

Defence to Claim – A Court Ordered Synopsis

Extracted From

The Defendant's Statement

Period 1961 – 2008.

DEFENCE STATEMENT:

1.00. Defendant's Personal Circumstances-2007.

It is especially germane to this dispute, though not a cri de coeur, that when the Claimant's pension 'review' commenced in September 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 family 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 Officer's 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 stated later.

The offensive manner in which this dispute has been mishandled by the Claimant goes to the heart of the issue.

2.00. The Defendant.

- a) The Defendant and Counter Claimant is Mr. Paul Peter Burns of 7, Kings Drive Fulwood Preston PR2 3HN.
- b) In November 1961 the Defendant joined the Northern Ireland Fire Authority as an Auxiliary Fireman.
- c) On 29th July 1963 the Defendant joined the Belfast City Fire Brigade at the start of the 'Troubles' as a Probationary professional Fireman.
- d) In October 1964 he sustained serious injuries to both ears in a street explosion during an incident. He was informed by his Consultant that he would suffer consequences later in life which he has.
- e) The Defendant rose through the ranks becoming a Staff Instructor at the Home Office Fire Service College Moreton-in-the-Marsh Glos, later transferring to Lancashire County Fire Brigade where he remained until the compulsory termination of his service.
- f) On compulsory retirement he held the rank of Divisional Officer Grade II and operationally commanded a Division of 10 Fire & Rescue stations and approximately 400 operational Officers and personnel.
- g) During service the Defendant also became the first Field Commander of the UK Foreign & Commonwealth Office International Rescue Team (An arm of diplomacy) and was decorated by five Nations, on one occasion in the field. Those nations are the United Kingdom; Armenia; the Soviet Union; 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.
- h) The Defendant is an honourable compulsorily discharged disabled Fire Service Veteran (FSV). The term FSV is an official Government title which the Government use in dealing with the British Fire Services Association.

i) The Defendant has never been charged or convicted of a single civil or criminal offence in his entire life. His discharge papers note) ^(D001) ***"Honesty and Trustworthiness: Never doubted"***.

Nor has he received a single penny of income which he has not earned and to which he is not entitled.

j) A DWP confidential record on his file contains the following internal documentary statement dated Saturday 28th March 2010... ***"The customer never misled or provided any incorrect information to the department."*** ^(D042).

3.00. Industrial Injury-1995.

a) On the 27th January 1995 after advice from the Brigade and the DWP *whilst still in service* the Defendant made application to record the Defendant's original injury in 1964 using DWP Form BI 95^(D024).

Correspondence then followed over an extended period between the Defendant, LCFB, Northern Ireland Fire & Rescue Service and the DWP.

b) On the 13th July 1995 the DWP formally acknowledged the Defendant's application to record an Industrial Injury^(D026);

c) On the 22nd July 1995 the Defendant was asked by the DWP to complete Claim Disablement Benefit Form BI100A though he continued in service and he never made any form of claim either against the DWP or his employers in litigation;

d) On 31st October 1995 the DWP on Form BI 132B^(D028) accepted the Defendant's claim and recorded it as an Industrial Injury a fact recognised in parallel by the Claimant as an in-service 'qualifying injury' under the Firemen's Pension Scheme Order 1992 (SI 192);

4.00. Compulsory Retirement-1996-To date.

a) 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).

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

c) 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.

d) On Friday 18th October 1996 the Defendant was informed he was to be compulsorily retired on the grounds of specific ill health and suspended from all operational duties^(D004).

e) The Defendant's compulsory retirement was therefore directly attributable to his Industrial Injury and accepted as a 'qualifying' injury under his pension Scheme.

f) 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.

N.B: D008, the Pension Retirement Calculation Statement from Ms.Drinkall's office was produced twice because of calculation error and was reissued on 13th November 1996 verified, signed off, and issued to the Defendant.

g) On 24th October 1996^(D009) the Defendant provided the Claimant with Minutes of the above meeting.

4.08. The Defendant regarded this pre-retirement meeting as ***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, 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) Subsequently these records and other relevant pension records were retained and maintained for future pension administration purposes.
- e) 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 benefit or allowance, or significant changes to such relevant payment (other than annual increases) and 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 for payment; or equally, *may not*.
- f) 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 or the Scheme.
- g) The Minutes of the 24th October 1996 re-confirmed that the Defendant was not at that time in receipt of any DWP benefit or allowance, whether relevant or not.
- h) The Defendant's DWP status was also recorded by hand as "NIL" on the first and second Pension Calculation Statement issued to him.
- i) Subsequently the Defendant has always repeatedly fulfilled this 'undertaking' to the letter, whether in his opinion this 'undertaking' was lawful or not.
- j) After 3 months of Statutory Notice on Statutory Sick Pay(SSP) the Defendant's service was prematurely compulsorily terminated on Friday 31st January 1997^(D006) at 23:59hrs, aged 54(he could at his rank serve until 60) and thus he became a compulsorily retired member of the Claimant's Pension Scheme.

5.00. The Firemen's Pension Scheme Order Statutory Instrument 1992 No. 129.

- 5.01. In practice and reality as it affected the Defendant and his rights.
- 5.02. 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.
- 5.03. The Claimant and the Lancashire County Council Pensions Services(LPS-just one of 120 Schemes they administer) their pensions contractor, are the administrators of the Scheme detailed in their 'Service Level Agreement' (SLA) of January 2007^(D011).
- 5.04. The Defendant was compulsorily discharged under Rule B4(1) with a 'Ordinary' pension. Thirty years service is the statutory period for a full service 'Ordinary' pension after contributing 11% of his monthly salary for his service lifetime.
This is paid by the Claimant.
- 5.05. In late 1996 prior to retirement in addition to his 'Ordinary' pension the Defendant, after medical adjudications by both the Claimant and the DWP was classified with a permanent 5% disability caused by his recorded Industrial Injury.
This disability, known as a 'qualifying injury' under Scheme Rule 9A led to the award of an additional compensating pension (in effect a second pension) known in the Scheme as an Injury Award(IA) which amounts to approximately £400:00pm tax free for life.
This is also paid by the Claimant.
- 5.06. The Injury Award recognises the Defendant's loss of employment; his loss of future income between the ages of 54-60; his loss of promotional prospects between the ages of 54-60; his loss of earning capacity; and in general his loss of amenity and quality of life.

- 5.07. This Injury Award along with his Ordinary pension are both paid *for life* on a statutory monthly basis by the Claimant.
- 5.08. 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...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 Rule L4,4(a), the inference of this Rule being that in the event of a liability dispute all or none of the pension may be delayed, not just a constituent part, for example the Injury Award.
- 5.09. The Claimant regularly in 'custom and practice' acted in bad faith:
- In 1996 in malfeasance the Claimant unlawfully delegated their 'liability to pay' to the Defendant at the commencement of his pensions by creating an unlawful 'Rule' under the Scheme which required the Defendant's to sign an 'undertaking'^(D005) on 24th October 1996 under the duress of potential 'delay' of liability by the Claimant;
 - 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*.
 - The Claimant's 'undertaking', fails the Unfair Contract Terms Act 1977 (c.50) SCHEDULE 2 "Guidelines" for Application of Reasonableness Test which requires a signature under circumstances of duress fetters this 'undertaking' in law making it unenforceable.
 - The Claimant was 'advantaged' in 'bargaining' by the implicit threat that if the Defendant declined to sign or to undertake a key part of their statutory duty for which he had no legal responsibility they would delay payment of his pensions;
 - The Defendant received an 'inducement' under duress which was that *if he did sign* he would receive his pensions.
 - The Claimant did by this ultra vires act, whilst determining their liability, create an unlawful 'Rule' outside the Scheme Rules.
- 5.10. The Claimant's statutory duty under Rule L3(1) is to determine their *liability* to pay. 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 any 'relevant' DWP allowance, but not if the Defendant complied with the terms of the Rules and the Claimant's 'undertaking'(whether lawful or not).
- 5.11. 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 malfeasance 'delay' becomes permanent withdrawal ^(D082).
Nevertheless the Claimant is not permitted in law to create its own arbitrary 'Rules' outside the Scheme for the 'convenience' of its administration or the rectification of its failures in misfeasance.
- 5.12. S.I.192 does not place any statutory duty on the Defendant in any respect of his pensions. He does not have a statutory; common law; lawful contractual duty; or moral imperative in 'goodwill' to comply with this 'undertaking' a common ground fact admitted in the Claimant's second hearsay Statement of Truth, nor to 'assist' in the running of the Scheme.
- 5.13. The Claimant as a consequence of their misfeasance and maladministration have acted unlawfully in withdrawing the Defendant's Injury Award. They have knowingly acted in a disproportionate, unreasonable, deliberately punitive, and wilfully oppressive manner.

- 5.14. Nevertheless, prior to this 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 he received a DWP Reduced Earnings Income Allowance(REA)1999(Paid directly to the Defendant by the DWP) and on numerous other occasions when this question arose.
- 5.15. Implicit in the Claimant's statutory duties is the necessity for a robustly maintained Scheme with set procedures particularly in handling pertinent information received from various sources including the pensioner and which is in daily compliance with the Scheme and its Rules; the husbanding and accounting of public monies; the daily keeping and maintaining of accurate personal pension accounts & financial records; the daily 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 including the Defendant ^(D058).
- 5.16. The Claimant concluded without producing incontrovertible evidence that the Defendant had de facto unlawfully received funds from them 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).
 - 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 misfeasance and/or 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;
- 5.17. "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."
- a) The Claimant at an early stage by their own admission and by their misfeasance did not know if a loss had occurred; how much that loss was alleged to be; and in withholding all the Defendant's IA to date, not even a proportion, have already exceeded any potential alleged overpayment, which is in any event is denied;
 - b) 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; it seemed to the Defendant that 'might was right'.

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

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).

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 perpetually been unable to accurately calculate the correct amounts taken from him at source without accounting in order to issue proceedings against Claimant for the recovery of their full debt due to him.

5.19. 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 Scheme, 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 by the Defendant in writing;
- 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 sets 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.
- d) The Claimant failed to correct their misfeasance and maladministrative and procedural errors when invited to do so by the Defendant and failed to use the Scheme's legal provisions whilst unlawfully retaining entitlements lawfully due to the Defendant.

6.00. DWP Reduced Earnings Income Allowance(REA).

REA should not be confused with the Defendant's pensions. This is a DWP Allowance paid directly to the Defendant for loss of a well-paid job.

6.01. REA was introduced on 1st October 1986 to replace the Special Hardship Allowance. REA is an obscure allowance which is regularly, and incorrectly, referred to as a disablement benefit by the Claimant in their correspondence. Decision Makers of the DWP state that whilst REA is **not defined** as a disablement benefit it is confusingly administered under the umbrella of the IIDBranch principally in the case of the Defendant, at Barrow-in-Furness but is nevertheless defined and referred to as an 'Allowance' rather than a 'benefit' where it stands on its own merits with separate and distinctive qualifications for payment purposes.

The DWP state this prequalified and annually reviewable allowance recognises loss of *earnings potential* unlike the IA which recognises *earnings capacity*.

This Allowance is paid directly to the Defendant who entitled to it and the DWP have declined the Claimant's request to terminate the payment because this issue does not concern them.

- 6.02. Prior to the Defendant's retirement in January 1997 the Defendant had attended a joint LCFB/LCC pre-retirement seminar with the DWP present during which (it became clear later) he was misdirected by the DWP representative called Diane the District Information Officer (Preston 84109) ^(D013) that he was not entitled to receive Reduced Earnings Income Allowance (REA) in retirement a direction which pertained for the following two years until the Defendant revisited this issue in 1999;
- 6.03. On Saturday the 22nd May 1999 the Defendant belatedly applied to the DWP for REA ^(D019). It was confirmed, following discussions with the DWP, that the Defendant had indeed been *misdirected* earlier regarding his entitlement by the DWP's District Information Officer ^(D013).
- 6.04. When notified by a Scheme member of the initial receipt of REA the Claimant has a statutory duty in seeking avoidance of 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. There is specific reference in S.I.192 to REA.
- 6.05. Whilst it may over time have grown into custom and practice, the Claimant does not have an automatic right to deduct REA from the Injury Award. They must state to the recipient as the Scheme states 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 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 and not; the DWP; the LPS; a Scheme member; or the Defendant.
It is also the statutory duty of the Claimant to make a determination; to follow its procedures and take action; to record its decision in the Defendant's Personal Record files(PRF) and to positively inform its contractor the LPS.
- 6.06. 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 so this could be determined; failed to communicate any final decision to him at the conclusion of their joint deliberations, or at any other time; failed to record this decisions in his PRF; and failed to action this decision with the LPS;
- 6.07. The information to take action was presented to the Claimant independently by both the Defendant and the DWP at the earliest moment, but it went into drift.
It is of particular note that when a second opportunity was created by the DWP with its second confidential anti-fraud check 18 months later in January 2002 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.
- 6.08. At no point in spite of repeated requests has the Claimant in the last 5.5+ years explained to the Defendant how or why these misfeasance and maladministrative failures occurred.

6.09. The single confirmed DWP record^(D020) contained in the Defendant's PRF which was copied to the Defendant's then 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.

6.10. 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 5.5 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 misfeasance they did not communicate this decision to the Defendant; the LPS; nor did they record it in his PRF.

6.11. On 22nd June 2008 the Defendant's then 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).

6.12. 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 concluded, 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 misfeasance and maladministration.

7.00. Evidential Proof of Defendant's Compliance.

7.01. 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'.

7.02. 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."

7.03. 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 of 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 against the DWP or those liable;
- e) On 31st October 1995 the DWP on Form BI 132B^(D028) accepted the Defendant's claim as an in-service injury which was also recognised by the Claimant as a 'qualifying injury' under the Scheme;
- f) Prior to the Defendant's retirement in 1997 the Defendant was misdirected 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;

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

- a) On 22nd May 1999 the Defendant belatedly 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). The purpose was to confirm the living existence of the Defendant on the Claimant's pension payroll. 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"*.

7.05. **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^(D031). The Defendant had at discharge given an 'undertaking' to do so, whether lawful or not, and his contemporaneous record confirms he did;
- 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 and 2 months.

7.06. **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 and 2 months later;

7.07. 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(Is he alive?; is he on the pension payroll?) 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 misfeasance and 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 5.5 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 transaction 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.

7.08. **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) (Ed1 with ultimately 4 amended Editions) 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 requested.
- 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.

7.09. 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) written in an increasingly bullying tone stating that if the Defendant did not sign this '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."

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

The arbitrary 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 payment of the Defendant's Injury Award up to this point 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 wilfully denied the Defendant his income and his lawful rights.

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

On Friday the 4th July 2008 the Defendant's then 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."

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

On Monday the 22nd September 2008 the Defendant's then 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-May 1999)."***

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

7.14. In April 2008 the National Fraud Initiative(Audit Commission) confirmed to the Defendant the statistics that 53 'mismatches'(errors) of pension payments and DWP payments had occurred by the LFRS and its contractor the LPS which led to alleged substantial 'overpayments' and 'underpayments' and of these the Defendant was 1 who was allegedly overpaid.

The Claimant was publicly claiming at this time that there had been 167+/- over and under payments and of these once more the Defendant was 1.

7.15. 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."***

7.16. These 53 were part of accumulating 'mismatches'(errors) by the Claimant's pension contractor the LPS which also went unmonitored by the Claimant until finally reported as 2215 by the NFI in its report for the year 2010-2011.

7.17. The NFI report clearly involving the Defendant as a named statistic reported on the 25th January 2011 that of the 2215 payees 1007 appeared to have been paid to dead payees leaving at one point an unaccounted for balance of 446 payees with no determination of how much money was also unaccounted for.

This amounts to an administrative failure rate of 1.85% commonly regarded as maladministration yet the Claimant did not publicly declare this statistics at any point.

7.18. 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 requiring lawful compliance are dealt with by the Claimant^(C-203).

7.19. The Defendant's facts confirm the following:

a) That 53 errors of Claimant data set against existing DWP data records illustrate de facto that substantial misfeasance and maladministration by the Claimant had occurred across a wide range and type of all Fire Service pensions including his for which the Claimant had a statutory duty to hold securely and to administer accurately;

- b) That the Claimant in misfeasance and 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 misfeasance and 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;
- 7.20. In the period from on or about the 2nd 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.
- 7.21. 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.
- 7.22. Neither can the Claimant dismiss the facts that they have engaged in misfeasance and 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.
- 7.23. 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 negligent misfeasance; 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 corporate policy to unlawfully to exert over the Defendant and others.
- 7.24. 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)
- 7.25. 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 withdrawn^(D040)... ***"until such time as the necessary information is available to determine correctly the amount of payments to be made."***
- 7.26. The Claimant insisted 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 complete 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 wilfully 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.

8.00. The Defendant's Voluntary Compliance with the Scheme 1997- to date.

- 8.01. In January 1997 in anticipation of compulsory 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.
- 8.02. 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 14%-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.
- 8.03. 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.
- 8.04. On Saturday the 22nd 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 belatedly 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 annually reviewable allowance which he continues to qualify for, to date.
- 8.05. 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 and unaware of any problems until the advent of the Claimant's 'review' on 13th November 2007 over 8 years and two months later.

- 8.06. The Defendant's finally 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 that the Defendant received notification from the DWP that his REA application had been successful^(D015;D016), and on or about the 2nd August 1999 that the Defendant by phone passed on this information to the Claimant, an action for which he retained a contemporaneous note^(D018).
- 8.07. 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. Mistakes had been made by the Claimant. 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.
- 8.08. 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(without the Defendant's knowledge) 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.
- 8.09. Mistakes had been made by the Claimant.
- 8.10. 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.
- 8.11. 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 misfeasance, the Claimant have breached their statutory duty.
- 8.11. 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 though which they have clearly failed to do.
- 9.00. The 'Review' 2007.**
- 9.01. The debacle first arose in March 2007 and seven months later was reported to the CFA Committee. It was decided a 'review' was required. No terms of reference were published.
- 9.02. Following this decision in September 2007 on the 13th November 2007^(D012), the Claimant again created a unlawful 'Rule' outside the Scheme by demanding that the Defendant sign a 'consent' form to access *all* (which was unlawful in any event under the Data Protection Act 1998(DPA) of the Defendant's DWP records under the direct threat and duress that failure to comply would lead to the withdrawal of his IA entitlement. Ultimately with the exception of his initial declaration on the 13th November 2007 he declined to do so.

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 5.5 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 5.5 years the Defendant has without success sought an explanation from the Claimant how misfeasance 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-actioned ;
- 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;a PRF which they had perpetually refused to release to the Defendant
- 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.Resolution.

11.01. Pensions Act 1995. 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 IDRPs when the Defendant's complaint concerning his pension was originally lodged with them.

- a) The Claimant 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).
- b) The Claimant failed to direct the Defendant's attention as a Scheme member to the existence of this IDRP 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.
- c) The Claimant failed to inform the Defendant what the Defendant's rights under IDRP were and failed to inform the Defendant where those rights and procedures were to be found and implemented in making a complaint to them.
- d) 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.

11.02. The Defendant throughout this debacle has repeatedly, regularly, and demonstrably attempted to bring commonsense resolution to this dispute for the good of all until finally it became a pointless aspiration. The Claimant wilfully failed to engage in reasonable

resolution dialogue with the Defendant and when finally forced to engage deliberately made no meaningful contribution ^(D105).

11.03. The Claimant also had a duty recommended in the Fire-fighters Pension Scheme Circulars (FPSC), which they wilfully failed, to propose in writing, 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^(D087;D093). This was immediately prior to the issue of proceedings.

11.04. 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."*

a) In addition a further three comprehensive written Resolution Mechanisms were published to the Leader of the LCC copied to the Chairman of the CFA and to all elected Members of the CFA including the Claimant's staff.

b) On Tuesday the 23rd June 2009^(D106) the Defendant published the first Resolution Mechanism, an 8 page document;

c) On Wednesday 5th August 2009^(D107) the Defendant published a second Resolution Mechanism a 3 page document, to the same circulation;

d) On Tuesday 27th October 2009^(D108) the Defendant published the third Resolution Mechanism, a 3 page document to the same circulation,.

e) Not a single Resolution Mechanism was ever acknowledged or responded to in any manner by a single politician or the Claimant.

f) On the 15th March 2010 on a fourth occasion the Defendant raised the existence of all three Resolution Mechanisms with CC Driver Leader LCC at County Hall at a meeting he called. He dismissed every single one of these Mechanisms, stating he had not even read them.

g) 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.

h) This offer making 7 in total in keeping with all the Defendant's other efforts to established a dialogue were dismissed and/or ignored.

12.00. Other Relevant Legislation.

12.01. Limitations Act 1980.

Section 2;s5;

The Defendant's position remains that the 'cause of action accrued' on or about the 2nd August 1999 because the Claimant knew, or ought to have known, or ought to have taken steps based on the information independently supplied by both the Defendant and the DWP to know the Defendant's position in respect of REA; and because they took no further recovery action until 2007 their Claim is statute barred.

12.02. **'Pensions Act 2004 S266.** 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.

12.03. 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.

12.04. 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."

The Defendant's Injury Award has been withdrawn, in effect forfeited, since 1st July 2008.

12.06. 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.

a) 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";

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

c) 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.

d) 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.

e) 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.

f) 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.

13.00. The Simple Unadorned Facts.

13.01. Did the Defendant do what he was asked to do in complying with the Scheme and this informal 'undertaking'? Yes.

Will he be able to evidentially demonstrate this to the Court? He believes so.

13.02. Did the Claimant do all in their power to assiduously administer the Defendant's pensions? No.

Can the Defendant using the Claimant's and the DWP records demonstrate this misfeasance and maladministration? Yes.

13.03. Did the Claimant in 'managing' the Defendant's pensions made many grievous errors of judgment and practice compounded with an unreasonable, aggressive, uncivil, and disproportionate response to a self-created situation all of which has amounted to misfeasance, malfeasance, and maladministration which have willfully harmed the Defendant, as it was intended to do? Yes.

13.04. Did it have to be this way? No.

A little courtesy; a little civility; a little pastoral care would have gone along way.

13.05. 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 but serious mistakes were made by the Claimant which were covered up and when politely challenged it all turned nasty.

13.03. This Defence in Part I 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.



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Signature Paul P Burns

Date: Tuesday 14th April, 2012.