

## Ombudsman's Determination

Applicant	Mr N
Scheme	The Old British Steel Pension Scheme ( <b>the OBSPS</b> )
Respondent	B. S. Pension Fund Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr N has complained that the Trustee should have informed him that the change in Cash Equivalent Transfer Value (**CETV**) calculation basis would cause CETVs to increase.
3. He also complained that the information surrounding the OBSPS' funding position raised the possibility of it entering the Pension Protection Fund (**PPF**), which encouraged him to transfer out.

## 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. Mr N's complaint was previously considered and was deemed to be materially similar to Mr D's case, PO-18762. Mr D complained 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 quotation on the new calculation basis, but Mr D opted to proceed with the CETV he had been quoted. Mr D argued 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.
6. The Pensions Ombudsman determined Mr D's complaint on 13 January 2020 (**the Determination**). The Determination explains the reasons why Mr D's complaint was not upheld and can be found on The Pensions Ombudsman's Office's (**TPO's Office**) website. Where Mr N's complaint overlaps, those points may not be repeated but reference will be made to the Determination.

7. The majority of the complaints within Mr D's group were discontinued following the Determination, on the basis that they were materially similar and so the outcome would be identical.
8. Paragraphs 9 to 18 below, provide a brief timeline of events relating to Mr N's complaint.
9. On 3 February 2017, Mr N requested a transfer quotation.
10. On 27 February 2017, he was supplied with a guaranteed CETV of £187,663.69.
11. On 8 March 2017, the Trustee decided to amend the CETV calculation basis. This change would take effect from 1 April 2017. The Trustee also decided that any members who had been provided with a CETV illustration, and had yet to be paid, should be given the opportunity of postponing their transfer decision. Those who postponed would be given an updated transfer value calculated in accordance with the new CETV calculation basis.
12. On 9 March 2017, Mr N completed the transfer paperwork and accepted the guaranteed CETV of £187,663.69.
13. On 20 March 2017, the Trustee sent a letter (**the Trustee's Letter**) to Mr N. This letter said that the CETV calculation basis was being amended and that, in most cases, transfer values were likely to increase. The Trustee offered him the opportunity to postpone his transfer and request a new illustration calculated on the new transfer basis. This letter is set out in Appendix One (paragraph 63).
14. On 22 March 2017, Mr N completed and returned the option form included within the Trustee's Letter. He elected to proceed with his transfer on the existing basis.
15. With effect from 1 April 2017, the Trustee amended the CETV calculation basis. This had the effect of increasing transfer values for the majority of members. The background to this decision has been explained in paragraphs 38 to 68 of the Determination (see Appendix One).
16. On 5 April 2017, his transfer was paid to his chosen receiving scheme, with Aviva.
17. Mr N raised his complaint with the Trustee on 21 June 2017.
18. Mr N has said he cannot accept the outcome of the Determination as he believes his case is substantially different. He said that:-
  - The letter he received, offering him the option to postpone the transfer, did not reflect the letter that was considered by the Ombudsman in the Determination. He said that his letter clearly stated his CETV could go down.
  - He no longer has a copy of the letter.
  - There were deadlines imposed on him, which meant that his decision was rushed.

- He was concerned about the OBSPS' funding position and was worried that his CETV would be reduced or that the OBSPS would enter the PPF. He said that these fears were a result of the Trustee's scaremongering.
- The OBSPS was underfunded, so he could not see how an increase in CETVs was possible.

## **Adjudicator's Opinion**

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

- Mr N has complained that the letter referenced in the Determination did not reflect the letter he received when he was given the option to postpone his transfer. He was unable to provide a copy of the letter he said he received. However, the Trustee has provided TPO's Office with a copy of the Trustee's Letter, which Mr N had signed and returned.
- This showed that Mr N elected to proceed with a CETV paid in accordance with the CETV illustration he received in February 2017. This letter is consistent with the letter that the Ombudsman considered when he issued the Determination. The letter used for the Determination is set out in paragraphs 63 to 64 of the Determination (see Appendix One).
- Consequently, the Adjudicator was satisfied that the Trustee's Letter was the same as the letter referred to in the Determination. So, the Adjudicator was of the view that Mr N's complaint had already been considered in paragraphs 146 to 154 of the Determination (see Appendix Two).
- Mr N also argued that he was set a two-week deadline to make his decision on whether to complete his transfer or wait for the new CETV calculation basis. As previously stated, the Adjudicator was satisfied that Mr N was sent the Trustee's Letter alongside his option form. The Trustee's Letter did not include a deadline for Mr N's response. So, in the Adjudicator's view, this element of Mr N's complaint would be unsuccessful.
- Mr N has argued that the Trustee provided information about the OBSPS' funding position which scared him into transferring out. He said that he had concerns that his CETV could reduce or the OBSPS would move into the PPF. The Adjudicator said this had already been considered in paragraphs 93 to 117 of the Determination (see Appendix Three).
- The Determination showed that the Ombudsman found the Trustee's actions were transparent and "did not amount to scaremongering". So, the Adjudicator was of the view that this element of Mr N's complaint was not materially different to the one brought by Mr D.

- Mr N has argued that the CETVs should not have increased when the OBSPS was in deficit. Again, the Adjudicator felt that this had already been considered in the Determination. The Trustee has provided evidence that it considered the application of an underfunding reduction but considered this unnecessary throughout the period leading up to the change in CETV calculation method. The Trustee instructed the Actuary to consider the OBSPS' funding position prior to implementing the change in CETV calculation method. So, there was no maladministration.
20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. He said that:-
- His CETV, if calculated in accordance with the new CETV calculation basis, would have been around £400,000 instead of the £187,000 he was paid.
  - The letter he received from the Trustee said that the CETV could be "lower" following the change in CETV calculation basis. He said that the word "lower" was the only word he considered when he decided to continue with his transfer.
  - His CETV was never going to decrease, if calculated under the new CETV basis. He argued that the Trustee knew this and should have told members.
  - He would not have made a complaint had the CETVs increased by less than 30%. However, he said it was unacceptable that CETVs doubled when calculated in accordance with the new CETV calculation basis.
  - The Trustee should not be allowed to "hide behind documents and procedures". What it did was "morally cruel".
  - There were significant uncertainties surrounding the future of the OBSPS and its ability to support members' pensions. The Chairman's Statement in June 2016 (**the Chairman's Statement**) said that "the Trustee considers it increasingly likely that the Scheme would be required to go into the PPF."
  - He was required to make a decision, as to whether he accepted his CETV or wait for the new CETV calculation basis, within two weeks. This deadline may not have been included within the Trustee's Letter, but was definitely the case.
21. I note the additional points raised by Mr N but agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

22. Mr N's complaint is materially similar to Mr D's, which I have already Determined.
23. I appreciate Mr N's concerns about the value of his benefits, and I understand that it is difficult for him to accept that his CETV was calculated correctly when his colleagues received vastly increased figures just a few months later. He said that he

would have accepted an increase of less than 30% but was not happy that some CETVs doubled, when calculated in accordance with the new CETV basis. I also acknowledge Mr N's comments that his CETV was likely to have been significantly larger, if it was calculated on the post April-2017 basis. Nevertheless, this statement is made with the benefit of hindsight. Mr N was paid a CETV in accordance with the CETV calculation basis at the time, so I find no maladministration.

24. Mr N has said that the Trustee wrote to him and said that the CETV could be "lower" following the change in CETV calculation basis. He has been unable to provide a copy of the letter in which he was told this. However, the Trustee has supplied a copy of its Letter, which was signed and returned by Mr N.

25. The Trustee's Letter said that:

"The transfer value which you accepted was calculated on the current basis; applying the revised factors in most cases is expected to result in a higher value (although we cannot give a guarantee to that effect)."

26. While there is no evidence to suggest that the Trustee wrote to Mr N and said that his CETV could be "lower", it is clear that the Trustee said that it could not guarantee an increase in CETVs following the change in CETV calculation basis. However, the Trustee's Letter clearly said that, in most cases, it would expect the CETV to increase. Therefore, I find that the Trustee was clear on the effects of the change in CETV calculation basis.

27. I considered the Trustee's Letter in the Determination, I found that there was no requirement for the Trustee to offer members a choice, between the accepted CETV and a CETV under the new calculation basis, under legislation or the OBSPS Rules. Despite this, the Trustee did provide the option alongside sufficient information to enable members to make informed decisions.

28. Regarding Mr N's argument that the Trustee knew that his CETV was not going to decrease, I disagree, and my reasons were explained in paragraphs 146 to 152 of the Determination (see Appendix Two). I concluded at paragraph 152 that:

"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 on 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, the Trustee did not have the resources to do so."

29. Mr N has said that the Trustee should not be allowed to "hide behind documents and procedures" and that its actions were "cruel". I will only uphold a complaint where I am satisfied that the respondent's actions amount to maladministration. In this case, I

am satisfied that the Trustee has acted properly, and I do not find any maladministration.

30. Mr N said that he had concerns surrounding the future of the OBSPS and its ability to support members' pensions. In particular, he noted the Chairman's Statement, which raised the prospect of the OBSPS joining the PPF. He said that this encouraged him to transfer out. In paragraphs 97 to 107 of the Determination (see Appendix Three), I considered the information announcements the Trustee issued in relation to the future of the OBSPS. In the Determination, I found that the Trustee correctly explained that the OBSPS could enter the PPF and what that would mean for members' benefits. I do not believe the information announcements were designed to encourage members to transfer out of the OBSPS.
31. While I accept that there had been a period of uncertainty for both members of the OBSPS and employees of Tata Steel UK (**TSUK**), the information provided by the Trustee was not misleading and did not amount to scaremongering.
32. Mr N has argued that he was required to decide, as to whether he accepted his CETV or wait for the new CETV calculation basis, within two weeks. He said that this deadline may not have been outlined within the Trustee's Letter, but was definitely the case. I have seen no evidence of a deadline being imposed on members, such as Mr N, so I do not agree that Mr N was rushed into making a decision. As explained in paragraphs 30 and 31, I accept that there had been a period of uncertainty surrounding the OBSPS and this may have led to members feeling that their decisions were time sensitive. However, I have seen no evidence to suggest that the Trustee imposed a deadline on Mr N in the manner he has suggested.
33. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 September 2021

## Appendix One

### Paragraphs 38 to 68 from Determination PO-18762

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

38. 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.
39. 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".
40. 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.
41. 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.
42. 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.

43. 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.
44. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings respectively.
45. 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.
46. 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.
47. 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.
48. 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 assumptions, 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**

49. 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.
50. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is provided in Appendix 2 below, however the Occupational Pension Schemes (Transfer Value) Regulations 1996 (**the Transfer Regulations**), also affect the member's right to transfer and set out the transfer requirements (see Appendix 3). In addition, in 2008, TPR published guidance for trustees in relation to transfer values which is available on TPR's website<sup>1</sup>.
51. 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.
52. 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.”
53. 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.”
54. The guidance also says that trustees should make evidence-based objective decisions:

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

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

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

55. 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.
56. As explained in paragraph 40 to 42 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.
57. 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.
58. As mentioned in paragraphs 44 to 47 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.

59. 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.
60. 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 48, the amendment to the CETV actuarial factors resulted in most members seeing an increase in their CETV after 1 April 2017, compared to CETVs provided before 1 April 2017.

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

61. In the Trustee 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.
62. Members whose circumstances met the criteria, set out in paragraph 61 above, were sent letters offering them the opportunity to await a calculation on the post April 2017 basis. The letters were sent out in batches, starting on 20 March 2017, and some further letters were later issued individually. These letters differed slightly, depending on whether: the member had already returned their paperwork to proceed with the

transfer; and the request for a CETV quotation or payment was received by the Trustee before or after 31 March 2017.

63. Mr D had returned his paperwork requesting to proceed with his transfer. His letter from the Trustee stated:

"I am writing to you about your decision to transfer out your [OBSPS] benefits to another registered pension arrangement by means of the [OBSPS] paying a Cash Equivalent Transfer ("transfer").

When an OBSPS member initially requests a transfer, the Pensions Office calculates 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 to [OBSPS] members 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 transfer value which you accepted was calculated on the current basis; applying the revised factors in most cases is expected to result in a higher value (although we cannot give a guarantee to that effect). You can of course proceed with your transfer on the basis quoted; however, you may wish to reconsider your decision taking into account the above information. If you decide to proceed with your request to transfer then please indicate in the box below and return this letter to the Pensions Office in the pre-paid envelope.

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 your transfer request, the Trustee has agreed that you will automatically be provided with an updated transfer value statement using the revised factors when these are available.

Allowing time for the necessary system changes following the closure of the [OBSPS] to future accrual with effect from 31 March 2017 for [OBSPS] employee members, it is anticipated that revised transfer value quotations will be available from the end of May 2017.

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

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

64. Mr D’s letter contained an option form titled “MEMBER’S DECLARATION” which stated:

“(please tick one box below to indicate your decision)

☐ **I wish to proceed** with transferring-out my [OBSPS] benefits.

I understand that the Trustee’s decision to change the transfer value basis from 1 April 2017 is likely to result in an increase to future transfer values payable by the Scheme and that any increase is not reflected in the transfer value I have accepted.

☐ **I do not wish to proceed** with transferring-out my [OBSPS] benefits at this time.

I understand that the Pensions Office will send me an updated transfer value quotation after the change in the transfer value basis takes effect and the Pensions Office systems are able to process such requests (likely to be towards the end of May 2017) and I understand that it is not guaranteed that the updated transfer value quotation will be greater than the current quotation.” **[original emphasis]**

65. Mr D returned his option form requesting to proceed with transferring out.

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

66. Part 4ZA, which contains sections 93 to 101 of the PSA 1993, sets out the trustee’s 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 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.
67. 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.

68. Section 99 of the PSA 1993, sets out the trustee's 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

### Paragraphs 146 to 154 from Determination PO-18762

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

146. The Trustee is correct when it states that there is no requirement, where trustees alter a pension scheme's CETV 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, like Mr D, 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 them under statutory 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 D 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.
147. However, that suggestion has been made with the benefit of hindsight. There are a number of reasons why it would not have been reasonable for the Trustee to guarantee that transfer values would increase.
148. 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.
149. 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 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.
150. 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 OBSPS. 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.
151. 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 [NPD].”

152. 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 on 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, the Trustee 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.
153. 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, 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 a 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.
154. 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.

## Appendix Three

### Paragraphs 93 to 117 from Determination PO-18762

#### **PART A: Information announcements in respect of possible changes to the OBSPS and their impact on Mr D's decision to transfer out**

93. Mr D claimed that the information provided by the Trustee, regarding the future of the OBSPS and the likelihood of it entering the PPF, scared members, including himself, into taking actions that they may not have otherwise taken, such as transferring out. Mr D says he was afraid that he would lose flexibility over when and how he could take his benefits, and that his benefits would be reduced if the OBSPS entered the PPF.
94. 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.
95. 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.
96. Mr D returned the required paperwork to transfer out on 16 March 2017, and his IFA supplied the remaining paperwork on 17 March 2017, before the Trustee's changes to the SIP or the CETV calculation basis were effective. However, Mr D was offered the option to wait for a new CETV to be provided on the new basis; but he decided against exercising that option, confirming on 31 March 2017, that he wished to proceed on the existing basis. Mr D's transfer was finally paid on 8 May 2017.
97. The announcements provided by the Trustee prior to Mr D's transfer referenced the likelihood of the OBSPS entering the PPF because changes were being contemplated in respect of TSUK, the principal employer of the OBSPS, and so the OBSPS could be affected. The primary purpose of the announcements, in May and June 2016 (which I have referred to in paragraphs 19 to 21 above), was to inform the members of the consultation undertaken by the Government on the Trustee's proposal to modify benefits so that the OBSPS could remain outside of the PPF.
98. There was no reference in those announcements to, or promoting, transferring out. However, there was information showing how PPF compensation would differ from the benefits available under the OBSPS. Under the PPF compensation provisions (Schedule 7 to the PA 2004), PPF compensation depends on the member's age and whether he or she has reached NPD by the scheme's assessment date. The 26 May 2016 announcement (and others) merely, correctly and rightly, factually referenced

that compensation under the PPF would result in a 10% reduction in benefits for those below age 65 (the OBSPS' NPD) at the PPF assessment date, as Mr D was.

99. On 12 August and 12 September 2016, the Trustee provided further updates in relation to the possibility of providing modified benefits and the need to move to low risk investments in order to make this feasible. Again, neither of those updates mentioned transferring out, but both updates referenced the likelihood of the OBSPS entering the PPF if modified benefits could not be provided using one of the methods that was available. I do not find these announcements to be inappropriate. They merely served to update members on: the situation regarding the Trustee's negotiations in relation to the OBSPS' future; and the need for the OBSPS to provide modified benefits if PPF entry were to be avoided.
100. It has been argued that the August and September 2016 announcements should have referenced the Trustee's decision, in August 2016, to take steps to de-risk the profile of the OBSPS' investments and the impact that moving to low risk investments would have on CETVs. However, there is no legal requirement for pension scheme trustees to inform members of changes to the pension scheme's investment strategy or to the pension scheme's SIP; and the changes that the Trustee made, in August 2016, did not impact the CETV calculation basis. Although, the Trustee stated that there was a need to move to low risk investments, I do not consider it appropriate for the Trustee to have explained the impact this could have on CETVs at this point, for the reasons set out below in paragraph 101.
101. First, no decision had been made to amend the CETV calculation basis at that time so the Trustee could only have provided speculative information to members, which would have caused uncertainty. Second, in alerting members to a potential increase in CETVs, the Trustee could have risked being accused of encouraging members to transfer out of the OBSPS. As TPR has pointed out, in guidance to pension scheme trustees regarding providing incentives to members to transfer out of defined benefit pension schemes<sup>2</sup>, trustees need to take care not to advise members in relation to transferring out of a pension scheme where they are not authorised to do so. I would add that a consequence of transferring out is that, typically, investment liability transfers to the member, so I do not consider that drawing members' attention to their option to transfer their fund out of the OBSPS would have constituted acting in those members' best interests on the whole. Further, significant numbers of members transferring out over a short space of time can have negative effects on the scheme, its funding position and the remaining members.
102. On 7 December 2016, the Trustee informed members that TSUK had announced its intention to close the OBSPS to future accrual and that a consultation with affected employees would be carried out. In January 2017, TSUK had already commenced consultation with members in relation to the proposed cessation of accrual under the OBSPS, which would undoubtedly have caused concern amongst members. On 12

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<sup>2</sup> <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/incentive-exercises>

January 2017, the Trustee informed members that TSUK was attempting to separate from the OBSPS using an RAA, and that while normally a scheme would immediately enter the PPF, the Trustee was requesting that a second scheme be set up on the modified basis previously outlined and that members be given the option to choose whether to enter the PPF or transfer to the proposed modified scheme.

103. On 27 January 2017, the Trustee issued a more detailed announcement to members which set out the options that were currently being considered by: TSUK; the Trustee; TPR; and the PPF, for the future of the OBSPS. This also went into more detail about what would happen in the event of an RAA and the setup of a new OBSPS with modified benefits. It confirmed that the outcome of the Government consultation, which had started in 2016, was still awaited and the consultation between TSUK and employees regarding the termination of future accrual in the OBSPS was ongoing.
104. I find that the announcements issued prior to and around the time Mr D chose to transfer were reasonable and I have not found any maladministration by the Trustee in respect of those announcements.
105. It would have been quite wrong for the Trustee to inform members of the potentially future favourable CETV calculation basis prior to 8 March 2017 when its investment strategy had not yet had the chance to bear results and the decision to amend the CETV calculation basis had not been made.
106. The announcements provided an update to members, using the information that was available at that time, and that information could not have been shared at an earlier time. The Trustee's communications in January 2017, can only have been intended to enhance members' understanding of the situation regarding the OBSPS' future, and to keep members up to date in relation to developments in that respect, at such a time of uncertainty.
107. It appears to me that the Trustee had focused on: securing the best outcome for the OBSPS and its members; and ensuring that members were given information on the situation as it unfolded. The OBSPS is now in the PPF assessment period, as the Trustee had predicted, but the Trustee had also set up an alternative scheme and those members who remained in the OBSPS were given the option to select whether to remain in the OBSPS and enter the PPF, or to move to the alternative scheme.
108. I acknowledge that the Trustee has referred to the PPF as being a "poor outcome" in its announcement of May 2016 and others<sup>3</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.

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<sup>3</sup> 8 June 2016, 12 August 2016, 12 January 2017 and 27 January 2017

109. The choice of words was in context to highlight that the modified OBSPS would provide a better outcome for the majority than the PPF would have provided. The context is clear, for example, in the announcement dated 26 May 2016:

“The Trustee believes that exchanging the [OBSPS’] assets for PPF compensation would be a poor outcome. The Trustee believes that the [OBSPS’] assets are more than enough to meet the cost of paying PPF compensation and that it will be better for the scheme to stay out of the PPF. The [OBSPS] could then provide modified benefits at levels which, for the vast majority of members, would be better than PPF compensation...”

110. 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.

111. 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 D 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.

112. The Trustee was not, and could not have been expected to be, aware of every member’s individual circumstances when making a generic decision. What is best for one member may disadvantage another. The Trustee needed to find a balance between providing too little information and overwhelming members with extensive and comprehensive information. This is a difficult balance to find, especially when it comes to pensions which are not straightforward in nature even without an event such as this affecting the OBSPS.

113. Mr D has said that the Trustee should have run roadshows about the future of the OBSPS and possible implications for members at a much earlier stage and that those who transferred prior to the roadshows were disadvantaged.

114. The roadshows that were run were in relation to two specific events:-

114.1. The first of those events was the consultation between TSUK and employees about the termination of future benefit accrual from late 2016 to early 2017. Those roadshows were run by TSUK (not by the Trustee) as part of the consultation exercise which it was required to carry out, as a participating employer in the OBSPS, to meet its statutory consultation obligations. The focus of those roadshows was on the potential termination of benefit accrual, as regulations<sup>4</sup> required TSUK to inform affected members that TSUK was considering ceasing future benefit accrual under the OBSPS and to provide members with the opportunity to comment on that possibility, before TSUK

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<sup>4</sup> the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

could formally reach its decision whether or not to cease benefit accrual. The roadshows had nothing to do with early retirement under, or transfers out of, the OBSPS.

114.2. The second set of roadshows, which started in October 2017, were run as part of the “Time to Choose” exercise, which was intended to inform members of their options of either transferring to the new scheme or remaining in the OBSPS and ultimately entering the PPF. The focus of the second set of roadshows was on the difference between the benefits provided by the PPF and those provided under the New British Steel Pension Scheme.

115. I do not consider it possible for either of those sets of roadshows to have been run at earlier dates, as the timing of the roadshows was dictated by the events that they related to, which had not yet occurred. The first set of roadshows could not have included details about the changes to the CETV calculation basis as they were run prior to the decision to make the changes having been made on 8 March 2017.

116. I do not agree that the Trustee should have run earlier roadshows about the possible future of the OBSPS, as the Trustee was not aware of what the OBSPS’ future would be until the RAA and the New British Steel Pension Scheme were agreed and confirmed in late 2017. Any such roadshows would have involved speculation and could have compounded members’ confusion and concerns about the situation regarding their benefits under the OBSPS.

117. To conclude, I have reviewed the information received by Mr D and I do not uphold this part of his complaint. The information provided by the Trustee was not misleading and did not amount to scaremongering. It was necessary to share information with the OBSPS members, given the press coverage of TSUK’s business at that time and the inevitable concerns this would raise.