Ombudsman's Determination

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

Outcome

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

Complaint summary

2. Mr N has complained about the change in Cash Equivalent Transfer Value (**CETV**) calculation basis. He said he had been told that his CETV quotation was final, however, as the CETV calculation basis changed after his transfer had been paid, this was not the case.

3. He also complained that the change in CETV values could not be explained wholly by the Trustee saying it had changed its investment strategy.

Background information, including submissions from the parties

4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a PPF assessment period, the BSPS changed its name to the OBSPS.

5. The Ombudsman considered Mr N's complaint and deemed it to be materially similar to Mr A's case, PO-16970 (**the Lead Complaint**). Mr A's group contained 123 associated complaints, one of which was Mr N's. Mr A complained that the Trustee amended the CETV calculation basis resulting in significantly higher CETVs after his transfer had been completed, without informing him it would be changing the calculation basis. Mr A argued that the change should have been made at an earlier date and, therefore, the CETV he received was incorrect.

6. The Ombudsman determined Mr A's complaint on 13 January 2020 (**the Determination**). The reasoning set out in the Determination explains why the Ombudsman did not uphold Mr A's complaint and can be found on our website. Where Mr N's complaint overlaps, those points will not be repeated but reference will be made to the Ombudsman's Determination of Mr A's case.

7. The majority of the complaints within Mr A's group were discontinued following the determination of Mr A's case, on the basis that they were materially similar and therefore the outcome would be identical.

8. Mr N has claimed his complaint is different to Mr A's, so should be considered separately. He said:

   - When he was provided with his CETV, he was told that they were final figures. The change in CETV calculation basis, which came into effect on 1 April 2017, meant this was not the case.

   - The Trustee has said that the change in investment strategy caused the significant changes in the CETV calculation basis. Mr N said that he did not believe that this was the case, and the Trustee should be forced to provide evidence of this.

9. Paragraphs 10 to 15 provide a brief timeline of events relating to Mr N's complaint.

10. On 6 November 2016, Mr N requested a CETV quotation.

11. On 10 November 2016, he was supplied with a guaranteed CETV of £207,367.55. He said that these figures were described as "final".

12. He completed and returned his paperwork. Shortly afterwards, on 14 December 2016, his transfer was paid to his chosen receiving scheme, Royal London Mutual.

13. In March 2017, the Trustee decided it would amend the CETV calculation basis, this change took effect from 1 April 2017. The background to this decision has been explained in paragraphs 36 to 62 of the Determination of PO-16970. This is replicated in Appendix One for ease of reference. References to appendices within paragraphs 36 to 62 are references to appendices to the Determination and are not replicated here.

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

15. Mr N raised his complaint with the Trustee on 16 October 2017.

Adjudicator's Opinion

16. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

   - When Mr N was provided a CETV quotation it was guaranteed for three months. His transfer completed on 14 December 2016, well within the statutory timeframe and before the Trustee's decision to alter the CETV calculation basis. The CETV quotation Mr N received was final, and the subsequent CETV payment was completed in accordance with the calculation basis, as it stood at the time, so there was no maladministration.

- The Adjudicator appreciated Mr N's comments that, had he transferred after 1 April 2017, his CETV would have likely been higher than the one he received. However, this does not undermine the previous CETV quotation. Whilst the Adjudicator had sympathy for Mr N's position, he did not agree it was appropriate for the Trustee to go back and adjust transfer values that have already been paid.

- Mr N has also argued that the explanation provided by the Trustee is not sufficient to account for the drastic increases in CETVs paid after 1 April 2017. The Adjudicator said that this had already been considered in the Determination, specifically paragraphs 148 to 155 (see Appendix Two).

- Paragraph 150 explained how the change in investment strategy affected the CETVs that were paid:

  "If assumed investment returns decrease (contrast paragraph 132), as they have in this instance, there will be less assumed growth between the CETV calculation date and Normal Pension Date (**NPD**), which means that the scheme needs more money, at the CETV calculation date, than it previously assumed in order to fund the same benefit at NPD. This makes the value of a member's benefits at the CETV calculation date higher thus resulting in increased transfer values for the majority of members."

- Paragraph 154 of the Determination explained that the Trustee acted appropriately when it updated the change in the CETV calculation basis:

  "It is for the Trustee to set the SIP and CETV calculation basis with advice from the OBSPS Actuary. I have found no fault in the process of how these changes were made. The Trustee has taken the appropriate advice from the Actuary, considered that advice and carried out its duties appropriately in line with TPR guidelines. I am satisfied with the Trustee's explanation of the changes it made. The changes in market conditions have also impacted the CETVs, causing the sharp increase using the post-April 2017 calculation basis when compared to the pre-April 2017 basis."

- The Adjudicator concluded that he was of the view that Mr N did not raise any points that differed to those that were considered in the Determination.

17. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

18. Mr N provided his further comments which do not change the outcome. He said:-

- He received a CETV that was significantly less than many of his colleagues who transferred out after the change in CETV calculation basis. He said that it was unfair that members who had made significantly less contributions than him received higher CETVs.

- At the time he transferred, the Trustee would have known of the effects that the changes to the CETV calculation basis would have had on members' CETVs. He said that the Trustee should have told him of the change and the effect it would have on his benefits.

- The Trustee should have realised that the majority of OBSPS members were steelworkers and they were not familiar with pension arrangements. So, the Trustee should have provided more information.

19. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N.

Ombudsman's decision

20. Mr N's complaint is materially similar to Mr A's, which I have already determined.

21. Mr N has argued that his CETV quotation should not have been described as "final" because the change in CETV calculation method meant this was untrue. I disagree. When Mr N was given his CETV quotation it was guaranteed for three months. The CETV quotation was final, and the subsequent CETV payment was completed in accordance with the calculation basis, as it stood at the time, so there was no maladministration.

22. I appreciate Mr N's concerns about the value of his benefits, and I understand that it is difficult for him to accept that his CETV was calculated correctly when his colleagues received vastly increased figures less than a year later. I also acknowledge Mr N's comments that his CETV was likely to have been larger, if it was calculated on the post April-2017 basis. Nevertheless, this statement is made with the benefit of hindsight. Mr N was paid a CETV that was in accordance with the CETV calculation basis at the time, so I can find no maladministration.

23. Mr N also said that he should have been warned of the change in the CETV calculation basis. He says that, prior to his transfer from the OBSPS, the Trustee would have known that the CETV calculation basis was changing. Mr N's transfer completed on 14 December 2016, almost three months before the Trustee decided to alter the CETV calculation basis. So, the Trustee would not have been aware of the change in the CETV calculation basis. In addition, there is no requirement for the Trustee to consult with members or to inform them of any changes to the CETV calculation basis. So, the Trustee cannot be said to have withheld information that should have been disclosed to members.

24. He also complained that he was not satisfied that the change in investment strategy caused the significant changes in the CETV calculation basis. I have already determined this in the Lead Complaint, and this is covered within paragraphs 150 to 154. Broadly, the Trustee uses the best estimate method when calculating CETV quotations. So, it estimates the amount it will need in order to provide the value needed at the member's NPD to pay the benefits. The change in investment strategy meant that there was less assumed growth between CETV calculation date and

members' NPD. As a result, the value of CETVs increased for the majority of members.

25. I am satisfied with this explanation and therefore do not accept Mr N's argument that these changes were not significant enough to produce such a change in CETVs.

26. Mr N has argued that the Trustee should have provided him with more information. He has said that he was a steelworker who did not know enough information about pensions to make an informed decision. At the time Mr N transferred, there was a requirement for him to have received financial advice. If Mr N was confused by any of the terminology I would have expected him to have asked from more information from his financial advisor.

27. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
23 March 2021

Appendix One

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

36. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 4), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that trustees must obtain and consider appropriate advice on what the SIP must cover.

37. Under Regulation 4(4) of the Investment Regulations, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (those liabilities being pension payments, transfer values etc.) must be invested "in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme".

38. In the Trustee's meeting on 9 March 2016, the Trustee considered a report from the Actuary dated 9 March 2016, which had been circulated on 26 February 2016. That report reviewed the actuarial factors for the OBSPS, following completion of the OBSPS' 31 March 2014 actuarial valuation (the **2014 Valuation**). In the review of the CETV calculation basis, the Actuary compared the assumptions underlying the existing CETV calculation basis, which were set to be best estimate assumptions as at 31 March 2011, to the 31 March 2014 best estimate basis. It concluded that the two best estimate bases were broadly similar and that the existing underlying assumptions remained suitable and did not require amendment. The Actuary did not recommend that the underlying assumptions were updated.

39. The 2011 best estimate basis had been adjusted when transfer values were calculated to reflect the market conditions at the point of calculation using market value adjustments (**MVAs**). The Actuary recommended that the MVAs were re-based to capture financial conditions as at 31 March 2014, the transfer basis; and also improving the accuracy of the equity-based MVA by linking it to the member's pre-retirement duration rather than a fixed duration. In the March 2016 meeting, the Trustee Board approved the revised MVAs; and agreed to review the transfer value basis, no later than 31 March 2019, although the Actuary said that it would alert the Trustee in the meantime if he considered that the basis or the MVAs needed to be reviewed earlier. It was agreed that the necessary steps should be completed to effect the changes no later than 1 October 2016, although implementation ahead of that date was encouraged if possible.

40. This timeframe had been set in order to allow sufficient time for the necessary revisions to be made to the administration system used to calculate CETVs. Before work could begin on the CETV revisions, the administration system had to be revised significantly in light of changes to the OBSPS' benefit structure being implemented with effect from 1 April 2016. This was necessary as the revised benefit structure had to be correctly coded so that it could be reflected in the CETV calculations. This work

was completed ahead of the 1 October 2016 target, so the changes were reflected in the CETV calculations, with effect from 1 September 2016.

41. In August 2016, a decision was made by the OBSPS' investment committee to take investment de-risking steps, however these remained within the tolerances of the SIP. No change was made to core strategic asset allocation and the SIP was amended to reflect the changes made.

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

43. The Actuary's report, dated 5 September 2016, explained that, while "good progress" had been made on the first stages of the de-risking, the OBSPS' future remained uncertain as decisions by Tata Steel Limited and the UK and Welsh governments, regarding the future of the UK steel industry, were still awaited. In any case, investment de-risking would be required. The report advised that the OBSPS' SIP had been amended to reflect the initial de-risking that had taken place, but the Actuary referred to the future targeted investment strategy not yet having been made and explained that: a new version of the OBSPS' SIP would be issued in due course, reflecting the expected move in the investment strategy; and the CETV calculation basis would be affected. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

44. In the 23 November report, which referred back to the September report and provided an update on the situation regarding the OBSPS' investment strategy, the Actuary indicated that a significant proportion of the de-risking that was permitted by the changes, that had been made within the amended August SIP, had been completed. The August 2016 SIP did not make changes to the central benchmarks for the OBSPS' long term investment strategy. The Actuary noted that "no attempt had yet been made to specify a targeted new investment strategy." But the intention was to amend the investment strategy further when the future of the OBSPS became clearer. As the September 2016 report had done, the November 2016 report stated that, once completed, the changes to the OBSPS' investment strategy would need to be reflected in a new SIP and in the CETV calculation basis.

45. Each of the September and November reports recommended that no changes be made to the CETV calculation basis at the relevant times, given the continued uncertainty in relation to the OBSPS' future, but that the matter be kept under review and considered further in the next Trustee's meeting, when the future of the OBSPS would be clearer.

46. The Actuary's report of March 2017 confirmed that, as the OBSPS' future was now less uncertain, changes to the OBSPS' investment strategy were therefore being formalised through the OBSPS' new SIP. On that basis, as advised by the Actuary, the Trustee proceeded with reviewing the CETV assumptions. The Trustee made the

decision to amend the CETV assumption, with effect from 1 April 2017, for any member retiring before reaching his or her NPD or requesting a CETV on or after that date. This resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

(iii) Amendment of the CETV calculation basis

47. In relation to the value of a transfer, the OBSPS Rules state at paragraph 16(1)(f) (see Appendix 1), that the value of the transfer payment will be as certified by the Actuary.

48. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is set out in Appendix 2 below. The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Transfer Regulations**), also affect the member's right to transfer and set out the transfer requirements (see Appendix 3). In addition, in 2008, TPR published guidance for trustees in relation to transfer values which is available on TPR's website[1].

49. Regulation 7B of the Transfer Regulations requires trustees to determine the economic, financial and demographic assumptions used to calculate the initial cash equivalent (**ICE**) after obtaining advice from the actuary. It also requires trustees to have regard for the scheme's investment strategy, with the aim that this will lead to the best estimate of benefits.

50. TPR's Transfer guidance states:

> "19. The assumptions must be chosen with the aim of leading to a best estimate of the ICE. This is a best estimate of the amount of money needed at the effective date of the calculation which, if invested by the scheme, would be just sufficient to provide the benefits. However, trustees should recognise that 'best estimate' is not a precise concept and they will often need to be pragmatic and accept choices which seem to them reasonable in the light of the information and advice they have obtained."

51. The guidance also refers to the investment strategy impacting transfer values. It states:

> "21. Trustees must have regard to their investment strategy when choosing assumptions. This includes the appropriate investment returns to be expected, which in turn will influence the choice of interest rates with which future expected cash flows are discounted."

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

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

> "23. Trustees should make evidence-based objective decisions in relation to matters that will have a material effect. Of course, evidence in the conventional sense is not available on the future. In this context what we mean by evidence is facts about the past, and opinions about the future based on those facts, which can be objectively used by the trustees to make judgements about the likely course of future events. This evidence can take a variety of forms, including:
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> - past history of investment returns from various asset classes and the relationships between them;
> - published mortality tables;
> - a scheme's own experience to the extent it is statistically reliable;
> - published statistics on demographic issues;
> - the opinions of recognised experts; and
> - the output of suitable stochastic models as advised by the scheme actuary."

53. As the Trustee was aware, although it was required under the Transfer Regulations to take actuarial advice, responsibility for the calculation and verification of CETVs rested with the Trustee. Therefore, the Trustee carried out annual reviews of its advisers to monitor their service standards to ensure that the standard of advice that it received from its advisers remained sufficiently high. The Actuary consistently rated well against the Trustee's key performance indicators.

54. As explained in paragraphs 38 to 40 above, in the Trustee's meeting in March 2016, the Trustee agreed to change the MVAs but maintained all of the other factors, having considered actuarial advice to that effect. The Actuary also considered the application of an underfunding reduction, suggesting regular future review, but determined that it was not appropriate at the time as the OBSPS had been more than 100% funded, as at 31 March 2014. The Trustee considered and agreed the change to the MVAs within the CETV calculation basis, which was implemented with effect from 1 September 2016. Members were not informed of these changes and the changes did not cause any delays in the issuing of CETV quotations or payment of CETVs.

55. In April 2016, the Actuary presented a report, again considering the application of an underfunding reduction based on an initial assessment of the OBSPS as at December 2015, which showed that funding may have fallen to 98%. The Actuary was working on an updated funding assessment as at 31 March 2016 and the Trustee agreed to await this before making any changes. The updated assessment, considered in the May 2016 meeting, showed that the OBSPS' funding position was more than 100% and, so, there was no need to apply an underfunding reduction to CETVs.

56. As mentioned in paragraphs 42 to 45 above, the Actuary provided two further reports, dated 5 September 2016 and 23 November 2016, which were considered at the September and December Trustee meetings. Both reports considered the

funding position in relation to CETVs to be over 100% on the existing CETV calculation basis, which meant that there was no need for an underfunding reduction. The reports went on to discuss the OBSPS' investment strategy due to its uncertain future, with the possible routes meaning that de-risking would be required. The Actuary indicated that, by 23 November 2016, a significant proportion of the preliminary de-risking that was permitted by the changes, reflected in the August 2016 amendment of the SIP, had been completed. In the September report, the Actuary referred to the future targeted investment strategy not yet being specified, with both reports stating that, once completed, the expected changes would need to be reflected in a new SIP and in the CETV calculation basis. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.

57. The actuarial reports recommended that no changes be made to the CETV calculation basis at that time, but that the matter was to be kept under review and considered further in the March 2017 meeting when the future of the OBSPS should be clearer. While the November 2016 Actuarial report noted that "a significant proportion of the anticipated de-risking has now been completed", changes to the long-term investment strategy were yet to be made and reflected in a SIP. The CETV calculations were based on the OBSPS' long term investment strategy. Short term changes within the tolerances of the SIP were not considered to be relevant for CETV purposes.

58. In the Trustee meeting of 8 March 2017, the Trustee approved the draft SIP, effective from 1 April 2017. On the advice of the Actuary, the Trustee also proceeded with reviewing the CETV assumptions, resulting in the Trustee's decision to amend the assumptions, with effect from 1 April 2017, for any member requesting a CETV on or after that date. As stated in paragraph 46, the amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

59. Finally, Mr A has expressed concern that a trustee was also a member and Mr A's concerns that this will have caused a conflict of interest for the Trustee. TPR has provided regulatory guidance for trustees in relation to conflicts of interest[2], which states that it is good practice to put in place a conflicts of interest policy to enable identification and management of any conflicts that may arise. The Trustee has explained that it had a conflicts of interest policy in place and considered whether any trustee had conflicting interests at the beginning of every Trustee board meeting. Potential conflicts were dealt with in line with the provisions of the conflicts of interest policy and were minuted accordingly.

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

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

60. Part 4ZA, which contains sections 93 to 101 of the PSA 1993, sets out the trustees' statutory requirements in relation to transfers. Section 93A of the PSA 1993, sets out the right to a statement of entitlement (also known as a guaranteed CETV). As long as the member meets the criteria set out in section 93 of the PSA 1993, section 93A requires the trustees to provide the member with a statement of entitlement in respect of his or her transferable rights. Trustees are required, under Regulation 6(1) of the Transfer Values Regulations, to provide the statement of entitlement within three months after the date of the member's application for a statement of entitlement or, where it is unable to do so for reasons beyond its control, it may take up to a further three months, as required, to do so.

61. Section 94 of the PSA 1993, provides a member who has been provided with a statement of entitlement under section 93A of the PSA 1993 with a right to take the cash equivalent in accordance with the remainder of Part 4ZA of the PSA 1993. Section 95 of the PSA 1993, details how an application to take the cash equivalent must be made, the relevant timeframe being three months beginning with the guarantee date, and the ways in which the right to a cash equivalent can be taken, for example for acquiring rights allowed under the rules of a personal pension scheme.

62. Section 99 of the PSA 1993, sets out the trustees' duties after the member has exercised his or her right to take a transfer in accordance with section 95 of the PSA 1993. Section 99(2) of the PSA 1993, states that trustees must do what is needed to carry out what the member requires within 6 months of the relevant period.

Appendix Two

148. Mr A says that the explanation provided by the Trustee is not sufficient to account for the drastic increases that members saw in their CETVs after 1 April 2017.

149. The Trustee calculates CETVs using the best estimate method as advised by the Actuary. This is explained at paragraph 131 and132. In summary, this is the amount the Trustee estimates it will need at the point the CETV calculation is performed in order to provide the value needed at the member's NPD to pay benefits. This will depend on how far the member's age is away from NPD and what investment return the Trustee expects to receive over the period between the CETV calculation date and that member's NPD.

150. If assumed investment returns decrease (contrast paragraph 132), as they have in this instance, there will be less assumed growth between the CETV calculation date and NPD, which means that the scheme needs more money, at the CETV calculation date, than it previously assumed in order to fund the same benefit at NPD. This makes the value of a member's benefits at the CETV calculation date higher thus resulting in increased transfer values for the majority of members.

151. This is demonstrated in the actuarial report prepared for the March 2017 meeting, which sets out that CETVs were expected to increase by as much as 290% for those members who were 30 years old, 170% for those 40 years old, 90% for those 50 years old, and 20% for those 60 years old prior to the underfunding reduction.

152. In addition, the Trustee has provided two further reasons which impacted on the increase to CETVs. These are: a change in the assumptions made about reversion of future yields to higher long term rates; and changes in market conditions. The assumptions around reversion of future yields has had the greatest impact on those members who are ten or more years away from NPD. This is because the pre-April 2017 CETV basis assumed that equities held in the pre-retirement period would switch into bonds at the point of retirement; and, for those members ten or more years from retirement it was assumed that bond yields at their NPD would have reverted to higher levels than current yields. The revised CETV basis removed this assumption as the updated SIP had the effect of assuming that bonds were held immediately, rather than at NPD, which meant that the OBSPS would no longer benefit from any future reversion in yields. This change increased transfer values for younger members.

153. The changes in market conditions also had an impact, although less so than the change to the SIP and the change to the yield assumptions. Market conditions varied depending on the point at which the CETVs were calculated, so they would have affected different members' CETVs in different ways. Gilt yields have fallen, which is reflected in market index-linked gilt yields, meaning that CETVs calculated at a later date have typically been higher.

154. It is for the Trustee to set the SIP and CETV calculation basis with advice from the OBSPS Actuary. I have found no fault in the process of how these changes were

made. The Trustee has taken the appropriate advice from the Actuary, considered that advice and carried out its duties appropriately in line with TPR guidelines. I am satisfied with the Trustee's explanation of the changes it made. The changes in market conditions have also impacted the CETVs, causing the sharp increase using the post-April 2017 calculation basis when compared to the pre-April 2017 basis.

155. The Trustee is correct when it states that there is no requirement, either under legislation or the OBSPS Rules, where it alters the calculation basis, for it to make members aware in advance of the change or offer members the option of awaiting a CETV on the new basis. Amending the CETV basis is not an event which requires consultation with scheme members, so the Trustee has not breached its duty by making amendments and not making members aware in advance.