FSV Scheme members;
- h) On the 13th November 2007, two weeks before this meeting the Defendant received an initial demand to sign a ‘consent’ form^(D012) (Ed1 of 5) for access to *all* the Defendant’s DWP records to which they were not entitled.

12.04. Tuesday 29th January 2008, nine months after the commencement of this dispute the Claimant still did not know whether or not their actions were lawful though with characteristic bombast they repeatedly reassured themselves they were.

This verbatim email is a dialogue between CC Driver(Leader of the LCC) formerly the Treasurer of the West Riding Fire Authority with direct hands on fire pension experience; Mrs.Lister LPS; and Mr.Warren LFRS:

“Paul

Thanks for the copies.

Just a quick up date from my end. I went into County Hall yesterday and spoke (on the 'phone!) to Mrs.Lister, head of LCC pensions. She took the line that they were "acting on behalf of CFS" and that I should speak to Hamilton or Warren. I told her I would in due course but that for now I was concerned that LCC could well be acting unlawfully and that a defence of "I was only acting for CFS" would not stand up in court. She was less than helpful and after getting nowhere with her I asked for the name of her boss who, as it turned out, I knew. He came to see me, accompanied by Mrs.Lister, and I soon convinced him that he needed to check with LCC lawyers. He promised to let me know the outcome. I then tried to contact Hamilton - I was advised by Mrs.Lister that he was dealing with it and got the impression from her that he was expecting me to contact him. This was no easy task and it turned out he and Warren were having an urgent meeting to discuss the matter – I guess because they had been told by LCC of my involvement. There is little doubt that my continued chasing caused a stir - asked to speak to the Chief (who was away!) and then the Deputy Chief (with the Chief!) and eventually spoke to the Assistant Chief (whose name escapes me but it was not Mr.O'Neill) After a couple of hours of me trying to contact them, a young lady promised that Warren would call me which he eventually did. His initial line was "Councillor O'Toole, your political boss, has been fully briefed" implying that I should speak to him. I put him right and he then tried to justify the stance they were taking. I told him that in my view they were acting unlawfully. Not surprisingly, he could not quote 'chapter and verse' but he promised to let me have

reference to the regulations and/or the law which supports his view. I await his response with interest.

Sorry to go on a bit but this will also serve as a note for me for future reference.

I will let you know when someone gets back to me”

Wed 30/01/2008 08:59.”

Additional emails are supplied to paint the trail of broken political promises ^(D045).

12.05. Tuesday 1st April 2008^(D046), (abridged):

a) **“URGENT BUSINESS – INJURY PENSIONS REVIEW**

The Chairman asked that a Part 2 report on the Injury Pension Review be circulated to the Members of the Committee under Part 1 of the proceedings to aid a discussion on this issue. As the issue was of considerable public interest, it was proposed that an “in principle” discussion on the key issues would take place under Part 1 with further detailed discussions in respect of individual cases taking place under Part 2 of the agenda.”

These ‘principles’ were never adhered to;

b) **“The Chief Fire Officer emphasised that this issue only related to those people who had an on-duty injury pension and confirmed that LFRS had acted entirely appropriately in this matter.”**

c) Mr.Holland confirmed that disabled FSVs were exclusively identified by the Claimant and thus that, unwittingly, discrimination under the DDA/EA had occurred.

This reference^(D047) and the attached later Statement of Truth by disabled FSV Mr.D.Aspden gives an example of the Claimant acting ‘appropriately’;

Mr. B. Hamilton^(D48) referred to in this statement is the Claimant’s Head of Human Resources. Mr.B.Hamilton was previously Head of Human Resources at the Manchester Probation Trust which he left under a mutual non-disclosure agreement. Anecdotal evidence suggests that there was a prior history of similar bullying and intimidating tactics involving females within the Trust.

c) **“The Director of People and Development was tasked with conducting a review of injury pensions by the Committee in September last year following a report on an individual case. The review completed in October 2007 revealed that this was a wider issue involving substantial amounts of public money.”**

The in-house ‘review’ took the month of October 2007 but was not reported until 5 months later as ‘Urgent Business’. In spite of a Fol Request this ‘review’ was never published or reported directly to disabled FSV Scheme members; their legal representatives; or the Fire Brigades Union(FBU) but under Court Order, 8 reviews were released^(C-65;C-66;C-90;C-101;C-103;C-127;C-161;C-170;) and are included in the Claimant’s bundle.

d) **“The background to the issue is that when a firefighter retired with an injury pension, the part of the pension relating to the injury varies depending on the amount of benefits paid by the Department of Work and Pensions (DWP). The onus is on the individual to notify the pension provider of any changes in the level of benefits paid.”**

e) From the beginning the CFA Elected Members, were disingenuously advised by the Claimant’s staff that the responsibility, or ‘onus’, for discharging *their* statutory liability rested entirely with the disabled FSVs.

Disabled FSVs have no statutory duty or obligation to discharge the Claimant’s statutory duties nor do Scheme members have a ‘requirement’ to report anything. The ‘onus’ remains with the Claimant.

f) **“In 2007 it became apparent that a significant number of pensioners were not fulfilling this requirement. As a result, LFRS wrote to 167 pensioners in receipt of an injury award seeking permission to contact the DWP to request details of the benefits they were paid. An overwhelming number of pensioners replied positively to this request, with only four refusing to provide the authorisation that LFRS needed to investigate their circumstances.”**

g) The Claimant’s initial actions in using the first edition of their ‘consent’ form were fettered in law, *by their ignorance of the law*. Even though they obtained ‘consent’ in ignorance from some disabled FSVs for the *Claimant* to approach the DWP the DPAAct 1998 makes it an offence to do so.

Authorised 'consent' to allow qualified access to a DWP subject's data must *first* be provided voluntarily and in full knowledge to the DWP data manager *by the subject of the data*, before the Claimant can approach the DWP for access to the disabled FSV's 'relevant' records;

- h) ***"The benefits information was not contained centrally by DWP but lies within different benefit offices across the county. Each benefit office was asked to report on any benefit the pensioner has received which was related to the pensioners qualifying injury. The benefits offices appeared to have a variety of information in terms of quality and timescale."***
- i) This unequivocally confirms that the Claimant committed repeated offences against the DPA 1998 in seeking and unlawfully obtaining disabled FSV DWP records. These actions simply confirm their cavalier approach to any law which was an inconvenient obstruction to them. Even though the Claimant did obtain this illicit information until the DWP refused to provide it on legal grounds they were still unable to interpret the released data they had obtained.
- It is not the role of the DWP as the Claimant was to 'discover' much later to determine the relationship between a paid benefit and a 'qualifying' injury. This is the statutory duty of the Claimant which they failed and have continued to fail to recognise.
- j) ***"This was a national problem and all fire and rescue services would have to address the issue. Furthermore, it affected all organisations awarding injury pensions, in particular Police Authorities."***
- 1) The Claimant finally recognised that this was a 'national problem' which Court released comprehensive correspondence with the Communities and Local Government Fire Service Pension Department confirms^(C-18;C-60;C-154;) but did not recognise it was also a complete maladministrative failure by the Claimant over many decades.
- 2) Analysis of this dialogue between the CLG and the Claimant confirms that the Department had already been involved in this IA issue with the Claimant for 2 years since 1996^(C-154) when a disabled FSV challenged the fundamental right of the fire authority to deduct any benefit from his IA.
- The Claimant notes that this challenge was never properly addressed between 1996-1998 by the Home Office (CLG) who 'prevaricated' and advised them that legislation needed to be amended but advised that in principle deductions should occur but before doing so they ought to seek legal advice;
- 3) The Claimant on their part failed in maladministration to follow through by allowing the disabled FSV to retain his payments for a further year and until such time as the matter was resolved which it never was. The entire issue having by this time gone into total 'drift' as the Claimant described it.
- 4) This vacuous state of legal uncertainty continued at Departmental^(C-18;C-60;) and at Claimant level until the advent of this current issue during which the serious implications and direct impact for Claimant's ability to manage the Lancashire Scheme namely the placing of the Data Protection Act of 1998 on the Statute Book which barred access to disabled FSVs DWP records went entirely unnoticed by the Claimant and, it has to be said, by the CLG as well.
- k) ***"As a result of the 133 reviews currently completed, it was clear that 8 people had been underpaid, 93 people had been paid correctly and 32 had been overpaid. Where underpayments had been identified the sums owing had been paid immediately."***
- l) Mr. Holland stated that both 'overpayments' and 'underpayments' had occurred which de facto confirms across the board maladministration. Seventeen (17) underpayments had been made (not 8) to a total value of £151,613.40 with one single underpayment to the value of £51,563.73 which it is likely, based on other evidence, was accumulated over two decades period^(C-65) of maladministration.
- m) ***"Whilst LFRS appreciates that this put those pensioners who had been overpaid in a difficult position, this was tax payer's money. LFRS were making every effort to deal sensitively with those who have been overpaid to reach an equitable outcome."***
- n) This is indeed taxpayers money and if the Claimant had been exercising strong and efficacious fiduciary duty of care in the first place this need not have arisen.

There are numerous examples of repeated errors by the Claimant in their failure to correctly interpret DWP figures supplied unlawfully to them which resulted in numerous disabled FSVs being accused of the receipt of 'overpayments' only for the Claimant to conclude later that they were wrong and withdraw their accusations; that it was the DWP's fault; or, a rarity, that the Claimant had engaged in admitted maladministration^(D048).

- o) ***"The scheme was administratively cumbersome and open to abuse and so as a result of the review LFRS has asked the Department for Communities and Local Government to review its construction."***
- p) Firemen's pension schemes have been in existence since 1926 and previous administrations did not seem to find it 'cumbersome'; not a single case has ever been published of any form of abuse and this statement imputes fraud on the part of disabled FSV Scheme members;
The Claimant has indeed asked the CLG to carry out such review but as Court released documents show are 'wary of going it alone' and have failed to take any initiative either with or without the Claimant allowing the matter to drift still further;
The Claimant has in turn been asked and encouraged by the DWP in correspondence to take the initiative over providing a lawful national 'gateway' so that they can lawfully regularly access disabled FSVs DWP relevant records but once more in 'drift' the Claimant has failed to do so;
- q) ***"LFRS had also implemented systems as far as reasonably practicable to prevent further problems from arising in the future."***
In March 2008 before this CFA Committee Report in April 2008 the CLG asked^(C-60) the Claimant what their proper current administrative practises were in place to guard against future such debacles. In particular how they:
- 1) ... ***"monitor/record changes in DWP benefits being received by firefighters who have been retired on an injury pension"***;
 - 2) ***"review injury awards"(would you be able to provide a flow diagram that identifies the different process stages?)***;
 - 3) It is clear from this official enquiry from the Department that they regard such statutory duties as falling within the remit of the Claimant rather than the 'onus' being placed on the Defendant and other disabled FSVs.
 - 4) The Defendant is unable to determine the outcome of this official request at this time but will request Specific Disclosure of these documents at the reconvened Disclosure Hearing on 11th May 2012;
 - 5) The Defendant notes and the Court should note that no copy of the Claimant's response was placed at this time before the CFA Committee;
 - 6) Neither was any subsequent amendments to the Scheme procedures ever been published to Scheme members;
 - 7) The Defendant notes that the Claimant has not indicated, within these new 'implemented systems', how they intend to address the major administrative stumbling block which still remains, namely the barred DPA 1998 legal gateway preventing access to disabled FSVs DWP benefit records which even at this point has not been addressed in this dialogue with CLG Department, a department which does not seem motivated to address the problem either.
- r) ***"Existing injury awards had been stopped or reduced where the information from DWP had highlighted the injury pension as being paid inappropriately."***
- s) At this point in time illicit DWP subject data was still being received by the Claimant, data which they could not understand. The DWP declined to identify why a benefit was being paid to a member because this is not their statutory duty. A decision compounded by the inability of the Claimant to indicate to the DWP the specific qualifying injury with which a disabled member had been discharged. Simply more compelling evidence of institutionalised maladministration.
- t) ***"If the sums were not overly large LFRS advised the pensioner of the detail received from DWP and the calculation of arrears and suggested a repayment plan over a small number of years. If the sums were large LFRS had invited the pensioners to a meeting to discuss the information"***

and subsequently provided them with detail. This had resulted in clarification of the amounts involved."

- u) Due to maladministration the Claimant did not know the amounts which were involved. They relied on the DWP and the honesty of confused and intimidated disabled FSVs to supply missing records; Individual disabled FSV Court released records^(C-66) are littered with notes by the Claimant... **"no notification on file"** this is presumed to mean within individual PRFs which begs the question why not?

The Defendant has had numerous first hand anecdotal discussions with disabled FSVs that in hearsay state that they either supplied information in writing or verbally by phone, or as a Witness Statement will later confirm physically handed over information, all of which seems not to have been acted on. Furthermore many disabled FSVs confirm that they were never supplied with an 'undertaking' form; signed one; or indeed knew what one was when the subject was addressed by the Defendant with them;

- v) **"If the pensioner had queried the accuracy of the information, LFRS have gone back to the local Benefits office. In a number of cases, the local benefits office had agreed that it was in error in terms of the benefit not being related to the qualifying injury that triggered the benefit award."**

- w) This confirms that the Claimant, due to their maladministration, did not know the accuracy of these alleged sums relying entirely on the information supplied by the DWP (whose statutory duty this is not) which in one notorious example consisted of a single gross payment figure (£40K) for *all* benefits ever paid to a disabled FSV, on this occasions for 3 or more decades, a total which included the DWP's 'best guess' conclusion (which is not their statutory duty), as to whether or not it was being paid for a compulsory discharge 'qualifying' injury. The Claimant later concluded that the disabled FSV did not owe anything but blamed the DWP.

When put to the test the Claimant could not accurately supply to the DWP details of the names and compulsory discharge qualifying injuries of disabled FSVs because they had not, in maladministration, held a proper 'account' of these critical discharge records in individual PRFs or in LPS pension files in the first place.

Furthermore, the Claimant in maladministration could not interpret or understand this DWP released data, which is their statutory duty, because in maladministration they did not retain the disabled FSV's records properly to compare and determine which DWP monies were being paid for what ailment to a particular disabled FSV.

- x) **"It was proposed that a Special Sub-Committee of four Members of the Resources Committee two Labour, one Conservative and one Liberal Democratic) be established, with delegated powers to act, to consider and determine individual cases of dispute over injury pensions."**

- 1) The Claimant when challenged repeatedly by the Defendant has never declared that a single individual disabled FSV's case has ever been resolved or reported;
- 2) No Minutes of the Special Sub-Committee have ever been published or copied to Scheme members or those personally involved; their legal representatives; or FBU.
- 3) A FoI Request to identify the elected Members on this Special Sub-Committee was refused^(D049).
- 4) The Claimant states^(C-164) that this CFA Sub-Committee approved the 'guiding principles' of the manner in which the disabled FSVs were to be harshly dealt with including ... **"potentially using the hardship route if this is necessary."**

- y) **"57/07 RESOLVED:**

1. That the Authority place on record an undertaking that it would only attempt to recover further overpayment monies from the individuals when the Authority was entirely satisfied of the correct and precise amounts involved. In the event of any underpayments the Authority would refund these as quickly as possible."

2. This mandate was totally ignored by the Claimant.

- 12.06. Monday 28th April 2008^(D050), (abridged):
- a) ***"In the light of the Injury Pensions matter the Chairman circulated at the meeting a proposed draft resolution for dealing in the future with matters generating substantial public interest.^(D051) He also updated members on progress on this matter since the Resources Committee. A Special Sub-Committee had been established and had met to consider and determine individual cases of dispute. In the light of potentially wider implications for the Authority, Counsel's Advice was being obtained. Upon its receipt a further meeting of the Sub-Committee would be convened."***
 - b) Further...
"The Chairman provided a brief update for members in relation to the confidential discussion which had taken place at the Resources Sub-Committee meeting held on the 14th April 2008. The Clerk outlined the reasoning behind the decision to seek Counsel's Advice. A further meeting of the Sub-Committee would be convened when that had been received."
 - c) It was one year before a legal Opinion was sought on the actions of the Claimant and only then when prompted by Scheme members' protests^(D052).
 - d) From this meeting forward, the Public and Press were permanently excluded.
- 12.07. Tuesday 23rd September 2008⁽⁰⁵³⁾, (abridged):
- a) ***"PROCEEDINGS OF RESOURCES SPECIAL SUB-COMMITTEE INJURY PENSIONS 30/08 RESOLVED:- That the proceedings of the Resources Special Sub-Committee on Injury Pensions meeting held on the 7th July 2008 be noted and endorsed."***
 - b) Public and Press excluded.
 - c) No report published or copied to disabled members; their legal representatives; or FBU.
- 12.08. Thursday 20th November 2008^(D054), (abridged):
- a) ***"INJURY PENSIONS UPDATE
The Committee considered a detailed update report outlining developments since the last meeting of the Resources Committee in particular the position in respect of the potential conflict between the Scheme requirements and the Data Protection Act.
43/08 RESOLVED:- That the Committee note and endorse progress on this item, and that a further update report be submitted to the March 2009 meeting."***
 - b) Public and Press excluded.
No report published or copied to disabled FSVs; legal representatives; or FBU.
 - c) ***"The Service were also authorised to consider the use of the National Fraud Initiative to obtain the outstanding information."***
 - d) The Claimant bizarrely and disingenuously asked authorisation for the use of the NFI to obtain 'information'. The use of the data matching exercise by the now obsolescent Audit Commission(AC) routinely takes place every 2 years in October in Lancashire. This 'authorised' exercise returned 53 sets of data mis-match^(D039) which reached beyond the disabled FSVs involved to other non-disabled FSVs who are not at the centre of this dispute, but with the usual AC proviso that...
"No assumption can be made as to whether there is fraud, error or other explanation until an investigation is carried out."
 - e) The Claimant did not authorise an investigation nor was a report on this routine AC exercise ever presented to the CFA by the Claimant.
- 12.09. Tuesday 10th March 2009^(D056), (abridged):
- a) ***"PROCEEDINGS OF INJURY PENSIONS SUB COMMITTEE
The Director of People and Development presented the detailed minutes from the Resources Special Sub-Committee meeting on Injury Pensions held on 11 February 2009. Members discussed resolution number 5 and agreed to endorse changing the wording "...from 31st March 2009..." to "...from one month after the date the letter was sent..."
55/08 RESOLVED:- That the proceedings of the Resources Special Sub-Committee on Injury Pensions meeting held on the 11 February 2009 be noted and endorsed, subject to the amendment to Resolution 5 referred to above."***
 - b) Public and Press were excluded;
 - c) From 14th April 2008 until 11th February 2009 no Special Sub-Committee meetings were held;
 - d) No report published or copied to disabled FSVs; their legal representatives; or FBU.

13.00. The Managers of Maladministration.

13.01. The Lancashire Fire Service Pension Scheme is undoubtedly a major pension Scheme.

A Scheme which ought to be managed by specifically qualified professional pension scheme managers and staff using the 'best practice' of vigorous checks and balances built on a pension management platform of nationally recognised proactive accurate monitoring systems to ensure a 'beyond reproach' discharge of its fiduciary pension function to Scheme members and Public finances in compliance with the law.

13.02. When Mr. Warren, senior admin manager, was appointed to his post by the Claimant in April 2002 he was, as he confirms, made responsible for this active major pension Scheme. A Scheme which has more active FSV pensions than the whole of the present serving LFRS personnel and civilian support staff combined.

13.03. In the mismanagement which was to follow neither Mr. Warren in his Statement of Truth, Mr. Hamilton Head of Human Resources, or Ms. Lister head of the LPS nor her staff have ever declared or published their pension management qualifications (even in post nominals) or their specialist professional pension competency to manage such a major Scheme.

13.04. Even though Mr. Warren did not have the essential specialist qualifications, knowledge, or experience to manage in this pension field, reporting at an early point to the CFA that, ...

"When LCC pensions explained the situation we contacted the CLG pension experts as the scenario was new to us."

It is reasonable to assume at the time of his appointment as the senior administrator that he would seek out these missing critical management skills elsewhere and having acquired these skills in the form of Mr. Hamilton (who came from the Probation Service)^(D055) then apply them at a very early point in his tenure in the form of a total Scheme 'review' if only to professionally satisfy himself that his responsibilities were fully discharged and that the Scheme under his, Mr. Hamilton, and Ms. Lister's contracted management was in complete compliance with all applicable and associated pension law and best actuarial practices.

13.05. Unfortunately it seems Mr. Hamilton did not have the necessary specialist skills or qualifications either. This became abundantly clear at an early point in this debacle when the section leaders responsible could not actually read or interpret the information on individual DWP benefit records obtained illicitly from the DWP allied with their inability to retrieve matching individual's Claimant pension records because of their failure to retain these disabled FSVs statutory records in the first place.

13.06. This superficial knowledge of DWP records, the Claimant's own pension records base (if available), and current legislation was repeatedly exhibited in the incorrect use of DWP nomenclature, a working knowledge of which the Defendant would expect in senior managers whose specific and important remit is, on the latest figures, to manage an annual pension budget head of some £40 million (2011) which shows that the budget head is some £3.8 million in the red and in which the accounts state that there are no investment assets built up to meet pensions liabilities in spite of serving personnel contributing 11% of their take home pay and the Claimant contributing 21.3%. By any modest description this called maladministration.

13.07. If any of these section managers had the necessary comprehension of pension and DWP working detail then this would have been reflected in their correct use of nomenclature and if any doubt then the DWP would and regularly did supply them with its nomenclature list which consists of 34xA4 pages which should at least sit on the desk of every pension manager.

For example, there is clear confusion between applicable legislation which currently applies back to the 1978 Scheme; the 1992 Scheme; and the 2004 Scheme. There is also endemic confusion on the Claimant's part between when a benefit is not a benefit

but an allowance and when incapacity benefit is applied above or below the Injury Award threshold of 12.5% and whether or not a carer's allowance is being paid for the 'qualifying injury' or not, or for an entirely different reason.

- 13.08. Mr. Warren and Hamilton, the section leaders responsible, claim that this maladministration occurred before their time but this denies the facts of their assumed responsibilities when they were appointed by the Claimant; their neglected opportunities to 'review' a Scheme which they were directly responsible for at the earliest opportunity; and their subsequent leading contributory roles and responsibility as the architects of the ensuing debacle which followed in the years since 2002.
- 13.09. Mr. Warren and Mr. Hamilton had a particular duty of care at the commencement of their 'watches' that all personal record files (PRFs) and FPS associated files, the very fiscal heart of the Statutory Scheme for which they are both responsible was fully maintained in efficient order and was being continuously updated by information supplied to them by the disabled FSVs; other agencies; and other sources. Information, which was being retained and maintained, and monitored on a daily, monthly, and annual check basis or at least it ought to have been.
- 13.10. All this proactive pension administration ought to have been carried out within the active framework of a healthy robust check and balance monitoring system which ensured the discharge of their fiduciary duty of care of public funds and which delivered a noteworthy service to all Members of this Scheme and in transparency for Public scrutiny but this efficacious system existed only on paper, not in reality. In addition to the Claimant's own duties and resources they had contracted the even larger resources of the LPS under Ms. Lister since 1998 but failed to 'police' their contractor's efficacy either. This is the Statutory duty for which the Claimant and by contract the LPS were, and are all paid for from public funds.
- 13.11. The Defendant's assertions are that these checks ought to have been carried out and were not. Assertions which have never been rebutted. It is clear that since his appointment in 2002 Mr. Warren did not carry out an 'on appointment' review which was his direct responsibility neither did he instruct Mr. Hamilton to carry out such a review on *his* appointment and neither did Mr. Hamilton, as the day to day hands on section manager of the Scheme, of his own volition do so either. Whilst it may well be that the daily administrative 'buck' was passed to the LPS the Statutory responsibility in law still rested with the Claimant to 'police' it. A responsibility which clearly the Claimant chose to ignore. It is from such administrative failures that pension debacles of this magnitude arise.
- 13.12. The records show that Mr. Warren, Mr. Hamilton, and Ms Lister only became aware of their own maladministrative failure when it was brought to their attention not by means of a well-managed, robust, vigilant, pension management system flagging up a major administration failure but in March 2007 by a terminally ill disabled FSV. Thus during the previous 5 years under Mr. Warren's control, partly under Mr. Hamilton's, and fully under Ms. Lister's control the onus and responsibility for this debacle must inevitably and entirely rest with the Claimant and his contractor.
- 13.13. The reality was that this achievable criteria for an efficacious pension administration and monitoring system was never even attempted with the resultant 'management' debacle which, unnoticed, commenced in April 1998, or before. This failure led to the unlawful activities from March 2007 which have included the unlawful withdrawing of complete pensions not just injury awards^(D057). The clawing back of alleged 'overpayments' from the disabled FSVs involved (2 now deceased) and their widows.

Including the paying out of substantial 'underpayments' on the basis when queried of ...
" *just go ahead and spend it*" ...such was the Claimant's standard of fiduciary care.

13.14. All these questionable actions took place without any form of consultation, agreement, or fully informed freely given consent and without detailed supporting pension records which ought to have been retained in the Defendant and others PRFs to support these actions but which the Defendant now knows were not.

Actions which when taken in the round simply confirm, ipso facto, that institutionalised endemic maladministration had taken place over the period from April 1998(if not before) until March 2007, some 9 years in total.

14.00. Claimant's Systemic Maladministration.

14.01. The LFRS was formed in April 1998.

14.02. In March 2007 the case for a retrospective 'review' of disabled members' Injury Awards first arose. The case for a 'review' was *not initiated* by an alert, robust, and vigilant Claimant but by the honesty of a(now deceased) Fire Service Veteran responsibly informing the Claimant of a change of his circumstances.

14.03. The Claimant had a duty of care to members under their Standards of Service ^(D058) which they have breached:

- a) Under Section 3 Standards of Service (a) Communications, to act... *"in compliance with overriding statutory requirements,"*;
- b) Section 3 Standards of Service (a) Newsletters... *"where a material or regulatory change occurs, Lancashire Pensions Services... will inform Scheme members as appropriate."*
- c) Section 3 Standards of Service (b) Systems and Maintenance to act in... *"Development needs arising from legislative change ."*
- d) Section 3 Standards of Service (e) Pensioner Member Services...
 - *"Maintaining current and historical records of all pensioners.*
 - *Checking benefits to ensure that statutory limits are not infringed.*
 - *Ensuring that changes to pensioner circumstances are actioned."*
- e) Section 3 Standards of Service (f) Performance Standards Pensioner Members...
 1. *"Any overpayment due to an administrative error will be rectified by Lancashire Pensions Services."*

14.04 The Claimant had a statutory duty to determine the liability for pension payment. The Scheme requires the Claimant to have a Scheme of Delegation^(D059) to empower their statutory function by creating and maintaining a pension 'account' by means of a robust, effective, efficient, proactive, recording, and member informing management system^(D06).

14.05. The Claimant is directly responsible for, and is required to be cognitive of, management impacting changing national legislation. It is not the duty of aging and disabled FSVs.

14.06. The Claimant failed to identify *"a national problem"* which was the management impact of the provisions of the Data Protection Act 1998. This closed the hitherto lawful gateway of access to disabled FSVs' 'relevant' DWP records^(D061). A maladministrative failure which made the Scheme effectively unworkable from this point forward^(D062).

14.07. The Claimant failed in their duty under the SLA^(D011), S3 Standards of Service (a) Newsletters, to inform disabled Scheme members that a major material change had occurred... *"where a material or regulatory change occurs, Lancashire Pensions Services will inform Scheme members as appropriate."*

14.08. This DPA enactment prevented the unlawful disclosure by the DWP of disabled FSV's subject data to the Claimant^(D063/D064) who, prior to 1998, had unhindered access to *all* disabled FSVs' DWP benefit records, including those *not relevant* to a an FSV's qualifying injury.

It is clear that even with this unbridled access to *all* DWP records prior to 1998 that the Claimant still failed in maladministration.

- 14.09. An alert Claimant had a statutory duty to identify this 'national problem' or gateway closure at the outset of the DPA Bill. The Claimant will have been invited by the CLG to comment at the Green/White Paper consultative stages or ought to have been. An alert experienced Claimant had a statutory duty to recognise the potential working impact on Scheme administration, *but clearly at that time and subsequently through maladministration they did not.*
- 14.10. Even though alerted late, the Claimant could, through their national Local Government Association, have made representations to the CLG and the DWP to maintain their lawful access to disabled members' DWP subject data, *but too late in maladministration they did not* ^(D065).
- 14.11. The Claimant in managing well, having recognised the impact of legislative change, and having failed to influence the progress of the DPA Bill, or even playing 'catch up' as an efficient Claimant ought to have done, ought to have immediately initiated a lawful 'arrangement' to ensure that all Scheme members gave their explicit, fully informed, freely given written permissions, to the DWP so that the Claimant would have lawful but qualified access to their 'relevant' DWP records. *But Claimant in their maladministration, did not initiate a single act or procedure to correct this blunder until too late* ^(D066) *and still have not done so.*
In other reasonably managed Fire Authority Schemes this issue was addressed in 1990^(D067), albeit using a legally technically flawed 'arrangement'.
In 2010 this same Fire Authority after carrying out its own 'review' decided to *correct* its own REA maladministration from the 6th April 2010 forward and in particular concluded that REA prior to this date did not affect an FSV's Injury Award^(D068).
"Our records show you are currently in receipt of Retirement Allowance however in accordance with the current guidance and legislation this is not deducted from your injury award. Therefore I can now advise you that following the review your injury award will remain unchanged."
N.B. Retirement Allowance is REA reduced to 25% of its value when the recipient attains the age of 65 and declares that he no longer working.
- 14.12. Claimant's failures to recognise and take immediate remedial action created an administrative debacle^(D069) in which they exonerated themselves by publicly blaming the disabled FSVs and thence to a classical cover up of their maladministration by attempting unlawfully to do the following:
- a) to create and enforce their own "Rules" outside the Scheme and contrary to the Pension Act 1995 by attempting to retrospectively and unlawfully rebuild their missing databases of individual disabled FSVs pension records which, having been regularly updated by members, they had failed to record and adjudicate on over the previous decades.
 - b) to deceive the DWP into releasing disabled FSVs DWP records, in which for a period they were partially successful.
 - c) to suborn under the duress of hardship and unlawful pension withdrawal in a gross abuse of trust disabled FSVs, by use of a mixture of deceit, coercion, and harassment to sign a 'consent' form, or forms, giving them retrospective access to *all* their DWP benefit records which they knew, or ought to have known, was unlawful;
 - d) The ultimate objective of the Claimant's machinations was then to use this unlawfully acquired subject data to re-build 'lost' records and to use them against these disabled FSVs as a defence against charges of total maladministration.
- 14.13. When the DWP was made aware they had been misled into unlawfully releasing some records in contravention of the DPA they denied it ^(D070) and then returned the original

'consent' forms en masse to the Claimant⁽⁰⁷¹⁾. Subsequently refusing to release further disabled FSVs records to the Claimant^(D072).

- 14.14. In a positional statement to disabled FSVs the DWP Permanent Secretary^(D073) advised FSVs that if they had signed these 'consent' forms they should write to the DWP withdrawing their 'consent' because it was clear that 'consent' had not been explicit, fully informed, or freely given, which was contrary to the spirit, law, and principles of the DPA.
- 14.15. The Claimant may lawfully attempt to obtain the permission of Scheme members to support the discharge of *their liability* by making a lawful 'arrangement' to do so. A lawful 'arrangement' must be approved by *all* members of the Scheme and an 'arrangement' must also pass the tests of common law:
- a) A lawful 'arrangement' must be clear and explicit in its intent to all members;
 - b) Members must be explicitly and fully informed of all the implications for individual members and for the collective membership;
 - c) Members must not be placed under duress either collectively or individually whilst evaluating such an 'arrangement';
 - d) *All* members' final consent must be freely given, explicit, and fully informed.
- 14.16 The Claimant had a statutory duty to take urgent national and local action to ensure that the Scheme was made workable again as the Permanent Secretary of the DWP suggested they ought to do in 2008, and *which, in any event, they have still failed to do.*
- 14.17. The Claimant's correspondence with the Permanent Secretary of the DWP shows the DWP were curious how in 'managing' their Scheme the Claimant had lawfully obtained members subject data from them in the past^(D074;D065):
"Could we also know how you have been acquiring any of this information hitherto, and, if so, on what basis, and what has changed to make that access no longer workable."
- 14.18. The Claimant's maladministration of a decade and more has led to a major debacle in which, for 5 years innocent disabled FSVs members, their widows, and families and the Defendant have endured the Claimant's deliberately and punitively imposed financial hardship.
- 14.19. The Claimant knew that maladministration existed from the outset of this dispute. Maladministration for which they are responsible and which they acknowledge in the following statements...
- a) Claimant's staff Mr. Warren stated to the CFA in September 2007...***"The issue came to light when we were reviewing an adjustment to the payment of an individual in respect of his state benefits. A considerable overpayment was identified. When LCC pensions explained the situation we contacted the CLG pension experts as the scenario was new to us."***
 - b) The Claimant stated to disabled FSV Mr. J.H., 21st Nov 2008^(D075)...***"The review in question was commenced following identification of a flaw in the administration of the scheme that potentially affected all recipients of a pension injury award from Lancashire Fire and Rescue Service."***
 - c) Lancashire Evening Post 6th March 2008 Claimant Chairman CC Wilkinson reported...***"When they finish work with an ill-health award, they are given a paper to say if they receive DWP benefits, they have to tell us. The onus is on them..."***
"There is a fault in the system at a national level in that the firemen's people who deal with the scheme cannot talk to the DWP until we get permission from the individual pensioner."
 - d) The Claimant stated on 28th March 2008^(D062), ... ***"Unfortunately the current Scheme makes no specific provision which authorises LFRS to obtain the required information from DWP. However, the provisions of the Scheme and the duties placed on LFRS in relation to the administration of the Scheme are unworkable..."***

again...

"In our view, the relevant provisions of the Scheme are unworkable without disclosure of the information and clearly it cannot have been the intention of the Scheme to make the operation of the provisions dependent upon obtaining the voluntary consent of the individuals concerned. In those circumstances we believe there are clear grounds under Data Protection legislation which authorise DWP to disclose the information without consent and we have asked them to do so."

further...

"Of course, if overpayments have been made as a result of a failure to provide accurate information then LFRS must reserve the right to recover any overpayment but this would be the subject of full discussion with the individual concerned before any further action is taken."

- e) The Claimant stated on 31st July 2008 to disabled FSV W.H.^(D076)...
- "It is the view of both the LFRS and Lancashire Pension Services that the relevant provisions of the Scheme are unworkable without disclosure of the information and clearly it cannot have been the intention of the Scheme to make the operation of the provisions dependent upon obtaining the voluntary consent of the individuals concerned ."***
- The Claimant does not comment on a situation whereby a Scheme member including the Defendant *has provided full and accurate information* on entitlement change and upon which Claimant *still failed to act*.
- f) LCC Deputy County Solicitor Young to DWP^(D061)... ***"The terms of the Compensation Scheme thus require the LFRS to obtain details as to what additional benefits are received by those eligible for Injury Pensions under the Scheme, and it follows that such information must be obtained from or confirmed by the DWP. In the absence of such information, the LFRS risks making payments that are not authorised by the Scheme, and are therefore ultra vires."***
- Mr.Young, simply reflects the abysmal technical ignorance of those 'managing' the Scheme. He does not understand that it is only the 'relevant' DWP benefits which apply.
- It is also 'unworkable' if the Claimant does not have in place a SoD and an alert system routinely exercised, maintained, audited, and correctly managed(on a monthly and annual basis), robust pension management system.
- To do otherwise is to invite pension maladministration and systemic failure which did occur on a massive scale.
- g) The Claimant to disabled member FSV Mr. B.B 18th May 2009 ^(D049) in writing off over £3000.0.. ***"It would appear that the Service did not then make the appropriate deduction from you injury award, Indeed the Service went further and advised you that you did not need to notify us of future inflation increases, I consider this to be poor administration and feel it is inappropriate to ask you to reimburse the Service this overpayment that resulted . I therefore intend finalising this matter by writing off the overpayment."***

14.20. Examples of maladministration, total disarray; and systemic failure of routine record management by the Claimant...

- a) DWP to Claimant^(D071)... ***"At the moment the authority letter is only addressing benefits that the customer "receives in relation to the injury that resulted in their retirement". Out of the 34 queries we have outstanding at the moment there are only 10 where you have told us what the relevant injury is. Even with these 10 we have no way of knowing that the incapacity given by the Doctors on the medical certificates relates to the injury they sustained in the course of their duties. In the conversation of 6th May, Dorothy Lambert suggested we made a judgement call as to whether the incapacity was relevant to the injury sustained. This is not a judgement to be made by DWP staff."***
- b) DWP to Claimant^(D069)... ***"(Redact)spoke to Dorothy Lambert, one of the caseworkers at LCC, regarding the problems we were now facing. (Redacted) mentioned that we had no way of knowing if our incapacity was relating to the fire fighters injury. She mentioned that most of the requests from LCC don't even have an injury stated on them. Dorothy stated that if they knew the injury they put it on the letter but in many cases LCC did not know the injury themselves! Dorothy suggested that on the cases where the injury was known that we make a judgement call as to whether our incapacity relates to the injury. (Redact) informed her that this was not for us to do."***

- 14.21. *If* a lawful arrangement is in place to access members' DWP records, it is the duty of the Claimant to inform the DWP what the qualifying injury was so that the Claimant can ask for information on the relevant DWP benefit *which the Claimant has determined is being paid for and directly attributable to that qualifying injury*.
- 14.22. The Claimants are in breach of their statutory duty by not maintaining an accurate fundamental record of the qualifying injury upon which a disabled member was originally compulsorily discharged. The Claimant cannot therefore accurately calculate their liability on a monthly and annual basis. It is clear from recently released(FoI) correspondence that because of the disarray of record keeping, the Claimant was *unable* to inform the DWP what the qualifying injuries were which led to compulsory discharge of 24 disabled FSVs out of a total of 34 disabled FSVs qualifying injury upon which queries had been raised by the DWP^(D071).
- 14.23. In May 2010 a disabled FSV Mr.B.^(D077) received his first ever annual entitlement review of his REA in the 15 years he has been retired and receiving this Allowance.
- 14.24. In this correspondence the Claimant continued to attempt, *still without* statutory powers or a lawful 'arrangement' in place to place their statutory responsibility for liability onto this disabled FSV member who have neither a statutory duty or a moral obligation to discharge^(D078).
These Claimant's statements directly contradict a statement made to the CFA^(D047) on 30th November 2007 ... "**a new system was in place**".
In this correspondence the Claimant finally acknowledges they still do not have access to this member's DWP records confirming the conclusion that the original 'consent' was null and void.
- 14.25. A snapshot of this disabled FSV's experience is interesting. In the beginning he refused to sign a 'consent' form and his entire IA was suspended. Forced by financial hardship to sign a 'consent' his entire pension still remains withdrawn.
- 14.26. Regardless of, whether or not, a disabled FSV notifies the Claimant of a 'relevant' DWP benefit change under a lawful 'arrangement' such notification is dependent on the medical condition and/or old age acuity of a disabled Scheme member.
No mechanism exists for proactive pastoral care nor is it published in the Standards of Service by the Claimant. The Claimant does not recognise that the acuity of an ageing or infirm disabled FSV, who may well be living alone, diminishes with time.
It is not the role of a visiting carer to ensure that a disabled FSV is receiving or reporting to the Claimant the 'relevant' DWP benefits received which sustain the quality of his/her life. It is the Claimant's statutory duty to determine liability.
- 14.27. It is inevitable that 'notification' of 'relevant' DWP benefits by declining disabled Scheme FSVs, even with a lawful arrangement in place, will get mislaid in maladministration unless there is a safety net in position.
A safety net is the recognition by the Claimant that their duty is to have a proactive outreach robust pension management system, or other lawful arrangement in place to discharge their statutory duty *without reliance* on third party agencies or disabled FSV's declining faculties.
- 14.28. The Claimant's statutory duties remain:
- a) to take the appropriate robust action to record and to act on such a notification of change of entitlement from a Scheme member;
 - b) to lawfully consult a Scheme member's 'relevant' DWP records;
 - c) to determine with the disabled FSV Scheme member the apportionment of a 'relevant' benefit to be taken into account when determining liability;
 - d) to confirm their decisions in writing to the disabled Scheme member;

- e) to review the Scheme member's entitlement, monthly and annually, to ensure that the liability payable is correct;
- f) to recognise that liability will always remain their statutory duty, whether or not they have been notified of any changes;
- g) to pay an incorrect liability is to act in an ultra vires. The Claimant states that 'overpayments' and 'underpayments' have occurred which is proof simple of the Claimant's maladministration.

14.29. Substantial 'underpayments' of the order of £51,563.73 have been a notable feature of this maladministration ^(D075). Breaches of statutory duty and failures of duties of care which have led directly to financial hardship and medical distress, a situation which Claimant does not recognise either.

The Claimant states:

- a) they are not authorised to make repayment with interest ^(D075) (County Court simple) on excess recouped monies even when accurate records supporting an FSV's actual financial position is produced to them; they are not authorised to pay interest (County Court simple) on underpaid monies;
- b) This means that no interest will be paid on an underpayment of £51,563.73 which was outstanding for 17 years;
- c) It is alleged that this is political decision, though no Claimant Minutes were ever published or produced, in spite of repeated requests, to support the Claimant's position ^(D079).

14.30. In January 2010 the CFA authorised the Claimant to make secret, deliberately undocumented 'deals' in conjunction with the FBU and individual disabled FSV Scheme members. This strategy failed with not a final resolution of a single case having been reported to the CFA. The CFA then instructed the Claimant in July 2010 to cease all 'deals' because this policy would only further compromise the Claimant's position in any litigation which would follow.

14.31. In September 2010 the Claimant authorised 'deals' to recommence but with the proviso that any finalised 'deal' was underpinned with a Non-Disclosure Agreement.

14.32. The Claimant in the five years or more of this dispute:

- a) has not attempted to construct a lawful 'gateway' with the DWP in spite of the DWP recommendations that they do so;
- b) has not attempted to contribute to or originate a national movement of local authority pension administrators seeking relevant changes in legislation or lawful procedures to create such DWP 'gateways';
- c) has failed to seek a resolution in law or a Judicial Review from the Courts.

14.33. The Claimant as a consequence of their maladministration have acted unlawfully in withdrawing the Defendant's Injury Award. They have knowingly acted in a disproportionate, unreasonable, deliberately punitive, and oppressive manner.

15.00. Claimant Maladministration-Defendant's Pensions.

15.01. The Claimant ultimately holds the statutory pension duty.

15.02. The LPS have a special contractual duty within the SLA to act only on the *lawful instructions* of the Claimant ^(D080) **...“Lancashire County Council administers the Firefighters' Pension Scheme under contract on behalf of the Claimant and acts under the lawful instructions of the same in relation to the administration of the scheme,”**

During the 5 years of this dispute, the LPS have never questioned the legality of the instructions of the Claimant. It is the Defendant's position that both are culpable in law ^(D081).

- 15.03. Implicit in this SLA are the Claimant's statutory duties which include compliance with the Scheme and its Rules; the keeping and maintaining of accurate personal pension accounts & financial records; the keeping and maintaining of pension decisions by the Claimant; and an accurate record of informing Scheme members of their decisions both at a Scheme and individual level. These are standards of reasonable expectation by all Scheme members, of which the Defendant is one ^(D058).
- 15.04. When the Data Protection Act 1998(DPA) was enacted the Claimant had a statutory duty which they breached, to seek the freely given, explicit, fully informed, permission of Scheme members *to transfer* their original pension subject data from the LCFB and the Claimant to their appointed contractors the LPS in compliance with the DPA. For example should the pension contractor change in the future this compliance will require 'refreshing' with Scheme members in a similar exercise of the mass transfer of subject data.
- 15.05. The Claimant did knowingly, at commencement of the Defendant's pensions, required him to sign an 'undertaking' on 24th October 1996^(D005) in trust and good faith under the direct duress of 'delay' of liability. It was not reasonable for the Claimant to do so without fully informing the Defendant of all the implications for him.
This was a legally flawed 'undertaking' which fails the Unfair Contract Terms Act 1977 (c.50) SCHEDULE 2 "Guidelines" for Application of Reasonableness Test thus making their 'undertaking' unenforceable in law.
Nevertheless the Defendant did sign in ignorance, trust and good faith and did comply, whether the Claimant actions were lawful or not.
- 15.06. The Claimant is entitled in their statutory prevention of 'double payments' to reasonably 'delay' payment of the Defendant's IA to establish their liability, particularly in respect of his 'relevant' DWP benefit status, *but not* if he has fully complied with the terms of the Scheme Rules and the Claimant 'undertaking'(whether lawful or not). The time period for 'delay' is not defined in the Scheme Rules; the word 'suspension' is not used in the Scheme Rules; nor is the time defined when reasonable or malicious 'delay' becomes permanent withdrawal ^(D082).
- 15.07. Under Rule L4,4,(a) of the Scheme the Defendant's two pensions, Ordinary and IA shall be treated by the Claimant as one ... ***"under rule B4 to an injury pension and also under rule B1,B2, B3 or B5 to an ordinary, short service, ill-health or deferred pension, or...those pensions shall be treated as one."***
The Claimant has no statutory power to 'delay' the Defendant's IA element, they must 'delay' all the Defendant's pension 'as one', or none. The Claimant is in breach of the Scheme Rules.
- 15.08. The Claimant has concluded without producing incontrovertible evidence that the Defendant has de facto unlawfully acquired funds from the fire authority in breach of Rule L5.—Payment of awards—Supplementary.
"Rule L5-(6) Subject to paragraphs (7) to (9), where as a result of fraud, theft or negligence on the part of a regular firefighter in connection with his employment there has been a loss to the funds of a fire authority, the authority may withhold all or part of any sums becoming due to him from the authority in respect of a pension."
- a) The Claimant has baselessly, without incontrovertible evidence, accused the Defendant of fraudulent activities by misappropriation of funds^(D083;D084;D085;D086). In addition the Claimant's barrister accused the Defendant of 'misappropriation' of such funds in his Particulars of Claim;
 - b) The Claimant has a statutory duty, which they have breached, in failing to keep an accurate 'account'(Rule-L2); which is the duty to determine how much the alleged amount of their loss is; to communicate this alleged amount to the Defendant in a

timely manner; and explain to the Defendant how their maladministration gave rise to this alleged overpayment in the first place;

- c) The Claimant has a statutory duty under the Human Rights Act 1998, which they have breached, to set the standards for the manner in which proceedings are to be conducted. Article 6 guarantees the Defendant's a right to a fair trial or hearing, in civil or criminal proceedings in a reasonable period of time^(D087). It is now 5.5 years since the commencement of this issue;
- d) The Claimant, who is in breach of the Defendant's Human Rights, must state at an early moment what the Defendant stands accused of, citing incontrovertible evidence to support their accusations; how it is alleged the Defendant has unlawfully, or by negligence, obtained their funds; the amount the Defendant is alleged to have obtained; and have a duty to provide the Defendant's with the right of response or redress;
"Rule L5-(7) The total amount withheld under paragraph(6) must not exceed the amount of the loss; and in the event of any dispute as to the amount of the loss nothing may be withheld unless the loss has become recoverable from the person entitled to the pension under the order of a competent court."
- e) The Claimant at an early stage by their own admission and by their maladministration did not know if a loss has occurred; how much that loss was alleged to be; and in withholding all the Defendant's IA to date, not even a proportion, and because the Defendant still does not know the alleged amount, may have exceeded any potential alleged overpayment, which is in any event is denied;
- f) The Claimant has also breached this statutory Rule by unlawfully withholding payment of *all* the Defendant's IA in a dispute without having an enforceable order for recovery from a competent Court;
- g) The Claimant had a statutory duty, which they breached, to issue the Defendant with a certificate showing the amounts they have withheld from the Defendant's pension ^(D088).

"RuleL5-(9) The fire authority shall provide the person entitled to the award with a certificate showing the amount withheld."

The Claimant - "In response to your Question 2:" -

"Clause L5(9) of the Consolidated Firefighters' Pension Scheme 1992 Order requires a certificate to be issued where the circumstances in L5(6) apply, namely where 'as a result of fraud, theft or negligence on the part of a regular firefighter in connection with his employment there has been a loss to the funds of a fire and rescue authority, the authority may withhold all or part of any sums becoming due to him from the authority in respect of a pension. ' These circumstances do not apply to the suspension of your injury allowance and a certificate is not therefore required ."

The Defendant has been unable to accurately calculate the correct amounts due to him in order to issue proceedings against Claimant for the recovery of their full debt due to him.

15.09 The Claimant in seeking to use the Common Law errs in law when attempting to reclaim an alleged overpayment when statutory provisions are provided for in the Firemens Pension Scheme Order 1992, namely Rule L5.

- a) This Rule is the correct legal procedure for 'loss' recovery which is specifically provided for these purposes by Parliament and which ought to have been followed by the Claimant but who declined to use this Rule when repeatedly asked to do so in writing by the Defendant;
- b) The use of the Common Law by the Claimant is also specifically excluded by the existence of this Scheme Rule a point in case law which is supported by a Judgement of the Supreme Court in the matter of the Child Poverty Action-v-the Secretary of State for the DWP;
- c) This Supreme Court case law set a requirement on the Claimant to use the Parliamentary provided Statute to pursue any alleged loss to the Claimant but before doing so the error or cause giving rise to this alleged loss must firstly be

rectified before implementing any form of recovery which also must be done through the Courts.

The Claimant has failed to correct these maladministrative and procedural errors when invited to do so by the Defendant and failed to use the Scheme's legal provisions for doing so whilst unlawfully retaining payments lawfully due to the Defendant.

15.10. By withdrawing the Defendant's IA without just cause the Claimant acted wilfully and perversely in victimisation; in ultra vires; and in breach of the Scheme and the 'Pensions Act 2004 S266 the inalienability of an occupational pension:

—(1) Section 91 of the Pensions Act 1995 (c. 26) (inalienability of occupational pension) is amended as follows.

—(2) In subsection (5) (exceptions to the rule of inalienability) at the end insert—

“(f) subject to subsection (6), a charge or lien on, or set-off against, the person in question's entitlement, or right, for the purpose of discharging some monetary obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.”

The right to inalienability has been amended in law but in relation to this issue the right, in the event of a dispute, to have this issue placed before a competent court, has not. The Claimant had a Statutory duty under this Section which they have breached, in so far as a dispute existed, that no amount, no charge, no lien, and no set-off is exercisable unless and until an order has become enforceable by a competent Court.

15.11. The Pensions Act 2004 S70, paras 1(a);2 (a), “*Duty to report breaches of the law*” . The Claimant has a duty, which they have breached, to report such breaches to the Pensions Regulator and the appropriate civil authorities.

15.12. The Pensions Act 1995(PA), S67. Restriction on powers to alter schemes.

The Claimant has no powers conferred on them *in* this Act or *in* the Scheme to create a 'new Rule' *outside* the Act or Scheme which requires the Defendant to sign any document before receipt of the Defendant's pension; or to alter the Defendant's entitlement or accrued rights acquired before any power of this Act or the Scheme is exercised...

—(1) *This section applies to any power conferred on any person by an occupational pension scheme (other than a public service pension scheme) to modify the scheme.*

—(2) *The power cannot be exercised on any occasion in a manner which would or might affect any entitlement, or accrued right, of any member of the scheme acquired before the power is exercised unless the requirements under subsection (3) are satisfied.*

— (3) *Those requirements are that, in respect of the exercise of the power in that manner on that occasion—*

(a) (ii) the requirements for consent, are met in respect of that member,

—4(b) *“the consent requirements” means prescribed requirements for the purpose of obtaining the consent of members of a scheme to the exercise of a power to which this section applies.”*

The Claimant has a Statutory duty of compliance which they have breached.

15.13. The Claimant has failed to accept and implement non statutory advice from the Communities and Local Government Department (CLG) contained in Fire-fighters Pension Scheme Circulars 2/1997^(D089) and 1/2009^(D090) approved by the joint Fire-fighters' Pension Committee, to wit, the *requirement to create, implement, and publish the existence* of a two stage Internal Dispute Resolution Procedure (IDRP) to Scheme members^(D091).

15.14. The Claimant knowingly breached their statutory duty under s50 of the Pensions Act 1995; amended by s273 of the Pensions Act 2004; as amended by s16 of the Pensions Act 2007; and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (SI 2008/649) which was to *implement, or cause to be implemented*, the IDRP when the Defendant's complaint was originally lodged with them.

- 15.15. The Claimant failed to direct the Defendant's attention as a Scheme member to the existence of this IDRП complaint mechanism; failed to initiate such a mechanism upon receipt of the Defendant's complaints; and failed to acknowledge all complaints from the Defendant and his representatives.
- 15.16. The Claimant failed to inform the Defendant what the Defendant's rights under IDRП were and failed to inform the Defendant where those rights and procedures were to be found and implemented in making a complaint to them.
- 15.17. The Claimant knowingly failed to propose in writing, as it is recommended in the Fire-fighters Pension Scheme Circulars(FPSC), a single informal or single formal resolution meeting with the Defendant or the Defendant's representatives throughout the 5.5 years of this dispute. Such a proposal was only advanced on a first occasion on the 19th November 2010^(D092), to which the Defendant responded positively once more^(D087;D093).
- 15.18. Since the commencement of this dispute the Defendant has repeatedly attempted in good faith to seek a resolution to this issue for the good of all. Attempts which have been consistently ignored by the Claimant. The Defendant's first offer of a meeting was made in writing in the Defendant's very first letter of 24th January 2008^(D036) in which the Defendant's stated... "***I am available at any reasonable time and notice to discuss this issue. You should expect that the I will not be unaccompanied.***" This offer in keeping with all the Defendant's 6 other offers have been consistently ignored.
- 15.19. The Claimant knowingly failed in their duty of care, as recommended in the FPSC, to inform the Defendant of the existence of the Pensions Advisory Service and the Pensions Ombudsman or other independent arbitration outside the Scheme where impartial pension advice or Statutory investigation might be obtained.
- 15.20. The Claimant knowingly failed to publish information to their members that it was a contingent legal principle of the DPA that in order to lawfully access members' 'relevant' DWP benefit records they must engage in a multi stage lawful mechanism in a duress free consensual atmosphere^(D095) approved by *all* the members of the Scheme ^(D096).
- a) The Claimant failed to explicitly and fully inform Scheme members of their complete intent of purpose when seeking access to members' 'relevant' records held by any Agency including the DWP;
 - b) The Claimant failed to request that the members *voluntarily write* to the DWP giving their explicit, fully informed, and freely given consent to the DWP to allow *qualified* access by the Claimant to Scheme members '*relevant*' DWP records;
 - c) The Claimant in creating a lawful mechanism or obtaining qualified access rights must accept in the event of further and future maladministration that the consequences of such a failure rests entirely with them, not the Scheme members.
- 15.21. The Claimant did knowingly and specifically engage in criminal breaches of the DPA by unlawfully importuning the LPS to mislead the DWP into releasing complete personal DWP benefit subject data records without the subjects' explicit, fully informed, freely given express permissions ^(D082;D097;D098;D099). Data which the Claimant, as a third person received whilst knowing the data had been obtained by the fraudulent action of their contractor the LPS in a further contravention of s55 of the DPA.
- 15.22. The Claimant did knowingly and unlawfully attempt without informing the Defendant, contrary to the DPA, to obtain *all* the Defendant's subject data, namely, *all* the Defendant's benefit records from the DWP to which they knew, or ought to have known, they were not lawfully entitled^(D100).
- 15.23. Claimant did, in a calculated manner knowingly act in breach of the terms of their 'Freedom of Information Act Publication Scheme'^(D101), in breach of the Freedom of Information Act 2000(FoI) and in breach of the DPA. The Claimant has acted

obstructively and without just cause by failing to respond positively to the Defendant's lawful FoI and DPA Requests for information and for access to the Defendant's subject data, the Defendant's Personal Record Files, for over 5 years.

- 15.24. These Requests included repeated written demands to release the Defendant's 35.5 year service Personal Record Files(PRF); obstructive actions which have necessitated the repeated and direct intervention of the Information Commissioner and for which the LCC was punitively placed on 3 month monitoring probation^(D102) ; in a Decision Notice^(D103) was found to be in breach of two sections of the FoI; and although the Claimant were ordered to release the Defendant's PRF^(D104). it was only after the Defendant made an Application to the High Court in October 2011 that his PRF was finally released 3 months later.
- 15.25. Scrutiny of the Defendant's PRF simply confirms what the Claimant refused to confirm for the preceding 5 years that with the exception of 1xDWP document issued at the commencement of his pensions no DWP records of any description have been retained or maintained in his PRF. Records which ought to have included not only information supplied by the Defendant to the Claimant but information independently supplied to them by the DWP to which they responded but did not keep a record.
- 15.26. The Claimant has breached their statutory duty and their *duty of care to the Defendant* which was to maintain an accurate 'account' of the Defendant's pensions; to maintain and retain accurate records of information which are relevant to the Defendant's pensions supplied to them by the Defendant's himself and by other Agencies; to accurately record their actions upon receipt of this information; and to communicate their final decisions on that information, in writing, to the Defendant.
- 15.27. The Claimant has failed to discharge a duty of care to the Defendant's under their SLA and in so doing have knowingly denied the Defendant his legal rights as a member of the Scheme.
- 15.28. The Claimant did knowingly fail to engage in reasonable resolution dialogue with the Defendant's solicitors and when finally forced to engage deliberately made no meaningful contribution ^(D105).
- 15.29. The Claimant had a public duty to acknowledge and to respond to resolution proposals from the Defendant but they repeatedly failed on 6 occasions to do so.
- 15.30. To assist a just and fair resolution the Defendant proposed a total of three political and pragmatic written Resolution Mechanisms to the Leader of the CC copied to the Chairman of the CFA and to all elected Members of the CFA including the Claimant's staff. The Defendant's published the first Resolution Mechanism, an 8 page document, on Tuesday the 23rd June 2009^(D106); the Defendant published the second Resolution Mechanism a 3 page document, to the same circulation on Wednesday 5th August 2009^(D107); the Defendant published the third Resolution Mechanism, a three page document to the same circulation, on Tuesday 27th October 2009^(D108). Not a single Resolution Mechanism was ever acknowledged or responded to in any manner by a single politician or the Claimant.
On a fourth occasion the Defendant raised the existence of all three Resolution Mechanisms with CC Driver Leader LCC at County Hall on the 15th March 2010 at a meeting he called. He dismissed every single one of these Mechanisms, stating he had not even read them.
- 15.31. Following two letter from the LFRS^(D109;D110) the Defendant responded with positive comments and a fifth Resolution Mechanism was proposed^(D111;D112). The Claimant neither acknowledged nor responded.

16.00. Claimant Maladministration- Defendant's Injury Award.

- 16.01. The Scheme requires that the Claimant have a Scheme of Delegation (SoD) which empowers their statutory functions which is to assiduously create and maintain an accurate 'account' by means of a robust, effective, efficient, proactive recording and informing pension management system; and a system which is cognitive of impacting national legislation.
- 16.02. The first SoD ^(D059) was belatedly originated in 2004, six years after the formation of the LFRS. The SoD delegates powers for injury pensions to the Chief Fire Officer:
- For comparison, the SoD Section 5.16e is the delegated power for Local Government Superannuation Regulations which contain a *specific requirement* for an *annual review* of the payee status by the LFRS;
 - By contrast the Claimant's SoD Section 5.17g, 'Retirements and Pensions-The Firemen's Pension Scheme' is the applicable delegated power which *does not* contain a specific requirement for an annual review of the payee status by the Claimant...
"To determine the actual injury allowance payable on each individual qualifying case of injury or disease both retrospectively and for the future."
 - It is inconceivable and unworkable, in determining liability that pensions should not be reviewed monthly; annually; and in anticipation of future and retrospective relevant national legislative changes.
- 16.03. The Claimant corporately failed in maladministration to accurately draft and implement a SoD which was designed to create an accurate pension account; an account which was cognitive of national impacting legislative changes; and a SoD with a mechanism to automatically publish significant changes to members.
- 16.04. In 1997 after retirement the Defendant regularly received regular monthly pension pay statements; published changes of liability; and an annual P60 statement:
- In 1998, following the creation of the CFA, it was decided that no monthly pay slips would be issued and only pay slips issued when a change of entitlement had occurred;
 - The Defendant's archive records show that since 1997 no monthly or annual reviews of liability, including the Defendant's IA, have ever been carried out, or if they were, not published to the Defendant;
 - The Defendant's archive records indicate that 7 years passed with only the issue of an annual P60.
- 16.05. The Claimant in complying with their SoD have:
- failed give timely direction in pastoral care regarding the Defendant's *entitlement to apply* to the DWP for REA;
 - failed to take prompt action on the Defendant's information supplied to them;
 - failed to retain historical REA documents of notification including, independent notification, from the DWP;
 - failed to record and keep current their liability decisions within the Defendant's PRF;
 - failed to communicate those decisions to the Defendant's, a member of the Scheme;
 - failed to carry out monthly and annual liability reviews since 1997;
 - failed to carry out in particular a monthly and annual liability review of the Defendant's REA entitlement since 1999;
 - failed to communicate their decisions to the Defendant's after determining their IA liability based on all the information supplied to them since the Defendant's initial receipt of REA in 1999.

17.00. The Legal Question-‘Consent’ Forms.

- 17.01. Prior to the issue of the ‘consent’ forms in November 2007, the Defendant’s own records, and his DWP independent records, confirm the Defendant’s complete compliance with his obligations, whether lawful, or not.
- 17.02. On Tuesday 13th November 2007^(D013), and subsequently, the Claimant sent the Defendant a ‘consent’ form (with 4 subsequently amended Editions) which demanded, upon threat of pension ‘suspension’, access to **all** the Defendant’s DWP records to which they knew, or ought to have known, they were not lawfully entitled.
- 17.03. On Wednesday 16th January 2008 the LPS^(D035) wrote to the Defendant... ***“if I do not receive a reply by the 4 February 2008 the injury part of your pension will be suspended.”***
- 17.04. On Thursday 24th January 2009^(D036) the Defendant wrote to the Claimant giving them due notice under the DPA S42(1) of his intention to seek an “Assessment” from the Information Commissioner for the unfair and unlawful manner in which they proposed to obtain the Defendant’s DWP subject data.
The Defendant’s drew their attention to the DPA Principles; Schedule 1; Part 1; 1&2; Schedule 1; Part 2.1(1). Interpretation of the Principles in Part 1; Section 55,1(b) Unlawful obtaining etc’ of personal data.
The Defendant reminded the Claimant that they did not have his freely given express approval to recover *all* the Defendant’s DWP records and that it was also contrary to the DPA to ‘share’ the Defendant’s data with a third party, namely the LPS without the Defendant’s express written approval,.
- 17.05. On Monday 28th January 2008^(D113) the Defendant served by hand, (receipted on the 29th January 2008) a 7 day “Cease and Desist” Data Subject Notice pursuant to S10 of the DPA, on the Chairman of the Claimant.
On the same day the Defendant again served by hand a Notice on the LPS(receipted).
The Defendant registered a written complaint that Claimant had failed to implement their own standards of conduct.
The Claimant failed to acknowledge official receipt of the Defendant’s Complaints and Notices; failed to respond within the 20 statutory days; failed to comply with the DPA and with their own public service standards.
- 17.06. On Monday 28th March 2008^(D062) the Claimant wrote to the Defendant specifically conceding that...
“Unfortunately the current Scheme makes no specific provision which authorises LFRS to obtain the required information from DWP. However, the provisions of the Scheme and the duties placed on LFRS in relation to the administration of the Scheme are unworkable...”
Furthermore ...
“LFRS and Lancashire Pensions Services have reviewed the position and made a further approach to DWP asking them to provide the required information without the necessity for individuals to consent to disclosure.”
- 17.07. On Monday 31st March 2008 by email at 18:14hrs ^(D073) the Permanent Secretary of the DWP issued the following positional statement which was forwarded to all disabled members...
***“Suspension of Subject Data Release
Dear Mr Burns
I have now had a response from Head Office. Their advice is that where a Fire Service pensioner believes they have previously given their written authority for DWP to release information to the pension administrators, they should write to the scheme stating that they wish to withdraw that consent.
Kind regards
Linda Gilroy DWP Data Protection Officer for Lancashire and Cumbria.”***

The DWP rejected all unlawfully obtained 'consents' and returned them en masse to the Claimant^(D071).

- 17.08. On Thursday 12th June 2008 ^(D114) the Claimant wrote to a disabled member, ...
"Unfortunately DWP have returned your completed form and have asked us to reword the form in order to ensure that they are fully compliant with the Data Protection Act. I am therefore enclosing a slightly revised form for your completion."
This *fourth edition* includes in further error, these words ...***"...all incapacities and benefits received..."***.
Once more in continuance of administrative ignorance of the Scheme the Claimant still did not grasp it is only 'relevant' benefits they have the right to know.
- 17.09. On Monday 16th June 2008^(D041) the Claimant wrote to the Defendant enclosing a 'consent' form stating:
"I also confirmed that an approach had been made to DWP asking them to disclose the required information without your consent. Unfortunately DWP has not yet agreed to provide the information without your consent to disclosure. In the circumstances, as you have not consented, LFRS have therefore determined that your injury pension should be suspended with effect from 1 July 2008 until such time as the necessary information is available to determine correctly the amount of payments to be made."
Once more in contradicting itself the 'consent form states...***"I give the DWP authority to disclose details of all incapacities and benefits received to Lancashire Pensions Services."***; and in demonstrating further administrative ignorance continues... ***"or additional benefits that the Defendant's may be awarded by the DWP in relation to the Defendant's injury"***...this is not a call that the DWP makes. This is the statutory duty of the Claimant.
- 17.10. On Wednesday 25th June 2008 the Defendant wrote to the LCC Chief Executive and to the Deputy County Secretary and Solicitor citing 4 documented examples^(D082;D09;D098;D099) whereby the Claimant had, by criminal deception in wilful breach of the DPA, obtained disabled FSV Scheme members' subject data without disabled FSVs knowledge or express written permission.
- 17.11. On Wednesday the 24th September 2008 the DWP Permanent Secretary wrote to the Defendant ^(D115) ...
"Where consent is provided it should be explicit, fully informed, and freely given. Where the form of authority provided to DWP does not meet this requirement, we do, on occasion, advise the third party seeking the information where their consent form is lacking. I can confirm DWP staff did help with the redrafting of the consent form. We did so to ensure that those people who choose to provide their consent were fully informed as to what they were consenting to."
The fact remains that it is for disabled FSVs to give their 'consent' to the DWP *not* the Claimant.
- 17.12. When the Defendant joined the Scheme in 1963 in Belfast a lawful 'gateway' existed to the Defendant's DWP (nee DHSS) subject data. the Defendant was not asked, nor required, to give his consent to the Fire Authority to access his records. These 'open' and lawful arrangements were closed with the enactment of the DPA in 1998.
- 17.13. The Defendant has never refused to disclose the Defendant's 'relevant' DWP records^(D087). The Claimant are lawfully entitled to view the Defendant's 'relevant' DWP records *provided* a lawful arrangement is in place; or *the Defendant's explicit, fully informed, freely given, express permission* has been given *directly* to the DWP to allow access by the Claimant to the Defendant's relevant data.
- 17.14. The Defendant declined to sign any of the 5 editions 'consent' forms for the following *legal* reasons:
- a) acting on the instructions of the Defendant's solicitor;
 - b) The Claimant was aware that the DWP had rejected all 'editions' of these 'consent' forms because they did not comply with the law or principles of the DPA 1998;

- c) The Claimant did not make their purposes explicit to the Defendant;
- d) the Defendant's 'consent' was not to be given explicitly, freely, and fully informed;
- e) the Defendant's 'consent' was to be given under duress and thus not freely given.
- f) The Claimant had no statutory powers within the Scheme to create and/or use a 'consent' form Rule as a precondition to receipt of a pension.
- g) The Claimant sought without statutory powers *within* the Scheme, and with an illegal mechanism *outside* the Scheme to create a new Rule and a new precondition to the receipt of the Defendant's pension;
- h) no statutory provision exists within the Scheme, nor does the Defendant have a statutory obligation, which requires the Defendant as a precondition to the payment of his pensions, in whole or in part, to sign any document, including a 'consent' form;
- i) no lawful Scheme mechanism presently exists and the Defendant has never received a lawful request, without duress, to give his permission directly to the DWP to allow the access of the Claimant to the Defendant's 'relevant' data.
- j) the Defendant has no statutory obligation to give the Claimant access to *all* the Defendant's DWP records;
- k) the Defendant has no statutory obligation to give the Claimant access to *any* of the Defendant's DWP records.
- l) the Defendant has repeatedly pointed out to the Claimant in writing that they were not legally entitled to see *all* the Defendant's records which belong to the DWP because the Defendant's records include bereavement payments to the Defendant's late wife Jill's estate which have no bearing whatsoever on the receipt of the Defendant's IA;
- m) The final edition of the 'consent' form sent to disabled members for their signature in July 2010 continued to be unlawful because it sought to obtain subject data from the DWP which is simply *not germane* to *any* disabled members' qualifying injury.
- n) The Claimant *in deceit* reissued 4 amended 'consent' forms deliberately intending to mislead by omitting an imprimatur or an edition number on the form indicating that it was an official document and that it had been officially revised or amended.
- o) The Claimant actions are unsupportable in law;
- p) The Claimant's reaction to the Defendant's lawful refusal to sign a 'consent' form(s) is *neither reasonable; proportionate; nor lawful*.

17.15. The Defendant declined to sign any of the 5 'revised' editions of the 'consent' forms for the following *personal* reasons:

- a) the Claimant exhibits a discriminatory, defamatory, and harassing attitude;
- b) the Claimant lacks common respect and dignity for the Defendant;
- c) the Claimant imputes fraud on the Defendant's part.

18.00. Suspension or Withdrawal of The Defendant's Injury Pension?

18.01. When this issue was routinely brought to the Claimant's attention in March 2007 by an innocent FSV the Claimant discovered the extent of their maladministration. They subsequently attempted to cover up these statutory failures by use of unlawful acts; unlawful documents; simple criminality in abuse of the DPA; by acts of coercion and deceit; and by acting in ultra vires. Such acts, including those against the Defendant, were knowingly unjustifiable, disproportionate, unreasonable, deliberately punitive, and unlawful.

18.02. The Claimant insists that they are not in a position "***to determine correctly the amount of payments to be made.***", citing as justification the Defendant's refusal to sign their unlawful 'consent' forms^(D041).

- a) *If* the Defendant's pension and his associated PRF had been robustly administered since 1997, which the release of the Defendant's PRF now confirms the Claimant did not, then they would be have been in the absolute position to accurately calculate the amount of monies allegedly owed by the Defendant by consulting his maintained PRF;

- b) Acting in good faith the Claimant could also have legitimately requested the DWP to supply generic benchmark annual figures for maximum REA allowances paid to any Scheme member, including the Defendant, on a year by year basis since 1999, but they did not attempt to do so;
- c) On Friday 24th April 2009 the Claimant were informed^(D039) by the Audit Commission that the Defendant was in receipt of REA. Based on this return even if they possessed no other records, they could readily have determined their liability, but they chose not to do so;
- d) The Claimant have been informed 12 times of the Defendant's relevant DWP benefit status including 3 days after they decided to withdraw the Defendant's IA;
- e) Since 1999 to date the Claimant have had numerous and ample opportunities to determine their liability and any alleged debt that they say has arisen, yet they have deliberately failed to act;
- f) aggressive attempts in recovering alleged overpayments without the provision of supporting evidence is yet more evidence and confirmation of maladministration;
- g) The Claimant actions in deliberately failing to do so are simply punitive and intended to impose hardship on the Defendant and his extended family and given the period of time which has now elapsed the Claimant decided without presenting evidence to a competent court that the Defendant's IA is *latae sententiae* and thus forfeited by the Defendant.

The Pensions Act 1995, S92 Forfeiture, etc.

—(1) Subject to the provisions of this section and section 93, an entitlement, or accrued right, to a pension under an occupational pension scheme cannot be forfeited.”

18.03. The Social Security (Recovery of Benefits) Regulations 1997 was introduced to allow the Secretary of State to eventually recover DWP benefits paid in the interim to injured 'victims' who were subsequently compensated (known as the 'compensator') by either individuals, companies (insurance etc), or through the Court.

The Social Security (Recovery of Benefits) Regulations 1997, s2, (2), (f), Exempted Trusts & Payments, exempts from recovery... "any payment made to the injured person in respect of sensorineural hearing loss where the loss is less than 50 dB in one or both ears";

The Claimant (the compensator) and the DWP (the compensator) at Service discharge decided that the Defendant's injury was a 5% disability.

The human hearing range is generally agreed to be 0-120dB. The Defendant's loss equates to 5% of 120dB namely 6dB which is considerably less than 50dB and thus the Defendant qualifies within the meaning of this Regulation.

Therefore any payments of REA (one of the defined 'benefits' which includes incapacity benefit) is exempt by Regulation from 'recovery' by the Secretary of State.

Within the meaning of these Regulations the Claimant are the 'compensator' in this situation and whilst the compensator may seek to recover REA payments from the Defendant the Secretary of State and Parliament have already chosen by means of a statutory defined qualification in this and other cases not to do so.

Because the Secretary of State and Parliament have chosen not to do so the compensator the Claimant are bound by this Regulation and thus by extension are not lawfully entitled to recover REA payments from the Defendant even if due which is denied.

SEEKING RESTITUTION.

19.00. Stifling the Voice of Democratic Dissent.

19.01. A limited number of the Claimant documents of internal correspondence have been released to the Defendant under mutual disclosure ordered by the Court.

Particular documents of note are (C-70; C-153;C-164;)

Without exception these documents, including an anonymous letter written by a 'concerned taxpayer'^(C-70) who was most certainly former County Councillor R.Wilkinson then Chair of the CFA and one of the Defendant's less illustrious firefighters illustrates a constant thread of what can only be described as victim pursuit in which the Defendant; his good name; his loyal service; his unblemished service records; his private history; and his successful commercial income have been raked over, deliberately besmirched, and exposed to intensely hostile scrutiny in order to find any evidence which could be harmful to the Defendant's persona; his private life; his probity; or his public integrity, but without success.

A corporate campaign confirmed by these documents illustrates the depths to which two major Local Authorities, including the Claimant, authorised by their Elected Members were prepared to stoop and did just that.

19.02. These corporate and CFA Elected Member approved the 'principles' referred to in these documents which the Claimant insists were approved by them, were clearly coordinated by the Claimant in complicity with their contractor the LPS; activities which had not only the objective of besmirching the good name of the Defendant and others but were specifically designed to divert public attention from their collective failures as public service pension administrators and to specifically obscure public scrutiny of their unlawful activities in which they subsequently engaged to ameliorate their public failure.

19.03. It was clear from the outset that any form of democratic objection within the law or any call for a proper public 'review' of this issue was to be ruthlessly suppressed in the pursuit of face and reputation saving. The stance adopted by the Claimant and the LPS was to blame the victim which is hardly original coupled with an arrogant and brutish response when challenged on any aspect of their actions or activities, encapsulated in the phrase, 'I will because I can'.

Thus at an early point without any evidence being presented to the courts or the Public the Defendant and others were deliberately misrepresented as benefit fraudsters though at no point have the DWP ever thought or confirmed so by a single public statement.

19.04. Later abandoning any degree of common civility or civilised behaviour the Claimant and the LPS both allegedly mature and responsible Local Authorities sanctioned by their Elected Members engaged in the unbridled imposition of deliberate financial hardship on the Defendant and others to 'persuade' them to see the error of their ways in order to force them into compliance with the Claimant's views and unlawful actions. Once more encapsulated in their phrase... ***"it is hoped to persuade the individuals of an appropriate resolution, potentially using the hardship route if this is necessary."*** (C-164)

In the case of the Defendant it is also clear from another document^(C-153) that the intention to leave the Claimant totally destitute had been explored by suspending every pension he was entitled to, but because of standing pension regulations this was not achievable.

It is nonetheless clear that every means fair or foul were to be used in harassment to 'induce' the Defendant to see the error of his ways and capitulate to the Claimant's unlawful position which was simply that 'might was right'.

19.05. This heinous exploitation of the weapon of financial hardship was not a coincidental effect of the Claimant's unlawful actions but a deliberate policy which the Claimant states in correspondence was approved not only by *all* the CFA Elected Members but in particular by the Claimant's Injury Pension Sub-Committee Elected Members which reports to the main CFA Committee. Under the duress of such contrived and deliberate oppression it is hardly surprising that many disabled FSVs signed up for 'deals' under non-disclosure agreements.

- 19.06. Whilst stifling the voice of lawful dissent was clearly an approved policy of the Claimant and the LPS allied with the pragmatic use of financial threats of hardship and/or the inducement of a secret 'deal'. It is also clear from the Claimant's own records that no opportunity was missed to directly stifle and emasculate the legitimate voice of democratic representation of the Defendant and the 16 others he represented.
- 19.07. Document ^(C-153) is a prime example of the secret manipulation of circumstances, including political circumstances, to the direct advantage of the Claimant whilst ensuring that both the Defendant and in particular those whom he represented were disenfranchised of any hope of using the democratic political process to seek a fair minded resolution to this issue.
- 19.08. It is political chicanery at its very best when the Claimant was prepared, as their records show, to directly discriminate against the Defendant by preventing his personal presence at a major political meeting which was to work towards the peaceful resolution of this issue.
Furthermore, the Claimant after having deliberately placed the Defendant and those he represented at a total disadvantage then constructed a report which the Defendant can only conclude disadvantaged him personally which was designed to find its way^(C-153) to the LCC Leader with the intention of not only smearing and discriminating against the Defendant but as an intended consequence to underpin the political activities of CC O'Toole the Chair of the CFA who clearly was under political pressure to find a prompt solution.
- 19.09. It is only possible at this point in disclosure for the Defendant to paint a limited picture of the 'behind closed doors' activities of the Claimant and the LPS with its direct effects on the Defendant and others.
On Friday 11th May 2012 the Court has ordered the reconvening of the Defendant's Specific Disclosure Application which will provide a comprehensive opportunity to present a sought for list of further documents of which the present release confirms the existence. Just as there cannot be proportionate truth, neither can there be the proportionate release of documents in such grave matters.

20.00. Claimant Abuses and Obstruction of Fundamental and Natural Justice.

- 20.01. The Defendant was denied the elementary fairness which the law and natural justice demands; his legal rights which included that which he was accused of;
- 20.02. The Defendant was never allowed to present his side of the case and whilst other Scheme members had resolution solutions presented to them under 'Non-Disclosure Agreements' including one notable case during which the Claimant admitted "poor administration"^(D049), no such solution was ever proposed to the Defendant or those he represented;
- 20.03. No impact study was ever carried out to which the Defendant was invited to contribute should it have been evidentially proven by the Claimant that the Defendant in some manner owed them money or how the restitution of that money might impact on the Defendant's overall income which included financially supporting the Defendant's extended family part of which was in marital distress;
- 20.04. No pastoral care was ever proffered to the Defendant in this entire matter instead the Defendant was regularly publicly humiliated and secretly branded, without any form of legal justification or evidential presentation to the Defendant as a benefit fraudster^(D086); a misappropriator of public funds; and a troublemaker for having the temerity to challenge the Claimant's assertions during this dispute. The Claimant did this because, as they saw it, they could.

20.05. The Claimant has maladministered the Defendant's pensions and in order to cover up their statutory failures over the preceding decades have engaged in deliberately imposed oppressive and obstructive misbehaviour, including financial hardship to dissuade the Defendant from pursuing his search for fair play and justice. In a direct abuse of the judicial process the Claimant issued a High Court proceedings against the Defendant which he regarded as nothing more or less than litigation intimidation whilst failing to take similar proceedings against 4 other disabled FSVs whom the Claimant states are in a parallel dissenting position.

20.06. In order to cover up their maladministration the Claimant in dispute with the Information Commissioner engaged in a deliberately protracted defence against the release of the Defendant's subject data to him. Subject data which included the Defendant's pension records which ought to have been retained as a statutory duty in the Defendant's PRF and which the belated release of his PRF now confirms, as the Defendant claimed all along, do not exist.

20.07. The Claimant by its premeditated abuse of the judicial process in refusing to release the Defendant's PRF deliberately, as intended, disadvantaged and frustrated the Defendant's right to complete a litigant's case against the Claimant and to issue proceedings. Justice over a deliberately extended period was denied to him.

20.08 Article 6 of the Human Rights Act 1998 states that any trial must take place within a "reasonable time" doing otherwise is a fundamental denial and breach of the Defendant's human rights:

- a) The Claimant has had 5.5 years (March 2007-to date) since this dispute arose to issue proceedings against the Defendant;
- b) The Claimant threatened legal proceedings against the Defendant 6 times but failed to do so, thus knowingly, disproportionately, and deliberately delaying legal proceedings in a calculated misuse of the judicial process thus deliberately perpetuating hardship on the Defendant by denying him his Injury Award Since 1st July 2008.
- c) The Defendant considers these malign, and deliberately excessive delays, are a direct violation of the "reasonable time" requirement of this Article.

20.09. Five published prejudicial statements were issued without the knowledge of the Defendant by the Claimant ^{CD083;D084;D085;D086}. These were by the Claimant to the Defendant's solicitor; to the Minister of State at the DWP; to the Defendant's Member of Parliament; and by the Claimant's Barrister in which he claimed that the Defendant had 'misappropriated' the Claimants funds without any form of supporting evidence; and to others which included the Information Commissioner and the First-Tier Information Appeal Tribunal. A further statement was made by the Claimants contractors through the LCC Deputy County Solicitor who accused the DWP of allowing "in effect" and in implication the Defendant to commit the crime of fraud.

These statements cast aspersions on the probity, honesty, and good name of the Defendant.

These statements were publicly prejudicial and were designed to mitigate against any form of fair public trial and to shape the public's and others perception of the Defendant.

21.00. Equality Act(EA) 2010 continuum of the DDA 1995.

21.01. On Monday 28th January 2008^(D113) the Defendant believed that he had been discriminated against under the Disability Discrimination Act 1995(DDA) so he wrote to the Claimant and asked him to supply the Defendant's with the necessary Complaint Form S56 2(a):

“forms by which the complainant may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;”

No acknowledgement or response was ever received.

21.02. Under the Equality Act 2010 the Defendant is a member of an occupational pension scheme which has a non-discrimination Rule. The Defendant has a defined protected characteristic, namely, a DWP disability. The Claimant is in breach of the clauses and rules of the EA in respect of the terms with which the Defendant was treated.

21.03. In breach of the EA the Claimant’s solicitor Eversheds confirmed that the Claimant had specifically identified a group 2000+/- retired FSVs within which there were two further groups each with protected characteristics, namely:

- a) A disabled Medical Discharge group, namely, those with a compulsory ‘medical’ discharge which included CC Wilkinson;
- b) A disabled Injury Award group, 167+/-, namely those with a compulsory medical discharge ‘qualifying’ Injury Award including the Defendant;
- c) The Claimant exclusively carried out a pension ‘review’ on the ‘qualifying’ Injury Award group thus treating these disabled FSVs less favourably than those whom they did not ‘review’ namely, those disabled FSVs with a *similar* protected characteristic who had a compulsory ‘medical’ discharge;
- d) Eversheds, solicitors representing the Claimant wrote on 5th March 2008^(D116)...
“A review was accordingly commenced in October 2007. The review was confined to injury pension. 157(sic) pensioners are affected by this review.”
- e) The Pensions Act 1995 S62 states:
***“(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.
—(2) An equal treatment rule is a rule which relates to the terms on which—
(a) persons become members of the scheme, and
(b) members of the scheme are treated.”***

21.04. Claimant in breach of the EA did, in the Defendant’s perception, repeatedly and knowingly engage in unwanted misconduct relating to the Defendant’s relevant protected characteristic which had the purpose and effect of violating the Defendant’s personal dignity.

21.05. The Claimant, as their confidential records, show deliberately created an intimidating, hostile, degrading, humiliating, and oppressive environment for the purposes of coercive duress under the threat of withdrawal of the Defendant’s and others IA, and by attempting to bully the Defendant into signing diverse editions of their unlawful instrument(s) namely, ‘consent’ forms.

21.06. The Claimant in the performance of their public function are the ‘service provider’ for the Defendant’s pension payments.

By failing to pay all the Defendant’s pensions whilst he is in compliance have:

- a) discriminated against the Defendant contrary to the EA occupational pension non-discrimination rule as a person with a protected characteristic by providing less equal treatment than others^(D117);
- b) victimised the Defendant by attempting to impose non Scheme conditions and Rules in the manner in which the Defendant’s pension was to be paid;
- c) in the performance of their public function acted in a manner which constitutes discrimination, harassment, and victimisation;
- d) did not continue after 13.5 years to provide the Defendant with the service, or in the terms of his compliance, which they usually provide this service to the Defendant;
- e) did engage in harassing personal defamation ^{CD083;D084;D085;D086};
- f) did engage in indirect discrimination by association as a member of a group of 17 disabled FSVs opposed to their unlawful actions;

- g) did in personal victimisation withhold the Defendant's IA and imposed punitive personal financial hardship because the Defendant was the mandated leader of a group of 17 disabled FSVs opposed to their actions;
- h) did engaged in direct harassment of the Defendant by means of a written threat in a recorded delivery letter falsely claiming that it was their intention to issue a High Court proceedings against the Defendant for defamation whilst in the knowledge that a 1993 Law Lords ruling expressly forbade any such an action by a local authority^(D118).
- i) did on at least 6 occasions state that they intended to issue proceedings against the Defendant without doing so^(D084;D118;D121;D122; D123; D124).
In the Defendant's perception these were acts of intimidation of a corporate public body with unlimited financial resources against an individual with limited financial resources. This was a direct attempt to place justice beyond the Defendant's economic reach and deny the Defendant the right of audience;
- j) did breach the EA in that they knowingly and wilfully harassed and obstructed the Defendant by deliberately delaying the Defendant's Court preparations for over 5.0 years by failing to 'find' and release the Defendant's PRF;
- k) did breach the EA by acting unlawfully, unreasonably, using disproportionate and unlawful means to achieve the aims of their 'review' and in so doing have caused the Defendant distress and hurt^(D120);
- l) did breach the EA by inducing and/or instructing the LPS to act unlawfully in importuning the subject data of Scheme members, including the Defendant's, contrary to the DPA^(D119);
- m) did with malice victimise the Defendant by terminating the provision of his pension service even though the Claimant states there are 4 or more other FSVs in a similar dissenting position. The Defendant regards this as deliberately punitive because the Defendant also represents, at their written request, 16 other disabled FSVs, widows, and families;
- n) did issue High Court proceedings exclusively against the Defendant in the professional knowledge that the value of their Claim did not fail within the criteria required for such a High Court an action perceived by the Defendant as deliberate oppression and intimidation and misuse of the Courts:
 - o) that the Claimant did deliberately engaged in a sustained campaign against the Defendant on a personal level by means of discrimination, intimidation, and character assassination initiated and sustained by the LFRS Head of Human Resources Mr.B.Hamilton^(D48) and his line managers;
 - p) that the Claimant did under the express mandate of the Elected Members including the Chair of the CFA CC D.O'Toole and the Elected Members of the CFA Full and Injury Award Sub-Committees, approve and underwrite the unlawful actions of their agents, namely Mr.Hamilton; his line manager Mr.Warren; the Claimant's Solicitor Mr.Harold; and by the acting head of the LFRS Mr.P.Holland;

21.07. Under the Equality Act 2010 and the Human Rights Act 1998 the Defendant is seeking remedies occasioned by the breaches of Claimant's statutory duties by means of currently unspecified damages for distress and inconvenience which will be detailed in the Defendant's Schedule of Damages required by the Court not later than 16:00hrs on Tuesday 12th June 2012;

21.08. The Public including the Defendant and those he represents have the right to expect those in public office to conduct themselves in a particular and seemly manner. Fundamental courtesy, civility, helpfulness, and common decency should be and usually are the order of the day. This was so in the 35.5 years of the conduct of the Defendant as a civil servant in public office himself.

In this case the exact opposite misbehaviour from the Claimant and the LPS is now accepted as the norm by the Defendant and other disabled FSVs. It is the usual expectation that any request connected with this issue will be responded to, if at all, by

hostile impertinence, disdainful obstruction and measured contempt, with gratuitous insult to the intelligence, which is usually accompanied by either an implied threat or a disdainful 'run along' attitude.

Within this secret and arcane world which in its institutionalised arrogance ignores the ultimate power of the Court to seek the truth on behalf of the Defendant it is to be expected that the Defendant and others will be referred to in certain derogatory terms.

Document No:153 released by the Court records an email communication between the current head of the LFRS Mr.P.Holland; his Director of People Mr.R.Warren; copied to the Clerk to the Combined Fire Authority Mr.M. Winterbottom JP DL Under Sheriff of Lancashire and legal advisor to the Combined Fire Authority in which they refer to the Defendant in the grossly offensive terms as an "animal"...

" I agreed but expressed the view that he was a wounded animal and these were his last throes".

A Local Authority conducting its business in a responsible manner should never use such abhorrent language about any member of the public who pays their wages and whom they are meant to serve and not especially about an honourable disabled Fire Service Veteran a member of their pension scheme for whom they have a special duty of pastoral care.

In this case it seems necessary for the Defendant to remind the Claimant and those Elected Members of the Combined Fire Authority who have, according to their written records, sanctioned and approved this ethos of personal insult of the following...

History and the public records show that the Defendant whilst in Service in Lancashire has brought great credit to the Lancashire County Fire Brigade and has been decorated by four Nations, on one occasion, in the field.

Those nations are the United Kingdom; Armenia; the Soviet Union and Russia; and the United States of America from whom he holds the US Medal of Valor(second only to the Congressional Medal of Honor) and Honorary Citizenship of the State of Oklahoma.

I believe that the facts stated in this witness statement are true.



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Signature Paul P Burns
Date: Tuesday 14th April, 2012.