

## Ombudsman's Determination

<b>Applicant</b>	Mr G
<b>Scheme</b>	Old British Steel Pension Scheme ( <b>OBSPS</b> )
<b>Respondents</b>	B.S. Pension Fund Trustee Limited ( <b>Trustee</b> ) and Open Trustees Limited

### Complaint Summary

1. Mr G's complaint is as follows:-
  - 1.1. Communications in respect of the OBSPS were misleading and scaremongering;
  - 1.2. Early retirement factors (**ERFs**) applied to his pension were unfair and could not have been calculated correctly. The Trustee changed the ERFs with effect from 1 April 2017, significantly reducing the rate for anyone who retired after the change. Mr G says that the Trustee's explanation does not account for such a substantial change, and therefore the rate applied before the change must be incorrect. He suggests that the Trustee has not acted in the members' best interests as the change must have had a detrimental impact on the OBSPS' funding position; and
  - 1.3. The statement of entitlement within his leaver pack, which showed the Cash Equivalent Transfer Value (**CETV**) that he was entitled to take should he decide to transfer his benefits out of the OBSPS, was incorrect as the CETV calculation basis was also changed with effect from 1 April 2017, and CETVs increased significantly as a consequence of that change.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is not upheld against the Trustee because:-
  - 2.1. The information the Trustee provided members in relation to the OBSPS' future was not misleading, nor did it amount to 'scaremongering'. Furthermore, I do not consider that the Trustee intended it to be so. Instead, the information provided was necessary to keep members abreast of developments so that they could consider how the scenarios might affect them. It was to provide

factual information. I have found no maladministration in respect of the announcements and information provided.

- 2.2. The Trustee has obtained and considered the appropriate advice from suitable parties in order to reach its decisions in respect of: the OBSPS; its future; the Statement of Investment Principles (**SIP**); ERFs; and the CETV calculation basis. I find that the relevant factors had been considered and the decisions reached were not perverse.
- 2.3. The ERFs applicable at the point of Mr G's early retirement was a matter for the Trustee and so any pension calculation correctly applying those ERFs was not maladministration. I have not found any error in the calculation of his retirement benefits.
- 2.4. The Rules that govern the OBSPS do not provide that a pension in payment shall be recalculated if the ERFs are changed at a future date. Nor is it reasonable to expect the Trustee to recalculate early retirement pensions in payment and increase such payment (or conversely, as the case may be, decrease such payments).
- 2.5. I do not find that the CETV statement that Mr G received, was incorrect. It was calculated using the agreed basis at the point of the calculation.
- 2.6. The notification requirements in respect of the OBSPS, with regard to this complaint, were either met or not applicable. Moreover, the fact that Mr G only became aware of future changes after retirement does not amount to maladministration.

## Detailed Determination

### Background

3. Following a bulk transfer from the British Steel Pension Scheme and its entering into a Pension Protection Fund (**PPF**) assessment period, the British Steel Pension Scheme changed its name to the Old British Steel Pension Scheme, namely, OBSPS. Additionally, the Trustee, has since been replaced by Open Trustees Limited. The Trustee was the trustee at the time of the actions complained of. Open Trustees Limited has been joined to this complaint as current trustee who has conduct of the OBSPS.
4. The Appendices are as follows:-
  - 4.1. Appendix 1 - relevant extracts of the Rules governing the OBSPS (the **OBSPS Rules**).
  - 4.2. Appendix 2 - relevant extracts from The Occupational Pension Schemes (Investment) Regulations 2005.

4.3. Appendix 3 – relevant extracts from the Occupational Pension Schemes (Transfer Values) Regulations 1996.

4.4. Appendix 4 - announcements referenced below.

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

**Part A - The information announcements issued by the Trustee in respect of possible changes to the OBSPS and their impact on Mr G's decision to retire; and**

**Part B - The CETV / ERF calculations - Relationship between ERFs and**

- (i) Relationship between ERFs and member contributions to the OBSPS;**
- (ii) Relationship between ERFs and the OBSPS' funding position;**
- (iii) Relationship between ERFs and the OBSPS' investment strategy; and**
- (iv) CETVs.**

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

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

7.1. Mr G complains that the Trustee amended the ERFs after he retired without informing him it would be changing the factors which would result in higher early retirement pensions. Mr G argues that the change should have been made at an earlier date and so the pension he is receiving is incorrect. He has also complained that if the CETV, he was given prior to his retirement, had been calculated on the new basis he may have made a different decision. Mr G's group contains 49 associated complaints.

7.2. Mr D complains that the Trustee amended the CETV calculation basis resulting in significantly higher CETVs during the period that he was transferring out. The Trustee offered him the option of awaiting a CETV on the new calculation basis but Mr D opted to proceed with the CETV he had been quoted. Mr D argues that the Trustee did not give him sufficient information to make an informed decision and that it should have guaranteed that his CETV would increase. Mr D's group contains 50 associated complaints.

7.3. Mr A complains that the Trustee amended the CETV calculation basis resulting in significantly higher CETVs after his transfer had been completed, without informing him it would be changing the calculation basis. Mr A argues that the change should have been made at an earlier date and that therefore the CETV he received was incorrect. Mr A's group contains 123 associated complaints.

- 7.4. Mr S complains that the Trustee calculated his CETV using the old calculation basis, after it had made its decision to amend the calculation basis but before the new calculation basis came in to effect, when it was aware that CETVs would significantly increase. Mr S' group contains 5 associated complaints.

### **Mr G's circumstances**

8. Mr G's timeline is as follows:

Active member in the OBSPS	12 August 1985 to 30 April 2016
CETV statement provided to Mr G	23 May 2016
Early retirement taken from the OBSPS by Mr G	2 June 2016
ERFs change date	1 April 2017

9. Mr G was an active member of the OBSPS and his pensionable service commenced on 12 August 1985. When he opted out of the OBSPS on 30 April 2016, and became a deferred member, he had accrued a total of 30 years, 8 months and 20 days of pensionable service.
10. On 23 May 2016, Mr G was provided with a leaver statement following his opting out of the OBSPS. Within that statement was a statement of entitlement, which showed the CETV, at that time, of Mr G's transferrable rights under the OBSPS.
11. On 2 June 2016, Mr G received an early retirement quotation, which he had requested. The quotation showed that an actuarial reduction would be applied for early payment prior to Mr G's normal pension date (**NPD**).
12. Following receipt of the retirement quotation, Mr G retired early from the OBSPS, with effect from 2 June 2016, at age 55. Mr G says that the actuarial reduction that was applied has resulted in a 5% reduction in his pension benefits for each year that his pension was paid early.

### **Material facts**

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

13. In March 2016, the Tata Steel Group announced that it had begun a portfolio restructuring exercise and it started investigating the possibility of selling Tata Steel UK (**TSUK**). TSUK was the principal sponsoring employer of the OBSPS.
14. In May 2016, the Government began consultations on options for the OBSPS, including the possibility of modifying OBSPS benefits. At the time, there was uncertainty over the OBSPS' future, and entry into the PPF seemed likely. The Trustee considered whether a change to the CETV basis was required and took actuarial advice, which confirmed changes were not required at that time.

15. On 26 May 2016, the Trustee issued a press release and a letter to all OBSPS members. The Trustee explained, in its letter, that its current belief was that the Government would support the modification of benefits within the existing scheme to enable the OBSPS to remain outside the PPF, with the intention of providing higher benefits for the majority of members, than those provided within the PPF. The OBSPS Rules allowed for such modification but legislation<sup>1</sup> that had come into effect since the OBSPS was established could prevent the Rule from being used in the manner proposed. The letter informed members that the Trustee had asked the Government to change the way this legislation applied to the OBSPS, to enable modification of benefits by reducing future pension increases; and the Government was undertaking a public consultation exercise to allow interested parties the opportunity to comment on that proposal. The Trustee encouraged members to participate in the Government consultation.
16. Included with the letter of 26 May 2016, was a question and answer paper which provided a table showing the differences between the compensation payable by the PPF and the proposed modified benefits within the OBSPS. This stated that, for a member under age 65 (the OBSPS' NPD), entry to the PPF would mean that his or her benefits would be reduced by at least 10% but, with the modifications that the Trustee proposed, no reduction would be needed and the OBSPS could remain outside of the PPF.
17. On 8 and 16 June 2016, the Trustee provided further updates on the Government's consultation process, which was still ongoing, and also details of how the Trustee itself had responded to the consultation. The updates emphasised the Trustee's aim to secure a better outcome for members than would be achievable were the OBSPS to enter the PPF. The Trustee encouraged members to contribute to the public consultation part of the Government consultation, expressing the importance of members having their voices heard.
18. On 12 August 2016, The Trustee provided an update to all members. It said that Tata Steel Group was looking for more sustainable solutions for its European business, but that the Trustee accepted that it was not realistic to expect the purchaser of the UK business or a joint venture to adopt responsibility for funding any current or future OBSPS deficit. The Trustee said that it remained of the opinion that, with the scenarios envisaged for TSUK, entry into the PPF was the most likely outcome for the OBSPS. The Trustee explained that it had been working with the Government, the Pensions Regulator (**TPR**), and the OBSPS stakeholders, to provide compelling evidence that the OBSPS had the ability to pay modified benefits indefinitely on a low risk basis outside of the PPF. This assumed that the OBSPS would move to a long-term, low-risk investment policy. The update referred back to the letter to members that had been issued on 26 May 2016, and included a link to that letter. The update also said:

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

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

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

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

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

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

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

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

20. On 12 September 2016, the Trustee issued a further update to members in light of the media coverage at the time. This update confirmed the Trustee's position that providing modified benefits under the OBSPS would be the Trustee's preferred outcome for members and informed members that the Government's consultation was still in progress.
21. On 12 September 2016, the Trustee also issued a press release in response to media reports which had stated incorrectly that, according to a Government report dated 13 June 2016, the OBSPS would require an additional £3-4 billion to cover the reduced liabilities on the modified basis. The Trustee said that it had not seen that report, but it understood that it was based on preliminary valuation figures and information supplied by the OBSPS actuary (the **Actuary**) that had been incorrectly interpreted. The Trustee reiterated that the information the Government was

currently considering showed how the OBSPS could meet its liabilities on a self-sufficiency basis with a substantial buffer.

22. Following an announcement from TSUK on 7 December 2016, that TSUK was to begin consultation on the closure of the OBSPS, the Trustee issued a statement on the same day. In that statement, the Trustee said that the OBSPS' closure to future accrual was an important step to secure the best outcome for the OBSPS members. The Trustee said that entry into the PPF remained the most likely outcome unless benefits were modified to remove the deficit and create adequate reserves to cover the residual risks. The Actuary had calculated that the OBSPS could meet the proposed modified liabilities on a low risk basis with a buffer of approximately £2 billion to cover the residual risks.
23. From late 2016 until early 2017 TSUK put on a number of "roadshows" for active members of the OBSPS, in relation to the termination of benefit accrual that had been proposed by TSUK, as the OBSPS' principal sponsoring employer. This was done as part of the consultation exercise that TSUK was obliged by statute<sup>2</sup>, in its role as the principal sponsoring employer, to carry out prior to terminating future benefit accrual in the OBSPS. At these roadshows, TSUK provided information to active members explaining the reasons for its proposed termination of future benefit accrual. As the statutory consultation obligations, in relation to the proposed termination of future benefit accrual, were those of TSUK, as sponsoring employer, and not of the Trustee, the Trustee was not involved in the roadshows.
24. On 12 January 2017, the Trustee issued a further statement regarding TSUK's announcement on 7 December 2016. It said that Tata Steel Group believed it would be able to achieve a sustainable future for the UK business if it were able to de-risk and de-link TSUK from the OBSPS. The Trustee said:

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

This would be an option for OBSPS because it has enough assets to provide these modified benefits on a low risk basis and with a high level of confidence that the new scheme would never fall into the PPF."
25. On 27 January 2017, the Trustee issued an update letter to all OBSPS members. The update explained that, since the update on 26 May 2016, it had made progress in its discussions with: Tata Steel; Trade Unions; the Government; various regulatory bodies; and other interested parties, and those discussions were ongoing. It said that

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

the separation of TSUK and the OBSPS would involve the termination of benefit accrual under the OBSPS, which was subject to consultation between TSUK and affected members (as explained above in paragraph 23). Benefits for future service were proposed on a money purchase basis. It would also involve TSUK and other current employers no longer sponsoring the OBSPS or funding the deficit, as well as the guarantees and securities, provided to the OBSPS by other Tata Steel Group companies, being released. The Trustee said that a potential route to achieve separation was by an RAA, and whilst termination of benefit accrual would be necessary for separation, this would in any case be an inevitable consequence of TSUK's insolvency. The Trustee said that termination of benefit accrual could be actioned by TSUK under the OBSPS Rules without consent from the Trustee or members, but that TSUK must consult affected members first, as it was currently doing.

26. The Trustee also explained that, were the RAA to go ahead, the usual process would be for that pension scheme to immediately enter the PPF. However, the Trustee maintained that it could achieve a fairer outcome for most members by modifying benefits. It said that this could be achieved by delaying the start of the PPF assessment period and giving members the option of either: remaining in the OBSPS and then receiving PPF compensation on the OBSPS entering the PPF; or transferring to a new scheme, which would offer the modified benefits as had been explained in May 2016. The Trustee said that it was pressing TPR and the PPF to allow members to be able to choose between staying in the OBSPS and transferring to the new scheme in the event that an RAA was agreed for the OBSPS. The Trustee said that this would be a better outcome than if TSUK became insolvent and the whole of the OBSPS entered the PPF. TSUK also provided an assurance that it would only agree the terms for the separation of TSUK from the OBSPS and the provision of modified benefits if it was satisfied that, without such action, the OBSPS would have to enter the PPF. A Q&A was enclosed which addressed questions it considered members might have had, such as which members would potentially be better off in the PPF. Under question number 10, headed "Could some OBSPS members be better off if [OBSPS] entered the PPF?", the answer given states:

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

27. In May 2017, the Trustee announced that the RAA had been agreed in principle between TSUK and the Trustee and that, following the RAA and subject to the new scheme meeting certain qualifying conditions, all members and pensioners of the OBSPS would be given the option of either: transferring to the new scheme sponsored by TSUK, which would provide modified benefits; or remaining in the



OBSPS and receiving PPF compensation. The RAA would be subject to approval from TPR and non-objection by the PPF. That announcement quoted comments from the Chairman of the Trustee, which included the following:

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

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

#### **PART B: CETV / ERF calculations.**

- (i) **Relationship between ERFs and the OBSPS’ funding position;**
- (ii) **Relationship between ERFs and member contributions to the OBSPS;**
- (iii) **Relationship between ERFs and the OBSPS’ investment strategy; and**
- (iv) **CETVs**

31. On 23 May 2016 Mr G received his CETV statement. However, Mr G took early retirement on 2 June 2016; almost a year before the ERFs were changed.

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

32. Benefits paid from the OBSPS to members who retire from deferred status are calculated on the basis of the member’s Final Pensionable Earnings and the number of years of his or her Pensionable Service, as set out in Rule 14 of the OBSPS Rules (a relevant extract of which is included in Appendix 1).
33. Employer contribution levels are set by the Trustee after certification from the Actuary (with agreement of the principal employer) in order to provide benefits as they fall due, as set out under Clause 9 of the Trust Deed that governs the OBSPS.
34. Rule 14(1) of the OBSPS Rules specifies that, if a pension is taken “at a time earlier than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be reduced”. There are specific circumstances set out in the OBSPS Rules where such a reduction would not apply, for example in situations where the member suffers from incapacity. However, those situations have not applied to Mr G at any material time.

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

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

36. In March 2016, the Actuary considered the application of an underfunding reduction in relation to CETVs. The Actuary determined that such action was not appropriate at the time, as the OBSPS had been more than 100% funded as at 31 March 2014 but recommended regular future review of the matter.
37. In April 2016, the Actuary presented a report, again considering the application of an underfunding reduction based on an initial assessment of the OBSPS’ funding position as at December 2015, which showed that the OBSPS’ funding level might have fallen to 98%. The Actuary was working on an updated funding assessment as at 31 March 2016, and the Trustee agreed to await this before making any changes.
38. The updated assessment, considered in the Trustee’s May 2016 meeting, showed that the OBSPS’ funding level was more than 100% and there was no need to apply an underfunding reduction to CETVs.
39. The Actuary’s reports of 5 September and 23 November 2016, considered the funding position in relation to CETVs to be over 100% on the existing CETV calculation basis and advised that there was, again, no need to apply an underfunding reduction.

**(iii) Relationship between ERFs and the OBSPS’ investment strategy**

40. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 2), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that trustees must obtain and consider appropriate advice on what the SIP must cover.
41. Under Regulation 4(4) of the Investment Regulations, assets held to cover the actuarially calculated amount required to provide for a scheme’s expected liabilities (those liabilities being pension payments, transfer values etc.) must be invested “in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme”.
42. In the Trustee’s meeting on 9 March 2016, the Trustee considered a report from the Actuary dated 9 March 2016, which had been circulated on 26 February 2016. That report reviewed the actuarial factors for the OBSPS, following completion of the OBSPS’ 31 March 2014 actuarial valuation (the **2014 Valuation**). In the review of the CETV calculation basis, the Actuary compared the assumptions underlying the existing CETV calculation basis, which were set to be best estimate assumptions as

at 31 March 2011, to the 31 March 2014 best estimate basis. It concluded that the two best estimate bases were broadly similar and that the existing underlying assumptions remained suitable and did not require amendment. The Actuary did not recommend that the underlying assumptions were updated.

43. The 2011 best estimate basis had been adjusted when transfer values were calculated to reflect the market conditions at the point of calculation using market value adjustments (**MVAs**). The Actuary recommended that the MVAs were re-based to capture financial conditions as at 31 March 2014, the transfer basis; and also improving the accuracy of the equity-based MVA by linking it to the member's pre-retirement duration rather than a fixed duration. In the March 2016 meeting, the Trustee Board approved the revised MVAs; and agreed to review the transfer value basis, no later than 31 March 2019, although the Actuary said that it would alert the Trustee in the meantime if he considered that the basis or the MVAs needed to be reviewed earlier. It was agreed that the necessary steps should be completed to effect the changes no later than 1 October 2016, although implementation ahead of that date was encouraged if possible.
44. This timeframe had been set in order to allow sufficient time for the necessary revisions to be made to the administration system used to calculate CETVs. Before work could begin on the CETV revisions, the administration system had to be revised significantly in light of changes to the OBSPS' benefit structure being implemented with effect from 1 April 2016. This was necessary as the revised benefit structure had to be correctly coded so that it could be reflected in the CETV calculations. This work was completed ahead of the 1 October 2016 target, so the changes were reflected in the CETV calculations, with effect from 1 September 2016.
45. The Actuary also advised, in the 9 March 2016 report, that ERFs on retirement from deferred pensioner status should continue to be calculated on the same basis as CETVs, which remained unchanged, as explained in paragraph 42 above.
46. In August 2016, a decision was made by the OBSPS' investment committee to take investment de-risking steps, however these remained within the tolerances of the SIP. No change was made to core strategic asset allocation and the SIP was amended to reflect the changes made.
47. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings, respectively.
48. The Actuary's report, dated 5 September 2016, explained that, while "good progress" had been made on the first stages of the de-risking, the OBSPS' future remained uncertain as decisions by Tata Steel Limited and the UK and Welsh governments, regarding the future of the UK steel industry, were still awaited. In any case, investment de-risking would be required. The report advised that the OBSPS' SIP had been amended to reflect the initial de-risking that had taken place, but the Actuary referred to the future targeted investment strategy not yet having been made and explained that: a new version of the OBSPS' SIP would be issued in due course,

reflecting the expected move in the investment strategy; and the CETV calculation basis would be affected. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

49. In the 23 November report, which referred back to the September report and provided an update on the situation regarding the OBSPS' investment strategy, the Actuary indicated that a significant proportion of the de-risking that was permitted by the changes, that had been made within the amended August SIP, had been completed. The August 2016 SIP did not make changes to the central benchmarks for the OBSPS' long term investment strategy. The Actuary noted that "no attempt had yet been made to specify a targeted new investment strategy." But the intention was to amend the investment strategy further when the future of the OBSPS became clearer. As the September 2016 report had done, the November 2016 report stated that, once completed, the changes to the OBSPS' investment strategy would need to be reflected in a new SIP and in the CETV calculation basis.
50. Each of the September and November reports recommended that no changes be made to the CETV calculation basis at the relevant times, given the continued uncertainty in relation to the OBSPS' future, but that the matter be kept under review and considered further in the next Trustee's meeting, when the future of the OBSPS would be clearer.
51. The Actuary's report of March 2017 confirmed that, as the OBSPS' future was now less uncertain, changes to the OBSPS' investment strategy were therefore being formalised through the OBSPS' new SIP. On that basis, as advised by the Actuary, the Trustee proceeded with reviewing the CETV (and, consequently, ERF) assumptions. The Trustee made the decision to amend both, with effect from 1 April 2017, for any member retiring before reaching his or her NPD or requesting a CETV on or after that date. This resulted in a lesser reduction being applied to members' benefits on early retirement and, subsequently, a higher early retirement pension than had previously been available. The amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

#### (iv) CETVs

52. 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.
53. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is set out in Appendix 2 below. The Occupational Pension Schemes (Transfer Value) Regulations 1996 (**the Transfer Regulations**), also affect the member's right to transfer and set out the transfer requirements (see Appendix 3). In addition, in 2008, TPR published

guidance for trustees in relation to transfer values which is available on TPR's website<sup>3</sup>.

54. 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.
55. 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.”
56. 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.”
57. 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

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

- the output of suitable stochastic models as advised by the scheme actuary.”

58. 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.

### **Summary of Mr G’s position**

59. The information that the Trustee circulated regarding the OBSPS’ future frightened him into making the decision to opt out and retire under the OBSPS before April 2017; this information has proved to be inaccurate. The information shared by the Trustee did not accurately reflect the Trustee’s growing understanding of the future of the OBSPS, the changes it was making to the SIP, or the changes anticipated to be made to the CETV calculation basis and ERFs.
60. Roadshows were run for active members from late 2016, but this is something that should have been done earlier as little support was given to those who made decisions earlier. Those who retired prior to the roadshows were disadvantaged.
61. Mr G is disappointed that members who retired after 1 April 2017 received a smaller reduction to their early retirement pension, and therefore are now in receipt of a higher pension.
62. All members of the OBSPS have paid an equal percentage of contributions into OBSPS and, therefore, they should all receive the same early retirement benefit which should be a fair assessment of the amount paid into the scheme and the investment of that value.
63. ERFs should follow the debt calculation of a scheme, so the Trustee’s suggestion that ERFs could change with the deficit remaining the same, is “nonsensical”.
64. The ERFs and CETV calculation basis should have been amended at an earlier point between 2009 and 2016, particularly when bank interest rates dropped in August 2016. Therefore, Mr G’s ERFs were incorrect as they should have been already updated to the more generous post 1 April 2017 factors.
65. The CETV provided to him was incorrect as the calculation basis should have been updated earlier, and he may have made a different decision had he been provided with an accurate figure.
66. The Trustee owes Mr G a duty to act in his best interests, as stated in *Cowan v Scargill* [1985] Ch D 270. It failed in this duty as it failed to alert Mr G that if the modified scheme was adopted, Mr G would have been better off than he is now as a result of opting to take early retirement at the point that he did. There was an asymmetry of knowledge between the Trustee and Mr G. The Trustee was making

changes to the investment strategy which it was aware would affect CETVs and ERFs in the future, but it did not share this information with Mr G. Only sharing the PPF benefits against the modified benefits was misleading when there was a third option not shared, namely, delaying early payment of his pension to benefit from either an increased CETV or more generous ERFs.

### **Summary of the Trustee's position**

67. The communications issued regarding the future of the OBSPS have not been inaccurate or misleading. The statements made regarding the PPF and the OBSPS' increasing likelihood of entering the PPF were correct and appropriate.
68. It is satisfied that Mr G is receiving the correct benefits and that the correct early retirement factors were used to calculate his early retirement pension.
69. Benefits are not calculated by reference to pension contributions paid by employees or the employer as adjusted by investment returns. Instead, they are calculated in line with the OBSPS Rules by reference to length of pensionable service and final pensionable earnings, as the OBSPS is a defined benefits scheme.
70. The OBSPS Rules (see paragraphs 32 to 35 above), provide for the pension to be reduced if the pension is paid early where the Actuary considers this to be appropriate. This is to compensate for the higher cost of paying a pension over a longer time period. The Trustee must be reasonably satisfied that the overall value of benefits paid from the earlier payment date is at least equal to the overall value of the benefits payable. It was satisfied that the ERFs applied to Mr G's pension met these criteria.
71. The ERFs were amended due to the adoption of a revised SIP. The Trustee has said:

"The most significant change to the investment strategy was in respect of the assets that were assumed to be held in relation to pensions that aren't yet being paid, where the assets were moved into much lower risk investments that are expected to produce lower investment returns than previously.

At the time of adopting the revised SIP in March 2017, the Trustee also reviewed the various factors and assumptions used for the [OBSPS], including the factors used to calculate early retirement pensions. The change to the investment strategy reduced assumed investment returns on [OBSPS] assets for the period before the member was expected to retire, which increased the relative value of each £1 of deferred pension payable from a member's Normal Pension Age compared with £1 of pension payable immediately. As a consequence, smaller reductions would apply to members' pensions put into payment before Normal Pension Age after this change in investment strategy."

72. It adopted revised ERFs following actuarial advice and in order to ensure the “Value Requirement”, that the value of a member’s early retirement pension was at least equal to the value of that member’s benefits that had accrued to him under the Standard Section of the OBSPS (taking into account the requirements of the Pension Schemes Act 1993), would still be met. See paragraphs 32 and 35 above.
73. Only ERFs in force at the point of calculating benefits can be applied. Any subsequent changes may result in the increase or decrease of particular factors depending on the circumstances at the time. It is inappropriate and impractical to apply new factors retrospectively to benefits already in payment:
- “If, for example, the factors were changed to reduce a benefit, members would not expect the Trustee to recalculate and reduce benefits already in payment.”
74. The Trustee notes that Mr G has not previously raised a complaint about the CETV he was provided with, so it was not considered during the OBSPS’ internal dispute resolution procedure (**IDRP**). In any case, the CETV provided in Mr G’s leaver pack was calculated in accordance with the CETV calculation basis applicable at the time at which it was provided. However, Mr G is now a pensioner and is no longer entitled to take a CETV from the OBSPS.

## Conclusions

### General observations on wider matters

75. There has been a lot of publicity around TSUK; the OBSPS and the events that have taken place during and after Mr G’s complaint.
76. Much of the publicity has been to do with Independent Financial Advisors (**IFAs**) concerning OBSPS members receiving wrong advice and members making poor decisions as a result of that advice. Mr G’s complaint does not deal with the advice that OBSPS members received from IFAs. The FCA is investigating the suitability of advice given to members of the OBSPS. Members have the right to make a formal complaint to the Financial Ombudsman Service if they have concerns about the advice they received, however they should make a complaint to the firm that provided the advice in the first instance. The FCA has published a statement on its website which provides more information<sup>4</sup>.
77. There has also been publicity about the OBSPS entering the PPF and the options that members were given prior to this, referred to as the “Time to Choose” exercise. The core issues reported appear to be about: the length of time the members were given to make a decision; the information they were provided with in order to make that decision; and the complexity of the options available. Mr G’s complaint does not

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<sup>4</sup> <https://www.fca.org.uk/news/news-stories/important-information-british-steel-pension-scheme-members>



concern the “Time to Choose” exercise as the events complained about occurred prior to the RAA which triggered the “Time to Choose” exercise.

78. An independent review of communications and support given to OBSPS members was undertaken, at TPR’s request, by Caroline Rookes<sup>5</sup>, previously CEO of the Money Advice Service. That review did not look at the complaints in hand but focused on the RAA and the “Time to Choose” exercise. It investigated what happened in the lead up to those events, as well as during them, and how improvements could be made in the event that other pension schemes should go through a similar process in the future. The review was not intended to criticise TSUK, the Trustee or any other organisations involved<sup>6</sup>, although, it highlighted how these organisations could have worked together in order to provide better support to the members of the OBSPS and makes recommendations about how improvements could be made for any future pension scheme restructures.
79. Ms Rookes’ report does observe scaremongering to some extent in relation to the roadshows carried out. However, as explained in paragraph 23, those roadshows were carried out by TSUK in its role as an employer (who is not a respondent to the complaints) in relation to the OBSPS, in order to fulfil its statutory duty when terminating benefit accrual in the OBSPS. TSUK must take into account the impact such changes will have but may also take account of its own financial interests. The complaint before me concerns the Trustee. Therefore, Ms Rookes’ findings on this point are not directly relatable to Mr G’s complaint.
80. I concur with the recommendations that Ms Rookes has made in her independent review. Included in those recommendations is a comment that pension scheme trustees who seek to communicate with members regarding a scheme restructure need to try to anticipate the behavioural responses of those members to the trustees’ attempts to engage with them. While I do not consider, on the facts of this case, that there was any maladministration on the part of the Trustee when it communicated with OBSPS members as it did, I would encourage pension scheme trustees in future to consider Ms Rookes’ recommendations before embarking on a large-scale communications exercise with members. The risk of member complaints following a restructure could be reduced considerably by taking steps to ensure that members feel that they are being kept informed before, during, and after, the process.
81. The House of Commons also ordered a Select Committee to review the events surrounding TSUK and the OBSPS<sup>7</sup>. This also focuses on the RAA, the “Time to Choose” exercise, and looks at the unsuitability of advice given by IFAs. The timeline it covers focuses mainly on the events that took place following the closure of the

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<sup>5</sup> <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/rookes-review-british-steel-pension-scheme-members.ashx>

<sup>6</sup> such as TPR, the FCA, the PPF or the single financial guidance body (now Money and Pensions Service)

<sup>7</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/828/828.pdf>

OBSPS to future accrual on 31 March 2017, and so it is not directly relevant to Mr G's complaint.

### **Mr G's complaint against the Trustee**

82. I understand that at the heart of Mr G's complaint is: a loss of faith in the Trustee and in its decision-making ability; a claim that the Trustee is not acting in the "best interests" of the OBSPS members; and that it has scared members into taking early retirement under the OBSPS before April 2017.
83. I appreciate Mr G's concerns regarding the value of his benefits. However, having investigated the matter thoroughly and, for the reasons set out in Parts A and B below, I do not uphold Mr G's complaint.

### **The extent of my jurisdiction**

84. Mr G has complained that the pre-April 2017 calculation basis was incorrect and that it should have been updated at an earlier point.
85. Mr G'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 G and his representative why it would be outside my jurisdiction to do so and provided detailed reasons. Mr G 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 the courts. Other members too have raised this jurisdictional issue with my office. I have set out below, in paragraphs 87 to 95, my reasons why I do not decide whether I have the necessary jurisdiction.
86. 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, paragraphs 151 to 153 (and see also paragraph 123)).
87. 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".
88. 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 95).

89. 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.
90. 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 85, means that the Actuary is a person concerned with the administration of the scheme (from April 2005).
91. 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.
92. 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:-
- 92.1. 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).
- 92.2. 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.

- 92.3. 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 89).
- 92.4. 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.
- 92.5. 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 123 below).
- 92.6. 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.
93. 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.
94. 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.

95. To conclude, perhaps the Actuary's involvement in the calculation of CETVs is not an "act of administration concerned with the scheme" in this case. But in any event, bearing in mind my extensive and exhaustive investigation and also that I have not upheld any aspect of the complaint, to such extent as is necessary, I am exercising my discretion not to determine my jurisdiction over the Actuary. Further, the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995, Rule 3, provides that any amendment of the complaint or submitting a supplementary statement, needs my leave which I decline.

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

96. Mr G and his representative have 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 may not otherwise have taken, such as retiring early and taking his OBSPS benefits before April 2017.
97. The evidence (see Appendix 4), 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.
98. 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.
99. Mr G retired, with effect from 2 June 2016, after the change to MVAs were agreed in March 2016, effective from 1 September 2016 (detailed in paragraphs 42 to 43 above), before the Trustee changed the SIP or the ERFs (which, it did later, with effect from 1 April 2017).
100. The announcements provided by the Trustee, prior to Mr G's retirement, 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 15 to 17 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.
101. There was no reference in those announcements to, or promoting, early retirement under the OBSPS. Under the PPF compensation provisions (Schedule 7, PA 2004),

PPF compensation depends on the member's age and whether he or she has reached NPD by the scheme's assessment date and is not affected by whether the member is a pensioner or a deferred member as at that date. The 26 May 2016 announcement (and others) merely, correctly and rightly, factually referenced that compensation under the PPF for some members (including those who took early retirement) could be higher (for example, Question 4 of the announcement): see Appendix 4.

102. The information concerning benefits under the PPF, compared with those under the future modified OBSPS, was provided to highlight to members that the majority of them would be better off, if the Government amended legislation to allow the OBSPS to provide modified benefits, or if a second scheme was set up with the same intention. This would have prevented the OBSPS from entering the PPF. The Trustee correctly looked to encourage members to participate in the Government's public consultation on the matter. Given that the majority of members would have received a higher level of benefit under the modified OBSPS than under the PPF, it seems to me that the Trustee did have the members' financial interests in mind by attempting to engage members in the public consultation in May 2016.
103. It would have been quite wrong, at that time, for the Trustee to inform members of the potentially future favourable ERFs when its investment strategy had not yet had a chance to bear results and the decision to amend the ERFs had not yet been made.
104. I find that the announcements, issued prior to and around the time Mr G chose to retire early, were reasonable and I have not found any maladministration on the Trustee's part in respect of those announcements.
105. After the date of Mr G's retirement, further similar announcements, detailed in paragraphs 106 to 110 below, were also sent to other members (falling within the same group of complaints) who also retired early.
106. 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 or taking early retirement, 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.
107. It has been argued 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 and ERFs. 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 (or, therefore, the ERF) calculation basis. The Trustee did state that there was a need to move to low risk investments, but I do not consider it appropriate for the Trustee to have explained the impact this could have on CETVs or ERFs at this point, for the reasons I have set out below in paragraph 108.

108. 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 schemes, 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.
109. 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.
110. 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.
111. I find that these announcements sent after Mr G's retirement 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.

112. 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.
113. I acknowledge that the Trustee has referred to the PPF as being a “poor outcome” in its announcement of May 2016 and others<sup>8</sup>. I can see how this terminology, because of the negative connotation, could have caused members concern on the future of their pension benefits should the OBSPS enter the PPF.
114. The choice of words was 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 [OBSPS] 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...”
115. I do not believe it is reasonable to assume that the Trustee included those statements to encourage members to transfer out of the OBSPS or to take early retirement prior to the OBSPS’ entering the PPF. They were to provide members with factual information concerning the OBSPS and the PPF.
116. The Trustee is not authorised or regulated to provide advice, therefore it was limited to providing only information and options to categories of members. It could not provide recommendations and advice for individual members (whose circumstances and facts would each have been different). It was for Mr G to consider, on independent advice, if and how any of the changes might have affected him on the basis of information available and circumstances pertaining at the time.
117. 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.

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<sup>8</sup> 8 June 2016, 12 August 2016, 12 January 2017 and 27 January 2017.



118. Mr G 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 retired prior to the roadshows were disadvantaged.
119. The roadshows that were run were in relation to two specific events:-
- 119.1. 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, in order to meet its statutory consultation obligations. The focus of those roadshows was on the potential termination of benefit accrual, as regulations<sup>9</sup> required TSUK to inform affected members that TSUK was considering ceasing future benefit accrual under the OBSPS and to provide members with the opportunity to comment on that possibility, before TSUK could formally reach its decision whether or not to cease benefit accrual. The roadshows had nothing to do with early retirement under, or transfers out of, the OBSPS.
- 119.2. 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.
120. 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 ERFs and CETV calculation basis, as they were run prior to the decision to make the changes having been made on 8 March 2017.
121. 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.
122. To conclude, I have reviewed the information received by Mr G 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

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<sup>9</sup> the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

information with the OBSPS members, given the press coverage of TSUK's business at that time and the inevitable concerns this would raise.

**Part B - CETV / ERF calculations.**

- (i) Relationship between ERFs and Member contributions to the OBSPS;**
- (ii) Relationship between ERFs and the OBSPS' funding position;**
- (iii) Relationship between ERFs and the OBSPS' investment strategy; and**
- (iv) CETVs**

123. 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, therefore, ERFs; 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.

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

**(i) Relationship between ERFs and member contributions in the OBSPS**

125. That Mr G's pension, upon his early retirement, should have been reduced is not in dispute. Indeed, in most cases including Mr G's, the OBSPS Rules require such a reduction, as explained in paragraphs 32 to 35 above.

126. Mr G's has commented that, as all members have paid the same percentage of pension contributions, they should all receive the same percentage of early retirement benefit.

127. That statement is incorrect for the following reasons: first, the amount of pension contributions paid will be linked to a broad salary range; and secondly, as the OBSPS is a defined benefit (or final salary) scheme, the level of contributions paid by the member or the employer, has no correlation to the benefits payable to individual members. Under the OBSPS Rules, contribution rates are set by the Trustee on actuarial advice, whereas a member's pension benefits are calculated with reference to their service and final pensionable salary.

128. If the member retires at a date before NPD, the OBSPS Rules allow for the pension to be reduced to reflect early payment and are designed to be cost neutral. The reductions are set by the Trustee on actuarial advice and have no relation to the contributions paid. ERFs are calculated on the basis of the extra cost to the pension

scheme, of funding the member's retirement benefits as a consequence of his or her early retirement, applying certain assumptions and actuarial factors.

**(ii) Relationship between ERFs and the OBSPS' funding position**

129. Mr G's has also said that ERFs should follow the debt calculation of the OBSPS, and that, if this method had been used, the change in factors would not have had a detrimental effect on the OBSPS' funding position. That statement is also incorrect, as explained in paragraphs 130 to 132 below.
130. ERFs are used to offset the cost to the scheme of a member's pension on early retirement potentially being paid for a much longer period. This is common practice, to ensure that there is no detrimental effect on, or extra cost to, the scheme. The overall value of benefits, when paid early, must be at least equal to the overall value of the benefits payable at normal retirement date. However, the ERFs are calculated to provide the value of a member's pension at the early retirement date.
131. A scheme's funding position does not have a direct impact on the ERFs applied in a final salary scheme or vice versa. The funding position, and/or any deficit, can only be calculated by an actuarial valuation. The Actuary will project future benefit payments earned in respect of pensionable service up to the date of the valuation, and then calculate the value that would be needed immediately to meet all of the projected liabilities (that is, benefit payments). This is usually less than the predicted benefit payments as the scheme's funds are expected to be invested and increase between the point of valuation and the point the benefits need to be paid. This value is then compared to the actual value of the scheme's assets at the valuation date and this is what produces the scheme's funding position.
132. A change in the ERFs or the CETV calculation basis does not alter the value of projected benefits for the purposes of an actuarial valuation. These are still calculated as though they would become payable at NPD. Therefore, the same value would be reached when projecting future benefit payments. A change to the SIP will have a greater impact upon the funding position than a change to the ERFs or the CETV calculation basis. This is because the value that would be needed immediately to meet all of the projected benefit payments, will be calculated using the investment returns the Trustee expects between the date of the valuation and the date at which benefits need to be paid. A change in the SIP, such as occurred in this case, means that more money is needed at the date of the valuation, in order to meet the projected benefits at the date they become payable, due to lower expected investment return between the two dates.
133. The Trustee has demonstrated that it took appropriate advice from the OBSPS Actuary before amending the ERFs. I have found no maladministration in the process that the Trustee followed.
134. For the reasons I have explained in this section (Part B (ii)), I am satisfied that ERFs should not follow the debt calculation or scheme deficit, and the ERFs that have

been implemented by the Trustee have been calculated by the Actuary in accordance with an actuarial industry standard.

135. I see nothing to suggest that the Trustee's method of calculation of ERFs should be drawn into question, or that the Trustee has committed any maladministration in calculating ERFs by that method.

**(iii) Relationship between ERFs and the OBSPS' Investment strategy**

136. Mr G has suggested that the changes made to the OBSPS' investment strategy should have been made at a much earlier stage. He also suggests that the decision to invest differently for different classes in the fund (referring in this case to deferred members) is questionable and unfair to all members of the OBSPS. Finally, he suggests that it would make more sense if the ERFs had been reduced before 2017 (thereby increasing his pension), but increased in 2017 due to lower expected returns from the updated investment strategy.
137. As explained in paragraphs 40 and 41 above, it is for the Trustee, with advice from the Actuary and/or the OBSPS' investment advisor/committee, to decide how to invest the OBSPS' funds in order to comply with the Investment Regulations.
138. I am satisfied that the Trustee has performed regular reviews of the OBSPS' SIP. The 2014 SIP was amended in August 2016, and then again in March 2017, effective from 1 April 2017. The changes made in August 2016, reflected the initial steps that had been taken to de-risk the OBSPS' short-term investments. At that time, due to the uncertainty surrounding the OBSPS' future, the new long-term investment strategy had not been made and therefore the Actuary did not consider it appropriate to amend the CETV factors at that point, but the matter was kept under review. The Investment Regulations require the SIP to be reviewed at least once every three years and without delay after any significant change in investment strategy. The Trustee has reviewed the SIP at least once every three years and indeed updated it on occasion, following such reviews, the changes made to the SIP in August 2016, is one such example of that. While the November 2016 actuarial report makes reference to a significant proportion of the investment de-risking having taken place, this was in relation to the short term investment strategy and within the tolerances of the August 2016 SIP. The changes to the long term investment strategy were agreed in the March 2017 Trustee meeting and the SIP was updated in March 2017 to take account of these changes. It is reasonable that the SIP was not reviewed and updated until March 2017, after the changes had been completed, and I am satisfied that the Trustee has complied with its duties under the legislation.
139. Under Regulation 4(4) of The Occupational Pension Schemes (Investment) Regulations 2005, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (for example, pension payments, transfer values etc.) must be invested "in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme". Therefore, the Trustee is entitled to apportion certain investments or sections of the fund to provide

for certain classes of membership. In this case, the Trustee's investment strategy for members who were not yet being paid a pension differed from that in respect of pensioners. Such practice is not uncommon as investments for this section of a scheme are generally considered long-term, especially when compared to investments intended to relate to pensioners where payments are being made.

140. As the ERFs are calculated to provide the value of a member's pension at the early retirement date, this means that the assumed investment strategy of the assets, allocated to provide the retirement benefit, is relevant to the calculation of the value of a member's pension at a date before NPD. If a high investment return is expected between the early retirement date and NPD, the value of the pension at the early retirement date would be relatively low, as it would be expected to grow with the high investment returns before NPD, and provide the level of benefits the member is entitled to at NPD. If the investment return is expected to be low, a higher value would be required at the early retirement date for the lower investment returns to bring the members benefit up to the level required at NPD.
141. Therefore, if assumed investment returns decrease, as they have in this case, there will be less assumed growth between the early retirement date and NPD, which means that the OBSPS requires more funding at the early retirement date than it did previously, in order to pay the same benefit at NPD. This makes the value of a member's benefits at the early retirement date higher. Therefore, the early retirement factors were amended so that a lower reduction was applied.
142. As explained in paragraphs 40 to 41 above, it is for the Trustee to set the investment strategy and ERFs, 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 and carried out its duties appropriately, in accordance with TPR guidelines.
143. The Trustee asked the Actuary to review the actuarial factors, including the ERFs, due to the OBSPS' updated SIP. The OBSPS Rules require that the Trustee take advice from the Actuary regarding any changes to ERFs. The Trustee has provided evidence that it did so, in the form of a report from the OBSPS Actuary, which was discussed at the Trustee's meeting on 8 March 2017. Section 5 of the actuarial report refers to ERFs and that the "actuarial equivalence" approach would be used, which produces an early retirement pension which is equivalent to the transfer value. That report confirmed that the change to ERFs would be applicable from 1 April 2017; the same date from which the updated CETV basis was effective. Therefore, I am satisfied that the Trustee carried out its obligations correctly in relation to amending the ERFs.
144. To conclude the ERFs that are applicable to a member's benefits on their retirement before NPD are those which are in force at that date of retirement. Factors may change from time to time, to reflect the scheme's circumstances. Mr G retired in 2016, before the change in ERFs. Despite his concerns about fairness, Mr G is not entitled to have his benefits in payment recalculated using post-April 2017 factors

because he had already retired before April 2017, when the change in ERFs took effect. If the factors applied from April 2017 had been less advantageous, Mr G would not expect to have his benefits in payment reduced.

145. Amending the ERFs is not an event which requires consultation with members under Section 67 of the Pensions Act 1995, it is reasonable that members were not informed of the forthcoming changes. In Mr G's case his retirement was prior to the Trustee making the decision to amend the ERFs so it would not have been possible for it to have notified him of a change on which it had not yet made a decision.
146. Mr G says that the Trustee owes him a duty to act in his best interests, as stated in *Cowan v Scargill* [1985] Ch D 270, and that the Trustee has failed in this duty because it did not alert Mr G that he would have been better off if he had delayed taking his benefits early. He also points to the asymmetry of knowledge between himself and the Trustee.
147. In *Cowan v Scargill*, Megarry V-C considered the trustees' investment duties. Megarry V-C held that the trustees had a duty to exercise their powers in the best interest of beneficiaries and that the best interests of beneficiaries are usually their financial interests. The trustees must put aside their personal interests and views; they have a duty to diversify investments; must take care in selecting investments; and seek advice on matters it does not understand.
148. I have already found (paragraphs 115 to 117) that there was no obligation to inform Mr G of the change or to re-calculate his pension; but also that the Trustee had met its investment duties properly (see paragraphs 137 to 139). I recognise that the Trustee had a duty when exercising its powers to consider the members' financial interests. But I do not consider that it follows that if the Trustee had alerted members to a potential, but uncertain, future improvement in CETVs and ERFs, it would have discharged that duty. In particular, had the Trustee done so in relation to CETVs, it would have alerted members to the possibility of taking a CETV, with the investment risk potentially shifting to the member on transferring out of the OBSPS which may not be in members' financial interests.

#### **(iv) CETVs**

149. Turning to Mr G's complaint that the CETV quoted in his leaver pack, in May 2016, was incorrect. The Trustee is satisfied that I have exercised my discretion to investigate this, notwithstanding that Mr G did not raise the point as part of the IDRP process.
150. Mr G's representative maintains that the CETV figures provided must have been incorrect as he believes that the investment strategy should have been changed earlier, and, that because the values changed so significantly, the reasons the Trustee has presented for the changes cannot explain the significant change to CETVs. Therefore, Mr G maintains that his CETV, before 1 April 2017, must have been incorrect. Mr G has also said that the OBSPS has been in deficit for some time and so, it would have been appropriate to have applied an underfunding reduction.

But this was not done until after the new basis came into effect, when the revised CETV factors produced CETVs of a high enough value to necessitate the reduction, although, even after applying the reduction, the resulting CETV was, in most cases, higher than it would have been pre-1 April 2017.

151. 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.
152. 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.”
153. 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.
154. The evidence demonstrates that the Trustee has fulfilled its duties by discussing the CETV calculation basis, the possibility of an underfunding reduction, and the future of the OBSPS, at regular intervals, and obtaining and considering advice from the appropriate advisors.
155. In the Trustee meeting of 8 March 2017, the Trustee approved the draft SIP, which was effective from 1 April 2017, as well as the proposed CETV calculation basis presented by the Actuary, also to be applied from 1 April 2017. The Trustee noted the need to give members suitable information during the transitional period. I am satisfied that the Trustee carried out its duties appropriately in amending the CETV calculation basis and the SIP. The matters at hand had been discussed in the previous year’s Trustee meetings. The Trustee had repeatedly taken and considered legal and actuarial advice and was aware of its role and the legislation to which it was required to adhere.
156. Both the OBSPS’ investment strategy and the CETV calculation basis have been discussed by the Trustee in Trustee meetings on a regular basis, as detailed in paragraphs 42 to 51 above. The evidence is clear that the Trustee has considered the CETV calculation basis, the possibility of an underfunding reduction and the future of the OBSPS at regular intervals, and has obtained advice from the appropriate advisors. I find that the Trustee’s actions accorded with the guidance issued by TPR, in September 2008, in respect of transfer values.

157. The CETV provided to Mr G was calculated using the agreed basis in force at the point of the calculation. I do not find that the CETV statement that Mr G received was incorrect. I acknowledge Mr G'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 to him in May 2016 (even taking into account the underfunding reductions that were applied from 1 April 2017), and he may have chosen a different option. However, that statement is made with the benefit of hindsight, and it does not cause the statement of entitlement that Mr G was given in May 2016, to be incorrect.

158. I do not uphold the complaint.

**Anthony Arter**

Pensions Ombudsman  
13 January 2020



## **Appendix 1**

### **The British Steel Pension Scheme Definitive Trust Deed and Rules**

(Consolidated as at 11 September 2017)

...

#### **Clause 4 of the Trust Deed**

##### **4. INVESTMENT AND BORROWING POWERS**

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

...

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

...

#### **Clause 9 of the Trust Deed**

##### **9. ACTUARIAL VALUATIONS**

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

...

#### **Clause 13 of the Trust Deed**

##### **13. APPOINTMENT AND DUTIES OF THE ACTUARY**

The duties of the Actuary shall be as follows:

- (a) to make a valuation of, and report on, the Fund in accordance with arrangements made by the Trustee under Clause 9 of the Trust Deed;

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

...

## **Rule 14 of the OBSPS Rules**

### **14. BENEFITS AFTER CEASING TO BE A MEMBER EARLY**

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

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

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

Where the pension under this Rule 14 commences at a time earlier than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be reduced, except where, in the opinion of the Trustee, the person's retirement was due to Incapacity. Where a Member retires before Normal Pension Age under this Rule 14, the Trustee must be reasonably satisfied that the value of his benefits is at least equal to the value of the benefits that have accrued to and in respect of him under the Standard Section taking into account the preservation, revaluation and contracting-out requirements of the 1993 Act.

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

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

...

## **Rule 16 of the OBSPS Rules**

### **16. TRANSFER PAYMENTS**

#### **(1) Transfers out:**

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

##### **(a) Other pension scheme:**

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

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

##### **(b) Insurance Company:**

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

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

##### **(c) Right to a transfer payment:**

A Member who becomes entitled to a deferred pension under Rule 14 at least a year before Normal Pension Age and has requested and been given a statement of entitlement under Section 94 of the 1993 Act and has made application to the Trustee to take his cash equivalent within 3 months of the date of the statement of entitlement has a right to require the Trustee to use

the cash equivalent as defined in the 1993 Act to acquire benefits under another scheme (option (1) above) or by purchase of a buy-out policy (option (2) above).

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

(d) Consents:

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

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

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

(e) Discharged benefits:

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

(f) Value transferred:

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

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

## Appendix 2

### The Occupational Pension Schemes (Investment) Regulations 2005

#### 2 Statement of investment principles

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

...

## Appendix 3

### The Occupational Pension Schemes (Transfer Values) Regulations 1996

...

#### 6 Statements of entitlement

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

...

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

- (1) Subject to paragraphs (4) and (7), cash equivalents are to be calculated and verified—
  - (a) by calculating the initial cash equivalent—
    - (i) for salary related benefits other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary, in accordance with regulations 7A and 7B; or
    - (ii) for money purchase benefits and cash balance benefits in respect of which the available sum is not calculated by reference to final salary, in accordance with regulation 7C, and then making any reductions in accordance with regulation 7D; or
  - (b) in accordance with regulation 7E.
- (2) The trustees must decide whether to calculate and verify the cash equivalent in accordance with paragraph (1)(a) or (b), but they can only choose paragraph (1)(b) if they have had regard to any requirement for consent to paying a cash equivalent which is higher than the amount calculated and verified in accordance with paragraph (1)(a).
- (3) The trustees are responsible for the calculation and verification of cash equivalents and initial cash equivalents.
- (4) Where a member, in relation to whom a cash equivalent is to be calculated and verified, is a member of a scheme modified by—
  - (a) the British Coal Staff Superannuation Scheme (Modification) Regulations 1994; or
  - (b) the Mineworkers' Pension Scheme (Modification) Regulations 1994,

the cash equivalent of his bonus is to be calculated and verified by the trustees, having obtained the advice of the actuary, to reflect the fact that a reduced bonus, or no bonus, may become payable in accordance with the provisions governing the scheme in question.

- (5) For the purposes of paragraph (4) “bonus” means any—
  - (a) augmentation of his benefits; or
  - (b) new, additional or alternative benefits,which the trustees of the scheme in question have applied to the member's benefits or granted to him in accordance with the provisions governing that scheme, on the basis of findings as to that scheme's funding position.
- (6) Paragraph (7) applies where the cash equivalent is calculated and verified in accordance with paragraph (1)(a).
- (7) Where a portion of the cash equivalent relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash equivalent is to be calculated—
  - (a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 7A and 7B; and
  - (b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 7C.

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

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

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

- (1) The trustees must calculate the initial cash equivalent for salary related benefits other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary—
  - (a) by using the assumptions determined under this regulation; and
  - (b) where the scheme falls within paragraph (6), in accordance with the guidance referred to in that paragraph.
- (2) Having taken the advice of the actuary, the trustees must determine the economic, financial and demographic assumptions.
- (3) In determining the demographic assumptions, the trustees must have regard to—
  - (a) the main characteristics of the members of the scheme; or
  - (b) where the members of the scheme do not form a large enough group to allow demographic assumptions to be made, the characteristics of a wider population sharing similar characteristics to the members.
- (4) Except where the scheme falls within paragraph (6), the trustees must have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.
- (5) The trustees must determine the assumptions under this regulation with the aim that, taken as a whole, they should lead to the best estimate of the initial cash equivalent.
- (6) A scheme falls within this paragraph if it is a public service pension scheme in respect of which guidance has been prepared, and from time to time revised, by the Treasury for calculating the discount rates.



## Appendix 4

### Press Release – 26 May 2016

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

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

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

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

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

26 May 2016

British Steel Pension Scheme  
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Dear Member

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

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

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

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

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

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

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

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

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

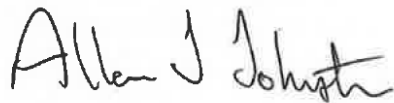
**The consultation is about you and the outcome will directly affect your retirement income. However, as this is a public consultation, anyone can comment whether or not they are connected to the Scheme. Not everyone responding will necessarily do so with the best interests of the Scheme membership in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

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

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

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

Yours sincerely

A handwritten signature in black ink that reads "Allan Johnston". The signature is written in a cursive, slightly slanted style.

**Allan Johnston**  
Trustee Chairman

## Questions and Answers

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

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

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

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

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

### Q3. How would the proposed changes affect me?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Q6. Where can I get more information?**

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

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

**Q7. How do I respond to the Government Consultation?**

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

Further information on responding to the consultation will be added to the Scheme website  
[www.bspensions.com](http://www.bspensions.com).

Press Release - 8 June 2016

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

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

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

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

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

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

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

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

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

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

## BSPS Response to Government Consultation - 16 June 2016

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

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

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

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

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

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

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

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

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

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

**Member Update - 12 August 2016**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### **Member Update - 12 September 2016**

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

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

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

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

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

**Press Release - 27 September 2016**

**Member clarification following inaccurate media reporting**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Statement from the Trustee board, 12 January 2017**

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

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

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

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

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

27 January 2017

BRITISH STEEL

PENSION SCHEME

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Dear Member,

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

### Background

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

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

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

### B.S. PENSION FUND TRUSTEE LIMITED

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### **Proposed separation**

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

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

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

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

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

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

### **Transfers to a new scheme**

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

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

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

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

#### **Next Steps**

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

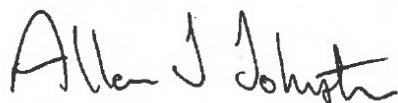
In particular, I will let you know if and when agreement is reached for the BSPS to be separated from Tata Steel through an RAA and whether it will then be possible for members and pensioners to have modified benefits in a new scheme. I would then also set out a timetable for providing detailed information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

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

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

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

Yours faithfully

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

**Allan Johnston**  
Trustee Chairman

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

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

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

**2. What are the options available for the BSPS?**

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

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

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

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

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

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

**REACHING AGREEMENT ON SEPARATION TERMS**

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

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

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

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

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

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

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

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



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

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

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

Trustee support for an RAA would be conditional upon:

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

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

#### **TERMS OF A TRANSFER EXERCISE**

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

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

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

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

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

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

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

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