

Ombudsman's Determination

Applicant	Mr A
Scheme	Old British Steel Pension Scheme (OBSPS)
Respondents	B.S. Pension Fund Trustee Limited (Trustee) and Open Trustees Limited

Complaint Summary

1. Mr A's complaint is as follows:-
 - 1.1. Communications in respect of the OBSPS were misleading and scaremongering.
 - 1.2. The cash equivalent transfer value (**CETV**) paid to his chosen receiving scheme was not an accurate representation of the benefits he accrued within the OBSPS. He says he felt pressured by the information the Trustee provided regarding the OBSPS entering the Pension Protection Fund (**PPF**) and believed transferring out would be his best option. He later discovered that members who had remained in the OBSPS saw a huge increase in their CETVs following a change to the calculation basis; the Trustee did not make him aware of this change. He would like his CETV calculated on the new basis and the difference transferred to the receiving scheme.
 - 1.3. The explanation the Trustee has provided for the differences in CETVs before and after the calculation basis change does not account for the significant increases seen in CETVs. Therefore, the only logical explanation is that the CETVs prior to the change of calculation basis were incorrect. The CETV he was provided with must have been wrong because the Trustee should have made changes to its investment strategy and amended the CETV calculation basis at an earlier date.

Summary of the Ombudsman's Determination and reasons

2. The complaint is not upheld against the Trustee because:-
 - 2.1. The information the Trustee provided to members in relation to the OBSPS' future was not misleading, nor did it amount to 'scaremongering'. Furthermore, I do not consider that the Trustee intended it to be so. Instead,

the information provided was necessary to keep members abreast of developments so that they could consider how the scenarios might affect them. It was to provide factual information. I have found no maladministration in respect of the announcements and information provided.

- 2.2. The Trustee has obtained and considered the appropriate advice from suitable parties in order to reach its decisions in respect of: the OBSPS; its future; the Statement of Investment Principles (**SIP**); and the CETV calculation basis. I find that the relevant factors had been considered and the decisions reached were not perverse.
- 2.3. The CETV calculation basis applicable at the point Mr A was provided with his guaranteed CETV is a matter for the Trustee and any calculation correctly applying that CETV calculation basis was not maladministration. I have not found any error in the calculation of Mr A's CETV, it was calculated using the agreed basis at the point of the calculation.
- 2.4. The Rules that govern the OBSPS do not provide that a CETV shall be recalculated if the CETV calculation basis is changed at a future date. Nor is it reasonable to expect the Trustee to recalculate CETVs already paid and increase such payments (or conversely, as the case may be, decrease such payments and seek repayment of any funds already paid, in excess of those calculated on the lower basis). In cases such as Mr A's, in which he exercised his right to transfer by requesting a transfer on the former CETV basis, I cannot find maladministration in the Trustee's completion of the transfer out, as the Trustee is bound to action the member's statutory right to transfer, which it did.
- 2.5. The notification requirements in respect of the OBSPS, with regard to this complaint, were either met or not applicable. Moreover, the fact that Mr A only became aware of future changes after transferring out of the OBSPS does not amount to maladministration.
- 2.6. Mr A exercised his right to transfer and the Trustee became bound to carry out his request and complete the transfer within the required timeframe.

Detailed Determination

Background

3. Following a bulk transfer from the British Steel Pension Scheme and its entering into a PPF assessment period, the British Steel Pension Scheme changed its name to the Old British Steel Pension Scheme, namely, OBSPS. Additionally, the Trustee, has since been replaced by Open Trustees Limited. The Trustee was the trustee at the time of the actions complained of. Open Trustees Limited has been joined to this complaint as current trustee who has conduct of the OBSPS.
4. The Appendices are as follows:-

- 4.1. Appendix 1 - relevant extracts of the Rules governing the OBSPS (the **OBSPS Rules**).
- 4.2. Appendix 2 - relevant extracts from Part 4ZA (Transfer Rights: General) of the Pension Schemes Act 1993.
- 4.3. Appendix 3 - relevant extracts from The Occupational Pension Schemes (Transfer Values) Regulations 1996.
- 4.4. Appendix 4 - relevant extracts from The Occupational Pension Schemes (Investment) Regulations 2005.
- 4.5. Appendix 5 - announcements referenced below that were issued before the Trustee paid Mr A's transfer value.

5. I have categorised Mr A's complaint into two parts:

Part A: The information announcements issued by the Trustee in respect of possible changes to the OBSPS and their impact on Mr A's decision to transfer out; and

PART B: CETV calculations in the OBSPS:

- (i) **Relationship between CETVs and member contributions to the OBSPS;**
- (ii) **Relationship between CETVs and the OBSPS' investment strategy;**
- (iii) **Amendment of the CETV calculation basis; and**
- (iv) **Completion of the transfer using the pre-1 April 2017 calculation basis.**

6. Mr A's complaint is one of several similar complaints brought by members of the OBSPS. His complaint has been chosen as the Lead Complaint for his group (there being four different groups of complainants, each with its own Lead Complaint). Where the circumstances of a complainant within Mr's A group are such that my findings below might differ, then that complaint will be looked at individually.

7. For ease of reference, a summary of the four Lead Complaints is as follows:-

- 7.1. Mr A complains that the Trustee amended the CETV calculation basis resulting in significantly higher CETVs after his transfer had been completed, without informing him it would be changing the calculation basis. Mr A argues that the change should have been made at an earlier date and that therefore the CETV he received was incorrect. Mr A's group contains 123 associated complaints.
- 7.2. Mr D complains that the Trustee amended the CETV calculation basis resulting in significantly higher CETVs during the period that he was transferring out. The Trustee offered him the option of awaiting a CETV on the new calculation basis, but Mr D opted to proceed with the CETV he had been quoted. Mr D argues that the Trustee did not give him sufficient information to make an informed decision and that it should have guaranteed that his CETV would increase. Mr D's group contains 50 associated complaints.

- 7.3. Mr S complains that the Trustee calculated his CETV using the old calculation basis, after it had made its decision to amend the calculation basis but before the new calculation basis came into effect when it was aware that CETVs would significantly increase. Mr S' group contains 5 associated complaints.
- 7.4. Mr G complains that the Trustee amended the early retirement factors after he retired without informing him it would be changing the factors which would result in higher early retirement pensions. Mr G argues that the change should have been made at an earlier date and so the pension he is receiving is incorrect. He has also complained that if the CETV, he was given prior to his retirement, had been calculated on the new basis he may have made a different decision. Mr G's complaint contains 49 associated complaints.

Mr A's circumstances

8. Mr A's timeline is as follows:

Active member in the OBSPS	22 October 1979 to 30 June 2016
Guaranteed CETV statement provided to Mr A	3 August 2016
Right to take CETV exercised (relevant paperwork returned)	21 October 2016
CETV paid to receiving scheme	2 November 2016
CETV calculation basis change date	1 April 2017

9. In October 1979, Mr A joined the OBSPS, a defined benefit pension scheme.
10. On 30 June 2016, Mr A left active membership of the OBSPS by opting-out and he became a deferred member.
11. On 3 August 2016, Mr A was provided with a statement of entitlement showing the cash equivalent of his transferrable rights under the OBSPS to be £307,453.27. The same day, he asked why the amount quoted in his statement of entitlement was approximately £40,000 lower than that quoted in his 2015 annual pension statement.
12. On 9 August 2016, the OBSPS administrator responded to Mr A's query, explaining that the difference was due to the application of Rule 5(3) of the OBSPS Rules. Rule 5(3) applies where non-basic elements of pay, such as overtime or bonuses, have been subject to abnormally wide fluctuations. The basic pay is used, along with the average of that year's non-basic pay and the previous two years' non-basic pay, to calculate the earnings under Rule 5(3). The highest earnings within the years preceding leaving the scheme calculated under Rule 5(3) would be selected and used as the final pensionable salary. As the annual benefit statement is based on the earnings of the previous year, Rule 5(3) can cause actual benefits to differ.

13. On 21 October 2016, Mr A's completed discharge paperwork was received, instructing the Trustee to proceed with the transfer. Confirmation that Mr A had obtained financial advice followed on 28 October 2016.
14. On 2 November 2016, Mr A's CETV of £307,453.27 was paid to his nominated arrangement.

Material facts

PART A: Information announcements in respect of possible changes to the OBSPS

15. In March 2016, the Tata Steel Group announced that it had begun a portfolio restructuring exercise and it started investigating the possibility of selling Tata Steel UK (**TSUK**). TSUK was the principal sponsoring employer of the OBSPS.
16. In May 2016, the Government began consultations on options for the OBSPS, including the possibility of modifying OBSPS benefits. At the time, there was uncertainty over the OBSPS' future, but its entry into the PPF seemed likely. The Trustee considered whether a change to the CETV basis was required and took actuarial advice, which confirmed changes were not required at that time.
17. On 26 May 2016, the Trustee issued a press release and a letter to all OBSPS members. The Trustee explained, in its letter, that its current belief was that the Government would support the modification of benefits within the existing scheme to enable the OBSPS to remain outside the PPF with the intention of providing higher benefits, for the majority of members, than those provided within the PPF. The OBSPS' Rules allowed for such modification but legislation¹ that had been established since the Rules came into effect could prevent the Rule from being used in the manner proposed. The letter informed members that: the Trustee had asked the Government to change the way this legislation applied to the OBSPS, to enable modification of benefits by reducing future pension increases; and the Government was undertaking a public consultation exercise to allow interested parties the opportunity to comment on that proposal. The Trustee encouraged members to participate in the Government consultation.
18. Included with the letter of 26 May 2016 was a question and answer paper which provided a table showing the differences between the compensation payable by the PPF and the proposed modified benefits within the OBSPS. This stated that, for a member under age 65 (the OBSPS' normal pension date (**NPD**)), entry to the PPF would mean that his or her benefits would be reduced by at least 10% but, with the modifications that the Trustee proposed, no reduction would be needed, and the OBSPS could remain outside of the PPF.

¹ i.e. section 67 of the Pensions Act 1995 which (broadly) prohibits any change to a pension scheme which could have a detrimental effect on scheme members' accrued rights under that pension scheme.

19. On 8 and 16 June 2016, the Trustee provided further updates on the Government's consultation process, which was still ongoing, and also details of how the Trustee itself had responded to the consultation. The updates emphasised the Trustee's aim: to secure a better outcome for members than would be achievable were the OBSPS to enter the PPF. The Trustee encouraged members to contribute to the public consultation part of the Government consultation, expressing the importance of members having their voices heard.
20. On 12 August 2016, the Trustee provided an update to all members. It said that Tata Steel Group was looking for more sustainable solutions for its European business, but that the Trustee accepted that it was not realistic to expect the purchaser of the UK business or a joint venture to adopt responsibility for funding any current or future OBSPS deficit. The Trustee said that it remained of the opinion that, with the scenarios envisaged for TSUK, entry into the PPF was the most likely outcome for the OBSPS. The Trustee explained that it had been working with the Government, the Pensions Regulator (**TPR**), and the OBSPS stakeholders, to provide compelling evidence that the OBSPS had the ability to pay modified benefits indefinitely on a low risk basis outside of the PPF. This assumed that the OBSPS would move to a long-term, low-risk investment policy. The update referred back to the letter to members that had been issued on 26 May 2016, and included a link to that letter. The update also said:

"Discussions with Government officials, [TPR], Tata Steel and other stakeholders are on-going and further updates will be provided to [OBSPS] members when appropriate.

The Government is currently considering its response to the consultation on OBSPS and an announcement is expected in due course."

21. In the same update, the Chairman of the Trustee then spoke about the OBSPS' funding position; he said:

"At the last funding update as at 31 March 2015, the Trustee reported a deficit on an on-going basis (i.e., by reference to technical provisions calculated in accordance with statutory requirements) of £485 million. On a consistent basis, as at 31 March 2016, the [OBSPS actuary] has indicated that the deficit had reduced to around £300 million. However, if [TSUK] is no longer able to access additional capital from the wider Tata Steel Group for continuation of business, a different valuation basis would have to be adopted and the deficit at both dates would be considerably higher. This is the main reason that the Trustee considers that the benefits need to be modified.

The improvement in the [OBSPS]'s funding position between March 2015 and March 2016 is due in part to favourable demographic experience since the last full Valuation and also to the [OBSPS]'s continued strong investment performance.

Our investment strategy has meant that the [OBSPS]'s funding position has not been affected by recent falls in gilt yields in the same way as many other UK pension schemes and we remain confident of the [OBSPS]'s ability to provide modified benefits as proposed on a self-sufficient basis...

[OBSPS] assets have recently reached an all-time high of over £15 billion, though the historically low yields will also have increased the [OBSPS]'s liabilities."

22. On 12 September 2016, the Trustee issued a further update directly to members in light of the media coverage at the time. This update confirmed the Trustee's position that providing modified benefits under the OBSPS would be the Trustee's preferred outcome for members and informed members that the Government's consultation was still in progress.
23. On 12 September 2016, the Trustee also issued a press release in response to media reports which had stated incorrectly that, according to a Government report dated 13 June 2016, the OBSPS would require an additional £3-4 billion to cover the reduced liabilities on the modified basis. The Trustee said that it had not seen that report, but it understood that it was based on preliminary valuation figures and information supplied by the OBSPS actuary (the **Actuary**) that had been incorrectly interpreted. The Trustee reiterated that the information the Government was currently considering showed how the OBSPS could meet its liabilities on a self-sufficiency basis with a substantial buffer.
24. Following an announcement from TSUK on 7 December 2016, that TSUK was to begin consultation on the closure of the OBSPS, the Trustee issued a statement on the same day. In that statement, the Trustee said, the OBSPS' closure to future accrual was an important step to secure the best outcome for the OBSPS members. The Trustee said that entry into the PPF remained the most likely outcome unless benefits were modified to remove the deficit and create adequate reserves to cover the residual risks. The Actuary had calculated that the OBSPS could meet the proposed modified liabilities on a low risk basis with a buffer of approximately £2 billion to cover the residual risks.
25. From late 2016 until early 2017 TSUK put on a number of "roadshows" for active members of the OBSPS, in relation to the termination of benefit accrual that had been proposed by TSUK as the OBSPS' principal sponsoring employer. This was done as part of the consultation exercise that TSUK was obliged by statute², in its role as the principal sponsoring employer, to carry out prior to terminating future benefit accrual in the OBSPS. At these roadshows, TSUK provided information to active members explaining the reasons for its proposed termination of future benefit accrual. As the statutory consultation obligations, in relation to the proposed

² Section 259 Pensions Act 2004 and the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

termination of future benefit accrual, were those of TSUK, as sponsoring employer, and not of the Trustee, the Trustee was not involved in the roadshows.

26. On 12 January 2017, the Trustee issued a further statement regarding TSUK's announcement of 7 December 2016. It said that Tata Steel Group believed it would be able to achieve a sustainable future for the UK business if it could de-risk and de-link from OBSPS. The Trustee said:

"The options for separating OBSPS from TSUK include a Regulated Apportionment Arrangement [RAA] approved by [TPR]. Normally, after an RAA has been agreed for a pension scheme, the pension scheme goes into the [PPF]. However, the Trustee hope[s] and expect[s] to be able to provide better benefits for members than PPF compensation. This could be done by transferring members and assets to a new scheme with modified benefits that could operate on a low risk basis.

This would be an option for OBSPS because it has enough assets to provide these modified benefits on a low risk basis and with a high level of confidence that the new scheme would never fall into the PPF."

27. On 27 January 2017, the Trustee issued an update letter to all OBSPS members. The update explained that, since the update on 26 May 2016, it had made progress in its discussions with: Tata Steel; Trade Unions; the Government; various regulatory bodies; and other interested parties, and those discussions were ongoing. It said that the separation of TSUK and the OBSPS would involve the termination of benefit accrual under the OBSPS, which was subject to consultation between TSUK and affected members (as explained above in paragraph 25). Benefits for future service were proposed on a money purchase basis. It would also involve TSUK and other current employers no longer sponsoring the OBSPS or funding the deficit, as well as the guarantees and securities, provided to the OBSPS by other Tata Steel Group companies, being released. The Trustee said that a potential route to achieve separation was by an RAA, and whilst termination of benefit accrual would be necessary for separation, this would in any case be an inevitable consequence of TSUK's insolvency. The Trustee said that termination of benefit accrual could be actioned by TSUK under the OBSPS Rules without consent from the Trustee or members, but that TSUK must consult affected members first, as it was currently doing.
28. The Trustee also explained that, were the RAA to go ahead, the usual process would be for that pension scheme to immediately enter the PPF. However, the Trustee maintained that it could achieve a fairer outcome for most members by modifying benefits. It said that this could be achieved by delaying the start of the PPF assessment period and giving members the option of either: remaining in the OBSPS and then receiving PPF compensation on the OBSPS entering the PPF; or transferring to a new scheme, which would offer the modified benefits as had been explained in May 2016. The Trustee said that it was pressing TPR and the PPF to allow members to be able to choose between staying in the OBSPS and transferring

to the new scheme in the event that an RAA was agreed for the OBSPS. The Trustee said that this would be a better outcome than if TSUK became insolvent and the whole of the OBSPS entered the PPF. TSUK also provided an assurance that it would only agree the terms for the separation of TSUK from the OBSPS and the provision of modified benefits if it was satisfied that, without such action, the OBSPS would have to enter the PPF. A Q&A was enclosed which addressed questions it considered members might have had, such as which members would potentially be better off in the PPF. Under question number 10, headed “Could some OBSPS members be better off if the [OBSPS] entered the PPF?”, the answer given states:

“...Based on the current PPF rules and adjustment factors (compared with the factors expected to apply in a new scheme providing modified benefits), pensioners in receipt of the [OBSPS] Rule 11(8) “High/Low pension option at the start of the PPF assessment period, and members who wish to access their pension early (from age 55) and/or maximise their tax free lump sum, could potentially be better off in the PPF. However, PPF rules and factors are subject to review and could change...”

29. In May 2017, the Trustee announced that the RAA had been agreed in principle between TSUK and the Trustee and that, following the RAA and subject to the new scheme meeting certain qualifying conditions, all members and pensioners of the OBSPS would be given the option of either: transferring to the new scheme sponsored by TSUK, which would provide modified benefits; or remaining in the OBSPS and receiving PPF compensation. The RAA would be subject to approval from TPR and non-objection by the PPF. That announcement quoted comments from the Chairman of the Trustee, which included the following:

“For most [OBSPS] members, these modified benefits are expected to be of greater value than those they would otherwise receive by transferring into the PPF.”

30. On 11 August 2017, the RAA was confirmed and the Trustee wrote to members to inform them of this, explaining that the RAA’s conclusion was subject to a 28-day appeal window but that no appeals were expected. On 11 September 2017, the RAA was finalised.
31. From October 2017, the Trustee began the “Time to choose” exercise in which members were asked whether they would like to transfer to the new scheme (the **BSPS**) or remain in the OBSPS and enter the PPF. As part of that exercise, further roadshows were run to provide members with information in order to help them make an informed decision.
32. On 29 March 2018, the OBSPS entered the PPF assessment period.

PART B: CETV calculations in the OBSPS:

- (i) **Relationship between CETVs and member contributions to the OBSPS;**
- (ii) **Relationship between CETVs and the OBSPS' investment strategy;**
- (iii) **Amendment of the CETV calculation basis; and**
- (iv) **Completion of the transfer using the pre-1 April 2017 calculation basis.**

33. Mr A received his CETV statement on 3 August 2016. He returned the paperwork requesting a transfer of his benefits out of the OBSPS on 21 October 2016 and the transfer was completed on 2 November 2016. This was several months before the CETV calculation basis was changed on 1 April 2017.

(i) Relationship between CETVs and member contributions to the OBSPS

34. Benefits paid from the OBSPS 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).
35. 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.

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

36. 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 trustees must obtain and consider appropriate advice on what the SIP must cover.
37. 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".
38. 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.

39. 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.
40. 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.
41. 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.
42. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings, respectively.
43. 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.
44. 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.

45. 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.
46. 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 assumption, 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.

(iii) Amendment of the CETV calculation basis

47. 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.
48. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is set out in Appendix 2 below. 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 website³.
49. 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.
50. TPR's Transfer guidance states:

³ <http://www.thepensionsregulator.gov.uk/guidance/guidance-transfer-values.aspx>

“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.”

51. 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.”

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

“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.”

53. 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.

54. As explained in paragraphs 38 to 40 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.

55. 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.
56. As mentioned in paragraphs 42 to 45 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.
57. 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.
58. 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 CETV assumptions, resulting in the Trustee's decision to amend the assumptions, with effect from 1 April 2017, for any member requesting a CETV

on or after that date. As stated in paragraph 46, 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.

59. Finally, Mr A has expressed concern that a trustee was also a member and Mr A's concerns that this will have caused a conflict of interest for the Trustee. TPR has provided regulatory guidance for trustees in relation to conflicts of interest⁴, which states that it is good practice to put in place a conflicts of interest policy to enable identification and management of any conflicts that may arise. The Trustee has explained that it had a conflicts of interest policy in place and considered whether any trustee had conflicting interests at the beginning of every Trustee board meeting. Potential conflicts were dealt with in line with the provisions of the conflicts of interest policy and were minuted accordingly.

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

60. Part 4ZA, which contains sections 93 to 101 of the PSA 1993, sets out the trustees' 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 the 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.
61. 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 the 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.
62. Section 99 of the PSA 1993, sets out the trustees' 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.

Summary of Mr A's position

63. The correspondence issued by the Trustee regarding the future of the OBSPS scared him into transferring his benefits out of fear of losing them, or a large

⁴ <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/conflicts-of-interest>

proportion of them, and losing flexibility to access them, if the OBSPS entered the PPF. The information shared by the Trustee did not accurately reflect the Trustee's growing understanding of the future of the OBSPS, the changes it was making to the SIP or the changes anticipated to be made to the CETV calculation basis.

64. As all members have paid the same percentage of pension contributions, their CETVs should be more comparable and much more similar in value than they are. The change in calculation basis should not have had as big an impact as it did and should not give members transferring later an advantage over those that transferred earlier.
65. The Trustee's CETV calculation basis does not achieve the objective set by TPR. TPR says the CETV must represent the best value estimate of the current cost to the OBSPS of the benefits to be provided at normal retirement date for each member. Yet the OBSPS is in deficit and the changes to the CETV calculation basis, where some members have seen increases of 100%, must have significantly increased this deficit.
66. The Trustee was aware of the OBSPS' deficit in 2015, along with the low interest rates and low investment returns. The Trustee should have adjusted the OBSPS' investment strategy at a much earlier stage to take account of these issues and better protect the members of the OBSPS, and may well have been able to have successfully done so. These factors should also have prompted an earlier review of the CETV calculation basis as the OBSPS was not receiving the investment returns that it was expecting. The Trustee did amend the investment strategy prior to March 2017, in August 2016, with further changes made to de-risk investments by November 2016, but the CETV basis was not amended to reflect these changes. This must make the CETVs issued prior to 1 April 2017 incorrect.
67. His CETV was incorrect, both when compared to previous values shown in his annual statements, and when compared to the CETVs other members have obtained since 1 April 2017.
68. He should have been provided with a transfer value on the revised basis and any difference should have been paid to his chosen receiving scheme.
69. The Trustee's explanation of the increase in the CETVs, after 1 April 2017, cannot be the whole explanation, as the significant increases seen cannot solely be down to changes in the investment strategy. Mr A says that he cannot see how this alone can increase some members' CETVs by 100% or more, even where the Trustee has applied a reduction to reflect the OBSPS' underfunding. Also, the OBSPS was underfunded prior to 1 April 2017, yet the Trustee did not reduce the CETVs prior to 1 April 2017 to take account of this.
70. In order to obtain a guaranteed CETV, Mr A was informed he had to become a deferred member of the OBSPS and so he opted out. He says he was mis-informed over the telephone by the OBSPS administrator that if he was not happy with the CETV, he could stay in the OBSPS, but was later told that he was out of the OBSPS

and had to take the CETV. His financial adviser had been incorrectly informed that “if he made himself a deferred member that he would have time up to the actual transfer decision to withdraw his application.”

71. The Trustee owes Mr A a duty to act in his best interests, as stated in *Cowan v Scargill* [1985] Ch D 270. It failed in this duty as Mr A was provided with his CETV in August 2016, he returned his paperwork in October and his transfer was completed in November 2016. The CETV calculation basis was updated with effect from 1 September 2016 but, despite Mr A’s transfer completing after that date, he did not benefit from the changes and was not informed about them. Similarly, the Trustee was making changes to the investment strategy which it was aware would affect CETVs in the future, but it did not share this information with Mr A.
72. Mr A believes that certain trustees did have conflicting interests when considering the change in the CETV calculation basis and that they have personally benefitted from being aware of the changes.

Summary of the Trustee’s position

73. The communications issued surrounding the future of the OBSPS were not inaccurate or misleading. The statements made regarding the PPF and the increasing likelihood of the OBSPS’ entering the PPF were correct and appropriate.
74. Mr A’s CETV was correct as it was calculated using the basis applicable at the point of calculation on 3 August 2016. The discrepancy compared to that shown in his 2015 annual benefit statement was caused by the application of Rule 5(3). Regarding the CETVs of other members, it said:

“We cannot comment on the specific amount quoted as a transfer value to any other member of the [OBSPS] and how this might compare with your transfer value nor the specific reasons for this. Transfer values are not calculated by reference to the contributions paid by the member and the employer to the scheme over the member’s period of scheme membership. Rather, they are calculated by reference to the expected cost (to the [OBSPS]) of providing the promised benefits to that member. Even if there had been no change in the transfer basis, the cost of providing benefits to two members with otherwise identical service and salary histories may well be different, depending on each member’s age and applicable market conditions at the date a transfer is requested.”

75. Regarding the changes to the MVA (described in paragraph 39 above), which were implemented on 1 September 2016, the Trustee has said:

“The review of the [OBSPS’] CETV basis concluded that the long-term assumptions underlying the CETV basis, in particular the net discount rates used, continued to be appropriate based upon the market conditions prevalent and the principles agreed at the 31 March 2014 valuation. As a result, whilst the underlying long-term assumptions did not need to change, the MVA

(which aims to capture changes in market yields since the assumptions were set) was 're-based' so that the impact of market movements from 31 March 2014 onwards was captured relative to the Scheme's best estimate basis as at 31 March 2014. At the same time, the opportunity was taken to improve the accuracy of the equity-based MVA, by linking it to the member's pre-retirement duration rather than a fixed duration. The previous MVA was, however, nonetheless considered appropriate for continued use for CETV purposes for the period until the new basis was implemented, as it continued to incorporate the impact of changing market conditions to CETV calculations on a basis that was considered reasonable at the time by the Scheme Actuary. The change on 1 September 2016 was then able to incorporate both the updated principles agreed as part of the 2014 valuation and improved accuracy in calculation."

76. The de-risking mentioned in the 23 November 2016 actuarial report, was within the tolerances of the August 2016 SIP and was a short-term investment strategy. The Trustee explained this change did not impact the CETV calculation basis:

"The approach adopted in determining the Scheme's CETV basis was to set the discount rate based upon the Scheme's long-term investment strategy, with a particular focus on the central benchmarks set out in the SIP. Short-term changes to investment strategy within the limits allowed by the SIP were expected as a matter of course for the Scheme due to the active management of its assets. However, these changes were not considered to be relevant for setting or changing the long-term assumptions for investment returns for CETV purposes, until there was clarity and certainty as to what that longer-term investment strategy would be. This was not the case until the revised longer-term strategy was agreed in March 2017 as reflected in the revised SIP then adopted."

77. Regarding the change in the calculation basis itself, the Trustee states:

"Under the Pension Schemes Act 1993, the Trustee is responsible for setting the assumptions used to calculate [CETVs] after taking actuarial advice. The assumptions are set with the aim that, taken as a whole, the transfer value represents the Trustee's best estimate at that time of the cost to the [OBSPS] of providing a member's benefits from the [OBSPS]. The Trustee is required to have regard to the [OBSPS]'s investment strategy when setting these assumptions.

Changes in these assumptions and/or changes in investment strategy, and expected investment returns, can affect the best estimate cost of providing a member's benefits from the [OBSPS] and therefore the calculation of transfer values. In accordance with legislative requirements, and guidance from [TPR], the Trustee therefore regularly reviewed the assumptions used to calculate [CETVs] payable from the [OBSPS] and, based on actuarial advice, considered if any changes were required to these assumptions as a result of

the [OBSPS]'s circumstances. Indeed, in view of the highly unusual circumstances of the [OBSPS], this was a matter considered by the Trustee at each quarterly Trustee meeting in 2016, including whether any reduction to transfers should be applied in view of the uncertainty relating to the ongoing solvency of [TSUK], the [OBSPS]'s sponsoring employer, and the funding levels of the [OBSPS]. The actuarial advice received at each meeting prior to March 2017 was that no material changes to the transfer basis were recommended."

78. The Trustee is entitled, and required by TPR, to review the calculation basis of the CETV regularly. It could not inform members of a change to the CETV calculation basis prior to making the decision to review it and amend it on 8 March 2017. Nor could it know what impact any future change would have on CETVs. Mr A's transfer was calculated on 3 August 2016 and paid on 2 November 2016, before the Trustee made its decision to review the CETV calculation basis.

79. In response to backdating the change in calculation basis, or making up the difference if one occurred due to the change, the Trustee said:

"Had a revised basis been adopted that reduced transfer values, it would not be fair or appropriate for any previous transfer value paid to be recalculated and reduced and for a member to be asked to return part of their transfer value. Similarly, it is not appropriate for the Trustee to apply the new transfer basis to transfers already requested and paid before the change. The Trustee can only pay transfer values by reference to the basis that applies at that time."

80. Mr A was not provided with mis-information. While there is no evidence of the content of the telephone call available, had he promptly asked for the transfer to be suspended, it would have been.

Conclusions

General observations on wider matters

81. There has been a lot of publicity around TSUK; the OBSPS and the events that have taken place during and after Mr A's complaint.

82. Much of the publicity has been to do with Independent Financial Advisors (**IFAs**), concerning OBSPS members receiving wrong advice and members making poor decisions as a result of that advice. Mr A's complaint does not deal with the advice that OBSPS members have received from IFAs. The FCA is investigating the suitability of advice given to members of the OBSPS. Members have the right to make a formal complaint to the Financial Ombudsman Service if they have concerns about the advice they received, however they should make a complaint to the firm

that provided the advice in the first instance. The FCA has published a statement on its website which provides more information⁵.

83. There has also been publicity about the OBSPS entering the PPF and the options that members were given prior to this, referred to as the “Time to Choose” exercise. The core issues reported appear to be about: the length of time the members were given to make a decision; the information they were provided with in order to make that decision; and the complexity of the options available. Mr A’s complaint does not concern the “Time to Choose” exercise as the events complained about occurred prior to the RAA which triggered the “Time to Choose” exercise.
84. An independent review of communications and support given to OBSPS members was undertaken, at TPR’s request, by Caroline Rookes⁶, previously CEO of the Money Advice Service. That review did not look at the complaints in hand but focused on the RAA and the “Time to Choose” exercise. It investigated what happened in the lead up to those events, as well as during them, and how improvements could be made in the event that other pension schemes should go through a similar process in the future. The review was not intended to criticise TSUK, the Trustee or any other organisations involved⁷, although it highlighted how these organisations could have worked together in order to provide better support to the members of the OBSPS and makes recommendations about how improvements could be made for any future pension scheme restructures.
85. Ms Rookes’ report does observe scaremongering to some extent in relation to the roadshows carried out. However, as explained in paragraph 25, those roadshows were carried out by TSUK, in its role as an employer (who is not a respondent to the complaints) in relation to the OBSPS, in order to fulfil its statutory duty when terminating benefit accrual in the OBSPS. TSUK must take into account the impact such changes will have but may also take account of its own financial interests. The complaint before me concerns the Trustee. Therefore, Ms Rookes’ findings on this point are not directly relatable to Mr A’s complaint.
86. I concur with the recommendations that Ms Rookes has made in her independent review. Included in those recommendations is a comment that pension scheme trustees who seek to communicate with members regarding a scheme restructure need to try to anticipate the behavioural responses of those members to the trustees’ attempts to engage with them. While I do not consider, on the facts of this case, that there was any maladministration on the part of the Trustee when it communicated with OBSPS members as it did, I would encourage pension scheme trustees in

⁵ <https://www.fca.org.uk/news/news-stories/important-information-british-steel-pension-scheme-members>

⁶ <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/rookes-review-british-steel-pension-scheme-members.ashx>

⁷ such as TPR, the FCA, the PPF or the single financial guidance body (now Money and Pensions Service)

future to consider Ms Rookes' recommendations before embarking on a large-scale communications exercise with members. The risk of member complaints following a restructure could be reduced considerably by taking steps to ensure that members feel that they are being kept informed before, during and after the process.

87. The House of Commons also ordered a Select Committee to review the events surrounding TSUK and the OBSPS⁸. This also focuses on the RAA, the "Time to Choose" exercise and looks at the unsuitability of advice given by IFAs. The timeline it covers focuses mainly on the events that took place following the closure of the OBSPS to future accrual on 31 March 2017, and so it is not directly relevant to Mr A's complaint.

Mr A's complaint against the Trustee

88. I understand that, at the heart of Mr A's complaint is: a loss of faith in the Trustee and in its decision-making ability; and a claim that the Trustee is not acting in the "best interests" of the OBSPS members. This has been demonstrated under a number of points raised by Mr A in his complaint, culminating in a claim of financial loss in the amount of the difference between the CETV calculated on the old basis, and the CETV calculated on the new basis.
89. I appreciate Mr A's concerns regarding the value of his benefits. However, having investigated the matter thoroughly and for the reasons set out in Parts A and B below, I do not uphold Mr A's complaint.

The extent of my jurisdiction

90. Mr A has complained that the pre-April 2017 calculation basis was incorrect and that it should have been updated at an earlier point. Mr A's representative has commented that I should include the Actuary as a party to this complaint and investigate his role and the quality and correctness of the advice that he provided to the Trustee in relation to the CETV calculation method (by which I understand to mean not the correctness of its mathematical accuracy but rather the factors used to derive the calculation). My office has explained to Mr A and his representative why it would be outside my jurisdiction to do so and provided detailed reasons. Mr A and his representative initially accepted this but have since changed their position and have suggested that they would look to Parliament to decide. This is not a matter for Parliament but for me. Other members too have raised this jurisdictional issue with my office. I have set out below, in paragraphs 92 to 100, my reasons why I do not decide whether I have the necessary jurisdiction.
91. What I do have jurisdiction over is the Trustee in relation to its duty to appoint an actuary and monitor their performance (indeed I have considered this below, in paragraphs 141 to 143 (and see also paragraph 127).

⁸ <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/828/828.pdf>

92. I note that the relevant legislation in respect of the complaints before me, provides that it is the *trustees* of a scheme (not actuaries) who are responsible for calculating and verifying CETVs; see Regulation 7(3) of The Occupational Pension Schemes (Transfer Values) Regulations 1996. Plus, under Rule 16(1)(f) of the OBSPS' Rules, whilst the value of the cash/other assets to be included in a transfer payment "will be as may be certified by the Actuary to be applicable to the case", this is subject to the proviso that the Trustee is "reasonably satisfied that it is at least equal to...the amount of [the] cash equivalent calculated in the manner prescribed under section 97 of the 1993 Act".
93. It is not clear if I do have jurisdiction to consider the actuarial advice going to methodology and assumptions made by the Actuary in connection with the CETVs. But I do not need to decide the point (see paragraph 100).
94. Section 146(4) of the Pension Schemes Act 1993 and The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, provide that any person who is not a person responsible for the management of the scheme but who is concerned with administration of the scheme is an 'administrator' and treated as if he were a person 'responsible for the management' of the scheme for the purposes of my jurisdiction. From April 2005, section 146(4A) provides that a person or body of persons is concerned with the administration of a scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.
95. No regulations have been made for persons who are concerned with the financing of or the provision of benefits under a scheme. Therefore, I have considered whether the functions performed as described in paragraph 90 means that the Actuary is a person concerned with the administration of the scheme (from April 2005).
96. To understand the difference before and after April 2005, in *Britannic Asset Management Ltd and others v Pensions Ombudsman* (2002) the Court of Appeal held that there was a distinction between someone who was "concerned with the administration of the scheme" and someone who undertakes an act of administration concerned with the scheme. Only someone "concerned with the administration of the scheme" would fall within the Ombudsman's jurisdiction. Subsequently, with effect from April 2005, section 146(4A) came into force providing for someone who undertakes an act of administration to fall within my jurisdiction.
97. I have looked at *Legal and General v CCA Stationery* [2003] EWHC 2989 (Ch) (L&G), which did not consider the identical issue but is still relevant. The court held that the calculation of the monthly value adjustment factors (**mvafs**), is not an act of administration; the assessment of the mvafs are not part of the administration of the contract (this was an insured scheme); and the method of setting mvafs was not within the Ombudsman's remit (paragraphs 58-62 of the judgment). The case is distinguishable however as its central premise looked at the issue in the context of L&G's Long Term Fund across all the pension schemes it manages. It is worth noting:-

- 97.1. Advising the Trustee on the methodology to apply in order to calculate the CETVs might not be a type of activity that is administrative in nature (it may be considered more to be financial).
- 97.2. Although the actuarial models, indices and tables etc, that the Actuary suggested were then applied to the OBSPS by the Trustee (having considered the Actuary's advice that these factors were suitable), their derivation was in part from figures that are used industry wide (for example, RPI/CPI indices, NSI mortality rates) or from actuarial firms (in this case Willis Towers Watson) for its client bases. So, that actuarial activity is not likely to be of a type that is administrative in nature in so far as it is an act of administration concerned with the OBSPS.
- 97.3. However, some of the industry or actuarial firm wide models were modified to be OBSPS specific (for example best estimate basis) and the Actuary's recommendation as to their suitability for the OBSPS might therefore be considered to have been an act of administration concerned with the OBSPS (see paragraph 94).
- 97.4. I could delegate assessing the appropriateness of such modifications to another actuarial body because I do not have the necessary expertise to make such an assessment myself, although I would have to make the ultimate decision.
- 97.5. I have looked at the broad principles concerning the Actuary's approach in his ongoing advice to the Trustee during the relevant period that were specifically flagged to me, in terms of whether they fall within a range of reasonableness (see paragraph 127 below).
- 97.6. In L&G, the court's view was that everything pointed to the carrying out of the calculations being a "purely commercial transaction" (paragraph 66 of L&G). Arguably, the relationship between the Actuary and the Trustee was a commercial one.
98. In the Court of Appeal case of *Government Actuary's Department v Milne [2013] EWCA Civ 901* the Court of Appeal observed that the Government Actuary Department's (**GAD**) role in relation to the scheme differentiated from the role of an actuary in a private sector defined benefit scheme. It was noted that GAD's role in updating the actuarial tables which provided the basis for benefit calculations under the scheme was "essentially interventionist" and "integral to the structure of the scheme". It was noted also that GAD was required by law to take a proactive approach to updating the tables and that the trustee could not wait to be asked to advise about updating them. The authorities had no choice but to rely upon the actuarial tables and were unable to use different commutation rates provided by other actuaries, which set GAD apart from actuaries retained by the managers of pension schemes to advise and update commutation tables. Critically, though, in determining whether GAD was an administrator the court only looked at exploring

GAD's duty to prepare and publish the commutation factors from time to time. The method for deriving the commutation factors was not a factor in those deliberations.

99. Following the Court of Appeal decision, my predecessor went on to Determine Mr Milne's complaint (PO-1327), which he upheld, and found that GAD failed to identify its continuing responsibility to calculate and notify the commutation factors. Thereafter, fresh complaints were made to my office, concerning that the commutation figures produced by GAD in 1998 (and other dates) were incorrect. I responded that my predecessor was clear that he made "no finding as to what the factor would have been, that is entirely a matter for GAD's judgment (it is not, for example, open to [him] to direct that an independent actuary should be consulted)". It was my view (and it was not subsequently challenged in legal proceedings) that GAD, in performing the function of calculating actuarial factors, necessitated the expertise of an actuarial judgment, and so was not a person concerned with the administration of the firefighters' scheme, so was not an 'administrator' for the purposes of my jurisdiction.
100. To conclude, perhaps the Actuary's involvement in the calculation of CETVs is not an "act of administration concerned with the scheme" in this case. But in any event, bearing in mind my extensive and exhaustive investigation and also that I have not upheld any aspect of the complaint, to such extent as is necessary, I am exercising my discretion not to determine my jurisdiction over the Actuary. Further, the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995, Rule 3, provides that any amendment of the complaint or submitting a supplementary statement, needs my leave which I decline.

PART A: Information announcements in respect of possible changes to the OBSPS and their impact on Mr A's decision to transfer

101. Mr A has claimed that the information provided by the Trustee, regarding the future of the OBSPS and the likelihood of it entering the PPF, scared members, including himself, into taking actions that they might not have otherwise taken such as transferring out. Mr A says he was afraid that he would lose flexibility over when and how he could take his benefits, and that his benefits would be reduced if the OBSPS entered the PPF.
102. The evidence (see Appendix 5), is clear that the Trustee kept members informed on the OBSPS' situation, as it unfolded, explaining the possible implications of the scenarios that could have come to pass. It is understandable that this period of uncertainty would have been concerning for both members of the OBSPS and employees of TSUK.
103. The Trustee explained that the OBSPS could enter the PPF and how this would affect the benefits that members would receive. The Trustee's updates provided members with information that allowed them to consider: how the possible scenarios could affect them and their benefits; the options for the OBSPS; and the terms of any transfer exercise.

104. Mr A's transfer was completed on 2 November 2016, after the change to MVAs, effective from 1 September 2016 (detailed in paragraphs 39 and 40 above), but before the Trustee decided to change the SIP or the CETV calculation basis (which it did later, in March 2017).
105. The announcements provided by the Trustee prior to Mr A's transfer referenced the likelihood of the OBSPS entering the PPF because changes were being contemplated in respect of TSUK, the principal employer of the OBSPS, and so the OBSPS could be affected. The primary purpose of the announcements, in May and June 2016 (which I have referred to in paragraphs 17 to 19 above), was to inform the members of the consultation undertaken by the Government on the Trustee's proposal to modify benefits so that the OBSPS could remain outside of the PPF.
106. There was no reference in those announcements to, or promoting, transferring out. However, there was information showing how PPF compensation would differ from the benefits available under the OBSPS. Under the PPF compensation provisions (Schedule 7, to the Pensions Act 2004), PPF compensation depends on the member's age and whether he or she has reached NPD by the scheme's assessment date. The 26 May 2016 announcement (and others) merely, correctly and rightly, factually referenced that compensation under the PPF would result in a 10% reduction in benefits for those below age 65 (the OBSPS' NPD) at the PPF assessment date, as Mr A was.
107. On 12 August and 12 September 2016, the Trustee provided further updates in relation to the possibility of providing modified benefits and the need to move to low risk investments in order to make this feasible. Again, neither of those updates mentioned transferring out, but both updates referenced the likelihood of the OBSPS entering the PPF if modified benefits could not be provided using one of the methods that was available. I do not find these announcements to be inappropriate. They merely served to update members on: the situation regarding the Trustee's negotiations in relation to the OBSPS' future; and the need for the OBSPS to provide modified benefits if PPF entry were to be avoided.
108. Mr A has said that the August and September 2016 announcements should have referenced the Trustee's decision, in August 2016, to take steps to de-risk the profile of the OBSPS' investments and the impact that moving to low risk investments would have on CETVs. However, there is no legal requirement for pension scheme trustees to inform members of changes to the pension scheme's investment strategy or to the pension scheme's SIP; and the changes that the Trustee made, in August 2016, did not impact the CETV calculation basis. Although, the Trustee stated that there was a need to move to low risk investments, I do not consider it appropriate for the Trustee to have explained the impact this could have on CETVs at this point, for the reasons set out below in paragraph 109.
109. First, no decision had been made to amend the CETV calculation basis at that time so the Trustee could only have provided speculative information to members, which would have caused uncertainty. Second, in alerting members to a potential increase

in CETVs, the Trustee could have risked being accused of encouraging members to transfer out of the OBSPS. As TPR has pointed out, in guidance to pension scheme trustees regarding providing incentives to members to transfer out of defined benefit pension schemes⁹, trustees need to take care not to advise members in relation to transferring out of a pension scheme where they are not authorised to do so. I would add that a consequence of transferring out is that, typically, investment liability transfers to the member, so I do not consider that drawing members' attention to their option to transfer their fund out of the OBSPS would have constituted acting in those members' best interests on the whole. Further, significant numbers of members transferring out over a short space of time can have negative effects on the scheme, its funding position and the remaining members.

110. I find that the announcements issued prior to and around the time Mr A chose to transfer were reasonable and I have not found any maladministration by the Trustee in respect of those announcements.
111. It would have been quite wrong, at that time, for the Trustee to inform members of the potentially favourable future CETV calculation basis when its investment strategy had not yet had a chance to bear results and the decision to amend the CETV calculation basis had not yet been made.
112. After the date of Mr A's transfer, further similar announcements were also sent to other members (falling within the same group of complaints) who also transferred out.
113. More specifically, on 7 December 2016, the Trustee informed members that TSUK had announced its intention to close the OBSPS to future accrual and that a consultation with affected employees would be carried out. In January 2017, TSUK had already commenced consultation with members in relation to the proposed cessation of accrual under the OBSPS, which would undoubtedly have caused concern amongst members. On 12 January 2017, the Trustee informed members that TSUK was attempting to separate from the OBSPS using an RAA, and that while normally a scheme would immediately enter the PPF, the Trustee was requesting that a second scheme be set up on the modified basis previously outlined and that members be given the option to choose whether to enter the PPF or transfer to the proposed modified scheme.
114. On 27 January 2017, the Trustee issued a more detailed announcement to members which set out the options that were currently being considered by: TSUK; the Trustee; TPR; and the PPF, for the future of the OBSPS. This also went into more detail about what would happen in the event of an RAA and the setup of a new scheme with modified benefits. It confirmed that the outcome of the Government consultation, which had started in 2016, was still awaited and the consultation

⁹ <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/incentive-exercises>

between TSUK and employees regarding the termination of future accrual in the OBSPS was ongoing.

115. I find that these announcements sent after Mr A's transfer were also reasonable: the announcements provided an update to members, using the information that was available at that time; and that information could not have been shared at an earlier time. The Trustee's communications, in January 2017, can only have been intended to enhance members' understanding of the situation regarding the OBSPS' future, and to keep members up to date in relation to developments in that respect, at such a time of uncertainty.
116. It appears to me that the Trustee had focused on: securing the best outcome for the OBSPS and its members; and ensuring that members were given information on the situation as it unfolded. The OBSPS is now in the PPF assessment period, as the Trustee had predicted, but the Trustee had also set up an alternative scheme and those members who remained in the OBSPS were given the option to select whether to remain in the OBSPS and enter the PPF, or to move to the alternative scheme.
117. I acknowledge that the Trustee has referred to the PPF as being a "poor outcome" in its announcement of May 2016 and others¹⁰. I can see how this terminology, because of the negative connotation, could have caused members concern about the future of their pension benefits should the OBSPS enter the PPF.
118. The choice of words was in context to highlight that the modified OBSPS would provide a better outcome for the majority than the PPF would have provided. The context is clear, for example, in the announcement dated 26 May 2016:
- "The Trustee believes that exchanging the [OBSPS'] assets for PPF compensation would be a poor outcome. The Trustee believes that the [OBSPS'] assets are more than enough to meet the cost of paying PPF compensation and that it will be better for the scheme to stay out of the PPF. The [OBSPS] could then provide modified benefits at levels which, for the vast majority of members, would be better than PPF compensation..."
119. I do not believe it is reasonable to assume that the Trustee included those statements to encourage members to transfer out of the OBSPS. They were to provide members with factual information concerning the OBSPS and the PPF.
120. 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 A 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.

¹⁰ 8 June 2016, 12 August 2016, 12 January 2017 and 27 January 2017.

121. 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.
122. Mr A has said that the Trustee should have run roadshows about the future of the OBSPS and possible implications for members at a much earlier stage and that those who transferred prior to the roadshows were disadvantaged.
123. The roadshows that were run were in relation to two specific events:-
- 123.1. The first of those events was the consultation between TSUK and employees about the termination of future benefit accrual from late 2016 to early 2017. Those roadshows were run by TSUK (not by the Trustee) as part of the consultation exercise which it was required to carry out, as a participating employer in the OBSPS, to meet its statutory consultation obligations. The focus of those roadshows was on the potential termination of benefit accrual, as regulations¹¹ required TSUK to inform affected members that TSUK was considering ceasing future benefit accrual under the OBSPS and to provide members with the opportunity to comment on that possibility, before TSUK could formally reach its decision whether or not to cease benefit accrual. The roadshows had nothing to do with early retirement under, or transfers out of, the OBSPS.
- 123.2. The second set of roadshows, which started in October 2017, were run as part of the "Time to Choose" exercise, which was intended to inform members of their options of either transferring to the new scheme or remaining in the OBSPS and ultimately entering the PPF. The focus of the second set of roadshows was on the difference between the benefits provided by the PPF and those provided under the New British Steel Pension Scheme.
124. I do not consider it possible for either of those sets of roadshows to have been run at earlier dates, as the timing of the roadshows was dictated by the events that they related to, which had not yet occurred. The first set of roadshows could not have included details about the changes to the CETV calculation basis as they were run prior to the decision to make the changes having been made on 8 March 2017.
125. I do not agree that the Trustee should have run earlier roadshows about the possible future of the OBSPS, as the Trustee was not aware of what the OBSPS' future would be until the RAA and the New British Steel Pension Scheme were agreed and confirmed in late 2017. Any such roadshows would have involved speculation and

¹¹ the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

could have compounded members' confusion and concerns about the situation regarding their benefits under the OBSPS.

126. To conclude, I have reviewed the information received by Mr A and I do not uphold this part of his complaint. The information provided by the Trustee was not misleading and did not amount to scaremongering. It was necessary to share information with the OBSPS members, given the press coverage of TSUK's business at that time and the inevitable concerns this would raise.

PART B: CETV calculations in the OBSPS:

- (i) Relationship between CETVs and member contributions to the OBSPS;**
- (ii) Relationship between CETVs and the OBSPS' investment strategy;**
- (iii) Amendment of the CETV calculation basis; and**
- (iv) Completion of the transfer using the pre-1 April 2017 calculation basis.**

127. In coming to my findings under Part B I have independently considered whether the approach of the actuarial explanations and recommendations provided by the Trustee are industry recognised within a range that a trustee, acting reasonably, could rely on them. I am satisfied that the Actuary's advice concerning the effect of the Scheme's investment strategy on CETVs, and the timing of the amendment of the CETV calculation basis in relation to the changes made to the Scheme's investment strategy and the SIP, was within the range of reasonableness/industry norm so it was reasonable for the Trustee to rely on that advice.

128. This complaint has arisen as a direct result of the Trustee's amending the CETV calculation basis. I have considered whether the Trustee has, in making its decision to adopt a new calculation method, acted properly and in accordance with the relevant legislation and the OBSPS Rules including TPR guidance; and whether it considered all relevant, but no irrelevant information.

(i) Relationship between CETVs and member contributions to the OBSPS

129. The submission made by Mr A that members' CETVs should be more comparable and more similar in value to each other, as all members have contributed to the OBSPS on the basis of the same percentage, is incorrect for the following reasons: first, the amount of pension contributions paid will be linked to a broad salary range; and secondly, as the OBSPS is a defined benefit (or final salary) scheme, the level of contributions paid by the member or the employer, has no correlation to the benefits payable to individual members. Under the OBSPS Rules, contribution rates are set by the Trustee on actuarial advice, whereas a member's pension benefits are calculated by reference to their service and final pensionable salary.
130. CETVs are calculated by the Actuary and the Trustee must be satisfied that the calculations meet the requirements set out in the OBSPS Rules and legislation, as explained in paragraphs 47 to 52 above.

131. The Trustee calculates CETVs using the best estimate method, considering advice from the OBSPPS Actuary. This is the best estimate of the value of a member's benefit at the point of calculation of the CETV, see paragraph 50. In other words, how much the Trustee estimates it will need at that point in order to provide the value needed at the member's retirement date to pay benefits (the benefits due at NPD being calculated using the member's salary and service accrued within the OBSPPS). This will take into account the returns the Trustee expects to receive from investment of that value between the calculation date and the member's retirement date. This means that the assumed investment of the assets allocated to provide the retirement benefit is relevant to the calculation of the value of a member's CETV at a date before NPD. The member's age, or the number of years until they reach NPD, will also have an impact on a CETV.
132. If a high investment return is expected between the CETV calculation date and NPD, or there is a long period between the CETV calculation date and NPD, the value of the CETV at the calculation date would be relatively low, as it would be expected to grow significantly with the high investment returns, or over a long period before NPD. If the investment return is expected to be low, or the CETV calculation date is close to the member's NPD, a higher value would be required at the CETV calculation date to take account of the lower investment returns expected to bring the member's benefit to the level required at NPD.

(ii) Relationship between CETVs and the OBSPPS' investment strategy

133. Mr A has suggested that the changes made to the OBSPPS' investment strategy should have been made at a much earlier stage, which would have meant that the CETV basis would have been updated earlier and that transfer values would have increased at an earlier stage. He also suggests that the decision to invest differently for different classes in the fund (referring in this case to deferred members) is questionable and unfair to all members of the OBSPPS.
134. As explained in paragraph 36 and 37 above, it is for the Trustee, with the relevant advice from the Actuary and/or the OBSPPS' investment advisor/committee, to decide how to invest the OBSPPS' funds in order to comply with the Investment Regulations.
135. I am satisfied that the Trustee has performed regular reviews of the OBSPPS' SIP. The 2014 SIP was amended in August 2016 and then again in March 2017, effective from 1 April 2017. The changes made in August 2016 reflected the initial steps that had been taken to de-risk the OBSPPS' short term investments. At that time, the new long term investment strategy had not been made and therefore the Actuary did not consider it appropriate to amend the CETV factors at that point, but the matter was kept under review. The Investment Regulations require the SIP to be reviewed at least once every three years and without delay after any significant change in investment strategy. The Trustee has reviewed the SIP at least once every three years and indeed updated it on occasion, following such reviews, the changes made to the SIP in August 2016 is one such example of that. While the November 2016 actuarial report makes reference to a significant proportion of the investment de-

risking having taken place this was in relation to the short term investment strategy and within the tolerances of the August 2016 SIP. The changes to the long term investment strategy were agreed in the March 2017 Trustee meeting and the SIP was updated in March 2017 to take account of these changes. It is reasonable that the SIP was not reviewed and updated until March 2017, after the changes had been completed and I am satisfied that the Trustee has complied with its duties under the legislation.

136. Mr A has said that the way in which the Trustee has said it has allocated investments to different categories of member is unfair and causes some members to bear more of the deficit than others. However, Regulation 4(4) of the Investment Regulations, allows trustees to allocate investments to membership categories. 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". Therefore, the Trustee is entitled to apportion certain investments or sections of the fund to provide for certain sections of membership. In this case, the Trustee's investment strategy for members who were not yet being paid a pension differed from that in respect of pensioners. Such practice is not uncommon as investments for this section of a scheme are generally considered long-term, especially when compared to investments intended to relate to pensioners where payments are being made.
137. Mr A says that the Trustee owes him a duty to act in his best interests, as stated in *Cowan v Scargill [1985] Ch D 270*, and that the Trustee has failed in this duty on two counts. First, that it amended the CETV calculation basis with effect from 1 September 2016 without informing Mr A of the change or re-calculating his CETV on the new basis, which would likely have been more generous. Second, that it had been aware that CETVs would rise as a result of the de-risking steps it was taking in its investment strategy and had failed to make Mr A aware of this.
138. In *Cowan v Scargill*, Megarry V-C considered the trustees' investment duties. Megarry V-C held that the trustees had a duty to exercise their powers in the best interest of beneficiaries and that the best interests of beneficiaries are usually their financial interests. The trustees must put aside their personal interests and views; they have a duty to diversify investments; must take care in selecting investments; and seek advice on matters it does not understand.
139. I have already found (paragraphs 108 to 109) that there was no obligation to inform Mr A of the change or re-calculating his CETV; but also that the Trustee had met its investment duties properly (see paragraphs 134 to 136). 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, it would have discharged that duty. Had the Trustee done so, it would have alerted members to the possibility of taking a CETV, with the investment risk potentially shifting to the member on transferring out of the OBSPS which may not be in members' financial interests.

140. Also, as explained in paragraph 60, during the period within which the changes to the OBSPS' investment strategy were being made the Trustee was obliged, by the Transfer Regulations and Part 4ZA of the PSA 1993, to continue to provide statements of entitlement and to comply with any subsequent transfer requests within the applicable statutory time frames.

(iii) Amendment of the CETV calculation basis

141. The Trustee has provided evidence showing that it obtained and considered actuarial advice in relation to CETVs at all appropriate times. The OBSPS Actuary and legal advisers have attended all Trustee Board meetings with other advisers attending as and when required.
142. The Trustee has provided a copy of the letter of appointment for the OBSPS Actuary and confirmed that:
- “Service standards by [OBSPS] advisers were reviewed annually and improvements agreed where necessary. Over a number of years, [the OBSPS Actuary] consistently rated as Good or Very Good against key performance measures.”
143. Therefore, I am satisfied that the Trustee has taken appropriate advice and has adequately monitored its relationship with the OBSPS advisors including the OBSPS Actuary. Although, the Trustee decided it was not appropriate to perform the annual performance reviews of OBSPS advisers in June 2016, due to the OBSPS' circumstances at the time and the fact that all advisers were heavily engaged in working towards the best possible outcome for the OBSPS, I do not find that this was an unreasonable approach in the circumstances.
144. Both the OBSPS' investment strategy and CETV calculation basis were considered by the Trustee in Trustee meetings on a regular basis. Paragraphs 54 to 58 detail when actuarial reports were considered by the Trustee, what recommendations the reports contained and the Trustee's decisions made concerning CETVs at the time. For example, the decision to change the MVAs with effect from 1 September 2016.
145. Mr A has commented that he was not made aware of the changes in MVAs made to the CETV calculation basis on 1 September 2016, and that despite his CETV being paid after this date he did not benefit from the changes. There is no requirement for the Trustee to consult with members or inform them of any changes made. The CETV quotation that Mr A obtained was guaranteed for three months and he returned his paperwork actioning his right to transfer within this period so the Trustee transferred the quoted figure (see also paragraph 159). The failure to inform Mr A of the change in MVAs and not re-calculating his CETV does not amount to maladministration on the Trustee's part.
146. The evidence demonstrates that the Trustee has fulfilled its duties by discussing the CETV calculation basis, the possibility of an underfunding reduction, and the future

of the OBSPS, at regular intervals, and obtaining and considering advice from the appropriate advisors.

147. In the Trustee meeting of 8 March 2017, the Trustee approved the draft SIP, which was effective from 1 April 2017, as well as the proposed CETV calculation basis presented by the Actuary, also to be applied from 1 April 2017. The Trustee noted the need to give members suitable information during the transitional period. I am satisfied that the Trustee carried out its duties appropriately in amending the CETV calculation basis and the SIP. The matters at hand had been discussed in the previous year's Trustee meetings. The Trustee had repeatedly taken and considered legal and actuarial advice and was aware of its role and the legislation to which it was required to adhere.
148. Mr A says that the explanation provided by the Trustee is not sufficient to account for the drastic increases that members saw in their CETVs after 1 April 2017.
149. The Trustee calculates CETVs using the best estimate method as advised by the Actuary. This is explained at paragraph 131 and 132. In summary, this is the amount the Trustee estimates it will need at the point the CETV calculation is performed in order to provide the value needed at the member's NPD to pay benefits. This will depend on how far the member's age is away from NPD and what investment return the Trustee expects to receive over the period between the CETV calculation date and that member's NPD.
150. If assumed investment returns decrease (contrast paragraph 132), as they have in this instance, there will be less assumed growth between the CETV calculation date and NPD, which means that the scheme needs more money, at the CETV calculation date, than it previously assumed in order to fund the same benefit at NPD. This makes the value of a member's benefits at the CETV calculation date higher thus resulting in increased transfer values for the majority of members.
151. This is demonstrated in the actuarial report prepared for the March 2017 meeting, which sets out that CETVs were expected to increase by as much as 290% for those members who were 30 years old, 170% for those 40 years old, 90% for those 50 years old, and 20% for those 60 years old prior to the underfunding reduction.
152. In addition, the Trustee has provided two further reasons which impacted on the increase to CETVs. These are: a change in the assumptions made about reversion of future yields to higher long term rates; and changes in market conditions. The assumptions around reversion of future yields has had the greatest impact on those members who are ten or more years away from NPD. This is because the pre-April 2017 CETV basis assumed that equities held in the pre-retirement period would switch into bonds at the point of retirement; and, for those members ten or more years from retirement it was assumed that bond yields at their NPD would have reverted to higher levels than current yields. The revised CETV basis removed this assumption as the updated SIP had the effect of assuming that bonds were held immediately, rather than at NPD, which meant that the OBSPS would no longer

benefit from any future reversion in yields. This change increased transfer values for younger members.

153. The changes in market conditions also had an impact, although less so than the change to the SIP and the change to the yield assumptions. Market conditions varied depending on the point at which the CETVs were calculated, so they would have affected different members' CETVs in different ways. Gilt yields have fallen, which is reflected in market index-linked gilt yields, meaning that CETVs calculated at a later date have typically been higher.
154. It is for the Trustee to set the SIP and CETV calculation basis with advice from the OBSPS Actuary. I have found no fault in the process of how these changes were made. The Trustee has taken the appropriate advice from the Actuary, considered that advice and carried out its duties appropriately in line with TPR guidelines. I am satisfied with the Trustee's explanation of the changes it made. The changes in market conditions have also impacted the CETVs, causing the sharp increase using the post-April 2017 calculation basis when compared to the pre-April 2017 basis.
155. The Trustee is correct when it states that there is no requirement, either under legislation or the OBSPS Rules, where it alters the calculation basis, for it to make members aware in advance of the change or offer members the option of awaiting a CETV on the new basis. Amending the CETV basis is not an event which requires consultation with scheme members, so the Trustee has not breached its duty by making amendments and not making members aware in advance.
156. Mr A raised a concern that some of the trustee directors making up the Trustee Board, used their position to their advantage. The Trustee has provided copies of the conflict of interest policies applicable over the period in question. It has said that Trustee directors are invited to declare any potential conflicts of interest at the beginning of every Trustee Board meeting relative to matters under discussion not previously disclosed and that potential conflicts were dealt with in line with the conflicts of interest policy (see paragraph 59). During the period in question the Trustee provided evidence to demonstrate that it has considered and monitored any potential conflicts in accordance with its conflicts of interest policy. It should also be noted that section 39 of the Pensions Act 1995, states that there is, "No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme". The fact that some Trustee directors are also members of the BSPS does not mean they are not able to act correctly in their role as a trustee. I am satisfied that the Trustee took the necessary steps in line with TPR's guidance in considering and dealing with any conflicts of interests.

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

157. Mr A was provided with a statement of entitlement, as required under section 93A of the PSA 1993, on 3 August 2016. In returning the paperwork and requesting his transfer on 21 October 2016, Mr A exercised his right to a CETV, acquired under section 94(1) of the PSA 1993, by taking it in accordance with one of the options available under section 95 of the PSA 1993. This in turn triggered section 99(2) of the PSA 1993, which required the Trustee to do what was necessary in order to carry out Mr A's request to transfer the cash equivalent value given to him in the statement of entitlement that he received on 3 August 2016, within six months of that request. The Trustee completed Mr A's transfer in compliance with these requirements and made payment to Mr A's chosen receiving scheme on 2 November 2016.
158. I do not consider it is reasonable for Mr A to have expected the Trustee to pay a higher transfer value in his case. Mr A accepted the CETV provided to him in his statement of entitlement. There is no evidence to suggest that the increase in transfer values following Mr A's transfer was due to an error in the calculations. Instead, the general increase in CETVs, in the months following Mr A's transfer out of the OBSPS, was likely as a direct result of the Trustee's having amended the CETV calculation basis following a change to the SIP, but other changes could have had an impact see paragraphs 152 and 153. Had this change led to transfer values decreasing, Mr A would not expect the Trustee to recalculate and reduce his CETV and then require him to return the difference. In the same way, the Trustee should not be expected to pay higher values to those members in the same position as Mr A, who requested to transfer their benefits after receiving a CETV calculated on the CETV basis applicable before 1 April 2017.
159. I appreciate Mr A's concerns with the value of his benefits and I can understand that it is difficult to accept that his CETV is correct when other members, his colleagues and friends, received vastly increased figures after 1 April 2017. But I do not find that the CETV Mr A received was incorrect. It was calculated using the agreed basis at the time of the calculation. I acknowledge Mr A's comments that, had the value been calculated on a post-April 2017 basis, it is likely to have been higher than that which was quoted in August and transferred in November 2016, and he may have chosen a different option. Nevertheless, that statement is made with the benefit of hindsight, and in any event, it does not cause the statement of entitlement that Mr A was given in August 2016, to be incorrect.
160. There is no evidence that the Trustee failed to properly undertake its duties of care and skill, in considering the advice from the OBSPS Actuary and investment advisor/committee, when making changes to the SIP and CETV calculation basis. Therefore, there has been no administrative error on the part of the Trustee in respect of the change in the CETV calculation basis, or in respect of the Trustee's implementing Mr A's transfer request. The fact that Mr A's CETV would have increased, had he chosen to do nothing until after April 2017, whilst unfortunate, is not due to any fault on the part of the Trustee.
161. Finally, addressing Mr A's comments that he was told during a telephone conversation that he was required to become a deferred member of the OBSPS in

order to obtain a CETV, and that he could stay in the OBSPS if he did not want to go ahead with the transfer. It is not known to me what was said during that conversation. But it is correct that taking a CETV would mean that Mr A would no longer be a member of the OBSPS; and we know that Mr A returned the transfer paperwork exercising his right to transfer out of the OBSPS. The Trustee confirmed that had Mr A requested his transfer to be suspended or cancelled prior to it being completed it would have been and he would have remained a deferred member of the OBSPS; yet there is no evidence that Mr A attempted to suspend or cease his transfer.

162. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
13 January 2020

Appendix 1

The British Steel Pension Definitive Trust Deed and Rules

(Consolidated as at 11 September 2017)

...

Clause 4 of the Trust Deed

4. INVESTMENT AND BORROWING POWERS

- (1) The Trustee has the following powers which it may exercise in such manner as it thinks fit:
- (a) to invest in, acquire, dispose of, lend or otherwise deal in or undertake to deal in any property, currencies, assets, rights, assurances, contracts or interests; and
 - (b) to retain moneys of the Fund in cash of any currency or upon current account with any deposit taking institution or bank without being liable for any gain foregone; and
 - (c) all powers relating to such properties, assets, rights, assurances, contracts or interests forming part of the Fund at least as favourable as if the Trustee was absolutely and beneficially entitled.

...

- (7) The Trustee shall prepare a Statement of Investment Principles in accordance with section 35 of the 1995 Act, shall take advice from a suitably qualified person in relation to that Statement and shall consult with the Principal Company (on behalf of all the other Employers) on it. In exercising its powers of investment, the Trustee shall have regard to the requirements of section 36 of the 1995 Act.

...

Clause 9 of the Trust Deed

9. ACTUARIAL VALUATIONS

- (1) The Trustee shall arrange for an investigation of the finances of the Scheme to be made by the Actuary from time to time at intervals not exceeding three years or such other interval as may be required by the 2004 Act. The Actuary shall report in writing to the Trustee and to the Principal Company.

...

Clause 13 of the Trust Deed

13. APPOINTMENT AND DUTIES OF THE ACTUARY

...

- (2) The duties of the Actuary shall be as follows:
- (a) to make a valuation of, and report on, the Fund in accordance with arrangements made by the Trustee under Clause 9 of the Trust Deed;
 - (b) to report at the Trustee's request upon the claims made from time to time upon the Fund, and certify the amounts payable out of the Fund in respect of such claims when requested by the Trustee so to do; and
 - (c) to make and give such other reports and certificates and give such advice and information relating to the Fund as may be necessary or expedient in accordance with the Trust Deed and the Rules or the 1995 or 2004 Acts or other applicable legislation, or as the Trustee or the Principal Company may require.

...

Rule 14 of the OBSPS Rules

14. BENEFITS AFTER CEASING TO BE A MEMBER EARLY

- (1) Subject to Rule 14(4), there shall be paid out of the Fund to every person who ceases to be a Member otherwise than through death or retirement with an immediate pension under Rule 11 or 12, an annual pension for life beginning at his Normal Pension Age, or at the request or with the consent of the former Member from a time which is before or after his Normal Pension Age, equal to:
- (a) $\frac{1}{60}$ th of his Final Pensionable Earnings multiplied by the number of years of his Pensionable Service up to 31 March 2012; plus
 - (b) $\frac{1}{65}$ th of his Final Pensionable Earnings (2012) multiplied by the number of years of his Pensionable Service on and after 1 April 2012, multiplied by the LAF at Normal Pension Age (or, if earlier, the date on which the pension comes into payment).

Such pensions shall be increased, when they come into payment, by the amount by which the person's Guaranteed Minimum Pension at the date the pension comes into payment exceeds that Guaranteed Minimum Pension as at the date he ceased to be a Member.

No pension under this Rule shall be payable before the age of 50 (55, after 5 April 2010, if the person became a Member after 5 April 2006) unless the person's retirement was, in the opinion of the Trustee (after receiving evidence from a registered medical practitioner), due to Incapacity.

Where the pension under this Rule 14 commences at a time earlier than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be reduced, except where, in the opinion of the Trustee, the person's retirement was due to Incapacity. Where a Member retires before Normal Pension Age under this Rule 14, 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.

Where the pension under this Rule 14 commences at a time later than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be increased by such percentage as the Actuary may from time to time certify.

Where the Member's retirement is deferred beyond the age of 75, his pension shall be payable from the date he attained that age.

...

Rule 16 of the OBSPS Rules

16. TRANSFER PAYMENTS

(1) Transfers out:

A transfer of cash or other assets from the Fund to another pension scheme (meaning an occupational or personal pension scheme) or an Insurance Company (a "transfer payment") may be made for a Member (which terms in this Rule includes a Deferred Pensioner, Pensioner or Postponed Pensioner) or other beneficiary as follows.

(a) Other pension scheme:

A transfer payment may be made to another pension scheme including a personal pension scheme only if:

- (i) the receiving scheme is a Registered Pension Scheme or such that the transfer payment will not be an Unauthorised Payment;
- (ii) the transfer payment satisfies the prescribed requirements under the 1993 Act; and
- (iii) (in the case of a transfer to an occupational pension scheme) not more than the amount included in the transfer payment attributable to a Member's contributions to the Fund may be treated as having been contributed by him to the other pension scheme.

(b) Insurance Company:

A transfer payment may be made to an Insurance Company only if:

- (i) it will issue a policy or annuity contract which satisfies the requirements of section 19(4) of the 1993 Act; and
- (ii) the Member or other person for whom it is made has, if his consent to the transfer payment is required, selected the Insurance Company.

(c) Right to a transfer payment:

A Member who becomes entitled to a deferred pension under Rule 14 at least a year before Normal Pension Age and has requested and been given a statement of entitlement under section 94 of the 1993 Act and has made application to the Trustee to take his cash equivalent within 3 months of the date of the statement of entitlement has a right to require the Trustee to use the cash equivalent as defined in the 1993 Act to acquire benefits under another scheme (option (1) above) or by purchase of a buy-out policy (option (2) above).

The Member can exercise this right by application in writing to the Trustees at any time up to a year before Normal Pension Age (or, if later, 6 months after ceasing to be a Member).

(d) Consents:

If the person for whom the transfer payment is to be made is a Member or is in receipt of pension, it cannot be made except:

- (i) at that person's written request or with his written consent; or
- (ii) in circumstances where such consent is not required under the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991.

No consent from any person other than the Member is required to a transfer payment for a Member.

- (e) Discharged benefits:
 - (i) A transfer payment must relate to all or an identified portion of the benefits otherwise payable for the person for whom the transfer payment is made ("the discharged benefits").
 - (ii) Subject to Rule 16(1)(h) one or more transfer payments for a person must relate to all of the benefits otherwise payable for him unless the Guaranteed Minimum Pension liabilities or section 9(2B) Rights are retained by the Fund.
 - (iii) The making of a transfer payment will discharge the Trustee from any further liability to pay the discharged benefits. The Trustee is not obliged to enquire into the application of the cash or other assets transferred.
- (f) Value transferred:

The value of the cash or other assets included in a transfer payment will be as may be certified by the Actuary to be applicable to the case provided the Trustee is reasonably satisfied that it is at least equal to:

 - (i) in the case of transfer payment made at the request of a person who has a right to a cash equivalent (or a cash transfer sum) under the 1993 Act, the amount of that cash equivalent calculated in the manner prescribed under section 97 of the 1993 Act; or
 - (ii) in any other case, the value of the discharged benefits.

...

Appendix 2

The Pension Schemes Act 1993

Part 4ZA

Chapter 1 Transfer Rights: General

93 Scope of Chapter 1

- (1) This Chapter applies to a member of a pension scheme if all of the following conditions are met.
- (2) Condition 1 is that the member has accrued rights to any category of benefits under the scheme rules.
- (3) Condition 2 is that no crystallisation event has occurred in relation to the member's accrued rights to benefits in that category (see subsection (7)).
- (4) Condition 3 is that—
 - (a) the member is no longer accruing rights to benefits in that category (see subsection (8)), and
 - (b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.

...

93A Right to statement of entitlement: benefits other than money purchase

- (1) The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation to categories of benefits other than money purchase benefits.
- (2) In the case of a member with transferrable rights in relation to two categories of benefits other than money purchase benefits, the application may relate to transferrable rights in relation to either or both of those categories.
- (3) For the purposes of this Chapter a member's "statement of entitlement" is a written statement of the amount of the cash equivalent at the guarantee date of the transferrable rights to which the application under subsection (1) relates.
- (4) In this Chapter "the guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be—
 - (a) within the prescribed period beginning with the date of the application, and
 - (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (5) Regulations may make provision in relation to applications under this section and may, in particular, restrict the making of successive applications.
- (6) If the trustees or managers of a pension scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

94 Right to cash equivalent

- (1) A member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter.

- (2) A member of a pension scheme who has transferrable rights in relation to money purchase benefits acquires a right to take their cash equivalent in accordance with this Chapter.

...

97 Calculation of cash equivalents

- (1) Cash equivalents are to be calculated and verified —

- (a) in the prescribed manner, and
- (b) where a designation has been made under section 97A or 97B, in accordance with regulations under section 97C.

...

- (2) Regulations may provide—

- (a) that in calculating cash equivalents that relate to money purchase benefits account shall be taken—

- (i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;
- (ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

- (aa) for a cash equivalent that relates to any category of benefits to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

- (i) any pension; or
 - (ii) any benefit in lieu of pension;
- and

- (b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

- (3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

- (b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and
- (c) the state of the funding of the scheme.

- (3A) For the purposes of subsection (3), the “appropriate date” —

- (a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 93A, and
- (b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 95.

- (3B) Where regulations under subsection (2)(b) provide for the cash equivalent shown in a statement of entitlement to be increased or reduced after the member has made an application under section 95, the regulations may provide for the application under section 95 to lapse (but this does not prevent the member making a fresh application in respect of the increased or reduced cash equivalent).

- (4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

...

98 Loss of right to cash equivalent

- (1) A member of a pension scheme who acquires the right to take a cash equivalent under section 94(1) loses that right if no application to take the cash equivalent is made within the period required by section 95(1A) or (6A).
- (2) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if, after the member makes an application under section 95, the duty of the trustees or managers to do what is needed to carry out what the member requires is extinguished by section 99(2A).
- (3) Nothing in subsection (1) or (2) prevents the member from later acquiring a new right to take a cash equivalent in relation to the same benefits.
- (4) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if the scheme is wound up.

99 Trustees' duties after exercise of option

- (1) Where—
 - (a) a member has exercised the option conferred by section 95; and
 - (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.
- (2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires—
 - (a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, and
 - (b) in the case of an application that relates to money purchase benefits, within 6 months beginning with the date of the application.
- (2A) Subsection (2) does not apply if—
 - (a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2015 by reason of factors outside their control, or
 - (b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.
- (3) If—
 - (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme; and
 - (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his or her surviving spouse or civil partner being forfeited; and

- (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

- (4) The Regulatory Authority may, in prescribed circumstances, by direction grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.
- (4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements.
- (4B) Regulations may extend the period for compliance under subsection (2) or (3) in prescribed circumstances.
- (7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within six months of the date mentioned in paragraph (a) or (b) of subsection (2)—
 - (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
 - (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.
- (8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

...

Appendix 3

The Occupational Pension Schemes (Transfer Values) Regulations 1996

...

6 Statements of entitlement

- (1) Subject to paragraph (1A), the guarantee date in relation to a statement of entitlement must be—
 - (a) within the period of three months beginning with the date of the member's application for a statement of entitlement; or
 - (b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they may reasonably require.

...

7 Manner of calculation and verification of cash equivalents — general provisions

- (1) Subject to paragraphs (4) and (7), cash equivalents are to be calculated and verified—
 - (a) by calculating the initial cash equivalent—
 - (i) for salary related benefits other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary, in accordance with regulations 7A and 7B; or
 - (ii) for money purchase benefits and cash balance benefits in respect of which the available sum is not calculated by reference to final salary, in accordance with regulation 7C,and then making any reductions in accordance with regulation 7D; or
 - (b) in accordance with regulation 7E.
- (2) The trustees must decide whether to calculate and verify the cash equivalent in accordance with paragraph (1)(a) or (b), but they can only choose paragraph (1)(b) if they have had regard to any requirement for consent to paying a cash equivalent which is higher than the amount calculated and verified in accordance with paragraph (1)(a).
- (3) The trustees are responsible for the calculation and verification of cash equivalents and initial cash equivalents.
- (4) Where a member, in relation to whom a cash equivalent is to be calculated and verified, is a member of a scheme modified by—
 - (a) the British Coal Staff Superannuation Scheme (Modification) Regulations 1994; or
 - (b) the Mineworkers' Pension Scheme (Modification) Regulations 1994,the cash equivalent of his bonus is to be calculated and verified by the trustees, having obtained the advice of the actuary, to reflect the fact that a reduced bonus, or no bonus, may become payable in accordance with the provisions governing the scheme in question.
- (5) For the purposes of paragraph (4) “bonus” means any—
 - (a) augmentation of his benefits; or
 - (b) new, additional or alternative benefits,

which the trustees of the scheme in question have applied to the member's benefits or granted to him in accordance with the provisions governing that scheme, on the basis of findings as to that scheme's funding position.

- (6) Paragraph (7) applies where the cash equivalent is calculated and verified in accordance with paragraph (1)(a).
- (7) Where a portion of the cash equivalent relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash equivalent is to be calculated—
 - (a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 7A and 7B; and
 - (b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 7C.

7A Manner of calculation of initial cash equivalents for salary related benefits other than cash balance benefits not calculated by reference to final salary

- (1) For salary related benefits other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary, the initial cash equivalent is to be calculated—
 - (a) on an actuarial basis; and
 - (b) in accordance with paragraph (2) and regulation 7B.
- (2) The initial cash equivalent is the amount at the guarantee date which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits.
- (3) For the purposes of paragraph (2), the trustees must determine the extent—
 - (a) of any options the member has which would increase the value of his benefits under the scheme;
 - (b) of any adjustments they decide to make to reflect the proportion of members likely to exercise those options; and
 - (c) to which any discretionary benefits should be taken into account, having regard to any established custom for awarding them and any requirement for consent before they are awarded.

7B Initial cash equivalents for salary related benefits other than cash balance benefits not calculated by reference to final salary: assumptions and guidance

- (1) The trustees must calculate the initial cash equivalent for salary related benefits other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary—
 - (a) by using the assumptions determined under this regulation; and
 - (b) where the scheme falls within paragraph (6), in accordance with the guidance referred to in that paragraph.
- (2) Having taken the advice of the actuary, the trustees must determine the economic, financial and demographic assumptions.
- (3) In determining the demographic assumptions, the trustees must have regard to—
 - (a) the main characteristics of the members of the scheme; or

- (b) where the members of the scheme do not form a large enough group to allow demographic assumptions to be made, the characteristics of a wider population sharing similar characteristics to the members.
- (4) Except where the scheme falls within paragraph (6), the trustees must have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.
- (5) The trustees must determine the assumptions under this regulation with the aim that, taken as a whole, they should lead to the best estimate of the initial cash equivalent.
- (6) A scheme falls within this paragraph if it is a public service pension scheme in respect of which guidance has been prepared, and from time to time revised, by the Treasury for calculating the discount rates.

...

Appendix 4

The Occupational Pension Schemes (Investment) Regulations 2005

2 Statement of investment principles

- (1) The trustees of a trust scheme must secure that the statement of investment principles prepared for the scheme under section 35 of the 1995 Act is reviewed—
 - (a) at least every three years; and
 - (b) without delay after any significant change in investment policy.
- (2) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must—
 - (a) obtain and consider the written advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes; and
 - (b) consult the employer.
- (3) A statement of investment principles must be in writing and must cover at least the following matters—
 - (a) the trustees' policy for securing compliance with the requirements of section 36 of the 1995 Act (choosing investments);
 - (b) their policies in relation to—
 - (i) the kinds of investments to be held;
 - (ii) the balance between different kinds of investments;
 - (iii) risks, including the ways in which risks are to be measured and managed;
 - (iv) the expected return on investments;
 - (v) the realisation of investments; and
 - (vi) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments; and
 - (c) their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments.

...

4 Investment by trustees

- (1) The trustees of a trust scheme must exercise their powers of investment, and any fund manager to whom any discretion has been delegated under section 34 of the 1995 Act (power of investment and delegation) must exercise the discretion, in accordance with the following provisions of this regulation.
- (2) The assets must be invested—
 - (a) in the best interests of members and beneficiaries; and
 - (b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries .
- (3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

- (4) Assets held to cover the scheme's technical provisions must also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme.
- (5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.
- (6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.
- (7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.
- (8) Investment in derivative instruments may be made only in so far as they—
 - (a) contribute to a reduction of risks; or
 - (b) facilitate efficient portfolio management (including the reduction of cost or the generation of additional capital or income with an acceptable level of risk),and any such investment must be made and managed so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.
- (9) For the purposes of paragraph (5)—
 - (a) an investment in a collective investment scheme shall be treated as an investment on a regulated market to the extent that the investments held by that scheme are themselves so invested; and
 - (b) a qualifying insurance policy shall be treated as an investment on a regulated market.
- (10) To the extent that the assets of a scheme consist of qualifying insurance policies, those policies shall be treated as satisfying the requirement for proper diversification when considering the diversification of assets as a whole in accordance with paragraph (7).
- (11) In this regulation—

“beneficiary” , in relation to a scheme, means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme:

“derivative instrument” includes any of the instruments listed in paragraphs (4) to (10) of Section C of Annex 1 to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

“regulated market” means—

 - (a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field;
 - (b) a regulated market within the terms of Directive 2014/65/EU; or
 - (c) any other market for financial instruments—
 - (i) which operates regularly;
 - (ii) which is recognised by the relevant regulatory authorities;
 - (iii) in respect of which there are adequate arrangements for unimpeded transmission of income and capital to or to the order of investors; and
 - (iv) in respect of which adequate custody arrangements can be provided for investments when they are dealt in on that market;

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“technical provisions” has the meaning given by section 222(2) of the 2004 Act (the statutory funding objective).

...

Appendix 5

Press Release – 26 May 2016

Allan Johnston, Chairman of the Board of Trustees of the British Steel Pension Scheme said:

"The Trustee of the British Steel Pension Scheme ('the Scheme') welcomes the Government's decision to consult on changes to the law applying to the Scheme.

"The Trustee will be writing to members over the coming days to make clear its belief that, with Government support, it should be possible to modify benefits so as to allow the Scheme to remain outside the Pension Protection Fund ('PPF') indefinitely and on a low-risk basis. Although this would entail future pension increases being cut back from their current levels, benefits would be more generous than those provided by the PPF for the vast majority of Scheme members.

"The primary focus of the Trustee is to secure the best outcome for Scheme members. Whilst the current pension protection framework provides a valuable safeguard for pension scheme members generally, the circumstances of the British Steel Pension Scheme are such that its assets could be better used in paying member benefits than potentially swelling a PPF surplus or insurance companies' profits.

"The Government consultation is open to the public and not everyone replying will necessarily do so with the best interests of the Scheme membership in mind. The Trustee will be looking to ensure that the views of members are properly reflected in the consultation outcome."

26 May 2016

British Steel Pension Scheme
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E-mail: pension.enquiries@tatasteel.com

Dear Member

This letter is to inform you that the Government is currently undertaking a public consultation exercise on potential changes to the law as it relates to the British Steel Pension Scheme which could result in changes to your Scheme benefits. The letter sets out the background to this consultation and explains why your Trustee believes the proposed changes would be in the best interests of the Scheme membership. You do not have to take any action as a result of this letter but you may wish to participate in the consultation and will find details attached on how to do so.

Following Tata Steel's announcement regarding UK portfolio restructuring, your Trustee has been working to understand potential outcomes for the British Steel Pension Scheme and its members.

Taking into account the information which is now available, it seems increasingly likely that it will not be possible to find a new employer wishing to take on the Scheme in its current form, and that the Scheme would be required to go into the Pension Protection Fund (PPF).

This would involve all Scheme assets being transferred to the PPF and members receiving compensation from the PPF. This would result in significant reductions in future pension increases and, for some 58,000 members (including current pensioners) who have not yet reached age 65, cuts in pensions of at least 10%.

The Trustee believes that exchanging the Scheme's assets for PPF compensation would be a poor outcome. The Trustee believes that the Scheme's assets are more than enough to meet the cost of paying PPF compensation and that it would be better for the Scheme to stay out of the PPF. The Scheme could then provide modified benefits at levels which, for the vast majority of members, would be better than PPF compensation. The Trustee would then adopt investment policies designed to minimise the risk of not being able to pay the modified benefits at any time in the future. This would enable the Scheme to stay out of the PPF at the present time and minimises the risk of having to go into the PPF in the future.

In other words, the Trustee believes that it is better to use the Scheme's assets to provide modified benefits under the Scheme than to hand them over to the PPF so that members are paid PPF compensation.

The modifications to Scheme benefits needed to achieve this preferred outcome would not be as severe as the cuts that would result from going into the PPF. The modifications would be made using a Scheme rule that allows future pension increases to be reduced. Pensions in payment would still have increases at least equal to those required by law. Deferred pensions would have future increases calculated by reference to the Consumer Prices Index instead of the Retail Prices Index.

The Scheme rule in question has been part of the Scheme since it was established in 1990. However, legislation in 1995 could prevent the rule being used in the way proposed. The Government was therefore asked to remove this obstacle by changing the law as it applies to our Scheme.

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The Trustee, Tata Steel and their respective advisers have set out a compelling argument as to why such a change would be in the best interests of the Scheme membership. However, the Government needs to consider wider policy implications and so has decided to undertake a public consultation exercise to allow interested parties the opportunity to comment on its proposals before a final decision is taken.

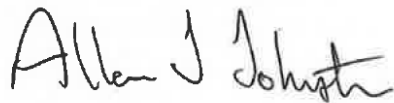
The consultation is about you and the outcome will directly affect your retirement income. However, as this is a public consultation, anyone can comment whether or not they are connected to the Scheme. Not everyone responding will necessarily do so with the best interests of the Scheme membership in mind. For this reason your Trustee believes that it is vitally important that you, the Scheme members, have your voices heard whatever your opinions may be.

It is important to note that the Government's proposals could well change as a result of the consultation exercise or indeed be withdrawn altogether. Without this change in the law, it seems likely that the Scheme will go into the PPF.

The consultation period ends on 23 June 2016 and the Trustee expects the Government to make its decision soon after that date.

Your Trustee firmly believes that keeping the Scheme outside the PPF, which has the support of the trade unions and the whole Trustee body, would result in a better and fairer outcome for members than entry into the PPF.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Allan Johnston', written in a cursive style.

Allan Johnston
Trustee Chairman

Questions and Answers

Q1. Why is the Trustee supporting a proposal which would result in pension increases being reduced?

- A. The Trustee takes the view that, without action, it is highly likely that the Scheme would enter the Pension Protection Fund resulting in benefits being restricted to PPF compensation levels. Reducing Scheme pension increases to allow the Scheme to stay outside the PPF would result in a better outcome for the vast majority of the Scheme membership. The reduction in Scheme pension increases would be no more than would apply in the PPF.

If it became apparent that the Scheme could continue in its current form with a secure sponsor then it would not be necessary to consider these actions and pension increases could continue unchanged.

Q2. Are these changes only being made to allow the sale of Tata Steel's UK business?

- A. No. The pension scheme could be separated from the UK business by other means to allow a sale of the UK business; however it is likely that these alternatives would result in the Scheme's entry into the PPF. The Trustee's support for modification of benefits is purely based on achieving the best possible outcome for the Scheme membership.

Q3. How would the proposed changes affect me?

- A. Pending confirmation from Government on what, if any, changes to the law have been made it is not possible to know with certainty what the impact will be on member benefits.

However, the Trustee is working to develop a framework which would allow the Scheme to continue to pay benefits in line with Scheme Rules (i.e. without applying PPF compensation limits and caps). Future pension increases would however be restricted though the level of increases would in all circumstances be no lower than that offered by the PPF, and in many cases would be higher.

A table comparing the main differences between PPF compensation and indicative Scheme benefits under the proposals is shown below:

	PPF Compensation	Indicative Scheme Benefits after modifications
Compensation / Pension Payable		
Age 65 or over at date of PPF Assessment	No reduction	No reduction
Below age 65 at date of PPF Assessment	Reduced by at least 10%	No reduction
Spouses pension	50% of member's pension at date of death	50% of member's pension at date of death, calculated as if they had not taken a lump sum at retirement
Future Pension Increases in payment		
Service up to 5 April 1997	No increases	Post-5 April 1988 GMP ¹ rights only increased
Service from 5 April 1997	Increased in line with Consumer Prices Index (CPI) each year, subject to a maximum of 2.5 %	Increased in line with Consumer Prices Index (CPI) each year, subject to caps of 2.5% or 5% per annum depending on when benefits were earned

¹ Guaranteed Minimum Pension (GMP) refers to that element of benefits payable to qualifying members in order to comply with statutory requirements for contracting out of the State earnings-related pension scheme before 6 April 1997.

Note: the table is a brief summary for benefits earned in the Standard Section. The position for other benefits may be different.

	PPF Compensation	Indicative Scheme Benefits after modifications
Future pension increases before benefits come into payment		
Service up to 1 April 2006	Increased in line with Consumer Prices Index (CPI), subject to a maximum of 5 % per annum	Increased in line with Consumer Prices Index (CPI) (subject to 5% per annum limit only for certain members)
Service from 1 April 2006	Increased in line with Consumer Prices Index (CPI), subject to a maximum of 2.5 % per annum (5% per annum for pre-April 2009 service)	Increased in line with Consumer Prices Index (CPI), subject to a limit of 2.5% or 5% per annum, depending on when benefits were earned

Further information on PPF Compensation levels can be found at:
<http://www.pensionprotectionfund.org.uk/Pages/Compensation.aspx>

Q4. Would all Scheme Members be better off under the modified benefits structure than if the Scheme went into the PPF?

- A. No. Although the vast majority of Scheme members would be better off under the modified benefit proposals, certain classes of member have been identified who might benefit in the longer term if the Scheme went into the PPF.

Around half of the cases identified relate to historic circumstances where pension schemes with spouses' benefits of less than 50% have been merged into the BSPS. As noted above, the PPF would provide a higher spouse's pension based on 50% of the member's pension. The Trustee and Company are looking to see whether it might be possible to provide an underpin in these cases.

The remaining cases relate to individuals who are below State Pension Age and in receipt of a bridging pension (e.g. under the Rule 11(8) "High/Low" pension option or former CESPS Income Levelling equivalent). Currently PPF compensation (see Q3 above) is calculated by reference to the pension payable at the date that entry to the PPF starts to be assessed, with no provision for any future reduction when the member reaches State Pension Age, as would be the case under the Scheme Rules. This is an anomaly that would give these members a windfall and so impose additional cost on the PPF. Legislation was passed in 2008 to address this anomaly but it has not yet been brought into force. Given the significant additional costs that would arise for the PPF if the Scheme were to go into the PPF, the Government can be expected to consider using this legislation in the near future.

Q5. Would a change to the law mean that members' benefits are no longer protected by the Pension Protection Fund?

- A. No. To safeguard the protections available to members, the Trustee would wish to ensure that the Scheme continued to be eligible for entry into the PPF.

Q6. Where can I get more information?

- A. Until such time as the Government's position is clear, the Trustee is unable to provide any further information.

Before any changes are made, the Trustee will write to you setting out how the changes will impact on Scheme benefits.

Q7. How do I respond to the Government Consultation?

- A. You do not have to respond to the Government consultation however you may wish to do so. Information on the consultation can be found on the Department for Work and Pensions website
<https://www.gov.uk/government/consultations/british-steel-pension-scheme>.

Further information on responding to the consultation will be added to the Scheme website
www.bspensions.com.

Press Release - 8 June 2016

British Steel Pension Scheme members urged to contribute to public consultation process

Trustee of British Steel Pension Scheme encourages members to have their voices heard on proposals which would be better and fairer for them than the Pension Protection Fund

Letters from the British Steel Pension Scheme are currently arriving at the homes of the 130,000 scheme members across the country.

Based on the information currently available following Tata Steel's announcement regarding UK portfolio restructuring, it looks increasingly likely that the British Steel Pension Scheme would be required to go into the Pension Protection Fund.

Although the Pension Protection Fund provides a valuable safety net for pension schemes generally, entry would significantly reduce future pension increases for all members of the British Steel Pension Scheme and, for 58,000 people under the age of 65, result in cuts in pensions of at least 10%.

Allan Johnston, Chairman of the Board of Trustees of the British Steel Pension Scheme, said: "I have written to scheme members setting out why the Trustee believes it is better and fairer to use the scheme's assets to provide modified benefits under the scheme than to hand the assets over to the Pension Protection Fund.

"The modified benefits would be more generous for the vast majority of members than Pension Protection Fund compensation.

Although it is correct that the modification being consulted on by Government would see future pension increases being reduced, they would be no lower than those offered by the Pension Protection Fund and in many cases they would be higher. In addition, members under the age of 65 would not be subject to a reduction of at least 10% which would apply if the scheme entered the Pension Protection Fund.

Not everyone responding to the public consultation will necessarily do so with the best interests of the scheme membership in mind. It is vitally important that scheme members have their voices heard."

Information on the consultation can be found on the Department for Work and Pensions website <https://www.gov.uk/government/consultations/british-steel-pension-scheme>.

BSPS Response to Government Consultation - 16 June 2016

The trustee of the British Steel Pension Scheme ('BSPS') has today given its formal response to the Consultation Document issued by the Department for Work and Pensions on 26 May 2016. The trustee's response, which can be found [here](#), makes the following key points:

- Decisions about the future of the Tata Steel UK business could result in BSPS going into the Pension Protection Fund ('PPF'). Members would then be paid Pension Protection Fund compensation which, for 58,000 members below age 65, would involve benefit reductions of at least 10% and, for all members, reductions in future pension increases.
- The PPF is an important safety net for pension schemes. But BSPS is a very large, well-funded scheme that is able to provide better benefits than PPF compensation on a self-sufficiency basis. The trustee wants to find a solution that avoids BSPS going into the Pension Protection Fund.
- The trustee's proposals involve modified future pension increases that, for all members, are at least as good as the increases that would apply to PPF compensation, and better for most. There would be no benefit reductions.
- The trustee has written to all 130,000 members explaining the proposals in detail. The letter is available on the BSPS website: [here](#).
- BSPS was set up in 1990 on the basis that future pension increases could be reduced if they were no longer affordable. Subsequent legislation that was designed to protect members' accrued rights is now an obstacle to securing the best outcomes for BSPS members.
- The trustee strongly supports the Government's proposal to disapply that legislation, specifically for BSPS in these particular circumstances.
- The trustee is clear that future pension increases should be reduced only if the alternative is for BSPS to go into the PPF.
- The trustee also wishes to ensure that any surplus in BSPS is used to improve the security of benefits and/or to reinstate pension increases (which would not happen in the PPF). No surplus would be paid to any sponsor or employer.
- For the reasons set out in the trustee's response, it would be better for the PPF and its levy payers if BSPS stays out of the PPF for at least the next ten years. If pension increases are reduced as proposed, the trustee expects BSPS to stay out of the PPF indefinitely.
- The trustee is engaged with Government and the Pensions Regulator to demonstrate how it will be able to provide better benefits than PPF compensation on a self-sufficiency basis. This may be dependent on the separation terms to be agreed with Tata Steel, involving the release of limited guarantees and security currently provided to BSPS by Tata Steel group companies.

Information on the Government's consultation, which ends on 23 June 2016, can be found [here](#).

Allan Johnston, Chairman of the Trustee Board of the British Steel Pension Scheme, said:

"Our overriding objective remains to achieve the best outcomes for our members.

"The current statutory framework could force BSPS into the Pension Protection Fund. Although the PPF is an important safeguard for pension schemes generally, we believe that better outcomes can be achieved for our members by staying out of it.

"BSPS is a very large, well-funded scheme able to provide better benefits than PPF compensation.

"If our proposals are implemented, the vast majority of members will be better off than going into the PPF.

"We have asked the Government to remove a legislative obstacle to achieving this outcome.

"We welcome the Government's consultation and expect to satisfy the Government and the Pensions Regulator that, if BSPS stays out of the Pension Protection Fund, it can be financially self-sufficient and is most unlikely to go into the PPF at any time in the future."

Member Update - 12 August 2016

The Trustee Board of the British Steel Pension Scheme ('BSPS' or 'the Scheme') and its advisers have provided the Government, the Pensions Regulator and other stakeholders with compelling evidence of the Scheme's ability to pay modified benefits indefinitely and on a low-risk basis outside the Pension Protection Fund ('PPF').

Tata Steel is currently looking at alternative and more sustainable solutions for its European business. The Trustee accepts that it would not be realistic to expect that a buyer of the UK business or a joint venture would take on responsibility for funding the current or future deficit in the BSPS.

In the scenarios envisaged for Tata Steel UK, the Trustee takes the view that entry into the PPF remains the most likely outcome for the Scheme unless benefits are modified so that the Scheme no longer has a deficit and has adequate reserves to cover residual risks. If the Trustee was satisfied that the Scheme could remain outside the PPF by other means, it would not wish to modify benefits.

The PPF provides an important safety net for pension schemes generally but the Trustee believes that, because the BSPS is relatively well funded, a better and fairer outcome can be achieved for the membership by modifying benefits and staying out of the PPF.

The modifications necessary for this outcome would involve using the Consumer Prices Index ('CPI') instead of the Retail Prices Index ('RPI') for future increases to pensions in deferment and limiting future increases to pensions in payment to the minimum required by law. These modified benefits would be better than PPF compensation for the vast majority of Scheme members. This was explained to members of the BSPS in a letter dated 26 May, which can be found [here](#).

The Trustee has asked the Government to help achieve this outcome by removing legal obstacles to the benefit modifications.

Scheme Officers and advisers have provided persuasive evidence to Government officials that the Scheme would be able to operate successfully on this basis without significant risk for the PPF.

The information provided assumes the Scheme moves to a long-term, low-risk investment policy designed to match cash inflows to benefit outflows. Even allowing for the recent falls in interest rates, the Scheme would still have a very significant financial buffer available to protect against residual risks. Those risks would be much lower than the risks being run by most other pension schemes in the UK, and lower than those of the PPF itself. This means that, even if these risks were to materialise, the net result for the PPF should still be better than if BSPS went into the PPF now and if the risks do not materialise, the buffer could be used to reinstate future pension / benefit increases.

Discussions with Government officials, the Pensions Regulator, Tata Steel and other stakeholders are on-going and further updates will be provided to Scheme members when appropriate.

- The Government is currently considering its response to the consultation on the BSPS and an announcement is expected in due course. The Trustee wishes to thank those members who participated in the consultation.

Allan Johnston, Chairman of the Trustee Board of the British Steel Pension Scheme, said:

"The Trustee and its advisers have provided Tata Steel, the Government and the Pensions Regulator with compelling evidence of the Scheme's ability to pay modified benefits indefinitely and on a low-risk basis outside the Pension Protection Fund.

"At the last funding update as at 31 March 2015, the Trustee reported a deficit on an on-going basis (i.e., by reference to technical provisions calculated in accordance with statutory requirements) of £485 million. On a consistent basis, as at 31 March 2016, the Scheme Actuary has indicated that the deficit had reduced to around £300 million. However if Tata Steel UK is no longer able to access additional capital from the wider Tata Steel Group for continuation of business, a different valuation basis would have to be adopted and the deficit at both dates would be considerably higher. This is the main reason that the Trustee considers that benefits need to be modified.

"The improvement in the Scheme's funding position between March 2015 and March 2016 is due in part to favourable demographic experience since the last full Valuation and also to the Scheme's continued strong investment performance.

"Our investment strategy has meant that the Scheme's funding position has not been affected by recent falls in gilt yields in the same way as many other UK pension schemes and we remain confident of the Scheme's ability to provide modified benefits as proposed on a self-sufficient basis.

"The Scheme's success in managing investment risk has been recognised by the external analyst State Street, which provides benchmarking information to many large UK pension schemes. Over the ten-year period to 31 March 2016, the Scheme recorded the best performance relative to other large funds in the survey on both absolute and risk adjusted bases.

"Scheme assets have recently reached an all-time high of over £15 billion, though the historically low yields will also have increased the Scheme's liabilities."

Member Update - 12 September 2016

The Trustee notes the recent media coverage regarding possible changes to future pension increases for British Steel Pension Scheme members.

The Trustee has set out a compelling case to Government, the Pensions Regulator and other stakeholders regarding the Scheme's ability to pay modified benefits indefinitely and on a low-risk basis outside the Pension Protection Fund ("PPF"). The recent Government consultation considered a number of options that might make this possible.

Allan Johnston, Chairman of the Trustee Board of the British Steel Pension Scheme, said:

"Although the PPF is an important safeguard for pension schemes generally, we believe that better and fairer outcomes can be achieved for our membership by staying out of it.

In our response to the recent Government consultation, the trustee strongly supported the option to disapply Section 67 specifically for the BSPS in its current circumstances. Although other options were outlined and are being considered which could allow benefits to be modified and all or part of the Scheme to remain outside the PPF, the disapplication of Section 67 continues to be our preferred option and we expect to have further discussions with Government before any decision is taken on the consultation outcome."

Press Release - 27 September 2016

Member clarification following inaccurate media reporting

It was recently reported in elements of the media that an internal Government report dated 13 June 2016 had indicated the BSPS would require additional assets in the region of £3 billion - £4 billion in order to meet its reduced liabilities on a self-sufficiency / low risk basis. The Trustee has not seen the report in question and the underlying figures have not been the subject of discussion between the Trustee and Government officials.

Based on the date of the report quoted, we understand this to be an internal Government paper which used preliminary valuation figures and incorrectly interpreted information provided by the Scheme Actuary. This error was identified towards the end of June and corrected in subsequent reporting.

Information prepared by the Scheme Actuary now being considered by Government presents a detailed analysis of how the assets held by the Scheme on 31 March 2016 could meet the proposed modified liabilities on a self-sufficiency basis, with a substantial buffer to cover residual risks.

The Trustee continues to take the view that a compelling case has been made to Government, the Pensions Regulator and other stakeholders regarding the Scheme's ability to pay modified benefits indefinitely and on a low-risk basis outside the Pension Protection Fund ("PPF").

The Trustee position remains that although the PPF is an important safeguard for pension schemes generally, it believes that better and fairer outcomes can be achieved for the Scheme's membership by staying out of it.

Statement from the Trustee board of the British Steel Pension Scheme - 7 December 2016

The Trustee Board of the British Steel Pension Scheme (BSPS) believes today's announcement that Tata Steel UK Limited ("TSUK") is to begin consultation on closure of the British Steel Pension Scheme ("BSPS" or the "Scheme") is an important step in securing the best outcome for the Scheme Members.

Based on the information available, the Trustee believes that entry into the PPF (Pension Protection Fund) remains the most likely outcome for the Scheme. This is unless benefits are modified so that the Scheme no longer has a deficit and has adequate reserves to cover residual risks. Closing the BSPS is an important step in preparing the Scheme for the future and securing a better outcome for Members than entry into the PPF can offer.

As part of TSUK's transformation plan to improve performance and enable a sustainable business, it wishes to reduce and limit its exposure to the BSPS before making commitments for the future.

Information prepared by the Scheme Actuary presents a detailed analysis of how the assets held by the Scheme could meet the proposed modified liabilities on a low-risk basis, with a buffer of about £2 billion to cover the residual risks. This analysis is based on modified benefits after closure, and is therefore not affected by today's announcement.

Allan Johnston, Chairman of the Trustee Board of the British Steel Pension Scheme, said:

"Options for separating BSPS from Tata Steel were outlined in the Government's consultation document in May. All of these options required closure of the BSPS to future accrual.

"The Trustee is in constructive discussions with Tata Steel, HM Government and the Pensions Regulator about the options in the consultation.

"Although the Trustee was not involved in the negotiations between TSUK and the trade unions about closure of the BSPS, today's announcement is an important step towards achieving the best possible outcome for the Scheme and its members.

"The Trustee remains confident that the assets it holds are more than enough to pay the proposed modified benefits, which would be a better outcome than PPF compensation for the vast majority of members."

Statement from the Trustee board, 12 January 2017

Tata Steel UK announced on 7 December that it had reached an agreement with the trade unions to make progress towards termination of benefit accrual in the British Steel Pension Scheme and to take steps towards a more sustainable future for the business.

Tata Steel has indicated that it believes the ability to achieve a sustainable future for the UK business is dependent on the structural de-risking and de-linking of BSPS from the business. TSUK is now in discussions with the Trustee and the relevant regulatory bodies on how this might be achieved.

The options for separating BSPS from TSUK include a Regulated Apportionment Arrangement approved by the Pensions Regulator. Normally, after an RAA has been agreed for a pension scheme, the pension scheme goes into the Pension Protection Fund. However, the Trustee hope and expect to be able to provide better benefits for members than PPF compensation. This could be done by transferring members and assets to a new scheme with modified benefits that could operate on a low risk basis.

This would be an option for BSPS because it has enough assets to provide these modified benefits on a low risk basis and with a high level of confidence that the new scheme would never fall into the PPF.

Tata Steel is continuing to support TSUK while consultation takes place with employee members of the BSPS and their representatives on the termination of benefit accrual and discussions are progressing with the Trustee and relevant regulatory bodies about the de-linking of BSPS. It cannot be assumed that this support would continue if an RAA or other mechanism to de-link is not agreed.

27 January 2017

BRITISH STEEL

PENSION SCHEME

British Steel Pension Scheme
FREEPOST RLXS-ZXKT-AUER
Glasgow
G2 7BW

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Dear Member,

This letter is to update you on recent developments in connection with the British Steel Pension Scheme. It is intended for information only and you do not have to take any action. It is being sent to all members of the Scheme, including pensioners and deferred pensioners.

Background

After Tata Steel's announcement on 29 March 2016 regarding UK portfolio restructuring, I wrote to you on 26 May 2016 to explain that:

- In the scenarios envisaged for Tata Steel UK, entry into the Pension Protection Fund (PPF) is the most likely outcome for the Scheme unless benefits are modified so that the Scheme no longer has a deficit and has adequate reserves to cover residual risks.
- Although the PPF is an important safety net for pension schemes, the Trustee believes it would be better and fairer for the membership as a whole to use the Scheme's assets to provide modified benefits than for the PPF to take over these assets and pay its members PPF compensation.
- Although modification would see future pension increases being reduced, they would generally be no lower than those offered by the PPF and in many cases they would be higher. In addition, members under the age of 65 would not be subject to a reduction of at least 10% which would apply if the Scheme entered the PPF (see also Question 10 below).
- Given the wider policy implications of allowing pension schemes to modify accrued pension benefits, the Government undertook a public consultation exercise to allow interested parties the opportunity to comment on the options available. (The outcome of the consultation is awaited.)

Since then, the Trustee has been engaged in constructive discussions with Tata Steel, Trade Unions, HM Government, the various regulatory bodies and other interested parties with a view to achieving the best possible outcome for Scheme members. These discussions have not yet reached a conclusion but are making progress.

B.S. PENSION FUND TRUSTEE LIMITED

Registered Office: 125 Old Broad Street, London EC2N 1AR – Registered No. 171830 (Incorporated in England & Wales)

Proposed separation

Tata Steel has told the Trustee that, despite recent improvements in the performance of the Tata Steel UK business, TSUK remains dependent on financial support from the wider Tata Steel group and that continuing support will be conditional on a separation of the BSPS from Tata Steel. Separation would involve:

- termination of benefit accrual under BSPS (which is currently the subject of consultation between TSUK and those employees affected by the proposal), with pension benefits for future service being provided on a "money purchase" basis through a new Defined Contribution Personal Retirement Savings Plan (as explained in TSUK's letter to affected employees dated 15 December 2016),
- TSUK and other current employers no longer being sponsors of the BSPS and no longer being required to fund any deficit in the BSPS, and
- a release of the guarantees and security provided to the BSPS by other Tata Steel companies.

One potential way of achieving separation involves a Regulated Apportionment Arrangement (RAA). This is an established statutory process that can be used to separate an employer from its pension scheme in circumstances where the employer would otherwise become insolvent. An RAA cannot happen without the agreement of the scheme's trustees and the approval of the Pensions Regulator, or if the Pension Protection Fund objects. The Pensions Regulator will approve an RAA only if it is satisfied that the outcome for the scheme is better than if the employer went through an insolvency process.

The Trustee is in discussions with Tata Steel, the Pensions Regulator and the Pension Protection Fund about whether an RAA should be agreed for the BSPS and, if so, on what terms.

Termination of benefit accrual is a necessary step if the BSPS is to be separated from Tata Steel. It would also be an inevitable consequence of TSUK insolvency. Termination of benefit accrual can be achieved by TSUK using its powers in the BSPS rules; there is no need to obtain the Trustee's or members' agreement. But TSUK must first consult affected members and their representatives, as is now happening.

The Trustee knows that many members are considering how to respond to the consultation and how to vote in the ballot that is being held by the Trade Unions. I hope that this letter and the attached Q&A will be helpful in understanding the current circumstances of the BSPS, why TSUK has proposed termination of benefit accrual, the consequences for the BSPS of TSUK insolvency, and the better outcomes that could be achieved through separation by means of an RAA.

Transfers to a new scheme

A pension scheme that has an RAA would normally straight away go into a PPF assessment period. If that happened for the BSPS, members would be paid PPF compensation. The Trustee believes that the BSPS has enough assets to secure better and fairer outcomes than that. This could be done by delaying the start of the PPF assessment period so that members can be given a choice between staying in the BSPS (and so getting PPF compensation) and transferring to a new scheme that would provide modified benefits.

The modified benefits that would be offered by the new scheme are the same modified benefits that were outlined in my letter of 26 May 2016. For the vast majority of members and pensioners, these modified benefits would be better than PPF compensation although the extent of the improvement will depend upon a member's personal circumstances and retirement preferences.

The Trustee is therefore pressing the Pensions Regulator and the Pension Protection Fund to allow members to have a choice between PPF compensation and modified benefits in a new scheme if an RAA is agreed for the BSPS.

Separation through an agreed RAA, with members and pensioners able to have modified benefits in a new scheme, would be a better outcome than if TSUK became insolvent and the whole of the BSPS went into the PPF. That is why the Trustee is actively exploring a potential RAA with Tata Steel, the Pensions Regulator and the Pension Protection Fund. However, as I have made clear before, the Trustee will not agree terms for separation and modified benefits unless it is satisfied that otherwise the BSPS will go into the Pension Protection Fund.

Next Steps

I know that members and pensioners are finding the current uncertainty regarding the BSPS unsettling but I hope they will be reassured that the Trustee is working hard to achieve the best possible outcomes for them. I expect to be able to tell you more as matters develop over the coming weeks and months.

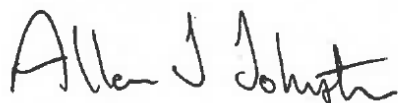
In particular, I will let you know if and when agreement is reached for the BSPS to be separated from Tata Steel through an RAA and whether it will then be possible for members and pensioners to have modified benefits in a new scheme. I would then also set out a timetable for providing detailed information about the PPF compensation that would be paid if you decide to stay in the BSPS and the modified benefits that would be paid if you transfer to the new scheme.

Meanwhile, the BSPS is continuing to pay benefits in full as and when they fall due. The next annual pension increases are due to take effect from 1 April 2017 and will be paid in the normal way.

Given the increased (and not always well informed) media coverage the Scheme is attracting, I have included overleaf some Q&A which I hope will help to explain the actions being taken and likely next steps.

The principal concern of your Trustee and its advisers in these matters remains to ensure the best possible outcome for the Scheme membership.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Allan Johnston', written in a cursive style.

Allan Johnston
Trustee Chairman

OPTIONS FOR THE BSPS**1. What is a Regulated Apportionment Arrangement (RAA)?**

A Regulated Apportionment Arrangement is a statutory mechanism which allows a company to free itself from its financial obligations to a pension scheme in order to avoid insolvency, provided that certain conditions are met. An RAA cannot be agreed without the approval of the Pensions Regulator or if the PPF objects.

An RAA will be approved only if employer insolvency is inevitable, and if the outcome under the RAA is better than the expected outcome from insolvency.

2. What are the options available for the BSPS?

In its public consultation on the BSPS carried out in summer 2016, the Government identified four possible options for separating the Scheme from Tata Steel, which are summarised below. Each of the options requires the BSPS to close to future accrual.

OPTION	COMMENT
i) Use existing regulatory mechanism to separate the BSPS	<p>This would involve a Regulated Apportionment Arrangement meeting various statutory and regulatory requirements. BSPS members would go into the PPF unless they agreed to modified benefits in a new scheme</p> <p>Although individual BSPS members would have a choice as to whether to enter the PPF or transfer to a new scheme offering modified benefits, an RAA would require complex negotiation between the Trustee, Tata Steel, the Pensions Regulator and the PPF, and difficult decisions for some members.</p>
ii) Payment of statutory pension debts	<p>Debt is based on amount required to buy out all benefits with an insurance company (likely to be in excess of £5 billion). Unaffordable</p>
iii) Reduction of the Scheme's liabilities through legislation (Section 67)	<p>Requires a change in legislation – which now seems unlikely to be forthcoming</p> <p>Achieves modification and so allows separation</p> <p>Although this would entail future pension increases being cut back from their current levels, benefits would be better than PPF compensation for the vast majority of Scheme members</p>
iv) Transfer to a New Scheme	<p>Similar to option 1 but with new regulations to allow the Trustee to transfer members to a new scheme providing modified benefits without having to obtain their consents (subject to safeguards, including an option for those members who wish, to opt for PPF compensation instead)</p>

3. What is the outcome of the Government's Consultation on the BSPS?

The Government has not yet confirmed its decision and discussions are ongoing. Currently, these discussions are around whether Government might make regulations to facilitate transfers from the BPS to a new scheme. For example, under current law, a transfer to the new scheme could be made for a member or pensioner only with his or her consent, meaning that PPF compensation would be the default outcome. New regulations could allow a transfer to be the default outcome for any member or pensioner when modified benefits would clearly be better than PPF compensation for that individual (although the individual could still choose to have PPF compensation instead).

4. What are the Pensions Regulator and PPF's views on the BPS de-linking from Tata Steel?

The Trustee is discussing with the Pensions Regulator and the PPF how a modified scheme could be established and regulated. If the new scheme does not have a substantial sponsor there would need to be a high level of confidence that the new scheme will always be able to pay the modified benefits for those who transfer to it. The Trustee believes that this would be the case because the BPS has enough assets to provide modified benefits for all members and pensioners on a low risk basis. But the Pensions Regulator and the PPF have yet to form their own views. The terms agreed with Tata Steel for separation and the amount of assets transferred from the BPS to the new scheme will be relevant. The new scheme would have the safety net of the Pension Protection Fund and so there would also need to be clarity about what levies the new scheme must pay to the PPF and the circumstances in which the new scheme might go into the PPF.

REACHING AGREEMENT ON SEPARATION TERMS

5. What happens if the Company's proposal to close the Scheme is rejected by employees?

This is a matter for the Company, its employees and their representatives. However, the Trustee believes that there is no realistic prospect of the Tata Steel UK business being able to continue to support the BPS in its current form and that termination of benefit accrual is an important step in securing the best outcome for BPS members and pensioners.

6. What happens if agreement for an RAA cannot be reached?

Unless there was Government support to amend the current legislation, it currently seems that the most likely outcome would be the insolvency of TSUK and free fall entry of the Scheme into the PPF.

7. Why does the Trustee believe that, based on the information available, entry into the PPF remains the most likely outcome for the Scheme?

The next actuarial valuation of the BPS is due as at 31 March 2017, at which time the funding position of the Scheme will be calculated by the Scheme Actuary. Although the final position will not be known for some time after that date, recent funding updates show that the Scheme would currently have a modest deficit if liabilities are valued using the same actuarial assumptions as were used for the 2014 valuation (adjusting for current market conditions). However, it will be necessary to change these assumptions to reflect lower-risk investment policies and to build in additional prudence if Tata Steel UK is no longer able to access additional capital from the wider Tata Steel Group for continuation of business (i.e. the covenant has weakened). The result is expected to be a deficit of between £1 and £2 billion.

The Scheme's sponsor, Tata Steel UK, would be required to make contributions to bring the Scheme back to a fully funded position. A deficit of this magnitude might require recovery contributions of £100 million to £200 million each year for 15 years.

Tata Steel UK has confirmed to the Trustee that it cannot afford to make deficit recovery contributions and indicated that without action, the likely outcome is that it would become insolvent leading to the Scheme's entry into the PPF.

8. How can insolvency be likely given the agreement reached between Tata Steel and its Trade Unions on proposals designed to help secure a more sustainable future for the UK business?

Tata Steel made clear in its announcement of 7 December 2016 that continuation of the existing blast furnace configuration in Port Talbot and further investment in the UK is conditional on the structural de-risking and de-linking of the British Steel Pension Scheme from the business.

9. Why would the Trustee support an RAA when it means the Scheme being de-linked from its sponsor, TSUK?

Trustee support for an RAA would be conditional upon:

- i) Insolvency being otherwise inevitable; and
- ii) The RAA producing a better outcome for the Scheme than a freefall insolvency

The Trustee and its advisers are working to ensure a fair value settlement from Tata Steel reflecting the obligations, security and guarantees currently owed and available to the Scheme. The Pensions Regulator would only consider approving an RAA proposal if it was satisfied that the proposal met its (and the PPF's) principles.

TERMS OF A TRANSFER EXERCISE

10. Could some BSPS members be better off if the Scheme entered the PPF?

The vast majority of members and pensioners would be expected to be better off in a new scheme with modified benefits than in the PPF. But there are some who could be better off in the PPF.

Based on the current PPF rules and adjustment factors (compared with the factors expected to apply in a new scheme providing modified benefits), pensioners in receipt of the Scheme's Rule 11(8) "High/Low" pension option at the start of a PPF assessment period, and members who wish to access their pension early (from age 55) and/or maximise their tax free lump sum, could potentially be better off in the PPF. However, PPF Rules and factors are subject to review and could change.

If Tata Steel UK became insolvent, it might be impossible to avoid all BSPS members and pensioners going into the PPF irrespective of their personal circumstances or preferences. Under an RAA, the Trustee would aim to provide members and pensioners with a choice. Those who wished to transfer to a modified scheme (because it provides a better outcome for them than entry into the PPF) could elect to do so; those who did not wish to transfer to a modified Scheme would enter the PPF.

If and when you are given a choice either to transfer to a new scheme for modified benefits or to stay in the BSPS with a view to getting PPF compensation, you will be provided with full information about both options and any other options that might then be open to you.

11. Will I be able to choose to go into a new scheme if it provides me with a better outcome than entry into the PPF?

Yes, if this option is allowed as part of an RAA approved by the Pensions Regulator. All members and pensioners would be able to make an informed choice. Those who wished to transfer to a modified scheme could elect to do so; those who did not wish to transfer would enter the PPF.

There is no guarantee that an RAA will be possible, although both the Trustee and Tata Steel believe that it would result in a better outcome for the BSPS membership than freefall entry of the whole Scheme into the PPF following insolvency of Tata Steel UK.