

## Ombudsman's Determination

Applicant	Mr S
Scheme	Teachers' Pension Scheme (TPS)
Respondents	Manchester College ( <b>the College</b> )

### Outcome

1. I do not uphold Mr S' complaint and no further action is required by the College
2. My reasons for reaching this decision are explained in more detail below.

### Complaint summary

3. Mr S' complaint is:

"Because I am an hourly paid worker on a sessional contract the College is using an unfair formula to calculate a full time equivalent (**FTE**) salary that the TPS then uses to credit me with pension days. The formula they are using is 30 teaching hours x hourly rate x 52 weeks. This is wrong because of the following:

The maximum teaching hours for a full-time member is 1200 and not the 1560 used here.

The management where I work do not permit anyone to work more than 1200 hours per year.

The hourly rate includes holiday pay and payment for an additional 20 minutes directed duties, which means I have to work longer than a full-time member of staff and cannot take any holidays.

The net result of this is that I pay more in percentage terms than I should in contributions and get less in pension credits than I should. If I worked full time it would cost me an additional £317 in contributions and I would get 84 days less in pension credits."

Mr S says "I would like the College to recognise that this is wrong on their part and repay me my lost wages and credit me with my lost 306 days."



## Background information, including submissions from the parties

4. Regulation 134 of Part 13 of the Teachers' Pensions Regulations (SI 2010/990) says:

"Where any reference occurs in these Regulations, in relation to a person (P) who is in, or has spent any period in, part time employment to the amount which P's contributable salary would have been if he had been employed full time then, in a case where P's contract entitles P to remuneration at a rate which is not expressed as a proportion of the annual, termly, or monthly rate for a comparable full time employment, the amount which P's contributable salary would have been if the employment had been full time is to be calculated on the same basis as is used for the calculation of his salary in the part time employment in question."

5. The TPS Regulations do not prescribe a formula for calculating the FTE. This is a matter for the member's employer to decide. The College's FTE calculation is based on a universal part time hourly rate of pay for sessional lecturers such as Mr S (currently £21.59). The College says:

"This hourly rate includes a specific amount for holiday and preparation time and is based on the mean value of the 14 incremental point lecturing scale. For the contact and non-contact time of the hour (approximately 22 min in respect of preparation, marking and other related duties appropriate to this scale) the rate is £17.57 comprising £13.31 for the delivery hour and £4.26 for the non contact element. The remaining £4.02 of the full £21.59 hourly rate covers the pro rata entitlement to holidays proportionate to that of a full-time member of staff (52 working days plus statutory holidays)."

6. Mr S says that the College's method of calculating the FTE is unfair and discriminatory. He has proposed alternative methods of calculation which he feels would lead to a fairer result. Mr S has pursued this with Teachers' Pensions; the Department for Education; his MP; the Minister of State for Schools; and the Pensions Advisory Service. He received essentially the same answer from all of them, which is that the TPS Regulations do not say how the FTE should be calculated and this is a matter for Mr S' employer to decide.
7. The College says using the same rate for all part time staff is the fairest way. Mr S says that the allowance of 22 minutes is insufficient, and training days are not properly recognised. Mr S is particularly concerned about the effect of prison shutdowns, as he lectures in prisons. One prison he lectures in has imposed a restriction on the number of hours available to him, which he feels merits an adjustment to his FTE.



## **Adjudicator's Opinion**

8. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the College. The Adjudicator's findings were that there may be different ways of calculating the FTE, but the College was entitled to decide how to calculate the FTE and the method it adopted was not unreasonable.
9. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.
10. Mr S' application is partly concerned with a claim for outstanding wages from the College. It has been explained to him that a dispute about his pay is outside my jurisdiction and if he wants to pursue this matter further, he should take professional advice about the options available to him.
11. Essentially, Mr S considers that the College's universal FTE calculation does not adequately cater for his circumstances. The College counters this by saying that the only fair way is to use the same method for everybody. I do not consider this approach to be so beyond the bounds of reasonableness that I should interfere with it. The availability of part time work frequently varies according to demand, and the College is not directly responsible for the number of hours offered to Mr S by third parties such as the Prison Service.

## **Ombudsman's decision**

12. Therefore, I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
12 August 2016