

## Ombudsman's Determination

Applicant	Mr E
Scheme	Electricity Supply Pension Scheme ( <b>the Scheme</b> )
Respondents	UK Power Networks (Operations) Ltd ( <b>UKPN</b> )

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by UKPN.

## Complaint summary

2. Mr E has complained that his pensionable pay has been miscalculated and therefore his retirement benefits have been understated.
3. Mr E says that the method of calculation used has "put him at a loss of around £97 per year" since his retirement in 2009. He asks UKPN to recalculate his entitlement and to compensate him for the shortfall in pension payments.

## Background information, including submissions from the parties

4. In 1976, Mr E was employed by UKPN as an Overhead Linesman and became a member of the Scheme.
5. Mr E's workplace duties included being available on a rota basis to attend emergency calls concerning the power supply network which may have affected public safety or the security of a power supply. This was known as 'standby duty'.
6. Under the terms of the Scheme, employees would receive 'standby payments' for each standby duty completed. This was a pensionable element of their normal working week.
7. On 1 July 2002, The Linesman Agreement (**the Agreement**) [See Appendix 1] was implemented by UKPN which introduced a cap of 60 on the number of standby payments which could be counted for the purpose of pensionable pay. This is

applicable from April to March across the Scheme year (**the 60 cap**). The Agreement states:

“Standby retainer payments currently equivalent to 60 duties will be superannuable. Duties in excess of this value and any other associated payments will be non-superannuable.”

8. In August 2008, Mr E telephoned UKPN to ask how the 60 cap was applied. He said that a member of the payroll team had informed him that the number of standby duties would be counted numerically from the beginning of the Scheme year.
9. Mr E also sent an email enquiry to the same effect.
10. On 27 August 2008, UKPN responded to Mr E’s email query. It said:

“Linesman agreement standbys are counted in numerical order from the start of the financial year, with the first 60 being done in that financial year being superannuable, and any after that not being superannuable.

In the example given Linesman A has done no standbys in the financial year 2007/8, but he has done 120 in the 2006/7 financial year. As he has already done 60 standbys prior to November 2006, the second 60 mentioned would not be superannuable, and as there are no Standbys in the 2007/08 year, then there would be no additional superannuable pay.”
11. On 7 November 2009, Mr E took his retirement. Mr E says he did so based on the information he had received from UKPN, believing that 60 of the 66 standby duties he had worked in the Scheme year 2008/9 year would be included in his pensionable pay.
12. In September 2018, Mr E emailed UKPN to query how standby duties were calculated for the purpose of pensionable pay.
13. On 24 September 2018, UKPN responded to Mr E’s email. It said that standby duties were calculated using a ratio method and provided the following example:

“Example is 3 linesmen, A, B and C

A carries out 34 weekday standby duties and 26 weekend standby duties – 34 weekday and 26 weekend. He has 60 standby payments included in his pension

B carries out 60 weekday duties – 34 weekday duties (included in his pension)

C carries out 60 weekend duties – 26 weekend duties (included in his pension)

As stated the ratio for calculating is based on the first 34 weekdays and 26 weekends which is deemed to be a fair method of counting the pensionable standbys taking into account the standby rotas are not specific to employees

working weekdays and weekends. This is being consistently applied in the payroll system.”

14. In November 2018, Mr E emailed UKPN to make a complaint. He said that he had discovered that only 58 of 66 standby duties had been included in his pensionable pay for the period of 2008/9 but that this should have been 60. He said that the ratio method used to calculate pensionable standby duties causes a shortfall and miscalculation in his benefits.
15. UKPN did not uphold Mr E’s complaint on the basis that it believed his benefits had been calculated correctly.
16. Mr E and UKPN continued to communicate about his complaint. Mr E remained unhappy with UKPN’s responses. On 7 January 2019, Mr E wrote to UKPN to initiate the employer’s complaint process. He said that he and his colleagues were part of the negotiations for the Agreement and the ratio method was not discussed or agreed at that time. He says that as it was not agreed, it should not be applied when calculating pensionable standby duty.
17. Mr E continued with his complaint to stage three of the employer’s complaint process and a response was given by UKPN on 26 February 2019. It said: -
  - According to UKPN records, it was not possible for Mr E’s colleagues to have been present as at the time of negotiations, one had retired in 2000 and the other was not part of the relevant team.
  - The method of application for calculating pensionable standby duties has been applied consistently as agreed since the inception of the Agreement and so it was happy with how Mr E’s retirement benefits had been calculated.
18. On 10 April 2019, Mr E attended in person to appeal the decision at stage three of the employer’s complaint process.
19. On 8 May 2019, the Joint Secretaries for UKPN reviewed the matter and gave its response. It said:-
  - Mr E’s grievance is specifically to do with the method of calculation, with the 60 cap being broken down to 26 weekend standby duties and 34 weekday standby duties, which has resulted in his final pension calculation counting 58 pensionable standby duties.
  - There is no reference in the Agreement to it being the first 60 standby duties, but ‘equivalent’ to 60 standby duties.
  - The breakdown of weekend and weekday standby duties looks to have been in place when the Agreement was agreed and there is no evidence to suggest that this has been varied.

- The breakdown was reflective of the standby rotas of that time, but it acknowledged that the standby arrangements now vary, with it being commonplace to do additional standbys to cover gaps in the rota.
- It is acknowledged that there is no evidence either way to say that this breakdown was discussed and agreed with Trade Unions and communicated to staff.
- On the basis of the wording of the current Agreement and the longstanding breakdown of weekday and weekend standby, there was no recommendation to change the current arrangements.

20. Mr E remained unhappy with the outcome of his appeal against the employer's complaint process, and he brought the matter to us.

21. On 10 July 2020, UKPN wrote to Mr N and said:

"Having looked at this matter further, we have identified that the correct position factually is as follows: in respect of the financial year you did a total of 89 standby duties; of these 46 were weekday duties and 43 were weekend duties. Of the 46 weekday duties, 34 were counted as pensionable and 12 were not counted as pensionable. Of the 43 weekend duties, 26 were counted as pensionable and 17 were not counted as pensionable. It follows that in fact for the financial year 2008/2009, 60 of your standby duties were indeed treated as pensionable.

...

As originally expressed, the 60 duty equivalent limit relates to "standby retainer payments equivalent to 60 duties". It is duties "in excess of this value" that are not treated as pensionable. As to this:

- (1) There are obviously a number of different ways in which a cap described in this way could in principle be implemented, particularly (but not only) having regard to the fact that weekday standby duties and weekend standby duties are paid at different rates. Different approaches will have different advantages and disadvantages.
- (2) The term itself does not stipulate a particular method.
- (3) In the circumstances it is for the company to implement the 60 duty equivalent cap in a reasonable way.

The way the Company has implemented the limit takes into account the fact that weekday and weekend duties are in the ratio of 4:3 (given that Friday to Sunday count as weekend duties for these purposes. It therefore translates the 60 duties into a limit to the number of weekday duties (of 34) and a limit to the number of weekend duties (of 26). And it then counts, within a given financial year, the first 34 weekday duties as pensionable; and the first 26 weekend duties as pensionable. This means that if someone has 60 pensionable standby duties within a given financial year, those duties will consist of 34 weekday duties and 26 weekend

duties, and therefore will represent the average “value” of 60 standby duties (reflecting a 4:3 blend).

...

The Company fully recognises that there may in principle be different ways in which the 60 duty equivalent could be implemented. However, it is satisfied that the method it has adopted is entirely reasonable.

22. UKPN offered Mr E £750 in compensation to reflect the distress and inconvenience caused by the initial misinformation, but he rejected this.
23. On 26 August 2020, UKPN gave its final response. It did not uphold Mr E’s complaint and said:-
  - Mr E’s benefits have been calculated correctly. His basis for a complaint was due to misinformation as a result of a lack of understanding by a junior member of staff.
  - While 58 standby payments were included in his pensionable salary, it is the interaction between ‘salary’ and ‘pensionable salary’ that may have caused confusion.
  - Mr E’s pensionable salary was calculated at retirement, in line with the Trust Deed and the Scheme Rules to span across two Scheme years: from November of the Scheme year 2008/9 to October of the Scheme year 2009/10.
  - It agreed that Mr E only had 58 standby duties included with his pensionable salary for the Scheme year 2008/9. However, 62 standby duties were included for the Scheme year 2009/10 and so Mr E has benefited by having more than 60 standby duties included in his pensionable salary reference period.
  - The Agreement does not state how the 60 cap should be applied and UKPN is happy with its consistent application of this since the implementation of the Agreement in 2002.
  - Mr E was offered £750 in compensation for any initial misinformation provided by junior members of staff, but this was not accepted.

### **Adjudicator’s Opinion**

24. Mr E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by UKPN. The Adjudicator’s findings are summarised below.
25. Mr E says that in the financial year 2008/2009 he completed 66 standby duties and under the terms of the Agreement, 60 of these should be counted towards his pensionable pay. Mr E says that instead, the ratio method has been applied and only 58 count towards his pensionable salary.

26. Mr E says that the ratio method was neither discussed nor agreed during negotiations of the Agreement and so it should not be applied. On this basis, he believes that his benefits have been miscalculated and he has suffered a financial loss.
27. UKPN acknowledge that the Agreement does not state how the 60 cap should be applied and also that there is no evidence, either way, to say that the ratio method was discussed and agreed with Trade Unions and communicated to staff. However, it is satisfied with its consistent application of this since the implementation of the Agreement in 2002.
28. For a complaint to be upheld, maladministration must be identified. The Adjudicator said that Mr E may feel that his benefits have been miscalculated due to his own interpretation of the Agreement, it was the Adjudicator's view that UKPN is entitled to apply the Agreement as it sees fit, provided that it does so in accordance with the Scheme Rules and in a consistent way.
29. On the available evidence, there is nothing to support a view that the Scheme Rules have been misinterpreted or applied incorrectly and UKPN has applied the ratio method consistently since the Agreement was implemented in 2002 and continues to do so. It was the Adjudicator's view that, while this may not be to Mr E's liking, it does not amount to maladministration.
30. There is no dispute however that UKPN provided Mr E with incorrect information during his initial enquiries into the calculation of his pensionable pay which does amount to maladministration.
31. The provision of misinformation does not of itself entitle the person to the higher amount. A member is only entitled to receive the benefits provided for under the scheme rules or regulations that is those based on correct information accurately reflecting the Scheme rules or regulations at the time the benefits are due. Mr E would have to have relied to his detriment on the misinformation to make a successful argument. Mr E retired in 2009 and he was provided with the misinformation in 2018 he cannot therefore successfully argue that he relied on the misinformation when he decided to retire.
32. The Adjudicator accepted that Mr E will have suffered some distress and inconvenience as a result of being misinformed however, in the Adjudicator's opinion, the error was not significant enough to warrant a higher award for non-financial injustice above the level already offered by UKPN. The Adjudicator believed that the offer of £750 was more than reasonable and that I would not award more if the case was determined. It should remain open to Mr E to accept the £750 if he wishes.
33. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr E.
34. Mr E says that he believes the ratio method is unlawful. It is his view that any reference to superannuable pay in the ESPS rules assumes that such payment has

been lawfully calculated, and if he is correct and the ratio method does not satisfy the Agreement then any payment method calculated using that method is against the rules of the Scheme.

35. Mr E also says that UKPN has not, to this very day, issued any documentary information that describes the ratio method. This applies, not only to linesmen, but also to their managers and engineers. There is not, within the Company, a single document that relates to it. Every conversation that has related to the ratio method has come about when a linesman has carried out standby duties in good faith and then found that they have been excluded from his pensionable pay. There have been numerous complaints of such deductions including formal grievances.
36. Mr E says why, after so many people have suffered serious deductions in their pensions, has the Company not seen fit to offer some clarification? If UKPN had an ounce of sincerity they would, at the very least, have sent a statement to the Linesmens Standby Sub-committee informing its members, both linesmen and managers, of the existence of this method of calculation.

### **Ombudsman's decision**

37. Mr E has raised a number of issues regarding the application of the ratio method relating to the calculation of standby duties that are deemed pensionable and its implementation. The agreement on linesman standby payments came into force on 1 July 2002 and said, "Standby retainer payments currently equivalent to 60 duties will be superannuable".
38. But as has been admitted by UKPN there is no evidence, either way, that the ratio method was discussed and agreed with the Trade Unions and communicated to staff. UKPN say that the ratio method has been applied consistently since its implementation in 2002 and it is a reasonable approach.
39. Without any specific detail on how the standby retainer payments were to be curtailed to an equivalence of 60, it fell to UKPN and its payroll function to evolve a method for calculating the restriction. Mr E has pointed out that the ratio method can mean, for example a linesman who works say 60 weekday standbys and no weekends because of family commitments would have his pensionable standbys restricted to 34. I agree that, on first sight, this does not seem to be in line with the spirit of the agreement when looking at a sole individual.
40. However, when looking at the body of linesmen as a whole, and the probability that most work a mixture of weekday and weekend standbys (with weekend standbys being at a higher rate), then I can understand the logic of the approach taken by UKPN and I find it is within the range of reasonable approaches to this issue.
41. With regard to Mr E's own position there has been some confusion over the number of standby duties included in his pensionable salary. UKPN has said that only 58 standby duties were included in his pensionable salary for the Scheme year 2008/9.

CAS-33500-K3T7

But 62 standby duties were included for the Scheme year 2009/10 so Mr E had benefited by having more than 60 standby duties included in his pensionable salary reference period. I do not find the approach taken by UKPN unreasonable.

42. UKPN have offered Mr E £750 in respect of the misinformation he received and the distress and inconvenience he has experienced. I find that this is an acceptable amount and in line with any award that I would make. If Mr E wishes to accept the award he should contact UKPN.

43. I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
29 November 2022

Appendix