

## Ombudsman's Determination

Applicant	Mr E
Scheme	Teachers Pension Scheme ( <b>the Scheme</b> )
Respondent	Surrey County Council ( <b>the Council</b> )

### Complaint Summary

1. Mr E's complaint concerns the discrepancy between the full time equivalent salary (**FTE**) stated on his payslips and the FTE salary figures the Council submits to Teachers Pensions (**TP**), on his behalf. The FTE figures submitted to TP affects the death in service benefit Mr E's beneficiaries are potentially entitled to.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against the Council because:-
  - 2.1. The Council has failed to send correct FTE figures to TP for Mr E; and
  - 2.2. This situation has caused Mr E serious distress and inconvenience for which he shall receive an award.

## Detailed Determination

### Material facts

3. Mr E has been employed by the Council since 1980 as a part-time tutor on an annualised contract, and is an active member of the Scheme. The Scheme is administered by TP. The Council provides information to TP such as Mr E's pensionable service and his salary. TP uses the information it receives from the Council to calculate the benefits Mr E and his beneficiaries are entitled to from the Scheme.
4. Mr E said that his employment contract states that he is on an "ALA (SCC)" pay scale. He was informed by the Council that the ALA pay scale is £20.24 per hour plus £3.24 holiday pay. This was as of 8 November 2017.
5. Mr E said that he was never sent retirement benefit statements. However, in 2016, following access to his record online, he became aware that his FTE submitted to TP by the Council was considerably lower than his FTE submitted by other employers, although his salary was identical. The FTE submitted to TP by the Council was also lower than the FTE stated on his payslips.
6. Subsequently, there were a number of exchanges between Mr E and the Council concerning the FTE submitted to TP.
7. On 2 August 2017:-
  - 7.1. Mr E emailed the Council and queried how the FTE for his hourly rate was calculated.
  - 7.2. The Council replied to Mr E and informed him that the formula used to calculate the FTE when only having the hourly rate was:  
  
"Hourly rate x 36 x 365 / 7" (**the Formula**)
8. Following this, there were further exchanges between Mr E and the Council concerning how his FTE was calculated, and the difference between the FTE stated on his payslips and those submitted to TP (**the Discrepancy**).
9. On 26 July 2018, Mr E complained to the Council. In summary he said:-
  - 9.1. The figures the Council sent to TP were substantially less than the figures stated on his payslips, his employment contract and those confirmed by the Council. This constituted a clear variation of contract which had not been disclosed nor agreed to.
  - 9.2. He requested that the FTE figure sent to TP was the same as the figure stated on his payslip, which was £38,037, at the time. He also requested that the Council corrected any historical Discrepancy.
  - 9.3. A reduced figure for the FTE would substantially affect his pension.

- 9.4. This issue had been unresolved for over two years. He was initially told that this was an administrative error which would be corrected. This was clearly not the case. He hoped that the Discrepancy could be resolved to his and the Council's mutual satisfaction.
10. Between August 2018 and 4 January 2020, there were further exchanges between Mr E and the Council concerning the Discrepancy. During this period, Mr E had a face-to-face meeting with the Council, and he also raised further complaints to the Council about this issue.
11. On 7 June 2020, the Council responded to Mr E's complaint and said in summary:-
  - 11.1. After examining his case it became aware that he had been set up correctly on its payroll system but the way the system calculated FTE was incorrect. This was because while Mr E worked term time only (39 weeks per year), the payroll system treated him as a full-time worker (52.14 weeks per year).
  - 11.2. Unfortunately, this resulted in his FTE being overinflated on his payslip. His monthly salary was correct based on the hours and weeks he had worked. His pension contributions were also correct according to the hours he had worked.
  - 11.3. It was working on resolving the issue and it apologised for the time it had taken for his complaint to be responded to.
12. On 17 June 2020, Mr E replied to the Council and said in summary:-
  - 12.1. The figures stated in the Council's 7 June 2020's response was incorrect. He was on an annualised contract which was spread over 52.14 weeks per year.
  - 12.2. Payslips are legal documents. He found it unacceptable that the Council knowingly put incorrect figures on payslips. It was also incomprehensible that the Council could not place correct figures on a payslip. There was no indication that the figures on his payslips were incorrect until he had made a complaint.
  - 12.3. The communications from the Council explicitly said that his FTE was calculated in the conventional way.
  - 12.4. He presumed that the reason the FTE figure on the payslip could not be altered was that the Council calculated the FTE for all other employees in the conventional manner, reserving this other method of calculation only for part-time tutors.
  - 12.5. He had still not received an explanation of the method of calculation that conformed to his contract.
13. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr E and the Council made further submissions that have been summarised below.

### Summary of Mr E's position

14. Mr E provided copies of his employment contracts and some of his payslips. He also made some additional comments. His additional comments have been summarised below, in paragraphs 15 to 31.
15. The Formula is the generally accepted method for calculating FTE, and has been used by his other employers. As of 30 September 2019, his monthly payslip from the Council stated his pay to be £20.46 per hour and his FTE to be £38,400.
16. As of 13 September 2019, the FTE the Council submitted to TP was £27,728.
17. On 2 August 2018, a 'Notification of Changes of your Employment Terms and Conditions' was sent to tutors (**the Notification**). This communication indicated that on 1 September 2016, their FTE would be calculated using an hourly rate of £14.14 using 36 hours per week for 52.142 weeks per year. From 1 September 2017, it would be calculated using the full salary but using 32.5 hours for 36 weeks per year.
18. His employment contract states that he is employed on a basis of 52.14 weeks per year, and that he has a maximum of 48 hours in a working week. TP clearly stated that all the pay including planning, preparation and assessment had to be included in calculation of pensions.
19. The Notification was a breach of contract and should be withdrawn as soon as possible.
20. The standard working week for the Council is 36 hours. His contracts of employment are on the basis of 52.14 weeks per year and state that his maximum working week should be 48 hours. His main contract is an annualised one and he has a 'top up' bank contract, both on the same rates of pay and both use these same figures.
21. As an employee, his duties can and do take place over the school holidays as well as during term time. They are not restricted to 36 weeks per year.
22. Subsequent to him referring his complaint to TPO, he had a meeting with the Council's Human Resources (**HR**) department. He was informed that the Council's HR department was having difficulty obtaining information from its pension department.
23. At this recent meeting with the HR department, he asked that it provided its current calculation for the FTE salary. This was confirmed as being: hourly rate x 32.5 hours per week x 36 weeks per year, as of 1 September 2017. Prior to this date it was calculating FTE as being: 58.5% of hourly rate x 36 hours per week x 52.14 weeks per year.
24. The Council could not explain why it had used any of these figures, nor why it wished to minimise his FTE. It could see no reason why the standard Council calculation, as applied to other members of staff (Full hourly rate of pay x 36 hours per week x 52 weeks per year), could not be applied in his case.

25. The information the Council sent to TP contained many errors, including the FTE figure not rising when there had been salary increases, and the FTE also decreasing in instances where there had been no lowering of salary.
26. TP said the Council had to correct any incorrect figures in the record. So, he requested for the Council to review his pension record.
27. The FTE figures on his payslips are less than those sent to TP. The FTE figure is important to the calculation of pension benefits from the Scheme. The in-service death grant is a multiple of the FTE and the FTE figure is also used to calculate the retirement benefits he will be entitled to.
28. Before August 2020, the FTE figures were included on the payslips. After this date, the FTE figure was removed from the payslips altogether.
29. Payslips are legal documents, and this duplicity was deceitful in the least. He had used his payslips to obtain mortgages. The Council stating that the figures on the payslip are incorrect could mean that he provided false information.
30. He would like the Council to calculate the FTE using the correct figures, meaning those contained in his contracts, rather than spurious figures that bear no relation to working patterns, and he would like the correct FTE figures sent to TP.
31. He would also like compensation for the distress and inconvenience this situation has caused him.

### **Summary of the Council's position**

32. After investigating the issue Mr E has complained about, its view is that the FTE calculation being used for tutors such as Mr E is incorrect.
33. It believed that the change to the calculation in 2018 was following a review about the omission of certain parts of the salary. This was rectified. However, the number of hours and weeks used were adjusted to align the annual salary with the grading structure that the roles were evaluated against.
34. It was trying to ascertain how to get the calculation updated, but this was proving difficult.
35. As for the impact to Mr E's different pension benefits, the change to the FTE calculation does not appear to affect the actual pension benefits but changes the potential death in service benefit amount Mr E's beneficiaries would be entitled to.

### **Conclusions**

36. Employed teachers are eligible to join the Scheme to accrue benefits payable at retirement. TP relies on employers to provide accurate information, such as an employee's salary, to ensure that TP correctly calculates and pays benefits to members of their beneficiaries.

37. Mr E has, since 2016, been querying the Discrepancy with the Council and had asked the Council to correct it. It was not until after Mr E's complaint was referred to TPO, and even then, only very recently, that the Council has confirmed that there is an issue with Mr E's FTE calculation.
38. The incorrect calculation of Mr E's FTE has a negative impact on the death in service benefits Mr E's beneficiaries would be entitled to. So, it is imperative that the Council rectifies the error and sends correct information to TP so that it can update Mr E's records accordingly.
39. I note the Council's comment that the incorrect FTE calculation does not appear to affect the pension benefits that Mr E is entitled to. However, the Council has not provided certainty that this would not be the case. So, it should also complete a full review of Mr E's pension record and send any amendments to TP.
40. I find that the failure on the part of the Council to calculate Mr E's FTE correctly and its failure to send correct FTE figures to TP for Mr E amounts to maladministration. This maladministration has undoubtedly caused Mr E serious distress and inconvenience. This is because the matter has been ongoing since 2016. It has taken a large amount of effort from Mr E and assistance from TPO for the Council to agree that there was an issue relating to the Discrepancy. I consider that Mr E should be paid an award for the serious distress and inconvenience he has experienced as a result of the Council's maladministration.
41. I uphold Mr E's complaint.

### **Directions**

42. Within 28 days of the date of the Determination, the Council shall:-
  - 42.1. Correctly calculate Mr E's FTE and provide him with the formula used to calculate his FTE.
  - 42.2. Send Mr E's correct, updated FTE to TP and ask TP to amend its records for Mr E so that the correct death in service benefits are applied to the records TP holds for Mr E.
  - 42.3. Complete a full review of Mr E's records. If it identifies any errors, it should, within 14 days of identifying the errors, notify TP and Mr E of the errors and provide the correct updated information to TP. Whether errors are identified or not, it should share details of that review with Mr E.

CAS-13063-Y1G8

43. Within 28 days of the date of the Determination, the Council shall pay Mr E £1,000 in recognition of the serious distress and inconvenience this matter has caused him over the last eight years.

**Dominic Harris**

Pensions Ombudsman

18 July 2024