

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr R has complained that the Trustee did not provide details of the Cash Equivalent Transfer Value (**CETV**) calculation basis used for the CETV quotation he received in October 2016. As a result, he claims he was unable to make an informed decision.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a Pension Protection Fund (**PPF**) assessment period, the BSPS changed its name to the OBSPS. Simultaneously, the Trustee was replaced by Open Trustees. The Trustee was the trustee at the time of the actions complained of. Open Trustees, as the current OBSPS trustee, has been included as a respondent.
5. When Mr R brought his complaint to my Office, I considered Mr R's complaint and deemed it to be materially similar to Mr A's case, PO-16970. Mr A's group contained 123 associated complaints, one of which was Mr R's. Mr A complained 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 argued that the change should have been made at an earlier date, which meant the CETV he received was incorrect.
6. I determined Mr A's complaint on 13 January 2020 (**Determination PO-16970**). Determination PO-16970 explains the reasons why I did not uphold Mr A's complaint

and can be found on our website. Where Mr R's complaint overlaps, those points will not be repeated but reference will be made to Determination PO-16970.

7. The majority of the complaints within Mr A's group were discontinued following the determination of Mr A's case, on the basis that they were materially similar and so the outcome would be identical.
8. Mr R has claimed his complaint is different to Mr A's, so should be considered separately. He has claimed that he and his independent financial adviser (**IFA**) requested information about the CETV calculation basis in order to understand it, but this was not provided. So, he argues that: he was not able to make an informed decision; the quality of the information provided by the Trustee was inadequate; and members had been treated differently.
9. Paragraphs 10 to 17 below, provide a brief timeline of events relating to Mr R's complaint.
10. On 31 May 2016, Mr R became a deferred pensioner member of the OBSPS.
11. On 20 June 2016, he requested a statement of his CETV entitlement, which the Trustee issued to him on 7 July 2016. The CETV had an expiry date of 5 October 2016.
12. On 6 October 2016, Mr R's IFA requested a further CETV quotation.
13. On 25 October 2016, the Trustee issued a CETV quotation, with a CETV of £376,885.82 guaranteed until 23 January 2017. This was not subject to an underfunding reduction.
14. On 18 November 2016, the Trustee received Mr R's completed transfer paperwork, instructing it to transfer his benefits to Aviva. The paperwork had been signed by Mr R on 6 November 2016.
15. On 15 December 2016, Mr R's CETV was paid to Aviva.
16. In March 2017, the Trustee decided it would amend the CETV calculation basis. This change took effect from 1 April 2017. The background to this decision has been explained in paragraphs 36 to 62 of Determination PO-16970. This is replicated in Appendix 1 for ease of reference. References to appendices within paragraphs 36 to 62 are references to appendices to Determination PO-16970 and are not replicated here.
17. Mr R raised his complaint with the Trustee on 15 June 2017.

Mr R's position

18. He has questioned why his CETV had been lower than market alternatives at the time.

19. He believes that the pre-1 April 2017 CETV calculation had been undervalued, but he could not get access to the Trustee's methodology to find out. So, he had to accept the value offered to him. He questions why the formula and mechanics of the calculation were not obtainable from the Trustee.
20. He does not believe the changes made to the CETV calculation basis were fair and questions why the Trustee had carried out two revaluations in 2016.
21. He also believes that the information provided by the Trustee prior to the changes made to the CETV calculation basis was inadequate.

The Trustee's position

22. Mr R's CETV was calculated using the factors applicable at the time, which reflected the expected cost of providing the member's benefits within the Scheme, calculated on a best estimate basis. The assumptions and methodology used were consistent with all regulatory requirements.
23. If Mr R and his IFA did not believe the CETV represented a fair value, he had the option of remaining as a deferred member.
24. There was no record of any verbal or written queries from Mr R or his IFA in relation to the transfer of his benefits. It appears that Mr R was happy to proceed with the transfer based on the information provided and so it does not accept that there was any failure to provide necessary information. Nor does it agree that there was a delay in responding.

Adjudicator's Opinion

25. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Mr R believed that the CETV he received was lower than the market value at that time. To investigate this matter would require analysing the advice the Actuary provided to the Trustee. In the Adjudicator's view, this was considered in paragraphs 90 to 100 of Determination PO-16970 (see Appendix 2). Further, the Trustee's duty to appoint an actuary and monitor their performance were considered in paragraphs 127 and 141 to 143 of Determination PO-16970 (see Appendix 3).
 - The value of the CETV, due to the difference between the CETVs calculated before and after 1 April 2017, had also been reviewed in paragraph 159 of Determination PO-16970 (see Appendix 3).
 - Mr R had not provided information to substantiate his claim that he had tried to obtain information about the CETV calculation after receiving his CETV quotation in October 2016. The Trustee had no records of any contact from Mr R or his IFA

in relation to his transfer benefits. So, due to the short timeframe between Mr R receiving the CETV quotation, Mr R signing this and then returning it to the Trustee, it did not appear that Mr R or his IFA had contacted the Trustee with any queries in relation to the CETV quotation.

- In the Adjudicator's opinion, the Trustee had not acted in error. If there had been information requests, it did not appear as if the information formed a crucial part in Mr R's decision making. This was because, despite having until 23 January 2017 to provide all the paperwork, Mr R and his IFA provided the information by 18 November 2016. So, Mr R readily accepted the CETV as it stood.
- Mr R had questioned the changes implemented by the Trustee, on the basis of fairness and highlighted that members had been treated differently. The Adjudicator noted that my Office could only investigate complaints of maladministration, rather than fairness. Taking this into account, the Adjudicator highlighted paragraphs 154, 155 and 160 of Determination PO-16970 (see Appendix 4), where the Trustee was found not to have acted in error with its changes to the Statement of Investment Principles and the CETV calculation basis.
- Mr R said that members of the OBSPS were not informed about a revaluation that took place in 2016. The Adjudicator understood this to be in relation to the Trustee's decision to change the market value adjustments with effect from 1 September 2016. In her view, this had been considered in paragraphs 144 and 145 of Determination PO-16970 (see Appendix 5).
- With regard to Mr R's comments about the information provided to members of the OBSPS prior to the change in CETV calculation on 1 April 2017, it was the Adjudicator's opinion that these had been considered in paragraphs 101 to 126 of Determination PO-16970 (see Appendix 6).
- At the time Mr R's transfer completed, the Trustee would not have been in a position to warn members of the future change. So, Mr R could not have been expected to have been informed. His CETV had been completed in accordance with the calculation basis, as it stood at the time, so there could be no maladministration.

26. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided further comments, which are summarised below:-

- It was his opinion that if the Trustee did not share information about how it reached his CETV calculation, "it [told] a story". He believes that the Trustee devalued the OBSPS in order to facilitate a merger and would like to see the calculation that proves the change in valuation from pre- to post-1 April 2017.
- He raised a number of concerns about pre-1997 pension terms, the removal of inflationary increases, an 8% retention value of his CETV, the "massive penalty reductions" for early retirement, being contracted out of the State Earnings Related

Pension Scheme (**SERPS**) and the fact that the full details of the negotiations were not shared with the employees.

- He shared a letter, dated 26 May 2016, from the Trustee, which he thought could be construed as advice and guidance. He said that the basis of this letter was to create fear in order to gain support for the Trustee's actions. He believes the information provided was "inadequate, misleading and slanted in favour of the Trustee's aims and objectives."
- It was convenient that the Trustee did not record telephone calls at the time in question.

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

Ombudsman's decision

28. Mr R has raised a number of additional concerns in response to the Adjudicator's Opinion, such as the removal of inflationary increases and a retention value of his CETV. I cannot see that these matters formed part of his original complaint, nor that he has raised these concerns with the Trustee. As a result, I am unable to investigate these concerns.
29. I appreciate Mr R questions the basis of his CETV and would like the Trustee to share the methodology and factors that were used to derive the CETV calculation at the time. However, I have already reviewed the Trustee's duty to appoint an actuary and monitor their performance in paragraphs 127 and 141 to 143 of Determination PO-16970 (see Appendix 3). Notably, I concluded that the Actuary's advice was within the range of reasonableness/industry norm meaning it was reasonable for the Trustee to rely on that advice. Consequently, I shall not comment on this point further.
30. With regard to the letter dated 26 May 2016, this formed part of my assessment of the information announcements in respect of possible changes to the OBSPS and their impact on Mr A's decision to transfer in Determination PO-16970 (see Appendix 6). My conclusions on the suitability of this information are in paragraph 126 of Determination PO-16970:
- "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."
31. I acknowledge that it is unfortunate that the Trustee did not record telephone calls at the time that Mr R has said he attempted to obtain further information about his CETV. However, I would have expected Mr R, or at least his IFA, to have recorded their attempts in detail if this had been a concern. If Mr R was unhappy with the CETV and the lack of information being provided by the Trustee, I cannot see why he could

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not have complained at that point, rather than after the change in the CETV calculation basis. Furthermore, given the short amount of time between Mr R receiving the CETV quotation and returning the necessary paperwork, I consider that Mr R has raised this complaint with the benefit of hindsight.

32. I do not find that Mr R was prevented from making an informed decision when he decided to transfer out of the OBSPS. Moreover, I do not consider that the Trustee's acts and/or omissions amount to maladministration.
33. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
29 September 2021

Appendix 1

Paragraphs 36 to 62 from Determination PO-16970

“(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 Values) 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 website¹.
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:

“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:

¹ <http://www.thepensionsregulator.gov.uk/guidance/guidance-transfer-values.aspx>

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

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

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 interest², 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.

² <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/conflicts-of-interest>

(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."

Appendix 2

Paragraphs 90 to 100 from Determination PO-16970

“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).
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

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1995, Rule 3, provides that any amendment of the complaint or submitting a supplementary statement, needs my leave which I decline.”

Appendix 3

Paragraphs 127, 141 to 143 and 159 from Determination PO-16970

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.”
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.”
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.”

Appendix 4

Paragraphs 154, 155 and 160 of Determination PO-16970

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. [...]
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."

Appendix 5

Paragraphs 144 and 145 of Determination PO-16970

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.”

Appendix 6

Paragraphs 101 to 126 of Determination PO-16970

“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 schemes³, 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

³ <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/incentive-exercises>

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 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 others⁴. I can see how this terminology, because

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

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.

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 regulations⁵ required TSUK to inform affected members that TSUK was

⁵ the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

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 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.”