

## Ombudsman's Determination

<b>Applicant</b>	Mr S
<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 S' complaint is as follows:-
  - 1.1. The information that was available; the uncertainty of the OBSPS', and TSUK's future, prompted him to transfer.
  - 1.2. The Cash Equivalent Transfer Value (**CETV**) he received should have been calculated on the basis applicable from 1 April 2017, rather than the basis used prior to 1 April 2017. His request for a statement of entitlement was made after the Trustee had made the decision to amend the CETV calculation basis with effect from 1 April 2017, but his CETV was calculated using the pre-April 2017 basis and issued prior to 1 April 2017.
  - 1.3. The Trustee should have waited and calculated his CETV on the post April 2017 basis, rather than "rushing" to issue it.
  - 1.4. The information the Trustee gave him in the covering letter with his statement of entitlement, was not appropriate and, if it had been, he would have delayed his transfer. Mr S contends that the Trustee has failed: to act consistently; to exercise due skill and care in its administration of the OBSPS; and to act in the best interests of its members.

### 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 to members in relation to the OBSPS' future was necessary to keep members abreast of developments so that they were given the opportunity to assess their circumstances and take appropriate action if they considered it essential.

- 2.2. The Trustee acted properly in supplying Mr S' CETV prior to 1 April 2017, rather than waiting for the new basis to come in to effect. The Trustee could not guarantee that Mr S' CETV would be issued on the new CETV calculation basis before the three-month statutory deadline for issuing a CETV passed, and there were no grounds on which the Trustee could have requested an extension to this deadline.
- 2.3. The CETV calculation basis applicable when Mr S was provided with his guaranteed CETV is a matter for the Trustee and any calculation correctly applying that CETV calculation basis was not maladministration. I have not found any error in the calculation of Mr S' CETV, it was calculated using the agreed basis at the point of the calculation.
- 2.4. The Rules that govern the OBSPS do not provide that a CETV shall be recalculated if the CETV calculation basis is changed at a future date. Nor is it reasonable to expect the Trustee to recalculate CETVs already paid and increase such payments (or conversely, as the case may be, decrease such payments and seek repayment of any funds already paid, in excess of those calculated on the lower basis). In cases such as Mr S', in which he exercised his right to transfer by requesting a transfer on the former CETV basis, I cannot find maladministration in the Trustee's completion of the transfer out, as the Trustee is bound to action the member's statutory right to transfer, which it did.
- 2.5. The notification requirements in respect of the OBSPS, with regard to this complaint, were either met or not applicable. There is no requirement for the Trustee to notify members of its intention to update the SIP or CETV calculation basis, nor is there any requirement to offer members the option to obtain a CETV on the new calculation basis if they have already been provided with a CETV on the former calculation basis.
- 2.6. The Trustee was proactive in providing information that anticipated potential detrimental outcomes for members. The information that the Trustee provided with Mr S' statement of entitlement and covering letter, on 29 March 2017, was clear and explained his options taking into account the fact that his CETV had been issued on the pre-April 2017 basis. Mr S had sufficient information to enable him to make an informed decision whether to proceed with the transfer on the former calculation basis or to obtain a CETV calculation on the new basis.
- 2.7. Guaranteeing that CETVs would increase is not within the Trustee's remit. Moreover, in doing so, the Trustee could have provided a CETV in excess of that to which the member was entitled, potentially to the detriment of other members as the excess would have been paid from the OBSPS' funds
- 2.8. I find that the Trustee has carried out its duties concerning Mr S' transfer benefits consistently, with due skill and care.

## 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 from the Rules governing the OBSPS (the **OBSPS Rules**).
  - 4.2. Appendix 2 - relevant extracts from Part 4ZA (Transfer Rights: General) of the Pension Schemes Act 1993.
  - 4.3. Appendix 3 - relevant extracts from The Occupational Pension Schemes (Transfer Values) Regulations 1996.
  - 4.4. Appendix 4 - relevant extracts from The Occupational Pension Schemes (Investment) Regulations 2005.
  - 4.5. Appendix 5 - announcements referenced below that were issued before the Trustee paid Mr S' transfer value.
5. I have categorised Mr 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 S decision to transfer out; and**

**Part B: The CETV calculations:**

- (i) **Relationship between CETVs and the OBSPS' investment strategy;**
- (ii) **Amendment of the CETV calculation basis;**
- (iii) **Issuing a statement of entitlement prior to 1 April 2017;**
- (iv) **Option to await a new CETV calculated using the post April 2017 calculation basis; and**
- (v) **Completion of the transfer using the pre-1 April 2017 calculation basis.**

6. Mr 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 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 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.
- 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 G complains that the Trustee amended the early retirement factors 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 complaint contains 49 associated complaints.

### **Mr S' circumstances**

8. Mr S' timeline is as follows:

Active member in the OBSPS	January 1995 to 28 February 2017
Requested a guaranteed CETV	Between 8 March 2017 and 1 April 2017
Guaranteed CETV statement provided to Mr S	29 March 2017
Option to await new calculation basis provided	29 March 2017
CETV calculation basis change date	1 April 2017
Right to take CETV exercised (relevant paperwork returned)	2 May 2017
CETV paid to receiving scheme	19 June 2017

9. In January 1995, Mr S joined the OBSPS, a defined benefit pension scheme.
10. On 28 February 2017, Mr S became a deferred member of the OBSPS. He had accrued 22 years and 1 month's service.
11. On 22 March 2017, Mr S requested a CETV.
12. On 29 March 2017, a guaranteed CETV was issued to Mr S. This included a covering letter, which explained that the CETV calculation basis was to change on 1 April 2017, and that a quotation would be provided automatically on the new basis if Mr S did not proceed with a transfer of the CETV that was enclosed with the letter, and which had been calculated on the pre-1 April 2017 basis.
13. On 1 April 2017, the new CETV calculation basis became effective. However, the Trustee was not in a position to issue quotations at that time, as it was waiting for the OBSPS Actuary to prepare the new calculation.
14. On 12 April 2017, Mr S completed the sections of the paperwork applicable to him, requesting payment of the guaranteed CETV to his chosen receiving scheme, Intelligent Money.
15. On 2 May 2017, the Trustee received Mr S' paperwork completed by both Mr S and Intelligent Money.
16. On 19 June 2017, payment of the guaranteed CETV, quoted on 29 March 2017, was made to Intelligent Money.
17. On 26 July 2017, Mr S' independent financial adviser (**IFA**), Active Wealth Management, contacted the Trustee, requesting his CETV be re-calculated on the new basis, and the difference paid to the receiving scheme. The IFA said that the information provided did not indicate how significantly the CETV's would rise, even though the OBSPS Actuary would have been aware of the impact in advance of 1 April 2017.
18. On 12 September 2017, the Trustee issued a response to the IFA's letter, explaining that Mr S had been informed of the forthcoming changes in the letter of 29 March 2017, and the transfer value that had been paid was correct at the date of calculation.
19. On 5 January 2018, Mr S raised a complaint with the Trustee under the OBSPS' internal dispute resolution procedure.

## Material facts

### **PART A: The information announcements issued by the Trustee in respect of possible changes to OBSPS**

20. 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.
21. 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, but its 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.
22. 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 been established since the Rules came into effect 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.
23. 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' normal pension date (**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 scheme could remain outside of the PPF.
24. 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

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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.

public consultation part of the Government consultation, expressing the importance of members having their voices heard.

25. 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:

“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.”

26. 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]'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 [OBSPS]'s continued strong investment performance.

Our investment strategy has meant that the [OBSPS]'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 [OBSPS]'s 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]'s liabilities.”

27. 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.
28. 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.
29. 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, 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.
30. 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.
31. On 12 January 2017, the Trustee issued a further statement regarding TSUK's announcement of 7 December 2016. It said that Tata Steel Group believed it would

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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



be able to achieve a sustainable future for the UK business if it could de-risk and de-link from OBSPS. The Trustee said:

“The options for separating OBSPS from TSUK include a Regulated Apportionment Arrangement [RAA] approved by the [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.”

32. 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 and various regulatory bodies and other interested parties and those discussions were ongoing. It said that 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 30). 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.
33. 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, for example, which members would potentially be better off in the PPF. Under question number 10, headed “Could some OBSPS members be better off if the [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...”

34. 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.”

35. 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.
36. 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.
37. On 29 March 2018, the OBSPS entered the PPF assessment period.

**Part B: The CETV calculations:**

- (i) **Relationship between CETVs and the OBSPS' investment strategy;**
- (ii) **Amendment of the CETV calculation basis;**
- (iii) **Issuing a statement of entitlement prior to 1 April 2017;**
- (iv) **Option to await a new CETV calculated using the post April 2017 calculation basis; and**
- (v) **Completion of the transfer using the pre-1 April 2017 calculation basis.**

38. Mr S received his CETV statement on 29 March 2017, before the change in the calculation basis on 1 April 2017. The covering letter stated that he would automatically be sent a new CETV statement calculated using the new basis when it was available (likely end of May 2017) if he did not opt to proceed with the CETV provided on the former basis. Mr S' completed the paperwork enclosed with the 29 March 2019 CETV statement requesting a transfer of his benefits out of the OBSPS. This was returned on 2 May 2017. His transfer completed on 19 June 2017.

**(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>3</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

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

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:

“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.

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 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.

### **Summary of Mr S' position**

71. The Trustee made the decision to amend the CETV calculation basis in its meeting on 8 March 2017. The Information Debrief from that meeting clearly shows that the Trustee had previously instructed the Actuary to consider the method for calculating CETVs (notes were made available to members and others with an interest in the OBSPS following Trustee meetings). The Actuary presented a report which the Trustee considered, and the Trustee accepted the Actuary's recommendation. The updated calculation basis was to apply from 1 April 2017, and was expected to provide increased transfer values. The Trustee also discussed how to ensure that members were given any appropriate information.
72. Despite the agreed approach of the Trustee set out in paragraph 71 above, Mr S' CETV was issued on 29 March 2017, two days before the updated CETV calculation basis. Mr S said, "I fail to understand the need to process my CETV in 7 days, especially when I was likely to receive a significantly higher figure should it (the CETV) be processed just 3 days later. I never specified, to the Trustees, any timeframe or deadline with regard to my CETV. This urgency was imposed by the Trustees."
73. The three-month deadline for issuing a CETV is extendable in certain circumstances under Regulation 13 of the Transfer Regulations. One of the circumstances listed under Regulation 13 is that TPR is satisfied that "(iii) the interests of the members of the scheme generally will be prejudiced if the trustees do what is needed to carry out what is required within that period". Therefore, this option was available to the Trustee, but it did not take advantage of it. If it had, this would have allowed it to assess the impact, permitting it to act in members' best interests and explain the options available to them.

74. The Trustee had also identified the need to provide sufficient information during the transitional period. But it did not explain the options given in the covering letter of Mr S' CETV and did not provide sufficient information to inform him that the increases to CETVs would be as significant as they were. Mr S did not understand that he could receive approximately £170,000 more if he waited for the new calculation basis.
75. Mr S has also said, "I understand the Trustee advised other beneficiaries (of OBSPS) that the revised CETVs calculations were likely to be amended and placed any transfers 'on hold', so that they (the beneficiaries) could take advantage of this change. I do not understand why the Trustee did not do the same in my case."
76. Regardless of this, the Trustee failed to supply a CETV calculated on the post 1 April 2017 basis. Mr S said, "By failing to provide me with details of the CETV following the introduction of the new methodology, I consider that the Trustee has failed to exercise due skill and care in the administration of the [OBSPS] and has failed to act in my best interests. As a result, I have suffered a loss. This loss is the difference between the CETV calculated on the old methodology prior to 1 April 2017 and the CETV calculated on the new methodology as at 1 April 2017."
77. Due to the uncertainty surrounding the OBSPS, and concerns that it may be placed into the PPF, Mr S decided to accept the CETV as shown in the correspondence dated 29 March 2017. However, these figures were significantly lower than they would have been had they been calculated on the updated CETV calculation basis; and the transfer was not completed until June 2017, so there would have been plenty of time for a calculation on the new basis to be carried out.
78. The transfer payment made in June 2017 should have been calculated on the new basis as the transfer paperwork and the payment were both completed after 1 April 2017 when the new calculation basis was adopted.
79. The Trustee has a duty at all times to act in the best interests of the beneficiaries. As specified in the case of *Cowan v Scargill [1985] Ch 270*, pension scheme trustees cannot ignore the financial interests of the beneficiaries.

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

80. A transfer was paid in respect of Mr S' benefits on 19 June 2017, in accordance with the CETV issued on 29 March 2017, which was guaranteed until 29 June 2017. The CETV quoted on 29 March, and paid on 19 June 2017, was calculated correctly in accordance with the OBSPS Rules and applicable statutory requirements at the time.
81. By signing and returning the transfer paperwork provided on 29 March 2017, Mr S exercised his right to payment of this CETV, authorising the Trustee to pay the value set out in the paperwork to the pension scheme specified. The transfer was completed in accordance with Mr S' instruction and the applicable statutory requirements. Mr S is not entitled to a higher transfer payment from the OBSPS.

82. While it is acknowledged that the Trustee changed the calculation basis for CETVs issued from 1 April 2017, this does not mean that transfers paid as a result of statement of entitlements issued before this date were calculated incorrectly. In any event, Mr S was offered the option to defer taking his CETV and wait to receive a CETV on the updated basis, but he did not take up this option and completed the paperwork to accept the CETV that had already been issued to him.
83. Under the PSA 1993, which was applicable in this instance, the Trustee was "...responsible for setting the assumptions used to calculate cash equivalent transfer values after taking actuarial advice. The assumptions are set with the aim that, taken as a whole, the transfer value represents the Trustee's best estimate at that time of the cost to the [OBSPS] of providing a member's benefits from the [OBSPS]. The Trustee is required to have regard to the [OBSPS]'s investment strategy when setting these assumptions."
84. Moreover, "Changes in these assumptions and/or changes in investment strategy, and expected investment returns, can affect the best estimate cost of providing a member's benefits from the [OBSPS] and therefore the calculation of transfer values. In accordance with legislative requirements, and guidance from [TPR], the Trustee therefore regularly reviewed the assumptions used to calculate cash equivalent transfer values payable from the [OBSPS] and, based on actuarial advice, considered if any changes were required to these assumptions as a result of the [OBSPS]'s circumstances. Indeed, in view of the highly unusual circumstances of the [OBSPS], this was a matter considered by the Trustee at each quarterly Trustee meeting in 2016, including whether any reduction to transfers should be applied in view of the uncertainty relating to the ongoing solvency of [TSUK], the [OBSPS]'s sponsoring employer, and the funding levels of the [OBSPS]. The actuarial advice received at each meeting prior to March 2017 was that no material changes to the transfer basis were recommended."
85. The Trustee is entitled, and required by TPR, to review the calculation basis of the CETV regularly. It could not inform members of a change to the CETV calculation basis prior to making the decision to amend it on 8 March 2017. Nor could it know what impact any future change would have on CETVs, prior to deciding to make the amendment.
86. The Trustee also said, "the [OBSPS] had undertaken to provide updated transfer quotations only to members who had not decided to proceed with a transfer on the current basis. Mr [S] should not, therefore, have been under any reasonable expectation that an updated transfer value would automatically be provided to him."
87. Mr S and other members in his position were given two options:-
- 87.1. The member could proceed with the CETV issued on the basis pre 1 April 2017, which the Trustee had a duty to provide so that it could ensure it met the statutory deadline so if the member returned paperwork for this CETV, as Mr S did, the Trustee had a statutory obligation to pay that transfer value; or

- 87.2. The alternative was for the member to await a CETV calculated on the updated basis.
88. It would have been inappropriate and unlawful for the Trustee to impose its own choice of which option would be in the best interests of each member. Indeed, it argued that, “for any individual member, his or her own personal circumstances might mean that it was in fact better to proceed sooner with the CETV then available from the [OBSPS] rather than wait for an updated transfer quotation calculated on the new basis, but which may involve additional delay in when that payment would be made. This was only a decision the member could make, with financial advice (which Mr [S] was required to take).”
89. It went as far as it reasonably could have done to make members aware of the impact that the updated CETV basis would have on the values available. It could not guarantee that values would increase for all members, in a letter that was being issued to a range of members.

## Conclusions

### General observations on wider matters

90. There has been a lot of publicity around TSUK; the OBSPS and the events that have taken place during and after the complaint.
91. Much of the publicity has been to do with IFA’s concerning OBSPS members receiving wrong advice and members making poor decisions as a result of that advice. Mr 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>.
92. 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 S’ complaint does not concern the “Time to Choose” exercise as the events complained about occurred prior to the RAA which triggered the “Time to choose” exercise.

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

93. 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.
94. Ms Rookes' report does observe scaremongering to some extent in relation to the roadshows carried out. However, as explained in paragraph 30, 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 S complaint.
95. 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.
96. 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 OBSPS to future accrual on 31 March 2017, and so it is not directly relevant to Mr S' complaint.

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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>

**Mr S' complaint against the Trustee**

97. I understand that at the heart of Mr 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 transferring benefits out of the OBSPS.
98. I appreciate Mr 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 S' complaint.

**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<sup>8</sup>. 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.

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

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.

**Part B: The CETV calculations:**

- (i) **Relationship between CETVs and the OBSPS' investment strategy;**
  - (ii) **Amendment of the CETV calculation basis;**
  - (iii) **Issuing a statement of entitlement prior to 1 April 2017;**
  - (iv) **Option to await a new CETV calculated using the post April 2017 calculation basis;**
  - (v) **Completion of the transfer using the pre-1 April 2017 calculation basis.**
108. 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 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. It has not been suggested that I include the Actuary as a party to this complaint, so I have not addressed any issue of whether or not it would be within my jurisdiction to do so.



109. This complaint has arisen as a direct result of the Trustee's amending the CETV 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's guidance; and whether it considered all relevant, but no irrelevant information.

**(i) Relationship between CETVs and the OBSPS' investment strategy**

110. The Trustee has said that the amendment of the CETV calculation basis was carried out as a direct result of it amending the OBSPS' SIP.

111. As explained in paragraphs 39 and 40 above, it is for the Trustee, with the relevant 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.

112. 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, 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.

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

113. 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.

114. 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.”

115. 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 find that this was a reasonable approach in the circumstances.
116. Both the OBSPS’ investment strategy and CETV calculation basis have been discussed by the Trustee in trustee meetings on a regular basis. Paragraphs 57 to 61 detail when actuarial reports were considered by the Trustee, what the reports contained and the Trustee’s decisions made concerning CETVs at the time. For example, the decision to change the MVAs with effect from 1 September 2016.
117. 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.
118. 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.
119. The Trustee calculates CETVs using the best estimate method as advised by the Actuary. This is explained at paragraph 52 and 53 however in brief 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 is from NPD and what investment return the Trustee expects to receive over the period between the CETV calculation date and that members NPD.
120. If assumed investment returns decrease, as they had for OBSPS, 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.

121. 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.
122. 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.
123. 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.
124. 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, and how the changes in market conditions have impacted the CETVs, causing the sharp increase using the post April 2017 calculation basis when compared to the pre-April 2017 basis.
125. 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.

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

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

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

131. The Trustee is correct when it states that there is no requirement, where trustees alter a pension scheme's calculation basis, to offer members the option of aborting a transfer out that is already in process and awaiting a CETV on a new basis, either under legislation or, in the Trustee's case, under the OBSPS Rules. This is something that the Trustee chose to offer to those members, such as Mr S, who had been issued with a CETV but had not yet had their transfer paid to their chosen receiving scheme. In making this offer and, in doing so, going beyond what was required of it under statute and trust law, the Trustee sought to provide sufficient information to enable members to make informed decisions whether to proceed with the transfer on the former calculation basis or to obtain a CETV calculation on the new basis. Mr S has suggested that the information supplied by the Trustee was not sufficient for this purpose, and that it should have contained a guarantee that transfer values would be higher.
132. However, that suggestion has been made with the benefit of hindsight. And more critically, there are a number of reasons why it would not have been reasonable for the Trustee to guarantee that transfer values would increase.

133. First, as the Trustee has stated, the letters were sent to anyone who had been issued a CETV but whose transfer had not been paid. This is likely to have included members whose CETVs would not have increased under the new calculation basis, for example those within two years of normal retirement date.
134. Second, the Trustee could not accurately predict how the market would change during the period between March 2017, when it issued the option letters, and the point at which CETVs could be calculated on the new basis, which it did not expect to be possible until at least May 2017. Changes in market conditions can cause a CETV to increase or decrease, meaning that a CETV obtained at a later date could be smaller or larger than one previously provided, even where no change has been made to the calculation basis. It would not be reasonable for the Trustee or the OBSPS to bear the costs of changes in market conditions.
135. Third, the Trustee has a responsibility to ensure that CETVs are the best estimate of the member's benefits, both to be fair to that member and to ensure that it is preserving adequate benefits for those members remaining in the scheme. If the Trustee had provided a guarantee that CETVs on the new basis would be higher but it was in fact a lower amount, the Trustee would have been liable to pay the higher CETV to the detriment of other OBSPS members as the fund would have been reduced by the payment of the CETV in excess of the member's entitlement.
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.
140. 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.

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

141. Mr S has suggested that it was not reasonable for the Trustee to pay his transfer on 19 June 2017, on the statement of entitlement provided on the pre-1 April basis, after the 1 April 2017. He maintains that the Trustee should have been in the position to calculate CETVs on the post 1 April 2017 basis, and would have been aware of the size of the increases this change presented. He feels that the Trustee did not act in his best interests in not recalculating his CETV.
142. Whilst I understand why this suggestion has been made, I am unable to agree with it. Mr S was provided with a statement of entitlement, as required under section 93A of the PSA 1993, on 29 March 2017. Mr S, in returning the paperwork and requesting his transfer on 2 May 2017, exercised his right to a CETV, acquired under section 94(1) of the PSA 1993, by taking it in accordance with one of the options available under section 95 of the PSA 1993. This in turn triggered regulation 99(2) of the PSA 1993, which required the Trustee to do what was necessary in order to carry out Mr S' request to transfer the cash equivalent value given to him in the statement of entitlement, within six months of that request. Therefore, the Trustee was bound by section 99(2) of the PSA 1993, and completed Mr S' transfer in compliance with those requirements on 19 June 2017.

143. I do not find that the Trustee was under any obligation to provide Mr S with a further option prior to paying the transfer. It is the member's decision whether or not to take a transfer. The Trustee cannot advise, or be seen to advise, whether any transfer is in a member's interests as it is not regulated to provide such advice. Mr S had already been informed, in the covering letter to his guaranteed CETV, that if he did not proceed with the transfer of the value quoted he would be provided with a new CETV on the new basis once the Trustee was in a position to issue it. To have offered Mr S the option to abort his transfer, after he had been informed of his right to wait until a CETV was available on the new basis and had nevertheless chosen to exercise his right to transfer, could have exposed the Trustee to accusations of: overstepping its role; and making a recommendation to Mr S that the existing transfer was not in his interest without being aware of the other circumstances that had informed Mr S' decision. It may well have been in Mr S' interest to proceed with the transfer at the time, regardless of whether waiting or opting for a CETV on the new basis would have provided a higher CETV, depending on his personal circumstances.
144. I do not consider it reasonable for Mr S to have expected the Trustee to pay a higher transfer value in his case. Mr S accepted the figure provided to him in his statement of entitlement. There is no evidence to suggest that the increase in transfer values after Mr S' transfer value was produced was due to an error in the original calculation of his CETV. Instead, the general increase in CETVs around the time of Mr S' transfer out of the OBSPS was likely as a direct result of the Trustee's having amended the CETV calculation basis following a change to the SIP, but other changes could have had an impact see paragraphs 122 and 123. Had that change led to transfer values decreasing, Mr S would not have expected the Trustee to recalculate and reduce his CETV, which would have resulted in Mr S being required to return the difference. In the same way, the Trustee should not be expected to pay higher values to those members, in the same position as Mr S, who requested to transfer their benefits after receiving a CETV calculated on the CETV basis applicable before 1 April 2017.
145. I appreciate Mr S' concern regarding the value of his benefits and I can understand that it is difficult to accept that his CETV is correct when, after 1 April 2017, other members, his colleagues and friends, received CETVs of a higher value than that which Mr S had received, especially as the statement of entitlement that he received was calculated so close to the date the new calculation basis came into effect. But I do not find that the CETV Mr S received was incorrect. It was calculated using the agreed basis at the time of the calculation. I acknowledge Mr 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 on 29 March 2017 and transferred on 19 June 2017, with the result that he may have chosen a different option. Nevertheless, that statement is made with the benefit of hindsight, and in any event, it does not cause the statement of entitlement, that Mr S was given on 29 March 2017, to be incorrect. Mr S could have waited for a calculation on the new basis, which would have been provided automatically by the Trustee, as stated in the covering letter, but he did not.

146. There is no evidence that the Trustee failed to properly undertake its duties of care and skill, in considering the advice from the Actuary and investment advisor/committee, when making changes to the SIP and CETV calculation basis. Therefore, there has been no administrative error on the part of the Trustee, despite the fact that Mr S' CETV would have increased, had he chosen not to transfer on the basis of his original statement of entitlement.
147. Mr S has referred to the need for the Trustee to take into account the financial interests of the OBSPS' beneficiaries and has referred to the case of *Cowan v Scargill [1985] Ch 270* in support of that point. That case related to the investment decisions that the trustee had made, although parts of the judgment are applicable to trustees' wider powers. Megarry VC, in his judgment said:
- “The starting point is the duty of trustees to exercise their powers in the best interests of the present and future beneficiaries of the trust, holding the scales impartially between different classes of beneficiaries. This duty of the trustees towards their beneficiaries is paramount. They must, of course, obey the law; but subject to that, they must put the interests of their beneficiaries first. When the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their best financial interests.”
148. The key point here is “holding the scales impartially between different classes of beneficiaries.” This means that although the Trustee can act differently between the groups they must be impartial. As mentioned in paragraph 106 above, providing more detailed information in relation to the possible increases in transfer values calculated using the new calculation factors might have led members to believe that they were entitled to benefits in excess of their actual entitlement and exposed the Trustee to claims for benefits in excess of those available under the OBSPS Rules. If some members received more than their entitlement in transfer values, it would disadvantage those members who remained in the OBSPS, as they would be left with less than their share. With that in mind, I find that the Trustee has considered the financial interests of the OBSPS beneficiaries and weighed up the different classes of membership in making its decision; I do not find those decisions to be perverse.
149. Mr S has also said that the Trustee has been inconsistent in the way in which it has treated members, as he understands that some members' transfers were put 'on hold' so that they could take advantage of the change.
150. In fact, transfer requests were only put 'on hold' in situations where: the member had received a statement of entitlement on the pre 1 April 2017 basis and had made a transfer request on the basis of that statement of entitlement, but that transfer had not been completed before the 8 March 2017.
151. Following the Trustee's meeting on 8 March 2017, those members whose transfer requests had not yet been actioned had been sent a letter from the Trustee,



explaining the change, which gave the member the option to (1) proceed with their existing CETV or (2) withdraw their request and await a new CETV, calculated on the post April 2017 basis. In those circumstances, it was necessary to wait for the member to respond to the Trustee's letter before taking further action concerning the requested transfer, as the member's response dictated the next step to be taken. In cases where the member selected option (2) in the letter, their transfer request on the pre 1 April 2017 basis was effectively withdrawn, and a new process was started on the post April 2017 basis. The members were required to complete new paperwork, obtain financial advice and locate a receiving scheme all over again.

152. But Mr S did not fall within the category of members described in paragraph 150 to 151 above as, unlike those members, he had been given the option to wait for a CETV calculation on the post-April 2017 basis at the same time that he was also given his statement of entitlement calculated on the pre 1 April 2017 basis. Mr S requested payment of his CETV, calculated on the pre 1 April 2017 basis, after 1 April 2017, notwithstanding that Mr S was given the option of waiting for a new CETV calculated on the new basis within the covering letter of 29 March 2017.
153. The information provided with his statement of entitlement on 29 March 2017, was clear and took into account Mr S circumstances. I do not find that the Trustee was inconsistent in its approach. Different members were in different situations and the Trustee properly took account of this.
154. 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**

...

- (2) 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 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:

Subject to Rule 16(1)(i), 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 Pension Schemes Act 1993**

#### **Part 4ZA**

#### **Chapter 1 Transfer Rights: General**

##### **93 Scope of Chapter 1**

- (1) This Chapter applies to a member of a pension scheme if all of the following conditions are met.
- (2) Condition 1 is that the member has accrued rights to any category of benefits under the scheme rules.
- (3) Condition 2 is that no crystallisation event has occurred in relation to the member's accrued rights to benefits in that category (see subsection (7)).
- (4) Condition 3 is that—
  - (a) the member is no longer accruing rights to benefits in that category (see subsection (8)), and
  - (b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.

...

##### **93A Right to statement of entitlement: benefits other than money purchase**

- (1) The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation to categories of benefits other than money purchase benefits.
- (2) In the case of a member with transferrable rights in relation to two categories of benefits other than money purchase benefits, the application may relate to transferrable rights in relation to either or both of those categories.
- (3) For the purposes of this Chapter a member's "statement of entitlement" is a written statement of the amount of the cash equivalent at the guarantee date of the transferrable rights to which the application under subsection (1) relates.
- (4) In this Chapter "the guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be—
  - (a) within the prescribed period beginning with the date of the application, and
  - (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (5) Regulations may make provision in relation to applications under this section and may, in particular, restrict the making of successive applications.
- (6) If the trustees or managers of a pension scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

##### **94 Right to cash equivalent**

- (1) A member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter.
- (2) A member of a pension scheme who has transferrable rights in relation to money purchase benefits acquires a right to take their cash equivalent in accordance with this Chapter.

...

## **97 Calculation of cash equivalents**

(1) Cash equivalents are to be calculated and verified —

- (a) in the prescribed manner, and
- (b) where a designation has been made under section 97A or 97B, in accordance with regulations under section 97C.

...

(2) Regulations may provide—

(a) that in calculating cash equivalents that relate to money purchase benefits account shall be taken—

- (i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;
- (ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent that relates to any category of benefits to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

- (i) any pension; or
  - (ii) any benefit in lieu of pension;
- and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

- (b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and
- (c) the state of the funding of the scheme.

(3A) For the purposes of subsection (3), the “appropriate date” —

- (a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 93A, and
- (b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 95.

(3B) Where regulations under subsection (2)(b) provide for the cash equivalent shown in a statement of entitlement to be increased or reduced after the member has made an application under section 95, the regulations may provide for the application under section 95 to lapse (but this does not prevent the member making a fresh application in respect of the increased or reduced cash equivalent).

(4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

...

## **98 Loss of right to cash equivalent**

- (1) A member of a pension scheme who acquires the right to take a cash equivalent under section 94(1) loses that right if no application to take the cash equivalent is made within the period required by section 95(1A) or (6A).
- (2) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if, after the member makes an application under section 95, the duty of the trustees or managers to do what is needed to carry out what the member requires is extinguished by section 99(2A).
- (3) Nothing in subsection (1) or (2) prevents the member from later acquiring a new right to take a cash equivalent in relation to the same benefits.
- (4) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if the scheme is wound up.

## **99 Trustees' duties after exercise of option**

- (1) Where—
  - (a) a member has exercised the option conferred by section 95; and
  - (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.
- (2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires—
  - (a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, and
  - (b) in the case of an application that relates to money purchase benefits, within 6 months beginning with the date of the application.
- (2A) Subsection (2) does not apply if—
  - (a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2015 by reason of factors outside their control, or
  - (b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.
- (3) If—
  - (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme; and
  - (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his or her surviving spouse or civil partner being forfeited; and
  - (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the

period of 3 months after the conclusion of the disciplinary or court proceedings  
(including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

- (4) The Regulatory Authority may, in prescribed circumstances, by direction grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.
- (4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements.
- (4B) Regulations may extend the period for compliance under subsection (2) or (3) in prescribed circumstances.
- (7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within six months of the date mentioned in paragraph (a) or (b) of subsection (2)—
  - (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
  - (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.
- (8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

...



## 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.

...

### **13 Extension of time limits for payment of cash equivalents**

- (1) The Regulatory Authority may grant an extension of the period mentioned in section 99(2)(a) or, as the case may be, (b) of the 1993 Act (trustees' duties after exercise of option) if the trustees have within that period applied to the Regulatory Authority for an extension and....

(a) the Regulatory Authority is satisfied that-

...

- (iii) the interests of the members of the scheme generally will be prejudiced if the trustees do what is needed to carry out what is required within that period

...

## **Appendix 4**

### **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.

...

#### **4 Investment by trustees**

- (1) The trustees of a trust scheme must exercise their powers of investment, and any fund manager to whom any discretion has been delegated under section 34 of the 1995 Act (power of investment and delegation) must exercise the discretion, in accordance with the following provisions of this regulation.
- (2) The assets must be invested—
  - (a) in the best interests of members and beneficiaries; and
  - (b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries .
- (3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

- (4) Assets held to cover the scheme's technical provisions must also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme.
- (5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.
- (6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.
- (7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.
- (8) Investment in derivative instruments may be made only in so far as they—
  - (a) contribute to a reduction of risks; or
  - (b) facilitate efficient portfolio management (including the reduction of cost or the generation of additional capital or income with an acceptable level of risk),and any such investment must be made and managed so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.
- (9) For the purposes of paragraph (5)—
  - (a) an investment in a collective investment scheme shall be treated as an investment on a regulated market to the extent that the investments held by that scheme are themselves so invested; and
  - (b) a qualifying insurance policy shall be treated as an investment on a regulated market.
- (10) To the extent that the assets of a scheme consist of qualifying insurance policies, those policies shall be treated as satisfying the requirement for proper diversification when considering the diversification of assets as a whole in accordance with paragraph (7).
- (11) In this regulation—

“beneficiary” , in relation to a scheme, means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme:

“derivative instrument” includes any of the instruments listed in paragraphs (4) to (10) of Section C of Annex 1 to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

“regulated market” means—

  - (a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field;
  - (b) a regulated market within the terms of Directive 2014/65/EU; or
  - (c) any other market for financial instruments—
    - (i) which operates regularly;
    - (ii) which is recognised by the relevant regulatory authorities;
    - (iii) in respect of which there are adequate arrangements for unimpeded transmission of income and capital to or to the order of investors; and
    - (iv) in respect of which adequate custody arrangements can be provided for investments when they are dealt in on that market;

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“technical provisions” has the meaning given by section 222(2) of the 2004 Act (the statutory funding objective).

...

## Appendix 5

### 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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Glasgow  
G2 7BW

Telephone: 0330 440 0802  
E-mail: [pension.enquiries@tatasteel.com](mailto:pension.enquiries@tatasteel.com)

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.

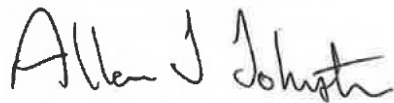
**The consultation is about you and the outcome will directly affect your retirement income. However, as this is a public consultation, anyone can comment whether or not they are connected to the Scheme. Not everyone responding will necessarily do so with the best interests of the Scheme membership in 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, appearing to read 'Allan Johnston', written in a cursive 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**

Registered Office: 125 Old Broad Street, London EC2N 1AR – Registered No. 171830 (Incorporated in England & Wales)

### **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.

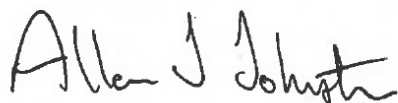
In particular, I will let you know if and when agreement is reached for the BSPS to be separated from Tata Steel through an RAA and whether it will then be possible for members and pensioners to have modified benefits in a new scheme. I would then also set out a timetable for providing detailed information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

<b>OPTION</b>	<b>COMMENT</b>
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 BSPS 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 BSPS 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 BSPS 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 BSPS 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 BSPS in its current form and that termination of benefit accrual is an important step in securing the best outcome for BSPS 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 BSPS 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.

**Trustee Statement - 16 May 2017**

In reporting its annual results, Tata Steel has today confirmed that, after prolonged and intense discussions with the BSPS Trustee, The Pensions Regulator (TPR) and the Pension Protection Fund (PPF), the key commercial terms of a Regulated Apportionment Arrangement (RAA) have been agreed in principle between Tata Steel UK Limited (TSUK) and the BSPS Trustee. These terms are in line with the published principles of TPR and PPF. However, the RAA is subject to detailed documentation and formal approval by TPR and non-objection from the PPF. The parties are in positive discussions and are hopeful of reaching final agreement shortly.

The RAA would separate the British Steel Pension Scheme from Tata Steel. It would take effect once agreed conditions are satisfied, including the payment by Tata Steel of an agreed amount of £550 million to the BSPS and BSPS being given a 33% equity stake in TSUK.

TSUK has also agreed in principle that, post RAA, all members and pensioners of the BSPS would be offered an option either to transfer to a new pension scheme sponsored by TSUK offering modified benefits, or to remain in the BSPS and so receive PPF compensation. For it to come into effect, the new pension scheme will be subject to certain qualifying conditions relating to factors such as size and funding level. Should these qualifying conditions not be met, the new pension scheme would not come into effect and all members of the BSPS would receive PPF compensation.

The assets to be transferred to the new scheme would include a proportion of the equity stake in TSUK and would otherwise be invested in low risk asset classes which would be expected to generate cash inflows sufficient to fund the modified benefits with a buffer to cover residual risks.

The BSPS Trustee Chairman, Mr Allan Johnston commented:

*"I am pleased that agreement in principle has been reached with TSUK about sponsorship of a modified pension scheme subject to qualifying conditions.*

*"Although the PPF is an important safeguard for pension schemes generally, the Trustee believes that the BSPS has sufficient assets to offer members the potential for better outcomes by enabling them to transfer to another scheme offering modified benefits. For most Scheme members, these modified benefits are expected to be of greater value than those they would otherwise receive by transferring into the PPF.*

*"TSUK's willingness in principle to sponsor a new scheme post RAA, subject to conditions agreed with the BSPS Trustee, paves the way to allowing members to make a choice based on their personal circumstances.*

*Discussions are progressing constructively and we expect to be in a position to communicate the final outcome to members soon."*