

Ombudsman's Determination

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

Outcome

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

Complaint summary

2. Mr S has complained about the change in the Cash Equivalent Transfer Value (**CETV**) calculation basis. He has said that he was disappointed with the CETV that he was paid compared to other members who transferred out of the OBSPS after the change in CETV calculation basis.
3. Mr S has also complained about the factors used during the calculation of his CETV. He said that The Pensions Advisory Service (**TPAS**) told him that the factor used to represent his length of retirement was at the lower end of the range of figures TPAS would usually see. He said that this meant that his CETV was undervalued.

Background information, including submissions from the parties

4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a PPF assessment period, the BSPS changed its name to the OBSPS.
5. The Ombudsman considered Mr S' complaint and deemed it to be materially similar to Mr A's case, PO-16970. Mr A's group contained 123 associated complaints, one of which was Mr S'. Mr A had complained that the Trustee amended the CETV calculation basis, resulting in significantly higher CETVs after his transfer had been completed, without informing him it would be changing the calculation basis. Mr A had argued that the change should have been made at an earlier date and, therefore, the CETV he received was incorrect.
6. The Ombudsman determined Mr A's complaint on 13 January 2020 (**the Determination**). The Determination explains the reasons why the Ombudsman did not uphold Mr A's complaint and can be found on our website. Where Mr S' complaint

overlaps with that of Mr A, those points will not be repeated here, but reference will be made to the Determination.

7. The majority of the complaints within Mr A's group were discontinued following the Determination, on the basis that they were materially similar and therefore the outcome would be identical.
8. Mr S asked for his case to be looked at individually because, in his view, his circumstances differ to Mr A's. Paragraphs 9 to 16 provide a brief timeline of events relating to Mr S' complaint.
9. On 8 July 2016, Mr S requested a transfer quotation.
10. On 13 July 2016, he was supplied with a guaranteed CETV of £206,350.96.
11. He completed and returned his paperwork, and, on 13 September 2016, his transfer was paid to his chosen receiving scheme, Alliance Trust.
12. In March 2017, the Trustee decided it would amend the CETV calculation basis, this change took effect from 1 April 2017. The background to this decision has been explained in paragraphs 36 to 63 of the Determination. This is replicated in Appendix One for ease of reference. References to appendices within paragraphs 36 to 63 are references to appendices to the Determination and are not replicated here.
13. On 1 April 2017, the CETV calculation basis changed. This had the effect of increasing transfer values for the majority of members.
14. Mr S raised his complaint with the Trustee on 16 August 2017.
15. Mr S has said that his complaint should be looked at individually on the basis that his complaint was not the same as Mr A's. His particular issues have been outlined in paragraphs two and three above.
16. In response, the Trustee said:
 - The factors used to calculate CETVs were decided upon following advice from the OBSPS Actuary. The factors reflected the expected cost of providing the member's benefits and were calculated on the best estimate basis.

Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Mr S has argued that it should not have been possible for there to be such a range of CETVs paid to members. The Adjudicator was of the view that this argument had already been considered in paragraph 159 of the Determination, which said:

“I appreciate Mr A’s concerns with the value of his benefits and I can understand that it is difficult to accept that his CETV is correct when other members, his colleagues and friends, received vastly increased figures after 1 April 2017. But I do not find that the CETV Mr A received was incorrect. It was calculated using the agreed basis at the time of the calculation. I acknowledge Mr A’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 in August and transferred in November 2016, and 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 A was given in August 2016, to be incorrect.”

- Mr S also complained that he was unhappy with the factor the Trustee used to replicate his retirement period when it calculated his CETV. The Adjudicator was of the view that the factor used by the Trustee fell within the scope of what TPAS said was usual, so the Adjudicator did not agree that this element of the complaint would succeed.
- Furthermore, the Adjudicator said that the role of the Actuary had already been considered within the Determination (see Appendix Two). In paragraph 100, the Ombudsman said:

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

18. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. He said that:

- The factor used for his length of retirement was at the lower end of the scale that was provided by TPAS. So, it should be investigated.
- The Ombudsman’s investigation cannot be considered “extensive and exhaustive” if the low factor was not investigated.
- The underfunding reduction meant that the CETV he received was reduced by 8%. However, after his CETV was paid, the underfunding reduction was modified, so other members reductions were 3% or 5%.

19. The Trustee responded and said that Mr S' CETV was not subject to an underfunding reduction, so this element of the complaint is not applicable. It provided a copy of Mr S' CETV which illustrated this.
20. I note the additional points raised by Mr S but I agree with the Adjudicator's Opinion.

Ombudsman's decision

21. Mr S' complaint is materially similar to Mr A's, which I have already Determined.
22. The Trustee has provided a copy of Mr S' CETV and this shows that an underfunding reduction was not applied to his CETV. As such, I am satisfied that Mr S was paid his CETV in full, so this element of the complaint cannot be upheld.
23. I appreciate Mr S' concerns about the value of his benefits, and I understand that it is difficult for him to accept that his CETV was calculated correctly when his colleagues received vastly increased figures a only few months later. I also acknowledge Mr S' comments that his CETV was likely to have been larger if it was calculated on the post April-2017 basis. Nevertheless, this statement is made with the benefit of hindsight. Mr S was paid a CETV in accordance with the CETV calculation basis at the time, so I find that there was no maladministration.
24. Mr S has also complained about the factors that were used when calculating his CETV. He said that he had spoken to TPAS, who told him that the factor used for his length of retirement was around 11.5, which was at the lower end of what it would normally expect.
25. If you divide Mr S' transfer value by his annual pension, you are left with a value of 11.03, which is what TPAS appear to be referring to. While I can see why Mr S refers to this as the expected retirement factor, this is overly simplistic. An actual CETV calculation would take into account life expectancy of scheme members plus how far away from retirement the member is, what investment returns are expected in that period, and a multitude of other things which are all broken down into "factors" to work out how much money the scheme would need on the date of the calculation to provide the benefits expected to be paid at Normal Retirement Date.
26. The Trustee has confirmed that it set its factors having taken advice from the OBSPS Actuary. In paragraphs 90 to 100 of the Determination (see Appendix Two), I explained my decision not to investigate the actuarial assumptions which underpin the calculations. So, I will not look into this further.

PO-20360

27. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
3 September 2021

Appendix One

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

36. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 4), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that trustees must obtain and consider appropriate advice on what the SIP must cover.
37. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 4), requires trustees to create and maintain a SIP, reviewing it at least once every three years, and without delay after a significant change in investment policy. This regulation also sets out that trustees must obtain and consider appropriate advice on what the SIP must cover.
38. 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".
39. 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.
40. 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.
41. 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.

42. 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.
43. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings, respectively.
44. 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.
45. 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.
46. 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.

47. The Actuary's report of March 2017 confirmed that, as the OBSPS' future was now less uncertain, changes to the OBSPS' investment strategy were therefore being formalised through the OBSPS' new SIP. On that basis, as advised by the Actuary, the Trustee proceeded with reviewing the CETV assumptions. The Trustee made the decision to amend the CETV assumption, with effect from 1 April 2017, for any member retiring before reaching his or her NPD or requesting a CETV on or after that date. This resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

(iii) Amendment of the CETV calculation basis

48. 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.
49. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is set out in Appendix 2 below. The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Transfer Regulations**), also affect the member's right to transfer and set out the transfer requirements (see Appendix 3). In addition, in 2008, TPR published guidance for trustees in relation to transfer values which is available on TPR's website¹.
50. 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.
51. TPR's Transfer guidance states:
- “19. The assumptions must be chosen with the aim of leading to a best estimate of the ICE. This is a best estimate of the amount of money needed at the effective date of the calculation which, if invested by the scheme, would be just sufficient to provide the benefits. However, trustees should recognise that 'best estimate' is not a precise concept and they will often need to be pragmatic and accept choices which seem to them reasonable in the light of the information and advice they have obtained.”
52. 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,

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

which in turn will influence the choice of interest rates with which future expected cash flows are discounted.”

53. 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.”

54. 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.
55. As explained in paragraphs 38 to 40 above, in the Trustee’s meeting in March 2016, the Trustee agreed to change the MVAs but maintained all of the other factors, having considered actuarial advice to that effect. The Actuary also considered the application of an underfunding reduction, suggesting regular future review, but determined that it was not appropriate at the time as the OBSPS had been more than 100% funded, as at 31 March 2014. The Trustee considered and agreed the change to the MVAs within the CETV calculation basis, which was implemented with effect from 1 September 2016. Members were not informed of these changes and the changes did not cause any delays in the issuing of CETV quotations or payment of CETVs.
56. 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.

57. As mentioned in paragraphs 42 to 45 above, the Actuary provided two further reports, dated 5 September 2016 and 23 November 2016, which were considered at the September and December Trustee meetings. Both reports considered the funding position in relation to CETVs to be over 100% on the existing CETV calculation basis, which meant that there was no need for an underfunding reduction. The reports went on to discuss the OBSPS' investment strategy due to its uncertain future, with the possible routes meaning that de-risking would be required. The Actuary indicated that, by 23 November 2016, a significant proportion of the preliminary de-risking that was permitted by the changes, reflected in the August 2016 amendment of the SIP, had been completed. In the September report, the Actuary referred to the future targeted investment strategy not yet being specified, with both reports stating that, once completed, the expected changes would need to be reflected in a new SIP and in the CETV calculation basis. The Actuary pointed out that the impact of assuming lower investment returns would significantly increase CETVs to a level greater than the OBSPS could afford, meaning that an underfunding reduction would then need to be considered and likely applied.
58. 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.
59. In the Trustee meeting of 8 March 2017, the Trustee approved the draft SIP, effective from 1 April 2017. On the advice of the Actuary, the Trustee also proceeded with reviewing the CETV assumptions, resulting in the Trustee's decision to amend the assumptions, with effect from 1 April 2017, for any member requesting a CETV on or after that date. As stated in paragraph 46, the amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.
60. Finally, Mr A has expressed concern that a trustee was also a member and Mr A's concerns that this will have caused a conflict of interest for the Trustee. TPR has provided regulatory guidance for trustees in relation to conflicts of interest², which states that it is good practice to put in place a conflicts of interest policy to enable identification and management of any conflicts that may arise. The Trustee has explained that it had a conflicts of interest policy in place and considered whether

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

any trustee had conflicting interests at the beginning of every Trustee board meeting. Potential conflicts were dealt with in line with the provisions of the conflicts of interest policy and were minuted accordingly.

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

61. Part 4ZA, which contains sections 93 to 101 of the PSA 1993, sets out the trustees' statutory requirements in relation to transfers. Section 93A of the PSA 1993, sets out the right to a statement of entitlement (also known as a guaranteed CETV). As long as the member meets the criteria set out in section 93 of the PSA 1993, section 93A requires the trustees to provide the member with a statement of entitlement in respect of his or her transferable rights. Trustees are required, under Regulation 6(1) of the Transfer Values Regulations, to provide the statement of entitlement within three months after the date of the member's application for a statement of entitlement or, where it is unable to do so for reasons beyond its control, it may take up to a further three months, as required, to do so.
62. Section 94 of the PSA 1993, provides a member who has been provided with a statement of entitlement under section 93A of the PSA 1993 with a right to take the cash equivalent in accordance with the remainder of Part 4ZA of the PSA 1993. Section 95 of the PSA 1993, details how an application to take the cash equivalent must be made, the relevant timeframe being three months beginning with the guarantee date, and the ways in which the right to a cash equivalent can be taken, for example for acquiring rights allowed under the rules of a personal pension scheme.
63. Section 99 of the PSA 1993, sets out the trustees' duties after the member has exercised his or her right to take a transfer in accordance with section 95 of the PSA 1993. Section 99(2) of the PSA 1993, states that trustees must do what is needed to carry out what the member requires within 6 months of the relevant period.

Appendix Two

The extent of my jurisdiction

90. Mr A has complained that the pre-April 2017 calculation basis was incorrect and that it should have been updated at an earlier point. Mr A's representative has commented that I should include the Actuary as a party to this complaint and investigate his role and the quality and correctness of the advice that he provided to the Trustee in relation to the CETV calculation method (by which I understand to mean not the correctness of its mathematical accuracy but rather the factors used to derive the calculation). My office has explained to Mr A and his representative why it would be outside my jurisdiction to do so and provided detailed reasons. Mr A and his representative initially accepted this but have since changed their position and have suggested that they would look to Parliament to decide. This is not a matter for Parliament but for me. Other members too have raised this jurisdictional issue with my office. I have set out below, in paragraphs 92 to 100, my reasons why I do not decide whether I have the necessary jurisdiction.
91. What I do have jurisdiction over is the Trustee in relation to its duty to appoint an actuary and monitor their performance (indeed I have considered this below, in paragraphs 141 to 143 (and see also paragraph 127)).
92. I note that the relevant legislation in respect of the complaints before me, provides that it is the *trustees* of a scheme (not actuaries) who are responsible for calculating and verifying CETVs; see Regulation 7(3) of The Occupational Pension Schemes (Transfer Values) Regulations 1996. Plus, under Rule 16(1)(f) of the OBSPS' Rules, whilst the value of the cash/other assets to be included in a transfer payment "will be as may be certified by the Actuary to be applicable to the case", this is subject to the proviso that the Trustee is "reasonably satisfied that it is at least equal to...the amount of [the] cash equivalent calculated in the manner prescribed under section 97 of the 1993 Act".
93. It is not clear if I do have jurisdiction to consider the actuarial advice going to methodology and assumptions made by the Actuary in connection with the CETVs. But I do not need to decide the point (see paragraph 100).
94. Section 146(4) of the Pension Schemes Act 1993 and The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, provide that any person who is not a person responsible for the management of the scheme but who is concerned with administration of the scheme is an 'administrator' and treated as if he were a person 'responsible for the management' of the scheme for the purposes of my jurisdiction. From April 2005, section 146(4A) provides that a person or body of persons is concerned with the administration of a scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.
95. No regulations have been made for persons who are concerned with the financing of or the provision of benefits under a scheme. Therefore, I have considered whether

the functions performed as described in paragraph 90 means that the Actuary is a person concerned with the administration of the scheme (from April 2005).

96. To understand the difference before and after April 2005, in *Britannic Asset Management Ltd and others v Pensions Ombudsman* (2002) the Court of Appeal held that there was a distinction between someone who was “concerned with the administration of the scheme” and someone who undertakes an act of administration concerned with the scheme. Only someone “concerned with the administration of the scheme” would fall within the Ombudsman’s jurisdiction. Subsequently, with effect from April 2005, section 146(4A) came into force providing for someone who undertakes an act of administration to fall within my jurisdiction.
97. I have looked at *Legal and General v CCA Stationery [2003] EWHC 2989 (Ch) (L&G)*, which did not consider the identical issue but is still relevant. The court held that the calculation of the monthly value adjustment factors (**mvafs**), is not an act of administration; the assessment of the mvafs are not part of the administration of the contract (this was an insured scheme); and the method of setting mvafs was not within the Ombudsman’s remit (paragraphs 58-62 of the judgment). The case is distinguishable however as its central premise looked at the issue in the context of L&G’s Long Term Fund across all the pension schemes it manages. It is worth noting:-
 - 97.1. Advising the Trustee on the methodology to apply in order to calculate the CETVs might not be a type of activity that is administrative in nature (it may be considered more to be financial).
 - 97.2. Although the actuarial models, indices and tables etc, that the Actuary suggested were then applied to the OBSPS by the Trustee (having considered the Actuary’s advice that these factors were suitable), their derivation was in part from figures that are used industry wide (for example, RPI/CPI indices, NSI mortality rates) or from actuarial firms (in this case Willis Towers Watson) for its client bases. So, that actuarial activity is not likely to be of a type that is administrative in nature in so far as it is an act of administration concerned with the OBSPS.
 - 97.3. However, some of the industry or actuarial firm wide models were modified to be OBSPS specific (for example best estimate basis) and the Actuary’s recommendation as to their suitability for the OBSPS might therefore be considered to have been an act of administration concerned with the OBSPS (see paragraph 94).
 - 97.4. I could delegate assessing the appropriateness of such modifications to another actuarial body because I do not have the necessary expertise to make such an assessment myself, although I would have to make the ultimate decision.
 - 97.5. I have looked at the broad principles concerning the Actuary’s approach in his ongoing advice to the Trustee during the relevant period that were specifically

flagged to me, in terms of whether they fall within a range of reasonableness (see paragraph 127 below).

97.6. In L&G, the court's view was that everything pointed to the carrying out of the calculations being a "purely commercial transaction" (paragraph 66 of L&G). Arguably, the relationship between the Actuary and the Trustee was a commercial one.

98. In the Court of Appeal case of *Government Actuary's Department v Milne [2013] EWCA Civ 901* the Court of Appeal observed that the Government Actuary Department's (**GAD**) role in relation to the scheme differentiated from the role of an actuary in a private sector defined benefit scheme. It was noted that GAD's role in updating the actuarial tables which provided the basis for benefit calculations under the scheme was "essentially interventionist" and "integral to the structure of the scheme". It was noted also that GAD was required by law to take a proactive approach to updating the tables and that the trustee could not wait to be asked to advise about updating them. The authorities had no choice but to rely upon the actuarial tables and were unable to use different commutation rates provided by other actuaries, which set GAD apart from actuaries retained by the managers of pension schemes to advise and update commutation tables. Critically, though, in determining whether GAD was an administrator the court only looked at exploring GAD's duty to prepare and publish the commutation factors from time to time. The method for deriving the commutation factors was not a factor in those deliberations.
99. Following the Court of Appeal decision, my predecessor went on to Determine Mr Milne's complaint (PO-1327), which he upheld, and found that GAD failed to identify its continuing responsibility to calculate and notify the commutation factors. Thereafter, fresh complaints were made to my office, concerning that the commutation figures produced by GAD in 1998 (and other dates) were incorrect. I responded that my predecessor was clear that he made "no finding as to what the factor would have been, that is entirely a matter for GAD's judgment (it is not, for example, open to [him] to direct that an independent actuary should be consulted)". It was my view (and it was not subsequently challenged in legal proceedings) that GAD, in performing the function of calculating actuarial factors, necessitated the expertise of an actuarial judgment, and so was not a person concerned with the administration of the firefighters' scheme, so was not an 'administrator' for the purposes of my jurisdiction.
100. To conclude, perhaps the Actuary's involvement in the calculation of CETVs is not an "act of administration concerned with the scheme" in this case. But in any event, bearing in mind my extensive and exhaustive investigation and also that I have not upheld any aspect of the complaint, to such extent as is necessary, I am exercising my discretion not to determine my jurisdiction over the Actuary. Further, the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995, Rule 3, provides that any amendment of the complaint or submitting a supplementary statement, needs my leave which I decline.

