Ombudsman's Determination

Applicant	Mr K
Scheme	The Old British Steel Pension Scheme (**the OBSPS**)
Respondents	British Steel Pension Fund Trustee Limited (**the Trustee**)
	Open Trustees

Outcome

1. I do not uphold Mr K's complaint and no further action is required by the Trustee or Open Trustees.

Complaint summary

2. Mr K has complained he should have been told about prospective changes to the Early Retirement Factors (**ERFs**), prior to his transfer out of the OBSPS.

3. He says that, had he been provided with the full information, he would have decided to remain within the OBSPS. This was because the improved ERFs would have allowed him to achieve his goal of retiring at age 55, directly from the OBSPS.

Background information, including submissions from the parties

4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a PPF assessment period, the BSPS changed its name to the OBSPS. Simultaneously, the Trustee was replaced by Open Trustees. The Trustee was the trustee at the time of the actions complained of. Open Trustees, as the current trustee of the OBSPS, has been included as a respondent.

5. On 4 August 2016, Mr K requested an early retirement estimate from the OBSPS.

6. The Trustee provided an estimate of Mr K's early retirement benefits from the OBSPS based on a retirement date of 24 August 2016.

7. On 9 November 2016, Mr K's Independent Financial Advisor (**IFA**) wrote to the Trustee and requested a cash equivalent transfer value (**CETV**) quotation.

8. On 25 November 2016, he was supplied with a guaranteed CETV of £274,121.50.

9. On 30 January 2017, Mr K's IFA returned some of the transfer documents.

10. On 20 February 2017, Standard Life provided the Trustee with completed transfer documentation. Standard Life confirmed that Mr K was seeking to transfer his benefits to the Standard Life Self-Invested Personal Pension Scheme.

11. On 24 March 2017, the Trustee sent a letter to Mr K explaining that the CETV calculation basis was being amended and that transfer values were likely to increase in most cases (**the Trustee's Letter**). He was offered the option of postponing his transfer decision and awaiting a quotation on the new CETV calculation basis.

12. With effect from 1 April 2017, the Trustee amended the OBSPS's ERFs. This had the effect of increasing early retirement pensions for a number of members who retired on or after this date. The background to this decision has been explained in paragraphs 32 to 51 of the Determination of Mr G's complaint, PO-18982. This is replicated in Appendix One for ease of reference.

13. On the same day, the Trustee amended the CETV calculation basis. This had the effect of increasing transfer values for the majority of members. The background to this decision has been explained in paragraphs 38 to 68 of the Determination of Mr D's case, PO-18762. This is replicated in the Appendix Two for ease of reference.

14. On 14 April 2017, Mr K returned his option form and elected to proceed with his transfer on the old CETV calculation basis.

15. On 26 April 2017, his transfer was paid to the Standard Life Self-Invested Personal Pension Scheme.

16. Mr K raised his complaint with the Trustee on 5 September 2017. He complained that he was not told that there would be reductions to the ERFs. He said that, had he been aware of these changes, he would have requested an updated early retirement quotation. This may have been preferable to transferring out of the OBSPS.

Mr K's position

- When he received the letter that said that the CETV calculation basis was changing, he should have also been told that the ERFs were changing.

- Had he known of the changes to the ERFs, he would have requested a new early retirement estimate to see whether an early retirement pension would have been a better option.

Open Trustees position

17. As mentioned in paragraph six above, the Trustee was the trustee at the time of the actions complained of. However, Open Trustees is the current trustee and has taken responsibility for replying to the complaint.

- The early retirement estimate stated that the amounts contained within it were illustrative and could change in the future. So, Mr K should have known that his early retirement pension could change.

- There was no legal obligation on the Trustee to inform Mr K of any potentially favourable changes to the ERFs either in advance of, or after, 1 April 2017.

- The Trustee was not aware of Mr K's individual circumstances or goals in respect of early retirement. If seeking early retirement directly from the OBSPS was a key consideration when deciding whether to transfer, he should have requested further information from the Trustee.

- Despite being provided with an opportunity to receive an updated CETV illustration, which would likely have resulted in a more generous CETV, Mr K decided to proceed with the original CETV. Therefore, it appeared that Mr K was intent on transferring out of the OBSPS as quickly as possible.

Adjudicator's Opinion

18. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Open Trustees. The Adjudicator's findings are summarised below:-

- The Trustee was not obliged to tell Mr K of any changes to the ERFs.

- This had already been determined by me in Mr G's complaint. Here I found that it was reasonable that members were not informed of the forthcoming changes. In paragraph 148, I said:-

  "I recognise that the Trustee had a duty when exercising its powers to consider the members' financial interests. But I do not consider that it follows that if the Trustee had alerted members to a potential, but uncertain, future improvement in CETVs and ERFs, it would have discharged that duty."

- By the time the changes to the ERFs were made, Mr K had already submitted his completed transfer documentation. In completing the transfer documentation, Mr K made it clear that he wanted to accept a CETV in exchange for any benefits he held within the OBSPS. In addition, it was almost eight months since he had requested an early retirement estimate, so the Adjudicator did not agree that the Trustee should have realised that he required more information regarding the ERFs.

- The Adjudicator said that, if early retirement was a significant consideration, it was the responsibility of Mr K, or his IFA, to have ensured that it had an up to date early retirement estimate prior to the transfer.

19. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. He said that:-

- The Pensions Regulator has said that trustees must act in the interests of the beneficiaries. Mr K argued that the Trustee had not done so in his case.
- His complaint differs to Mr G's complaint because Mr G had transferred out of the OBSPS long before the changes were made to the valuation.
- The Trustee would have known of the changes to the ERFs by the time he transferred out. So, he should have been told of the changes.
- In April 2017, his IFA attempted to speak to the former OBSPS administrator (**the Pensions Office**) regarding the changes, in particular how they would affect early retirement. However, the Pensions Office refused to engage. He said that he was unable to provide evidence of this call.

20. Open Trustees were given the opportunity to respond to Mr K's comments. It said that:-

- It has checked Mr K's file and cannot locate any evidence of correspondence or telephone conversations between Mr K's IFA and the Pensions Office.
- It thinks it is unlikely that the Pensions Office refused to speak to Mr K's IFA.

21. I note the additional points raised by Mr K, but agree with the Adjudicator's Opinion.

Ombudsman's decision

22. I have previously considered whether the Trustee was obliged to tell members about the changes in ERFs in Mr G's complaint. In paragraphs 116 and 117, I said:-

> "The Trustee is not authorised or regulated to provide advice, therefore it was limited to providing only information and options to categories of members. It could not provide recommendations and advice for individual members (whose circumstances and facts would each have been different). It was for Mr G to consider, on independent advice, if and how any of the changes might have affected him on the basis of information available and circumstances pertaining at the time.
>
> The Trustee was not, and could not have been expected to be, aware of every member's individual circumstances when making a generic decision. What is best for one member may disadvantage another. The Trustee needed to find a balance between providing too little information and overwhelming members with extensive and comprehensive information. This is a difficult balance to find, especially when it comes to pensions, which are not straightforward in nature, even without an event such as this affecting the OBSPS."

23. I accept that Mr K's circumstances differ to those of Mr G. Specifically, that Mr G retired prior to the changes in the ERFs. Mr K's complaint was distinct as he transferred out of the OBSPS after the changes to the ERFs. However, my findings in Mr G's Determination still stand. The Trustee could not have been expected to be aware of every member's individual circumstances. By the time the ERFs had changed, it was over eight months since Mr K had last requested a retirement quotation and over a month since Mr K had returned completed transfer documentation. Consequently, the Trustee would not have known Mr K was still contemplating early retirement and so I would not have expected it to provide an update on the ERFs.

24. Mr K has argued that the Trustee failed to act in his best interests, I do not find this argument compelling. The Trustee cannot advise, or be seen to advise, whether the transfer was in Mr K's best financial interests as it is not regulated to provide such advice. Had the Trustee offered Mr K an option to abort his transfer and retire early, the Trustee could have been accused of making a recommendation it was not regulated to make.

25. Furthermore, by the time the Trustee decided to update the ERFs, Mr K had already submitted completed transfer paperwork. The Trustee had all it needed to complete the transfer at this point, so I do not find it reasonable for Mr K to have expected to be updated on ERFs.

26. Mr K has complained that the Pensions Office refused to engage with his IFA; so, he was not given the opportunity to assess what the new ERFs would mean for him. He has been unable to provide evidence of his IFA's correspondence being refused. In response to this element of the complaint, Open Trustees has said that it holds nothing that suggests the IFA attempted to make contact. With this limited information, I cannot be satisfied that there was maladministration on the part of the Trustee.

27. I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
18 March 2022

Appendix One

Paragraphs 32 to 51 from Determination PO-18982

(i) “Relationship between ERFs and member contributions to the OBSPS

32. Benefits paid from the OBSPS to members who retire from deferred status are calculated on the basis of the member’s Final Pensionable Earnings and the number of years of his or her Pensionable Service, as set out in Rule 14 of the OBSPS Rules (a relevant extract of which is included in Appendix 1).

33. Employer contribution levels are set by the Trustee after certification from the Actuary (with agreement of the principal employer) in order to provide benefits as they fall due, as set out under Clause 9 of the Trust Deed that governs the OBSPS.

34. Rule 14(1) of the OBSPS Rules specifies that, if a pension is taken “at a time earlier than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be reduced”. There are specific circumstances set out in the OBSPS Rules where such a reduction would not apply, for example in situations where the member suffers from incapacity. However, those situations have not applied to Mr G at any material time.

35. Rule 14(1) of the OBSPS Rules also states that “the Trustee must be reasonably satisfied that the value of his benefits is at least equal to the value of the benefits that have accrued to and in respect of him under the Standard Section, taking into account the preservation, revaluation and contracting-out requirements of the 1993 Act.”

(ii) Relationship between ERFs and the OBSPS’ funding position

36. In March 2016, the Actuary considered the application of an underfunding reduction in relation to CETVs. The Actuary determined that such action was not appropriate at the time, as the OBSPS had been more than 100% funded as at 31 March 2014 but recommended regular future review of the matter.

37. In April 2016, the Actuary presented a report, again considering the application of an underfunding reduction based on an initial assessment of the OBSPS’ funding position as at December 2015, which showed that the OBSPS’ funding level might have fallen to 98%. The Actuary was working on an updated funding assessment as at 31 March 2016, and the Trustee agreed to await this before making any changes.

38. The updated assessment, considered in the Trustee’s May 2016 meeting, showed that the OBSPS’ funding level was more than 100% and there was no need to apply an underfunding reduction to CETVs.

39. The Actuary’s reports of 5 September and 23 November 2016, considered the funding position in relation to CETVs to be over 100% on the existing CETV calculation basis and advised that there was, again, no need to apply an underfunding reduction.

(iii) Relationship between ERFs and the OBSPS' investment strategy

40. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 2), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that trustees must obtain and consider appropriate advice on what the SIP must cover.

41. Under Regulation 4(4) of the Investment Regulations, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (those liabilities being pension payments, transfer values etc.) must be invested "in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme".

42. In the Trustee's meeting on 9 March 2016, the Trustee considered a report from the Actuary dated 9 March 2016, which had been circulated on 26 February 2016. That report reviewed the actuarial factors for the OBSPS, following completion of the OBSPS' 31 March 2014 actuarial valuation (the **2014 Valuation**). In the review of the CETV calculation basis, the Actuary compared the assumptions underlying the existing CETV calculation basis, which were set to be best estimate assumptions as at 31 March 2011, to the 31 March 2014 best estimate basis. It concluded that the two best estimate bases were broadly similar and that the existing underlying assumptions remained suitable and did not require amendment. The Actuary did not recommend that the underlying assumptions were updated.

43. The 2011 best estimate basis had been adjusted when transfer values were calculated to reflect the market conditions at the point of calculation using market value adjustments (**MVAs**). The Actuary recommended that the MVAs were re-based to capture financial conditions as at 31 March 2014, the transfer basis; and also improving the accuracy of the equity-based MVA by linking it to the member's pre-retirement duration rather than a fixed duration. In the March 2016 meeting, the Trustee Board approved the revised MVAs; and agreed to review the transfer value basis, no later than 31 March 2019, although the Actuary said that it would alert the Trustee in the meantime if he considered that the basis or the MVAs needed to be reviewed earlier. It was agreed that the necessary steps should be completed to effect the changes no later than 1 October 2016, although implementation ahead of that date was encouraged if possible.

44. This timeframe had been set in order to allow sufficient time for the necessary revisions to be made to the administration system used to calculate CETVs. Before work could begin on the CETV revisions, the administration system had to be revised significantly in light of changes to the OBSPS' benefit structure being implemented with effect from 1 April 2016. This was necessary as the revised benefit structure had to be correctly coded so that it could be reflected in the CETV calculations. This work was completed ahead of the 1 October 2016 target, so the changes were reflected in the CETV calculations, with effect from 1 September 2016.

45. The Actuary also advised, in the 9 March 2016 report, that ERFs on retirement from deferred pensioner status should continue to be calculated on the same basis as CETVs, which remained unchanged, as explained in paragraph 42 above.

46. In August 2016, a decision was made by the OBSPS' investment committee to take investment de-risking steps, however these remained within the tolerances of the SIP. No change was made to core strategic asset allocation and the SIP was amended to reflect the changes made.

47. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings, respectively.

48. The Actuary's report, dated 5 September 2016, explained that, while "good progress" had been made on the first stages of the de-risking, the OBSPS' future remained uncertain as decisions by Tata Steel Limited and the UK and Welsh governments, regarding the future of the UK steel industry, were still awaited. In any case, investment de-risking would be required. The report advised that the OBSPS' SIP had been amended to reflect the initial de-risking that had taken place, but the Actuary referred to the future targeted investment strategy not yet having been made and explained that: a new version of the OBSPS' SIP would be issued in due course, reflecting the expected move in the investment strategy; and the CETV calculation basis would be affected. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

49. In the 23 November report, which referred back to the September report and provided an update on the situation regarding the OBSPS' investment strategy, the Actuary indicated that a significant proportion of the de-risking that was permitted by the changes, that had been made within the amended August SIP, had been completed. The August 2016 SIP did not make changes to the central benchmarks for the OBSPS' long term investment strategy. The Actuary noted that "no attempt had yet been made to specify a targeted new investment strategy." But the intention was to amend the investment strategy further when the future of the OBSPS became clearer. As the September 2016 report had done, the November 2016 report stated that, once completed, the changes to the OBSPS' investment strategy would need to be reflected in a new SIP and in the CETV calculation basis.

50. Each of the September and November reports recommended that no changes be made to the CETV calculation basis at the relevant times, given the continued uncertainty in relation to the OBSPS' future, but that the matter be kept under review and considered further in the next Trustee's meeting, when the future of the OBSPS would be clearer.

51. The Actuary's report of March 2017 confirmed that, as the OBSPS' future was now less uncertain, changes to the OBSPS' investment strategy were therefore being formalised through the OBSPS' new SIP. On that basis, as advised by the Actuary,

the Trustee proceeded with reviewing the CETV (and, consequently, ERF) assumptions. The Trustee made the decision to amend both, with effect from 1 April 2017, for any member retiring before reaching his or her NPD or requesting a CETV on or after that date. This resulted in a lesser reduction being applied to members' benefits on early retirement and, subsequently, a higher early retirement pension than had previously been available. The amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

Appendix Two

Paragraphs 38 to 68 from Determination PO-18762

(i) Relationship between CETVs and the OBSPS' investment strategy

38. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 4), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that the trustees must obtain and consider appropriate advice on what the SIP must cover.

39. Under Regulation 4(4) of the Investment Regulations, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (those liabilities being pension payments, transfer values etc.) must be invested "in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme".

40. In the Trustee's meeting on 9 March 2016, the Trustee considered a report from the Actuary dated 9 March 2016, which had been circulated on 26 February 2016. That report reviewed the actuarial factors for the OBSPS, following completion of the OBSPS' 31 March 2014 actuarial valuation (the **2014 Valuation**). In the review of the CETV calculation basis, the Actuary compared the assumptions underlying the existing CETV calculation basis, which were set to be best estimate assumptions as at 31 March 2011, to the 31 March 2014 best estimate basis. It concluded that the two best estimate bases were broadly similar and that the existing underlying assumptions remained suitable and did not require amendment. The Actuary did not recommend that the underlying assumptions were updated.

41. The 2011 best estimate basis had been adjusted when transfer values were calculated to reflect the market conditions at the point of calculation using market value adjustments (**MVAs**). The Actuary recommended that the MVAs were re-based to capture financial conditions as at 31 March 2014, the transfer basis; and also improving the accuracy of the equity-based MVA by linking it to the member's pre-retirement duration rather than a fixed duration. In the March 2016 meeting, the Trustee Board approved the revised MVAs; and agreed to review the transfer value basis, no later than 31 March 2019, although the Actuary said that it would alert the Trustee in the meantime if he considered that the basis or the MVAs needed to be reviewed earlier. It was agreed that the necessary steps should be completed to effect the changes no later than 1 October 2016, although implementation ahead of that date was encouraged if possible.

42. This timeframe had been set in order to allow sufficient time for the necessary revisions to be made to the administration system used to calculate CETVs. Before work could begin on the CETV revisions, the administration system had to be revised significantly in light of changes to the OBSPS' benefit structure being implemented with effect from 1 April 2016. This was necessary as the revised benefit structure had to be correctly coded so that it could be reflected in the CETV calculations. This work

was completed ahead of the 1 October 2016 target, so the changes were reflected in the CETV calculations, with effect from 1 September 2016.

43. In August 2016, a decision was made by the OBSPS' investment committee to take investment de-risking steps, however these remained within the tolerances of the SIP. No change was made to core strategic asset allocation and the SIP was amended to reflect the changes made.

44. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings respectively.

45. The Actuary's report, dated 5 September 2016, explained that, while "good progress" had been made on the first stages of the de-risking, the OBSPS' future remained uncertain as decisions by Tata Steel Limited and the UK and Welsh governments, regarding the future of the UK steel industry, were still awaited. In any case, investment de-risking would be required. The report advised that the OBSPS' SIP had been amended to reflect the initial de-risking that had taken place, but the Actuary referred to the future targeted investment strategy not yet having been made and explained that: a new version of the OBSPS' SIP would be issued in due course, reflecting the expected move in the investment strategy; and the CETV calculation basis would be affected. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

46. In the 23 November report, which referred back to the September report and provided an update on the situation regarding the OBSPS' investment strategy, the Actuary indicated that a significant proportion of the de-risking that was permitted by the changes, that had been made within the amended August SIP, had been completed. The August 2016 SIP did not make changes to the central benchmarks for the OBSPS' long term investment strategy. The Actuary noted that "no attempt had yet been made to specify a targeted new investment strategy." But the intention was to amend the investment strategy further when the future of the OBSPS became clearer. As the September 2016 report had done, the November 2016 report stated that, once completed, the changes to the OBSPS' investment strategy would need to be reflected in a new SIP and in the CETV calculation basis.

47. Each of the September and November reports recommended that no changes be made to the CETV calculation basis at the relevant times, given the continued uncertainty in relation to the OBSPS' future, but that the matter be kept under review and considered further in the next Trustee's meeting, when the future of the OBSPS would be clearer.

48. The Actuary's report of March 2017 confirmed that, as the OBSPS' future was now less uncertain, changes to the OBSPS' investment strategy were therefore being formalised through the OBSPS' new SIP. On that basis, as advised by the Actuary, the Trustee proceeded with reviewing the CETV assumptions. The Trustee made the

decision to amend the CETV assumptions, with effect from 1 April 2017, for any member retiring before reaching his or her NPD or requesting a CETV on or after that date. This resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

(ii) Amendment of the CETV calculation basis

49. In relation to the value of a transfer, the OBSPS Rules state at paragraph 16(1)(f) (see Appendix 1), that the value of the transfer payment will be as certified by the Actuary.

50. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is provided in Appendix 2 below, however the Occupational Pension Schemes (Transfer Value) Regulations 1996 (**the Transfer Regulations**), also affect the member's right to transfer and set out the transfer requirements (see Appendix 3). In addition, in 2008, TPR published guidance for trustees in relation to transfer values which is available on TPR's website[1].

51. Regulation 7B of the Transfer Regulations requires trustees to determine the economic, financial and demographic assumptions used to calculate the initial cash equivalent (**ICE**) after obtaining advice from the actuary. It also requires trustees to have regard for the scheme's investment strategy, with the aim that this will lead to the best estimate of benefits.

52. TPR's Transfer guidance states:

> "19. The assumptions must be chosen with the aim of leading to a best estimate of the ICE. This is a best estimate of the amount of money needed at the effective date of the calculation which, if invested by the scheme, would be just sufficient to provide the benefits. However, trustees should recognise that 'best estimate' is not a precise concept and they will often need to be pragmatic and accept choices which seem to them reasonable in the light of the information and advice they have obtained."

53. The guidance also refers to the investment strategy impacting transfer values. It states:

> "21. Trustees must have regard to their investment strategy when choosing assumptions. This includes the appropriate investment returns to be expected, which in turn will influence the choice of interest rates with which future expected cash flows are discounted."

54. The guidance also says that trustees should make evidence-based objective decisions:

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[1] http://www.thepensionsregulator.gov.uk/guidance/guidance-transfer-values.aspx

"23. Trustees should make evidence-based objective decisions in relation to matters that will have a material effect. Of course, evidence in the conventional sense is not available on the future. In this context what we mean by evidence is facts about the past, and opinions about the future based on those facts, which can be objectively used by the trustees to make judgements about the likely course of future events. This evidence can take a variety of forms, including:

- past history of investment returns from various asset classes and the relationships between them;
- published mortality tables;
- a scheme's own experience to the extent it is statistically reliable;
- published statistics on demographic issues;
- the opinions of recognised experts; and
- the output of suitable stochastic models as advised by the scheme actuary."

55. As the Trustee was aware, although it was required under the Transfer Regulations to take actuarial advice, responsibility for the calculation and verification of CETVs rested with the Trustee. Therefore, the Trustee carried out annual reviews of its advisers to monitor their service standards to ensure that the standard of advice that it received from its advisers remained sufficiently high. The Actuary consistently rated well against the Trustee's key performance indicators.

56. As explained in paragraph 40 to 42 above, in the Trustee's meeting in March 2016 the Trustee agreed to change the MVAs but maintained all of the other factors, having considered actuarial advice to that effect. The Actuary also considered the application of an underfunding reduction, suggesting regular future review, but determined that it was not appropriate at the time as the OBSPS had been more than 100% funded as at 31 March 2014. The Trustee considered and agreed the change to the MVAs within the CETV calculation basis, which was implemented with effect from 1 September 2016. Members were not informed of these changes and the changes did not cause any delays in the issuing of CETV quotations or payment of CETVs.

57. In April 2016, the Actuary presented a report, again considering the application of an underfunding reduction based on an initial assessment of the OBSPS as at December 2015, which showed that funding may have fallen to 98%. The Actuary was working on an updated funding assessment as at 31 March 2016 and the Trustee agreed to await this before making any changes. The updated assessment, considered in the May 2016 meeting, showed that the OBSPS' funding position was more than 100% and so there was no need to apply an underfunding reduction to CETVs.

58. As mentioned in paragraphs 44 to 47 above, the Actuary provided two further reports dated 5 September 2016 and 23 November 2016, which were considered at the September and December Trustee meetings. Both reports considered the funding

position in relation to CETVs to be over 100% on the existing CETV calculation basis, which meant that there was no need for an underfunding reduction. The reports went on to discuss the OBSPS' investment strategy due to its uncertain future, with the possible routes meaning that de-risking would be required. The Actuary indicated that, by 23 November 2016, a significant proportion of the preliminary de-risking that was permitted by the changes reflected in the August 2016 amendment of the SIP had been completed. In the September report, the Actuary referred to the future targeted investment strategy not yet being specified, with both reports stating that, once completed, the expected changes would need to be reflected in a new SIP and in the CETV calculation basis. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

59. The actuarial reports recommended that no changes be made to the CETV calculation basis at that time, but that the matter was to be kept under review and considered further in the March 2017 meeting when the future of the OBSPS should be clearer. While the November 2016 Actuarial report noted that "a significant proportion of the anticipated de-risking has now been completed", changes to the long-term investment strategy were yet to be made and reflected in a SIP. The CETV calculations were based on the OBSPS' long-term investment strategy. Short-term changes within the tolerances of the SIP were not considered to be relevant for CETV purposes.

60. In the Trustee meeting of 8 March 2017, the Trustee approved the draft SIP effective from 1 April 2017. On the advice of the Actuary, the Trustee also proceeded with reviewing the assumptions, resulting in the Trustee's decision to amend the CETV assumptions, with effect from 1 April 2017, for any member requesting a CETV on or after that date. As stated in paragraph 48, the amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

(iii) Option to await a new CETV calculated using the post April 2017 calculation basis

61. In the Trustee meeting of 8 March 2017, the Trustee identified the need to give members suitable information during the transitional period. It was decided that any member who had requested a CETV quotation and been provided with a guaranteed CETV since 1 January 2017, and whose transfer value had not yet been paid, should be given the opportunity of postponing his or her transfer decision and requesting an updated transfer value calculated on the new basis.

62. Members whose circumstances met the criteria, set out in paragraph 61 above, were sent letters offering them the opportunity to await a calculation on the post April 2017 basis. The letters were sent out in batches, starting on 20 March 2017, and some further letters were later issued individually. These letters differed slightly, depending on whether: the member had already returned their paperwork to proceed with the

transfer; and the request for a CETV quotation or payment was received by the Trustee before or after 31 March 2017.

63. Mr D had returned his paperwork requesting to proceed with his transfer. His letter from the Trustee stated:

> "I am writing to you about your decision to transfer out your [OBSPS] benefits to another registered pension arrangement by means of the [OBSPS] paying a Cash Equivalent Transfer ("transfer").
>
> When an OBSPS member initially requests a transfer, the Pensions Office calculates the individual's transfer value using factors set by the Trustee after taking advice from the [OBSPS] Actuary. These factors reflect the expected cost of providing the member's benefits within the OBSPS, calculated on a best estimate basis. The actuarial basis for calculating transfer values was last updated on 1 October 2016.
>
> The assumptions and methodology used to calculate transfer values must satisfy certain regulatory requirements and have regard to the [OBSPS'] investment strategy. The Trustee Chairman's letter to [OBSPS] members referred to recent developments in connection with the future of the [OBSPS]. In recognition of those developments the Trustee is adopting a lower-risk investment strategy.
>
> The transfer value basis will therefore be changed to reflect the [OBSPS] revised investment strategy and the overall effect of this change is expected to result in higher transfer values in most cases. It is currently expected that increases in transfer values will only apply for members more than 2 years from the [OBSPS] Normal Pension Age (generally age 65), and that the increases become more significant the further away a member's age is from Normal Pension Age.
>
> The transfer value which you accepted was calculated on the current basis; applying the revised factors in most cases is expected to result in a higher value (although we cannot give a guarantee to that effect). You can of course proceed with your transfer on the basis quoted; however, you may wish to reconsider your decision taking into account the above information. If you decide to proceed with your request to transfer then please indicate in the box below and return this letter to the Pensions Office in the pre-paid envelope.
>
> Under statutory provisions a transfer value is required to be provided on request to a scheme member once in any 12 month period. Due to the unusual circumstances outlined above, if you decide not to proceed with your transfer request, the Trustee has agreed that you will automatically be provided with an updated transfer value statement using the revised factors when these are available.

Allowing time for the necessary system changes following the closure of the [OBSPS] to future accrual with effect from 31 March 2017 for [OBSPS] employee members, it is anticipated that revised transfer value quotations will be available from the end of May 2017.

You may wish to discuss the contents of this letter with an Independent Financial Adviser. Pensions Office staff cannot give advice.

I enclose a copy of this letter for your records, or for you to pass to your Independent Financial Adviser."

64. Mr D's letter contained an option form titled "MEMBER'S DECLARATION" which stated:

"(please tick one box below to indicate your decision)

☐ **I wish to proceed** with transferring-out my [OBSPS] benefits.

I understand that the Trustee's decision to change the transfer value basis from 1 April 2017 is likely to result in an increase to future transfer values payable by the Scheme and that any increase is not reflected in the transfer value I have accepted.

☐ **I do not wish to proceed** with transferring-out my [OBSPS] benefits at this time.

I understand that the Pensions Office will send me an updated transfer value quotation after the change in the transfer value basis takes effect and the Pensions Office systems are able to process such requests (likely to be towards the end of May 2017) and I understand that it is not guaranteed that the updated transfer value quotation will be greater than the current quotation." [**original emphasis**]

65. Mr D returned his option form requesting to proceed with transferring out.

(iv) Completion of the transfer using the pre-1 April 2017 calculation basis

66. Part 4ZA, which contains sections 93 to 101 of the PSA 1993, sets out the trustee's statutory requirements in relation to transfers. Section 93A of the PSA 1993, sets out the right to a statement of entitlement (also known as a guaranteed CETV). As long as the member meets the criteria set out in section 93 of the PSA 1993, section 93A requires trustees to provide the member with a statement of entitlement in respect of his or her transferable rights. Trustees are required, under Regulation 6(1) of the Transfer Values Regulations, to provide the statement of entitlement within three months after the date of the member's application for a statement of entitlement or, where it is unable to do so for reasons beyond its control, it may take up to a further three months, as required, to do so.

67. Section 94 of the PSA 1993, provides a member who has been provided with a statement of entitlement under section 93A of the PSA 1993, with a right to take that

cash equivalent in accordance with the remainder of Part 4ZA of the PSA 1993. Section 95 of the PSA 1993, details how an application to take the cash equivalent must be made, the relevant timeframe being three months beginning with the guarantee date, and the ways in which the right to a cash equivalent can be taken, for example for acquiring rights allowed under the rules of a personal pension scheme.

68. Section 99 of the PSA 1993, sets out the trustee's duties after the member has exercised his or her right to take a transfer in accordance with section 95 of the PSA 1993. Section 99(2) of the PSA 1993, states that trustees must do what is needed to carry out what the member requires within 6 months of the relevant period.