

Ombudsman's Determination

Applicant	Mr S
Scheme	Old British Steel Pension Scheme (OBSPS)
Respondent	B.S. Pension Fund Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr S' complaint.

Complaint summary

2. Mr S has complained about the disparity between the Cash Equivalent Transfer Value (**CETV**) he received and the CETVs paid to other members of the OBSPS.

Background information, including submissions from the parties

3. I have previously considered Mr 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 S'. Mr A complained that the Trustee amended the CETV calculation basis which resulted in significantly higher CETVs after his transfer had been completed. He complained that he should have been informed of the changes. He also argued that the change should have been made at an earlier date and, therefore, the CETV he received was incorrect.
4. Mr A's complaint was determined on 13 January 2020. The Determination explains the reasons why I did not uphold Mr A's complaint and can be found on my Office's website.
5. 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 therefore the outcome would be identical.
6. On 17 March 2020, Mr S wrote to my Office and argued that his complaint was different to Mr A's, so should be considered separately. He said:-

- Some members were paid significantly higher CETVs as a result of the change in CETV calculation basis.
 - Nobody told him that the CETV calculation basis would change so soon after he transferred out of the OBSPS. The Trustee knew of the change, so members should have been told.
 - He did not see how the CETVs could rise so considerably when there was a deficit.
 - When the New British Steel Pension Scheme (**the New BPS**) was announced, the Trustee said that there was no guarantee it would come into effect. He said that this amounted to scaremongering, as he was worried that, if he did not transfer, he would lose his option to transfer and the BPS would automatically move into the Pension Protection Fund (**the PPF**).
 - His father had made contributions to the OBSPS for all of his working life but died only eight years after retiring. Because Mr S' mother died prior to his father, a lot of his father's benefits went unpaid.
7. Paragraphs 8 to 12 provide a brief timeline of events relating to Mr S' complaint.
 8. On 19 June 2016, Mr S requested a transfer quotation.
 9. On 4 August 2016, Mr S was supplied with a guaranteed CETV of £433,159.07.
 10. Mr S completed and returned his paperwork, and, on 28 September 2016, his transfer was paid to his chosen receiving scheme.
 11. On 8 March 2017, the Trustee held a meeting and 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 the Determination of PO-16970. This is replicated in Appendix One for ease of reference. References to appendices within paragraphs 36 to 62 are references to appendices to the Determination and are not replicated here.
 12. With effect from 1 April 2017, the Trustee amended the CETV calculation basis. This had the effect of increasing transfer values for the majority of members.

Adjudicator's Opinion

13. Mr 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 S' complaint was materially similar to Mr A's complaint, which had been Determined.

- Mr S had argued that it should not have been possible for there to be such a range of CETVs paid to members. The Adjudicator said that this complaint had already considered in paragraph 159 of the Determination relating to Mr A's complaint:

"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."

- The Adjudicator did not accept Mr S' argument that he should have been warned of the change in the CETV calculation basis. Mr S' transfer completed on 28 September 2016, over five months before the Trustee decided to alter the CETV calculation basis. At the time his transfer completed, the Trustee would not have been in a position to warn members of the future change, so Mr N could not have expected to have been informed. His CETV was completed in accordance with the calculation basis, as it stood at the time, so there can be no maladministration.
- The Adjudicator also thought Mr S' argument that the CETVs should not have increased when the OBSPS was in a deficit had also been covered in Mr A's Determination. In Mr A's Determination, I confirmed that I was satisfied that the Trustee had, "obtained and considered actuarial advice in relation to CETVs at all appropriate times."
- The Adjudicator also said that the Trustee had provided evidence that it considered the application of an underfunding reduction but considered this unnecessary throughout the period leading up to the change in CETV calculation method. This was outlined in paragraphs 54 to 58 of the Determination on Mr A's complaint, which is replicated in Appendix One below. The Adjudicator said I had already considered this element of Mr S' complaint and was satisfied that the Actuary, on the Trustee's behalf, had considered the OBSPS' funding position prior to implementing the change in the CETV calculation method.
- Mr S had argued that he was concerned he would lose control of his benefits if the OBSPS transferred into the PPF. He said that when the New BPS was announced, the Trustee said there was no guarantee that it would come into effect, so this encouraged him to transfer-out. The Adjudicator said that while it was true that the New BPS was not guaranteed, informing members of this does not amount to scaremongering.

- The Adjudicator said that he had sympathy for what Mr S said about his father dying within eight years of his retirement, however this was not relevant to the complaint.
14. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
15. Mr S provided his further comments which do not change the outcome. He said:-
- His CETV was £200,000 less than it would have been had it been calculated post-April 2017.
 - He attended two meetings that were also attended by a trustee director of the Trustee Board. One of the meetings was prior to his CETV being paid and the other after the change in CETV calculation basis. The trustee director did not transfer out of the OBSPS until after April 2017. Mr S alleges this meant that the trustee director was aware of the changes, so should have informed other members.
16. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.

Ombudsman's decision

17. Mr S' complaint is materially similar to Mr A's, which I have already Determined.
18. Mr S says if his transfer had completed after the change in the CETV calculation basis, his CETV would have increased by £200,000.
19. I appreciate Mr S' concerns concerning the value of his benefits, and I understand that it is difficult for him to accept that his CETV was calculated correctly when his colleagues received vastly increased figures less than a year later. However, the CETV Mr S received was calculated using the agreed basis at that time. I acknowledge Mr S' comments that his CETV was likely to have been larger, if it was calculated on the post April-2017 basis. Nevertheless, this statement is made with the benefit of hindsight. Mr S was paid a CETV that was in accordance with the CETV calculation basis at the time, so I can find no maladministration in the payment.
20. Mr S argues that he should have been warned of the change in the CETV calculation basis. He says that, prior to his transfer from the OBSPS, he attended a meeting that was attended by a trustee director who was part of the Trustee Board. He argues that this Trustee should have told members of the potential for the CETV basis changing. He also comments that this trustee director chose to delay his transfer from the OBSPS until after April 2017, which showed that the trustee director was aware of the changes.
21. Mr S' transfer completed on 28 September 2016, over five months before the Trustee decided to alter the CETV calculation basis. So, the trustee director and, more broadly, the Trustee, would not have been aware of the change in the CETV

calculation basis. In addition, there is no requirement for the Trustee to consult with members or inform them of any changes made to the CETV calculation basis. So, the Trustee cannot be said to have withheld information that should have been disclosed to members.

22. In his comments, Mr S has suggested that some of the trustee directors would have had a conflict of interest in the running of the OBSPS. I have already looked into this possibility in the Determination relating to Mr A's complaint. My findings were set out in paragraph 156, which have been duplicated in Appendix Two. I am satisfied that the Trustee took the necessary steps in line with The Pension Regulator's guidance in considering and dealing with any conflicts of interests.
23. I have sympathy for what Mr S has told my Office about his father dying within eight years of retirement from the OBSPS. However, as the Adjudicator has said it is not relevant to this complaint.
24. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
23 February 2021

Appendix One

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.”

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

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 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.

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

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."

Appendix Two

Paragraph 156 from Determination PO-16970

“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.”