

## Ombudsman's Determination

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

## Outcome

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

## Complaint summary

2. Mr E has complained about the Trustee's decision to issue his cash equivalent transfer value (**CETV**) quotation using the existing calculation basis at the time, even though it had decided to change this. He believes that the Trustee should have issued his CETV quotation after it had implemented the new CETV calculation basis.

## Background information, including submissions from the parties

3. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a PPF assessment period, the BSPS changed its name to the OBSPS. Simultaneously, the Trustee was replaced by Open Trustees. The Trustee was the trustee at the time of the actions complained of. Open Trustees, as the current OBSPS trustee, has been included as a respondent.
4. Mr E's complaint was previously considered and was deemed to be materially similar to Mr S' case, PO-20199. Mr S' group contained 5 associated complaints, one of which was Mr E's. Mr S complained that the Trustee calculated his CETV using the existing calculation basis, after it had decided to amend the CETV calculation basis but before the new calculation basis came into effect, when it was aware that CETVs would increase. Mr S argued that the Trustee had already implemented the new CETV calculation basis when he returned his paperwork and when his transfer was paid, so his CETV should have been based on the new CETV calculation basis.
5. The Pensions Ombudsman determined Mr S' complaint on 13 January 2020. The Determination explains the reasons why Mr S' complaint was not upheld and can be found on The Pensions Ombudsman's Office's (**TPO's Office**) website. Where Mr E's

complaint overlaps, those points will not be repeated but reference will be made to the Determination of Mr S' case.

6. The majority of the complaints within Mr S' group were discontinued following the determination of Mr S' case, on the basis that they were materially similar and so the outcome would be identical.
7. Mr E has said he cannot accept the outcome of the Determination of Mr S' complaint. He has questioned: why the Trustee issued his CETV quotation in such a short time before implementing the new CETV calculation basis; when the first CETV quotations using the new calculation basis were issued; and how the Trustees could have been working in his best interests when he had to become a deferred member to get a CETV. He believes that the Trustee's decision has cost him money and was against his best interests in general.
8. Paragraphs 9 to 15 below, provide a brief timeline of events relating to Mr E's complaint.
9. Mr E became a deferred member of the OBSPS on 31 January 2017.
10. On 6 March 2017, both Mr E and his independent financial adviser (**IFA**) requested a transfer quotation.
11. On 28 March 2017, the Trustee issued a CETV quotation (**the March CETV Quotation**) to Mr E and his IFA, with a guaranteed CETV of £292,897.65. This included a covering letter (**the Covering Letter**), which explained that the CETV calculation basis was being amended and that transfer values were likely to increase in most cases. Mr E was offered the option of postponing his transfer and waiting for a quotation based on the new transfer basis.
12. With effect from 1 April 2017, the Trustee amended the CETV calculation basis. This had the effect of increasing transfer values for the majority of members. The background to this decision has been explained in paragraphs 39 to 70 of the Determination PO-20199. This is replicated in Appendix 1 for ease of reference. References to appendices within paragraphs 39 to 70 are references to appendices to the Determination PO-20199.
13. On 14 April 2017, Mr E completed and returned the paperwork for his transfer to a self-invested personal pension called Intelligent SIPP.
14. On 3 May 2017, Mr E's transfer was paid to Intelligent SIPP.
15. Mr E raised his complaint with the Trustee on 12 December 2017.

### **Adjudicator's Opinion**

16. Mr E'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:-

- The Ombudsman had already considered Mr E's complaint about when the March CETV Quotation was issued in paragraphs 126 to 129 of the Determination of PO-20199. This is because Mr S had also argued that the Trustee should have waited to issue his CETV quotation once the new CETV calculation basis had been implemented.
  - Nevertheless, the Trustee had provided Mr E with the option of postponing his transfer, so that he could have received an updated CETV quotation using the new CETV calculation basis. So, despite receiving the March CETV Quotation when he did, he had the choice of which calculation basis he wanted to proceed with. Consequently, the Adjudicator could not see that the Trustee had acted in error.
  - The suitability and clarity of the information in the Covering Letter had also been considered by the Ombudsman in the Determination of PO-20199, so the Adjudicator did not comment on this.
  - In addition, the Ombudsman had also already considered a complaint concerning the Trustee's alleged acts and/or omissions not being in everyone's best interests.
  - The process of becoming a deferred member in order to obtain a CETV is normal practice. Trustees are not able to provide a guaranteed CETV when a member is still active. This is because some of the factors used, such as pensionable service, continue to change when the member is still an active member of the pension scheme. So, the Trustee did not act in error in relation to this process.
17. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided further comments, which are summarised below:-
- The timing of when he asked for a CETV quotation was as a result of the attitude and the "threat" from the Trustee about transferring the OBSPS to the Pension Protection Fund. So, he was afraid of losing access to his pension benefits.
  - He would not have transferred had he known that by using the new CETV calculation basis, his CETV would have increased by approximately £200,000.
  - He had received "poor advice" from his independent financial adviser (IFA).
  - He considers himself partly to blame for not reading and understanding all of the information that accompanied the March CETV Quotation but does not think this should "cost [him his] future." He would simply like what is due to him.
18. I note the additional points raised by Mr E, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

19. I have noted Mr E's comments regarding the advice he received from his IFA. However, this is not something that I can consider. Mr E's IFA is a separate entity whose actions do not fall into my Office's jurisdictional remit. In addition, the suitability

of the advice Mr E received from his IFA has no bearing on the Trustee's acts and/or omissions, nor can the Trustee be held accountable for it. So, I shall not comment on it further.

20. Mr E has raised a number of claims which suggest he believes that, but for the Trustee's acts and/or omissions, he would have received a CETV using the new CETV calculation basis. Namely, he considered: the information provided by the Trustee as a "threat" which caused him to ask for a CETV quotation when he did; that the Trustee should not have issued the March CETV Quotation when it did; and that it did not provide sufficient information about the increases. I shall address these in turn.

21. I appreciate that the information provided to members of the OBSPS in respect of the possible changes to the OBSPS, would have been concerning for Mr E. However, I have already assessed the suitability of this information in the Determination of PO-20199 (see Appendix 2), so I shall not comment on this further. My findings on this particular point were outlined in paragraph 107 of Determination PO-20199:

"To conclude, I have reviewed the information received by Mr S and I do not find that there was maladministration on the Trustee's part. The information provided by the Trustee was not misleading and did not amount to scaremongering. It was necessary for the Trustee to share information with the OBSPS members, given the press coverage of TSUK's business at that time and the inevitable concerns that it would raise."

22. I also considered the Trustee's acts and/or omissions in relation to when it issued Mr S' CETV quotation in paragraphs 126 to 129 of Determination PO-20199 (see Appendix 3). As this applies to Mr E's circumstances, I will not repeat my comments. I concluded with the following, in paragraph 130 of Determination PO-20199:

"I find that the Trustee complied with the Transfer Regulations by issuing the statement of entitlement to Mr S on 29 March 2017."

23. With regard to the information provided about the possible increases, I commented on this in paragraphs 136 to 139 of Determination PO-20199 (see Appendix 4), and concluded that there was no maladministration:

"Therefore, while the Trustee was aware that CETVs would increase substantially for most members, it would not have been appropriate for the Trustee to have provided members with a guarantee to that effect or to have provided the additional information which would have raised expectations, potentially to the detriment of the OBSPS and its remaining members."

24. As Mr E has recognised, he had a responsibility to read and understand the information that was provided to him. Paragraph 140 of Determination PO-20199 is also applicable here, so I shall not say anything further on this matter:

“The covering letter issued by OBSPS stated “if you decide not to proceed with a transfer on the current basis, the Trustee has agreed that you will automatically be provided with an updated transfer value statement using the revised factors when these are available.” It is clear that, Mr S was given the opportunity to wait for a new statement of entitlement which would be automatically provided if he did not proceed with the transfer on the statement of entitlement he had been given. I find that this statement is sufficiently clear. In any event, if Mr S or his IFA were in any doubt as to its meaning and/or implications, they had the opportunity to ask further questions; I have seen no evidence to suggest that they did so.”

25. Mr E completed the paperwork for a transfer in line with the March CETV Quotation and the Trustee transferred his pension benefits in accordance with this. As a result, I have found no maladministration.
26. I do not uphold Mr E’s complaint.

**Anthony Arter**

Pensions Ombudsman  
19 May 2021

## Appendix 1

### Paragraphs 39 to 70 from Determination PO-20199

#### “(i) Relationship between CETVs and the OBSPS’ investment strategy

39. 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 the trustees must obtain and consider appropriate advice on what the SIP must cover.
40. 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”.
41. 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.
42. 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.
43. 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.

44. 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.
45. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings respectively.
46. 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.
47. 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.
48. 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.
49. 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 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 in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

**(ii) Amendment of the CETV calculation basis**

50. 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.
51. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is provided in Appendix 2 below, however 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>1</sup>.
52. 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.
53. 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."
54. 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."
55. The guidance also says that trustees should make evidence-based objective decisions:

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



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

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

56. 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.
57. As explained in paragraph 41 to 43 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.
58. 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.

59. As mentioned in paragraphs 45 to 48 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.
60. 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.
61. 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 assumptions, resulting in the Trustee's decision to amend the CETV assumptions, with effect from 1 April 2017, for any member requesting a CETV on or after that date. As stated in paragraph 49, 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.

**(iii) Issuing a statement of entitlement prior to 1 April 2017**

62. Regulation 6(1)(a) of the Transfer Regulations, requires trustees to issue a guaranteed statement of entitlement, showing the member's CETV as at a date (the "guarantee date"), which must be within the period of three months starting with the date of the member's application for the statement of entitlement. The statement of entitlement must then be provided to the member no more than (broadly) ten working days after the guarantee date.
63. Regulation 6(1)(b) allows trustees up to six months to produce the statement of entitlement where "the trustees are unable to provide a statement of entitlement for reasons beyond their control".

**(iv) Option to await a new CETV calculated using the post April 2017 calculation basis**

64. In the Trustee's meeting of 8 March 2017, the Trustee identified the need to give members suitable information during the transitional period. It was decided that any member who had requested a CETV quotation and been provided with a guaranteed CETV since 1 January 2017, and whose transfer value had not yet been paid, should be given the opportunity of postponing his or her transfer decision and requesting an updated transfer value calculated on the new basis.
65. For those members, in a similar position to Mr S, who requested a guaranteed CETV after 8 March 2017 but before 1 April 2017, the Trustee decided that they would automatically be issued a CETV on the post-1 April basis if they had not returned their paperwork. The Trustee included information about the change in calculation basis and the fact that the Trustee was awaiting a guaranteed CETV on the new basis within the covering letter to their pre-April 2017 guaranteed CETV.
66. The covering letter dated 29 March 2017 stated:

"This letter should be read in conjunction with the Trustee Chairman's letter sent to you on 27 January 2017, a copy of which can be found on the [OBSPS] website ([www.bspensions.com](http://www.bspensions.com))....

I am writing to you about your request for a Cash Equivalent Transfer Value ("transfer value") in respect of your [OBSPS] benefits.

When a [OBSPS] member requests such a transfer, the Pensions Office will calculate the individual's transfer value using factors set by the Trustee after taking advice from the [OBSPS] Actuary. These factors reflect the expected cost of providing the member's benefits within the [OBSPS], calculated on a best estimate basis. The actuarial basis for calculating transfer values was last updated on 1 October 2016.

The assumptions and methodology used to calculate transfer values must satisfy certain regulatory requirements and have regard to the [OBSPS]' investment strategy. The Trustee Chairman's letter referred to recent developments in connection with the future of the [OBSPS]. In recognition of those developments the Trustee is adopting a lower-risk investment strategy.

The transfer value basis will therefore be changed to reflect the [OBSPS]' revised investment strategy and the overall effect of this change is expected to result in higher transfer values in most cases. It is currently expected that increases in transfer values will only apply for members more than 2 years from the [OBSPS] Normal Pension Age (generally age 65), and that the increases become more significant the further away a member's age is from Normal Pension Age.

The [OBSPS] is required to provide you with a transfer value statement within three months of receiving your request. Allowing time for changes relating to the cessation of pensionable service accrual with effect from 31 March 2017 for [OBSPS] employee members, it is anticipated that transfer values on the revised basis will be available from the end of May 2017.

We have enclosed a transfer value statement calculated on the current basis, however you may wish to take the above information into consideration before making a decision whether or not to transfer your benefits to another registered pension arrangement.

Under statutory provisions a transfer value is required to be provided on request to a scheme member once in any 12-month period. Due to the unusual circumstances outlined above, if you decide not to proceed with a transfer on the current basis, the Trustee has agreed that you will automatically be provided with an updated transfer value statement using the revised factors when these are available.

You may wish to discuss the contents of this letter with an Independent Financial Adviser. Pensions Office staff cannot give advice.

I enclose an additional copy of this letter for your records, or for you to pass to your Independent Financial Adviser.”

67. Mr S completed the sections of the paperwork that he was required to fill out himself to request the transfer on 12 April 2017. The Trustee received Mr S' fully completed paperwork, completed by both Mr S and Intelligent Money, on 2 May 2017.

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

68. 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 trustees to provide the member with a statement of entitlement in respect of their 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 I agree with the complaint but, in my opinion, new evidence or additional arguments would need to be provided for there to be a good chance of an Ombudsman coming to a different conclusion in relation to the outcome.

69. 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 that 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

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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.

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

## Appendix 2

### Paragraphs 99 to 107 from Determination PO-20199

#### **“PART A: The information announcements issued by the Trustee in respect of possible changes to the OBSPS and their impact on Mr S’ decision to transfer out**

99. While Mr S has not complained directly about the information announcements or their appropriateness, he has said that the information available and the uncertainty of the OBSPS’ and TSUK’s future prompted him to transfer. So, it is relevant for me to consider the information announcements and the role they played in Mr S’ complaint.
100. The evidence (see Appendix 5), is clear that the Trustee kept members informed on the OBSPS’ situation, as it unfolded, explaining the possible implications of the scenarios that could have come to pass. It is understandable that this period of uncertainty would have been concerning for both members of the OBSPS and employees of TSUK.
101. 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.
102. I acknowledge that the Trustee has referred to the PPF as being a “poor outcome” in its announcement of May 2016 and others. I can see how this terminology, because of the negative connotation, could have caused members concern about the future of their pension benefits should the OBSPS enter the PPF.
103. The choice of words was in context to highlight that the modified OBSPS would provide a better outcome for the majority than the PPF would have provided. The context is clear, for example, in the announcement dated 26 May 2016:
- “The Trustee believes that exchanging the [OBSPS’] assets for PPF compensation would be a poor outcome. The Trustee believes that the [OBSPS’] assets are more than enough to meet the cost of paying PPF compensation and that it will be better for the scheme to stay out of the PPF. The [OBSPS] could then provide modified benefits at levels which, for the vast majority of members, would be better than PPF compensation...”
104. I do not believe it is reasonable to assume that the Trustee included those statements to encourage members to transfer out of the OBSPS. They were to provide members with factual information concerning the OBSPS and the PPF.
105. 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 S 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.

106. The Trustee was not, and could not have been expected to be, aware of every member's individual circumstances when it is 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.
107. To conclude, I have reviewed the information received by Mr S and I do not find that there was maladministration on the Trustee's part. The information provided by the Trustee was not misleading and did not amount to scaremongering. It was necessary for the Trustee to share information with the OBSPS members, given the press coverage of TSUK's business at that time and the inevitable concerns that it would raise."

## Appendix 3

### Paragraphs 126 to 129 from Determination PO-20199

126. “Mr S has said that the Trustee should not have issued a guaranteed CETV to him on 29 March 2017 when it did, but that it should have waited for the more generous post 1 April 2017 calculation basis to be effective before issuing his guaranteed CETV.
127. I shall look first at Mr S’ claim that the Transfer Regulations allow the three-month period to be extended in certain circumstances; Mr S has referred to an extension being available under Regulation 13 of the Transfer Regulations (Regulation 13), which can be applied for through TPR.
128. Regulation 13 is only applicable to the timescale that applies under section 99(2) of the PSA 1993, where the member has exercised his right to take a cash equivalent, such right having been acquired by the member’s having requested and been issued with a statement of entitlement. Therefore, whilst Regulation 13 can, potentially, extend the six-month period in which trustees must pay a transfer value following the member’s request for payment, it cannot extend the three-month period in which the statement of entitlement must be produced, under section 93A of the PSA 1993 and Regulation 6(1)(a) of the Transfer Regulations, following the member’s request for a transfer value.
129. Nevertheless, Regulation 6(1)(b) of the Transfer Regulations, allows trustees up to six months for a statement of entitlement to be provided where “the trustees are unable to provide a statement of entitlement for reasons beyond their control”. This does not apply to Mr S’ case as the Trustee was able to supply the CETV to Mr S on the basis applicable before 1 April 2017, and in fact did so. The Trustee was not in a position to legitimately request an extension under Regulation 6(1)(b) of the Transfer Regulations.”



## Appendix 4

### Paragraphs 136 to 139 from Determination PO-20199

136. "With regard to the information provided and its suitability, the Trustee explained that:

"[the] change is expected to result in higher transfer values in most cases. It is currently expected that increases in transfer values will only apply for members more than 2 years from the [OBSPS'] [NPD] (generally age 65), and that the increases are expected to become more significant the further away a member's age is from Normal Pension Age."

137. I consider the information provided was reasonable as CETVs can vary significantly from member to member, depending upon the date at which they are calculated in relation to the member's NPD. For the Trustee to provide more information about how it was likely to impact a specific member it would have needed to look at that member's individual circumstances. I do not consider that the Trustee could reasonably have been expected to have conducted such a detailed exercise and, in any case, it did not have the resources to do so. Providing more specific information could also have led to expectations which may not have been borne out.

138. The undated actuarial report prepared for the March 2017 Trustee meeting does detail the change and the anticipated impact of it. It includes a graph and table, the former showing the expected impact on transfer values at different ages based on a pension of £1,000 per annum at NPD, the latter showing the anticipated percentage increase at ages 30, 40, 50 and 60. However, the data used for the table and graph does not provide the full picture, as the comparison is only shown for pension accrued prior to 2006 and it does not take into account the Guaranteed Minimum Pension (**GMP**), which any member in service between 1975 and 1997 will have, and it is subject to statutory revaluation in deferment. The inclusion of GMP in a member's benefits will alter the transfer value available and its impact will differ from member to member while any pension accrued after 2006 is not accounted for in the illustration. It would not have been appropriate for the Trustee to share the graph and table with members as, while it is useful for the Actuary and Trustee to consider the impact across the OBSPS, it does not provide an accurate representation of the transfer value for an individual member. Its inclusion, again, could have raised an expectation which was not realised.

139. Therefore, while the Trustee was aware that CETVs would increase substantially for most members, it would not have been appropriate for the Trustee to have provided members with a guarantee to that effect or to have provided the additional information which would have raised expectations, potentially to the detriment of the OBSPS and its remaining members.