CAS-71892-J1V8

Ombudsman's Determination

Applicant	Mr E
Scheme	Strathclyde Pension Fund (**the Fund**)
Respondent	Glasgow City Council (**the Council**)

Complaint Summary

Mr E has complained that the Council failed to recognise him as a member of the Fund from 27 January 2011. An Employment Tribunal (**ET**) determined in August 2017 that he should have been classified as an employee of the Council and the ET's judgment was subsequently upheld by an Employment Appeal Tribunal (**EAT**) on 27 August 2020. As an employee, Mr E was of the view that he was entitled to membership of the Fund.

Summary of the Ombudsman's Determination and reasons

Mr E became eligible to join the Fund on the date he commenced employment with the Council in accordance with the 2008 Administration Regulations and the 2008 Benefit Regulations. The complaint should be upheld, and Mr E should be retrospectively enrolled as a member of the Fund from 27 January 2011, as he was employed by the Council and became a member of the Fund from this date. The Council's mistakes have caused Mr E significant distress and inconvenience.

Detailed Determination

Material facts

1. In 2010, the Council in conjunction with the National Health Service (**NHS**) introduced the "Connex Multi-Dimensional Treatment Foster Care, Looked After Children (Scotland) Regulations 2009, Foster Care Agreement" (**the Connex Agreement**) for foster carers.

2. The Connex Agreement represented a new format for recruiting foster carers, one that sat alongside an existing foster care agreement which did not recognise carers as employees.

3. Mr E and his wife were accepted and registered as foster carers in 2011 having entered the Connex Agreement with the Council and the NHS.

4. While still registered as foster carers, Mr and Mrs E undertook claims at an ET on the basis that they were in fact employees of the Council under a contract of employment.

5. In his judgment dated 1 August 2017, the Employment Judge upheld their claims.

6. At paragraph 65 of his judgment[1], the Employment Judge commented that:

> "The claimants are clearly obliged to personally do the work and in exchange they are paid £32,000 per annum. They are allowed paid holidays. It is clear that the respondents made it a condition of the agreement that neither of the claimants take other work without their consent and indeed I accepted the evidence to the effect that Mrs E was told she required to work (sic) full time for the respondents and not take any other work whatsoever. The degree of day-to-day control through the parental daily report and the weekly meetings was extremely significant and the claimants had no real discretion as to how they carried out the work they were to undertake…The other provisions of the contract were entirely consistent with this being a contract of service. One of the provisions of the contract was that the claimants would remain registered as approved foster carers, but this is not in any way inconsistent with them being employees. My judgment therefore is that both claimants were employees."

7. The Employment Judge concluded by stating that a final hearing should be heard.

8. On the 27 August 2020, the Honourable Lord Summers, issued his Final Hearing judgment (EAT - UKEATS/0011/18/JW) upholding the decision of the Employment Judge.

9. At paragraphs 47 and 48 of his judgment the Honourable Lord Summers said that:

[1] Employment Tribunals (Scotland) Case Nos 4103972/2016 & 4103973/2016

> "47. In this case, the key issue is whether the terms that set out the Claimants' remuneration and the terms that provide the Appellants with control over the Claimants are principally contractual as opposed to statutory. I consider that they are. I am inclined to think that the terms arising under paragraph 4(b)[2] are contractual. I am inclined to think that the terms in the Connex Agreement are contractual. But in the absence of submissions designed to identify the boundaries of the contract I am unwilling to be more precise. In my judgment, the Employment Judge was correct to conclude that the arrangement contains all the elements of a contract of employment. In my opinion, the contract of employment is accompanied by a variety of statutory duties. Some of these appear to overlap with contractual obligations.
>
> 48. Mr Napier QC advised me that the Connex Agreement was not drafted by lawyers and that the Council had not appreciated that the use of a contractual agreement had the potential to alter the legal character of the relationship between a foster carer and the Council. As I understood him this submission was designed to persuade me that if the Council lacked the intention to enter into a contract of employment, I should not be readily persuaded that one had come into existence. I was also given to understand that if the Claimants succeeded there could be serious repercussions. The legal status of foster carers in general would become uncertain. It was submitted that since a variety of important and burdensome statutory responsibilities attend the employment relationship, this would be undesirable. I do not consider however that I should be influenced by the possibility that the Council may have inadvertently altered the status of the Claimants. My task is to consider the position objectively. I have sought to make it clear that there are certain specialities about the present case. I have not sought to address the position of the ordinary foster carer. In my opinion, none of these considerations affect my decision."

10. Mr E has requested that the Council accept that, as an employee, he should therefore have been granted membership of the Fund, which is a statutory public service pension scheme for local government and related employees in Scotland administered in accordance with The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (**the 2008 Benefit Regulations**) and The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (**the 2008 Administration Regulations**), both as applicable in 2011. (See the Appendix below)

11. In an e-mail dated 15 April 2021, a representative from Mr E's trade union, the Independent Workers' Union of Great Britain (**IWGB**), asked the Council to enrol Mr E into the "workplace pension scheme" from the date he commenced working on 27

[2] Paragraph 4(b) of Schedule 6 to the Looked After Children (Scotland) Regulations 2009 states: "the financial arrangements which are to exist between the local authority and the foster carer, including any special financial arrangements in relation to particular categories of children who may be placed with the foster carer."

January 2011 as an "equivalent Grade 6 Residential childcare worker, as previously agreed."

12. The Council did not respond to IWGB, so Mr E made a complaint to my office.

13. Although this complaint is in relation to whether Mr E should have been granted membership of the Fund, during my investigation, Mr E also submitted as evidence copies of his tax returns for the tax years ended 5 April 2012 and 5 April 2013.

14. According to the partnership tax return for the tax year ended 5 April 2012, the joint income of Mr E and his wife was £37,863. After deducting expenses allowable for tax of £23,000, the net profit was £14,863. This was divided equally so Mr E and Mrs E received £7,431 and £7,432 respectively.

15. Mr E declared that his share of taxable profits from the partnership's business was £7,431 on his tax return for the tax year ended 5 April 2012.

16. For the following tax year ended 5 April 2013, Mr E declared that his share of the partnership's profit was £7,482 on his tax return.

17. Mr E also supplied a copy of his accountant's letter dated 18 March 2013 to the Council. This letter said that the enclosed copy of the relevant pages of Mr E's tax return for the tax year ended 5 April 2012 showed that Mr E had received a "50% share of the foster caring profit."

18. While separate to this complaint Mr E looked to amend his ET complaint against the Council by way of a Preliminary Hearing (**PH**) held on 14 September 2021, with the Employment Judge commenting on how Mr and Mrs E were paid by the Council.[3]

Summary of the Council's position

19. There was no intention on the part of the Council for Mr E to be an employee when he became a foster carer as it did not consider this role as being suitable for an employee. This explains why the payment arrangements are different from other Council employees.

20. Although it has now accepted the ET's judgment that Mr E is an employee of the Council, it still considers that he is ineligible to join the Fund because:-

    20.1. The household fee of £32,000 per annum was paid jointly to Mr and Mrs E. So, it is impossible for Mr E to state his qualifying earnings to establish that he is an eligible jobholder under the Pensions Act 2008.

    20.2. For qualifying earnings to be regarded as pensionable pay they must meet the requirements of the Pensions Act 2008 and must fall within the definition of "pensionable pay" as set out in Regulation 5 of the 2008 Benefit Regulations and a tax determination must have been made on them.

[3] Further details may be found in paragraph 23 below.

20.3. Mr E was responsible for paying income tax and national insurance contributions on his share of the household fee through self-assessment. So, the Council does not know whether he paid any income tax on his earnings from foster caring.

20.4. Furthermore, pensionable pay was not specified in the Connex Agreement for Mr E.

21. There is no basis in fact or law that: (a) the household fee should be split equally between Mr and Mrs E and (b) the onus is on it to specify any division of this fee.

22. It is not responsible for Mr E's inability to state his contractual salary. Both the Council and Mr E accepted the terms of the Connex Agreement. The content of an agreement between consenting parties "cannot fairly be ascribed to one party" where there is no evidence of "coercion or undue influence".

23. In his PH judgment dated 4 October 2021, the Employment Judge said that:

> "60…I accepted Mr Napier's submission that there is no basis for the assumption that the annual fee payment should be divided equally between the claimants, either in law or in the factual findings of the ET. I accepted Mr Napier's reliance on there being findings in fact made at the PH on employment status which indicate that the annual fee payment should not be divided equally between the two claimants. There were clear differences between the claimants, in particular with regard to the extent to which each was permitted to engage in other employment. That is a clear finding which points against an equal division of the annual fee."

24. The Council says that:

> "…to conclude that "the Council should not be allowed to evade its pension obligations to Mr E on the basis of a supposed lack of clarity entirely of its own making" is to beg the question as to what these obligations were. To conclude that these obligations should be based on each receiving £16,000 per annum by way of remuneration is to fly in the face of the tribunal's findings and is to ignore a formal legal determination made after hearing argument from both sides. The Es submitted before the tribunal that there should be a 50/50 split, but that submission was rejected. It is also contrary to common sense to draw such a conclusion when the tribunal has found that there were "clear differences" between what Mr and Mrs E were entitled to do under the contract…
>
> When interpreting such a contract, the Supreme Court has stated that the court must identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean" (Arnold v Britton [2015] UKSC 36, at paragraph 15)…there is simply no evidence that the intention of the parties

was that the fee should have been split 50/50 and a reasonable person, being aware that the contractual obligations of the Es were not the same, would not conclude that the lump sum payment made by the Council should be equally divided between them."

25. Mr E has now provided his tax returns for the tax years ended 5 April 2012 and 5 April 2013 as evidence. However, the fact that Mr and Mrs E could decide how they would split the household fee of £32,000 per annum is "incompatible with an occupational pension". It is not for a potential member of the Fund to decide what his/her contributions into it should be.

26. Mr and Mrs E declared on the partnership tax return for the tax year ended 5 April 2012 that their joint income was £37,863. If Mr E's complaint is successful, some of his declared income must be excluded from the calculation of pensionable pay.

27. The Council's view is that the Fund cannot be administered in respect of Mr E given the absence of pensionable pay in his contract of employment.

Summary of Mr E's position

28. In August 2020, the EAT upheld the ET's judgment that he is an employee of the Council. He is consequently entitled to a pension from the Fund like all other Council employees.

29. As a result of incorrectly categorising him as self-employed in 2011, the Council cannot now precisely state: (a) his contractual qualifying earnings[4] and (b) whether any tax was deducted from these earnings so that they could be regarded as pensionable pay in the Fund.

30. The division of the household fee of £32,000 per annum between him and his wife and the determination of tax paid on it can be reasonably estimated from their self-assessment tax returns[5]. However, in his view, a pragmatic approach would be simply to divide the fee equally between them.

31. If the Council disagrees with this suggested split, it should state how the household fee should be apportioned between him and Mrs E.

32. It would be contrary to natural justice that a party should benefit from its wrongdoing by not paying pension contributions if the Council's position that he cannot join the Fund is considered correct.

33. The Council should not be allowed to evade its pension obligations to him on the basis of "a supposed lack of clarity entirely of its own making."

[4]Qualifying earnings is the band of gross annual earnings on which contributions for the purposes of automatic enrolment are calculated.

[5] Please refer to paragraphs 13 to 17 above for further details.

34. The Council's reliance on the PH decision in Mr and Mrs E v the Council (2021) is misplaced. In that case, the judge ruled on a preliminary matter that was unrelated to this pensions dispute and made no findings of fact on what ought to be "the proper apportionment" of the household fee of £32,000.

35. On behalf of Mr E, IWGB says that:

> "We find it rather surprising that the Council is now attempting to rely on a contract which was found by the EAT to bear very little relevance to the reality of the relationship between the parties. It is clearly not true to state that the terms of the fostering agreement "were accepted as much by Mr and Mrs E as by the Council". The fact that Mr and Mrs E felt compelled to bring a claim in the ET demonstrates their disagreement with the wording and consequences of the terms of the agreement.
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> It may have been the Council's intention that the complainants were to be classified as independent contractors, but the ET disagreed and found that they…were in fact working under a contract of employment, with the statutory duties which attach to this sort of contract. The Council cannot now evade this ruling by relying arguments based on contractual intent.
>
> The case cited by the Council (Arnold v Britton [2015] UKSC 36) is not relevant here. We are discussing contractual terms in an employment context, the correct line of authority is therefore Autoclenz v Belcher [2011] UKSC 41 and Uber v Aslam [2021] UKSC 5.
>
> In these cases, the Supreme Court affirmed that, where employees are asserting statutory rights, employers cannot rely on ordinary contractual principles - such as the parties' intention - to deny them these rights. This is because the purpose of statutory employment protections - such as employee status and rights to a pension - are to "protect vulnerable workers" (Uber at para 71), who often have "no practical possibility of negotiating any different terms" (Uber at para 77)."

Conclusions

36. As a preliminary point, I understand that Mr E's complaint concerns whether he should have been enrolled into the Fund in January 2011, as a result of entering the Connex Agreement. Therefore:

    36.1. The relevant legislation is the 2008 Administration Regulations and the 2008 Benefit Regulations, in the form which was in force at the time (both sets of regulations were revoked and replaced by new regulations in 2015) – this is what I refer to below, though I use the present tense.

    36.2. The automatic enrolment legislation introduced by the Pensions Act 2008 is not relevant to Mr E's complaint, as the legislation did not come into force until October 2012. This includes the definition of "eligible jobholder" as referred to

by the Council. As a result, automatic enrolment duties are not considered as a part of this complaint.

37. As a second preliminary point, Mr E's status as an employee of the Council from 27 January 2011 was confirmed by the EAT in its judgment dated 27 August 2020. The Council now accepts that point and I do not need to investigate it further.

Eligibility and admission to the Fund

38. Regulation 10 of the 2008 Administration Regulations states that a person who is eligible to be an active member of the Local Government Pension Scheme (**LGPS**) on the day their employment begins becomes an active member on that day unless he/she notifies his/her employer in writing before employment begins that he/she does not wish to do so. Mr E did not advise the Council that he did not wish to become a member of the Fund (having not been informed that he was entitled to become a member).

39. Regulation 3 of the 2008 Administration Regulations says: "A person may be a member if the person is employed by a body which is listed in Schedule 2." Schedule 2 includes a local authority and as such this covers the Council.

40. Regulation 3 of the 2008 Benefit Regulations[6] says: "A person is not an active member unless the person is employed under a contract of employment of more than three months' duration." Mr E did not have a separate written contract of employment, though as recognised by the ET and endorsed by the EAT, the Connex Agreement contains all the elements of a contract of employment. As recorded by the ET the Connex Agreement lasted until the foster carer ceased to be registered with Connex Multi-Dimensional Treatment Foster Care. The ET goes on to confirm that Mr E was not required to re-certify until 2015 and in doing so that Mr E's employment lasted longer than the three months stipulated in the 2008 Benefit Regulations.

41. Taking these provisions together, I find that Mr E automatically became an active member of the Fund from 27 January 2011 in accordance with the 2008 Benefit Regulations and the 2008 Administration Regulations.

Pensionable Pay

42. The complaint before me is whether Mr E should have become an active member of the Fund, and I have answered that in the paragraphs above. However, as a practical point, the Council contends that the Fund cannot be administered in respect of Mr E given the absence of pensionable pay in his contract of employment. I understand that this contention has two aspects: (1) there was no agreed split between Mr E and Mrs E in the pay made from the Council, and (2) it is unclear what tax has been paid by Mr E on his pay.

43. The Council refers to the Pensions Act 2008, which deals with the automatic enrolment regime that I have already noted does not apply here. However, it also

[6] This regulation has been set out in the Appendix.

refers to the 2008 Benefit Regulations, and I consider that its contention concerning that the uncertainty over Mr E's pensionable pay can be applied to the two sets of regulations I am addressing.

44. I do not consider that any difficulty in establishing Mr E's pensionable pay invalidates his entitlement to membership of the scheme which is the question at hand and the point I have determined above.

45. This is particularly the case given the primary reason for any difficulty could be seen to arise as a result of the Council's failure to comply with its obligations as an employer (however inadvertent) towards Mr E, notably:

    45.1. Reference to the rate of employee contributions into the LGPS is set out in Regulation 4(2) and (4)[7] of the 2008 Benefit Regulations and places the emphasis on the employing authority to determine the annual contribution rate at the commencement of the individual's membership. Therefore, to the extent that Mr E was an employee, as has now been determined by the ET and the EAT, it is the Council that should have determined this in 2011.

    45.2. The Council was not legally required to provide Mr E with a written contract. However, in accordance with section 1 of the Employment Rights Act 1996 (**ERA 1996**), the Council was required within two months of the commencement of employment to provide Mr E with a written statement of the essential terms of his employment including how much he would be paid, and any terms and conditions relating to pensions and pension schemes. As the Council failed to recognise Mr E as an employee at the time, it did not do this.[8]

    45.3. Section 8 of the ERA 1996 requires an employer to provide a worker, at or before the payment of wages or salary, with a written itemised pay statement confirming both the gross amount of wages or salary and the net amount of wages or salary payable. Again, as the Council failed to recognise Mr E as an employee at the time, it did not do this.

46. The Council correctly refers to the definition of "pensionable pay"[9] in the 2008 Benefit Regulations, which says pensionable pay is "salary, wages, fees and other payments paid to the employee for his or her own use in respect of the employee's employment" and "No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it". The Council questions whether the payment to Mr E is for his own use and whether it is assessed for income tax. It contends that Mr E cannot be a member of the Fund because of this requirement for a tax determination to have been made on the pensionable pay.

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[7] These Regulations have been set out in the Appendix.

[8] I note that at paragraph 91 of the PH decision (extracted in the Appendix) the judge allowed Mr and Mrs E to amend their original ET claims to include a breach of section 1 of the ERA 1996. Mr and Mrs E will consequently be provided with a remedy for this breach by way of an ET decision, if upheld.

[9] The definition has been set out in the Appendix.

47. However, Mr E has provided evidence of his tax returns for the tax years ending April 2012 and 2013. The Council was advised of Mr E's tax position in March 2013, including the fact that he had ceased his other business. To that extent, Mr E has shown that his income is separately identified and for his own use, and that this income was assessed for income tax.

48. As evidenced by his tax return and confirmed by his accountant, Mr E's share of the Foster Care profit for the tax year ending April 2012 was 50%. Although the absence of a written employment contract at the time meant that this was not documented in any agreement between the Council and Mr and Mrs E, it is clear this is how Mr and Mrs E have been administering their pay, and I do not think that this is unreasonable. I therefore consider that Mr E's pensionable pay could be determined by the Council by reference to his tax records and the further information provided, and with his cooperation. I see no reason why the Council could not have met its statutory obligations as set out in the 2008 Benefit Regulations, once it accepted that Mr E was an employee.

49. The Council considers the fact that Mr and Mrs E could decide how they would split the household fee of £32,000 per annum is incompatible with the definition of pensionable pay in the 2008 Benefit Regulations.

50. As I have set out in paragraph 45 above, my view is that this difficulty is, to an extent, of the Council's own making. As a result, it is necessary to set out after the event what pensionable pay was in fact paid – notwithstanding that it was not, as it should have been, clearly established at the time. In my view, and in such circumstances, it is right that the actual amount received by Mr E, and on which tax was paid, should be a key factor in that decision. However, if the Council disagrees with the above pragmatic approach of apportioning the household fee, it can proceed on the basis of a different division, based on the factual evidence available to it, and in a reasonable manner determine Mr E's pensionable pay. If the Council wishes to do this, it should specify what basis it intends to use.

51. However, I should also note that in determining the distress and inconvenience suffered by Mr N, I have assumed that pensionable pay will follow the past proportions received by Mr N, once the household fee was split, and on which tax was then paid. In the event that the Council is unable to determine Mr E's pensionable pay, or decides to take a different approach to that set out above, Mr E is at liberty to submit a further application to my office, so that I may consider the decision taken, the reasoning of the Council and any additional distress and inconvenience caused to Mr E (for example, which may arise as a result of him then having to reconsider previous tax payments made).

52. Whatever the Council's view on this point, it does not affect my finding that Mr E is entitled to membership of the Fund from 27 January 2011.

My findings

53. If the Council had correctly classified Mr E as an employee prior to the commencement of his employment on 27 January 2011, I consider that:

    53.1. Mr E would have been treated as an active member of the Fund on and from 27 January 2011.

    53.2. Mr E would have paid employee contributions into the Fund in accordance with the 2008 Benefit Regulations from this date.

54. The Council would also have acted in accordance with its other obligations, including providing Mr E with a written statement of employment particulars showing details of his pensionable pay and eligibility to join the Fund, and with itemised pay statements.

55. The Council has had the opportunity to resolve this matter after the ET and EAT judgments and has chosen not to do so.

56. The Council has failed to act in accordance with its obligations as set out in the 2008 Benefit Regulations and 2008 Administration Regulations as the employing authority. I find that these failures amount to maladministration on the part of the Council as Mr E's employer.

57. I consider that Mr E has experienced significant distress and inconvenience because of the maladministration identified above. I find that the non-financial injustice which Mr E has suffered is significant enough to warrant a compensation award of £500.

58. I uphold Mr E's complaint against the Council and make appropriate directions below.

Directions

59. Within 28 days of the date of this Determination, the Council shall:

    59.1. enrol Mr E into the Fund from his date of employment, 27 January 2011;

    59.2. contact Mr E to request additional information, if it deems it reasonably necessary to do so;

    59.3. determine Mr E's pensionable pay and confirm his annual contribution rate;

    59.4. calculate the arrears of employee and employer contributions due from 27 January 2011;

    59.5. offer Mr E an opportunity to pay the arrears of employee contributions as a lump sum or through a payment plan over a reasonable period before he reaches his Normal Pension Age in the Fund; and

    59.6. award him £500 in recognition of the significant non-financial injustice which he has suffered dealing with this matter.

The Council can choose to pay the arrears of employer contributions as a one-off lump sum or in instalments.

60. Although, I am unable to direct Mr E, as an applicant, to take any particular steps, I am sure that he will appreciate that his assistance, in responding to any reasonable request from the Council may help it confirm his pensionable pay.

61. If the Council is unable to enrol Mr E into the Fund, it shall provide him with the equivalent benefits by means of another pension arrangement on the basis that he commenced employment with the Council on the 27 January 2011.

Dominic Harris

Pensions Ombudsman
3 October 2023

Appendix

The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

3 Active members

(1) Subject to paragraphs (2) and (3), the term “active member” in relation to the Scheme is to be construed in accordance with regulation 3(1) of, and Schedule 1 to, the Administration Regulations.

(2) An active member of the 1998 Scheme is an active member of the Scheme for as long as the member continues to be in employment which makes the member eligible to be such in accordance with Part 2 of the Administration Regulations.

(3) A person is not an active member unless the person is employed under a contract of employment of a duration of three months or more.

4 Contributions payable by active members

(1) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from that member's pensionable pay in each employment in which the member is an active member.

(2) Subject to paragraph (4), the annual contribution rate to be applied to a person who becomes an active member is determined by the person's employing authority at the commencement of the person's membership on the basis of the person's pensionable pay—

(a) in accordance with the following table; and

(b) having regard to guidance issued by the Scottish Ministers.

……

(4) (a) Where there has been a permanent material change to the terms and conditions of a member's employment which affect the member's pensionable pay in the course of a financial year, the member's employing authority may determine that the contribution rate to be applied in that case is not to be calculated in accordance with paragraph (2); and
(b) in such a case, the authority shall inform the member of the contribution rate applicable to the member, and the date from which it is to be applied.

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5 Meaning of “pensionable pay”

(1) An employee's pensionable pay is the total of—

(a) all the salary, wages, fees and other payments paid to the employee for his or her own use in respect of the employee's employment; and

(b) any other payment or benefit specified in the employee's contract of employment as being a pensionable emolument.

(2) But an employee's pensionable pay does not include—

(a) payments for non-contractual overtime;

(b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;

(c) any payment in consideration of loss of holidays;

(d) any payment in lieu of notice to terminate the employee's contract of employment; or

(e) any payment as an inducement not to terminate the employee's employment before the payment is made.

(3) No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.

The Local Government Pension Scheme (Administration) Scotland Regulations 2008

3 General eligibility for membership

(1) A person may only be an active member if—

(a) this regulation, regulation 4 (employees of non-scheme employers: community admission bodies) to 7 (eligibility in certain cases of persons who are not employers); or

(b) regulation 3(2) (active members) of the Benefits Regulations, enables the person to be one and the person is not prevented from being one by regulation 9 (further restrictions on eligibility).

(2) A person may be a member if the person is employed by a body which is listed in Schedule 2.

……

10 Joining the Scheme

(1) A person who is eligible to be an active member of the Scheme on the day the employment begins becomes an active member on that day unless the person notifies his or her employer in writing before his or her employment begins that he or she does not wish to become a member on that date.

(2) A person who applies to become a member after the date the member would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

Preliminary Hearing Judgment dated 4 October 2021

Amendment 6 – Amendments to include a claim re breach of section 1 ERA for alleged failure to provide the claimants with written statements of particulars of employment, being set out in the proposed amended paper apart to the ET1 at paragraph 49.

91. Permission to amend the claims to add this claim was granted at the PH on 25 June 2021. Now that the terms of the amendment to include this claim have been received, the papers apart to the ET1s are allowed to be amended in terms of this Amendment 6.