# Ombudsman's Determination

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| Applicant | Mr N |
| Scheme | Old British Steel Pension Scheme (**OBSPS**) |
| Respondents | B.S. Pension Fund Trustee Limited (**the Trustee**)<br>Open Trustees Limited (**Open Trustees**) |

## Outcome

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

## Complaint summary

2. Mr N has complained that he should have been told about the change in the Cash Equivalent Transfer Value (**CETV**) calculation basis. He believes that, at the time that he transferred, the Trustee must have known that the new calculation basis was going to increase members' CETVs, but he was not given any notice.

## Background information, including submissions from the parties

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

4. Mr N's complaint was previously considered and was deemed to be materially similar to Mr A's case, PO-16970. Mr A's group contained 123 associated complaints, one of which was Mr N'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.

5. Mr A's complaint was determined on 13 January 2020. The Determination explains the reasons why Mr A's complaint was not upheld and can be found on my Office's website. Where Mr N's complaint overlaps, those points will not be repeated but reference will be made to the Determination of Mr A's case.

6. 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.

7. Mr N has claimed his complaint is different to Mr A's, so should be considered separately. He has argued that as his transfer completed much later than Mr A's, the Trustee would have known about the proposed changes at that point and should have informed him.

8. Paragraphs 9 to 15 below, provide a brief timeline of events relating to Mr N's complaint.

9. On 25 November 2016, Mr N requested a transfer quotation.

10. On 29 November 2016, he was supplied with an illustration quoting a guaranteed CETV of £336,943.92.

11. He completed and returned his paperwork and on 2 February 2017, his transfer value was paid to his chosen receiving scheme, the Standard Life SIPP.

12. 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 the Determination PO-16970. This is replicated in the Appendix for ease of reference. References to appendices within paragraphs 36 to 62 are references to appendices to the Determination PO-16970.

13. Following this decision, the Trustee wrote to members who had requested a CETV but had yet to be paid. It gave them the opportunity to abort any pending transfers and receive a new CETV, calculated in accordance with the new transfer basis.

14. On 1 April 2017, the CETV calculation basis changed. This had the effect of increasing transfer values for the majority of members.

15. Mr N raised his complaint with the Trustee on 12 July 2017.

## Adjudicator's Opinion

16. Mr N'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 N's complaint was initially considered as part of a group complaint that related to CETVs. Mr N had been sent a copy of the Determination of Mr A's complaint, the lead case of that group.

    - Mr N's complaint differed to the group complaint as he argued that, due to the proximity of the date his transfer completed to the change in CETV calculation basis, the Trustee must have been aware of the impact this would have had on CETVs at the time he transferred his pension benefits. So, he claimed that he should have been informed about the change, like other members were, so that he could have benefitted from the preferable terms.

- Mr N’s transfer completed on 2 February 2017, which was prior to the Trustee’s decision to alter the CETV calculation basis. At the time Mr N’s 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.

- Mr N’s CETV was completed in accordance with the correct calculation basis at that time, so there was no maladministration.

17. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. He did not provide any further comments, and after considering the complaint, I agree with the Adjudicator’s Opinion.

## Ombudsman’s decision

18. Mr N has argued that the Trustee would have known, at the time that he transferred out of the Scheme, that the new calculation basis was going to increase members’ CETVs. I disagree.

19. The Trustee decided to amend the Scheme’s CETV calculation basis in March 2017, as a result of the Actuary’s report of March 2017. Until the Trustee had received and reviewed the report, it would not have known that the Actuary was going to advise it to review the CETV assumptions. Consequently, it would also not have known that it would decide to change the CETV calculation basis, or that this change would result in the vast majority of members’ transfer values increasing.

20. As Mr N’s transfer completed in February 2017, prior to the Actuary’s report of March 2017, the Trustee could not have known, or informed Mr N, of the change to the CETV calculation basis. So, the Trustee has not acted in error and there is no maladministration in respect of communicating the change of actuarial factors.

21. I do not uphold Mr N’s complaint.

**Anthony Arter**

Pensions Ombudsman
01 March 2021

# Appendix

**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 website[1].

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:

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

> "23. Trustees should make evidence-based objective decisions in relation to matters that will have a material effect. Of course, evidence in the conventional sense is not available on the future. In this context what we mean by evidence is facts about the past, and opinions about the future based on those facts, which can be objectively used by the trustees to make judgements about the likely course of future events. This evidence can take a variety of forms, including:
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> - 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 interest[2], 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."